

EXHIBIT 27

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 EXCEPTIONS TO DISCOVERY
MAGISTRATE'S RECOMMENDATION RE: GAWKER MEDIA, LLC AND
A.J. DAULERIO'S FIFTH MOTION TO COMPEL**

I. INTRODUCTION

In this proceeding, the discovery magistrate recommended that Plaintiff Terry Bollea ("Mr. Bollea" or "Plaintiff") be ordered to comply with Defendants Gawker Media LLC and A.J. Daulerio's Fifth Motion to Compel, which sought: (1) all of Mr. Bollea's personal telephone records from the year 2012, (2) all of his and his representatives' communications with law enforcement, and (3) documents referring or relating to Mr. Bollea's media appearances.¹ Mr. Bollea files these Exceptions to the discovery magistrate's recommendation as to subjects (1)

¹ The discovery magistrate's recommendation is attached hereto. Mr. Bollea submits, concurrently herewith, a binder containing the briefing of both parties directed to the discovery magistrate, for the Court's convenient reference.

DENTON: I don't think people give a f*ck, actually. There was a moment when I thought some sex pictures of me were about to land. Someone claimed to have some and to be marketing them. I even thought I knew where they'd come from—I'd lost a phone. But it turned out to be a hoax.

PLAYBOY: And you weren't freaked out?

DENTON: It would have been mortifying, but every infringement of privacy is sort of liberating. Afterward, you have less to lose; you're a freer person. Shouldn't we all want to own our own story?

Kinja KFT (a defendant herein and Gawker affiliate owned by Denton) even proudly posted the interview to its online platform, found at <http://Playboysfw.Kinja.com/the-playboy-interview-a-candid-conversation-with-gawke-1527302145>.

In sum, Gawker is highly unlikely to obtain any information from Mr. Bollea's telephone records from the entire year of 2012. Instead, the probability of abuse is enormous. In seeking Mr. Bollea's phone records, Gawker potentially will gain what it is really after: **leverage**. Gawker is determined to make this lawsuit so unbearably invasive to Mr. Bollea that he will simply drop it. Such bad faith litigation practices that intrude upon Mr. Bollea's privacy should not be countenanced, especially when weighed against the absence of any likelihood of obtaining relevant information.

Respectfully, the Court should reject the recommendation of the discovery magistrate, deny Gawker's motion, and maintain the careful balance struck in previous rulings.

III. GAWKER SHOULD NOT BE PERMITTED TO USE CIVIL DISCOVERY TO INTERFERE WITH A CRIMINAL INVESTIGATION.

The discovery magistrate recommends that Mr. Bollea be required to answer interrogatories and produce documents concerning every communication that Mr. Bollea or someone acting on his behalf has had with law enforcement concerning any recording of Mr. Bollea having sexual relations with Heather Clem. The recommendation, however, is not

supported by the law. Documents generated as part of an ongoing law enforcement investigation are **not discoverable**. In *In re United States Department of Homeland Security*, 459 F.3d 565 (5th Cir. 2006), the court held: “[H]owever it is labeled, **a privilege exists to protect government documents relating to an ongoing criminal investigation.**” *Id.* at 570, n. 2 (emphasis added). “The federal law enforcement privilege is a qualified **privilege** designed to **prevent disclosure** of information that would be **contrary to the public interest in the effective functioning of law enforcement**. [It] serves to **preserve the integrity of law enforcement techniques and confidential sources, protects witnesses and law enforcement personnel, safeguards the privacy of individuals under investigation, and prevents interference with investigations.**” *Id.* at 570, n. 1 (emphasis added; citation omitted). Florida law recognizes the same privilege. In *State v. Maier*, 366 So.2d 501 (Fla. 1st DCA 1979), for example, the Florida Court of Appeal held that a law enforcement agency could refuse to disclose the identity of a confidential informant.

Gawker’s discovery requests represent, at worst, a dangerous attempt to use the civil discovery process to interfere with a criminal investigation and, at best, an attempt to invade the Law Enforcement Privilege, and also to circumvent the proper channels for seeking documents concerning law enforcement investigations.

As the Court is aware, Gawker sought an order compelling Mr. Bollea to sign a Freedom of Information Act (“FOIA”) waiver so that Gawker might try to obtain documents from the FBI relating to its ongoing criminal investigation regarding the dissemination of the sex tape. On February 26, 2014, the Court affirmed the discovery magistrate’s recommendation that Mr. Bollea be required to sign an FOIA waiver. A motion to stay that February 26 Order pending writ of certiorari review was filed on March 5, 2014, and the writ of certiorari is being filed

concurrently with these Exceptions. Mr. Bollea incorporates by reference his Motion to Stay, the accompanying Affidavit of David Houston, and the Exceptions re FBI Files/FOIA Waiver filed by Mr. Bollea on February 12; therefore, he will not repeat those same points and authorities within the instant Exceptions to the recommendation regarding Gawker's Fifth Motion to Compel.

Mr. Bollea's statements to law enforcement are not relevant to this litigation, and are not reasonably calculated to lead to the discovery of admissible evidence. Gawker's stated reason for requesting the information is found in footnote 3 of its underlying Motion to Compel, where Gawker accuses Mr. Bollea of having "several different versions" of the events in this case. Yet despite repeatedly quoting press reports of Mr. Bollea's alleged statements regarding this case in its legal briefs and papers, Gawker has never once identified a single statement by Mr. Bollea (within this proceeding, to the media, or otherwise) where he expresses or even implies that he knew that he was being recorded having sex, or ever authorized the dissemination of the recording. To the contrary, and as Gawker is well aware, Mr. Bollea has **consistently maintained**, since the inception of this case, and even before this case was filed, that he had **no knowledge** that he was being clandestinely recorded, and gave **no authorization** for its dissemination. Moreover, Mr. Bollea sent, through counsel, **multiple cease and desist demands** immediately after the tape was posted, followed shortly by **the filing of this lawsuit** and a **motion for temporary injunction** to remove the sex tape from the Internet. Therefore, Gawker's stated basis for seeking the law enforcement records is completely contrary to and unsupported by the factual record.

Gawker also **misled the discovery magistrate** when Gawker asserted that, under Florida law, a failure to serve a privilege log supposedly waives all privilege objections, no matter how

meritorious the objection. This is incorrect. In *State Farm Florida v. Coburn*, 2014 WL 539874 at *1 (Fla. 2d DCA 2014), the Florida Court of Appeal held: “[A] party is required to file a [privilege] log only if the information is otherwise discoverable, and until a circuit court rules on the scope of discovery objection, the party responding to the discovery does not know what will fall into the category of discoverable documents.... Thus, prior to a ruling on a scope of discovery objection, “the obligation to file a privilege log does not arise.” (Citations omitted.) The documents requested are not discoverable, and therefore a privilege log is not required and privilege objections were not waived. Nevertheless, on February 28, 2014, Mr. Bollea served all parties with a privilege log of his communications relating to the FBI’s pending criminal investigation. A copy of the log, which has been marked “Confidential” pursuant to the Court’s Protective Order, can be filed with the Court **under seal** upon the Court’s request.

IV. GAWKER MADE SUBSTANTIAL MISREPRESENTATIONS OF KEY FACTS TO THE DISCOVERY MAGISTRATE

Gawker made the following two misrepresentations of key facts in its briefing before the discovery magistrate, which bear on this Court’s review of the recommendation at issue:

First, Gawker alleged that Mr. Bollea violated this Court’s Order of October 29, 2013, regarding the first round of discovery. That is not true. The Court never ordered Mr. Bollea to serve a supplemental response to any discovery at issue in the discovery motions before the discovery magistrate. The Court ordered Mr. Bollea to serve a further response to Interrogatory No. 12 (not at issue in any later discovery motion), and Mr. Bollea timely served a supplemental response to that interrogatory. Mr. Bollea has produced **all responsive documents and information within his possession**, except for privileged communications (which he has logged) and except for the categories of information and documents that the Court ruled he was not

required to provide, when the Court granted Mr. Bollea's motion for protective order (namely, information regarding his general finances, medical history, divorce proceeding, and general sexual history, other than sexual relations with Heather Clem).

Second, Gawker incorrectly characterized the extraordinary procedure of seeking privileged criminal law enforcement records as "routine." That also is not true. As demonstrated in Mr. Bollea's Motion to Stay filed March 5, 2014, and his Exceptions re FBI Files/FOIA Waiver filed February 12, 2014, the law **supports** Mr. Bollea's position, and does **not** support Gawker's. Indeed, Gawker has not cited a single legal authority for the proposition that a civil litigant is permitted to obtain privileged criminal law enforcement records in a civil action. Far from "routine," as Gawker claims, the procedure is **not allowed**. In any event, Mr. Bollea's filing of Exceptions to the discovery magistrate's recommendation on this issue hardly constitutes "obstruction" to discovery, as Gawker represented to the discovery magistrate in its Fifth Motion to Compel.

CONCLUSION

For the foregoing reasons, Mr. Bollea respectfully requests that the Court **decline** to adopt the discovery magistrate's recommendation, and that Gawker's Fifth Motion to Compel be **denied** on the two issues of Mr. Bollea's telephone records from the entire year of 2012, and Mr. Bollea's communications with law enforcement (FBI, etc.) regarding their **open and pending** criminal investigation.

DATED: March 6, 2014

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by E-Service via the e-portal system this 6th day of March, 2014 to the following:

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