

Exhibit A

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR PINELLAS COUNTY

TERRY GENE BOLLEA, professionally
known as HULK HOGAN,

Plaintiff,

No. 12-012447-CI-011

vs.

HEATHER CLEM; GAWKER MEDIA, LLC,
aka GAWKER MEDIA, et al.,

Defendants.

-----/

TELEPHONIC HEARING BEFORE
THE HONORABLE JAMES CASE

DATE: October 20, 2014
TIME: 3:07 p.m. to 5:37 p.m.
PLACE: 201 East Kennedy Boulevard
Suite 712
Tampa, Florida
REPORTED BY: Susan C. Riesdorff, RPR, CRR
Notary Public, State of
Florida

Pages 1 - 114

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES:

CHARLES J. HARDER, ESQUIRE
Harder Mirell & Abrams, LLP
1925 Century Park East
Suite 800
Los Angeles, California 90067

- and -

DAVID HOUSTON, ESQUIRE
Law Office of David Houston
432 Court Street
Reno, Nevada 89501

- and -

KENNETH G. TURKEL, ESQUIRE
Bajo Cuva Cohen & Turkel, P.A.
100 North Tampa Street
Suite 1900
Tampa, Florida 33602

Attorneys for Plaintiff

SETH D. BERLIN, ESQUIRE
MICHAEL BERRY, ESQUIRE
ALIA L. SMITH, ESQUIRE
Levine Sullivan Koch & Schulz, LLP
1899 L Street, N.W.
Suite 200
Washington, D.C. 20036

- and -

RACHEL FUGATE, ESQUIRE
Thomas & LoCicero, PL
601 South Boulevard
Tampa, Florida 33606

Attorneys for Defendant Gawker Media, LLC

I N D E X

PROCEEDINGS	Page 3
REPORTER'S CERTIFICATE	Page 114

P R O C E E D I N G S

1
2 THE COURT: This is Judge Case. We're
3 gathered on the Bollea hearing today to discuss --
4 to go through several items. I just wanted to let
5 everybody know that by way of -- what I have been
6 furnished is a copy of the defendants' motion to
7 overrule the objections to third party subpoenas
8 and opposition to motions for protective order
9 under cover letter of August the 26th together
10 with all the exhibits.

11 Subsequent to that I have received from the
12 plaintiff under cover letter of September the 22nd
13 a binder containing the plaintiff's opposition to
14 Gawker's motion to overrule the objections to
15 third party subpoenas together with the exhibits
16 attached thereto. And then subsequent to that, on
17 October the 3rd, I have received under cover
18 letter of the same date from Mr. Thomas the reply
19 brief in support of Gawker's motion to overrule
20 objections to third party subpoenas.

21 If there's anything subsequent to that, let
22 me know if you would. I think that's it.

23 MR. BERLIN: I believe that's it from our
24 side, Your Honor, for that motion. I think
25 there's another motion on for today, but for that

1 motion, I think that's it.

2 THE COURT: Okay. Well, Mr. Berlin, I'll let
3 you start out then.

4 MR. BERLIN: I'm actually going to, if I may
5 with Your Honor's blessing, ask Mr. Berry to speak
6 to that motion if we could.

7 THE COURT: That's fine. Mr. Berry.

8 MR. BERRY: Thank you, Your Honor.

9 Plaintiff has asserted three claims that are
10 relevant to this motion and the subpoenas that we
11 seek to serve. Their claims are invasion of
12 privacy, a claim for commercial misappropriation
13 of likeness, and claims for intentional and
14 negligent infliction of emotional distress.

15 Those three claims implicate two kinds of
16 damages, at least as are relevant here. The first
17 is plaintiff's emotional distress. The question
18 that that raises is, did Gawker's act of
19 publication cause plaintiff to suffer emotional
20 distress? And, if so, how significant was that
21 distress?

22 Secondly, with respect to the claim for
23 commercial misappropriation of likeness, plaintiff
24 is asserting a claim for damages for the market
25 value of a sex tape featuring Hulk Hogan. That

1 implicates a couple of questions. One is, what is
2 the value of the -- the market value of a sex tape
3 featuring Hulk Hogan? Is that damage subject to
4 mitigation of damages or some sort of offset?
5 That is, did Gawker's act of publication increase
6 the value of plaintiff's likeness or create
7 additional opportunities for him?

8 The discovery that we seek to take breaks
9 down into three different categories of records.
10 The first is what I'll call financial information.
11 These are records showing the value of the Hulk
12 Hogan videos and his commercial appearances.
13 Plaintiff has argued that discovery of that
14 information is precluded by Judge Campbell's
15 earlier ruling.

16 Second, there's a category of documents that
17 deals with plaintiff's public image. We seek to
18 find out how plaintiff sought to portray himself
19 to the public during commercial advertisement in
20 the media and in other commercial appearances
21 close to and following the Gawker publication.
22 Again, plaintiff claims that that discovery is
23 precluded by Judge Campbell's earlier ruling and
24 that he has decided to take only what he describes
25 as garden variety emotional distress damages,

1 which somehow precludes our ability to take
2 discovery on emotional distress.

3 The third category of documents that's at
4 issue is really just one document. It's an
5 outtake of the advertisement that plaintiff did
6 for Hostamania, the advertisement of him swinging
7 on the wrecking ball in a thong that parodies a
8 sexualized video that Miley Cyrus had done. It
9 was the subject of some testimony by the plaintiff
10 at his deposition.

11 The plaintiff's position with respect to all
12 of these things appears to be that with respect to
13 his claim for garden variety emotional distress,
14 the only discovery that's permissible is his own
15 testimony. With respect to the market value of
16 the tape featuring Hulk Hogan, again, it appears
17 to be his position that the only discovery that is
18 permissible is his own testimony based on the
19 value of the tape from his deposition. These
20 positions are simply not supported by the law. If
21 his position prevailed, that is, if he's permitted
22 to seek damages on these theories, but we are
23 barred from taking discovery on them from third
24 parties, that verdict would not stand on appeal.

25 If Your Honor would like, what I would

1 propose to do is to break the argument down into
2 each of the three categories of documents that I
3 just described so that we could go through them
4 bit by bit rather than holistically.

5 THE COURT: Okay. That's fine.

6 MR. BERRY: That way Mr. Harder and I can go
7 back and forth on each and I think that will help
8 clarify the issues.

9 THE COURT: Okay.

10 MR. BERRY: With respect to the -- if you
11 have questions along the way, please feel free to
12 interject. I'd be happy to answer anything that
13 you may have as we go.

14 THE COURT: All right.

15 MR. BERRY: With respect to the financial
16 information requests, those are summarized in
17 Exhibit 17 to our motion, which provides a
18 complete list of the requests that are at issue
19 dealing with financial information. As I
20 mentioned before, I believe plaintiff's objection
21 to those requests is that Judge Campbell's ruling
22 following a hearing last October was that that
23 ruling would preclude discovery into any of this
24 financial information. That ruling, however, only
25 covered financial records of Terry Bollea. Many

1 of the requests that we are seeking to serve in
2 these subpoenas do not deal with financial records
3 of Terry Bollea.

4 First, with respect to requests that we
5 served on Mr. Bollea's employers or that we would
6 like to serve on his employers, TNA and WWE, we're
7 asking for profit and revenue information for Hulk
8 Hogan videos of them, not of him, but their profit
9 and revenue information. We're also seeking their
10 assessment of the economic value of Hulk Hogan.
11 There's only three requests that pertain to TNA
12 and WWE that deal specifically with payment to
13 plaintiff, which is the only thing that could
14 arguably be covered by Judge Campbell's prior
15 rulings. And those requests seek only the
16 information -- and I'll get to this in a bit -- of
17 what plaintiff was actually paid for the sale of
18 Hulk Hogan videos.

19 Second, with respect to plaintiff's business
20 partners, most of the requests that we're seeking
21 information for deal with an assessment, their
22 assessment, the business partners' assessment of
23 the value of Hulk Hogan's name and likeness. The
24 only request within those business partner
25 subpoenas that deals with financial information of

1 the plaintiff is a request asking how much he was
2 paid through their deal for licensing his
3 likeness. Most of the requests deal solely with
4 their information, not anything that reflects
5 financial records with him.

6 Finally, with respect to plaintiff's agents,
7 the requests that are being objected to largely
8 deal with offers that were being made to those
9 agents for Mr. Bollea to appear in advertisements
10 and whatnot or pitches that they were making for
11 him to appear in endorsements or other places
12 commercially. Again, the only way the financial
13 information comes into play is if those agents
14 have information about contracts that were
15 actually agreed to where Mr. Bollea actually
16 showed up and appeared and was paid. Most of the
17 other stuff doesn't deal with any financial
18 information of Mr. Bollea that would even remotely
19 be covered by Judge Campbell's earlier order.
20 Because those requests aren't covered, they should
21 be permitted without question. Plaintiff hadn't
22 objected to them except to the extent that they
23 were covered in further categories dealing with
24 public image requests.

25 With respect to Judge Campbell's prior

1 ruling, this -- the history was reviewed quite a
2 bit in our papers and in the papers that plaintiff
3 filed, but just to put it into some context, early
4 in the case, plaintiff obviously had filed a
5 complaint where he claimed that his brand had been
6 harmed. He then answered discovery saying that he
7 had lost business opportunities. In response to
8 those allegations, Gawker sought broad net worth
9 discovery. That is, what was the plaintiff's net
10 worth at various points during his career? In
11 plaintiff's opposition papers -- and we can quote
12 exactly what those requests were. They dealt with
13 everything from his tax return to loan
14 applications to accountants, all manner of broad
15 net worth discovery.

16 At that point in discovery, however, the
17 plaintiff had not answered an interrogatory asking
18 him to state the basis for the damages that he
19 seeks or how those damages would be calculated.
20 We moved to compel and wind up going to a hearing
21 before Judge Campbell. And at that hearing,
22 plaintiffs explained his damages that were
23 mentioned in his complaint in the early
24 interrogatory response. At that point, Judge
25 Campbell said that we could not get discovery from

1 the plaintiff, the financial records that we had
2 sought, this broad net worth discovery. She
3 instructed the plaintiff to provide an answer to
4 the damages interrogatories setting forth what
5 damages he was seeking and how those damages would
6 be calculated. She then said that Gawker could
7 take discovery based on those damages. At the
8 close of the hearing -- we quoted this in our
9 motion papers -- she said, "Many of the things you
10 discussed today would be fair game for you to
11 know, especially for purposes of trial." But
12 plaintiff had limited his damages at that hearing.
13 And she said, let's see what he comes back with
14 and says what his damages are.

15 She also said that if plaintiff doesn't
16 provide discovery that's pertinent to the damages
17 that he ultimately declares that Gawker could file
18 a motion in limine to preclude him from seeking
19 those damages. She suggested that Gawker could
20 take the discovery that it sought on financial
21 information of the plaintiff and said that if
22 plaintiff objected, the way that that could be
23 obtained was through further direction or further
24 order of the Court.

25 After that hearing, plaintiff answered our

1 interrogatory and said that he was seeking damages
2 based on the reasonable value of a publicly
3 released sex tape featuring Hulk Hogan. He hasn't
4 produced any evidence to this point on the value
5 of that tape or any information that would bear on
6 its value. We now, just as Judge Campbell had
7 instructed, are seeking that discovery and are
8 coming to Your Honor to the extent that plaintiff
9 has objected to it.

10 The case law that we cited in our papers and
11 that comes directly from Florida cases dealing
12 with misappropriation claims shows that the exact
13 kind of financial information that we're seeking
14 here, how much the plaintiff has been paid for
15 authorized uses, is the exact kind of information
16 that courts and that juries will consider in
17 assessing damages for misappropriation claims. As
18 those cases make clear, it doesn't have to be an
19 apples to apples comparison. It just has to be
20 what is the commercial value of plaintiff's name
21 and likeness based on past endorsement deals?

22 There's a couple cases in particular that
23 discuss this. The first and I think the most
24 analogous is the Coton case that was decided in
25 the Middle District of Florida in 2010. In that

1 case, there was a claim for misappropriation based
2 on a young model's photo being used in connection
3 with a pornographic movie, which she would have
4 never allowed and was never asked for its use.
5 She sought damages, just like plaintiff here, for
6 the loss -- the lost market value of the use of
7 that image.

8 In assessing what that value would be, the
9 court looked at the amount that she had licensed
10 similar photos in books -- in mainstream books and
11 what those were paid and gave a licensing fee on a
12 copyright claim based on those prior uses. It did
13 award a fee and damages for the misappropriation
14 claim, but only because it had allowed the fee to
15 be awarded on the copyright claim, and a similar
16 fee on the misappropriation claim would be a
17 double recovery. That case is nearly on all fours
18 with this one.

19 The second case is a case out of the Fourth
20 DCA, the Weinstein Design Group case that also is
21 cited in our papers. In that case, a famous
22 baseball player had his image used in connection
23 with advertisements for interior design services.
24 And he, like Mr. Bollea here, sought the royalty
25 value of the use of his name in connection with

1 those interior design ads. At trial, both the
2 plaintiff and the defendant in that case presented
3 evidence about what this baseball player had been
4 paid in other endorsement deals, including a shoe
5 deal with Reebok. The court -- the DCA on appeal
6 said that the jury was free to consider any of
7 this evidence that was offered and would be free
8 to accept it or reject it, but that these
9 questions in similarity would be resolved by the
10 jury.

11 Just as in each of those cases, Gawker should
12 be permitted to see the value of plaintiff's
13 endorsements and marketing deals. Those things
14 reflect better than anything else how the market
15 values Hulk Hogan. It's the best evidence
16 available to calculate the market value of the sex
17 tape. It doesn't need to be perfectly analogous,
18 just like in the Coton case comparing photo deals
19 to a pornographic movie, and the Weinstein case,
20 comparing interior design ads to a shoe deal, but
21 it simply has to be what the market value is.
22 That's what this evidence would show.

23 THE COURT: Okay. Seth? Seth?

24 MR. BERLIN: Yes, Your Honor?

25 THE COURT: You want to take this piece by

1 piece as has been suggested?

2 MR. BERLIN: I assume that -- I assume you
3 meant to ask that of Charles. It's fine with me,
4 but I assume you meant to ask the plaintiff's
5 side.

6 THE COURT: Okay.

7 MR. BERLIN: If it's fine with Charles, it's
8 fine with us.

9 THE COURT: Charles?

10 MR. HARDER: I mean -- well, Your Honor, a
11 lot of the things that I'm going to say have to do
12 with the entire motion, because the entire motion
13 in almost all respects is trying to redo what we
14 did last year before Judge Campbell. And Judge
15 Campbell did not --

16 THE COURT: Mike, why don't you go ahead and
17 complete your argument then as to the entire
18 motion and then we'll let Mr. Harder take over.

19 MR. BERRY: Okay. That will be fine. Just
20 on that point, if I may, if Your Honor believes
21 that this is covered by Judge Campbell's prior
22 order, what we would ask is that you recommend
23 that the discovery be granted, but then consistent
24 with her order, you could deny the -- for
25 plaintiff, you would deny their request at this

1 time so that we can bring it to her because she
2 did say that discovery could be taken upon further
3 order of the Court.

4 THE COURT: Okay.

5 MR. BERRY: With respect to the public image
6 requests, these are detailed in Exhibit 18 to our
7 motion. It basically seeks discovery again from
8 plaintiff's employers, business partners, and
9 agents about Mr. Bollea's public image and the
10 public image that he sought to portray both before
11 and after the Gawker posting. We believe that
12 this information is relevant for three reasons.
13 The first is to evaluate plaintiff's relative
14 fame. It should go without saying that the market
15 value of a sex tape or any kind of appearance is
16 affected by the plaintiff's relative fame. The
17 more famous somebody is, the more valuable their
18 appearance and their likeness is. Indeed, the
19 restatement of unfair competition in Section 49 as
20 we said in our papers said that this kind of
21 evidence, evidence of the plaintiff's relative
22 fame, is relevant in determining the value of an
23 unauthorized appearance. We're simply seeking
24 this discovery to determine how famous Hulk Hogan
25 is or was at the time of the Gawker posting, what

1 kind of products was he being endorsed, what kinds
2 of offers was he getting, what kind of media and
3 events was he doing at the time, how did companies
4 seek to use him prior to the Gawker posting?

5 In previous arguments, plaintiff has referred
6 to sex tapes involving Kim Kardashian and Paris
7 Hilton. At plaintiff's deposition, he mentioned a
8 sex tape involving Jimi Hendrix. It's not clear,
9 to me at least, how those tapes would affect the
10 value of the Hulk Hogan sex tape unless you look
11 at the relative fame of those individuals at the
12 time that their tapes were released. That's the
13 kind of information that we're seeking to get
14 through the public image requests that we would
15 like to serve on plaintiff's business partners and
16 his agent.

17 Secondly, we believe this information is
18 relevant to demonstrate mitigation of damages or
19 offset against what he's seeking in damages here.
20 As we explained in our papers, what we're seeking
21 to determine is whether in posting the column and
22 the excerpts, Gawker conferred some sort of
23 benefit on plaintiff that would benefit that same
24 interest that he claims was injured. The interest
25 here is identical. What plaintiff claims was

1 injured was his pecuniary interest in the use of
2 his name. What we're seeking to determine is
3 whether that pecuniary interest was also
4 benefitted by the posting. Did we do something
5 that increased the commercial value, that interest
6 in his name? We could offset it in several ways.
7 This is what we're seeking to determine. First it
8 would increase the value of the appearances that
9 he was making after the Gawker publication. Was
10 he paid more money? Was the quality of the offers
11 that he was getting different than prior to the
12 Gawker posting?

13 Second, did he get commercial opportunities
14 following the Gawker posting that he would not
15 have otherwise received?

16 Third, did he seek himself to benefit from
17 the notoriety? For example, in earlier discovery,
18 in talking about Hogan's Beach, the bar and
19 restaurant that was opened after the posting, it
20 was advertised as Hooters times ten.

21 Finally, did he seek to capitalize
22 specifically on the way that Gawker had portrayed
23 him? The most obvious example that we have is the
24 Hostamania ad where he was still going to
25 advertise himself in some sort of sexualized way.

1 The third and final way that we believe that
2 this public image information is relevant is
3 through -- to test the plaintiff's claims that he
4 suffered emotional distress. The cases are legion
5 that a plaintiff's post tort conduct is relevant
6 in assessing the degree to which they suffered
7 emotional distress. What we are looking to find
8 out is how was plaintiff dealing with his agent,
9 employers, and business partners in the wake of
10 the Gawker posting? Were they seeking to
11 capitalize on it? Were they seeking to market
12 plaintiff based on the Gawker posting? What was
13 sensitive about the posting and he didn't want
14 that be exploited in some way?

15 In his papers, plaintiff has argued that,
16 well, I'm just seeking garden variety emotional
17 distress, so this is off the table. Well, that's
18 not what garden variety emotional distress does.
19 It doesn't mean that the only evidence that's
20 allowed is plaintiff's testimony about his own
21 emotional distress. Garden variety emotional
22 distress just means that he's not claiming to have
23 suffered the kind of injury that would require
24 medical attention or psychological treatment.
25 That was the issue that Judge Campbell wrestled

1 with before. We couldn't seek his medical records
2 or his psychological records. Those things are
3 off the table. But, again, the cases clearly show
4 that we're allowed to present evidence and to
5 explore evidence into whether his emotional
6 distress claim can be rebutted or was he doing
7 things or saying things or acting in a way like
8 somebody who would have suffered emotional
9 distress? That's simply what we're seeking to do
10 here.

11 Finally, with respect to the Hostamania
12 outtake, we believe this is relevant principally
13 to the claim of emotional distress. I think it's
14 fair to say that any person who suffered emotional
15 distress, whether garden variety or severe, from a
16 claimed invasion of privacy dealing with showing
17 them in any state of undress would not publicly be
18 swinging on a wrecking ball in a thong showing
19 their bare buttocks. We seek to find out how
20 plaintiff handled this behind the scenes. Was he
21 joking around about it? Or was he sad and mopey
22 and doing this reluctantly against his will?

23 It's also relevant to his private life. At
24 his deposition, plaintiff claimed in numerous
25 spots that he closely guards his privacy both with

1 respect to his anatomy and other things. In
2 particular, with respect to the filming of this
3 Hostamania ad, he said that he was very careful
4 and that he made sure he did this only in front of
5 I believe what he called a few men's men. Is that
6 true? Is that how he actually acted when the
7 cameras were on? Did he really closely guard his
8 privacy in the way that he suggests? That
9 information plainly bears on his privacy claim,
10 and we believe that it ultimately is discoverable.

11 The bottom line on each of those areas is
12 that Gawker is entitled to take discovery on
13 public damages. We should be permitted to find
14 out, what is the value of a sex tape featuring
15 Hulk Hogan and to take discovery to gather that
16 information and we're permitted to seek whether
17 plaintiff actually suffered emotional distress,
18 and if so, to what degree.

19 I'd be happy to answer any questions
20 Your Honor may have at this time or to allow
21 Mr. Harder to make his argument now.

22 THE COURT: Okay. Mr. Harder?

23 MR. HARDER: Thank you, Judge Campbell.

24 THE COURT: Case.

25 MR. HARDER: I'm sorry. Thank you, Judge

1 Case.

2 I assume -- I'm looking at something that
3 says Campbell. I'm assuming you've read Judge
4 Campbell's ruling, which it forecloses a lot of
5 this discovery. We already argued all of these
6 things a year ago. And what Gawker is essentially
7 doing is saying it doesn't agree with Judge
8 Campbell's ruling before and it's not willing to
9 live with her ruling before. It wants a redo.
10 And a lot of these things, the arguments that are
11 in the papers and that Mr. Berry just said and the
12 arguments in our opposition and our papers and
13 some of the things I'm going to say, we already
14 hashed all these things out. Judge Campbell was
15 very clear -- and I'm going to read a few words
16 from the transcript where once I took off of the
17 table large categories of damages that we could
18 have sought but we decided not to, Judge Campbell
19 said, you have significantly eliminated a number
20 of theories of damages. So with that being said,
21 that then sort of eliminates a lot of areas of
22 inquiry for the defense.

23 So essentially Judge Campbell was saying by
24 taking these issues off of the table, the defense
25 now can't inquire about these things. Then if you

1 take a look at the order, there's a list of things
2 that the defense is not allowed to inquire about.
3 It's Hulk Hogan's contracts and Hulk Hogan's
4 finances and the things that go into determining
5 what his value -- his economic value, whether it
6 was before the sex tape or after the sex tape.
7 And the reason why Judge Campbell took all those
8 things off is because we took off all theories of
9 damages that would in any way pertain to that
10 information. It was a calculated decision on our
11 part because we didn't want the case to be about
12 Hulk Hogan's finances, because the case really is
13 about Gawker's activity and how Gawker benefitted
14 from that activity. Gawker was the one that took
15 a sex tape that it knew was surreptitiously taken.
16 It knew it had Hulk Hogan in it. It knew that he
17 was having sex. It knew it was a private bedroom.
18 Gawker had been informed that this was an illegal
19 recording. Gawker nevertheless edited and posted
20 that video for six entire months notwithstanding
21 numerous letters and e-mails that came from Hulk
22 Hogan's counsel telling Gawker, that's illegal,
23 that's unlawful, that's unauthorized, that was
24 taken without his knowledge, you must remove that
25 from the Internet. And Gawker's response was,

1 we're not going to do it. We're allowed to do
2 this and we're going to do this.

3 So in putting together our damages theories
4 in a way that makes sense to Hulk Hogan, makes
5 sense to this case, our damages which we explained
6 to Judge Campbell at the hearing and we put into
7 an interrogatory response which was consistent
8 with what we had talked to Judge Campbell about,
9 is that we are seeking damages based primarily off
10 of the finances of Gawker, not the finances of
11 Hulk Hogan. Gawker received a substantial benefit
12 when more than five million people went to its
13 website to go watch the Hulk Hogan sex tape and
14 all the advertising dollars that flowed from that
15 event. So that is the primary basis for our
16 damages. It has nothing to do with how much money
17 Hulk Hogan was paid for anything in his life,
18 whether it was before or after the sex tape.
19 Judge Campbell ruled in our favor on this very
20 exact issue. And so all of the discovery that
21 seeks to get at what Gawker sought from before a
22 year ago and was denied, it all falls within this
23 ruling from Judge Campbell. And Judge Campbell
24 did not make the ruling without prejudice and did
25 not say that Gawker can't seek this information at

1 a later time in the case. The only exception that
2 Judge Campbell provided was that if Hulk Hogan
3 changes his damages theories and decides to put
4 back on the table matters that would involve his
5 finances -- for example, if Hulk Hogan was to say,
6 ladies and gentlemen of the jury, Hulk Hogan's
7 career was hurt substantially from this sex tape
8 or if we were to say that now as our damages
9 theory, then we have now opened up discovery into
10 his finances so that Gawker would be permitted to
11 find out did his finances actually go down because
12 of the sex tape. But we are not seeking damages
13 based upon that.

14 There is a provision in interrogatory No. 12
15 that we served that says a reasonable value of a
16 sex tape featuring Hulk Hogan -- can everyone hear
17 me -- featuring Hulk Hogan with a viewership of
18 approximately 5.35 million viewers during the
19 period of October 2012 to April 2013. The way
20 that damages are calculated according to a sex
21 tape that is viewed by 5.35 million people has
22 nothing to do with what Hulk Hogan was paid from
23 Hogan's Beach or a T-shirt shop or for appearing
24 in wrestling matches or for making public
25 appearances, whether it's a wrestling match or a

1 live appearance or a T-shirt shop or Hogan's Beach
2 or something along that line or relating to some
3 of these other companies. Nor does it pertain to
4 some of these other things that might bear talking
5 about, but the way you look to the value of 5.35
6 million unique viewers of a sex video at Gawker
7 for a six-month period of time is you seek
8 consultants who are knowledgeable about the value
9 of viewership on the Internet. What is 5.35
10 million sets of eyeballs worth? And if you need
11 to compare it to a sex video, then you look to
12 tapes such as Paris Hilton or Kim Kardashian or
13 Jimi Hendrix, or whatever else has sold out there
14 in the marketplace, and you get a sense of how
15 much do people -- how much do companies that sell
16 sex charge for a sex video -- how much do they
17 charge for it? If you were to bring 5.35 million
18 viewers to a sex tape based on the aspects that
19 exist in the adult market, what is that? You
20 don't have to look to nonsexual things in Hulk
21 Hogan's career. You look to the marketplace for
22 content like that. Hulk Hogan has never done a
23 sex tape. This is the only occasion where without
24 his knowledge and permission he was filmed, and
25 Gawker without his permission published it.

1 If there was a history of Hulk Hogan being
2 filmed having sex, then obviously that would be a
3 discoverable thing. But looking to what are
4 contract terms for appearing or being associated
5 with Hogan's Beach or the T-shirt shop that's in
6 Clearwater or the Internet hosting company where
7 he appeared on a wrecking ball in a video, those
8 are things that are not sex tapes. They're not
9 sex videos.

10 Let's talk about the wrecking ball. First is
11 the issue of the outtake, the footage. It sounds
12 like what Gawker wants is to see Hulk Hogan naked
13 on some of these outtakes only to point to them
14 and say, uh-huh, he wasn't protecting his privacy
15 when he was around the four or five people, the
16 men's men who were on set. Therefore, he somehow
17 has given up his right to privacy because he for
18 one second was changing in and out of clothing,
19 and he therefore has no rights. You can't go
20 after him. Or to say, well, obviously he wasn't
21 emotionally distressed when Gawker posted the sex
22 tape and five million people saw it because on a
23 closed set, he chose to get in and out of clothing
24 and there were four or five men standing around
25 him. So, therefore, he has no right to complain

1 and he has no right to say that he was ever
2 emotionally harmed in any way.

3 Either way, however you slice it, it's just
4 not proper. Whether he was naked or not naked on
5 that set for a few seconds, it's just irrelevant.
6 It's another invasion of his privacy because,
7 quite frankly, Gawker is not allowed to see him
8 naked, period, ever unless he's walking around in
9 public naked or releases a video of himself naked
10 to the public or to Gawker. But that never
11 happened. So Hulk Hogan does protect his privacy,
12 and the way that you define it is that he doesn't
13 release himself naked to the public. So whether
14 there are four or five men's men around when he
15 changed clothes, that's not relevant to how he
16 portrays himself to the public. The way he
17 portrays himself to the public is he keeps his
18 clothes on. When he was on that wrecking ball --
19 one thing that's interesting is that Miley Cyrus
20 was naked in her video. So when Hulk Hogan did a
21 parody -- it was a parody video. Some people
22 declare it to be the funniest parody in all of the
23 year in which it came out -- but Hulk Hogan had
24 his clothes on. He was wearing underwear. It was
25 small underwear, but he was wearing underwear. He

1 wore a shirt that covered up his chest and his
2 back. So people saw his legs and people saw his
3 arms. And the segment showing his buttocks
4 wearing underwear was shown for a split second.
5 That's really not relevant to the situation that
6 we're dealing with here, which is Gawker posted a
7 video of him distinctly naked, with an erection,
8 having sex with a woman, and it created a high
9 level of interest so that all the world could
10 watch that. And it was not authorized, unlike a
11 wrecking ball scene where -- well, you can walk on
12 the beach with what he was wearing in that video.
13 That's completely permissible, not that he does,
14 but what Gawker portrays is something you can't
15 walk down to the beach with, which is a completely
16 naked body and having sex. Gawker is the one that
17 crossed the line. For them to try to invade his
18 privacy by getting into the footage of the
19 outtakes is troubling.

20 Let's talk about the Coton and the Weinstein
21 cases. Those are cases where -- well, first
22 Coton. It was a woman who did not appear naked at
23 all. It was her photo that somebody put onto the
24 cover of a porno DVD, and she sought damages for
25 that. And part of the damages that she sought was

1 she said, it harmed my career, because I'm a
2 legitimate actor or model, and if you're going to
3 put me on illegitimate videos, people are going to
4 think I'm some kind of a porn star. And how am I
5 supposed to get legitimate work in the
6 entertainment industry? So her damages were based
7 on that.

8 So the defendants said, well, we need to get
9 at your contracts to see how your career was
10 harmed or not harmed, and that was fair game.

11 We have a completely different situation
12 here. I've already said it. I don't want to
13 repeat it, but we're not seeking damages for harm
14 to a career. So we've taken that off the table.
15 Judge Campbell recognized that, and she precluded
16 this discovery.

17 Also, we argued all these things before. If
18 Gawker wanted to bring up the Coton case a year
19 ago, it could have. The Coton case came out well
20 more than a year ago. For some reason, it chose
21 not to argue Coton the last time around and it
22 chose to argue it this time around, but either way
23 you slice it, we've already argued the issue.

24 Weinstein, same exact thing. Weinstein was a
25 situation where a baseball player's image was used

1 on a promotion of some company, a design company
2 that he had not authorized. And so he sought to
3 prove damages by showing that he gets paid a lot
4 of money to be in advertising and here the
5 defendant used him in advertising. And I read
6 something in the case that there was something
7 about taxes. It doesn't really explain who put up
8 the tax information. It may well have been the
9 plaintiff because the plaintiff was again trying
10 to prove his damages based on his own finances.

11 That is again not the case here. We took
12 that off the table, and we did so for a specific
13 reason. One is we don't need any of that because
14 the damages that we're focused on are how much did
15 Gawker make off of this. Gawker should not be
16 allowed to profit from this activity. So whatever
17 profit that it made, we're entitled to receive as
18 unjust enrichment. It's ill gotten gain. So
19 that's the focus of the damages theory.

20 Let's talk about this mitigation theory,
21 which I'm a little surprised by. If somebody has
22 been run over by a car and the victim sues the
23 driver and says, you ran over me, and let's say
24 the victim later wrote a book about how they got
25 run over and they had to recover and they were in

1 the hospital for a long time and they were
2 recovering and they have emotional distress and
3 maybe they forgive or they don't forgive, or
4 whatever's interesting, they write about it and
5 they make this profit off of it. Let's say they
6 write a popular book and they make a lot of
7 profit. The driver is not allowed to say, oh, you
8 know what, you did so well financially from me
9 creaming you with my car that you can't come after
10 me for damages. You made a profit off of what
11 happened. So in this tort claim, if the claim is
12 only about you ran over me and I want my damages
13 for being run over, the defendant can't say, I
14 want all the information of everything you've ever
15 done relating to your career because now I'm
16 making this all about your career and how now
17 you're on a speaking tour over your book and now
18 you're making money from this and that. Somebody
19 who's harmed in a tort is allowed to seek redress
20 for the harm that was caused by the tort, but the
21 tortfeasor is not allowed to say, ah-hah, you
22 benefitted from my tort, so, therefore, I'm
23 allowed to get at every single thing you've ever
24 made in your life that had anything to do with the
25 tort and I'm allowed to say that you made a profit

1 off of it, so you can't seek anything.

2 That's essentially what Gawker is doing here
3 by seeking, once again, all the information that
4 Judge Campbell says is not discoverable, which is
5 things that have to do with Hulk Hogan's career,
6 his contracts, and his payments before the sex
7 tape and after the sex tape. And once again, we
8 went through all of that a year ago. It's a
9 little frustrating that we have to relive this
10 year what we lived through last year in terms of
11 this discovery, all of the paperwork involved and
12 all these different motions and oppositions and
13 replies and all the exhibits. But, again, Judge
14 Campbell said, you significantly eliminated a
15 number of damages theories. And she said that a
16 lot of areas of inquiry are eliminated for the
17 defense based on that. So that applies all
18 throughout this motion.

19 Let me talk about the post tort conduct
20 because Gawker's theory is that Hulk Hogan perhaps
21 was not emotionally distressed or not emotionally
22 distressed as much as he says he was based upon
23 post tort conduct. First, we're seeking garden
24 variety emotional distress, which is different
25 from a theory that he was distressed by a certain

1 margin and that then opens up all the medical
2 records and everything. One of the reasons why we
3 made this decision is so that we don't get into
4 all his medical records because there are records
5 there, and it's not relevant to what we're talking
6 about. And Hulk Hogan did not seek medical
7 treatment for his emotional distress in this case
8 relating to the sex tape, but that does not mean
9 that he did not suffer emotional distress. But
10 Gawker says, we're entitled to everything that he
11 ever did, everything that he ever said, everything
12 that he talked to all of his representatives about
13 from the day the sex tape came out to the present
14 day to see if he's ever said anything that can
15 remotely sound like he wasn't really emotionally
16 distressed like he says he was. There's nothing
17 in the law that says you're entitled to every
18 conversation between the plaintiff and everyone he
19 ever talked to to determine whether he was
20 emotionally distressed or not or the level of
21 emotional distress, particularly in a garden
22 variety emotional distress situation, which is the
23 one that we have here.

24 And then Gawker brings in this case relating
25 to a person who was -- who claims that she was

1 sexually harassed in the workplace, a woman who
2 was allegedly sexually harassed in the workplace,
3 and then the defendant wanted to bring in evidence
4 that in her next job, she was rubbing her breasts
5 on a coworker as if to say, well, in the first
6 instance, you couldn't have been all that
7 emotionally distressed because in the second
8 instance, you were rubbing your breasts on
9 somebody. The court allowed that evidence to come
10 in.

11 This is a different situation because there
12 is no second situation of Hulk Hogan agreeing to
13 appear naked in public or having sex in public.
14 Gawker posted the sex tape of him having sex. He
15 didn't know he was being taped. He didn't approve
16 of it. He objected numerous times to Gawker.
17 Gawker said, we don't care. We're going to post
18 it anyway.

19 There is no second example, nothing even
20 close. The fact that he did a parody wearing a
21 T-shirt and underwear is not an example of a
22 second situation. And even if it was, Gawker has
23 the portions that were publicly released, which is
24 the only thing that's relevant to the instance of
25 a second situation.

1 The case I was referring to is Olson vs. EG&G
2 Idaho, which is a workplace harassment case.

3 The second situation, if there is one that's
4 even relevant here, is what did Hulk Hogan permit
5 the public to see of him the second time around,
6 not what ended up on the cutting room floor of the
7 editor if he was in between takes and he happened
8 to be changing into or out of something. The
9 relevant part, if there is any relevance at all to
10 the second situation, would be he allowed a video
11 of him parodying Miley Cyrus sitting on a wrecking
12 ball wearing a T-shirt and wearing underwear to be
13 portrayed of him.

14 So if Gawker wants to use that -- assuming
15 that's even relevant, if Gawker wants to use that
16 to say, ladies and gentlemen of the jury, he
17 couldn't have been all that emotionally distressed
18 from us releasing a sex tape of him because, look,
19 he appeared a year or two later on a wrecking ball
20 in a video parodying somebody to promote a
21 company, if Judge Campbell allows that, fine.
22 Then let the jury see that, but whatever ended up
23 on the cutting room floor is irrelevant. Whatever
24 discussions were had about the wrecking ball
25 commercial, it's a fishing expedition. It's

1 getting into information that's not relevant.
2 It's not reasonably calculated -- it's not
3 reasonable period, but not reasonably calculated
4 to lead to discovery of anything relevant with
5 respect to the actual video that was put up.

6 Let me just check and see if I addressed all
7 of the points or if I left anything off here.

8 Mr. Berry called the wrecking ball
9 sexualized. I didn't see anything sexual about
10 it. I thought it was -- it tended to be comedic.
11 A lot of people perceived it as comedic. He was
12 wearing underwear. He was wearing a shirt. And
13 he was not engaged in any sexual act of any kind.
14 He wasn't even implying any sexual acts of any
15 kind. Even when Miley Cyrus was naked on the
16 wrecking ball, she wasn't necessarily implying
17 sex. Maybe she was naked while she was on the
18 wrecking ball, but Hulk Hogan took a giant step
19 away from that. He was not naked. He was wearing
20 clothing. Sex means that sexual activity was
21 taking place or sexual activity is highly
22 suggested. There really was nothing like that in
23 this wrecking ball spoof that he did.

24 Here's an issue that I haven't addressed yet,
25 the TNA and the WWE and requests of financial

1 records relating to videos. The way that Gawker
2 is portraying this, it would sound as if TNA and
3 WWE are putting out videos of only Hulk Hogan in
4 the video and they're seeking profits and revenues
5 relating to videos that were put out with Hulk
6 Hogan. What those companies do is they put out
7 wrestling matches. In the time period of
8 discovery that's been requested -- it's only for a
9 few years -- Hulk Hogan was not a wrestler. He
10 testified to that. He stopped wrestling, and he
11 hasn't wrestled himself as a wrestler in a great
12 deal of time.

13 What those videos have is a whole lot of
14 people in the video, most of whom are professional
15 wrestlers, and there are a few announcers. And
16 Hulk Hogan appears as one of many, many, many
17 people in these wrestling videos, and he does some
18 announcing. So what Gawker's trying to get at is
19 that TNA and WWE only made so much money off of
20 the videos. We're talking about DVDs. I mean,
21 DVDs are -- virtually don't even sell anymore.
22 It's a lost technology. A lot of the money is on
23 Pay Per View. Judge Case, you heard testimony
24 about how there was a promotion over a Pay Per
25 View event of TNA that was being promoted and

1 exhibited shortly after the sex tape came out,
2 which was a coincidental timing because the Pay
3 Per View event and all of the media was arranged
4 well, well, well in advance of Gawker
5 independently releasing the sex tape.

6 But, again, that is so far afield of anything
7 that's relevant, a video that has probably a
8 hundred people in it, most of which depicts
9 wrestling, a little bit of which depicts
10 presumably Hulk Hogan doing a little bit of
11 announcing on camera, but to compare that to a sex
12 tape of Hulk Hogan naked in a private room taped
13 without his knowledge or permission and the whole
14 enterprise being done without his knowledge and
15 without his permission is just a completely
16 different -- different thing. It's beyond apples
17 to oranges. At least apples to oranges, they're
18 both fruit. This is like apples to spaceships. I
19 mean, it's just so completely different from what
20 we're talking about that there really is no reason
21 why Gawker should be bothering TNA and bothering
22 WWE to get their confidential financial
23 information over the videos that they produced
24 involving a whole bunch of different people in a
25 sporting event, sporting video where everybody has

1 their clothes on, where everybody approves of
2 being in the videos and having the videos released
3 in public.

4 So all of that is irrelevant. All
5 communications that deal with these things is
6 irrelevant. When you get into -- again, when you
7 get into the areas of Hulk Hogan's contracts, Hulk
8 Hogan's finances, all of that was precluded by
9 Judge Campbell. Judge Campbell did not leave the
10 door open to any of that with the sole exception
11 being if Hulk Hogan changes his damages theories,
12 and he has not changed his damages theory.

13 So I believe I covered everything. If you
14 have any questions, I'd be happy to answer them.
15 Thank you.

16 THE COURT: All right. Thank you.
17 Mr. Berry?

18 MR. BERRY: Thank you, Judge Case. I'll
19 maybe begin where Charles ended and if you have
20 any questions, I'll be happy to answer them.
21 Otherwise I have a few points to respond to
22 briefly.

23 THE COURT: All right. Go ahead.

24 MR. BERRY: First, if you -- for plaintiff to
25 be correct here about the nature of what Judge

1 Campbell's prior order was, the theory would have
2 to be that you don't need to disclose your
3 damages. Then you can defeat a motion to compel.
4 After that you can declare what your damages are
5 going to be and then preclude the defendant from
6 taking discovery on your damages. That's not the
7 way that the game is played, and that's certainly
8 not what Judge Campbell had anticipated nor what
9 she instructed.

10 Mr. Harder went to some length in talking
11 about what happened a year ago, and we are here
12 today to argue the same thing. That's simply not
13 the case. Your Honor, we attached excerpts from
14 the prior briefing. We attached the entire
15 transcript from the earlier hearing. The
16 discussion about market value of the Hulk Hogan
17 sex tape can be found I believe in three, four,
18 maybe five instances where those words were
19 mentioned anywhere in the brief or anywhere in the
20 argument by our side or even by plaintiff's side.
21 That simply was not the focus of what -- the
22 discovery we're seeking, nor was it the focus of
23 Judge Campbell at that hearing.

24 Mr. Harder spoke at length about it's
25 Gawker's profits and that's what they're seeking

1 in damages, but that's not all they're seeking in
2 damages. As he alluded to a couple times, the
3 other thing that they're seeking is the market
4 value of the sex tape. Judge Campbell made clear
5 in her order that if plaintiff did declare that
6 those were the two items of damages that he was
7 seeking, profits and market value of the sex tape,
8 we could take information -- we could take
9 discovery relevant to those damages. If there's
10 any question about it, as I said during my
11 argument, then we would ask for you to recommend
12 that discovery be allowed, but defer to Judge
13 Campbell so that she can make the order on it as
14 she contemplated at that hearing.

15 Mr. Harder during his argument said that
16 there's a difference between sex tapes and other
17 kinds of appearances. It is true and we will
18 grant you that Hulk Hogan has never appeared in
19 another sex tape other than the one that we heard
20 about during the deposition and this small short
21 excerpt that was posted on the Gawker website.
22 But just as in every one of the Florida cases that
23 we cited, the types of things that you use in
24 assessing market value do not have to be the same.
25 In no case can someone sue for unauthorized use if

1 they've authorized the use. Here, just as in
2 Coton, the plaintiff there didn't authorize the
3 use, but she used authorized use to estimate what
4 the market value of the unauthorized use is.
5 That's what we're saying here.

6 Mr. Harder suggested that market value could
7 be determined by looking at other sex tapes and
8 what the value is in the market and mentioning
9 folks again like Kim Kardashian, Paris Hilton, and
10 Jimi Hendrix. But the only thing that those
11 things have any value is based on the celebrity
12 involved. You have to understand what those
13 people are paid and how the market values those
14 people. Whether you're assessing the value of a
15 sex tape or a photo shoot or a television deal,
16 that's how the market looks at it. And the kinds
17 of things that Mr. Bollea was getting paid at the
18 time are the kinds of things that would determine
19 his relative fame and how one would value a sex
20 tape.

21 Mr. Harder said at several points here, and
22 they said in their papers, that they're not
23 seeking damages for Mr. Bollea's career. That's
24 fine. But just because they are not seeking those
25 kinds of damages and the kinds of evidence that we

1 are seeking might be relevant if they were does
2 not mean that we cannot take discovery that's
3 relevant on other issues such as the market value
4 of a sex tape where these things are relevant.
5 Just because you take damages to career off the
6 table doesn't mean that we can't take discovery if
7 it's relevant to other aspects of things that they
8 are pursuing.

9 With respect to mitigation of damages,
10 Mr. Harder's analogy with respect to a car
11 accident is completely inapposite. In that case,
12 the physical harm, the physical injury to a person
13 is obviously different than the pecuniary interest
14 in selling their story whether to a book or a
15 television mini series. Here the pecuniary
16 interest in a misappropriation claim is the value
17 of somebody's name or likeness. That is what
18 Mr. Bollea is seeking in his misappropriation
19 claim and that is what we're entitled to seek
20 discovery of with respect to offset. Was there
21 any value that was given to that pecuniary
22 interest, the value of his name or likeness?
23 Unlike a car accident case, the interests here are
24 identical.

25 With respect to this garden variety emotional

1 distress claim, I just don't even know where to
2 begin. Judge Campbell said to plaintiff's counsel
3 during the argument on emotional distress at that
4 October hearing last year that he should come down
5 and look in her courtroom on any given day and see
6 the type of testimony that's permitted. What she
7 was saying then and what we are saying now and
8 what I believe Mr. Harder was saying is they have
9 taken medical records off the table, they've taken
10 medical information off the table, we can't depose
11 his doctors. We're not asking for that. What we
12 are asking for is to take discovery on evidence
13 that would show that he did not suffer any
14 emotional distress from the Gawker posting, or if
15 he did that it was much more limited than he would
16 suggest.

17 Mr. Harder said, well, that doesn't mean that
18 you should be allowed to take any sort of
19 communications that he had with all of these
20 people. The funny thing is the plaintiff did not
21 object to our request in the subpoenas seeking
22 communications. The things that are at issue with
23 respect to the agents are pitches and offers that
24 were made with respect to third parties, not
25 communications with plaintiff. Those things were

1 not objected to. The same is true with TNA and
2 WWE and his business partners.

3 The reference to the cases that Mr. Harder
4 made I think was a bit confused. What those cases
5 suggest -- and there were two. One is the Olson
6 case which he mentioned by name. That said --
7 that was a situation where the plaintiff was fired
8 from her job and claimed emotional distress. The
9 evidence that was allowed there was testimony that
10 somebody saw her at her subsequent job and said
11 she didn't look so distressed. She actually
12 seemed cheerful.

13 The other case dealing with rubbing breasts
14 was a woman who claimed she had been raped and the
15 evidence that was admitted after the fact -- and
16 this is the Smith case out of the Tenth Circuit --
17 was that after the rape, she went cavorting around
18 and was rubbing her breasts on somebody,
19 inconsistent with somebody who has claimed to have
20 suffered emotional distress.

21 Finally with respect to the video outtakes,
22 we are not seeking to invade Mr. Bollea's privacy
23 by seeking the outtakes. We're seeking evidence
24 here about whether he closely guards his privacy
25 as he said in his deposition. That could be

1 subject to the same sort of confidentiality
2 provisions that the other evidence in this case
3 has been subject to. This is far less of an
4 invasion of privacy -- let me strike that.

5 The bottom line is that it's not an invasion
6 of privacy. The second thing is that with these
7 video outtakes, what we're seeking here is to find
8 out whether he suffered emotional distress. Was
9 he embarrassed by this? The question wasn't
10 whether he was naked or wearing underwear or a
11 T-shirt or anything else or whether he was making
12 sexual gestures or this was a parody or anything
13 like that, but somebody who claims they suffered
14 emotional distress from being shown in the state
15 that Mr. Bollea was would not turn around shortly
16 afterwards and be in that kind of advertisement,
17 and if behind the scenes he was joking about it,
18 if he was carefree about it and not in any way
19 appearing to suffer emotional distress in filming
20 it, that would be evidence that would rebut his
21 claim of garden variety emotional distress.

22 Unless Your Honor has any questions, that's
23 my argument.

24 THE COURT: All right.

25 MR. TURKEL: Judge, this is Ken Turkel. I

1 didn't want to interrupt anybody. I got on about
2 40 minutes ago.

3 THE COURT: Thank you, Ken.

4 Anything else, Mr. Harder? Charles?

5 MR. HARDER: Yes. I didn't know I was going
6 to get another chance to talk.

7 I feel like I covered a lot of these things.
8 One quick point perhaps is I think Mr. Berry just
9 said that the amount that somebody gets paid in
10 their career is directly determinative of the
11 amount of the value of a sex tape of them. That's
12 actually completely inaccurate in reality, and
13 there is no evidence of that.

14 I'll give you an example. If Paris Hilton is
15 on the first season of a reality show and she
16 signs a contract agreeing to get paid like
17 \$10,000, an extremely low amount of money, let's
18 say if it's hugely popular and lots and lots of
19 people see it and then she's in a sex tape and the
20 sex tape is the biggest selling sex tape in the
21 history of all time, the \$10,000 amount that she
22 gets paid for the reality show is completely
23 detached in reality from the value of the sex
24 tape, which could be something like \$30 million,
25 possibly even more. So there's just really no

1 connection. So Gawker trying to find out what
2 Mr. Bollea gets paid for this matter and that
3 matter and this and that is just really not
4 related to the value of the sex tape.

5 I could hit every single one, but I feel like
6 we've covered everything pretty well.

7 THE COURT: Without repeating anything,
8 Mr. Berry, anything you want to add now?

9 MR. BERRY: No, sir.

10 THE COURT: Okay. You've both done an
11 excellent job of presenting the issue, not only
12 your in written memorandums, but also in your
13 argument here today. I have reviewed everything
14 that you have sent to me, including the exhibits,
15 and I listened carefully to the arguments that
16 have been presented here today.

17 It is -- having considered the motion that is
18 under consideration here together with the
19 response papers and the argument of counsel, as
20 the special discovery magistrate, it is going to
21 be my recommendation that plaintiff's objections
22 to nonparty subpoenas be sustained and that the
23 plaintiff's motions for protective order be
24 granted.

25 With respect to the plaintiff's motion for

1 attorney's fees, which was not argued during this
2 time, I'll take that matter under advisement and
3 we'll address that issue at some further time.
4 That would be my recommendation to the Court with
5 respect to the motions made here today.

6 Next question, do you still have a hearing
7 time with Judge Campbell on the 22nd of October?

8 MR. HARDER: Yes, Your Honor.

9 MR. BERLIN: Yes, Your Honor.

10 THE COURT: Okay. Next then I guess would be
11 to take up the subject of the scheduling.

12 MR. HARDER: This is Charles, Your Honor.
13 The motion to compel?

14 THE COURT: Let's take that one up.

15 MR. HARDER: That was plaintiff's motion. So
16 if now's a good time, I can go into the argument.

17 THE COURT: Let's do it.

18 MR. HARDER: Okay. Great. This is Charles
19 Harder, so that we have a clear record.

20 Plaintiff has filed a motion to compel
21 further response from Gawker relating to financial
22 documents and other types of documents. And I'll
23 take them all in turn.

24 Judge Campbell granted our request as to a
25 lot of things. And as to other things, she -- she

REPORTER'S CERTIFICATE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF FLORIDA :
COUNTY OF HILLSBOROUGH :

I, Susan C. Riedsorph, RPR, CRR certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the outcome of the foregoing action.

Dated this 21st day of October, 2014, IN THE CITY OF TAMPA, COUNTY OF HILLSBOROUGH, STATE OF FLORIDA.

Susan C. Riedsorph, RPR, CRR, CLSP