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, *et al.*,

Defendants.
_____/

**OBJECTION TO PLAINTIFF'S PURPORTED NOTICE/MOTION UNDER RULE 1.440**

Defendants Gawker Media, LLC, Nick Denton and A.J. Daulerio (the "Publisher Defendants"), by and through their undersigned counsel, hereby memorialize their objection to plaintiff's notice and accompanying motion to set a trial date, filed on June 18, 2015, purporting to give notice that this action is "at issue" pursuant to Rule 1.440, and moving this Court to set a trial date on July 6, 2015, and state as follows:

1. This Court lacks jurisdiction over the issue of setting a trial date because the District Court of Appeal assumed jurisdiction over the issue when it granted the Publisher Defendants' writ petitions in its May 7, 2015 Order. The Court of Appeal has not issued its opinion, nor issued a mandate or any other order returning jurisdiction over that issue to this Court. Indeed, plaintiff previously filed a Motion for Clarification asking the District Court of Appeal if this Court could set a trial date if he dismissed Kinja. In an order dated June 17, 2015, the Court of Appeal *denied* that motion, further confirming that it intended to retain jurisdiction until it issues its opinion. Simply put, this Court lacks subject matter jurisdiction to act on this issue, and subject matter jurisdiction cannot be waived by the parties.

2. *Even if* this Court had jurisdiction over this issue, setting a trial date for July 6, 2015 would violate the clear requirements of Florida Rule of Civil Procedure 1.440. It is settled law that the requirements of Rule 1.440 are mandatory and that failure to follow them is reversible error. *See, e.g.*, *Bennett v. Continental Chemicals, Inc.*, 492 So. 2d 724, 726 (Fla. 1st DCA 1986) (en banc) (attached hereto as Exhibit A) ("Rule 1.440 is very clear as to when the action is ready for trial, or is 'at issue'" and leaves "little room for improvisation. . . . [S]trict compliance with rule 1.440 is mandatory" and "failure to conform with Rule 1.440 is reversible error."); *Genuine Parts Co. v. Parsons*, 917 So. 2d 419, 421 (Fla. 4th DCA 2006) (attached hereto as Exhibit B) (Rule 1.440 provides that "Trial shall be set **not less than 30 days from the service of the notice for trial.** It is this provision which is mandatory. It is this provision with which the trial court failed to comply. It is this provision which causes us to issue the writ of mandamus in this case.") (emphasis in original). Under the clear and unambiguous language of the rule, plaintiff must await the close of the pleadings (which has not yet occurred), then wait twenty days to file a Notice that the case is at issue, and then a trial must be at least thirty days thereafter. As such, his Notice is premature, and his Motion cannot be granted without violating the rule.

3. Plaintiff focuses his Notice/Motion on whether the Publisher Defendants would be prejudiced in their preparations. While they clearly would be, as explained to the Court and the Court of Appeal in prior submissions, there is a more basic concern: if the Court acts when it has no subject matter jurisdiction or in violation of a "mandatory" rule, both parties could be prejudiced at a much more fundamental level by having devoted substantial time and resources (not to mention wasting the Court's and jurors' time) on a trial that turns out to have been a nullity.

4. The Notice should be stricken as premature, and the motion denied.

Dated: June 19, 2015

Respectfully submitted,

THOMAS & LOCICERO PL

By: */s/ Gregg D. Thomas*

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 19th day of June 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

Charles J. Harder, Esq.
charder@HMAfirm.com
Douglas E. Mirell, Esq.
dmirell@HMAfirm.com
Sarah E. Luppen, Esq.
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*

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

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/ *Gregg D. Thomas*
Attorney