

EXHIBIT E

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

TERRY GENE BOLLEA,
professionally known as
HULK HOGAN,

Plaintiff,

vs.

Case No.
12012447-CI-011

HEATHER CLEM; GAWKER MEDIA, LLC
a/k/a GAWKER MEDIA; GAWKER
MEDIA GROUP, INC., a/k/a 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 a/k/a
GAWKER MEDIA,

Defendants.

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PLAINTIFF'S MOTION FOR AN ORDER TO SHOW CAUSE WHY
GAWKER MEDIA, LLC SHOULD NOT BE HELD IN CIVIL CONTEMPT

BEFORE: HONORABLE PAMELA A.M. CAMPBELL
Circuit Court Judge

DATE: May 29, 2013

TIME: 2:06 p.m. to 2:34 p.m.

PLACE: PINELLAS COUNTY COURTHOUSE
545 1st Avenue North
St. Petersburg, Florida

REPORTED BY: JULIE A. ALLISON, RPR
Notary Public, State of
Florida at Large

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17	INDEX	PAGE
18		
19	PROCEEDINGS	3
20	REPORTER'S CERTIFICATE	27

21	E X H I B I T S	
22	No. Description	PAGE
23		
24	(NONE)	

25

1 P R O C E E D I N G S

2 THE COURT: Good afternoon, everybody.

3 MR. BERLIN: Good afternoon, Your Honor.

4 MR. HARDER: Good afternoon, Judge.

5 THE COURT: And I think you can both sit
6 down.

7 Okay. So we are here this afternoon on
8 Case No. 12012447, Terry Bollea versus
9 Gawker Media and Heather Clem.

10 And we are here on Plaintiff's Motion For an
11 Order to Show Cause Why Gawker Media Should Not Be
12 Held in Civil Contempt.

13 You may proceed.

14 (Interruption in proceedings.)

15 THE COURT: And these are some of our court
16 attorneys.

17 Okay.

18 MR. HARDER: Thank you, Your Honor.
19 Charles Harder on behalf of the plaintiff,
20 Terry Bollea.

21 Your Honor, I think we pretty much said it in
22 our papers. And I'll just recap a few points.

23 On April 24th we were all before Your Honor
24 on our motion for a preliminary -- or I think you
25 call it a temporary injunction. And Your Honor

1 granted that motion and issued the injunction that
2 afternoon, orally. And counsel for the defense
3 was here in the courtroom and heard it.

4 But the -- Gawker Media did not remove the
5 content that they were required to move pursuant
6 to the order.

7 The next day Your Honor issued a written
8 order. And the website at gawker.com continued to
9 have the same content for about an hour or two.
10 And then they changed it around so that they got
11 rid of the video playing at their website, but
12 they replaced it with a link to the same sex tape
13 video that has been playing at their website. And
14 they were directing traffic to a different
15 website.

16 So their content was allowing viewers to view
17 that same sex tape that Your Honor had ordered be
18 removed.

19 The content of the Web page itself remained
20 the same in terms of the text. It had all of the
21 same quotations from the sex tape and the other
22 descriptions of that sexual encounter that
23 Your Honor had ordered to be removed.

24 The defense filed an emergency appeal with
25 the Court of Appeal. And five days after you

1 initially issued your order, the Court of Appeal
2 made a ruling which left in place Item No. 3 from
3 your injunction order.

4 And Item No. 3 states that, "Gawker Media
5 is," quote, "enjoined from posting, publishing, or
6 broadcasting the full-length video and all
7 portions, clips, still images, audio, and
8 transcripts of that recording.

9 So Item No. 3 of your order remained in place
10 from the day that you issued it on the 24th of
11 April all the way until May 15th. That was a
12 21-day period. And throughout that entire time --
13 on May 15th the Court of Appeal stayed the
14 injunction order, but it took 21 days for that to
15 happen.

16 And throughout that 21-day period,
17 Gawker Media continued to post what I just
18 described, which had a link to the sex tape and
19 had all the quotation transcript of the sex tape.

20 And, in addition to that, they -- on the 25th
21 of April, they posted a new article which defied
22 your order and said, "Judge Campbell instructed us
23 to remove this content." Quote, "We won't," close
24 quote. And then it went on to describe why they
25 would not comply with your injunction order.

1 Now, Your Honor, as you well know, the proper
2 procedure for a defendant who is enjoined is to
3 remove all the content and go through the
4 appellate process.

5 And if 21 days later the Court of Appeal
6 issues a stay order, then they're free to comply
7 with that. But until such time they can't just
8 defy your orders.

9 And, in addition to that, they posted up on
10 their website that they were defying your order.
11 145,000 people went to that page and viewed that
12 page, showing that they were in defiance of your
13 order.

14 And, Your Honor, we believe that the
15 appropriate measure is for them to be held in
16 contempt.

17 And we have asked for Nick Denton, who's one
18 of the defendants in this case -- and he's the
19 owner of Gawker Media or the controlling
20 shareholder. And he's, I believe, the CEO. He
21 was the chief executive.

22 We believe that he should come to this court
23 and answer Your Honor's questions as to why it is
24 that he felt it was appropriate for his company to
25 defy your order and not to comply with it during

1 the pendency of their emergency appeal.

2 And we are also requesting monetary sanctions
3 and attorney's fees. And if Your Honor does grant
4 the motion that's before you and issue an OSC, we
5 would like to add some briefing so that we can
6 explain what measure of monetary sanctions we
7 believe is appropriate and also be able to put
8 forth to Your Honor the attorney's fees that were
9 incurred.

10 Thank you.

11 THE COURT: Okay. Response, please.

12 MR. BERLIN: Good afternoon, Your Honor.

13 Seth Berlin with Levine Sullivan Koch & Schulz
14 from Washington, D.C.

15 I want to first thank the Court for
16 authorizing me and my colleague, Paul Safier, for
17 appearing pro hac. We appreciate the opportunity
18 to appear before Your Honor.

19 THE COURT: You're welcome.

20 MR. BERLIN: Let me start by saying that the
21 motion that's before you seeks -- and there is a
22 number of things that Mr. Harder talked about.
23 We'll try to move through them some -- with some
24 order, I hope.

25 The motion before you seeks explicitly in its

1 title and in its first paragraph and throughout an
2 order directing Gawker to show why it should not
3 be held in civil contempt.

4 Civil contempt is a remedy that works
5 prospectively and is designed to coerce an alleged
6 contemnor into compliance. When the Supreme Court
7 described this in a famous case called Gompers, it
8 says, "An alleged contemnor has the keys of his
9 prison in his own pocket." And the idea that if
10 you do what's being ordered, then you can
11 discharge and purge the contempt.

12 Here, as of right now, there is no order that
13 is in effect because it has been fully stayed by
14 the DCA. So there is no basis for civil contempt.
15 And the motion should be denied for that reason.

16 Now, I do want to just take up a couple of
17 other things that Mr. Harden talked about. First
18 of all, let me start with the second of the two
19 stay orders which stayed the order completely.

20 I think we can all agree that if this
21 Court -- in other words, when we were here before
22 Your Honor last time, Your Honor indicated that
23 you would be granting the motion for a temporary
24 restraining order.

25 Mr. Thomas who was arguing for Gawker at that

1 time got up and asked for a stay. If Your Honor
2 had granted a stay and we continued to engage in
3 the conduct -- although we, perhaps, describe it
4 differently than Mr. Harder outlined -- we would
5 not have been in any way, even arguably, in
6 contempt of court.

7 And the DCA has reviewed this Court's
8 decision to deny the stay order. And there was
9 some back and forth when we went to the DCA about
10 whether what the parties were asking for was a
11 review of Your Honor's stay order or separately,
12 independently moving for a stay, and that the
13 Court of Appeals treated the emergency motion for
14 a stay as the motion to review the trial court's
15 order denying the stay of injunction and granted
16 that order and said -- I'm quoting here -- "The
17 trial court's order denying stay is disapproved,"
18 and then entered a full stay.

19 If -- and I mean this as respectfully as I
20 can, Your Honor. But if this Court had correctly
21 stayed the order, as the DCA has now found would
22 happen, there should be no circumstances of which
23 our client, which is otherwise engaging in a
24 conduct protected by the First Amendment, should
25 be facing contempt proceedings.

1 So that is the -- so to the extent that the
2 Court were -- even though it's not really
3 contemplated by civil contempt -- to look
4 backwards, you know, that is the circumstance in
5 which we find ourselves today.

6 And it would seem to us improper to go down
7 the road of contempt where we have an order saying
8 what probably should have happened here is this
9 order should have been stayed.

10 And then Gawker would have been able to, at
11 least during the pendency of appeal, to engage in
12 the speech that it's now engaging in.

13 If I can just turn briefly to the first stay
14 order, just because I wanted to clear this up. I
15 think that what I just said should be dispositive
16 of the motion that's before Your Honor, but I do
17 want to correct a couple of factual assertions.

18 First, the -- the first stay order which was
19 issued -- well, the timing was that Your Honor
20 issued a written order late in the day on a
21 Thursday. Friday morning, early in the morning,
22 we appealed probably by a couple of hours later by
23 an emergency motion for stay. And the next
24 business day, which was the following Monday, we
25 got this provisional stay.

1 And what I think --

2 THE COURT: The one from me?

3 MR. BERLIN: No.

4 THE COURT: From the 2nd DCA?

5 MR. BERLIN: From the Second.

6 There were two stays from the district.

7 THE COURT: Okay.

8 MR. BERLIN: One was essentially granted
9 within about a business day and a half pending the
10 adjudication of the motion to stay. And then the
11 second one was a ruling on the motion to stay.

12 The first one left open one of the four --
13 left in place one of the four paragraphs of
14 Your Honor's order.

15 And I think to have that make sense --
16 Mr. Harder was basically saying that left in place
17 a provision that we violated. And we would
18 respectfully disagree. And with the Court's
19 indulgence, I would like to explain why.

20 The Court's temporary injunction order -- and
21 if you like, I can hand up a copy to defense
22 counsel, a copy to --

23 (Mr. Berlin speaking with Mr. Harder).

24 MR. BERLIN: May I approach, Your Honor?

25 THE COURT: Uh-huh (indicates affirmatively).

1 MR. BERLIN: And I'm turning to the operative
2 paragraphs of the injunction on page 2. The first
3 paragraph basically directs taking down the video
4 itself, the excerpts of the video that were posted
5 on the Gawker website.

6 The second paragraph speaks to the written
7 narrative that accompanied those excerpts that
8 were on the Gawker website, what we've been
9 calling in our papers, "The Gawker Story."

10 The third paragraph says, "Don't broadcast
11 the full-length video from which the excerpts were
12 taken" -- and those haven't been broadcast yet --
13 "or portions, clips, still images," et cetera.

14 And then the fourth paragraph and fifth
15 paragraph really are not at issue here, but it
16 involves turning back over copies of the video and
17 the posting of the bond.

18 In the context of this order, the third -- we
19 are asserting -- and I believe this is correct --
20 that the third paragraph, which was the one left
21 in place by the first of the two stay orders, was
22 designed to say, "Don't publish anything else from
23 the video that had not been previously published."
24 And we understood it that way because the first
25 paragraph specifically dealt with what had been

1 published in terms of the excerpts of the video.
2 And the second paragraph expressly dealt with the
3 text that had been previously published. And what
4 we understood the DCA to be saying is, "Look, we
5 just got an emergency order" -- I mean, "an
6 emergency motion. We're going to sort this out.
7 And what we're going to do -- which is appropriate
8 in the context of the stay, is to preserve the
9 status quo. We're going to continue to allow
10 Gawker to publish what it had previously
11 published, i.e., the tape and the article, but
12 we're not going to allow Gawker to publish new
13 things, which is what's governed by this third
14 paragraph."

15 So we would respectfully disagree with
16 Mr. Harder's characterization that even when that
17 first stay was issued that we were in violation of
18 that order.

19 And it would seem to us, therefore, that
20 especially when -- and the case law is pretty
21 clear about this -- that when a party seeks, as we
22 did here in a good faith emergency appellate
23 review in the First Amendment context, we are, in
24 fact, when it's involving pure speech, we are
25 actually permitted to continue to speak.

1 And, you know, we do so potentially at our
2 peril. If we had not gotten the stay and the
3 Court said, "No, that was a perfectly
4 constitutional order," then we may well have found
5 ourselves in hot water, but that is not what we
6 have here.

7 And we would respectfully request for that
8 reason that the motion be denied.

9 Lastly, I just want to say one small thing
10 about -- actually, I have two last things. I
11 apologize.

12 But one of the things on the comments from
13 Mr. Harder, he referred to Gawker hyperlinking to
14 another site.

15 One of the points that, as Your Honor may
16 recall, we made it on papers, on the TRO motion,
17 and that Gawker feels quite strongly about it, is
18 that this video that was enjoined before being
19 stayed by the DCA was -- and used -- well, maybe
20 not used, but was at the time available in other
21 places, not controlled by Gawker. They're not our
22 websites.

23 And in commenting on the fact that our client
24 disagreed with this order -- and it did it in a
25 way that acknowledged that a court order is a

1 serious thing and, although they disagreed with
2 the order, they were taking down the video and
3 were trying to say that, that the -- that by
4 pointing out that you can still get it somewhere
5 else, it pointed out, to some extent, as we had in
6 our papers, the futility of the injunction.

7 And one of the things that needs to be taken
8 into consideration in issuing both an order and
9 certainly going down the road to contempt is
10 whether the order would have provided meaningful
11 relief to the allegedly aggrieved party. And here
12 we would say that it would not.

13 And in that regard, the order that was
14 entered, which was requested and then drafted by
15 plaintiff's counsel nowhere mentions the word
16 "hyperlink."

17 And they cite in their papers a case in which
18 a party was found in contempt for violating an
19 order for hyperlinking, but in that order it
20 actually said, "You may not hyperlink to this
21 content."

22 This order talks about, "You may not publish
23 this content."

24 And there is a large body of case law that
25 says hyperlinking is different than publishing.

1 Hyperlinking is referring to something else.

2 And so we also think that because the order
3 did not expressly deal with that, even if it were
4 not otherwise stayed, it would not have barred
5 that conduct, including -- because it was part of
6 a commentary about the fact that the video was
7 available elsewhere.

8 I am prepared, if the Court would like -- I
9 don't know. I don't want to take up more of the
10 Court's time than you would like, but I am also
11 prepared to address the -- Gawker's position,
12 which may be more appropriate if the Court were
13 not otherwise inclined to deny the motion for the
14 reasons I've already outlined, I am prepared to
15 address why in the First Amendment context
16 involving pure speech a party is not -- is in sort
17 of this unique area where a party may, if they
18 are -- if it is a fundamental constitutional right
19 that's at issue, you know, proceed with their
20 speech even in the face of a court order, I would
21 submit, Your Honor, that because it was stayed
22 here, if this had been, as the DCA has now
23 determined it should have been, stayed at the
24 time, we wouldn't be here having these
25 discussions. We probably don't need to go down

1 that road; but I am, if the Court would like,
2 prepared to that.

3 And then the last thing I will say; that if
4 the Court is not otherwise inclined to deny the
5 motion for the reasons that I've set -- and this
6 really is my final thing -- the -- what we have
7 here is circumstances where there is no
8 prospective contempt, because there was an order
9 that was not in effect.

10 So we're only looking backwards. We're
11 looking backwards at, you know, what we would
12 respectfully suggest is about a day's worth of --
13 a business day's worth of time.

14 And Mr. Harder sort of reshuffled the deck
15 chairs to make it longer than that; but either
16 way, it's fixed in time. We know it happened.
17 And it would seem to me that before we would go
18 down the road to figuring out whether -- and
19 extending significant resources on all sides,
20 including the Court addressing this question, we
21 might see what the DCA does on the merits of the
22 appeal of the temporary restraining order and
23 temporary injunction to -- before getting to that
24 point.

25 And there is nothing that would prevent us

1 from returning in a couple of months to address
2 the question. You know, "Did you violate an order
3 that you should not have violated," which we'll no
4 doubt be informed by what the DCA does on the
5 merits.

6 If they were to find, for example, that it
7 was -- it was unconstitutional, that would order
8 one way; if found differently, that might order a
9 different way. It seems like it would make a lot
10 more sense for all parties to go through it at
11 that time.

12 And then including to the extent that there
13 is now a request that Mr. Denton, who is a party
14 but has not been served, be compelled to appear in
15 this court, I would respectfully suggest that
16 there is a well-recognized court process for
17 compelling the attendances -- attendance of
18 witnesses at a proceeding.

19 And that if the plaintiffs [sic] wish to have
20 Mr. Denton present, then they should ask this
21 Court for permission and issue subpoena and have
22 him appear or they should serve him with papers in
23 which he was named as a defendant in this case at
24 the end of December and now, you know, approaching
25 the end of May has not been served yet.

1 I don't think it would otherwise be
2 appropriate to compel his attendance, you know,
3 some -- close to a thousand miles to where he
4 resides in New York without availing themselves of
5 the well-recognized process for him being here.

6 Before I sit down, I just want to ask if the
7 Court has any questions.

8 THE COURT: Thank you, Mr. Berlin. I do.

9 Are you saying that there -- the hyperlinks
10 that were included on the website -- and I've not
11 been on the website, so I don't know -- that the
12 hyperlinks were to other websites or other places
13 that were outside of Gawker's control?

14 MR. BERLIN: That's correct, Your Honor.
15 It's actually one hyperlink to one website. And
16 if you were to go there today, that link goes to a
17 website that no longer posts that content. We
18 don't know why. We don't control it. We don't
19 know why the content is not there now.

20 But at the time, it went to a website called
21 The Daily Motion, I believe is what it's called.
22 That is not a website that is controlled, as I
23 understand it, by Gawker or any of its --

24 THE COURT: Unrelated to Gawker?

25 MR. BERLIN: Unrelated to Gawker, that's

1 correct.

2 THE COURT: Thank you.

3 MR. BERLIN: Any other questions?

4 THE COURT: No, that's it.

5 MR. BERLIN: Thank you, Your Honor.

6 THE COURT: Yes, Mr. Harder.

7 MR. HARDER: Thank you, Your Honor. Just to
8 address the points that Mr. Berlin made: He
9 initially started out by saying that civil
10 contempt is not an available remedy because you
11 can no longer punish them for disobeying an order
12 that has been stayed.

13 Actually -- and he -- it sounded like he was
14 citing the cases, but I haven't seen any of his
15 cases because he hasn't provided a written
16 response.

17 But we found a lot of cases that say there
18 are different types of contempt; one is to impose
19 a civil contempt order that somebody is fined a
20 certain amount of money per day if they don't stop
21 doing what they're supposed to stop doing.

22 But there's separate civil contempt remedies
23 which go to the plaintiff's damages for an ongoing
24 contempt during the time period in which they're
25 required to comply, for instance, there's not a

1 stay by a Court of Appeal. As well as attorney's
2 fees. That's another component. Those are
3 available to Your Honor.

4 Mr. Berlin talked about the Court of Appeals'
5 order on April 29th, which left in place Item
6 No. 3 of your injunction, but stayed the other
7 items.

8 A couple of points about that. First, that
9 was -- that order came five days after your
10 injunction order. So they make it sound like it
11 happened immediately. There were five entire days
12 where they were just completely disobeying your
13 injunction order. And the Court of Appeal had
14 done nothing to stay any aspect it. So that is
15 separate grounds for contempt.

16 The second point is that the Court of Appeal
17 left in place Item No. 3. It could have stricken
18 the language from Item No. 3 that dealt with
19 portions, clips, and transcripts. It left those
20 in place.

21 Now, they chose to interpret it in a certain
22 way; but if you look at the words on the page,
23 what they did was a violation of your order. And
24 that portion had not been stayed.

25 When they were publishing the transcript,

1 that was a violation of your order that had not
2 been stayed.

3 And we believe that by hyperlinking to the
4 actual sex tape on a different website, that was a
5 violation of your order as well.

6 It's not that they are completely unrelated
7 websites. The other websites obtained the sex
8 tape because Gawker had the sex tape on its site.
9 That's where people got it from. It was an edited
10 version of a full-length sex tape. That edited
11 version was 101 seconds of very specific content
12 that was edited in a specific way.

13 The website that they were linking to was the
14 exact same edited version that had originally come
15 from Gawker.

16 Now, I don't know the relationship between
17 those two websites. Perhaps they're completely
18 unrelated, or perhaps there's some sort of a
19 business relationship.

20 But I think that's irrelevant because when
21 your order says you have to remove the content,
22 the clips and everything and then they have a
23 hyperlink where all a person has to do is click
24 and then they go to the exact content that you had
25 ordered enjoined, I believe that the law

1 supports -- and we've cited cases -- the law
2 supports that that is a violation.

3 Mr. Berlin says that there are cases out
4 there that says that hyperlinking is not
5 publishing. I haven't seen any of them. Again,
6 they haven't provided a written response. So I
7 haven't seen that. Once they do, I'd be happy to
8 address those case.

9 As far as Mr. Denton, he is a defendant. He,
10 as far as I know, has not been served. However,
11 I'm not asking that he appear as an individual
12 defendant.

13 I'm asking that he appear here because he's
14 the CEO of Gawker Media, which is a defendant that
15 has been served that's appearing here that was
16 ordered enjoined and that didn't comply with the
17 order. It's in that capacity that we're asking
18 that he appear.

19 I think, Your Honor, the ultimate question is
20 this: Is a party to a lawsuit allowed to simply
21 disobey a court's order just because they don't
22 agree with it and they intend to appeal it and
23 they intend to be successful on the appeal?

24 If that were the case, nobody would comply
25 with court orders because they would all disagree

1 with them and they would all expect to win on
2 appeal.

3 So I think that it is 100 percent appropriate
4 to impose sanctions in this situation.

5 Thank you.

6 THE COURT: Thank you. Thank you,
7 Mr. Harder.

8 All right. I'm going to deny the motion as
9 written. The motion requires -- requests civil
10 contempt. In civil contempt there's indirect; and
11 there's direct. And civil contempt is to coerce
12 someone not to do something.

13 And so at this point in time, it appears as
14 though whatever the events that have occurred has
15 already occurred. And so it looks as though the
16 intent of the plaintiff is really more to punish,
17 which more goes into the criminal contempt realm.

18 And at this point in time, I believe it's
19 premature, since the Second District Court of
20 Appeal has stayed the issue at this point.

21 So in the future we'll see what happens with
22 the appellate issue, but I am denying the civil
23 contempt motion as requested, as written. That's
24 without prejudice.

25 If something later on comes about after the

1 2nd DCA rules, then I think at that point in time
2 I would entertain something else if you believe
3 it's appropriate at that point in time. But for
4 now the motion for civil contempt is denied.

5 So with that I'm going to ask you,
6 Mr. Berlin, to please prepare the order from the
7 hearing. Please in your order -- I know that
8 right now everyone is required to E-file, but
9 Mr. Berlin since you weren't here the last
10 hearing, I can't see anything that goes into
11 E-portal just yet.

12 So if you would please just tell me in your
13 cover letter that you physically print on a piece
14 of paper and you mail to me that it comes from the
15 hearing, today's date, and that the other counsel
16 have seen it and reviewed the language -- approve
17 of the language.

18 If you don't approve of the language, then
19 just tell me that they don't approve of the
20 language. And each side can submit their own
21 order.

22 But if you'll please mail it directly to me
23 here with sufficient copies and envelopes with
24 postage.

25 I'm sure that probably you're familiar, all

1 the courts, I think, are struggling financially.
2 And, unfortunately, that's just the way it's done.

3 MR. BERLIN: Happy to do so, Your Honor.
4 Would it be helpful to the Court to also provide
5 an electronic copy to your J.A.?

6 THE COURT: No, but thank you very much.
7 All right. Thank you. See you again.

8 MR. BERLIN: Thank you, Your Honor.

9 MR. HARDER: Thank you, Judge.

10 (Proceedings concluded at 2:34 p.m.)

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REPORTER'S CERTIFICATE

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STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

I, JULIE A. ALLISON, Registered Professional Reporter, certify that I was authorized to and did stenographically report the foregoing hearing; 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 action.

Dated this 31st day of May 2013.

JULIE A. ALLISON, RPR