

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

GAWKER MEDIA, LLC, *et al.*,

Defendants.

**SUPPLEMENTAL BRIEF RE: STANDARDS FOR MOTION
CHALLENGING PLAINTIFF'S CONFIDENTIALITY DESIGNATIONS**

Pursuant to the Court's instructions at the November 18, 2015 case management conference, Gawker Media, LLC, Nick Denton, and A.J. Daulerio submit this supplemental brief regarding the applicable standards governing the pending motion challenging plaintiff's designation of discovery materials as "Attorneys' Eyes Only." The law on this issue holds that:

1. Plaintiff bears the burden of proving that the materials are properly designated as "Confidential" and "Attorneys' Eyes Only." *See, e.g.*, Agreed Protective Order at ¶ 10; *SCI Funeral Servs. of Fla., Inc. v. Light*, 811 So. 2d 796, 798 (Fla. 4th DCA 2002) (party seeking protection bears burden of showing good cause). Consistent with Florida law, the Agreed Protective Order allows only certain information to be designated as confidential, including "financial information or sensitive business or proprietary information" and "[o]ther information in which the party . . . has a reasonable expectation of privacy or confidentiality." Agreed Protective Order ¶ 3. It prohibits information "in the public domain" from being designated. *Id.*

2. Plaintiff may not designate information that has been publicly disclosed. Here, much of the information plaintiff has designated as "Confidential" and "Attorneys' Eyes Only" is publicly available and has been reported by media around the world. *See* Mot. at 7-10.

Indeed, over the past few weeks, the Tampa Police Department publicly issued a detailed report that includes an extensive discussion of the FBI's investigation, provides a thorough description of FBI witness interviews and recordings, and notes that plaintiff's racist statements were discussed in the FBI's investigation. *See* Ex. 1; *see also* Exs. 2-5 (media reports of same). Given these vast public disclosures, plaintiff's confidentiality designations are improper. *See, e.g., Sciele Pharma, Inc. v. Brookstone Pharm., LLC*, 2010 WL 9098290, at *9 (N.D. Ga. June 23, 2010) (prior confidentiality designation became "moot" once information became public).

3. The federal court already has held that the materials produced by the federal government concerning the FBI's investigation are public records. *See Gawker Media, LLC v. FBI*, 2015 WL 6736800, at *7 (M.D. Fla. Nov. 4, 2015); *see also* Ex. 6 (July 2, 2015 FOIA Hrg. Tr.) at 91:17-22 (JUDGE BUCKLEW: "The items that I am ordering produced or that they have produced were pursuant to a FOIA request and that's what FOIA is, it's something the public 'is entitled to.'"). Plainly, documents that have been held to be public under federal law cannot properly be deemed confidential under the protective order or under Florida law.

4. The "Attorneys' Eyes Only" designation is not allowed here. Courts have reserved "Attorneys' Eyes Only" protection for cases in which the information has *never* been seen by other people, the litigation is between business competitors, and the materials contain sensitive business information that would confer an irrevocable competitive advantage. *See, e.g., Lockheed Martin Corp. v. The Boeing Co.*, 2005 WL 5278461, at *4 (M.D. Fla. Jan 26, 2005) (limiting "Attorneys' Eyes Only" designation to outside counsel where (a) litigation is between business competitors, (b) discovery materials contained "competitively sensitive information," and (c) in-house counsel had direct involvement in company's "competitive decisionmaking"); Mot. at 12 (citing numerous cases applying same narrow test). Plaintiff has not cited a single

authority, nor are we aware of any, where such a limitation has been used in any other kind of case – much less where, as here, many non-attorneys have already had or seen the materials.

Based on the foregoing, counsel for the Gawker Defendants respectfully request on their clients' behalf that this Court issue an order lifting the confidentiality restrictions placed on the materials addressed in their motion, or, in the alternative, reclassifying them as "Confidential."

December 9, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of December, 2015, I caused a true and correct copy of the foregoing to be served via the Florida Courts' E-Filing Portal on the following counsel of record:

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