

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

TERRY GENE BOLLEA professionally
known as HULK HOGAN,

Plaintiff,

vs.

Case No. 12012447CI-011

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

Defendants.

**PLAINTIFF TERRY GENE BOLLEA’S OPPOSITION TO EXPEDITED MOTION TO
COMPEL COMPLIANCE WITH OCTOBER 29, 2013 DISCOVERY RULINGS**

I. INTRODUCTION

Gawker’s motion to compel is unwarranted. First, Gawker has moved to compel compliance with a purported court order that (1) has not been entered, and (2) did not compel a further response from Mr. Bollea, and instead imposed a **limitation** on Gawker’s discovery. Further, Mr. Bollea has provided all of the information that Gawker has asked for, including all of the documents within his possession, custody, and control that fall within Gawker’s document demands, and all of the information requested in Gawker’s interrogatories. Promptly following the meet and confer conference regarding the instant motion, Mr. Bollea provided three sentences of additional information in a supplemental response to Interrogatory No. 9, and also

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corrected a date in his prior response to Interrogatory No. 10. (Mr. Bollea has served as a supplemental response concurrently with this opposition; a copy of which is being provided to the Discovery Magistrate concurrently herewith). If Gawker wishes to explore this topic further, it can ask Mr. Bollea questions at his deposition regarding what he remembers about his relationship and communications with the Clems. Gawker has demonstrated no prejudice, nor any justification for monetary sanctions.

Gawker's motion is nothing more than an extreme overreaction, and part of its barrage of motions against Mr. Bollea designed to make this litigation as expensive and burdensome as possible, and to obtain further salacious tidbits about his life so that Gawker can further invade his privacy (after already grossly invading his privacy by posting a surreptitiously recorded sex tape of him on the Internet to drive traffic to its website (and resulting revenues)). Gawker's efforts to litigate this case by scorched earth, by bringing meritless motions and seeking to compel further private information about Mr. Bollea to exploit at its celebrity tabloid website, should be rejected.

**II. GAWKER MISREPRESENTS KEY FACTS TO THE DISCOVERY
MAGISTRATE.**

Gawker misrepresents numerous facts to the Discovery Magistrate, and Mr. Bollea feels it is necessary to correct the record:

- A. Gawker's initial discovery requests were not a carefully tailored attempt to obtain information about his relationship with Heather Clem which led to the encounter depicted on the Sex Tape. Rather, Gawker served broad discovery seeking detailed information regarding **all** sexual partners that Mr. Bollea has had, and information about his sexual history with all of those partners. Because Gawker refused to limit any of its broad and

intrusive discovery, Mr. Bollea was forced to incur the costs to move for a protective order before Judge Campbell, to limit discovery into Mr. Bollea's private life. At the October 29, 2013 hearing, Judge Campbell granted that motion.

- B. Mr. Bollea's objections to "more than half" of Gawker's initial discovery requests were ruled to be **meritorious** by Judge Campbell, because Gawker went far beyond the issues in this case to seek discovery of such things as Mr. Bollea's sex life generally (as mentioned above), all of his medical providers and medical history, and all of his financial affairs, among other things. Gawker's strategy was to serve a lot of inappropriate discovery, to later claim that Mr. Bollea supposedly is being "uncooperative" in discovery by declining to respond to inappropriate requests. Judge Campbell granted Mr. Bollea's motion for protective order on all of these points. Thus, his "lack of cooperation" with Gawker's improper discovery was and is completely warranted and justified.
- C. Judge Campbell ruled that the relationship between the Clems and Mr. Bollea is the proper subject of discovery, and Mr. Bollea has been forthcoming with his recollections regarding same. He has answered fully the interrogatories on this subject, and has produced all of his responsive documents regarding same.

III. JUDGE CAMPBELL NEVER ORDERED MR. BOLLEA TO SERVE A FURTHER RESPONSE TO THE DISCOVERY AT ISSUE.

Gawker is moving to compel compliance with a court order that does not exist. On October 29, 2013, Judge Campbell held a hearing on various discovery motions brought by the parties. However, Judge Campbell has not yet signed **any order on the motions**. Judge Campbell directed the parties to prepare and submit a proposed order. Tr. (10/29/13) at 104:6-8

(“THE COURT: Who is going to try to prepare the order from today?”).

Mr. Bollea and Gawker have submitted **competing proposed orders**, and those competing proposed orders are currently **under submission** before Judge Campbell. On January 17, 2014, Judge Campbell confirmed this on the record: Tr. (1/17/14) at 112:11-15 (“You are going to get me the competing orders from the October hearing. I’ll pull all my notes from the October hearing and the motions and response at that time for the October hearing, and I’ll make a ruling from that.”). Thus, Mr. Bollea has not been ordered to do anything with respect to Gawker’s prior motion to compel heard on October 29, 2013.¹

The transcript from the October 29, 2013 hearing shows clearly that **Judge Campbell did not require a further response by Mr. Bollea to the interrogatories and document demands that are at issue in this motion**. Rather, Judge Campbell granted Mr. Bollea’s motion for a protective order, which had sought to **restrict** Gawker’s discovery of Mr. Bollea’s sexual activities, medical records and financial records. In doing so, Judge Campbell stated: “As it pertains to Mr. Bollea, or for that matter, Ms. Clem’s sex life, the questions that the court would determine to be relevant are only as it relates to the sexual relations between Mr. Bollea and Ms. Clem for the time frame 2002 to the present....” Tr. (10/29/13) at 92:9-14. Judge Campbell further **sustained** a series of objections by Mr. Bollea to various interrogatories served by Gawker. Tr. (10/29/13) at 92:16-19 (“[I]nterrogatory No. 4, interrogatory No. 5, No. 6, No. 7, No. 8, No. 9, **the objections to the Plaintiff are being sustained.**”) (Emphasis added) Judge Campbell identified only a **single interrogatory** where she was inclined to overrule the

¹ Mr. Bollea does not know the reason why Judge Campbell has not yet signed an order. The parties submitted competing orders because Gawker insisted on a form of order that went beyond what Judge Campbell discussed at the October 29, 2013 hearing; had Gawker agreed to Mr. Bollea’s proposed order, which tracked Judge Campbell’s comments, perhaps Judge Campbell would have entered an order already. However, that did not happen, and both parties have asked Judge Campbell to issue an order, but Judge Campbell has not yet done so.

objections of Mr. Bollea: Interrogatory No. 12. Tr. (10/29/13) at 92:19:93:2. Mr. Bollea timely served a supplemental response to Interrogatory No. 12, as ordered, and that Interrogatory is **not at issue in any of the pending discovery motions** filed by Gawker, including the two discovery motions filed in this action on February 12 and 13, 2014, or the New York State Court petition filed by Gawker against Mr. Bollea's publicist, filed on February 13, 2014.

To reiterate: at no point during the October 29, 2013 hearing did Judge Campbell state that Mr. Bollea was being compelled to serve a further response to **any** discovery, other than Interrogatory No. 12. Rather, Judge Campbell granted a protective order and sustained numerous objections asserted by Mr. Bollea, and overruled Mr. Bollea's objections to one interrogatory (No. 12) which Mr. Bollea had already fully answered and is not the subject of any pending discovery motion. Thus, Mr. Bollea is not in violation of any court order.

Notwithstanding the foregoing, Mr. Bollea has served a supplemental response to Interrogatory Nos. 9 and 10.

IV. MR. BOLLEA HAS PROVIDED ALL DOCUMENTS AND INFORMATION RESPONSIVE TO GAWKER'S REQUESTS AS NARROWED BY JUDGE CAMPBELL; THERE IS NO BASIS TO COMPEL A FURTHER RESPONSE.

Mr. Bollea has fully responded to the discovery at issue:

Interrogatory No. 9: Mr. Bollea previously objected to this interrogatory, and Judge Campbell sustained the objection. However, consistent with Judge Campbell's decision to permit Gawker to take discovery of Mr. Bollea's sexual relationship with Heather Clem, Mr. Bollea has served a supplemental response which states what Mr. Bollea remembers regarding the occasions when the two had sexual relations—nearly seven years ago. Mr. Bollea has no further recollection responsive to Interrogatory No. 9; however, Gawker can ask him questions

about the relationship at his deposition.

Interrogatory No. 10: Mr. Bollea gave a complete answer to this Interrogatory on August 21, 2013: describing in detail his recollection of the communications between himself and the Clems that led to his sexual relationship with Ms. Clem, and also his communications with the Clems that he can recall after that sexual relationship.² A supplemental response to Interrogatory No. 10 has been provided simply to correct a date: rather than “in or about 2008” the interrogatory states the correct time period: “in or about late spring/early summer 2007.” Mr. Bollea has no further recollection on this topic. Gawker also can ask him questions about his communications with the Clems at Mr. Bollea’s two-day deposition on March 6-7, 2014.

Interrogatories 15 through 17: These interrogatories cover visits to the Clems’ residence between 2002 and 2006. Mr. Bollea provided a complete response to this Interrogatory. For instance, the response to Interrogatory 16 reads, in part: “The Clems were his personal friends, and he visited their residence numerous times during the period between 2002 and 2006. At some point in time, he may have entered their bedroom. It would be unduly burdensome, pointless, and probably impossible to compile all the information that Gawker Media has requested with respect to each such visit.” (The responses to Interrogatories 15 and 17 are similar.) Mr. Bollea does not remember the **details** regarding **each time** he visited the Clems’ home, during the period of **8 to 12 years ago**. Gawker can ask him questions about such visits during his two-day deposition.

Document Demands 8-9, 11: Mr. Bollea produced all non-privileged documents responsive to these requests within his possession, custody, or control. There is nothing further

² Mr. Bollea’s supplemental responses have been designated CONFIDENTIAL pursuant to Judge Campbell’s Protective Order and therefore Mr. Bollea is not including verbatim quotes of his responses within this publicly-filed court document. The supplemental responses, however, are being provided to the Magistrate Judge under separate cover.

to produce.

Interrogatories 4 and 5: Judge Campbell sustained Mr. Bollea's objections to these interrogatories, which asked for all recordings that exist of Mr. Bollea having sex with anyone, not just Heather Clem. Tr. (10/29/13) at 92:16-19 (“[I]nterrogatory No. 4, interrogatory No. 5, No. 6, No. 7, No. 8, No. 9, the objections to the Plaintiff are being sustained.”).

Requests for Production 12 and 13: These requests sought any sex tapes Mr. Bollea made with anyone. These requests clearly are improper under Judge Campbell's protective order limiting discovery of Mr. Bollea's sexual activities to his relationship with Heather Clem. Mr. Bollea has repeatedly confirmed to Gawker that he does not have any sex tapes of himself with Heather Clem other than the video published by Gawker at www.Gawker.com, and the video produced by Gawker in this litigation. (Mr. Bollea received both of these videos from Gawker itself, and not from any other source.) Mr. Bollea has no responsive documents to these requests, and repeatedly confirmed this to Gawker in his discovery responses, at court hearings, and in numerous meet and confer conferences over the past year. Gawker's two motions to compel on this topic (the motion hearing on October 29, 2013, and the instant motion) were and are a waste of judicial resources, and the parties' resources.

V. **THERE IS NO BASIS TO RECALL MR. BOLLEA FOR A SECOND DEPOSITION**

Gawker asks the Discovery Magistrate, based on no record whatsoever, to grant it the right to recall Mr. Bollea for additional days of deposition. The trial court previously ruled that Mr. Bollea's deposition is limited to **two days**. Tr. (10/29/13) at 90:19-23 (“The deposition of the plaintiff, Mr. Bollea, will be permitted to take place over two days. Any further time frame than the two days would need to have Court approval or the agreement of the parties.”) Gawker

has not obtained reconsideration of that ruling or asked Judge Campbell to revisit it; thus, the Discovery Magistrate has no basis to overrule the trial court's ruling and order Mr. Bollea back for additional deposition sessions. In any event, Gawker's request is premature, because there has been no deposition yet of Mr. Bollea – it is scheduled for March 6-7, 2014. Gawker has made no showing that it should be allowed to require Mr. Bollea to sit for a second deposition to answer questions about documents that may be produced in the future, based on discovery that Gawker propounded **after** it scheduled Mr. Bollea's deposition for March 6-7, 2014, and after Gawker insisted on taking Mr. Bollea's deposition on those dates rather than postponing his deposition to allow the pending written discovery and document disputes to be resolved first.

VI. THERE IS NO BASIS FOR A SANCTIONS ORDER.

As demonstrated above, the motion at issue fabricates a controversy. It is premised on the violation of an order that has not been entered, and when the transcript of October 29, 2013 states clearly that Mr. Bollea's motion for protective order is **granted**, other than a supplemental response to Interrogatory No. 12. No document was ordered to be produced, and no other interrogatory was required to be supplemented, in response to Gawker's original motion to compel heard on October 29, 2013. Conflicting proposed orders were submitted to Judge Campbell, which are under submission, and the parties are awaiting entry of the final order. Gawker received all of the discovery that it is entitled to receive anyway. Gawker has not been prejudiced in any way, and will be able to fully explore Mr. Bollea's relationship with Heather Clem at deposition. Thus, there is no basis for any sort of sanctions.

Even if the Discovery Magistrate determines that some additional discovery response should be provided, there is still no basis for sanctions. First, Mr. Bollea was entitled to rely on the fact that the parties were (and are) still waiting for Judge Campbell to enter an order based on

Gawker's original motion to compel, heard on October 29, 2013. *See, e.g., Akridge v. Crow*, 903 So.2d 346, 350 (Fla. 2d DCA 2005) (party could not be punished for failing to appear in alleged violation of unsigned court order which failed to "provide adequate notice to [its] recipients regarding what is expected"). Second, Mr. Bollea's position has substantial justification: his responses to Gawker's discovery were sufficiently detailed and Gawker has moved to compel on several issues (such as requests for sex tapes not involving Heather Clem) that clearly are barred by Judge Campbell's ruling on October 29, 2013. Fla. R. Civ. 1.380(a)(4) (no monetary sanction may be awarded where opposing party's position is "substantially justified"). On the contrary, Gawker should be ordered to pay Mr. Bollea's legal fees to oppose this and other baseless and unjustified portions of the motion to compel.

Finally, Gawker's request for an evidentiary sanction under Fla. R. Civ. Proc. 1.380(b) is wholly unjustifiable. First, Section 1.380(b) requires that a party "fail[] to answer a question after being directed to do so by a court" before a sanction may be imposed. *Id.* Mr. Bollea has not been directed to answer any of the questions that form the basis of Gawker's motion. Nor has Mr. Bollea failed to answer a question at all; his responses are complete and set forth his recollections of the matters asked about. All responsive documents likewise have been produced. Additionally, with respect to discovery sanctions, "the severity of the sanction must be commensurate with the violation." *Ferrante v. Waters*, 383 So.2d 749, 750 (Fla. 4th DCA 1980). Gawker is seeking broad preclusion orders, to preclude Mr. Bollea from testifying to the truth, namely, that he did not know he was being recorded when he was having sex. There is no justification whatsoever to preclude Mr. Bollea from testifying to the truth. Moreover, Gawker's basis for seeking such an unwarranted and severe sanction is that Mr. Bollea supposedly did not supplement his discovery response fast enough, that is, **before** the entry of a court order

requiring him to do so. And the supplemental discovery response, which has been provided, is merely three sentences: stating the number of times, and locations, that Mr. Bollea recalls having sex with Heather Clem. Gawker's request that the Discovery Referee remedy dandruff with decapitation should be denied.

Moreover, the cases cited by Gawker do not support its argument. *Herold v. Computer Components International, Inc.*, 252 So.2d 576 (Fla. 4th DCA 1971), involved **several** orders that **specifically** ordered the plaintiff to provide more complete answers to interrogatories. Nonetheless, the Court of Appeal **reversed** the trial court's order striking the plaintiff's complaint as a discovery sanction. "The sanctions provided under [Rule 1.380(b)]... should be imposed only in the exceptional case." 252 So.2d at 579. Further, the court confirmed that "[i]n reviewing the plaintiff's answers in connection with the imposition of sanctions, consideration ought to be given to the relevancy of the interrogatories propounded". *Id.* at 580. In the instant motion, Gawker has moved to compel further responses to interrogatories and document demands concerning Mr. Bollea's sex life which **Judge Campbell has already ruled to be irrelevant**. Clearly *Herold* does not permit the sanction sought by Gawker, and on the contrary supports the **denial** of the sanctions request.

Florida Bar v. Lobasz, 64 So.3d 1167, 1171 (Fla. 2011), also cited by Gawker, **affirmed** a referee's decision to **allow** the respondent to testify regarding his mental state despite the fact that he did disclose the defense in his interrogatory responses. "[T]he exclusion of a witness's testimony as a discovery sanction is a **drastic remedy** that should be used only under the **most compelling circumstances**". *Id.* (emphasis added).

VII. CONCLUSION

For the foregoing reasons, Gawker's motion to compel and for sanctions should be denied in its entirety.

DATED: February 21, 2014

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via E-Service via the e-portal system this 21st day of February, 2014 to the following:

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