

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.

**DEFENDANTS' EXCEPTIONS TO REPORT AND
RECOMMENDATION DENYING MOTION FOR SANCTIONS**

Pursuant to Rule 1.490 of the Florida Rules of Civil Procedure, defendants Gawker Media, LLC ("Gawker") and A.J. Daulerio ("Daulerio") (collectively, "defendants") hereby file these exceptions to the first paragraph of the Special Discovery Magistrate's October 20, 2014 Report and Recommendation denying their motion for sanctions, and state as follows:

1. Defendants' motion papers and argument at the July 18, 2014 hearing before the Special Discovery Magistrate demonstrated a pattern of misconduct that prejudiced defendants, both delaying and adversely affecting this litigation. Defendants incorporate by reference their argument at the hearing (a transcript of that portion of the hearing is submitted herewith as Exhibit A) and their motion papers, including without limitation their Confidential Statement. The Confidential Statement was submitted under seal because it references material plaintiff designated as confidential under the Protective Order entered in this action, and Judge Case designated the hearing as confidential so the transcript is also being submitted under seal.

2. Plaintiff opposed defendants' motion on a variety of grounds, which are addressed in his papers, in defendants' reply papers filed before the Special Discovery Magistrate, and in the parties' arguments at the July 19, 2014 hearing. Given the voluminous nature of both sides'

submissions, defendants have not re-filed the parties' briefs or exhibits, but will supply a set to the Court.

3. In addition to the conduct described in the Confidential Statement, two weeks ago, plaintiff disclosed a large number of additional text messages concerning plaintiff's claims that should have been disclosed prior to the depositions of plaintiff and Bubba the Love Sponge Clem. *See* Ex. B (Oct. 15, 2014 correspondence from plaintiff's counsel, submitted under seal because it references material designated as confidential).

4. Defendants' motion sought a variety of carefully tailored relief. Other than authorizing the re-opening of plaintiff's deposition on certain topics, the Special Discovery Magistrate denied that relief in its entirety based solely on *Kozel v. Ostendorf*, 629 So. 2d 817 (Fla. 1993). Not only was the test set forth in *Kozel* satisfied, but that case only addresses dismissal with prejudice based on an attorney's misconduct and does not address the other relief sought by defendants or circumstances where the party is involved in the conduct at issue. *See id.* at 818 (setting forth six factors to apply in "determining whether dismissal with prejudice is warranted" where "the attorney, and not the client" is responsible); *see also Ham v. Dunmire*, 891 So. 2d 492, 496 (Fla. 2004) (describing *Kozel* as establishing test for determining "whether a dismissal with prejudice is a warranted response to an attorney's behavior"). As such, the Report and Recommendation was erroneous.

5. Because the conduct in defendants' submissions justifies the other relief they sought and is authorized by the precedent cited in defendants' papers, and because that conduct has resulted in significant delays in this action while plaintiff presses for a trial date, defendants respectfully take exception to the Report and Recommendation.

CONCLUSION

For the foregoing reasons, defendants respectfully request that the Report and Recommendation be overruled, that their motion be granted, and that the Court enter the relief requested therein, as well as any other relief that the Court deems just and proper.

Dated: October 30, 2014

Respectfully submitted,

THOMAS & LOCICERO PL

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of October 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:

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