

VIRGIE ARTHUR,

Plaintiff,

v.

HOWARD K. STERN, BONNIE
STERN, LYNDAL HARRINGTON, ART
HARRIS, NELDA TURNER, TERESA
STEPHENS, HARVEY LEVIN, and TMZ
PRODUCTIONS, INC.,

Defendants.

§ IN THE DISTRICT COURT OF
§
§ HARRIS COUNTY, TEXAS
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§ 280th JUDICIAL DISTRICT
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**ORDER COMPELLING PRODUCTION BY DEFENDANT
HOWARD K. STERN AND EXPANDING APPOINTMENT
OF INDEPENDENT COMPUTER FORENSIC EXAMINER
AND INCORPORATED PROTECTIVE ORDER**

On the 8th day of May, 2009, this Court heard Plaintiff's Motion to Compel Production from Defendant Howard K. Stern and to Extend Authority of Special Master and determined that the motion should be GRANTED. It is therefore

ORDERED, ADJUDGED and DECREED that:

(1) Defendant Howard K. Stern shall produce the documents requested by Plaintiff in her Requests for Production Nos. 1 and 3 for the period September 20, 2006 through March 14, 2008. Specifically excluded from production of the documents requested in Requests Nos. 1 and 3 are the following:

a. electronic communications, including but not limited to e-mails, to or from Defendant Howard K. Stern's attorneys, which consist of the law firm of Bryan Cave/Powell Goldstein and its employees, former employees and partners, including but not limited to L. Lin Wood, Nicole J. Wade, John C. Patton, Luke Lantta, Ben Erwin, and B. Lyle, and the Law

Offices of Eric Sauerberg, and its employees and partners including but not limited to M. Krista Barth and Julie Wallis; and

b. electronic communications, including but not limited to e-mails, between Stern family members that are of a purely personal nature.

(2) At the present time, Defendant Howard K. Stern is not compelled to produce the documents requested by Plaintiff in her Request for Production No. 2.

(3) To facilitate production of such documents from other defendants, the Court previously appointed Craig Ball, of Austin Texas, as a Special Master under the terms and conditions contained in the Consulting Agreement which is attached hereto and incorporated herein as if fully set forth in this Order, to conduct an independent forensic examination of relevant computer hard drives, external hard drives, jump drives, and other such repositories of electronic communications ("electronic media") in the possession or control of the other defendants for the purpose of locating documents responsive to Plaintiff's Request for Production. That appointment now is extended to include examination of Howard K. Stern's electronic media.

(4) To facilitate the work of the Special Master, this Court ORDERS Defendant Howard K. Stern contact the Special Master Ball within 10 days of the signing of this order to make arrangements for capture and examination of ^{Howard K. Stern's} ~~his~~ electronic media.

(5) At the option and expense of Defendant Howard K. Stern, Special Master Ball may travel to California, where the electronic media is currently located, to examine and copy the electronic media. If Defendant Howard K. Stern chooses this option, he will pay in advance for Special Master Ball's time, portal-to-portal, 24-hours per day, at the rate of \$250.00 per hour. Defendant Howard K. Stern will also pay for First Class or Business Class airfare and a good

hotel for Special Master Ball if he is required to travel. Or, at the option of the Special Master, Mr. Ball may subcontract the work of obtaining capturing the electronic data and forwarding it to Special Master Ball. Any subcontract for obtaining the data shall be paid in advance by Defendant Howard K. Stern.

(6) Also at the option and expense of Defendant Howard K. Stern, Special Master Ball shall produce a copy of Defendant Howard K. Stern's electronic media and present that copy to the computer forensic expert of Defendant Howard K. Stern's choosing. If Defendant Howard K. Stern chooses this option, Special Master Ball will hold the original of Defendant Howard K. Stern's electronic media without viewing its contents for a period of 10 days after delivery of the copy to Defendant Stern's expert to allow that expert an opportunity to view the contents first. At the expiration of that 10-day period, Special Master Ball will begin forensic examination of the electronic media and shall:

- a. have discretion to employ or to modify search terms;
- b. capture all remaining electronic communications, including but not limited to emails to or from the persons, entities and email addresses listed in parts 1 and 3 of Plaintiff's Requests for Production, and submit them to Defendant Howard K. Stern for privilege review prior to production.

(7) Within 14 days after receipt of the captured documents from the Special Master, the law firm of Bryan Cave/Powell Goldstein, and Defendant Howard K. Stern shall produce a privilege log to Special Master Ball and to Plaintiff listing all documents submitted by Special Master Ball to Defendant Howard K. Stern, which Defendant Howard K. Stern has not produced to Plaintiff and the reasons for withholding the documents from production. Special Master Ball shall then produce all documents within the scope of Paragraph 1 above that not listed on the

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privilege log to Plaintiff and shall maintain for the remainder of this lawsuit the electronic media and documents listed on the privilege log.

(8) Plaintiff shall have an opportunity to challenge any designation listed on the log and, in the event that a designation is challenged, Special Master Ball shall submit the log, along with the disputed document(s), to the Court for in camera inspection.

(9) Other than as stated in parts (5) and (6) above, the costs of the Special Master shall be carried by the Plaintiff, until such time as the Court may determine otherwise.

(10) No waiver of privilege or confidentiality occurs if any otherwise privileged or confidential information is observed by Special Master Ball during the imaging and review process.

(11) Special Master Ball is expressly prohibited from using or disclosing any information obtained through the imaging and examination of Defendant Howard K. Stern's electronic media other than providing to Defendant Howard K. Stern documents captured during his examination, except as specified in this order. Signed this 11th day of

May, 2009.

Tony Lindsay
JUDGE TONY LINDSAY