

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

TERRY GENE BOLLEA professionally
known as HULK HOGAN,

Plaintiff,

Case No.: 12012447-CI-011

vs.

HEATHER CLEM; GAWKER MEDIA,
LLC aka GAWKER MEDIA; et al.,

Defendants.

**AFFIDAVIT OF SETH D. BERLIN IN SUPPORT OF GAWKER MEDIA, LLC'S
AND A.J. DAULERIO'S REQUEST FOR ATTORNEYS' FEES AND COSTS
IN CONNECTION WITH THEIR MOTION TO COMPEL**

1. I am a partner in the law firm Levine Sullivan Koch & Schulz, LLP, counsel to Defendants Gawker Media, LLC and A.J. Daulerio (collectively, "movants"). I submit this Affidavit in support of movants' request to recover attorneys' fees and costs that they have incurred, and are still incurring, in connection with preparing the accompanying Motion to Compel to address plaintiff's responses to movants' written discovery requests.

2. As described in the Motion to Compel, plaintiff's responses to movants' discovery requests fell short of complying with their obligations in almost every respect. In that regard, plaintiff (a) improperly relied on general and boilerplate objections, which plaintiff's counsel advised me were asserted prior to having reviewed any documents; (b) produced only a handful of documents other than printouts from Gawker's own website; (c) asserted privilege in response to every single response but then failed to produce a privilege log; (d) refused to provide any substantive response to more than half of the discovery requests, including about essential elements of plaintiff's liability and damages claims and the specific factual contentions

of his Amended Complaint; (e) despite having litigated this case for ten months and having been afforded a thirty-day extension to respond, asserted simply that “discovery is ongoing” as his only substantive response to a number of discovery requests; and (f) served responses that contradicted the factual assertions of his Amended Complaint, previously-filed declarations, and public statements.

3. Plaintiff’s wholesale failure to comply with discovery required movants’ counsel (a) to follow up in writing regarding plaintiff’s documents, which were not produced until a week or so after the already-extended deadline, (b) to prepare an eight-page single spaced letter detailing the numerous deficiencies in plaintiff’s discovery responses, (c) to participate in a meet and confer telephone call that, given the number of requests as to which plaintiff objected or otherwise failed to respond, lasted almost three hours, and (d) to prepare a Motion to Compel that runs to more than forty pages. Because the rules do not contemplate that parties should be required to expend anywhere near that much effort – or incur the associated expense – movants respectfully request that plaintiff be ordered to reimburse their fees and costs of doing so, as detailed below.

4. I am a member in good standing of the bars of D.C., Maryland and New York, as well as ten federal district and appellate courts. I am admitted *pro hac vice* in this action. I have practiced law since 1991, focusing almost exclusively on First Amendment and media litigation during those twenty-two years, and am a co-author of *Newsgathering and the Law*, a two-volume treatise published by LexisNexis now in its fourth edition. My hourly rate for this matter is \$470.00. Movants are seeking reimbursement of \$1,974.00 for 4.2 hours of my time incurred in preparing the Motion to Compel.

5. My partner Alia Smith is a member in good standing of the bars of D.C. and New York, as well as five federal district and appellate courts, and is admitted *pro hac vice* in this action. Ms. Smith has practiced law since 2000, focusing almost exclusively on First Amendment and media litigation during those thirteen years. Ms. Smith's hourly rate for this action is \$445.00. Movants are seeking reimbursement of \$4,049.50 for 9.1 hours of Ms. Smith's time incurred in researching and preparing the Motion to Compel.

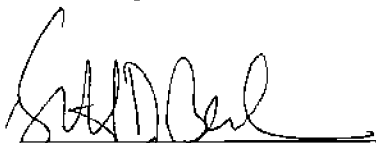
6. My associate Paul Safier is a member in good standing of the bars of Pennsylvania and New Jersey, as well as three federal district and appellate courts, and is admitted *pro hac vice* in this action. Mr. Safier has practiced law since 2008, and focuses almost exclusively on First Amendment and media litigation. Mr. Safier's hourly rate for this matter is \$345.00. Movants are seeking reimbursement of \$3,829.50 for 11.1 hours of Mr. Safier's time incurred in researching and preparing the Motion to Compel.

7. In total, movants are seeking reimbursement of \$9,853.00 in attorneys' fees in connection with preparing and filing the Motion to Compel seeking to obtain plaintiff's compliance with his discovery obligations. I anticipate that movants will incur additional time and expenses in drafting a reply brief and preparing for hearing, and plan to submit a supplemental Affidavit setting forth such additional fees and costs.

8. Local counsel in this matter, Gregg Thomas and Rachel Fugate, also devoted time to addressing plaintiff's discovery responses, including by corresponding with counsel for plaintiff, advising as to local Florida practice, and reviewing, revising and filing the instant motion. In addition, our firm's paralegal staff cite-checked the Motion to Compel before it was

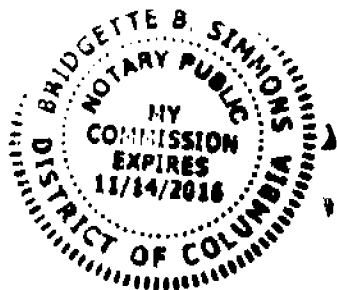
filed. In an effort not to further burden the Court, movants have not sought an award of their fees at this time.

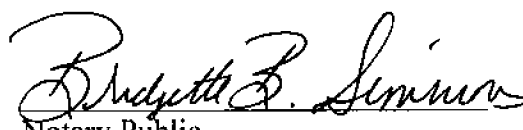
Executed this 11th day of September 2013 in Washington, DC.


Seth D. Berlin

SWORN TO AND SUBSCRIBED

before more this 11th day of September 2013




Notary Public
Bridgette B. Simmons
Notary Public, District of Columbia
My Commission Expires 11/14/2016
(Print, type, or stamp Commissioned name of Notary Public)