

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.

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**GAWKER MEDIA, LLC’S MOTION TO COMPEL DEFENDANT  
HEATHER CLEM TO RESPOND TO DISCOVERY REQUESTS**

Pursuant to Florida Rules of Civil Procedure 1.340, 1.350, and 1.380, Defendant Gawker Media, LLC (“Gawker”) respectfully moves this Court for an Order compelling defendant Heather Clem (“Mrs. Clem”) to provide responses to Gawker’s (1) First Request for the Production of Documents, (2) Second Request for the Production of Documents, and (3) First Set of Interrogatories (collectively, the “Discovery Requests”), all of which were served on Mrs. Clem on August 2, 2013. Despite the passage of over two months, Mrs. Clem has not provided any responses to the Discovery Requests, nor has she produced any responsive documents or a privilege log. Mrs. Clem, along with plaintiff, his wife and Bubba the Love Sponge Clem, are scheduled to have their depositions taken during the week of November 11, 2013. Mrs. Clem should be required to promptly provide full and complete responses to the Discovery Requests.<sup>1</sup>

\_\_\_\_\_ <sup>1</sup> Gawker is aware that, pursuant to paragraph 10 of Your Honor’s General Civil Practice Preferences, Gawker is entitled to submit an *ex parte* order requiring Mrs. Clem to respond within 10 days. However, because Mrs. Clem’s counsel has indicated to Gawker that he is working in good faith to respond to Gawker’s Discovery Requests before the October 29 hearing, Gawker instead is filing this motion in the hope that Mrs. Clem will respond, while at the same time preserving the ability to address any failure to do so – or specific deficiencies in any responses ultimately provided – at that hearing.

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## **BACKGROUND**

As the Court is aware, discovery is ongoing in this case. Plaintiff has served wide-ranging discovery requests on Gawker, to which Gawker has responded by producing copious documents, providing detailed responses to numerous interrogatories, and producing three witnesses for full-day depositions. Gawker also has served discovery demands on plaintiff.

Both plaintiff and Gawker also have served discovery requests on defendant Heather Clem, the woman with whom plaintiff appears in the video at issue in this litigation (the “Video”) and the ex-wife of plaintiff’s former best-friend (and a former defendant in this lawsuit), Bubba The Love Sponge Clem (“Bubba Clem”). Gawker served on Mrs. Clem a total of 10 interrogatories and 37 document requests. (Gawker’s Discovery Requests are attached hereto as Exhibits A, B and C.) Although Mrs. Clem answered plaintiff’s demands on September 20, 2013, she has not provided to Gawker any responses and objections, any documents, or any answers to interrogatories – let alone responses sufficient to permit Gawker to evaluate any claimed objections and to prepare for upcoming depositions.<sup>2</sup>

In an email exchange on October 9, 2013, Mrs. Clem’s counsel indicated that he was working on responses to the interrogatories. The email omitted any reference to the overdue responses to the document requests. While mindful of Mrs. Clem’s efforts, Gawker notified her counsel that if the responses were not provided immediately, Gawker would have no choice but to file this motion, given that the Court has a discovery hearing scheduled for October 29, 2013

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<sup>2</sup> While Gawker believes that Mrs. Clem’s responses to plaintiff’s discovery requests are unsatisfactory, Gawker understands this Court’s rules to authorize only the party propounding the requests to challenge the sufficiency of those responses, and has therefore sought similar discovery from her directly. Mrs. Clem’s counsel has indicated to Gawker that she plans to respond to Gawker’s demands shortly and to provide responses that are materially more forthcoming than those provided to plaintiff. To date, however, Mrs. Clem has not responded at all and, were she simply to duplicate her responses to plaintiff, Gawker reserves the right to address the deficiencies in such responses at the October 29 hearing, as indicated above.

and that her deposition, as well as that of plaintiff, his wife and Mr. Clem – for which her written discovery responses are highly relevant – is only a few weeks away. Mrs. Clem’s counsel has not served responses or documents since then. Gawker therefore is constrained to request this Court to intercede.

### **ARGUMENT**

Under Florida law, recipients of discovery demands during litigation have 30 days from service to respond to requests for discovery. *See, e.g.*, Fla. R. Civ. P. 1.340(a); Fla. R. Civ. P. 1.350(b). A party’s failure to respond to discovery requests subjects that party to sanctions. *See generally* Fla. R. Civ. P. 1.380. *See also, e.g., Harrell v. Mayberry*, 754 So. 2d 742 (Fla. 2d DCA 2000) (sanctioning party for failing to respond to discovery requests until ordered to do so, and even then responding late). Here, Mrs. Clem was served with Gawker’s Discovery Requests over two months ago. She has had ample time both to provide responses and objections to the demands, to produce non-privileged responsive documents, and to answer the 10 interrogatories. And she has managed to find the time and resources to address plaintiff’s discovery demands. Yet Mrs. Clem has offered no response to Gawker’s requests. There is no basis under the operative rules for her total failure to respond to Gawker’s Discovery Requests.

Gawker is scheduled to take depositions of plaintiff and Mrs. Clem, among others, during the week of November 11. Especially given that Gawker served its discovery on Mrs. Clem more than three months before the scheduled depositions, Gawker is entitled to time in advance of these long-scheduled depositions to review Mrs. Clem’s discovery so it can inquire about the documents and her sworn interrogatory responses at those depositions. Gawker’s ability to question the deponents effectively should not be stymied by Mrs. Clem’s failure to comply with her discovery obligations.

**CONCLUSION**

For the foregoing reasons, the Court should grant Gawker's motion to compel and direct Heather Clem to provide full and complete responses to Gawker's Discovery Requests within seven calendar days.

Dated: October 15, 2013

Respectfully submitted,

THOMAS & LOCICERO PL

By: /s/ Gregg D. Thomas

Gregg D. Thomas

Florida Bar No.: 223913

Rachel E. Fugate

Florida Bar No.: 0144029

601 South Boulevard

P.O. Box 2602 (33601)

Tampa, FL 33606

Telephone: (813) 984-3060

Facsimile: (813) 984-3070

gthomas@tlolawfirm.com

rfugate@tlolawfirm.com

and

Seth D. Berlin

Pro Hac Vice Number: 103440

Alia L. Smith

Pro Hac Vice Number: 104249

Paul J. Safier

Pro Hac Vice Number: 103437

LEVINE SULLIVAN KOCH & SCHULZ, LLP

1899 L Street, NW, Suite 200

Washington, DC 20036

Telephone: (202) 508-1122

Facsimile: (202) 861-9888

sberlin@lskslaw.com

asmith@lskslaw.com

psafier@lskslaw.com

*Counsel for Defendant*

*Gawker Media, LLC*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 15th day of October 2013, I caused a true and correct copy of the foregoing to be served by email upon the following counsel of record:

Kenneth G. Turkel, Esq.  
kturkel@BajoCuva.com  
Christina K. Ramirez, Esq.  
cramirez@BajoCuva.com  
Bajo Cuva Cohen & Turkel, P.A.  
100 N. Tampa Street, Suite 1900  
Tampa, FL 33602  
Tel: (813) 443-2199  
Fax: (813) 443-2193

David Houston, Esq.  
Law Office of David Houston  
dhouston@houstonatlaw.com  
432 Court Street  
Reno, NV 89501  
Tel: (775) 786-4188

Charles J. Harder, Esq.  
charder@HMAfirm.com  
Harder Mirell & Abrams LLP  
1801 Avenue of the Stars, Suite 1120  
Los Angeles, CA 90067  
Tel: (424) 203-1600  
Fax: (424) 203-1601

*Attorneys for Plaintiff*

Barry A. Cohen, Esq.  
bcohen@tampalawfirm.com  
Michael W. Gaines, Esq.  
mgaines@tampalawfirm.com  
Barry A. Cohen Law Group  
201 East Kennedy Boulevard, Suite 1000  
Tampa, FL 33602  
Tel: (813) 225-1655  
Fax: (813) 225-1921

*Attorneys for Defendant Heather Clem*

/s/ Gregg D. Thomas  
Attorney