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

TERRY GENE BOLLEA professionally known as HULK HOGAN,

Case No. 12012447 CI-011

Plaintiff,

vs.

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 MOTION TO COMPEL DEPOSITION OF DEFENDANT GAWKER MEDIA, LLC (JOHN COOK)**

## I. INTRODUCTION

Plaintiff Terry Bollea hereby moves to compel the deposition of Defendant Gawker Media, LLC ("Gawker") for the deposition notice served March 10, 2015, for the person most knowledgeable concerning the article entitled: "A Judge Told Us to Take Down Our Hulk Hogan Sex Tape Post. We Won't," posted on Gawker.com on or about April 25, 2013 (the "Article"). A copy of the deposition notice is attached as **Exhibit A** hereto. The only possible witness for that deposition is John Cook, the then-Editor-in-Chief of Gawker.com, who wrote the Article. Therefore, Mr. Bollea seeks his deposition as the corporate designee.

The parties previously briefed the issue of Gawker producing a corporate designee witness for a second day of deposition on topics limited to its corporate structure and revenues, and on March 11, 2015, Special Discovery Magistrate Judge James Case issued a Report and Recommendation overruling Gawker's objections and denying Gawker's request for a protective order. Gawker is expected to file exceptions to that Report and Recommendation with the Court. Mr. Bollea will be taking that deposition in New York after the Court rules on Gawker's objections to the topics.

Mr. Bollea seeks herein the additional deposition of Gawker's designee on the topic of the Article, while the parties are in New York for the other corporate designee deposition. The issues of Gawker's corporate structure and revenues are completely different from the issues related to the Article and require different corporate designees. Gawker has stated that Scott Kidder will be its corporate designee for the 36 topics relating to its corporate structure and revenues. The Gawker designee most knowledgeable concerning the Article, however, is John Cook, because he wrote the Article and knows more about it than anyone else at Gawker. The deposition notice also seeks to question the corporate designee on all written and oral communications that John Cook had regarding the Bollea sex video at any time. Again, John Cook is the person at Gawker with the most knowledge on that subject and therefore is the only person who can be designated its corporate designee on that subject.

Mr. Bollea previously served an individual deposition subpoena on John Cook in New York. Mr. Cook filed a motion to quash and for a protective order in New York state court. Though the motion has been fully briefed, no hearing date has been scheduled on that motion and there is no indication when that motion will be resolved. Regardless of the outcome of that

motion, Mr. Bollea is entitled to take Mr. Cook's deposition **as Gawker's corporate designee** regarding the Article, and his personal communications regarding the sex video.

**First**, the topics noticed regarding the Article are relevant and necessary in this case. The Article demonstrates Gawker's malice and is relevant to Mr. Bollea's claims for punitive damages. The Article expressly states that Gawker would not comply with the Court's Order granting Plaintiff's Motion for Temporary Injunction, and linked to a third party website playing the Gawker-edited sex video of Mr. Bollea. Gawker's acts evidence its **intent to harm** Mr. Bollea, and Mr. Bollea should be permitted to question Gawker about the Article.

**Second**, Mr. Cook's personal, individual objections to his deposition in New York are irrelevant to a deposition of him as a corporate designee of Gawker. Mr. Bollea is entitled to obtain Gawker's position on the topics noticed, and Mr. Cook **as a corporate designee**, on three discrete topics relating to Gawker's articles (and Mr. Cook's involvement in them and his related communications).

With the fact discovery cutoff quickly approaching on April 10, Mr. Bollea respectfully requests expedited consideration of Gawker's objection to this deposition at the status conference on March 19, 2015. The parties are taking up the matter with Judge Case early next week, and will be able to report his recommendation to the Court at the March 19 status conference.

## II. RELEVANT FACTS AND PROCEDURAL HISTORY

As the Court is well aware, this case arises from Gawker's publication of a secretly taped video of Mr. Bollea nude and having private sexual relations in a private bedroom. Gawker had been notified repeatedly that the video was illegally recorded, and had been illegally posted by Gawker, yet Gawker ignored Mr. Bollea's demands to remove it. As a result, 5.35 million people flocked to Gawker.com to see the post and video.

On April 25, 2013, the Court granted Mr. Bollea's motion for temporary injunction requiring Gawker to remove the video of Mr. Bollea, and accompanying text, from the Gawker.com website.

On or about April 25, 2013, Gawker posted the Article bearing the title: "A Judge Told Us to Take Down Our Hulk Hogan Sex Tape Post. We Won't." The Article was credited to John Cook, who was Editor-in-Chief of Gawker.com at the time. The Article describes Gawker's objections to the Court Order, and included a link to the Gawker-edited video posted on another website. In the Article, Mr. Cook repeatedly refers to the sex video as the "Hulk Hogan f*king session" (asterisk supplied) and criticizes this court and its ruling. A copy of the Article is attached as **Exhibit B** hereto.

On February 9, 2015, Mr. Bollea served a deposition subpoena on John Cook individually in New York. On February 11, 2015, Gawker's counsel filed a Motion to Quash and for Protective Order in New York state court seeking to prevent Mr. Cook from testifying in this case. Though the motion has been fully briefed, no hearing date has been scheduled on that motion, and there has been no indication from the New York court when that motion might be resolved.

On March 10, 2015, Mr. Bollea served Gawker with a deposition notice related to the Article (**Exhibit A** hereto) with the following topics:

> **Topic 1:** John Cook's writing and posting of the article entitled: "A Judge Told Us to Take Down Our Hulk Hogan Sex Tape Post. We Won't," posted at Gawker.com on or about April 25, 2013, and communications regarding same.
>
> **Topic 2**: John Cook's written and oral communications regarding the one minute forty-one second long video that was initially made available at http://gawker.com/5948770/even-for-a-minute-watching-hulk-hogan-have-sex-in-a-canopy-bed-is-not-safe-for-work-but-watch-it-anyway, including his communications regarding the cease-and-desist communications of David Houston and the claims in the captioned lawsuit.

> **Topic 3**: John Cook's observations and participation in decision-making regarding the one minute forty-one second long video that was initially made available at http://gawker.com/5948770/even-for-a-minute-watching-hulk-hogan-have-sex-in-a-canopy-bed-is-not-safe-for-work-but-watch-it-anyway.

That same day, Mr. Bollea sent the deposition notice and a cover letter to Special Discovery Magistrate Judge James Case seeking expedited resolution of Gawker's anticipated objections. On March 11, 2015, counsel for Gawker requested that the New York state court be allowed to adjudicate the issue of Mr. Cook's deposition first. The parties are scheduled to have a telephonic hearing before Judge Case in advance of the March 19 status conference with Judge Campbell.

## III. THE MOTION TO COMPEL SHOULD BE GRANTED.

### A. The Deposition of Gawker Related to the Article is Relevant and Necessary.

"Parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action. . . . It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." Fla. R. Civ. P. 1.280(b)(1). "[T]he test is relevancy to the subject matter of the action rather than to the precise issues framed by the pleadings." *Charles Sales Corp. v. Rovenger*, 88 So.2d 551, 553 (Fla. 1956).

First, deposition testimony from a Gawker representative regarding Topic 1—John Cook's writing and posting of the Article and communications regarding the same—is clearly relevant. The Article demonstrates Gawker's malice and is relevant to Mr. Bollea's claims for punitive damages. The Article expressly states that Gawker would not comply with the Court's Order Granting Plaintiff's Motion for Temporary Injunction, and linked to a third party website playing the Gawker-edited sex video of Mr. Bollea. Gawker's acts evidence its intent to harm

Mr. Bollea, and Mr. Cook (Gawker.com's Editor-in-Chief at the time, and credited author of the Article) was the Gawker representative with the most knowledge regarding the Article.

Second, deposition testimony from a Gawker representative regarding Topic 2—John Cook's written and oral communications regarding the one minute forty-one second long video that was initially made available at http://gawker.com/5948770/even-for-a-minute-watching-hulk-hogan-have-sex-in-a-canopy-bed-is-not-safe-for-work-but-watch-it-anyway, including his communications regarding the cease-and-desist communications of David Houston and the claims in the captioned lawsuit—is clearly relevant. Mr. Cook was personally involved in both the initial publication of the video at issue, its removal from Gawker.com six months later, and communications with Gawker employees and executives throughout that time. He apparently was involved in the matter throughout the six months that the video was posted online, and in the decision-making process regarding the removal of the sex video in 2013, and in the posting of a link to the same Gawker-edited sex video that was playing at another website.

Third, deposition testimony from a Gawker representative regarding Topic 3—John Cook's observations and participation in decision-making regarding the one minute forty-one second long video that was initially made available at http://gawker.com/5948770/even-for-a-minute-watching-hulk-hogan-have-sex-in-a-canopy-bed-is-not-safe-for-work-but-watch-it-anyway—is clearly relevant. Mr. Cook has worked at Gawker throughout the time that the video was first posted (as a senior editor), ran online for six months (during which time he was elevated to the position of Editor-in-Chief), and was removed from Gawker.com (though linked to a third party webpage that played the sex video), and Mr. Cook engaged in communications internally about the sex video and publicly blogged about it while serving as Editor-in-Chief of Gawker.com. Mr. Cook clearly has evidence relevant to this case, including, among other

things, Gawker's policies towards privacy (or lack thereof), Gawker's editorial practices, and how Gawker benefitted from publishing the video.

Overall, deposition testimony on the topics listed relates to the sex video, is directly relevant in this case, and also is reasonably calculated to lead to admissible evidence.

### B. Mr. Bollea is Entitled to a Deposition of Gawker Regardless of Mr. Cook's Objections to an Individual Deposition.

Mr. Cook and Gawker have objected to Mr. Cook's deposition based on New York's Shield Law. The Shield Law, Civ. Rights Law § 79-h, protects journalists from being held in contempt of court for refusing to answer questions regarding their communications with and the identity of confidential **sources** and, absent a showing of compelling need, their communications with non-confidential **sources** and **unreported** news as well. Section 79-h has no application here because the discovery sought does not pertain to Gawker's sources, and also does not pertain to unreported news. Therefore, the objections do not apply to allow Gawker to evade its discovery obligations to allow its witnesses with relevant knowledge to be disposed.[1]

The Florida Rules of Civil Procedure specifically prescribe that a party can take the deposition of a corporation, separate and distinct from individuals, including that corporation's employees:

> In the notice a party may name as the deponent a public or private corporation, a partnership or association, or a governmental agency, and designate with reasonable particularity the matters on which examination is requested. The organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to do so, to testify on its behalf and may state the matters on which each person designated will testify. The persons so designated shall testify about matters known or reasonably available to

[1] Gawker's and Mr. Cook's motion in New York is nothing more than a tactic to avoid having to testify about Gawker's illegal actions. This Court need not adjudicate the issue of the New York Shield Law, because the deposition notice at issue is **of Gawker**. Further, if there were any valid objections based on the Shield Law (which there are not), they should be raised **at the time of the deposition**, and as to specific questions, rather than in an effort to prevent the deposition from going forward at all.

> the organization. This subdivision does not preclude taking a deposition by any other procedure authorized in these rules.

Fla. R. Civ. P. Rule 1.310(b)(6).

As held in *Carriage Hills Condo., Inc. v. JBH Roofing & Constructors, Inc.*:

> As we have previously pointed out, the substance of Rule 1.310(b)(6) was borrowed from a 1970 amendment to its federal counterpart, Federal Rule of Civil Procedure 30(b)(6). Designed in part to streamline litigation, Rule 30(b)(6) imposes burdens upon both parties. The party seeking discovery is required to describe, with reasonable particularity, the matter(s) for examination. The responding entity must then produce one or more witnesses who can testify as to the corporation's knowledge of the specified topics. This "enables [the] deposing party to gather information from [the] corporation by way of a human being named by that corporation to serve as the corporation's voice." Moreover, the person(s) designated to testify represents the collective knowledge of the corporation, not of the individual deponents. **As the corporation's "voice" the witness does "not simply testify [ ] about matters within his or her personal knowledge, but rather is 'speaking for the corporation.'" Put simply, the corporation appears vicariously through its designees.** ... When a Rule 1.310(b)(6) deposition is properly noticed and conducted, the testimony of the designee "is deemed to be the testimony of the corporation itself." As such, the testimony is binding on the entity.

*Carriage Hills Condo., Inc. v. JBH Roofing & Constructors, Inc.*, 109 So. 3d 329, 334-335 (Fla. 4th DCA 2013) review dismissed sub nom. *J.B.H. Roofing & Constructors v. Carriage Hills Condo.*, Inc., 130 So. 3d 692 (Fla. 2013), reh'g denied (Nov. 7, 2013) (internal citations omitted) (emphasis added).

Here, Mr. Bollea is entitled to obtain Gawker's testimony and Gawker's position on the topics noticed. The topics are relevant to Mr. Bollea's claims and damages, and the deposition notice and noticed topics fall within the purview of Florida Rules of Civil Procedure 1.310(b)(6).

### C. Fairness and Justice Support the Noticed Deposition.

As stated in the seminal case of *Surf Drugs, Inc. v. Vermette*, 236 So.2d 108, 111 (Fla. 1970), "[a] primary purpose in the adoption of the Florida Rules of Civil Procedure is to prevent

the use of surprise, trickery, bluff and legal gymnastics." Moreover, in *Schlagenhauf v. Holder*, 379 U.S. 104, 114–15, 85 S.Ct. 234, 13 L.Ed.2d 152 (1964), the U.S. Supreme Court held that the rules of discovery should be afforded "'broad and liberal treatment' to effectuate their purpose that" trials should not be "'carried on in the dark.'" *Id.* (quoting *Hickman v. Taylor*, 329 U.S. 495, 501, 507, 67 S.Ct. 385, 91 L.Ed. 451 (1947)). "A search for truth and justice can be accomplished only when all relevant facts are before the judicial tribunal. Those relevant facts should be the determining factor rather than gamesmanship, surprise, or superior trial tactics." *Dodson v. Persell*, 390 So. 2d 704, 707 (Fla. 1980).

Here, fairness and justice would be served by allowing Mr. Bollea a deposition of Gawker to obtain discovery relevant to the Article and Mr. Cook's communications regarding the sex video. Gawker's improper tactics are evidenced by, among other things: its refusal to accept service of a deposition subpoena for Mr. Cook, requiring Mr. Bollea to personally serve a subpoena on Mr. Cook in New York. Gawker's counsel then immediately represented Mr. Cook and filed a motion in New York to prevent that deposition from proceeding.

Gawker's actions are clearly aimed to prevent Mr. Cook from testifying, and preventing Mr. Bollea from obtaining relevant evidence. Such tactics should not be permitted.

## IV. CONCLUSION

For the foregoing reasons, Mr. Bollea requests that the Court compel Gawker to produce John Cook as its corporate witness responsive to the topics listed in Mr. Bollea's Notice of Taking Videotaped Deposition (**Exhibit A**).

Respectfully submitted,

*/s/ Shane B. Vogt*
Kenneth G. Turkel, Esq.
Florida Bar No. 867233
Shane B. Vogt
Florida Bar No. 0257620
BAJO | CUVA | COHEN | TURKEL
100 North Tampa Street, Suite 1900
Tampa, Florida 33602
Tel: (813) 443-2199
Fax: (813) 443-2193
Email: kturkel@bajocuva.com
Email: svogt@bajocuva.com

Charles J. Harder, Esq.
PHV No. 102333
Douglas E. Mirell, Esq.
PHV No. 109885
Sarah E. Luppen, Esq.
PHV No. 113729
HARDER MIRELL & ABRAMS LLP
1925 Century Park East, Suite 800
Los Angeles, CA 90067
Tel: (424) 203-1600
Fax: (424) 203-1601
Email: charder@hmafirm.com
Email: dmirell@hmafirm.com
Email: sluppen@hmafirm.com

Attorneys for Plaintiff

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-mail via the e-portal system this 12th day of March, 2015 to the following:

Barry A. Cohen, Esquire
Michael W. Gaines, Esquire
The Cohen Law Group
201 E. Kennedy Blvd., Suite 1950
Tampa, Florida 33602
bcohen@tampalawfirm.com
mgaines@tampalawfirm.com
jhalle@tampalawfirm.com
mwalsh@tampalawfirm.com
*Counsel for Heather Clem*

Gregg D. Thomas, Esquire
Rachel E. Fugate, Esquire
Thomas & LoCicero PL
601 S. Boulevard
Tampa, Florida 33606
gthomas@tlolawfirm.com
rfugate@tlolawfirm.com
kbrown@tlolawfirm.com
pmcgonigle@tlolawfirm.com
*Counsel for Gawker Defendants*

David R. Houston, Esquire
Law Office of David R. Houston
432 Court Street
Reno, NV 89501
dhouston@houstonatlaw.com
krosser@houstonatlaw.com

Seth D. Berlin, Esquire
Paul J. Safier, Esquire
Alia L. Smith, Esquire
Michael D. Sullivan, Esquire
Levine Sullivan Koch & Schulz, LLP
1899 L. Street, NW, Suite 200
Washington, DC 20036
sberlin@lskslaw.com
psafier@lskslaw.com
asmith@lskslaw.com
msullivan@lskslaw.com
*Pro Hac Vice Counsel for Gawker Defendants*

Michael Berry, Esquire
Levine Sullivan Koch & Schultz, LLP
1760 Market Street, Suite 1001
Philadelphia, PA 19103
mberry@lskslaw.com
*Pro Hac Vice Counsel for Gawker Defendants*

*/s/ Shane B. Vogt*
Attorney