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; GAWKER MEDIA GROUP, INC. aka GAWKER MEDIA; GAWKER ENTERTAINMENT, LLC; GAWKER TECHNOLOGY, LLC; GAWKER SALES, LLC; NICK DENTON; A.J. DAULERIO; KATE BENNERT, and BLOGWIRE HUNGARY SZELLEMI ALKOTAST HASZNOSITO KFT aka GAWKER MEDIA,

Defendants.
_____/

PLAINTIFF TERRY GENE BOLLEA'S OPPOSITION TO GAWKER MEDIA, LLC'S VERIFIED MOTION TO DISQUALIFY TRIAL JUDGE

Plaintiff Terry Gene Bollea (professionally known as Hulk Hogan) (the "Plaintiff" or "Mr. Bollea") files this opposition to Gawker Media, LLC's ("Gawker Media") Verified Motion to Disqualify Trial Judge (the "Motion" or "Mot."). The Motion should be denied for the following reasons:

First, Gawker Media seeks to disqualify Judge Campbell because it disagrees with her ruling granting a temporary injunction against Gawker Media. It is well established, however, that adverse rulings are not a sufficient ground to disqualify a judge. *Gilliam v. State*, 582 So.2d 610, 611 (Fla. 1991).

Second, Gawker Media's purported "fear that it will not receive a fair adjudication and trial before the Court" is unreasonable. Mot. at 1. There is no competent evidence that Gawker Media will not receive a fair adjudication and trial. Even so, "[a] judge's remarks that he is not impressed with a lawyer's, or his client's behavior are not, without more, grounds for recusal," *Nassetta v. Kaplan*, 557 So.2d 919, 921 (Fla. 4th DCA 1990); "[a] trial judge's expression of dissatisfaction with counsel . . . alone does not give rise to a reasonable belief that the trial judge is biased . . . ." *Ellis v. Henning*, 678 So.2d 825, 827 (Fla. 4th DCA 1996).

Third, Gawker Media's claim that Heather Clem's counsel engaged in an *ex parte* communication with the Court's staff is an obvious, after-the-fact confection by Gawker Media to try to fit the facts of this case within those cited by the case on which Gawker Media principally relies, *Rollins v. Baker*, 683 So.2d 1138 (Fla. 5th DCA 1996). The argument does not withstand scrutiny. The alleged *ex parte* communication was purely administrative in nature.

Gawker Media makes no showing that the Court is biased against Gawker Media or its positions on the issues or that their arguments were not given due consideration by the Court. Accordingly, there is no legal basis to disqualify the trial judge, and Gawker Media's attempt to "judge shop" should be rejected.

I. STATEMENT OF FACTS

On December 28, 2012, Mr. Bollea filed a First Amended Complaint against defendants Heather Clem and Gawker Media (and its related entities) alleging various privacy-related torts concerning the clandestine recording and publication of explicit portions of a hidden camera video of Mr. Bollea and Heather Clem (the excerpts of the recording published by Gawker Media are hereinafter referred to as the "Sex Tape"), as well as an explicit narrative description of the full recording (the "Sex Narrative").

On April 19, 2013, Mr. Bollea moved for a temporary injunction to prohibit the publication, broadcast and dissemination of the Sex Tape and the Sex Narrative. On April 23, 2013, Gawker Media filed an opposition to Mr. Bollea's temporary injunction motion.

On April 24, 2013, the Court heard oral argument on Mr. Bollea's motion. During the oral argument, the Court expressed discomfort with portions of the parties' papers: "I would like to remind the parties that when they file pleadings, they are lawyers first. . . . You write pleadings for legal proceedings, not for tabloid or sensational effect. So, please, the next time any future filings that are in this court file, please keep that in mind. I think some of the language that was used, especially in the response, is offensive. I think that it is unnecessary, that it is more written for sensational issues." Hearing Tr. 3:17–4:2. Gawker Media's counsel did not seek any clarification from the Court as to what particular language concerned the Court. *Id.*

Also during the argument, the Court stated on the record: "Mr. Keith Thomas had called our office, was not able to be here today. He represents [Defendant] Ms. [Heather] Clem and has no objection to the entry of an injunction." *Id.* 35:24–36:2. The following morning, at 9:56 a.m. (EDT) on April 25, 2013, all parties received the transcript of the April 24 hearing. Affidavit of Charles J. Harder ("Harder Aff.") ¶ 2, Ex. A.

At the conclusion of the argument, the Court orally granted Mr. Bollea's motion for a temporary injunction. On April 25, 2013, the Court entered a written order.

II. STANDARD OF REVIEW

"The disqualification of a presiding trial judge is a serious and disruptive matter. Each petition [ ] must be carefully reviewed to be certain that it is well-founded and not **merely an attempt at forum-shopping**." *Cooper Tire & Rubber Co. v. Rodriguez*, 997 So.2d 1124, 1125

(Fla. 3d DCA 2008) (emphasis added). "[W]e would comment that motions to disqualify trial judges are becoming more prevalent in South Florida. We increasingly encounter situations where **the motive behind a motion to disqualify is obviously** to gain a continuance or **to get rid of a judge who evidences doubt or displeasure** as to the efficacy of the movant's cause of action by oral comment or by entering adverse judicial rulings. **A judge's remarks that he is not impressed with a lawyer's, or his client's behavior are not, without more, grounds for recusal.**" *Nassetta v. Kaplan*, 557 So.2d 919, 921 (Fla. 4th DCA 1990) (emphasis added).

A motion to disqualify a trial judge must "allege specifically the facts and reasons upon which the movant relies as the grounds for disqualification." Fla. R. Judicial Admin. 2.330(c)(2). Gawker Media must show that it fears that it "will not receive a fair trial or hearing because of **specifically described prejudice or bias of the judge**." Fla. R. Judicial Admin. 2.330(d)(1) (emphasis added). Those fears must be **reasonable** based on the factual record. *Hayes v. State*, 686 So.2d 694, 695 (Fla. 4th DCA 1996) (holding that a motion to disqualify trial judge must be denied unless facts alleged "would place a reasonably prudent person in fear of not receiving a fair and impartial proceeding"); *MacKenzie v. Super Kids Bargain Store, Inc.*, 565 So.2d 1332, 1334 (Fla.1990) (moving party's fear must be "well grounded"). A "mere subjective fear of bias" is not sufficient to justify disqualification. *Domville v. State*, 103 So.3d 184, 185 (Fla. 4th DCA 2012) (internal quotation omitted) (judge's "friending" prosecutor on Facebook was not grounds for disqualification). **Adverse rulings are not a sufficient ground to disqualify a judge.** *Gilliam v. State*, 582 So.2d 610, 611 (Fla. 1991).

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III. ARGUMENT

A. Admonitions From A Trial Court Regarding The Tenor Of Court Filings Are Proper And Do Not Evidence Bias Or Prejudice

At the parties' first appearance before Judge Campbell, the Court admonished both parties, based on their filings to date, to avoid sensationalistic and tabloid-style court filings. Hearing Tr. 3:17–4:2. Such an admonition is entirely proper. A trial judge's admonishments regarding the filings, evidence, and argument before it are not grounds for disqualification. *See, e.g.*, *Ellis v. Henning*, 678 So.2d 825, 827 (Fla. 4th DCA 1996) ("A trial judge's expression of dissatisfaction with counsel . . . alone does not give rise to a reasonable belief that the trial judge is biased . . ."); *Cooper*, 997 So.2d at 1126 (finding that "holding the parties' feet to the fire" and admonishing them for not completing discovery and getting the case to trial is appropriate and not a ground for disqualification); *Nassetta*, 557 So.2d at 920–21 (rejecting disqualification motion based on judge's comment at bail reduction hearing that he did not care if the defendant got out of jail or not: "A judge's remarks that he is not impressed with a lawyer's, or his client's behavior are not, without more, grounds for recusal.").

Gawker Media's attempt to liken the Court's conduct here to that at issue in *Rollins v. Baker*, 683 So.2d 1138, 1139 (Fla. 5th DCA 1996), is completely misplaced. In *Rollins*, a divorce case, the trial court made gratuitous comments directed at the husband personally, and which had nothing to do with the parties' appearances or pleadings before the court. *Id.* For example, the court commented on the litigant's status as a professional basketball player, his dislike for the litigant's basketball team, and the litigant's financial status. *Id.* Based on the court's comments, it was reasonable to believe that the trial court was biased against the litigant because of his wealth and profession.

Unlike the personal attacks at issue in the *Rollins* case, however, Gawker Media takes issue with the Court's comments on **both parties' court filings** in support of and in response to Mr. Bollea's Motion for a Temporary Injunction. Mot. at ¶¶ 5–6, 25–29. Specifically, the Court admonished, "I would like to remind **the parties** that when they file pleadings, they are lawyers first. . . . You write pleadings for legal proceedings, not for tabloid or sensational effect. So, please, the next time any future filings that are in this court file, please keep that in mind. I think some of the language that was used, especially in the response, is offensive. I think that it is unnecessary, that it is more written for sensational issues." Hearing Tr. 3:17–4:2 (emphasis added). Such an admonition is in no way evidence of impartiality toward Mr. Bollea or bias against Gawker Media. Rather, the Court reminds **both parties** (in actuality, their attorneys) to refrain from filing "sensational" pleadings—a proper admonition from a trial judge concerned with decorum in her courtroom.

The Court's inclusion of the words "especially in the response" is both accurate and does not somehow convert the admonishment to **both** parties into an unwarranted attack on Gawker Media alone (or its counsel). Gawker Media urges the Court to undertake a "side by side comparison of Plaintiff's Motion and Gawker's Opposition" to determine whose pleading was more "offensive," and then points to Mr. Bollea's use of "offensive" language – language **quoted directly from Gawker Media's** Sex Tape and Sex Narrative. Mot. at ¶ 27. Moreover, Gawker Media's response to the Motion for Temporary Injunction included several alleged "facts" that did not concern (a) the content of the Sex Tape or the Sex Narrative, (b) Gawker Media's argument that the First Amendment should protect its publication of same, or (c) Mr. Bollea's cause of action for invasion of privacy as to Gawker Media's publication of same. Rather, the "facts" submitted by Gawker Media concerned **another alleged affair** that Mr.

Bollea supposedly had with a person who **has nothing whatsoever to do with this lawsuit**, including a **graphic description of alleged sexual conduct** with that person. Gawker Media obviously included such material for sensationalistic or tabloid effect, and the Court's admonishment of Gawker Media specifically was entirely proper.

Therefore, Gawker Media's perception that its use of language is less offensive than Mr. Bollea's is inaccurate. It also is irrelevant as discussed above. *See, e.g., Nassetta*, 557 So.2d at 920–21 ("A judge's remarks that he is not impressed with a lawyer's, or his client's behavior are not, without more, grounds for recusal.").

Gawker Media's suggestion that the trial court's decision not to review the Sex Tape is somehow an indication of bias against Gawker Media is far-fetched. Mot. at ¶ 28. **First**, the contents of the Sex Tape were extensively described in the briefing; there was no factual dispute as to any aspect of its content (*i.e.*, the length of the footage, what was depicted, etc.). **Second**, this is not an obscenity prosecution where the materials might need to be viewed to determine if they appealed to the prurient interest or were patently offensive. The applicable legal standard was whether private facts were disclosed and whether the Sex Tape was a matter of legitimate public concern. Neither of those determinations required close scrutiny of the tape as opposed to a description of its contents. **Third**, Gawker Media failed to submit a copy of the actual video of the Sex Tape in opposition to the motion for temporary injunction (under seal), nor did it ask the Court to take judicial notice of it. If Gawker Media believed that having the Court view the Sex Tape was either necessary or that it would assist its cause, it should have at the very least taken such action or made such a request. Moreover, it is hardly evidence of bias that the Court did not affirmatively undertake the actions necessary to independently locate and review the Sex Tape video on the Gawker Media website. And now that the temporary injunction has issued, Gawker

Media cannot be heard to complain that the Court should have watched a video that it failed to supply (under seal) or otherwise failed to ask the Court to watch or take judicial notice of. Moreover, there is absolutely no evidence that the Court's disinclination to independently undertake the steps necessary to locate and review the explicit content of the Sex Tape evinces any bias or prejudice against Gawker Media. It is at least as likely that the Court's viewing of the Sex Tape could have sparked revulsion toward its purveyor and/or sympathy for Mr. Bollea as the victim of such a flagrant invasion of his personal privacy. It is perhaps for this very reason that Gawker Media intentionally chose to avoid supplying the Court with a copy (under seal), or asking that the Court take judicial notice of it. Either way, Gawker Media cannot complain **now**, when Gawker Media did not take the required steps prior to the hearing, to request that the Court view the video in connection with the motion for temporary injunction.

B. Communications With Court Staff Regarding Administrative Matters Do Not Constitute Improper *Ex Parte* Communications

The prohibition on *ex parte* communications extends only to communications regarding the substance of the case. It is proper and appropriate, however, for a court or its staff to communicate with counsel *ex parte* with respect to purely administrative matters, such as scheduling. "*Ex parte* communications regarding purely administrative, non-substantive matters . . . do not require disqualification." *Nudel v. Flagstar Bank, FSB*, 52 So.3d 692, 694 (Fla. 4th DCA 2010) (communications between judge and judge's staff and lawyer for one of the parties discussing calendaring of motion did not constitute improper *ex parte* communication).

In this instance, Ms. Clem's counsel notified the Judge's office that he could not attend the temporary injunction hearing and that his client did not oppose the motion. *See* Hearing Tr. 35:24–36:2. This is exactly the sort of administrative communication that is entirely proper and

does not constitute conduct evidencing judicial bias. Lawyers call court offices all the time to notify them of their non-opposition to pending motions or that they cannot attend hearings. These communications in no way prejudice trial judges and, in fact, are necessary to ensure the smooth functioning of the judicial system (by, for instance, not delaying a motion hearing while someone attempts to contact counsel for a non-appearing party to determine if that party opposes the motion).

To the extent the Court finds that the communication was not purely administrative (though it was), the purpose of the prohibition on substantive *ex parte* communications is to ensure that every person in a proceeding has the right to be heard. Fla. Code of Judicial Conduct Canon 3(B)(7). Administrative communications are permitted so long as "no party will gain a procedural or tactical advantage as a result of the ex parte communication" and the other parties are promptly notified and given an opportunity to respond. Fla. Code of Judicial Conduct Canon 3(B)(7)(a)(1) & (2).

Ms. Clem's counsel's telephone call to the Judge's office did not in any way interfere with Gawker Media's right to be heard on the motion for temporary injunction. Further, the parties received prompt notice of the communication and its substance when they received the transcript of the April 24 hearing the following morning at 9:56 a.m. (EDT). Harder Aff., Ex. A. The communication did not prejudice Gawker Media and thus is not a ground for disqualifying the trial judge. *See Pinardi v. State*, 718 So.2d 242 (Fla. 5th DCA 1998) (rejecting motion for disqualification based on alleged *ex parte* communication where contents of communication were "innocuous").

The cases relied on by Gawker Media are inapposite. In *Rose v. State*, 601 So.2d 1181, 1184 (Fla. 1992), the Florida Supreme Court held that the trial court erroneously signed a

proposed order denying a habeas petition without giving the other side the right to object to the order's contents. The *Rose* opinion did not, however, disqualify the trial judge; rather it "direct[ed] the trial court to reconsider Rose's motion and to hold an evidentiary hearing." *Id.* Also, the *ex parte* communication at issue in *Rose* was unquestionably substantive—the contents of a court's order—versus the purely administrative nature of the call at issue here: notification of an attorney's inability to appear at a motion hearing and non-opposition to the motion.

The *Rollins* case is similarly unhelpful to Gawker Media's argument. In *Rollins*, the trial court had an *ex parte* discussion with the wife's attorney concerning the substance of a domestic violence injunction against the husband. *Rollins*, 683 So.2d at 1139. The court then pressured the husband's lawyer to accept the injunction as discussed with the wife's counsel. *Id.* The communications—the contents of an injunction order—were wholly substantive in nature. Further, it appeared that the judge in that case failed to inform the husband's attorney about procedural failings fatal to the wife's injunction motion. *Id.* The conduct at issue here—a courtesy telephone call to a clerk indicating in ability to attend a hearing and non-opposition to a motion—is not at all analogous.[1]

Gawker Media's new-found "fear" of impartiality "[b]ased upon these statements and actions," and the surrounding hullabaloo Gawker Media tries to incite, appears disingenuous and should not be used as grounds to disqualify a judge. Mot. at ¶ 10.

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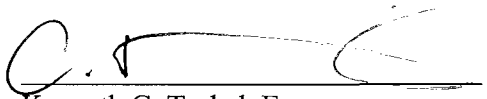
[1] It is difficult to determine exactly what Gawker Media believes the Court should have done in this situation. Was the court clerk supposed to refuse to take the message from Ms. Clem's lawyer? Was the court clerk required to order Ms. Clem's counsel to appear at the hearing, despite the attorney's statement that he was unavailable to attend, merely for the purpose of stating she did not oppose the motion? Under Gawker Media's absurd construction of the ex parte communications rule, it would be grounds for disqualification for a court to utilize voice mail.

IV. CONCLUSION

For the foregoing reasons, Gawker Media's motion to disqualify should be denied.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via e-mail and U.S. First Class Mail this 8th day of May, 2013 to the following:

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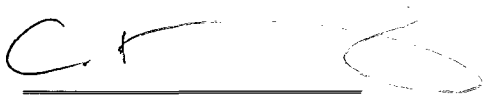

Attorney

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
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TERRY GENE BOLLEA professionally known as HULK HOGAN,

Plaintiff,

vs.

Case No. 12012447CI-011

HEATHER CLEM; GAWKER MEDIA, LLC aka GAWKER MEDIA; GAWKER MEDIA GROUP, INC. aka GAWKER MEDIA; GAWKER ENTERTAINMENT, LLC; GAWKER TECHNOLOGY, LLC; GAWKER SALES, LLC; NICK DENTON; A.J. DAULERIO; KATE BENNERT, and BLOGWIRE HUNGARY SZELLEMI ALKOTAST HASZNOSITO KFT aka GAWKER MEDIA,

Defendants.

_____/

AFFIDAVIT OF CHARLES J. HARDER

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

CHARLES J. HARDER, Esq. being duly sworn, deposes and says:

1. I am a resident of Los Angeles, California over the age of 18 years. I am an attorney duly licensed to practice before all courts of the State of California, among other courts. I am a partner at the law firm Harder Mirell & Abrams LLP, counsel (admitted *pro hac vice*) for Plaintiff Terry Gene Bollea, professionally known as Hulk Hogan. The statements made herein are based on my personal knowledge.

2. Attached hereto as **Exhibit A** is a true and correct copy of the email that I received from Anthem Reporting at 9:56 a.m. (EDT) (6:56 a.m. (PDT)) on Thursday, April 25, 2013, which attaches the transcript of the April 24, 2013 temporary injunction hearing. The email copies counsel for Gawker Media, LLC: George Thomas (gthomas@tlolawfirm.com) and Rachel Fugate (rfugate@tlolawfirm.com), as well as their legal assistant, Katie Brown (kbrown@tlolawfirm.com).

I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information and belief.

Executed this 7th day of May, 2013.

CHARLES J. HARDER

Sworn to and subscribed before me this __ day of _____, 2013 by _____ who is personally known to me or _____ who has produced _____ (type of I.D.) as identification (check one).

* See attached CA Jurat Form

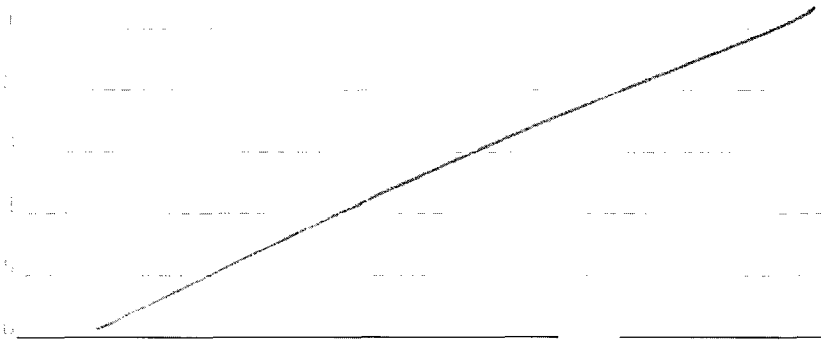
_____
(Signature)

_____
(Type or Print Name)

Notary Public
My Commission Expires:
Commission No.:

CALIFORNIA JURAT WITH AFFIANT STATEMENT

☑ See Attached Document (Notary to cross out lines 1–6 below)
☐ See Statement Below (Lines 1–5 to be completed only by document signer[s], *not* Notary)



Signature of Document Signer No. 1

Signature of Document Signer No. 2 (if any)

State of California
County of Los Angeles

Subscribed and sworn to (or affirmed) before me on this 7th day of May, 2013, by
(1) Charles J. Harder,
Name of Signer

proved to me on the basis of satisfactory evidence to be the person who appeared before me (.) (,)

(and

(2) _____,
Name of Signer

proved to me on the basis of satisfactory evidence to be the person who appeared before me.)

Signature _____
Signature of Notary Public

S. BRADLEY
Commission # 1993706
Notary Public - California
Los Angeles County
My Comm. Expires Nov 8, 2016

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Further Description of Any Attached Document

Title or Type of Document: Affidavit

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

RIGHT THUMBPRINT OF SIGNER #1	RIGHT THUMBPRINT OF SIGNER #2
Top of thumb here	Top of thumb here

EXHIBIT A

Charles Harder

From: Anthem Reporting <Anthem@anthemreporting.com>
Sent: Thursday, April 25, 2013 6:56 AM
To: cramirez@bajocuva.com
Cc: Charles Harder; gthomas@tlolawfirm.com; rfugate@tlolawfirm.com; kbrown@tlolawfirm.com
Subject: E-TRANSCRIPT FILES OF: Hearing before Judge Campbell 04-24-13
Attachments: Bollea v Clem at al; Hearing before Judge Campbell 04-24-13.txt; bollea v clem at al; hearing before judge campbell 04-24-13.ptx

Importance: High

Attached, please find files for the above named transcript in Ascii (.txt) and eTranscript (.ptx) format.

Please confirm that you have received these files and thank you for your business!
If this is your first time downloading a PTX eTranscript, please click the following link to download the free viewer. You will be able to view and print the full, condensed/mini and the word index: http://store.westlaw.com/reallegal/software/default.aspx

Best regards,

Shauna Allen, Operations Manager | Anthem Reporting
Headquarters/Mailing: 101 S. Franklin St. #100, Tampa FL 33602
Toll Free: 888.909.2720 | Main: 813.272.2720 | Toll Free: 888.909.2720
Tampa - St. Pete - Orlando - Ft. Lauderdale - Miami – Jacksonville

Our business continues to grow from your referrals.
Thank you!

http://www.facebook.com/#!/pages/Anthem-Reporting/181199358596873?fref=ts

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

TERRY GENE BOLLEA, professionally known as HULK HOGAN,

Plaintiff,

vs. CASE NO.: 12012447 CI-011

HEATHER CLEM; GAWKER MEDIA, LLC, a/k/a GAWKER MEDIA; GAWKER MEDIA GROUP, INC. a/k/a GAWKER MEDIA; GAWKER ENTERTAINMENT, LLC; GAWKER TECHNOLOGY, LLC; GAWKER SALES, LLC; NICK DENTON; A.J. DAULERIO; KATE BENNERT, and BLOGWIRE HUNGARY SZELLEMI ALKOTAST HASZNOSITO KFT a/k/a GAWKER MEDIA,

Defendants.

PROCEEDINGS: MOTION FOR TEMPORARY INJUNCTION

BEFORE: HONORABLE PAMELA A.M. CAMPBELL

DATE: April 24, 2013

PLACE: St. Petersburg Judicial Building
545 First Avenue North
St. Petersburg, Florida

REPORTED BY: Stacy D. Miller, Court Reporter
Notary Public
State of Florida at Large

APPEARANCES:

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P R O C E E D I N G S

THE COURT: We are here on Case Number 12-012447, Terry Gene Bollea vs. Gawker Media and others. Christina Ramirez here representing the plaintiff. Charles Harder here representing the plaintiff, who as been ordered as pro hoc to appear today. Greg Thomas here representing

Gawker and Rachel Fugate here representing Gawker.

We're here today for plaintiff's Motion for Temporary Injunction. I have reviewed both the plaintiff's and the defendant's responses that had been filed for this hearing.

First off, I would like to say one initial thing, and that is professionalism, civility, integrity. Anything less will not be tolerated. I would like to remind the parties that when they file pleadings, they are lawyers first. They are officers of the Court first. You write pleadings for legal proceedings, not for tabloid or sensational effect.

So, please, the next time any future filings that are in this court file, please keep that in mind. I think some of the language that was used, especially in the response, is offensive.

I think that it is unnecessary, that it is more written for sensational issues. I will remind you all that you are professionals and lawyers first above anything else. So please keep that in mind in the future in these kinds of filings.

All right. So, Mr. Harder, are you making the argument?

MR. HARDER: I would like to, Your Honor.

MR. THOMAS: Go ahead.

THE COURT: Thank you.

MR. HARDER: Your Honor, I'm going to try to

avoid repeating anything from the moving papers because I assume you've read them and you don't want to hear it again. I have read the response. I was in route in an airport, and I read it on my iPhone, but I got a sense of it.

I did want to address the issue of the collateral estoppel argument first. There are several cases that say that a ruling on a preliminary injunction is not collateral estoppel because it is not a ruling on the merits of the case, and it does not stop a second hearing on a second motion for preliminary injunction.

I can -- I would cite to the Abbott Laboratories case, 473 F.3d 1196 from the Federal

Circuit, 2007, which says that, "Rulings on earlier preliminary injunction motions do not have collateral estoppel effect in subsequent preliminary injunction proceedings.

In the 11th Circuit controlling here in Florida, there's a case called David Vincent, Inc. vs. Broward County, 200 F.3d 1325, 11th Circuit, 2000. In that case, the Court held that findings made on a prior motion for preliminary injunction proceeding were not binding in subsequent proceedings and do not have collateral estoppel and res judicata effect.

I'm sure that there are lots more cases out there. I just saw the opposition yesterday. So we could provide additional cases.

I think it's pretty clear that the ruling

that was in the Federal court was not on the merits. We filed a temporary restraining order immediately after we had been retained in the case when this sex tape video was on the internet. And we immediately filed because we felt it was an emergency, and we wanted to stop the spread of that tape. We wanted to put an end to it right away.

We filed initial papers. We expected that

we would be able to file subsequent papers. We were denied leave to file additional papers which had a lot more authority.

And so it was a hearing that took place very quickly, and I know that there were other requests made that were related to that, but that was the only hearing that was ever -- that has ever taken place on those issues.

So we believe that the Federal court did a rush job on that preliminary injunction motion and didn't really give it the full consideration with all of the cases that we were prepared to put before the Court. We also think that the Court got it wrong, and we explained to some extent why we think that. I'm not going to go into that because it's in our papers.

I do want to point out to the Court, Your Honor, though, because there is this issue of prior restraint of free speech. I think that's one of the main arguments that the defendants are

relying upon. They are alleging that what we're trying do is enjoin prior restraint of free speech, that this is somehow protected constitutional speech. And it is not, Your Honor. The speech that is at issue, which is the

sex tape, is not constitutional protected speech.

There is a case that we came across when we were doing some research on the opposition. We came across it yesterday. It happens to be from the California Supreme Court, but it cites heavily to the United States Supreme Court. That case is called Aguilar vs. Avis Rent-A-Car System, Inc. The citation is 21 Cal.4th 121. It's from 1999.

And the -- I'm not going to get into the facts too much, but there was an employee at Avis Rent-A-Car who was being subjected to racial epithet. And the employee -- his co-worker who was subjecting him to these, wouldn't stop and Avis wouldn't put a stop to it. So he filed a lawsuit and he sought an injunction to stop this co-worker from using racial epithets towards him.

The argument from the defense was that this was an attempt at prior restraint of free speech. It went all the way up to the California Supreme Court. The California Supreme Court enjoined this conduct and said it's not a prior restraint because it's not constitutionally protected. And the Court even went into a whole list of the types of conduct and types of speech that's not

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constitutionally protected. They had quite a list in the case, and there is additional case law, which even adds to that list.

Unlawful conduct is not constitutionally protected. The Aguilar case has soliciting a bribe. That's a crime. You can't protect speech that's like that. Perjury is another example. Making a terrorist threat is another example. In other cases one example is child pornography. That's not constitutionally protected. You can enjoin that in heartbeat. No one is going to say you can't.

Well, that's somewhat similar to what we have here, which is a violation of the video voyeurism law in Florida where somebody is taped without their knowledge, without their permission, in a state of undress. You can't tape them. It's illegal. And you can't post it. That's illegal. Illegal conduct. It's criminally illegal, not just civilly illegal. You can enjoin conduct that's like that. It doesn't get constitutional protection.

And the Supreme Court of California has a great quote here. It says, "The State may penalize threats, even those consisting of pure

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speech. The goal of the First Amendment is to protect expression that engages in some fashion

in public dialogue, that is communication in which the participants seek to persuade or are persuaded, communication which is about changing or maintaining beliefs, or taking or refusing to take action on the basis of one's beliefs."

The Court even goes into slander and intentional infliction of emotional distress. And it says to -- as to all of this whole list of types of speech, "Types of speech that produce special harms distinct from their communicative aspect, such practices are entitled to no constitutional protection."

And the Court concludes, "The foregoing high court decision" -- it's referring to several U.S. Supreme Court decisions -- "recognize that once a Court has found the specific pattern of conduct is unlawful, an injunction order prohibiting the repetition, perpetuation, or continuation of that practice is not a prohibited prior restraint of speech."

And here, Your Honor, we have a situation, as you are aware, of one other area that's not protected is copyright and trademark

infringements. Courts are all the time enjoining copyright infringements and trademark infringements, particularly in California where I'm from, where somebody will post either a TV show or a movie or excerpts from it and the owner of that will say, wait a second, you have to pay for that. You have to get a license from me. I

get money when I put that on TV or I put that on the internet. Courts enjoin that all the time. Well, that's beyond prior restraint. That's not constitutionally protected.

There is also the case that we cited, Michaels -- the first Michaels case, Bret Michaels, where it involved a celebrity sex tape. The Court enjoined it. The Court said just because you're a celebrity doesn't mean you gave up your rights of privacy. In some ways you do, but not in all ways, not when you're behind closed doors in a bedroom or another private place.

And in preparing for this, Your Honor, I went on the internet, and I just looked up video voyeurism in Florida just to see what was -- what's the whole point of the video voyeurism law. There were some articles about some of the

recent prosecutions, and one was a fellow named Michael Drey, D-R-E-Y. Last year the article came out in the Orlando Sentinel in September of last year.

This was fellow who was an employee at a Target store. He set up allegedly -- I guess I have to say allegedly. He set up two cameras in the changing rooms, filmed what was going on in the changing rooms.

And one of the victims, who was 26 years old, was mortified that she had changed into a

bikini, had no idea that she was being filmed.

And this individual, Michael Drey, was prosecuted. He was facing a five-year prison sentence, according to the article. I don't know whatever happened to it.

But it's -- it's -- the courts look at the balancing of the public interests. And the balancing of the public interests on the one hand is the right to be -- have privacy in a private place. And everybody has that right. Everybody has that expectation, and they should if we're going to be a civilized society. You just can't burst in anywhere or surreptitiously video someone when you don't have their permission.

It's a very substantial interest.

And the Michaels 1 case talks about the substantial interest that people have to privacy in their private homes and private places.

On the other hand, the counter balance is the right of people to watch videos that they are not supposed to watch. Well, there is no right. There is no such right to watch a video of somebody in a private bedroom naked or having sex or in a changing stall when they are putting on a bikini. There is no such right.

Now, the Gawker defendants try to tie in a newsworthiness to this. They say, well, he's a celebrity, so therefore, we can talk about it. Well, the Michaels 1 decision says, no, you can't. You can't -- you can't just tie in a

newsworthy aspect to something that is a violation of someone's rights.

Now, the interesting thing is that in Michaels, it wasn't a violation of the criminal statute of video voyeurism. First it was in California, and here we're in Florida where there is such a statute. And, second, Pamela Anderson and Bret Michaels created the film on their own. The violation was that they created it for their

personal usage and not for public usage.

Here we have a different situation where Mr. Bollea was filmed without his knowledge and without his permission in a private place. That was a violation. And it is equally a violation to post that. So it's even more of a violation of his privacy rights and of the law here in Florida.

Also, Florida has a two-person -- a statute that requires two people to consent to the taping and recording of someone. That was violated, as well.

There is a famous case that involves a celebrity outside of all of these cases that we've cited. That's of Erin Andrews. She was an ESPN reporter who was in a hotel room. A person rented the hotel room next to her and somehow had peep holes into her room, and he videoed her in her hotel room.

She was mortified, and she suffered extreme

emotional distress. It was a huge news story. No one doubts that that was a big news story, that there was a newsworthy aspect to that incident.

But that doesn't mean you get -- a news

organization gets to post video of Erin Andrews naked in a hotel room. It's not necessary to post that to tell the news story. You can still tell the five Ws of the story, the who, what, where, when, why, how, without posting the actual content.

And here, Gawker defendants stepped over the line. No one is disputing that they had a right to write a legitimate news story. Even to have a picture of Terry Bollea next to the news story saying, this is the guy that we're talking about. You know him as Hulk Hogan.

And then talking about he had an extramarital affair. He was in a bedroom. It was not his bedroom. It was not his wife, et cetera. A tape was made allegedly. Someone is trying to shop that tape. You can say all of that in words. You don't have to post the content.

Can you imagine a world where every time someone was surreptitiously videoed, and if there was some news aspect of it, they got to post the content? Erin Andrews or the situation with Michael Drey at the Target store? Or news flash, ladies and gentlemen, there is a Peeping Tom in

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your neighborhood. This is how he operates. Here is some video that he took. That's crossing the line.

They crossed the line. We're asking for an injunction to stop that. The Courts say you're entitled to an injunction, a mandatory injunction. Yes, they posted it up. We're entitled to an injunction to take it down.

The case that I was telling you about earlier, Aguilar, the Supreme Court of California said you're entitled to a mandatory injunction against this co-worker who was using racial epithets because his speech is not constitutionally protected and you can stop him.

I think you need to look no further than the Gawker story itself where they admit this isn't about telling the news. They say it's not safe for work. They say it reduces us all to voyeurs and deviants. They say you're not supposed to watch it.

Well, they are not describing the front page of the New York Times. The New York Times is something -- is not something you're not supposed to watch. It's not something that reduces you to a voyeur or a deviant if you look at it. It's

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perfectly safe for work.

If it was a legitimate news content -- I'm

talking about the sex tape. If that was legitimate, they wouldn't be saying you're not supposed to watch it.

I think it's also telling that no other news organizations in the world have this sex tape up. There was one other instance where following their lead, they posted the same content. And in a Cease & Desist letter, it was taken down immediately.

No other news organization has posted this up. Hundreds, if not thousands, have written about the story of the Hulk Hogan sex tape. It became big news, but nobody has posted the contents.

I reserve for further. Thank you, Your Honor.

THE COURT: All right. Mr. Thomas.

MR. THOMAS: Your Honor, can I approach?

THE COURT: Yes.

MR. THOMAS: Your Honor, there's a chart we would like to talk to you about. Your Honor, I would like for you to think for a second about the reverse of what happened in this case. Let's

assume Mr. Bollea comes to you firsthand and he presents these arguments. Your Honor spends a consider amount of judicial labor on those arguments.

And this is the same thing, Your Honor. Mr. Hogan chose the court of first resort. Didn't come to this court first. He came to the

United States District Court in Tampa, Florida and filed this claim. He chose it. We didn't.

He files a Motion for Temporary Restraining Order and Preliminary Injunction. The Court, seven days later, denies the temporary restraining order, but says you're going to have your day in court. You're going to have a hearing. You take as much time as you want.

I argued. Ms. Ramirez's partner, Mr. Turkel, argued. We were there for an hour and a half. There is a lengthy transcript of that hearing in Tampa, Your Honor.

The Judge -- the same day we had that hearing, they file an Amended Complaint that adds a copyright claim. Copyright, as Mr. Harder says, is exactly right. Copyright gives you an entitlement to an injunction if you satisfy the other criteria.

So Judge Whittemore after that hearing, three weeks, issues -- denies the preliminary injunction. Lengthy order. We have a copy of it right here for Your Honor.

THE COURT: I have a copy. Thank you. I have two copies, in fact, that were attached to -- I believe it was Ms. Fugate's declaration, and there was a copy of the Order dated November 14, 2012. There is also an Order that is dated December 21, 2012.

MR. THOMAS: Exactly, Your Honor. That

first Order is the Order -- the key Order about the preliminary injunction. The Court spends a considerable amount of time analyzing the four criteria, talking about prior restraint, makes the determination that it is a prior restraint to enjoin this, looks at the four criteria that are necessary for an injunction and makes a ruling.

But then the Court goes on -- well, the next day, Your Honor, the 15th, they appeal to the 11th Circuit Court of Appeals. They are on their way to the 11th Circuit to the get relief there.

And they come back to Judge Whittemore and they say, "You need to stay this while we consider the 11th Circuit Order." The Judge

looks at that and he denies it.

They file a motion, the same sort of motion, in the 11th Circuit, and the 11th Circuit never gets there. The Court then -- they file a next -- a second Motion for Preliminary Injunction, Your Honor, on the copyright claim.

Then, again, Judge Whittemore denotes -- devotes judicial labor to that claim and, again, denies the preliminary injunction.

So they've had three bites at the apple; temporary restraining order, preliminary injunction on the first claim, and preliminary injunction on the second claim. So to say that the Court in Tampa did not devote sufficient labor to this matter, Your Honor, that's what Judges like Your Honor do. You consider the

matter and you rule. Here, Judge Whittemore did exactly that. He made a ruling.

At some point they decide to abandon that claim. They dismiss in trial court exactly the same claims Your Honor is presented with today; intrusion, private facts, video voyeurism, all the same claims.

And I would ask Mr. Harder to tell you on rebuttal what's changed since then. You know,

you can have a second injunction if the facts and circumstances have changed.

Your Honor, the collateral estoppel rule is clear. You can't form shop. That's exactly what's happening here. Considerable judicial labor there followed by decisions on the merits.

Your Honor, if we look at the -- what the -- what the standard is adopted by Florida and Federal courts, if it's a Federal decision, the Federal rules apply, will estoppel apply? Florida courts agree with that.

The criteria are the issue the stake is identical to the one involved in the prior proceeding. The issues are identical, Your Honor. The Complaint doesn't really change between State court and Federal court.

The issue was actually litigated in a prior proceeding. Not only litigated, but we have a decision. We have adjudication on the merits.

The determination of the issue in prior

litigation had a critical and necessary part of the judgment in the first action. That's exactly what happened here. Judge Whittemore looked at it and made a decision.

The party against whom the collateral

estoppel is asserted had a full and fair opportunity for a hearing. Your Honor, fully briefed, fully argued. A decision made by Judge Whittemore.

Your Honor, if we look at the merits, and we really can look to what Judge Whittemore said about prior restraints, since 1789, we've had a non-English interpretation of the way the speech works. If I said something in England, I would be stopped and not allowed to proceed and then we'd have a trial.

In the United States, it's just the reverse. It's publish first, punish later. That's the rule about speech. We're not saying that Mr. Bollea may at some time in a trial be able to recover damages for any loss that he suffered. And we're not saying that at a subsequent point Your Honor can't enjoin it, but not at this status of the proceedings, Your Honor.

Since 1789, we've had a Constitution that honors speech. And I'm the last person here, Your Honor, to tell you that this is the speech of the highest quality or tenor, but the cases seem to say Your Honor can't make that judgment. You can't --

THE COURT: Let me ask you this. I'm sorry for interrupting, but directly on that point. This is the part that was irritating to me in the lawyers' pleading, where they are describing comments that are made allegedly during this tape.

So is that the speech that you are trying to protect? The speech that was made during the scope of this videotape between these two consenting adults having sex in a private setting with allegedly no notice to the plaintiff? I'm not sure what speech you're trying to protect.

MR. THOMAS: Your Honor, I'm trying to protect multiple parts of speech. The first part is the printed version of the story. This is not a sex tape by itself, Your Honor. There is a printed version like in the Michaels 2 case and a sex tape that goes with it. It's not a sex tape alone. Yes, Your Honor, I'm trying to protect that speech. I'm also trying to protect the speech that's there.

THE COURT: How does that butt up against the Florida Constitution, Article I, Section 23, a right to privacy?

MR. THOMAS: Well, Your Honor, I think

Federalism would mandate that Article I, Section 4 of the Florida Constitution is equally

significant. Your Honor, we're talking about the First Amendment and Article I, Section 4.

THE COURT: I'm thinking this injunction is only about the tape.

MR. THOMAS: Yes, Your Honor. I understand that. But I also think, Your Honor, when we think of the history of the First Amendment, we think of the Pentagon papers, maybe because I'm a First Amendment lawyer.

There a top secret document that was clearly stolen that could have injured men in war in Vietnam was considered by the United States Supreme Court. And they said we're not going to stop its publication. The analogy perhaps is not appropriate.

THE COURT: It doesn't even have any -- it's apples and oranges, worse than that actually.

MR. THOMAS: Well, Your Honor, I don't think I'm out of order when I say speech is speech. Your Honor is not permitted to make an editorial judgment about which speech is permissible and which speech is not permissible.

THE COURT: I'm only talking about the tape.

MR. THOMAS: Your Honor, I'm talking about the tape, too. Your Honor, I don't know if you've taken the time to look at the tape.

THE COURT: No. I'm not going to look at the tape. I don't think at this point in time I need to look at the tape.

But I will tell you that I had case not too

recently that had to do with a man here in town that was allegedly hiring bikini-clad women to go beat up homeless men, and they were recording these sessions, and the men allegedly would receive $50 at the end of 12 minutes.

Well, it was a crime in beating up these disabled people, so the man went to jail. The case ultimately resolved, but there were injunctions. He couldn't be posting those. He was selling those videotapes. He couldn't be selling those videotapes of this crime that was occurring in his garage. And I liken that similar to something that's here.

MR. THOMAS: Your Honor, the Michaels case that's talked about by Plaintiff, a sex tape created and copyrighted, and then Michaels 1 was about the sale of that videotape. The Michaels 2 case comes along, it's a hard copy, which is a

news television program, has a section of the same videotape and text and discussion of the videotape.

And the Court, Federal Court, contrary to Michaels 1, says that's permissible when you -- when you put speech together with writing, as in the hard copy case and in this case. Your Honor, there is a lengthy article about this that appears in Gawker.

Your Honor, the tape, as I understand it, is 101 seconds long --

THE COURT: That's what your motion says.

MR. THOMAS: -- out of 30 minutes. And in that are about nine seconds of something that could be deemed sexual conduct. Your Honor, I think as Judge Whittemore said, that sort of speech in our Constitution is entitled protection.

Mr. Bollea says he wants $100 million. In our system, that's what you do. You litigate the merits. And a jury in this courtroom can make that, and that could remedy the wrong here, Your Honor. The Constitution and prior restraint simply does not permit Your Honor to do that.

And here, given the fact that another

Federal Judge -- or a Federal Judge has looked at exactly the same issues and made a determination, Your Honor, I think -- does everybody get a second bite at the apple? I don't think so. I think Your Honor would be -- what's the purpose of us having a hearing here today if tomorrow we could go into Federal court and raise the same issues?

THE COURT: Well, you know, this same case was filed here on October 15, 2012. So it was filed.

MR. THOMAS: Not with these defendants, Your Honor.

THE COURT: I don't know. There was a case that was filed here with this same case number on October 15, 2012. I'm not sure who were the

parties.

MR. THOMAS: Not with these parties, Your Honor, not with the Gawker defendants. The Gawker defendants in Federal court, adjudicated in Federal court. After they dismissed the case in Federal court, Your Honor, they amended the Complaint, I think, in December 25.

THE COURT: It was filed December 28.

MR. THOMAS: 28. Yeah. So adjudicated,

lost, dismissed, amended here and came to Your Honor.

Your Honor, the principals of comity where you give deference to other judicial labors I think is critical here, Your Honor. The waste of time and effort by Judge Whittemore would be wasted. So do we all get two shots at the apple?

Your Honor, I think when you consider the elements, the four elements required for injunctive relief, is this newsworthy? Hulk Hogan, Your Honor, I think we've mentioned, has written books about his exploits. He is a major, major person. When he does things, he writes about it. When he divorced his wife, he wrote about it. When he did other things, he wrote about it.

And now when something is intensely embarrassing, does he get to shut the spicket on news about that matter, that he has an affair with his best friend's wife in the presence of

the same person? Your Honor, I think if he opens the spicket in circumstances like this, he can't close it as easily.

Your Honor, we think you should deny the Motion for Preliminary Injunction.

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THE COURT: All right. Thank you.

Response, Mr. Harder?

MR. HARDER: Thank you, Your Honor. Just briefly. Judge, as I said before, Judge Whittemore's ruling was not on the merits. And Mr. Thomas says that you can't go into one court and ask for injunction and go to another court and ask for injunction. That's not true.

I've cited to you cases where someone did go into one court, was denied an injunction in State court, went to Federal court, and the Court did not deny it based on collateral estoppel. The Court in the second case did a full hearing. And that's all we're asking for here, Your Honor, is to -- just to be heard.

What Judge Whittemore did is not a waste in any sense because he wrote up an Order. And that Order has case citations and an explanation as to how he viewed the case and how he viewed the issues.

That doesn't mean that you have to be a rubber stamp, Your Honor. You, as you are fully aware, I'm sure, can make your own decisions, and we assume that you will do so.

Collateral estoppel, however, does not apply

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here. You are not forced to adopt Judge Whittemore's ruling. You can rule how you see fit.

It's true that we can seek damages, and we are seeking damages, but that's not what an injunction is about. An injunction is about putting a stop to wrongful, illegal criminal conduct that is taking place today. A criminal conduct that we're here about is occurring right now at Gawker.com, this web page, where they will not take this video down.

Just to clarify, it's about the video, and it's about the quotations from that video that are in print. If you're not supposed to ever tape someone behind closed doors, you're also -- you shouldn't be quoting from what people are saying or the descriptions of what so and so looked like and that so and so's genitals were as X, Y, Z, and I'm going to stop there. That's what is on the website. They go into great length about describing things.

From our viewpoint, the description should be taken down, the quotation should be taken down, and definitely the video should be taken down.

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They talk about 101 seconds isn't very much because the video is 30 minutes long supposedly,

although no one has ever seen the full 30 minutes.

Let's say their encounter lasted three days. Let's say it was a long weekend. Does that mean you can have 30 minutes because the percentage is small?

101 seconds is a great deal of time when you're looking at the types of things that we're looking at. There was oral sex. There's intercourse. There's all kinds of -- there's changing of positions. There's climaxing, excuse me, Your Honor. There's all kind of things within that 101 seconds.

It's a highlight reel is what it is. They make it sound like it's minor portions of the video. It's a highlight reel. It's ladies and gentlemen, this is all you ever need to see. We've cut it all down to the best stuff.

They're making money off of this. That's why they are doing it. The owner of their company -- we've provided the blog entries that he wrote. He brags. He brags about how they made 100 million views because people are going

to watch the sex tape. Well, now it's up to 4 million because so much time has elapsed. It's still about 5,000 people going every single week to take a look at this.

My clients can't move past this. That's why they've asked me to continue this endeavor because they can't move past this with their

lives as long as that tape is still showing Mr. Bollea having sex with somebody and people are still going to see it, and they comment about, oh, I just saw it, on Twitter and in interviews and various other places. Once this thing is down, they will begin the process of moving past it, but they can't do that.

And they've provided affidavits, Your Honor, and you can read them. I don't want to put words in their mouths, but I think that they are articulate in how they describe what they're having to go through and still having to go through. That's why we're seeking the injunction. If you have any questions, Your Honor, I'm happy to address them.

THE COURT: All right. Thank you.

MR. THOMAS: Your Honor, briefly can I respond?

THE COURT: Well, typically you have the movant, the response, and the rebuttal, and that's it. Is there something that you feel really pressing that's also not in your papers?

MR. THOMAS: Your Honor, just the video voyeurism claim. It's not a private cause of action in Florida. It's not permissible to bring it as a private cause of action. In the Barnicki (phonetic) case from the United States Supreme Court --

THE COURT: That was in his initial part.

MR. THOMAS: Yes, Your Honor.

THE COURT: Thank you. All right. The Court is going to grant the temporary injunction, finding that plaintiff will suffer irreparable harm. There is no adequate remedy of law, the likelihood of success on the merits, and that public interest will definitely be served by granting this public and temporary injunction.

I'm ordering that the Gawker.com remove the sex tape and all portions and content therein from their websites, including Gawker.com. Ordering to remove the written narrative describing the private sexual encounter, including the quotations from the private sexual

encounter from websites and including Gawker.com.

I would like to comment that -- perhaps comments on the news aspect of it, I'm not addressing the news aspect of it or the book that Mr. Bollea wrote or any of those other aspects. Simply the language that describes what's on the tape, the tape itself, and the exact quotations that are entailed during the course of the tape.

I have more to go. Did you have a question?

MR. THOMAS: Your Honor, I'm sorry. I'm just trying to be professional and stand when I'm talking, but I'll wait until you finish.

THE COURT: I didn't know if you had a specific point on that particular issue.

MR. THOMAS: No, Your Honor.

THE COURT: Okay. Also enjoined from

posting, publishing, exhibiting, or broadcasting the full length video recording, any portions, clips, still images, audio, or transcripts of the video recording.

And ordering the turn over to Mr. Bollea's attorneys all copies of the full length video recording, any portions of any clips, still images, audio, or transcripts of that video recording; and that turn over is to be

accomplished within the next 10 business days. No bond will be required.

And so, Mr. Thomas, did you want a clarification?

MR. THOMAS: Your Honor, they say that we've made millions off of this, but you're not going to require a bond?

THE COURT: I think that it was really -- in the paper there's millions that have been watching it. I don't know how much money has been made on it.

MR. THOMAS: But, Your Honor, you have to protect us if the injunction is improperly entered so that there is bond money there. I mean, a bond -- if we're making millions off this and you take it down, shouldn't we have some monetary bond?

MR. HARDER: Your Honor, we never said they made millions of dollars. The quote is from Nick Denton saying a million people have watched --

have gone to Gawker.com.

THE COURT: Yeah, now 4.9 some million people.

MR. THOMAS: So, Your Honor, if you can monetize it at .10 a piece, that's still a

significant amount of money.

THE COURT: I'm not going to require a bond. Did you have anything else?

MR. THOMAS: Yes, Your Honor. Can we have a stay pending our time to go to the 2nd DCA to seek appellate review of your decision?

THE COURT: Do you know of any authority that requires me to stay it?

MR. THOMAS: No, Your Honor.

THE COURT: Okay. No. Denied. Stay is denied.

So, Mr. Harder, would you please prepare that Order for me and send it to me. Do you know how long it will take you to prepare that?

MR. HARDER: I would expect that we would get that in to you hopefully tomorrow or the next day, as soon as we possibly can.

THE COURT: Okay. Thank you. Anything else for today?

MR. THOMAS: Thank you, Your Honor.

THE COURT: All right. Thank you very much.

(Thereupon, a discussion was held off the record.)

THE COURT: Additionally on the record, Mr. Keith Thomas had called our office, was not able

to be here today. He represents Ms. Clem and has no objection to the entry of an injunction.

Thank you.

(Thereupon, the proceedings were concluded.)

CERTIFICATE OF REPORTER

STATE OF FLORIDA)
) ss
COUNTY OF PASCO)

I, Stacy D. Miller, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true record thereof.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED this 24 day of April, 2013.

_____

STACY D. MILLER, Court Reporter