EXHIBIT B

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

JOHN COOK,

Petitioner,

- against -

TERRY GENE BOLLEA, professionally known as Hulk Hogan

Respondent.

Index No. 151477/2015

RESPONDENT'S OPPOSITION MEMORANDUM OF POINTS AND AUTHORITIES RE: PETITIONER JOHN COOK'S PETITION AND ORDER TO SHOW CAUSE, AND TO MOTION TO QUASH AND FOR PROTECTIVE ORDER

I. INTRODUCTION

This special proceeding arises out of a civil action brought in Florida state court (the "Florida Action") by Terry Bollea, professionally known as Hulk Hogan, for invasion of privacy and related torts against Gawker Media, LLC ("Gawker"), among other defendants, based on Gawker's October 2012 posting of a clandestinely-recorded video of Mr. Bollea fully naked and engaged in private consensual sex in a private bedroom (the "Sex Video"), on Gawker's celebrity tabloid website: Gawker.com.

The petitioner, John Cook, was a senior editor at Gawker.com at the time of the initial posting of the Sex Video, and was elevated to the position of Editor-in-Chief of Gawker.com **during the time** that the company posted Sex Video. Mr. Cook engaged in internal communications at Gawker.com regarding the Sex Video, which Gawker wrongfully **withheld in discovery** until **after** Gawker's witnesses had been deposed (notwithstanding the fact that the

documents were responsive to document requests that Bollea had propounded months **before** those depositions had occurred). John Cook engaged in written communications internally at Gawker regarding the posting of the Sex Video (and presumably engaged in oral communications as well with Gawker's executives and staff regarding the Sex Video, both before and after it was posted to Gawker.com). Attached as **Exhibit 2** to the accompanying Affirmation of Charles Harder are true copies of Mr. Cook's and other Gawker employee's internal communications regarding the Sex Video. (Exhibit 2 is redacted because the original communications were marked as "confidential" by Gawker in discovery in the Florida Action. The redactions permit this Court to view the comments that tie Mr. Cook to the Sex Video while removing the confidential material in the IM's.)

Moreover, approximately six month into Gawker's posting of the Sex Video, and during the time that Mr. Cook was serving as **Editor-in-Chief** of Gawker.com, Mr. Cook wrote a story posted at the homepage of the Gawker.com website in April 2013 regarding the underlying lawsuit of *Bollea v. Clem, Gawker Media LLC, et al.* The story related to the underlying Florida trial court's issuance of a temporary injunction requiring the Gawker to remove the Sex Video from Gawker.com. That story was entitled "A Judge Told Us To Take Down Our Hulk Hogan Sex Tape Post. We Won't." In the story, Mr. Cook describes Gawker's objections to the Court Order, indicates that Gawker intends to retain on the website a detailed narrative of the video's depiction of Mr. Bollea having sex, and **includes a link to the full Sex Video posted on another website**. In the story, Mr. Cook repeatedly refers to the Sex Video as the "Hulk Hogan f*cking session" (asterisk supplied), and disparages Florida trial court Judge Campbell and her ruling (herein, "John Cook's 'We Won't' Article) (Attached as **Exhibit 3** to the accompanying Harder Affirmation is a true copy of John Cook's 'We Won't' Article.)

In other words, Mr. Cook wrote an article at Gawker.com which was, in and of itself, a flagrant violation of a Court Order in effect at the time, and also specifically invited Gawker.com readers as to a third party website where they could find the same Sex Video that Judge Campbell had ordered removed from Gawker.com and all other Gawker-affiliated websites.

In light of the foregoing, Mr. Cook is a person **directly involved** in the central wrongful acts at issue in this case: he directly and personally assisted in the dissemination of the Sex Video, and he is a material witness to the activities at Gawker.com throughout the relevant period of time from immediately before Gawker posted the Sex Video, through Gawker's removal of the Sex Video approximately six months later, and other activities at Gawker including during the instant litigation (which has lasted more than two years – John Cook remains at Gawker to this day.) Moreover, Mr. Cook was a senior editor at Gawker.com when the Sex Video was posted, and sent written communications internally about the Sex Video). Mr. Cook served as Editor-in-Chief of Gawker.com at the time Judge Campbell ordered Gawker to remove the Sex Video from the website (and Mr. Cook resisted, and blogged about it). Moreover, during the six-month time period while Gawker.com published the Sex Video, Mr. Cook was elevated from a senior editor position to the **most** senior editor position (Editor-in-Chief) at Gawker.com, following the departure of Gawker.com's prior editor-in-chief, defendant A. J. Daulerio, who left (or was fired) shortly after Gawker.com posted the Sex Video and was sued by Mr. Bollea for millions of dollars because of it.

The trial date in the Florida Action is set for July 6, 2015, and the fact discovery cutoff is April 10, 2015. Mr. Cook's motion, filed by Gawker's attorneys, is calculated to prevent Mr. Bollea from being able to complete fact discovery, and delay the production of documents and information needed in upcoming depositions, and prevent a deposition of

Mr. Cook, based on legal contentions that clearly have no merit. Mr. Bollea respectfully requests that this Court expedite consideration of this matter and deny the relief sought by Mr. Cook.

Mr. Bollea is entitled to ask Mr. Cook questions about the facts and circumstances surrounding the publication of the Sex Video at Gawker.com, including Mr. Cook's **personal involvement** in the publication and removal of the Sex Video; and all matters relating to Gawker.com's six-month publication of the Sex Video. Mr. Bollea also is entitled to ask Mr. Cook questions regarding Gawker's editorial policies; policies relating to the protection of personal privacy (if any); his and Gawker's intentions in promoting the dissemination of the Sex Video, and refusing to comply with the aforementioned Court Order; any benefits that the dissemination of the Sex Video conferred on Gawker; and any other questions relevant to the claims and defenses in the underlying Florida Action.

Mr. Cook is represented by Gawker's litigation counsel, who interpose several spurious objections to the subpoena at issue, as follows:

First, the subpoena was properly served; it was left with a responsible party at Mr. Cook's office, and there is no dispute that Mr. Cook and his counsel received it.

Second, Mr. Cook's involvement in the matters underlying the Florida Action, as well as in the Florida Action itself (refusing to comply with a Court Order in the Florida Action) easily meets the standards of minimal relevance for service of a third party subpoena.

Third, Mr. Cook is not entitled to a blanket exemption from testimony under the New York Reporter's Shield Law. Mr. Bollea is not seeking information regarding unreported news or communications between Mr. Cook and sources. His piece was not a "news" piece (except to the extent that it relied entirely on the publically-available temporary injunction issued in the

Florida Action); it was an opinion piece, based on Mr. Cook's personal observations and opinions. Controlling case law makes clear that the shield law does not apply to questioning a reporter regarding personal observation. Further, a reporter may always be asked about the words that he actually wrote in the story. Finally, a reporter who writes a press release on behalf of his employer is not covered by the Shield Law. Clearly there are substantial areas of examination not covered by the Shield Law.

For the reasons summarized above, and discussed below, the deposition subpoena should not be quashed, and instead Mr. Cook should be ordered to comply and appear for deposition.

II. ARGUMENT

A. Mr. Cook Was Properly Served.

Mr. Cook is an employee of Gawker. He was served at Gawker's offices. The process server was told he was not available to personally receive the documents, so a copy was left with the responsible person at the Gawker offices, and the document also was mailed to Mr. Cook. Under CPLR § 308(2), this is sufficient service.

Mr. Cook claims that the document was not mailed, but the affidavit of service confirms that it was.

B. Mr. Cook's Testimony Meets the Minimal Standard of Relevance

1. Legal Standard

The New York Court of Appeals recently made clear the broad scope of permissible third party discovery under New York law. In *Kapon v. Koch*, 23 N.Y.3d 32 (2014), the Court of Appeals confronted the very issue that Gawker raises—the claim that courts should impose some sort of special burden on parties in out of state cases who serve discovery subpoenas on New York residents. In *Kapon*, a party to a pending California action served a third party subpoena in

New York. The Court imposed one procedural requirement—that the subpoena or notice contain a short statement of the circumstances or reasons that justify the subpoena. Mr. Bollea's subpoena to Mr. Cook complies with this requirement.

So long as that requirement, which the court described as "minimal" (*id.* at 39), is satisfied, courts should grant a motion to quash **only** when it is "inevitable or obvious" that the discovery will be "futil[e]." *Id.* at 38. Thus, Mr. Cook must show that the information sought is not relevant **at all** to the prosecution or defense of the action. *Id.* at 38. Mr. Cook bears this heavy burden of proof in this proceeding. *Id.* at 39.

Moreover, the *Kapon* Court specifically rejects the argument that a party must seek the information from the parties to the case, rather than going to third parties. There is "no requirement that the subpoenaing party demonstrate that it cannot obtain the requested disclosure from any other source." *Id.* at 38. Even so, Mr. Bollea seeks nothing more than the testimony of John Cook, Gawker's current employee and former Editor in Chief of its website Gawker.com, who was personally involved in Gawker's initial publication, and eventual removal, of the Sex Video at issue. There is no justification for resisting the discovery at issue.

Further, in *Kapon*, in addition to seeking an order quashing the subpoena, the petitioner sought a protective order in the Supreme Court precluding enforcement of the California subpoena. *Id.* at 35. The Court of Appeals held the subpoena enforceable so long as the minimal requirement that it imposed (a description of the justification for the subpoena) was met and the petitioner failed to show that the subpoena did not seek any relevant information. *Id.* at 38-39. The official commentary to CPLR 3103 states that *Kapon* settles this matter—though a protective order may still be sought if the petitioner wishes to limit discovery, it cannot be utilized to circumvent *Kapon* and seek denial of the discovery altogether. Patrick M. Connors,

Supplementary Practice Commentaries, CPLR § 3103 (2014) ("We mention the *Kapon* decision again here because there might be situations in which a court should deny a motion to quash under CPLR 2304 because the materials sought from the nonparty are relevant, yet still grant relief under CPLR 3103(a). This might be appropriate in situations in which a nonparty seeks an order qualifying or conditioning the use of a disclosure device, **rather than an order denying the disclosure in its entirety**.") (emphasis added).

Thus, in *Nacos v. Marcos*, 124 A.D.3d 462 (1st Dep't 2015), the court applied the *Kapon* doctrine to **both** a motion to quash and for a protective order challenging a third party subpoena, and held that where the minimal standard of notice and relevance was met, all relief sought by the petitioner would be denied.

The Appellate Divisions are enforcing the new *Kapon* standard and are reversing trial court rulings granting motions to prevent third party discovery under the older, now rejected standards. *Menkes v. Beth Abraham Health Services*, 120 A.D.3d 408 (1st Dep't 2014) (reversing order quashing third party deposition subpoena and applying *Kapon* minimal relevance standard); *Peters v. Peters*, 118 A.D.3d 593 (1st Dep't 2014) (reversing order quashing subpoena issued to law firms representing opposing party in litigation).

2. The Subpoena to John Cook Meets the Standard.

Mr. Cook's testimony is clearly relevant. He was personally involved in both the initial publication of the Sex Video at issue, as well as its removal from Gawker.com six months later. Presumably he was involved in the matter throughout the six months that the Sex Video was posted online, as well as after the Sex Video had been removed (in or about April 2013) and this lawsuit continued (until present). Additionally, Mr. Cook has worked at Gawker (including as Editor-in-Chief during the time that the Sex Video was posted and removed) and has relevant

evidence regarding Gawker's policies towards privacy (or lack thereof), Gawker's editorial practices, and how Gawker benefitted from publishing the Sex Video.

The minimal relevance standard of *Kapon* easily is met here.

C. Mr. Cook Clearly Has Relevant Knowledge Outside the Scope of the Shield Law (And Has Not Shown that the Shield Law Covers His Testimony At All).

The Shield Law, Civ. Rights Law § 79-h, prohibits holding journalists 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 does not apply here.

Mr. Cook, as noted above, is a **percipient witness** regarding Gawker's policies and practices of posting the Sex Video, its attitudes towards privacy, and the benefits that it received as a result of the Sex Video. None of these subject areas even touches upon the reporter's shield. That fact alone is sufficient to deny the motion to quash or for a protective order. Protective orders based on the Shield Law have been granted where there was **no relevant testimony** other than the journalist's communications with sources and/or unreported news. That certainly is not the case here.

In *Matter of Perito*, 51 A.D.3d 674 (2d Dep't 2008), cited by Gawker, a party subpoenaed the work product of an investigative journalist who wrote a book. Because the writer's work product was protected under the Shield Law, the subpoena could be quashed rather than holding a pointless deposition. *Accord Baez v. JetBlue Airways*, 2012 WL 5471229 (E.D.N.Y. Nov. 9) (quashing subpoena seeking source of article about airplane terrorism incident). But that case does not apply here. Mr. Cook is a percipient witness. He has brought

the motion to quash to avoid having to answer questions about the facts and circumstances of this case: Gawker's publication and removal of the Sex Video, the internal communications at the company regarding same, Mr. Cook's article opining on the alleged unfairness of Judge Campbell's injunction order, and the benefits received by Gawker from the publication of the Sex Video.

Moreover, if there were any valid objections based on the Shield Law (which there are **not**), they would need to 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.

With respect to Mr. Cook's story regarding Judge Campbell's issuance of the temporary injunction, the story was an **opinion piece** that contained Mr. Cook's own personal observations. It is well-established that **a journalist's personal observations are not protected by the Shield Law** (only source communications and identities), and a journalist may be asked about the words he actually wrote and published, because publicly available stories are **not** confidential or privileged. *People v. Dan*, 41 A.D.2d 687, 688 (4th Dep't 1973) (Shield Law's provisions "afford appellants the privilege of refusing to divulge the identity of any informant who has supplied them with information but the statute does not permit them to refuse to testify about events which they observed personally"); *In re Pennzoil Co.*, 108 A.D.2d 666, 667 (1st Dep't 1985) ("material which has already been published" is outside the protections of the Shield Law).

Mr. Cook's opinion piece, which consisted of an outrageously written defense of Gawker's actions and an attack on the trial judge in the Florida Action, was essentially a Gawker press release. Press releases also are not covered by the Shield Law. *Westmoreland v. CBS, Inc.*, 97 F.R.D. 703, 707 (S.D.N.Y. 1983).

Mr. Cook's remaining arguments all are based on the fiction that Mr. Cook is somehow being questioned about his sources or unreported news relating to some sort of investigative reporting article he wrote, and that Mr. Bollea therefore would need to meet the three-part compelling need test to ask his questions. **The compelling need test does not apply**, at all, because the questions directed to Mr. Cook relate to an article in which he engaged in a press release-style defense of Gawker's actions by expressing personal thoughts, observations and opinions, and directing his readers to a third party website where they could view the Sex Video. These sorts of inquiries are not within the ambit of the Shield Law. Not even close.

III. CONCLUSION

For the foregoing reasons, Mr. Cook's request for relief on his Petition should be **denied** in its entirety, the Order to Show Cause discharged, and Mr. Cook ordered to comply with the subpoena and appear for deposition on a mutually agreeable date, preferably within 20 days of the date of this Court's order and in no event later than the discovery cutoff of April 13, 2015, in the Florida action.

DATED: February __, 2015

By: 

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Counsel for Respondent

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

JOHN COOK,

Petitioner,

- against -

TERRY GENE BOLLEA, professionally known as Hulk Hogan

Respondent.

Index No. 151477/2015

AFFIRMATION OF CHARLES J. HARDER IN SUPPORT RESPONDENT'S OPPOSITION MEMORANDUM OF POINTS AND AUTHORITIES RE: PETITIONER JOHN COOK'S PETITION AND ORDER TO SHOW CAUSE, AND TO MOTION TO QUASH AND FOR PROTECTIVE ORDER

CHARLES J. HARDER, an attorney duly admitted to practice law in the Courts of the State of New York, hereby affirms the following as true and correct under the penalties of perjury as prescribed by the C.P.L.R.:

1. I am an attorney at law, duly authorized to appear before all courts of the State of California, among other courts, an active member of the New York Bar, and a partner of the law firm of Harder Mirell & Abrams LLP, lead litigation counsel for Terry Gene Bollea, professionally known as Hulk Hogan, in the underlying lawsuit styled *Bollea v. Clem, Gawker Media LLC, et al.* pending in the Florida state court.

2. Attached hereto as **Exhibit 1** is a true copy of the Affidavit of Service of the Subpoena directed to John Cook.

3. Attached hereto as **Exhibit 2** is a true copy of internal communications at Gawker Media LLC ("Gawker") that were produced by Gawker in discovery in the underlying Florida action. Exhibit 2 is being produced in redacted form because it was marked as CONFIDENTIAL in the underlying Florida action, and therefore everything that reasonably could be construed as confidential has been omitted. However, references to the Hulk Hogan sex video are being provided in unredacted form, for context, as well as references to outside third party content published publicly, regarding the sex video. Gawker did not object in discovery to the production of its non-privileged internal communications relating to the Hulk Hogan sex video, however, Gawker waited more than six months after the documents were requested to produce these communications (Exhibit 2) in discovery – until after Mr. Bollea's counsel had taken the depositions of Gawker's corporate designee, as well as defendant Nick Denton (Gawker's founder and CEO), and defendant A. J. Daulerio (Gawker.com's former editor-in-chief who posted the Hulk Hogan sex video). The internal communications (Exhibit 2) are being provided to the Court to demonstrate that Mr. Cook was personally and actively involved in internal communications and activities at Gawker regarding the Hulk Hogan sex video, including **before** Gawker first posted the sex video on October 4, 2012, as well as **after** Gawker posted the sex video, and including after Mr. Bollea filed the underlying Florida action against Gawker and others on or about October 15, 2012.

4. Attached hereto as **Exhibit 3** is a true copy of an article by deponent and petitioner John Cook entitled: "A Judge Told Us To Take Down Our Hulk Hogan Sex Tape Post. We Won't", which was published at Gawker.com on or about April 25, 2013. I am informed and believe that John Cook was the Editor-in-Chief of Gawker.com at the time that he published that article. The publication of that article by Mr. Cook coincided with a temporary

injunction order issued by Judge Pamela Campbell, the trial court judge in the underlying Florida action, issued orally in Court on or about April 24, 2013, which was reduced to a signed written Order dated on or about April 25, 2013.

DATED: February 23, 2015
Los Angeles, California

CHARLES J. HARDER

EXHIBIT

1

STATE OF NEW YORK COUNTY OF NEW YORK
SUPREME COURT

Case Number: 12012447-CI-011
Date Filed:
Court/Return Date: 02/20/2015

ATTORNEY(S) HARDER, MIRELL & ABRAMS LLP PH: (424) 203-1608
1925 CENTURY PARK EAST STE. 800 LOS ANGELES , CALIFORNIA 90067 |

Terry Gene Bollea, professionally known as Hulk Hogan

Plaintiff

vs

Heather Clem; Gawker Media, LLC, et al.

Defendant

STATE OF NEW YORK, COUNTY OF NASSAU, SS.:

AMENDED AFFIDAVIT OF SERVICE

Raed Ibrahim , being sworn says:
Deponent is not a party herein is over the age of 18 years and resides in the State of New York.

On February 9, 2015, at 1:42 PM at 210 Elizabeth Street 4th Flr., New York, NY 10012, Deponent served the within **Subpoena Ad Testificandum and Subpoena Ad Testificandum and Duces Tecum, Amended Notice of Take Videotaped Deposition of John Cook and Agreed Protective Order**

On: John Cook c/o Gawker Media LLC , Respondent therein named, (hereinafter referred to as "subject").

☐ #1 INDIVIDUAL
By delivering a true copy of each to said subject personally; Deponent knew the person so served to be the person described in as said subject therein.

☐ #2 ENTITY/CORPORATION/LLC/LLP
By delivering to and leaving with said individual to be who specifically stated he/she was authorized to accept service on behalf of the Corporation/Government Agency/Entity.

☒ #3 SUITABLE AGE PERSON
By delivering thereat a true copy of each to Allen Roge () a person of suitable age and discretion. Said premises is subject's:[X] actual place of business / employment [] dwelling house (usual place of abode) within the state.

☐ #4 AFFIXING TO DOOR
By affixing a true copy of each to the door of said premises which is subjects [ ] actual place of business / employment [ ] dwelling house (usual place of abode) within the state. Deponent was unable with due diligence to find subject or person of suitable age and discretion thereat having called thereat on

Address confirmation:

☒ #5 MAILING
On February 9, 2015 , service was completed by mailing a true copy of above document(s) to the above address in a 1st Class postpaid properly addressed envelope marked "Personal and Confidential" in an official depository under the exclusive care and custody of the United States Post Office in the State of New York.

☒ #6 DESCRIPTION
Sex: Male Color of skin: White Color of hair: Brown Age: 21-35
Height: 5ft9in-6ft0in Weight: 161-200 Lbs. Other Features:

☒ #7 WITNESS FEES
The authorized witness fee and / or traveling expenses were paid (tendered) to the recipient in the amount of $18.

☒ #8 MILITARY SERVICE
Deponent asked person spoken to whether the person to be served is currently active in the military service of the United States or of the State of New York, and was informed that said person is not.

☐ #9 OTHER

Sworn to before me on February 16, 2015

Patricia Rothfritz
NOTARY PUBLIC STATE OF New York
01R06055503, Qualified in Nassau County
Commission Expires February 26, 2019

Process Server, Please Sign
Raed Ibrahim
Job #: 1502753 Lic# 1326602
Client's File No.:

EXHIBIT

2

[redacted]

Max R. [redacted] design a headline [redacted]
[redacted] "Watch Hulk Hogan [redacted]

Cord J. [redacted]

A.J. D. [redacted]

[redacted]

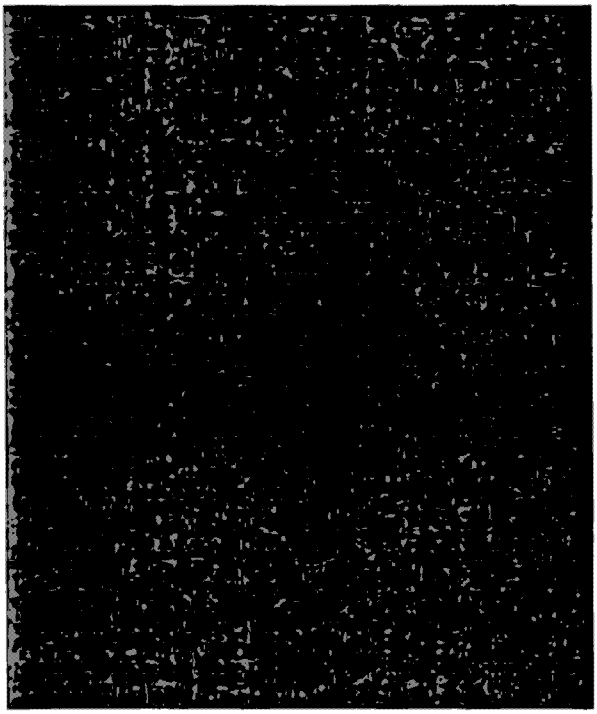
John C. [redacted]

Caity W. [redacted]

A.J. D. [redacted]

Kate B. [redacted]

Camille D. [redacted]

John C. 

Jim C. [redacted]

Kate B. [redacted]

Camille D. [redacted]

Caity W. [redacted]

A.J. D. [redacted]

John C. [redacted]

[redacted]

Max R. [redacted]

Caity W. [redacted]

[redacted]

[redacted]

Hamilton N. [redacted]

John C. [redacted]

Kate B. has entered the room

Caity W. [redacted]

[redacted]

Emma C. [redacted]

View paste

> Daulerio claims the video was delivered to Gawker "anonymously" by someone who wanted "no payment" and "no credit," which seems extremely unlikely considering the video was being shopped around to other gossip hounds -- like TMZ -- that have significantly more street cred than Gawker.

Caity W. [redacted]

Emma C. [redacted]

John C. "The tape was "leaked" (read: purchased) by Gawker, and published on its website earlier this month."

Cord J. [redacted]

[redacted]

Emma C. [redacted]

Max R. [redacted]

[redacted]

Camille D. [redacted]

Max R. [redacted]

[redacted]

Hamilton N. [redacted]

[redacted]

[redacted]

Adrian C. [redacted]

Caity W. [redacted]

John C. http://www.hollywoodreporter.com/thr-esq/hulk-h...

Leah B. [redacted]

Adrian C. [redacted]

Max R. [redacted]

Kate B. [redacted]

Max R. [redacted]

Caity W. [redacted]

Max R. [redacted]

Max R. [redacted]

Hogan vs. the Cons

It's an unhappy pappy • 'Versailles' star i

Leah B. [redacted]

Ken L. [redacted] there's John fighting with the Hulk

Leah B. Defiant Editor, [redacted] John Cook

John C. [redacted]

Ken L. [redacted]

John C. "special to The S.F. Examiner"

[redacted]

[redacted]

[redacted]

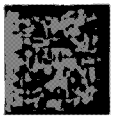
Ken L. [redacted]

[redacted]

[redacted]

John C. [redacted]

[redacted]

John C.  [redacted]

[redacted]

[redacted]

[redacted]

Max R. [redacted] Hulk Hogan [redacted]

Hamilton N. [redacted]

John C. [redacted]

[redacted]

Caity W. [redacted]

[redacted]

Tom S. [redacted]

John C. [redacted] Hulk Hogan [redacted]

[redacted]

Tom S. [redacted]

John C. [redacted]

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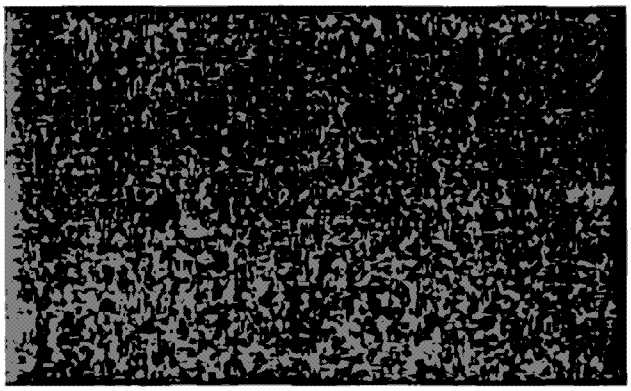
Max R. [redacted]

John C. [redacted]



Caity W. [redacted]

[redacted]

[redacted]

[redacted]

John C. [redacted]

Sam B. [redacted]

Victor J. has left the room

Tom S. [redacted]

Caity W. [redacted]

Tom S. [redacted]

[redacted]

Leah B. [redacted]

Camille D. [redacted]

[redacted]

John C. [redacted]

Camille D. [redacted]

John C. [redacted]

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[redacted]

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[redacted]

John C. [redacted]

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Tom S. [redacted]

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Sam B. [redacted]

John C. [redacted]

[redacted] hogan [redacted]

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Tom S. [redacted]

John C. [redacted]

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Tom S. [redacted]

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Tom S. [redacted]

Caity W. [redacted]

John C. [redacted]

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[redacted]

Max R. [redacted]

[redacted]

Keenan T. has entered the room

John C. [redacted]

[redacted]

Rich J. [redacted]

Hamilton N. [redacted]

[redacted]

[redacted]

[redacted]

Caity W. [redacted]

John C. [redacted] Hulk [redacted]

[redacted]

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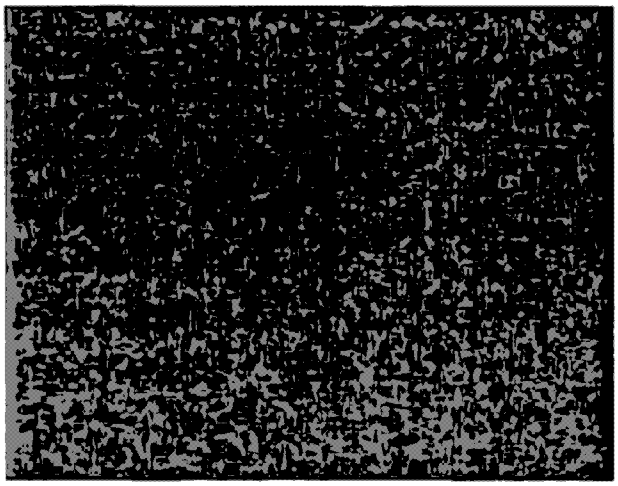
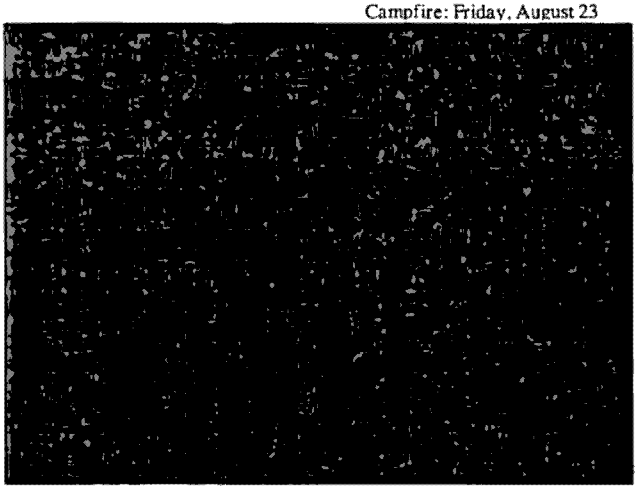
[redacted]

John C. 



[redacted]

[redacted]

[redacted] hulk [redacted]

10:15 AM

Sam B. [redacted]

Tom S. [redacted]

[redacted]

[redacted]

Camille D. [redacted]

Hamilton N. [redacted]

Rich J. [redacted]

[redacted]

[redacted]

John C. [redacted]

[redacted]

Rich J. [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Max R. [redacted]

[redacted]

[redacted]

John C. [redacted]

Sam B. [redacted]

Max R. [redacted]

Sam B. [redacted]

John C. [redacted] Hulk Hogan Fucks [redacted]

Sam B. [redacted]

Hamilton N. [redacted]

[redacted]

John C. [redacted]

[redacted]

Beejoli S. [redacted]

Hamilton N. [redacted]

Max R. [redacted]

[redacted]

[redacted]

Sam B. [redacted]

John C. [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Keenan T. [redacted]

[redacted]

Keenan T. [redacted]

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[redacted]

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Nitasha T. [redacted]

[redacted]

John C. [redacted] hulk hogan [redacted]

[redacted]

Keenan T. [redacted]

[redacted]

Keenan T. [redacted]

Tom S. [redacted]

Cord J. [redacted]

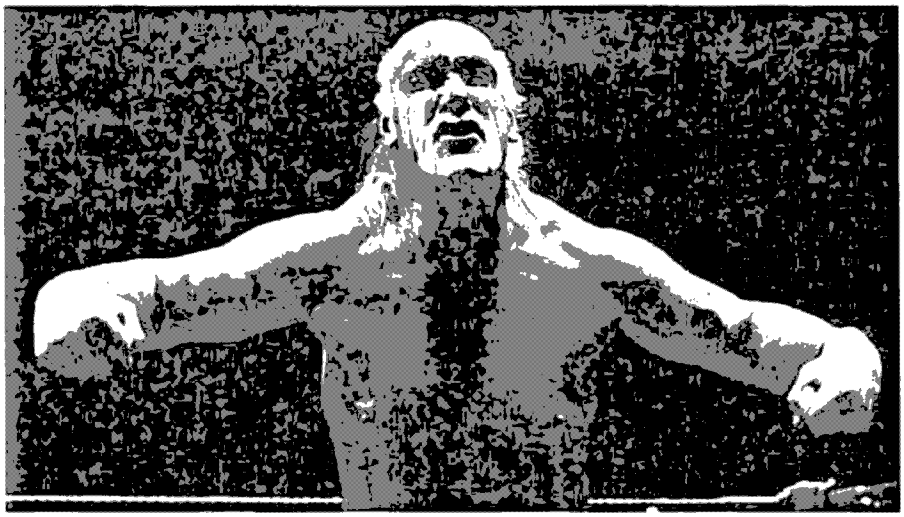
EXHIBIT

3

GAWKER

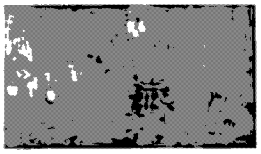
A Judge Told Us to Take Down Our Hulk Hogan Sex Tape Post. We Won't.

John Cook



Yesterday the Hon. Pamela A.M. Campbell, a circuit court judge in Pinellas County, Fla., issued an order compelling Gawker to remove from the internet a video of Hulk Hogan fucking his friend's ex-wife, as well as a 1,400-word narrative of the video written by former Gawker editor A.J. Daulerio and 466 user-submitted comments. Here is why we are refusing to comply.

Campbell made the command at the request of Charles J. Harder, an attorney for Hogan. Hogan is suing Gawker Media and a variety of other parties in Florida state court for, among other things, invasion of privacy stemming from publication of the video of him fucking his friend's ex-wife and its accompanying narrative. Hogan initially brought a copyright claim against us in federal district court, but after a judge issued a series of preliminary rulings disadvantageous to his case, he dropped the matter and shifted his focus to the state invasion of privacy claim.



Even for a Minute, Watching Hulk Hogan Have Sex in a Canopy Bed is Not Safe For Work but Watch it An

Yesterday, Campbell held a hearing to consider Harder's motion for a temporary injunction against our continued publication of the video and accompanying text. This is what Campbell ordered at the hearing's end, from a transcript of the proceedings provided by Gawker's in-house counsel:

> *I'm ordering that the Gawker.com remove the sex tape and all portions and content therein from their websites, including Gawker.com. Ordering to remove the written narrative*

describing the private sexual encounter, including the quotations from the private sexual encounter from websites and including Gawker.com.

This afternoon, she released a written order saying, in substance, the same thing. It requires us to remove the video as well as "the written narrative describing activities occurring during he private sexual encounter, including: (a) all descriptions of visual images and sounds captured on the Sex Tape or any other video of this private sexual encounter, and (b) all direct quotations of words spoken during this private sexual encounter and recorded on the Sex Tape or any other video of this private sexual encounter." Campbell, who represented the parents of Terri Schiavo in their effort to portray their daughter as conscious and alert and was appointed to the bench by former Florida Gov. Jeb Bush, described her order as serving "the public interest." She stated very clearly during the hearing that she had never watched, and did not intend to watch, the video that she was ordering us to remove: "I'm not going to look at the tape. I don't think at this point in time I need to look at the tape."

We publish all manner of stories here. Some are serious, some are frivolous, some are dumb. I am not going to make a case that the future of the Republic rises or falls on the ability of the general public to

watch a video of Hulk Hogan fucking his friend's ex-wife. But the Constitution does unambiguously accord us the right to publish true things about public figures. And Campbell's order requiring us to take down not only a very brief, highly edited video excerpt from a 30-minute Hulk Hogan fucking session but also a lengthy written account from someone who had watched the entirety of that fucking session, is risible and contemptuous of centuries of First Amendment jurisprudence.

Campbell's grasp on the ramifications of that jurisprudence, such as it is, can be gleaned from a moment in the transcript of yesterday's hearing wherein she seemed to fail to understand the basic First Amendment principle that "speech" includes forms of communication beyond word-sounds coming out of people's mouths. This is a moment when Gawker Media's attorney, Gregg Thomas, is interrupted by Campbell to attempt to clarify a point:

> *THOMAS: Since 1789, we've had a Constitution that honors speech. And I'm the last person here, Your Honor, to tell you that this is the speech of the highest quality or tenor, but the cases seem to say Your Honor can't make that judgment. You can't —*
>
> *CAMPBELL: Let me ask you this. I'm sorry for interrupting, but directly on that point. This is*

the part that was irritating to me in the lawyers' pleading, where they are describing comments that are made allegedly during this tape. So is that the speech that you are trying to protect? The speech that was made during the scope of this videotape between these two consenting adults having sex in a private setting with allegedly no notice to the plaintiff? I'm not sure what speech you're trying to protect.

THOMAS: Your Honor, I'm trying to protect multiple parts of speech. The first part is the printed version of the story. This is not a sex tape by itself, Your Honor. There is a printed version...and a sex tape that goes with it. It's not a sex tape alone. Yes, Your Honor, I'm trying to protect that speech. I'm also trying to protect the speech that's there....

CAMPBELL: I'm thinking this injunction is only about the tape.

THOMAS: Yes, Your Honor. I understand that. But I also think, Your Honor, when we think of the history of the First Amendment, we think of the Pentagon papers, maybe because I'm a First Amendment lawyer. There, a top secret document that was clearly stolen that could have injured men in war in Vietnam was considered by the United States Supreme

Court. And they said we're not going to stop its publication. The analogy perhaps is not appropriate.

CAMPBELL: It doesn't even have any — it's apples and oranges, worse than that actually.

THOMAS: Well, Your Honor, I don't think I'm out of order when I say speech is speech.

Despite her misapprehension that the issue at hand was "only about the tape," Campbell has seen clear to order us to disappear a 1,400-word article—words composed and published by Gawker Media editorial employees—simply because Hulk Hogan didn't like it.

A lawful order from a circuit court judge is a serious thing. While we vehemently disagree with Campbell's order with respect to the video itself, we have chosen to take it down pending our appeal.

But the portion of the order compelling us to remove the entirety of Daulerio's post—his words, his *speech* —is grossly unconstitutional. We won't take it down.

You can read the transcript of yesterday's hearing, as well as Campbell's ruling, below. And go here to read Daulerio's account of watching Hulk Hogan fuck his friend's ex-wife for 30 minutes, as is your right. And if you'd really like to watch the tape for some reason,it's online here.

DOCUMENT | PAGES

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

TERRY GENE BOLLEA, professionally known as HULK HOGAN,

Plaintiff,

vs. CASE NO.: 12012447 CI-01

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.

PROCEEDINGS: MOTION FOR TEMPORARY INJUNCTION

BEFORE: HONORABLE PAMELA A.M. CAMPBELL

DATE: April 24, 2013

PLACE: St. Petersburg Judicial Building
545 First Avenue North
St. Petersburg, Florida

REPORTED BY: Stacy D. Miller, Court Reporter
Notary Public
State of Florida at Large

Bollea v Clem at Al Hearing Before Judge Campbell 04 24 13 (PDF)

Bollea v Clem at Al Hearing Before Judge Campbell 04 24 13 (Text)

DOCUMENT PAGES

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

TERRY GENE BOLLEA, professionally known as HULK HOGAN,

Plaintiff,

vs. Case No. 12012447CI-(

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.
_____/

ORDER GRANTING PLAINTIFF'S MOTION FOR TEMPORARY INJU

This cause came before the Court on Plaintiff's Motion for Temporary I "Motion"). The Court having reviewed and considered the Motion and Response p argument at the hearing, and the Court file, and being otherwise fully advised,

IT IS ORDERED:

The Motion is GRANTED for the reasons stated on the record at the he April 24, 2013.

For the duration of the captioned action and until judgment is entere Gawker Media, LLC aka Gawker Media, Gawker Media Group, Inc. aka G Gawker Entertainment, LLC, Gawker Technology, LLC, Gawker Sales, LLC, Nicl

Order Granting Temporary Injunction (PDF)
Order Granting Temporary Injunction (Text)
[*Image via Getty*]

8 246

As an avid Gawker reader, I read the piece in its entirety and also watched the edited video posted with the story. I can assure anyone who hasn't seen the video that the article was much, much funnier than the video, and A. J. pointed out tons of things that I wouldn't have even noticed if I hadn't read the piece first, and described some of what he edited out. He must have watched that thing 100 times. The video itself was boring, grainy, and uncomfortable to watch. But furthermore I'd like to thank Gawker for (almost) never backing down to this anti-1st-amendment pressure. I can remember a lot of times when every news organization EXCEPT Gawker took down some controversial video/picture. You guys rule.

2 8 **Reply**

Proofer

Really?

This is the Freedom Of Speech fight you're picking?

That is sad.

18 14 **Reply**

John Cook

Which other injunction ordering us to remove the editorial work of Gawker staffers would you have us fight?

9 17 **Reply**

yandat

John, this would be a better write-up if you more fully explained the reasoning behind taking down the video but leaving the text. Not that I'm disagreeing with the decision, but this is obviously going to be the first reaction most people have when they view the article in question.

1 1 **Reply**

John Cook

4

The order to remove the purely editorial work of a Gawker staffer describing what he had seen —no matter how frivolous or dumb or salacious —is plainly unconstitutional. The order to take down the video was mistaken, but it's a far different thing than barring a reporter from writing true things about what he'd watched.

7 2 **Reply**

yandat

Ok, I guess it's hedging bets to take down the video - but the only person Hulk Hogan should be able to prosecute for violating privacy is whoever secretly filmed and released the sex tape. The Apache helicopter video released by Wikileaks is a good example of this principle; the government can legally prosecute Bradley Manning for personally downloading and then leaking the video, however it cannot then prosecute every subsequent publication of that leaked video.

The Hulk Hogan sex tape doesn't show crimes against humanity (well, uh, it's close) but the legal principle is the same.

2 3 **Reply**

View all 246 replies