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.
_____/

PLAINTIFF TERRY GENE BOLLEA'S
REPLY IN SUPPORT OF SECOND MOTION FOR PROTECTIVE ORDER

Gawker Media does not provide a good reason why it should be able to videotape plaintiff Terry Gene Bollea's deposition, or why it should have unrestricted access to the recording. First, Gawker Media repeats its frivolous contention that because the parties have a confidentiality stipulation in place, there can be no other protective orders entered no matter how serious the intrusion on a party's privacy. That argument is utterly without merit. The signing of a confidentiality stipulation does not waive any right to seek additional privacy protections in discovery. *See Taylor v. Kenco Chemical & Manufacturing Co.*, 465 So.2d 581, 587 (Fla. 1st DCA 1985) (setting forth stringent requirements for finding a waiver).

Second, Gawker attempts to minimize the risk of the release of the video recording of his deposition by mischaracterizing Bollea's argument. Bollea is not arguing that because Gawker is

a "media organization," it should not be permitted to videotape his deposition. Rather, Bollea is arguing that because Gawker is a **celebrity gossip website** that has repeatedly published video recordings that are invasive of people's privacy, it should not be permitted to videotape the deposition. The nature of Gawker Media's business is completely different than the New York Times or CNN; this substantial difference justifies different precautions with respect to the confidentiality of a deposition of a celebrity.

Condit v. Dunne, 225 F.R.D. 113 (S.D.N.Y. 2004), is distinguishable in many respects. First, the plaintiff was not a celebrity gossip website, and the deponent was, at most, a minor celebrity. Further, the deponent was concerned that the plaintiff would not only publish the videotape but do so in an attempt to taint the jury pool. Bollea's concern is purely with the publication of the video resulting in a second invasion of his privacy – not any sort of "bank shot" effect on the jury pool.

Flaherty v. Seroussi, 209 F.R.D. 205 (N.D.N.Y. 2001), also is distinguishable. There, the issue was whether the videotape of a public official's deposition could be disseminated to the media. In that situation, the deposition related to matters of public interest; here, there is no legitimate public interest in Bollea's testimony regarding his private life. Moreover, there will still be a written transcript of the deposition so that all information obtained during the deposition will be preserved.

Jackson v. Jackson, 2002 WL 32301735 (Ill. Cir. Jun. 19), held that a protective order would not be entered where the deponent did not show that disseminating the videotaped deposition would cause harm. The harm that would result to Bollea – if videotaped testimony of Bollea discussing his private life, arising out of a case where his privacy has already been invaded by the publication of the Sex Tape and Sex Narrative – is manifest.

Third, Gawker Media's argument against Bollea's application for the alternative relief of a sealing order is without merit. Gawker Media argues that mere embarrassment is insufficient to justify a protective order. However, Bollea is not contending that he would merely be embarrassed if a video recording of him discussing his private life were published—he is contending his **privacy would be invaded**, just as it already has been by the release of the Sex Tape and Sex Narrative. The world should never have seen what occurred behind the closed doors of a private bedroom between Bollea and his partner. Gawker Media invaded his privacy by posting the clandestinely-recorded tape of that encounter. Bollea's privacy will be further invaded by any dissemination of Bollea's videotaped deposition discussing what occurred behind closed doors during and in connection with that encounter, again, information to which the public is not entitled because it is private. Gawker Media's characterization of a second invasion of Bollea's privacy as mere "embarrassment" adds insult to injury.

Finally, Gawker repeats the argument that it has made over and over again in this litigation that because Bollea gave media interviews where he discussed certain aspects of his personal life, he supposedly has waived all his privacy rights as to all aspects of his private life. This argument does not justify publishing his recorded deposition testimony any more than it justifies publishing an illegal and clandestinely-recorded Sex Tape and accompanying Sex Narrative, as Gawker Media has already done.

It also is important to remember that when the Court issued a temporary injunction against Gawker Media, Gawker Media refused to comply with it, and posted an article bearing the headline: "A Judge Told Us to Take Down Our Hulk Hogan Sex Tape Post. **We Won't.**" (emphasis added).[1] That article is still up at Gawker.com, at the URL address:

[1] The first paragraph of the Gawker.com article, dated April 25, 2013 written by Gawker.com Editor in Chief John Cook, states:

http://Gawker.com/A-Judge-Told-Us-To-Take-Down-Our-Hulk-Hogan-Sex-Tape-po-481328088

Bollea should not be expected to "trust" that Gawker Media will treat the videotape of Bollea's deposition responsibly, or in compliance with the existing Protective Order regarding the treatment of confidential information produced in discovery, just as Gawker Media has not been responsible with the Sex Tape or the Court's injunction order.

Gawker Media has run roughshod over Bollea's constitutional right to privacy. This motion asks that the Court take one of two small steps: enter an order precluding a videotaped deposition, or sealing the video recording and maintaining it in the Court's custody, to ensure that Bollea's privacy is not further invaded. Bollea has established good cause for the Court to protect him against a further invasion. The motion should be granted.

DATED: October 24, 2013

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> Yesterday the Hon. Pamela A.M. Campbell, a circuit court judge in Pinellas County, Fla., issued an order compelling Gawker to remove from the internet a video of Hulk Hogan f**king his friend's ex-wife . . . . **Here is why we are refusing to comply.**

(Emphasis added; asterisks added.) http://Gawker.com/A-Judge-Told-Us-To-Take-Down-Our-Hulk-Hogan-Sex-Tape-po-481328088

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via email this 24th day of October, 2013 to the following:

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