

EXHIBIT 2

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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GAWKER MEDIA, LLC,	:	
	:	
Petitioner,	:	Index No. _____
	:	
-against-	:	
	:	PETITION
EJ MEDIA GROUP, LLC and ELIZABETH	:	
ROSENTHAL TRAUB,	:	
	:	
Respondents.	:	
	:	
-----	X	

Petitioner Gawker Media, LLC (“Gawker”), by and through its attorneys, Levine Sullivan Koch & Schulz, LLP, for its Petition alleges as follows:

NATURE OF THE PETITION

1. In this special proceeding, Gawker seeks to enforce two New York subpoenas *duces tecum* (the “Subpoenas”) it issued in connection with litigation pending in Florida, using the procedures set forth in the Uniform Depositions and Discovery Act, as codified in New York Law. *See* CPLR § 3119; *see also id.* § 3119(e). The Subpoenas seek discovery for use in the defense of an action brought against Gawker by the professional wrestler publicly known as “Hulk Hogan” (“Hogan”). That lawsuit arises out of a story Gawker published on its website about a pre-existing controversy over a video of him having sexual relations with his best friend’s wife, with his best friend’s blessing (the “Gawker Story”).

2. The Respondents here provided public relations services to Hogan, including in connection with Hogan’s response to the controversy surrounding the sex tape and to the Gawker Story. Despite providing such services, in response to the Subpoenas, they produced *no* documents concerning Hogan’s appearances in a number of media outlets in which he discussed the Gawker Story and the controversy over the sex tape about which it reports. These include,

for example, appearances on *The Howard Stern Show*, the *Today* show, *TMZ Live*, *Piers Morgan Live*, and in an interview in *USA Today*. Respondents have also improperly asserted privilege and work product protection for certain documents, and have redacted others without explanation.

3. By this petition (the “Petition”), Gawker seeks to enforce the Subpoenas and to require Respondents to provide prompt responses so that the documents can be used at upcoming depositions, including of Hogan, currently scheduled for the week of March 3, 2014. Gawker respectfully requests this Court to direct Respondents to produce all documents responsive to the Subpoenas that have not been previously produced – including those as to which they have improperly claimed privilege and those they have redacted without explanation – within three business days.

JURISDICTION AND VENUE

4. This Court has jurisdiction pursuant to CPLR §§ 301 and 3119(e).

5. Venue is proper in this County pursuant to CPLR §§ 503, 506(a), and 3119(e).

PARTIES

6. Petitioner Gawker Media, LLC, is a Delaware limited-liability company with its principal place of business at 210 Elizabeth Street, 4th Floor, New York, New York 10012.

Gawker is the publisher of www.gawker.com, a news and entertainment website.

7. Respondent EJ Media Group, LLC (“EJ Media”) is a New York limited liability company with its principal place of business at 349 Fifth Avenue, New York, New York 10016.

At all relevant times, EJ Media provided public relations services to Hogan.

8. Upon information and belief, Respondent Elizabeth Rosenthal Traub (“Traub”) is a citizen and resident of New York County. Traub is the managing partner of Respondent EJ Media Group, LLC. At all relevant times, Traub provided public relations services to Hogan.

FACTUAL ALLEGATIONS

9. The underlying litigation, *Bollea v. Clem*, No. 12012447-CI-011 (Fla. 6th Jud. Cir.) (the “Florida Litigation”), concerns claims brought by Terry Gene Bollea, the professional wrestler known as Hulk Hogan, against Gawker (among others) relating to Gawker’s publication of the Gawker Story in October 2012. That story reported on a pre-existing controversy about a sexual liaison between Hogan and a woman later identified to be Heather Clem (the “Gawker Story”). At the time of the tryst, Heather Clem was married to Hogan’s best friend, radio shock-jock Bubba The Love Sponge Clem, who consented to – and indeed encouraged – his wife to have sex with Hogan.

10. Together with the Gawker Story, Gawker published brief excerpts of the videotape of Hogan’s tryst with Mrs. Clem (the “Excerpts”). While the original video ran to over 30 minutes, the Excerpts were only one minute and forty-one seconds long, and included fewer than 10 seconds of sexual activity in grainy black and white footage. The remainder was comprised of fairly banal conversation between Hogan and Mrs. Clem.

11. Although discovery as to the liability phase of the Florida Litigation is proceeding, the Florida appellate court recently found in the context of Hogan’s motion for a preliminary injunction that the Gawker Story and Excerpts involved a matter of public concern and were therefore newsworthy speech protected by the First Amendment. *See Gawker Media, LLC v. Bollea*, --- So. 3d ----, 2014 WL 185217 (Fla. Ct. App. 2014). This ruling was consistent with earlier decisions in a prior proceeding Hogan filed against Gawker in the United States

District Court for the Middle District of Florida, in which the Court reached the same conclusion on multiple occasions. *See Bollea v. Gawker Media, LLC*, 2012 WL 5509264 (M.D. Fla. Nov. 14, 2012); *Bollea v. Gawker Media, LLC*, 913 F. Supp. 2d 1325 (M.D. Fla. 2012).

12. In connection with its ongoing defense in the Florida Litigation, on January 6, 2014, Gawker served the Subpoenas on Respondents pursuant to CPLR § 3119. The Subpoenas are attached as Exhibits 1 and 2 to the Affirmation of Julie B. Ehrlich, Esq.

13. In mid-January, Gawker consented to Respondents' request for a two-week extension to respond to the Subpoenas.

14. Following that extension, Traub and EJ Media responded to the Subpoenas on February 4, 2014. Respondents did not object to the form of the Subpoenas or to the scope of the document requests reflected therein.

15. Respondents' production was comprised of fewer than 90 pages of documents – a number of which were heavily redacted without explanation – and four audio files.

16. Despite concededly providing public relations services to Hogan at and around the time of the sex tape controversy, posting of the Gawker Story, and Hogan's filing suit against Gawker, Respondents did not produce *any* documents whatsoever concerning Hogan's appearances in a number of media outlets – in which he specifically discussed the Gawker Story and the controversy over the sex tape – including, for example, *The Howard Stern Show*, the *Today* show, *TMZ Live*, *Piers Morgan Live*, and in an interview in *USA Today*.

17. Respondents also produced no documents regarding the occasions on which Hogan discussed the Video at issue here as part of a media tour in October prior to the filing of his lawsuits; no documents regarding Traub and EJ Media's engagement to provide public relations support to Hogan (including in connection with the Gawker Story and Video); and no

documents in the nature of drafts, instructions, or other information she received from, or provided to, Hogan or those working on his behalf.

18. In addition, Respondents produced a privilege log. The log, which lacks much of the information required under New York law, including the subject line of the emails and a brief description of their content, asserts that 21 communications between Respondents and Hogan's counsel, California attorney Charles Harder, are protected against disclosure under the attorney client and attorney work product privileges.

19. Of these 21 emails, nine date to October 13, 14, and 15, 2012 – the two days preceding the filing of the Florida Litigation and the day of filing (the "2012 Emails"). Respondents have asserted the attorney-client privilege as to all nine of these 2012 Emails, and the work-product privilege as to four of the nine.

20. The remaining 12 emails reflected in the privilege log postdate service of the Subpoenas. Because Harder is now representing Respondents in connection with the Subpoenas, Gawker does not challenge the assertion of attorney-client privilege as to the 12 emails from 2014.

21. However, no attorney-client relationship existed between Harder and Respondents in October 2012. As a result, there is no privilege or work product protection between Hogan's publicist and *his* counsel with respect to the 2012 Emails.

22. Finally, a number of documents produced by Respondents appear to be redacted, with significant portions of a page blocked from view. The documents do not however indicate that they are redacted, and the privilege log does not provide context or information about any of Respondents' redactions.

23. By letter dated February 5, 2014, Gawker objected to Respondents' incomplete responses, inappropriate invocation of the attorney-client and work-product privileges, and improper redactions. Respondents have not replied.

24. Absent court intervention, Respondents' dilatory and incomplete responses to the Subpoenas will prejudice Gawker's ability effectively to depose Hogan and other key witnesses, which depositions are scheduled for the week of March 3, 2014. Because the underlying Florida litigation asserts claims, *inter alia*, for invasion of privacy and violation of Hogan's right of publicity, public relations efforts undertaken on his behalf – particularly as they relate to media appearances about the sex tape controversy and the Gawker Story at issue – are central to the case.

**FIRST CAUSE OF ACTION
(CPLR § 3119)**

25. Petitioner hereby incorporates each of the foregoing paragraphs as if fully set forth herein.

26. CPLR § 3119(e) provides that a party may make “[a]n application to the court . . . to enforce . . . a subpoena issued under this section,” and that any such application “must . . . be submitted to the court in the county in which discovery is to be conducted.”

27. A special proceeding is one type of “application” contemplated by § 3119(e).

28. Petitioner properly served the Subpoenas pursuant to CPLR § 3119(b)(4).

29. The Subpoenas were served on Respondents on January 6, 2014.

30. Respondents provided their responses to the Subpoenas on February 4, 2014.

Respondents did not object to the form of the subpoenas or to the substance of the document requests.

31. The Subpoenas seek evidence that is relevant to the Florida Litigation and discoverable under the laws of the States of New York and Florida.

32. Respondents did not produce all of the responsive, non-privileged documents in their possession, custody, or control.

33. Respondents submitted an inadequate privilege log, which neither reflected the content of redacted documents nor contained sufficient information about documents withheld on the basis of privilege.

34. Respondents improperly invoked the attorney-client privilege and/or attorney work product in connection with nine emails from October 2012. Those 2012 Emails are not subject to the attorney-client privilege or protected as attorney work product.

35. New York law does not recognize any privilege shielding a client's (or his attorney's) communications with a public relations consultant.

36. Similarly, under New York law, the work-product privilege does not shield documents created for public-relations or non-legal business purposes.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that judgment be entered against Respondents as follows:

- a. Directing Respondents to provide the October 2012 communications reflected in the privilege log within three business days;
- b. Directing Respondents to produce unredacted versions of the documents they have already produced, or, in the alternative, to provide a privilege log that provides all of the information required by law;
- c. Directing Respondents to produce any and all outstanding documents responsive to the Subpoenas within three business days; and

d. Granting such further relief as the Court deems appropriate.

Dated: February 13, 2014
New York, New York

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