

**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, et al.,

Defendants.

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**PLAINTIFF'S OPPOSITION TO INTERVENORS' MOTION TO UNSEAL ALL  
JUDICIAL RECORDS CURRENTLY FILED UNDER SEAL AND CROSS-MOTION TO  
CLARIFY GROUNDS FOR SEALING SURREPTITIOUSLY RECORDED  
MATERIALS AND EVIDENCE DERIVED THEREFROM**

Plaintiff, Terry Bollea, professionally known as Hulk Hogan ("Mr. Bollea"), responds in opposition to Intervenor's Motion to Unseal All Judicial Records Currently Filed Under Seal, (the "Motion"), and moves, pursuant to Rule 1.100(b), of Judicial Administration 2.420, Article I, Section 12 of the Florida Constitution and Florida's Security of Communications Act (the "Act"), to prohibit the unsealing of any records not specifically identified in the Motion and to maintain all surreptitiously recorded footage of Mr. Bollea under seal. In support, Mr. Bollea states as follows:

**Introduction**

This Court, on February 17, 2016, and the jury, on March 18, 2016, determined that Mr. Bollea was secretly recorded in a place in which he had a reasonable expectation of privacy. No one should be permitted to see or hear these recordings. All of the recordings of Mr. Bollea violated his privacy, the Act and Florida's Constitution. The Act prohibits any "use" or "disclosure" of the contents of those illegal recordings. § 934.03, *Fla. Stat.*, Florida's public

policy and constitutional and statutory prohibitions against secret recordings are so strong that courts are prohibited from receiving the contents of and any evidence derived from such secret recordings into evidence. § 934.06, *Fla. Stat.*

Pitched as a motion to conform this Court's sealing orders with recent directives of the Second District Court of Appeal (which Mr. Bollea does not oppose), Intervenors' motion actually appears to seek to unseal and disseminate to the public **everything** filed in this litigation, including extremely sensitive video and audio recordings of sexual activity and private conversations which a jury has already found were improperly and illegally recorded, and portions of which were distributed to the public in violation of Florida law and Mr. Bollea's rights.

Mr. Bollea does not want and has never wanted "secrecy" for this entire proceeding. Unfortunately, however, Gawker Defendants have routinely dumped voluminous materials in the court file, portions of which should not be made public. This tactic forced Mr. Bollea to repeatedly seek to seal these private, irrelevant and legally protected materials. Often times, this proved difficult because of the volume of materials and the manner in which Gawker Defendants weaved them into their filings.

In large part, the Motion does not adequately describe the remedy sought (i.e. the specific materials Intervenors want unsealed). This deficiency seems consistent with Gawker Defendants' strategy. In fact, Gawker Defendants have continued their mass dump of confidential materials into the court file without justification. For example, on March 17, 2016 (the day after the Second DCA quashed this Court's prior sealing orders), Gawker Defendants needlessly filed numerous "confidential" deposition transcripts in this case. Arguably the Motion covers these materials, but does not specifically identify them so Mr. Bollea is being

deprived of the opportunity to address all of the depositions and the reasons why those portions must remain sealed.

Significantly, Intervenors make no attempt to meet the burden placed upon them to unseal records; many of which were not at issue in the Second DCA's recent decision. This lack of clarity will result in a waste of judicial and attorney resources as the parties will be forced to litigate this same issue multiple times for no good reason.

As the Court knows, on March 16, 2016, the Second District Court of Appeal entered a ruling that unsealed various judicial records in this action. However, the Second DCA's ruling is not a master key which requires that everything that Gawker Defendants saw fit to dump into the file in this case be unsealed; particularly records that were not before the Second DCA, are wholly irrelevant to this litigation, and the release of which will further violate the rights of, and cause harm to, Plaintiff and to third parties. Assuming Intervenors want everything unsealed, the vast majority of items at issue were correctly excluded from evidence and sealed because they are totally irrelevant, untrustworthy and statutorily prohibited from becoming public records under the Act. (*See* 2/17/16 Trans. pp. 41-47, 97-98.)

The continuing perversion and abuse of the laws pertaining to court records which Gawker Defendants have facilitated in this case should be stopped. Mr. Bollea's privacy rights are repeatedly being violated using illegally recorded footage of him in a private bedroom: first, by Gawker; then, by an extortionist; then by the leak to *The National Enquirer*; and now by other media companies attempting to gain access to Court records, properly sealed and wholly irrelevant to the matter at hand. No greater public good is being served. Rather, the goal seems to be motivated solely by the same morbid and sensational prying into Mr. Bollea's private life for its own sake, the jury based its verdict upon.

The public records laws should not be used to victimize Mr. Bollea again and again with the fruits of illegal activity. This case remains about the video excerpts posted on Gawker.com and whether that material alone was a matter of public concern. None of the salient facts or proceedings relative to those issues have been closed.

### **Intervenors Motion is Procedurally Defective**

Intervenors' motion is premature and does not specify with sufficient particularity the remedy sought. The broad demand for "everything" to be unsealed is legally insufficient and patently unfair.

The Florida Rules of Civil Procedure require a movant to state their grounds with particularity and to set forth the relief sought. Fla. R. Civ. Pro. 1.100(b); *Sperling v. United States*, 994 So. 2d 1139 (Fla. 3d DCA 2008). However, the present Motion is purposefully vague and incredibly overbroad. Instead of specifying the **exact** documents that they seek to have unsealed, or even to identify categories of documents that they believe should be unsealed, they attempt to use the Second DCA's order as a wedge to unseal **every** document ever sealed by this Court. In fact, the Motion asks the Court to "unseal all judicial records filed in this action that remain under seal."

To complicate matters further, Intervenors then describe certain documents that such an unsealing would include, but then list only nine of Gawker's filings as examples and just one of Mr. Bollea's. As discussed below, Mr. Bollea has reviewed those ten filings and determined which of those he consents to unsealing; however, that does not justify a vague and overbroad demand from Intervenors to open the floodgates and unseal everything in the file; even materials that Intervenors do not even mention in their papers.

**There is No Good Cause to Unseal Video and Audio  
Recordings of Plaintiff And Third Parties<sup>1</sup>**

Intervenors' failure to specifically identify what they want unsealed prevents them from meeting their burden of proof. As the Court has already entered orders sealing the records at issue, Intervenors have the burden to unseal them. "[P]roperly sealed court records are no longer 'public records' within the meaning of the state statutes and constitution [but rather] are *former* public records, now sealed, subject to being reopened upon 'good cause shown.'" *Scott v. Nelson*, 697 So.2d 207, 209 (Fla. 1st DCA 1997); *Times Publishing Co. v. Russell*, 615 So.2d 158, 158-59 (Fla. 1993). The burden to show good cause is on the party seeking to reopen court records. *Id.* at 209.

As for records that are not even identified, Intervenors make no argument to demonstrate good cause. With respect to audio and video files, which contain illegal recordings of Mr. Bollea and Heather Clem having sex as well as their private conversations, Intervenors have not met and cannot meet this burden.

Intervenors attempt to find "cause" in the Second DCA's March 16 Order and state that the parties to this litigation "do not have a reasonable expectation of privacy in matters inherent to a civil proceedings." However, that contention is without merit. The jury in this case has already found that Mr. Bollea has a reasonable expectation of privacy in a surreptitious recording, made without his knowledge, of a sexual encounter. Further, this Court has ruled that Florida law provides a cause of action against those who publish and disseminate a surreptitious recording of sexual activity to the public. In other words, both the law and the facts mandate the

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<sup>1</sup> While Mr. Bollea is aware that defendants repeatedly filed copies of **audio** files obtained from the federal government under the guise of "relevance," Mr. Bollea remains unaware of any occasion wherein defendants have filed copies of the **videos** obtained from the Federal Government under seal. However, such materials have been tendered in camera to the Court and Mr. Bollea opposes any attempt to make such materials public.

conclusion that Mr. Bollea **has the right to keep these recordings private**. Releasing them as public records to the media and the public will vitiate the substantive right to privacy which is mandated by Florida law and which this Court and the jury recognized. Thus, there is no inherent waiver of the right to privacy of audio and video recordings based on Mr. Bollea's bringing of this lawsuit; particularly those which the Court deemed totally irrelevant, untrustworthy and recorded in violation of the Act. Intervenors raise no arguments demonstrating otherwise.

An additional justification supports maintaining all audio and video recordings under seal. This action concerns the single one minute and 41 second video of Mr. Bollea naked and having sex posted on Gawker.com. Other sex videos, as well as the full thirty minute recording received by Gawker, were all ruled inadmissible in this trial. The extortion audio was ruled inadmissible as well. These recordings are of no relevance to the case and contain illegally recorded private conversations and intimate activity involving Mr. Bollea and third party Heather Clem. They are not "inherent" in the case in any fashion. The mere fact that Gawker Defendants dumped these materials into the court file in the hopes of making them public does not automatically render them "inherent."

That aside, despite calling for the unsealing of "all" currently sealed judicial records, Intervenors have highlighted in their motion ten filings that they seek to have unsealed. To be clear, Mr. Bollea does not oppose unsealing of material similar to that already released by the Second District Court of Appeal pursuant to its March 17, 2016 order. However, Intervenors' motion is a stalking horse for the release of illegally recorded, private sex tapes to the public and that must not be allowed to happen.

The public's interest in the details of the litigation and reviewing and scrutinizing the courts processes does not include the ability to view and hear illegally recorded material that is wholly irrelevant to the case. The audio-visual files at issue remain sealed because closure is necessary to avoid substantial injury to Mr. Bollea (as well as non-parties) by the disclosure of matters protected by the right to privacy in matters which are not generally inherent in the specific type of civil proceeding sought to be closed. *See Barron v. Florida Freedom Newspapers, Inc.*, 531 So.2d 113, 114 (Fla. 1988). Here, the matters which are protected by the sealing of certain records are not "generally inherent" in this case—regardless of how badly the Intervenor want them to be. The sealed records involved the content of an audio and video files **not at issue in or inherent to this case**, and which have absolutely no relevance or materiality whatsoever. The unsealing of the audio-visual files of Mr. Bollea would undeniably constitute an invasion of his privacy rights and a violation of Florida law.

This Court was entirely within the bounds of the law to seal proceedings that involved the discussion of the contents of this illegally recorded video and audio footage which is not the subject matter at issue in this case. Moreover, given the very nature of these materials, there was **no** alternative, let alone a more reasonable one, and **no** less restrictive means to protect Mr. Bollea's rights. All of the requirements of *Barron* necessary to close the proceedings **were met**.

Intervenor fail to show at any point in their Motion how the DCA's March 16 Order changes any of the above, or how the audio-visual files, which Gawker Defendants never should have filed or even have access to, and which have been repeatedly ruled by this court to be untrustworthy and irrelevant to the trial of this matter, are somehow "inherent" to this litigation.

The Second District Court of Appeal's recent dismissal of Gawker Defendants' appeal of this Court's September 28, 2015 Clarification Order is significant to this point. Gawker Defendants' counsel should not even have copies of the audio recordings produced by the United States Government. They, like the DVDs, should have been reviewed for relevance by the Court before being filed, if at all. Moreover, the September 28, 2015 Clarification Order makes clear that Mr. Bollea's limited FOIA Authorizations do not authorize the release of any DVDs or audio recordings to anyone for any other purpose, including Intervenors.

**Intervenors Have Identified a Number of Documents for Which the Confidentiality Designation May Be Removed, and Mr. Bollea Does Not Oppose Removing the Designation of Those Documents**

To be clear, Mr. Bollea has never sought to preclude the press and the public from accessing court records inherent in this case. His concern has always been preventing the public disclosure of the contents of illegally recorded videos. Unfortunately, at times, this has proven difficult because Gawker Defendants and their counsel—well-versed in public records laws—employed the strategy of mass dumps of records and materials into the court file that should never be publicly disclosed, along with other materials that should be publicly accessible. Out of necessity, Mr. Bollea sought to seal these bulk filings *in toto*.

Now, Mr. Bollea is only seeking to seal and keep sealed the contents of illegally obtained video and audio recordings. There are numerous documents identified specifically by Intervenors which do not have to have to remain sealed by the Court. **Exhibit A** to this opposition lists those documents.

Mr. Bollea does not waive any objection as to the unsealing of the documents and believes that the majority of documents listed therein are irrelevant to this litigation, infringe on the privacy of Mr. Bollea, and that their unsealing will cause harm to Mr. Bollea. Without



prejudice to that position, Mr. Bollea acknowledges that the documents listed in Exhibit A are either publicly available or are similar to those unsealed by the DCA on March 16, 2016, and so in the interest of avoiding needless litigation and writ proceedings from the Intervenor, does not oppose the removal of the confidentiality designation.

**Conclusion**

For the foregoing reasons, Intervenor's motion should be denied as applied to audio and video files. Mr. Bollea also respectfully requests that the Court enter an order specifically finding that the illegal recordings of Mr. Bollea should be sealed under the Act.

Dated: April 8, 2016.

Respectfully submitted,

*/s/ Kenneth G. Turkel*

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