UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

LEAH BASSETT, Plaintiff, v. MONICA JENSEN, d/b/a NICA NOELLE; JON BLITT, in his Personal Capacity & d/b/a MILE HIGH MEDIA, ICON MALE, and TRANSSENSUAL; MILE HIGH DISTRIBUTION, INC.; JOSHUA SPAFFORD, d/b/a JOSHUA DARLING; APRIL CARTER, d/b/a DIANA DEVOE; TLA ENTERTAINMENT GROUP, d/b/a TLA GAY and TLA DISTRIBUTION; and GAMMA ENTM'T, d/b/a CHARGEPAY B.V.; WILLIAM GRAY, d/b/a BILLY SANTORO; and FIORE J. BARBINI, d/b/a HUGH HUNTER, Defendants.	)	CIVIL ACTION No. 18-cv-10576-PBS

DEFENDANT MILE HIGH DISTRIBUTION, INC.'S OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL ANSWERS

Defendant Mile High Distribution, Inc. ("Mile High") hereby submits this opposition to Plaintiff Leah Bassett's Motion to Compel Answers Per The Clerk's Notes (Dkt. 69, the "Motion"). Mile High notes that the parties will all be present in Court on October 16, 2019 for a hearing on an unrelated motion before Judge Saris, should the Court wish to hear oral argument on this issue.

INTRODUCTION

This motion is about two discovery requests. Nothing more, nothing less.

But as has become routine practice now, seemingly innocuous motions are filed on behalf of the Plaintiff which are riddled with wild accusations, red herrings, and old issues. All of this is meant to distract from the point, provoke responses from the defendants on stale and unrelated topics, and inflame the Court.

None of the requested information is relevant to any issue in this case. But instead of explaining *why* she is entitled to the information sought in the two discovery requests at issue, Plaintiff spends *pages* discussing unrelated (and unfounded) grievances, including complaints about other discovery requests that have already been addressed and ruled on.

She doesn't address why she is entitled to it, because she can't. Rather, she reverts to Salem Witch Trial tactics – for example, demanding that Mile High produce its tax returns to prove that it's *not* a tax evader (just because she "suspects" it), even though she hasn't an iota of evidence to support the theory and even though it has no relationship to this case whatsoever.

Setting everything aside, Plaintiff's motion relates to two discovery requests that Mile High properly objected to: (1) Plaintiff's Interrogatory No. 2 to Mile High, and (2) Plaintiff's Document Request No. 13 to Mile High.

Briefly, her interrogatory is objectionable because it is vastly overbroad and seeks personal and irrelevant corporate information about non-parties from Mile High, and her document request is objectionable because it seeks Mile High's tax returns which have no bearing on any issue in this case. Nor has Plaintiff ever once engaged in a meaningful and adequate meet and confer to understand the objections, explain what she wanted/needed, and attempt to narrow the issues.

Each request is addressed in further detail below. Instead of going through each and every irrelevant and unfounded allegation/accusation stated in the Motion that does not relate to the discovery requests, Mile High will limit its analysis to the requests and the objections only, and why Plaintiff is not entitled to anything further.

PLAINTIFF'S INTERROGATORY NO. 2 TO MILE HIGH

Plaintiff's first request is for a further response to Interrogatory No. 2 propounded to Mile High on June 15, 2019. (Motion at 1). The interrogatory is as follows:

> Please describe all business entities, incorporated or otherwise, that fall within the scope of "Mile High Media", including the name; location; managerial officers; owners/shareholders; and, the business purpose and/or activities for each such entity.

Mile High objected on a number of grounds. Chief among them is (1) the interrogatory is vastly overbroad insofar as the scope of parties it could extend to (and as such would also inappropriately exceed the number of interrogatories Plaintiff is allowed to propound under the Local Rules), and (2) the interrogatory seeks information relating to non-parties that is both personal and entirely irrelevant to this case.

A. The Interrogatory is Vastly Overbroad and Exceeds the Scope of Permissible Discovery

First, this interrogatory is objectionable because of the incredibly wide range of entities/parties that could arguably fit within its scope, and because of the amount of information it attempts to cram into one interrogatory.

The preamble to Plaintiff's interrogatories states that any reference to "Mile High Media":

> "shall extend, as applicable to each Interrogatory respectively, to any incorporated or unincorporated entities in which Co-defendant Mile High Distribution, Inc. has any ownership, partnership, and/or agency association with in connection with the creation and/or dissemination of adult entertainment (or 'porn') products for commercial purposes."

The terms "partnership" and "agency association" are, quite literally, open to anyone's interpretation. It could apply to anyone that Mile High does business with. Does it apply to any one of the independent contractors that Mile High purchases films from? Does it apply to the

customers and distributors that Mile High sells films to? Or does it only apply those who share an ownership connection in some way with Mile High's shareholders?

The only seemingly clear term from this definition is "ownership" – and Mile High responded that it has no subsidiaries or parent companies.

By virtue of its broad definition, this interrogatory also exceeds what is allowable under the Local Rules. Rule 26.1(c) of the Local Rules limits the number of interrogatories for each side to 25 total interrogatories. *See* D. Mass. Local Rules 26.1(c). The rule allows for subparts that are "logical extensions" of the basic interrogatory. *Id*. (Under the Federal Rules of Civil Procedure, the limitation on the number of interrogatories specifically includes "all discrete subparts" so that a party cannot skirt the limitation by serving compound interrogatories. Fed. R. Civ. Proc. 33(a)(1).)

Whether or not requesting (1) names, (2) locations, (3) managerial officers, (4) owners/shareholders, (5) business purposes, and (6) activities are "logical extensions" of the basic interrogatory is debatable. What is certainly *not* a logical extension is to multiply that information across an array of different entities (the scope of which is vague in and of itself), and to call it one interrogatory.

Plaintiff's definition of "Mile High Media" makes the scope of this interrogatory vastly overbroad, and the interrogatory's compound nature violates the Local Rules.

B. The Interrogatory Seeks Personal and Irrelevant Information of Unrelated Non-Parties

While the interrogatory is overly broad and unclear as to whose information exactly is being sought, one thing is certain: Plaintiff is trying to get information about non-parties to this action, including information that is personal and financially sensitive.

No matter the scope, these requests are directed to Mile High. Mile High cannot respond on behalf of *other* entities as to this information – including in particular who their managerial officers are, who their owners and shareholders are, what their business purpose is, or what their activities are.

Mile High Distribution can respond on its *own* behalf, about its *own* information. And that is precisely what it did. Mile High provided the information sought for the only relevant party to this litigation, the defendant in this case. And it provided it for the only entity it can provide it for – itself.

If Plaintiff believed that Theodore Blitt or Jon Blitt had information about other entities that she thinks are relevant, then she had every opportunity to *ask those questions at their depositions*.

Plaintiff spends a lot of words trying to say that Mile High "disingenuously" objected the term "Mile High Media" because Mile High uses that term itself. The defendant may in fact use the term Mile High Media in business – but its own use of the term is not what is objectionable – it's *Plaintiff's* use of the term, as she defined it, which is overly broad and includes irrelevant parties.

Whoever the entities are that fit within the scope of the interrogatory, they are non-parties, they are not defendants in the case, and they are not relevant to Plaintiff's claims. And perhaps most importantly, they are not Mile High Distribution, Inc., the party to whom the interrogatory was directed, and who can only respond on its own behalf.

/ / /

/ / /

/ / /

PLAINTIFF'S DOCUMENT REQUEST NO. 13 TO MILE HIGH

Plaintiff's second request is for production of documents pursuant to Document Request No. 13 to Mile High. The request is as follows:

> Please produce a copy of all tax returns filed by Mile High Distr., and any separately incorporated subsidiaries, for the years 2014-present in all federal, state, provincial, or other geographical jurisdiction in which Mile High Distr., directly or indirectly, markets its adult entertainment products.

Mile High objected primarily on the grounds that its tax returns have absolutely no bearing on Plaintiff's claims in this case.

In her Motion, Plaintiff's justification for this request seems to be predicated on her theory that the documents are relevant because she has a "long standing suspicion as to [Mile High's] tax evasion/fraud activities in relation to the porn materials that they have created principally in the U.S." (Motion at 12).[1]

It appears that Plaintiff believes that this "long standing suspicion" entitles her to Mile High's tax returns because it relates somehow to her civil RICO claim and her unfair business practices claim. Thus, she claims, she has a right "to demand credible and documentary proof in Discovery as to whether the Defendants, individually or collectively, have complied with all tax reporting obligations connected to their commercial porn activities conducted on her premises specifically, as well as conducted generally within Massachusetts and other States/territories relative to the creation and marketing of their porn materials during the years 2014-present." (Motion at 14-15).

Respectfully, Mile High disagrees.

[1] (Plaintiff then continues on, and recites her usual litany of unrelated issues, including her gripes about the names of actors and crewmembers, an extended discussion about Section 2257 documents, and other issues.)

Mile High's tax returns do not prove or disprove a single fact in this case. Set aside momentarily that Plaintiff has never *once* previously articulated how this is a RICO case (what theory of RICO is she alleging? What is the pattern of predicate racketeering activity she is claiming? What is the RICO enterprise?). Set aside also that she cites as support her "pending Motion for Injunctive Relief" to enjoin Defendants from "creating, marketing, and/selling adult entertainment/pornographic materials ... [anywhere] within the United States and/or its Territories" based on that RICO claim – but that she has since withdrawn that motion. (Motion at 13-14). She now says in this Motion that Mile High has committed the predicate acts of *criminal copyright infringement*. (Motion at 14). In other words, she is saying that Mile High knew that the Plaintiff claimed copyrights in miscellaneous items around her house (such as the fireplace, pillow cases, and sheet stitching, among others), which were not federally registered at the time, but nevertheless willfully and knowingly infringed on those protected "works" for its own private financial gain. *See* 18 U.S.C. § 2319, 17 U.S.C. § 506.

Even assuming *all* that is true, what does that have to do with Mile High's tax returns and tax reporting obligations? Even if her suspicions are correct, and Mile High is a rampant tax evader, how does that affect her RICO claim or unfair business practices claim? Was Plaintiff proximately harmed by that? *See Anza v. Ideal Stell Supply Corp*., 547 U.S. 451, 460-462 (2006) ("When a court evaluates a RICO claim for proximate causation, the central question is must ask is whether the alleged violation led directly to the Plaintiff's injuries. [...] The proximate-cause inquiry, however, requires careful consideration of the 'relation between the injury asserted and injurious conduct alleged."). This information has nothing to do with her claims or injuries, and therefore is not a proper subject of discovery. *See Pedraza v. Holiday Housewares, Inc.*, 203

F.R.D. 40, 43 (D. Mass. 2001) (tax returns only discoverable if they are relevant to the action and the necessary information contained therein is otherwise unobtainable).

Mile High's tax returns have no bearing on anything Plaintiff alleges, and her "long standing suspicion" of tax fraud has nothing to do with her claimed injuries. Plaintiff rented her house to a tenant, and that tenant allowed pornography to be shot there. Plaintiff is upset about that. But that does not create a RICO case. Nor does it make Mile High's tax returns relevant to this case in any shape or form.

PLAINTIFF HAS NEVER ADEQUATELY MET AND CONFERRED TO NARROW THE SCOPE OF THESE REQUESTS

Finally, Mile High simply notes that Plaintiff has not once conducted a proper meet and confer in this case on a discovery issue. Ordinarily, when parties to a litigation have a discovery dispute, the party seeking the information will state reasons and/or authority why they are entitled to the information, and the other party will present its opposition and relevant support.

Plaintiff has tried to litigate every discovery dispute in a shotgun approach before this Court by raising issues tangentially in briefs and hearings on other issues. The only time Plaintiff has met and conferred was after the Court ordered her to do so – which led to a 2.5-hour phone call in which the parties needed to cover 119 separate issues raised by Plaintiff just the day before.

Suffice it to say, any possibility of narrowing the scope and bridging the differences between the parties has been eliminated by Plaintiff's inability to meaningfully engage in a true meet and confer process.

/ /

/ /

CONCLUSION

Based on the foregoing reasons, Defendant Mile High Distribution, Inc. respectfully requests that the Court deny Plaintiff's Motion in its entirety.

Respectfully submitted,

DEFENDANT MILE HIGH DISTRIBUTION, INC.
By its attorneys,

/s/_____

Gary Jay Kaufman, Esq. Cal SBN 92759
Noam Reiffman, Esq. Cal SBN 299446
All admitted pro hac vice
THE KAUFMAN LAW GROUP
1801 Century Park East, Suite 1430
Los Angeles, California 90067
gary@theklg.com
nreiffman@theklg.com
Phone: (310) 286-2202
Fax: (310) 712-0023

Dated: October 8, 2019

CERTIFICATE OF SERVICE

I, Gary Jay Kaufman, Esq., attorney for the Defendants Jon Blitt and Mile High Distribution, Inc., hereby certify that a true copy of this document and was filed through the ECF system, and will be sent this date, October 8, 2019, electronically to the registered participants as identified on the Notice of Electronic Filing.

Dated: October 8, 2019

/s/ Gary Jay Kaufman
Gary Jay Kaufman