

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA

TERRY GENE BOLLEA professionally  
known as HULK HOGAN,

Plaintiff,

vs.

Case No. 12012447CI-011

HEATHER CLEM; GAWKER MEDIA, LLC  
et al.,

Defendants.

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**PLAINTIFF TERRY GENE BOLLEA'S RESPONSE TO GAWKER MEDIA, LLC'S  
EXCEPTIONS TO THE SPECIAL DISCOVERY MAGISTRATE'S REPORT AND  
RECOMMENDATION DENYING GAWKER'S MOTION TO OVERRULE  
OBJECTIONS TO THIRD-PARTY SUBPOENAS AND GRANTING PLAINTIFF'S  
MOTIONS FOR PROTECTIVE ORDERS**

On November 11, 2014, after extensive briefing and lengthy oral argument, Special Discovery Magistrate Judge James Case entered a Report and Recommendation denying Gawker Media, LLC's ("Gawker") Motion to Overrule Plaintiff's Objections to Third-Party Subpoenas and granting Plaintiff's related Motions for Protective Orders. **Gawker's arguments in its Exceptions** to the Report and Recommendation are the **same arguments** that were already **fully considered by Judge Case**, which also are substantially the same arguments this Court considered on October 29, 2013, when the Court denied Gawker's motion to compel Mr. Bollea to produce the same documents and information which Gawker seeks from third parties. This Court ruled that Mr. Bollea's financial information was off-limits in discovery **unless** Mr. Bollea later put that information at issue by changing his damages theory. Such a change has not occurred, and therefore the financial discovery remains off-limits, as Judge Case has ruled.

Because these issues have already been briefed **two times**, and so not to overburden the Court with unnecessary paper, Mr. Bollea hereby incorporates by reference the arguments made in his oppositions to both the October 2013 and October 2014 motions, and his counsel's

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arguments made at the hearings before Judge Campbell and Judge Case, respectively. To summarize, Gawker's exceptions to the November 11 Report and Recommendation should be rejected, and the Report and Recommendation should be adopted in its entirety, for the following reasons:

1. The Court already determined several months ago that Mr. Bollea's financial records and business agreements are not discoverable. After briefing and oral argument on October 29, 2013, the Court entered a written order denying Gawker's motion to compel on February 26, 2014:

For purposes of depositions, interrogatory responses, requests for production of documents, and all other types of discovery, inquiry into . . . financial records . . . is hereby prohibited, absent further order of the court, and Terry Bollea's objections to such discovery are sustained . . . .

The Court's February 26, 2014 Order further provided:

This portion of the Court's ruling is based on the representations of Terry Bollea's counsel at the hearing that . . . Terry Bollea is not seeking damages "to his career" (including without limitation that his "brand" has been diminished or that he has lost business opportunities), and intends to limit his claims for economic damages to claims for (i) the "commercial value in a celebrity sex tape" of the Plaintiff and (ii) financial benefit to Gawker based on the "value that they got [which] is the value of a celebrity sex tape in which Hulk Hogan is the star."

Mr. Bollea's damages theories have remained unchanged since the October 29, 2013 hearing. Gawker's arguments that the circumstances have somehow changed since the parties were before this Court in October 2013 is plainly rebutted by the evidence, and Judge Case rejected the argument as well. Thus, this Court's order still stands and Mr. Bollea's financial documents are not discoverable.

2. The case law Gawker relies on to argue that Mr. Bollea's financial records and business agreements are relevant, despite this Court's ruling that they are not, is inapposite in

any event. In those cases, the plaintiffs sought damages based on loss to their careers—a theory **expressly disclaimed** by Mr. Bollea.

3. Gawker’s requests relating to Mr. Bollea’s “public image” are disguised requests seeking financial information that this Court’s February 26, 2014 Order already prohibited. The requests seek all employment, endorsement, and financial documents in the possession of third parties. Such requests have no bearing on the damages sought by Mr. Bollea. Besides emotional distress, Mr. Bollea’s damages are based on the value or benefit that **Gawker gained** by publishing the sex video, and not any diminishment in value that resulted to Mr. Bollea’s public image.

4. The mitigation of damages theory that Gawker advances makes no sense in the context of claims for personal injury for invasion of privacy and related harms. An invasion of privacy does not become any less of an invasion if some downstream profit is made. Gawker’s argument is akin to saying that an assault victim who writes a book about the assault (and thereby makes money) sees the damage award against her tortfeasor reduced or eliminated by nature of the book profits. Mr. Bollea has not put damage to his career at issue, so discovery relating to any possible benefit to his career (if any) is not relevant or reasonably calculated to lead to the discovery of admissible evidence.

5. Mr. Bollea’s business marketing decisions following Gawker’s publication of the sex video have no relevance whatsoever to whether Mr. Bollea suffered emotional distress as a result of Gawker’s unauthorized publication of the sex video. The cases cited by Gawker are inapposite.

6. Gawker’s requests for the outtakes from the Hostamania commercial are improper, irrelevant and not reasonably calculated to lead to the discovery of admissible

evidence. Gawker contends the outtakes could show that Mr. Bollea did not “take precautions to guard his privacy,” in the course of filming the commercial. The request borders on the harrassive. How Mr. Bollea conducted himself in a situation that never aired publicly, and was never going to be aired publicly, can have no conceivable relevance to this case, which concerns Gawker’s unauthorized publication of Mr. Bollea engaged in private, consensual sexual relations in a private bedroom.

For the foregoing reasons, Gawker’s exceptions to the Special Discovery Magistrate’s report and recommendations should be overruled in their entirety, and the Special Discovery Magistrate’s Report and Recommendation denying Gawker’s motion to overrule objections to third party subpoenas, and granting Plaintiff’s related motions for protective orders, should be adopted and entered by this Court.

If the Court, for whatever reason, is inclined to **decline** to adopt Judge Case’s November 11, 2014 Report and Recommendation, then Mr. Bollea hereby requests a hearing on this matter during the already-scheduled Case Management Conference set for December 17, 2014 at 1:30 p.m. If the Court is inclined to **adopt** the Report and Recommendation, then Mr. Bollea has no objection to the Court doing so without oral argument.

DATED: November 18, 2014

*/s/ Charles J. Harder*

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by E-Mail via the e-portal system this 18th day of November, 2014 to the following:

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