

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

TERRY GENE BOLLEA professionally	(
known as HULK HOGAN,	(
	(Case No. 12-012447-CI-011
Plaintiff,	(
	(
vs.	(
	(
GAWKER MEDIA, LLC, <i>et al.</i> ,	(
	(
	(

DEFENDANT A.J. DAULERIO'S RESPONSE AND OPPOSITION TO PLAINTIFF BOLLEA'S EMERGENCY MOTION TO ENFORCE PERMANENT INJUNCTION

1. There is no "emergency" that requires any affirmative action by this Court for two chief reasons.

2. **First:** A.J. Daulerio is not emotionally "desperate" and poses no threat—imminent or otherwise—of circulating any copy of any video of plaintiff Bollea.

3. **Second:** Counsel have taken especially prudent steps designed to give the Court and plaintiff Bollea confidence that Daulerio has no copies of the video, and so could not circulate any. The next paragraphs elaborate on those two reasons, starting with what counsel has done.

What counsel has done

4. After Bollea filed his emergency motion last week, the undersigned counsel David Marburger in Cleveland, Ohio, took possession of Daulerio's laptop. Counsel has transferred the laptop to Vestige, Ltd., a highly reputable digital forensic

firm in Medina, Ohio; see <http://www.vestigeltd.com/>. Last December, Marburger retired from his partnership in Baker Hostetler after more than 32 years there as a civil litigator, 24 years as a partner. He founded Marburger Law LLC in January.

5. Vestige is copying the laptop's hard-drive. After ensuring that the copy is accurate and complete, Vestige is permanently deleting whatever exists on the original hard drive. Vestige will retain and preserve the image of the original hard-drive indefinitely to ensure that, if the video were to resurface on the web or elsewhere, the retained copy would enable Daulerio to show that he did not have the video on the laptop as of this date. Vestige will return Daulerio's laptop to him with either a fresh new hard-drive or with the original hard-drive put back.

6. The undersigned counsel has arranged a similar procedure with Daulerio's mobile phone.

7. When preparing for trial last March, Daulerio had a flash drive containing digital copies of various exhibits expected to be introduced at trial. Among those exhibits were the 30-minute video of Bollea and the one-minute-40-second excerpt that had been posted on gawker.com. The Levine Sullivan firm already had retrieved that flash drive from Daulerio before Bollea filed his emergency motion. The Levine Sullivan firm continues to retain that flash drive in a vault.

8. Daulerio's counsel repeatedly have consulted with him to ensure that he possesses no copies of the content of either video—digital or otherwise and instructed him to alert counsel immediately if he discovers a copy.

9. Plaintiff Bollea grounded his asserted "emergency" motion, and its accompanying letter to the Court marked "Urgent," upon Daulerio's comments on a "podcast" recorded in September. Among the exhibits to Bollea's motion is a stenographer's transcript of that podcast. (Ex. A)

10. The last page of that transcript shows that the stenographer finished typing it on Thursday, September 29. So Bollea's counsel apparently had the transcript for a full week before filing the emergency motion. Perhaps this matter would have worked out more simply and inexpensively and without litigating if Bollea's counsel had informed Daulerio's counsel on September 29 or during the ensuing week that they were concerned about the podcast.

The podcast evidences no threat that Daulerio intends to violate this Court's permanent injunction

11. As the Court can hear for itself and see from the transcript, the podcast at the heart of Bollea's motion evidences no present, existing threat that Daulerio will or might violate this Court's injunction.

12. In the podcast, Daulerio described his "brief sliver" of "fantasy" six months ago, when the seven people on the jury rendered their monumental, unprecedented verdict in this case.¹ An unexpected verdict of \$140.1 million would crush the spirit of almost anyone who was subject to it. Thus, the podcast describes Daulerio's "first instinct." (Plntff's Ex. A at 53:16 to 55:8.)

¹ (Plntff's Ex. A at 55:9-10.)

13. In the podcast, Daulerio made clear that he is grateful that he didn't act on that first instinct, adding figuratively: "thankfully some people talked me off the ledge." (Plntff's Ex. A at 54:20-22.)

14. When Daulerio described his near-present state of mind, he consistently said that he realizes that he must abide by the law's demands. Referring to the money judgment which Bollea is collecting upon, Daulerio said: "I do owe this money, and up until the appeals process, they can do very, you know, aggressive and invasive things to try to collect on that." (Pltff's Ex. A at 57:12-58:7.)

15. After the shock of six months ago, Daulerio chooses the appeal as his vehicle for potential vindication. He is not emotionally "desperate." He is resigned to what happened, and anxious to see what happens in the appeal.

16. Today and in the podcast, Daulerio expresses no interest in violating this Court's permanent injunction.

17. While Bollea's emergency motion directs a flurry of other baseless accusations at Daulerio, none bears on the actual issue that the motion presents or the relief that the motion seeks. Daulerio reserves the right to respond to those accusations at an appropriate juncture.

Conclusion

For the reasons stated above, Daulerio respectfully requests that the Court deny Bollea's emergency motion as moot or otherwise.

Dated: October 13, 2016

Respectfully submitted,
ANDREW B. GREENLEE, P.A.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of October, 2016, I caused a copy of the foregoing to be served via the Florida Courts' E-Filing Portal on the following counsel:

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