

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

TERRY GENE BOLLEA professionally
known as HULK HOGAN,

Case No. 12012447 CI-011

Plaintiff,

vs.

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.

**PLAINTIFF'S MOTION FOR EXTENSION OF TIME
TO SUPPLEMENT EXPERT DISCLOSURE & TO EXTEND EXPERT DISCOVERY**

Plaintiff Terry Bollea moves for an extension of time until March 27, 2015 to supplement his expert disclosures with respect to Professor Leslie John, and to extend the expert discovery deadline to allow Defendants additional time to complete discovery regarding Professor John's opinions.

SUMMARY OF REQUESTED RELIEF

Mr. Bollea seeks a brief extension until March 27, 2015 (the deadline for rebuttal experts) to supplement his Expert Disclosures so that one of his damages experts,¹ Professor Leslie John, can complete the survey upon which her opinions in this case will be based. This brief extension

¹ Professor John's opinions do not bear on any issue relating to liability, so they have no impact on Defendants' summary judgment motions.

will not prejudice Defendants. Mr. Bollea proposes an extension of time for Defendants to designate a rebuttal expert as to Professor John's opinions.²

I. RELEVANT FACTS AND PROCEDURAL HISTORY

On March 6, 2015, in accordance with the Order Setting Pre-Trial Conference and Jury Trial (sent to the Court on February 13, 2015), Mr. Bollea served Defendants with his Expert Designations, listing four expert witnesses: (1) Jeff Anderson, (2) Professor Mike Foley, (3) Professor Leslie John, and (4) Shanti Shunn.

Mr. Bollea provided written expert reports detailing the opinions and bases for opinions for three of the four named experts. Mr. Bollea also provided all of the required disclosures for Professor John, except for her opinions, which have not yet been completed.

Leslie John is a professor at Harvard Business School and an expert in the field of behavioral economics. She has conducted research into the value of an individual's privacy.

On March 6, 2015, Mr. Bollea disclosed to Defendants that Professor John is expected to testify about the value of the loss of privacy to a person similarly situated to Hulk Hogan who has a secretly-filmed tape of him naked and having sex released on the Internet without his consent. Mr. Bollea also disclosed that Professor John's opinions will be based in part on the results of a survey she is conducting regarding reasonable or fair compensation for being observed naked and having sex on a video published and viewed online without consent.

Professor John expects to complete her survey within the next 10–14 days. Accordingly, Mr. Bollea was unable to provide further detail as to Professor John's opinions, their basis, and the full scope of materials relied upon in forming her opinions. Mr. Bollea thus provided in his

² If Gawker contends it needs additional time to depose Professor John beyond the April 13, 2015 deadline to complete expert depositions, Mr. Bollea will be reasonable in granting any such requests.

Expert Designations that: “Upon completion of Professor John’s research and investigation, Plaintiff will supplement this disclosure with Professor John’s opinions and findings, the basis therefor, and the documents and resources on which she relied.”

During the course of expert deposition scheduling discussions, counsel for Defendants Gawker Media, LLC (“Gawker”), Nick Denton, and A.J. Daulerio, informed Mr. Bollea’s counsel that they would not agree to a deposition date for Professor Leslie John until Mr. Bollea receives an order from the Court allowing Mr. Bollea to supplement his Expert Designations with Professor John’s opinions.

As a result, Mr. Bollea now promptly brings the matter to the attention of the Special Discovery Magistrate.

II. ARGUMENT

As set forth above, Mr. Bollea disclosed Professor John as an expert witness and provided Defendants with information regarding her professional background, qualifications and expected areas of testimony. Mr. Bollea is only seeking a brief extension of time for Professor John to complete and disclose her opinions based on the survey she is conducting.

Trial courts have broad discretion to determine whether to allow testimony of a witness whose name has not been disclosed *at all* in accordance with a pretrial order. Such discretion “must not be exercised blindly, however, and should be guided largely by a determination as to whether use of the undisclosed witness will prejudice the objecting party.” *Binger v. King Pest Control*, 401 So. 2d 1310, 1314 (Fla. 1981). “Other factors which may enter into the trial court’s exercise of discretion are: (i) the objecting party’s ability to cure the prejudice or, similarly, his independent knowledge of the existence of the witness; (ii) the calling party’s possible intentional, or bad faith, noncompliance with the pretrial order; and (iii) the possible disruption

of the orderly and efficient trial of the case (or other cases).” *Id.*

The Florida Supreme Court has held that, “[i]f after considering these factors, and any others that are relevant, the trial court concludes that use of the undisclosed witness will not substantially endanger the fairness of the proceeding, **the pretrial order mandating disclosure should be modified and the witness should be allowed to testify.**” *Id.* (emphasis added).

Here, the Order Setting Pre-Trial Conference and Jury Trial should be modified to allow Mr. Bollea until March 27, 2015 to supplement his Expert Designations as to Professor Leslie John’s opinions and their basis, and allow a corresponding extension of time for expert discovery and Defendants to designate a rebuttal expert as to those opinions:

First, unlike the situation presented in *Binger*, Mr. Bollea disclosed Professor John by name, providing Defendants with the expected subject matter of her testimony, disclosed the methodology she would use to form her opinions, and provided the documents relied upon by Professor John to date. Defendants thus were aware of “the existence of the witness” as of March 6, 2015.

Second, given the status of expert discovery, granting this brief extension will not cause any prejudice. However, providing Defendants with a corresponding extension of time to disclose a rebuttal expert and complete Professor John’s deposition cures any potential prejudice Defendants may argue exists due to disclosing Professor John’s opinions on March 27 instead of March 6.³

Third, extending the time for supplementing Professor John’s opinions and for designating a rebuttal witness does not disrupt the orderly and efficient trial of the case. Professor John’s opinions do not relate to liability in any way (only to the proper measure of

³ Arguably, Professor John could have been simply disclosed as a “rebuttal” expert because Defendants disclosed an expert to testify as to the “value” of the subject video.

damages), and so have no effect on the summary judgment motion deadline of April 20. Trial is scheduled to begin July 6, 2015, meaning there will be **ten weeks** between the last day to depose any rebuttal witness to Professor John and the beginning of trial.

Mr. Bollea therefore respectfully requests that the Special Discovery Magistrate recommend that the Court **grant** this motion, because extending the time to disclose Professor John's opinions "will not substantially endanger the fairness of the proceeding." *Id.*

III. CONCLUSION

For the foregoing reasons, Mr. Bollea requests that the Special Discovery Magistrate recommend that this motion for extension of time to supplement expert disclosure be **granted** and recommend that: (1) Mr. Bollea shall have until March 27, 2015 to supplement his Expert Disclosures with the expert opinions of Professor Leslie John; (2) Defendants shall have until April 17, 2015 to designate a rebuttal expert as to the expert opinions of Professor Leslie John only; and (3) Any deposition of any witness designated in rebuttal to Professor Leslie John's expert opinions shall be held no later than April 24, 2015.

Respectfully submitted,

/s/ Shane B. Vogt

Kenneth G. Turkel, Esq.

Florida Bar No. 867233

Shane B. Vogt

Florida Bar No. 0257620

BAJO | CUVA | COHEN | TURKEL

100 North Tampa Street, Suite 1900

Tampa, Florida 33602

Tel: (813) 443-2199

Fax: (813) 443-2193

Email: kturkel@bajocuva.com

Email: svogt@bajocuva.com

-and-

Charles J. Harder, Esq.
PHV No. 102333
Douglas E. Mirell, Esq.
PHV No. 109885
Sarah E. Luppen, Esq.
PHV No. 113729
HARDER MIRELL & ABRAMS LLP
1925 Century Park East, Suite 800
Los Angeles, CA 90067
Tel: (424) 203-1600
Fax: (424) 203-1601
Email: charder@hmafirm.com
Email: dmirell@hmafirm.com
Email: sluppen@hmafirm.com

Attorneys for Plaintiff

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 March, 2015 to the following:

Barry A. Cohen, Esquire
Michael W. Gaines, Esquire
The Cohen Law Group
201 E. Kennedy Blvd., Suite 1950
Tampa, Florida 33602
bcohen@tampalawfirm.com
mgaives@tampalawfirm.com
jhalle@tampalawfirm.com
mwalsh@tampalawfirm.com
Counsel for Heather Clem

David R. Houston, Esquire
Law Office of David R. Houston
432 Court Street
Reno, NV 89501
dhouston@houstonatlaw.com
krosser@houstonatlaw.com

Michael Berry, Esquire
Levine Sullivan Koch & Schultz, LLP
1760 Market Street, Suite 1001
Philadelphia, PA 19103
mberry@lskslaw.com
*Pro Hac Vice Counsel for
Gawker Defendants*

Gregg D. Thomas, Esquire
Rachel E. Fugate, Esquire
Thomas & LoCicero PL
601 S. Boulevard
Tampa, Florida 33606
gthomas@tlolawfirm.com
rfugate@tlolawfirm.com
kbrown@tlolawfirm.com
pmeconigle@tlolawfirm.com
Counsel for Gawker Defendants

Seth D. Berlin, Esquire
Paul J. Safier, Esquire
Alia L. Smith, Esquire
Michael D. Sullivan, Esquire
Levine Sullivan Koch & Schulz, LLP
1899 L. Street, NW, Suite 200
Washington, DC 20036
sberlin@lskslaw.com
psafier@lskslaw.com
asmith@lskslaw.com
msullivan@lskslaw.com
*Pro Hac Vice Counsel for
Gawker Defendants*

/s/ Shane B. Vogt
Attorney