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.
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PLAINTIFF TERRY GENE BOLLEA'S OPPOSITION TO GAWKER MEDIA LLC'S AND AJ DAULERIO'S MOTION TO COMPEL FURTHER RESPONSES TO DISCOVERY AND MOTION FOR MONETARY SANCTIONS

I. INTRODUCTION

Gawker Media LLC's and AJ Daulerio's motion to compel seeks to obtain information for the purpose of trying to obscure, rather than clarify, the material issues of this case. This case involves: (1) whether Gawker Media committed a tort by posting a clandestinely recorded explicit sex tape depicting Bollea fully nude and engaging in sexual intercourse (the "Sex Tape"), along with an explicit narrative describing Bollea's genitals and sexual activity (the "Sex Narrative"); (2) whether Gawker Media has a defense under the First Amendment that permits it to publish the clandestine Sex Tape and Sex Narrative despite the invasion of Bollea's privacy; and (3) the extent of Bollea's damages resulting from Gawker Media's conduct.

The discovery that Gawker Media and Daulerio claim that Bollea has not responded to, in contrast, concerns issues that are **not relevant** to the case, including: (1) Bollea's entire sex life, including any alleged extramarital affairs he might have had during his marriage[1]; (2) all of Bollea's medical records, apparently on the theory that if Bollea suffered any medical problems around the time that Gawker Media published the Sex Tape, that would show that he could not have been emotionally distressed by the publication of a clandestinely filmed Sex Tape depicting him naked; and (3) all of Bollea's financial records and contracts over a period of several years, on the theory that if Bollea asserts that his career was harmed in any way whatsoever, Gawker Media is entitled to a complete forensic examination of Bollea's finances.

Gawker Media and Daulerio are trying to overcomplicate this case, obscure the issue of whether their own conduct was wrongful, and instead put Bollea on trial, and assassinate his character, by making the case about his sexual morality, alleged hypocrisy, and private conduct. The Court should not allow this.[2] Gawker Media has done enough already to invade Mr. Bollea's privacy and negatively impact his life. It should not be permitted to use this litigation as an opportunity to continue its wrongful campaign against him.

Bollea's central argument, that Gawker Media's and Daulerio's discovery is overbroad, is

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[1] Mr. Bollea was separated from his then-wife and living in a different residence when he had the encounter with Ms. Clem depicted in the clandestinely filmed Sex Tape

[2]Gawker Media and Daulerio trumpet that Bollea did not respond to a fairly large percentage of discovery requests. It is an empty rhetorical point, not a legal argument. As shown in this motion and in Bollea's motion for a protective order, wide swaths of Gawker Media's and Daulerio's coordinated discovery requests are objectionable. Similarly, Gawker Media's and Daulerio's condemnation of "boilerplate objections" misses the mark—many of Gawker Media's and Daulerio's requests covered the same subject areas or asked the same question, just in a different way, and thus were objectionable for the same reasons. Moreover, the objections served by Bollea **were** tailored to the specific requests. For instance, Bollea only interposed privacy objections to discovery requests that actually invaded his privacy, he only interposed overbreadth objections to requests that actually were overbroad, etc. These therefore were not "boilerplate" objections.

reasonable. Bollea acted reasonably in seeking a protective order to protect his privacy. The Court therefore should deny Gawker Media's request for monetary sanctions, regardless of how it rules on the merits of the motion to compel.

II. ARGUMENT

A. Bollea Is Not Required to Disclose Information Regarding His Private Sex Life (Other Than the One Encounter Documented on the Sex Tape) (RFP 7, 8, 12, 13, 20-22; Gawker Interrogatories 4, 5, 8).

Gawker Media and Daulerio are seeking to take wide-ranging discovery of Bollea's sex life, using the spurious reasoning that because this case involves a sex tape (and thus Bollea can be legitimately questioned about some aspects of the encounter that was recorded, such as whether he consented to the recording and its dissemination), Gawker Media supposedly can ask Bollea anything about anyone he might ever have had sex with, and the details of each account. Bollea has already had his privacy severely invaded by the surreptitious taping of him fully naked in a private bedroom and engaged in consensual sexual relations – without his permission or consent – along with the unlawful posting of that recording at Gawker.com where more than 4 million people have viewed it. He and his family should not be subjected to further invasions of their privacy through invasive discovery that goes beyond the scope of the issues in this case.

Florida's Constitution recognizes a right to privacy. Fla. Const. Art. 1 § 23. The Court has the authority to preclude or limit discovery into areas of constitutionally protected privacy. *South Florida Blood Service, Inc. v. Rasmussen,* 467 So.2d 798, 801 (Fla. App. 3d Dist. 1985) (quashing order granting discovery from blood bank of identities of donors, which could be used to determine whether donors had contracted STD's and thus could indirectly disclose the sex lives of the donors). "The discovery rules. . . grant courts authority to control discovery in all aspects in order to prevent. . . undue invasion of privacy." *Id.*

A California case involving a television actress is highly persuasive on the issue of the scope of Bollea's right to sexual privacy in this sort of case. *Tylo v. Superior Court*, 64 Cal. Rptr. 2d 731 (Cal. App. 1997), involved an actress who sued a television producer for firing her from a role in a television show due to her pregnancy. At deposition, the defense counsel asked the actress about the state of her marriage at various points in time, purportedly to rebut her claims that she suffered emotional distress. The court held that just because the plaintiff claimed emotional distress did **not** mean that **any possible source** of emotional distress from her private life was discoverable. *Id.* at 736–37. The court further **rejected** the argument (also made by Gawker Media and Daulerio herein) that the fact that Ms. Tylo gave interviews to the media about her personal life waived her right to privacy, or put the content of those interviews at issue in the case. *Id.* at 737. Likewise, here, Gawker Media's efforts to claim that Mr. Bollea somehow waived his privacy rights or put his private sex life at issue because he brought this action for injunction and damages, or spoke about the case or discussed his private life, is without merit.[3]

In determining whether to permit discovery into private matters, the court must **balance** the **relevance** of the discovery to the action, against the **invasion of privacy** that would result from allowing the discovery. *Rasmussen*, 467 So.2d at 803.

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[3] *Tylo* distinguishes a case involving a request to seal public court records as involving competing First Amendment issues; however, there are no competing First Amendment issues when it comes to taking **discovery** in a case. *Seattle Times Co. v. Rhinehart*, 467 U.S. 20 (1984) (affirming protective order against newspaper prohibiting publication of material obtained through discovery).

Gawker Media and Daulerio distinguish *Tylo* as a pregnancy discrimination case. However, the central holding of *Tylo* is that an actress / celebrity doesn't waive her privacy rights, thereby making intrusive discovery questions fair game, just because she grants an interview to some media outlet and discusses her sex life. That holding is just as applicable in the area of privacy litigation.

Under these standards, Gawker Media and Daulerio should not be permitted to inquire into Bollea's sex life, except where it directly relates to the issues in the case, that is, the specific sexual encounter with Heather Clem that was recorded. Whether or not Bollea had extramarital affairs, with whom he slept, etc., is simply of no relevance to this action and is exactly the sort of private information that is manifestly protected by the Florida Constitution's right to privacy.

Similarly, unless Bollea made a sex tape and disseminated it to the public (which he did not), whatever his proclivities might be with respect to the making of completely **private** sex tapes, if any exist, are not relevant and are clearly protected under his right to privacy.

Gawker Media and Daulerio argue that their First Amendment defense centers around the claim that the publication of the Sex Tape and Sex Narrative supposedly was a "commentary" on Bollea's sex life, alleged hypocrisy, and extramarital affairs. Bollea has shown in earlier proceedings in this same action, before this Court, that none of these arguments justify publishing explicit contents or details from a surreptitiously recorded sex tape (as opposed to simply reporting on its existence). Notwithstanding, **Gawker Media and Daulerio do not need any of the evidence that they seek to make this argument**. Gawker Media and Daulerio can still make their argument that the publication of the Sex Tape and Sex Narrative was protected as legitimate commentary on Bollea's sex life whether Bollea had zero affairs, or 1,000. Indeed, Gawker Media and Daulerio **will** make this argument anyway, whether or not they are permitted to take this discovery. The argument, however, turns **not** on what Bollea did or did not do in his sex life, but rather on whether a secret and illegal sex tape that Gawker Media published is somehow constitutionally protected as a matter of "pubic concern." Gawker Media and Daulerio are simply using a legal argument that they are going to make anyway, and which does not actually depend on Bollea's conduct, as an excuse to try to dig through Bollea's private life in an attempt to embarrass and harass him, and further invade his privacy, as retaliation for having

filed this lawsuit in the first place, and in an effort to assassinate his character in front of the jury. Gawker Media and Daulerio should not be permitted to do this.

Gawker Media and Daulerio's claims of alleged "hypocrisy," and alleged "failure to live up to his public pronouncements," are not relevant to this case. Unlike, for example, a case involving the unauthorized use of a celebrity's name or likeness in a product advertisement (where the plaintiff's unpopularity and inability to obtain commercial endorsements would be relevant to the damages claimed), the commercial success of a sex tape does not depend on whether the celebrity is viewed positively or negatively. The mere fact that the celebrity is famous makes the sex tape valuable, and the more internationally well known and unique the person, the greater the value for purposes of sale. Alleged "hypocrisy" plays no role.

Tootle v. Seaboard Coast Line Railroad Co., 468 So.2d 237 (Fla. 5th DCA 1984), cited by Gawker Media and Daulerio, has no application here. *Tootle* rejected a claim of privacy under **federal law** (the US Constitution has no enumerated right to privacy, unlike the Florida Constitution), by a plaintiff in a personal injury case who objected to the deposition of a psychologist who examined him for the Social Security Administration. Nothing in *Tootle* holds that people's private sex lives are discoverable or that the discovery sought by Gawker Media and Daulerio herein is permissible.[4]

Condit v. Dunne, 225 F.R.D. 100 (S.D.N.Y. 2004), also is distinguishable. *Condit* was a defamation case. Thus, the **truth** of what was published, and not simply its invasive nature, was at issue, and this can sometimes justify intrusive discovery that is not permissible in a privacy case. For instance, if a celebrity sued Gawker Media for defamation over a report that he had an

[4]Gawker Media and Daulerio cite Judge Whittemore's order in the federal case between Bollea and Gawker Media; however, this Court has already rejected Gawker Media's collateral estoppel arguments, and in any event Judge Whittemore was ruling on what he viewed to be the probable validity of Gawker Media's First Amendment claim. Nothing in Judge Whittemore's ruling endorses extensive discovery into Bollea's private sex life.

affair, parts of his sex life (including whether he had affairs) could be discoverable. However, Bollea has not contended in this litigation that Gawker Media's Sex Narrative was false or that the Sex Tape was a fake; he contends that Gawker Media invaded his privacy by publishing them. *Condit* is very clear that even in the defamation context, discovery of the plaintiff's sex life is **limited to information of direct relevance** to the claim asserted: "[A]ny inquiry on discovery into Condit's sexual relationships is limited to information relevant to Dunne's possible defense of substantial truth, mitigation of damages, and impeachment as to the truthfulness of plaintiff. To be perfectly clear and allay plaintiff's fears of overly salacious discovery, **no fishing expeditions will be tolerated by this Court**, nor by Magistrate Judge Ellis who will supervise the parties' depositions." *Id.* at 111 (emphasis added). The holding of *Condit* **supports** Bollea's claim that fishing expeditions into his sex life are impermissible.

Gawker Media and Daulerio further argue that because Bollea must prove that Gawker Media's conduct was "offensive" to establish an invasion of privacy, Gawker Media and Daulerio should be permitted to take discovery of Bollea's sex life to show that he was not really "offended" by discussions about it. This is a non sequitur. Bollea is not arguing that any public discussion whatsoever of his sex life is tortious; he is arguing that publishing an explicit clandestinely-recorded tape of him naked, aroused, and having sex, without his knowledge or permission is offensive. It does not follow that just because a celebrity might discuss aspects of his or her private life in interviews, anyone can secretly tape them having private sex and post the video to the Internet. The argument is non-sensical and would mean the end of all privacy for celebrities—in direct contravention of Constitutional, statutory and case law that gives them, and all citizens, privacy rights.

Moreover, the First Amendment does not extend to grant a publisher carte blanche to intentionally publish the most invasive possible material where the public has no legitimate need

to see it and its publication is not necessary to report the news. In *Michaels v. Internet Entertainment Group, Inc.*, 5 F. Supp. 2d 823 (C.D. Cal. 1998) (hereinafter "Michaels I"), for example, the Court enjoined the broadcast of a celebrity sex tape of Pamela Anderson and rock star Brett Michaels, holding:

> It is also clear that **[Brett] Michaels has a privacy interest in his sex life**. While Michaels's voluntary assumption of fame as a rock star throws open his private life to some extent, **even people who voluntarily enter the public sphere retain a privacy interest in the most intimate details of their lives**. *See Virgil,* 527 F.2d at 1131 ("[A]ccepting that it is, as matter of law, in the public interest to know about some area of activity, it does not necessarily follow that it is in the public interest to know private facts about the persons who engage in that activity."); Restatement 2d Torts § 652D cmt. h.
>
> The Court notes that the private matter at issue here is not the fact that Lee and Michaels were romantically involved. Because they sought fame, Lee and Michaels must tolerate some public exposure of the **fact** of their involvement. *See Eastwood,* 198 Cal.Rptr. at 351. The fact **recorded on the Tape**, however, is not that Lee and Michaels were romantically involved, but rather the visual and aural details of their sexual relations, facts which are ordinarily considered private even for celebrities.

Michaels I, 5 F. Supp. 2d at 840 (emphasis added).

B. Bollea's Medical Records Are Not Discoverable (RFP's 19, 29, 30; Daulerio Interrogatory 2).

This Court also should limit discovery of Bollea's medical records. Bollea has made a straightforward claim for emotional distress damages—that the publication of a recording of a private sexual encounter taped without the person's knowledge would cause **any** reasonable person to suffer emotional distress. He is not claiming that he went to the hospital, or had to consult with doctors, or anything similar.

There is no legal basis for allowing extensive discovery of a plaintiff's entire medical history simply because he is asserting damages resulting from conduct that would cause **any reasonable person** to suffer emotional distress. Bollea is not putting his medical history at issue or any portion of it; he is simply asking that the jury be allowed to consider his claim that he

suffered emotional distress. This is exactly the situation that the "garden variety emotional distress" doctrine addresses. *See Olges v. Dougherty*, 856 So.2d 6, 12 (Fla. 1st DCA 2003) (citing cases).

Gawker Media and Daulerio argue that *Olges* supports its position. However, while the plaintiff in *Olges* did drop his separate mental anguish claim, the Court made clear that garden variety emotional distress claims do not require an invasive examination of the plaintiff's mental state, citing with approval *Bjerke v. Nash Finch Co.*, 2000 WL 33339658 at *1 (D.N.D. Feb. 1), for that proposition. *Bjerke* rejected a motion for a mental examination of a plaintiff in an employment discrimination case: "Plaintiff does not intend to offer expert testimony, since her claimed emotional distress is a general loss of self esteem rather than a serious mental or psychiatric injury. She no longer makes any separate claim for infliction of emotional distress; it is simply a component of her compensatory damages for discriminatory treatment. Under these circumstances, defendant has failed to make a showing of good cause and a mental examination is not warranted." *Id.* Like the plaintiff in *Bjerke*, Bollea is merely seeking damages for general emotional distress, not a serious psychiatric injury, caused by an independently tortious act. He has not placed his mental health at issue in this litigation.

The cases cited by Gawker Media and Daulerio are distinguishable. *Nelson v Womble*, 657 So.2d 1221, 1222-23 (Fla. 5th DCA 1995), involved two plaintiffs seeking emotional distress arising out of a personal injury claim who had sought care from a psychiatrist as a result of their injuries. Unlike the plaintiffs in *Nelson*, Bollea has not sought care from any mental health professional and is merely claiming that the nature of Gawker Media's conduct would cause any reasonable person to suffer emotional distress.[5] The brief opinion in *Scheff v. Mayo*,

[5]*Nelson* was limited by *Partner-Brown v. Bornstein*, 734 So.2d 555, 556 (Fla. 5th DCA 1999), which held that despite *Nelson*, plaintiffs who merely plead a loss of enjoyment of life as

645 So.2d 181, 182 (Fla. 3d DCA 1994), contains little reasoning and merely rejects a claim of psychotherapist-patient privilege by a plaintiff claiming mental anguish. Bollea has not sought care from a psychotherapist and *Scheff* has no application here.[6] *Wheeler v. City of Orlando*, 2007 WL 4247889 at *3 (M.D. Fla. Nov. 30), applies federal law and, like *Scheff*, merely holds that there is no psychotherapist-patient privilege in actions for intentional infliction of emotional distress, a non-issue here because Bollea has not asserted one. Gawker Media and Daulerio misstate the holding of *Chase v. Nova Southeastern University, Inc.*, 2012 WL 1936082 at *4 (S.D. Fla. May 29), which does not hold that merely pleading a claim for intentional infliction of emotional distress puts a plaintiff's mental state at issue, but rather holds that this is one factor in a 5 pronged balancing test.[7]

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a result of a personal injury do not place their mental states at issue in the case.

[6]*Arzola v. Reigosa*, 534 So.2d 883, 883 (Fla. 3d DCA 1988) also concerns the psychotherapist-patient privilege and is identical to *Scheff*.

Importantly, the Colorado Supreme Court reviewed the holdings of *Scheff* and other cases and determined that making generic claims for mental anguish that did not exceed the suffering an ordinary person would likely experience under the circumstances does not put the plaintiff's mental state at issue. *Johnson v. Trujillo*, 977 P.2d 152 (Colo. 1999).

[7]The five prongs are "(1) stating a tort claim for intentional or negligent infliction of emotional distress; (2) alleging a specific mental or psychiatric injury or disorder; (3) alleging unusually severe emotional distress; (4) intending to offer expert testimony to support a claim for emotional distress damages; and/or (5) conceding that his or her mental condition is in controversy". *Chase*, 2012 WL [redacted] at *4 (holding that claim that defendant discriminated against plaintiff on the ground of mental disability did not put plaintiff's mental health at issue). Of the five factors set forth in *Chase*, all of them except for pleading an IIED claim militate in favor of Bollea's position that his mental state is not at issue.

Gawker Media's and Daulerio's argument that a garden variety emotional distress claim cannot give rise to a substantial damages award is entirely premature. Bollea is entitled to present his claim to the trier of fact which can fix a proper valuation for the distress that a reasonable person would suffer as a result of the posting of a private, clandestinely recorded sex tape on the Internet. If Gawker Media and Daulerio contend that the damages awarded are excessive, they can make this argument in a post-verdict motion. Gawker Media's and Daulerio's attempt to pretermit the amount of damages that Bollea may recover on his emotional distress claim should be rejected by the Court.

Finally, Gawker Media and Daulerio's argument that Bollea must answer all of their

C. Gawker Media and Daulerio Are Not Entitled To Every Contract That Bollea Ever Signed Simply Because He Pleaded That He Is Famous And His Name And Persona Have Value (RFP's 6, 14, 17, 19, 31, 32, 40, 41, 44; Gawker Interrogatories 1 & 11; Daulerio Interrogatories 1 & 3).

Gawker Media and Daulerio argue that because Bollea alleged that he is a celebrity who is famous and whose name and persona have value (a fact that Gawker Media and Daulerio cannot dispute, because their First Amendment argument relies upon this fact in their contention that the Sex Narrative and Sex Tape were "matters of public concern"), they supposedly are entitled to obtain in discovery every contract, business dealing, endorsement deal, or employment offer of any kind that Bollea has entered into over the course of many years. Gawker Media and Daulerio essentially are arguing that Bollea has no financial privacy whatsoever. However, the Florida Constitution's right to privacy protects private financial records as well as other sorts of privacy. *Berkeley v. Eisen*, 699 So.2d 789, 790 (Fla. 4th DCA 1987) (investing and banking records protected).

Gawker Media's and Daulerio's position is nonsensical and demonstrative of their overbroad approach to discovery. Bollea has conceded in the meet and confer process that **if** he wishes to contend that he lost particular opportunities, endorsements, or employment as a result of the publication of the Sex Tape and Sex Narrative, then he is required to and will produce any documents and answer questions relating to those losses. Discovery is continuing on the issue of whether Gawker Media's publication of the Sex Tape caused any such losses.

However, whether or not Bollea worked for a particular wrestling promoter or reality

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overbroad discovery responses because Gawker Media and Daulerio did not ask a specific yes-no question regarding whether Bollea sought mental health treatment for his emotional distress is meritless. Bollea has made the representation that he did not to Gawker Media and to the Court, and if that is not satisfactory to Gawker Media and Daulerio, they can easily ask a yes or no question about it at Bollea's upcoming deposition.

show producer, and what he received in compensation for those activities or for endorsements or personal appearances, is completely tangential to Bollea's claims in this action. Gawker Media and Daulerio are asking this Court to authorize a massive fishing expedition through Bollea's financial affairs in the hope that they might turn up something embarrassing or find a basis for an argument that Bollea has little or no commercial value based on some irrelevant contract that has no relation to facts of this case, which involve the publication of a secretly filmed sex tape of Bollea. There is no justification for granting Gawker Media's Motion to Compel.

The cases cited by Gawker Media and Daulerio do not provide such a justification. *Friedman v. Heart Institute*, 863 So.2d 189, 194-95 (Fla. 2003), supports **Bollea's** position. *Friedman* rejected an application to **stay** fraudulent transfer litigation to protect a party's financial privacy, but specifically states that the reason the stay should be rejected is that trial courts have the power to **protect parties' financial privacy** through the less restrictive means of **limitations on discovery**, and that trial courts should balance the need for discovery against the severity of the invasion of privacy when determining the extent to allow such discovery.

Florida Gaming Corp. v. American Jai-Alai, Inc., 673 So.2d 523, 524-25 (Fla. 4th DCA 1996), also supports Bollea's position. In *Florida Gaming*, the court held that in a breach of partnership agreement action that sought damages for the plaintiff's lost expectancy, financial information that was relevant to the plaintiff's earning power was discoverable because of the nature of the plaintiff's damages claim. This is exactly the standard Bollea seeks to apply in this case: to the extent Bollea seeks damages based on a lost opportunity, Gawker Media and Daulerio may obtain discovery of financial information relating to that opportunity. However, they may not take discovery of financial information that has nothing to do with lost business

opportunities or lost employment claimed by Bollea.[8]

Sharon v. Time, Inc., 103 F.R.D. 86, 90 (S.D.N.Y. 1984), cited by Gawker Media and Daulerio, also supports Bollea's position. In *Sharon*, the Court **limited** discovery of plaintiff Ariel Sharon's finances because "[h]e has voluntarily restricted his claim… to the injury done to his statute as a national leader and to his reputation as a military hero, as well as the future lost opportunities that such damage may have predictably caused," which is analogous to the position taken by Bollea in this litigation.

The other cases cited by Gawker Media and Daulerio are distinguishable. *Board of Trustees v. American Educational Enterprises, LLC*, 99 So.3d 450, 458 (Fla. 2012), held that financial information was discoverable in an action where the plaintiff sought to reform a purchase contract and the financial information could show that the terms of the original deal were favorable to the plaintiff and no reformation was called for. Our case involves no such facts, and Gawker Media and Daulerio have not articulated a similar theory of relevance that would justify discovery of all of Bollea's private financial information. *Bystrom v. Whitman*, 488 So.2d 520 (Fla. 1986), holds that a taxpayer who challenged a tax assessment could be required to produce financial information that was relevant to the assessment – a completely different situation than our case.

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[8] *Condit*, 225 F.R.D. at 112, stands for the same proposition—financial records were discoverable in a defamation case where the plaintiff specifically claimed that he could not get work due to the alleged defamation. *Caruso v. Coleman Co.*, 1995 WL 298376 at *2 (E.D.Pa. May 12), holds tax returns can be discoverable where the plaintiff claims that he lost future income as damages, but, *Caruso* also holds that tax returns are presumptively **not discoverable** absent a heightened showing of relevance. Similarly, *Smith v. CSX Transportation, Inc.*, 1994 WL 762208 at *1 (E.D.N.C. May 18), holds that tax returns can be discoverable to show the plaintiff's income where plaintiff was seeking damages for lost wages. Gawker Media and Daulerio mischaracterize the holding of *Patton v. Southern Bell Telephone & Telegraph Co.*, 38 F.RD. 428, 430 (N.D.Ga. 1965), which does not hold that financial data is discoverable because the plaintiff alleged he suffered humiliation and embarrassment, but rather because he alleged he suffered a loss of earnings.

D. There Is No Need for an Order Compelling a Further Response to Interrogatories Regarding Actual Lost Business Opportunities Claimed As Damages By Bollea; Bollea Has Already Agreed to Produce Relevant Documents And Provide Relevant Information If He Intends to Seek Damages Resulting from Them (Gawker Interrogatories 2, 3, and 20).

Gawker Media and Daulerio argue that a further response is required to the interrogatories seeking information about Bollea's lost business opportunities, and the related document demands, even though Bollea already agreed during the meet and confer process to provide relevant documents regarding any contract or opportunity that he contends was lost as a result of the publication of the Sex Tape or Sex Narrative. Gawker Media and Daulerio do not dispute that Bollea has identified the Rent-A-Center and WWE opportunities in its discovery responses, and cannot argue that these documents are relevant absent a claim of damages by Bollea. Thus, Bollea's express agreement to produce documents relating to any lost opportunity that becomes an item of damages in this litigation is sufficient. No order to compel should be entered.

E. There Is No Need to Require a Privilege Log, Because Bollea has Agreed to Represent that the Only Documents Withheld Because of Privilege Were Created After Bollea Hired His Litigation Counsel, and This Representation Was Agreed to be Acceptable by Gawker Media's and Daulerio's Counsel.

In the meet and confer process, Bollea's counsel represented to counsel for Gawker Media and Daulerio that the only documents being withheld on the grounds of privilege were documents created after litigation counsel was engaged. Counsel for Gawker Media and Daulerio agreed to accept this representation in lieu of a privilege log. Accordingly, there is no basis to compel production of a privilege log.

F. Gawker Media's And Daulerio's Request for Monetary Sanctions Should Be Denied.

Where a party is "justified" in opposing a motion to compel, monetary sanctions should not be awarded. Fla. R. Civ. Proc. 1.380(a)(4). Even where a sanction is imposed, it must be "commensurate with the violation". *Ford Motor Co. v. Garrison*, 415 So.2d 843, 845 (Fla. 1st DCA 1982) (declining to award expert witness fees as discovery sanction). In the case at bar, Bollea had ample grounds to oppose Gawker Media's overbroad and intrusive discovery. In addition, Bollea did not simply stand on his objections, delay, and force Gawker Media to bring a motion to compel, but brought his own motion for a protective order to quickly get the issues between the parties resolved.

Under these circumstances, Gawker Media and Daulerio are not entitled to any award of attorney's fees. Bollea took actions in good faith to obtain an expeditious judicial review of this issue. On the contrary, after Bollea filed his Motion for Protective Order regarding the same issues, Gawker Media and Daulerio sought to multiply the litigation by bringing this Motion in addition to it. Bollea was required to incur substantial attorneys fees to oppose this Motion. Accordingly, Bollea requests an award of his attorneys fees in the amount of $6,160.00. See Declaration of Charles J. Harder ¶ 4.

IV. CONCLUSION

For the foregoing reasons, Bollea respectfully requests that the Court deny the Motion to Compel, deny Gawker Media and Daulerio's request for monetary sanctions; and grant Bollea's request for monetary sanctions against Gawker Media and Daulerio in the amount of $6,160.00.

DATED: October 23, 2013

/s/ Charles J. Harder

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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 23rd day of October, 2013 to the following:

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