

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

TERRY GENE BOLLEA professionally
known as HULK HOGAN,

Plaintiff,

Case No.: 12012447-CI-011

vs.

HEATHER CLEM; GAWKER MEDIA,
LLC aka GAWKER MEDIA; et al.,

Defendants.

RENEWED MOTION TO COMPEL PLAINTIFF'S DAMAGES CALCULATIONS

Pursuant to Florida Rule of Civil Procedure 1.380, Defendants Nick Denton and Gawker Media, LLC respectfully move this Court for an Order compelling plaintiff to provide proper responses to the discovery served on him on December 18, 2014 concerning how he calculates his alleged damages. That discovery mirrors interrogatories that the Court already ordered plaintiff to answer in the Fall of 2013, but to which he still has failed to provide a substantive response. Without this information, Gawker is unable to properly prepare its defense or engage experts to address plaintiff's damages theories.

BACKGROUND

1. In June 2013, Gawker asked plaintiff to “[i]dentify any and all damages purportedly suffered by you as a result of alleged actions by the Gawker Defendants or any of them, explaining with particularity the basis for your calculation of such alleged damages.” Ex. 1 (Gawker’s First Set of Interrogatories, No. 12). Plaintiff refused to answer that interrogatory, asserting only that “[d]iscovery is continuing, and Responding Party is still assessing and

calculating his damages.” Ex. 2 (Plaintiff’s Response to Gawker’s First Set of Interrogatories, No. 12). Accordingly, Gawker filed a motion to compel a response.

2. At the hearing on Gawker’s motion in October 2013, Judge Campbell implored plaintiff that “the time to let [defendants] know [the damages he seeks to recover] is now. We’re doing the discovery now.” Ex. 3 at 14:6-8 (excerpt from transcript of Oct. 29, 2013 hearing). At the close of the hearing, Judge Campbell read the interrogatory, noted that it asked plaintiff to “explain with particularity the basis for your calculation of . . . damages,” and ordered plaintiff to respond to that interrogatory by November 8, 2013. *Id.* at 95:12 – 96:12; *see also* Ex. 4 (Feb. 26, 2014 Order, requiring plaintiff to respond to interrogatory).

3. Plaintiff served a response to the interrogatory on his damages and set out his damages theories. He then supplemented those responses several times, most recently on June 24, 2014. *See* Ex. 5 (Plaintiff’s Third Supplemental Response to Interrogatory No. 12).

4. Those supplemental responses stated that plaintiff is seeking damages, *inter alia*, based on:

- “The reasonable value of a publicly released sex tape featuring Hulk Hogan”;
 - “The reasonable value of 5.35 million unique Internet users visiting the Gawker.com homepage and/or the webpage featuring the Hulk Hogan sex tape, and any other Gawker affiliated websites/webpages during the period of October 4, 2012, through April 25, 2013, because of the existence of the Hulk Hogan sex tape at Gawker.com”;
- and
- “Gawker Media’s profits, and the profits of Gawker’s owners, managers and/or employees, resulting from the unlawful dissemination of the Hulk Hogan sex tape at issue

and the accompanying narrative describing Hulk Hogan naked and having sex in a private place.” *Id.*

5. Neither plaintiff’s initial response to the damages interrogatory nor any of his supplemental responses quantified the damages he seeks or stated the basis for his calculation of damages, as requested by Gawker and ordered by Judge Campbell. *Id.* Instead, he has disclosed only the broad categories of damages he seeks, reiterating that his “investigation and discovery are continuing” and “reserv[ing] the right to alter or modify this response as additional information is learned through his investigation and discovery into the underlying facts.” *Id.* To date, some sixteen months after plaintiff was ordered to provide information about how he calculates his damages, he has still not done so.

6. After the Court set a discovery deadline and trial date, Gawker’s co-defendant, Denton, served four interrogatories again asking plaintiff for the precise information Judge Campbell previously ordered to be produced. Specifically, he asked plaintiff:

Interrogatory No. 18. Explain in detail how you calculate the reasonable value of a publicly released sex tape featuring Hulk Hogan as identified as one of your alleged damages in response to Interrogatory No. 12 propounded by defendant Gawker Media, LLC

Interrogatory No. 19. Explain in detail how you calculate the reasonable value of the Video Excerpts [posted by Gawker]

Interrogatory No. 20. Explain in detail how you calculate the element of damages identified in the paragraph numbered 2 in your third supplemental response to Interrogatory No. 12 propounded by defendant Gawker Media, LLC [*i.e.*, the reasonable value of unique visitors to Gawker’s homepage and “other Gawker affiliated websites/webpages”]

Interrogatory No. 21. Explain in detail how you calculate the element of damages identified in the paragraph numbered 3 in your third supplemental response to Interrogatory No. 12 propounded by defendant Gawker Media, LLC [*i.e.*, the profits of Gawker and its owners, managers, and employees]

See Ex. 6 (Denton’s Third Set of Interrogatories Nos. 18-21).

7. In addition, although Gawker had previously requested such documents close to two year ago, Gawker again asked plaintiff to produce documents that “support [his] calculation of the reasonable value of a publicly released sex tape featuring Hulk Hogan.” Ex. 7 (Gawker’s Fifth Request for Production of Documents No. 65).

8. In response to the Interrogatories, plaintiff refused to provide any information about the calculation of his damages. Instead, he asserted a nearly a full page of boilerplate objections, claiming, among other things, that the interrogatories sought information that was “protected from disclosure by the attorney-client privilege and/or attorney work product doctrine,” sought “confidential and/or proprietary information or trade secrets,” was “made to cause annoyance [and] oppression,” and “is not relevant to [plaintiff’s] claims.” *See* Ex. 8 (Plaintiff’s Responses to Denton’s Third Set of Interrogatories Nos. 18-21).

9. Plaintiff also said that a “more complete response . . . will be the subject of expert discovery” and will be provided with his initial expert disclosures on March 6, 2014. *Id.*

10. Plaintiff objected to Gawker’s document request on many of the same grounds and again said that he would provide documents with his initial expert disclosures. *See* Ex. 9 (Plaintiff’s Responses to Gawker’s Fifth Request for Production of Documents No. 65).

ARGUMENT

11. It is black-letter law that a party must disclose information relevant to its calculation of damages. *See, e.g., Behm v. Cape Lumber Co.*, 834 So. 2d 285, 287 (Fla. 2d DCA 2002) (“Proper discovery includes records and information that are relevant to the calculation of damages.”). Yet, from the outset of this case, plaintiff has refused to provide any information about how he calculates his damages.

12. In October 2013, Judge Campbell told plaintiff that the time to provide information about his damages “is now.” Ex. 3 at 14:6-7. Yet, nearly a year-and-a-half later, plaintiff still has not provided a response to any interrogatory seeking information about how he calculates his damages. *See, e.g., Johnson v. Allstate Ins. Co.*, 410 So. 2d 978, 980 (Fla. 5th DCA 1982) (“party may not ignore a valid order of court”). In response to Denton’s attempt to ask again for that information, plaintiff continues to stonewall.

13. His stonewalling is highly prejudicial, as defendants cannot complete discovery on his damages without having any idea how those damages are calculated. Although plaintiff has suggested that he will disclose information about his calculation of damages when he makes his expert disclosures, a party cannot hide relevant information merely because an expert later might rely on that information or offer his own opinion about it.

14. Plaintiff also cannot properly hide information about how he calculates his damages or documents supporting that calculation based on a claim of work-product protection. As the Florida Supreme Court has explained, “evidence reasonably expected or intended for trial use [must] be produced *when requested*.” *Northup v. Acken*, 865 So. 2d 1267, 1271 (Fla. 2004) (emphasis added). The Court has “explicitly h[e]ld that if attorney work product is expected or intended for use at trial, it is subject to the rules of discovery.” *Id.* at 1272. Certainly, plaintiff intends to present claims for damages at trial. Plaintiff, however, seeks to use his claim of work-product protection to hide plainly relevant information and documents.

15. At bottom, nothing in the Florida Rules of Civil Procedure contemplates this kind of gamesmanship. To the contrary, a “primary purpose” of the Rules “is to prevent the use of surprise, trickery, bluff and legal gymnastics.” *Surf Drugs, Inc. v. Vermette*, 236 So. 2d 108, 111 (Fla. 1970). Yet, that is precisely what will happen if plaintiff is permitted to wait until March 6

to produce any information about his calculation of damages. By that point, the Gawker defendants will be left with only one month to take discovery on his damages theories and just three weeks to identify an expert to opine on how plaintiff purports to calculate his damages. That result is precisely what Judge Campbell sought to avoid in October 2013 and exactly what the Florida Rules prohibit.

16. Plaintiff should be required to provide full and complete responses to Denton's interrogatories and Gawker's document requests forthwith. If plaintiff does not do so promptly, the Gawker defendants should, if necessary, be granted additional time to take discovery concerning plaintiff's damages theories and to present experts who can meaningfully address them.

CERTIFICATION OF GOOD FAITH CONFERENCE

Pursuant to Florida Rule of Civil Procedure 1.380, movants' counsel certifies that they have, in good faith, attempted to confer with counsel for plaintiff about the foregoing in an effort to secure the discovery at issue without court action, but have been unable to do so. Specifically, counsel for the parties have exchanged detailed letters on this issue, but plaintiff continues to maintain that such information and documents need not be provided.

CONCLUSION

For the foregoing reasons, Denton respectfully requests that plaintiff be required to respond to Interrogatories No. 18, 19, 20, and 21, and Gawker respectfully requests that plaintiff be required to respond to Document Request No. 65 by February 23, 2015.

Dated: February 6, 2015

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of February, 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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