

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.

\_\_\_\_\_ /

**REPLY TO GAWKER’S OPPOSITION TO PLAINTIFF’S  
MOTION TO COMPEL GAWKER RESPONSES**

Plaintiff TERRY GENE BOLLEA, professionally known as Hulk Hogan (herein  
“Responding Party”) hereby replies to Gawker Media, LLC’s Opposition to Plaintiff’s Motion to  
Compel Discovery dated August 21, 2013 as follows:

**I. INTRODUCTION**

Gawker Media’s opposition asks this Court to accept its position that all of the documents  
that it has refused to produce are irrelevant to this action and not reasonably calculated to lead to  
admissible evidence. Plaintiff Terry Gene Bollea is allowed, however, to test the veracity of  
Gawker Media’s claims against the documentary record. Further, Gawker Media has not shown  
how it would be unduly burdensome to produce the records requested by Bollea. Finally,  
Gawker Media’s contention that Bollea failed to adequately meet and confer is incorrect—Bollea  
filed this motion after the parties exchanged letters and there appeared to be a standoff. The

\*\*\*ELECTRONICALLY FILED 10/28/2013 10:43:48 AM: KEN BURKE, CLERK OF THE CIRCUIT COURT, PINELLAS COUNTY\*\*\*

parties also held a three-hour telephonic conference regarding these issues shortly after the motion was filed; Gawker Media's counsel refused to have a conference before the motion was filed, notwithstanding Bollea's counsel's requests. Bollea has shown every willingness to meet and confer and, in fact, the parties eventually were able to resolve some discovery issues informally. Bollea's motion to compel should be granted as to the issues remaining in dispute.

I. **ARGUMENT**

A. **Interrogatory No. 5 (Information Regarding the Making of the Sex Tape) Was Mooted By a Supplemental Response of Gawker Media After the Motion to Compel Was Filed.**

Gawker Media argues that the motion to compel its further response to Interrogatory 5 regarding its knowledge of the making of the video is now moot. Gawker Media did so, after Bollea was forced to bring this motion. Accordingly, no order to compel is necessary.

B. **Gawker Media Should Be Compelled to Provide a Further Response to Interrogatory No. 13 and RFP's 30, 39-40, 89-90, 91-95, and 104 (Discovery Regarding Involvement of and Benefits Received by Gawker Affiliates and Websites); Demands 96-98 and 101-03 Were Mooted By Dismissal, and Gawker Media Complied with Demand 99.**

Gawker Media argues that it should not be required to disclose information regarding the other Gawker Media websites, or the other Gawker affiliated defendants. However, Bollea is entitled to know which Gawker entities and websites benefitted from the sex tape. If the Sex Tape drove traffic or generated revenue for other Gawker websites or entities, Bollea is entitled

to find that out. Gawker's denial that this occurred is insufficient to deny Bollea discovery of potentially relevant evidence that could show that it did.

Gawker Media's arguments against this discovery are without merit. First, Bollea has pleaded that the veil should be pierced and that each defendant is responsible for the other defendant's actions. *See Amended Complaint* ¶ 24 (alleging each defendant was responsible for the acts and omissions of each other defendant).<sup>1</sup>

Second, Gawker Media cannot obviate the need for this discovery simply by claiming (as it has) that it respects corporate formalities. For one thing, not all of the discovery at issue is

---

<sup>1</sup> The authorities cited by Gawker Media do not support its contention that Bollea is not entitled to discovery on the issue of piercing the corporate veil. *Oginsky v. Paragon Properties of Costa Rica LLC*, 784 F. Supp. 2d 1353, 1372-73 (S.D. Fla. 2011), a federal district court case, involves the specificity of pleading necessary to survive a motion to dismiss and has nothing to do with whether discovery is available on veil piercing claims. *Diaz-Verson v. Walbridge Aldinger Co.*, 54 So.3d 1007, 1010 (Fla. 2d DCA 2010), held an **individual's** private financial data (protected by the Florida Constitution's right to privacy) was not discoverable in an action against a business entity owned by the individual for simple failure to pay amounts due on a contract. *Diaz-Verson* distinguished *All About Cruises, Inc. v. Cruise Options, Inc.*, 889 So.2d 905, 907 (Fla. 4th DCA 2004), which held that discovery of even an individual's private financial matters was permissible where a veil piercing claim was asserted. *All About Cruises*, rather than *Diaz-Verson*, controls here. In *Capco Properties, LLC v. Monterey Gardens of Pinecrest Condominium*, 982 So.2d 1211, 1214 (Fla. 3d DCA 2008), the court construed the request as seeking information regarding the personal wealth of individual defendants in a breach of warranty case. The court further noted there was no claim for punitive damages asserted. Thus, the information sought was not discoverable. Here, Bollea is not seeking at this time to discover any individual defendant's personal wealth (and has asserted a punitive damages claim anyway, which could make even that information relevant and discoverable). Bollea simply is trying to trace the profits from the publication of the Sex Tape. *O'Barry v. Ocean World, S.A.*, 17 So.3d 1286, 1287 (Fla 4th DCA 2009), a very short opinion, holds that personal tax returns of individual defendants are not discoverable in an interference with contract suit. Similarly, *Spry v. Professional Employer Plans*, 985 So.2d 1187, 1188 (Fla. 1st DCA 2008), holds that personal financial information of a worker's compensation plaintiff is not discoverable. Nothing in *O'Barry* or *Spry* suggests that Bollea is not entitled to the discovery he seeks here. Finally, *Hilton Oil Transport v. Oil Transport Co.*, 659 So.2d 1141, 1151 (Fla. 3d DCA 1995), is distinguishable in two respects: (1) it concerns the merits of an alter ego claim, not whether financial information is discoverable; and (2) it applies federal common law, not Florida state alter ego law.

directed to Gawker Media's disrespect of corporate formalities. For instance, if publishing the Sex Tape drove up traffic on other Gawker websites and therefore generated revenue for Gawker Media, this would be discoverable as a potential measure of damages even if Gawker Media completely respects corporate formalities. Gawker Media is refusing to produce documents that would show this.

Additionally, Bollea is not required to accept Gawker Media's word with respect to whether there is evidence that would support a veil piercing claim. Financial records are generally discoverable where such claims are at issue in the case. *See All About Cruises*, 889 So.2d at 907; *Crocker Construction Co. v. Hornsby*, 562 So.2d 842, 842 (Fla. 4th DCA 1990) (financial documents discoverable even where plaintiff had failed to plead its alter ego claim).

Nor is Bollea required to accept Gawker Media's word as to whether other defendants were involved in the posting of the Sex Tape. Gawker Media notes that the parties have tentatively agreed to dismiss certain corporate defendants upon receipt of a binding certification from Gawker Media that they were not involved, but Bollea has sued individual defendants as well (and is entitled to know their involvement), and in any event, that dismissal has not occurred yet. Also, the issue of whether profits from the Sex Tape have redounded to the benefit of the other Gawker affiliated defendants is discoverable.<sup>2</sup>

Third, Gawker Media's claim that it received no advertising revenue as a result of the publication of the Sex Tape is both non-dispositive (Bollea is permitted to test this claim through

---

<sup>2</sup> *Elkins v. Syken*, 672 So.2d 517 (Fla. 1996), cited by Gawker Media, concerns the discoverability of financial records of a party's medical expert witnesses. It has no application to the facts herein. *State Farm Mutual Automobile Insurance Co. v. Parrish*, 800 So.2d 706 (Fla. 5th Dist. App. 2001), holds that a plaintiff has no right to obtain discovery on a claim that is barred by the plain language of the parties' contract, a completely different situation than the case at bar.

discovery) and incomplete (even if Gawker Media did not receive direct advertising revenue from the page that featured the Sex Tape, Gawker Media still received a huge boost in traffic and thus ad revenue – traffic that spilled over to other Gawker websites as a result of the Sex Tape’s publication). The financial documents and statements sought by Bollea will show the extent of this Gawker Media revenue spillover. This information is directly relevant to Bollea’s damages claims.

Fourth, Gawker Media’s contention that the information that it has produced regarding revenue and traffic is sufficient is without merit. Bollea has not received from Gawker Media **any** traffic figures regarding Gawker websites other than Gawker.com, or any revenue statistics that would show whether or not any other Gawker websites realized a bump in revenue due to the publication of the Sex Tape. That information is discoverable.

Finally, the standards that Gawker Media employs to post content on the web are clearly discoverable. Whether Gawker Media has any policies and practices with respect to posting content, on any of its websites, can shed light as to whether such policies were followed or disregarded in posting the Sex Tape. Gawker Media has asserted that it acted in good faith at all times as a defense to Bollea’s claims; Bollea is entitled to test the veracity of this contention.

Certain requests regarding Gawker affiliates that were shut down by Gawker Media (Gawker Sales, Gawker Technology, and Gawker Entertainment) have been mooted by a request for dismissal filed by Bollea. (The information regarding the shut down was disclosed during a recent Gawker Media employee deposition.) Thus, no order is required with respect to RFP’s 96-99 and 101-03.

**C. Gawker Media Should Be Compelled to Serve a Further Response to RFP 28 (Cease And Desist Letters).**

Gawker Media's argument that it should not be required to disclose cease and desist letters received from other parties is without merit. Gawker Media analogizes to *Nationwide Mutual Fire Insurance Co. v. Hess*, 814 So.2d 1240 (Fla 5th DCA 2002), where a plaintiff in a bad faith denial of coverage suit was not permitted to discover the names of other policyholders who had been denied coverage, but the discovery in *Hess* implicated the privacy of third party policyholders who had nothing to do with the lawsuit, whereas in the case at bar, Bollea seeks to discover **Gawker Media's** conduct with respect to cease and desist claims regarding content that was posted publicly on Gawker Media's websites. No such privacy interests are implicated here.

**D. Gawker Media Should Be Compelled to Make a Further Response to RFP's 49 and 50 ("Editor Wiki").**

Gawker Media's argument as to why its "Editor Wiki" should not be discoverable is completely without merit. This document contains standards for content published on Gawker websites, and Gawker Media has agreed to produce it in the meet and confer process. Gawker Media, after this motion was brought, produced a **portion** of it (dealing with style guidelines for Gawker posts), however, Gawker Media has refused to produce the full document which contains guidelines for fair use, publishing photos, and other categories that are relevant to this litigation. Thus, Gawker Media should be required to produce the remainder of the document.

**E. Gawker Media Should Be Compelled to Make a Further Response to RFP 105 (Communications With E-Discovery Vendor).**

Gawker Media's argument as to why communications with its electronic discovery vendor are not discoverable is without merit. Gawker Media has not established that such communications would contain its counsel's thoughts, impressions, or conclusions about the case. Disclosure of these documents will allow Bollea to confirm that all discoverable documents have in fact been obtained and disclosed to Bollea. Thus, discovery of these documents should be compelled by the Court.

**F. Gawker Media Is Not Permitted to Redact Documents on Grounds of Mere Relevance.**

Gawker Media has identified no authority that permits it to redact documents on the ground of mere relevance. Gawker Media should be required to produce unredacted copies of all documents redacted on grounds of relevance.

**G. Monetary Sanctions Are Appropriate Because Bollea Discharged His Obligation to Meet And Confer.**

Gawker Media's argument that Bollea failed to meet and confer and thus should be denied an attorney's fees award is without merit. Bollea sent Gawker Media's counsel a letter setting out the deficiencies in Gawker Media's discovery responses; Gawker Media responded with a letter that made no concessions whatsoever and which declined to produce any additional discovery. Gawker Media's counsel refused to make itself available for a telephone conference for a prolonged period of time (approximately 14 days) to discuss the issues, thus requiring Bollea to file the motion to compel. Counsel eventually did have a three-hour conference and resolved some but not all of the issues. It was only because of the motion that was filed that Gawker Media complied with some of the issues. But still, it refused to comply with many other

issues – outlined herein. If there was any failure to meet and confer, that failure was on Gawker Media's end. Monetary sanctions therefore are appropriate.

## II. CONCLUSION

For the foregoing reasons and those set forth in the moving papers, the motion to compel and for monetary sanctions should be granted in its entirety except with respect to compelling a further response to Interrogatory 5 and Document Demands 96-99 and 101-03. Moreover, the requested monetary sanctions of \$6,160 should be ordered against Gawker Media.

DATED: October 28, 2013

Respectfully submitted,

/s/ Charles J. Harder  
Charles J. Harder, Esq.  
PHV No. 102333  
HARDER MIRELL & ABRAMS LLP  
1801 Avenue of the Stars, Suite 1120  
Los Angeles, CA 90067  
Tel: (424) 203-1600  
Fax: (424) 203-1601  
Email: [charder@hmafirm.com](mailto:charder@hmafirm.com)

-and-

Kenneth G. Turkel, Esq.  
Florida Bar No. 867233  
Christina K. Ramirez, Esq.  
Florida Bar No. 954497  
BAJO CUVA COHEN & TURKEL, P.A.  
100 North Tampa Street, Suite 1900  
Tampa, Florida 33602  
Tel: (813) 443-2199  
Fax: (813) 443-2193  
Email: [kturkel@bajocuva.com](mailto:kturkel@bajocuva.com)  
Email: [cramirez@bajocuva.com](mailto:cramirez@bajocuva.com)

Counsel for Plaintiff



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via e-mail this 28th day of October, 2013 to the following:

Barry A. Cohen, Esquire  
Michael W. Gaines, Esquire  
The Cohen Law Group  
201 East Kennedy Blvd.  
Suite 1000  
Tampa, FL 33602  
[bcohen@tampalawfirm.com](mailto:bcohen@tampalawfirm.com)  
[mgaines@tampalawfirm.com](mailto:mgaines@tampalawfirm.com)  
Counsel for Heather Clem

Gregg D. Thomas, Esquire  
Rachel E. Fugate, Esquire  
Thomas & LoCicero PL  
601 S. Boulevard  
Tampa, Florida 33606  
[gthomas@tlolawfirm.com](mailto:gthomas@tlolawfirm.com)  
[rfugate@tlolawfirm.com](mailto:rfugate@tlolawfirm.com)  
Counsel for Defendant Gawker

Seth D. Berlin, Esquire  
Alia L. Smith, Esquire  
Paul J. Safier, Esquire  
Levine Sullivan Koch & Schulz, LLP  
1899 L. Street, NW  
Suite 200  
Washington, DC 20036  
[sberlin@lskslaw.com](mailto:sberlin@lskslaw.com)  
[asmith@lskslaw.com](mailto:asmith@lskslaw.com)  
[psafier@lskslaw.com](mailto:psafier@lskslaw.com)  
Pro Hac Vice Counsel for  
Defendant Gawker

David R. Houston, Esquire  
Law Office of David R. Houston  
432 Court Street  
Reno, NV 89501  
[dhouston@houstonatlaw.com](mailto:dhouston@houstonatlaw.com)

/s/ Kenneth G. Turkel  
\_\_\_\_\_  
Attorney