

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

‘O’

Case No.	2:07-cv-05715-CAS(PJWx)	Date	January 12, 2015
Title	OSAMA AHMED FAHMY v. JAY-Z ET AL.		

Present: The Honorable CHRISTINA A. SNYDER

Catherine Jeang

Laura Elias

N/A

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiff:

Attorneys Present for Defendant:

Keith Wesley

Eric Pettit

Linda Burrow

David Steinberg

Proceedings: DEFENDANT JAY Z’S CORRECTED MOTION FOR REVIEW OF NON-DISPOSITIVE RULING OF MAGISTRATE (Dkt. 439, filed December 8, 2014)

I. INTRODUCTION

This action arises from defendant Shawn C. Carter’s, professionally known as Jay Z’s, alleged unauthorized sampling of “Khosara, Khosara” from the 1960 Egyptian film Fata Ahlami in his 2000 hit song “Big Pimpin’.” On November 24, 2014, Magistrate Judge Patrick J. Walsh ordered defendant to produce the amount of revenue he earned from concerts where he performed “Big Pimpin’ in order to allow plaintiff Osama Ahmed Fahmy to calculate his damages. Dkt. 436.

On December 8, 2014, defendant filed a motion for review of Judge Walsh’s order under Federal Rule of Civil Procedure 72(a) and Local Rule 72-7, dkt. 439, and on December 11, 2014, he filed a corrected motion requesting the same relief, dkt. 442. Plaintiff filed an opposition to the motion on December 16, 2014, dkt. 443, and defendant filed a reply in support of the motion on December 23, 2014, dkt. 444. On January 12, 2015, the Court held a hearing on the matter. For the reasons stated below, the Court DENIES the motion.

II. LEGAL STANDARD

Pursuant to Federal Rule of Civil Procedure 72(a), a party may file objections to a magistrate judge’s non-dispositive order within ten days, and “[t]he district judge to

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whom the case is assigned shall consider such objections and shall modify or set aside any portion of the Magistrate Judge’s order found to be clearly erroneous or contrary to law.” Rule 3.3.1 of the Local Rules Governing Duties of Magistrate Judges sets forth the same standard. See also 28 U.S.C. § 636(b)(1)(A); Grimes v. City and Cnty. of San Francisco, 951 F.2d 236, 241 (9th Cir. 1991).

III. DISCUSSION

In his motion for review, defendant argues that the magistrate judge misinterpreted the Court’s December 9, 2011 Order, dkt. 309, as a ruling that plaintiff is entitled to discover his revenue from concerts at which he performed “Big Pimpin’,” thereby relieving plaintiff of his burden of proving a causal nexus between the infringement and any profits therefrom. Dkt. 442 at 10-12. Defendant also emphasizes that he already produced evidence of the income he receives from venues that perform “Big Pimpin’.” Id. at 13. He denies the relevance of the amount of revenue he receives from concerts because plaintiff cannot divide the portion of the revenue derived from the sample of “Khosara, Khosara” from the portion of the revenue driven by other factors, such as the popularity of other works produced by defendant and his co-performers. Id. at 13-15. He contends that the burden of attempting to distinguish the additional factors influencing the revenue far outweighs the discovery’s minimal relevance. Id. at 17-20.

Plaintiff responds that he is not required to prove a causal nexus between the infringement and the profits as a gateway to discovery. Dkt. 443. According to plaintiff, “the entire raison d’etre of discovery is to aid a party in unearthing evidence that will assist in proving a claim; it is not a reward to a party who demonstrates he can already prove his claim.” Id. at 3-6. Plaintiff argues that he nonetheless succeeded in showing a causal nexus because defendant performs “Big Pimpin’” at most of his concerts, uses the song in his advertising, and reaps the benefit of its effect on his career. Id. at 7-9. Further, Plaintiff disputes that the burden of discovery far outweighs its relevance because defendant’s evidence addressing the burden consists of a self-interested declaration from his accountant, defendant is financially well positioned to withstand any burden, and the challenge of apportionment is not reasonable grounds for denial of all discovery on the issue. Id. at 9-12.

Judge Walsh’s order was not “clearly erroneous or contrary to law.” The order states that defendants “cite the Court’s summary judgment order and argue that it

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supports their position that additional discovery is not warranted because Plaintiff has failed to establish a nexus between his song and any concert revenues,” that Judge Walsh “reads the December 9, 2011 Order more broadly than Defendants,” and that he bases his ruling on his “reading of that order.” Dkt. 436 at 1-2. Judge Walsh’s order is not tantamount to a holding that plaintiff need not demonstrate the relevance of the requested discovery regarding concert revenue. Moreover, plaintiff satisfies the test for relevance because the discovery of concert revenue “appears reasonably calculated to lead to the discovery of admissible evidence” concerning the existence and amount of damages. Fed. R. Civ. P. 26(b)(1). Finally, the evidence is insufficient to conclude that the burden of production is “undue.” Fed. R. Civ. P. 26(c)(1).

IV. CONCLUSION

In accordance with the foregoing, the Court DENIES defendant Shawn C. Carter’s, performing as Jay Z’s, motion for review of Judge Walsh’s ruling. Defendant is directed to produce all responsive documents which are the subject of this order within thirty (30) days of the date of the order.

IT IS SO ORDERED.

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