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.

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

Defendants.
_____/

Case No.: 12012447-CI-011

BOLLEA'S EMERGENCY MOTION TO VACATE AND/OR MODIFY JUNE 10, 2016 ORAL RULING ON MOTION FOR STAY OF EXECUTION PENDING APPEAL, FOR REHEARING AND RECONSIDERATION, FOR SANCTIONS AND/OR ORDER TO SHOW CAUSE, AND FOR AWARD OF ATTORNEYS' FEES AND COSTS AGAINST DEFENDANTS DENTON AND DAULERIO

Plaintiff, Terry Bollea known professionally as Hulk Hogan ("Mr. Bollea"), by counsel, and pursuant to Rule 9.310(a), *Fla. R. App. P.*, Rules 1.530 and 1.540, *Fla. R. Civ. P.*, Section 45.045, *Fla. Stat.*, and the Court's inherent authority, moves, **solely as to Defendants, Nick Denton ("Denton") and A.J. Daulerio ("Daulerio")**,[1] on an emergency basis, to vacate and/or modify the Court's June 10, 2016 oral ruling on Defendants' Motion for Stay of Execution Pending Appeal ("Motion for Stay"), to deny Denton and Daulerio's Motion for Stay, for relief from the Court's June 10, 2016 oral ruling, for rehearing of Denton and Daulerio's Motion for Stay, and for the entry of an order protecting Mr. Bollea, requiring Denton and Daulerio to post a supersedeas bond in an amount up to the amount required for an automatic stay pursuant to Rule 9.310(b)(1) **if** a stay of execution is permitted, and imposing other remedies and sanctions as the Court deems appropriate, including, but not limited to, awarding costs and attorneys' fees

[1] Mr. Bollea does not seek any relief against Defendant, Gawker Media, LLC.

and entering an order to show cause as to why Denton and Daulerio should not be held in contempt for hindering and obstructing this Court in the administration of justice. The grounds upon which this motion is based are as follows:

The Bankruptcy Court's Temporary Restraining Order Protecting Denton and Daulerio Individually Has Been Lifted

As this Court is aware, shortly after Denton and Daulerio professed to this Court their willingness to pledge stock in order to stay this case pending appeal – and after this Court granted their request – Defendant, Gawker Media, LLC ("Gawker"), filed a voluntary petition for bankruptcy protection under Chapter 11 of the U.S. Bankruptcy Code. Gawker immediately sought and obtained, on an *ex parte* basis, a Temporary Restraining Order against Mr. Bollea in the United States Bankruptcy Court for the Southern District of New York ("Bankruptcy Court"), which prohibited Mr. Bollea from executing and enforcing his June 7, 2016 Final Judgment against Denton and Daulerio, individually, even though they did not file for personal bankruptcy protection (the "TRO"). Gawker's Petition was actually signed the **day prior** to the June 10, 2016 hearing in this case.

Gawker's actions, which were taken at the behest and direction of Denton, directly contradicted express representations that Gawker, Denton and Daulerio had made to this Court just hours before. Defendants told **this** Court that it should stay execution of the judgment based on a pledge of Denton's and Daulerio's GMGI stock, and led **this** Court to believe that their stock had significant value. At that time, Defendants did **not** disclose that Denton and Daulerio both had indemnity rights from the Gawker entities for the entire amount of the Final Judgment, nor that Denton had just received $200,000 from his company. Then, immediately after inducing **this** Court to act upon their representations, and again acting at Denton's direction and with his approval, bankruptcy petitions were filed seeking protection for all of the Gawker entities; and,

in support, a pre-negotiated asset purchase agreement was signed, which calls for the sale of all the Gawker companies' assets; essentially destroying the value of the "security" that Denton and Daulerio just pledged in this Court.

On July 25, 2016, following a July 19, 2016 final evidentiary hearing held in the Bankruptcy Court, the Honorable Stuart Bernstein entered an Order vacating the TRO and vacating the stay of this case as to Denton and Daulerio, a copy of which is attached as **Exhibit A**. Accordingly, Mr. Bollea is entitled to pursue all available relief in this proceeding against Denton and Daulerio, individually.

Overview of Requested Relief and Emergent Circumstances

Since this Court entered its July 7, 2016 Final Judgment awarding Mr. Bollea $140.1 million, Mr. Bollea has been denied his basic rights as a judgment creditor: he has been unable to domesticate his judgment, perfect his judgment liens, conduct discovery in aid of execution, execute upon the judgment and prevent Denton and Daulerio from dissipating or diverting assets. Denton, aided by Gawker's President and General Counsel, Heather Dietrick, orchestrated the unconscionable scheme to deprive Mr. Bollea of these time sensitive rights; a scheme which included material misrepresentations to this Court and Mr. Bollea about Denton and Daulerio's assets, an illusory pledge of stock, and misrepresentations to the Bankruptcy Court about this Court's June 10, 2016 oral ruling granting a stay of execution. Meanwhile, Denton borrowed $200,000.00 from his now-bankrupt company to pay personal expenses, and is actively marketing for rental and seeking to encumber one of his most significant assets, his New York City apartment. (*See* **Exhibit U**)

Now that the Bankruptcy Court has denied Denton and Daulerio further individual stay protection, they are threatening to file for personal bankruptcy protection. At the same time,

Gawker, its sister company, Kinja, KFT ("Kinja"), and their parent company, Gawker Media Group, Inc. ("GMGI"), are proceeding with a bankruptcy auction to sell all of their assets, following which they will be liquidated and dissolved.[2] Mr. Bollea has already been prevented from securing his Final Judgment as a lien against Gawker, and is now in immediate danger of enduring the same prejudice as to Denton and Daulerio if Mr. Bollea's rights continue to be denied.

As set forth below, Denton and Daulerio came before this Court on June 10, 2016 with hands tainted by misconduct. They abused this Court's equitable powers to secure relief by pledging stock in a company that Denton personally knew (and Daulerio should have known through counsel) was about to file for bankruptcy protection and sell all of its assets via a bankruptcy auction; while Denton and Daulerio simultaneously represented and affirmed that their GMGI stock was their only "material" asset available to offer. Mr. Bollea relied upon these omissions and representations when he accepted the stock pledge; as did this Court when it approved the stock pledge in exchange for staying execution, subject to reasonable and appropriate conditions.

Hours later, because Defendants were not satisfied with this Court's decision to approve the very relief they themselves offered, Denton used Gawker's bankruptcy filing to secure individual stay protection for himself and Daulerio; and in the process misrepresented the relief this Court orally granted on June 10, 2016. Worse yet, while Denton was obtaining temporary stay protection from the Bankruptcy Court, it was revealed that Denton and Daulerio held valuable indemnification rights covering the entire amount of the Final Judgment – assets which

[2] Notably, GMGI and Kinja contested personal jurisdiction in this Court, but then availed themselves of the bankruptcy protections of the U.S. Bankruptcy Court in New York.

they both had concealed throughout financial worth discovery, the punitive damages phase of the trial and in connection with their Motion for Stay.

As a result of Denton's and Daulerio's misconduct and the surrounding substantial change in circumstances, this motion seeks to vacate and/or modify the Court's June 10, 2016 oral ruling staying execution under Rule 9.310(a). Pursuant to Rules 1.530 and 1.540, *Fla. R. Civ. P.*, it also seeks rehearing of the Motion for Stay and reconsideration of the Court's June 10, 2016 oral ruling.

Pursuant to Rule 9.310(a) and Section 45.045, Florida Statutes, as well as the Court's inherent authority,[3] this motion seeks an order: (1) denying the Motion for Stay; (2) requiring Denton and Daulerio to post a bond for the entire amount of the judgment plus two years of interest if they are allowed to stay execution; and (3) imposing sanctions. Denton and Daulerio knowingly and intentionally made an illusory pledge of stock as "adequate" security to stay execution of Mr. Bollea's $140.1 million judgment pending appeal. They purposely concealed from this Court that Gawker's, Kinja's and GMGI's bankruptcies and associated asset sale were already imminent at the June 10, 2016 hearing. They also concealed Denton and Daulerio's indemnity rights and Denton's $200,000 in cash. Consequently, they should not be afforded any equitable relief.

Factual Background

On June 10, 2016, Denton and Daulerio, aided by Heather Dietrick, implemented the plan set forth below to mislead Mr. Bollea, this Court and the Bankruptcy Court, so they could prevent Mr. Bollea from protecting his rights as a judgment creditor. This scheme included thwarting discovery that would have revealed their plan, making several false and misleading

[3] A trial court always has inherent authority to reconsider, alter or retract its prior interlocutory rulings. *See, e.g., Hunter v. Dennies Contracting Co., Inc.*, 693 So.2d 615, 616 (Fla. 2d DCA 1997); *Oliver v. Store*, 940 So.2d 526, 529 (Fla. 2d DCA 2006).

representations in sworn affidavits, declarations, motions and open court, and intentionally concealing assets and Gawker's, GMGI's and Kinja's already approved bankruptcy filings and an associated agreement to sell all of their assets.

Before this Court, Denton and Daulerio knowingly made an illusory pledge of GMGI stock as "adequate security" to obtain a temporary stay of execution. Shortly on the heels of securing this relief, Gawker sought and obtained the *ex parte* TRO from the Bankruptcy Court, by falsely representing to the Bankruptcy Court that this Court had **"denied Gawker Media's request to post stock or alternative collateral in lieu of bonds,"** and that Mr. Bollea **"refused to agree to even a brief temporary stay of execution."** In truth, Mr. Bollea had agreed to, and this Court orally granted, Gawker's request for a stay, based on the pledge of stock offered by Denton and Daulerio. Gawker also maintained in the Bankruptcy Court that the TRO was necessary because Denton and Daulerio held indemnity rights for the full amount of the Bollea Final Judgment. Denton and Dietrick directed and approved these filings.

Denton's and Daulerio's actions denied Mr. Bollea his right to perfect his status as a secured creditor, which Florida law explicitly allows. *Platt v. Russek*, 921 So.2d 5 (Fla. 2d DCA 2004). Their unconscionable scheme was intended to and did interfere with and obstruct this Court in the administration of justice, and therefore warrants the denial of any equitable stay relief to Denton and Daulerio.

Denton and Daulerio's Scheme to Secure a Stay

The jury trial concluded with a $140.1 million award in favor of Mr. Bollea on March 21, 2016. On May 16, 2016, Gawker retained an investment banker, Houlihan Lokey, to assist in the sale of all or substantially all of its assets in connection with a Chapter 11 bankruptcy. (*See*,

Snellenbarger Dec. ¶ 9)[4] Houlihan Lokey immediately determined that the best course of action was a sale of all of the assets of GMGI, Kinja and Gawker. (*Id.* ¶ 10) By the week of May 22, 2016, a potential stalking horse bidder for a bankruptcy sale had already been identified, and a term sheet accepted. (*Id.* ¶ 11) At the hearing held in this case on May 25, 2016, on Defendants' post-trial motions, the Defendants were not prepared to address, nor had they even made, a request for stay of execution pending appeal. They did, however, object to Mr. Bollea conducting any financial worth discovery. Defendants asked for and the Court specially set a hearing on June 10, 2016 to address a stay of execution.[5]

Despite spending considerable time preparing their voluminous bankruptcy filings and negotiating a sale of their assets, Defendants waited until **June 9, 2016**, at 1:00 p.m. to file their Motion for Stay, in which they offered to pledge Denton's stock in GMGI[6] as security to stay execution of Mr. Bollea's $140.1 million Final Judgment as to all Defendants. The Motion for Stay asserts that "Mr. Denton is prepared, on behalf of all three Defendants, to pledge *all* of those shares as security for any judgment that Plaintiff might ultimately obtain in this case following an appeal." (Motion for Stay p. 8).

Citing to Plaintiff's expert's valuation of Denton's 29.52% ownership interest in GMGI, the Motion for Stay states: "Mr. Denton is prepared to provide security that Plaintiff's expert valued at $81 million…[and]… the Court should exercise its discretion to accept Mr. Denton's shares as security in exchange for staying execution of the judgment against Defendants pending their appeal." (Motion to Stay p. 9) This pledge, they asserted, would prevent "an immediate and

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[4] The Declaration of Reid Snellerbarger filed in the Bankruptcy Court on June 13, 2016 is attached hereto as **Exhibit S**.

[5] Unaware of the agreement to sell the Gawker entities' assets to a stalking horse bidder, Mr. Bollea agreed to a temporary stay of execution through the conclusion of the June 10, 2016 hearing.

[6] GMGI is a privately-owned holding company based in the Cayman Islands whose sole assets are 100% of the equity in two subsidiaries – Gawker Media, LLC and Kinja, KFT.

final blow to Gawker" and "forc[ing] the two individual defendants to seek bankruptcy protection." While citing to and relying upon Plaintiff's expert valuation of GMGI at $276 million as a benchmark for the value of Denton's GMGI stock, Denton and Daulerio purposely concealed that the Asset Purchase Agreement with the potential Stalking Horse Bidder, Ziff Davis, was for a **total** of just $90 million, only a fraction of which could possibly flow to Denton and Daulerio.

In support of the Motion for Stay, Denton and Daulerio filed **sworn** affidavits attached as **Exhibits B** and **C**, respectively. Denton's Affidavit was signed **June 9, 2016**, and states as follows:

> 2. As has been previously documented in this litigation, my principal asset is my ownership interest in Gawker Media Group, Inc.
>
> 3. I have a retirement account whose current value is $91,707.14 (See Ex. 1), a brokerage account whose current value is $13.50 (See Ex. 2), a personal banking account whose value is $5,078.64 (See Ex. 3), and a joint bank account with my spouse whose value is $3,661.71 (See Ex. 4). I also recently opened a second personal banking account which contains $45,000 that I withdrew from my retirement account to pay for living expenses. See Ex. 5
>
> …
>
> 7. As security for the appeal in the above-captioned matter, I am willing to pledge the entirety of my interest in GMGI.
>
> 8. I **respectfully request** that the Court deem that full ownership interest to be **adequate** security to stay the judgment pending appeal. (emphasis added)

At the June 10, 2016 hearing, Denton and Daulerio's counsel reaffirmed Denton's representations regarding his assets:

> We understand that plaintiff has an interest in seeking security for his judgment. We have taken time. We have employed other people to come up with a solution to balance that interest, that interest in security and judgment with the interest in a right to appeal that means something.

> We've undertaken a serious analysis, and what we are offering is a serious condition. **We have pledged what, between the three defendants, is the most meaningful asset they have. And, again, it's effectively what the plaintiff could get if he were to execute.**

(6/10/16 Trans. pp. 16:16-17:4)(emphasis added).

Denton's Affidavit is materially false in two respects. First, Denton did not disclose that, on June 8, 2016, his now-bankrupt company loaned him $200,000 for personal expenses; and this $200,000 does not appear in any of his listed bank accounts. (*See* **Exhibit D**; GMGI 13 Week Cash Flow Report) Second, Denton did not disclose that GMGI owed him contractual indemnity rights under an Indemnity Agreement dated December 31, 2009. (*See* **Exhibit R**; Holden Dec. ¶ 22)[7] In fact, Ms. Dietrick had already assured Mr. Denton, both **before trial** and after, that GMGI would honor its indemnity obligations. (Denton 7/6/16 Depo. pp. 76-80; Dietrick 7/6/16 Depo. pp. 56-59)[8]

Denton had been concealing his GMGI Indemnity Agreement for quite some time. In his June 4, 2015 Responses to Financial Worth Interrogatories, Denton did not disclose this agreement as an asset, and denied under oath that he maintained the right to bring any action against another person or entity to recover a debt. (*See* **Exhibit E**; Denton 6/4/15 Interrog. Responses) Consequently, Mr. Bollea, the jury and this Court were misled about Denton's true net worth during the punitive damages phase of the trial, and while Denton was seeking a stay of execution.

Daulerio's Affidavit was also signed **June 9, 2016**, and states as follows:

> 2. My assets are:
>
> a. A 44.7% ownership interest in RGFree, Inc. ("RGFree"), a privately-held start-up media company. RGFree is not currently

[7] Denton's Indemnity Agreement has been filed confidentially under seal.
[8] The deposition transcripts of Denton and Dietrick have been filed confidentially under seal.

operational, and it has not earned any revenue. As a result, my ownership interest in RGFree is not of material value.

b. 5,900 shares in Gawker Media Group, Inc.

c. Checking and savings accounts holding approximately $13,000. The money comes exclusively from gifts and some freelance writing work. I do not currently have full-time employment.

3. I do not own a home, a car, or any other material assets.

Like Denton, Daulerio concealed his indemnification rights from Mr. Bollea, the jury and the Court. (*See* Daulerio 6/4/15 Interrog. Responses; **Exhibit F**) In reality, Daulerio is "subject to a company practice and policy of indemnification, by which the Debtor[s] defend and indemnify their writers and editorial staff in connection with lawsuits related to the company's web content." (*See* Holden Dec. ¶ 24)

As this Court may recall, on May 9, 2016, Mr. Bollea filed his Motion for Leave to Conduct Expedited Post-Trial Financial Worth Discovery, for the express purpose of determining Defendants' current net worths and available assets in connection with their anticipated Motion for Stay. On May 20, 2016, Defendants filed their opposition to this motion, arguing that the discovery Mr. Bollea sought was premature and inappropriate. They repeated these arguments at the May 25, 2016 hearing. Notably, by the time Defendants filed their May 20, 2016 Opposition, they had already retained Houlihan Lokey to assist in selling-off the Gawker entities' assets through bankruptcy; and by the time of the May 25, 2016 hearing, Ziff Davis had already been identified as a potential stalking horse bidder to purchase their assets through a bankruptcy auction for just $90 million (*See, infra* p. 14).

At the hearing held in this Court at 9:00 a.m. on June 10, 2016, Denton and Daulerio's counsel acknowledged that they and their clients "understood that the plaintiff wants security for

the judgment." (6/10/16 Trans. p. 6:19-21)[9] Denton and Daulerio urged this Court to accept the pledge of Denton's and Daulerio's GMGI stock and options as adequate security in exchange for a stay of execution pending appeal. They represented to the Court that, "we're not seeking some sort of free ride. We're not seeking an unsecured stay." (6/10/16 Trans. p. 7:14-17) "Mr. Denton, as we said in [the Motion for Stay] and now I can say the same for Mr. Daulerio, a**re literally willing to put their money where their mouth is**. Both of them will pledge their shares of Gawker Media Group, Inc., as security for the judgment that has been entered…" (6/10/16 Trans. pp. 7:20-8:4) (emphasis added) At that time, Denton and Daulerio failed to advise Mr. Bollea and this Court that Gawker, GMGI and Kinja had already approved (on June 9, 2016) resolutions to file for bankruptcy protection, that Gawker had already signed its bankruptcy petition (on June 9, 2016), that a stalking horse bidder had already been selected (during the week of May 22, 2016), nor that the companies had already agreed and were in the midst of signing an Asset Purchase Agreement to sell all of their assets for just $90 million in conjunction with their imminent bankruptcy filings.

This Court recognized at the June 10, 2016 hearing that there was reason for concern over the dwindling value of Denton's shares, particularly given that Defendants prevented Mr. Bollea from conducting financial discovery at the May 25, 2016 hearing. (6/10/16 Trans. pp. 17:18-18:3) This left Mr. Bollea completely blind as to what had unfolded behind the scenes at Gawker since the March 2016 verdict, and as to how much the value of the GMGI stock had further dwindled, as well as unaware of the indemnity rights Denton and Daulerio had available, plus Denton's $200,000 in cash, as other meaningful assets at the time of the June 10, 2016 hearing.

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[9] The June 10, 2016 Hearing Transcript is attached as **Exhibit G**.

At the June 10, 2016 hearing, Mr. Bollea agreed to accept the pledge of Denton's and Daulerio's stock in exchange for a temporary stay of execution pending appeal, subject to certain reasonable conditions suggested by the Motion for Stay, and other reasonable conditions expressly permitted under Florida law. Those conditions are for the most part memorialized in the proposed order Mr. Bollea provided to opposing counsel and the Court during the hearing, attached as **Exhibit H**.

The Court granted a 35 minute recess for Defendants' counsel to discuss the proposed conditions with their clients. When the hearing reconvened, Denton and Daulerio's counsel refused to agree to the conditions proposed by Mr. Bollea. At that point, the Court orally granted Defendants' Motion for Stay on a temporary basis subject to further proceedings specially set for July 6, 2016 (based upon the representations therein and affidavits in support), accepted the pledge of Denton's and Daulerio's GMGI stock in exchange, and directed the undersigned to revise Mr. Bollea's proposed order and resubmit it to the Court later that day. (6/10/16 Trans. p. 52:7-18)

The Reasonable Conditions that Mr. Bollea Proposed

The conditions Mr. Bollea proposed attendant to accepting the pledge of Denton's and Daulerio's GMGI stock were reasonable and appropriate under Florida law. Mr. Bollea sought specific terms governing the pledge of the shares, compliance with the non-monetary terms of the Final Judgment, financial discovery, and the right to take steps to perfect his rights as a judgment creditor and to establish and perfect his judgment lien and priority as a creditor. All of these conditions are explicitly appropriate under Florida law. *Platt*, 921 So.2d 5, 6. Further, Mr. Bollea sought a reasonable restriction against Defendants' dissipation of assets, as well as

advance notice in the event of the potential sale of all or substantially all of the assets or stock of Gawker, GMGI or Kinja.

At the June 10, 2016 hearing, Defendants rejected these conditions. At the time, upon inquiry by the Court, they struggled to articulate to this Court the reasons why they could not agree to these reasonable conditions. More importantly, Defendants did not come forward and tell this Court that voluminous bankruptcy filings were already prepared and set to be filed hours later, that an agreement had already been reached to sell all of the Gawker entities' assets, nor that the pledge of stock being made to Mr. Bollea was worth far less (perhaps worthless) as a result.

This Court's June 10, 2016 Oral Ruling Must Be Vacated, Modified and/or Reconsidered

Given what transpired after the June 10, 2016 hearing, the conditions included in the June 10, 2016 proposed order and in this Court's June 10, 2016 oral ruling cannot stand. Gawker cannot be included in the order because of its bankruptcy and the associated stay. The pledge of GMGI stock is not adequate security; and Cayman Islands' stock cannot be effectively "pledged." The stalking horse bid for all of the Gawker entities' assets is only $90 million, from which more than $25 million in secured debt plus millions in administrative expenses must first be paid. Denton and Daulerio have indemnity rights and Denton's $200,000 in cash that were concealed.

The Misrepresentations of this Court's Ruling

On June 10, 2016, at **11:17 a.m.** (**22 minutes after** the June 10, 2016 hearing concluded), Denton tweeted "our sites will thrive – **under new ownership** – and we'll win in court." (*See* **Exhibit V**.) (emphasis added) At **12:44 p.m.** on **June 10, 2016** (approximately 2 hours after this Court's hearing concluded), Gawker filed its voluntary petition ("Petition") under Chapter 11 of

the Bankruptcy Code in the United States Bankruptcy Court of the Southern District of New York (Case No. 16-11700). A copy of the Petition is attached as **Exhibit I**. Gawker's Petition was signed **June 9, 2016**.

On page 5 of the Petition, Denton certifies, as of June 9, 2016 (the same day he signed his affidavit in support of the Motion for Stay), that Gawker had already adopted Resolutions, with the consent of its sole member, GMGI, to approve the filing of a voluntary petition under Chapter 11 of the Bankruptcy Code. The Resolutions were executed by Heather Dietrick, in her capacity as President of GMGI, as sole member of Gawker Media, LLC. Page 15 of the Petition ("Schedule 1") provides that GMGI and Kinja, KFT "On the date hereof….has filed or will file a voluntary petition for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of New York." On Sunday, June 12, 2016, GMGI and Kinja filed their petitions, attached as **Exhibits J** and **K**, respectively.

On the afternoon of June 10, 2016, GMGI issued a press release, attached as **Exhibit L**, announcing that it entered into an asset purchase agreement to sell its assets to Ziff Davis. A copy of the June 10, 2016 Asset Purchase Agreement is attached as **Exhibit M**.

At 1:52 p.m. on June 10, 2016, Gawker filed a 21-page Adversary Complaint against Mr. Bollea and others in the Bankruptcy Court, seeking (among other things) injunctive relief to preclude Mr. Bollea from taking further action in this case against Denton and Daulerio. Shortly thereafter, Gawker filed its *ex parte* motion for the TRO, including a 34-page memorandum of law and several declarations in support. The Adversary Complaint, *Ex Parte* Motion, Memorandum of Law and supporting declarations of Michael Winograd and William Holden are attached as **Exhibits N, O, P, Q** and **R**, respectively. Mr. Denton and Ms. Dietrick reviewed and made the decision to file these voluminous documents. (*See* 7/19/16 Hearing Trans. p. 196:1-23;

Exhibit T) At 2:23 p.m. on June 10, 2016, the Gawker Bankruptcy Court signed the TRO, which was subsequently docketed at 2:48 p.m.

In order to obtain the Bankruptcy Court TRO that prevented Mr. Bollea from protecting his judgment creditor rights against Daulerio and Denton, several false statements were included in the supporting declarations and bankruptcy filings. First, the Adversary Complaint states:

> … The bond to stay execution of the judgments pending appeal is $50 million for each of the Bollea Litigation defendants. The Court has refused to reduce the cash bond and denied Gawker Media's request to post stock or alternative collateral in lieu of the bonds. As of June 10, 2016, the judgments in the Bollea Litigation became available for execution.

(Adversary Complaint, ¶ 28). These same false assertions about this Court's June 10, 2016 oral ruling are sworn to in the Winograd Declaration (¶ 6) and Holden Declaration (¶ 20). Winograd further testifies that Mr. Bollea "has refused to agree even to a brief temporary stay of execution of the judgments." (¶ 7). These same assertions are relied upon in the *Ex Parte* Motion for the TRO (¶¶ 2 and 3). They are also made in support of the Memorandum of Law (¶ 16, ¶ 20 *(sic)* on p. 15, ¶ 65 and ¶ 66). Winograd also attests that "[a]a of *today*, the $140.1 million of judgments in the Bollea [litigation] against Gawker Media, Mr. Denton and Mr. Daulerio may be executed." (**Exhibit Q**, ¶ 6 [emphasis in original])

The Illusory Pledge of Stock

When Denton and Daulerio pledged their GMGI stock as "adequate security" in the June 9, 2016 Motion for Stay and at the June 10, 2016 hearing, they knew that pledge was legally ineffective, worth far less than they claimed, and was not their only material asset available to pledge as security. They knew Gawker, GMGI and Kinja were selling all of their assets and filing for bankruptcy protection. They also had no intention of actually transferring the shares to Mr. Bollea, because as noted in Gawker's Adversary Complaint, "Mr. Bollea would become a substantial owner of GMGI, thereby defeating [Gawker's] chance at successful

reorganization." (¶40, FN 3) They also knew that, because GMGI is a Cayman Islands company, a "pledge" of stock was legally ineffective.

At the time Denton and Daulerio pledged their GMGI stock as security, convinced Mr. Bollea to accept the GMGI stock, and convinced this Court to approve the pledge of GMGI stock as "adequate security" for a stay of execution pending appeal, Denton and Daulerio knew the pledge was illusory – indeed Cayman stock cannot be "pledged." They also knew that Denton had $200,000 in undisclosed cash, and that Denton and Daulerio had valuable indemnity rights that had been concealed.

Argument

"The integrity of the civil litigation process depends on truthful disclosure of facts." *Morgan*, 993 So.2d at 253-54, *citing Cox*, 706 So.2d 43, 47 (Fla. 5th DCA 1998). ***"Revealing only some of the facts does not constitute 'truthful disclosure'."*** Id. at 254 (emphasis added)(*citing Metro Dade County v. Martinsen*, 736 So.2d 794 (Fla. 3d DCA 1999)).

Preserving the integrity of the judicial process and protecting the proper administration of justice are of paramount importance. That is why attorneys are primarily officers of the Court, bound to serve the ends of justice with openness, candor and fairness to all—even when it appears in conflict with a client's interests. *Ramey v. Thomas*, 382 So.2d 78, 81 (Fla. 5th DCA 1980). In fact, the duty of candor toward the tribunal is viewed as one of the most sacrosanct ethical and legal obligations in the Rules of Professional Conduct and under Florida law. See, Rules 4-3.3 and 4-8.4, Fla. R. Prof. Cond.; *Phillip Morris USA, Inc. v. Green*, 175 So.2d 312, 315 (Fla. 5th DCA 2015) (the integrity of our system of justice is the quintessence of the judicial estoppel rule).

"Every court has the prerogative and duty to see that its processes are not abused." *Marine Transport Lines, Inc. v. Green*, 114 So.2d 710, 711 (Fla. 1st DCA 1959). In furtherance of this duty, all courts have the inherent authority to impose sanctions for bad faith litigation, and the explicit authorization under the Rules of Judicial Administration to strike documents which are filed without "good ground to support." *Patsy v. Patsy*, 666 So.2d 1045, 1046-47 (Fla. 4th DCA 1996); *Sheldon Greene & Assoc., Inc. v. Williams Island Assoc., Ltd.*, 592 So.2d 307 (Fla. 3d DCA 1991); *Emerson Realty Group, Inc. v. Schanze*, 572 So.2d 942, 945 (Fla. 5th DCA 1991); Rule 2.515, *Fla. R. Jud. Admin.*

Rule 9.310, *Fla. R. App. P.*, and Section 45.045, *Fla. Stat.*, afford this Court substantial discretion to deny a stay and/or to impose sanctions where the moving party attempts to impede the plaintiff's security. Under Rule 9.310(a), this Court has "continuing jurisdiction, in its discretion, to grant, modify, or deny" a stay pending review. Under § 45.045(4), "[i]f the trial or appellate court determines that an appellant has dissipated or diverted assets outside the course of its ordinary business or is in the process of doing so, the court may enter orders necessary to protect the appellee, require the appellant to post a supersedeas bond in an amount up to, but not more than, the amount that would be required for an automatic stay pursuant to Rule 9.310(b)(1), Florida Rules of Appellate Procedure, and impose other remedies and sanctions as the Court deems appropriate." *See*, Rule 9.310(b)(3), *Fla. R. App. Proc.*

Stays pending review are equitable in nature and determined based on a balance of equities between the parties. *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010). It is a fundamental maxim of equity that one who seeks such equitable relief must do so with clean hands. *Epstein v. Epstein*, 915 So.2d 1272, 1275 (Fla. 4th DCA 2005).

Unclean hands is "a self-imposed ordinance that closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief." *Congress Park Office Condos II, LLC v. First Citizens Bank & Trust Co.*, 105 So.3d 602, 609 (Fla. 4th DCA 2013). "Sneaky and deceitful" are equated with "unclean hands." *Id.* "Equity will stay its hand where a party is guilty of conduct condemned by honest and reasonable men. Unscrupulous practices, overreaching, concealment, trickery or other unconscientious conduct are sufficient to bar relief." *Id.*

Here, Denton and Daulerio intentionally misled Mr. Bollea and this Court by purposely concealing material facts associated with their assets and the value and legitimacy of the alternative security they pledged in exchange for a request, which this Court orally granted, to stay execution of a $140.1 million Final Judgment. Their pledge of GMGI stock is illusory, and at the time they asked this Court for the extraordinary remedy of staying execution without having to post a "good and sufficient bond" required under Florida law, they were concealing significant assets. Then, because they were upset that Mr. Bollea and this Court unknowingly accepted their false representations and illusory stock pledge, they made an end-around this Court and misrepresented facts to the Bankruptcy Court to obtain a stay on more preferable conditions to them.

Without question, Denton and Daulerio's actions qualify as "sneaky and deceitful," "unscrupulous," "concealment," "trickery" and "unconscientious" conduct that would be condemned by an honest and reasonable man. They are not entitled to equitable relief. Moreover, Denton's and Daulerio's misconduct rises to a level so severe that sanctions and other remedies are appropriate.

Contempt is an act that hinders or obstructs a court in the administration of justice. *Ex parte Crews*, 173 So. 275 (1937). Florida cases have recognized the use of direct and indirect criminal contempt to punish the making of perjured statements. *Haeussler v. State*, 100 So.3d 732, 734 (Fla. 2d DCA 2010). Direct criminal contempt is an act committed in the presence of the court so as to hinder judicial proceedings, and may result in serious consequences, including immediate imprisonment. *Emanuel v. State*, 601 So.2d 1273, 1275 (Fla. 4th DCA 1992). Intentionally underrepresenting one's financial condition in sworn documents filed with a trial court is punishable by at least indirect criminal contempt. *Haeussler*, 100 So.3d at 734.

Courts have the discretion to cite a guilty person for contempt, direct that the record be sent to the State Attorney's office for investigation or, in proper cases, strike pleadings or testimony shown to be a sham. *Parham v. Kohler*, 134 So.2d 274, 276 (Fla. 3d DCA 1961). Remedies for perjury, slander and the like committed during judicial proceedings are left to the discipline of the courts, the bar association, and the state. *Wright v. Yurko*, 446 So.2d 1162, 1164 (Fla. 5th DCA 1984); *Sheldon Greene & Assoc., Inc.*, 592 So.2d 307; *Emerson Realty*, 572 So.2d at 945; Rule 2.515, *Fla. R. Jud. Admin.*; *Emanuel*, 601 So.2d at 1275; *Parham*, 134 So.2d at 276; *Wright*, 446 So.2d at 1164.

"[B]asic, fundamental dishonesty… is a serious flaw, which cannot be tolerated" because dishonesty and a lack of candor "cannot be tolerated by a profession that relies on the truthfulness of its members." *The Florida Bar v. Head*, 27 So.3d 1, 8 (Fla. 2010). "Dishonest conduct demonstrates the utmost disrespect for the court and is destructive to the legal system as a whole." *Id.* at 8-9. When such conduct occurs, courts also have the authority to assess fees and costs against parties and their counsel. *Patsy*, 666 So.2d at 1047; *Levine v. Keaster*, 862 So.2d 876, 880 (Fla 4th DCA 2003).

WHEREFORE, Mr. Bollea respectfully requests that this Court vacate and/or modify its oral ruling granting Defendants, Denton's and Daulerio's, Motion for Stay at the June 10, 2016 hearing, reconsider and/or re-hear the Motion for Stay, deny the Motion for Stay, require the posting of a bond for the entire amount of the Final Judgment, plus two years interest under 9.310(b)(1) **if** a stay of execution is permitted, sanction Denton and Daulerio, award attorney's fees and costs, and consider entering an order to show cause as to why Denton and Daulerio should not be held in contempt, as well as grant any other relief this Court deems just and appropriate.

DATED: July 25, 2016.

/s/ Kenneth G. Turkel

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