

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- x
JOHN COOK, :
 :
 : Petitioner, :
 :
 : -against- :
 :
 : TERRY GENE BOLLEA, professionally known as HULK :
 : HOGAN, :
 : Respondent. :
 :
 :
----- x

Index No. 151477/2015

**MEMORANDUM OF LAW IN
SUPPORT OF PETITION
AND MOTION TO QUASH
AND/OR FOR A
PROTECTIVE ORDER**

Petitioner John Cook by and through its attorneys Levine Sullivan Koch & Schulz LLP, submits this memorandum of law in support of his Petition.

PRELIMINARY STATEMENT

This Court should quash a subpoena to Petitioner John Cook (“Cook”) pursuant to CPLR § 2304 and enter a Protective Order pursuant to CPLR §§ 3103(a) & (b) such that he does not have to testify in response thereto. The subpoena, which was issued in New York County in connection with litigation pending in Florida, seeks to compel Cook to testify on March 4, 2015. The only conceivable testimony that could be sought from Mr. Cook under the subpoena relates to an article written by Cook, which is *not* the subject of the Florida lawsuit, information that is privileged from disclosure by the New York State Shield Law, N.Y. Civ. Rights Law §79-h(c).

FACTUAL BACKGROUND

A. The Florida Litigation

The underlying litigation, *Bollea v. Clem*, No. 12012447-CI-011 (Fla. 6th Jud. Cir.) (the “Florida Litigation”), concerns claims brought by Terry Gene Bollea, the professional wrestler known as Hulk Hogan, against Gawker Media, LLC, the publisher of www.gawker.com, a news and entertainment website (among others). Petition (“Pet.”) ¶ 8.

The lawsuit arises out of an article, published by Gawker in October 2012, reporting and commenting on a pre-existing controversy about a sexual liaison between Hogan and a woman later identified to be Heather Clem (the “Gawker Story”). *Id.* At the time of the tryst, Heather Clem was married to Hogan’s best friend, radio shock-jock Bubba The Love Sponge Clem, who consented to – and indeed encouraged – his wife to have sex with Hogan. *Id.* Together with the Gawker Story, Gawker published brief excerpts of the videotape of Hogan’s tryst with Mrs. Clem (the “Excerpts”). *Id.* ¶ 9. The Florida state and federal courts have both held, in the context of Hogan’s motions for preliminary injunctive relief, that the publication of the Gawker Story and Excerpts were newsworthy and protected by the First Amendment. *See id.* ¶ 11. While the original video ran to over 30 minutes, the Excerpts were only one minute and forty-one seconds long, and included fewer than 10 seconds of sexual activity in grainy black-and-white footage. The remainder was comprised of fairly banal conversation between Hogan and Mrs. Clem. *Id.* ¶ 9.

Cook played no role whatsoever in drafting the Gawker Story. Affidavit of John Cook ¶ 3. He did not write it or edit it, nor was he involved in the decision to publish it. *Id.*

B. The Subpoena

In connection with the Florida Litigation, on or about January 26, 2015, Respondent Hogan delivered a subpoena at the Gawker offices in New York City, which purports to require Cook to appear to testify on March 4, 2015. Cook, a New York resident, is currently a contributor to Gawker. The original subpoena gives no hint as to the testimony requested of Cook, merely stating that “[y]our testimony is sought and required because of its material importance to the underlying claims and defenses in the originating case.” Affidavit of Kavitha Reddy, Esq. (“Reddy Aff.”) Ex. 1.

Cook's counsel alerted Hogan's counsel to the deficiency in the subpoena on February 4, 2015. Affidavit of Katherine M. Bolger ("Bolger Aff.") ¶ 2. On February 9, 2015, Hogan delivered a subpoena (the "Subpoena") to Gawker's offices purporting to require his testimony on "because of its material importance to the underlying claims and defenses in the originating case and due to your employment in various positions of control and influence at Gawker Media LLC, as well as your authorship of various Gawker.com articles concerning the subject matter of this litigation." Reddy Aff. ¶ 4 & Ex. B.

ARGUMENT

Cook, a journalist who was in no way involved with the Gawker Story, hereby moves to quash the Subpoena served on him and for a protective order providing that he is not required to testify in response to the Subpoena. Not only was the Subpoena improperly served, but also the only testimony which it could possibly seek is protected against compelled disclosure by the New York State Shield Law, N.Y. Civ. Rights Law § 79-h. For these reasons, the Subpoena should be quashed and a protective order entered.

A. The Subpoena Was Not Properly Served.

First, the Subpoena was not properly served. Respondent purported to issue the Subpoena pursuant to the Uniform Interstate Deposition and Discovery Act and CPLR § 3119. Section 3119 requires that service under that provision must be accomplished in compliance with CPLR § 2303, which in turns requires that the Subpoena be served "in the same manner as a summons." But Respondent's service of the Subpoena does not comply with any of the methods for service of a summons as set forth in CPLR § 308. The Subpoena was simply left for Cook at the Gawker's office – he was not served personally and there was no subsequent mailing or other attempt to deliver the Subpoena as would be required under the provisions of CPLR § 308. For this reason alone, the Subpoena should be quashed and a protective ordered entered.

While Hogan might be able to cure this defect, in the interests of judicial economy, Cook also explains in the next section why the Subpoena, even if it had been served properly, is fatally defective under the New York Shield Law.

B. The Subpoena Seeks Testimony from a Reporter About Unpublished Information, Which is Protected From Compelled Disclosure By The New York Shield Law.

The Subpoena seeks to compel Cook to testify about the preparation of an article entirely different from the one at issue in the Florida Litigation. Because such information would be protected from disclosure by the New York State Shield Law, the Subpoena should be quashed.

Cook wrote the story entitled “A Judge Told Us To Take Down Our Hulk Hogan Sex Tape Post. We Won’t,” which was published on *gawker.com* on April 25, 2013, six months after the publication of the Gawker Story (the “Cook Story”). The Cook Story commented on the Florida Litigation and particularly on the decision enjoining the continued publication of the Gawker Story, an injunction that was later reversed on appeal. *See* Pet. ¶ 15.

By seeking testimony about Cook’s preparation of the Cook Story, the Subpoena seeks unpublished information related to a story not at issue in this matter. It is, therefore, protected from disclosure by the New York State Shield Law, N.Y. Civ. Rights Law § 79-h. The Shield Law, consistent the First Amendment to the United States Constitution, and the long-standing tradition of the courts and the legislature of the State of New York, protects both confidential *and* non-confidential newsgathering materials, unpublished information, and editorial processes from disclosure. *In re Eisenger*, 2011 WL 1458230 (S.D.N.Y. April 12, 2011), *aff’d sub nom. Baker v. Goldman Sachs & Co.* 669 F.3d 105 (2d Cir. 2012) (“New York courts have recognized that the Shield Law was enacted, in part to “prevent intrusion into the editorial process.”) (citing *People v. Iannaccone*, 112 Misc. 2d 1057, 1059 (Sup. Ct. N.Y. 1982)); *Perito v. Finklestein*, 51 A.D.3d 674, 675 (2d Dep’t 2008) (quashing subpoena *ad testificandum* to

reporter on Shield Law grounds); *Baez v. JetBlue Airways*, 2012 WL 5471229, at *1, 2 (E.D.N.Y. Nov. 9, 2012) (quashing deposition subpoena of non-party *New York Daily News* reporter under Shield Law); *Baker v. Goldman Sachs & Co.*, 669 F.3d at 111 (affirming decision quashing subpoena to reporter). Here, Hogan seeks to depose Cook not about the article he is challenging, but about a later article commenting on a judicial decision, a subject at the core of the First Amendment freedoms protected by the Shield Law.

Pursuant to the Shield Law, “any news obtained or received in confidence or the identity of the source of any such news” is entitled to “[a]bsolute protection” from disclosure. N.Y. Civ. Rights Law § 79-h(b). Further, any party seeking to obtain unpublished information, editorial processes, and/or newsgathering materials, even if *non-confidential*, must make “a clear and specific showing” that the information sought

- (i) is *highly material and relevant*;
- (ii) is *critical or necessary* to the maintenance of a party’s claim, defense or proof of an issue material thereto; *and*
- (iii) is *not obtainable from any alternative source*.

N.Y. Civ. Rights Law § 79-h(c) (emphases added). Under this three-part test, Section 79-h(c) requires “disclosure of non-confidential material *only as a last resort*.” *In re Am. Broad. Cos.*, 189 Misc. 2d 805, 808 (Sup. Ct. N.Y. Cnty. 2001) (emphasis in original). Here, Hogan will be unable to satisfy this three part test.

First, he cannot make a clear and convincing showing that the testimony he seeks related to the preparation of the Cook Story is “highly material and relevant” to the Florida Litigation about whether Hogan’s rights of publicity were violated many months earlier by a different article (the Gawker Story). N.Y. Civ. Rights Law § 79-h(c). Indeed, Cook’s testimony about the

preparation of the Cook Story, published in 2013, can shed no light on the preparation, editing and/or decision to publish the Gawker Story in 2012.

Nor can Hogan make a clear and specific showing that the testimony sought related to the Cook Story is “critical or necessary” to the prosecution of the Florida action. N.Y. Civ. Rights Law § 79-h(c). To do so, a “plaintiff cannot merely show that the materials were useful. He must convince the court that the claim *virtually rises or falls* with the admission or exclusion of the proffered evidence.” *Flynn v. NYP Holdings, Inc.*, 235 A.D.2d 907, 908 (3d Dep’t 1997) (emphases added) (internal marks omitted). Accordingly, generalized assertions or speculation by the party seeking to overcome the privilege are insufficient to establish that the requested materials are critical and necessary to the prosecution or defense of the action. *See, e.g., Perito*, 51 A.D.3d at 675 (“In order to show that [the] information sought is ‘critical or necessary,’ a petitioner cannot merely show that it would be useful (citations omitted); *In re Subpoena Duces Tecum to Ayala*, 162 Misc. 2d 108, 114 (Sup. Ct. Queens Cnty. 1994) (“[m]ere speculation without demonstrative factual corroboration is legally insufficient to impinge upon the First Amendment safeguards embodied within Civil Rights Law § 79-h”).

Here, Hogan cannot demonstrate that any information about the Cook Story is “critical or necessary” to his claims in the Florida Litigation. The Florida Litigation seeks damages for alleged violations of Hogan’s rights of privacy from the publication of news report and commentary about a sex tape depicting him, accompanied by brief and heavily edited excerpts. By contrast, the Cook Story, advancing the view that the trial judge in Florida issued an unconstitutional injunction (an opinion that the appellate court in Florida agreed with by staying that order just two business days later and ultimately reversing the injunction in a unanimous opinion), is not critical and necessary to the decision to publish the original post six months

earlier. Indeed, whatever the merits of Hogan's claims that the original post invaded his privacy, it would turn the purposes of the Shield Law on its head if he were allowed to invade the editorial processes involved with a later piece commenting on the litigation, commentary which is fully protected by the First Amendment.

Thus, this court recently held that the Shield Law prohibited disclosure of just the kind of information sought by this Subpoena. In *Prince v. Fox Television Stations, Inc.*, 2012 WL 3705165 (Sup. Ct. N.Y. Cnty. Aug 28, 2012), the plaintiffs brought a defamation lawsuit seeking damages arising out of a television news report that was broadcast in May 2011. During the litigation, the plaintiffs moved to compel discovery in connection with a related story, that aired six months later in November 2011. This court denied that request and held that the plaintiffs had failed to demonstrate that it could overcome any of the three parts of the Shield Law, particularly noting that "Plaintiffs' moving papers are silent as to how the records they have obtained thus far from defendants are wholly and completely inadequate to establishing their claims, so as to render the post-May segment information critical and necessary to the maintenance of their suit." *Id.* at *7. Here, as in *Prince*, Hogan will be unable to show that the testimony he seeks from Cook – as opposed to the multiple full days of testimony and 25,000-plus pages of documents about the Gawker Story that he has received from Gawker – is critical and necessary to the Florida lawsuit. Indeed, Hogan has already taken three full-day depositions of Gawker witnesses, and Gawker is producing five additional witnesses for deposition during the week of March 2, 2015. Pet. ¶ 17. In addition to the author of the Gawker Story, these witnesses include Gawker's CEO, its Chief Operating Officer, its Chief Technology Officer, its

Chief Strategy Officer, and its President of Advertising and Partnerships. *Id.* It cannot seriously be maintained that Hogan also needs Cook’s deposition to make his claims.¹

Finally, Hogan has not made any showing that he can satisfy the third prong of the Shield Law, that the requested information “is not obtainable from any alternative source.” N.Y. Civ. Rights Law § 79-h(c). To satisfy this prong of the test, Hogan must make a “clear and specific showing . . . that the relevant information [is] unavailable elsewhere.” *In re CBS, Inc.*, 232 A.D.2d 291, 292 (1st Dep’t 1996). Without this clear and specific showing, the testimony cannot be compelled and this motion must be denied. *See id.*; *Flynn*, 235 A.D.2d at 909 (prohibiting discovery into journalist’s notes and materials in part because plaintiff “has not detailed any efforts made to obtain the requested documents or the information contained therein”); *Perito*, 51 A.D.3d at 675 (“petitioner failed to demonstrate that the information sought was not obtainable from another source”). Here, there may well be other sources for the information Hogan seeks. For example, if all Respondent wants to do is authenticate the Cook Story or to ask questions about the underlying Florida decision, he can certainly ask the Florida Court to take judicial notice of their authenticity. And, even assuming *arguendo* that Cook were the only source of information about the preparation of the Cook Story – and it is Hogan’s burden to show this – where, as here, that story is at best only tangentially related to the Florida Litigation, there is no basis under the Shield Law to authorize compelled testimony about it. Taken together, the Shield Law’s requirement that all three-parts of the test are satisfied ensures that such discovery be had not only where the discovery cannot be had from another source, but also

¹ Indeed, in the Florida Litigation, the parties jointly submitted to the Court a proposed discovery plan, listing depositions each side planned to take. Although Hogan included these other Gawker witnesses on his list, he did not include Mr. Cook. Testimony from a witness whom Hogan did not even include on his list of proposed deponents can in no way be deemed to be “critical or necessary” to his claims.

where it is “highly relevant” and “critical and necessary.” That is not the case here and the Subpoena should be quashed and a Protective Order entered.

CONCLUSION

For the foregoing reasons, the Court should grant the Petition and direct the relief requested therein.

Dated: February 11, 2015
New York, New York

LEVINE SULLIVAN KOCH & SCHULZ, LLP

By: /s/ Katherine M. Bolger
Seth D. Berlin
Katherine M. Bolger

321 West 44th Street, Suite 1000
New York, New York 10036
(212) 850-6100
(212) 850-6299 (Fax)
sberlin@lskslaw.com
kbolger@lskslaw.com

Counsel for Petitioner John Cook

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----	X	
JOHN COOK,	:	
	:	
Petitioner,	:	Index No. 151477/2015
	:	
-against-	:	
	:	
TERRY GENE BOLLEA, professionally known as HULK HOGAN,	:	
	:	
Respondent.	:	
	:	
-----	X	

AFFIDAVIT OF JOHN COOK

JOHN COOK, being duly sworn, deposes and says:

1. I am an investigative reporter for Gawker Media, the publisher of www.gawker.com, a news and entertainment website. I have personal knowledge of the facts set forth in this affidavit, and submit this affidavit in support of my petition to quash a subpoena pursuant to CPLR § 2304 and for entry of a Protective Order pursuant to CPLR §§ 3103(a) & (b) such that I do not have to testify in response thereto.

2. The subpoena (the “Subpoena”) was issued by Terry Gene Bollea (known professionally as Hulk Hogan) (“Hogan”), in connection with litigation pending in Florida. The underlying litigation, *Bollea v. Clem*, No. 12012447-CI-011 (Fla. 6th Jud. Cir.) (the “Florida Litigation”), concerns claims brought Hulk Hogan, against Gawker (among others) relating to Gawker’s publication of a story on its website in October 2012.

3. I had no involvement in writing, editing or publishing the Gawker story at issue in the Florida Litigation.

4. I have been a professional journalist for 19 years. In that time I have worked consistently as a reporter at various publications including Gawker, the Chicago Tribune, and Radar Magazine.

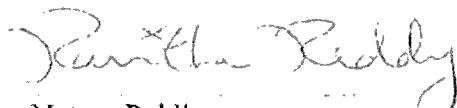
5. I have been a reporter, off and on, at Gawker since 2009. Specifically, since first starting at Gawker, I left for about five months to work at Yahoo! News, and I left one other time to work for First Look Media for about nine months. I also served as the Editor of Gawker from February 2013 to March 2014. I was not the Editor when the Gawker story at issue in the Florida Litigation was published.

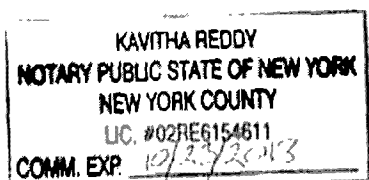
6. I wrote the story entitled "A Judge Told Us To Take Down Our Hulk Hogan Sex Tape Post. We Won't," which was published on April 25, 2013, many months after the publication of the Gawker Story at issue in the Florida Litigation. That article expresses my view that an injunction issued in the Florida Litigation was unconstitutional (an appellate court later agreed, promptly staying and ultimately reversing that injunction). That article is not the subject of any claims in the Florida Litigation.

7. I did not receive a copy of the Subpoena by mail either at my office or my home.


JOHN COOK

Subscribed and sworn to before me
19th day of February, 2015


Notary Public



SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- x

JOHN COOK, :

Petitioner, :

-against- :

TERRY GENE BOLLEA, professionally known as HULK HOGAN, :

Respondent. :

----- x

Index No. 151477/2015

AFFIDAVIT OF KAVITHA REDDY

KAVITHA REDDY, being duly sworn, deposes and says:

1. I am an attorney admitted to the courts of the State of New York and I am Counsel at Gawker Media LLC, the publisher of www.gawker.com, a news and entertainment website. I have personal knowledge of the facts set forth in this affidavit, and submit this affidavit in support of John Cook’s petition and motion to quash a subpoena pursuant to CPLR § 2304 and for entry of a Protective Order pursuant to CPLR §§ 3103(a) & (b) such that Mr. Cook does not have to testify in response thereto.

2. On January 26, 2015, a subpoena was delivered to the Gawker offices seeking the testimony of John Cook (the “Original Subpoena”). The subpoena was issued by Terry Gene Bollea (known professionally as Hulk Hogan) (“Hogan”), in connection with litigation pending in Florida.

3. The process server did not hand the Original Subpoena to Mr. Cook, but simply attempted to leave a copy at the front desk. Because it appeared to be a legal matter, I was called, and I explicitly advised the process server that I was not authorized to accept service for

Mr. Cook. A true and correct copy of the original subpoena as it was left at the Gawker office is annexed hereto as Exhibit A.

4. On February 9, 2015, a "re-issued" subpoena and amended notice of deposition for Mr. Cook were delivered to Gawker's office (the "Subpoena"). The process server did not hand the Subpoena to Mr. Cook; rather, the process server simply left the Subpoena at the front desk with our receptionist and left. A true and correct copy of the Subpoena as it was left at the Gawker office is annexed hereto as Exhibit B.

5. Gawker has not received any additional copies of either the Original Subpoena or Subpoena in the mail.


KAVITHA REDDY

Subscribed and sworn to before me
10th day of February, 2015

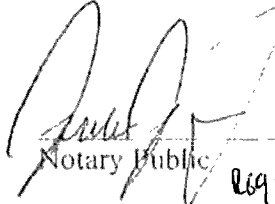

Notary Public
Reg # 01160272654
Exp: 11/19/16

Exhibit A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

7/2x5

TERRY GENE BOLLEA, professionally
known as HULK HOGAN

Plaintiff,

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

Defendants.

SUBPOENA AD TESTIFICANDUM

(Pursuant to the Uniform Interstate
Deposition and Discovery Act and
CPLR § 3119)

Originating State: Florida
Originating County: Pinellas
Originating Court: Circuit Court of the
Sixth Judicial Circuit
In and For Pinellas
County
Originating Case No.: 12012447-CI-011

INSYNC

THE PEOPLE OF THE STATE OF NEW YORK

TO:

John Cook
Gawker Media LLC
210 Elizabeth Street, 4th Floor
New York, NY 10012

WE COMMAND YOUR appearance at a deposition to be held at Merrill Corporation, 1345 Avenue of the Americas, 17th Floor, New York, New York 10105, on March 4, 2015 at 2:00 p.m. in order to provide testimony in connection with the above-captioned matter. The testimony shall be recorded by a stenographer and electronically by a videotape operator employed by Merrill Corporation of the above address.

Your testimony is sought and required because of its material importance to the underlying claims and defenses in the originating case.

Dated: New York, New York
January 26, 2015

HARDER MIRELL & ABRAMS LLP


By 
Charles J. Harder, Esq.
Harder Mirell & Abrams LLP
1925 Century Park East, Suite 800
Los Angeles, CA 90067
Attorneys for Plaintiffs

Exhibit B

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
:
: SUBPOENA AD TESTIFICANDUM
:
TERRY GENE BOLLEA, professionally :
known as HULK HOGAN : (Pursuant to the Uniform Interstate
:
: Deposition and Discovery Act and
Plaintiff, : CPLR § 3119)
:
HEATHER CLEM; GAWKER MEDIA, :
LLC; et al., : Originating State: Florida
:
: Originating County: Pinellas
Defendants. : Originating Court: Circuit Court of the
:
: Sixth Judicial Circuit
: In and For Pinellas
: County
: Originating Case No.: 12012447-CI-011
:
-----X

THE PEOPLE OF THE STATE OF NEW YORK


TO: John Cook, Gawker Media LLC, 210 Elizabeth Street, 4th Floor, New York, NY
10012

WE COMMAND YOUR appearance at a deposition to be held at Merrill Corporation, 1345 Avenue of the Americas, 17th Floor, New York, New York 10105, on March 4, 2015 at 2:00 p.m. in order to provide testimony in connection with the above-captioned matter. The testimony shall be recorded by a stenographer and electronically by a videotape operator employed by Merrill Corporation of the above address.

Your testimony is sought and required because of its material importance to the underlying claims and defenses in the originating case and due to your employment in various positions of control and influence at Gawker Media LLC, as well as your authorship of various Gawker.com articles concerning the subject matter of this litigation.

Dated: Los Angeles, California
February 6, 2015

HARDER MIRELL & ABRAMS LLP

By: 
Charles J. Harder, Esq.
Harder Mirell & Abrams LLP
1925 Century Park East, Suite 800
Los Angeles, CA 90067
Attorneys for Plaintiffs

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.

SUBPOENA AD TESIFICANDUM
AND DUCES TECUM

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,

(Pursuant to the Uniform Interstate
Deposition and Discovery Act and New
York CPLR § 3119)

Case No. 12012447CI-011

Defendants.

SUBPOENA AD TESTIFICANDUM

THE STATE OF FLORIDA:

TO: **John Cook**
Gawker Media LLC
210 Elizabeth Street, 4th Floor
New York, NY 10012

WE COMMAND YOUR appearance at a deposition to be held at Merrill Corporation,
1345 Avenue of the Americas, 17th Floor, New York, NY 10105 on March 5, 2015 at 2:00 p.m.
in order to provide testimony in connection with the above-captioned matter. The testimony
shall be recorded by a stenographer and electronically by a videotape operator employed by
Merrill Corporation of the above address.

You are subpoenaed to appear by the following attorney, and unless excused from this
subpoena by this attorney, you shall respond to this subpoena as directed. You have a right to

object to the subpoena under Florida Rule of Civil Procedure 1.410. You have the right to designate as Confidential any applicable document or testimony as specified under the Agreed Protective Order Governing Confidentiality, signed and ordered by the Court on July 25, 2013, a copy of which is attached hereto. A copy of the First Amended Complaint in this action is attached hereto for your reference.

DATED on February 6, 2015

/s/ Charles J. Harder

Charles J. Harder

For the Court

Charles J. Harder

PHV No. 102333

Douglas E. Mirell

PHV No. 109885

Attorney for Terry Gene Bollea

Harder Mirell & Abrams LLP

1925 Century Park East, Suite 800

Los Angeles, California 90067

Tel: (424) 203-1600

Fax: (424) 203-1601

Email: charder@hmafirms.com

Email: dmirell@hmafirms.com

**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. 12012447 CI-011

HEATHER CLEM; GAWKER MEDIA, LLC
AKA GAWKER MEDIA; GAWKER MEDIA
GROUP, INC. AKA GAWKER MEDIA; et. al.,

Defendants.

AMENDED NOTICE OF TAKING VIDEOTAPED DEPOSITION OF JOHN COOK

PLEASE TAKE NOTICE that, Pursuant to Rules 1.310(b)(1) and 1.310(b)(4) of the Florida Rules of Civil Procedure, Plaintiff Terry Gene Bollea, professionally known as Hulk Hogan ("Bollea") by and through the undersigned attorneys, will take the deposition testimony of the following:

DEPONENT: John Cook
DATE: March 4, 2015
TIME: 2:00 p.m. until completion
LOCATION: Merrill Corporation, 1345 Avenue of the Americas, 17th Floor
New York, NY 10105

by oral examination before a member of Merrill Corporation, or a Notary Public in and for the State of New York at Large, and or some other officer duly authorized by law to take depositions.

The deposition shall continue from day to day until completed. The deposition will be recorded by video by a videographer provided by Merrill Corporation, 1345 Avenue of the

Americas, 17th Floor, New York, NY 10105, and/or using instant visual display of the testimony (e.g., Live Note), as well as stenographically. Plaintiff Bollea shall bear the initial cost of the videotaping.

PLEASE GOVERN YOURSELF ACCORDINGLY.

DATED: January 26, 2015.

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

-and-

/s/ Kenneth G. Turkel

Kenneth G. Turkel, Esq.
Florida Bar No. 867233
Christina K. Ramirez, Esq.
Florida Bar No. 954497
BAJO CUVA COHEN & TURKEL, P.A.
100 North Tampa Street, Suite 1900
Tampa, Florida 33602
Tel: (813) 443-2199
Fax: (813) 443-2193
Email: kturkel@bajocuva.com
Email: cramirez@bajocuva.com

Counsel 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 26th day of January, 2015 to the following:

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
Counsel for Gawker Defendants

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

Seth D. Berlin, Esquire
Michael Sullivan, Esquire
Alia L. Smith, Esquire
Paul J. Safier, 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*

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

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/ Kenneth G. Turkel
Attorney

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----	x	
JOHN COOK,	:	
	:	
Petitioner,	:	Index No. 151477/2015
	:	
-against-	:	
	:	
TERRY GENE BOLLEA, professionally known as HULK HOGAN,	:	
	:	
Respondent.	:	
	:	
-----	x	

AFFIDAVIT OF KATHERINE M. BOLGER

KATHERINE M. BOLGER, being duly sworn, deposes and says:

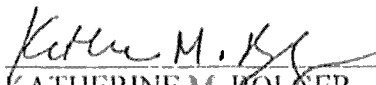
1. I am an attorney admitted to the courts of the State of New and a member of the law firm Levine Sullivan Koch & Schulz, LLP, counsel for Petitioner John Cook (“Cook”). I have personal knowledge of the facts set forth in this affidavit, and submit this affidavit in support of Cook’s petition to quash an amended subpoena pursuant to CPLR § 2304 and for entry of a Protective Order pursuant to CPLR §§ 3103(a) & (b) such that Cook does not have to testify in response thereto.

2. On Tuesday, February 4, 2015, I wrote to Charles Harder, counsel for Terry Gene Bollea (professionally known as Hulk Hogan) (“Hogan”) asking him to withdraw a subpoena to Mr. Cook on the grounds that the subpoena was procedurally improper and that the requested testimony was protected from disclosure by the New York State Shield Law, N.Y. Civ. Rights Law § 79-h. I also invited Mr. Harder to call me to discuss the subpoena. A true and correct of the letter is annexed hereto as Exhibit A.

3. On February 9, 2015, I sent Mr. Harder an email informing him that I had not heard from him and advising him that I intended to file this motion. I again invited him to call me to discuss. A true and correct of the email is annexed hereto as Exhibit B.

4. On February 9, 2015, in response to the procedural issues I raised in the letter, Mr. Harder purported to reissue a subpoena to Mr. Cook on Mr. Hogan's behalf. In addition, Doug Mirell, a partner of Mr. Harder's, wrote me a letter on February 9, 2015, in which he repeated his expectation that Mr. Cook would appear for his deposition and did not withdraw the subpoena. A true and correct of the letter is annexed hereto as Exhibit C.

5. I hereby affirm, pursuant to Rule 202.7(a)(2) and (c) of the Uniform Rules for the Supreme Court, that I conferred with Hogan's counsel about the subpoena by letter and by email as described herein and in Exhibits A-C. Hogan's counsel amended the subpoena in response to my letter, but did not agree to withdraw it.


KATHERINE M. BOLGER

Subscribed and sworn to before me
11th day of February, 2015


Notary Public

SCOTT BAILEY
Notary Public, State of New York
No. 01875701502
Qualified in New York County
Commission Expires March 2, 2017

Exhibit A



LEVINE SULLIVAN
KOCH & SCHULZ, LLP

321 West 44th Street
Suite 1000
New York, NY 10036
(212) 850-6100 | Phone
(212) 850-6299 | Fax

Katherine M. Bolger
(212) 850-6123
kbolger@lkslaw.com

February 4, 2015

VIA ELECTRONIC MAIL

Charles J. Harder, Esq.
Harder Mirell & Abrams LLP
1925 Century Park East, Suite 800
Los Angeles, CA 90067

Re: Subpoena to John Cook in *Bollea v. Clem, Gawker Media, LLC, et al.*, No. 12012447-CI-011 (Fla. Cir. Ct.)

Dear Mr. Harder:

I represent John Cook for matters arising from the subpoena you issued in connection with the above-referenced action pending in Circuit Court in Florida.

As an initial matter, Mr. Cook was not properly served with the subpoena. *See* CPLR §§ 308 & 2303. Moreover, the subpoena is silent on the topic of the planned inquiry, in violation of CPLR § 3101(a)(4). Even were you to cure both of those defects, however, Mr. Cook played no role in preparing, editing or deciding to publish the post at issue in the Florida action. Although I understand that fact was confirmed in both sworn interrogatory responses and sworn deposition testimony in that action, I would if necessary be pleased to provide an additional affidavit to that effect from Mr. Cook. Under these circumstances, there is no basis to compel him to testify in connection with the Florida action, particularly to the extent that any testimony would involve his work as a journalist on other stories. *See* N.Y. Civ. Rights Law § 79-h.

Mr. Cook respectfully requests that you promptly withdraw the subpoena and confirm in writing that you are doing so. I will otherwise be forced to move to quash the subpoena and for a protective order early next week. Should you have any questions or wish to discuss the foregoing (or if you believe there is some other basis for deposing Mr. Cook), please let me know. I will be travelling for the next several days, but will endeavor to respond. I look forward to your prompt response. Thank you.

Sincerely,

LEVINE SULLIVAN KOCH & SCHULZ, LLP

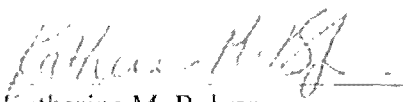
By: 
Katherine M. Bolger

Exhibit B

From: Kate Bolger
Sent: Monday, February 09, 2015 5:39 PM
To: charder@HMAfirm.com
Subject: Bollea v. Gawker - subpoena to John Cook

Dear Mr. Harder,

I have not heard anything from you in response to my correspondence dated February 5, 2015, but I understand that your process server left a "re-issued" subpoena at Gawker today. While that continues to be ineffective service, the main point is that there is no basis to compel Mr. Cook to testify. At the time of the post at issue, he had no management position at Gawker, and only briefly served as editor well after. Moreover, any unpublished information concerning any articles he authored is privileged. While I would renew my request that you withdraw the subpoena, I take it from your failure to respond to my letter and your "re-issuance" of the subpoena that you do not intend to do so. If upon reflection you change your mind, please let me know later today. Otherwise, I will file a motion to quash and for a protective order, likely tomorrow. Should you wish to discuss, please let me know. Thank you.

Kate Bolger

Katherine M. Bolger

LSKS | LEVINE SULLIVAN
KOCH & SCHULZ, LLP

321 West 44th Street
Suite 1000
New York, NY 10036
(212) 850-6123 | Phone
(212) 850-6299 | Fax
www.lskslaw.com

Exhibit C



DOUGLAS E. MIRELL, ATTORNEY AT LAW
1925 CENTURY PARK EAST, SUITE 800
LOS ANGELES, CALIFORNIA 90067-2749
424.203.1600 • WWW.HMAFIRM.COM
DIRECT: 424.203.1603 • FAX: 424.203.1671
EMAIL: DMIRELL@HMAFIRM.COM

February 9, 2015

VIA EMAIL [kbolger@lkskslaw.com]

Katherine M. Bolger, Esq.
Levine Sullivan Koch & Schulz, LLP
321 West 44th Street, Suite 1000
New York, NY 10036

Re: Subpoena to John Cook in *Bollea v. Gawker Media, LLC, et al.*
No. 12012447-CI-011 (Fla Cir. Ct.)

Dear Kate:

I write in response to your letter of February 4, 2015, to my partner, Charles Harder, concerning the above-referenced subpoena.

We have given careful consideration to your procedural objections to the subpoena previously served on John Cook. Out of an overabundance of caution, we have elected to re-issue that subpoena in order to address and satisfy all of those procedural objections. That re-issued subpoena, a copy of which is included as an attachment to this emailed letter, is currently in the process of being served -- weather permitting.

Though I am not licensed to practice law in the State of New York, I am advised that your letter's citation to New York's shield law (N.Y. Civ. Rights Law § 79-h) is wholly inapposite. First, as a definitional matter and given Mr. Cook's interrupted tenure, it is not at all certain that Mr. Cook is fully entitled to protection under the specific terms of this statute. Second, even if protection is theoretically available to your client, New York's "shield law" (like those of other states) is merely an anti-contempt remedy. We have found no authority supporting the proposition that invoking this statute can immunize Mr. Cook from appearing at his deposition, and your letter cites none. To the contrary, *People v. Monroe*, 82 Misc.2d 850, 855, 370 N.Y.S.2d 1007, 1012 (1975) held: "Couched in negative language, this legislation cannot be accurately said, in a positive sense, to create a privilege exempting reporters from complying with compulsory process in trials and hearings." Moreover, the New York Court of Appeals has held that a newspaper cannot refrain from answering a complaint or defending a suit even if it refuses to disclose the name of an anonymous source. *See Oak Beach Inn v. Babylon Beacon*, 62 N.Y.2d 158, 476 N.Y.S.2d 269, 464 N.E.2d 967 (1984). Furthermore, appellate review is only available once an order to produce is defied and the refusing party is held in contempt. *In re Application to Quash Subpoenas to Daily News, L.P.*, 2010 WL 2490990 (S.D.N.Y. June 16,

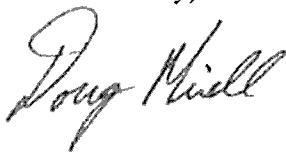
Katherine M. Bolger, Esq.
February 9, 2015
Page 2

2010). Thus, the only time that Mr. Cook can even arguably seek to invoke the "shield law" privilege is if his prospective answers to questions actually posed to him at his deposition qualify for protection under the precise terms of Section 79-h (b) or (c), respectively.

Accordingly, we now expect that you will fully cooperate with this office in the conduct of the duly re-noticed deposition of Mr. Cook pursuant to the attached subpoena.

The letter is not intended, and should not be construed, as a complete expression of plaintiff's factual or legal position with respect to the matters addressed above. Nothing contained in or omitted from this letter is intended, and should not be construed, as a waiver, relinquishment or other limitation upon any of plaintiff's rights and/or remedies, all of which are hereby expressly reserved.

Yours sincerely,

A handwritten signature in cursive script that reads "Doug Mirell".

DOUGLAS E. MIRELL Of
HARDER MIRELL & ABRAMS LLP

Attachment