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UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

_____)	November 4, 2016
Marcus Bagwell, et al)	
Plaintiffs)	
v.)	
World Wrestling)	3:16cv1350(JCH)
Entertainment, Inc.)	
Defendant)	2:30 p.m.
_____)	

141 Church Street
New Haven, Connecticut

HEARING

B E F O R E:

THE HONORABLE JANET C. HALL, U.S.D.J.

A P P E A R A N C E S:

For The Plaintiffs	:	Brenden P. Leydon Tooher & Wocl & Leydon LLC 80 Fourth St. Stamford, CT 06905
		Matthew T. Peterson Clinton A. Krislov (Telephonically) Krislov & Associates 20 N. Wacker Dr., Suite 1300 Chicago, IL 60606
For the Defendant	:	Curtis B. Krasik Jerry S. McDevitt K&L Gates, LLP K&L Gates Center 210 Sixth Ave Pittsburgh, PA 15222-2613
		Jeffrey Mueller Day Pitney LLP 242 Trumbull St. Hartford, CT 06103-1212

1 THE COURT: Thank you for your patience. We're here
2 in the matter of Bagwell versus World Wrestling
3 Entertainment, Inc, Case Number 3:16cv1350. If I can have
4 appearances please. In the courtroom, if I can have
5 appearances please.

6 MR. LEYDON: Brenden Leydon and Matthew Peterson for
7 the plaintiff.

8 MR. MUELLER: Good afternoon, your Honor. Jeffrey
9 Mueller from Day Pitney on behalf of the defendant and with
10 me are Jerry McDevitt and Curt Krasik from K&L Gates who have
11 been admitted pro hac vice in this case and Mr. McDevitt will
12 be speak on behalf of defendants today.

13 THE COURT: Thank you. Give me just a moment to get
14 my papers out. I have note from the law clerk. I can't make
15 sense of. Here it is. All right.

16 We're here this afternoon because I wanted to
17 address the Motion to Amend and also generally to address how
18 this case is going to be conducted going forward.

19 So with respect to the Motion to Amend, I don't know
20 who you will handle that for the plaintiff.

21 Whoever is handling it, I would ask if they could
22 rise so I can speak with them.

23 MR. LEYDON: All right. So what we want to propose
24 with the defendants is that we have -- we would like to see
25 the Motion to Dismiss. We have another Amended Complaint

1 that we want to file, but we kind of want to work with them
2 to see maybe if we might not need to file it. It is going to
3 depend if they are raising a certain defense.

4 THE COURT: I have to say that's a very unusual
5 argument, sir. Do I take it to mean you are withdrawing what
6 you filed as a motion to amend?

7 MR. PETERSON: Yes, we filed a motion to Amend.

8 THE COURT: I'm looking at it. So I want to ask you
9 some questions about. I'm not sure if you wish to withdrew
10 it.

11 MR. PETERSON: No, no, go ahead.

12 THE COURT: Why would you file a Motion to Amend if
13 you believe you have a right to amend as a right?

14 MR. PETERSON: Brenden handled that part. I will
15 hand it off to Brenden.

16 MR. LEYDON: The reason I filed that was because the
17 defendants had said that they believe we didn't, so I thought
18 to have it teed up, it would be a motion asserting our right
19 to file, our right to amend which --

20 THE COURT: But then you spend six pages in a reply
21 brief arguing you have the right. Did I misread that?

22 MR. LEYDON: But I recognize there's a dispute.
23 Having a motion would allow to be teed up for the ruling.

24 THE COURT: I have not said you have a right. If
25 you think you did, under the reading of the second part of

1 Rule 15(a) then what you do is docket the Amended Complaint.
2 Then they have to strike it under the theory that reading the
3 rule is not supportable. It is an infinity date I guess I'd
4 call it but anyway.

5 Does the defense have any argument as to whether as
6 of right or not as of right, I shouldn't allow a plaintiff to
7 amend a Complaint approximately 33 days after the lawsuit was
8 filed and no answer had been filed and the Rule 11 letter
9 hadn't been sent? Would there be any reason I shouldn't
10 allow the Amended Complaint?

11 MR. McDEVITT: If I may, it is even a little more
12 convoluted then Your Honor may realize right now because
13 what's happened is last week we had a Rule 26 conference,
14 talked about the schedule for responding to the First Amended
15 Complaint on the assumption that they be given leave or it
16 would be deemed filed as of right. They told us as of
17 yesterday that they want to file another Amended Complaint on
18 Monday. They now said something even more confusing today.

19 All we want to know, your Honor, no matter what
20 version whether it's the original Complaint, the Amended
21 Complaint, or the one they are talking about filing, in our
22 mind, they are all defective. We would like to file a Motion
23 to Dismiss at the earliest possible time. They are like
24 frogs on a lily pad. They keep jumping around. If they file
25 another Complaint on Monday, your HONOR, it will be the

1 fourth different version. The same plaintiff's counsel filed
2 a lawsuit to the docket originally with Judge Underhill on
3 behalf of another former wrestler that's contrary to the
4 agreements they signed. They withdraw that case. They filed
5 the Bagwell that had a lot of defects in it. We told them
6 about that. They tried to amend that which your Honor is
7 talking about. We advise them of the defects of that one.
8 Now they tell us again they want to amend on Monday. We
9 haven't seen that.

10 Whatever your Honor decides, we would like to get to
11 the chase where we can file the motion to dismiss. They also
12 agree, Your Honor, in the conferences that we had. It is
13 very straight forward issue that Your Honor is going to have
14 to decide. I can preview for you if you want me to.

15 THE COURT: No, I really don't. I will get to it
16 soon enough.

17 MR. McDEVITT: The point I was going to make, your
18 Honor, because of the simplicity of that issue, they had
19 agreed in our conference, there could be a stay of discovery
20 until such time we could present and the Court could decide
21 the Motions to Dismiss because it is a pretty straightforward
22 issue. That's where we are on the whole issue, Your Honor.

23 THE COURT: Does the plaintiff wish to file an
24 Amended Complaint other than the one that's the subject of
25 the pending motion?

1 MR. LEYDON: Is it okay if he handles that part?

2 THE COURT: Whoever wants to answer and can answer,
3 I would be pleased to hear from.

4 MR. PETERSON: For right now, we'll stick with what
5 we talked to them about the 26(f) and move forward with what
6 we agreed then.

7 THE COURT: I wasn't there so I don't know what you
8 talked about. I have Docket 11, a Motion to Amend a
9 Complaint dated December 7, 2016. Attached to that is
10 something called a First Amended Class Action Complaint. Is
11 that what you would like to have docketed and have them file
12 a response to?

13 MR. PETERSON: Yes.

14 THE COURT: The Court is granting the plaintiff's
15 Motion to Amend. The interest of justice would call for it.
16 The defendants are in no way prejudiced by an Amended
17 Complaint the this early stage of the case. They themselves
18 have suggested the original Complaint is be defective. I
19 believe the plaintiff's response by requesting leave to file
20 an Amended Complaint is an effort -- I'm sure they think it
21 is an effort. The defendants obviously don't. To respond to
22 that. In my world, Motions to Amend 32 days after the case
23 is initiated are routinely granted so Diahann, I'm granting
24 Number 11.

25 The plaintiff is directed to docket the attachment

1 to Document 11 which is known as 11-1 on the docket. You
2 have to send it in as the First Amended Class Action
3 Complaint. I presume that will get done today or Monday and
4 then the defendants had asked for until I believe November 7
5 on a consent motion. Obviously that's next week. What time
6 does the defense ask to file this Motion to Dismiss that they
7 seem to have already a pretty good idea of what they are
8 doing.

9 MR. McDEVITT: Last week, again subject obviously to
10 the Court's approval, when we talked about the scheduling,
11 and we're under a court order to submit our Rule 26 statement
12 I think on Monday.

13 THE COURT: Monday is the 26 statement, but the
14 answer to the Complaint or the response I believe.

15 MR. McDEVITT: What we were going to suggest and what
16 we were going to file Monday, Your Honor, was this has been
17 agreed subject the Court's agreement, we'll file our Motion
18 to Dismiss by December 2, plaintiffs will file their
19 opposition to our motion by January 9. We'll file our reply
20 on January 27. The only reason for I guess giving the
21 plaintiffs more time and respect for the holidays.

22 THE COURT: Why do you get to the 27th? The usual
23 time is 14 days. It's a mere response of ten pages and you
24 are going to take 19 days.

25 MR. McDEVITT: If you want condense that, I will

1 not --

2 THE COURT: Why do you need until December 7?

3 MR. McDEVITT: That would be approximately 30 days
4 from whenever they file.

5 THE COURT: All right. I thought you wanted to get
6 this filed as soon as possible.

7 Mr. McDEVITT: Again, Your Honor, whatever the Court
8 orders. I will not tell you we haven't looked at the motion
9 to dismiss because we have. If you want to condense it, we
10 can condense that.

11 THE COURT: I will leave it on the 7th and the
12 plaintiff's opposition will be the 9th.

13 MR. McDEVITT: It was actually the 2nd.

14 December 2 we'll file our motion. And January 9
15 they will file their opposition. We had the 27th. Whatever
16 the Court wants to give us, that's fine.

17 Could I ask this clarification of the Court, your
18 Honor? Is the First Amended Complaint being filed as of
19 right or with leave of the court?

20 THE COURT: I'm granting the motion. There's a
21 Motion to Amend. I'm granting the motion.

22 MR. McDEVITT: The way they style it, your Honor, it
23 was a motion for leave to amend.

24 THE COURT: I know. The caption is a motion. I'm
25 treating it as a motion and I'm granting the motion.

1 Mr. McDEVITT: Could I ask this. Do they still then
2 have another right to amend as of right or do they need leave
3 to amend further?

4 THE COURT: I haven't decided that. But they are
5 not going to need to amend until I rule on your Motion to
6 Dismiss and I presume on that if I rule in your favor, they
7 don't need to amend. If I rule against them, I will decide
8 at that time whether it is futile to give them leave to amend
9 or whether they have another right. I will give them the
10 right to amend in that motion to dismiss ruling.

11 Mr. McDEVITT: We assumed the Court would govern any
12 further amendments. Okay.

13 THE COURT: Once you file your Motion to Dismiss, I
14 think that is going to close out their as of right even under
15 their ruling. I don't think they will amend the Complaint
16 while the motion is pending.

17 Mr. McDEVITT: On the interpretation they advanced
18 the amendment as of right, they probably could claim under
19 their argument that a Motion to Dismiss is not a responsive
20 pleading. Therefore, they could amend again which is what
21 they suggested when they opened up today. They want to see
22 our Motion to Dismiss, then they might amend again. Then we
23 have to file a brief, then another brief.

24 THE COURT: We'll see, sir. That brings me to one of
25 the other reasons I decided to have this hearing. I haven't

1 had any of the lawyers except maybe Attorney Mueller may have
2 been here as a second chair awhile ago. I don't know. I
3 know from other outside bar matters, et cetera, maybe
4 forgetting another case he's on. I don't know lead counsel
5 for the defendants. I know of plaintiff's counsel. I don't
6 know, Attorney Leydon, whether I had you. You seem familiar
7 to me but I don't remember the case I had you on.

8 MR. LEYDON: We tried Lee Vanacore versus Kennedy.

9 THE COURT: I haven't had a lot of dealings with
10 counsel in front of me, but I guess if this motion/as of
11 right/opposition/reply is any indication of how counsel
12 expect to conduct this case, you better get your
13 checkbooks ready. I don't know who is going to be the
14 problem in the case or who is causing problems or will cause
15 problems. If there are problems, I will eventually figure it
16 out.

17 When I figure it out, I will begin entering
18 sanctions. They will be sanctions against you counsel and
19 your client so I'm ordering you to tell your client that will
20 be a consequence of what I consider inappropriate litigation
21 conduct. By "inappropriate," I mean things that violate not
22 only specific rules of the court and orders of the court and
23 local and federal civil rules of procedure and in particular
24 Rule One. So I don't expect to have any difficulties with
25 counsel but I'm troubled by the first go-around with this

1 motion. So I thought it might be wise to call everybody in
2 and just make that very clear. If people are going to
3 conduct themselves professionally and reasonably, we won't
4 have any problem. I don't know if anybody wants to say
5 anything in response or thinks I'm being anticipatorily
6 unfair. I don't mean to be. Most of that is motion to
7 amend. These filings are -- it seems to me parties could
8 have had a conversation, agreed what's going to be the
9 Amended Complaint, get it filed and file your motion to
10 dismiss. Doesn't seem hard to me. I have been out of
11 practice a long time. Maybe I lost the feel for it. Maybe
12 it is hard.

13 So is there anything else that the Court can take up
14 at this time on the matter? No. All right. Thank you all
15 very much.

16 (Whereupon, the above hearing adjourned at 2:50 p.m.)

17 COURT REPORTER'S TRANSCRIPT CERTIFICATE

18 I hereby certify that the within and foregoing is a true and
19 correct transcript taken from the proceedings in the
20 above-entitled matter.

21
22 /s/ Terri Fidanza

23 Terri Fidanza, RPR

24 Official Court Reporter

25