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; GAWKER MEDIA, LLC aka GAWKER MEDIA; GAWKER MEDIA GROUP, INC. aka GAWKER MEDIA; GAWKER ENTERTAINMENT, LLC; GAWKER TECHNOLOGY, LLC; GAWKER SALES, LLC; NICK DENTON; A.J. DAULERIO; KATE BENNERT, and BLOGWIRE HUNGARY SZELLEMI ALKOTAST HASZNOSITO KFT aka GAWKER MEDIA,

Defendants.
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PLAINTIFF TERRY GENE BOLLEA'S MOTION TO COMPEL THE FURTHER DEPOSITION OF DEFENDANT GAWKER MEDIA, LLC

I. INTRODUCTION

Mr. Bollea has once again been forced to bring a motion to compel after a good faith effort to resolve discovery issues. Defendant Gawker Media, LLC ("Gawker") again refuses to provide Mr. Bollea with discovery. This motion relates to Gawker's unjustified refusal to produce a corporate representative for a further deposition. The motion should be granted for at least the following reasons:

First, Mr. Bollea needs a further deposition of Gawker to obtain relevant and important information that relates primarily to Gawker's revenues, profits, finances and its sister corporations, Kinja KFT ("Kinja") and Gawker Media Group, Inc. ("GMGI"), the parent company of both Gawker and Kinja. Gawker and Kinja repeatedly enter into agreements with

one another, and their activities contribute to the operation of the Gawker.com website where the sex video at issue was published. Thus, the companies are all part of a unified corporate structure, owned by the same parent company, and have highly relevant ongoing financial and operational interactions. The Court (and the Special Discovery Magistrate) has recognized the relevance of this information in granting Mr. Bollea's prior motion to compel written discovery from Gawker in this area. This motion became necessary because Gawker refuses to produce a corporate representative for a deposition on these topics. Such discovery tactics should not be tolerated.

Second, Gawker cannot show any undue burden or prejudice. Mr. Bollea has noticed a second day of deposition for Gawker on topics **different from** those noticed for the prior Gawker deposition. Moreover, Gawker stonewalled every effort of Mr. Bollea to obtain documents relating to the topics at issue in this motion, including taking the indefensible position that it did not "possess" any responsive documents because they were technically within the possession of Gawker's sister company, with whom Gawker regularly conducts business and shares executives. The Special Discovery Magistrate and Court have called Gawker on its technicality and ordered it to produce the documents (a second time) by no later than February 2. Mr. Bollea is entitled to ask Gawker's representative questions arising from those documents, as well as other information obtained on these subjects. This is proper under Florida law, is necessary under the circumstances, and does not cause any cognizable undue burden to Gawker.

Third, Gawker withheld documents that were in its possession and responsive to relevant discovery until after the earlier Gawker representative's deposition. Mr. Bollea is entitled to ask the Gawker parties about those documents and relevant subject matter as well.

Fourth, fairness and justice support a further Gawker deposition, especially considering Gawker's own comprehensive approach to discovery in this case. Although Mr. Bollea took one brief deposition of a Gawker representative early on in the case, a further Gawker deposition is fair and justified. That is especially true considering Mr. Bollea was deposed for two days and is scheduled for a third day of deposition in April. Gawker continues to expand the discovery it wants but refuses to produce discovery that Mr. Bollea wants. Gawker has continually refused to produce written discovery and documents, especially concerning Kinja. Gawker also has noticed over a dozen non-party depositions, most of which have little or no relevance to the claims and legitimate defenses in the case. On the other hand, Gawker's continuous refusals to produce discovery have forced Mr. Bollea to file multiple motions to compel, which have been repeatedly granted. From Gawker's perspective, discovery is a one-way street. Gawker is wrong.

Accordingly, Mr. Bollea respectfully requests that the Discovery Magistrate recommend that Gawker produce a corporate witness, or witnesses, for deposition on March 6, 2015.

II. RELEVANT FACTS AND PROCEDURAL HISTORY

As the Special Discovery Magistrate is well aware, this case arises from Gawker's publication of a video depicting Mr. Bollea nude and having sex, without asking his permission, without notifying him, without confirming whether the video was recorded with his knowledge and/or permission. Gawker kept the video up at its site for six months after Mr. Bollea's counsel immediately and repeatedly demanded that it be removed, and as a result millions of people viewed the video, and Gawker substantially profited from its illegal publication of that video.

Gawker's business consists of a shell game orchestrated to operate, and profit from, the website Gawker.com and related websites. Gawker is the United States based entity for the

website operations. Kinja is purportedly based out of Budapest, Hungary. Kinja owns the trademarks and trade names for all of Gawker's websites, including Gawker.com, and the Gawker.com domain name, and licenses all such intellectual property to Gawker for a tremendously high fee equal to all of Gawker's profits. Thus, Gawker and Kinja exchange revenue from the operations of the Gawker.com website, and Kinja ends up with 100% of the profits. Further, both Gawker and Kinja are owned by GMGI, a Cayman Islands entity, whose **sole** purpose, according to Gawker, is to facilitate the ownership of Gawker and Kinja.[1]

On October 1, 2013, Mr. Bollea conducted the deposition of Gawker. Attached as **Exhibit 1** hereto is a true and correct copy of the Second Amended Notice of Taking Video Deposition for that deposition.

During the course of that deposition, and others taken that week, it became clear that Gawker was withholding documents responsive to Mr. Bollea's discovery requests. After the deposition, Gawker made a supplemental production of additional documents. As a result, questions about those documents were never asked. Mr. Bollea seeks an opportunity to ask Gawker about them.

On or about June 27, 2013, Mr. Bollea served Gawker with Requests for Production relating to Kinja's involvement in the facts and circumstances that gave rise to this lawsuit, and to understand the extent of any downstream benefit Kinja may have received from the unauthorized posting of the sex video at Gawker.com. Gawker refused to produce documents responsive to the Requests, forcing Mr. Bollea to bring a motion to compel the documents. The motion was heard on November 25, 2013. The Court issued a written order on February 26,

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[1] As a further reminder, Scott Kidder, who works out of Gawker's offices in Manhattan, New York City, acted as both Vice President of Operations at Gawker, and the sole officer and director of Kinja for several months (likely overlapping with the time period that Gawker posted the sex video at issue).

2014, granting in part and denying in part Mr. Bollea's motion to compel. Most notably, the Court granted Mr. Bollea's motion as to all documents that describe Kinja's functions or line of business, all documents that describe Kinja's functions with respect to the posting of content on Gawker.com, all documents that relate to financial transactions between Kinja and Gawker, and documents that relate to the direct or indirect receipt of advertising revenue by Kinja.

Despite the Court's order requiring the discovery, Gawker did not produce any documents compelled by the Court's February 26, 2014 Order, and still has not done so. Gawker's position was that it was not in possession of any such documents, even though Gawker clearly had possession and custody over these documents because they were in Kinja's possession. Mr. Bollea was again forced to bring a motion to compel.

On November 5, 2014, after extensive briefing and lengthy oral argument, Special Discovery Magistrate Judge James Case entered a Report and Recommendation granting in its entirety Mr. Bollea's motion to compel compliance with the February 26, 2014 Order. On December 17, 2014, the Court affirmed the Report and Recommendation on a majority of the requests. Attached as **Exhibit 2** hereto is a true and correct copy of the December 17, 2014 Order.

On December 29, 2014, Mr. Bollea served a Notice of Taking Videotaped Deposition on Gawker, for a deposition dated March 6, 2015. Attached as **Exhibit 3** hereto is a true and correct copy of that Notice of Taking Video Deposition. On January 13, 2015, counsel for Gawker asserted in writing that Gawker objects to a second deposition of a Gawker corporate witness. The parties met and conferred but were unable to resolve this issue without court intervention.

III. THE MOTION TO COMPEL SHOULD BE GRANTED.

A. The Further Deposition of Gawker is Relevant and Necessary.

"Parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action. . . . It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." Fla. R. Civ. P. 1.280(b)(1). "[T]he test is relevancy to the subject matter of the action rather than to the precise issues framed by the pleadings." *Charles Sales Corp. v. Rovenger*, 88 So.2d 551, 553 (Fla. 1956).

First, deposition testimony from a Gawker representative regarding Kinja and GMGI, and those entities' relationships and interactions with each other, is clearly relevant to liability on Mr. Bollea's claims, and both the Discovery Magistrate and Judge Campbell have repeatedly so ruled. Mr. Bollea alleges that Gawker improperly published, and profited from, a video of him. Mr. Bollea should be permitted to discover which entities are responsible for the publication, and their specific involvement. As shown herein, these entities operate an elaborate scheme to collaborate in the operation of the Gawker.com website.

Second, deposition testimony from a Gawker representative regarding Kinja and GMGI, and those entities' relationships and interactions with each other, is clearly relevant to Mr. Bollea's damages. The Gawker family of companies unjustly benefitted from the unauthorized posting of the sex video depicting Mr. Bollea. Mr. Bollea should be permitted to discover which entities received revenue from exploitation of the video, and what profits were made.

Overall, deposition testimony on the topics listed are directly relevant in this case. The court even recognized as much when it granted Mr. Bollea's previous motion to compel on similar written discovery requests.

B. Gawker Cannot Show Any Undue Burden or Prejudice.

No provision exists in Florida law limiting the number or length of depositions. *See generally* Fla. R. Civ. P. Rule 1.310. In fact, "[n]othing in the Florida Rules of Civil Procedure forbids a second discovery deposition." *Medina v. Yoder Auto Sales, Inc.*, 743 So.2d 621, 623 (Fla. Dist. Ct. App. 1999).[2]

The only basis that Gawker would have for refusing to appear for a second deposition would be to obtain a protective order. But Gawker has not sought a protective order. If it had, a protective order could only be obtained on a showing of good cause "to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense that justice requires." Fla. R. Civ. P. Rule 1.280(c). Gawker has the burden to show good cause. *Medina*, 743 So.2d at 623 ("Here, the circuit court did not address whether the Yoders showed good cause, but instead found that Medina failed to make a sufficient showing to warrant a second deposition. The court apparently put the burden on Medina, rather than on the Yoders. This was error.").

Here, Gawker cannot present any good cause justifying a protective order. The first deposition of Gawker was only for one day, and less than seven hours. There cannot be any reasonable argument that a second day of deposition on very particular topics results in any annoyance, embarrassment, oppression, or **undue** burden or expense. On the other hand, Mr. Bollea was deposed for two days and is scheduled for a third day of deposition in April. Gawker has only sat for one partial-day deposition. A second day is clearly warranted.

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[2] Further, a party is permitted to take a deposition of an officer, director, or managing agent of a corporation by simple notice and without the necessity of serving the official with a witness subpoena, even when the deposition of the corporation has already been taken. *See Plantation-Simon Inc. v. Bahloul*, 596 So. 2d 1159, 1162 (Fla. Dist. Ct. App. 1992); *see also Racetrac Petroleum, Inc. v. Sewell*, 150 So. 3d 1247, 1252 (Fla. Dist. Ct. App. 2014).

The specific topics identified in the deposition notice at issue were not addressed and were not at issue at the earlier deposition. In contrast to the very narrow issues in the deposition notice at issue, *i.e.* the relations and interactions among Gawker, Kinja, and GMGI, the topics at issue at the earlier deposition were much broader issues concerning the video of Mr. Bollea (*compare* Ex. 3 to Ex. 1 hereto). Given Gawker's proclivity for objecting to any discovery, Gawker would have surely objected to any questioning outside of the listed topics. Gawker proclaims that its representative talked about Kinja at the first deposition and that Mr. Bollea therefore could have asked any questions he wanted about Kinja. The fact that Kinja may have been mentioned during the earlier deposition does not negate the fact that the topics noticed for the second day of deposition are different from those noticed for the earlier deposition.

Additionally, Mr. Bollea has obtained further discovery, and is still waiting on additional documents, for which he should be permitted to question Gawker. Gawker continually refused to produce discovery, especially concerning Kinja. Gawker has even gone as far as filing appeals in attempts to thwart Mr. Bollea's efforts to obtain this discovery. As the Court has already ruled, this discovery is relevant and proper. Once Mr. Bollea finally receives the discovery, he should be permitted to question Gawker about it.

C. <u>Fairness and Justice Support a Further Gawker Deposition.</u>

As stated in the seminal case of *Surf Drugs, Inc. v. Vermette*, 236 So.2d 108, 111 (Fla. 1970), "[a] primary purpose in the adoption of the Florida Rules of Civil Procedure is to prevent the use of surprise, trickery, bluff and legal gymnastics." Moreover, in *Schlagenhauf v. Holder*, 379 U.S. 104, 114–15, 85 S.Ct. 234, 13 L.Ed.2d 152 (1964), the U.S. Supreme Court held that the rules of discovery should be afforded "'broad and liberal treatment' to effectuate their purpose that" trials should not be "'carried on in the dark.'" *Id.* (quoting *Hickman v. Taylor*, 329

U.S. 495, 501, 507, 67 S.Ct. 385, 91 L.Ed. 451 (1947)). "A search for truth and justice can be accomplished only when all relevant facts are before the judicial tribunal. Those relevant facts should be the determining factor rather than gamesmanship, surprise, or superior trial tactics." *Dodson v. Persell*, 390 So. 2d 704, 707 (Fla. 1980).

Here, fairness and justice would be served by allowing Mr. Bollea a further deposition of Gawker to obtain discovery relevant to Mr. Bollea's claims and damages, particularly to question Gawker about facts and documents that Gawker withheld from discovery at the time of its first deposition and that were ordered to be produced by Gawker subsequent to that first deposition. Gawker seriously invaded Mr. Bollea's privacy rights. He has every right to obtain all relevant facts and information prior to the trial. Mr. Bollea's motion is in no way a litigation tactic; it is simply a search for the truth.

Gawker, on the other hand, has evaded discovery and engaged in continual gamesmanship and litigation tactics. Gawker has repeatedly and systematically refused to engage in discovery, going so far as to avoid a court order. Even when Gawker's tactics are invalidated by the Court, it refuses to stop filing numerous interlocutory appeals. Gawker also continues to expand the discovery that it wants, for example, by noticing over a dozen non-party depositions, most of which have little to no relevance to this case, while seeking to block Mr. Bollea from taking the instant one deposition at issue. Gawker's "one way" discovery tactics should not be permitted.

Gawker apparently has much to hide: its improper exploitation and profiting from the video, and its corporate shell game with Kinja and GMGI. The court should not condone Gawker's evasive discovery tactics, and should permit a further deposition of Gawker so the truth may be revealed.

IV. CONCLUSION

For the foregoing reasons, Mr. Bollea requests that the Special Discovery Magistrate recommend that this motion to compel be granted and that Gawker produce a corporate witness, or witnesses, responsive to the topics listed in Mr. Bollea's Notice of Taking Videotaped Deposition (Exhibit 3).

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by E-Mail via the e-portal system this 23rd day of January, 2015 to the following:

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