EXHIBIT 9

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.

II. THE DISCOVERY MAGISTRATE ERRED IN RECOMMENDING THAT GAWKER BE PERMITTED TO INVADE MR. BOLLEA'S PRIVACY BY TAKING BLANKET DISCOVERY OF HIS PHONE RECORDS.

This Court should decline to adopt the discovery magistrate's recommendation that Mr. Bollea be required to produce his personal telephone records (both mobile phone records and landline phone records) for the **entire year of 2012**. It is well-established that telephone records are protected by the right to privacy under Florida law and the party seeking such information must establish the **necessity** of obtaining them, as opposed to using a less intrusive form of discovery. "The party seeking discovery of confidential information must make a showing of necessity which outweighs the countervailing interest in maintaining the confidentiality of such information." *Berkely v. Eisen*, 699 So.2d 789, 791 (Fla. 4th DCA 1997); *see also Higgs v. Kampgrounds of America*, 526 So.2d 980, 981 (Fla. 3d DCA 1988 (Fla. 3d DCA 1988). In *Berkeley v. Eisen*, the Florida Court of Appeal held that in a suit against an investment advisor for fraud, the plaintiffs **could not obtain discovery of the telephone numbers of other investors** who utilized the advisor's services. 699 So.2d at 791. "There is no indication that the non-party clients gave their permission to be identified, or otherwise took any steps inconsistent with a reasonable expectation of privacy." *Id.* at 791. Similarly, here, not only would it be an invasion of Mr. Bollea's privacy to release his phone records, but it would also invade the privacy of the many hundreds (if not thousands) of people with whom he communicated during the entire year of 2012. Additionally, the Colorado Supreme Court recently recognized that "[i]ndividuals also have a personal privacy interest in the telephone numbers they dial." *Gateway Logistics, Inc. v. Smay*, 302 P.3d 235, 240 (Colo. 2013) (**reversing order** compelling production of three years worth of telephone records in civil case). Thus, both Mr.

Bollea **and** all of the people with whom he communicated during all of 2012 have **vital and important privacy interests** that far outweigh Gawker's desire to delve into Mr. Bollea's communications with all persons, relating to all of his business and personal dealings, throughout 2012.

The reasoning in *Berkeley* controls here—the many hundreds of people who called or were called by Mr. Bollea have **never waived their privacy rights** or authorized discovery of their phone numbers. Gawker is not entitled to discovery of their phone numbers unless it can show that there are no "means less intrusive than the release of confidential information" to obtain the discovery. *Berkeley*, 699 So.2d at 792. Gawker has not and cannot make this showing. On the contrary, Gawker already has used less intrusive means of discovery—it has asked Mr. Bollea for his communications regarding the sex tape in 2012, and Mr. Bollea has provided all responsive non-privileged information he has, including text messages between Mr. Bollea and Bubba Clem regarding the sex tape. Gawker is not entitled to much more intrusive discovery of a list of everyone Mr. Bollea called and everyone who called Mr. Bollea. *Accord Colonial Medical Specialties v. United Diagnostic Laboratories, Inc.*, 674 So.2d 923 (Fla. 4th DCA 1996) (granting extraordinary writ **quashing** trial court's order directing medical offices being sued by laboratory for breach of contract to produce telephone numbers of patients who received the laboratory's services).

In its reply brief filed the morning of the hearing before the discovery magistrate, Gawker cited *Kamalu v. Walmart Stores, Inc.*, 2013 WL 4403903 (E.D. Cal. Aug. 15, 2013), to support its position, but *Kamalu* is distinguishable. There, the plaintiff sued for wrongful termination after Walmart fired her for using her cell phone during work hours. Thus, her cell phone records were directly at issue in the case—they either would show that Walmart had cause to fire her or

using keywords: "April 2013 Hulk Hogan Sex Tape We Won't."

If Mr. Bollea's phone records are produced, Gawker would learn the identity of **everyone** who Mr. Bollea contacted for any reason whatsoever, and **everyone** who contacted him, including virtually all of his business or personal dealings—for the entire year of 2012. At least 99% of those communications have nothing whatsoever to do with this case. Of the less than 1% that do, all or nearly all of them are Mr. Bollea's privileged calls and texts with his legal counsel relating to the sex tape. There simply is no justification for Gawker to obtain thousands of calls and texts, when at least 99% of them are completely irrelevant and not reasonably calculated to lead to admissible evidence, and all or nearly all of the less than 1% remaining are privileged.

Moreover, Gawker might use this information for improper purposes. As one example, Gawker would have the ability to place calls to **every single person** in Mr. Bollea's life—both business and personal—for the purpose of conducting a "fishing expedition" that would serve to allow Gawker to interfere with every aspect of Mr. Bollea's business and personal relationships, so as to make this litigation so costly to his life (not just because of legal fees and costs, but because of Gawker's further invasions of his privacy and interference with his professional and personal life). Also, Gawker's access to his phone records would allow Gawker to compile more personal information about Mr. Bollea, which could be the subject of even more invasive articles about him. Gawker already has written articles about this case and shown a propensity for not complying with this Court's orders. *See id.* (4/25/13 article). Gawker presumably will not hesitate to continue to do so.

Gawker's CEO, Nick Denton (a defendant in this action) was recently interviewed by *Playboy* magazine, where he reiterated his total disdain for people's privacy rights:

PLAYBOY: Is it possible you set a lower value on privacy than most people do?

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

/s/ Charles J. Harder

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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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