



Magistrate Judge for the E.D.N.Y. Denies Request to Compel Party to Turn Over Facebook Login Information

February 29, 2012

Dauids v. Novartis Pharm. Corp., No. CV06-0431, (E.D.N.Y. February 24, 2012)

In a short opinion on February 24, 2012, the Eastern District of New York ruled on whether the plaintiff in her claim against a pharmaceutical company could be compelled to turn over her Facebook account's login username and password.

Dauids v. Novartis Pharm. Corp., No. CV06-0431, (E.D.N.Y. February 24, 2012) surrounds a claim of ongoing suffering from osteonecrosis of the jaw (a rare jaw disorder) against the defendant. During discovery the defendant requested the Plaintiff's personal pictures and information from all of her social-networking websites and a release allowing defendant to obtain documents directly from those websites. However, the Plaintiff only produced materials that were available to all Facebook users — not items hidden through Facebook's privacy settings — because she claimed that the request was overbroad and a fishing expedition. The Defendant subsequently moved to compel the Plaintiff to turn-over her Facebook login information.

The Defendant's motion argued that the "Plaintiff's log-in information is discoverable because statements or pictures on her Facebook page relate directly to her claim of ongoing suffering from osteonecrosis of the jaw." Moreover, the "claim is predicated on [the Plaintiff's] profile picture, in which Defendant claims she is smiling." However, the Defendant failed to inquire about the Plaintiff's social networking activity at her deposition, and thus, based its motion on the fact that the Plaintiff was smiling in a single picture.

In determining whether the Defendant could compel such discovery, Magistrate Judge Wall first noted that neither the Second Circuit nor the Eastern District of New York have directly addressed the issue. Thus, in writing the decision he relied on precedent from the New York Appellate division in which the court held that to "compel a plaintiff's Facebook login information without a factual predicate is tantamount to a fishing expedition." See *McCann v. Harleysville Ins. Co.*, 910 N.Y.S. 2d 614, 615 (4th Dep't 2010). Furthermore, although "the discovery rules are liberal, the court agrees with the [McCann court] that there must be some factual predicate, like an individual's public postings, from which the court could infer that relevant information exists on the individual's private page," in order to compel such discovery.

Ultimately, the Court held that “even if Plaintiff is smiling in her profile picture, which is not clear to the court, one picture of Plaintiff smiling does not contradict her claim of suffering, nor is it sufficient evidence to warrant a further search into Plaintiff’s account.” Therefore, the Defendant lacked the requisite factual allegations to justify ordering that Plaintiff turn over more than simply the public information. Thus, Defendant’s motion to compel the plaintiff’s Facebook login information and a release of the requested Facebook documents was denied.

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