

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
aka GAWKER MEDIA; GAWKER MEDIA
GROUP, INC. aka GAWKER MEDIA;
GAWKER ENTERTAINMENT, LLC;
GAWKER TECHNOLOGY, LLC; GAWKER
SALES, LLC; NICK DENTON; A.J.
DAULERIO; KATE BENNERT, and
BLOGWIRE HUNGARY SZELLEMI
ALKOTAST HASZNOSITO KFT aka
GAWKER MEDIA,

Defendants.

AFFIDAVIT OF CHARLES J. HARDER

CHARLES J. HARDER, Esq. being duly sworn, deposes and says:

1. I am a resident of Los Angeles, California, over the age of 18 years. I am an attorney duly licensed to practice before all courts of the State of California, among other courts. I am a partner in the law firm of Harder Mirell & Abrams LLP, counsel (admitted *pro hac vice*) for Plaintiff Terry Gene Bollea, professionally known as Hulk Hogan. The statements made herein are based on my personal knowledge.

2. In or about June 2013, Gawker and its co-defendant A. J. Daulerio served an initial round of written discovery.

3. Mr. Bollea raised a number of objections to Gawker's initial round of discovery, which was overbroad and sought discovery of every detail of Mr. Bollea's sex life, finances and medical history. Accordingly, Mr. Bollea objected to the discovery; and on or about August 23, 2013, Mr. Bollea filed a motion for a protective order to declare these subject areas "off limits"

except as they related to the sexual encounter between Mr. Bollea and Heather Clem depicted on the clandestine recording published by Gawker.

4. On or about October 29, 2013, Judge Pamela A.M. Campbell held a hearing on Mr. Bollea's motion for a protective order, and on Gawker's motion to compel with respect to the first set of written discovery. Judge Campbell ruled from the bench that she was **granting** Mr. Bollea's motion to not allow discovery of Mr. Bollea's finances or medical history, and to limit discovery of Mr. Bollea's sex life to any relationship he may have had with Heather Clem between February 2002 and the present.

5. The parties submitted competing proposed orders after the October 29, 2013, hearing, and Judge Campbell issued her written order on or about February 26, 2014. The order indicated that Mr. Bollea should serve a supplemental response to Interrogatory 12, and did not identify any other discovery response that required supplementation. Attached hereto as **Exhibit A** is a true and correct copy of the Court's February 26, 2014 Order.

6. On or about November 8, 2013, Mr. Bollea served a supplemental response to Gawker's Interrogatory 12, and served a second supplemental response on or about December 3, 2013. On or about February 21, 2014, Mr. Bollea served supplemental responses to Gawker's Interrogatory Nos. 9 and 10.

7. In or about August 2013, Mr. Bollea produced his text communications with Bubba Clem that related to the sex video published by Gawker.

8. To the best of my knowledge, Mr. Bollea has fully complied with the February 26, 2014 Order.

9. For two full days, on or about March 6 and 7, 2014, Defendants took Mr. Bollea's deposition. At that deposition, Defendants fully probed Mr. Bollea's memory regarding his

relationship with Heather Clem from 2002 to the present, asking him specific and detailed questions about sex, whether Mr. Bollea knew of the recording, what he discussed with Heather and Bubba Clem, and a myriad other details regarding the facts of this case.

10. The written discovery at issue in the instant motion was served on or about December 19, 2013. It sought, among other things, documents relating to Mr. Bollea's media appearances in which he discussed the sex video, documents relating to his communications with law enforcement regarding the sex video, as well as a description of any such communications, and Mr. Bollea's phone records.

11. Mr. Bollea served objections to this discovery, the parties met and conferred, and Gawker filed a motion to compel production. Mr. Bollea opposed the motion, the Special Discovery Magistrate recommended that an order be entered compelling production, and Mr. Bollea took exceptions to the Special Discovery Magistrate's report.

12. On or about April 23, 2014, Judge Campbell overruled Mr. Bollea's exceptions, and Gawker then handed Judge Campbell a proposed order to sign, without handing Mr. Bollea's counsel a copy of that proposed order, and without conferring with Mr. Bollea's counsel regarding its content. This was inconsistent with Judge Campbell's normal practice concerning the submission of proposed orders, where counsel typically confer on a proposed order before it is submitted to the Court for entry. Mr. Bollea's counsel was not aware that the proposed order that Gawker's counsel handed to Judge Campbell to sign proposed a deadline of only ten days for Mr. Bollea to produce responsive documents. This short deadline was proposed by Gawker even though there is no trial date in this action and Gawker would suffer no prejudice as a result of a slightly longer production deadline. Judge Campbell signed Gawker's proffered order

without Mr. Bollea's counsel having received a copy of it at the hearing, or commenting upon its contents.

13. The ten-day timeframe for production was not feasible. Many, if not the majority, of the documents and information to be produced were in the possession of third parties and/or needed to be gathered from multiple individuals. Plaintiff's counsel nevertheless diligently endeavored to produce the information and documents as expeditiously as possible.

14. Mr. Bollea fully complied with the requests for documents related to media appearances. On or about March 5, 2014 (before his deposition), Mr. Bollea provided Gawker with his itinerary for the October 2012 media tour that Mr. Bollea's counsel was able to obtain from TNA Wrestling. Gawker also asked Mr. Bollea detailed questions about his media appearances at deposition. In response to Gawker's meet and confer correspondence prior to the filing of the instant motion, Mr. Bollea has once again reviewed his e-mail account and again confirms that he has no responsive documents.

15. After an initial exchange of meet and confer correspondence, on or about May 6, 2014, Seth Berlin, counsel for Defendants, sent me a letter in which he accused Mr. Bollea of failing to comply with Judge Campbell's order.

16. On or about May 7, 2014, I responded to Seth Berlin's letter. My letter made clear that Mr. Bollea either was, or soon would be, in full compliance with the entirety of the order. A true and correct copy of my letter is attached to my concurrently filed Confidential Affidavit as **Exhibit 2**. Despite the fact that Defendants were placed on clear notice that they shortly would be receiving all of the material required to be produced pursuant to the April 23, 2014 Order, and would suffer no prejudice from the production of those materials a few days past Gawker's unilateral production deadline, which it inserted into the Court's proposed order,

Defendants did not respond at all to my letter (**Exhibit 2**), and instead raced into court to bring its motion seeking terminating sanctions, evidentiary sanctions, and monetary sanctions.

17. On or about May 8, 2014, Mr. Bollea produced to Gawker the phone records that were in his possession, custody and control. Mr. Bollea also contacted his telephone carrier to obtain further records to produce to Gawker. Those records will not be in his possession, custody or control until they are received. They have not yet been received but will be produced upon receipt.

18. On or about April 30, 2014, Mr. Bollea produced to Gawker communications with law enforcement in his possession, custody and control. On or about May 8, 2014, Mr. Bollea made a further production in response to Gawker's meet-and-confer correspondence regarding certain attachments to emails that inadvertently had been left out of the earlier production.

19. On or about May 9, 2014, Mr. Bollea served supplemental responses to A. J. Daulerio's Interrogatories 9 and 10, which concerned Mr. Bollea's communications with law enforcement and his telephone numbers and service providers, respectively. On or about May 16, 2014, Mr. Bollea produced to Gawker a second supplemental response to Interrogatory 9. On or about May 23, 2014, Mr. Bollea produced to Gawker a second supplemental response to Interrogatory 10. Mr. Bollea produced the related documents on or about April 30 and May 8, 2014.

20. As of today, it is my understanding that Mr. Bollea has fully complied with the April 23, 2014 order—to wit: (a) Mr. Bollea has produced his documents regarding his media appearances; (b) Mr. Bollea has produced documents in his possession regarding his communications with law enforcement regarding the sex video, subject only to the redactions

addressed in my concurrently filed confidential affidavit; (c) Mr. Bollea has answered the interrogatories seeking information regarding his communications with law enforcement and information regarding his telephone accounts; and (d) Mr. Bollea has produced the phone records that are in **his** possession, and has requested, and is waiting to receive, more detailed phone records from his phone carriers, so they can be produced to Gawker.

I declare under penalty of perjury that the foregoing statements are true and correct.

Executed this 27th day of May, 2014.

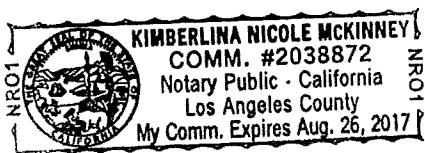


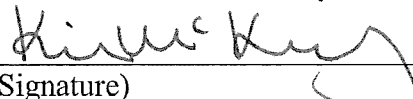
CHARLES J. HARDER

State of California
County of Los Angeles

Subscribed and sworn to (or affirmed) before me, Kimberlina McKinney
this 27th day of May, 2014, by Charles J. Harder who proved to me on the
basis of satisfactory evidence to be the person who personally appeared before me.

He/she is personally known to me or he/she has produced _____
(type of I.D.) as identification.





(Signature)
Kimberlina McKinney

(Type or Print Name)
Notary Public
My Commission Expires: Aug 26, 2017
Commission No.: 203 8872