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 RENEWED MOTION FOR SANCTIONS AND FOR ORDER TO SHOW CAUSE AGAINST DAULERIO

Plaintiff, Terry Bollea known professionally as Hulk Hogan ("Mr. Bollea"), by counsel, and pursuant to Section 45.045, *Fla. Stat.*, and the Court's inherent authority, moves, **solely as to Defendant, A.J. Daulerio ("Mr. Daulerio")**,[1] for the entry of an order imposing sanctions that the Court deems appropriate as a result of Mr. Daulerio's and/or his counsel's material misrepresentations to this Court, including but not limited to, awarding monetary sanctions, costs and attorneys' fees and entering an order to show cause as to why Mr. Daulerio and/or his counsel 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:

Overview of Requested Relief

On July 29, 2016, this Court entered its Order Granting in Part Plaintiff's Motion to Vacate; Denying Stay of Execution Pending Appeal; and Denying Defendants' Motion for Stay to Seek Appellate Review, a copy of which is attached as **Exhibit A** (the "July 29 Order"). In

[1] At this time, because of their bankruptcy proceedings and the associated automatic stays, Mr. Bollea does not seek any relief against Defendants, Gawker Media, LLC and Nick Denton. Mr. Bollea fully reserves his right to do so upon the lifting of the stay(s).

the July 29 Order, this Court found that Mr. Daulerio "misled" the Court in connection with his pledge of Gawker Media Group, Inc. ("GMGI") stock as "adequate" security to stay execution of the $115,100,000 judgment against him. (July 29 Order ¶ 8) This Court further found that Mr. Daulerio and his counsel failed to advise the Court about material facts of which they were aware that significantly impacted the value of the Gawker Media Group, Inc. stock Mr. Daulerio pledged. (Id. ¶ 11)

The Court reserved jurisdiction "to award attorneys' fees and costs as a sanction, impose additional sanctions and remedies, and to issue an order to show cause as to why Mr. Daulerio and/or [his] counsel should not be held in contempt of court, all of which this Court takes under advisement at this time." Through this motion, Mr. Bollea respectfully requests that, based on the Court's July 29, 2016 findings and the additional facts set forth herein, sanctions now be imposed against Mr. Daulerio and/or his counsel.

Mr. Daulerio's Additional Misconduct

In the July 29 Order, this Court correctly found that Mr. Daulerio misled this Court about his stock in GMGI. In addition to that, Mr. Daulerio has also made material misrepresentations about his net worth that directly impacted the punitive damages phase of the trial, as well as this Court's initial decision to grant a temporary stay of execution. Specifically, Mr. Daulerio concealed indemnity rights he holds against Gawker Media, LLC ("Gawker") and/or GMGI. These indemnity rights should have been disclosed and included within Mr. Daulerio's net worth for purposes of punitive damages and his request for a stay of execution based on alternative security.

Prior to trial, Mr. Bollea propounded financial worth discovery to Mr. Daulerio, including interrogatories. In his verified responses, Mr. Daulerio did not disclose his indemnity rights as

an asset. (6/4/2015 Response # 3; attached as **Exhibit B**) In fact, Mr. Daulerio affirmatively represented that he did not have any such rights. (*Id.* #4). Consequently, the parties entered into a Stipulation at trial regarding Mr. Daulerio's net worth, which provided as follows: "Defendant A.J. Daulerio has no material assets and has student loan debt in the amount of $27,000. (*See* Stipulation ¶ 6) This stipulation was read to the jury. (3891:10-3892:21)

Mr. Bollea's counsel took Mr. Daulerio at his word, relied upon the net worth Stipulation, and structured his argument to the jury accordingly. At one point, Mr. Daulerio's counsel even objected to a portion of the punitive damages closing that addressed GMGI's $276 million stipulated value, because "Gawker Media Group is not a party to this case." (3899:16-3901:15)

Mr. Daulerio's counsel followed by arguing that the **"$115,000,000 verdict … means financial ruin for Mr. Daulerio … he has no material assets … he will never be able to pay $115,000,000**." (3910:25-3911:5) Mr. Daulerio's counsel also addressed the financial condition and exposure of Mr. Denton, Gawker and GMGI:

> As you just heard from Mr. Turkel, [Mr. Denton's] main asset is his ownership interest in Gawker Media's Parent Company, GMGI. That company is not a party to this case. It is not before you to be held liable.
> …
> Mr. Denton owns a percentage of that company. Besides that, besides that ownership interest, he has total assets—besides that, he has total assets, as the judge told you of $3.6 million. That includes his home, his checking account, his savings account, his retirement funds. **Everything.** $3.6 million. **The verdict already rendered will be financially devastating to Mr. Denton.**

(3910:5-24) (emphasis added)

On rebuttal, Mr. Bollea's counsel acknowledged Mr. Daulerio's position that GMGI was not a party to the case. (3915: 14-24) Mr. Bollea's counsel also acknowledged, based on Mr. Daulerio's factual representations and the Stipulation, (all of which counsel believed to be true), that Mr. Bollea, in fairness, could not tell the jury that a "gentleman who has no assets and

$27,000 worth of student loans as his present worth would not be bankrupted or be financially destroyed by this." (3917: 5-10)

At Mr. Daulerio's request and over Mr. Bollea's objection, the jury was instructed that it could not award an amount "that would financially destroy or bankrupt any of the defendants." (3890:20-22) The jury followed that instruction, particularly as to Mr. Daulerio, by assessing only $100,000 in punitive damages against him.

What we now know, based on Gawker's June 10, 2016 bankruptcy filings, is that Mr. Denton and Mr. Daulerio have indemnity rights which were concealed from the Court, the jury and Mr. Bollea. Specifically, Mr. 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)[2]

Consequently, when Mr. Daulerio claimed to the jury that there was no way he could pay the $115 million compensatory damage award, he was not being truthful.[3] When he claimed to the jury that he "has no material assets," he was not being truthful. Under Florida law, indemnity rights and choses in action are assets. *See Puzzo v. Ray*, 386 So.2d 49, 51 (Fla. 4th DCA 1980); *General Guaranty Ins. Co. of Fla. v. DaCosta*, 190 So.2d 211, 213-14 (Fla. 3d DCA 1966). When Mr. Daulerio entered into the net worth Stipulation he was not being truthful. And when Mr. Bollea, the jury and this Court took Mr. Daulerio at his word about these facts, we were all deceived.

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[2] Mr. Denton also had broad indemnity rights, including an undisclosed December 2009 Indemnity Agreement with GMGI.

[3] Regardless of whether Mr. Daulerio's indemnity rights flow from GMGI and/or Gawker, GMGI's President and General Counsel had already assured Mr. Denton that GMGI would pay all of the $115 million compensatory damages awarded by the jury.

The fact that Mr. Daulerio had indemnity rights that he concealed during financial worth discovery would have justified striking his "pauper" defense at trial. Improperly withholding net worth information justifies disallowing a "low net worth" defense. *Belle Glade Chevrolet-Cadillac Buick Pontiac Oldsmobile, Inc. v. Figgie*, 54 So.3d 991, 996-97 (Fla. 4th DCA 2011).

Once Mr. Daulerio made the argument to the jury that a large punitive award would "financially destroy" him, his indemnity rights became relevant. *Humana Health Ins. Co. of Florida, Inc. v. Chipps,* 802 So.2d 492, 497-98 (Fla. 4th DCA 2011) is directly on point: "Once [defendant] claimed that a large award would hurt or bankrupt the company financially, the [indemnity] agreement became relevant for purposes of proving otherwise." If there is evidence to rebut a defendant's assertion that a large award would force it into financial straits, then it should be admitted. *Id.; see also Wheeler v. Murphy*, 452 S.E.2d 416, 424 (W.Va. 1994) ("A defendant's net worth is relevant to the issue of punitive damages, and in this case, where defense counsel offered evidence of Mr. Murphy's meager finances, the plaintiff's rebuttal evidence disclosing the existence and policy limits of Mr. Murphy's liability insurance is not barred…"); *Wallace v. Poulos*, 861 F.Supp.2d 587, 602 (D. Md. 2012) ("[I]nforming the jury of the indemnification agreement makes jurors aware that Defendants' ability to pay is essentially a moot point [and] ensures that jurors have an accurate understanding of the likely deterrence effect of their judgment.")

Here, Mr. Bollea was denied his right to discover and present this highly relevant evidence to the jury because Mr. Daulerio (and Mr. Denton) concealed their indemnity rights. While the validity and enforceability of Mr. Daulerio's indemnity rights may be subject to debate, that fact is of no consequence at this point because the deception of the jury and this Court at trial cannot be undone – the debate should have taken place before the jury rendered its

punitive damages, not after the trial. Moreover, Mr. Bollea notes that Gawker and GMGI's General Counsel and President, Heather Dietrick, already assured Mr. Denton, before and after the trial, that his indemnity rights for the entire amount of the Bollea judgment would be honored. (*See* Dietrick 7/6/15 Depo. at pp. 55-70.) Unless GMGI and Gawker intend to leave Mr. Daulerio exposed (notwithstanding Gawker's bankruptcy case argument and public assertion that doing so would have a "chilling effect" on Gawker's other writers), Mr. Daulerio must have been extended the same assurances that Mr. Denton received.

Mr. Daulerio's concealment of relevant and material evidence directly impacted the trial. The fact that Mr. Daulerio and Mr. Denton, who are represented by the same counsel, both concealed their indemnity rights demonstrates a calculated scheme to reduce their exposure to punitive damages.

Mr. Daulerio's concealment of his true net worth even continued after the trial, when he sought a stay of execution. In support of his June 9, 2016 Motion for Stay of Execution Pending Appeal, Mr. Daulerio filed a **sworn** affidavit attached as **Exhibit C**, in which he affirmed 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 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.**

Once again, Mr. Daulerio concealed his indemnification rights from Mr. Bollea and the Court. At the hearing held in this Court at 9:00 a.m. on June 10, 2016, Mr. 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)[4] They also urged this Court to accept the pledge of Mr. 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, are **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 the hearing, Mr. Daulerio's counsel also reaffirmed Mr. Daulerio's false representations regarding his assets:

> We've done 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). This assertion was also untrue.

Within hours of making this statement, Gawker obtained a temporary restraining order from its bankruptcy court that protected Mr. Daulerio, and was based, in part, on the sworn assertion that Mr. Daulerio has indemnity rights. Those indemnity rights are an asset which Mr. Bollea could get through proceedings supplementary to help satisfy the judgment. *Puzzo*, 386 So.2d 49, 51; *DaCosta*, 190 So.2d 211, 213-14; *see also In re. Celotex Corp.*, 204 B.R. 586, 613-

[4] The June 10, 2016 Hearing Transcript is attached as **Exhibit D**.

14 (M.D. Fla. 1996) (indemnification rights are property of a debtor's estate, which can be assigned or transferred).

Having undertaken a "serious analysis," Mr. Daulerio and his counsel certainly knew that his indemnity rights were available to help satisfy the judgment. Importantly, these indemnity rights flowed from a non-party, GMGI, whose stipulated value was $276 million.

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. *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).

Section 45.045, *Fla. Stat.*, also affords this Court substantial discretion to impose sanctions. 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.*

Here, Mr. Daulerio and his counsel intentionally misled this Court, the jury and Mr. Bollea by concealing Mr. Daulerio's indemnity rights so he could cry "poor" to reduce his punitive damages exposure. Then, they intentionally misled this Court and Mr. Bollea by purposely concealing material facts associated with his assets and the value and legitimacy of the alternative security he pledged in exchange for a request, which this Court orally granted, to stay execution of a $115,100,000 Final Judgment. Mr. Daulerio's pledge of GMGI stock was illusory, and at the time he asked this Court for the extraordinary remedy of staying execution without having to post a "good and sufficient bond" required under Florida law, he was concealing a significant asset. Then, because he was upset that Mr. Bollea and this Court unknowingly accepted his false representations and illusory stock pledge, Mr. Daulerio was implicit in the scheme to circumvent this Court in order to obtain a stay on more preferable conditions to him in Gawker's bankruptcy proceedings.

Mr. Daulerio's misconduct interfered with this Court's and the jury's ability to impartially adjudicate, and improperly influenced the trier of fact regarding, central issues in this case: punitive damages and a stay of execution. Mr. Daulerio is guilty of making material misrepresentations that directly impacted the trial, and should be sanctioned accordingly.

In light of the severity and repetition of Mr. Daulerio's misconduct, he should also be required to show cause as to why he should not be held in contempt. To the extent that his attorneys participated in that misconduct, they should likewise be punished. 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 adjudicate Mr. Daulerio guilty of making material misrepresentations to the jury and this Court,[5] sanction Mr. Daulerio and/or his counsel, award attorney's fees and costs, and consider entering an order to show cause as to why Mr. Daulerio and/or his counsel should not be held in contempt, as well as grant any other relief this Court deems just and appropriate.

DATED: August 5, 2016.

/s/ Kenneth G. Turkel

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[5] Mr. Bollea seeks specific findings regarding Mr. Daulerio's misconduct because such misconduct may impact his rights in his appeal of the Final Judgment.

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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 5th day of August, 2016 to the following:

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