

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.

SUBPOENA DUCES TECUM WITHOUT DEPOSITION

THE STATE OF FLORIDA:

TO: **BEN MALLAH**
2268 Kings Point Drive
Largo, FL 33774

YOU ARE COMMANDED by Defendant Gawker Media, LLC, to produce the documents described in Schedule A at the office of Marilyn McCloskey and Associates, 405 6th Street South, Suite 102, St. Petersburg, FL 33701 on or before August 7, 2014 at 10:00 a.m.

In the alternative, you may mail the requested documents, for delivery prior to the deadline above, to Gregg D. Thomas, Esquire, Thomas & LoCicero PL, 601 South Boulevard, Tampa, FL 33606. If you fail to comply, you may be in contempt of court.

You are subpoenaed to appear by the following attorney, and unless excused from this subpoena by this attorney, you shall respond to this subpoena as directed. You have a right to object to the production under Florida Rule of Civil Procedure 1.351 and you will not be required to surrender the documents or things requested. You have the right to designate as Confidential any applicable document as specified under the Agreed Protective Order Governing

Confidentiality, signed and ordered by the Court on July 25, 2013, a copy of which is attached hereto. No testimony will be taken.

DATED on _____.

s/Rachel E. Fugate, Esquire

Rachel E. Fugate, Esquire
For the Court

Rachel E. Fugate
Florida Bar No. 0144029
Attorney for Gawker Media, LLC
Thomas & LoCicero, PL
601 South Boulevard
Tampa, FL 33606
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SCHEDULE A

INSTRUCTIONS AND DEFINITIONS

1. “You” and “your” mean Ben Mallah. When documents or things are requested, such request includes materials in the possession, custody or control of your agents, attorneys or other persons acting on your behalf.
2. “Restaurant” means Hogan’s Beach and any person who owns or operates Hogan’s Beach, as well as any of its employees, agents, attorneys, or other persons or entities acting for or on behalf of or in concert with Hogan’s Beach.
3. “Terry Bollea” means Terry Gene Bollea (professionally known as “Hulk Hogan”).
4. “Hulk Hogan” means the character played by Terry Bollea.
5. “Bubba Clem” means Bubba the Love Sponge Clem.
6. “Heather Clem” means Defendant Heather Clem, former wife of Bubba Clem and the woman who appears in the video that accompanied the Gawker Story, as that term is defined below.
7. The “Gawker Story” means the story entitled “Even For a Minute, Watching Hulk Hogan Have Sex on a Canopy Bed is Not Safe For Work, But Watch It Anyway,” as well as the accompanying video, published on www.gawker.com on or about October 4, 2012.
8. The “Lawsuit” means any legal proceeding instituted against Gawker Media, LLC, Bubba Clem, or Heather Clem by Terry Bollea relating to the Gawker Story.
9. “Sexual Relations” means sexual intercourse, anal intercourse, fellatio, or cunnilingus.
10. “Sex Tape” means any video, audio and/or audio/video footage featuring Terry Bollea or Hulk Hogan engaged in Sexual Relations with Heather Clem, including excerpts of any such footage. Sex Tapes refers to one or more of them.

11. “Documents sufficient to show” means that you are to produce documents sufficient to establish the subject of the document request and does not necessarily mean all documents relating to such a request.

12. “Communication” includes any type of correspondence, electronic mail, instant messages, voicemail, and any oral conversation, interview, discussion, negotiation, agreement, understanding, meeting or telephone conversation, as well as every kind of written or graphic communication.

13. “Correspondence” when used herein includes letters, emails, telegrams, mailgrams, telexes, memoranda, and any other documents used to make or to record communications.

14. “Media” includes television, radio, newspapers, magazines, websites, mobile apps, and any other form of mass communication.

15. The words “and” and “or” also have the meaning “and/or.”

16. The terms “all” and “any” shall be considered to include “each” and every.” Use of any of these terms incorporates them all.

17. The term “person” means all individuals and entities.

18. The term “document(s)” means all writings and recordings, including the originals and all non-identical copies, whether different from the original by reason of any notation made on such copies or otherwise (including but without limitation to, email and attachments, “instant” messages or “IM” messages, “wall” postings on Facebook, Myspace postings, Twitter postings or “tweets,” correspondence, memoranda, notes, diaries, minutes, statistics, letters, telegrams, contracts, reports, studies, checks, statements, tags, labels, invoices, brochures, periodicals, telegrams, receipts, returns, summaries, pamphlets, books, interoffice and intraoffice communications, offers, notations of any sort of conversations, working papers, applications, permits, file wrappers, indices, telephone calls, meetings or printouts, teletypes,

telex, invoices, worksheets, and all drafts, alterations, modifications, changes and amendments of any of the foregoing), graphic or aural representations of any kind (including without limitation, photographs, charts, microfiche, microfilm, videotape, recordings, motion pictures, plans, drawings, surveys), and electronic, mechanical, magnetic, optical or electric records or representations of any kind (including without limitation, computer files and programs, tapes, cassettes, discs, recordings), including metadata.

19. Throughout this request, the singular shall include the plural and the plural shall include the singular.

20. The following terms should be read as if they were synonymous, and each should be taken to include the meaning of all of the others: related to, related in any manner to, concerning, referring to, alluding to, responding to, connected with, with respect to, commenting on, about, regarding, announcing, explaining, discussing, showing, describing, studying, reflecting, analyzing or constituting.

21. If you contend that it would be unreasonably burdensome to produce all the documents called for in response to any request, you should:

- (a) produce all documents that are available without unreasonable burden; and
- (b) describe with particularity the reasons why production of the remaining documents would be unreasonably burdensome.

22. In the event that any responsive document cannot be produced in its entirety, you are requested to produce the document to the fullest extent possible, specifying the reasons for your inability to produce the remainder and describing to the fullest extent possible the contents of the unproduced portion.

23. With respect to your responses to the following request for production, if any document or any portion of any document is withheld because of a claim of privilege, please state the basis for your claim of privilege with respect to such document or portion of any

document and the specific ground(s) on which the claim of privilege rests, and including, with respect to documents: the date appearing on the document, or if no date appears, the date on which the document was prepared; the name of the person(s) to whom the document was addressed; the name of each person, other than addressee(s), to whom the document, or a copy thereof, was sent or with whom the document was discussed; the name of the person(s) who signed the document, or if not signed, the name of the person(s) who prepared it; the name of each person making any contribution to the authorship of the document; and the general nature or description of the document and the number of pages of which it consists.

24. In the event that any documents or things that would have been responsive to this request have been destroyed, discarded or lost, please identify each such document or thing, including: the nature of the document or thing; the author(s) and addressee(s) of any document; any indicated or blind copies of any document; the document's subject matter, number of pages and attachments or appendices; all persons to whom the document was distributed or persons who have seen the thing; the date of destruction, discard or loss; and, if destroyed or discarded, the reasons therefore and the identity of the person(s) authorizing or carrying out any such destruction or discard.

DOCUMENTS TO BE PRODUCED

- Request No. 1:** All documents referring or relating to the Sex Tapes.
- Request No. 2:** All documents referring or relating to the Gawker Story.
- Request No. 3:** All documents referring or relating to the Lawsuit.
- Request No. 4:** All documents referring or relating to any Media report about the Sex Tapes.
- Request No. 5:** All documents referring or relating to Terry Bollea's or Hulk Hogan's public image.

Request No. 6: All documents referring or relating to marketing and advertising the Restaurant using Terry Bollea's or Hulk Hogan's name and likeness from January 1, 2012 to the present.

Request No. 7: All documents referring or relating to licensing Terry Bollea's or Hulk Hogan's name, likeness, and/or any of his trademarks in connection with the Restaurant, including without limitation all documents referring or relating to any request or proposal by you, or by Terry Bollea or Hulk Hogan (or any person acting on behalf of Terry Bollea or Hulk Hogan) in connection therewith.

Request No. 8: All documents referring or relating to the image the Restaurant sought to convey through advertising and marketing using Terry Bollea's or Hulk Hogan's name and likeness.

Request No. 9: Copies of all video advertisements for the Restaurant featuring Terry Bollea, Hulk Hogan, or Terry Bollea's or Hulk Hogan's likeness.

Request No. 10: All market research referring or relating to Terry Bollea or Hulk Hogan from January 1, 2012 to the present, including any analysis, assessment, or evaluation of the value of Terry Bollea's or Hulk Hogan's name or likeness.

Request No. 11: Documents sufficient to show what characteristics, traits, or other aspects of Terry Bollea or Hulk Hogan that you sought to market or promote by using his name, likeness and any of his trademarks in connection with the Restaurant.

Request No. 12: All documents reflecting, referring, or relating to communications with Terry Bollea or Hulk Hogan (or any person representing Terry Bollea or Hulk Hogan) concerning marketing the Restaurant, advertising for the Restaurant, or the image the Restaurant seeks to convey to the public.

Request No. 13: All documents reflecting, referring, or relating to communications with any person about the Gawker Story, Sex Tapes, or this Lawsuit.

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HEATHER CLEM; GAWKER MEDIA,
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Defendants.

AGREED PROTECTIVE ORDER
GOVERNING CONFIDENTIALITY

Upon motion of all the parties for a Protective Order, pursuant to Rule 1.280 of the Florida Rules of Civil Procedure, it is hereby **ORDERED** that:

1. All Confidential Information produced or exchanged in the course of this litigation shall be used solely for the purpose of preparation and trial of this litigation and for no other purpose whatsoever and shall not be disclosed to any person except in accordance with the terms hereof.
2. "Material" means information in written, oral, graphic/pictorial, audiovisual, digital, electronic, or other form, whether it be electronically stored information, a document, information contained in a document, document metadata, information revealed during a deposition, information revealed in an interrogatory answer, or otherwise disclosed and or any copies or reproductions, excerpts, summaries or other electronically stored information, documents or media that excerpt, contain, or otherwise reveal the substance of such information.
3. "Confidential Information," as used herein, means any information of any type,

kind or character which is designated as "Confidential" by the supplying party, whether it be electronically stored information, document metadata, a document, information contained in a document, information revealed during a deposition, information revealed in an interrogatory answer or otherwise.

A party (including a third party witness) may designate the following types of Material as "Confidential:"

- (a) Medical and financial records of any nature from hospitals, physicians, physical therapists, psychologists, psychiatrists, and any other health care provider any individual has seen, consulted, or from whom he or she has sought treatment;
- (b) The Parties' financial information or sensitive business or proprietary information, provided the information is not otherwise available to the public through other means; or
- (c) Other information in which the party from which discovery is sought has a reasonable expectation of privacy or confidentiality.

Material that does not fall within any of these categories may not be designated "Confidential."

In addition, none of the following types of Material shall be designated as Confidential:

- (a) Information that is in the public domain at the time of disclosure;
- (b) Information that becomes part of the public domain through no fault of the other parties in this action;
- (c) Information that was in the rightful and lawful possession of the receiving party at the time of disclosure; or
- (d) Information the receiving party lawfully receives at a later date from a third party without restriction as to disclosure.

Nothing herein is intended to waive the parties' respective positions with respect to, and/or to govern or to adjudicate, the possession or dissemination of the video footage at issue in

this action, or the full video from which such footage was excerpted.

4. "Qualified Persons." as used herein means:

(a) Attorneys of record for the parties in this litigation, in-house attorneys for the corporate defendants, and staff of such attorneys to whom it is necessary that the material be shown for purposes of this litigation:

(b) Stenographic and videographic reporters, bonded outside copy services, and other litigation support vendors:

(c) The Court and its staff; any arbitrator, mediator or case evaluator in this action:

(d) Actual or potential independent experts or consultants who have signed a document agreeing to be bound by the terms of this Protective Order:

(e) A party, or his, her, or its agent, employee, insurer or representative, provided that such agent, employee, insurer or representative agrees in writing to be bound by the terms of this Protective Order:

(f) Any witness or potential witness provided that such person is advised in advance that the information is governed by the terms of this Protective Order; and

(g) If this Court so elects, any other person may be designated as a Qualified Person by order of this Court after notice to all parties and an opportunity to be heard.

5. Documents produced in this action may be designated by any party or parties as "Confidential" by marking each page of the document(s) so designated with a stamp or label stating "Confidential."

In lieu of marking the original of a document, if the original is not produced, the designating party may mark the copies that are produced or exchanged. Originals shall be

preserved for inspection.

To the extent that electronically stored information is produced in electronic form, the producing party may designate such material as "Confidential" by cover letter referring as specifically as practicable to such matter and by affixing (where practicable) a label on the electronically stored information, its storage media, or casing indicating such designation.

6. Information disclosed at (a) the deposition of a party or one of its present or former officers, directors, employees, agents or independent experts retained by counsel for the purpose of this litigation, or (b) the deposition of a third party (which information pertains to a party) may be designated by any party as "Confidential" as follows: The designating party shall clearly identify those portions of the testimony that should be designated "Confidential" either on the record during the deposition and/or in a written notification made within thirty (30) days after receipt by the designating party of the transcript of the testimony. Each party shall attach a copy of such written notice or notices to the face of the transcript and each copy thereof in his possession, custody or control. All deposition transcripts and testimony shall be treated as if designated confidential until the expiration of that thirty (30) day period. The parties may not issue blanket designations for depositions and must instead clearly identify the specific testimony and/or page and line numbers containing Confidential Information.

7. Confidential Information shall not be disclosed or made available by the receiving party to persons other than Qualified Persons.

8. Documents unintentionally produced without designation as "Confidential" may be retroactively designated in the same manner and shall be treated appropriately from the date written notice of the designation is provided to the receiving party.

9. Nothing herein shall prevent disclosure beyond the terms of this Order if each

party designating the information as "Confidential" consents to such disclosure or, if the Court, after notice to all affected parties, orders such disclosures. Nor shall anything herein prevent any counsel of record from utilizing "Confidential" information in the examination or cross-examination of any person who is indicated on the document as being an author, source or recipient of the Confidential Information, irrespective of which party produced such information.

10. A party shall not be obligated to challenge the propriety of a designation as "Confidential" at the time made, and a failure to do so shall not preclude a subsequent challenge thereto. In the event any party to this litigation disagrees at any stage of these proceedings with the designation by the designating party of any information as "Confidential," or the designation of any person as a Qualified Person, the parties shall first try to resolve such dispute in good faith on an informal basis. If the dispute cannot be resolved, the objecting party may invoke this Protective Order by objecting in writing to the party who has designated the document or information as "Confidential." Either party may then move the Court for an order adjudicating the designated status of such information or document. At all times, the burden of proving that discovery material has been properly designated as Confidential Information shall remain with the designating party.

The parties may, by stipulation, provide for exceptions to this Order and any party may seek an order of this Court modifying this Protective Order.

11. In the event a party wishes to use any Confidential Information in any affidavits, briefs, memoranda of law, or other paper filed in Court in this litigation, such Confidential Information used therein shall be filed under seal with the Court consistent with Florida Rule of Judicial Administration 2.420.

12. Consistent with Florida Rule of Judicial Administration 2.420, unless otherwise

ordered by the Court, the Clerk of this Court is directed to maintain under seal all documents and transcripts of deposition testimony and answers to interrogatories, admissions and other pleadings filed under seal with the Court in this litigation which have been designated, in whole or in part, as "Confidential" by a party to this action.

13. Unless otherwise agreed to in writing by the parties or ordered by the Court, all proceedings involving or relating to documents or any other information shall be subject to the provisions of this Order. The Court will determine the use of Confidential Information at trial.


14. Within thirty (30) days after conclusion of this litigation and any appeal thereof, all documents and reproductions thereof containing Confidential Information produced by a party in the possession of any Qualified Persons shall be returned to the producing party or destroyed (in the case of attorney work product) and counsel shall submit a certificate certifying to the full and complete return and/or destruction thereof, except as this Court may otherwise order or to the extent such information was used as evidence at the trial. To the extent that any protective orders entered in this action restrict the communication and use of Confidential Information, including without limitation this Agreed Protective Order Governing Confidentiality, such orders shall continue to be binding after the conclusion of this litigation, except that (a) there shall be no restriction on documents that are used in Court, unless such documents were filed under seal, or were filed in violation of this or other protective order and (b) a party may seek either the written permission of the producing party or order of the Court with respect to dissolution or modification of such protective orders. Notwithstanding the foregoing, Counsel for each party may maintain a litigation file of all documents filed with the Court, including documents filed under seal that remain under seal and have not been returned by the Court to the party that lodged, filed or attempted to file them.

15. Pursuant to 45 C.F.R. § 164.512(e), the parties are prohibited from using or disclosing any "protected health information" (as that term is defined in HIPAA and its corresponding regulations) for any purpose other than this litigation and the parties are ordered to destroy all protected health information, including any copies made of the information at the conclusion of this litigation. As a result, the parties acknowledge and agree that this Agreed Protective Order Governing Confidentiality is also a Qualified Protective Order pursuant to HIPAA and 45 C.F.R. § 164.512(e). A party, or non-party, who believes that he, she, or it is producing "protected health information" should designate it as such at the time it is produced, consistent with the procedures outlined in this Order for Confidential Information.

16. This Order shall survive the termination of the Action and shall continue in full force and effect until otherwise ordered by the Court. The Court shall retain jurisdiction to enforce or modify this Order.

DONE AND ORDERED in Chambers, at St. Petersburg, Pinellas County,

Florida, this 25 day of July 2013.


PAMELA A.M. CAMPBELL
Circuit Court Judge

cc: Counsel of Record