

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.

**CONFIDENTIAL STATEMENT OF VIOLATIONS OF COURT ORDERS
AND MISREPRESENTATIONS BY PLAINTIFF AND PLAINTIFF'S COUNSEL**

Gawker Media, LLC (“Gawker”) and A.J. Daulerio (“Daulerio”) respectfully submit this confidential explanation of violations of Court orders and misrepresentations by plaintiff, Terry Gene Bollea (“Bollea”), and his counsel in support of Defendants’ Motion for Sanctions, and to place before the Court records related thereto.

1. At issue in Defendants’ Motion for Sanctions are four rulings by the Court:
 - a. its October 29, 2013 ruling overruling Bollea’s objections to providing discovery concerning his sexual and romantic relationship with Heather Clem,
 - b. its February 26, 2014 Order memorializing the October 29, 2013 ruling in a written order,
 - c. its February 28, 2014 Order denying Gawker’s motion to compel and for sanctions based on Bollea’s representation that he had provided full and complete discovery concerning his sexual relationship with Heather Clem and cautioning Bollea that, if it turned out that Bollea and his counsel “have been

less than candid in these proceedings and with the Court,” sanctions – likely including a preclusion order – would follow, and

- d. its April 23, 2014 Order directing Bollea to provide full and complete responses to discovery requests seeking information and/or documents concerning (i) communications related to the FBI investigation, (ii) his telephone records from 2012, and (iii) his media appearances.

In Part I below, Defendants address Bollea’s misrepresentations about his sexual relationship with Heather Clem as revealed in the FBI documents ultimately produced, as well as his and his counsel’s extraordinary efforts to conceal and misrepresent their contents. In Part II, Defendants address Bollea’s other misrepresentations about his compliance with the April 23 Order, including his ongoing failure to produce any additional documents related to his many media appearances or to produce his full phone records and related information as ordered. In Part III, Defendants address the sanctions that they request the Court to enter and that properly flow from this conduct.

I. Misrepresentations About Bollea’s Sexual Relationship with Heather Clem as Exposed by the FBI Documents

2. For the first many months of the discovery period, Bollea and his counsel concealed the existence of documents and information related to the FBI investigation into the dissemination of sex tapes depicting Bollea and Heather Clem, failing to identify documents and communications, or to assert a privilege as to them, in response to document requests and interrogatories Gawker and Daulerio served approximately a year ago. After belatedly disclosing the existence of the documents, but resisting production of them for many months in hearings before both Judge Case and then Judge Campbell (largely on disingenuous grounds, as

detailed below), the Court ultimately ordered Bollea to make full and complete responses to discovery requests seeking those documents and information.

3. Even though Bollea's responses are not full and complete, it is now readily apparent why Bollea resisted production. The documents and limited supplemental interrogatory responses he provided demonstrate that, for close to a year, Bollea made material misrepresentations both in other sworn interrogatory responses and in sworn deposition testimony. They also demonstrate that, through his counsel, Bollea made material misrepresentations to both Judge Case and Judge Campbell about key facts, the status of the FBI investigation, and Bollea's compliance with earlier discovery rulings. And, they explain, at least in significant part, why Bollea and his counsel hid the FBI documents and related information – namely, to avoid revealing that transcripts of a recording of Bollea having sexual relations with Heather Clem show that (a) Bollea used several racial epithets and made other racist comments during that encounter and (b) Bubba Clem's pivotal "we could retire off this tape" statement referred to those comments, not the fact that Bollea was recorded having sex.

A. Communications Related to the FBI Investigation

4. As the Court is aware, in October 2012, Bollea and his counsel requested that the FBI initiate an investigation into "the source and distribution of the secretly-recorded sex tape that is the subject of this lawsuit." *See* Ex. 1 (Affidavit of David R. Houston, filed Mar. 5, 2014).

5. As reflected in the documents Bollea ultimately produced, an attorney from Los Angeles, Keith Davidson, and his anonymous client proposed transferring to Bollea three video recordings of Bollea having sex with Heather Clem in exchange for a payment of \$300,000. As part of what Bollea's counsel described as an FBI "sting" operation, in December 2012, Bollea executed an agreement with Davidson, and then Bollea and David Houston (one of Bollea's

attorneys in this action) met with Davidson and his “client” at the Sand Pearl Hotel, whereupon FBI agents, who were waiting in an adjacent room, arrested Davidson and his “client.” *See* Ex. 2 (April 23, 2014 Conf. Hrg. Tr.) at 3:10 – 4:13.

6. As part of this operation, Bollea and Davidson’s “client” entered into a “Settlement Agreement and Mutual Release” (the “Davidson Agreement”), attached hereto as Exhibit 3. The parties executed the Davidson Agreement on December 11 and 12, 2012. *Id.*

7. The Agreement was signed using pseudonyms, “Taryn Bostick” and “Jo Walsh,” as well as by Davidson and Houston (both using their real names). The final two pages of Exhibit 3 are a Side Letter Agreement, executed on December 14, 2012, identifying “Taryn Bostick” as Terry Bollea and “Jo Walsh” as a person named “Lori Burbridge.”¹

8. Exhibit B to the Davidson Agreement (BOLLEA001210-1214) describes the “Property” transferred to Bollea, providing a detailed time-coded summary transcription of three video recordings depicting Bollea having sexual relations with Heather Clem. Even crediting Bollea’s contention in this action that he had no knowledge of having been recorded, Exhibit B to the Davidson Agreement necessarily provided key information to Bollea and his counsel and reminded Bollea of the details of encounters in which he had participated.

9. First, Exhibit B to the Davidson Agreement confirms that Bollea was recorded having sexual relations with Heather Clem on three different occasions on three different dates.

10. Second, Exhibit B to the Davidson Agreement also includes specific dates for two of the three recordings – July 3, 2007 and July 13, 2007 – and sufficient identifying information about the July 13, 2007 recording (*e.g.*, that “Bostick”/Bollea declares “I can’t believe I just ate –

¹ Other documents produced by Bollea indicate that “the young lady present during the negotiations with Davidson, [apparently the person identified as “Ms. Burbridge”] admitted she was only an intermediary,” rather than Davidson’s actual client. *See* Ex. 4 (July 23, 2013 email from D. Houston to FBI Agent J. Shearn).

I feel like a pig”) to make clear that it is the one from which excerpts were published on Gawker’s website.

11. Third, Exhibit B to the Davidson Agreement also reflects that another of the three recordings includes a statement by Bubba the Love Sponge Clem (identified by the initials “TAC,” for “Todd Alan Clem,” his former name) telling Heather Clem that if they wanted to retire they could get rich off the “footage.” Significantly, however, Exhibit B indicates that Clem’s reference to getting rich from the footage was not about the depiction of Bollea having sex, but instead referred to Bollea’s repeated use of *racial epithets* (comments redacted by Bollea and his counsel). See Ex. 3 at BOLLEA001214 (“if we ever did want to retire, all we have to do is use that . . . footage of him talking about [redacted] people”).²

12. Finally, Paragraph 3.3 of the Davidson Agreement recites that “JW agrees that they are the party that possessed the videos given or provided to Gawker, TMZ and other media for publication.”

13. The Government apparently elected not to pursue prosecution in the matter. See, e.g., Ex. 6 (July 23, 2013 email from FBI Agent J. Shearn to D. Houston advising “any questions regarding the case declination should be directed to Bob Mosakowski” who is “the supervisor of the Economics Crime Section and Sara Sweeney’s boss”). As a result, Bollea and Houston asked the Government to turn over the video recordings obtained by the Government. See Ex. 4 (July 23, 2013 email from D. Houston to J. Shearn: “As a consequence of the USA’s failure to prosecute, I am concerned about the disposition of the tapes”).

² A different time-coded summary of this tape, obtained in discovery in this case, and attached hereto as Exhibit 5, includes the full, direct quote without redaction: “if we ever did want to retire, all we have to do is use that footage of him talking about black people.” That transcription also recites that, on the recording, Bollea “explains how he is racist to a point, talks about Brooke ‘fucking niggers,’” and then makes what the transcript describes as a “real racist comment.” Although redacted, the Davidson exhibit appears to contain additional context for, and detail about, the nature of Bollea’s racist comments.

14. In response, the United States Attorney's Office wrote to Houston "regarding the disposition of the following pieces of evidence from the [FBI] investigation." Ex. 7 (Sept. 3, 2013 letter from AUSA S. Sweeney to D. Houston). Specifically, the Government advised that it had possession of "3 DVD recordings labeled as follows: (1) DVD-R – Hogan 7-13-07, (2) DVD-R – Hootie 7-13-07; (3) DVD-R – Hootie." *Id.* That letter also advised that

the government intends to retain possession of this [DVD] evidence pending the outcome in *Terry Gene Bollea v. Heather Clem et al.*, case no. 12-012447-CI, currently pending in the Sixth Judicial Circuit Court, in and for Pinellas County, Florida. The evidence will be provided to whichever party is found to be the rightful possessor of the recordings in that suit.

Id.

15. A second letter from the United States Attorney's Office to Houston returned certain evidence from the investigation, but reiterated the same position with respect to the three DVDs. Ex. 8 (Nov. 8, 2013 letter from S. Sweeney to D. Houston).

16. In addition to producing documents, the Court's April 23, 2014 Order also required Bollea to supplement his response to Daulerio Interrogatory No. 9 which requested that he "[d]escribe in detail every communication you or someone acting on your behalf had with any law enforcement agency, or any employee thereof, concerning any recording of you having sexual relations with Heather Clem, including without limitation the date of the communications, the participants to the communication (or if a written communication the sender(s) and all recipients), the substance of the communication, and any response to the communication." *See* Exs. 9 and 10 (supplemental and second supplemental responses to Daulerio Interrog. No. 9).

17. While as explained below the information Bollea provided in those supplemental responses is both vague and incomplete, the responses confirm that, in addition to conversations between the Government and each of Bollea's three lawyers (Houston, Charles Harder and Ken

Turkel), Bollea personally participated numerous meetings concerning the FBI investigation including the “sting” operation itself. Specifically, Bollea disclosed in his supplemental response that:

- a. “In or about the fall of 2012, Plaintiff and David Houston met with FBI agents on approximately two to three occasions at the FBI office in Tampa, Florida” concerning “the FBI’s criminal investigation.” Ex. 10 at 6.
- b. “On or about December 13, 2012, Plaintiff and David Houston met with FBI agents Jason R. Shearn and Charlotte F. Braziel at the FBI office in Tampa, Florida to discuss logistical details for their in-person meeting with Keith Davidson and his client, which was scheduled for the following day.” *Id.* at 9.
- c. “On or about December 14, 2012, Plaintiff, Mr. Houston, several FBI agents . . . and a polygrapher named ‘Jim’ met in Mr. Houston’s hotel room at the Sand Pearl Hotel” prior to that meeting with Davidson and his client. *Id.*
- d. On that same date, “Plaintiff, Mr. Houston, Jim, Mr. Davidson and his client or client’s representative had a meeting in Mr. Houston’s hotel room” after which the FBI agents detained Davidson and his client/client representative. *Id.* at 9-10.

18. Thus, by the time Bollea served his initial responses to Gawker’s and Daulerio’s discovery requests in August 2013, and, in most cases, by the time this action was amended on December 28, 2012 to include claims against Gawker and the other Gawker Defendants, Bollea and his counsel knew:

- a. That there were at least three recordings depicting Bollea and Heather Clem having sexual relations on three separate occasions.

- b. That two of those recordings had precise dates on them in July 2007.
- c. That two of the recordings were labeled “Hootie,” a nickname bestowed on Bollea by Bubba Clem. *See* Ex. 11 (B. Clem Dep. Tr.) at 222:22 – 223:14.
- d. That, on one of the recordings, Mr. Clem tells his wife that they could “retire” off the tape – not because it depicts Bollea having sex, but because it depicts him repeatedly using racist language about black people.
- e. That Bollea had personally participated in the FBI investigation, including a meeting directly with Davidson and his client representative.
- f. That the FBI had declined prosecution.
- g. That the Government had retained possession of the three video recordings of Bollea having sexual relations with Heather Clem specifically in connection with *this* case.

19. Despite this, Bollea and his counsel made repeated misrepresentations about each of these things in sworn interrogatory responses, sworn deposition testimony, and statements by counsel to Judge Case and Judge Campbell, as is further explained below.

B. Misrepresentations About the Existence of Other Tapes

20. On August 21, 2013, Bollea responded to Gawker’s Interrogatory No. 5, requesting him to “Identify any all videotapes or other recordings of any type made of you having Sexual Relations during the Relevant Time Period.” Ex. 12 (Bollea’s Resp. to Gawker Interrog. No. 5). He responded, in pertinent part:

... Responding Party has never made a recording of his sexual activity for the purpose of public dissemination, and has never consented to the making or dissemination of such a recording. ***Responding party does not know if any other clandestine recordings exist other than the video depicting Responding Party having relations with Heather Clem (which was excerpted and posted by Gawker Media on its website).***

Id. at 8 (emphasis added). That statement was materially false and knowingly so at that time. It was not supplemented despite the Court’s various rulings compelling full responses to discovery concerning the sexual relationship between Bollea and Heather Clem.

21. During the January 17, 2014 discovery hearing before Judge Campbell, the specific topic of other videos was addressed at length by counsel and the Court. Throughout this entire exchange, Bollea’s counsel concealed the fact that there were multiple videos and that the FBI was maintaining copies of them specifically in connection with this case. For example, after counsel for Gawker referenced news reports about Mr. Clem’s “retiring”-off-the-tape comment and suggested that this statement indicated that another recording existed, Bollea’s counsel (C. Harder) professed ignorance about such a recording:

Now, I think what Mr. Berlin is saying, if I understand him – and I don’t even – ***I’m operating in the dark here***, because he’s talking about certain things that happened on the video and yet they’ve never produced any evidence of that to me and ***this is the first time I’ve ever heard of it***, that apparently maybe the Clems were having a discussion that they were going to get rich from this video, then that’s an issue that would pertain to the Clems.

Ex. 13 (Jan. 17, 2014 Hrg. Tr.) at 32:23 – 33:8 (emphasis added); *see also id.* at 30:14-15 (“***If there happens to be more video than they have***, we would strongly urge Your Honor not to allow that video to go anywhere”) (emphasis added); *id.* at 32:14-15 (“***If there happens to be more footage . . .***”) (emphasis added).

22. Gawker subsequently filed a Motion to Compel Compliance with the Court’s October 29, 2013 Rulings and for Sanctions, again contending that Bollea had not fully responded to discovery requests concerning his sexual relationship with Heather Clem. Rather than disclose the existence of the three tapes, or documents detailing the contents thereof, Bollea and his counsel assured the Court that “Mr. Bollea has provided all of the information that

Gawker has asked for” including “all of the information requested in Gawker’s interrogatories.”
See Mot. for Sanctions, Ex. 4 (Pl. Opp. Br.) at 1.

23. And then, during his deposition this past March, Bollea again claimed ignorance of about whether any of the three encounters with Mrs. Clem that took place in the Clems’ bedroom – other than the one depicted in the Gawker excerpts – had been recorded. Specifically, when counsel for Gawker asked: “Do you know whether the other encounters in the bedroom were filmed?” Bollea testified, “I have no idea.” Ex. 14 (Bollea Dep. Tr.) at 291:12-14.

24. Whether there are other recordings is a key fact. It bears on many central issues, such as Bollea’s knowledge of being taped, Clem’s sworn assertion at his deposition that there was only one such recording, *see* Ex. 11 at 322:5-20, Heather Clem’s sworn statement that there are multiple tapes of her engaged in sexual relations with persons other than Mr. Clem, *see* Ex. 15 (H. Clem Resp. to Bollea Interrog. No. 2), and who had knowledge about and access to the tapes.

C. Misrepresentations About the Date of the Sexual Encounter at Issue

25. Bollea and/or his counsel also made numerous misrepresentations about the date on which the video excerpted by Gawker was recorded, even though they have known since at least November 2012 that it was recorded on July 13, 2007, knew the date of a second encounter, and knew that the third date was within a matter of weeks of the other two, as Bollea testified under oath at his deposition. Ex. 14 at 269:17 – 270:7.

26. In Bollea’s Amended Complaint, which he filed on December 28, 2012, he dated the sexual encounter depicted on the Gawker excerpts to “in or about 2006.” Am. Compl. ¶ 1.

27. In his initial responses to Gawker’s interrogatories, Bollea amended that to “[i]n or about 2008.” Ex. 12 (Resp. to Gawker Interrog. No. 10, served Aug. 21, 2013).

28. In Defendants' motion to compel, heard on October 29, 2013, they sought clarification of which date was correct. Despite having had the FBI documents for almost a year at that time, Bollea's counsel (C. Harder) explained the change to Judge Campbell as follows:

Mr. Berlin went for a while trying to – it sounded like he was saying that Hulk Hogan has been inconsistent in his allegations in this case. The only thing – and I will admit to this – the only thing that was inconsistent is the 2006 versus 2008. When Hulk Hogan first said this happened six years ago, I think that my office took it literally rather than figuratively. I think when he said it happened six years ago, he was meaning it happened many years ago. And so when we initially prepared the papers, we made a mistake and we said, okay, it's 2012, and then we go back six years, so that's 2006. And then in further talking to him about this, we got down the actual timeline based upon other things that were happening in his life, including his separation. He did live with the Clems for a short period of time, I think two weeks or two months or somewhere in between there. I never said that he didn't. But that was part of the timeline. So once we got him down on the timeline, it turns out it happened to be in 2008 rather than 2006. And I apologize, but that was an inadvertent error. . . . It means we goofed and we unfortunately had our client sign something that was under penalty of perjury that was off by two years. And I apologize for that.

Ex. 16 (Oct. 29, 2013 Hrg. Tr.) at 67:15 – 68:18.

29. Despite this, four months later, Bollea served a supplemental response to Gawker's Interrogatory No. 10 in which he stated that the sexual encounter depicted in the Gawker excerpts occurred not in 2006 or 2008, but instead in "approximately late spring/early summer of 2007." See Ex. 17 (Supp. Resp. to Gawker Interrog. No. 10, served Feb. 21, 2014). While this third try had the right year, it too was incomplete as Bollea and his counsel had available to them the exact date in July at the time.

30. During a subsequent hearing before Judge Case, Bollea's counsel (C. Harder) explained this second revision as follows:

We had provided that response to No. 10 way back in August, except we had a date wrong. Instead of 2008, it was mid 2007. And I apologize. And this is actually – and Seth is correct – the second time I have made an apology about dates. I'm trying to get it right. ***It's difficult when I have a client who does not have documents pertaining to these things, pertaining to when things occurred,***

and he's working off his memory, and it turns out that we have to make a slight adjustment to the date because we find out things.

Ex. 18 (Feb. 24, 2014 Hrg. Tr.) at 27:14 – 28:2 (emphasis added).

31. During his deposition, Bollea was similarly vague and evasive about why he and his counsel initially got the date of the sexual encounter wrong, why they later changed their story, and, significantly, whether they had any documents they could consult that would help in pinning down the date:

Q. Did all of the sexual encounters take place in close proximity time-wise to each other?

A. What would you call close proximity?

Q. Well, let me ask you that. How far apart were they?

A. I seem to remember one encounter was four or five days apart from another one. And then another encounter was like two weeks apart. So it varied.

Q. And do you know when exactly they occurred?

A. No, I don't.

Q. Is there anything that you could consult, like a calendar, to find out?

A. They happened before I met Jennifer and before my son's accident. As far as a calendar, I don't have stars or dates written down of when I had encounters with Heather.

Ex. 14 at 269:17 – 270:7.

32. Later, Bollea also testified as follows on the same subject:

Q. Just so I understand, as you sit here now, is it your best understanding that when these sexual encounters with Mrs. Clem happened were in the late spring and early summer of 2007?

A. About.

Q. About?

A. Yes.

Q. That's realizing that – and accepting what you've said about your – that dates aren't your strength –

A. Well, I know –

Q. – that's – that's sort of your best understanding at this point?

A. Yes. And I know they were before the accident. And I know they were before I started dating my new wife, Jennifer. I know that for sure. So if we can place it before that, that would be more accurate than saying about 2008.

Id. at 305:11 – 306:3.

33. Bollea and his counsel continued to rely on the vagueness of plaintiff's memory in a brief they filed in the District Court of Appeal seeking a writ to overturn this Court's ruling that he and his counsel should be required to provide authorizations to obtain records from the FBI. Rather than admit that the FBI documents disclosed exactly when the encounters occurred, his appellate brief asserted:

At the beginning of this case, Mr. Bollea had difficulty remembering the exact time period when he had a sexual relationship with Ms. Clem, which occurred several years before Gawker published the sex video and Mr. Bollea filed suit. Mr. Bollea has diligently sought to accurately recall this time period and has updated his discovery responses to reflect his refreshed recollection.

Ex. 19 (Reply in Supp. of Pet. for Writ of Cert., filed May 1, 2013). This statement would reasonably leave the appellate judges with the impression that the only thing Bollea could do to pin down the date was to rely on his memory, when, in fact, he had documents in his possession that provided that information.

34. When the sexual encounters and recordings occurred is a key fact in this case, bearing on central issues, including Bollea's knowledge of cameras in the Clems' home from having lived there for several months (*i.e.*, did he live there before or after the encounters took place?); whether his testimony about being anxious while he lived there that he would be propositioned to participate in further sexual encounters was truthful; whether Bollea was

married, separated or divorced at the time (a subject on which 2006, 2007 or 2008 makes a material difference); whether he had previously discussed his sex life and the size of his penis on Clem's radio program at the time the recordings were made; and whether he had heard about Clem's recording equipment, including in radio broadcasts in which Clem discussed his surveillance system, by the time the recording was made.³

D. Misrepresentations About the Existence of the FBI Documents and Communications

35. Bollea did not disclose the existence of the FBI documents – either by generally asserting a law enforcement privilege or by identifying them in a privilege log – when he submitted his initial responses to Gawker's document requests. This was so, even though the FBI documents ultimately produced are obviously responsive to multiple documents requests, including Request No. 2 (“Any and all documents in any manner related to the Gawker Defendants, or any of them.”), Request No. 3 (“Any and all documents in any manner related to the Video.”), Request No. 4 (“Any and all documents in any manner related to any communications you had about the Video.”), Request No. 8 (“Any and all documents concerning any Sexual Relations you had with Heather Clem during the Relevant Time Period.”), Request No. 13 (“Any and all documents concerning any videotapes made of you engaged in Sexual Relations during the Relevant Time Period.”). Ex. 20 (Bollea Resp. to Gawker Doc. Reqs., served Aug. 21, 2013).

36. At the October 2013 hearing on Defendants' initial motion to compel, at which Judge Campbell made clear that documents related to the sexual relationship between Bollea and

³ In addition, the date of the recording is also relevant to whether the statute of limitations bars claim(s) arising out of the recording the sexual encounters, including claims Bollea is asserting here against Mrs. Clem – itself an issue that Gawker and Bollea litigated in connection with Bollea's motion to remand this case from federal court based on his then-current contention that the recording occurred in 2006.

Heather Clem were to be produced, Bollea's counsel (C. Harder) addressed his failure to serve any privilege log at all. He stated:

In terms of privilege, we haven't done a privilege log because I don't have any privilege – *there are no privileged communications that I'm aware of – and I've asked for them and I've done everything I can to find them* – other than [attorney-client] communications that happened after litigation counsel was retained to fight this case.

Ex. 16 at 71:19 – 72:1 (emphasis added).⁴

37. Then, at the January 31, 2014 hearing before Judge Case on Gawker's motion to compel FBI records authorizations, Bollea's counsel responded to Gawker's argument in its briefs that Bollea had "waived his ability to rely on the [law enforcement] privilege by failing to log any of his or his counsel's communications with the FBI as to which he claims a privilege,"

Ex. 21 (Reply in Supp. of Mot. to Compel FBI Authorization) at 3, by contending that he and his client were not in possession of any such documents and by arguing instead that the only documents related to the investigation were those in the possession of the FBI itself:

Gawker says we didn't identify communications on a log. *Well, we're not in possession of these documents. It's law enforcement that's in possession.* Gawker is trying to flip the issue on us and say, well, we need to show that these are privileged. We don't need to provide a privilege log. That's not how it works, not in this instance, because we're not the ones who possess the documents. It's the FBI here.

Ex. 22 (Jan. 31, 2014 Hrg. Tr.) at 16:18 – 17:1 (emphasis added).

38. Notwithstanding these earlier representations, Bollea identified the FBI documents in a privilege log served on February 28, 2014.

⁴ Bollea's counsel further explained that "Mr. Berlin and I have an agreement that we're not going to put every communication, because it's endless, on a privilege log." Ex. 16 at 72:1-4. That agreement pertained to attorney-client communications created after the date that the lawsuit was first filed in federal court. It did not apply to privileges other than the attorney-client and attorney work product privileges (for example, Gawker has logged post-litigation documents as to which it asserted other privileges) and would not, in any event, apply to the multiple communications with Davidson that pre-dated the filing of the federal court action.

39. Bollea also repeatedly misrepresented the nature of the investigation itself. For example, despite knowing its precise substance, he opposed Gawker's motion to compel FBI records authorizations by arguing that "[i]t is **pure speculation** by Gawker that the FBI investigation is in any way relevant to this civil lawsuit against Gawker and Ms. Clem." Ex. 23 (Opp. to Mot. to Compel FBI Authorization, filed Jan. 29, 2014) at 5 (emphasis in original). He further complained that Gawker had "provide[d] no declarations from any witnesses with personal knowledge, and produce[d] no documentary evidence other than a hearsay blog post from celebrity gossip website, TMZ.com, which **speculates** on what the alleged FBI investigation **might** have pertained to." *Id.* at 4 (emphasis in original). Bollea advanced this argument despite the fact that TMZ's source for its reporting on the FBI investigation was Bollea's own counsel. Ex. 24 (TMZ article). As the article stated, "Hulk's lawyer says he has contacted the FBI to track down the sex tape leaker . . . and bring that person to justice. We're told Hulk plans to meet with FBI agents on Monday." *Id.* After Judge Case granted Gawker's motion, Bollea again argued in his exceptions that "[i]t is **pure speculation** by Gawker that the FBI investigation is in any way relevant to this civil lawsuit." Ex. 25 (Exceptions to R&R re: Mot. to Compel FBI Authorization, filed Feb. 12, 2014) at 7 n.4 (emphasis in original).

40. Bollea and his counsel then reversed course. In an affidavit accompanying his motion to stay the FBI Authorization Order, Houston stated that "Mr. Bollea and I initiated our contact with the FBI to discuss the commencement of an investigation into the source and distribution of the secretly-recorded sex tape." Ex. 1 at ¶ 3; *see also id.* at ¶ 2 (FBI investigation focused on "the source and distribution of the secretly-recorded sex tape that is the subject of this lawsuit").

41. Then, in litigating the motion to compel Bollea's and his counsel's *own* communications related to the FBI investigation, Bollea repeatedly asserted that (a) the investigation was ongoing, (b) disclosing the documents would interfere with the investigation, and (c) Gawker was improperly seeking the documents because it might be a target or subject. *See* Ex. 26 (Opp. to Fifth Mot. to Compel, filed Feb. 21, 2014) at 7-9 (argument under heading "GAWKER SHOULD NOT BE PERMITTED TO USE CIVIL DISCOVERY TO INTERFERE WITH A CRIMINAL INVESTIGATION THAT COULD BE TARGETING GAWKER"); Ex. 27 (Exceptions to R&R re: Fifth Mot. to Compel, filed Mar. 6, 2014) at 10-12 ("Gawker's discovery requests represent . . . a dangerous attempt to use the civil discovery process to interfere with a criminal investigation").

42. In fact, as the FBI documents confirm, Bollea and his counsel knew at the time these representations were made that (a) the Government had long since declined prosecution, and (b) Gawker was not, and had never been, the target of the FBI investigation. Prior to finally receiving the FBI documents, counsel for Gawker contacted the FBI and the U.S. Attorney's Office concerning Bollea's representations, and they each confirmed that (a) they had no objection to Bollea's disclosing his documents, and (b) that Gawker was not a target or subject. *See* Ex. 28 (Berlin Aff., Mar. 18, 2014, including Ex. B (letter from U.S. Atty's Office)). Bollea's counsel challenged those statements as hearsay, until defense counsel submitted a letter and email confirming them, facts long since known to Bollea and his counsel. *See* Ex. 29 (Suppl. Berlin Aff., Mar. 20, 2014, including Ex. A (email exchange with U.S. Atty's Office)).

43. In a last-ditch effort to avoid producing the documents, Bollea's counsel reversed course yet again, representing to Judge Campbell at the hearing on his Exceptions that the FBI investigation "has nothing to do with Gawker." Ex. 2 (Apr. 23, 2014 Conf. Hrg. Tr.) at 3:10 –

5:1; *see also* Ex. 30 (Apr. 23, 2014 Hrg. Tr.) at 92:23 – 93:2 (contending that the FBI documents “are not relevant or reasonably calculated to lead to anything that’s admissible”). In addition, Bollea’s counsel indicated that the recent letter from the United States Attorney’s Office (from March 2014) meant that “it seems like they’re at the end of the line in terms of the investigation and there is not going to be a prosecution,” Ex. 2 at 4:14-18, despite having been advised many months earlier that the FBI had declined prosecution and had returned key documents.

44. Judge Campbell rejected Bollea’s effort at concealing communications related to the FBI investigation, finding that “they are relevant because that’s one of the critical aspects I think of the case or at least in resolving the case, is how did Gawker get it and how did this all come about” and ordering the documents produced. *Id.* at 6:4-8.

45. Bollea has continued this pattern of changing his characterization of the FBI investigation based on whatever is strategically advantageous, most recently in his opposition to Defendants’ motion for sanctions. There, he contends that the belated production of the FBI documents does not warrant reopening his deposition because “[t]he FBI documents pertain to a completely unrelated matter. Defendants fail to meet their burden of showing that anything in the FBI documents are related to Mr. Bollea’s claims in this action, or Defendants’ legitimate defenses thereto,” even though Judge Campbell had found otherwise. *Opp.* at 15.

46. Thus, on this subject as well, Bollea and his counsel concealed the existence of documents and then engaged in a deliberate pattern of misrepresentations to Defendants, as well as to Judge Campbell and to Judge Case, about the substance of the FBI investigation in an effort to avoid producing the documents (or having to provide authorizations). Even putting aside that these documents answer basic questions like the number of times that Bollea was recorded having sexual relations with Heather Clem, and when those encounters occurred (as discussed

above), these documents also provide key information about facts central to the case, including (a) the dissemination of the recordings, (b) who had access to those recordings, (c) whether Bubba Clem was involved in the dissemination (as Bollea initially alleged in this action), (d) whether the recording was stolen from Bubba Clem by Matt “Spice Boy” Lloyd as Clem claimed at his deposition, *see* Ex. 11 at 121:22 – 122:24, and (e) whether Heather Clem was involved. And, they reveal the real nature of Mr. Clem’s comment that he could “retire” from selling the recording – *i.e.*, that it referred to Bollea’s use of racist language and epithets, not sex, as discussed in greater detail below.

47. Despite his ultimate production of documents, this pattern of conduct has continued with Bollea’s and his counsel’s failure to provide information about their oral communications with law enforcement officials. For example, Bollea’s second supplemental response to Daulerio Interrogatory No. 9 identifies a series of such communications including (a) two or three meetings between Bollea, Houston and FBI agents in the Fall of 2012; (b) one or two telephone calls between Houston and FBI Agent Shearn in February or March 2014, (c) two telephone conversations between Harder and Shearn in January 2013, (d) one or two telephone conversations between Harder and Shearn in March 2014, and (e) one or two telephone conversations between Harder and AUSA Sweeney in March 2014. Ex. 10. The substance of each of those conversations is described nearly identically in boilerplate language as “regarding the criminal investigation into the dissemination of the surreptitious recording of Plaintiff engaged in sexual relations with Heather Clem.” *Id.* When Defendants requested more detailed information, Bollea’s counsel responded that “the communications at issue occurred two years ago” and “memories have faded,” even though a number of the communications occurred no more than 60 days ago, and the memories that have supposedly faded are for the most part those

of Bollea's litigation counsel who are expected to preserve such information. Ex. 31 (May 23, 2014 letter from C. Harder to Defendants' counsel). His counsel further advanced the contention that none of Bollea's three different lawyers took any notes whatsoever during any of their many conversations with law enforcement officials. *Id.*

E. Misrepresentations About Bollea's First-Hand Knowledge of the FBI Investigation

48. During his deposition, Bollea and his counsel repeatedly contended that Bollea had no first-hand knowledge of the FBI investigation, that the only facts Bollea knew about the FBI investigation had been learned by counsel, and that they were therefore protected by the attorney-client privilege.⁵ In fact, as the FBI documents reveal, Bollea participated *personally* in a number of meetings with FBI agents and also participated *personally* in the "sting" operation in which he *personally* met Keith Davidson. Bollea finally admitted as much in his second supplemental interrogatory response served after his deposition.⁶

49. Despite this, at Bollea's deposition, Bollea's counsel objected to testimony about Bollea's knowledge of the FBI investigation and Davidson's attempt to sell him the recordings. In some instances, Bollea followed his counsel's lead and refused to answer, contending that any information was learned solely from his lawyers, while in other instances he went even further,

⁵ Defendants question whether the privilege covers facts known to and/or learned from a party's counsel. *See, e.g., Wiand v. Wells Fargo Bank, N.A.*, 2013 WL 6170616, at *2 (M.D. Fla. Nov. 22, 2013) ("a deponent may not refuse to answer questions seeking factual information merely because the facts were learned through counsel."). While Defendants reserve their right to challenge such an assertion of privilege by Bollea, their focus here is on the factual misrepresentations by Bollea and his counsel that such information was learned solely from counsel rather than the assertion of a legal privilege based on those factual assertions.

⁶ Bollea has offered no explanation as to why, in response to the Court's April 23 Order directing him to provide "full and complete" responses with seven days, he omitted this information from his first supplemental response, served on May 9, 2014, but then included it in a second supplemental response served on May 16, 2014.

affirmatively testifying that he had no knowledge of Davidson or his efforts to sell back the recordings. For example, Bollea testified:

Q. I'm asking at any time were you aware of there being a sex tape of you being shopped around?

MR. HARDER: Calls for speculation.

A. *No, not – not that I know of.*

Q. And are you aware at any time of somebody trying to offer you the sex tape or a sex tape of you?

MR. HARDER: Asked and answered. And if it's through communications with counsel, you cannot answer. . . .

THE WITNESS: *That's privileged.*

Ex. 14 at 343:17 – 344:8 (emphases added).

50. This same pattern repeated itself throughout the deposition:

Q. When did you first learn that someone was shopping a sex tape involving you?

MR. HARDER: Lacks foundation. Assumes facts not in evidence.

THE WITNESS: That's something I can't talk about. *It's from one of my attorneys.*

Q. When was the first time, other than from one of your attorneys, that you learned that someone was shopping a sex tape involving you?

MR. HARDER: Lacks foundation. Assumes facts not in evidence.

THE WITNESS: After I received the original information, which is confidential, there were [two "porno companies" that wanted to "do a deal" with him].

Q. At the beginning of your answer, you referred to information that was confidential. Is that confidential because it's stuff you learned from your attorney?

A. *Yes, sir.*

Q. All right. Did anyone try to sell the sex tape back to you?

A. *No one tried to sell it back to me.*

Q. Did anybody . . . contact you to offer you the sex tape?

A. *No.*

Q. Did anybody contact someone on your behalf to offer you the sex tape?

MR. HARDER: I'm just going to advise you that *if this involves a communication with one of your attorneys, it's privileged.*

A. *It's privileged.*

Id. at 319:7 – 320:19 (emphases added). *See also id.* at 583:4-18:

Q. Other than suing Gawker, Heather Clem, and initially suing Bubba Clem, what have you done to find out who was responsible for disseminating the sex tape of you?

MR. HARDER: And I'm going to instruct you that if you learned of anything from your communications with counsel, don't answer as to that information.

THE WITNESS: *That's privileged.*

Q. So there is nothing that you know on that subject outside of what you have had in discussions with your lawyer?

A. And what I have heard here in the depositions the last few days.

51. Finally, during his deposition, Bollea denied having seen *any* documents pertaining to the FBI investigation, despite at a minimum having personally signed the Davidson Agreement. Specifically, Bollea was asked:

Q. Without telling me their contents, have you ever seen any documents pertaining to the FBI's criminal investigation?

After Judge Case overruled a privilege objection interposed by Bollea's counsel (since it was simply a "yes or no" question), Bollea responded:

THE WITNESS: No.

Id. at 581:12 – 582:15.

52. In sum, having concealed and then withheld documents that would demonstrate that Bollea was personally involved in the FBI investigation, including the sting operation itself, Bollea and his counsel orchestrated his testimony so that he alternately asserted privilege over,

and then denied knowing anything about, the entire Davidson affair, including the agreement that he signed personally and the meetings he attended personally.

F. Misrepresentations Concerning the Nature of Bubba Clem’s Comment About Getting Rich from the Recording and Bollea’s Improper Redactions

53. Bubba Clem’s statement about how he and his wife could get rich from selling the recording of Bollea was first reported by the TMZ website in October 2012. It was later widely cited by Bollea – including in his public statements and in his responses to interrogatories and deposition testimony in this case – as the basis for (a) asserting that the Clems were involved in the recording and/or dissemination of the sex tape, (b) ending his personal relationship with Mr. Clem, and (c) initiating his lawsuit (however short-lived) against Mr. Clem.

54. Significantly, however, Exhibit B to the Davidson Agreement indicates that Clem’s reference to getting rich from the footage was not a reference to selling footage depicting Bollea having sex. Rather, it was a reference to getting rich from selling footage of Bollea using offensive racist language.

55. Even though Bollea was ordered by Judge Campbell to provide “full and complete” discovery responses, and even though Judge Campbell authorized production of the FBI documents on an “attorneys’ eyes only” basis in a confidential portion of the April 23, 2014 hearing, Bollea nevertheless redacted these comments from his production. And, even though Bollea did not raise his objection to producing these documents in his discovery responses, in his opposition to Defendants’ motion to compel, at the hearing before Judge Case, in his exceptions, or at the hearing before Judge Campbell, including in that confidential session, he has unilaterally determined he is entitled to violate a direct order of the Court.

56. Similarly, in response to a subpoena from Bollea, two third parties – Don Buchwald and Associates, a New York talent management company, and Tony Burton, one of its

talent agents – produced documents that included a similar, albeit less detailed, time-coded transcription of two of the recordings of Bollea having sex with Heather Clem. Gawker served a Request For Copies of the documents obtained via that subpoena, and when Bollea produced copies of the Buchwald/Burton document production to Defendants, he also took it upon himself to redact any references to Bollea’s racist language. (Gawker separately obtained an unredacted copy, *see* note 2 *supra*, and seeks an unredacted copy of Exhibit B to the Davidson Agreement which appears to provide additional detail.) Again, he did not seek authorization from Judge Campbell or Judge Case to take the extraordinary step of unilaterally redacting a third party’s document production.

57. Bollea and his counsel have justified these redactions on the basis that Judge Case sustained an objection during the deposition of Bubba Clem to two questions asking generally about Bollea’s use of “the ‘N’ word.” *See* Ex. 11 at 431:17 – 432:16 (“have you ever heard the Hulk use the ‘N’ word when talking about African-Americans?” and, after pointing to a story on www.thedirty.com that reported on a sex tape involving Bollea including what he “said about black people,” asking “Having seen that, do you recall whether Hulk Hogan ever used the ‘N’ word?”).

58. In addition to objections from Clem’s counsel, Bollea’s counsel (C. Harder) argued that such a comment does not “have anything to do with this case, which is about Gawker posting a sex tape.” *Id.* at 431:22-25. Counsel continued, again concealing and misrepresenting what they knew about the multiple tapes and their contents:

MR. HARDER: Your Honor, about the content of the tape. There [are] two tapes. One is the minutes 40 seconds that Gawker posted on the Internet. There is nothing about anything racial at all in that. And they produced to us a 30-minute video. There is nothing racial that has to do with that.

What we're talking about here is thedirty.com, which is making some sort of an allegation about the content of the tape, *that I assume that they are talking about the tape that they provided to us that doesn't have any of this*. . .

Id. at 435:1-11 (emphasis added). At that time, Bollea and his counsel knew there were other tapes, including a tape that specifically included Bollea's racist comments.

59. When Defendants' counsel then explained to Judge Case that "we didn't know" whether this was on the "full tape" or not, including because Bollea had concealed the FBI documents and concealed even the number of tapes, Judge Case responded "If you don't know, then we don't know." But Bollea and his counsel knew.

60. Even now, and even in court papers filed under seal, Bollea and his counsel are taking a similar approach of denial. On the one hand, the Confidential Affidavit of Charles J. Harder (filed under seal), Exhibit 2 thereto, as well as Bollea's separate Motion for a Protective Order (filed under seal on May 27, 2014), all confirm that the various redacted language is "race-related." On the other hand, they argue that there is "no competent, authenticated evidence of Plaintiff ever having used offensive language of this type." Conf. Harder Aff. at ¶ 6. Of course, the only reason that evidence has not been produced is because Bollea has refused to provide it and objected to Defendants' efforts to take discovery that would have uncovered it.

II. Other Misrepresentations Concerning Bollea's Compliance with the Court's April 23, 2014 Order (Media Appearances and Phone Records)

A. Media Appearances

61. Bollea continues to advance the remarkable contention that he has no documents related to his many media appearances in the Fall of 2012 in which he discussed the sex tape at issue. In support of his contention, he states that he "searched diligently for records responsive to this request," and noted that on the day prior to his deposition he provided an itinerary and schedule of media appearances he obtained from TNA Wrestling "as a *courtesy*." Opp. at 7

(emphasis in original).⁷ Bollea fails to note that this itinerary had been sent to his email account or that he testified at his deposition that he had failed to search his email. *See* Ex. 32 (Mar. 3, 2014 email from TNA publicist J. Wortman to S. Luppen, an attorney at C. Harder’s firm, forwarding an Oct. 3, 2012 email sent to “Terry Bollea” shortly before the original lawsuit was filed); Ex. 14 at 102:8-10. He has also provided no explanation of how such an obviously relevant document was not preserved for use in litigation. And, he has steadfastly refused to offer any explanation as to why he has no texts, no emails, no receipts, no reimbursements, no itineraries, no talking points, etc. from a media tour that occurred just days before he initiated this action against Defendants.⁸

62. Bollea asserts that he has no documents on this subject despite having engaged a New York-based publicist, Elizabeth Rosenthal Traub and her company E.J. Media, to provide him with public relations services about the sex tape. In response to Defendants’ initial interrogatory seeking the identity of persons with knowledge concerning this action, Bollea did not identify his publicist, and in response to Gawker’s initial document requests from August 2103 seeking all documents related to public statements, Bollea said nothing of his publicist’s documents. When, in December 2013, Gawker forwarded an even more specific request for

⁷ He also submitted a sworn affidavit to this effect, dated May 23, 2014, but fails to explain why, despite appearing before a notary on that date and despite being under Court order to have supplemented his interrogatory responses by April 30th, he failed to swear out verifications for those supplemental responses until June 2, 2014.

⁸ Indeed, Bollea’s testimony confirms that he and his counsel have failed to preserve key documents in their original form. For example, despite the obvious relevance of texts between Bollea and Bubba Clem, Bollea testified at his deposition that he did not preserve such texts after forwarding them to his counsel, and as a result could not ascertain whether pressing the “Load Earlier Messages” link that appears at the beginning of the string of texts he produced would reveal more relevant text exchanges. *See* Ex. 14 at 94:10-18 (“I sent my attorneys a bunch of texts, and I’ve also sent my attorneys – every time something comes up on Twitter about the sex tape or something, because I don’t deal with the negative stuff, you know, on a consistent basis. I deal with it and I bracket it and go back to where my heart’s at. Anything like that that – a text that I would send to my attorneys, as soon as I send it, I would erase it once I knew they had it.”); *see also id.* at 78:7-16 (admitting that he threw away his old calendars, including for 2012 and 2013, after the commencement of the litigation).

documents related to his media appearances, Bollea again said nothing of these documents. Gawker then subpoenaed documents directly from Traub and her agency, and they produced certain documents, but withheld and redacted others, claiming that they were protected by an attorney-client privilege which somehow extended to the services of Bollea's public relations consultant because she was acting as Bollea's agent. Gawker sought to enforce the subpoena, which was opposed by Traub and her agency— now represented by Harder's firm. After a hearing and an *in camera* inspection, the New York judge determined that the documents were not privileged and should be produced. Ex. 33 (May 1, 2014 Order). Just as the Court here did, the New York court also rejected Traub's contention that she had produced all responsive documents, crediting Gawker's argument that there were large holes in her production concerning Bollea's October 2012 media tour. *Id.* at 3. Traub and her agency appealed, and have sought a stay.

63. Putting aside the merits of a purported privilege for public relations documents, the assertedly privileged documents are obviously responsive to Gawker's document requests from both June 2013 and December 2013 because they relate directly to public statements about the sex tape and the Gawker Story. While Traub's documents – which she has asserted are privileged precisely because she was Bollea's agent – are within Bollea's possession, custody or control for that reason, those documents were also in Harder's possession given that they purportedly reflect his own communications exchanged with Traub. Despite this, these documents were neither produced nor listed on Bollea's privilege log, even though a number of the purportedly privileged documents pre-date the filing of the federal court action. *See* note 4 *supra*. Thus, when Bollea's counsel represented to Judge Case at the February 24, 2014 hearing that Bollea had no responsive documents in his possession, custody or control, *see* Ex. 18 at

71:25 –76:1 (asserting that Bollea and his counsel are not “withholding anything”), that too was false. This represents yet another category of documents that Bollea and his counsel improperly concealed for many months – including effectively until after Bollea’s deposition – instead of identifying them and asserting the privilege claims that he is now, in effect, belatedly asserting through his public relations consultants. The fact that these documents continue to be withheld also undercuts Bollea’s representation to this Court that all documents related to his media appearances have been produced. They clearly have not.

64. In a case where the District Court of Appeal has already found that the substance of Bollea’s contemporaneous media appearances is directly relevant to the legal issues presented, *see Gawker Media, LLC v. Bollea*, 129 So. 3d 1196, 1200-01 & n.5 (Fla. 2d DCA 2014), Bollea’s and his counsel’s failure to produce or even maintain such key information is obviously prejudicial. Indeed, because Bollea failed to produce any information about his October 2012 media tour until the day before his deposition, Defendants were unable to obtain copies of certain of those appearances that were unknown to them, despite the representation by Bollea’s counsel to Judge Case that “Gawker seems to have found every single occasion where he talked to a reporter.” Ex. 18 (Feb. 24, 2014 Hrg. Tr.) at 74:19-20. In at least one instance, Bollea was asked at his deposition about a print news report describing a radio appearance, and was unable even to confirm whether he made such an appearance or said what had been reported without being played a recording of the actual broadcast. Ex. 14 at 260:22 – 263:6.

B. Telephone Records

65. Bollea contends that he has fully complied with the Court’s April 23 Order requiring him to provide all of his 2012 telephone records and information regarding his service providers and accounts. This too is demonstrably false. Although it has been six weeks since

the entry of the April 23 Order, Bollea has still not provided significant portions of the records reflecting his call and text data, including no data from one of his two providers and only a portion of the data from the other. In that regard, since he had not produced any data at the time he filed his Opposition, he represented to the Court therein that he “will produce records from his phone carriers once he obtains them.” Opp. at 11. Yet, in the records he subsequently produced, he redacted phone numbers for all calls and texts save for three callers (Bubba Clem, Tony Burton and the Don Buchwald firm).

66. Bollea has done so even though his request to limit his production only to those persons he and his counsel deem to be legitimate witnesses was previously raised and rejected by the Court. For example, Bollea argued to Judge Case that Bollea’s response be limited to identifying “any phone calls that happened to be on his phone records with Bubba or Heather Clem” because “we’re talking about 99-percent-plus phone calls that have nothing at all to do with this case” and none “of that is appropriate, especially when it’s not like we are withholding information.” *See, e.g.*, Ex. 18 (Feb. 24, 2014 Hrg. Tr.) at 68:16 – 71:8. In response, Defendants’ counsel explained that calls and texts with numerous others – including, for example, Bollea’s publicist or with media organizations – would be relevant, adding:

[T]he problem I want to avoid, Your Honor [is having] Mr. Harder decide what’s relevant or not relevant, because he doesn’t – he has a different theory of the case. He has, in many briefs that we have filed back and forth, a different view of what’s relevant And it’s a fairly narrow description, and it excludes the primary thing that we’re trying to do, which is to be able to test what the plaintiff is saying in these various factual contentions. . . .

[T]rying to have him guess what we think would be important is a bad idea in discovery and that’s not how it’s supposed to work.

Id. at 77:17 – 79:18. In ordering full production of the records, Judge Case therefore rejected Bollea’s argument that he should only be required to produce records of calls or texts with

people he or his counsel deem to be witnesses. Mot. for Sanctions, Ex. 6 (R&R re: Fifth Mot. to Compel, dated Feb. 5, 2014).

67. Bollea's counsel advanced the same argument at the hearing before Judge Campbell on his exceptions to Judge Case's report and recommendation. *See* Ex. 30 (Apr. 23, 2014 Hrg. Tr.) at 91:9 – 92:1 (arguing to limit disclosure of records of phone calls and texts between “Hulk Hogan and Bubba Clem and Heather Clem” rather than with other people). Judge Campbell rejected that contention without even hearing argument from Defendants' counsel, *id.* at 92:2-11, and ordered “full and complete” responses to the discovery requests at issue, Mot. for Sanctions, Ex. 7 (Apr. 23, 2014 Order).

68. Bollea's production of redacted documents is therefore a direct violation of this Court's April 23 Order. And, Bollea's representations that he “**has fully complied with the Court's April 23, 2014 discovery order**” Opp. at 6 (emphasis in original), and that he “will produce records from his phone carriers once he obtains them,” *id.* at 11, are false.

III. Request for Sanctions

69. Whatever the merits of Bollea's privacy claims, Bollea and his counsel should not be permitted to conceal the existence of documents, to submit false interrogatories, to assert deposition objections that are knowingly wrong, to testify falsely under oath, and to make a series of affirmative misrepresentations to Defendants, to the Court, to the Special Discovery Magistrate and even to the District Court of Appeal. Such an extensive pattern of misconduct constitutes a direct affront to the fundamental authority of the Court system, to the honor required of those who appear before it, and to the integrity of the adversarial process at its heart. It should be promptly and firmly sanctioned.

70. As expressly contemplated by the February 28, 2014 Order, because Bollea and his counsel have been “less than candid in these proceedings and with the Court,” a sanctions order should follow. Given the extent to which they have polluted the discovery process and tried to pull the wool over the Court’s eyes, it would be entirely proper to strike plaintiff’s claims and to dismiss his complaint. At a minimum, if the case is not dismissed, Defendants respectfully request:

- a. That Bollea be required within five (5) days to provide full and complete responses in connection with each category of information and documents;
- b. That Bollea and Bubba the Love Sponge Clem may be recalled for deposition, including to examine them about belatedly produced discovery and about their various misrepresentations and omissions that have only now become apparent;
- c. That Bollea be held in contempt, both for his prior misconduct detailed herein and his ongoing failure to comply with multiple orders of the Court;
- d. That, as a sanction for improperly concealing documents and information, and for making misrepresentations about those documents and information to Defendants and to the Court, the Court preclude Bollea from seeking to shield from the Court or jury the information and documents that he improperly withheld, as described herein;
- e. That the Court give an “adverse inference” instruction with respect to each category of documents or information that Bollea and his counsel failed to preserve, including without limitation with respect to (i) his texts, (ii) his

email, (iii) his calendars, and (iv) the substance of his and his counsel's oral communications with law enforcement officials;

- f. That Bollea be required to pay the fees and costs associated with the above-described misconduct, including without limitation (i) the fees and costs incurred in litigating Gawker's various motions to compel, as well as this motion for sanctions, (ii) the fees and costs (including the costs of the Special Discovery Magistrate) incurred in preparing for, taking and resuming the depositions of Bollea and Mr. Clem; and (iii) the fees and costs incurred in investigating and uncovering numerous facts that should have been disclosed;⁹
- g. That the Court enter any other relief that it deems just and proper given the extraordinary violations of this Court's rules and numerous Court orders.

Dated: June 6, 2014

Respectfully submitted,

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⁹ If the Court awards such fees and costs, Defendants will submit a detailed statement of them for the Court's review so that the amount of the awards can be quantified.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of June 2014, I caused a true and correct copy of the foregoing to be served via the Florida Courts' E-Filing Portal upon the following counsel of record:

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