

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.

**EXCEPTIONS TO SPECIAL DISCOVERY MAGISTRATE'S
REPORT AND RECOMMENDATION DATED MARCH 11, 2015**

Pursuant to Rule 1.490 of the Florida Rules of Civil Procedure, defendant Gawker Media, LLC, hereby files exceptions to the Special Discovery Magistrate's Report and Recommendation, dated March 11, 2015, concerning the second corporate deposition of Gawker and the topics for that deposition.¹

Gawker's corporate deposition was taken by plaintiff on October 1, 2013. Plaintiff's notice for that deposition consisted of 51 topics, and Gawker's corporate designee, Scott Kidder, prepared to testify about each of those topics, and then did so. At the time, Gawker urged plaintiff to await the adjudication of then-pending discovery motions so that the witness would only need to appear once. Plaintiff refused, the deposition proceeded, and Mr. Kidder testified, *inter alia*, about the relationship between Gawker, GMGI and Kinja.

Despite this, on December 29, 2014, plaintiff filed and served another "Notice of Deposition of Corporate Representative of Gawker," which included another 36 separate

¹ The Report and Recommendation was titled by the Special Discovery Magistrate as "Report and Recommendation of Special Discovery Magistrate Re: Plaintiff Terry Gene Bollea's Motion to Overrule Defendant Gawker Media, LLC's Objections to Corporate Designee Deposition Topics and Motion for Protective Order" (the "R&R"). A copy of the R&R is attached hereto as Exhibit 1.

deposition topics. Gawker objected to this Notice on the grounds that plaintiff had already deposed a corporate designee more than a year earlier and should not be provided with a second bite at the apple. Plaintiff filed a motion to compel, and, after briefing, the Special Discovery Magistrate held a hearing on February 13, 2015. (Gawker will supply the Court with copies of plaintiff's moving papers, Gawker's opposition and plaintiff's reply). At that hearing, he recommended that Gawker be required to submit to a second deposition. Ex. 2 (Feb. 13, 2015 Hrg. Tr.) at 24:11-25:7.² Gawker believes that a second deposition of its corporate designee should be limited to questions about documents and information that had been requested prior to the first deposition, but provided thereafter. This would be consistent with the continuation of plaintiff's deposition, which has been similarly limited. Although the Special Discovery Magistrate disagreed, he suggested that Gawker could submit objections in writing to individual topics enumerated on plaintiff's second corporate deposition notice. *Id.* at 26:11-20.

On February 23, 2015, Gawker asserted specific objections to certain of the topics of testimony listed in plaintiff's deposition notice and moved for a protective order. (Gawker will supply the Court with copies of Gawker's objections/motion, plaintiff's opposition and Gawker's letter in reply). The Special Discovery Magistrate did not hear argument on Gawker's objections and motion, and issued his R&R on March 11, 2015, that Gawker be required to submit to deposition on all the noticed topics.

For the reasons stated in Gawker's previously-filed papers, which it incorporates by reference herein, Gawker strongly believes: (a) that any additional deposition of Gawker should, consistent with the continuation of plaintiff's deposition, be limited to documents and

² The entire transcript of this hearing was erroneously marked as "confidential." Only a portion of the hearing transcript involving specific information previously designated as confidential should have been marked "confidential." With these Exceptions, Gawker has filed only pages from the transcript that do not involve confidential information.

information that had been requested and pending at the time that the deposition occurred, and (b) that in any event enumerated deposition topics are improper, irrelevant, and, in many cases, exceed the limits on discovery imposed by this Court. Just by way of example, the topics seek testimony on:

- (i) the ownership interests in Gawker Media Group, Inc. (“GMGI”), including the percentage of outstanding shares at all times for more than four years (this Court had previously dismissed GMGI, ruled that discovery need not proceed regarding GMGI and specifically sustained Gawker’s objections to discovery of “the identity of the owners of Gawker or any affiliated company”),
- (ii) various requests about payments made by Gawker, GMGI and/or Kinja, regardless of whether they had anything to do with the post at issue (this Court had previously sustained Gawker’s objections to discovery seeking information about payments of “usual and customary obligations” and limited discovery to persons or entities who “received money or other compensation flowing from the publication of the article”),
- (iii) quarterly bank balances, bank account numbers, and tax payments of Gawker, GMGI and/or Kinja (the Court had limited intrusive financial discovery and these items are entitled to particular protection under Florida law),
- (iv) various requests that have no limitation on their time period, making them extremely difficult for the witness to prepare (the Court has imposed time limitations on virtually every aspect of discovery, on both sides, and certain topics, *e.g.*, Topics 2-3, have no time limitations whatsoever),

- (v) discovery relating to www.cink.hu, a Hungarian language website operated by Kinja in Budapest,
- (vi) the identities of every person or entity that Kinja has done business with in the United States for a four year period (this is ostensibly related to jurisdiction over Kinja, even though that question is now before the Court of Appeal and even though the relevant question is Kinja's contacts with Florida).

The Special Discovery Magistrate without any explanation recommended that plaintiff be permitted to question Gawker's designee all of these topics, and more.

Finally, to the extent that at least some of the issues raised by the deposition topics tread on the exercise of jurisdiction over GMGI or Kinja, or otherwise seek sensitive financial information without justification (*e.g.*, bank account balances, account numbers, tax payments), Gawker respectfully requests that any order be stayed for fourteen (14) days to allow it to seek review by the Court of Appeal, and a stay from that Court, should Gawker elect to do so.

Dated: March 17, 2015

Respectfully submitted,

THOMAS & LOCICERO PL

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of March 2015, 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:

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