

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

TERRY GENE BOLLEA professionally  
known as HULK HOGAN,

Plaintiff,

Case No.: 12012447-CI-011

vs.

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

Defendants.

---

**OBJECTION TO NOTICE OF HEARING**

Defendants Gawker Media, LLC, Nick Denton, and A.J. Daulerio (collectively, “Defendants), by and through undersigned counsel, hereby object to Plaintiff’s Notice for Hearing (filed April 3, 2015) noticing Plaintiff’s Motion for Leave to Add Claim for Punitive Damages to the case management conference scheduled for April 22, 2015. In support of this objection, Defendants state as follows:

1. Two and a half years into this case, three months before trial, and on a court holiday, Friday April 3, 2015 (the holiday before Easter and Passover weekend), Plaintiff filed and served an extensive Motion to Add Punitive Damages. The motion itself is twenty-six (26) pages in length and includes over forty (40) exhibits, encompassing hundreds of pages of documents.

2. That same day, Plaintiff also noticed the motion for hearing for April 22, 2015. The notice violates Florida Rules of Civil Procedure and fails to provide adequate time for Defendants to oppose the motion.

3. First, Florida Rule of Civil Procedure requires that a motion to amend to add punitive damages and the supporting evidence or proffer “*shall* be served on all parties *at least* 20 days before the hearing.” Fla. R. Civ. P. 1.190(f). Pursuant to Florida Rule of Judicial Administration 2.514(b), five additional days are added where, as here, service is made by mail or e-mail, meaning that the motion was required to have been served no less than twenty-five (25) days before the hearing. See C.E. Huffman Trucking, Inc. v. Red Cedar Corp., 723 So. 2d 296, 298 (Fla. 2d DCA 1998) (interpreting similar notice provision for summary judgment hearings).

4. Plaintiff served his motion and supporting evidence well less than the twenty-five (25) days required prior to the noticed hearing in clear violation of the mandatory requirements of Fla. R. Civ. P. 1.190(f) and Fla. R. Jud. Admin. 2.514(b). Under these rules, for a hearing on April 22, plaintiff would have needed to serve the motion by March 27, 2015, but he served it a full week later (even not taking into account that it was served on a court holiday). The hearing cannot go forward for this reason alone.

5. For example, Florida Rule of Civil Procedure 1.510 contains a similar notice provision for motions for summary judgment. Fla. R. Civ. P. 1.510(c) (“The movant shall serve the motion at least 20 days before the time fixed for the hearing . . .”). Florida courts have determined that the failure to comply with this nearly identical notice provision constitutes reversible error. E.g., Verizzo v. Bank of New York, 28 So. 3d 976, 968 (Fla. 2d DCA 2010); Wizikowski v. Hillsborough County, 651 So. 2d 1223, 1224 (Fla. 2d DCA 1995).

6. Moreover, Section 768.72 of the Florida Statutes establishes a substantive right “not to be subject to a punitive damages claim and ensuing financial worth discovery until the trial court makes a determination that there is a reasonable evidentiary basis for recovery of

punitive damages.” Globe Newspaper Co. v. King, 658 So. 2d 518, 519 (Fla. 1995). Courts strictly construe the procedural protections surrounding such claims. Id. The requirements of Rule 1.190(f) should likewise be strictly construed.

7. Second, the April 22 hearing does not provide sufficient time for Defendants to prepare.

8. The timing of Plaintiff’s motion leaves twelve (12) working days before the hearing. Of those twelve (12) working days, five (5) are slotted for depositions in four (4) different states. Moreover, Defendants are finalizing their motion for summary judgment, which is due April 20, 2015, just two (2) days before the hearing and just ten (10) days after the close of fact discovery. Defendants’ summary judgment motion is of particular importance in a case such as this involving freedom of the press, where “pretrial dispositions are especially appropriate because of the chilling effect these cases have on freedom of speech.” Stewart v. Sun-Sentinel Co., 695 So. 2d 360, 363 (Fla. 4th DCA 1997). Unlike the punitive damages motion, the timing for the summary judgment motion was agreed to, and specifically planned and provided for, in the Court’s Order Setting Pre-Trial Conference and Jury Trial.

9. As evidenced by Plaintiff’s extensive motion, hearings on punitive damages are often complex and heavily contested evidentiary matters. However, the timing of Plaintiff’s motion does not leave Defendants with time to adequately prepare an opposition or for the hearing.

10. Undersigned counsel raised both these issues with Plaintiff’s counsel and requested that Plaintiff remove the motion from the April 22, 2015 case management conference. Defendants agreed that the motion could be heard at the next available hearing date scheduled in this case, when the parties already have a full day reserved for Defendants’ motion for summary

judgment. Defendants also agreed that if the motion to add punitive damages was granted, they would work with Plaintiff to coordinate any remaining financial discovery promptly. Plaintiff's counsel, however, advised that Plaintiff planned to keep the April 22, 2015 hearing as noticed. See Correspondence attached as Composite Ex. A.

11. Plaintiff was in complete control of when he chose to file his motion to add punitive damages claim. He claims he needed to wait "to finalize the Punitive Damages Motion until the completion of recent depositions of certain Gawker witnesses," see Plaintiff's Motion to Extend at 2, but those depositions were completed a full month before the punitive damages motion was filed, and the motion references only one of the recent depositions. He also chose to file his motion on a court holiday and in a manner that does not allow adequate time for Defendants to properly oppose the motion. He also violated the explicit Rules of Civil Procedure in so doing.

12. Plaintiff's motion to add punitive damages may not proceed on April 22, 2015.

WHEREFORE, the Defendants object to proceeding on Plaintiff's Motion for Leave to Add Claim for Punitive Damages (and the companion motion to take additional financial discovery) on April 22, 2015.

Respectfully submitted,

THOMAS & LOCICERO PL

By: /s/ Rachel E. Fugate

Gregg D. Thomas

Florida Bar No.: 223913

Rachel E. Fugate

Florida Bar No.: 0144029

601 South Boulevard

P.O. Box 2602 (33601)

Tampa, FL 33606

Telephone: (813) 984-3060

Facsimile: (813) 984-3070

gthomas@tlolawfirm.com

rfugate@tlolawfirm.com

Seth D. Berlin  
Pro Hac Vice Number: 103440  
Michael D. Sullivan  
Pro Hac Vice Number: 53347  
Michael Berry  
Pro Hac Vice Number: 108191  
Alia L. Smith  
Pro Hac Vice Number: 104249  
Paul J. Safier  
Pro Hac Vice Number: 103437  
LEVINE SULLIVAN KOCH & SCHULZ, LLP  
1899 L Street, NW, Suite 200  
Washington, DC 20036  
Telephone: (202) 508-1122  
Facsimile: (202) 861-9888  
sberlin@lskslaw.com  
msullivan@lskslaw.com  
mberry@lskslaw.com  
asmith@lskslaw.com  
psafier@lskslaw.com

*Counsel for Defendants Gawker Media, LLC,  
Nick Denton, and A.J. Daulerio*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 10<sup>th</sup> day of April 2015, I caused a true and correct copy of the foregoing to be served via the Florida Courts' E-Filing Portal upon the following counsel of record:

Kenneth G. Turkel, Esq.  
kturkel@BajoCuva.com  
Shane B. Vogt, , Esq.  
shane.vogt@BajoCuva.com  
Bajo Cuva Cohen & Turkel, P.A.  
100 N. Tampa Street, Suite 1900  
Tampa, FL 33602  
Tel: (813) 443-2199  
Fax: (813) 443-2193

David Houston, Esq.  
Law Office of David Houston  
dhouston@houstonatlaw.com  
432 Court Street  
Reno, NV 89501  
Tel: (775) 786-4188

Charles J. Harder, Esq.  
charder@HMAfirm.com  
Douglas E. Mirell, Esq.  
dmirell@HMAfirm.com  
Sarah E. Luppen  
sluppen@HMAfirm.com  
Harder Mirell & Abrams LLP  
1925 Century Park East, Suite 800  
Los Angeles, CA 90067  
Tel: (424) 203-1600  
Fax: (424) 203-1601

*Attorneys for Plaintiff*

Barry A. Cohen, Esq.  
bcohen@tampalawfirm.com  
Michael W. Gaines, Esq.  
mgaines@tampalawfirm.com  
Barry A. Cohen Law Group  
201 East Kennedy Boulevard, Suite 1000  
Tampa, FL 33602  
Tel: (813) 225-1655  
Fax: (813) 225-1921

*Attorneys for Defendant Heather Clem*

/s/ Rachel E. Fugate  
Attorney