

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. 12012447CI-011

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.

**PLAINTIFF'S NOTICE THAT ACTION IS STILL AT ISSUE
& MOTION TO SET CAUSE FOR TRIAL**

Plaintiff Terry Bollea, professionally known as Hulk Hogan ("Mr. Bollea"), by counsel and pursuant to Rule 1.440(b), Florida Rules of Civil Procedure, gives notice that this action is still at issue and ready to be set for trial, and moves this Court for the entry of an order re-setting this action for trial, and states as follows:

1. The jury trial of this matter was originally scheduled on the two week trial docket set to commence on July 6, 2015, pursuant to this Court's Order Setting Pre-Trial Conference and Jury Trial dated February 18, 2015 (the "Pretrial Order").

2. On April 17, 2015 (Mandate issued on May 8, 2015), the Second District Court of Appeal entered an Order directing this Court to conduct a hearing on Kinja's Motion to Dismiss for Lack of Personal Jurisdiction.

3. On May 7, 2015, the Second District Court of Appeal entered an Order quashing this Court's November 4, 2014 Order severing Plaintiff's claims against Kinja, and quashing this Court's Pretrial Order. The Second DCA indicated that an opinion will follow but, as of today's date, the opinion has not issued.

4. The Court held a Case Status Conference on May 29, 2015, during which the Court and counsel for the parties discussed the Second DCA's May 7, 2015 Order and Plaintiff's intention to dismiss Kinja in order to retain the July 6, 2015 trial date on his claims against the remaining Defendants.

5. However, due to the uncertainty surrounding the Second DCA's May 7, 2015 Order, Gawker Defendants argued at the May 29, 2015 hearing that this Court lacked jurisdiction to re-set the case for trial.

6. The Court decided at the May 29, 2015 Case Status conference to hold the July 6, 2015 trial docket for this case, in the hopes that the uncertainty associated with the Second DCA's May 7, 2015 Order would be resolved quickly.

7. Until Monday, June 15, 2015,¹ the parties continued to follow the schedule and deadlines established in the Pretrial Order, and participated in the financial worth discovery ordered by the Court at the May 29, 2015 Case Status Conference. In particular, Defendants:

- a. Filed their Opposition to Plaintiff's Motion to Exclude Testimony of Peter Horan on June 1, 2015;
- b. Served Answers to Financial Worth Interrogatories and Requests for production on June 4, 2015;

¹ On June 15, 2015, Gawker Defendants filed their Notice Regarding Trial Date and Pre-Trial Filings (the "Objection"), in which they objected to the continued application of the Pre-Trial Order and deadlines set forth therein.

- c. Agreed to dates for and participated in the Financial Worth Depositions of Gawker Defendants in New York on June 16–17, 2015;
- d. Filed their Witness List, Exhibit List, and Deposition Designations for trial on June 8, 2015;
- e. Filed their Motions in Limine on June 12, 2015; and
- f. Filed their Replies to Plaintiff's Responses in Opposition to Gawker Defendants' Motions to Exclude the expert testimony of Mike Foley, Leslie John, Shanti Shunn, and Jeff Anderson, on June 12, 2015;

8. Gawker Defendants are fully prepared to proceed to trial. At worst, they are merely a few days behind in filing objections to plaintiff's deposition designations, counter-designations, objections to jury instructions and verdict form, and any special instructions they request.

9. After trying unsuccessfully to reach an agreement with Gawker Defendants providing for the dismissal of Kinja and re-setting of the trial on July 6, 2015, Mr. Bollea filed an Emergency Motion for Clarification in the Second DCA.

10. On June 17, 2015, the Second DCA issued an order denying this Emergency Motion.

11. As a result, Mr. Bollea decided to voluntarily dismiss Kinja with prejudice. (See **Exhibit A**).

12. Mr. Bollea, pursuant to the Court's ruling at the May 29, 2015 hearing, also filed his First Amended Complaint, which includes Mr. Bollea's demand for punitive damages within the prayer for relief (as the only change by interlineation, along with a footnote on page 1 reflecting the same). (See **Exhibit B**).

13. Accordingly, pursuant to Rule 1.440, Florida Rule of Civil Procedure, Mr. Bollea gives notice that this case is still at issue and requests that it be re-set for jury trial. See *Tarasewicz v. Royal Caribbean Cruises, Ltd.*, 2015 U.S. Dist. LEXIS 45923 (S.D. Fla. April 8, 2015) (punitive damages are part of prayer for relief, not a separate cause of action).

14. Because this matter has been scheduled for jury trial for a considerable amount of time, and the parties have been following the Pretrial Order irrespective of the confusion caused by the Second DCA's May 7, 2015 Order, it is appropriate to re-set this matter for trial upon less than thirty days notice. See *Labor Ready Southeast, Inc. v. Australian Warehouses Condo. Ass'n*, 962 So.2d 1053 (Fla. 4th DCA 2007); *HSBC Bank USA, N.A. v. Serban*, 148 So.3d 1287 (Fla. 1st DCA 20014).

15. Contrary to the position Mr. Berlin states in his June 11, 2015 letter to this Court, Gawker Defendants are **admittedly and proudly ready for trial**—and want the whole world to know it.

16. In fact, Gawker Defendants (including Nick Denton and Gawker's President and General Counsel, Heather Dietrich), voluntarily chose to participate in an interview with *Capital New York*, in a story published on June 12, 2015, a copy of which is attached as **Exhibit C**. Mr. Denton immediately thereafter published his own story on Gawker.com, discussing the interview and his eagerness to defend the First Amendment in court against Mr. Bollea, a copy of which is attached as **Exhibit D**.

17. Among other things, these articles state:

- Denton: "The Hogan lawsuit is **actually coming to trial, probably on July 6th**."
- Denton: "[N]ow **that the trial is on, we intend to fight it as far as we need to and we can.**" (Emphasis added.)

18. If Gawker Defendants are ready to try this case in the press, they must certainly be ready to try it in Court.

DATED: June 18, 2015.

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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 18th day of June, 2015 to the following:

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