

**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 LEAVE TO CONDUCT DISCOVERY
CONCERNING POTENTIAL VIOLATION OF PROTECTIVE ORDER, TO COMPEL
TURNOVER OF CONFIDENTIAL DISCOVERY MATERIALS
AND FOR ORDER TO SHOW CAUSE**

On July 10, 2015, Defendant Nick Denton posted a story on a Gawker-affiliated website foreboding that a “third act” in this case would soon reveal “Hulk Hogan’s real secret” from within illegally recorded footage of Plaintiff, Terry Gene Bollea, professionally known as Hulk Hogan (“Mr. Bollea”), surreptitiously recorded in a private bedroom. Mr. Denton was presumably referring to documents purporting to reflect Mr. Bollea’s use of offensive language on a recording of Mr. Bollea and Ms. Clem—a different recording not relevant to the issues in this lawsuit.

Two weeks later, while Gawker Media, LLC and Nick Denton were in the midst of their own public relations and internal corporate catastrophe, *The National Enquirer* broke a story based on sealed evidence about the “real secret” which Nick Denton threatened would be exposed.

Mr. Bollea files this motion to find out who was responsible for disseminating highly confidential information protected by this Court’s protective orders, and to hold anyone responsible who attempted to yet again capitalize on the illegally recorded footage and related evidence which was obtained in violation of his right to privacy and used as part of an attempted extortion.

Mr. Bollea, by and through his undersigned counsel, hereby moves for an order granting him leave to conduct discovery to determine who disclosed “HIGHLY CONFIDENTIAL—ATTORNEY’S EYES ONLY” discovery materials from this case to certain media outlets, which materials have been sealed by this Court’s orders.

Specifically, Mr. Bollea seeks:

1. The appointment of an independent electronic forensic expert to examine the computer network, systems, servers, tablets, and smart phones of Defendants, Gawker Media, LLC (“Gawker”), Nick Denton (“Mr. Denton”), and/or A.J. Daulerio (“Mr. Daulerio”), including any of their respective agents or attorneys (collectively, “Gawker Defendants”), for any and all data, files, emails, messages, texts, phone records and similar electronically stored information which in any way demonstrates that Gawker Defendants or anyone else associated with them communicated with *The National Enquirer* or *Radar Online*, or any other members of the media or third-parties, directly or indirectly, concerning Mr. Bollea or this lawsuit, including without limitation any information contained in the reporting by *The National Enquirer* and *Radar Online*;

2. An order appointing the expert to conduct electronic discovery of the computers, hard drives, servers, tablets, and smartphones of Gawker Defendants and their respective attorneys or agents, searching for all nonprivileged documents that utilize the search terms “Hulk”, “Hogan”, “Terry”, “Bollea”, or the offensive language quoted in the *National Enquirer* piece, as well as any communications between Gawker Defendants or their counsel and the *National Enquirer* or *Radar Online*. All such nonprivileged documents will be produced to Mr. Bollea.

3. An order that a privilege log be provided with respect to all privileged communications that are found that use such search terms.

4. An order providing that any inadvertently produced privileged documents shall be returned to Gawker Defendants so long as Gawker Defendants object within seven days of production and it is ascertained that they are privileged.

5. The depositions of any current or former Gawker Defendant employees or agents revealed by the computer forensic examination to have been in contact with or communicated with *The National Enquirer* or *Radar Online* concerning Mr. Bollea or this lawsuit, or otherwise provided any information to anyone contained in the reporting by *The National Enquirer* and *Radar Online*; and

6. The depositions of Nick Denton and Heather Dietrick to verify what confidential information they have been provided in this case and to whom they have disclosed such information.

7. An order directing Gawker Defendants to immediately turn over to Special Discovery Magistrate James Case all hard and electronic copies of the “HIGHLY CONFIDENTIAL—ATTORNEY’S EYES ONLY” transcripts and audio and video recordings gathered as part of the FBI’s extortion investigation in order to prevent any future public dissemination of such materials.

8. An order appointing Special Discovery Magistrate James Case to supervise the electronic discovery process, and to make binding rulings with respect to any disputes between the parties. Absent a stay ordered by Judge Case or by this Court, the process will continue after Judge Case makes any ruling on a disputed issue.

9. An order that any discovery violations by Gawker will be met with discovery sanctions and treated as a contempt of court.

Should the evidence establish that Gawker Defendants violated this Court's orders, Mr. Bollea will request the entry of an order to show cause as to why they should not be held in civil and criminal contempt and sanctioned accordingly. Mr. Bollea states in support as follows:

INTRODUCTION

When the trial of this case was continued on July 2, 2015, a central concern of Mr. Bollea was that Gawker Defendants were engineering the delay as an opportunity to try to publicly attack Mr. Bollea outside the courtroom by using materials from the FBI's investigation of an extortion attempt against Mr. Bollea, which Gawker Defendants duplicitously obtained under the guise of the Freedom of Information Act. Although this Court has ruled on numerous occasions that Gawker Defendants cannot use, disclose or even file these completely irrelevant and inadmissible materials in this case, Gawker Defendants insisted on obtaining them from the FBI and EOUSA.

Shortly after this Court ruled that the fruits of the extortion attempt against Mr. Bollea would be inadmissible at trial, Mr. Bollea's fears that Gawker Defendants may publicly disclose sealed discovery heightened when, on July 10, 2015, Denton posted a story on Kinja (affiliated with Gawker) flaunting that Mr. Bollea's "real secret" contained within "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY" discovery in this case would **soon be revealed**. At that time, pursuant to the Court's Protective Order, Denton was not authorized to receive or even know about any of the contents of the FBI's extortion investigation file. As a result, Mr. Bollea promptly filed an Emergency Motion seeking clarification and confirmation that the materials to which Denton cryptically alluded would remain protected.

Just days before Mr. Bollea's Emergency Motion was set to be heard, however, and 14 days after Denton's threat, *The National Enquirer* and its sister publication, *Radar Online*, somehow obtained the contents of "HIGHLY CONFIDENTIAL--ATTORNEY'S EYES ONLY" sealed

discovery in this case and, on July 24, 2015, published an article purporting to quote excerpts of an audio recording containing offensive statements attributed to Mr. Bollea.

This admittedly sealed discovery appears to have been disclosed in violation of this Court's Protective Order; almost immediately after Mr. Bollea filed his Emergency Motion to force Gawker Defendants to abide by the Protective Order with respect to this very evidence; and almost immediately after Mr. Bollea filed his motion asking the Court to grant this case "priority" status so that it could be re-set for trial in September or October of this year; and while Gawker was in the midst of a public relations nightmare and inter-company "meltdown" after it published and then immediately removed from gawker.com a story alleging that a corporate executive is gay—which according to news reports aided and abetted an alleged attempt to extort the executive.

Given the strength of Mr. Bollea's claims and weakness of Gawker Defendants' First Amendment Defense, as well as Gawker defendants' recent controversy and Denton's comments, Mr. Bollea has legitimate concern that this Court's orders have been violated. Gawker Defendants may have finally reached a breaking point at which dire steps became necessary to escape liability and a substantial monetary award to Mr. Bollea. Gawker Defendants' repeated efforts to delay the trial of this case over the past year bought them time to avoid the trial on the merits, while also creating an opportunity for the disclosure and publication of evidence related to illegally created video and/or audio footage, irrelevant to this case, which was used to attack Mr. Bollea's public image before this case could be tried.

The public disclosure of 'HIGHLY CONFIDENTIAL—ATTORNEY'S EYES ONLY' sealed discovery in this case is undeniable. The timing of this disclosure, coupled with Denton's comments about the case and Gawker Defendants' dismal prospects of prevailing at the soon to be re-scheduled trial, strongly suggest that Gawker Defendants may have been the source of the leak.

At a minimum, given what has transpired, Mr. Bollea should be permitted to conduct e-discovery and depositions to establish whether this Court’s authority has been violated. And, if Mr. Bollea’s suspicions are verified, Gawker Defendants should be civilly and criminally sanctioned to the fullest extent permitted by law.

Timeline of Events

The sequence of events which occurred over the past month make clear that Gawker could be the source of the leaked information published by the *National Enquirer*:

DATE	DESCRIPTION	EXHIBIT
June 26, 2015- July 2, 2015	Gawker Defendants receive numerous documents and audio files from the FBI, including transcripts from the extortion investigation containing the offensive language.	A
July 1, 2015	At a pretrial hearing, this Court ruled that full versions of all illegally recorded videos of Mr. Bollea and any evidence of Mr. Bollea’s use of offensive language would be excluded at trial	
July 2, 2015	<p>In a hearing before Judge Susan Bucklew in Gawker’s FOIA Lawsuit against the FBI and EOUSA, Gawker’s counsel accuses Mr. Bollea of colluding with the FBI to conceal or alter records, before revealing that Gawker’s true intent in abusing the discovery process in this case was to obtain the FBI’s investigative files so it could write a story about Mr. Bollea:</p> <p>MR. BERLIN: --look, I don’t want to impugn anybody at the FBI or in the U.S. Attorney’s office or in Winchester, Virginia, where they review them [the tapes], or anywhere else, right—</p> <p>THE COURT: You are.</p> <p>...</p> <p>MR. BERLIN: ...Mr. Bollea has used the arms of the federal grand jury to try to suppress, and that I didn’t know—I didn’t know that the FBI was in the business of doing that.</p> <p>THE COURT: Of doing what?</p> <p>MR. BERLIN: Of trying to – of essentially trying to use the arms of the federal government to help people – you know,</p>	B

	<p>we've all done or said things that we wished we hadn't. But I didn't know you could go down to your local FBI office and say hey, can you prosecute this or investigate this to try and keep that from coming out. And that is what I think is going on here and that is wrong.</p> <p>THE COURT: Well, I would be very surprised if that's what's going on here. I realize why it's in your best interests to say something like that, but I would be very surprised to say that's going on.</p> <p>...</p> <p>MR. BERLIN: You know, there are a number of things here where – and even apart from Gawker's interest as a litigant, <i>Gawker's interest as a news organization</i>, having spent a lot of money to get to this point, has an interest in understanding, okay, how is the government operating. And that's the public interest part of this—</p> <p>...</p> <p>But when we get to the public interest prong, right, the main point of FOIA is to allow the public to understand how the government is operating.</p> <p>THE COURT: I agree with that. <i>But that's not your reason for doing it.</i></p> <p>MR. BERLIN: <i>There's a difference between why we originally came here and what we're ultimately trying to find out.</i> When I came here 18 months ago when I filed FOIA request or had Mr. Thomas file a FOIA request, it was to get statements by Mr. Bollea and if there was any documentary evidence to get that. Right. This is basic discovery for a lawsuit.</p> <p>We now have a situation where over the course of that time we now have a situation where we know a lot about it and we—at least Gawker as a news organization is left scratching its head and saying how is this that the government is operating. And maybe there is good and valid reasons, but the whole point of this statute is to be able to scrutinize those reasons.</p>	
July 2, 2015	Immediately following the hearing before Judge Bucklew, Heather Dietrick, Gawker's President and General Counsel,	

	provided a television interview to Fox 13 on the steps outside the Federal Courthouse in Tampa, during which she accuses “Hogan’s Team” of “hiding evidence...certainly on purpose” from Gawker Defendants	
July 10, 2015	The FBI provides its Notice of Production of Additional Video Footage—whereby the FBI produced re-processed versions of DVDs previously provided to this Court; this was due to technical problems associated with the initial DVD production, which arose from trying to redact certain portions due to a third-party’s privacy rights—not from any collusion with Mr. Bollea or his “Team.”	C
July 10, 2015	Denton posts a story titled “Hulk v. Gawker, the story so far” on Kinja in which he discusses the last minute continuance of the trial and predicts the release of the contents of the recordings being produced by the FBI: <i>“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.”</i>	D
July 13, 2015	Mr. Bollea files his Emergency Motion for Clarification and Confirmation that Agreed Protective Order and Stipulated Protocol Govern All Documents, Records and Materials Produced in Response to FOIA. Mr. Bollea also transmits a copy of his Emergency Motion to the Court with a letter requesting that a hearing be scheduled for July 17, 2015 or, alternatively, that the Court immediately issue an Order granting the Emergency Motion.	E
July 14, 2014	Mr. Berlin sends a letter to the Court objecting to Mr. Bollea’s Emergency Motion and request for an expedited hearing. Mr. Berlin further suggests that the Court wait until October 1, 2015 to hear Mr. Bollea’s Emergency Motion.	F
July 15, 2015	Mr. Bollea’s counsel sends a letter to Gawker Defendants’ counsel designating all documents, records, recordings, footage and similar materials which have been or are being produced by the United States Government under FOIA as “CONFIDENTIAL—ATTORNEY’S EYES ONLY”	G
July 16, 2015	The re-processed DVDs produced by the FBI are hand delivered to Judge Campbell by members of Gawker Defendants’ and Mr. Bollea’s respective law firms	
July 16, 2015	Gawker posts its story purporting to expose a corporate executive as gay.	

	Gawker faces immediate and widespread media backlash for the story	H
July 16, 2015	The Court provides hearing time on July 30, 2015 to hear Mr. Bollea’s Emergency Motion	
July 17, 2015	The Court <i>sua sponte</i> issues its Order to Appear for Case Management and Status Conference—which allows Mr. Bollea to discuss the re-scheduling of the case for trial at the July 30, 2015 Hearing	I
July 17, 2015	Gawker’s executive team votes to take down the post about the media executive—a decision driven primarily by concerns over Gawker’s image as it prepares to enter the trial of its case with Mr. Bollea, as well as concerns over losing money (advertisers) as a result of the public outcry over running the story	J
July 17, 2015	Denton posts a story titled “Taking Down a Post,” in which he states: “It is not enough for them [stories] simply to be true. They have to reveal something meaningful.” “I believe this public mood reflects a growing recognition that we all have secrets, and they are not all equally worthy of exposure.” “The point of this story was not in my view sufficient to offset the embarrassment to the subject and his family.”	K
July 20, 2015	Gawker is in the midst of a “civil war” over taking down the post about the media executive. Gawker’s Executive Editor and the Editor in Chief resign in protest, and blast Gawker’s executive team for the decision to remove the post. These events prompt Denton to post another story titled “To All of Edit at Gawker Media,” in which he states: “Were there also business concerns? Absolutely.” “If the post had remained up, we probably would have triggered advertising losses this week into seven figures.” “...a story that was pure poison to our reputation just as we go into the Hogan trial.” “The post wasn’t what Gawker should stand for, and it is symptomatic of a site that has been out of control of editorial	J, L

	<p>management.”</p> <p>“The Hogan case has shown that we can’t escape our past, and I can’t escape Gawker.”</p> <p>“And some humane guidelines are needed—in writing—on the calculus of cruelty and benefit in running a story.”</p>	
July 20, 2015	Mr. Bollea files his Notice That Action is At Issue, Motion to Grant Priority Status and Motion to Specially Set Cause for Trial on September or October 2015 Docket. Mr. Bollea also files a Notice setting his motion to re-set the trial and his Emergency Motion for hearing on July 30, 2015.	M
July 21, 2015	Mr. Bollea’s counsel sends an email to Gawker Defendants’ counsel requesting that Gawker Defendants agree to treat the audio recordings produced by the FBI—which contain some of the offensive language which <i>The National Enquirer</i> is days away from reporting—in the same manner as DVDs under the parties Stipulated Protocol (which provides for them to be reviewed by the Court for relevance before being provided to counsel)	N
July 22, 2015	Mr. Berlin responds to the July 21, 2015 email by refusing to treat the audio recordings in the same manner as the DVDs and stating that there is “no basis for your request to transfer copies of any audio recordings to the Court.”	O
July 23, 2015	<p>Mr. Bollea learns that <i>The National Enquirer</i> is about to run a story publishing the offensive language used by Mr. Bollea contained within the audio recordings.</p> <p>Mr. Bollea ‘s contract with World Wrestling Entertainment (“WWE”) is immediately terminated; and the WWE removes any mention of Mr. Bollea and his decades of accomplishments as a professional wrestler from the WWE’s website.</p>	
July 24, 2015	<i>The National Enquirer</i> publishes its story disclosing the contents of “sealed” transcripts of the illegally recorded conversations of Mr. Bollea; and indicating that there is more to come	
July 27, 2015	<i>The National Enquirer</i> publishes another story disclosing the contents of “sealed” transcripts of the illegally recorded conversations of Mr. Bollea.	

Gawker Defendants' Motive to Attack Mr. Bollea

Gawker Defendants clearly had a motive to leak the sealed and highly prejudicial contents of the FBI's files generated during the investigation of an attempt to extort Mr. Bollea. First, Gawker Defendants were facing the soon-to-be re-scheduled trial of a case in which their motion for summary judgment on First Amendment Grounds had just been denied, and Mr. Bollea had just been granted leave to assert claims for punitive damages, because Gawker Defendants' bellwether "newsworthiness" defense had just been proven to be meritless. As set forth below, the man who actually posted the video footage, Daulerio, testified under oath that the only reason he posted the video of Mr. Bollea was because he had it, and he wanted to show it. "News" had absolutely nothing to do with his post.

Second, Gawker was facing a catastrophic "meltdown," huge public backlash, and losing advertisers because of its sordid post allegedly "outing" a corporate executive. This public relations nightmare, the fallout from which essentially cemented Mr. Bollea's claims against Gawker Defendants, was publicly unfolding at the very same time that Mr. Bollea was pushing to re-set the trial of his claims much sooner than Gawker Defendants expected. Having already publicly admitted that a victory for Mr. Bollea would destroy Gawker and its way of doing business, Gawker Defendants had very few options remaining to save their way of life.¹

Gawker Defendants' Meritless "Newsworthiness" Defense

Over the past several months, while fighting to prevent this case from going to trial, Gawker took to the press to tout the alleged "newsworthiness" of posting surreptitiously-recorded footage of Mr. Bollea naked and engaged in sexual intercourse, providing the press with numerous factually unsupported reasons why they contend they had the right to publish the illegally recorded footage.

¹ See Exhibit P; "Gawker in the fight of its life with Hulk Hogan Sex Tape suit."

Denton and Gawker President/General Counsel, Heather Dietrick (“Dietrick”), even went so far as to try to re-write history and the law to suit their needs.

First, Denton sought to introduce a new, misguided standard for newsworthiness: “I have a simple editorial litmus test, which is: is it true, and is it interesting?”² Essentially, Denton believes he himself has the power to make *anything and everything* “newsworthy”—particularly when Gawker Defendants have “exclusive” pornographic footage they can post online to draw millions of people to their website.

The law is not how Denton describes it, which is why this Court denied Gawker Defendants’ Motion for Summary Judgment and granted Mr. Bollea leave to assert a claim for punitive damages. To the contrary—and rather ironically given Denton’s recent efforts to self-anoint himself as “this generation’s Larry Flynt”³—the Eleventh Circuit laid out a much different “newsworthiness” standard in a ruling *against* Larry Flynt himself when Hustler published unauthorized nude photographs of a public figure:

The restatement recognizes that, although an individual may be rendered to public scrutiny by some newsworthy event, ‘[t]he extent of the authority to make public private facts is not ...unlimited.’ RESTATEMENT (SECOND) OF TORTS § 652d. The Restatement concludes that even public figures, like actresses, may be ‘entitled’ to keep private ‘some intimate details...such as sexual relations...’ Id. **‘The line is to be drawn when the publicity ceases to be the giving of information to which the public is entitled, and becomes a morbid and sensational prying into private lives for its own sake, with which a reasonable member of the public, with decent standards, would say he had no concern.’** Id. (emphasis added). The Restatement expounds that ‘[t]he limitations ... are those of common decency, having due regard to the freedom of the press and its reasonable leeway to choose what it will tell the public, but also due regard to the feelings of the individual and the harm that will be done to him by the exposure.’”

² See Exhibit Q; “The Price of Free Journalism”

³ See Exhibit Q.

...

“... every private fact disclosed in an otherwise truthful, newsworthy publication must have some substantial relevance to a matter of legitimate public interest...” (“An individual and more pertinently perhaps the community, is most offended by the publication of intimate personal facts when the community has no interest in them *beyond the voyeuristic thrill of penetrating the wall of privacy that surrounds a stranger*”)

See Toffoloni v. LFP Publishing Group, LLC, 572 F.3d 1201, 1211 (11th Cir. 2009).

“A morbid and sensational prying into private lives for its own sake” and the “voyeuristic thrill of penetrating the wall of privacy” are precisely and admittedly why Daulerio posted the uncensored footage of Mr. Bollea on Gawker.com. As Daulerio wrote in his post accompanying the footage: “Because the internet has made it easier for all of us to be shameless voyeurs and deviants, we love to watch famous people have sex... because it’s something we’re not supposed to see...” This is the antithesis of “news.”

Facing these facts, Denton and Dietrick embarked on a PR campaign to try to re-write history. They now claim that the purpose of Gawker Defendants’ post was supposedly to prove that Mr. Bollea was lying when he stated in a radio interview in 2010 that he would not have sex with his best friend’s wife, Heather Clem (which was after the 2007 encounter occurred, but before their encounter was made public). Importantly, Daulerio’s post accompanying the video of Mr. Bollea made no mention of any of these supposedly newsworthy reasons for publishing the footage.

Daulerio’s actual testimony disproves all of the after-the-fact excuses Denton and Dietrick have manufactured to try to justify Gawker Defendants’ actions. Contrary to Denton’s and Dietrick’s current justifications, Daulerio testified under oath during his 2013 deposition that “...the whole point of the story was to, A, prove its [the tape’s] existence and, B, for me to commentate on

what I witnessed of the tape.” (*Daulerio Tr.182: 9-12*) When Daulerio was asked whether the fact that Mr. Bollea and Ms. Clem were engaged in sexual intercourse was the “news hook” for his post, he said no: “The news hook was essentially what I stated in the headline itself which was my own personal commentary about the Hulk Hogan sex tape that was in existence and me watching it.” (*Daulerio Tr. 195: 9-13*) Daulerio further conceded that none of the nudity and sexual intercourse depicted in the video had news value:

Q. With respect to the story and its news value, does it matter what position Hulk and Heather Clem, Hulk Hogan and Heather Clem were having sex in?

A. In terms of news value?

Q. Yes.

A. I don’t think so.

Q. Does it matter what his penis looked like?

A. In terms of news value?

Q. Yes.

A. I don’t think so.

...

Q. So then can you tell me what the news value was, if any, of showing any explicit footage?

A. Yeah. As I stated before, I mean, it was the, the excerpts were picked more for length and duration and kind of to basically coincide with the commentary I was offering about the tape and to show some of the things that I had pinpointed as stuff that I was interested in discussing.

(*Daulerio Tr. 195: 14-196:21*)⁴

Notably, this Court relied upon these facts (not after-the-fact excuses) and applied the law as stated in *Toffoloni*, when it denied Gawker Defendants’ motion for summary judgment.

The Fallout from Gawker’s Purported “Outing” of a Corporate Executive And Its Decision to Take Down the Post

At the same time Mr. Bollea was trying to confirm that the discovery in this case which was sealed by agreement of the parties and pursuant to Court Order would remain protected, and trying

⁴ Excerpts of Daulerio’s deposition testimony are attached as Exhibit R.

to reset this case for trial in 2015 - much sooner than Gawker Defendants wanted - Gawker was in the midst of a public relations crisis after it published and then took down a story about a male corporate executive in which it claimed that he had attempted to arrange a sexual encounter with a man; a situation which has very serious implications in this case.

On July 16, 2015, Gawker published the story, which met with intense public and internal criticism, as well as the reported loss of coveted advertisers. Accordingly, on July 17, 2015, Gawker removed the post—following a vote by the management team at Gawker. In an abrupt change of course, which many have speculated is financially driven, Denton posted that he was “ashamed” of the story and concerned about it damaging Gawker’s brand and reputation heading into the trial in this case.⁵

The fallout at Gawker was immediate and massive: a “civil war” erupted which included the resignations of the Executive Editor of all Gawker-owned websites (in charge of all editorial content, and within the company’s top six leadership positions) and the Editor-in-Chief of Gawker.com. Attached hereto as Exhibits H and J are copies of news articles reporting on the “meltdown” at Gawker and its “civil war.”

The fallout outside of Gawker was equally swift: an onslaught of negative media attention over the next several days questioning Denton’s hypocrisy in removing one post, while maintaining at the same time that Gawker’s publication of the video of Mr. Bollea naked and engaged in sexual intercourse was somehow legitimate. Many reports noted Gawker Defendants’ inconsistency in pulling the executive story, and are extremely harmful to Gawker Defendants’ position in this case:

There’s definitely a bit of karma here in the situation given that Gawker, a site that probably traffics in internet outrage “Let’s rally and get everyone fired” pageviews as much as anyone, is falling apart because of the soft and constantly self-righteous attitude

⁵ See Exhibit L.

they've profited off turning the internet into. For years, Gawker has served as this hypocritical ombudsman of the Internet, racking up billions of pageviews starting as a site for reporting on things like what media people were f*@%\$*g whom, then graduating to the bevy of d*@k pics that was Deadspin a few years ago, to now fighting for their financial future in court because they somehow think a secretly filmed video of Hulk Hogan banging a shock jock's wife is a freedom of the press issue...instead of something just really f*@%\$*g scummy.⁶

...

The Bollea case, said Coffee, depends on invasion of privacy. Hulk Hogan's status as a public figure, even one who holds forth often and at length about his sex life, may have kept him from getting the kind of sympathy that the subject of the escort story immediately received, but there's no evidence Bollea intended for anyone to see the tape. Indeed, he's denied he knew it was being made."⁷

The Possible Release of Sealed Discovery to The National Enquirer in the Midst of Gawker's PR and Inter-Company Crisis

On July 24, 2015, as Gawker was facing its internal "civil war" and intense public criticism about its unjustifiable, hypocritical and harmful editorial policies and practices, *The National Enquirer* broke a story in which it purported to quote offensive statements made by Mr. Bollea on an audio recording. *The National Enquirer* acknowledged in its article that the audio and the related transcript are "sealed" discovery in this lawsuit—but claims to have confirmed the verbatim statements from this sealed discovery from unidentified "sources."

The timing of the disclosure of this sealed discovery to the *National Enquirer* raises serious questions about the source of the leak: after months of unsuccessful efforts to inject the irrelevant and inflammatory "race card" into this case, after the Court granted Mr. Bollea's motions *in limine* excluding it from the trial, and while facing an impending hearing to re-set this case for trial and

⁶ See Exhibit H.

⁷ See Exhibit J.

confirm the protections covering the discovery Gawker Defendants were obtaining from the United States Government, Gawker was being publicly crucified for its article allegedly outing an executive. This Court had already ruled on July 1, 2015 that the full length DVDs and all evidence concerning offensive language would be excluded at trial. Thus, the only value Gawker Defendants could squeeze out of the materials provided by the United States Government was if these materials went public—and in the process publicly destroyed Mr. Bollea.

The release of this sealed discovery, successfully diverting press attention away from Gawker's public and internal freefall, caused severe damage to Mr. Bollea. His relationship with WWE ended immediately—and the WWE scrubbed all mention of "Hulk Hogan" from its website. Mr. Bollea's 38 years of hard work and sacrifice were erased in the blink of an eye.

Gawker's Misleading Justification for Obtaining Discovery Under FOIA

The weakness of Gawker Defendants' case on the merits and the PR crises they were facing offers a possible explanation of why they have fought so hard to obtain and use totally unrelated, irrelevant and illegal recordings of Mr. Bollea, even after the Court excluded this evidence. Audio and video of Mr. Bollea using offensive language had the potential of destroying his character and reputation outside the courtroom as well as tainting the jury pool; it could also allow Gawker Defendants to potentially avoid a trial altogether. To obtain this discovery, Gawker Defendants engaged in a bait and switch, originally claiming they were seeking to determine whether Mr. Bollea consented to being recorded (or obtain other evidence that Gawker Defendants could use at trial)—but, once the requisite privacy waivers were obtained by court order, claiming to the U.S. District Court that these materials were being sought to **publish additional news stories about Mr. Bollea.**

The background is as follows: the FBI investigation culminated in a “sting” operation at a hotel in Florida—which was recorded by the FBI. Following the operation, the FBI took possession of three (3) DVD’s which were exchanged, and a \$150,000 check. The FBI also secured a “summary transcript” purporting to describe the contents of the DVDs, which was used as part of the effort to extort Mr. Bollea.

After learning about the extortion investigation and “summary transcript” through discovery, Gawker sought to use the Freedom of Information Act (“FOIA”) to obtain copies of the FBI’s investigation file. However, due to Mr. Bollea’s privacy rights, the United States Government would not produce its files without authorization. Accordingly, on December 18, 2013, Gawker filed a motion in this case to compel Mr. Bollea to execute a Certificate of Identity and Authorization to Release Information to Another Person (the “Authorization”) to obtain the FBI’s records “related to plaintiff’s request that the FBI investigate the creation and dissemination of the tape at issue in this case.” The sole reason Gawker argued that it should be entitled to use FOIA to conduct discovery concerning the FBI’s investigative file was its assertion and representation to this Court that the file may provide evidence that Mr. Bollea consented to or knew he was being recorded. Gawker’s argument was **solely** that the FOIA request was necessary as **discovery** in this litigation, to be produced as “Attorneys’ Eyes Only” pursuant to the Court’s Protective Order. Nowhere in Gawker’s papers did Gawker argue that it was entitled to a privacy waiver so that it could use the information to write editorial stories about Mr. Bollea for the public’s consumption.

On January 31, 2014, Gawker served a reply brief, again asserting that the documents that it sought were relevant as discovery in this litigation, subject to the Court’s Protective Order. On February 5, 2014, Judge Case issued a report and recommendation that the Court grant Gawker’s

motion to compel Mr. Bollea to sign a FOIA Authorization. The Court adopted that report and recommendation on February 26, 2014.

On March 14, 2014, Gawker opposed a motion by Mr. Bollea to stay the February 26, 2014 Order compelling Mr. Bollea to sign the Authorization. Gawker again never indicated any intention to disseminate the private U.S. government records to the public, by way of editorial stories. Further Gawker called its request a “discovery tool.”

Mr. Bollea complied with this Court’s orders and he and his counsel signed Authorizations permitting Gawker to make its FOIA request. The FBI denied that request, and Gawker brought suit in the U.S. District Court (the “FOIA Lawsuit”). As specifically set forth in their pleadings and summary judgment motion in the FOIA Lawsuit, Gawker and Thomas again asserted that their *sole and exclusive* purpose for seeking the United States Government’s records under FOIA was *for discovery in this case* by Mr. Bollea against Gawker Defendants.

Based on Gawker’s and Thomas’s pleadings and summary judgment motion, and commencing on June 24, 2015, Judge Bucklew issued a series of orders in the FOIA Lawsuit requiring the production of documents by the FBI and the Executive Office of the U.S. Attorney. Mr. Bollea was permitted to intervene in the FOIA Lawsuit; however, in an 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.

In the FOIA Lawsuit, Gawker’s counsel made statements for the first time that Gawker desires not only to obtain information for discovery in this case, but also to disseminate these documents to the general public (which it would **not** have otherwise been able to obtain, due to Mr.

Bollea's privacy rights, absent the waiver Gawker induced this Court to compel Mr. Bollea to sign). See *Gawker FBI Litigation Tr. (7/2/2015)* at 72:5-15 (Seth Berlin stating that while the original purpose of the FOIA request was "basic discovery", Gawker is a "news organization" and therefore seeks to investigate and publically report how "the government is operating"); *Plaintiffs' Statement Regarding Defendant Agencies' Invocation of Newly-Claimed Exemptions* at 10 (filed in *Gawker v. FBI*, Jul. 1, 2015) ("Gawker – a news organization – concededly began this process simply because it sought information for use in connection with the state court litigation. But, at this point, finding out what the Agencies are up to here is clearly within the public interest."). Gawker specifically argued that disclosure of documents in the FOIA Lawsuit was justified by "the public interest in understanding the many highly unusual and suspect aspects of this investigation". *Id.* at 11.

Denton confirmed in his blog post, 14 days before the *National Enquirer* published its story, that he believed the sealed information from the FBI records should be released to the public: "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."

Gawker thus convinced this Court to require Mr. Bollea to waive important privacy rights by arguing that it needed the information from the FBI for discovery purposes, then, once Gawker obtained court orders requiring disclosure of the information, Gawker altered its position and now contends that the private information is to be disseminated to the public.

Mr. Bollea Should Be Entitled to Discover Who Leaked Sealed Discovery

Although discovery in this case is closed, Mr. Bollea requests leave to conduct limited discovery to determine whether Gawker Defendants willfully violated this Court's Orders and the Stipulated Protocol by leaking sealed discovery to the press, in order to gain an unfair advantage in

this case or, alternatively, whether some other source was able to obtain sealed discovery in this case through other methods. In particular, Mr. Bollea hereby requests:

1. The appointment of an independent electronic forensic expert to examine the computer network, systems, servers, tablets, and smart phones of Defendants, Gawker Media, LLC (“Gawker”), Nick Denton (“Mr. Denton”), and/or A.J. Daulerio (“Mr. Daulerio”), including any of their respective agents or attorneys (collectively, “Gawker Defendants”), for any and all data, files, emails, messages, texts, phone records and similar electronically stored information which in any way demonstrates that Gawker Defendants or anyone else associated with them communicated with *The National Enquirer* or *Radar Online*, or any other members of the media or third-parties, directly or indirectly, concerning Mr. Bollea or this lawsuit, including without limitation any information contained in the reporting by *The National Enquirer* and *Radar Online*;

2. An order appointing the expert to conduct electronic discovery of the computers, hard drives, servers, tablets, and smartphones of Gawker Defendants and their respective attorneys or agents, searching for all nonprivileged documents that utilize the search terms “Hulk”, “Hogan”, “Terry”, “Bollea”, or the offensive language quoted in the *National Enquirer* piece, as well as any communications between Gawker Defendants or their counsel and the *National Enquirer* or *Radar Online*. All such nonprivileged documents will be produced to Mr. Bollea.

3. An order that a privilege log be provided with respect to all privileged communications that are found that use such search terms.

4. An order providing that any inadvertently produced privileged documents shall be returned to Gawker Defendants so long as Gawker Defendants object within seven days of production and it is ascertained that they are privileged.

5. The depositions of any current or former Gawker Defendant employees or agents revealed by the computer forensic examination to have been in contact with or communicated with *The National Enquirer* or *Radar Online* concerning Mr. Bollea or this lawsuit, or otherwise provided any information to anyone contained in the reporting by *The National Enquirer* and *Radar Online*; and

6. The depositions of Nick Denton and Heather Dietrick to verify what confidential information they have been provided in this case and to whom they have disclosed such information.

7. An order directing Gawker Defendants to immediately turn over to Special Discovery Magistrate James Case all hard and electronic copies of the “HIGHLY CONFIDENTIAL—ATTORNEY’S EYES ONLY” transcripts and audio and video recordings gathered as part of the FBI’s extortion investigation in order to prevent any future public dissemination of such materials.

8. An order appointing Special Discovery Magistrate James Case to supervise the electronic discovery process, and to make binding rulings with respect to any disputes between the parties. Absent a stay ordered by Judge Case or by this Court, the process will continue after Judge Case makes any ruling on a disputed issue.

An order that any discovery violations by Gawker will be met with discovery sanctions and treated as a contempt of court.

Finally, upon the discovery of any information or documents demonstrating that Gawker Defendants were the source of the sealed discovery leaked to the *National Enquirer* and *Radar Online*, Mr. Bollea will request that the Court issue an Order to Show Cause as to why any person responsible for or who participated in leaking such confidential information should not be held in

civil and criminal contempt for willful violation of this Court's orders. Moreover, upon a finding that Gawker or its counsel were the source of the sealed discovery leaked to the *National Enquirer* and *Radar Online*, Mr. Bollea will request that the Court sanction and impose the maximum possible civil and criminal penalties against Gawker Defendants, including any of their agents or attorneys responsible for violating this Court's orders. Such penalties should include, without limitation as is appropriate, incarceration, the striking of Gawker Defendants' pleadings, the entry of a judgment as to liability against Gawker Defendants, a civil fine for contempt to include restitution for all damages caused to Mr. Bollea, an award of attorneys' fees and costs, and such other and further relief as the Court deems just and appropriate.

Dated: July 29, 2015.

Respectfully submitted,

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I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by E-Mail via the e-portal system this 29th day of July, 2015 to the following:

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