Filing # 44443057 E-Filed 07/26/2016 03:27:42 PM

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

TERRY GENE BOLLEA professionally
known as HULK HOGAN,

Plaintiff,

Case No.: 12012447-CI-011

vs.

HEATHER CLEM; GAWKER MEDIA,
LLC aka GAWKER MEDIA, et al.,

Defendants.
_____________________________________/

DEFENDANTS NICK DENTON'S AND A.J. DAULERIO'S OPPOSITION TO PLAINTIFF'S EMERGENCY MOTION TO VACATE AND/OR MODIFY JUNE 10, 2016 RULING, FOR REHEARING AND RECONSIDERATION, FOR SANCTIONS AND/OR ORDER TO SHOW CAUSE, AND FOR ATTORNEYS' FEES AND COSTS

Although Plaintiff Terry Bollea nowhere informs the Court of this fact, his motion is based entirely on recycling baseless accusations against these Defendants that were rejected when he recently made them in the federal bankruptcy court in New York. Moreover, the very premise of his motion – that this Court "orally" granted a stay which he now asks to vacate – contradicts the position that he has taken for the past month in the bankruptcy proceedings, where he asserted that this Court never finally entered any stay and opposed the entry of a stay by the Bankruptcy Court. He has engaged in this about-face because this motion is a last-ditch attempt to prevent the Second District Court of Appeal from reviewing the stay issue in this case on a motion currently pending before it, as well as the merits of Defendants' appeal. This Court should reject his arguments for the same reasons that the Bankruptcy Court did, and allow the Court of Appeal to do its work.

ELECTRONICALLY FILED 07/26/2016 03:27:41 PM: KEN BURKE, CLERK OF THE CIRCUIT COURT, PINELLAS COUNTY

I. BOLLEA'S MOTION IS A PRETEXT TO TRY TO AVOID LITIGATING THE MERITS OF BOTH THE STAY ISSUE AND THE UNDERLYING JUDGMENT IN THE COURT OF APPEAL.

The premise of Bollea's motion is that this Court made an enforceable "oral ruling" entering a stay of execution that Bollea now asks it to "vacate" or "modify" by way of this motion – as well as to enter sanctions and attorneys' fees against these Defendants. But that is the opposite of what Bollea has been telling the Bankruptcy Court for the past month. There, Bollea asserted that there was no stay that resulted from the June 10 hearing held in this Court and steadfastly opposed the extension of the bankruptcy stay to Denton and Daulerio. In so doing, Bollea contended that this Court made an oral ruling from the bench that was never reduced to "a written stay order" or "entered." Bollea Opp. to Debtor's Mot. for Prelim. Inj. at 2, *In re Gawker Media, LLC*, Case No. 16-11700 (SMB) (S.D.N.Y. July 5, 2016), Dkt. 31 (attached hereto as Ex. 1); *id.* at 30 (during bankruptcy proceeding, "the Florida court has been unable to enter its order, and Mr. Bollea's judgment against Messrs. Denton and Daulerio has been unprotected"). Simply put, Gawker and Bollea just spent over a month litigating whether the Bankruptcy Court should extend a stay to Denton and Daulerio, a dispute that would have been superfluous if Bollea thought there was an enforceable stay issued by this Court all along. *See, e.g.*, *id.* at 11 (arguing to Bankruptcy Court that Gawker "has not made a sufficient showing as to why the stay should be extended to Messrs. Denton and Daulerio at all").

The reason that Bollea has now completely changed his position is that, at the conclusion of the last bankruptcy hearing, Defendants gave him advance notice that they intended to seek a stay in the Second District Court of Appeal. *See, e.g.*, July 19, 2016 Hrg. Tr. (Bollea Ex. T) at 236:24 – 237:1 (counsel for Gawker advising the Bankruptcy Court that Denton and Daulerio

intend "to go down to the [Florida] Court of Appeal to seek a stay").[1] Bollea has not informed this Court of that exchange in the Bankruptcy Court. Instead, evidently concerned about how the appeals court might view the merits of his arguments, Bollea changed his position in order to find a pretext to come back and re-litigate an issue that was already litigated and adjudicated here, so that he could tell the appellate court that the matter was "**pending** in the trial court." Ex. 2 at 1 (Bollea's Notice of Filing, *Gawker Media, LLC v. Bollea*, No. 2D16-2535 (Fla. 2d DCA July 25, 2016)) (emphasis in original). This Court should reject this forum-shopping gambit and Bollea's accompanying gymnastics – telling the Bankruptcy Court there is no enforceable ruling, telling this Court that there was already a ruling that should be vacated, and then telling the Court of Appeal that the matter remains pending here.

In any event, regardless of whether this Court already ruled (as Bollea now contends here) or simply declined to enter a stay of execution in the manner requested by Defendants without actually "ruling" (as Bollea contended for the past month in the Bankruptcy Court), this Court already heard the matter after extensive briefing and a hearing, such that the issue is now properly before the District Court of Appeal. This Court should reject Bollea's efforts to circumvent review and should instead allow these Defendants' pending appellate motion to be decided.

II. BOLLEA'S ARGUMENTS ABOUT MISREPRESENTATIONS FAIL HERE FOR THE SAME REASONS THAT THEY FAILED IN THE BANKRUPTCY COURT.

Bollea submits a veritable laundry-list of allegations against Denton and Daulerio – and against Gawker even though he is barred from doing so by the federal bankruptcy stay that is

[1] Bollea's representation to this Court that the Bankruptcy Court intended to "allow . . . the parties to address the stay of execution with the Court," meaning *this* Court, *see* Ex. 8 (July 25, 2016 Ltr. from Bollea's Counsel to Court), is incorrect since the only thing discussed with the bankruptcy judge was seeking a stay in the Court of Appeal.

indisputably in place as to the company. We address each in turn and demonstrate why, just as the Bankruptcy Court found, they lack any merit.

1. **Gawker Declaring Bankruptcy.** Bollea says that prior to the June 10 hearing, Gawker had already put in place a plan to file for bankruptcy that day, and it duped the Court by not disclosing that during the morning hearing. But Bollea does not produce a shred of evidence to support that conclusion, and indeed there is none.

Rather, what occurred is that Gawker had put in place a *contingency* plan to file for bankruptcy and to sell its assets in the event that it did not obtain the relief it sought from this Court on June 10 and the company were placed in jeopardy as a result. And that is exactly what happened. The Court indicated that it was prepared to enter a stay, but on the basis of the "extremely strict conditions" Bollea requested that would have given him control over the company's assets and essentially enabled him to micro-manage the "business" and "legal" expenses of the company, thus preventing it from continuing to effectively operate as an independent entity. *See* June 10, 2016 Hrg. Tr. (Bollea Ex. G) at 26:16-17. When the Court denied any temporary stay of that ruling to allow Defendants to seek emergency appellate review and a further stay from the appeals court, Gawker concluded that the better option was to immediately file for bankruptcy.

When Bollea pressed this same argument in the bankruptcy proceedings, the Bankruptcy Court after reviewing the record repeatedly gave it short shrift. *See, e.g.*, Ex. 3 at 76:8-13 (June 15, 2016 Hrg. Tr., *In re Gawker Media, LLC*, Case No. 16-11700 (SMB) (S.D.N.Y. Bankr.)) (bankruptcy judge noting to Bollea's counsel that Gawker was "keeping two options open," having obtained "authority to file a bankruptcy" while "pursuing the options of pledging the shares"); July 19, 2016 Hrg. Tr. (Bollea Ex. T) at 198:13-21 (bankruptcy judge explaining to

Bollea's counsel that Denton had offered to pledge his shares, but after this "Court agreed with Mr. Bollea, . . . Mr. Denton made the decision that it was in the best interests of the company to file a bankruptcy").[2]

Moreover, Defendants' stay motion in fact advised the Court that Gawker planned to file for bankruptcy if it did not get the relief it sought. Their motion expressly stated that "if Plaintiff were subsequently to proceed to attempt to execute on the judgment in the absence of a stay, each one of the Defendants would face immediate financial ruin, and all of them would have no option but to file for bankruptcy protection." Defs.' Mot. for Stay at 6 (filed June 9, 2016). Indeed, Gawker went even further, and told the Court that even if it obtained a stay, its financial circumstances were sufficiently dire that it might not survive. *See id.* at 7 (noting Gawker's "perilous financial circumstances" and explaining that "Gawker risks experiencing cash flow issues, even without this judgment, due to the high litigation costs imposed by Mr. Thiel's lawsuits, as well as the need to hire professionals to evaluate the Company's options in anticipation of this judgment being entered"). Heather Dietrick's accompanying affidavit similarly stated that the company had "retained financial consultants to conduct an independent analysis of its projected cash flow," and that "[t]heir analysis concluded that even without a stay of execution of this judgment, Gawker Media faces significant challenges to its ability to continue to operate with positive cash flow." Dietrick Aff. ¶¶ 10-11 (filed June 9, 2016); *see also* June 10, 2016 Hrg. Tr. (Bollea Ex. G) at 11:25 – 12:5 (defendants' counsel stating that the

[2] Indeed, the affidavit from investment banker Houlihan Lokey that Bollea cites to support his motion confirms that Gawker had made contingency plans in the event that this Court would not accept a stay under the conditions it proposed. *See* Bollea Ex. S ¶ 9 (explaining that Houlihan Lokey was retained "with the goal of maximizing return of the Debtors' estates in the event of a ***possible*** chapter 11 filing" and "***as a contingency*** in the event of an immediate chapter 11 filing") (emphasis added).

company "could already be in dire financial position, even setting aside the judgment issue. . . . [T]here [are] cash flow issues within the company even without a judgment."); *see also id.* at 12:21 (explaining that "the company's liabilities exceed its assets").

Finally, Bollea seeks to punish Denton and Daulerio for Denton's supposed role in preparing that contingency plan, and to use that sanction or contempt against the company. First, he provides no evidence that Daulerio, who has not worked for Gawker for years, knew or even could have known anything about Gawker's contingency plans. And, to the extent that Bollea seeks to punish Denton for his role as an officer of the company in preparing it to be able to file for bankruptcy if necessary, Bollea's request for relief likely violates the automatic stay. It would have been a dereliction of duty for Gawker's officers not to prepare a contingency plan for declaring bankruptcy in the face of a crippling judgment that far exceeded its assets, as it readied itself for a hearing at which its motion for a stay of execution could be denied, or, as turned out to be the case, where any relief was attached to onerous conditions that would prevent the company from operating.[3]

2. Denton's and Daulerio's Financial Circumstances. Bollea next contends that Defendants somehow misled the Court about their financial circumstances, including the value

[3] While Bollea comes to this Court to feign surprise that Gawker filed for bankruptcy, he does not disclose that he repeatedly urged the Bankruptcy Court to require Denton and Daulerio to declare bankruptcy as well. Indeed, the Bankruptcy Court held a full day hearing, the entire premise of which was whether, assuming that Denton and/or Daulerio would be forced to declare bankruptcy, that would interfere with the sale of Gawker's assets. *See, e.g.*, July 19, 2016 Hrg. Tr. (Bollea Ex. T) at 14:3-14 (opening statement by Gawker's counsel concerning distraction of personal bankruptcy), 20:14 – 25:11 (Bollea's counsel discussing possibility of personal bankruptcies); 234:17 – 235:17 (bankruptcy court discussing issue of Denton potentially filing for bankruptcy and noting "the representation by Mr. Bollea that they'll stand down until after the sale").

of their GMGI shares, whether they were entitled to indemnification, a loan to Denton, and the fact that he was trying to rent out his condo to reduce his expenses. Each of these is baseless.

a. Valuation of GMGI Shares: Bollea asserts that Defendants misrepresented the value of their GMGI shares, contending (a) that Denton supposedly claimed that his shares were worth $81 million and (b) they became "worthless" as soon as GMGI filed for bankruptcy. These claims are simply wrong, as the Bankruptcy Court also found.

First, it is more than a little ironic that Bollea accuses Defendants of misleading the Court by noting a valuation performed by his own expert. In fact, Defendants repeatedly noted in their papers and at the oral argument that they "disputed" that valuation. *See, e.g.*, Mot. for Stay at 8-9; June 10, 2016 Hrg. Tr. (Bollea Ex. G) at 15:19 – 16:4. Defendants' motion papers specifically stated that they "***disputed*** that valuation and ***doubt that it is accurate***." Mot. for Stay at 9 (emphasis added). They further noted that "GMGI may be ***worth less*** than that today," particularly in light of "the pressures applied by Mr. Thiel in this and other cases." *Id.* at 9 n.5 (emphasis added). Defendants were candid with the Court in this regard.[4]

It is likewise wrong that the bankruptcy filing renders these shares "worthless." To the contrary, the whole point of seeking bankruptcy protection for the purpose of selling the company is to preserve value for creditors and shareholders, allowing them the chance to realize real value from the proceeds of that sale. Here, too, the bankruptcy judge repeatedly rejected the same argument. For example, the Bankruptcy Court noted that the shares pledged "do[] appear

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[4] By contrast, Bollea's Emergency Motion to Vacate quotes from Defendants' Motion for Stay, but wrenches the quoted language from its context, omitting the italicized language. *See* Mot. at 7 ("*While Defendants disputed that valuation and doubt that it is accurate, for purposes of punitive damages only they agreed to stipulate to it as the basis for Mr. Denton's net worth. Thus, using Plaintiff's version of the facts*, Mr. Denton is prepared to provide security that Plaintiff's expert valued at $81 million.") (quoting only a portion of Defendants' Motion for Stay at 9).

to be valuable . . . since they have a $90 million deal." June 15, 2016 Hrg. Tr. (Ex. 3) at 76:8-13.

Similarly:

> THE COURT: Are you going to make a motion for sanctions against the Debtor [*i.e.*, Gawker]?
>
> BOLLEA'S COUNSEL: No, of course not, Your Honor. Against Mr. Denton, who submitted the declaration pledging his stock and ma[d]e representations about its value.
>
> THE COURT: Well, what is the misrepresentation about the value?
>
> BOLLEA'S COUNSEL: He led the Court to believe that he was pledging stock of great value in support of --
>
> THE COURT: And you don't think it's valuable?
>
> BOLLEA'S COUNSEL: Your Honor, it's a very preliminary stage in the case, but I --
>
> THE COURT: Well, what percentage of the company does he own?
>
> BOLLEA'S COUNSEL: Thirty percent, Your Honor.
>
> THE COURT: Thirty percent. . . . [Gawker may] be insolvent after all is said and done. But without the judgment, it sounds like it's valuable.

Id. at 76:25 – 77:19. As the Bankruptcy Court understood, the only reason the shares might ultimately lack value would be that Bollea's judgment depressed the value of the company, and if Bollea further persists in draining the company's resources by bringing repeated motions like this one.

In any event, the actual value of the company is not yet known and will be set at an auction in mid-August. That auction is expected to have many bidders, and the initial $90 million "stalking horse bid" was obtained to "***set a floor for the value***" of the companies, Bollea Ex. S at ¶ 20 (emphasis added). *See also* July 19, 2016 Hrg. Tr. (Bollea Ex. T) at 137:23

– 138:2, 159:17 – 160:12 (testimony from Snellenbarger that he expects many bidders); *id.* at 191:10-14 (Dietrick testimony stating that "there [are] about 50 potential bidders").[5]

b. The Loan to Denton. Bollea claims that Denton failed to disclose an "asset," *i.e.*, a $200,000 loan he received to pay for personal insolvency counsel. This loan is a liability, not an asset. In any event, Denton did not refer to those funds because he did not have them. The funds were transferred to his insolvency counsel the same day he received them, and so when he completed his declaration listing his assets, this was not included since the funds were not his (and would have been offset by an obligation to repay the loan in any event). *See* Declaration of N. Denton ¶¶ 2-4; Declaration of I. Volkov, Esq. (Denton's insolvency counsel) ¶¶ 3-4 (both filed contemporaneously herewith).

c. Indemnification. Bollea claims that Denton and Daulerio failed to disclose that they were being indemnified. This too is flatly wrong. Bollea has long known those facts. On June 4, 2015 – nearly a year before trial – Gawker produced its Second Amended and Restated Operating Agreement (dated August 21, 2012), which contains an explicit indemnification provision. *See* Ex. 4 at Gawker 28484_C ("the Company . . . shall

[5] Bollea also complains that a pledge of GMGI shares is ineffective, including because there are no share certificates. Denton and Daulerio disagree that such a pledge is ineffective, particularly when it was to be backed by an order of this Court enforcing that pledge, if necessary. In any event, Defendants' counsel expressly disclosed at the June 10 hearing that there were no share certificates, including to seek a brief amount of additional time to address the mechanics of the pledge with Bollea's counsel, to which Bollea objected. *See, e.g.*, June 10, 2016 Hrg. Tr. (Bollea Ex. G) at 41:17-24, 47:21-24 (explaining that there are "things about the way that the stock operates in the Cayman [I]slands where this [*i.e.*, plaintiff's proposed order] just isn't a correct document. We are happy to pledge it, but we want to make sure it's done properly," and noting as one example that, "in the Cayman Islands where GMGI is incorporated, there are not shares of certificates"); *id.* at 45:4-22 (asking for time to work out details of pledge with corporate counsel); *id.* at 50:12-19 (stating that defendants "would like to make sure that we do it [*i.e.*, the stock pledge] in a way that is proper in accordance with the law as to where the stock is actually held" and saying that the documents could be ready by 5:00 p.m. on June 14, as Bollea requested).

indemnify and defend the Member, Manager, and officers against . . . any and all losses, judgments, costs, damages, liabilities, fines, claims and expenses . . . that may be made or imposed upon such persons"). Likewise, in February 2016, Denton produced the Fourth Amended and Restated Memorandum and Articles of Association of Gawker Media Group, Inc., which also contains an indemnification provision. *See* Ex. 5 at Denton 580_C (officers and directors of the company "shall be indemnified . . . against any liability . . . [they] may incur as a result of any act or failure to act in carrying out their functions"). And, Mr. Daulerio testified at his financial worth deposition that Gawker was covering his legal expenses, without any obligation to repay them. Daulerio Dep. (Ex. 6) at 136:10 – 137:14.[6]

Bollea also provides no support for his contention that the company's indemnification obligation is an "asset" that Denton or Daulerio could transfer. Indeed, Bollea's argument here is particularly weak given that he took the position in the Bankruptcy Court, in opposing an extension of the bankruptcy stay to Denton and Daulerio, that they were not entitled to indemnification of the Bollea judgment. *See* Ex. 1 at 3 ¶ 9 ("Debtor [Gawker] has no indemnity obligations to Messrs. Denton and Daulerio"); *id.* at 16 ¶ 40 (same); *id.* at 17-18 n.5 ("To the extent Debtor claims a 'policy and practice' of indemnifying employees," there is no indemnification for "Messrs. Denton and Daulerio . . . for the Bollea Litigation."); *id.* ("Debtor cannot indemnify Mr. Denton or Mr. Daulerio for this judgment"); *id.* at 18 ¶ 44 ("With regard to the Bollea Litigation," there are no "indemnification obligations that Debtor [has] toward Messrs. Denton and Daulerio.").

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[6] Denton's and Daulerio's responses to the interrogatories Bollea cites were not misleading, as they did not have a right to bring an action against someone for the collection of a debt in June 2015, as they owed no debt from a judgment at that time.

In any event, for purposes of collecting on the judgment it makes no difference whether they are indemnified because the three defendants were jointly and severally liable for the compensatory damages award, so any indemnification by Gawker to Denton or Daulerio would simply reduce the amount of money Gawker had to pay the judgment. Bollea admitted this to the Bankruptcy Court as well. Ex. 1 at 18 ¶ 43 ("for every dollar that Mr. Bollea collects from Mr. Denton or Mr. Daulerio . . . , Mr. Bollea's claim against [Gawker] is reduced by that amount.").

d. Denton's Decision To Rent His Apartment. Bollea attempts to make hay of Denton's decision to list his apartment for rent, suggesting that this too was somehow a misrepresentation. But, Denton expressly disclosed that he was seeking to rent his apartment in his prior affidavit submitted to this Court, *see* Denton Aff. in Support of Mot. for Stay ¶ 5 (filed June 9, 2016) ("I recently began seeking to rent the condominium . . . ."), in the motion for a stay, *see* Mot. for Stay at 8 ("In the wake of the verdict in this case, he has placed his condo up for rent."), and at the hearing on that motion, June 10, 2016 Hrg. Tr. (Bollea Ex. G) at 15:2-5 ("He also has a condominium [that] . . . he's now seeking to rent."). Denton's decision was no secret. Indeed, as cited in Bollea's latest filing, it was publicly reported in May by the *New York Post*. *See* Bollea Ex. U.

3. Representations to the New York Bankruptcy Court. Next, Bollea claims that Denton and Daulerio should be held liable for alleged misrepresentations about the status of these proceedings to the Bankruptcy Court. As an initial matter, this argument is completely misplaced: it inexplicably asks this Court to levy sanctions for statements by another party (Gawker) and different counsel (the company's bankruptcy counsel) in a different proceeding (the bankruptcy case) before a different court (the federal bankruptcy court in New York).

In any event, Gawker's bankruptcy counsel repeatedly explained to the Bankruptcy Court exactly what happened at the June 10 hearing. *See, e.g.*, June 15, 2016 Hrg. Tr. (Ex. 3) at 14:2-7; July 19, 2016 Hrg. Tr. (Bollea Ex. T) at 204:12 – 207:1; *see also id.* (referencing description made to bankruptcy judge in Chambers on June 10). As a result, when Bollea argued otherwise to the bankruptcy judge, he flatly rejected it. *See id.* at 19:3-20 (bankruptcy judge responding to Bollea's argument about alleged misrepresentations about the June 10 hearing by telling him "you're wasting your time"); *id.* at 197:24 – 203:6 (bankruptcy judge explaining that he clearly understood that this Court rejected defendants' offer concerning the stay and accepted Bollea's counter-proposal, and further noting that Bollea agreed to postpone the bankruptcy proceedings relating to Denton and Daulerio rather than timely challenge these supposed misrepresentations); *see also, e.g.*, *id.* 225:17 – 226:7 (same).[7]

4. Bollea's Claims About The June 10 Hearing. Bollea criticizes Defendants for "struggl[ing] to articulate to this Court the reasons why they could not agree to" the conditions he asked the Court to impose. Mot. at 13. This ignores what happened at the hearing. Bollea did not file a written response or tell the Court or Gawker's counsel his position on this offer before the hearing on June 10. Indeed, Bollea first made his position known during the hearing, at roughly 9:30 a.m. *See* June 10, 2016 Hrg. Tr. (Bollea Ex. G) at 26:8-17. At that point, Bollea's counsel proposed that, in addition to the pledge, the Court impose other "*extremely strict conditions*" on all three defendants. *Id.* (emphasis added).

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[7] Bollea suggests, as further evidence of Denton's "misrepresentations," his tweet concerning the sale of the company, which plaintiff's California-based counsel erroneously claims was posted "at **11:17 a.m. (22 minute after** the June 10, 2016 hearing concluded)." Mot. at 13. But, in reality, that tweet was posted at 2:17 p.m. Eastern Daylight Time, hours after the stay hearing and well after Gawker filed for bankruptcy. *See* Denton Aff. ¶ 5 & Ex. A.

Unbeknownst to the Defendants or the Court, Bollea had prepared a proposed order setting forth those conditions. Bollea first tendered that proposed order to the Court and defense counsel at approximately 9:45 a.m., whereupon the Court took a break so that defense counsel could review the proposed order and confer with his clients. *See id.* at 34:6-15; *see also id.* at 37:18 (noting recess at 9:47 a.m.). At 10:00 a.m., Bollea's counsel emailed an electronic copy of the order to defense counsel. *See* Ex. 7. That five-page proposed order included onerous conditions, far more detailed and, in some material ways, different than what Bollea's counsel had represented to the Court. *See id.* (Proposed Order).

Just 22 minutes later, the Court called the hearing to order. *See* June 10, 2016 Hrg. Tr. (Bollea Ex. G) at 37:19-20. At that point, defense counsel explained that he was trying to coordinate with his three different clients, had only gotten the proposed order roughly 25 minutes earlier, was concerned that what the proposed order had "ask[ed] for . . . is incredibly complicated," and thus requested time to consult with other attorneys and negotiate an agreement with Bollea's counsel. *Id.* at 38:1 – 39:19. Defense counsel raised various practical problems posed by Bollea's proposed order and repeatedly asked for time to consult with his clients, co-counsel, and Bollea's counsel to reach a resolution that worked for all sides. *See, e.g.*, *id.* at 41:17– 42:15, 43:2-19, 44:4-13, 45:4 – 46:18, 47:20-25; *see also* note 5 *supra* (discussing request for brief amount of additional time to address mechanics of pledge).

Bollea's counsel did not respond to any of these flaws in the proposed order, and, rather than provide sufficient time for defense counsel to confer with their three separate clients, the Court indicated that it intended to enter Bollea's proposed order, modified only to reflect the additional pledge of Daulerio's shares. June 10, 2016 Hrg. Tr. (Bollea Ex. G) at 46:21 – 47:19, 48:1 – 50:4, 50:25 – 53:22. The Court then denied Defendants a temporary stay of the order,

ultimately denying a stay of even "two hours." *Id.* at 54:6 – 55:9. As explained above, Denton and Daulerio have filed a motion seeking a stay from the District Court of Appeal, and that motion is pending.

* * *

In short, there was no misrepresentation to this Court by Denton or Daulerio. Bollea's requests for sanctions and an order to show cause and attorneys' fees and costs should be denied, and the appellate process should continue to proceed. We therefore turn in the next section to the issue of a stay of execution.

III. BOLLEA'S REQUEST FOR NO STAY OF EXECUTION, OR A STAY WITH A $50 MILLION-PLUS BOND, SHOULD BE DENIED.

In their Motion to Stay, Denton and Daulerio demonstrated that this Court has the authority to depart from the bond requirements applicable to money judgments. They also explained why the Court should do so here, including that:

a. the First Amendment requires independent appellate review of judgments to ensure that there is not a forbidden intrusion into the field of free expression,

b. the First Amendment requires a stay where refusing one would deprive a speaker of such review,

c. that is particularly true here where the Court of Appeal has already issued a lengthy opinion concluding that the speech at issue addresses a matter of public concern and is protected by the First Amendment, *see Gawker Media, LLC v. Bollea*, 129 So. 3d 1196 (Fla. 2d DCA 2014),

d. the Due Process Clause separately requires a stay where the judgment is extraordinary, as is indisputably the case here,

e. the Florida Constitution separately requires a stay of a judgment such as this to secure Denton and Daulerio a meaningful right to appeal,

f. being required to post a bond of $50 million-plus per Appellant would be tantamount to denying a stay outright since they plainly lack the resources to do so, and

g. even apart from these constitutional requirements, there are ample grounds for granting a stay, including that Gawker is likely to succeed on the merits of its appeal, failure to grant a stay would force Denton and Daulerio into bankruptcy, that harm outweighs any harm to Bollea given that they were willing to pledge virtually all of their assets to him, and the public has an interest in not having speakers forced into bankruptcy over speech determined to be protected.

See Mot. for Stay at 5-24.

Each of those grounds still warrants a stay here. Simply put, under applicable law, a stay should be entered provided that these Defendants post security that is reasonable under the circumstances. Denton and Daulerio remain willing to pledge their stock in GMGI, in both cases their primary asset. Yet in the Bankruptcy Court, Bollea said he wanted Denton and Daulerio to actually *transfer* the stock to him. In other words, Bollea does not want security for a stay, he wants to execute on the judgment by transferring the asset to him. That makes no sense, and Bollea does not point to a single case suggesting that would be an appropriate condition for a "stay."

In his latest motion, he has retreated even further, saying that there should be no stay or a stay only with an impossible-to-satisfy bond requirement. This is consistent with his true

purpose, which he repeatedly admitted to the Bankruptcy Court: to force Denton and Daulerio into bankruptcy. *See* note 3 *supra*. Because the law does not allow such a result in these circumstances, and because this issue is now before the District Court of Appeal on a pending motion (as explained above), this Court should deny Bollea's motion.

CONCLUSION

For the foregoing reasons, the Court should reject Bollea's attempt to manufacture a series of misrepresentations as a supposed ground for securing various forms of Draconian relief, including everything from an outright denial of a stay, to sanctions or contempt, to attorneys' fees and costs. Instead, the Court should deny Bollea's motion, allowing the Court of Appeal to decide the motion that is pending before it addressing this issue. If this Court nevertheless elects to take up this issue despite the pending appellate proceedings, it should enter a stay of execution pending appeal, accepting Denton's and Daulerio's pledge of their GMGI stock without the additional onerous conditions proposed by Bollea.

As requested by the Court, Denton and Daulerio will submit proposed orders, one simply denying the motion (including in light of the pending appellate proceedings), and an alternative entering a stay and accepting Denton's and Daulerio's stock pledge.

Dated: July 26, 2016

Respectfully submitted,

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I HEREBY CERTIFY that on this 26th day of July 2016, I caused a true and correct copy of the foregoing to be served via the Florida Courts' E-Filing Portal and U.S. Mail on the following counsel of record:

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