

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

TERRY GENE BOLLEA professionally
known as HULK HOGAN,

Plaintiff,

Case No.: 12012447-CI-011

vs.

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

Defendants.

DECLARATION OF RACHEL E. FUGATE

I, Rachel E. Fugate, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury that the following is true and correct:

1. The statements made in this Declaration are based on my personal knowledge.
2. I am an attorney at Thomas & LoCicero PL, counsel for Defendant Gawker

Media, LLC in the above captioned matter. I submit this Declaration in support of Defendant Gawker Media, LLC's Opposition to Plaintiff's Motion for Temporary Injunction ("Defendant's Opposition").

3. Attached hereto as Exhibit 1 is a true and correct copy of an Order filed October 22, 2012 denying Plaintiff's Motion for a Temporary Restraining Order in *Terry Gene Bollea, professionally known as Hulk Hogan v. Gawker Media, LLC, et al.*, No. 8:12-cv-02348-T-27TBM (M.D. Fla.) (the "Prior *Bollea* Action")

4. Attached hereto as Exhibit 2 is a true and correct copy of an Order dated November 14, 2012 denying Plaintiff's Motion for a Preliminary Injunction in the Prior *Bollea* Action, which was published at 2012 WL 5509624 ("*Bollea I*").

ELECTRONICALLY FILED 4/24/2013 9:23:28 AM: KEN BURKE, CLERK OF THE CIRCUIT COURT, PINELLAS COUNTY

5. Attached hereto as Exhibit 3 is a true and correct copy of an Order filed December 4, 2012 denying Plaintiff's Motion for a Preliminary Injunction Pending Appeal in the Prior *Bollea* Action.

6. Attached hereto as Exhibit 4 is a true and correct copy of an Order dated December 21, 2012 denying Plaintiff's Motion for a Preliminary Injunction to Enjoin Copyright Infringement in the Prior *Bollea* Action, which has been selected for publication in the federal reporter and which is also published at 2012 WL 7005357 ("*Bollea II*").

7. Attached hereto as Exhibit 5 is a true and correct copy of the docket in the United States District Court for the Middle District of Florida in the Prior *Bollea* Action.

8. Attached hereto as Exhibit 6 is a true and correct copy of the docket in the United States Court of Appeals for the Eleventh Circuit in the appeal of the denial of Plaintiff's Motion for Preliminary Injunction in the Prior *Bollea* Action (*Bollea I*, Ex. 2). As reflected therein, plaintiff filed a Motion for Injunction Pending Appeal in the Eleventh Circuit, which was fully briefed when plaintiff voluntarily dismissed the Prior *Bollea* Action and the Eleventh Circuit appeal in that action.

9. Attached hereto as Exhibit 7 is a true and correct copy of Hulk Hogan's *My Life Outside the Ring* excerpted pages 187, 188 and 253.

10. Attached hereto as Exhibit 8 is a true and accurate printout of the website found at <http://www.tnz.com/2012/03/07/hulk-hogan-sex-tape/>.

11. Attached hereto as Exhibit 9 is a true and accurate printout of the website found at <http://content.usatoday.com/communities/gameon/post/2012/03/hulk-hogans-attorney-issues-sex-tape-warning/1>.

12. Attached hereto as Exhibit 10 is a true and accurate printout of the website found at <http://www.tmz.com/2012/03/07/hulk-hogan-i-had-no-idea-sex-was-being-filmed/>.

13. Attached hereto as Exhibit 11 is a true and accurate printout of the website found at <http://www.eonline.com/news/299470/hulk-hogan-sex-tape-shop-it-at-your-own-risk>.

14. Attached hereto as Exhibit 12 is a true and accurate printout of the website found at http://www.nypost.com/p/pagesix/hulk_hogan_sex_tape_report_DD91uxbTs9Ux0o6zEQqJ2O.

15. Attached hereto as Exhibit 13 is a true and accurate printout of the website found at <http://www.vh1.com/celebrity/2012-03-07/report-a-hulk-hogan-sex-tape-is-in-existence/>.

16. Attached hereto as Exhibit 14 is a true and accurate printout of the website found at <http://thedirty.com/2012/04/exclusive-hulk-hogan-sex-tape-continued-terry-gene-bollea-sex-tape/>.

17. Attached hereto as Exhibit 15 is a true and accurate printout of the website found at <http://thedirty.com/2012/04/exclusive-hulk-hogan-sex-tape/>.

18. Attached hereto as Exhibit 16 is a true and accurate printout of the website found at <http://www.inflexwetrust.com/2012/04/23/photos-nsfw-ww-e-hulk-hogan-sex-tape-images-leaked-online/>.

19. Attached hereto as Exhibit 17 is a true and accurate printout of the website found at <http://gossipoverload.com/thank-god-theyre-grainy-hulk-hogan-sex-tape-pics-leaked/>.

20. Attached hereto as Exhibit 18 is a true and accurate printout of the website found at <http://www.tmz.com/2012/04/26/hulk-hogan-sex-tape-pictures/>.

21. Attached hereto as Exhibit 19 is a true and accurate printout of the website found at <http://www.tmz.com/2012/03/07/hulk-hogan-sex-tape-partner-tmz-live/>. As reflected in Defendant's Opposition, video footage is contained and available at the hyperlink.

22. Attached hereto as Exhibit 20 is a true and accurate printout of the website found at <http://www.publishersweekly.com/978-0-312-58889-2>.

23. Attached hereto as Exhibit 21 is a true and accurate printout of the website found at <http://gawker.com/5948770/even-for-a-minute-watching-hulk-hogan-have-sex-in-a-canopy-bed-is-not-safe-for-work-but-watch-it-anyway>. As reflected in Defendant's Opposition, video footage is contained and available at the hyperlink.

24. Attached hereto as Exhibit 22 is a true and accurate printout of the website found at <http://www.tmz.com/2012/10/09/hulk-hogan-bubba-the-love-sponge-radio-howard-stern/>. As reflected in Defendant's Opposition, audio footage is contained and available at the hyperlink.

25. Attached hereto as Exhibit 23 is a true and accurate printout of the website found at <http://www.tmz.com/2012/10/09/hulk-hogan-sex-tape-leaked-bubba-heather-clem-retire/>.

26. Attached hereto as Exhibit 24 is a true and accurate printout of the website found at <http://www.eonline.com/news/354384/bubba-the-love-sponge-slams-hulk-hogan-s-sex-tape-lawsuit-blasts-wrestler-as-ultimate-lying-showman>.

27. Attached hereto as Exhibit 25 is a true and accurate printout of the website found at <http://www.tmz.com/2012/10/16/bubba-the-love-sponge-hulk-hogan-may-have-leaked-sex-tape/>.

28. Attached hereto as Exhibit 26 is a true and accurate printout of the website found at <http://www.radaronline.com/exclusives/2012/10/hulk-hogan-sex-tape-leaked-disgruntled-former-bubba-love-sponge-employee>.

29. Attached hereto as Exhibit 27 is a true and accurate printout of the website found at <http://www.tampabay.com/blogs/media/content/bubba-love-sponge-calls-hulk-hogan-hypocritical-fraud-over-sex-tape-lawsuit-morning-radio>.

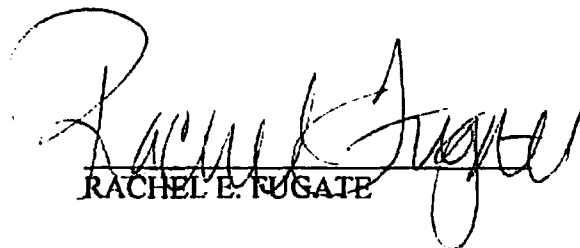
30. Attached hereto as Exhibit 28 is a true and accurate printout of the website found at <http://www.nydailynews.com/entertainment/gossip/hulk-hogan-settles-sex-tape-lawsuit-article-1.1194557>.

31. Attached hereto as Exhibit 29 is a true and accurate printout of the website found at <http://www.scribd.com/doc/111465916/Bubba-Clem-Apology-Letter-10-29-12>, which reprints Bubba the Love Sponge Clem's apology upon settlement of this action.

32. Attached hereto as Exhibit 30 is a true and correct copy of the Transcript of Preliminary Injunction Hearing held on November 8, 2012 in the Prior *Bollea* Action in connection with Plaintiff's Motion for a Preliminary Injunction.

I, RACHEL E. FUGATE, declare under penalty of perjury under the laws of the State of Florida that the foregoing is true and correct.

Date of Execution: April 25, 2013
Place of Execution: Tampa, Florida


RACHEL E. FUGATE

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this 23rd day of April, 2013, by
RACHEL E. FUGATE, who is personally known to me.

Cherie Pacheco

(SEAL)

Printed/Typed Name: _____

Notary Public, State of _____

Commission Number: _____



CHERIE L. PACHECO
MY COMMISSION # EE 179607
EXPIRES: May 27, 2016
Bonded Thru Budget Notary Services

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

TERRY GENE BOLLEA, professionally
known as HULK HOGAN,

Plaintiff,

vs.

Case No. 8:12-cv-02348-T-27TBM

GAWKER MEDIA, LLC, *et al.*,

Defendant.

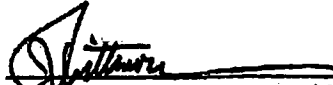
ORDER

BEFORE THE COURT are Plaintiff's Motion for Temporary Restraining Order (Dkt. 4) and Plaintiff's Motion for Preliminary Injunction (Dkt. 5). Plaintiff's Motion for Temporary Restraining Order (Dkt. 4) seeks temporary injunctive relief prior to service of process and without affording an opportunity for Defendants to be heard. "An *ex parte* temporary restraining order is an extreme remedy to be used only with the utmost caution." *Levine v. Comcoa Ltd.*, 70 F.3d 1191, 1194 (11th Cir. 1995) (Hill, C.J., concurring). Upon consideration, Plaintiff has failed to show that immediate and irreparable injury, loss, or damage will result before Defendants can be heard in opposition. *See Fed.R.Civ.P. 65(b)(1)(A)*; *see also Zidon v. Pickrell*, 338 F.Supp.2d 1093 (D. N.D. 2004) (denying motion for temporary restraining order filed by former boyfriend seeking to shutter former girlfriend's website which purportedly contained defamatory and derogatory content). Accordingly, it is **ORDERED AND ADJUDGED** that Plaintiff's Motion for Temporary Restraining Order (Dkt. 4) is **DENIED**.



IT IS FURTHER ORDERED that a hearing on the Motion for Preliminary Injunction (Dkt. 5) is scheduled for **November 8, 2012 at 3:00 p.m.** before the undersigned judge in Courtroom 13B of the Sam Gibbons Courthouse, 801 North Florida Avenue, Tampa, Florida 33602. Plaintiff shall immediately effect service of process in accordance with the requirements of Rule 4, Federal Rules of Civil Procedure, and file proof of service with the Clerk. Additionally, on or before **October 31, 2012**, Plaintiff shall file proof of service of the moving paper(s), affidavit(s) and a copy of this Order in accordance with Local Rule 4.06(b)(2). Defendant shall file and serve any opposing affidavit(s) and a responsive brief not later than **November 2, 2012**. The hearing will be limited to argument of counsel unless the Court grants express leave to the contrary in advance of the hearing. *See* Local Rule 4.06(b).¹

DONE AND ORDERED this 19th day of October, 2012.


JAMES D. WHITTEMORE
United States District Judge

Copies to:
Counsel of Record

¹ Local Rule 4.06(b) applies except where in conflict with the provisions of this Order.

2012 WL 5509624

Only the Westlaw citation is currently available.
United States District Court, M.D. Florida,
Tampa Division.

Terry Gene BOLLEA, professionally
known as Hulk Hogan, Plaintiff,
v.

GAWKER MEDIA, LLC, et al., Defendant.

No. 8:12-cv-02348-T-
27TBM. | Nov. 14, 2012.

Attorneys and Law Firms

Charles J. Harder, Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP, Los Angeles, CA, Jonathan H. Waller, Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP, Birmingham, AL, David R. Houston, Reno, NV, Christina K. Ramirez, Kenneth George Turkel, Bajo Cuva Cohen Turkel, PA, Tampa, FL, for Plaintiff.

Gregg Darrow Thomas, Rachel E. Fugate, Thomas & Locicero PL, Tampa, FL, Paul J. Safier, Seth D. Berlin, Levine Sullivan Koch & Schulz, LLP, Washington, DC, for Defendant.

Opinion

ORDER

JAMES D. WHITTEMORE, District Judge.

*1 BEFORE THE COURT is a Motion for Preliminary Injunction (Dkt.5) filed by Plaintiff Terry Gene Bollea ("Bollea"), in which he seeks an order requiring Defendants to remove "the excerpts from the Hulk Hogan sex tape that were posted on the www.Gawker.com website on or about October 4, 2012 and to enjoin Defendants from posting, publishing or releasing any portions or content of the sex tape to the public, including that or any other website." (Dkt.5, p. 1). Defendants oppose the motion, contending that the requested relief would constitute an unconstitutional prior restraint (Dks.28, 29). Argument on the motion was heard on November 8, 2012. Upon consideration, Plaintiff's Motion for Preliminary Injunction (Dkt.5) is due to be denied.

I. Applicable Standard

A preliminary injunction may be granted only if the movant establishes: "(1) a substantial likelihood of success on the merits of the underlying case, (2) the movant will suffer irreparable harm in the absence of an injunction, (3) the harm suffered by the movant in the absence of an injunction would exceed the harm suffered by the opposing party if the injunction issued, and (4) an injunction would not disserve the public interest." *Johnson & Johnson Vision Care, Inc. v. I 800 Contacts, Inc.*, 299 F.3d 1242, 1246-47 (11th Cir.2002). In addition, a party seeking a prior restraint must establish that the prior restraint will be effective and that no less extreme measures are available. *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 562, 96 S.Ct. 2791, 49 L.Ed.2d 683 (1976).

In all but the most exceptional circumstances, an injunction restricting speech pending final resolution of constitutional concerns is impermissible. *See Near v. Minnesota*, 283 U.S. 697, 716, 51 S.Ct. 625, 75 L.Ed. 1357 (1931); *Procter & Gamble Co. v. Bankers Trust Co.*, 78 F.3d 219, 226-27 (6th Cir.1996). Any prior restraint bears a "heavy presumption against its constitutional validity." *New York Times Co. v. United States*, 403 U.S. 713, 714, 91 S.Ct. 2140, 29 L.Ed.2d 822 (1971). Thus, the Supreme Court has "imposed this 'most extraordinary remed[y]' only where the evil that would result from the reportage is both great and certain and cannot be mitigated by less intrusive measures." *CBS, Inc. v. Davis*, 510 U.S. 1315, 114 S.Ct. 912, 127 L.Ed.2d 358, (1994) (Blackmun, J., in chambers) (quoting *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 562, 96 S.Ct. 2791, 49 L.Ed.2d 683 (1975)).

II. Factual Background

According to Plaintiff's submissions, approximately six years ago, he engaged in consensual sexual relations with a woman that was not his wife.¹ Allegedly unbeknownst to Plaintiff, the encounter was videotaped (the "Video"). Plaintiff insists that he was unaware that the encounter was being videotaped and would have strenuously objected to any recording thereof.

On or about October 4, 2012, one or more of the named defendants (collectively, "Gawker Media") posted to their website (www.Gawker.com) (the "Gawker Site") excerpts of the Video. Plaintiff contends that the Video was posted



without his permission and Gawker Media has refused numerous requests that they remove the excerpts from the Gawker Site. Plaintiff contends that “[i]f the Video remains publicly posted and disseminated, it will have a substantial adverse and detrimental effect on [his] personal and professional life, including irreparable harm to both.” Bollea Declaration (Dkt.4-1), ¶ 11.

*2 On October 15, 2012, Plaintiff commenced this action by filing a five count complaint against Defendants asserting claims for (1) invasion of privacy by intrusion upon seclusion, (2) publication of private facts, (3) violation of the Florida common law right of publicity, (4) intentional infliction of emotional distress, and (5) negligent infliction of emotional distress.²

III Discussion

The purpose of a preliminary injunction is to preserve the status quo so that a reasoned resolution of a dispute may be had. *Procter & Gamble Co.*, 78 F.3d at 226. Where freedom of the press is concerned, the status quo is to “publish news promptly that editors decide to publish. A restraining order disturbs the status quo and impinges on the exercise of editorial discretion.” *In the Matter of Providence Journal Company*, 820 F.2d 1342, 1351, modified on reh’g by 820 F.3d 1354 (1st Cir.1986). Accordingly, in the case of a prior restraint on pure speech, the hurdle is substantially higher than that necessary to obtain a traditional preliminary injunction: “publication must threaten an interest more fundamental than the First Amendment itself. Indeed, the Supreme Court has never upheld a prior restraint, even faced with the competing interest of national security or the Sixth Amendment right to a fair trial.” *Procter & Gamble Co.*, 78 F.3d at 226–27.

Although Defendants concede that Plaintiff has a right of privacy in what is depicted in the sex tape, they contend that their First Amendment rights outweigh Plaintiff’s privacy interests. Specifically, they urge, consistent with “[t]he First Amendment principles articulated in this long and unbroken line of precedent demonstrate that a prior restraint may not properly issue in this case,” and that any alleged invasion of his privacy must be redressed in an action for damages that do not require a prior restraint in derogation of the First Amendment (Dkt.28, p. 8–9).

The Supreme Court recently recognized that “speech on matters of public concern ... is at the heart of the First Amendment’s protection.” *Snyder v. Phelps*, — U.S. —, —, 131 S.Ct. 1207, 1215, 179 L.Ed.2d 172 (2011) (internal citations and quotations omitted). In a somewhat different context, the Court noted: “Not all speech is of equal First Amendment importance, however, and where matters of purely private significance are at issue, First Amendment protections are often less rigorous.” *Id.* (internal citations and quotations omitted). “Speech deals with matters of public concern when it can be fairly considered as relating to any matter of political, social, or other concern to the community, or when it is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public.” *Id.* at 1216 (internal citations and quotations omitted).³ The arguably “inappropriate or controversial character of a statement is irrelevant to the question whether it deals with a matter of public concern.” *Rankin v. McPherson*, 483 U.S. 378, 387, 107 S.Ct. 2891, 97 L.Ed.2d 315 (1987).

*3 Consistent with these authorities, Plaintiff has failed to satisfy his heavy burden to overcome the presumption that the requested preliminary injunction would be an unconstitutional prior restraint under the First Amendment. Plaintiff’s public persona, including the publicity he and his family derived from a television reality show detailing their personal life, his own book describing an affair he had during his marriage, prior reports by other parties of the existence and content of the Video, and Plaintiff’s own public discussion of issues relating to his marriage, sex life, and the Video all demonstrate that the Video is a subject of general interest and concern to the community. Compare *San Diego v. Roe*, 543 U.S. 77, 84, 125 S.Ct. 521, 160 L.Ed.2d 410 (2004) (*per curiam*) (in the context of a government employer regulating the speech of its employees, videos of an employee engaging in sexually explicit acts did not address a public concern; the videos “did nothing to inform the public about any aspect of the [employing agency’s] functioning or operation”).

As such, Defendants’ decision to post *excerpts* of the Video online is appropriately left to editorial discretion, particularly when viewed in connection with a request for a prior restraint. See *Heath v. Playboy Enterprises, Inc.*, 732 F.Supp. 1145, 1149 n. 9 (S.D.Fla.1990) (“the judgment of what is newsworthy is primarily a function of the publisher, not the courts”) (citing *Doe v. SarasotaBradenton Florida Television Co., Inc.*, 436 So.2d 328, 331 (Fla. 2d DCA 1983)); cf. *Haynes v. Alfred A. Knopf, Inc.*, 8 F.3d 1222, 1234 (7th Cir.1993)

(holding that in cases balancing First Amendment against state law right to privacy, federal courts should resolve doubtful cases at summary judgment to prevent freedom of the press from being restricted "at the sufferance of juries").⁴

Plaintiff relies heavily on the reasoning of the district court in *Michaels v. Internet Entertainment Group, Inc.*, 5 F.Supp.2d 823 (C.D.Cal.1998). At a minimum, however, *Michaels* is distinguishable from this case in that it involved purely commercial speech. *Id.* at 834-35.⁵ *Michaels* essentially involved the *sale* of a copyrighted sex tape via the Internet to a paid subscriber base and the display of short segments of the tape in an effort to entice individuals to purchase a subscription to the defendant's website. *Id.* at 835 (noting that "because the nature of the adult entertainment business on the Internet, the commercial value of the Tape lies as much in the display of brief images as in display of the entire tape").⁶ In contrast, Defendants in this case have not attempted to sell the Video and only posted *excerpts* of the Video in conjunction with the news reporting function of Defendants' website. See *Jones v. Turner*, No. 94 Civ. 8603(PKL), 1995 WL 106111, at *21 (S.D.N.Y. Feb.7, 1995) (concluding that prior restraint was unwarranted when sexually explicit pictures had relationship to accompanying article and that the article itself was a matter of public interest).⁷ Moreover, even the *Michaels* court recognized that the preliminary injunction was focused on the defendant's use of plaintiffs' names, likenesses or identities in connection with the *sale* of the video and not the defendant's ability to comment on matters of public interest. *Id.* at 839.⁸

*4 Even assuming that Plaintiff could overcome the constitutional concerns associated with a prior restraint on speech, Plaintiff has failed to demonstrate that he is entitled to preliminary injunctive relief under the factors applicable in a traditional preliminary injunction analysis. For example, Plaintiff has failed to introduce evidence demonstrating that he would suffer irreparable harm if Defendants are not forced to remove the Video excerpts from the Internet, that the balancing of harm warrants entry of a preliminary injunction, or that the public interest would be served by the entry of a preliminary injunction.

With respect to the issue of irreparable harm, the fact that Plaintiff may be embarrassed by the Video is not "the type of irreparable harm or injury that would tip the scale toward justifying a prior restraint." *In re King World Productions*, 898 F.2d 56, 60 (6th Cir.1990) (holding that fact

that physician may be embarrassed by publication of video allegedly showing him engaging in medical malpractice did not justify temporary restraining order). Moreover, economic loss, even if difficult to quantify, is no basis for the entry of a preliminary injunction restricting speech. See, e.g., *Hughes NetworkSys., Inc. v. Interdigital Communications Corp.*, 17 F.3d 691, 693 (4th Cir.1994); *In re King World Productions, Inc.*, 898 F.2d at 60.

Plaintiff has also failed to demonstrate that the balancing of harm favors entry of a preliminary injunction or that an order essentially altering the status quo by requiring Defendants to remove the video excerpts from the Internet would further the public interest. The Supreme Court has repeatedly recognized that even minimal interference with the First Amendment freedom of the press causes an irreparable injury. See, e.g., *Nebraska Press Ass'n*, 427 U.S. at 559; *Elrod v. Burns*, 427 U.S. 347, 373-74, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976); see also *Barmicki v. Vopper*, 532 U.S. 514, 531-32, 121 S.Ct. 1753, 149 L.Ed.2d 787 (2001) (holding that First Amendment interest in publishing matters of public importance outweighed conversants' privacy rights given fact that media outlet had played no part in illegal reception).

Moreover, this is an example of where the proverbial "cat is out of the bag," rendering injunctive relief ineffective in protecting the professed privacy rights of the Plaintiff. See *Bank Julius Baer & Co., Ltd. v. Wikileaks*, 535 F.Supp.2d 980, 985 (N.D.Cal.2008); see also *Jones*, 1995 WL 106111, at *21 (concluding that plaintiff was unable to demonstrate that prior restraint would be effective when magazine containing sexually explicit pictures had already shipped and several pictures had already been displayed both on television and in print media). Thus, even if Plaintiff's privacy concerns could arguably justify injunctive relief, is not apparent that entry of the requested preliminary injunction would serve its intended purpose. See *Nebraska Press Ass'n*, 427 U.S. at 569.

IV. Conclusion

*5 For these reasons, Plaintiff is not entitled to a preliminary injunction.⁹ If it is ultimately found that Defendants have violated Plaintiff's rights, any such violations must be "redressed in legal actions that do not require a prior restraint in derogation of the First Amendment." *In re Lifetime Cable*, 17 Media L. Rep.(BNA) 1648, 1990 WL 71961, at *1 (D.C.Cir. Apr.6, 1990).

Accordingly, Plaintiffs Motion for Preliminary Injunction
(Dkt.5) is DENIED.

Parallel Citations

DONE AND ORDERED this 13th day of November, 2012 105 U.S.P.Q.2d 1496, 40 Media L. Rep. 2601

Footnotes

- 1 Plaintiff has submitted the Declaration of Plaintiff Terry Gene Bollea (Dkt.4-1).
- 2 Following the hearing on the motion for preliminary injunction, Plaintiff filed a First Amended Complaint adding a new claim for copyright infringement.
- 3 In the context of privacy law, the privilege to publish facts of legitimate public concern extends beyond the dissemination of news "to information concerning interesting phases of human activity" even when the individuals thus exposed did not seek or have attempted to avoid publicity. *Campbell v. Seabury Press*, 614 F.2d 395, 397 (5th Cir.1980). "The privilege is broad and extends beyond subjects of political or public affairs to all matters of the kind customarily regarded as 'news' and all matters giving information to the public for purposes of education, amusement or enlightenment, where the public may reasonably be expected to have a legitimate interest in what is published." *Anonsen v. Donahue*, 857 S.W.2d 700, 703-04 (Tex.App.-Houston [1 Dist.] 1993, writ denied).
- 4 Moreover, the manner by which the Video was obtained by a third-party and provided to Defendants bears "no relation to the right of [Defendants] to disseminate the information in [their] possession" and, therefore, is not an appropriate basis for entering a prior restraint. See *Procter & Gamble Co.*, 78 F.3d at 224.
- 5 In a companion decision more analogous to this case, the California district court granted summary judgment in favor of a tabloid news program with respect to plaintiffs' claims that a television report that outlined the impending release of the tape together with eight (two to five second) excerpts from the tape violated plaintiffs' rights under privacy and copyright law. See *Michaels v. Internet Entertainment Group, Inc.*, No. CV 98-0583 DDP (CWx), 1998 WL 882848 (C.D.Cal. Sept.11, 1998).
- 6 The defendant in *Michaels* offered a subscription service with approximately 100,000 members, each of whom paid approximately \$14.95 per month to access various online content. *Id.* at 837. Even in the context of commercial speech, however, numerous courts have recognized that the same procedural safeguards are required in the context of a prior restraint. See, e.g., *Bosley v. Wildwelt.com*, No. 04-3428, 2004 WL 1093037, at *1 (6th Cir. Apr.21, 2004).
- 7 It is true that Defendants stand to indirectly profit from the posting of the Video excerpts to the extent it drives additional traffic to Defendants' website. This is true, however, with respect to any information posted online by any media outlet and is distinguishable from *selling* access to the Video solely for the purpose of commercial gain.
- 8 The court also noted that the "[n]ewsworthiness is defined broadly to include not only matters of public policy, but any matter of public concern, including the accomplishments, everyday lives, and romantic involvements of famous people." *Id.* at 839 (citing *Eastwood v. Superior Court (National Enquirer)*, 149 Cal.App.3d 409, 198 Cal.Rptr. 342, 346 n. 6 (1983)).
- 9 While this order focuses on the principal relief requested by Plaintiff, for many of the same and similar reasons, Plaintiff is also not entitled to the other relief sought in the motion for preliminary injunction (e.g., disclosure of unpublished information relating to Defendants' acquisition of the Video, imposition of a constructive trust). See *WTJ-NBC 6 v. Shehadeh*, 56 So.3d 104, 106 (Fla. 3d DCA 2011) (reversing trial court's interlocutory order compelling reporter to identify source of leaked information); *Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 333, 119 S.Ct. 1961, 144 L.Ed.2d 319 (1999) (holding that a district court may not issue a preliminary injunction preventing a defendant from disposing of assets in support of a claim for money damages).

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

TERRY GENE BOLLEA, professionally
known as **HULK HOGAN**,

Plaintiff,

vs.

Case No. 8:12-cv-02348-T-27TBM

GAWKER MEDIA, LLC, et al.,

Defendant.

ORDER

BEFORE THE COURT is Plaintiff's Motion for Preliminary Injunction Pending Appeal (Dkt. 54) filed by Plaintiff Terry Gene Bollea ("Bollea"), in which he seeks an Injunction Pending Appeal requiring Defendants to remove "the excerpts from the Hulk Hogan sex tape that were posted on the www.Gawker.com website on or about October 4, 2012 and the written narrative describing in vivid detail the sex acts portrayed in the sex tape, and enjoining Defendants from posting, publishing or releasing any portions or content of the sex tape to the public until the Eleventh Circuit Rules on Plaintiff's appeal of the Court's November 14, 2012 Order denying his motion for preliminary injunction." (Dkt. 5, p. 1). In support of the motion, Plaintiff essentially reargues the same legal and factual issues raised in support of his motion for preliminary injunction. Upon consideration, Plaintiff's Motion for Preliminary Injunction Pending Appeal (Dkt. 54) is due to be denied. *See Lands Council v. Packard*, 391 F.Supp.2d 869, 871 (D. Idaho 2005) (denying motion for injunction pending appeal when appellants essentially restated arguments that court had already considered and rejected).

EXHIBIT

3

The "extraordinary remedy" of an injunction pending appeal is warranted only if the moving party can show: "(1) a substantial likelihood that they will prevail on the merits of the appeal; (2) a substantial risk of irreparable injury to the [movant] unless the injunction is granted; (3) no substantial harm to other interested persons; and (4) no harm to the public interest." *Touchston v. McDermott*, 234 F.3d 1130, 1132 (11th Cir. 2000) (*en banc*). "Failure to show any of the four factors is fatal and the most common failure is not showing a substantial likelihood of success on the merits." *Am. Civil Liberties Union of Fla., Inc. v. Miami-Dade County Sch. Bd.*, 557 F.3d 1177, 1198 (11th Cir. 2009).

For the reasons discussed in this Court's November 14, 2012 Order (Dkt.47) denying Plaintiff's Motion for Preliminary Injunction, Plaintiff has also failed to demonstrate any of the four factors warranting the "extraordinary remedy" of a preliminary injunction pending appeal.¹ Accordingly, it is **ORDERED** that Plaintiff's Motion for Preliminary Injunction Pending Appeal (Dkt. 54) is **DENIED**.

DONE AND ORDERED this 3rd day of December, 2012.


JAMES D. WHITTEMORE
United States District Judge

Copies to:
Counsel of Record

¹ In this case, Plaintiff is seeking not only the "extraordinary remedy" of a preliminary injunction pending appeal, but also the "most extraordinary remed[y]" of an injunction restricting speech pending final resolution of constitutional concerns. See *CBS, Inc. v. Davis*, 510 U.S. 1315, 1317 (1994) (Blackmun, J., in chambers) (the Supreme Court has "imposed this 'most extraordinary remed[y]' only where the evil that would result from the reportage is both great and certain and cannot be mitigated by less intrusive measures") (quoting *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 562 (1975)).

2012 WL 7005357

Only the Westlaw citation is currently available.
United States District Court, M.D. Florida,
Tampa Division.

Terry Gene BOLLEA, professionally
known as Hulk Hogan, Plaintiff,

v.

GAWKER MEDIA, LLC, et al., Defendant.

No. 8:12-cv-02348-T-27TBM. | Dec. 21, 2012.

Synopsis

Background: Celebrity brought motion for preliminary injunction to enjoin copyright infringement, seeking to require an Internet website to remove excerpts from a video of celebrity having sex with a woman who was not the celebrity's wife, and to prevent website operator from posting, publishing, or releasing any portions or content of the video.

[Holding:] The District Court, James D. Whittemore, J., held that celebrity did not show irreparable harm in the context of copyright infringement.

Motion denied.

West Headnotes (14)

[1] Injunction

- Grounds in General; Multiple Factors

A preliminary injunction may be granted only if the movant establishes: (1) a substantial likelihood of success on the merits of the underlying case; (2) the movant will suffer irreparable harm in the absence of an injunction; (3) the harm suffered by the movant in the absence of an injunction would exceed the harm suffered by the opposing party if the injunction issued; and (4) an injunction would not disserve the public interest.

[2] Injunction

- Extraordinary or Unusual Nature of Remedy

Injunction

- Clear Showing or Proof

A preliminary injunction is an extraordinary and drastic remedy not to be granted unless the movant clearly establishes the burden of persuasion as to the four requisites.

[3] Injunction

- Grounds in General; Multiple Factors

Failure to show any one of the four factors for granting a preliminary injunction is fatal.

[4] Copyrights and Intellectual Property

- Preliminary Injunction

Celebrity did not show substantial likelihood of success on merits of underlying copyright claim, as would be required for issuance of preliminary injunction to enjoin copyright infringement, by requiring Internet website to remove excerpts from video of celebrity having sex with a woman who was not celebrity's wife, and to prevent website operator from posting, publishing, or releasing any portions or content of the video; significant issues existed relating to validity of celebrity's copyright and website operator's colorable fair use defense. 17 U.S.C.A. § 107.

[5] Copyrights and Intellectual Property

- Fair Use and Other Permitted Uses in General

The mere fact that the posting on an Internet website of excerpts of a copyrighted work would increase traffic to the website and, correspondingly, advertising revenue, standing alone, is insufficient to demonstrate a commercial use that would preclude a finding of fair use under copyright law. 17 U.S.C.A. § 107.

[6] Copyrights and Intellectual Property

- Fair Use and Other Permitted Uses in General



For commercial use to weigh heavily against a finding of fair use, as defense to copyright infringement, it must involve more than simply publication in a profit-making venture. 17 U.S.C.A. § 107.

[7] Civil Rights

✓- Injunction

Even minimal interference with the First Amendment freedom of the press causes an irreparable injury. U.S.C.A. Const.Amend. 1.

[8] Constitutional Law

✓- Press in General

Copyrights and Intellectual Property

✓- Fair Use and Other Permitted Uses in General

The balance between First Amendment freedom of the press and copyright is preserved, in part, by the doctrine of fair use. U.S.C.A. Const.Amend. 1; 17 U.S.C.A. § 107.

[9] Copyrights and Intellectual Property

✓- Preliminary Injunction

Celebrity did not show irreparable harm in the context of copyright infringement, as would be required for issuance of preliminary injunction to enjoin copyright infringement, by requiring Internet website to remove excerpts from video of celebrity having sex with a woman who was not celebrity's wife, and to prevent website operator from posting, publishing, or releasing any portions or content of the video; the only evidence in the record reflecting harm to celebrity related to harm suffered by him personally and harm to his professional image due to the "private" nature of the video's content, in contrast to protecting the financial worth of the video.

[10] Copyrights and Intellectual Property

✓- Nature of Statutory Copyright

The justification of the copyright law is the protection of the commercial interest of the artist/

author; it is not to coddle artistic vanity or to protect secrecy, but to stimulate creation by protecting its rewards.

[11] Copyrights and Intellectual Property

✓- Preliminary Injunction

Even if a copyright holder has a First Amendment interest in not speaking, the protection of such interest is relevant in the context of a preliminary injunction only to the extent that it is not remediable after a final adjudication. U.S.C.A. Const.Amend. 1.

[12] Civil Rights

✓- Preliminary Injunction

Economic loss, even if difficult to quantify, is no basis for the entry of a preliminary injunction restricting speech. U.S.C.A. Const.Amend. 1.

[13] Copyrights and Intellectual Property

✓- Nature of Statutory Copyright

The protection of privacy is not a function of the copyright law.

[14] Copyrights and Intellectual Property

✓- Preliminary Injunction

Copyrights and Intellectual Property

✓- Permanent Relief

When a plaintiff seeks a preliminary injunction or a permanent injunction to prevent copyright infringement, making out a prima facie case of copyright infringement does not lead to a presumption of irreparable harm.

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Opinion

ORDER

JAMES D. WHITTEMORE, District Judge.

*1 BEFORE THE COURT is Plaintiff's Motion for Preliminary Injunction to Enjoin Copyright Infringement (Dkt.60). Plaintiff seeks an order requiring Defendants to remove "the excerpts from the Hulk Hogan sex tape that were posted on the www.Gawker.com website on or about October 4, 2012, and enjoining Defendants from posting, publishing or releasing any portions or content of the video to the public because Defendants' display of these excerpts constitute an infringement of Plaintiff's copyright." (Dkt.60, p. 1).¹ Defendants oppose the motion (Dkt.64).

A hearing on the motion will not assist the Court in resolving Plaintiff's claim. Upon consideration, the Motion for Preliminary Injunction to Enjoin Copyright Infringement (Dkt.60) is due to be denied, as Plaintiff has not established a likelihood of success on the merits of his purported copyright infringement claim or that he will suffer irreparable harm if an injunction is not issued. Substantial questions exist concerning the validity of his copyright and significantly, whether, assuming a valid copyright, Defendants have a colorable defense of fair use.

II. Factual Background

According to Plaintiff's submissions, approximately six years ago, he engaged in consensual sexual relations with a woman that was not his wife.² Allegedly unbeknownst to Plaintiff, the encounter was videotaped (the "Video"). Plaintiff insists that he was unaware that the encounter was being videotaped and would have strenuously objected to any recording thereof. Despite repeatedly disclaiming any knowledge of, and consent to, the videotaping, Plaintiff now contends that he recently obtained and registered a copyright for the Video.

On or about October 4, 2012, one or more of the named defendants (collectively, "Gawker Media") posted to their website (www.Gawker.com) (the "Gawker Site") excerpts of the Video. Plaintiff contends that the Video was posted without his permission and Gawker Media has refused numerous requests that they remove the excerpts from the Gawker Site. Plaintiff contends that "[i]f the Video remains publicly posted and disseminated, it will have a substantial adverse and detrimental effect on [his] personal and professional life, including irreparable harm to both." Bollea Declaration (Dkt.4-1), ¶ 11.

On October 15, 2012, Plaintiff commenced this action by filing a five count complaint against Defendants asserting claims for (1) invasion of privacy by intrusion upon seclusion, (2) publication of private facts, (3) violation of the Florida common law right of publicity, (4) intentional infliction of emotional distress, and (5) negligent infliction of emotional distress. Following the hearing on the his original Motion for Preliminary Injunction, Plaintiff filed a First Amended Complaint adding a new claim for copyright infringement.

III. Discussion

[1] [2] [3] A preliminary injunction may be granted only if the movant establishes: "(1) a substantial likelihood of success on the merits of the underlying case, (2) the movant will suffer irreparable harm in the absence of an injunction, (3) the harm suffered by the movant in the absence of an injunction would exceed the harm suffered by the opposing party if the injunction issued, and (4) an injunction would not disserve the public interest." *Johnson & Johnson Vision Care, Inc. v 1-800 Contacts, Inc.*, 299 F.3d 1242, 1246-47 (11th Cir.2002). "A preliminary injunction is an extraordinary and drastic remedy not to be granted unless the movant clearly establishes the burden of persuasion as to the four requisites." *All Care Nursing Serv., Inc. v. Bethesda Mem'l Hosp., Inc.*, 887 F.2d 1535, 1537 (11th Cir.1989) (quotation marks omitted). "Failure to show any of the four factors is fatal...." *ACLU of Fla. v. Miami-Dade Cnty. Sch. Bd.*, 557 F.3d 1177, 1198 (11th Cir.2009).

*2 As discussed below, it is doubtful that Plaintiff could establish a likelihood of success on the merits or that the balancing of harm and public interest warrant preliminary injunctive relief. Regardless, Plaintiff's motion for preliminary injunctive relief is due to be denied because

he has produced no evidence demonstrating that he will suffer irreparable harm absent a preliminary injunction.

Likelihood of Success

[4] As an initial matter, it is questionable whether Plaintiff will prevail on his claim for copyright infringement. Significant issues relating to the validity of the copyright and Gawker Media's fair use of the Video create substantial doubt as to whether Plaintiff will prevail on his claim for copyright infringement. *See Michaels v. Internet Entertainment Group, Inc.*, No. CV 98-0583 DDP (CWx), 1998 WL 882848 (C.D.Cal. Sept.11, 1998) (granting summary judgment in favor of defendant on plaintiff's claim that broadcasting excerpts of sex tape constituted copyright infringement). Indeed, this Court has previously found that Defendants' published the video excerpts "in conjunction with the news reporting function." That factual finding supports a colorable fair use defense, as the Copyright Act expressly provides that "the fair use of a copyrighted work ... for purposes such as criticism, [or] news reporting ... is not an infringement of copyright." 17 U.S.C. § 107.

[5] [6] Plaintiff's reliance on *HarperCollins Publishers v. Gawker Media*, 721 F.Supp.2d 303 (S.D.N.Y.2010), is unpersuasive. The mere fact that the posting of excerpts of a copyrighted work would increase traffic to a website and, correspondingly, advertising revenue, standing alone is insufficient to demonstrate a commercial use that would preclude a finding of fair use under copyright law. As this Court previously noted: "It is true that Defendants stand to indirectly profit from the posting of the Video excerpts to the extent it drives additional traffic to Defendants' website. This is true, however, with respect to any information posted online by any media outlet and is distinguishable from *selling* access to the Video solely for the purpose of commercial gain." *See also Campbell v. Acuff Rose Music, Inc.*, 510 U.S. 569, 584, 114 S.Ct. 1164, 127 L.Ed.2d 500 (1994) (noting that "news reporting, comment, [and] criticism" are activities "generally conducted for profit in this country"). "For commercial use to weigh heavily against a finding of fair use, it must involve more than simply publication in profit-making venture." *Nunez v. Caribbean Int'l News Corp.*, 235 F.3d 18, 22 (1st Cir.2000).

In *HarperCollins*, the court relied on the fact that "[t]he posts on Gawker consisted of very brief introductions followed by the copied material" in concluding that Gawker's use

was not for "purposes such as criticism, comment, [or] news reporting...." *HarperCollins*, 721 F.Supp.2d at 306. That is, the court found that Gawker Media merely copied *verbatim* portions of Plaintiff's yet to be published book and "essentially engaged in no commentary or discussion." *Id.* In contrast, in this case, Gawker Media posted an edited excerpt of the Video together with nearly three pages of commentary and editorial describing and discussing the Video in a manner designed to comment on the public's fascination with celebrity sex in general, and more specifically Plaintiff's status as a "Real Life American Hero to many," as well as the controversy surrounding the allegedly surreptitious taping of sexual relations between Plaintiff and the then wife of his best friend—a fact that was previously reported by other sources and was already the subject of substantial discussion by numerous media outlets.³

*3 Moreover, unlike the plaintiff in *HarperCollins*, Plaintiff in this case cannot legitimately claim that he seeks to enforce the copyright because he intends to publish the Video. In any event, it cannot reasonably be argued that Gawker Media is usurping Plaintiff's potential market for the Video (which Plaintiff himself characterizes as a "sex tape") by publishing excerpts of the video. *See Michaels*, 1998 WL 882848, at *14 ("[Defendant's] transformative use of the Tape excerpts to produce an entertainment news story does not affect Lee's market for the same service, because Lee is not in such a market.").

Balancing of Harm and Public Interest

[7] [8] Similarly, it is doubtful that the balancing of harm and public interest warrant preliminary injunctive relief. The Supreme Court has repeatedly recognized that even minimal interference with the First Amendment freedom of the press causes an irreparable injury. *See, e.g., Nebraska Press Ass'n*, 427 U.S. at 559; *Elrod v. Burns*, 427 U.S. 347, 373-74, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976); *see also Bartnicki v. Vopper*, 532 U.S. 514, 531-32, 121 S.Ct. 1753, 149 L.Ed.2d 787 (2001) (holding that First Amendment interest in publishing matters of public importance outweighed conversants' privacy rights given fact that media outlet had played no part in illegal reception). The Eleventh Circuit has recognized that the balance between the First Amendment and copyright is preserved, in part, by the doctrine of fair use. *See Suntrust Bank v. Houghton Mifflin Co.*, 268 F.3d 1257, 1263 (11th Cir.2001).

Irreparable Harm

[9] Even if Plaintiff could establish a likelihood of success on the merits and that the balancing of harm and public interest warrant preliminary injunctive relief, Plaintiff has produced no evidence demonstrating that he will suffer irreparable harm in the copyright sense absent a preliminary injunction. The only evidence in the record reflecting harm to Plaintiff relates to harm suffered by him personally and harm to his professional image due to the "private" nature of the Video's content.⁴ This evidence does not constitute irreparable harm in the context of copyright infringement.

[10] [11] [12] [13] "[T]he justification of the copyright law is the protection of the commercial interest of the artist/author. It is not to coddle artistic vanity or to protect secrecy, but to stimulate creation by protecting its rewards." *New Era Publications International, ApS v. Henry Holt & Co.*, 695 F.Supp. 1493, 1526 (S.D.N.Y.1988). "The plaintiff's interest is, principally, a property interest in the copyrighted material." *Salinger v. Colting*, 607 F.3d 68, 81 (2d Cir.2010) (citing *Wheaton v. Peters*, 33 U.S. 591, 661, 8 Pet. 591, 8 L.Ed. 1055 (1834)).⁵ The Fourth Circuit discussed the nature of the fair use defense in the context of privacy concerns as follows:

Because the challenged use is noncommercial, Bond must demonstrate that the use of the manuscript as evidence in the litigation would harm the potential market for his manuscript. Neither in his brief nor at oral argument has Bond been able to identify any harm or potential harm to his work against which the law of copyrights protects. The only harm that we can discern from his arguments is a claim that he has lost the right to control the release of a "private" or "confidential" document. But at oral argument, he conceded that the document was not confidential. Indeed, it is apparent that Bond has circulated the document in an effort to have it published. ***But more importantly, the protection of privacy is not a function of the copyright law. See, e.g., New Era***

Publications Int'l ApS v. Henry Holt & Co., 695 F.Supp. 1493, 1504-05 (S.D.N.Y.1988) (Leval, J.). To the contrary, the copyright law offers a limited monopoly to encourage ultimate public access to the creative work of the author. ***If privacy is the essence of Bond's claim, then his action must lie in some common-law right to privacy, not in the Copyright Act. See, e.g., Lawrence v. A.S. Abell Co.***, 299 Md. 697, 475 A.2d 448, 450-51 (1984).

*4 *Blond v. Blum*, 317 F.3d 385, 395 (4th Cir.2003) (emphasis added). Here, Plaintiff's copyright claim is, in essence, nothing more than a belated attempt to bolster his previous claims based on the common-law right to privacy.

The main concern proffered by Plaintiff—the concern that spurred this litigation—well before Plaintiff obtained his purported ownership of a copyright in the Video—is that the "private" Video portrays him in poor light and in an embarrassing fashion. *See, e.g.*, First Amended Complaint, ¶¶ 42, 52, 61, 76 ("Plaintiff has suffered injury, damage, loss, harm, anxiety, embarrassment, humiliation, shame, and severe emotional distress ..."), ¶ 66 ("Plaintiff has suffered severe emotional distress, anxiety and worry."). After attempting to quell any distribution or publication of excerpts of the Video in an effort to protect his mental well-being, personal relationships, and professional image, Plaintiff cannot legitimately claim that he is concerned with protecting the financial worth of the Video.

This is not a case in which the posting of copyrighted materials implicates the ownership value of the copyright because it impacts the commercial advantage of controlling the release of those materials. Indeed, there is no evidence that Plaintiff ever intends to release the Video and, in fact, it is quite likely that Plaintiff seeks to recover the copyrighted material for the sole purpose of destroying—not publishing—the copyrighted material. *See Nunez*, 235 F.3d at 24 (noting that where use of copyrighted material does not threaten copyright holder's right of first publication, nature of copyrighted work factor weighs in favor of finding of fair use). Moreover, the posting of a relatively poor quality edited excerpt⁶ from the Video is unlikely to change the demand for the Video and, if anything, may actually increase it. *See id.* at 25 (noting that newspaper's publication of copyrighted

photograph of naked beauty pageant contestant on front cover of newspaper should not change demand for portfolio).

[14] Finally, Plaintiff's contention that irreparable harm should be presumed because he has alleged a *prima facie* case of copyright infringement is mistaken. While this may have been the rule in some circuits, it is no longer the law after *eBay, Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 126 S.Ct. 1837, 164 L.Ed.2d 641 (2006). See, e.g., *Peter Letterese & Assocs., Inc. v. World Inst. of Scientology Enter., Int'l*, 544 F.3d 1287, 1323 (11th Cir.2008); *Live the Life Ministries, Inc. v. The Pairs Foundation, Inc.*, No. 4:11cv194-WS/WCS, 2011 WL 6780997, at *12 (N.D.Fla. Sep.27, 2011). Thus, an injunction "does not automatically issue upon a finding of copyright infringement," rather a plaintiff must still demonstrate the four requisites for either a preliminary or a permanent injunction. *Peter Letterese & Assocs., Inc.*, 533 F.3d at 1323.

IV. Conclusion

Plaintiff has failed to demonstrate that he is entitled to a preliminary injunction. At a minimum, Plaintiff has introduced no evidence establishing that he would suffer irreparable harm in the copyright sense absent preliminary injunctive relief. If it is ultimately found that Defendants have infringed a valid copyright held by Plaintiff, any violation is best redressed after a trial on the merits rather than by a prior restraint in derogation of the First Amendment.

*5 Accordingly, Plaintiff's Motion for Preliminary Injunction to Enjoin Copyright Infringement (Dkt.60) is **DENIED**.

DONE AND ORDERED this 20th day of December, 2012.

Parallel Citations

105 U.S.P.Q.2d 1558, 41 Media L. Rep. 1233

Footnotes

- 1 This is Plaintiff's second motion for preliminary injunction (and third request for preliminary injunctive relief).
- 2 Plaintiff has submitted, *inter alia*, the Declaration of Plaintiff Terry Gene Bollea (Dkt.4-1), the Declaration of Charles J. Harder (Dkt.60-1), and the Declaration of Nathaniel Wong (Dkt.60-2).
- 3 As this Court previously noted: "Plaintiff's public persona, including the publicity he and his family derived from a television reality show detailing their personal life, his own book describing an affair he had during his marriage, prior reports by other parties of the existence and content of the Video, and Plaintiff's own public discussion of issues relating to his marriage, sex life, and the Video all demonstrate that the Video is a subject of general interest and concern to the community."
- 4 The First Amended Complaint does not specify the damage purportedly suffered by Plaintiff as a result of the alleged copyright infringement, alleging only in conclusory fashion that he suffered "a severe and irreparable injury which cannot adequately be compensated by monetary damages." First Amended Complaint (Dkt.42), ¶ 86.
- 5 While "the Supreme Court has suggested [that] a copyright holder might also have a First Amendment interest in not speaking," the protection of such interest is relevant in the context of a preliminary injunction only to the extent that it is not remediable after a final adjudication. *Salinger*, 607 F.3d at 81 (citing *Harper & Row Publishers, Inc. v. Nation Enters.*, 471 U.S. 539, 559, 105 S.Ct. 2218, 85 L.Ed.2d 588 (1985)). Economic loss, even if difficult to quantify, is no basis for the entry of a preliminary injunction restricting speech. See, e.g., *Hughes Network Sys., Inc. v. Interdigital Communications Corp.*, 17 F.3d 691, 693 (4th Cir.1994); *In re King World Productions, Inc.*, 898 F.2d 56, 60 (6th Cir.1990).
- 6 Of note, Defendants did not simply post the entire Video—or substantial portions thereof, but rather posted a carefully edited excerpt consisting of less than two minutes of the thirty minute video of which less than ten seconds depicted explicit sexual activity.

CLOSED, SL DOC

**U.S. District Court
Middle District of Florida (Tampa)
CIVIL DOCKET FOR CASE #: 8:12-cv-02348-JDW-TBM**

Bollea v. Gawker Media, LLC et al
Assigned to: Judge James D. Whittemore
Referred to: Magistrate Judge Thomas B. McCoun III
Demand: \$9,999,000
Case in other court: 11th Circuit, 12-15959-C
Cause: 28:1332 Diversity-Personal Injury

Date Filed: 10/15/2012
Date Terminated: 01/03/2013
Jury Demand: Plaintiff
Nature of Suit: 360 P.I.: Other
Jurisdiction: Diversity

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ATTORNEY TO BE NOTICED

Rachel E. Fugate
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Seth D. Berlin
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant**Does 1 through 20, inclusive**

Date Filed	#	Docket Text
10/15/2012	<u>1</u>	COMPLAINT against Kate Bennert, Blogwire Hungary Szellemi Alkotast Hasznosito KFT, A.J. Daulerio, Nick Denton, Gawker Entertainment, LLC, Gawker Media Group, Inc., Gawker Media, LLC, Gawker Sales, LLC, Gawker Technology, LLC with Jury Demand (Filing fee \$ 350 receipt number TPA-13727) filed by Terry Gene Bollea. (Attachments: # <u>1</u> Civil Cover Sheet)(DG) (Entered: 10/16/2012)
10/16/2012	<u>2</u>	NOTICE of Appearance by Gregg Darrow Thomas on behalf of Gawker Media, LLC (Thomas, Gregg) (Entered: 10/16/2012)
10/16/2012	<u>3</u>	NOTICE of Appearance by Rachel E. Fugate on behalf of Gawker Media, LLC (Fugate, Rachel) (Entered: 10/16/2012)

- 10/16/2012 4 MOTION for temporary restraining order by Terry Gene Bollea. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4)(Thompson, E.) (Entered: 10/16/2012)
- 10/16/2012 5 MOTION for preliminary injunction by Terry Gene Bollea. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2)(Thompson, E.) (Entered: 10/16/2012)
- 10/17/2012 6 Summons issued as to Kate Bennert, A.J. Daulerio, Nick Denton, Gawker Entertainment, LLC, Gawker Media Group, Inc., Gawker Media, LLC, Gawker Sales, LLC, Gawker Technology, LLC. (DG) (Entered: 10/17/2012)
- 10/22/2012 7 NOTICE of designation under Local Rule 3.05 - track 2 (AO) (Entered: 10/22/2012)
- 10/22/2012 8 ORDER denying 4 Motion for temporary restraining order; setting 5 Motion for Preliminary Injunction for hearing on 11/8/12 at 3:00 P.M. See order for details. Signed by Judge James D. Whittemore on 10/19/2012. (KE) (Entered: 10/22/2012)
- 10/26/2012 ***PRO HAC VICE FEES paid and Special Admission Attorney Certification Form filed by attorney Charles J. Harder appearing on behalf of Terry Gene Bollea (Filing fee \$10 receipt number TPA13986.) (JNB) (Entered: 10/26/2012)
- 10/26/2012 ***PRO HAC VICE FEES paid and Special Admission Attorney Certification Form filed by attorney Jonathan H. Waller appearing on behalf of Terry Gene Bollea (Filing fee \$10 receipt number TPA14011.) (AG) (Entered: 10/26/2012)
- 10/29/2012 9 APPEARANCE of non-resident counsel and designation of local counsel by E. Colin Thompson on behalf of Terry Gene Bollea. Local Counsel: E. Colin Thompson. Non-Resident Counsel: Charles J. Harder. (Thompson, E.) (Entered: 10/29/2012)
- 10/29/2012 10 APPEARANCE of non-resident counsel and designation of local counsel by E. Colin Thompson on behalf of Terry Gene Bollea. Local Counsel: E. Colin Thompson. Non-Resident Counsel: Jonathan H. Waller. (Thompson, E.) (Entered: 10/29/2012)
- 10/29/2012 11 MOTION for Charles J. Harder to appear pro hac vice by Terry Gene Bollea. (Attachments: # 1 Exhibit A)(Thompson, E.) (Entered: 10/29/2012)
- 10/29/2012 12 MOTION for Jonathan H. Waller to appear pro hac vice by Terry Gene Bollea. (Attachments: # 1 Exhibit A)(Thompson, E.) (Entered: 10/29/2012)
- 10/30/2012 13 STIPULATION for *Substitution of Counsel* by Terry Gene Bollea. (Turkel, Kenneth) (Entered: 10/30/2012)
- 10/30/2012 14 Unopposed MOTION to continue *Hearing on Motion for Preliminary Injunction*, MOTION for leave to file *Supplemental Memorandum*, MOTION for extension of time to file response/reply as to 5 MOTION for preliminary injunction, MOTION for extension of time to file answer or otherwise plead re 1 Complaint by Terry Gene Bollea. (Attachments: # 1 Exhibit A-1 Supplemental Memorandum, # 2 Exhibit A-2 Exhibits to Supplemental Memorandum)(Turkel, Kenneth) Motions referred to Magistrate Judge Thomas

B. McCoun III. (Entered: 10/30/2012)

10/31/2012	<u>15</u>	ENDORSED ORDER denying <u>14</u> Unopposed Motion to Continue Hearing on Motion for preliminary Injunction, for Leave to File Supplemental Memorandum, and to Extend the Deadlines for Defendants to Respond to Motion and the Complaint. Signed by Judge James D. Whittemore on 10/31/2012. (Whittemore, James) (Entered: 10/31/2012)
10/31/2012	<u>16</u>	RETURN of service executed on 10/25/12 by Terry Gene Bollea as to Gawker Media, LLC. (Turkel, Kenneth) (Entered: 10/31/2012)
10/31/2012	<u>17</u>	RETURN of service executed on 10/24/12 by Terry Gene Bollea as to Gawker Entertainment, LLC. (Turkel, Kenneth) (Entered: 10/31/2012)
10/31/2012	<u>18</u>	RETURN of service executed on 10/24/12 by Terry Gene Bollea as to Gawker Technology, LLC. (Turkel, Kenneth) (Entered: 10/31/2012)
10/31/2012	<u>19</u>	RETURN of service executed on 10/24/12 by Terry Gene Bollea as to Gawker Sales, LLC. (Turkel, Kenneth) (Entered: 10/31/2012)
10/31/2012	<u>20</u>	RETURN of service executed on 10/24/12 by Terry Gene Bollea as to Nick Denton. (Turkel, Kenneth) (Entered: 10/31/2012)
10/31/2012	<u>21</u>	RETURN of service executed on 10/24/12 by Terry Gene Bollea as to Gawker Media Group, Inc.. (Turkel, Kenneth) (Entered: 10/31/2012)
11/01/2012	<u>22</u>	ORDER granting <u>11</u> motion to appear pro hac vice; granting <u>12</u> motion to appear pro hac vice. Signed by Judge James D. Whittemore on 10/31/2012. (KE) (Entered: 11/01/2012)
11/01/2012	<u>23</u>	ORDER approving <u>13</u> Stipulation for Substitution of Counsel filed by Terry Gene Bollea. Fredrick H.L. McClure, Esq. and E. Colin Thompson, Esq. withdrawn. Kenneth G. Turkel, Esq. and Christina K. Ramirez, Esq. Signed by Judge James D. Whittemore on 10/31/2012. (KE) (Entered: 11/01/2012)
11/01/2012	<u>24</u>	NOTICE of Appearance by Gregg Darrow Thomas on behalf of Kate Bennert, Blogwire Hungary Szellemi Alkotast Hasznosito KFT, A.J. Daulerio, Nick Denton, Gawker Entertainment, LLC, Gawker Media Group, Inc., Gawker Sales, LLC, Gawker Technology, LLC (Thomas, Gregg) (Entered: 11/01/2012)
11/01/2012	<u>25</u>	NOTICE of Appearance by Rachel E. Fugate on behalf of Kate Bennert, Blogwire Hungary Szellemi Alkotast Hasznosito KFT, A.J. Daulerio, Nick Denton, Gawker Entertainment, LLC, Gawker Media Group, Inc., Gawker Sales, LLC, Gawker Technology, LLC (Fugate, Rachel) (Entered: 11/01/2012)
11/01/2012	<u>26</u>	Unopposed MOTION for Seth D. Berlin to appear pro hac vice by All Defendants. (Thomas, Gregg) (Entered: 11/01/2012)
11/01/2012	<u>27</u>	Unopposed MOTION for Paul J. Safier to appear pro hac vice by All Defendants. (Thomas, Gregg) (Entered: 11/01/2012)
11/02/2012	<u>28</u>	RESPONSE in opposition re <u>5</u> MOTION for preliminary injunction filed by Gawker Media, LLC. (Thomas, Gregg) (Entered: 11/02/2012)
11/02/2012	<u>29</u>	DECLARATION of Rachel E. Fugate re <u>28</u> Response in opposition to motion

by Gawker Media, LLC. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 Exhibit 12, # 13 Exhibit 13, # 14 Exhibit 14, # 15 Exhibit 15, # 16 Exhibit 16, # 17 Exhibit 17, # 18 Exhibit 18, # 19 Exhibit 19, # 20 Exhibit 20, # 21 Exhibit 21, # 22 Exhibit 22, # 23 Exhibit 23, # 24 Exhibit 24)(Thomas, Gregg) (Entered: 11/02/2012)

11/05/2012		***PRO HAC VICE FEES paid and Special Admission Attorney Certification Form filed by attorney Seth D. Berlin appearing on behalf of Kate Bennert, Blogwire Hungary Szellemi Alkotast Hasznosito KFT, A.J. Daulerio, Nick Denton, Gawker Entertainment, LLC, Gawker Media Group, Inc., Gawker Media, LLC, Gawker Sales, LLC, Gawker Technology, LLC (Filing fee \$10 receipt number TPA14125.) (JNB) (Entered: 11/05/2012)
11/05/2012		***PRO HAC VICE FEES paid and Special Admission Attorney Certification Form filed by attorney Paul J. Safier appearing on behalf of Kate Bennert, Blogwire Hungary Szellemi Alkotast Hasznosito KFT, A.J. Daulerio, Nick Denton, Gawker Entertainment, LLC, Gawker Media Group, Inc., Gawker Media, LLC, Gawker Sales, LLC, Gawker Technology, LLC (Filing fee \$10 receipt number TPA14125.) (JNB) (Entered: 11/05/2012)
11/06/2012	<u>30</u>	RETURN of service executed on 10/24/2012 by Terry Gene Bollea as to Gawker Media, LLC. (Turkel, Kenneth) (Entered: 11/06/2012)
11/06/2012	<u>31</u>	RETURN of service executed on 10/23/2012 by Terry Gene Bollea as to Gawker Sales, LLC. (Turkel, Kenneth) (Entered: 11/06/2012)
11/06/2012	<u>32</u>	RETURN of service executed on 10/23/2012 by Terry Gene Bollea as to Gawker Entertainment, LLC. (Turkel, Kenneth) (Entered: 11/06/2012)
11/06/2012	<u>33</u>	RETURN of service executed on 10/23/2012 by Terry Gene Bollea as to A.J. Daulerio. (Turkel, Kenneth) (Entered: 11/06/2012)
11/06/2012	<u>34</u>	RETURN of service executed on 10/23/2012 by Terry Gene Bollea as to Kate Bennert. (Turkel, Kenneth) (Entered: 11/06/2012)
11/06/2012	<u>35</u>	RETURN of service executed on 10/23/2012 by Terry Gene Bollea as to Nick Denton. (Turkel, Kenneth) (Entered: 11/06/2012)
11/06/2012	<u>36</u>	RETURN of service executed on 10/23/2012 by Terry Gene Bollea as to Gawker Technology, LLC. (Turkel, Kenneth) (Entered: 11/06/2012)
11/06/2012	<u>37</u>	CERTIFICATE of interested persons and corporate disclosure statement re <u>7</u> Notice of designation of track 2 by Gawker Media, LLC identifying Corporate Parent Gawker Media Group, Inc. for Gawker Media, LLC.. (Thomas, Gregg) (Entered: 11/06/2012)
11/07/2012	<u>38</u>	ENDORSED ORDER granting <u>26</u> motion to appear pro hac vice; granting <u>27</u> motion to appear pro hac vice. Seth D. Berlin, Esq. and Paul J. Safier, Esq. admitted pro hac vice. Gregg Thomas, Esq. designated local counsel. Counsel are further notified that pursuant to the USDC - Middle District of Florida's Administrative Procedures for Electronic Filing in Civil and Criminal Cases, Section I(A) "... all documents filed in Civil and Criminal cases in this District... shall be filed electronically." Therefore, the attorneys being admitted

pro hac vice is/are directed to sign up for CM/ECF, enter an email address in their CM/ECF account and electronically file a notice of compliance with this Court's Order within thirty (30) days. Failure to comply with this Order as directed will result in counsel being terminated from the docket sheet without further notice. Signed by Judge James D. Whittemore on 11/7/2012. (KE) (Entered: 11/07/2012)

11/08/2012	<u>40</u>	RETURN of service executed on 10/24/12 by Terry Gene Bollea as to Gawker Media Group, Inc.. (Turlkel, Kenneth) (Entered: 11/08/2012)
11/08/2012	<u>41</u>	Minute Entry. Proceedings held before Judge James D. Whittemore: ruling deferred <u>5</u> Motion for preliminary injunction; Motion Hearing held on 11/8/2012 re <u>5</u> MOTION for preliminary injunction filed by Terry Gene Bollea. Court Reporter: Linda Starr (AO) (Entered: 11/08/2012)
11/08/2012	<u>42</u>	AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL WITH INJUNCTIVE RELIEF SOUGHT against All Defendants with Jury Demand filed by Terry Gene Bollea. Related document: <u>1</u> Complaint filed by Terry Gene Bollea.(Turlkel, Kenneth) (Entered: 11/08/2012)
11/08/2012		Sealed document S-1. (DG) (Entered: 11/13/2012)
11/09/2012	<u>43</u>	NOTICE of compliance re 38 Order on motion to appear pro hac vice by Kate Bennert, Blogwire Hungary Szellemi Alkotast Hasznosito KFT, A.J. Daulerio, Nick Denton, Gawker Entertainment, LLC, Gawker Media Group, Inc., Gawker Media, LLC, Gawker Sales, LLC, Gawker Technology, LLC (Berlin, Seth) (Entered: 11/09/2012)
11/09/2012	<u>44</u>	ORDER denying Motion to Intervene. Signed by Judge James D. Whittemore on 11/8/2012. (KE) (Entered: 11/09/2012)
11/10/2012	<u>45</u>	TRANSCRIPT of Preliminary Injunction Hearing held on 8 November 2012 before Judge James D. Whittemore. Court Reporter/Transcriber Linda Starr, Telephone number 813-301-5252. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER or purchased through the Court Reporter. Redaction Request due 12/3/2012, Redacted Transcript Deadline set for 12/11/2012, Release of Transcript Restriction set for 2/8/2013. (LS) (Entered: 11/10/2012)
11/10/2012	<u>46</u>	NOTICE to counsel of filing of OFFICIAL TRANSCRIPT. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days. Any party needing a copy of the transcript to review for redaction purposes may purchase a copy from the court reporter or view the document at the clerk's office public terminal. Court Reporter: Linda Starr (LS) (Entered: 11/10/2012)
11/14/2012	<u>47</u>	ORDER denying <u>5</u> Motion for Preliminary Injunction. Signed by Judge James D. Whittemore on 11/13/2012. (KE) (Entered: 11/14/2012)
11/15/2012	<u>48</u>	CERTIFICATE of interested persons and corporate disclosure statement re <u>7</u>

Notice of designation of track 2 by Terry Gene Bollea. (Ramirez, Christina) (Entered: 11/15/2012)

11/15/2012 49 NOTICE OF APPEAL as to 47 Order on motion for preliminary injunction by Terry Gene Bollea. (Filing fee not paid) (Tukel, Kenneth) (Entered: 11/15/2012)

11/16/2012 TRANSMITTAL of initial appeal package to USCA consisting of copies of notice of appeal, docket sheet, order/judgment being appealed, to USCA re 49 Notice of appeal. Eleventh Circuit Transcript information form forwarded to pro se litigants and available to counsel at www.flmd.uscourts.gov under Forms and Publications/General. (DG) (Entered: 11/16/2012)

11/16/2012 USCA appeal fees received \$ 455 receipt number TPA14379 re 49 Notice of appeal filed by Terry Gene Bollea (AG) (Entered: 11/16/2012)

11/16/2012 50 Unopposed MOTION for extension of time to file answer or otherwise plead re 42 Amended complaint by Gawker Media, LLC. (Thomas, Gregg) (Entered: 11/16/2012)

11/19/2012 TRANSMITTAL to USCA forwarding certified copy of NEF reflecting the appeal fee payment received by the District Court on 11/16/12 re 49 Notice of appeal. USCA number: not yet known. (DG) (Entered: 11/19/2012)

11/19/2012 51 NOTICE of compliance re 22 Order on motion to appear pro hac vice *Jonathan H. Waller* by Terry Gene Bollea (Waller, Jonathan) (Entered: 11/19/2012)

11/19/2012 52 ENDORSED ORDER granting 50 Motion for extension of time to answer or respond. Defendants' response(s) to Plaintiffs' Amended Complaint is due by 12/7/12. Signed by Judge James D. Whittemore on 11/19/2012. (KE) (Entered: 11/19/2012)

11/19/2012 53 MOTION for David R. Houston to appear pro hac vice by Terry Gene Bollea. (Attachments: # 1 Exhibit A)(Ramirez, Christina) (Entered: 11/19/2012)

11/19/2012 ***PRO HAC VICE FEES paid and Special Admission Attorney Certification Form filed by attorney David R. Houston appearing on behalf of Terry Gene Bollea (Filing fee \$10 receipt number TPA14417.) Related document: 53 MOTION for David R. Houston to appear pro hac vice (AG) (Entered: 11/19/2012)

11/19/2012 54 MOTION for preliminary injunction *PENDING APPEAL* by Terry Gene Bollea. (Attachments: # 1 Exhibit Declaration of Nathaniel Wong ISO Pltf's Motion for Injunction Pending Appeal, # 2 Exhibit Declaration of Charles J Harder ISO Pltf's Motion for Injunction Pending Appeal)(Harder, Charles) (Entered: 11/19/2012)

11/21/2012 55 ORDER granting 53 motion for David R. Houston to appear pro hac vice contingent upon counsel's required submissions as directed in the order. Christina Ramirez, Esq. is designated as local counselo. Signed by Judge James D. Whittemore on 11/20/2012. (AO) (Entered: 11/21/2012)

11/27/2012 56 NOTICE of compliance re 22 Order on motion to appear pro hac vice *Charles*

- J. Harder* by Terry Gene Bollea (Harder, Charles) (Entered: 11/27/2012)
- 11/27/2012 57 NOTICE of compliance *Notice of Compliance with November 21, 2012 Order Regarding CM/ECF Registration* by Terry Gene Bollea (Houston, David) (Entered: 11/27/2012)
- 11/28/2012 58 MOTION for Eric Levinrad to appear pro hac vice by Terry Gene Bollea. (Ramirez, Christina) (Entered: 11/28/2012)
- 11/30/2012 ***PRO HAC VICE FEES paid and Special Admission Attorney Certification Form filed by attorney Eric Levinrad appearing on behalf of Terry Gene Bollea (Filing fee \$10 receipt number TPA14567.) (JNB) (Entered: 11/30/2012)
- 11/30/2012 ACKNOWLEDGMENT by USCA of receiving certified copy of NEF reflecting the appellate filing fee payment received by District Court on 11/16/12 on 11/21/12 re 49 Notice of appeal. USCA number: 12-15959-CC (DG) (Entered: 11/30/2012)
- 11/30/2012 59 RESPONSE in opposition re 54 MOTION for preliminary injunction *PENDING APPEAL* filed by Gawker Media, LLC. (Thomas, Gregg) (Entered: 11/30/2012)
- 11/30/2012 60 MOTION for preliminary injunction *TO ENJOIN COPYRIGHT INFRINGEMENT* by Terry Gene Bollea. (Attachments: # 1 Affidavit Exhibit 1 - Decl of Charles J Harder ISO Motion for Prelim Injunction RE Copyright Claim, # 2 Affidavit Exhibit 2 - Wong Decl ISO Motion for Prelim Injunction RE Copyright Claim, # 3 Text of Proposed Order Exhibit 3 - Proposed Order for Motion for Prelim Injunction RE Copyright Claim)(Harder, Charles) (Entered: 11/30/2012)
- 12/04/2012 61 ORDER denying 54 Motion for preliminary injunction. Signed by Judge James D. Whittemore on 12/3/2012. (KE) (Entered: 12/04/2012)
- 12/04/2012 62 ENDORSED ORDER granting 58 motion to appear pro hac vice. Eric Levinrad, Esq. admitted pro hac vice. Christina Ramirez, Esq. designated local counsel. Counsel are further notified that pursuant to the USDC - Middle District of Florida's Administrative Procedures for Electronic Filing in Civil and Criminal Cases, Section 1(A) "... all documents filed in Civil and Criminal cases in this District... shall be filed electronically." Therefore, the attorneys being admitted pro hac vice is/are directed to sign up for CM/ECF, enter an email address in their CM/ECF account and electronically file a notice of compliance with this Court's Order within thirty (30) days. Failure to comply with this Order as directed will result in counsel being terminated from the docket sheet without further notice.. Signed by Judge James D. Whittemore on 12/4/2012. (KE) (Entered: 12/04/2012)
- 12/07/2012 63 MOTION to Dismiss for Lack of Jurisdiction *and Failure to State a Claim* by Kate Bennert, A.J. Daulerio, Nick Denton, Gawker Entertainment, LLC, Gawker Media Group, Inc., Gawker Media, LLC, Gawker Sales, LLC, Gawker Technology, LLC. (Thomas, Gregg) (Entered: 12/07/2012)
- 12/14/2012 64 RESPONSE in opposition re 60 MOTION for preliminary injunction *TO ENJOIN COPYRIGHT INFRINGEMENT* filed by Gawker Media, LLC.

(Fugate, Rachel) (Entered: 12/14/2012)

12/17/2012 65 CERTIFICATE of readiness sent to USCA re: 49 Notice of appeal. ROA consists of: volume of pleadings: 1; volume of transcripts: 1; and 1 expandable folder of documentary exhibits. USCA number: 12-15959-C (DG) (Entered: 12/17/2012)

12/21/2012 66 ORDER denying 60 Motion for preliminary injunction. Signed by Judge James D. Whittemore on 12/20/2012. (KE) (Entered: 12/21/2012)

12/24/2012 67 RESPONSE in opposition re 63 MOTION to Dismiss for Lack of Jurisdiction and Failure to State a Claim filed by Terry Gene Bollea. (Attachments: # 1 Exhibit Declaration of Eric Levinrad and Exhibits A through C)(Harder, Charles) (Entered: 12/24/2012)

12/26/2012 ACKNOWLEDGMENT by USCA of receiving the certificate of readiness on 12/26/12 re 49 Notice of appeal. USCA number: 12-15959-C (DG) (Entered: 12/27/2012)

12/28/2012 68 NOTICE of Voluntary Dismissal *Without Prejudice* by Terry Gene Bollea (Turl, Kenneth) (Entered: 12/28/2012)

01/03/2013 69 ORDER dismissing case without prejudice pursuant to Plaintiff's 68 Notice of Voluntary Dismissal. Signed by Judge James D. Whittemore on 1/3/2013. (KE) (Entered: 01/03/2013)

01/04/2013 70 ORDER of USCA: Pursuant to Appellant Terry Bollea's motion for voluntary dismissal, FRAP Rule 42 and 11th Cir. R. 42-1(a), the above referenced appeal was duly entered dismissed as to 49 Notice of appeal filed by Terry Gene Bollea. EOD: 1/3/13; USCA number: 12-15959-CC. (JNB) (Entered: 01/04/2013)

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Billable Pages:	11	Cost:	1.10

**General Docket
United States Court of Appeals for the Eleventh Circuit**

Court of Appeals Docket #: 12-15959 Nature of Suit: 4360 Other Personal Injury Terry Bollea v. Gawker Media, LLC, et al Appeal From: Middle District of Florida Fee Status: Fee Paid	Docketed: 11/20/2012 Termed: 01/03/2013 Case Handler: Caruso, Joe. CC (404) 335-6177
Case Type Information: 1) Private Civil 2) Diversity 3) -	
Originating Court Information: District: 113A-8 : 8:12-cv-02345-JDW-TBM Court Reporter: Linda Starr Civil Proceeding: James D. Whittemore, U.S. District Judge Secondary Judge: Thomas B. McCoun, III, U.S. Magistrate Judge Date Filed: 10/15/2012 Date NOA Filed: 11/15/2012	
Prior Cases: None	
Current Cases: None	

TERRY BOLLEA, professionally known as Hulk Hogan, a.k.a. Hulk Hogan Appellant	Plaintiff -	Charles J. Harder [NTC Retained] Wolf Rifkin Shapiro Schulman Rabkin, LLP Firm: 310-478-4100 11400 W OLYMPIC BLVD LOS ANGELES, CA 90084 David R. Houston Direct: 775-786-4188 [NTC Retained] Law Office of David R. Houston 432 COURT ST RENO, NV 89501 Christine Kizirian Ramirez Direct: 813-443-2199 [COR NTC Retained] Bajo Cuva Cohen & Turkel, PA 100 N TAMPA ST STE 1900 TAMPA, FL 33602 Kenneth G. Turkel Direct: 813-443-2199 [COR NTC Retained] Bajo Cuva Cohen & Turkel, PA 100 N TAMPA ST STE 1900 TAMPA, FL 33602 Jonathan H. Waller Direct: 205-994-3270 [NTC Retained] Wolf Rifkin Shapiro Schulman & Rabkin, LLP 201 PARK PL STE 900 BIRMINGHAM, AL 35203
versus GAWKER MEDIA, LLC, a.k.a. Gawker Media Appellee	Defendant -	Seth D. Berlin Direct: 202-508-1122 [NTC Retained] Levine Sullivan Koch & Schulz, LLP

