

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

TERRY GENE BOLLEA professionally
known as HULK HOGAN,

Case No. 12012447 CI-011

Plaintiff,

vs.

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

Defendants.

**EMERGENCY MOTION FOR CLARIFICATION AND CONFIRMATION THAT
AGREED PROTECTIVE ORDER AND STIPULATED PROTOCOL GOVERN ALL
DOCUMENTS, RECORDS AND MATERIALS PRODUCED IN RESPONSE TO FOIA
REQUEST OF GAWKER MEDIA, LLC AND ITS ATTORNEYS AND REQUEST FOR
STATUS CONFERENCE**

Plaintiff Terry Gene Bollea, professionally known as Hulk Hogan (“Mr. Bollea”), by and through his undersigned counsel, hereby moves for an order clarifying and confirming that the July 25, 2013 Agreed Protective Order Governing Confidentiality (“Protective Order”) and the October 20, 2014 Stipulated Report and Recommendation of the Special Discovery Magistrate (the “Stipulated Protocol”) apply to and govern all documents, records and materials produced by the United States Government (the FBI and the Executive Office of the United States Attorney) to counsel for Defendants Gawker Media, LLC (“Gawker”), Nick Denton, and A.J. Daulerio (collectively the “Gawker Defendants”) in response to any Freedom of Information Act (“FOIA”) Request. Mr. Bollea states in support as follows:

1. On May 19, 2015, Gawker and its counsel, Gregg Thomas, brought an action in the U.S. District Court for the Middle District of Florida seeking a court order directing the United

States Government to produce its investigative files related to the FBI investigation of an extortion attempt against Mr. Bollea (the “FOIA Lawsuit”).

2. Gawker and Thomas initiated the FOIA Lawsuit solely for the purpose of discovery in this state court case by Mr. Bollea against Gawker Defendants.

3. All discovery in this case is governed by this Court’s July 25, 2013 Protective Order.

4. Gawker and Thomas sought the United States Government’s investigative files under FOIA. However, due to Mr. Bollea’s privacy rights, the United States Government would not produce its files without authorization.

5. As part of the discovery process in this case, Gawker moved to compel Mr. Bollea and his counsel to provide Certificates of Identity and Authorization to Release Information to Another Person (the “Authorizations”) under FOIA.

6. The Court granted Gawker’s motion and ordered Mr. Bollea and his attorneys to provide Authorizations on February 26, 2014.

7. On October 14, 2014, the parties executed a Stipulated Protocol for the FOIA request, a copy of which is attached as **Exhibit A**, providing that:

- a) any responsive documents would be provided from the government to Gawker’s counsel and treated as “Highly Confidential – Attorney’s Eyes Only” under this Court’s Protective Order; and
- b) any videos would be produced by the government directly to Judge James Case (Ret.).

8. On November 7, 2014, Gawker and Thomas sent new FOIA requests to the United States Government under the Stipulated Protocol.

9. The United States Government again refused to provide its investigative files, citing the law enforcement privilege. The FOIA Lawsuit ensued.

10. On June 24, 2015 and July 2, 2015, the Honorable Susan Bucklew issued certain orders in the FOIA Lawsuit requiring the United States Government to produce certain records, as well as audio and video recordings. The video recordings, contained on three DVDs, were hand-delivered to this Court by attorneys from the law firms of Bajo Cuva Cohel & Turkel, and Thomas & LoCicero, on Monday, June 29, 2015, at approximately 11:30 a.m., and the Court had six attorneys (three from each side) watch the video recordings contained on the three DVDs on Tuesday, June 30, 2015, at approximately 2:00 p.m. The remaining materials, however, which include approximately two audio CDs and hundreds of pages of documents, were produced or are being produced by the United States Government directly to Gawker's counsel.

11. Mr. Bollea intervened in the FOIA Lawsuit to ensure that this Court's Protective Order and the Stipulated Protocol were being followed. To this end, Mr. Bollea filed a motion for Protective Order in the FOIA Lawsuit.

12. In a written order dated July 1, 2015, and at a hearing in court on July 2, 2015, Judge Bucklew stated that Mr. Bollea must seek relief from this Court to enforce any confidentiality stipulations or orders governing the records produced in the FOIA Lawsuit, including documents and audio and video recordings produced by the United States Government.

13. Counsel of record for the government, Erik Kenneth Stegeby, has also stated that he cannot provide any documents to Mr. Bollea or his counsel absent a court order, and that Mr. Bollea should seek relief from this Court with respect to the United States Government's records, including to receive a copy of the documents and audio recordings produced to counsel for Gawker Defendants.

14. The records produced by the United States Government include extremely sensitive information that implicate the privacy rights of Mr. Bollea and third parties.

15. Mr. Bollea's Authorization to release these documents under FOIA is limited solely to this Court and Gawker's counsel for the exclusive purpose of discovery in this case—and therefore subject to the Protective Order and the Stipulated Protocol.

16. Records produced by the United States Government to date include information regarding Mr. Bollea's private sex life, the private sex life of Heather Cole and Bubba Clem, and sensitive law enforcement information regarding the extortion investigation. Thus, it is crucial that the parties' Stipulated Protocol and the Protective Order with respect to the confidentiality of this information and all associated United States Government records be confirmed in an Order, and followed.

17. Pursuant to Judge Case's October 20, 2014 Report and Recommendation based on the Stipulated Protocol, any and all documents, records and materials produced by the United States Government in response to the FOIA request of Gawker and/or their counsel are automatically designated as "Highly Confidential – Attorney's Eyes Only."

18. Accordingly, Mr. Bollea requests that this Court enter an Order confirming that the parties' Stipulated Protocol and the Protective Order apply to any and all records, documents, recordings and other materials produced by the United States Government. Mr. Bollea also requests that the following definition for the term "Highly Confidential – Attorney's Eyes Only" be applied to such materials: such material may only be received or viewed by: (a) attorneys of record for the parties in this litigation, and staff of such attorneys to whom it is necessary that the material be shown for purposes of this litigation; (b) the Court and its staff, and any mediator, provided they are filed under seal or otherwise provided to the Court or mediator outside of the public docket; and

(c) any other person designated by the Court after notice to all parties and an opportunity to be heard.

19. Mr. Bollea further requests that all DVDs provided by the United States Government to this Court be kept under seal, and that the Order specifically rule that all other records, documents and materials that have been or will be produced by the United States Government are designated “Highly Confidential – Attorney’s Eyes Only” and that counsel for Gawker Defendants provide to Mr. Bollea’s counsel a copy of all records, documents and materials produced by the United States Government pursuant to the terms of the Stipulated Protocol.

20. Mr. Bollea further requests that the Court specifically rule that the Authorizations provided pursuant to this Court’s Order are applicable solely to Gregg Thomas, Esq. (as stated in the Authorizations), and solely with respect to discovery in this lawsuit. This Court’s intention in ordering Mr. Bollea to provide the Authorizations was not to allow anyone other than Gawker’s Defendants’ counsel (Mr. Thomas) to be provided with the United States Government’s records concerning the investigation into the extortion of Mr. Bollea.

21. Mr. Bollea further requests that the Court **schedule a status conference as expeditiously as possible** (preferably on July 17, 2015) to discuss the status of the United States Government’s production to Gawker and its counsel, and procedures for handling these sensitive documents and materials.

CERTIFICATION OF NECESSITY OF REQUEST FOR EMERGENCY HEARING

I HEREBY CERTIFY that just cause exists to request a consideration of this motion on an emergency basis based upon the following:

A. In an article titled “Hulk v. Gawker, the story so far” posted by Nick Denton on July 10, 2015 (a copy of which is attached as **Exhibit B**), Mr. Denton states:

There will be a third act which we believe will center on the real story: the additional recordings held by the FBI, *the information in them that is Hulk Hogan's real secret*, and irregularities in the recordings which indicate some sort of cover-up.

This statement raises serious concerns that the protections applicable to the United States Government's records have already been and/or will be violated.

B. The FBI served Notice in the FOIA Lawsuit on July 10, 2015, a copy of which is attached as **Exhibit C**, indicating that it is producing re-processed video footage to this Court.

WHEREFORE, Plaintiff Terry Bollea respectfully requests that this Court enter an order on the Special Discovery Magistrate's October 20, 2014 Report and Recommendation, Stipulated Protocol and Protective Order, which also contains the clarifications discussed herein, and that the Court set a status conference (preferably on July 17, 2015) to discuss the status of the United States Government's production to Gawker and its counsel, and procedures for handling these sensitive documents and materials.

Dated: July 13, 2015.

Respectfully submitted,

/s/ Kenneth G. Turkel

Kenneth G. Turkel, Esq.

Florida Bar No. 867233

Shane B. Vogt

Florida Bar No. 0257620

BAJO | CUVA | COHEN | TURKEL

100 North Tampa Street, Suite 1900

Tampa, Florida 33602

Tel: (813) 443-2199

Fax: (813) 443-2193

Email: kturkel@bajocuva.com

Email: svogt@bajocuva.com

-and-

Charles J. Harder, Esq.

PHV No. 102333

Jennifer J. McGrath, Esq.

PHV No. 114890

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: jmcgrath@hmafirm.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 13th day of July, 2015 to the following:

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

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*

Kirk S. Davis, Esquire
Shawn M. Goodwin, Esquire
Akerman LLP
401 E. Jackson Street, Suite 1700
Tampa, Florida 33602
kirk.davis@akerman.com
shawn.goodwin@akerman.com
Co-Counsel for Gawker Defendants

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
abcenc@tlolawfirm.com
Counsel for Gawker Defendants

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

Timothy J. Conner
Holland & Knight LLP
50 North Laura Street, Suite 3900
Jacksonville, FL 32202
timothy.conner@hkllaw.com

Charles D. Tobin
Holland & Knight LLP
800 17th Street N.W., Suite 1100
Washington, D.C. 20006
charles.tobin@hkllaw.com
*Attorneys for Intervenors, First Look Media, Inc.,
WFTS-TV and WPTV-TV, Scripps Media, Inc.,
WFTX-TV, Journal Broadcast Group, Vox Media,
Inc., WFLA-TV, Media General Operations, Inc.,
Cable News Network, Inc., Buzzfeed and The
Associated Press.*

Allison M. Steele
Rahdert, Steele, Reynolds & Driscoll, P.L.
535 Central Avenue
St. Petersburg, FL 33701
amnestee@aol.com
asteel@rahdertlaw.com
ncampbell@rahdertlaw.com
*Attorneys for Intervenor Times Publishing
Company*

/s/ Kenneth G. Turkel

Attorney