

EXHIBIT 1

ELECTRONICALLY FILED 3/14/2014 4:35:21 PM: KEN BURKE, CLERK OF THE CIRCUIT COURT, PINELLAS COUNTY

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.

_____ /

AFFIDAVIT OF SETH D. BERLIN

I, Seth D. Berlin, hereby affirm under penalty of perjury that the following is true and correct:

1. The statements made in this affidavit are based on my personal knowledge.
2. I am a partner with the law firm Levine Sullivan Koch & Schulz, LLP, counsel to defendant Gawker Media, LLC (“Gawker”) and the other Gawker defendants in the above-captioned action. I am admitted *pro hac vice* in this action.
3. I submit this affidavit in connection with Gawker’s opposition to the motion of plaintiff Terry Gene Bollea to stay this Court’s February 26, 2014 order (the “Motion to Stay”). That order directed Mr. Bollea and his counsel to provide signed authorizations to obtain records related to his request that the FBI investigate the creation and dissemination of the sex tape at issue in this litigation.
4. On March 11, 2014, I spoke with Robert Mosakowski, Esq., Chief of the Economic Crime Section for the United States Attorney’s Office for the Middle District of Florida. On March 14, I spoke again with Mr. Mosakowski, this time joined by Sara Sweeney,

Esq., an Assistant United States Attorney in the United States Attorney's Office for the Middle District of Florida.

5. During those conversations, they advised that Ms. Sweeney had reviewed both the Affidavit of David Houston that accompanied the Motion to Stay and the ten-page privilege log served by plaintiff asserting a law enforcement privilege in connection with 162 documents in plaintiff's possession, custody and control (the "Privilege Log," a true and correct copy of which is attached hereto as Exhibit A).

6. During those conversations, Mr. Mosakowski and Ms. Sweeney also advised that:

- a. The U.S. Attorney's Office is not asserting any law enforcement privilege in connection with any documents in Mr. Bollea's or his counsel's possession, including those listed on the Privilege Log,
- b. Although they could neither confirm nor deny the existence of any investigation in light of U.S. Department of Justice policies, Gawker would not be interfering in any way with any investigation if either (1) documents in Mr. Bollea's or his counsel's possession, including those listed on the Privilege Log, were disclosed, or (2) Gawker or its counsel contacted witnesses who may have provided information to the FBI or the United States Attorney's Office, and
- c. To the extent that Mr. Bollea or his counsel believed that they had been instructed not to speak about the above subjects, that belief was incorrect and likely the result of a misunderstanding or miscommunication.

7. During the March 14, 2014 conversation, Mr. Mosakowski also confirmed that Gawker is "neither a target nor a subject of any investigation by the Middle District of Florida."

8. During the March 14, 2014 conversation, Ms. Sweeney also advised that, after Mr. Houston's affidavit was submitted to the Court and provided to her, she advised Mr. Houston that the U.S. Attorney's Office was not asserting a law enforcement privilege with respect to any documents in Mr. Bollea's or his counsel's possession, including the documents listed on the Privilege Log.

9. At Mr. Mosakowski's suggestion, I also contacted the Tampa office of the Federal Bureau of Investigation. Specifically, on March 11, 2014, I spoke with FBI agent Jason Shearn, and described what Mr. Mosakowski had said on behalf of the United States Attorney's Office. He described the FBI's position as "echoing" that of the United States Attorney's Office, including that: (a) the FBI is not asserting a law enforcement privilege as to any documents that Mr. Bollea or his counsel might have relating to the FBI's investigation, including those listed on the Privilege Log, and (b) although the FBI could neither confirm nor deny the existence or status of any investigation, Gawker could "do what it needed to do" without in any way interfering with any investigation by the FBI.

10. Based on the foregoing, and for the other reasons set forth in its opposition brief, Gawker believes that plaintiff's Motion to Stay should be denied.



Seth D. Berlin

Sworn before me this 14 day of March 2014:



Notary Public

Bridgette B. Simmons
Notary Public, District of Columbia
My Commission Expires 11/14/2016



EXHIBIT A

Plaintiff Terry Gene Bollea's Privilege Log
Correspondence re FBI Criminal Investigation

Designation applies to any attachments to a document, where applicable.

KEY

- D. Houston = David Houston, Esq., Mr. Bollea's counsel
- K. Rosser = Kristy Rosser, Mr. Houston's assistant
- C. Harder = Charles Harder, Esq., Mr. Bollea's civil litigation counsel
- K.D. = Target of FBI criminal investigation
- V.D. = Associate of K.D. and part of FBI criminal investigation
- FBI = FBI agent or other FBI personnel involved in the criminal investigation
- AUSA = Assistant U.S. Attorney and ASUA personnel

AUTHOR	RECIPIENT	DATE	DOCUMENT TYPE	DESCRIPTION OF WITHHELD INFORMATION	REASON FOR WITHHOLDING
K. Rosser	K.D.	10.10.12	Email	Communication re Criminal Investigation	Law Enforcement Privilege ("LEP")
D. Houston	K.D.	10.10.12	Email	Communication re Criminal Investigation	LEP
K.D.	D. Houston	10.10.12	Email	Communication re Criminal Investigation	LEP
D. Houston	K.D.	10.10.12	Email	Communication re Criminal Investigation	LEP
K.D.	D. Houston	10.10.12	Email	Communication re Criminal Investigation	LEP
D. Houston	K.D.	10.10.12	Email	Communication re Criminal Investigation	LEP
K.D.	D. Houston	10.10.12	Email	Communication re Criminal Investigation	LEP

D. Houston	K.D.	10.10.12	Email	Communication re Criminal Investigation	LEP
K. Rosser	K.D.	10.10.12	Email	Communication re Criminal Investigation	LEP
K.D.	D. Houston	10.10.12	Email	Communication re Criminal Investigation	LEP
D. Houston	K.D.	10.10.12	Email	Communication re Criminal Investigation	LEP
K.D.	D. Houston	10.10.12	Email	Communication re Criminal Investigation	LEP
D. Houston / K. Rosser	C. Harder	10.11.12	Email	Communication re Criminal Investigation	Attorney-Client Privilege (“ACP”); Attorney Work Product (“AWP”); LEP
K.D.	D. Houston / K. Rosser	10.11.12	Email	Communication re Criminal Investigation	LEP
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FBI	D. Houston	01.14.13	Email	Communication re Criminal Investigation	LEP
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D. Houston / K. Rosser	AUSA	09.03.13	Email	Communication re Criminal Investigation	LEP
FBI	D. Houston (cc: AUSA)	09.03.13	Email	Communication re Criminal Investigation	LEP
AUSA	D. Houston	09.03.13	Email	Communication re Criminal Investigation	LEP
AUSA	D. Houston	11.08.13	Letter	Communication re Criminal Investigation	LEP