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 (1) REPLY IN SUPPORT OF MOTION TO COMPEL THE FURTHER DEPOSITION OF DEFENDANT GAWKER MEDIA, LLC AND (2) OPPOSITION TO GAWKER MEDIA, LLC'S MOTION FOR PROTECTIVE ORDER

I. INTRODUCTION

In response to Mr. Bollea's motion to compel a further deposition, Defendant Gawker Media, LLC ("Gawker") has resorted to abstract arguments that such a deposition would be burdensome and unfair. There is no evidence to support Gawker's position. Fairness dictates that Mr. Bollea be given the opportunity for a further deposition of a Gawker representative.

First, Gawker has the burden of proving undue burden or prejudice will result from a further deposition. Gawker has failed to satisfy its burden, including by failing to include amongst its numerous exhibits any declaration from it or its representative, Scott Kidder. A conclusory assertion that further preparation of Mr. Kidder would be burdensome, without any

declarations to support that assertion, is insufficient. Gawker has failed to satisfy its burden, and the Court should grant Mr. Bollea's motion.

Second, Gawker cannot hide from the fact that it produced responsive documents after the initial documents and also recently produced additional documents responsive to Mr. Bollea's discovery requests (including as recently as February 4, 2015), propounded a year and a half ago. Mr. Bollea is entitled to take a further deposition of Gawker now that he finally has received Gawker's responsive documents and additional information, which Mr. Bollea requested before the initial deposition. Gawker cites no case to the contrary.

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. MR. BOLLEA'S MOTION TO COMPEL SHOULD BE GRANTED.

A. Gawker Has Failed To Meet Its Burden to Show Undue Burden or Prejudice.

"[T]he bare allegation that [a party] would suffer 'an unreasonable burden' if required to provide discovery cannot form the basis for denying petitioner its discovery." *Office of Attorney Gen., Dep't of Legal Affairs, State of Fla. v. Millennium Commc'ns & Fulfillment, Inc.*, 800 So. 2d 255, 258 (Fla. 3d DCA 2001). "There is obviously no error in overruling this kind of objection when it is not supported by record evidence, such as an affidavit detailing the basis for claiming that the onus of supplying the information or documents is inordinate." *Topp Telecom, Inc. v. Atkins*, 763 So. 2d 1197, 1199 (Fla. 3d DCA 2000); *see also In re Commitment of Sutton*, 884 So. 2d 198, 203 (Fla. 4th DCA 2004) ("An objection claiming an undue burden in responding to discovery requests must be supported by record evidence, such as an affidavit detailing the basis for claiming that the onus of supplying the information or documents is inordinate. [citation omitted] The petitioners did not make such a showing; instead, they relied

on unsupported and conclusory claims of undue burden and expense.").

Gawker's arguments regarding alleged burden have no evidentiary support. Gawker states, in the abstract, that its representative (Scott Kidder) had "devoted substantial time to preparing" for his deposition in 2013, and spent "significant time reviewing documents." Opp. at pp.1, 3. Yet, neither Gawker nor Mr. Kidder supplied an affidavit of the time spent by Mr. Kidder in preparing for the earlier deposition or estimating the time that Mr. Kidder would require to prepare for a further deposition.

Again, Gawker has the burden of proving 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 presented no evidence of any "annoyance, embarrassment, oppression, or undue burden or expense that justice requires" and therefore has not met its burden.[1]

B. Fairness and Justice Support a Further Gawker Deposition.

Any burden that Gawker may be required to undertake in preparing for a further deposition cannot be characterized as an "undue" burden. Gawker does not dispute that it produced additional documents and discovery responses, after the initial Gawker deposition, and that such discovery was responsive to Mr. Bollea's discovery propounded prior to the initial deposition. Some of those documents were just produced on February 4, 2015. Mr. Bollea should not be punished for taking Gawker's deposition and then having to file numerous motions, which were successful, to get discovery from Gawker. He should be permitted to take a

[1] Gawker labels its opposition to Mr. Bollea's motion also as a motion for protective order, seemingly in response to Mr. Bollea pointing out in his motion that Gawker had not filed such a motion. Regardless of how Gawker wants to label it, Gawker has the burden to justify its refusal to attend a further deposition. *Towers v. City of Longwood*, 960 So. 2d 845, 848 (Fla. Dist. Ct. App. 2007) ("The burden of demonstrating good cause for the issuance of such a protective order, however, falls upon the party seeking that relief.").

further deposition of Gawker, especially to explore the documents and discovery responses produced after the initial Gawker deposition. Significantly, Mr. Bollea is scheduled for **a third day of deposition** based on documents and discovery that were produced after his initial two days of deposition and that were the subject of pending motion practice at the time.

Gawker cites *J.S. v. State*, 45 So. 3d 910, 911 (Fla. 4th DCA 2010) for the argument that good cause does not exist for a further deposition when the attorney could have asked the desired questions at the initial deposition. That case is factually and procedurally inapplicable:

First, the counsel in *J.S. v. State* conceded that the deponent had already asked and answered the desired questions and "admitted that 'these were areas that I should have covered and I didn't.'" 45 So. 3d at 911. That certainly is not the case here. Mr. Bollea's counsel could not have covered the areas sought by the further deposition – Mr. Bollea did not receive the documents and information until after the initial deposition.

Second, *J.S. v. State* was a juvenile criminal case and was based on criminal procedural rules that "no person shall be deposed more than once except by consent of the parties or by order of the court issued on good cause shown." 45 So. 3d at 910 (citing Florida Rule of Juvenile Procedure 8.060(d)(2)(D)). Those procedures do not apply to civil depositions of corporate defendants.

No provision exists in Florida law limiting Gawker's corporate deposition to one session. *See generally* Fla. R. Civ. P. Rule 1.310. Gawker's position that Mr. Bollea must purportedly justify a further deposition of Gawker was rejected in *Medina v. Yoder Auto Sales, Inc.*, 743 So.2d 621 (Fla. 2d DCA 1999), because it would improperly place the burden on Mr. Bollea. Gawker has the burden to show good cause why a further deposition should not take place. *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.").

Gawker attempts to distinguish *Medina* on the facts, suggesting that a further deposition is only warranted when subsequent discovery casts doubt on earlier deposition testimony, as in *Medina*. *Medina* makes no such requirement. *Medina* only reinforces the basic premise that subsequent discovery can provide a legitimate reason for a further deposition. Here, Gawker's late production of documents and information responsive to Mr. Bollea's discovery propounded prior to the initial deposition warrants a further deposition. Mr. Bollea could not have questioned Gawker about documents and information that Mr. Bollea did not have at the time of the initial deposition. *Medina* rejects the principle for which Gawker advocates – that a further deposition is fundamentally unfair unless the party requesting it shows good cause. On the contrary, Gawker must meet its burden and has not done so.[2]

Gawker premises its opposition on the fact that Mr. Bollea took Gawker's deposition "early" in the case and, therefore, "should have known" that Gawker was withholding documents, and "should have known" that it would take a year-and-a-half and several motions to get Gawker to comply with its discovery obligations. Such a position does not justify refusing to attend a further deposition; in fact, it justifies Mr. Bollea's request for a further deposition.

III. CONCLUSION

For the foregoing reasons, Mr. Bollea requests that the Special Discovery Magistrate

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[2] Gawker also asserts that discovery concerning its relationships with Kinja KFT ("Kinja") and Gawker Media Group, Inc. ("GMGI") is improper and/or premature. This argument is a red herring. Mr. Bollea has noticed a further deposition of Gawker, not of Kinja or GMGI. The Court (and the Special Discovery Magistrate) has recognized the relevance of this information and has found that Mr. Bollea can conduct discovery on these topics from Gawker.

recommend that this motion to compel be granted, Gawker's motion for protective order be denied, and that Gawker produce a corporate witness, or witnesses, responsive to the topics listed in Mr. Bollea's Notice of Taking Videotaped Deposition.

Respectfully submitted,

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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 12th day of February, 2015 to the following:

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