

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.

**DEFENDANT NICK DENTON'S
MOTION TO DISMISS FIRST AMENDED COMPLAINT**

Defendant Nick Denton ("Denton"), by and through the undersigned counsel, hereby moves to dismiss Plaintiff's First Amended Complaint and Demand for Jury Trial. As grounds for this motion, Denton states as follows:

1. Plaintiff filed his First Amended Complaint on December 28, 2012, which added Denton as a defendant.
2. Plaintiff purported to effect service of the First Amended Complaint on Denton on August 16, 2013.
3. Denton joins, and expressly adopts and incorporates, Gawker Media, LLC's Motion to Dismiss Plaintiff's Complaint for Failure to State a Claim, filed January 4, 2013.¹
4. In addition, Denton was not properly served. Florida Rule of Civil Procedure 1.070(a) requires service of the summons as issued by the court. In this case, the summons

¹ The Motion to Dismiss was initially filed in federal court during the period in which these proceedings were removed to the Middle District of Florida, and was submitted in this Court together with a Notice of Filing dated April 29, 2013 because those motion papers were not forwarded to this Court by the federal court when this case was remanded.

served on Denton was not an original, bearing the stamp and signature of the Clerk of Court. As the Supreme Court has explained, service of the summons as issued is required because it is the signature of the Clerk that serves as the “testimonial by which the authenticity of the summons is made to appear.” *Ball v. Jones*, 65 So. 2d 3, 4 (Fla. 1953) (*en banc*). Since original process was not served here, dismissal is warranted pursuant to Florida Rule of Civil Procedure 1.140(b)(4). *See Woide v. Fannie Mae*, 116 So. 3d 1281, 1281 (Fla. 5th DCA 2013) (process was insufficient where defendants were served with summons that did not “contain[] the deputy clerk’s signature or the circuit court’s official seal”); *see also Schofield v. Wells Fargo Bank. N.A.*, 95 So. 3d 1051, 1052 (Fla. 5th DCA 2012) (“Service of process must strictly comply with all relevant statutory provisions.”).

WHEREFORE, Defendant Denton requests that the Court grant this Motion and dismiss Plaintiff’s First Amended Complaint.

Dated: September 4th, 2013

Respectfully submitted,

THOMAS & LOCICERO PL

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of September 2013, I caused a true and correct copy of the foregoing to be served by email upon the following counsel of record:

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