

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA

TERRY GENE BOLLEA professionally
known as HULK HOGAN,

Plaintiff,

vs.

Case No. 12012447CI-011

HEATHER CLEM; GAWKER MEDIA, LLC
aka GAWKER MEDIA; GAWKER MEDIA
GROUP, INC. aka GAWKER MEDIA;
GAWKER ENTERTAINMENT, LLC;
GAWKER TECHNOLOGY, LLC; GAWKER
SALES, LLC; NICK DENTON; A.J.
DAULERIO; KATE BENNERT, and
BLOGWIRE HUNGARY SZELLEMI
ALKOTAST HASZNOSITO KFT aka
GAWKER MEDIA,

Defendants.

**PLAINTIFF TERRY BOLLEA'S RESPONSE TO GAWKER MEDIA LLC'S
EXCEPTIONS TO THE REPORT AND RECOMMENDATION COMPELLING
SECOND CORPORATE DESIGNEE DEPOSITION ON ALL TOPICS**

I. INTRODUCTION

Defendant Gawker Media, LLC ("Gawker") is doing everything it can to avoid a second day of deposition. First, Gawker refused to appear for the deposition, thus requiring Mr. Bollea to file a Motion to Compel. The Discovery Magistrate granted that Motion and ordered Gawker to a second day of deposition. Second, Gawker switched to a piecemeal approach, and objected to nearly every topic in the deposition notice, and filed a Motion for Protective Order to prohibit questions regarding each of those topics. The Discovery Magistrate rejected that approach as well by denying the Motion for Protective Order in its entirety, and **overruling each and every objection** raised by Gawker. Third, Gawker now pleads to the Court not to accept the Discovery Magistrate's recommendation, and asks that each of its objections be sustained. Fourth, Gawker

asks that any order of the Court be **stayed** to allow Gawker to bring yet another improper interlocutory appeal to the Florida District Court of Appeal (“DCA”).

Ironically, Gawker chastised Mr. Bollea for seeking what Gawker characterized as a “second bite at the apple,” that is, a second day of deposition. Yet it is **Gawker** that seeks a second bite at the apple, and a third bite, and a fourth bite. There is no apple left.

Gawker should have saved the parties, the Discovery Magistrate and this Court the tremendous waste of time and resources, and simply submitted to the second day of deposition, as the Discovery Magistrate ordered (twice). Instead, Gawker has driven the costs for everyone through the roof, in its quest to avoid Day #2 of its deposition.

At the same time, Gawker has heaped an avalanche of discovery on Mr. Bollea and twenty-five (25) third parties. Gawker wants a “one way street” for discovery, in which Gawker obtains all documents imaginable, and deposes every conceivable witness (some of them **two-day** and **three-day** depositions), all the while **refusing** to allow anywhere near the same level of discovery of its own witnesses, including a second day of deposition for Gawker’s corporate designee (or, in a related discovery motion, a first deposition of the former Editor-in-Chief of Gawker.com: John Cook, who was present at Gawker.com throughout the time that it posted the sex video at issue, and communicated with employees about that subject, and made decisions about the sex video and whether to comply with this Court’s order, and blogged about it).

To date, Gawker has taken **two days** of deposition of Mr. Bollea, and a **third day** is scheduled for April 8; Gawker has taken one day of deposition of Heather Cole; and Gawker served no less than twenty-five (25) subpoenas, and has taken depositions of many of those witnesses, as follows:

1. Bubba Clem (deposed by Gawker for **two days** in March 2014)
2. Elizabeth Rosenthal Traub in New York (deposed by Gawker on March 2, 2015)

3. EJ Media in New York
4. Tony Burton in New York (deposed by Gawker on March 2, 2015)
5. David Rice in Vermont (deposed by Gawker on March 9, 2015)
6. Richard Pierce in St. Petersburg, Florida (deposed by Gawker on Jan. 27, 2015)
7. Dixie Carter in Nashville, Tennessee (scheduled for deposition in April 2015)
8. Jules Wortman in Nashville, Tennessee (scheduled for deposition in April 2015)
9. TNA Wrestling in Nashville, Tennessee
10. David Houston in Reno, Nevada (scheduled for deposition in April 2015)
11. Law Offices of David Houston in Reno, Nevada
12. Ron Howard in Tampa Bay area, Florida (scheduled for deposition)
13. Darren Prince in New Jersey
14. Prince Marketing Group in New Jersey
15. World Wrestling Entertainment in Connecticut
16. Bischoff Hervey Entertainment in Los Angeles, California
17. Keith Davidson in Los Angeles, California
18. Law Offices of Keith Davidson in Los Angeles, California
19. Peter Young in Los Angeles, California
20. Matt Loyd in Tampa Bay area, Florida
21. Ben Mallah in Tampa Bay area, Florida
22. Bay Harbor Hotel and Convention Center, LLC in Tampa Bay area, Florida
23. Cox Media Group in Tampa Bay area, Florida
24. Tech Assets in Tampa Bay area, Florida
25. Marc Hardgrove in Tampa Bay area, Florida

For the reasons discussed herein – as well as the reasons discussed in Mr. Bollea’s deposition notice at issue (**Exhibit A** hereto), Motion to Compel (**Exhibit B** hereto), and Opposition to Gawker’s Objections and Motion for Protective Order (**Exhibit C** hereto) – Gawker’s Exceptions at issue should be **rejected**, and the Discovery Magistrate’s Report and Recommendation compelling Gawker to appear for a second day of deposition, overruling each of Gawker’s objections to the deposition notice, and denying Gawker’s Motion for Protective

Order, should be **adopted** as the Order of the Court.

II. ARGUMENT

In seeking a protective order, **Gawker has the burden** of proving good cause “to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense that justice requires.” Fla. R. Civ. P. Rule 1.280(c).

First, Gawker argues that a second deposition of its corporate designee should be limited to questions about documents and information that had been requested prior to the first deposition but provided thereafter. However, Gawker provides no authority or justification for this position, which Gawker acknowledges was repeatedly rejected by the Discovery Magistrate.

To avoid duplication of discovery, the topics listed in the deposition notice at issue are different from the topics listed in the initial Gawker deposition notice. Mr. Bollea and his counsel are not interested in re-asking questions or wasting time; rather, they just want to obtain discovery from Gawker on the topics in the notice at issue. Therefore, Mr. Bollea requests that the Court overrule Gawker’s exceptions and compel a second day of deposition without Gawker’s artificial limitation.

Second, Gawker asserts that “enumerated” topics are improper. However, Gawker’s Exceptions do not adequately state why the Discovery Magistrate’s Report and Recommendation was improper as to specific objections and topics, only giving a few examples. Again, of 36 deposition topics listed in the notice, Gawker has objected to 21 of them. However, Gawker fails to delineate all of the topics to which it objected in its Exceptions, apparently relying on Mr. Bollea and the Court to go back through all of the previous briefing to decipher Gawker’s position. The Court should not feel compelled to engage in this sort of intensive analysis –

which the Discovery Magistrate has already done and entered a ruling on. Rather, the Court need only recognize that Gawker has no true justification for its objections, and adopt the Discovery Magistrate's Recommendation.

As to the "examples" provided by Gawker, a cursory review of Gawker's arguments demonstrates that the objections are without merit:

- i. Ownership interests in Gawker Media Group, Inc.: Gawker has objected to certain topics on the basis that the Court supposedly ruled that the subject matter of corporate shareholders is out-of-bounds. However, the ruling cited by Gawker from the Court's February 26, 2014 Order (**Exhibit D** hereto) specifically stated that the Gawker objections to those specific discovery requests were sustained **without prejudice**. The Court expressly stated that Mr. Bollea retained the "right to request the subject documents in the future." *Id.* (February 26, 2014 Order at p. 2, ¶ 4). The issue of re-visiting discovery following the initial "without prejudice" ruling has **already been litigated**, both before the Court and the Special Discovery Magistrate, and Mr. Bollea prevailed in both instances. Therefore, Mr. Bollea should be permitted to ask questions of Gawker's corporate witness at the second day of deposition.
- ii. Transactions and Payments by Gawker, GMGI, and/or Kinja KFT: Gawker has objected to certain topics on the basis that the Court supposedly ruled that the subject matter of the identities of "employees or vendors" who are paid "usual and customary obligations" is out-of-bounds. Gawker again tries to take this very narrow ruling completely out of context, and attempts to apply it to nearly every topic related to finances. First, the ruling was for specific, and **unrelated** discovery requests. Second, Gawker conveniently failed to mention the portions of the Court's December

17, 2014 Order (**Exhibit E** hereto) **granting** Mr. Bollea’s motion to compel regarding the finances and corporate structure of Gawker and its affiliated companies (including its sister-company, Kinja KFT, based in Budapest, Hungary, and their same parent, GMGI, based in the Cayman Islands). The Court’s message (following the Special Discovery Magistrate’s recommendation) was clear: **Mr. Bollea is entitled to discovery regarding these topics; they are not off limits.**

- iii. Financial Information of Gawker, GMGI, and/or Kinja KFT: Gawker again states in conclusory fashion that the Court supposedly limited financial discovery, and these items supposedly are entitled to particular protection under Florida law. On the contrary, the Court made no such order, and Gawker fails to cite any law supportive of its position. Moreover, Gawker (again) conveniently ignores the Court’s (and Discovery Magistrate’s) prior rulings **permitting** financial discovery on the basis that the financial information is relevant because Gawker unjustly profited from the exploitation of the sex video at issue. *See Aspex Eyewear, Inc. v. Ross*, 778 So. 2d 481, 481–482 (Fla. Dist. Ct. App. 2001) (citations omitted) (stating that financial records are discoverable because they are relevant when defendant’s profits are at issue).
- iv. Time Period: Gawker argues that the lack of a time limitation on certain topics makes it “extremely difficult for the witness to prepare.” But, Gawker provides no explanation or support. At no point has Gawker ever supplied a declaration stating any undue burden or prejudice that its witness would suffer in having to prepare for any particular topic.
- v. Other Website: Gawker cites to a Hungarian language website operated by Kinja in

Budapest without any explanation as to why this topic is improper. Aside from the fact that the website is only one aspect of this topic, Gawker does not explain how its involvement with this website (if any) is not discoverable. The Court has found that other websites, other than Gawker.com, are relevant in this case. *See, e.g.*, December 17, 2014 Order (**Exhibit E**) at p. 2.

- vi. Kinja's Contacts: Gawker again implies that discovery related to Kinja is off limits. There is no general limitation as to discovery involving Kinja – as shown by the extensive discovery that the Court has ordered Gawker to produce regarding Kinja – and Gawker has no legitimate basis to object to this topic of questioning. The objection therefore should be overruled.

III. CONCLUSION

For the foregoing reasons, Mr. Bollea respectfully requests that the Court overrule Gawker's exceptions and order the deposition of Gawker's corporate designee witness(es) without objection (other than privilege) as to **all** of the topics listed in Mr. Bollea's Notice of Taking Videotaped Deposition. Mr. Bollea also requests that the Court not stay any further proceedings, because the issues raised by Gawker do not justify review by the Court of Appeal. Mr. Bollea also requests an extension on the fact discovery cutoff to allow the deposition at issue to be completed.

DATED: March 18, 2015.

/s/ Shane B. Vogt

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-mail via the e-portal system this 18th day of March, 2015 to the following:

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