

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, *et al.*,

Defendants.

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**DEFENDANTS' MOTION FOR SANCTIONS**

By and through its undersigned counsel, defendants Gawker Media, LLC (“Gawker”) and A.J. Daulerio (“Daulerio”) hereby move for sanctions against plaintiff for violations of the Court’s orders of October 29, 2013, February 26, 2014, February 28, 2014, and April 23, 2014, and state as follows:

1. Gawker and Daulerio initially served written discovery in May 2013, a year ago. Because of the obvious relevance of the subject, they sought information and documents concerning the sexual relationship between plaintiff and Heather Clem. *See, e.g.*, RFP Nos. 3-4, 8-9, 11-13, 36, 47; Gawker Interrogatory Nos. 4-10, 13-18. The discovery also sought, among other things, information and documents about plaintiff’s communications about the Video at issue as well as his communications and public statements about the alleged invasion of his privacy, including in that Video. *See, e.g.*, RFP No. 4 (requesting “any and all documents in any manner related to any communications plaintiff had about the Video”); Interrog. No. 13 (requesting plaintiff to identify “each and every communication [he] . . . had with persons other than his attorney(s) regarding the” actions he alleges violated his privacy rights).

2. In response, plaintiff objected to providing information concerning his sexual relationship with Heather Clem. Plaintiff also refused to provide any public statements or documents concerning his media appearances. And, he did not produce or even identify telephone records (which obviously document communications) or his communications with law enforcement agencies. These discovery refusals led to a series of motions and court orders directing that the information and documents be provided.

**Information Regarding the Sexual Relationship Between Plaintiff and Heather Clem:**

3. With respect to sexual relationship between plaintiff and Heather Clem, Gawker and Daulerio filed a motion to compel, which was adjudicated at a lengthy hearing held on October 29.<sup>1</sup> At that hearing, and in a subsequent written order, the Court ruled that Gawker was entitled to discovery concerning the sexual relationship between plaintiff and Heather Clem because that subject was directly at issue. *See* Oct. 29, 2013 Hearing Tr. at 92:9 – 93:9 (Ex. 1); Feb. 26, 2014 Order (Ex. 2) (adjudicating motion to compel and authorizing discovery into “the sexual and/or romantic relationship between Terry Bollea and Heather Clem (as to the period from January 1, 2002 to the present”).

4. Despite having been compelled to provide this information, plaintiff did not do so. Accordingly, Gawker filed a motion to compel compliance with the Court’s October 29, 2013 ruling and for sanctions. At a hearing before the Special Discovery Magistrate (the Honorable James R. Case) held on February 24, 2014, plaintiff’s counsel represented that plaintiff had provided full and complete responses and did not have any additional information requested in that motion in his possession, custody or control. *See, e.g.*, Feb. 24, 2014 Hearing Tr. at 23:2-3 (Ex. 3) (MR. HARDER: “We’re not holding back on anything.”); *id.* at 23:24-25 (“it’s not that

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<sup>1</sup> Plaintiff also filed a motion for protective order limiting discovery into his sexual relationships and it too was adjudicated at the same hearing.

we're hiding anything or trying to prevent anything"); *see also* Pl. Opp. to Gawker's Mot. to Compel Compliance with Oct. 29, 2013 Discovery Rulings at 1 (Ex. 4) ("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."); *id.* at 5 (plaintiff has "fully responded to the discovery at issue"). On that basis, Judge Case issued a Report and Recommendation denying the motion, "with a very strong caveat" – namely, that if the representation by plaintiff later turned out to have been "less than candid or honest," he would recommend "in the strongest of words that a preclusion order be entered with respect to what the defendant is seeking here today." Feb. 24, 2014 Hearing Tr. at 53:14 – 54:3 (Ex. 3). *See also* Feb. 28, 2014 Report and Recommendation (Ex. 5) (which became effective following the ten day objection period, *see* Fla. R. Civ. P. 1.490(h), and which memorializes that ruling).

5. The FBI documents that plaintiff belatedly produced last week (and that are discussed below, *see* Paragraph 13 *infra*) confirm that plaintiff's responses to interrogatories and requests for production were incomplete in materially misleading ways. They also call into serious question plaintiff's sworn deposition testimony concerning his sexual relationship with Ms. Clem.

6. Even though those FBI documents reflect communications with third parties, plaintiff has designated all of them as "CONFIDENTIAL" under the Agreed Protective Order, and "ATTORNEYS EYES ONLY" as Judge Campbell authorized plaintiff to do in connection with this limited category of documents. Accordingly, defendants have not explained in detail herein plaintiff's specific misstatements and omissions, but will be fully prepared to address them at the hearing on this motion. Suffice it to say, however, that this is now the third motion

addressing this same subject (earlier raised in defendants' August 2013 motion to compel and their February 2014 motion to compel compliance and for sanctions), and plaintiff has continued in his refusal to provide proper information on this central issue. Because Judge Case made clear that if plaintiff was "less than candid" he would strongly recommend a preclusion order, such a sanction is now warranted.

**Communications and Public Statements Concerning the Video(s) and the Gawker Story:**

7. As described above, plaintiff's initial discovery responses failed to disclose information or documents about his public statements and his communications about the Gawker Story and the Videos at issue – including, significantly, his communications with law enforcement agencies that he had publicly touted. Accordingly, some five months ago, Gawker served specific additional requests seeking: (a) his 2012 cellular telephone records and basic information about each of his service providers, (b) documents relating to his media appearances about the Gawker Story and/or Video, and (c) documents and information concerning his communications with law enforcement agencies or officials concerning any recording of plaintiff having sexual relations with Heather Clem.

8. Following a two-week extension, plaintiff refused to provide the requested information. Gawker and Daulerio therefore moved to compel in early February.

9. After a two-hour hearing, Judge Case issued a Report and Recommendation that Defendants' Motion to Compel be granted in its entirety, and that the requested information be provided in advance of plaintiff's deposition. Ex. 6.

10. Plaintiff again refused to provide the requested information, filing exceptions to Judge Case's Report and Recommendation with respect to the telephone records and the law enforcement communications.<sup>2</sup>

11. Gawker then deposed plaintiff without the benefit of any of the requested information or documents.

12. Following a hearing on April 23, 2014, the Court overruled plaintiff's exceptions, affirmed Judge Case's Report and Recommendation, granted Defendants' Motion to Compel, and directed that plaintiff "furnish *all* of the discovery requested in the Motion to counsel for Movants within seven days," including "*full and complete* responses" to each of the interrogatories and document requests at issue. Ex. 7 (April 23, 2014 Order) (emphasis added).

13. Eight days later, counsel for movants received 149 pages of documents related to the FBI investigation initiated by plaintiff. However, in violation of the Court's April 23 Order:

- a. plaintiff produced no telephone records;
- b. plaintiff provided no supplemental interrogatory response disclosing provider or account information;
- c. plaintiff provided no documents related to his media appearances about the Gawker Story and/or the Video;
- d. plaintiff provided no supplemental interrogatory response detailing communications with the FBI (including, significantly, his and his counsel's oral communications not memorialized in documents);

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<sup>2</sup> In his Exceptions, plaintiff contended that he had already produced all responsive documents relating to his media appearances in his possession, custody or control, but Judge Case had rejected that exact argument in ordering a supplemental response. Indeed, it is not credible that plaintiff had no texts, no emails, no receipts, no reimbursements, no itineraries, no talking points, etc., concerning his many media appearances concerning the Video, including after the Gawker Story was published. Moreover, if that assertion is in fact true, plaintiff has offered no explanation as to why he failed to preserve such evidence, directly related to statements about the substance of this case.

- e. In the documents plaintiff did produce, he failed to include numerous attachments to emails, effectively stripping away their substance; and
- f. plaintiff improperly redacted two documents that had originally been created by a third party.<sup>3</sup>

14. Like plaintiff's repeated failure to provide complete discovery concerning his sexual relationship with Heather Clem, each of plaintiff's ongoing discovery refusals is a clear violation of this Court's April 23 order, a ruling procured after months of motions and exceptions.

15. Although not obligated to do so, defendants' counsel followed up with plaintiff's counsel with two letters seeking compliance with this Court's April 23 Order. Ex. 8 (composite exhibit containing exchange of correspondence and email).<sup>4</sup> Now, a full week after the time for plaintiff to comply with the April 23 Order, he has still not provided any of the additional discovery ordered.

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<sup>3</sup> Plaintiff contends that he was authorized to make such redactions based on Judge Case's recommendation to sustain plaintiff's objection to a question at the deposition of Bubba Clem. Such a recommendation, in a different context, cannot trump this Court's written order regarding *these* discovery requests, including as is relevant here, pre-existing documents created by a third party. Indeed, plaintiff failed to raise that objection in his discovery responses, in his opposition to defendants' motion, at the hearing before Judge Case, in his exceptions, or at the hearing before Judge Campbell. It is therefore waived, including because his failure to do so effectively precluded defendants or the Court from addressing it. In any event, the improperly redacted information bears directly on several key issues in this case, including the testimony provided by both plaintiff and Bubba the Love Sponge Clem at their depositions, and cannot be unilaterally redacted given the Court's unambiguous order to provide "full and complete" responses.

<sup>4</sup> Plaintiff's most recent correspondence was designated as "CONFIDENTIAL" under the Agreed Protective Order and is therefore not included in the exhibit. It can be supplied to the Court or to Judge Case upon request.

**Sanctions Are Warranted for Plaintiff's Repeated Violations of Multiple Court Orders:**

16. Plaintiff's contumacious conduct, blatantly violating the clear directives of multiple orders of this Court should be sanctioned pursuant to Florida Rule of Civil Procedure 1.380(b).

17. First, as Judge Case indicated at the February 24, 2014 hearing and in his February 28, 2014 Report and Recommendation (which was unchallenged by either party and therefore become effective after ten days, *see* Fla. R. Civ. P. 1.490(h)), movants respectfully request the Court to enter an appropriate sanctions order, up to including the striking of plaintiff's claims and dismissal of his complaint, but at a minimum an order precluding him from advancing factual contentions in the numerous areas where he failed to provide full and complete discovery as ordered and where he made repeated misrepresentations to the Court in connection therewith. *See* Fla. R. Civ. P. 1.380(b)(2)(A), (B) & (C).

18. Second, pursuant to Fla. R. Civ. P. 1.380(b)(2)(D), movants respectfully request that the Court also find plaintiff in contempt for the willful and widespread violations of multiple court orders.

19. Third, if the action is not dismissed, plaintiff should be required, under penalty of dismissal, to provide full and complete responses in connection with each category of information and documents at issue within five (5) days. Relatedly, based on plaintiff's repeated violations of multiple court orders, and the fact that the depositions of both plaintiff and Bubba the Love Sponge Clem were necessarily incomplete (and resulted in testimony that is directly contradicted by documents belatedly provided), defendants should be permitted to reopen the depositions of plaintiff and Bubba the Love Sponge Clem, including to ask about the belatedly produced discovery and to examine them further in light of the misstatements and omissions in

plaintiff's previous discovery responses and testimony. Such additional written and deposition discovery should proceed before permitting plaintiff to take any additional discovery from defendants or third parties, absent defendants' consent.

20. Finally, Gawker and Daulerio respectfully request that the Court award Gawker the substantial attorneys fees and costs it incurred in litigating this matter for a full year during which plaintiff and his counsel have repeatedly made material misstatements or omissions, thereby causing Gawker and its counsel to take unnecessary discovery, to conduct unnecessary investigation, and to file numerous motions simply to compel plaintiff to honor his basic discovery obligations and to comply with multiple court orders. These fees and costs include without limitation (a) the fees and costs incurred in litigating Gawker's initial motion to compel, its motion to compel compliance with the Court's October 29, 2013 ruling and for sanctions, its fifth motion to compel, and this motion; (b) the fees and costs incurred in preparing for and taking the depositions of plaintiff and Bubba the Love Sponge Clem based on incomplete and improperly withheld information; and (c) the fees and costs incurred in investigating and uncovering numerous facts that should have been disclosed by plaintiff in discovery. *See Fla. R. Civ. P. 1.380(b)*.



## CONCLUSION

For the foregoing reasons, movants respectfully request that their motion be granted, that the Court enter the relief requested herein, as well as any other relief that the Court deems just and proper given the extraordinary violations of this Court's rules and numerous Court orders.

Dated: May 8, 2014

Respectfully submitted,

THOMAS & LOCICERO PL

By: /s/ Gregg D. Thomas

Gregg D. Thomas

Florida Bar No.: 223913

Rachel E. Fugate

Florida Bar No.: 0144029

601 South Boulevard

P.O. Box 2602 (33601)

Tampa, FL 33606

Telephone: (813) 984-3060

Facsimile: (813) 984-3070

gthomas@tlolawfirm.com

rfugate@tlolawfirm.com

Seth D. Berlin

Pro Hac Vice Number: 103440

Michael Berry

Pro Hac Vice Number: 108191

Alia L. Smith

Pro Hac Vice Number: 104249

Paul J. Safier

Pro Hac Vice Number: 103437

Julie B. Ehrlich

Pro Hac Vice Number: 108190

LEVINE SULLIVAN KOCH & SCHULZ, LLP

1899 L Street, NW, Suite 200

Washington, DC 20036

Telephone: (202) 508-1122

Facsimile: (202) 861-9888

sberlin@lskslaw.com

mberry@lskslaw.com

asmith@lskslaw.com

psafier@lskslaw.com

jehlich@lskslaw.com

*Counsel for Gawker Media, LLC  
and A.J. Daulerio*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 8th day of May 2014, I caused a true and correct copy of the foregoing to be served via the Florida Courts' E-Filing Portal upon the following counsel of record:

Kenneth G. Turkel, Esq.  
kturkel@BajoCuva.com  
Christina K. Ramirez, Esq.  
cramirez@BajoCuva.com  
Bajo Cuva Cohen & Turkel, P.A.  
100 N. Tampa Street, Suite 1900  
Tampa, FL 33602  
Tel: (813) 443-2199  
Fax: (813) 443-2193

David Houston, Esq.  
Law Office of David Houston  
dhouston@houstonatlaw.com  
432 Court Street  
Reno, NV 89501  
Tel: (775) 786-4188

Charles J. Harder, Esq.  
charder@HMAfirm.com  
Harder Mirell & Abrams LLP  
1925 Century Park East, Suite 800  
Los Angeles, CA 90067  
Tel: (424) 203-1600  
Fax: (424) 203-1601

*Attorneys for Plaintiff*

Barry A. Cohen, Esq.  
bcohen@tampalawfirm.com  
Michael W. Gaines, Esq.  
mgaines@tampalawfirm.com  
Barry A. Cohen Law Group  
201 East Kennedy Boulevard, Suite 1000  
Tampa, FL 33602  
Tel: (813) 225-1655  
Fax: (813) 225-1921

*Attorneys for Defendant Heather Clem*

/s/ Gregg D. Thomas  
Attorney