

APPENDIX 1

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IN THE NINTH JUDICIAL CIRCUIT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF FLORIDA, IN AND FOR HILDEBRAND COUNTY

TERRY WENN BOLLEA, Jr. (a/k/a) Terry
Bollea aka "HULK HOGAN",
Plaintiff,
N. 12-012447-12-11
v.
HEATHER CLEM; GAWKER MEDIA, LLC,
aka GAWKER MEDIA, et al.,
Defendants.

HEARING BEFORE THE HONORABLE PAMELA CAMPBELL

DATE: Oct 28, 2013
TIME: 11:00 a.m. to 12:00 p.m.
PLACE: Hillsborough County Courthouse
545 First Avenue N.E.
St. Petersburg, Florida
REPORTED BY: Susan J. Riedorff, RPR, CRR,
Notary Public, State of
Florida

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1 PROCEEDINGS
2 THE COURT: We're here on Case No. 12-012447,
3 Terry Bollea versus Gawker Media and others.
4 Today we are here for a number of motions.
5 I saw a bunch of correspondence going back
6 and forth about the notebook. I'm going to tell
7 you, it was just, I have to say, irritating to
8 read some of the correspondence.
9 Let me make it really clear for everybody.
10 I'm sure I've said this before. You all are
11 required to file things through the ePortal. We
12 can't see it yet, which is a technical difficulty
13 for us. So I rely on -- I have to rely on the
14 attorneys to send me copies of motions ahead of
15 time. So if somebody wants to put together a
16 notebook, I greatly appreciate it. If somebody
17 just wants to send me copies individually, since
18 I'm paying for the toner cartridges since the
19 government doesn't give us enough money for the
20 toner cartridges, I'm not printing out all your
21 long volumes of stuff. So if somebody would
22 please send me copies of them -- a notebook is
23 really good and helpful. It's just helpful. It
24 just makes our proceedings much more efficient. I
25 think hopefully you all have been with me enough

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1 to know that I'll read the things that you send to
2 me ahead of time. So I try to make our time as
3 productive as possible.
4 I believe that initially this was scheduled
5 for a short time. I don't know what the last
6 communication with you all was. At least we do
7 have two hours this morning. So I would like to
8 make the most use of that time and for it to be
9 productive.
10 I do have a notebook. I do also have lots of
11 copies of different things. I'm not sure if it's
12 duplicative in the notebook. I didn't take the
13 time to go through and make all those
14 determinations. So I have -- I've only seen one
15 copy of a notice of hearing today, which was
16 Mr. Thomas' notice of hearing which had the Motion
17 to Compel Discovery From Plaintiff By Defendants
18 Gawker Media and Gawker Media's Motion to Compel
19 Defendant Heather Clem to Respond to Discovery
20 Requests and the Motion to Dismiss the Defendant
21 Gawker Media Group.
22 It seems to me that we would make best use of
23 our time if they are noticed for today to do the
24 things as much as we can for those issues that
25 pertain to the depositions that are scheduled for

<p>Page 5</p> <p>1 November 11th. Does that make sense? 2 MR. HARDER: Yes, Your Honor. 3 MR. BERLIN: Yes. 4 THE COURT: Okay. So with that in mind, it 5 seems to me starting out with plaintiff's motion 6 for protective order as the first -- I think 7 there's two motions for protective order. 8 MR. HARDER: Correct. 9 Your Honor, I can cover both, because the 10 second motion for protective order just relates to 11 the videotapes. So I can cover them both. Thank 12 you, Your Honor. 13 I would like to go over the types of 14 discovery that we're seeking to have precluded. 15 They're covered in our two protective orders. And 16 then also, they kind of bleed into our opposition 17 to their motion to compel in certain respects. So 18 if it's -- I'm not going to take up a whole lot of 19 time as to the latter things, but I just wanted to 20 kind of cover them all so that we can cover our 21 bases. 22 Obviously, Your Honor's familiar with the 23 case. It involves a single sexual encounter that 24 was secretly taped, and the Gawker defendant 25 posted a minute and a half of the highlights of</p>	<p>Page 7</p> <p>1 further details, but I'll just move through this. 2 They're asking for his -- Terry Bollea's 3 medical history, his medical records and 4 everything under the sun relating to medical. 5 THE COURT: I do have an overall question. 6 Maybe this would sort of streamline part of your 7 argument. 8 MR. HARDER: Okay. 9 THE COURT: I don't have the complaint here 10 in front of me, but it seems as though there's a 11 permanent injunction claim and there was a claim 12 for damages, right? 13 MR. HARDER: Yes. 14 THE COURT: Basically. 15 MR. HARDER: Yes. 16 THE COURT: Okay. So in -- I appreciate the 17 fact that they've asked for all those medical 18 providers and you're objecting to that, but I 19 don't know how you get them ultimately -- how do 20 you prove your damages? So I think that how you 21 plan on proving your damages is pretty much 22 related to their response. 23 MR. HARDER: Well, in terms of emotional 24 distress, that's one component of his damages. 25 And I'll just touch upon that and then the other</p>
<p>Page 6</p> <p>1 that tape to their website. And it was up on 2 their website for about six months. They have 3 sought to take discovery into every possible 4 aspect of Terry Bollea's life, sought every single 5 piece of paper that he could possibly possess on 6 earth. And so we brought this motion for 7 protective order to confine the discovery to what 8 this case is about rather than everything about 9 Terry Bollea as it exists, in particular his sex 10 life. 11 The encounter obviously is at issue in the 12 case. And so discovery pertaining to that 13 encounter is relevant to the case. We are giving 14 them everything that we have that's not 15 privileged. But they've asked for everything 16 about every person he's had sex with in the course 17 of several years, the details of all of those 18 sexual encounters, everything you can imagine 19 pertaining to his sex life, in addition to the one 20 encounter that's at issue. So we've brought a 21 motion for protective order to limit the 22 discovery, including documents, including 23 interrogatories, including questions that will be 24 asked of him at deposition, to the one encounter 25 that's at issue in this case. I could go into</p>	<p>Page 8</p> <p>1 aspects of damages. 2 In terms of emotional distress, we're just 3 asking for what's known in Florida law as garden 4 variety emotional distress, that if something 5 happens to somebody that a reasonable person would 6 become distressed over that, then a jury would 7 award damages that's appropriate for that 8 situation. We are saying that he was filmed in a 9 bedroom engaged in private activities and it was 10 posted on the Internet for six months, that that 11 is something that would cause anyone, if that had 12 happened to them, to be distressed by that. And 13 we're going to ask the jury to give damages 14 appropriate to that. He did not seek medical 15 treatment for distress relating to this tape. So 16 we don't feel that anyone should have to go into 17 all of the aspects of his medical history. 18 THE COURT: But isn't it also appropriate 19 then for the defense to be able to determine the 20 flip side of that, well, were there other issues 21 medically that he was dealing with at the time 22 that would have caused the same level of stress? 23 MR. HARDER: Well, we're not saying that we 24 want damages for all of the stress that he was 25 feeling in his life at the time of the tape.</p>

<p>Page 9</p> <p>1 We're asking for what a reasonable person would be 2 distressed by having that tape up. And we're 3 not -- we're not opening the door to everything 4 that was going on in his life. 5 So Florida law allows garden variety damages 6 to be sought for emotional distress, and the cases 7 permit a prohibition of discovery into medical 8 records and -- because otherwise, if somebody gets 9 distressed by something and then the defense is 10 going to want to go into every single possible 11 aspect of their life, well, that's going to have a 12 chilling effect on anyone ever saying I was ever 13 stressed because now people are getting into my 14 relationships with people, if I was on medication 15 of some sort or, let's say, a back injury or some 16 sort of a physical ailment. But I would say that 17 all those things come into play if somebody is 18 seeking medical treatment and they're going to 19 have an expert testify about their -- about their 20 medical, physical or emotional or otherwise and 21 get into, well, they had to take these types of 22 medications to deal with the stress. Well, okay. 23 Then what else were they taking? Could there be 24 medications that were affecting one another? I 25 mean, I can understand that. But that's not the</p>	<p>Page 11</p> <p>1 seek garden variety emotional distress damages 2 because of that, and it doesn't open the door to 3 everything that happened in their life. 4 THE COURT: Okay. 5 MR. HARDER: Another aspect of discovery that 6 we're seeking to preclude are financial -- general 7 finances. They've asked for Mr. Bollea's tax 8 records. They've asked for all of his loan 9 applications and mortgage applications. They've 10 asked for all of his contracts that he's ever 11 signed during the course of many, many years; 12 every aspect of his finances. 13 MR. BERLIN: I'm sorry to interrupt, 14 Your Honor. I have no objection to Mr. Harder 15 addressing that now, but that actually is not part 16 of the motions for protective order. 17 THE COURT: I thought that it was. 18 MR. HARDER: This is something that we are 19 opposing in terms of their -- 20 THE COURT: We have the motion for protective 21 order. Then we've also got interrogatories and 22 requests to produce and there's objections. It 23 seems to me that in the motion for protective 24 order that the objections are sort of -- 25 objections to the discovery were all rolled into</p>
<p>Page 10</p> <p>1 situation here. 2 Mr. Bollea is not saying that he was so 3 distressed that he had to seek medical treatment. 4 He's not saying he was so distressed that he had 5 to take medication for it. We're not making any 6 of those allegations. What we're saying is that 7 this is something that would cause anyone to be 8 extremely distressed over it and a jury can 9 determine what a reasonable person should be 10 compensated for based upon what happened to him. 11 THE COURT: In one of the defense's many 12 motions that we're considering today, as an 13 exhibit, there are excerpts from Mr. Bollea's book 14 where he references taking Xanax. I'm just using 15 this as an example. I don't know if he was taking 16 Xanax at the same time as the release of this 17 video was out there, whether or not it was 18 prescribed or not, but I could see how all those 19 kinds of issues potentially could be relevant. So 20 that's why I'm sort of posing it. 21 MR. HARDER: I understand, Your Honor. I 22 believe that Florida law is fairly clear that if 23 somebody suffers emotional distress as a result of 24 something that would cause anyone, any reasonable 25 person, to be distressed over it that they can</p>	<p>Page 12</p> <p>1 the motion for protective order. So we can do 2 this in one of several ways, one of which is going 3 over the general categories of the motion for 4 protective order. The second is going -- another 5 way of doing it is ruling specifically on the 6 objections. I think the objections are generally 7 pretty broad objections in the interrogatory 8 responses. And so that's what I see as more a -- 9 how do I -- pattern to the motion for protective 10 order. 11 Do you agree? 12 MR. BERLIN: Your Honor, I have no objection, 13 as I said, to Mr. Harder addressing that now. I 14 just want it to be clear for the record that there 15 was a motion for protective order and separately a 16 motion to compel. The motion for protective order 17 was limited to the two topics Mr. Harder spoke 18 about already and some specific things related to 19 depositions. The economic damages are the subject 20 of our motion to compel, which is coming. If it 21 makes more sense for the Court to address that 22 objection, I just want it to be clear on the 23 record that that's not actually the subject of the 24 motion for protective order. 25 THE COURT: Thank you for that clarification.</p>

<p>Page 13</p> <p>1 MR. BERLIN: I'm sorry to interrupt. 2 THE COURT: That's all right. I think you're 3 right. When you read them all at once, they all 4 blend after a while. But I appreciate it. 5 Why don't we go over the financial. 6 MR. HARDER: Thank you, Your Honor. I wasn't 7 going to take up a lot of time on this. 8 If Mr. Bollea lost a business opportunity, if 9 a contract was cancelled on him because of what 10 happened with regard to the sex tape being posted, 11 obviously -- and we make that as part of our 12 damages, obviously we will produce all of the 13 nonprivileged documents that pertain to that lost 14 opportunity, lost contract, whatever it happens to 15 be. We haven't alleged any of that yet. I don't 16 expect that we will. We're still in the process 17 of trying to determine the effects of everything, 18 and we want to make sure that there's causation 19 before we allege something. We don't feel that 20 we've gotten there yet. It may be that it never 21 happens. But that doesn't mean that his tax 22 returns, his loan applications, all financial 23 statements of every type, all financial documents 24 of every type are now fair game. 25 THE COURT: I guess, though, you filed a</p>	<p>Page 15</p> <p>1 financially in terms of web traffic, in terms of 2 ad revenues before the sex tape and immediately 3 after the sex tape and on a going-forward basis so 4 that we can determine what sort of a bump Gawker 5 Media, LLC received as a result of having 6 wrongfully published this sex tape. 7 And a second area of damages is the market 8 value of the sex tape of Hulk Hogan. There is 9 inherent value in a sex tape of a celebrity. In 10 fact, there's a marketplace for it, unfortunately. 11 And Paris Hilton and Kim Kardashian and folks like 12 that have sex tapes that are out there that have 13 made millions and millions of dollars. And we 14 intend to present evidence of what the value is 15 because that's what Gawker Media took. They took 16 something that they shouldn't have had, which is 17 the value of a -- market value of a sex tape of 18 Hulk Hogan. And that's how they have been 19 enriched and Mr. Bollea has been damaged. 20 Gawker Media is seeking all documents 21 pertaining to Mr. Bollea's divorce proceeding. 22 It's irrelevant. It has nothing to do with the 23 sexual encounter in this case. It should be 24 prohibited. 25 They've asked for every deposition</p>
<p>Page 14</p> <p>1 complaint. So -- 2 MR. HARDER: Right. 3 THE COURT: -- here we are. So we're a year 4 into the complaint almost. And at what point in 5 time do you say, well, this is what we're -- at 6 some point in time, we'll let you know. No. The 7 time to let them know is now. We're doing the 8 discovery now. 9 MR. HARDER: I understand, Your Honor. Our 10 damages are twofold in terms of the economic 11 damages. One is Gawker Media's unjust enrichment. 12 Gawker Media received upwards of five million 13 unique viewers because of this sex tape. They 14 posted it. Millions and millions of people went 15 to their websites, and they gained a large number 16 of new viewers. And ad revenues were generated 17 because of that, both short-term ad revenues and 18 long-term ad revenues because now they have 19 potentially five million new people who come to 20 their websites. Perhaps they never knew about 21 Gawker and or their other websites and now they do 22 and now they frequent those websites. 23 So what we're undertaking is an analysis -- 24 and our motion to compel is seeking this 25 information -- an analysis of where Gawker was</p>	<p>Page 16</p> <p>1 transcript, court transcript, every time he's ever 2 given testimony in his life, and we believe that 3 that's beyond the scope because he's never given 4 testimony that relates to the factual situation in 5 this case. This just gets into just the basics of 6 discovery, which is if it pertains to what we're 7 here about, obviously we are going to fully 8 participate, and we have been. If the discovery 9 pertains to things that don't relate to this 10 sexual encounter and it relates to other things, 11 then it's irrelevant. It doesn't pertain to this 12 case and it shouldn't be part of some sort of 13 investigation into the life of Terry Bollea. The 14 discovery needs to be focused. 15 In terms of depositions, they've asked for a 16 multi-day deposition of Mr. Bollea, but the 17 relevant issues are narrow. He has very limited 18 knowledge of what we're here about. He was -- he 19 had the sexual encounter. He was separated from 20 his wife at the time. It was filmed. He didn't 21 know it was filmed. He never approved of 22 anything, the filming, the release of the film, 23 any of that. And he's had emotional distress 24 which is garden variety emotional distress. 25 And there's the value of the sex tape, which</p>

<p>Page 17</p> <p>1 he's not necessarily an expert in -- I don't think 2 he's an expert at all in celebrity sex tapes, but 3 he'll answer the questions. And in terms of 4 general background, he'll talk about his career. 5 He'll talk about his relationship with Heather 6 Clem and Todd Bubba Clem. And it could easily -- 7 his deposition can easily be completed within one 8 day, seven hours. And we get the sense that the 9 defendants want to keep him in a chair as long as 10 possible, ask him every question under the sun, 11 ask him about all the things that we're seeking to 12 preclude, his sex life generally, his finances 13 generally, his medical condition generally, and 14 they want to have him answer questions until, you 15 know -- until he collapses, I suppose. But I 16 think that in a day, in seven hours, they will 17 easily be able to get all the information that's 18 relevant to this case and then some.</p> <p>19 And if they still want to continue to ask 20 questions, they could always go before Your Honor 21 and say, well, we asked the following, but we 22 never got the following. And I will be 23 reasonable. If they ask appropriate questions and 24 they want a few more hours and it makes sense, 25 then I'll say yes to it. I don't want them to</p>	<p>Page 19</p> <p>1 doesn't have any information about any of those 2 things.</p> <p>3 And then lastly, in terms of our second 4 motion for protective order, we don't feel that 5 any -- I think we moved as Terry Bollea. But in 6 preparing for this, it doesn't -- I don't think 7 that any of the Bolleas' videotape -- depositions 8 should be videotaped. That's Terry Bollea, his 9 current wife, and his ex-wife. And the reason is 10 because Gawker Media is a celebrity gossip site, 11 so to speak, and they like to post videos of 12 everything that they can post videos of that 13 people will watch. We don't believe this lawsuit 14 should be used to create new content for Gawker so 15 that they can point to Terry Bollea when he's 16 answering a question and mock him and splice it in 17 such a way that it makes it appear embarrassing to 18 him. We don't believe that the courts should be 19 used for that purpose. If a videotape is 20 necessary, then we would ask, in the alternative, 21 that the videotape be filed under seal with the 22 Court and that Gawker Media not have access to it 23 until it becomes appropriate for them to have 24 access, for example, because they want to prepare 25 certain excerpts for trial. And then we would</p>
<p>Page 18</p> <p>1 have to come before you and waste your time. But 2 if they spend a day asking a bunch of nonsense 3 questions and then they want to keep him in a 4 chair for day upon day asking things about, did 5 you have sex with so and so and did you have sex 6 with so and so, and tell me all the details and 7 things like that, obviously I'm not going to agree 8 to it.</p> <p>9 We also want to limit the time of the 10 deposition of his current wife, Jennifer, to two 11 hours because she observed the distress that he's 12 felt, but she -- she was -- she never even knew 13 him at the time of the encounter. So she doesn't 14 have any relevant information about a great number 15 of things. They could easily get what they need 16 to get out of her in two hours.</p> <p>17 As far as Mr. Bollea's ex-wife, again, 18 they're trying to open up his divorce proceedings 19 and get into all sorts of things that have nothing 20 to do with this situation. He was separated from 21 his ex-wife at the time of the encounter. So his 22 ex-wife didn't have any knowledge about that. 23 She -- they had been divorced for about four years 24 at the time that the tape was posted up onto 25 Gawker.com. She obviously, as far as we know,</p>	<p>Page 20</p> <p>1 jointly work together to have excerpts prepared 2 for purposes of trial. But, again, I don't think 3 that videotape is necessary. And we would have a 4 transcript with all the words that are said which 5 could be used to impeach him if that's what the 6 purpose of the transcript is for. So we would ask 7 for no video as to those three witnesses.</p> <p>8 THE COURT: We're still going under the 9 original complaint, right?</p> <p>10 MR. HARDER: It's the first amended complaint 11 that was filed when Gawker Media -- I have a copy 12 of it if you would like, Your Honor -- when Gawker 13 Media was added to the case. I also have a copy 14 of our notice of hearing for -- because you had 15 mentioned that you received their notice but not 16 ours.</p> <p>17 THE COURT: Thank you very much. 18 MR. HARDER: Thank you. 19 Obviously, Your Honor, I reserve and I'm 20 happy to answer questions. 21 THE COURT: Mr. Cohen, I -- you're somewhat 22 intertwined in this with Mrs. Clem. Do you have 23 anything you want to argue, or do you want to let 24 them go first? 25 MR. COHEN: I would rather that they go</p>

<p>Page 21</p> <p>1 first, Your Honor, if that's okay. 2 THE COURT: Okay. Actually, the complaint 3 was filed October 15th. So, see, we are here on 4 our year anniversary. 5 MR. BERLIN: And the amended complaint, I 6 think, was in December. So it's almost a year 7 even for that. 8 Good morning, Your Honor. Let me try and go 9 through the various topics that Mr. Harder raised 10 in some sort of order that I think will probably 11 help make sense. And I agree it probably does 12 make sense to do this topically rather than one 13 request at a time given the number of requests 14 that are at issue. And if there are particular 15 questions after that about a specific request, we 16 can perhaps turn to that. 17 Mr. Harder addressed, as I said, topics that 18 were both in the motion for protective order as 19 well as the motion to compel. If it would be 20 helpful to the Court, I will be happy to try and 21 address all of those together and just, you know, 22 reserve on our motion a brief time for some 23 rebuttal. 24 As some of the Court's questioning indicated, 25 this is a case where the plaintiff has brought a</p>	<p>Page 23</p> <p>1 it's relevant to the issues in the case, it's 2 discoverable. And, of course, we do have in place 3 a protective order. So to the extent that there's 4 the production of sensitive information, obviously 5 it should be produced more confidential and we'll 6 treat it as such. 7 THE COURT: This is the agreed protective 8 order governing confidentiality that I signed -- 9 MR. BERLIN: July 25th, I believe, 10 Your Honor. 11 THE COURT: Okay. Thank you. 12 MR. BERLIN: And, in fact, realizing that -- 13 let me just speak a word about that. Realizing -- 14 before I get to the specific topics, realizing 15 that some of the discovery that we were asking for 16 which -- because the discovery had already been 17 served by July 25th -- and realizing that some of 18 the discovery that plaintiff was asking for 19 involved, for example, financial information about 20 Gawker, which we've produced, we went to them and 21 said, hey, we should have a protective order. We 22 negotiated the terms over the space of about 30 23 days. Mr. Cohen and his colleagues got in on it, 24 and then we presented it to you, to the Court. 25 And we think that it actually provides a fair bit</p>
<p>Page 22</p> <p>1 case saying certain things in the complaint. He 2 brought it originally, as you know, in federal 3 court with much fanfare and a press conference and 4 asked for a hundred dollars million dollars, which 5 certainly got our attention. So we have tried to 6 better understand his claims. And while his -- 7 Mr. Harder sort of said, well, we've been asking 8 for every document that he has. So far we've 9 gotten a total of 17 documents in the first 10 production, and we got -- other than things that 11 we created or that were publicly available. And 12 then we got one more document last Friday along 13 with a whole bunch of articles about Gawker Media 14 which were used as exhibits at the depositions of 15 our people that happened at the end of September. 16 THE COURT: Those are the 600-some-odd number 17 of responses? 18 MR. BERLIN: Right. So we have a stack of 19 documents, but in terms of actual things that are 20 not just pages from our website or articles about 21 our people, it's very, very little. 22 Let me start, if I could, with the economic 23 damages. And I think that this is -- you know, 24 we're sort of in agreement about some of the legal 25 principles that animate this and, that is that if</p>	<p>Page 24</p> <p>1 of background for how we should proceed. 2 Turning to the economic damages, the 3 complaint that you have now before you talks about 4 injury to the plaintiff's brand as a wrestler, as 5 an actor, as a television personality. He -- and 6 he echoed this -- Mr. Harder echoed this today. 7 The plaintiff is entitled to seek, and hereby does 8 seek, the market value of the use of his publicity 9 rights. Right? So our task is to try and 10 understand, okay, you say this injured you 11 economically. How so? Right? So we asked some 12 questions. 13 Now, one of the things that we've learned, 14 for example, which we did not get in discovery was 15 we asked for other lawsuits that he had been a 16 party to, including, particularly as it relates to 17 this, around the same time. One of the things we 18 learned from our own investigation was that in 19 January of this year, he sued a company that did 20 some spine surgery on him and claims to have lost 21 two years of professional opportunities. Well, he 22 can't come into this court and say I lost 23 professional opportunities and come into that 24 court and say I lost professional opportunities 25 and then say I'm not going to disclose that. I</p>

<p>Page 25</p> <p>1 mean, that's sort of fair game in this process. 2 In his divorce case, right, we don't want to 3 go through all of the messy custody issues. 4 That's not what this is about. But in his divorce 5 case, he petitioned the court -- again, we found 6 this out on our own by just getting the court 7 record -- that he asked for modification of 8 support claiming that his career was on the wane 9 and that his earning potential was diminished. 10 And that all happened before this tape was posted. 11 Again, that's fair game if you were -- if you're 12 claiming economic damages, then the way our 13 adversarial system works is you put that up to 14 scrutiny. 15 Since then, right, we say, well, you know, 16 how has the brand been affected? You know, since 17 then we've learned -- again, from our own 18 investigation -- that he's opened up a store. 19 He's opened up a restaurant. He's launched a 20 hosting service for websites called Hostamania, 21 which is based on his wrestling monicker Hulkmania 22 and in which, by the way, he appears in a thong 23 with his bare buttocks exposed in the ads 24 imitating an overtly sexual Miley Cyrus music 25 video in which she appears nude and undertakes a</p>	<p>Page 27</p> <p>1 The New York Times just wrote a piece about this 2 about two weeks ago chronicling the history of all 3 these celebrities who have been involved in sex 4 tapes and made the general point that in some 5 cases, it actually enhances their career. 6 To the extent that the plaintiff has now 7 said, I may have lost deals with a couple of 8 entities -- Rent-A-Center, who he had an 9 endorsement deal with, or WWE, which is the 10 wrestling organization -- we need to know whether 11 he did or he didn't. It's not -- it's not up to 12 the plaintiff to say, well, if I want to make 13 those claims, I'll tell you about it, but if I 14 don't want to make those claims, i.e., because I 15 didn't suffer any damages, you don't get to me 16 about that because that actually bears on the 17 question of did you suffer damages. And that's 18 what we are asking for. And we've gotten 19 literally nothing. There seems to be a lot to do 20 there. 21 When we get to his deposition, we have a 22 separate motion for protective order. He's 23 saying, here are the topics on which you can ask. 24 He concedes that one of the four legitimate topics 25 is -- I'm pulling from his motion -- any lost</p>
<p>Page 26</p> <p>1 variety of sexually suggestive acts. I have to 2 say I didn't know that -- I didn't get the joke on 3 my own. I had to have my younger colleagues 4 explain to me the Miley Cyrus video, but it was 5 explained. 6 We also understand that he's in the process 7 of renewing his agreement with either TNA or WWE, 8 which are both wrestling companies. And so to the 9 extent that somebody says, I was injured in my 10 brand by this, we're entitled to say, like, okay, 11 here's all the stuff that happened immediately 12 after this video was posted and it seems like your 13 business is going well. 14 Again, all of this -- I'm just giving you 15 examples that we've been able to find on our own. 16 We have nothing on this subject in any of the 17 discovery. And, in fact, as Mr. Harder alluded, a 18 number of celebrities -- and I'll come back to 19 this in a little bit -- a number of celebrities 20 don't actually lose money when a sex video is 21 posted and sometimes they release it themselves 22 because it actually enhances their career because 23 it draws attention to it, for better or worse. I 24 don't make a judgment about whether that is a good 25 thing or a bad thing, but that is, in fact, true.</p>	<p>Page 28</p> <p>1 business opportunities that Bollea is claiming 2 damages in this litigation. So his deposition is 3 in two weeks. We need an answer. When we had our 4 meet and confer about this in late August, one of 5 the things we agreed on -- and there's an e-mail 6 that's attached to one of the many pieces of paper 7 that you've gotten, Your Honor, that confirms 8 this, that says, look, one of the interrogatories, 9 interrogatory No. 12, says, tell us what your 10 theories of damages are, right? And two months 11 later, and even with some supplemental discovery 12 that was served last week, we don't have an answer 13 to that question. And I would submit that, you 14 know, we're now at a point where if I'm going to 15 take this gentleman's deposition and I'm going to 16 try and do it efficiently, I would like to have 17 the materials so that I can do that. And I think 18 the case law in Florida and elsewhere is quite 19 clear that if you are claiming economic damages, 20 you have to allow some scrutiny. 21 I'm not asking for a forensic exam of his 22 finances. I don't want his checkbook balance, his 23 checkbooks or cancelled checks or his bank 24 statements. What I'm trying to do is get a big 25 picture so that I understand, did you suffer</p>

<p>Page 29</p> <p>1 damages form this that are economical. And if the 2 answer is no, then you can -- if you still want to 3 argue about privacy-related damages, then we can 4 argue. 5 So that -- if I can then -- unless there's 6 any questions -- I know we're doing this 7 topically -- about economic damages, let me move 8 to the next topic, which is the medical and mental 9 health records. You know, this -- Mr. Harder 10 began his argument by saying we're not opening the 11 door to this. I would respectfully say that he 12 opened the door to this when he brought claims 13 that almost exclusively relate to claims of 14 emotional distress. We have the obviously easy 15 ones, which are negligent infliction and 16 intentional infliction of emotional distress. The 17 only injury you can get for that is emotional 18 distress. 19 But the privacy torts really -- you know, 20 they teach us when we -- when we study this area 21 of the law that if you bring a defamation claim, 22 you're remedying injury or reputation, but if you 23 bring a privacy claim, you're remedying severe 24 emotional distress. The law is not that you get 25 to say, oh, I have a garden variety bit of</p>	<p>Page 31</p> <p>1 the discovery process. We don't want to go 2 through, you know, every last bit, but we 3 literally have nothing. And this is a claim where 4 literally for every single one -- I mean, we've 5 detailed this in our papers and I won't read to 6 you from the complaint, but there's literally 7 paragraph after paragraph that talks about 8 emotional distress. That includes, by the way, as 9 Your Honor alluded to in your questions, that the 10 emotional distress may have come from other 11 sources, because he has publicly stated, publicly 12 testified, publicly written about in his book 13 having emotional distress from his divorce, from 14 an accident that his son was in that nearly caused 15 a good friend to die, from a near suicide attempt. 16 Later he sued his ex-wife for defamation for 17 statements that she included in her autobiography 18 and also claimed emotional distress. 19 There's a whole bunch of other causal factors 20 for one's emotional distress. We need to be able 21 through the discovery process to separate the 22 wheat from the chaff and be able to explain to a 23 jury, well, this isn't really causing emotional 24 distress. And, in fact, maybe it didn't cause 25 emotional distress at all. Maybe it was something</p>
<p>Page 30</p> <p>1 emotional distress. 2 Where garden variety emotional distress comes 3 in legally in Florida -- and this is true 4 elsewhere -- is that if you -- if you have a tort 5 injury of some other type, right, I was -- I was 6 in an auto accident -- and the main part of your 7 claim is some other kind of injury -- or I was 8 discriminated against, there's another example -- 9 you're allowed to also say to the jury, gee, that 10 was annoying. And in addition to the physical 11 injuries or the loss of work from the 12 discrimination claim, that was annoying, and I'm 13 entitled to some garden variety emotional distress 14 sort of as an add-on. 15 Where the only part of your claim is I 16 suffered emotional distress, there's no garden 17 variety emotional distress and you actually have 18 to prove it, because otherwise it's too easy for 19 somebody to come in and say, I was distressed by 20 this. And, in fact, because maybe he was 21 distressed and sought medical treatment and was on 22 Xanax and all sorts of things and maybe he wasn't, 23 but if he wasn't, then he's not entitled to 24 compensation for that, and we're entitled to 25 subject that claim to reasonable scrutiny through</p>	<p>Page 32</p> <p>1 that he sort of, you know, claims to have suffered 2 emotional distress to have a lawsuit but, in fact, 3 didn't actually suffer much. And I'm not -- I 4 don't know that, but that's what we're entitled to 5 find out through the discovery process. And when 6 you place that at issue, you are by definition 7 subjecting that to the discovery process. 8 Again, if it's sensitive -- and I understand 9 that it may be -- you do it under the protective 10 order which was jointly negotiated by the parties. 11 And the -- you don't get to -- I don't think you 12 get to come into court and say, well, I didn't 13 seek professional help for this and, therefore, 14 all of that's off limits, because you're entitled 15 to test that claim. 16 And, in fact, in another lawsuit that we 17 found out about on our own, he was involved in a 18 legal proceeding over a sexual assault that he was 19 allegedly involved in committing on a woman. And 20 the -- you know, she claimed, I don't have to give 21 you any of this information about my medical and 22 mental health history. And he filed a motion, 23 which if the Court would like, I can hand up, that 24 says, she claims she'll be entitled to -- I'm 25 quoting from the motion -- entitled to recover</p>

<p>Page 33</p> <p>1 damages for emotional and physical suffering 2 because of the alleged assault committed by 3 Mr. Bollea. Mr. Bollea denied that he assaulted 4 her or that this woman, Ms. Kennedy, was damaged 5 in this way. Viewed in this light, there can be 6 no question that discovery of medical information 7 implicating her physical or mental condition has 8 been placed in controversy.</p> <p>9 I don't think you get to say that in one case 10 and then come into this court and say, well, we 11 don't have to give you any of that stuff. So -- 12 and I think I'll stop there on the -- let me just 13 say one last thing about this other case against 14 the doctors that performed some spine injury.</p> <p>15 He asserts in that case that his ability to 16 make money off his brand is dependent upon his 17 physical health. So to the extent that he is 18 saying my physical health was substantially 19 diminished for a two-year period and then 20 separately is coming in and saying I want economic 21 damages, obviously the state of his physical 22 health is directly relevant to his economic 23 damages. And we would -- we would and ought to be 24 able to get that for that reason as well. Because 25 if he's saying I could be working and I'm not, but</p>	<p>Page 35</p> <p>1 it were, in a moment of vulnerability, he had an 2 encounter with Mrs. Clem, Mr. Cohen's client, 3 which -- and he didn't know that there were any 4 cameras there. He didn't know that he was being 5 taped. And he played no role in the dissemination 6 of the video. That's his story. The complaint 7 says, you know, had I known that my private sexual 8 activities were being filmed, I would have not 9 engaged in those activities, and that he had no 10 knowledge of and did not consent to the recording 11 or its dissemination.</p> <p>12 Now -- and in this regard, Your Honor, I have 13 a couple of documents that have been produced to 14 us confidentially which I would like to address. 15 I'm not sure if I should pause and ask how the 16 Court would like me to handle that. My 17 understanding is under the protective order that 18 if I hand them up to the Court, they should be 19 treated under seal. I'm also happy to hand them 20 up and take them back. If Mr. Harder has any 21 views, I don't want to run afoul of the Court's 22 confidentiality order.</p> <p>23 THE COURT: Do Mr. Harder or Mr. Cohen know 24 what you want me to look at? 25 MR. BERLIN: I don't know because we just got</p>
<p>Page 34</p> <p>1 he's saying somewhere else I'm not working because 2 somebody else injured me physically, that's a 3 different claim.</p> <p>4 Unless there's any questions on the 5 economic -- I mean, on the medical or mental 6 health records, I will move on.</p> <p>7 THE COURT: Go ahead.</p> <p>8 MR. BERLIN: Let me turn to what I think is 9 the admittedly more difficult and most difficult 10 subject, which is the information we sought about 11 what he says about his sex life.</p> <p>12 I would submit to you, Your Honor, that what 13 we're asking for is not information about his sex 14 life, which I think is overreaching and is 15 something that we try to do -- you know, we ask 16 discovery requests, because we don't exactly know 17 what we're shooting at, that are broad in 18 explaining this before we try to be specific about 19 what it is we're after. And that is, we're after 20 the extent to which he maintained his sex life as 21 private.</p> <p>22 So this is a case about the privacy of a 23 sexual encounter. Right? And his story is that 24 at one time, at a particularly low moment in 2006 25 when things in his marriage were on the rocks, as</p>	<p>Page 36</p> <p>1 these documents on Friday. So we haven't had a 2 chance to talk about it.</p> <p>3 THE COURT: Why don't we take -- 4 MR. COHEN: I don't know, Your Honor. 5 THE COURT: Okay. Why don't we take just a 6 brief break. Why don't you share those with 7 Mr. Harder or Mr. Cohen, get their thoughts about 8 it. I probably -- if I'm looking at it, I'm not 9 going to take possession of it. Why don't you 10 take a minute and share it with them. And when 11 you're ready, let me know.</p> <p>12 (Recess taken from 11:04 a.m. to 11:06 a.m.) 13 MR. BERLIN: I apologize for the 14 interruption, Your Honor.</p> <p>15 THE COURT: That's all right. 16 MR. BERLIN: I think that what we've worked 17 out is that I will hand them up and not actually 18 ask that they be made a part of the record and 19 that when I describe them that we would have that 20 part of the record be sealed so that they're not 21 in the public transcript of this hearing.</p> <p>22 THE COURT: And that's the agreement with 23 you, Mr. Harder? 24 MR. BERLIN: Yes, Your Honor. 25 THE COURT: Mr. Cohen?</p>

<p>Page 37</p> <p>1 MR. COHEN: Yes, Your Honor. Thank you. 2 MR. BERLIN: If this is too loud, I'll try to 3 step back. There seems to be an echo. 4 THE COURT: No. The whole -- this room is 5 hard to hear. And if you're not in there, 6 Mr. Cohen and Mr. Harder won't be able to hear 7 you. 8 MR. BERLIN: I remember the last time I was 9 before you, you were courteous enough to allow me 10 to hear by phone -- to participate by phone and it 11 was actually quite difficult to hear. 12 THE COURT: It is. 13 MR. BERLIN: So just turning back to that, 14 Your Honor, Mr. Hogan in his -- or Mr. Bollea in 15 his complaint told a particular story, this is 16 what happened. We have a couple of indications 17 that have caused us to call into question whether 18 that in fact -- those in fact are the facts. 19 Number one, we have some text messages -- let 20 me just, so that I'm not handing you up my work 21 product, just remove the stickers here from it. 22 I've shown this to them. 23 Actually, I think I can do this probably 24 without this particular document. So let me try 25 and move that one so that this is as easy as</p>	<p>Page 39</p> <p>1 served -- that suggests that he may have made 2 other tapes, both generally and with Mrs. Clem. 3 Rather than simply saying, I don't have any 4 documents, as he's now done for a lot of other 5 requests, he's objecting to their production. 6 Mrs. Clem was served an admission request by the 7 plaintiff asking her to admit that, quote, 8 "Plaintiff was not aware that he was being 9 recorded at the time the video was made." And she 10 denied that. She's in other words saying, yeah, 11 he was aware that he was being recorded. 12 THE COURT: Would you do me a favor. I think 13 Mr. Harder is having a hard time. How about if 14 you move that whole podium back a little bit. I 15 have excellent hearing, so I'll be able to hear 16 you if you're back by the door. But if you move 17 it back a little bit, then I think both of them 18 can hear you. 19 MR. BERLIN: Is that a little better? 20 THE COURT: Hopefully so. If not, I'm sure 21 they'll tell us. 22 MR. HARDER: I appreciate it. The acoustics 23 are strange. 24 THE COURT: They've very bad. 25 MR. BERLIN: It's one of the only times I've</p>
<p>Page 38</p> <p>1 possible. Then we have some -- the text messages, 2 but also public statements saying there was some 3 awareness of cameras. We have public statements 4 from Mr. Bollea saying that this was not just a 5 one-time thing and that he believes that he had an 6 encounter, a sexual encounter, with Mrs. Clem at 7 least twice and maybe as many as three times, 8 that -- we have public statements saying that 9 Mr. Hogan lived with the Clems for a lengthy 10 period, I believe somewhere between a couple of 11 weeks and a couple of months. 12 When we had our meet and confer about this in 13 August, we addressed -- this is a separate issue 14 for later, but we addressed that particular issue 15 and said, look, you -- we asked you about, you 16 know, his time in the Clem household, and you said 17 you visited, but you didn't stay there. So we 18 said, you've got these public statements. And 19 Mr. Harder said, well, he did live there, but I 20 don't exactly know the period and I'll get back to 21 you. We're still waiting. 22 In -- Mr. Bollea has served objections to the 23 discovery that we served on Mrs. Clem and Mr. Clem 24 and -- even though the discovery that we served on 25 Mrs. Clem is identical to discovery that he was</p>	<p>Page 40</p> <p>1 been told I'm not loud enough. 2 THE COURT: Well, just speak up. 3 MR. BERLIN: I'll try and do that. 4 Mr. Clem -- so we have three people who know 5 sort of about what happened here, Mr. Bollea, 6 Mrs. Clem, and Mr. Clem. Mr. Clem, after this 7 tape was posted and he was a defendant in this 8 lawsuit, he told his radio audience, "Hulk was in 9 on the sex tape release from the get-go." That's 10 a quote from Mr. Clem. He was in on the stunt. 11 He is, quote, the ultimate lying showman. And, 12 quote, "You can't play the victim like that." 13 Then he went on the Howard Stern show two 14 days later and he said, everybody understood that 15 this was being taped and that this was being -- 16 and he was in on the release. 17 (Proceedings marked "Confidential" are 18 contained under separate cover and must be sealed 19 if filed with the court.) 20 MR. BERLIN: Now, we don't know which one of 21 his versions of this is true. We've sought to 22 take discovery from him. That's a separate issue 23 which I want to come back to later today if 24 there's time -- including because we've been 25 trying to get his deposition scheduled now for --</p>

<p>Page 41</p> <p>1 we've noticed it, but we haven't actually gotten 2 confirmation from his counsel -- for the better of 3 two months.</p> <p>4 And what all this means -- let me say one 5 other thing actually before I tell you what it all 6 means.</p> <p>7 The other thing that's happened is that the 8 plaintiff has shifted his story on when this 9 encounter happened. For most of the past year, he 10 contended it was in 2006 while he was still 11 married. It -- since then he's contended it 12 happened in 2008, after he and his first wife had 13 filed for divorce. It happened while they were 14 legally separated, which would be sometime in 15 between. In fact, this is -- this -- the effect 16 of all the filings in this case, the complaint 17 says this happened in 2006. They amended the 18 complaint, which you just had handed up, to 2006. 19 His affidavit sworn under penalty of perjury in 20 support of the temporary injunction proceeding 21 says 2006. Apparently he communicated that to his 22 wife, because that's what his wife's affidavit 23 also says in support of the temporary injunction 24 motion. His discovery responses then say 2008. 25 His motion for protective order, which you have</p>	<p>Page 43</p> <p>1 saying is that there's -- this isn't just what 2 might have happened. There's enough factual 3 record, Your Honor -- I'm trying not to give you 4 every last piece of it, but enough of it that you 5 have a sense that I'm not just making stuff up. 6 But that's what's gone on.</p> <p>7 So when we say -- because we only have three 8 people who actually know what happened and we're 9 not one of them. When we say we need information 10 about the extent to which the plaintiff kept his 11 sex life private, it's because we need to be able 12 to test the fundamental core key facts that he is 13 alleging in his complaint and in this case that he 14 claims entitles him to a hundred million dollars. 15 And if you are going to come into court and say, I 16 have this version of events, and say, but that 17 version of events involves sensitive facts, so I'm 18 not going to let you explore that that in fact is 19 what happened, that -- that flies in the face of 20 the discovery rules.</p> <p>21 Now, the -- you know, let me give you an 22 example of this. They cite in their papers this 23 case called Tylo, T-y-l-o, which is a California 24 case involving a television actress who used to be 25 on a daytime soap, gave that up to be on a</p>
<p>Page 42</p> <p>1 before you, says, well, we were separated at the 2 time with divorce proceedings commencing 3 thereafter. And his opposition to our motion to 4 compel says, well, we were separated and living in 5 a different residence.</p> <p>6 Now, it is very difficult for us to litigate 7 a case where we don't even know when this -- the 8 key event at issue happened. But this shifting 9 story about when this happened calls into further 10 question the assorted details of it, including 11 whether this was the only time when it happened, 12 let alone his knowledge of whether he was recorded 13 or in on the dissemination of the tape.</p> <p>14 Now, it may be that Mr. Clem's initial tale 15 was correct and that Mr. Bollea was in on this 16 from the get-go, knew he was being recorded, was 17 in on the release as a publicity stunt, which 18 celebrities do, right? They -- they release this 19 tape and then in fact they say, I had nothing to 20 do with it, so that it drives further interest in 21 people seeing something the famous celebrity 22 doesn't want them to see.</p> <p>23 I don't know if that's what happened here. 24 I'm not suggesting to the Court that is what 25 happened or it isn't what happened. What I am</p>	<p>Page 44</p> <p>1 program, which I'm sure enriched the world for 2 many, called Melrose Place. And it was a soap 3 opera, evening soap opera in the '90s, I think. 4 She wanted to be on Melrose Place. She took this 5 contract for several years and then got pregnant. 6 And the producers of Melrose Place said, this is 7 about beautiful people who live in this 8 condominium complex in L.A. and we're not really 9 looking for a pregnant actress, and terminated her 10 contract. And she sued for pregnancy 11 discrimination. And the Court says, look, some of 12 the discovery that you're asking for seems to be 13 completely, you know, pulled out of the air like 14 you're just asking to harass. But they said -- 15 because one of the issues was whether she had, in 16 fact, known that she was trying to get pregnant 17 and took this contract and was hoping to just get 18 a contract, get fired, and still get paid. One of 19 the issues was did she knowingly get pregnant.</p> <p>20 So because it was relevant to the case, the 21 court -- even in California, which is very 22 solicitous of privacy -- said, look, you're 23 allowed to ask this witness whether she knew that 24 her husband had had a vasectomy. She was allowed 25 to be asked, did you know that your husband had</p>

<p>Page 45</p> <p>1 his vasectomy reversed? She was allowed to be 2 asked, did you have a -- you know, did you 3 consider this pregnancy to be an asset? And so -- 4 and the point of that is to say that where it's 5 relevant to the facts of the case, you have to be 6 able to take some reasonable discovery. I'm not 7 saying I'm going to want to know everything about 8 the guy's sex life. That would be improper, and I 9 admit that that would be improper.</p> <p>10 What I am saying is where we have a series of 11 serious questions about whether the tale that he's 12 telling is, in fact, the actual facts of what 13 happened, we need to be able to have some leeway 14 to explore this so that if he made other sex tapes 15 with Mrs. Clem or otherwise, he says, I didn't 16 make any for public dissemination, but that's -- 17 that's sort of a very -- it's almost like a 18 Clintonesque distinction. Your Honor, where, you 19 know -- you know, he's drawing a very fine line. 20 And that's really not, I think, appropriate given 21 what the facts of this case are.</p> <p>22 The last thing I'll say is that he asked 23 Mrs. Clem the same kinds of questions because he 24 was trying to get -- you know, he says, look, 25 they're limited to inquiries regarding how the sex</p>	<p>Page 47</p> <p>1 reporter and actually end the part that talks 2 about the actual sealed document which was 3 earlier. I just neglected to deal with that 4 housekeeping issue.</p> <p>5 Thank you, Mr. Thomas.</p> <p>6 We've talked about the fact that we have 7 virtually no documents. We have talked about the 8 fact that we have virtually no information. We 9 found out a variety of things from our own 10 Internet searching, searching of court records, 11 but that's not how this process is supposed to 12 work. I'm not supposed to hope that I get lucky 13 getting it from somewhere else when I ought to be 14 able to get it from the plaintiff in the first 15 instance.</p> <p>16 One of the things that is addressed is, you 17 know, he said that, for example, he was trying to 18 get the FBI and the Florida authorities to 19 prosecute the Clems and Gawker. We have no 20 records relating to those efforts, just as an 21 example.</p> <p>22 One of the issues appears to be that 23 Mr. Bollea is taking the position that documents 24 are equally available to Gawker and he doesn't 25 need to produce them. And our response is, when</p>
<p>Page 46</p> <p>1 tape came to be recorded and disseminated and her 2 proclivities for engaging in recording of sex 3 tapes, right? Because she's -- that's relevant. 4 Well, if it's relevant for Mrs. Clem about what 5 he's trying to find out from one of our 6 codefendants, it's going to be relevant for us to 7 find out when he's the one doing the questioning 8 how that's done. And we would ask for some 9 reasonable amount of leeway on that subject. I'm 10 sorry that took a little longer to explain than 11 the others, but that's why.</p> <p>12 THE COURT: All right. What about the second 13 motion for protective order regarding having the 14 depositions videotaped?</p> <p>15 MR. BERLIN: Well, if I could -- if it would 16 be all right, Your Honor, before I turn to the --</p> <p>17 THE COURT: You were continuing. I thought 18 you were done.</p> <p>19 MR. BERLIN: I'm sorry. Before I turn -- 20 before turning to the videotaping of the 21 depositions, I would like to address the rest of 22 the topics that are at issue.</p> <p>23 Oh, I'm sorry. Mr. Thomas reminds me that I 24 can say that this is now unsealed and will be 25 okay -- we'll try to go back with the court</p>	<p>Page 48</p> <p>1 we say we have no documents, it means we have no 2 documents in our possession, custody, or control. 3 It seems to be that when he says it, it appears to 4 be something other, as in if you can get that 5 document from somewhere else, be it a court or 6 another source, we're not producing it. And I 7 want to be clear in whatever ruling the Court 8 issues that if something is ordered to be produced 9 that it is -- it applies to his possession, 10 custody, or control, including his attorneys and 11 other agents, because that's what the rules 12 require.</p> <p>13 We have no privilege log. Now, I understand 14 his position is, I'm not logging the stuff that is 15 between me and my client after the lawsuit was 16 filed. We did the same thing. And I'm fine with 17 that. I'm not trying to -- that's a burdensome 18 task in a lawsuit that's gone on for a year. I'm 19 not asking for that burden to be taken. But in 20 one of his motions, he claims that certain things 21 are protected by spousal privilege. That stuff is 22 not logged. And we can't assess whether, in fact, 23 it is legitimately protected.</p> <p>24 He's not produced any documents concerning 25 the agreement that I provided to Your Honor other</p>

<p>Page 49</p> <p>1 than that agreement itself. Mr. Clem's lawyers 2 have asserted that that material is protected by a 3 so-called settlement privilege. If that's the 4 position that Mr. Hogan is taking, we should have 5 that on a log. That's not in the category of 6 attorney/client privileged materials after the 7 lawsuit was filed.</p> <p>8 Several of the documents produced reflect 9 conversations with counsel before the case was 10 filed. And, again, we -- we went up until the day 11 the lawsuit was filed in federal court in October, 12 and we would expect that the plaintiff would do 13 the same, because that way the Court is able to 14 assess whether the claim of privilege is 15 legitimate and not just have to take their word 16 for it. Trust but verify it first.</p> <p>17 Now, we have a bunch of allegations where 18 we've not gotten -- we've gotten some documents on 19 Friday saying we have no documents, but there are 20 a number that are still outstanding, and these 21 include things like documents about the privacy 22 interests you claim were violated, documents 23 related to Gawker's conduct challenged in the 24 complaint, documents related to Heather Clem's 25 conduct challenged in the complaint, documents in</p>	<p>Page 51</p> <p>1 from my comments this morning, but that's not how 2 the process is supposed to work. That's a 3 legitimate question in a case where we're talking 4 about whether something is private, whether 5 something is newsworthy. We've got nothing.</p> <p>6 And then we've talked a little bit about the 7 two incorrect statements. One is the -- the 8 question is, did this happen in 2006; did this 9 happen in 2008? Did you live with the Clems or 10 did you only visit the Clems? We've called that 11 to their attention in our motion -- in our meet 12 and confer. It's two months later. The 13 depositions are two weeks away. We have nothing.</p> <p>14 In sum, I think before we move on to the 15 motion for protective order, I would say that 16 taken in its totality -- and I don't -- I'm not 17 casting aspersion either to Mr. Hogan or 18 Mr. Harder, but taken in their totality, this 19 reflects an approach to this case which says, you 20 know, this is a privacy case and, therefore, I 21 object to having to do the -- the stuff that has 22 to do with discovery so that you can test whether 23 there's a legitimate claim here. And that's not 24 how this process is supposed to work. We would 25 respectfully ask the Court to order them to, you</p>
<p>Page 50</p> <p>1 support or refuting the allegations in the 2 complaint, communications you had about the 3 alleged violations of your privacy. We've gotten 4 literally nothing in response to those things. 5 And those are some basic questions about the 6 allegations of his own complaint.</p> <p>7 We've talked a little bit about the documents 8 from prior legal proceedings including sworn 9 testimony. He has not responded. He hasn't 10 supplemented and he hasn't addressed that at all 11 in the opposition to our motion to compel. And we 12 would respectfully submit that that is -- at a 13 minimum, that's an easy thing to go to one's 14 lawyers and say, look, turn this stuff over so 15 that -- and if there's a legitimate objection, 16 let's deal with it. But we're not at that point. 17 We're at a point where we have literally nothing.</p> <p>18 Documents relating to his public writings and 19 statements and appearances, as the Court knows, 20 this is a case about, is this private? Is this 21 public? If you're talking about this stuff in 22 public, as you did in your book, we're entitled to 23 know about it. And the argument is, well, you can 24 search the Internet and find the stuff. Well, we 25 don't -- we've done some of that, as is obvious</p>	<p>Page 52</p> <p>1 know, provide meaningful discovery on these 2 depositions.</p> <p>3 Let me talk for a moment, if I could, about 4 the depositions. There are a couple of issues. 5 One is, should we limit the plaintiff's deposition 6 to seven hours? Mr. Cohen and I are in agreement 7 that this cannot be done in seven hours. There's 8 a lot of material to cover. I think that that's 9 probably evident just from the comments that I've 10 made this morning. And I've tried to spare you 11 from a lot of other things that I have questions 12 about. It's made longer by the fact that I don't 13 have a lot of the information that I need to 14 actually ask the questions orally rather than 15 being able to say, oh, here's a document that 16 answers my question and I don't have any question.</p> <p>17 It is my understanding, and I'm told by my 18 esteemed Florida counsel that the -- that it would 19 be rare in Florida state court to limit the 20 deposition of a key player, or party in the case 21 of the plaintiff, to seven hours, especially when 22 there's multiple defendants who have different 23 issues.</p> <p>24 The conduct involving the recording of the 25 video perhaps is different than the conduct of</p>

<p>Page 53</p> <p>1 disseminating the video. And we don't want to be 2 artificially limited. And the approach is not 3 supposed to be, limit it to seven hours and if 4 Mr. Harder feels like he's being a good guy, he 5 lets us go on. It's supposed to be the opposite, 6 which if we abuse our privilege, he's free to come 7 to the Court and say, look, this has now taken on 8 a life of its own and it shouldn't and you need to 9 limit it. But we're not at that point, and I 10 respectfully request that that portion of the 11 motion be denied.</p> <p>12 His current wife, Jennifer Bollea, offered a 13 declaration in the temporary injunction 14 proceedings in which she spoke about a variety of 15 things that are relevant in this case. I don't 16 think it's a reasonable request to ask Mr. Cohen 17 and I to split two hours and call it a day on a 18 witness who clearly has a lot of information about 19 the case and lived through this information -- 20 lived through this experience of the deposition -- 21 I mean, the video being posted and the supposed 22 emotional distress, the supposed financial 23 consequences. We ought to be able to ask those 24 questions. I don't know that it would take a 25 whole day even, but I think two hours is an</p>	<p>Page 55</p> <p>1 a case that may well end up in front of you for 2 trial. And if we have a trial, I want to have 3 videotape footage of the key witnesses' 4 depositions so if there's, for example, a prior 5 inconsistent statement I want to impeach them 6 with, the jury can see not only the cold 7 transcript, but can see their demeanor when they 8 were giving the earlier testimony and the later 9 testimony. And that's what the rules contemplate.</p> <p>10 The primary concern that Mr. Harder has 11 expressed is that, what happens if Gawker 12 videotapes this? And I want to tell the Court, as 13 I told Mr. Harder in the meet and confer about 14 this, Gawker is not interested in broadcasting 15 proceedings from this case. There was a lot of -- 16 there's already a lot of interesting stuff that's 17 happened in this case. We haven't put any of it 18 up on our website. And it's not interested in it. 19 And I am prepared to represent, after checking 20 with the client, that they are not going to 21 broadcast or publish any portion of the videotaped 22 deposition of Mr. Hogan, regardless of whether it 23 would otherwise be subject to the protective 24 order. And obviously if it is subject to the 25 protective order, we clearly intend to abide by</p>
<p>Page 54</p> <p>1 artificial limit and I don't think that the Court 2 should get into the business of prejudging on the 3 testimony and trying to guess that you get this 4 many hours and not that many hours.</p> <p>5 His ex-wife's deposition -- his ex-wife, 6 Linda, and he and -- Mr. Hogan and Mr. Clem and 7 Mrs. Clem were all friends. She obviously has 8 information about what was going on at the time in 9 this case, and we think we should be able to probe 10 that. This isn't intended to be a rehash of the 11 divorce. It's intended to be a focused 12 examination on the issues in this case. But it 13 would be highly unusual, it would seem to me, 14 Your Honor, for a Court to say, here is a witness 15 who has clearly probative knowledge and say you 16 can't take that person's deposition. In fact, we 17 got here a little early. We heard in the last 18 case, even though there's a trial coming on 19 Monday, Your Honor said, try and depose this 20 additional witness, even though they identified 21 that person at the last minute.</p> <p>22 And then lastly, just speaking to the 23 videotaping of the depositions, Your Honor, the 24 Florida rules are clear that we're entitled to 25 take a videotaped deposition. And I think this is</p>	<p>Page 56</p> <p>1 the protective order as we have so far in the 2 case.</p> <p>3 Our witnesses had their depositions taken by 4 videotape. The chronology is a little bit tough 5 here, which is we entered into a protective order. 6 We had our -- we sent our deposition notices back 7 and forth. Our witnesses -- they filed a motion 8 for protective order which said nothing about 9 videotaping. Our witnesses were deposed and they 10 had their -- had their videotape -- their 11 depositions videotaped. And they're people who 12 are the subject of their own degree of media 13 attention, maybe not as famous as the plaintiff, 14 but they're subject of a fair bit of media 15 attention, a number of pieces of which were 16 produced back to us in the discovery process. And 17 then only after that happened did we get a motion 18 for protective order saying, no, I don't want my 19 clients to be deposed. And I would respectfully 20 submit that that's not fair and that we ought to 21 be able to take their depositions. And if my 22 client violates what I've just told you, which is 23 to say they're not going to post them, you'll haul 24 us in. You know, there ought to be appropriate 25 consequences. But, you know, I could go to them</p>

<p>Page 57</p> <p>1 and say, if I make this representation to 2 Judge Campbell, we're going to honor it. And they 3 say, okay, we understand that and, you know, we're 4 going to do that.</p> <p>5 But I will say parenthetically, they also 6 said to me, most of our readers are not so 7 interested in watching a deposition which -- 8 because, you know, they had just been through 9 them -- which is boring. I mean, most people, you 10 know, think, oh, depositions are exciting because 11 they watch TV and, you know, what lawyers do is 12 exciting. Generally it's pretty boring. And 13 they're not interested -- they took a 30-minute 14 tape and cut it down to a minute and 40 seconds to 15 make it more focused. They're not going to take 16 an eight-hour tape or 16-hour tape or however long 17 the deposition is and start posting it online. 18 Nobody is interested in watching that. So they 19 have no interest in doing that. But they've 20 authorized me to represent to the Court that 21 they're not going to do that.</p> <p>22 I think given that, we ought to be able to 23 avail ourselves of the rules that allow us to use 24 this videotaping for what it's for, which is to 25 prepare ourselves for a trial in this case, not --</p>	<p>Page 59</p> <p>1 MR. BERLIN: That's right.</p> <p>2 THE COURT: You probably don't know some of 3 our local folks. But I was thinking of 4 Judge Jim Case, who is a senior retired judge. 5 I'm sure Mr. Cohen and Mr. Turkel know him.</p> <p>6 So think about -- do you have any response to 7 that off the top of your head? I know I'm just 8 throwing that out, but it seems to me that that 9 would be an important --</p> <p>10 MR. BERLIN: Well, my reaction -- if the 11 Court wants to do that, we'll obviously do 12 whatever the Court would like and we'll, you know, 13 work with the special magistrate to do whatever is 14 necessary. My hope was that by raising these 15 issues in detailed motions, we would have rulings 16 that --</p> <p>17 THE COURT: Oh, I plan on giving you some of 18 those rulings now to narrow the focus.</p> <p>19 MR. BERLIN: Let me give you an example in a 20 microcosm. We had a contested motion the last 21 time we were before you about whether we could get 22 a 30-day extension of discovery for our responses, 23 right?</p> <p>24 THE COURT: Right.</p> <p>25 MR. BERLIN: The Court ruled on that, granted</p>
<p>Page 58</p> <p>1 and eliminate from the picture, you know, 2 publishing it online.</p> <p>3 Unless there are any questions about all of 4 the various things that we've talked about, I'll 5 sit down. Because some of that was related to our 6 affirmative motion, I probably would like to just 7 reserve a brief amount for rebuttal.</p> <p>8 THE COURT: Okay. We're stopping at noon. 9 So let me throw this out, because I still want to 10 allow him an opportunity, Mr. Harder. And I 11 understand part of the motion to compel. In going 12 through a lot of this yesterday, it seems to me 13 that there are going to be -- Mr. Harder thinks 14 it's objectionable, you think it's not 15 objectionable as -- when you get into the actual 16 deposition itself.</p> <p>17 It seems to me that the appointment of a 18 special magistrate would be -- for discovery 19 purposes would be an efficient tool so that there 20 was somebody right there at the -- during these 21 depositions to make calls. I was trying to think 22 of who would that person be. I think this is a 23 unique case that would require a unique person.</p> <p>24 So the person I was thinking about -- and 25 I -- you're Mr. Berlin, right?</p>	<p>Page 60</p> <p>1 the motion, and then told the parties, this is how 2 I expect this to go. And we haven't had any more 3 problems about deadlines since then. And it would 4 be my hope that if the Court gives us guidance on 5 these issues, we might actually be able to work 6 out most of them. There might be a few that are 7 left, but I actually think that most of them we 8 should be able to work out. And then we just -- 9 because I'm interested in sort of cutting to the 10 chase. I'm not -- I'm interested in getting what 11 I need and not getting what I don't need. So --</p> <p>12 THE COURT: Yes. But that being said, 13 there's angst in just the preparation of getting 14 here as to who's giving me copies of whatever. So 15 don't do that stuff. It's crazy. It's driving me 16 nuts.</p> <p>17 MR. BERLIN: I appreciate that. And I'm 18 sorry.</p> <p>19 THE COURT: I understand. It goes all the 20 way around. It's just sort of how we got here. 21 Well, I just throw that sort of thought out. 22 Okay?</p> <p>23 MR. BERLIN: And if that's the way the Court 24 wants to go --</p> <p>25 THE COURT: Well, I plan on giving you</p>

<p>Page 61</p> <p>1 parameters now. That's why I'm reserving some 2 time for me at the end here because I'm going to 3 give you some parameters.</p> <p>4 MR. BERLIN: The only other thing I would 5 say, Your Honor, is that -- with respect to that 6 is that we do have these depositions lined up for 7 a couple weeks from now. They took a long time to 8 schedule. We went through almost 30 days back and 9 forth just getting the schedules lined up with 10 witnesses, and I would like to be able to proceed 11 with that. If appointing somebody would delay 12 that, then I probably would have some concerns 13 about that.</p> <p>14 THE COURT: I don't know what his schedule 15 would be. Okay. Thank you very much.</p> <p>16 Mr. Cohen?</p> <p>17 MR. COHEN: Judge, it may be helpful if 18 Mr. Harder responds. He's more conversant with a 19 lot of these issues and not coming in at the end, 20 if that's okay with Your Honor.</p> <p>21 THE COURT: Well -- but it seems to me that 22 there may be some conflict, because Mr. Harder is 23 asking -- well, Mr. Harder's client, Mr. Bollea, 24 is asking for stuff from Ms. Clem, which I believe 25 she's objecting to. And on the other hand, he is</p>	<p>Page 63</p> <p>1 points that Mr. Berlin made, as far as the garden 2 variety distress claim, it's discussed in the case 3 of Olges versus Dougherty, and we cite to that on 4 page 8 of our first motion for protective order. 5 That's the case that says, in a garden variety 6 emotional distress case where the plaintiff is 7 simply alleging that the very nature of the 8 defendant's conduct would cause any normal person 9 mental anguish and where the plaintiff is not 10 intending to put on expert medical testimony as to 11 his emotional state, no such discovery is required 12 or permissible.</p> <p>13 And so I would just direct the Court's 14 attention to that case.</p> <p>15 THE COURT: I only say, though, that if I 16 agree with you in that regard, you're very limited 17 when we get to the ultimate trial. There's very 18 limited testimony that the plaintiff has in that 19 regard.</p> <p>20 MR. HARDER: I understand, Your Honor.</p> <p>21 THE COURT: I would anticipate we would be 22 spending lots of time in motions in limine and a 23 lot of the issues that Mr. Berlin, Ms. Fugate, and 24 Mr. Thomas are determining on their own would all 25 seem to be fair game.</p>
<p>Page 62</p> <p>1 objecting to some of the same stuff that they're 2 asking for. So I see some -- a bit of an inherent 3 conflict in some of it.</p> <p>4 MR. COHEN: There are some conflicting 5 issues, Your Honor. That's patently obvious. But 6 I think that if Mr. Harder proceeds, then I don't 7 think that my response will probably necessitate a 8 long response.</p> <p>9 THE COURT: Okay. Well, then, I'm going to 10 sort of consider this to be your response to the 11 ultimate motion for protective order that 12 Mr. Berlin was just doing as well.</p> <p>13 MR. HARDER: Correct. Just on that last 14 point regarding Heather Clem, we have not made any 15 motion to compel as to Heather Clem. I think she 16 objected to some --</p> <p>17 THE COURT: But I think some of my rulings -- 18 Mr. Berlin, let me give this back to you.</p> <p>19 Some of my rulings affect Ms. Clem as well as 20 far as like videotaping and links of and whether 21 or not anybody is telling every sex partner 22 they've ever had, all those kinds of discovery 23 requests I think go all the way around.</p> <p>24 MR. COHEN: They do, Your Honor.</p> <p>25 MR. HARDER: Just to go over some of the</p>	<p>Page 64</p> <p>1 MR. HARDER: Fair game meaning what? 2 THE COURT: In cross-examination. 3 MR. HARDER: You mean fair game in terms of 4 medical records? 5 THE COURT: Medical, divorce records, any of 6 the other aspects of the things that Mr. Berlin 7 brought up would seem to me -- 8 MR. HARDER: Okay. 9 THE COURT: That's -- we're a ways off from 10 that, but -- 11 MR. HARDER: Okay. I mean, I just don't see 12 that because somebody is taped against their 13 knowledge and against their will and somebody 14 posts that to the Internet that now the plaintiff 15 has to open up their life. 16 THE COURT: You know, you should sit in any 17 day of the week that we're in here in jury trials. 18 I understand where you're coming from. 19 MR. HARDER: I don't see why anyone would 20 ever want to seek redress if now suddenly they 21 have to be violated a second time, a third time, 22 and a fourth, and a fifth time every time they're 23 deposed, every time they go on the stand, every 24 time they have to open up all their medical 25 entries and everything, especially to a company</p>

<p>Page 65</p> <p>1 that is in the business of posting things to the 2 Internet where they come across something and 3 they're like, oh, this is a juicy tidbit; let's 4 throw that up on the website.</p> <p>5 THE COURT: I totally understand what you're 6 saying. But like, for example, Mr. Bollea's 7 divorce proceeding, we have government in sunshine 8 here. Unless the judge sealed certain parts of 9 it, that whole file is open to public record.</p> <p>10 MR. HARDER: And if they want to go look at 11 the file, I'm not trying to stop them from looking 12 at the file. What I'm trying to stop them from 13 doing is having us make a photocopy of the file 14 and everything else that goes along with it that 15 wasn't part of the public file, because I don't 16 see how a divorce proceeding is --</p> <p>17 THE COURT: Okay. Well, let's just move on 18 because I think those are ultimately -- some of 19 those are going to be issues on down the road. 20 But go ahead.</p> <p>21 MR. HARDER: In terms of damages, Mr. Berlin 22 talked a lot about -- it sounds like he thinks 23 that now our damages theory is that Hulk Hogan's 24 career was damaged because of the sex tape being 25 posted and we are seeking damages because of the</p>	<p>Page 67</p> <p>1 celebrity sex tape. Some celebrities -- or some 2 sex -- celebrity sex tapes make \$10 million, 3 \$15 million, \$20 million from the tape itself 4 because so many people go to a site and plunk down 5 money and want to watch it.</p> <p>6 What we're saying is, they got the value of 7 five million plus people who were unique to Gawker 8 Media, unique viewers, went there, and their -- 9 their company was enhanced financially because of 10 it and the value that they got is the value of a 11 celebrity sex tape in which Hulk Hogan is the 12 star. So we want the value rather than allowing 13 them to have it. It has nothing to do with 14 whether his career was harmed or not.</p> <p>15 Mr. Berlin went for a while trying to -- it 16 sounded like he was saying that Hulk Hogan has 17 been inconsistent in his allegations in this case. 18 The only thing -- and I will admit to this -- the 19 only thing that was inconsistent is the 2006 20 versus 2008. When Hulk Hogan first said this 21 happened six years ago, I think that my office 22 took it literally rather than figuratively. I 23 think when he said it happened six years ago, he 24 was meaning it happened many years ago. And so 25 when we initially prepared the papers, we made a</p>
<p>Page 66</p> <p>1 harm to his career. That's not what we're 2 seeking.</p> <p>3 THE COURT: But, see, they don't know. So 4 that's why --</p> <p>5 MR. HARDER: Well, I've told him. We had a 6 three-hour phone conversation and I told him that. 7 I said if he happens to have lost a contract or an 8 opportunity, then we'll produce that contract or 9 opportunity. I don't know of any. And I've asked 10 my client many times. And if Your Honor wants to 11 just say, okay, you have until X day to produce 12 any contracts that you claim were lost, that's 13 fine. I'm happy to have a deadline, because I 14 don't think we're going to end up producing 15 anything because I don't think that he lost any 16 contracts as a result of what Gawker Media did.</p> <p>17 We're not seeking damages to his career. I 18 think Mr. Berlin said, well, sometimes a 19 celebrity's career goes up rather than down 20 because of a celebrity sex tape. Maybe that's the 21 case. It's not a point that's being made by us in 22 this case. We're not saying that his career went 23 down or his career went up because of this sex 24 tape. What we're saying is that there is a 25 tremendous amount of commercial value in a</p>	<p>Page 68</p> <p>1 mistake and we said, okay, it's 2012, and then we 2 go back six years, so that's 2006. And then in 3 further talking to him about this, we got down the 4 actual timeline based upon other things that were 5 happening in his life, including his separation. 6 He did live with the Clems for a short period of 7 time, I think two weeks or two months or somewhere 8 in between there. I never said that he didn't. 9 But that was part of the timeline. So once we got 10 him down on the timeline, it turns out it happened 11 to be in 2008 rather than 2006. And I apologize, 12 but that was an inadvertent error. That doesn't 13 mean you open up the floodgates to discovery. It 14 means we goofed and we unfortunately had our 15 client sign something that was under penalty of 16 perjury that was off by two years. And I 17 apologize for that. But, again, it doesn't lead 18 to this opening of the floodgates.</p> <p>19 In terms of what Mr. Berlin was presenting to 20 the Court -- and I can talk about the public 21 statement. When Bubba Clem was sued, he went on 22 the radio and he told things that weren't true. 23 He said Hulk Hogan was in on this. That wasn't 24 true. And it was, I suppose, the passion of the 25 moment after having just been sued and his</p>

<p>Page 69</p> <p>1 reputation was being maligned. And because he's a 2 radio personality, he didn't want people to think 3 that he was running around taping people having 4 sex in his bedroom without their knowledge. But 5 the truth is exactly what Hulk Hogan has said. 6 And that's why we brought this lawsuit. That's 7 why we're fighting it so hard. That's why there 8 is so much money being spent. If this was 9 something that Hulk didn't care about -- and 10 Mr. Berlin implied that, that Hulk let this tape 11 get released -- why would we be doing all this? I 12 mean, that doesn't make any sense at all. 13 And Bubba Clem made an apology. He went 14 public with his statement. He put it in writing 15 and he signed it and he read it on the air. And 16 he said, what I said before was untrue. These are 17 the true facts. Hulk Hogan had nothing to do with 18 this. 19 In terms of discovery, though, we're happy to 20 give them everything that we have that's not 21 privileged that pertains to this encounter. And 22 we've done it. In terms of -- there's not a whole 23 lot. They make it sound like, oh, there's all 24 these documents and we haven't gotten any of them. 25 The document that Mr. Berlin handed to the</p>	<p>Page 71</p> <p>1 search. Lexis-Nexis has a database. Google has a 2 database. They're a news organization. I assume 3 they know how to get news stories. And we're not 4 hiding anything. It's -- those types of things 5 are available. 6 I think a key point here is that when they're 7 asking for discovery, that discovery either has to 8 be relevant to what the case is about or it has to 9 lead to -- be reasonably calculated to lead to 10 admissible evidence. I just don't see how the 11 great majority of things that they've moved to 12 compel on are going to lead to admissible 13 evidence. They want everything about his sex 14 life. They want everything about his finances. 15 They want everything about a great number of 16 things, everything about his divorce. Well, it 17 has to lead to admissible evidence. I don't see 18 how any of these things are admissible. 19 In terms of privilege, we haven't done a 20 privilege log because I don't have any 21 privilege -- there are no privileged 22 communications that I'm aware of -- and I've asked 23 for them and I've done everything I can to find 24 them -- other than communications that happened 25 after litigation counsel was retained to fight</p>
<p>Page 70</p> <p>1 Court and to me, last page of it is page 669. So 2 we've produced at least 669 pages of documents. 3 And I think that we produced another hundred pages 4 or so on top of that. So we're talking close to 5 800 pages of documents that we've produced. When 6 he first came up, he said that there were 17 7 documents that we produced. It was something like 8 800 pages. 9 Somebody who is taped against their will and 10 against their knowledge, they're not going to have 11 a lot of documents. I'm surprised that we had as 12 much as we did. Hulk Hogan doesn't do e-mail. 13 And so it's not that there was much in the way of 14 e-mail. 15 In terms of communications that he's had, he 16 went on a -- he did do some press things, but we 17 don't have any documents about his interview that 18 he did. But you can get all that from a Google 19 search if you -- and so when we say it's -- what's 20 the term for it -- mutually available or equally 21 available, we don't keep press stories. 22 Hulk Hogan doesn't. He has a publicist who is a 23 very, very limited publicist. He does not keep 24 press stories. No one keeps press stories on our 25 side. If they want press stories, they can do a</p>	<p>Page 72</p> <p>1 this case. So -- and Mr. Berlin and I have an 2 agreement that we're not going to put every 3 communication, because it's endless, on a 4 privileged log. If what they're asking for is 5 communications between Bubba Clem's counsel and my 6 office regarding the settlement, we'll put those 7 on a privilege log. It's already been put on a 8 privilege log by Bubba's counsel. I'm happy to do 9 it. I wasn't aware that they were seeking that, 10 but I'm happy to do it if they're seeking it. 11 One of the things, documents relating to 12 Hulk Hogan's public appearances, well, he's a 13 public person and he goes out in public. So every 14 time he walks down the street or drives somewhere, 15 I mean, I'm not going to produce documents of 16 every time he goes anywhere, every time he talks 17 to anyone, every time he's interviewed. I mean, 18 sometimes he's interviewed probably six -- six 19 times in a day. Again, we don't keep these 20 documents. A lot of this stuff is not reasonably 21 calculated to lead to admissible evidence. 22 Mr. Berlin said that Jennifer Bollea 23 submitted a declaration that said a variety of 24 things, a lot of information, and she lived 25 through this. She had a very short paragraph, and</p>

<p>Page 73</p> <p>1 it said, every time we go out in public, people -- 2 I don't know if it said every time -- but when we 3 go out in public, people come and ask us as a 4 family about this sex tape, and that is causing a 5 lot of distress to Mr. Bollea and to the family. 6 That's all she said. I don't see why it takes 7 more than two hours to ask her about that. If 8 they're going to ask her about every single 9 instance that happened, I don't know that she can 10 remember two hours' worth. But I think there 11 should be a reasonable limitation.</p> <p>12 And, Your Honor, I think your idea about a 13 special magistrate is a good one. I think that it 14 would be good to have somebody who's there who can 15 be the referee and to say this is fair game and 16 this is out of bounds.</p> <p>17 As far as the videotaping of the depositions, 18 we did videotape their depositions, but we're not 19 a media company. It wasn't until Bubba Clem filed 20 a motion for protective order asking that his 21 videotape -- his deposition not be videotaped that 22 that's when I came up with the idea -- not my own 23 thought, though -- that that's a good idea for 24 Hulk Hogan. And the reason that was put into that 25 motion -- again, by Bubba Clem's counsel -- is</p>	<p>Page 75</p> <p>1 MR. BERLIN: There's a -- if I may, 2 Your Honor, just briefly. There was a -- 3 Mr. Harder served discovery on Ms. Clem which she 4 answered in a somewhat abbreviated fashion. We 5 were of the view in reading the Florida rules that 6 we would not be in a position to move to compel 7 based on discovery that had been served by 8 somebody else. So we served the same discovery 9 and added a few document requests on top of that, 10 but most of it's the same discovery. We haven't 11 gotten response to that. So we're not able to -- 12 we could have just sent an order to Your Honor 13 saying there's no response and issue an order 14 without notice, but Mr. Cohen said he was working 15 on this. So we figured we would cue that up for 16 today. We still don't have answers, and Mr. Cohen 17 and I spoke about that yesterday. And I 18 understand that he's in the process of putting 19 together more forthcoming answers to that 20 discovery.</p> <p>21 THE COURT: Is her deposition also scheduled 22 for November 11th?</p> <p>23 MR. BERLIN: That week. It's the 13th of 24 that week.</p> <p>25 THE COURT: Same time frame.</p>
<p>Page 74</p> <p>1 that they're a media organization and they publish 2 celebrity gossip and this is something that they 3 would want to and be inclined to post. It just 4 makes sense for all of the Bollea witnesses that 5 their depositions should not be videotaped. And 6 if they are videotaped, then the videotape should 7 be kept with the Court and not distributed out, 8 because I can just imagine what's going to happen. 9 And I know Mr. Berlin made a representation, but I 10 don't -- it would really surprise me if excerpts 11 of the deposition didn't end up on the Internet. 12 It wouldn't surprise me if that were to happen. 13 The only sure fire way of ensuring that it doesn't 14 end up on the Internet is that the depositions not 15 be videotaped.</p> <p>16 And I've lost my train of thought. But if 17 you have any questions, Your Honor, I'm happy to 18 answer them.</p> <p>19 THE COURT: Thank you.</p> <p>20 Mr. Cohen, do you have anything to add at 21 this point? Mr. Cohen, let me ask you, is there 22 in this stack of stuff a motion -- I think it was 23 a motion of Mr. Berlin. I think there's a motion 24 to compel Ms. Clem of something in here.</p> <p>25 MR. COHEN: Right.</p>	<p>Page 76</p> <p>1 MR. BERLIN: Same time frame, yes, 2 Your Honor.</p> <p>3 THE COURT: Thank you, Mr. Berlin. 4 Mr. Cohen?</p> <p>5 MR. COHEN: Thank you very much, Your Honor. 6 Let me just share with you the posture of this 7 case as I see it.</p> <p>8 We have been sued by Mr. Bollea. We have 9 filed a motion to dismiss about a year ago, I 10 think, which we believe to be a very tenable 11 motion. And for whatever reason, Mr. Bollea has 12 not set it for hearing. And perhaps we probably 13 should have since that didn't occur. Usually once 14 that motion to dismiss is filed, usually the 15 defendant would want to get rid of it and move on 16 with the case, but they haven't done that and we 17 haven't addressed it perhaps to set the motion and 18 get it heard. We probably should have, but we 19 didn't.</p> <p>20 In the meantime, the litigation has been 21 going on primarily between the plaintiff, 22 Mr. Bollea, and the defendant, Gawker. And I've 23 really taken a back seat in this litigation. It's 24 been very aggressive. It's been very 25 confrontational. Frankly, I didn't think that it</p>

<p>Page 77</p> <p>1 was necessary for me to become involved in it. We 2 don't have the resources that either one of those 3 people do, and we just decided we were going to 4 sit back, see what happened, and then when it came 5 time to really get serious about this matter, that 6 she was going to be in the case, then we would do 7 what we had to do.</p> <p>8 The fact of the matter is that as recently as 9 two weeks ago, I spent a great deal of time 10 talking with Gawker's counsel about resolving the 11 case. It was conditional on Mr. Bollea agreeing 12 to it and letting us out of the case. Mr. Bollea 13 did not do that. So those discussions fell short. 14 And I didn't respond to these interrogatories, 15 frankly and honestly, because I felt that the 16 original responses to Mr. Bollea were really -- 17 were really pretty typical of what you see 18 unfortunately day in and day out in these 19 proceedings when you're talking about them being 20 unduly burdensome and delay and all these -- all 21 these obstructionist type of responses. And I 22 decided that if we got out of the case that there 23 wasn't any reason to put the kind of information 24 that they were requesting in the public record. 25 And I was hoping not to have to put that in a</p>	<p>Page 79</p> <p>1 We're willing to answer any of the -- any of the 2 interrogatories that involve the case, the facts 3 of the case that they're asking about here. 4 Whether -- who she had sex with previously and who 5 knew about it and who -- whether it was recorded 6 and all these other documents, I -- I think that 7 her right to privacy certainly outweighs any 8 probative value that those -- that those tapes -- 9 that those answers may have.</p> <p>10 So what I intend to do is I intend to go 11 ahead and give them all the information involving 12 the actual interrogatories dealing with the case 13 that they're asking about. I intend to file 14 whatever I need to file to stop us from having to 15 release all of those issues with people -- the 16 identity of people that were involved in a prior 17 sexual relationship that she's had with people at 18 the request of her then husband. And I'll file 19 whatever we have to file if they want to push 20 that. If they're going to go into those types of 21 questions at the deposition, then we're going to 22 object to it. And then I guess we'll have to deal 23 with it at that time or another day.</p> <p>24 The deposition of Mr. Clem, Bubba The Love 25 Sponge Clem, I intend to take his deposition</p>
<p>Page 78</p> <p>1 public record because of the fact it involved 2 very, very private matters to Ms. Clem involving 3 her prior sexual relationships at the behest of 4 her husband then. And it involved a lot of other 5 people whose lives could be ruined by putting 6 those names in a public record. And I really -- 7 and I told this to Mr. Berlin when we talked about 8 it, that I really didn't want to have to do that. 9 And I told him that we would -- if we could settle 10 this case -- and we were pretty close to getting 11 that done, but we couldn't get it done because -- 12 because Mr. Bollea's counsel had to go along with 13 it, and they did not. So that was about two weeks 14 ago.</p> <p>15 So it came down to -- I know that the 16 depositions are set in a couple weeks. I promised 17 Mr. Berlin that this -- putting this off to -- for 18 the reasons that I've just stated, I did not think 19 it was fair to put him in a position of prejudice 20 because he's certainly entitled to information. 21 And the fact that I may have had a good reason for 22 not responding didn't game-save the fact that he 23 was entitled to the responses that he asked for.</p> <p>24 Where we are now, Your Honor, is that we do 25 not believe that -- well, let me put it this way.</p>	<p>Page 80</p> <p>1 probably for a couple days. I'm not so concerned 2 about Mr. Bollea, but I would certainly object to 3 any -- any restriction of the time or hours that 4 we have to take depositions. The interest of 5 the -- the interest of these two parties, 6 Mr. Bollea and Gawker, are totally -- not totally, 7 but to some extent different than the issues I 8 have with Mr. Clem, and I expect to spend a lot of 9 time with Mr. Clem.</p> <p>10 The dilemma that I have to deal with that I 11 haven't fully thought through, to be quite candid 12 with the Court, is I know I can't have my cake and 13 eat it, too. If the Court is going to compel us 14 to get into prior sexual conduct with third 15 persons other than Mr. Bollea, then I'm going to 16 be required to -- I'm going to spend a lot of time 17 with Mr. -- with Mr. Clem. If that's not the 18 case, then I don't need to spend as much time with 19 him as I -- as I perhaps would otherwise.</p> <p>20 THE COURT: Well, let me ask, is Mr. -- I was 21 looking for a letter that I think that Mr. Thomas 22 sent me.</p> <p>23 Who all's depositions are coming up on the 24 11th?</p> <p>25 MR. COHEN: Bubba The Love Sponge I</p>

<p>Page 81</p> <p>1 understand is scheduled. 2 THE COURT: He is scheduled? 3 MR. COHEN: I'm sorry. He is scheduled. I 4 understand that his attorney has advised all 5 counsel that he's not going to be made available 6 because Mr. Diaco, who is his counsel, is in 7 another trial. I don't know whether that's 8 changed. I haven't been keeping up with these 9 vociferous e-mails that have been going back and 10 forth. 11 MR. BERLIN: That's in part right, 12 Your Honor. 13 THE COURT: It's plaintiff, Mrs. Clem -- or I 14 guess they're divorced now -- and -- 15 MR. BERLIN: Mr. Clem and Jennifer Bollea. 16 Mr. Clem is -- 17 THE COURT: Linda Bollea? 18 MR. BERLIN: Yeah. Mr. Clem was -- Mr. Clem 19 is -- his counsel was unavailable due to trial 20 today, but he's not in trial the 11th, which is 21 when the deposition was noticed and subpoenaed 22 for. And we have told him for about two months 23 now that if he proposes another date that's 24 agreeable to the other counsel, we would release 25 him. But he has not done that. So we would</p>	<p>Page 83</p> <p>1 blood that developed as a result of that and he 2 disqualified himself in that case -- all my cases. 3 And I would be concerned about his ability to be 4 objective in rulings. I would ask the Court 5 because of that, I think it would be unfair to my 6 client to be subjected to that sort of concern. 7 THE COURT: Well, I will say this, though. 8 MR. COHEN: But if you had the ultimate say 9 so -- in other words, if he gave some ruling and 10 if we didn't -- if he said, for example, that she 11 had to answer that question and I said she's not 12 going to answer that question and if we certify 13 that to Your Honor, then as long as I know 14 Your Honor would be making rulings, then -- then 15 it's moot. But if I'm going to be bound by his 16 rulings just like if he were a judge in these 17 circumstances, I would not permit him to be the 18 judge in the case if I could help it. 19 THE COURT: Well, let me say this. 20 Mr. Turkel, did you want to say something 21 before I go off on one of my tangents? 22 MR. TURKEL: Judge, just because I caucused 23 with Mr. Cohen, I understand Mr. Cohen's position 24 completely. 25 My concern would be this. I think the bulk</p>
<p>Page 82</p> <p>1 actually plan on proceeding on that date unless 2 the Court tells us something different. 3 THE COURT: Well, I think, though, a lot of 4 my rulings -- and let me just say this, because I 5 think you're spending some time trying to 6 anticipate what my rulings are. I would rather 7 spend the last -- our last minutes or so -- let me 8 give you some of my rulings, and I think they 9 would apply to Mrs. Clem. And I don't really see 10 anything here pertaining actually to Mr. Clem. So 11 if we get to that point in time, then we'll deal 12 with it at that point. 13 MR. COHEN: I would like to just mention one 14 thing, Your Honor. 15 THE COURT: Okay. 16 MR. COHEN: I don't know what your ruling 17 would be as far as this special magistrate. And I 18 don't mean to be disrespectful. 19 THE COURT: Go ahead. 20 MR. COHEN: When Judge Case was on the bench, 21 I had an occasion to disqualify him based on the 22 fact that he didn't disclose that his wife was a 23 lobbyist for Florida Power trying to get rid of 24 punitive damages after he kept denying my motion 25 for punitive damages. And I -- there was some bad</p>	<p>Page 84</p> <p>1 of where a magistrate is really going to be 2 involved is going to be as it affects us and 3 Gawker. And in that respect, I think Judge Case 4 could be somewhat uniquely outfitted just because 5 he's -- he's always been in my opinion very 6 strong-willed and can handle the personalities. 7 But I understand Mr. Cohen's position. 8 MR. COHEN: I have no problem with that, 9 Judge. I think Mr. Turkel is right. But when it 10 comes time for me taking Mr. Clem's deposition or 11 my client's deposition being taken and they're 12 starting to try to go into a lot of this 13 foolishness that they've been talking about today, 14 then that's not going to happen. 15 THE COURT: Well, let me say this. We get 16 motions to disqualify just about every week, and I 17 am so beyond being fed up with some of the stuff 18 because some of the motions to disqualify say I'm 19 sleeping with somebody else's wife, I mean, just 20 so -- 21 MR. COHEN: Whose wife? 22 THE COURT: Somebody else's wife. My husband 23 would be shocked to hear about it. So it is -- I 24 think when somebody files a motion to disqualify, 25 there is a high burden to say the truth. The</p>

<p>Page 85</p> <p>1 judge is not allowed to comment on the truth or 2 the untruth of it. So I think when a lawyer 3 certifies his name there that they have a burden 4 to determine that the allegations are actually 5 true, not something that happens in a hearing. 6 Oh, my gosh, she yelled at me or whatever. You 7 know, that's -- or she ruled against me, something 8 like that. That's all fair game. But when they 9 start putting things in there that are just flat 10 out wrong, it just throws me over the edge to the 11 point that I've asked ABOTA to please look at 12 changing the rules on some of that because some of 13 the stuff that goes in these motions to disqualify 14 is just disgusting.</p> <p>15 So that being said, Janice Case was not a 16 lobbyist for Florida Power. My husband was the 17 vice president of Florida Power, and it was only 18 his department that had anything to do with public 19 affairs and the governmental agencies. 20 Janice Case was an officer for the company. And 21 so, yes, that -- but she was not a certified 22 lobbyist. So things were going into the paper -- 23 into these motions. I don't know anything about 24 that. I really don't want to go down that rabbit 25 trail. But I have found that Judge Case, I think,</p>	<p>Page 87</p> <p>1 bites at the apple and it gets to be ridiculous. 2 MR. COHEN: I understand, Your Honor. 3 THE COURT: Thank you. 4 So if there was some kind of problem, I would 5 not want this case to be side railed into some 6 other issue. Recently a judge sent me a message, 7 not from here, that somebody had made some comment 8 that I was -- on these motions to disqualify -- I 9 don't know if I've forgotten who they were or that 10 I was forgiving or some -- I was nice to people 11 when they came back. Sometimes maybe that is too 12 much the point. But it's just -- 13 MR. COHEN: Well, Judge -- 14 THE COURT: I'm sure Judge Case, I would 15 imagine, has probably forgotten all about that. 16 MR. COHEN: If I knew your husband was 17 affiliated with Florida Power, I can assure you I 18 would have never brought that subject up. 19 THE COURT: He retired many years ago. He 20 retired eleven years ago. 21 MR. COHEN: It just shows if you don't do 22 your homework about the judge -- 23 THE COURT: When we were coming in and I was 24 unlocking the door, you said, oh, are you the 25 judge? I didn't even know. So that's all right.</p>
<p>Page 86</p> <p>1 would be uniquely suited in this. Some of our 2 other, quite frankly, either retired or more 3 senior judges would not want to be spending their 4 time on this case. They would choose a different 5 type of a case than this particular one. I think 6 that Judge Case would be a good person to, as 7 Mr. Turkel put it, handle the personalities and 8 handle the subject matter in the legal, dignified 9 way that it should be handled. Because in these 10 types of cases, they actually make law that the 11 rest of us then have to live with later on down 12 the road. So you want to make sure that it is 13 properly preserved, that the ruling, that 14 everything -- we have a good transcript for 15 things. And any time a special magistrate is 16 appointed, they're appointed subject to the 17 rulings of the Court.</p> <p>18 So I think that responds to your thing. But 19 I will tell you this. In other cases that I've 20 appointed a number of different special 21 magistrates, if there's a lot of time spent with a 22 special magistrate, I don't intend to be 23 second-guessing them and have whole days worth of 24 hearings to go through some of that other stuff. 25 So that truly is a waste because it's like two</p>	<p>Page 88</p> <p>1 MR. COHEN: Well, Judge, you were in the 2 distance when you were going to the bathroom in 3 that speech I gave. I didn't -- I think that's 4 the only thing I saw was your back. 5 THE COURT: Oh, that was the Bar meeting that 6 you're talking about when you were the speaker. 7 MR. COHEN: Right. You walked out on me and 8 I thought you were going to the bathroom, and I 9 said, wait a minute. 10 THE COURT: I was going back to court. 11 MR. COHEN: Anyway, Judge, I don't have 12 anything else. 13 THE COURT: Anything else briefly? 14 Otherwise I'm prepared to give some 15 parameters. 16 MR. BERLIN: Very briefly. 17 I just wanted to say with respect to 18 Judge Case, Your Honor, I'm at somewhat of a 19 disadvantage because I'm not from these parts. So 20 I'm a little bit hesitant to agree, including now 21 that I have an understanding how that would work. 22 So if the Court is inclined to do that, I would 23 like to do a little bit of homework and then just 24 get back to you. 25 THE COURT: The only thing is, November 11th</p>

<p>Page 89</p> <p>1 is your deposition. 2 MR. BERLIN: I can do it quickly. 3 THE COURT: And I don't know what his 4 schedule is. And if his schedule is something 5 that would delay it, then we can address that 6 differently. 7 MR. BERLIN: Right. 8 The only other thing I wanted to say was just 9 to correct one legal point that Mr. Harder made. 10 I think that what I said about the facts of the 11 case and the need for the different things is -- 12 and the need to be able to defend ourselves -- 13 there are things I could say, but I won't -- but 14 the Olges case which talks about emotional 15 distress, in that case, the plaintiff had 16 withdrawn all claims for emotional distress. And 17 the case says, once Mr. Olges abandoned his 18 original efforts to recover damages for mental 19 anguish, emotional distress, and other emotional 20 damages, then his mental condition ceased to be in 21 controversy. 22 That's not this case. And so I would 23 respectfully submit that that was, you know, not a 24 proper recitation of what the case holds. And I 25 just wanted to be clear on the record about that.</p>	<p>Page 91</p> <p>1 let's say five-hour time frame. 2 MR. HARDER: Half day? 3 THE COURT: If I say half day, some people 4 may think that's 9:00 to 12:00. 5 MR. HARDER: I understand, but -- 6 THE COURT: That's why I'm saying five. 7 MR. HARDER: You said half hour. 8 THE COURT: Oh, okay. I'm sorry. I'm sorry. 9 Five hours. So no more than five hours. The same 10 with Linda Bollea; it should be no more than five 11 hours without either agreement of the parties or 12 further Court order. 13 The deposition of Heather Clem, no one has 14 really addressed has aspect of it. Perhaps when I 15 sort of narrow some of the scope, that may be an 16 aspect. So why don't we just get the -- if 17 there's an issue pertaining to Heather Clem, then 18 I'll address that. 19 For purposes of the deposition, interrogatory 20 responses, requests for production, and any other 21 kind of discovery, the medical records of 22 Mr. Bollea, the plaintiff's objection is 23 sustained. 24 For purposes of financial records of the 25 plaintiff, tax returns, whoever -- the names of</p>
<p>Page 90</p> <p>1 THE COURT: Okay. Thank you. All right. So 2 since we have mostly treated these by topics, I'm 3 just going to give the topic and then my ruling as 4 to the topic as opposed to going down motion by 5 motion. I'll let you all figure how is the best 6 way to prepare the orders on this. 7 The depositions of the plaintiff, Jennifer 8 Bollea, and Linda Bollea will be permitted to be 9 videotaped, which is then denying the primary or 10 the first request of the second plaintiff's motion 11 for protective order; however, granting the 12 alternative, which is they would be videotaped 13 under seal, not to be disseminated to anyone other 14 than the attorneys representing these specific 15 parties without further order of the Court. And 16 there's to be no further dissemination beyond the 17 attorneys representing the parties specifically in 18 this case without further order of the Court. 19 The deposition of the plaintiff, Mr. Bollea, 20 will be permitted to take place over two days. 21 Any further time frame than the two days would 22 need to have Court approval or at the agreement of 23 parties. 24 The deposition of Jennifer Bollea will be 25 permitted to take place over a one half hour -- or</p>	<p>Page 92</p> <p>1 the people that prepare his taxes, any of those, 2 the plaintiff's objection is sustained. 3 Let me back up. As far as the medical 4 records, that includes the names of all of 5 Mr. Bollea's physicians. 6 The divorce proceeding, information regarding 7 the divorce proceeding, as far as Mr. Bollea, the 8 plaintiff's objections are sustained. 9 As it pertains to Mr. Bollea, or for that 10 matter, Ms. Clem's sex life, the questions that 11 the Court would determine to be relevant are only 12 as it relates to the sexual relations between 13 Mr. Bollea and Ms. Clem for the time frame 2002 to 14 the present, which was the time frame related I 15 believe in the request, 2002 to the present, but 16 the other additional -- for example, interrogatory 17 No. 4, interrogatory No. 5, No. 6, No. 7, No. 8, 18 No. 9, the objections by the plaintiff are being 19 sustained. So questions pertaining to like, for 20 example, interrogatory No. 10, identify any and 21 all times you discussed having sexual relations 22 with Heather Clem and her husband, Todd Alan Clem, 23 during the relevant time period stating for each 24 time the date, approximate time, location, and 25 substantive discussion, the objections would be</p>

<p>Page 93</p> <p>1 overruled. Plaintiff's objections would be 2 overruled. So as it pertains to the three -- and 3 I guess we really need to include Mr. Clem in that 4 aspect -- those three parties are fair game for 5 questions as it pertains to each other. 6 Is that pretty clear? I think that pretty 7 much gives guidance as to all the different 8 interrogatories globally as to the sex life aspect 9 of it. 10 Do you think so, Mr. Berlin? 11 MR. BERLIN: If I may ask just a clarifying 12 question. In the questioning you had an exchange 13 with Mr. Harder about, if we're going to limit 14 proof on emotional distress and we're going to 15 limit proof on economic damages, which I 16 understand your ruling to do, then there would be 17 limits on proof at trial. I wanted to -- in an 18 effort not to run afoul of the Court's ruling and 19 to understand how we should prepare our case, I 20 want to understand what the appropriate -- you 21 know, what that would look like at trial so that 22 we can prepare and get the information we need, 23 but not overstep the bounds of the Court's ruling. 24 THE COURT: I think some of that is going to 25 have to come up later on and maybe even more</p>	<p>Page 95</p> <p>1 well. There is an interrogatory -- I think 2 No. 12, but I may be mis-recalling that -- that 3 asked for the plaintiff to set forth his theories 4 of damages. We have no sort of meaningful answer 5 to that. It would seem to me that the first step 6 in going down the road that Your Honor just 7 outlined would be to do that. 8 THE COURT: I think that's a good idea. 9 MR. BERLIN: Then we can bring the motion 10 that you just described so that we're all on the 11 same page and we won't have these problems. 12 THE COURT: I think you're right. In 13 interrogatory No. 12, it says, identify any and 14 all damages purportedly suffered by you as a 15 result of alleged actions by the Gawker defendant 16 and then explain with particularity the basis for 17 your calculation of such alleged damages. So I'm 18 thinking that -- 19 MR. HARDER: We gave them a supplemental 20 response to that. 21 THE COURT: You did? 22 MR. BERLIN: I don't believe there's any 23 supplemental response to that, Your Honor. We got 24 a supplemental response to document requests. We 25 have no supplemental response to that.</p>
<p>Page 94</p> <p>1 specific, because you mentioned a number of things 2 today that I think would be fair game for you to 3 know, especially for purposes of trial. But -- 4 and I guess maybe, Mr. Harder, you made the offer 5 to give you a deadline for any contracts or 6 events. It seems as though today in your oral 7 presentation, you have significantly eliminated a 8 number of theories of damages. So with that being 9 said, that then sort of eliminates a lot of the 10 areas of inquiry on the -- for the defense. So 11 I'm thinking that maybe comes about later on in a 12 motion for limine. They don't give you any of the 13 information, so therefore, they're not allowed to 14 now bring it up during trial. But, on the other 15 hand, if Mr. Bollea is saying, I was under severe 16 stress because of this, and, Mr. Berlin, you find 17 out, well, yeah, he was under stress because he 18 was also going through a divorce and some of these 19 other areas, I think I would rather see those more 20 accurately framed in a motion that I could 21 specifically rule on prior to a trial. 22 Does that make sense? 23 MR. BERLIN: I think it makes a lot of sense, 24 Your Honor. And perhaps it's implicit in the 25 Court's ruling, but I want to clarify this as</p>	<p>Page 96</p> <p>1 MR. HARDER: I may be mistaken. 2 THE COURT: Mr. Harder will look at it. If 3 he can give that to you let's say prior to 4 November 11th or whenever the deposition is 5 scheduled, that would be helpful. Is his 6 scheduled on the 11th? 7 MR. BERLIN: I believe he's the 12th, 8 Your Honor. 9 THE COURT: Okay. So perhaps you could give 10 that response by the 8th, which is the Friday 11 before. 12 MR. HARDER: I will. 13 THE COURT: Okay. Anything else that I can 14 give clarification on? 15 MR. COHEN: Yes, Your Honor. The deposition 16 of Mr. Clem, is it my understanding that he's not 17 going to show up on the 11th or is he -- 18 MR. BERLIN: His lawyer is saying he's not 19 available, but we have for two months asked for a 20 different day and said, look, we'll release you on 21 that day if you give us a different day. We 22 haven't. I would ask the Court to authorize us to 23 proceed because we have counsel coming in from all 24 over the country. 25 THE COURT: It seems to me like it's</p>

<p>Page 97</p> <p>1 proceeding. If there's some problem or he doesn't 2 show up, then somebody will file something and let 3 me know and I can hear it at that point in time. 4 Nobody is hear asking for me to limit his 5 deposition. 6 I will say that I think that the testimony -- 7 or the questions, the sex life questions, I'm 8 including him in the group of everybody with the 9 others. 10 MR. COHEN: Well, Your Honor, I may intend to 11 ask him -- because what my concern is in this 12 trial, right now we have not filed a cross claim 13 against Gawker. So that really is a moot issue at 14 the present, but it's likely not to stay moot if 15 we stay in this case. And so at trial, one of the 16 things that I'm going to have to deal with is 17 going to be why this woman would engage in this 18 sexual conduct with Mr. Bollea just at the urging 19 of her husband. And there's a lot of dynamics 20 that go into that that I'm going to have to deal 21 with. And they're going to deal with over a 22 period of time sexual conduct dealing with third 23 persons, although they won't have to be named. 24 That's why I indicated to the Court that I was 25 going to be taking a while with Bubba depending on</p>	<p>Page 99</p> <p>1 and -- 2 MR. COHEN: Judge, I have a deposition at one 3 o'clock in the other case that we were here on 4 this morning, in Tampa. 5 THE COURT: We'll see you later. Thank you, 6 Mr. Cohen. 7 (Mr. Cohen exited the courtroom.) 8 THE COURT: How about, look at -- what about 9 Thanksgiving week? Is that problematic? I have a 10 hard time giving that week away, but if it's 11 problematic, those are three good days that I 12 generally have some time. Other than that, we're 13 looking for large blocks of time, and I want you 14 to get through the depositions first. 15 MR. HARDER: Is Thanksgiving the 28th? 16 THE COURT: Yes. Or I'm going to be here all 17 day December 23rd, 24th, 26th, and 27th. I'm duty 18 judge. 19 MR. BERLIN: I'm sorry for Your Honor. 20 MR. THOMAS: Lucky drawing. 21 THE COURT: So I'll be here all that week, 22 too, except for Wednesday. 23 MR. TURKEL: Judge, the only thing perhaps 24 stranger than that is Judge Dubensky down in 25 Manatee set me on a trial docket January 2nd</p>
<p>Page 98</p> <p>1 his attitude. If he plays games and answers the 2 questions correctly, then we may not take as much 3 time, but if he's doing the dance with me, then we 4 may -- I expect we're going to be a while. I 5 think that first day, even if he shows up, I think 6 they're going to be with him probably the entire 7 day and we'll have to reset his deposition for 8 another day. 9 THE COURT: It seems to me that it may be 10 premature at this point in time since there isn't 11 a counterclaim. So I don't know that the rulings 12 could be narrow enough for that. And if there 13 needs to be a separate deposition once a 14 counterclaim is filed, then we'll deal with that 15 at that point in time. 16 MR. COHEN: Thank you, Judge. 17 THE COURT: Thank you. 18 Anything else. 19 MR. BERLIN: I realize our time has run out. 20 We had a couple other motions noticed. 21 THE COURT: I think we have to reschedule 22 that. 23 MR. BERLIN: I was going to ask while we're 24 all here if we might schedule that. If you prefer 25 not to do that, we can certainly work it out</p>	<p>Page 100</p> <p>1 sua sponte. So I'll be getting ready for trial 2 that week. 3 THE COURT: Otherwise, look at like January 4 15th. I have all day. January 17th. 5 MR. TURKEL: I'm good on the Thanksgiving 6 week. 7 MR. BERLIN: Maybe -- 8 MR. HARDER: Is it Tuesday of Thanksgiving 9 week? 10 THE COURT: It used to be really hard to get 11 on my calendar, but I just lost about 2,000 cases 12 in foreclosure that went to a specific division 13 set up. So it's really much easier to get on my 14 calendar now. 15 MR. BERLIN: Congratulations. 16 MR. TURKEL: Is that Judge Minkoff? 17 THE COURT: Yes. So his division in 18 Clearwater is ultimately collapsing at the end of 19 the year. 20 MR. TURKEL: So he's in there until December? 21 We were talking about that after our hearing 22 yesterday. 23 THE COURT: He's here until further order of 24 the Court. 25 MR. TURKEL: So that division has or hasn't</p>

<p>Page 101</p> <p>1 opened yet?</p> <p>2 THE COURT: It started in September.</p> <p>3 MR. TURKEL: So his previous cases are being</p> <p>4 heard by?</p> <p>5 THE COURT: Judge Jirotko until the end of</p> <p>6 the year. Then those -- his cases are going to</p> <p>7 the other division.</p> <p>8 MR. TURKEL: That's what Judge Schaefer told</p> <p>9 me. I thought they decided to do that, then</p> <p>10 changed their mind.</p> <p>11 MR. BERLIN: Your Honor, we were just talking</p> <p>12 amongst ourselves while you were talking to Mr.</p> <p>13 Turkel. Would Monday the 25th in the afternoon be</p> <p>14 possible?</p> <p>15 THE COURT: I have a half day nonjury trial</p> <p>16 starting at 1:30. I have a suspicion that that's</p> <p>17 probably going to go away, but right now it's</p> <p>18 still there.</p> <p>19 MR. THOMAS: Could we tentatively schedule</p> <p>20 it, Your Honor?</p> <p>21 THE COURT: It's just -- how are we going to</p> <p>22 find out if it's going away or not going away?</p> <p>23 That becomes a little problematic. The afternoon</p> <p>24 of the 26th, I have a class action all that</p> <p>25 afternoon.</p>	<p>Page 103</p> <p>1 Some of them are involving the substance of the</p> <p>2 case, and we actually thought it might promote</p> <p>3 judicial economy to bring those on for a hearing</p> <p>4 after the appeal is heard that's pending in the</p> <p>5 DCA on the temporary injunction and decided. One</p> <p>6 of those is a jurisdictional motion about the</p> <p>7 parent of Gawker Media. That can actually be</p> <p>8 heard even before the DCA rules.</p> <p>9 THE COURT: Okay.</p> <p>10 MR. BERLIN: And I can attach -- if it's</p> <p>11 limited to that, I actually think we'll only need</p> <p>12 a couple of hours, not a whole day.</p> <p>13 THE COURT: Okay. I was sort of thinking --</p> <p>14 listening to the argument today, I was thinking</p> <p>15 maybe not, but a motion to bifurcate the</p> <p>16 injunction versus the damages, I wasn't sure if</p> <p>17 that would be -- before today, I was thinking that</p> <p>18 would be helpful. After today and hearing more</p> <p>19 about some of the different damages, I thought</p> <p>20 maybe it wouldn't be, but I throw it out there in</p> <p>21 case you all think it would be.</p> <p>22 MR. BERLIN: Well, we have also -- at</p> <p>23 Your Honor's suggestion, if the damages are</p> <p>24 limited, we might try to bring on the motion in</p> <p>25 limine that Your Honor alluded to just so that we</p>
<p>Page 102</p> <p>1 MR. BERLIN: Could we do Monday morning</p> <p>2 instead?</p> <p>3 THE COURT: Certainly. You can do Monday --</p> <p>4 have all of Monday morning, and then if 1:30 goes</p> <p>5 away, then we'll do the afternoon.</p> <p>6 MR. BERLIN: It would actually be</p> <p>7 substantially better for the counsel who are</p> <p>8 traveling if the thing goes away in the afternoon</p> <p>9 for us to have the afternoon, but if not, we can</p> <p>10 do the morning.</p> <p>11 THE COURT: Well, let's go ahead and schedule</p> <p>12 it and notice it for -- you can come in the night</p> <p>13 before, Sunday night.</p> <p>14 MR. BERLIN: We'll either come in Sunday</p> <p>15 night or potentially Monday morning if it's the</p> <p>16 afternoon.</p> <p>17 THE COURT: Okay. I'm going to say let's</p> <p>18 start at 9:30 on 11/25. I'm going to say half</p> <p>19 day, but need full day if -- we'll do the motions</p> <p>20 to dismiss -- those motions to dismiss on that</p> <p>21 day. What else?</p> <p>22 MR. HARDER: We have a motion to compel.</p> <p>23 MR. BERLIN: We have a motion to dismiss --</p> <p>24 we actually have several motions to dismiss,</p> <p>25 Your Honor, that have been filed at various times.</p>	<p>Page 104</p> <p>1 have clear guidance and we're not coming, like the</p> <p>2 case you had this morning, where Friday before</p> <p>3 trial, there's some motion in limine that would</p> <p>4 affect discovery and depositions. So we're trying</p> <p>5 to tee this up early.</p> <p>6 THE COURT: Who is going to try to prepare</p> <p>7 the order from today?</p> <p>8 MR. HARDER: I would be happy to.</p> <p>9 THE COURT: Great. All right. So share them</p> <p>10 between Mr. Harder and Mr. Berlin and then send</p> <p>11 them on to me. Don't file them through the</p> <p>12 E-Portal, though, because I'll never see them.</p> <p>13 Just send them to me.</p> <p>14 MR. HARDER: Your Honor, I just had one</p> <p>15 question about the five hours to depose Jennifer</p> <p>16 Bollea and Linda Bollea. In my experience, a half</p> <p>17 day is typically three and a half hours of</p> <p>18 testimony and seven hours is a full day. So five</p> <p>19 hours would be pretty close to a full day. I</p> <p>20 would just ask if they could be limited to three</p> <p>21 and a half.</p> <p>22 THE COURT: Uh-huh.</p> <p>23 MR. HARDER: Okay.</p> <p>24 THE COURT: Only -- you have two defendants</p> <p>25 on there, and knowing Mr. Cohen, he can take up</p>

<p>Page 105</p> <p>1 all five hours. So he's going to have to share 2 some with Mr. Berlin. 3 MR. BERLIN: That's why we noticed them, so 4 we can go first, Your Honor. 5 THE COURT: All right. Thank you all very 6 much. 7 We're back on the record for just one minute. 8 So I would -- I did not mention the special 9 magistrate. I do think that at the depositions 10 themselves, a lot of issues are going to come up. 11 Generally my policy is to try to get me on the 12 phone and just see where my cases are, although 13 during that particular time, I for sure am not 14 going to be available. I'm out of the state at 15 the time. So I would just as soon appoint -- and 16 I'm going to say I'm going to appoint Judge Jim 17 Case. If you all get with him -- and I'll give 18 you his contact information. If you all get with 19 him and find out if he's not going to be available 20 during those time frames, then I can put in 21 somebody else's name, but -- I appreciate 22 Mr. Cohen's concern, but I don't think it's going 23 to be an issue for him. 24 MR. BERLIN: Just one housekeeping thing, 25 Your Honor. I assume it's okay to go back with</p>	<p>Page 107</p> <p>1 REPORTER'S CERTIFICATE 2 3 STATE OF FLORIDA : 4 COUNTY OF HILLSBOROUGH : 5 6 7 I, Susan C. Riesdorff, RPR, CRR certify that I 8 was authorized to and did stenographically report the 9 foregoing proceedings and that the transcript is a true 10 and complete record of my stenographic notes. 11 I further certify that I am not a relative, 12 employee, attorney, or counsel of any of the parties, 13 nor am I a relative or employee of any of the parties' 14 attorney or counsel connected with the action, nor am I 15 financially interested in the outcome of the foregoing 16 action. 17 18 Dated this 31st day of October, 2013, IN THE 19 CITY OF TAMPA, COUNTY OF HILLSBOROUGH, STATE OF 20 FLORIDA. 21 22 Susan C. Riesdorff, RPR, CRR, CLSP 23 24 25</p>
<p>Page 106</p> <p>1 the court reporter and adjust the time when the 2 record is not to be sealed when we stop talking 3 about the document I handed up because I forgot to 4 do that during the hearing. 5 THE COURT: So what are you asking me? 6 MR. BERLIN: We essentially over designated 7 what was under seal. So it is to go back with 8 Mr. Harder's agreement on the specific page and 9 just correct where it should be -- what should be 10 sealed. 11 THE COURT: That's fine. 12 MR. HARDER: You and I can work on that. 13 THE COURT: I don't have any objection to 14 that. 15 MR. BERLIN: Thank you, Your Honor. 16 THE COURT: And I'll enter an order on Judge 17 Case that has all of his information, and then 18 Teresa will be sending that all to you 19 electronically. Is that okay? 20 MR. BERLIN: Yes. Thank you very much. 21 MR. HARDER: Thank you, Your Honor. 22 (Proceedings concluded at 12:31 p.m.) 23 24 25</p>	