

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, *et al.*,

Defendants.

**CONFIDENTIAL SUPPLEMENTAL OPPOSITION TO PLAINTIFF'S EMERGENCY
MOTION TO CONDUCT DISCOVERY CONCERNING POTENTIAL VIOLATION OF
PROTECTIVE ORDER, TO COMPEL TURNOVER OF CONFIDENTIAL
DISCOVERY MATERIALS AND FOR ORDER TO SHOW CAUSE**

Undersigned counsel respectfully file this confidential supplemental opposition on behalf of their clients – Gawker Media, LLC, Nick Denton, A.J. Daulerio (collectively, “Gawker”) – and on behalf of themselves in order to bring to this Court’s attention newly discovered facts that bear on the adjudication of Plaintiff’s Motion.

As explained below, documents produced by the FBI in the FOIA action since Gawker and their counsel submitted their original opposition reveal additional facts that further underscore why the Motion should be denied in its entirety. Because those documents are provisionally designated as “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” (pending plaintiff’s review and designation and pending further challenge by Gawker), they are described in this confidential filing.

Specifically, documents produced by the FBI on August 17, 2015 indicate that, in November 2012, after the video excerpts at issue in this case were published, Bubba the Love Sponge Clem made complaints to the FBI about a group of people who were threatening to release additional sex tape footage. Because the FBI redacted the names of any individuals who

did not sign privacy waivers, the names of the complaining parties have been redacted. Still, the documents make clear that the complaints have to do with threats directed toward Mr. Clem.¹

A. Official FBI Statement of Mr. Clem

The FBI produced a Form FD-302 documenting a statement to the FBI interview by the person principally complaining about the alleged threats. From the context, that person was obviously Mr. Clem. For example, the FBI's official statement identified him as someone with a "radio show" that was at one time broadcast on "Sirius Radio." Conf. Ex. 1-C at 1-2. According to the statement, the FBI asked him "to explain his role in the filming and producing of the sex tapes between his [redacted, presumably "wife"] HEATHER COLE (formerly CLEM) and TERRY BOLLEA, aka HULK HOGAN." *Id.* at 1. In response, he stated that "COLE wanted to sleep with BOLLEA while they were married and further advised COLE was into sleeping with other men and taping the act." *Id.* That same summary describes him as having stated "that he, COLE and BOLLEA all knew that they were being filmed. . . . The camera was not concealed; rather it was a security type camera in the room which fed to the master security unit." *Id.* at 2. He "again advised that the camera was obvious and everyone knew about the filming." *Id.*

B. Official FBI Statement of Stephen Diaco, Mr. Clem's Counsel

The FBI documents also contain another Form FD-302 documenting a statement to the FBI by another person who accompanied Mr. Clem and who made similar complaints on his own behalf to the Bureau. From the context, that person is obviously Stephen Diaco, Esq., widely known to be one of Mr. Clem's lawyers. Specifically, that official statement describes an incident that occurred on "September 28, 2012" in which this person "and two other associates

¹ Although the FBI has redacted the identities, Gawker currently has pending before the federal court a request to provide unredacted versions of the documents produced. We have provided the redacted versions now so that they are submitted promptly to the Court. If unredacted versions are ordered produced, we will submit them upon receipt.

went” to an office in “St. Petersburg” for the purpose of asking someone employed there “to stop posting threatening and intimidating messages on the internet.” Conf. Ex. 2-C at 1. According to his statement to the FBI, the person confronted at his office later “created an entry on his blog” that contained “information regarding the confrontation.” *Id.* The FBI’s latest document production includes a blog post in which the author describes being “paid a visit by Bubba the Love Sponge’s attorney and friend Stephen Diaco” at his “office in Saint Petersburg” on September 28, 2012, and being confronted about alleged threats directed at Mr. Clem. Conf. Ex. 3-C.

C. Mr. Clem’s Complaints Include Threats by the “Sixers” to Release Additional Sex Tape Footage

Mr. Clem’s complaints focused on a group of six people calling themselves the “sixers,” whom Mr. Clem claimed were “harassing and threatening” him online. *See* Conf. Ex. 4-C. Mr. Clem’s concerns about threats and harassment from his online critics have been well documented. *See, e.g.,* Conf. Ex. 5-C (Nov. 23, 2013 *Tampa Bay Times* article describing Mr. Clem’s complaints to law enforcement about those critics); Conf. Ex. 6 (Dec. 13, 2012 blog post from one such critic referring to the “drama surrounding Bubba and the Sixers”).²

D. Evidence that People Other than Gawker and Its Counsel Had Access to the Footage At Issue

As relevant here, the newly-produced FBI documents reveal that, among the threats Mr. Clem faced were threats to release additional sex tape footage. For instance, on October 21, 2012, one of the members of this group apparently tweeted the following at Mr. Clem: “Tell you a little secret. Depending on how tomorrow’s show goes down, you might get to hear about

² Although published news reports are obviously not confidential, filing them publicly might arguably reveal the substance of the confidential FBI documents discussed herein. Accordingly, we have filed them confidentially as well, while preserving our ability to challenge those designations.

another sex tape.” Conf. Ex. 7-C; *see also* Conf. Ex. 8-C (timeline summarizing various threatening communications). The next day, someone apparently tweeted a photograph of a DVD at Mr. Clem, along with this message: “[Redacted] you want to tell you[r] public audience you have more tapes or shall I? @TMZ.” Conf. Ex. 9-C (referencing TMZ, which shortly before this tweet was sent had reported that it had seen a copy of another sex tape, which turns out to have been the one with the racist language on it); *see also* Joint Opp. Ex. 17 at 1:50 – 2:15 (TMZ conceding it had been provided with and seen a copy of that footage). Mr. Clem and his counsel apparently found these tweets concerning enough, at least in the context of the other threats he had received, to bring them to the attention of the FBI.

Mr. Clem and/or Mr. Diaco also prepared and provided to the FBI a timeline of events related to his complaints concerning the threats and harassment he had received; as reflected therein, it was centered around the possible disclosure of additional sex tape footage. *See* Conf. Ex. 8-C. Thus, taken together, these documents reveal a group of six people who appear to have had access to additional sex tapes and who threatened Mr. Clem with further release in a manner that he and his counsel thought was serious enough to warrant involving the FBI.

In bringing this to the Court’s attention, neither Gawker nor its counsel intends to suggest that this group of people was necessarily responsible for providing information to the *National Enquirer* about Bollea’s racist and homophobic statements on one of the sex tapes. All Gawker and its counsel know for certain about who provided that information is that it was not them. The point in bringing this additional information to the Court’s attention is to underscore that, in addition to the numerous other people identified in the Joint Opposition, there are even more people, unconnected to this litigation, who knew about these additional tapes, had previously threatened to release them, and, unlike Gawker and its counsel, actually had access to them.

August 25, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of August 2015, I caused a true and correct copy of the foregoing to be served via the Florida Courts' E-Filing Portal upon the following counsel of record:

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