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July 22, 2015

VIA ELECTRONIC MAIL AND HAND DELIVERY

The Honorable Pamela A.M. Campbell
Sixth Judicial Circuit
St. Petersburg Judicial Building
545 First Avenue N., Room 300
St. Petersburg, FL 33701

Re: *Terry Gene Bollea v. Clem, Gawker Media, LLC, et al.*
Case No.: 12012447-CI-011
Review of DVDs Produced by FBI

Dear Judge Campbell:

As you know, I serve as counsel for Gawker Media, LLC, Nick Denton and A.J. Daulerio. I write concerning the reprocessed DVDs produced by the FBI to Your Honor on Thursday, July 16, 2015, and in response to the correspondence that plaintiff's counsel sent to Your Honor earlier today (see attached).

Following Judge Bucklew's order directing the FBI to advise Her Honor whether a "second, more accurate and complete production is required," counsel for the FBI informed the federal court that the reprocessed DVDs correct issues with two of the DVDs provided to Your Honor on June 29, 2015 and reviewed by counsel for the parties on June 30, 2015. As the FBI has explained in its filings in the federal FOIA litigation, "one of the FBI's DVDs was corrupt and contained video footage that was little over one minute" and the other "video appeared to have audio that, in part, was not synchronized with the video footage."

Now that Your Honor has received the reprocessed DVDs and has had an opportunity to review them, we respectfully request that counsel for the parties be permitted to review the two reprocessed DVDs, just as the parties' counsel jointly reviewed the DVDs previously produced by the FBI. We are available to review the DVDs before or after the upcoming July 30 hearing, either on the afternoon of July 29 or following the hearing on July 30.

Today, plaintiff's counsel has requested that the DVDs be transferred to Judge Case. We believe that is both unnecessary and inefficient. The protocol was entered while the case was in active discovery, which was overseen by Judge Case. In light of the fact that Your Honor

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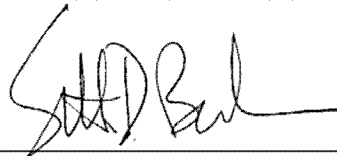
Hon. Pamela A.M. Campbell
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Page 2

reviewed the first set of DVDs and has custody of the reprocessed DVDs, we believe that it would be appropriate for you to continue to retain possession of all of the DVDs and oversee issues relating to them, including because they bear on evidentiary and other issues relating to trial. Indeed, for that reason, the parties previously agreed, and this Court directed, that the DVDs be provided directly to Your Honor. We would be happy to discuss this and any other issue relating to the DVDs at the July 30 hearing.

Thank you for your consideration. And, as always, thank you for your time and attention to this matter.

Sincerely,

LEVINE SULLIVAN KOCH & SCHULZ, LLP

By: 

Seth D. Berlin

cc: All counsel or record (via electronic mail)

Exhibit A

Bajo | Cuva | Cohen | Turkel

ATTORNEYS AT LAW

July 21, 2015

VIA HAND DELIVERY

The Honorable Pamela A.M. Campbell
Civil Division, Section 11
St. Petersburg Judicial Building
545 1st Avenue North, Room 300
St. Petersburg, Florida 33701

Re: *Bollea v. Heather Clem et al.*
Case No. 12012447-CI-011

Dear Judge Campbell:

We understand that the U.S. government has provided you two additional DVDs, pursuant to the Gawker FOIA requests and Judge Bucklew's orders in the federal lawsuit of *Gawker v. FBI*. As you know, in the *Bollea v. Gawker* case, the parties entered into a Stipulated Protocol for the handling of all video produced by the U.S. government pursuant to Gawker's FOIA requests. The Protocol provides, in pertinent part:

"[C]ounsel for Gawker will ask the government to provide any videos that the government agrees to produce in response to the request in a separate sealed envelope addressed to Judge James Case (Ret.), who will personally pick up the videos in Tampa. If the government inadvertently sends any video to Gawker's counsel, counsel will not open any sealed envelope containing videos and will not review any videos provided by the government, except as provided below. Gawker's counsel will send any videos to Judge Case within two business days of receiving them.

* * *

"With respect to any videos that contain any Nudity, Sexual Content, or Protective Order material, Judge Case will review them to determine whether the videos or any portions of the videos are relevant or reasonably calculated to lead to the discovery of admissible evidence.

* * *

100 North Tampa Street, Suite 1900, Tampa Florida 33602
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“If Judge Case determines that any statements reflected in the videos... are relevant or reasonably calculated to lead to the discovery of admissible evidence, then he will arrange for a court reporter to transcribe those statements (at Gawker’s expense).”

Enclosed is a copy of the Stipulated Report and Recommendation re FOIA Protocol, for your ease of reference.

The Court temporarily veered from the Protocol when the U.S. government produced its initial three DVDs a week before the July 6 trial date, a time Judge Case was on vacation (or about to go on vacation). It therefore made sense at the time for the three DVDs to be delivered to Your Honor for review.

The immediacy of that situation has now passed. Judge Case has returned from vacation, and the trial in this case has been postponed with no new trial date yet scheduled. Therefore, the reasons for veering from the Protocol no longer are present.

We therefore request that, pursuant to the provisions of the Protocol, all of the DVDs sent from the U.S. government, including the initial three DVDs, as well as the two additional DVDs, be forwarded to Judge Case for his review and compliance with the terms of the Protocol. Also, any motions or other activity can be addressed by Judge Case.

We are available to discuss this matter at the scheduled Status Conference on July 30 at 10:00 a.m.

Sincerely,



Kenneth G. Turkel

KGT/lhm

Enclosure

cc: Counsel of Record (via e-mail)

OCT 22 2014

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.

STIPULATED REPORT & RECOMMENDATION

Plaintiff Terry Gene Bollea and Defendant Gawker Media, LLC jointly stipulate to the protocol for the Freedom of Information Act request to be made by Gawker's counsel as outlined in the correspondence attached hereto as Exhibit 1.

Dated: October 14, 2014

Respectfully submitted,

HARDER MIRELL & ABRAMS LLP

THOMAS & LOCICERO PLLC

By: 

By: 

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and

and

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Counsel for Defendant Gawker Media, LLC

SO RECOMMENDED:

10.20.14
vs. JAMES R. CASE

James R. Case
Special Discovery Magistrate

Copies furnished to: Counsel of Record

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of October, 2014, I caused a true and correct copy of the foregoing to be served electronically upon the following counsel of record at their respective email addresses via the Florida Courts E-Filing Portal:

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September 29, 2014

VIA E-MAIL

Charles J. Harder, Esq.
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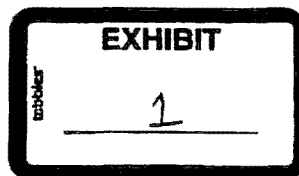
Re: *Bollea v. Clem, et al.*
No. 12012447-CI-011 (Fla. Cir. Ct.)

Dear Charles:

I write to follow up our conversations about a mutually agreeable protocol for our Freedom of Information Act ("FOIA") request seeking records concerning the federal government's investigation relating to the sex tape(s) involving plaintiff.

As Seth, you, and I discussed, we understand that plaintiff firmly believes that these records are not relevant and that our request for this information is not reasonably calculated to lead to the discovery of admissible evidence. We, in turn, disagree with plaintiff's belief about the records' relevance and his position that Gawker and its counsel should not be able to review certain materials that might be in the government's files without the Court reviewing them first. Nevertheless, both sides recognize that the Court has issued rulings that bear on these issues, and, in the spirit of compromise and in an effort to move the process along, we have agreed to establish a protocol for facilitating the FOIA request and subsequent review of any records provided by the government, without intending to waive our respective positions in connection with earlier rulings by the Court.

Based on our discussion, I set out below what I understand we agreed to in principle. Both sides understand that this agreement is intended only to address the procedure with respect to the FOIA request. Each party is preserving its rights and positions concerning the discoverability, relevance, or admissibility of any material the government produces in response to the FOIA request, and each party is preserving its right to challenge Judge Case's rulings, including any rulings on a party's confidentiality designations:





Charles J. Harder, Esq.
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- Counsel for the Gawker defendants, along with counsel for plaintiff, will call the U.S. Attorney's office and/or FBI before Gawker's counsel makes the FOIA request to explain our agreed upon protocol and seek their guidance on how best to ensure the government's assistance in complying with it.
- Plaintiff and his counsel will provide signed authorizations for the release of records to the Gawker defendants. Gawker will treat the Social Security numbers on the authorizations as "Highly Confidential – Attorney's Eyes Only" and will not disseminate them to anyone other than in submitting the FOIA request to the government.
- Counsel for the Gawker defendants will make the FOIA request, copying plaintiff's counsel. The request will note that plaintiff believes that records relating to the investigation are not relevant to this litigation, but he and his counsel have provided signed FOIA waivers based on a court order. We will provide a draft of the request to you before submitting it to the government, for you to review and revise as it pertains to plaintiff's position. Alternatively, if plaintiff prefers, we will include a separate letter from you stating plaintiff's position.
- **Responsive Documents:** Any documents that Gawker's counsel receives from the government will be treated as "Highly Confidential – Attorney's Eyes Only" pending plaintiff's review of the documents. Gawker's counsel will FedEx copies of the documents to plaintiff's counsel within two business days of receiving them. Plaintiff then will have 30 days from the date of receipt to review the documents and decide whether to designate any of them as "Confidential" under the Protective Order or "Highly Confidential – Attorney's Eyes Only" under Judge Campbell's April 23, 2014 ruling.
- **DVDs or Other Video Footage:** In the call with the government and in the FOIA request itself, counsel for Gawker will ask the government to provide any videos that the government agrees to produce in response to the request in a separate sealed envelope addressed to Judge James Case (Ret.), who will personally pick up the videos in Tampa. If the government inadvertently sends any video to Gawker's counsel, counsel will not open any sealed envelope containing videos and will not review any videos provided by the government, except as provided below. Gawker's counsel will send any videos to Judge Case within two business days of receiving them.



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- Prior to reviewing any video, Judge Case will provide the parties' counsel with an index of what he has received, describing the number of videos, their form (*i.e.*, DVD, tape, etc.), and any title that is on the video. Judge Case will preserve the videos until the final disposition of this case, including any appeals.
- Judge Case will review any videos provided to him, in their entirety, to determine if they contain any nudity, or any sexual content, or any material covered by the protective order plaintiff sought during the July 18, 2014 hearing (any and all of which is referred to herein as "Nudity, Sexual Content, or Protective Order Material"). If any videos do not contain any Nudity, Sexual Content, or Protective Order Material, then Judge Case will provide such videos to Gawker's counsel, and Gawker's counsel will then provide copies to plaintiff's counsel and will treat them as "Highly Confidential – Attorney's Eyes Only" until plaintiff's counsel has had 30 days to review them and make any confidentiality designations.
- With respect to videos that contain any Nudity, Sexual Content, or Protective Order Material, Judge Case will review them to determine whether the videos or any portions of the videos are relevant or reasonably calculated to lead to the discovery of admissible evidence. In connection with Judge Case's conducting that review and making his recommendations, Gawker might request of Judge Case to make a confidential, *ex parte* proffer to Judge Case about Gawker's theories on why content that might be on the recordings should be deemed to be relevant or reasonably calculated to lead to the discovery of admissible evidence. (Plaintiff opposes any *ex parte* communications between Gawker and Judge Case, or any protocol contemplating any such *ex parte* communications.) If Judge Case permits any *ex parte* proffer by Gawker's counsel: Judge Case will not provide Gawker's counsel with any information about the contents of any videos, except as provided below; any such proffer by Gawker will be treated as confidential and not shared with plaintiff or his counsel; and any such proffer will be made on the record and transcribed by a court reporter, in case it is needed for further review of Judge Case's recommendations concerning his review of the videos.
- If Judge Case recommends that any portion of the videos is not relevant or reasonably calculated to lead to the discovery of admissible evidence, he will provide the parties with something akin to a privilege log, generally describing any footage being withheld and the basis for withholding it, providing sufficient detail so that his recommendations could, if needed, be subject to further review, but while respecting the privacy interests of the plaintiff.



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- If Judge Case determines that any statements reflected on the videos containing Nudity, Sexual Content, or Protective Order Material or any portion thereof are relevant or reasonably calculated to lead to the discovery of admissible evidence, then he will arrange for a court reporter to transcribe those statements (at Gawker's expense). Each side retains the right to seek from Judge Case any portions of the videos, including any portions of the audio, that he finds to be relevant or reasonably calculated to lead to the discovery of admissible evidence in which there is no Nudity, Sexual Content, or Protective Order Material. Any transcript, audio recording, or video will be treated as "Highly Confidential – Attorney's Eyes Only" until plaintiff has had 30 days to review them and make any confidentiality designations.
- Prior to Gawker's counsel making the FOIA request, the parties will inform Judge Case of the agreed-upon protocol and provide him with a stipulation and proposed recommendation memorializing the proposed procedure for his receipt, review, and ruling on any videos.

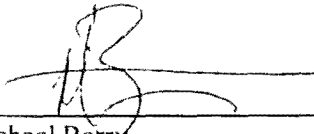
Please confirm that plaintiff agrees to this protocol or let us know if he proposes any revisions. If you have any questions or would like to discuss the protocol, please call me or Seth. If this is otherwise agreeable, please provide us with the signed authorizations as directed by the Court.

We appreciate your working with us to develop a mutually agreeable procedure.

Very truly yours,

LEVINE SULLIVAN KOCH & SCHULZ, LLP

By: _____


Michael Berry

cc: Seth D. Berlin, Esq.