

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

J. HUNTER CHILES, III, and
DIANNA CHILES,

Plaintiffs,

v.

CASE NO. 3:06-cv-96-J-25JBT

NOVARTIS PHARMACEUTICALS
CORPORATION,

Defendant.

ORDER

THIS CAUSE is before the Court on Defendant's Motion to Compel Plaintiff J. Hunter Chiles, III ("Motion") (Doc. 62) and Plaintiffs' Memorandum of Law in Opposition thereto ("Opposition") (Doc. 69). For the reasons stated herein, the Motion is due to be **GRANTED** only to the extent that Plaintiff will be ordered to produce any subject documents containing depictions of Mr. Chiles eating and **DENIED** in all other respects.

In the Motion, Defendant seeks an order compelling Plaintiff to (1) produce the log-in information to his Facebook account and any other social networking websites he may belong to; and (2) execute a waiver allowing Defendant to directly obtain these materials held in the corresponding databases; or, in the alternative, directing Plaintiff to produce all photographs added to any social networking website that depict Plaintiff from the date of the development of his alleged injury, regardless of

who posted the photograph. (Doc. 62 at 1.) As the sole basis for its request, Defendant states: “Mr. Chiles claims that he suffers presently from the effects of his alleged osteonecrosis of the jaw (“ONJ”) [Defendant] seeks materials from Facebook and any other social networking sites in which he participates in order to discover information relevant to that claim.” (*Id.* at 3.)

Plaintiff responds that Defendant has not made even a minimal showing that the material it seeks is relevant to the case, non-cumulative, and necessary to its defense, and states:

There is no claim that [Plaintiff’s] facial appearance is altered at this time by his [ONJ]. This is not a case where a picture or statement is going to disprove some physical infirmity claimed because Mr. Chiles does not claim that his physical appearance is altered at this time (although [ONJ] can so alter it in the future). Moreover, Mr. Chiles suffers from multiple myeloma and he has freely admitted his life is affected by that. . . . Here Mr. Chiles does not claim his physical appearance, or activities other than those involving his jaw, such as eating, are at issue.

(Doc. 69 at 3-4.)

The Court agrees with Plaintiff that Defendant has not provided a sufficient basis for its request. As this Court recently stated in *Davenport v. State Farm Mutual Automobile Insurance Company*, 2012 WL 555759 (M.D. Fla. Feb. 21, 2012):

Generally, SNS [social networking sites] content is neither privileged nor protected by any right of privacy. See *Tompkins v. Detroit Metropolitan Airport*, 2012 WL 179320, at *2 (E.D. Mich. Jan. 18, 2012). A request for discovery must still be tailored, however, so that it “appears reasonably calculated to lead to the discovery of admissible evidence.” Fed. R. Civ. P. 26(b)(1). “Otherwise, the Defendant would be allowed to engage in the proverbial fishing expedition, in the hope

that there might be something of relevance in Plaintiff's [SNS] account[s]." *Tompkins*, 2012 WL 179320, at *2; see also *R.F.M.A.S., Inc. v. So*, 271 F.R.D. 13, 41 (S.D.N.Y. 2010) ("The Federal Rules require that requests for discovery ... be focused and specific[.]").

Davenport, 2012 WL 555759 at *1.

As in *Davenport*, Defendant's request is not "reasonably calculated to lead to the discovery of admissible evidence." *Id.* It is "the proverbial fishing expedition." *Id.* Thus, the Court could simply deny the Motion. However, in order to err on the side of full and fair discovery, and in light of Plaintiff's alternative position that "the Court should order production only of pictures, if any, of Mr. Chiles eating" (Doc. 69 at 7), the Court finds it appropriate to order such production.¹ Therefore, the Motion is due to be granted only to the extent that Plaintiff will be ordered to produce any documents that otherwise fall within the subject request and that depict Mr. Chiles eating.

In light of the Motion being granted in part and denied in part, the Court will not award or apportion expenses. See Fed. R. Civ. P. 37(a)(5)(C). Moreover, even though Plaintiff has substantially prevailed regarding the Motion, the Court finds the Motion "substantially justified." Fed. R. Civ. P. 37(a)(5)(B).

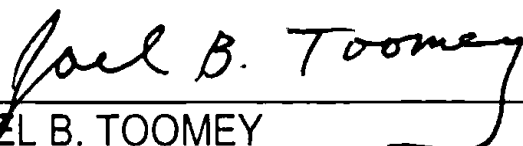
Accordingly, it is **ORDERED**:

The Motion (**Doc. 62**) is **GRANTED** only to the extent that **on or before**

¹ Had the discovery deadline not passed, Defendant would be able to serve an amended request for only those documents. Thus, the Court believes it is appropriate to order such production.

March 22, 2012, Plaintiff shall produce any documents that otherwise fall within the subject request and that depict Mr. Chiles eating, and **DENIED** in all other respects.

DONE AND ORDERED at Jacksonville, Florida, on March 12, 2012.



JOEL B. TOOMEY
United States Magistrate Judge

Copies to:

Counsel of Record