

**APPENDIX EXHIBIT A – Gawker Media, LLC v. FBI, Case No. 8:15-cv-01202-SCB-EAJ**  
**(M.D. Fla.)**

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

**GAWKER MEDIA, LLC and GREGG D.  
THOMAS,**

Plaintiffs,

v.

**THE FEDERAL BUREAU OF INVESTIGATION  
and THE EXECUTIVE OFFICE OF UNITED  
STATES ATTORNEYS,**

Defendants.

Case No. \_\_\_\_\_

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs, by and through their undersigned attorneys, allege:

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. §§ 552, *et seq.*, brought by Gawker Media, LLC and its counsel Gregg D. Thomas, Esq. (together, “Gawker”), for injunctive and other appropriate relief, seeking the release of agency records from the Federal Bureau of Investigation (“FBI”) and the Executive Office of United States Attorneys (“EOUSA”) (together, the “Agencies”).

2. Through this lawsuit, Gawker seeks to compel the Agencies to provide records it requested through FOIA relating to an FBI investigation, conducted in 2012, into the source and distribution of video footage depicting Terry Gene Bollea, professionally known as Hulk Hogan (“Hogan”), engaged in a sexual affair with Heather Clem, the wife of his best friend, the radio shock jock Bubba the Love Sponge Clem.

3. The EOUSA has not responded at all to Gawker's FOIA request. The FBI has claimed that all responsive documents are exempt under FOIA because their release would constitute an interference with a law enforcement investigation. But any law enforcement investigation into the video footage that may once have existed is now long since over, and thus the claim that release of records would "interfere" with it is demonstrably incorrect. Moreover, even if there were an ongoing or prospective investigation, the FBI has made no showing, as it must under FOIA, that release of specific records related to it would necessarily disrupt that investigation.

4. Because the requested records have been ruled to be critical to Gawker's defense of a \$100 million lawsuit brought by Hogan, first in this Court, and then in Florida state court arising from Gawker's publication a news report and commentary about the footage, along with short excerpts of the footage itself (the "Florida Litigation"), it now institutes this lawsuit.

#### **PARTIES**

5. Plaintiff Gawker Media, LLC is an online news organization and publisher of the website [www.gawker.com](http://www.gawker.com), as well as seven other popular websites. Gawker Media, LLC is a defendant in the Florida Litigation.

6. Plaintiff Gregg D. Thomas, Esq. is an attorney and counsel to Gawker Media, LLC in the Florida Litigation, in which capacity he made the FOIA requests at issue in this lawsuit.

7. Defendant FBI is an agency of the federal government that has possession, custody and/or control of the records that Gawker seeks. The FBI is headquartered at 935 Pennsylvania Avenue, NW, Washington, D.C. 20535-0001.

8. Defendant EOUSA is an agency of the federal government that has possession, custody and/or control of the records that Gawker seeks. The EOUSA is headquartered at 950 Pennsylvania Avenue, NW, Room 2242, Washington, DC 20530-0001.

### **JURISDICTION AND VENUE**

9. This Court has subject matter jurisdiction over this action and personal jurisdiction over the FBI and the EOUSA pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

10. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B).

11. Gawker has exhausted all available administrative remedies against the FBI because the FBI has issued its final determination to deny access to all responsive records, and Gawker's administrative appeal therefrom has been denied.

12. Gawker is deemed to have exhausted all administrative remedies against the EOUSA pursuant to 5 U.S.C. § 552(a)(6)(C) because the EOUSA has failed to respond within the statutory time limit.

### **FACTS**

#### **The FBI Investigation**

13. In or around the fall of 2012, the FBI conducted an investigation into the source and distribution of video footage of Hogan engaged in a sexual affair with Heather Clem.

14. Upon information and belief, the investigation ended shortly after it began, and no criminal prosecutions were ever brought.

#### **Gawker's Requests**

15. On November 8, 2013, Gawker requested from the FBI, via FOIA, public records relating to the FBI investigation. Gawker sought these records in connection with its defense of



a \$100 million lawsuit that Hogan filed against it arising from its publication in October 2012 of a news report and commentary about the video footage of Hogan's and Mrs. Clem's affair, along with short and heavily-edited excerpts of that footage. Hogan initially filed his case in this Court, which denied his successive requests for injunctive relief on various theories. Hogan then dismissed his federal court complaint and re-filed his claims against Gawker in state court, where, after removal and remand, the case is now pending.

16. The FBI denied Gawker's FOIA request on the sole basis of privacy concerns, indicating that it would not process the request without formal records authorizations from persons connected to the investigation.

17. Accordingly, Gawker sought to obtain such authorizations from Hogan and his attorneys, who refused to voluntarily provide them. After nearly a year of litigating the matter in the Florida Litigation, Hogan and his attorneys were eventually required to provide the authorizations (and to provide to Gawker their own records related to the FBI investigation) on the grounds that information about the investigation was critical to Gawker's defense.

18. On November 7, 2014, Gawker renewed its request to the FBI and submitted an identical request to the EOUSA, in both cases enclosing the records authorizations from Hogan and his counsel (as well as one from Ms. Clem, which she voluntarily provided). In its requests, Gawker specifically enumerated certain categories of records it was seeking relating to the FBI investigation:

- a. communications between Hogan and his counsel with the FBI;
- b. documents related to video recordings depicting Hogan engaged in sexual activity with Ms. Clem, including the recordings themselves;
- c. statements by Hogan and/or his counsel; and

- d. records pertaining to the source and distribution of the video recordings, or attempts to disseminate or sell those video recordings.

19. The FBI acknowledged receipt of Gawker's request on November 17, 2014. On January 29, 2015, the FBI informed Gawker that it had located 1,168 pages of responsive records and two CDs containing responsive video material.

### **The FBI Denial**

20. Gawker responded to the FBI's acknowledgement on February 3, 2015, accepting all duplication charges.

21. The following day, however, on February 4, 2015, the FBI denied Gawker's request in full and declined to produce any records, citing FOIA's Exemption 7(A), the law enforcement exemption as the sole basis for its denial. Specifically, the agency stated: "The records responsive to your request are law enforcement records; there is a pending or prospective law enforcement proceeding relevant to these responsive records, and release of the information in these responsive records could reasonably be expected to interfere with enforcement proceedings."

22. Gawker submitted an administrative appeal from the FBI's denial on March 4, 2015. In the administrative appeal, Gawker submitted substantial evidence that there was no ongoing or prospective investigation, no plausible interference with any such investigation, and thus no proper basis for the FBI's wholesale denial. Gawker also explained that, under governing law, the FBI had a responsibility to conduct its review (and justify withholding) on a category-by-category basis, and requested that the FBI provide a specific explanation why it was denying Gawker's request for each category of documents.

23. On May 6, 2015, the Department of Justice affirmed the FBI's decision not to disclose any records (the "Final Determination"). The Final Determination did not dispute or rebut any of the showings Gawker made in its administrative appeal – it neither asserted that any investigation exists, nor claimed that any such investigation would be harmed by disclosure of any responsive records. And it did not provide any explanation of the reasons Exemption 7(A) might apply to particular categories of records. Rather, the Final Determination stated only: "The FBI properly withheld certain information in full because it is protected from disclosure under the FOIA pursuant to 5 U.S.C. § 552(b)(7)(A). This provision concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to interfere with enforcement proceedings."

#### **The EOUSA's Denial**

24. The EOUSA acknowledged receipt of Gawker's request on December 4, 2014.

25. Thomas repeatedly attempted to follow up on the request, emphasizing the absence of any basis for withholding records.

26. To date, the EOUSA has failed to respond to Gawker's request, and has produced no records. Therefore, it has constructively denied the request and Gawker has, by operation of law under 5 U.S.C. § 552(a)(6)(c), exhausted its administrative remedies.

#### **FIRST CAUSE OF ACTION**

(FBI's wrongful withholding of records and its failure to make them promptly available)

27. Gawker repeats, realleges, and incorporates the allegations in the foregoing paragraphs as though fully set forth herein.

28. The FBI is an agency subject to FOIA, 5 U.S.C. § 552(f), and therefore must disclose in response to a FOIA request all responsive records in its possession at the time of the

request that are not specifically exempt from disclosure under FOIA, and must provide a lawful reason for withholding any records as to which it is claiming an exemption.

29. The FBI's final determination that it will not disclose any of the records requested by Gawker, its failure to adequately explain its reasons for withholding them, and its failure to make them promptly available violates FOIA, 5 U.S.C. § 552(a)(3)(A), and the FBI's corresponding regulations.

**SECOND CAUSE OF ACTION**  
(EOUSA's wrongful withholding of records  
and failure to make them promptly available)

30. Gawker repeats, realleges, and incorporates the allegations in the foregoing paragraphs as though fully set forth herein.

31. The EOUSA is an agency subject to FOIA, 5 U.S.C. § 552(f), and therefore must disclose in response to a FOIA request all responsive records in its possession at the time of the request that are not specifically exempt from disclosure under FOIA, and must provide a lawful reason for withholding any records as to which it is claiming an exemption.

32. The EOUSA's constructive denial of Gawker's FOIA request violates FOIA, 5 U.S.C. §§ 552(a)(3)(A) and 552(a)(6)(A), and the EOUSA's corresponding regulations.

**REQUEST FOR RELIEF**

**WHEREFORE**, Gawker respectfully requests that this Court:

- a. Expedite consideration of this Complaint pursuant to 28 U.S.C. § 1657;
- b. Declare that the records requested by Gawker, including as more particularly described above, are public records pursuant to 5 U.S.C. § 552 and must be disclosed;

- c. Declare that Exemption 7(A) does not exempt the requested records from disclosure;
- d. Order the FBI to produce the requested records, including electronic copies of records stored in electronic format, as provided in the request, within 10 business days of the Court's order;
- e. Order the EOUSA to provide the requested records, including electronic copies of records stored in electronic format, as provided in the request, within 10 business days of the Court's order;
- f. Award Gawker the costs of this proceeding, including reasonable attorney's fees, as authorized by FOIA; and
- g. Grant Gawker such other and further relief as this Court deems just and proper.

Dated: May 19, 2015

Respectfully submitted,  
THOMAS & LOCICERO PL

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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

GAWKER MEDIA, LLC and GREGG D.  
THOMAS,

Plaintiffs,

Case No.: 8:15-cv-01202-SCB-EAJ

vs.

**DISPOSITIVE MOTION**

THE FEDERAL BUREAU OF  
INVESTIGATION and THE EXECUTIVE  
OFFICE OF UNITED STATES ATTORNEYS

Defendants.

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**PLAINTIFFS' DISPOSITIVE MOTION FOR SUMMARY JUDGMENT  
AND MEMORANDUM OF LAW**

Gawker Media, LLC and its counsel Gregg D. Thomas, Esq. (together, "Gawker"), respectfully move the Court for summary judgment ordering Defendants, the Federal Bureau of Investigation ("FBI") and the Executive Office of United States Attorneys ("EOUSA") (together, the "Agencies"), to promptly disclose wrongfully withheld public records requested by Gawker under the Freedom of Information Act ("FOIA").

**PRELIMINARY STATEMENT**

Gawker is currently defending against a \$100 million lawsuit in Florida state court brought by the celebrity known as Hulk Hogan ("Hogan"), following his earlier, aborted lawsuit against it in this Court. Thomas, together with the other below-listed counsel, have served as counsel for Gawker and other related defendants in both lawsuits.

Both lawsuits arose out of a report and commentary Gawker published in 2012 about Hogan and, in particular, the ongoing controversy over video footage depicting him having sex with Heather Clem, the wife of Hogan's best friend, radio shock jock Bubba the Love Sponge

Clem. Gawker had received from an unknown source a copy of about 30 minutes of such video footage, and included about a minute-and-a-half of heavily edited excerpts with its report (referred to herein as the “Gawker Story”).

At around the time Gawker published that report, a lawyer from Los Angeles was separately – and unbeknownst to Gawker – attempting to sell to Hogan video footage depicting him having sex with Mrs. Clem. Without specifically mentioning those events, Hogan and his long-time counsel, David Houston, Esq., publicly announced that they were contacting the FBI’s Tampa Field Office. The FBI investigated the matter, but the U.S. Attorney’s Office for the Middle District of Florida declined to prosecute. Now, close to three years later, any potential involvement of either of the Agencies is decidedly over. The facts demonstrating this are set forth below, in the accompanying Declaration of Gregg D. Thomas (the “Thomas Decl.”) and, because Hogan designated some of those facts as confidential under a protective order in the Florida state action, a separate Confidential Declaration of Gregg D. Thomas (the “Conf. Thomas Decl.”), that Gawker is moving to file under seal.

On November 8, 2013, more than a year after the events at issue, Gawker requested, via FOIA, public records relating to the FBI investigation for use in its defense against Hogan’s lawsuit. Gawker wanted, for example, to determine whether what Hogan was telling the Agencies was consistent with his position in his lawsuit against Gawker and wanted to obtain the raw materials (video, emails, and the like) that have been determined by the Florida state court to be critical to its case. Initially, the FBI raised privacy concerns, so Gawker requested records authorizations from Hogan and his counsel. They refused, but after a year of litigation on that subject were ultimately ordered by the Florida courts to provide the signed authorizations for the release of the records. Heather Clem provided one as well. Gawker then submitted those

authorizations with renewed requests, asking both the FBI and the EOUSA for the records in early November 2014, more than six months ago.

The FBI has now refused to produce *any* records about the investigation on the grounds that they are exempt from disclosure under FOIA's law enforcement exemption, 5 U.S.C. § 552(b)(7)(A). The EOUSA has not responded at all, and its failure to do so is deemed a constructive denial of the request. Because Exemption 7(A) cannot possibly apply to records from an investigation which is clearly long since over, Gawker seeks relief in this Court to obtain documents that are critical to its defense of its First Amendment rights in the underlying case. As explained below and in the accompanying declarations, there is no valid basis to withhold them.

### **MOTION FOR SUMMARY JUDGMENT**

1. In October 2012, Gawker published a news report and commentary about video footage it had obtained depicting Hogan's sexual affair with Heather Clem, the wife of his best friend, the radio shock jock Bubba the Love Sponge Clem. Along with the report and commentary, Gawker also published short and heavily-edited excerpts of the video footage. As a result of that publication, Hogan filed a \$100 million lawsuit against Gawker, alleging claims for invasion-of-privacy and related torts.

2. In connection with its defense of that lawsuit, Gawker sought, under FOIA, records from the FBI and the EOUSA related to an investigation conducted by the FBI in 2012 into the source and distribution of video footage depicting Hogan and Ms. Clem, focusing on a Los Angeles lawyer who was – unbeknownst to Gawker – attempting to sell the video footage to Hogan.



3. The EOUSA never responded to Gawker's FOIA request. The FBI (at the initial stage and on administrative appeal) denied Gawker's request on the grounds that disclosure would interfere with an ongoing or prospective law enforcement investigation, and thus the records were exempt under 5 U.S.C. § 552(b)(7)(A).

4. The FBI's invocation of the law enforcement exception is erroneous in light of the facts that (1) substantial evidence confirms that there is no ongoing or prospective investigation (which precludes invocation of Exemption 7(A)), and, (2) even if there were, the FBI and EOUSA have not shown and cannot show that release of the documents requested by Gawker would interfere with any such investigation. Because these are legal questions based on undisputed facts, Gawker therefore moves for summary judgment.

## MEMORANDUM OF LAW

### FACTUAL BACKGROUND

#### A. The FBI Investigation

Hogan made many public statements about the sex tape controversy, complaining that the video footage depicting his sexual affair with Ms. Clem had been unlawfully recorded and was being unlawfully disseminated. Among those statements, Hogan and his counsel announced to the media that they had contacted the FBI, and requested that the Bureau investigate. *See* Thomas Decl. ¶ 5 & Exs. 1-5. Hogan's counsel later confirmed in the lawsuit against Gawker that the FBI had indeed commenced a criminal investigation into the "source and distribution" of the video footage at issue. *Id.* ¶ 6 & Ex. 6. In particular, the FBI investigated a lawyer from Los Angeles who attempted to sell Hogan video footage of him and Ms. Clem to Hogan for a substantial payment. *See* Thomas Decl. at ¶ 7; Conf. Thomas Decl. at ¶¶ 4-6 & Exs. 26-C & 27-

C. As described below, however, no one was ever prosecuted, and for some time now both the Agencies and Hogan have treated the matter as effectively over.

**B. The Litigation Against Gawker**

Hogan initially sued Gawker in this Court under a variety of legal theories, seeking to recover \$100 million in damages and to enjoin Gawker's continued publication of the Gawker Story. Hogan repeatedly sought preliminary injunctive relief from this Court, which rejected those serial requests on the grounds that the Gawker Story was a news report and commentary on a matter of public concern and that its publication was protected by the First Amendment.<sup>1</sup>

Having had no success in this Court, Hogan dismissed his action and re-filed his claims in Florida state court on December 28, 2012, seeking damages and various injunctive relief and joining those claims to his existing state court lawsuit against Heather Clem (the "Florida Litigation"). See Thomas Decl. Ex. 7 (Am. Compl., *Bollea v. Clem, et al.*, No. 12012447-CI-011 (Fla. Cir. Ct.)). Gawker removed the case to this Court, which granted Hogan's motion to remand. See *Bollea v. Clem*, 937 F. Supp. 2d 1344 (M.D. Fla. 2013).

Notwithstanding this Court's prior rulings, following remand, the Florida trial court issued a temporary injunction enjoining continued publication. That order was immediately stayed and then unanimously reversed by the Florida District Court of Appeal, which also found that Gawker's publication involved a matter of public concern and was protected by the First Amendment. See *Gawker Media, LLC v. Bollea*, 129 So. 3d 1196 (Fla. 2d DCA 2014). Despite that appellate ruling on a dispositive legal issue, the state trial court denied Gawker's motion to

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<sup>1</sup> *Bollea v. Gawker Media, LLC*, No. 8:12-CV-02348-T-27, Dkt. 8 (M.D. Fla. Oct. 22, 2012) (denying motion for temporary restraining order); *Bollea v. Gawker Media, LLC*, 2012 WL 5509624, at \*4-5 (M.D. Fla. Nov. 14, 2012) (denying motion for preliminary injunction); *Bollea v. Gawker Media, LLC*, No. 8:12-CV-02348-T-27, Dkt. 61 (M.D. Fla. Dec. 4, 2012) (denying motion for injunction pending appeal); *Bollea v. Gawker Media, LLC*, 913 F. Supp. 2d 1325, 1331 (M.D. Fla. 2012) (denying motion for preliminary injunction on copyright grounds).

dismiss and ordered the parties to proceed with discovery, including as is relevant here, discovery related to the FBI investigation. Thomas Decl. ¶ 9.

**C. It Becomes Clear Through Discovery That the Agencies' Investigation is Over.**

In discovery, Gawker sought (a) Hogan's documents related to the FBI investigation, and (b) a Department of Justice-issued records authorization to allow Gawker to submit the FOIA requests at issue here. *Id.* ¶ 10. Hogan objected to such discovery, contending both that it was irrelevant and that it would interfere with an ongoing law enforcement investigation. Both the Special Discovery Magistrate (Hon. James R. Case, Ret.) and the presiding Florida trial court judge (Hon. Pamela A.M. Campbell) rejected Hogan's arguments, with the latter finding, *inter alia*, that this information was relevant and concerned a critical aspect of the case. Thomas Decl. ¶ 12-13 & Exs. 9-10; Conf. Thomas Decl. Ex. 30-C at 6:4-8.<sup>2</sup> With respect to the records authorizations, Hogan's efforts to have the trial court's ruling overturned by the District Court of Appeal were also unsuccessful. *See Bollea v. Clem*, 151 So. 3d 1241 (Fla. 2d DCA 2014) (Table) (dismissing writ petition).

With respect to Hogan's claim that the discovery sought from him and a FOIA request to the Agencies would interfere with an ongoing law enforcement investigation, Gawker contacted the Agencies and explained that it had no interest in interfering with any active investigation. In response, the U.S. Attorney's Office confirmed that:

- (a) the Government was "not asserting any privilege with respect to documents that [Hogan] or his counsel have in their possession, including the documents on [Hogan's] privilege log" asserting a law enforcement privilege;

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<sup>2</sup> *See also* Thomas Decl. Ex. 14 (Jan. 17, 2014 Hrg. Tr.) at 32:1 – 33:23 (finding, at an earlier hearing, that any other video footage goes to "the credibility of Mr. Bollea as far as his knowledge of the Clems – Mr. and Mrs. Clem's practices as far as taping or any other – the credibility of Mr. Bollea, his knowledge, his sense of taping, those kinds of things").

- (b) Gawker “would not be interfering in any way with any investigation if those documents were disclosed or if [it] contact[s] witnesses who may have provided information to the Government”;
- (c) Hogan and his counsel were not currently under any instructions “by the Government not to speak about these subjects or any investigation”; and
- (d) Gawker was not a target or subject of any investigation (addressing Hogan’s contention to the contrary).

Thomas Decl. ¶ 19 and Ex. 15 (describing and attaching email confirming same from Sara Sweeney, the AUSA responsible for the matter). The Section Chief in the U.S. Attorney’s Office further confirmed the United States was not asserting any evidentiary law enforcement privilege in connection with the information sought in the Florida Litigation. *Id.* ¶ 20 & Ex. 16. And, the FBI similarly confirmed that its position “echoed” that of the U.S. Attorney’s Office, including that the FBI was not asserting any law enforcement privilege with respect to Hogan’s records relating to the investigation and that Gawker could “do what it needed to do” without in any way interfering with any investigation. *Id.* ¶ 21 & Ex. 16.

Hogan was thus ordered to provide records authorizations for him and his counsel, and to produce his documents related to the FBI investigation. *See* Thomas Decl. ¶¶ 13, 16 & Exs. 10, 13 (orders granting motions to compel Hogan’s investigation-related documents and orders and hearing transcript related to FBI authorizations); Conf. Thomas Decl. ¶ 10 & Ex. 30-C (Apr. 23, 2014 Conf. Hrg. Tr.) at 6:2-11 (confidential hearing transcript related to Hogan’s records). Hogan designated the records he produced as confidential under the confidentiality order governing discovery in the Florida state court case. The import of those records on this matter,

and on this motion, is therefore further addressed in the Confidential Thomas Declaration, at ¶¶ 11-12, and the exhibits attached thereto.

**D. The FOIA Requests**

Through its counsel, Gawker submitted a FOIA request on November 8, 2013 seeking all records in the custody of the FBI relating to its investigation of this matter. Thomas Decl. Ex. 18. The FBI denied that request, citing only privacy concerns and making no reference to any interference with law enforcement investigation or the law enforcement exemption. *Id.* Ex. 19. As described above, following a year of litigation before the Special Discovery Magistrate, Circuit Court, and the District Court of Appeal, Hogan and his counsel were compelled to provide signed records authorizations so that the records could be released. (Mrs. Clem, now known as Heather Cole, provided a similar authorization without objection. *See* Thomas Decl. ¶¶ 14-16, and exhibits attached thereto.)

On November 7, 2014, Gawker renewed its request to the FBI and submitted an identical one to the EOUSA, in both cases enclosing the records authorizations from Hogan, his counsel, and Ms. Clem/Cole. Thomas Decl. Exs. 20 & 21. Gawker specifically enumerated certain categories of records it was seeking relating to the FBI investigation:

- (1) communications between Hogan and his counsel with the FBI;
- (2) documents related to video recordings depicting Hogan engaged in sexual activity with Ms. Clem, including the recordings themselves;
- (3) statements by Hogan and/or his counsel; and
- (4) records pertaining to the source and distribution of the video recordings, or attempts to disseminate or sell those video recordings.

*Id.* On January 29, 2015, the FBI advised that it had located 1,168 pages of responsive records and two CDs containing responsive video material. Thomas Decl. Ex. 22. Gawker responded on February 3, 2015, accepting all duplication charges and requesting expedited treatment on the basis of discovery deadlines in the Florida Litigation. Thomas Decl. Ex. 23.

By letter dated February 4, 2015, however, the FBI denied the request in full and declined to produce any records, citing only Exemption 7(A), the law enforcement exemption. Thomas Decl. Ex. 24 (the “Denial”). The FBI provided nothing more than a conclusory assertion of the exemption, stating only: “The records responsive to your request are law enforcement records; there is a pending or prospective law enforcement proceeding relevant to these responsive records, and release of the information in these responsive records could reasonably be expected to interfere with enforcement proceedings.” *Id.*

On March 4, 2015, Gawker submitted an administrative appeal from the FBI’s Denial. Conf. Thomas Decl. Ex. 34-C. In the administrative appeal, Gawker pointed out that, as noted above, there was no ongoing investigation, no showing of any interference, and thus no proper basis for wholesale denial. *Id.* at 4-6. Gawker also explained that the FBI had a responsibility to conduct its review (and justify withholding) on a category-by-category basis, and requested that the FBI provide a specific explanation why it was denying Gawker’s request for each category of documents. *Id.* at 4-6.

On May 6, 2015, the Department of Justice affirmed the FBI’s decision not to disclose any records. Thomas Decl. Ex. 25 (the “Final Determination”). The Final Determination did not dispute or rebut any of the showings Gawker made in its administrative appeal – it neither asserted that any investigation exists, nor claimed that any such investigation would be harmed by disclosure of any responsive records. *Id.* And it did not contain any explanation of the

reasons it believed Exemption 7(A) applied. *Id.* Rather, the Final Determination stated only: “The FBI properly withheld certain information in full because it is protected from disclosure under the FOIA pursuant to 5 U.S.C. § 552(b)(7)(A). This provision concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to interfere with enforcement proceedings.” *Id.*

Despite the passage of more than six months and repeated efforts to follow up, the EOUSA has still not responded to Gawker’s request at all. Thomas Decl. ¶ 35.<sup>3</sup>

## ARGUMENT

### I. SUMMARY JUDGMENT SHOULD BE GRANTED.

Summary judgment is appropriate if “there is no genuine issue as to any material fact” and “the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56. FOIA cases “should be handled on motions for summary judgment, once the documents in issue are properly identified,” because the records speak for themselves and the propriety of their withholding is a matter of law. *Miccosukee Tribe of Indians of Florida v. United States*, 516 F.3d 1235, 1243 (11th Cir. 2008) (quoting *Miscavige v. I.R.S.*, 2 F.3d 366, 369 (11th Cir. 1993)). On that question, the Court’s review is *de novo*, 5 U.S.C. § 552(a)(4)(B), and “the burden is squarely on the government to prove that the information in question is covered by one of the exemptions.” *Ely v. F.B.I.*, 781 F.2d 1487, 1489-90 (11th Cir. 1986). Where, as here, “it is determined that records do exist, the District Court must do something more to assure itself of

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<sup>3</sup> Having failed to respond, the EOUSA has constructively denied the Request. *Miccosukee Tribe of Indians of Florida v. U.S. Dep’t of Justice*, 2015 WL 1649957, at \*6 (S.D. Fla. Apr. 14, 2015) (EOUSA’s failure to respond within statutory deadline satisfied requirement that requestor exhaust administrative remedies).

the factual basis and bona fides of the agency's claim of exemption than rely solely upon an affidavit." *Stephenson v. I.R.S.*, 629 F.2d 1140, 1145 (5th Cir. 1980).

## **II. THE LAW ENFORCEMENT EXEMPTION CANNOT AND DOES NOT JUSTIFY WITHHOLDING THE REQUESTED RECORDS.**

To lawfully withhold records under FOIA, the government must demonstrate with concreteness and specificity that the exemption it invokes permits withholding. "An agency cannot meet its statutory burden of justification by conclusory allegations." *Mead Data Cent., Inc. v. Dep't of the Air Force*, 566 F.2d 242, 258 (D.C. Cir. 1977); *id.* at 251 (agencies must provide "relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply"); *Stephenson*, 629 F.2d at 1144, n.9 ("blanket objections" and "mere conclusory allegations" are insufficient). Here, the EOUSA has not provided any reasons at all for its withholding, and the FBI simply parroted back the statutory language of Exemption 7(A) without explaining how or why it applies to every document that Gawker seeks, at least some of which have already been disclosed by Hogan with the Agencies' express consent. For this reason alone, Gawker is entitled to summary judgment.

But even if the Agencies' wholesale failure to explain themselves were not sufficient to entitle Gawker to relief, the facts and evidence in this case make clear that Exemption 7(A) cannot possibly apply. Under that exemption, an agency may withhold from disclosure "records or information compiled for law enforcement purposes, *but only to the extent that the production of such law enforcement records or information could reasonably be expected to interfere with enforcement proceedings.*" 5 U.S.C. § 552(b)(7)(A) (emphasis added). "[E]xemption 7(A) was enacted in 1974 mainly to overrule judicial decisions that prohibited disclosure of investigatory files in 'closed' cases" because "when the investigation is all over and the purpose and point of it



has expired, it would no longer be an interference with enforcement proceedings and there ought to be . . . disclosure.” *Moorefield v. U.S. Secret Serv.*, 611 F.2d 1021, 1024-25 (5th Cir. 1980) (citations omitted). Thus, to rely on this exemption, agencies have the burden of showing two things: (1) that a law enforcement proceeding is either underway or actually prospective, and (2) that the release of responsive records “could reasonably be expected to interfere” with those current or prospective proceedings. 5 U.S.C. § 552(b)(7)(A). The Government has not, and cannot, meet this burden.

**A. The Government’s Claim That There Is An Active Investigation Cannot Withstand Scrutiny.**

As explained above and in the accompanying affidavits, both the FBI and the U.S. Attorney’s Office for the Middle District of Florida have effectively confirmed that there are no ongoing or prospective enforcement proceedings. *See* Thomas Decl. ¶¶ 20-23 & Exs. 16-17; Conf. Thomas Decl. at ¶¶ 7-9 & Exs. attached thereto (reciting substantial evidence that any investigation into this matter is over). There is no pending or reasonably anticipated law enforcement proceeding relating to the requested records. And the FBI’s conclusory assertion to the contrary does not withstand scrutiny. *See, e.g., Linn v. Dep’t of Justice*, 1995 WL 417810, at \*9 (D.D.C. June 6, 1995) (rejecting agency’s assertion of law enforcement exemption where agency averred only that “some unspecified investigation. . . was ongoing,” and the release of the information sought would interfere with it); *North v. Walsh*, 881 F.2d 1088, 1100 (D.C. Cir. 1989) (disclosure “cannot interfere with parts of the enforcement proceeding already concluded”). With any investigation long since over, Exemption 7(A) simply cannot apply.

**B. The Government Has Not Shown, and Cannot Show, that Release of the Requested Records Would “Interfere” With Any Ongoing Investigation.**

*Even if* there were an ongoing investigation, the Agencies have not made any showing, as they must, that the categories of materials requested pose any specific threat to the integrity of the supposed investigation. *See Van Bilderbeek v. Dep’t of Justice*, 416 F. App’x 9, 13 (11th Cir. 2011) (agency cannot categorically withhold all documents found in investigative file, even of active investigation, where some are “publicly known” or not likely to interfere); *Sussman v. U.S. Marshals Serv.*, 494 F.3d 1106, 1114 (D.C. Cir. 2007) (agencies must provide “specific information about the impact . . . the disclosures” would have on the investigation); *Kuffel v. U.S. Bureau of Prisons*, 882 F. Supp. 1116, 1126 (D.D.C. 1995) (agency must be “specific as to what information is being withheld and the distinct harm that could result from its disclosure”); *see also Cuban v. SEC*, 744 F. Supp. 2d 60, 85 (D.D.C. 2010) (law enforcement exemption “is not meant to be a ‘blanket exemption’ for any files or records that are relevant to an investigation – their disclosure must be reasonably expected to interfere in a ‘palpable, particular way’ with the investigation”).

To justify withholding records about an active investigation, “the FBI has a three-fold task. First, it must define its categories functionally. Second, it must conduct a document-by-document review in order to assign documents to the proper category. Finally, it must explain . . . how the release of each category would interfere with enforcement proceedings.” *Bevis v. Dep’t of State*, 801 F.2d 1386, 1389-90 (D.C. Cir. 1986); *see also Tipograph v. Dep’t of Justice*, 2015 WL 1245921, at \*4 (D.D.C. Mar. 18, 2015) (FBI required to perform detailed review of records *at the administrative stage*).

The Agencies have done none of this, nor could they meet their burden under this test. Indeed, much of the information related to the aborted investigation has already been disclosed –

either by Hogan in discovery or by other media in their news reporting – and the Agencies have not claimed that this disclosure has had any negative effect on any “investigation.” Nor have they explained why they themselves have not produced this same information, which is plainly responsive to Gawker’s Request. *See, e.g., Scheer v. Dep’t of Justice*, 35 F. Supp. 2d 9, 14 (D.D.C. 1999) (an agency “cannot successfully claim that disclosure of the same information” that was previously disclosed “would have resulted in distinct harm”). There is thus no reasonable basis to believe that release of related documents would somehow be detrimental to any ongoing investigation. And even if adequate showings could be made for certain records or categories of records, the Agencies have offered no justification for withholding every portion of every single one of the 1,168 responsive documents and video files in their possession. *Johnson v. Exec. Office for U.S. Attorneys*, 310 F.3d 771, 776 (D.C. Cir. 2002) (it is incumbent on the government to ensure that “any ‘reasonably segregable’ information from those [properly exempted] documents [is] disclosed after redaction of the exempt information”).

## CONCLUSION

For the foregoing reasons, summary judgment is appropriate here. Gawker respectfully requests that this Court order the Agencies to produce the requested records within 10 days of its order. Upon entry of such an order, Gawker reserves its right to move for an award of attorneys' fees pursuant to 5 U.S.C. § 552(a)(4)(E)(i).

Respectfully submitted,

THOMAS & LOCICERO PL

By:  /s/ Gregg D. Thomas

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 20th day of May 2015 a true and correct copy of the foregoing, together with the Declaration of Gregg D. Thomas, is being electronically filed via CM/ECF. It is also being served, by certified mail, on the following:

Loretta Lynch  
Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Ave., NW  
Washington, DC 20530

The Federal Bureau of Investigation  
933 Pennsylvania Ave., NW  
Washington, DC 20530

The Executive Office of United States Attorneys  
950 Pennsylvania Ave., NW, Room 2242  
Washington, DC 20530.

It is being served by hand on the following:

Office of the United States Attorney for the Middle District of Florida  
Attention: Civil Process Clerk  
400 North Tampa Street, Suite 3200  
Tampa, FL 33602

/s/ Gregg D. Thomas  
Attorney

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

GAWKER MEDIA, LLC and GREGG D.  
THOMAS,

Plaintiffs,

Case No.: 8:15-cv-01202-SCB-EAJ

vs.

THE FEDERAL BUREAU OF  
INVESTIGATION and THE EXECUTIVE  
OFFICE OF UNITED STATES ATTORNEYS

Defendants.

---

**DECLARATION OF GREGG D. THOMAS**

I, Gregg D. Thomas, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury that the following is true and correct:

1. The statements made in this Declaration are based on my personal knowledge.
2. I am a partner at Thomas & LoCicero PL, counsel for plaintiffs in the above-captioned matter. My firm, along with the law firm of Levine Sullivan Koch & Schulz, LLP, also serves as defense counsel for Gawker Media, LLC and other related entities and individuals, in connection with the related case *Bollea v. Clem, et. al.*, No. 12012447-CI-011, currently pending in state court in Pinellas County (referred to herein as the “Florida Litigation”). The plaintiff in that case is Terry Gene Bollea, the celebrity widely known as “Hulk Hogan” (“Hogan”).
3. I submit this Declaration in support of plaintiffs’ motion for summary judgment, filed herewith, which seeks to compel the FBI and Executive Office of the United States Attorneys (“EOUSA”) to release, as required under the Freedom of Information Act, certain

records critical to the defense of the Florida Litigation. I am also submitting a supplemental Confidential Declaration in order to put before this Court certain evidence that has been designated as “CONFIDENTIAL” or “CONFIDENTIAL – Attorneys’ Eyes Only” under the protective order in place in the Florida Litigation.

**A. The FBI Investigation**

4. The Florida Litigation arises out of an article published by Gawker in October 2012 reporting on a controversy involving video footage of Hogan having sexual relations with Heather Clem, the wife of his best friend, radio shock jock Bubba the Love Sponge Clem.

5. Attached hereto are examples of news articles reporting about statements by Hogan and his counsel to the media that they had contacted the FBI, and requested that the Bureau investigate, including:

- a. Attached hereto as Exhibit 1 is a true and correct copy of an article published by *TMZ* on October 14, 2012, entitled “Hulk Hogan Contacts FBI Over Leaked Sex Tape.” It reports that “Hulk’s lawyer says he has contacted the FBI to track down the sex tape leaker . . . and bring that person to justice. We’re told Hulk plans to meet with FBI agents on Monday.”
- b. Attached hereto as Exhibit 2 is a true and correct copy of an article published by *SFGate* on October 16, 2012, entitled “Hulk Hogan Sues for \$100 Million Over Sex Tape Leak.” It reports that Hogan has “called in the FBI.”
- c. Attached hereto as Exhibit 3 is a true and correct copy of an article published by the *Daily Mail* on October 14, 2012, entitled “Hulk Hogan ‘to contact the FBI over sex tape to bring the perpetrator to justice’ after best friend Bubba the Love

Sponge is ‘cleared of leak.’” It reports that “Hogan plans to contact the FBI over the leak.”

- d. Attached hereto as Exhibit 4 is a true and correct copy of an article published by *TMZ* on October 9, 2012, entitled “Hulk Hogan – Yes, I Banged Bubba’s Wife Heather Clem.” It reports that Hogan told Howard Stern that he was “working with officials to find out who released the tape . . . because he swears he didn’t know he was being recorded . . . and vows to press charges against the perpetrator.”
- e. Attached hereto as Exhibit 5 is a true and correct copy of an article published by *USA Today* on October 5, 2012, entitled “Hulk Hogan Fights Sex Tape Leak,” which reports statements by Hogan’s counsel David Houston that his team is “doing everything in our power to unearth whomever has done this and . . . to see they are prosecuted to the full extent of the law.”

6. Attached hereto as Exhibit 6 is a true and correct copy of an Affidavit dated March 5, 2014, signed by David Houston in the Florida Litigation, confirming that the FBI had indeed commenced a criminal investigation into the “source and distribution” of the video footage at issue.

7. Gawker also learned that the FBI investigation centered around a lawyer from Los Angeles who attempted to sell Hogan video footage of him and Ms. Clem for a substantial payment. It is Gawker’s and my understanding that no one was ever prosecuted. (Additional information concerning the investigation is set forth in my accompanying Confidential Declaration at ¶¶ 4-15.)



**B. The Florida Litigation, and Discovery Confirming Any Investigation is Over**

8. Attached hereto as Exhibit 7 is a true and correct copy of the First Amended Complaint in the Florida Litigation asserting claims against Gawker for invasion-of-privacy and other related causes of action.

9. The Florida trial court denied Gawker's motion to dismiss and ordered the parties to proceed with discovery, including as is relevant here, discovery related to the FBI investigation.

10. In discovery, Gawker sought (a) Hogan's documents related to the FBI investigation, and (b) a Department of Justice-issued records authorization to allow Gawker to submit the FOIA requests at issue here.

11. Attached hereto as Exhibit 8 is a true and correct copy of Gawker's Document Request No. 52, which requested that Hogan produce "documents in any manner referring or relating to communications between you or anyone acting on your behalf and any law enforcement person or agency concerning any recording of you having sexual relations with Heather Clem."

12. Attached hereto as Exhibit 9 is a true and correct copy of the February 28, 2014 Report and Recommendation of Special Discovery Magistrate James R. Case in the Florida Litigation recommending that the Court grant Gawker's motion to compel Hogan to respond to Document Request No. 52 concerning the his communications with law enforcement agencies.

13. Attached hereto as Exhibit 10 is a true and correct copy of the April 23, 2014 order by the judge presiding over the Florida Litigation, the Honorable Pamela A.M. Campbell, granting Gawker's motion to compel Hogan to respond to Gawker's Document Request No. 52 seeking his communications with law enforcement agencies. (The transcript reflecting the

parties' arguments concerning this motion were designated as confidential at Hogan's request, and excerpts are therefore submitted with my Confidential Declaration.)

14. Attached hereto as Exhibit 11 is a true and correct copy of excerpts from a transcript of a January 31, 2014 hearing in the Florida Litigation before the Special Discovery Magistrate at which he concluded that Hogan and his counsel should be required to provide Gawker with signed records authorizations, on Department of Justice-issued forms, authorizing the release of records related to the FBI's investigation concerning the sex tape.

15. Attached hereto as Exhibit 12 is a true and correct copy of the Special Discovery Magistrate's February 5, 2014, Report and Recommendation memorializing his recommendation granting Gawker's request, and directing Hogan and his counsel to provide the signed records authorizations to Gawker within three days.

16. Attached hereto as Exhibit 13 is a true and correct copy of the Florida Circuit Court's order, dated February 26, 2014, affirming the Special Discovery Magistrate's February 5, 2014 Report and Recommendation and directing Hogan and his counsel to provide the signed authorizations to Gawker within three days. Hogan's efforts to have that ruling overturned by the District Court of Appeal were unsuccessful. *See Bollea v. Clem*, 151 So. 3d 1241 (Fla. 2d DCA 2014) (Table) (dismissing writ petition).

17. Attached hereto as Exhibit 14 is a true and correct copy of excerpts from a January 17, 2014 hearing in the Florida Litigation, at which the court directed the production of any video footage depicting sexual relations between Hogan and Ms. Clem be produced (in the first instance to the Special Discovery Magistrate for his review) because such footage goes to "the credibility of Mr. Bollea as far as his knowledge of the Clems – Mr. and Mrs. Clem's

practices as far as taping or any other – the credibility of Mr. Bollea, his knowledge, his sense of taping, those kinds of things.”

18. In objecting to providing the above-described discovery and records authorizations, Hogan contended that it would interfere with an ongoing law enforcement investigation. Both my co-counsel and I contacted the Agencies and explained that Gawker had no interest in interfering with any active investigation. As set forth below, the Agencies explained that we would not be interfering with any such investigation.

19. Attached hereto as Exhibit 15 is a true and correct copy of an email dated March 19, 2014, from Assistant United States Attorney Sara Sweeney to my co-counsel Seth Berlin stating:

- a. the Government is “not asserting any privilege with respect to documents that [Hogan] or his counsel have in their possession, including the documents on [Hogan’s] privilege log” in which he asserted a law enforcement privilege;
- b. Gawker “would not be interfering in any way with any investigation if those documents were disclosed or if [it] contact[s] witnesses who may have provided information to the Government”; and
- c. Hogan and his counsel were not currently under any instructions “by the Government not to speak about these subjects or any investigation.”

20. Attached hereto as Exhibit 16 is an affidavit from Mr. Berlin describing his conversation on March 11, 2014, with Ms. Sweeney’s supervisor, Section Chief Robert Mosakowski, in which Mr. Mosakowski confirmed that the United States would not assert any evidentiary law enforcement privilege in connection with the information sought in the Florida Litigation.

21. That Affidavit also describes statements to Gawker's counsel on March 11, 2014, by Special Agent Jason R. Shearn of the FBI's Tampa Field Office, who confirmed that the FBI's position "echoed" the position of the U.S. Attorney's Office, including that the FBI was not asserting any law enforcement privilege with respect to Hogan's records relating to any investigation and that Gawker could "do what it needed to do" without in any way interfering with any investigation.

22. Attached hereto as Exhibit 17 is a true and correct copy of a letter dated March 18, 2014, from AUSA Sara Sweeney to Gawker's counsel Seth Berlin confirming in writing that Gawker was "neither the subject nor the target of any criminal investigation conducted by the United States Attorney's Office for the Middle District of Florida."

23. Additional documents demonstrating that any investigation is long since over have been designated as confidential by Hogan and are therefore being submitted with my supplemental Confidential Declaration.

### **C. The FOIA Requests**

24. Attached hereto as Exhibit 18 is a true and correct copy of a FOIA request submitted to the FBI by my firm on Gawker's behalf on November 8, 2013, seeking all records in the custody of the FBI relating to its investigation of this matter.

25. Attached hereto as Exhibit 19 is a true and correct copy of the FBI's denial of that request based solely on privacy concerns and providing a records authorization to be completed if the records were to be produced. As described above, Hogan and his counsel objected to providing those authorizations but, after a year of litigation, were ultimately ordered to provide them. Heather Clem also provided a signed authorization without objection.

26. Attached hereto as Exhibit 20 is a true and correct copy of a second FOIA request I submitted to the FBI on Gawker's behalf on November 7, 2014.

27. Attached hereto as Exhibit 21 is a true and correct copy of an identical FOIA request I submitted to the EOUSA on Gawker's behalf on November 7, 2014.

28. As reflected in Exhibits 20 and 21, both FOIA requests specifically enumerated the categories of records they were seeking relating to the FBI investigation, including:

- a. communications between Hogan and his counsel with the FBI;
- b. documents related to video recordings depicting Hogan engaged in sexual activity with Ms. Clem, including the recordings themselves;
- c. statements by Hogan; and
- d. records pertaining to the source and distribution of the video recordings, or attempts to disseminate or sell those video recordings.

29. The FOIA requests (Exs. 20 and 21) were submitted to the FBI and the EOUSA together with the signed records authorizations from Hogan, his counsel and Ms. Clem (described above). Those authorizations were designated as confidential because they contain each signatory's social security number, and are therefore not submitted herewith. If the Court would like to review copies of the authorizations, I would be pleased to provide them.

30. Attached hereto as Exhibit 22 is a true and correct copy of a letter dated January 29, 2015 I received from the FBI, stating that the agency had located 1,168 pages of responsive records and two CDs containing responsive video material.

31. Attached hereto as Exhibit 23 is a true and correct copy of a letter I sent to the FBI on February 3, 2015, accepting all duplication charges and requesting expedited treatment on the basis of discovery deadlines in the Florida Litigation.

32. Attached hereto as Exhibit 24 is a true and correct copy of a letter from the FBI dated February 4, 2015, denying the FOIA request in full and declining to produce any records. As reflected therein, the only basis cited for the denial was FOIA Exemption 7(A), the law enforcement exemption.

33. On March 4, 2015, Gawker submitted an administrative appeal from the FBI's denial. Because that administrative appeal both described and attached documents that had been designated as confidential under the confidentiality order in the Florida Litigation, I am submitting that document and the attachments thereto with my supplemental Confidential Declaration.


34. Attached hereto as Exhibit 25 is a true and correct copy of correspondence dated May 5, 2015, from the Department of Justice affirming the FBI's decision not to disclose any records.

35. Despite the passage of more than six months and my repeated efforts to follow up with the agency, the EOUSA has still not responded to my November 7, 2014 FOIA request at all.

36. The combination of the facts set forth herein and in my Confidential Declaration confirms that any investigation is long since over and undercuts any assertion of Exemption 7(A) by the Government.

I, GREGG D. THOMAS, declare under penalty of perjury under the laws of the State of Florida that the foregoing is true and correct.

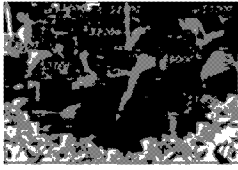
Date of Execution: May 20, 2015  
Place of Execution: Tampa, Florida

  
\_\_\_\_\_  
GREGG D. THOMAS

# Exhibit 1

to the

# Declaration of Gregg D. Thomas



•

[Floyd Mayweather -- Strippers Got \\$3,000 Each For Instagram Twerk-fest](#)



•

[Jose Canseco -- My Finger Didn't Fall Off ... It Was A PRANK!!](#)



•

[Dwight Howard -- Baby Mama Throws Son's B-day Party At Hooters](#)



•

[Al Michaels -- Dennis Miller on 'MNF' ... 'He Had a Pretty Good Run'](#)



•

[Shelly Sterling -- Donald's Still a Huge Clippers Fan ... We Want Rings!!!](#)

[Home](#)

# Hulk Hogan Contacts FBI Over Leaked Sex Tape

## Hulk Hogan

Contacts FBI

Over Leaked Sex Tape

10/14/2012 6:00 AM PDT BY TMZ STAFF

EXCLUSIVE





TMZ.com

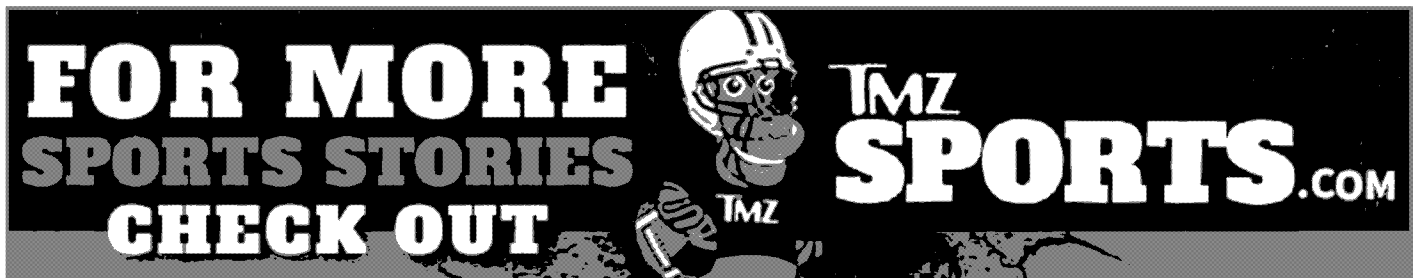
**Hulk Hogan** is taking his sex tape fight to the big dogs -- contacting the FBI this week to help him track down the low-life who leaked his naked fun time footage to the media ... TMZ has learned.

Hulk's attorney tells TMZ, the wrestler had previously attempted to file a police report in Florida -- but local police couldn't help him for two reasons:

- 1) Because the tape was recorded in 2006, the four-year statute of limitations had expired on the offense of unlawfully recording Hulk without his permission.
- 2) The other offense -- distributing the illegal footage to the media -- crosses state lines, so it's a federal problem ... not a local one.

As a result, Hulk's lawyer says he has contacted the FBI to track down the sex tape leaker ... and bring that person to justice.

We're told Hulk plans to meet with FBI agents on Monday.



### See also

- [Hulk Hogan Betrayed By Best Friend -- 'I'm Sick to My Stomach'](#)
- [Bubba the Love Sponge Knew Hulk Hogan Sex Tape Could Be Worth A Fortune](#)

Gawker 24004

## Exhibit 2

to the

## Declaration of Gregg D. Thomas

# DAILY DISH

## Hulk Hogan sues for \$100 million over sex tape leak

By Daily Dish on October 16, 2012 10:25 AM



WENN.com

**HULK HOGAN**

Wrestler-turned-reality TV star Hulk Hogan has launched a \$100 million lawsuit over his leaked sex tape.

A lawyer for Hogan held a news conference in Tampa, Fla., on Monday and announced that the star had filed two lawsuits in relation to intimate footage which appeared on website Gawker.com earlier this month.

The clip featured Hogan, real name Terry Bollea, and Heather Clem, the ex-wife of wrestler and radio personality Bubba the Love Sponge.

The former fighter filed a criminal police report in Florida in an attempt to secure lawmakers' help in tracking down the person responsible for the leak – and he has since called in the FBI, according to insiders.

Hogan is now seeking \$100 million in damages from bosses at Gawker, and has also filed suit against Clem and her former husband.

In legal papers, obtained by TMZ.com, Hogan claims he “had a reasonable expectation of privacy in his consensual, intimate activities in a private bedroom and reasonably believed that his privacy was safe and protected.”

Hogan's attorney states the recording of the footage was “illegal, outrageous, and exceeded the bounds of human decency”.

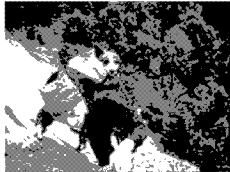
The 59-year-old has also requested the surrender of all footage so it can be destroyed.

**Categories: Hulk Hogan**

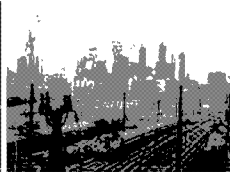
# Exhibit 3

to the

# Declaration of Gregg D. Thomas



Nine dead in clash between biker



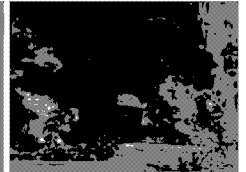
Amtrak trains resume service



New York bankers pay their



Tragedy as mother-of-three falls 150



One Marine killed and 21 hospitalized

## Hulk Hogan 'to contact the FBI over sex tape to bring the perpetrator to justice' after best friend Bubba the Love Sponge is 'cleared of leak'

By AMELIA PROUD and JADE WATKINS

PUBLISHED: 08:10 EST, 14 October 2012 | UPDATED: 11:58 EST, 15 October 2012

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4 View comments

It's proving to be quite the soap opera, and now the latest in the Hulk Hogan sex tape saga is that the video was reportedly leaked by 'an unhappy ex-employee of his best friend Bubba the Love Sponge.'

But far from believe any gossip the wrestling star, who hit the headlines after X-rated footage of him and Heather Clem - the estranged wife of Bubba - surfaced online, Hogan plans to contact the FBI over the leak.

With rumours that overweight Bubba may have leaked the tape, Hogan is determined to get to the bottom of the leak.

SCROLL DOWN FOR VIDEO...



Splash News



Adam Bielawski/Landmark Media

Obsessed: Hulk Hogan's sex tape partner Heather Clem, pictured right with her former husband and the Hulk's best friend Bubba The Love Sponge, was said to be obsessed with the wrestler

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	Follow DailyMail		+1 DailyMail

### FEMAL TODAY

► Kendall and Kylie Jenner get booed at Billboard Music Awards before introducing brother-in-law Kanye West's very censored closing performance



► MAD MEN SPOILER ALERT: Don Draper's fate is finally revealed as the curtain falls on hit show after eight years He had one last big slogan in him



► Dissed? Giuliana Rancic has an awkward moment on live TV when Kendall Jenner refuses to air kiss her at the Billboard Music Awards in Las Vegas



A source told TMZ that Hogan had tried to report the leak to local police in Florida but because of the statute of limitations and the nature of the offence, officers could not help him.

Hogan's lawyer added the wrestler will meet agents on Monday.

TMZ also reported that Hogan planned to sue Bubba, were he found to be responsible for the leak.

Meanwhile source told Radar: 'Even though Bubba knew how much the Hulk sex tape would be worth, he didn't stab his friend in the back and he's not the one who released it.

'It's a former employee of Bubba's who was outraged when he left Sirius to go back to terrestrial radio. He wanted payback.'

The source added: 'Bubba didn't secure the tape properly and showed it to a bunch of people. And that's why they're all in this mess now.'

On Wednesday, it was reported that Hulk's partner in his now infamous video was completely obsessed with the 59-year-old, and always had dreams of getting intimate with the star.

Radar allege that Clem used her former husband and the Bubba to get to the former reality star.

▶ Kisses from her man! Taylor Swift flashes plenty of flesh in low-cut jumpsuit before getting close to Calvin Harris at Billboard Music Awards  
Not coy about romance



▶ 'We knew Bruce was a cross-dresser': Khloe Kardashian delivers shocking information during About Bruce special as sister Kendall sobs



▶ Chest is best! Jennifer Lopez Taylor Swift





© Splash News  
**Grim: The wrestler looked downcast as he headed out in Manhattan on Wednesday**

Sources claim that Clem was 'obsessed' with Hogan and that she and her former husband set up the camera to film the act so she could obsessively and repetitively watch it.

Insiders claim that Clem is a voyeur and used every possible means to have sex with the star.

'Heather has been obsessed with Terry [Hulk Hogan] Bollea forever,' an insider told Radar.

'She took advantage of her husband's friendship with him and used Bubba to get to Terry.

'She's a voyeur and her fantasy was to have sex with Terry and then have a tape of her conquest.'

Meanwhile, earlier this week Hogan said he was 'sick to his stomach' after hearing his best friend Bubba plotted to leak the sex tape of the wrestler with his own ex-wife.

Lopez, Taylor Swift, Mariah Carey all showcase their ample charms for the Billboard Music Awards



▶ What's happened to Iggy Azalea's face? Aussie singer sparks rumors of more plastic surgery as she shows off her new bustline at the Billboard Awards



▶ Taylor Swift steals the show at Billboard Music Awards... taking home EIGHT gongs and debuting her star-studded music video Bad Blood



▶ Leather-clad red-head Taylor Swift is backed up by bazooka-toting Gigi Hadid as she confronts Selena Gomez in racy star-studded Bad Blood music video



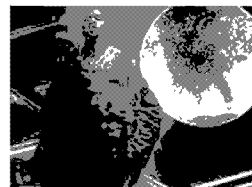
▶ 'She looked really beautiful': Kim Kardashian claims she has seen Bruce as a woman... and reveals Mr Jenner has a new name Bruce has family support



▶ 'Reliving this is harder than I imagined': Kim and Khloe Kardashian react on Twitter after emotional KUWTK About Bruce special airs Bruce is transitioning



▶ Fans furious after ABC censors Kanye West's Billboard performance due to offensive language, with almost a full minute being broadcast in SILENCE



▶ Power couple Jay Z and Beyoncé 'wired tens of thousands of dollars in bail money' to cover protesters in Baltimore and Ferguson Biographer claims



▶ Proud papa! Chris Brown dotes over daughter Royalty as he takes his tot on the red carpet at Billboard Music Awards Showed his softer side



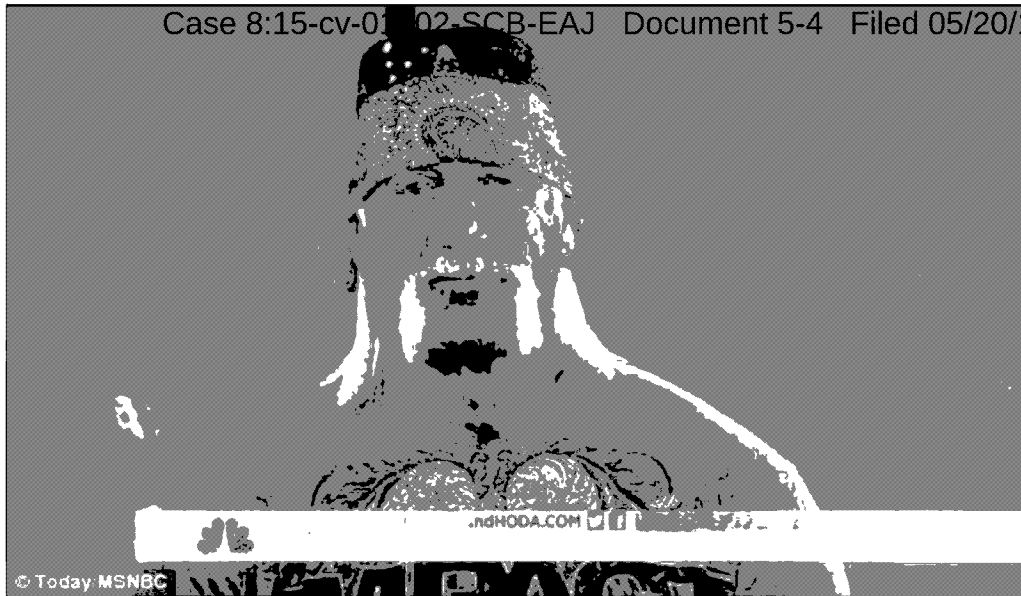
▶ Dominatrix diva! Britney Spears struts in a sheer catsuit with latex boots as she performs Pretty Girls with busty Iggy Azalea at the Billboard Awards



▶ Jennifer Lopez slips into a flirty playsuit as she joins Nick Jonas and his girlfriend Olivia Culbo at the Billboard







© Today MSNBC

'Rattled': Hulk spoke out on the Today show on Tuesday, saying he was devastated about a sex tape featuring him leaking online... he later admitted he was 'sick to the stomach' to hear it may be his best friend to blame

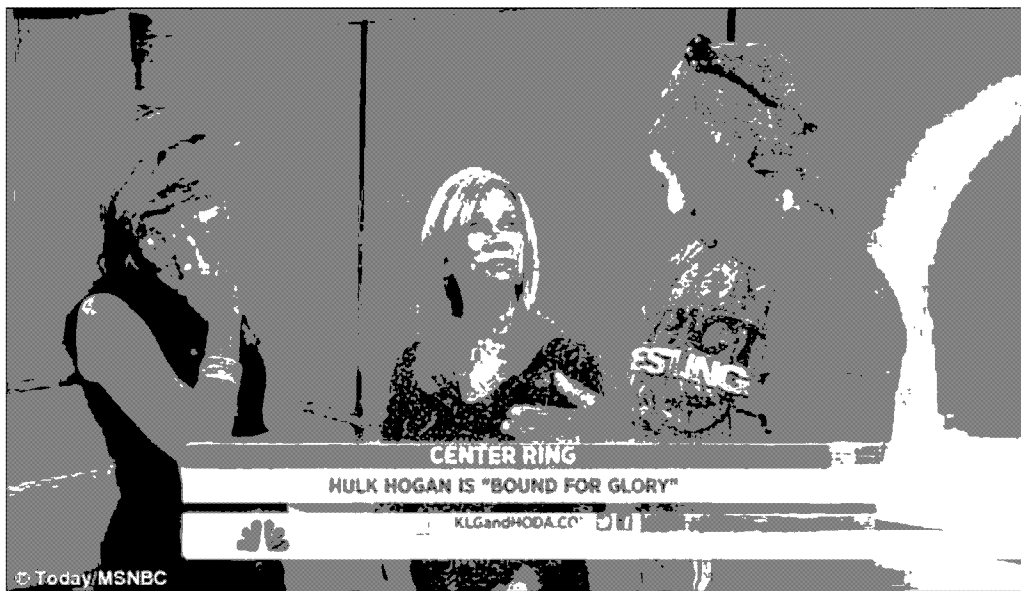
The wrestler admitted on the Today Show on Tuesday that his life had been turned 'totally upside down' by the tape... and confessed on Howard Stern's radio show that the woman in the video was Clem, the ex-wife of his best friend.

And in the same afternoon he called into TMZ Live to admit he was 'completely stunned' when they told him about footage of Bubba planning to profit from the tape.

He told them: 'I'm sick to my stomach right now.'

Hogan also told them Bubba had vociferously denied even knowing about the sex tape and said he wasn't aware a camera even captured the steamy tryst.

Hulk relayed that he said to his buddy: 'If you had anything to do with this, that means we were never friends.'



© Today/MSNBC

Shock: The wrestling icon spoke to hosts Hoda Kotb, left, and Kathie Lee Gifford, saying he didn't even realise he was being filmed

At the end of the TMZ footage, Bubba can be heard saying to Heather: 'If we ever did want to retire, all we'd have to do is use this footage.'

Hulk told the Today show that he had no idea footage was being taken - and TMZ reports Hulk is now filming a criminal police reports in Florida, claiming he was filmed illegally.

In the clip, the professional wrestler can be seen engaging in a sex act with the brunette after a man thought to be his friend Bubba is seen leaving the room.

Bubba, who legally changed his name by deed poll, is mentioned in the video as Hulk asks his partner if she had slept with him earlier that day.

Hulk told Today hosts Kathie Lee Gifford and Hoda Kotb: 'It was a bad choice and a very low point.

'I was with some friends and made a wrong choice. It has devastated me, I have never been this hurt.'

Hulk revealed the video - which only recently leaked online this week following stills from the encounter being released in April - was from six years ago.

► **Party** party

► **Scarlett Johansson** slips into skin-tight jeans as she gets stuck into action scenes alongside her body double on Captain America: Civil War set



► **Steve Irwin's father** reveals his devastation over broken pact of silence around the Crocodile Hunter's death after cameraman detailed final moments



► **Rita Ora** puts on a VERY daring display in a deeply plunging cutaway gown with thigh-high slit as she hints at split from Ricky Hill at Billboard Music Awards



► **Mad Men** ends in triumph as fans take to Twitter to hail finale as 'pure genius' Fans flocked to social media to praise last episode of 8 year series



► **Jay Z** slams Google, YouTube, Spotify, the police, and hypocrites who buy iPhones and Nikes in blistering freestyle defense of Tidal during show



► **Jennifer Lopez**, 45, displays plenty of cleavage in a daring gown at the Billboard Awards... and toyboy beau Casper Smart, 28, looks rather impressed



► **No time for jet-lag!** Prince Harry looks fresh as a daisy as he swaps New Zealand for London's Chelsea Flower Show Jet-setting royal in UK



► **Hair today!** Victoria Beckham pokes fun at herself in hilarious snap as her immaculate locks struggle to cope with the humid Singapore weather



► **Pushing the envelope!** Nicki Minaj sensually licks her lips and touches herself as she performs Hey Mama at Billboard Music Awards Risque as usual



► **And the award for wackiest outfit** goes to... Iggy Azalea, Dencia and Kira Kazantsev who hit a low note at Billboard Music Awards in Las Vegas





Married: Hulk is pictured with his current wife Jennifer McDaniel

But added that it still has really upset his current wife, Jennifer McDaniel.

'I'm going full blown to try and figure out who would do this to me,' he said on Today before speaking to TMZ. 'My new wife Jennifer is rattled, she is not used to being part of the media.'

Clem, meanwhile was previously said to be embarrassed about the whole incident, and has refused to comment.

A source told PerezHilton.com recently: 'She thinks it puts her in a bad light - it's not as if Hulk's a hunk and it's a pretty embarrassing moment.'

Hulk was formerly married to Linda Hogan, who was recently hit the headlines over a DUI arrest.

▶ The hostess with the mostest! Chrissy Teigen stuns in FIVE curve-hugging outfits as she takes on the Billboard Music Awards with Ludacris



▶ Chrissy Teigen fails to notice her dress KNOCKS a woman over during opening sequence of Billboard Music Awards in Vegas That's power dressing



▶ Time to escape! Rita Ora makes a quick exit from the Billboard Music Awards to catch a flight... after hinting she's split from boyfriend Ricky Hil



▶ January Jones brings out the retro glamour as she joins Christina Hendricks and Elisabeth Moss at Farewell To Mad Men event It's the end of an era



▶ Chris Pine enjoys romantic lunch date with a mystery woman before indulging in some retail therapy The Star Trek heartthrob was on a date



▶ SPOILER ALERT: Game Of Thrones reveals Sansa Stark's gruesome marriage to Ramsay as Tyrion and Jorah are captured by slave traders



▶ Sam Smith looks forlorn as he leaves hospital after undergoing throat surgery... before accepting Billboard Award via video link



▶ Doting mother Selma Blair works off-duty style in a baggy sweater and over-sized shades as she visits the farmer's market with her son Arthur

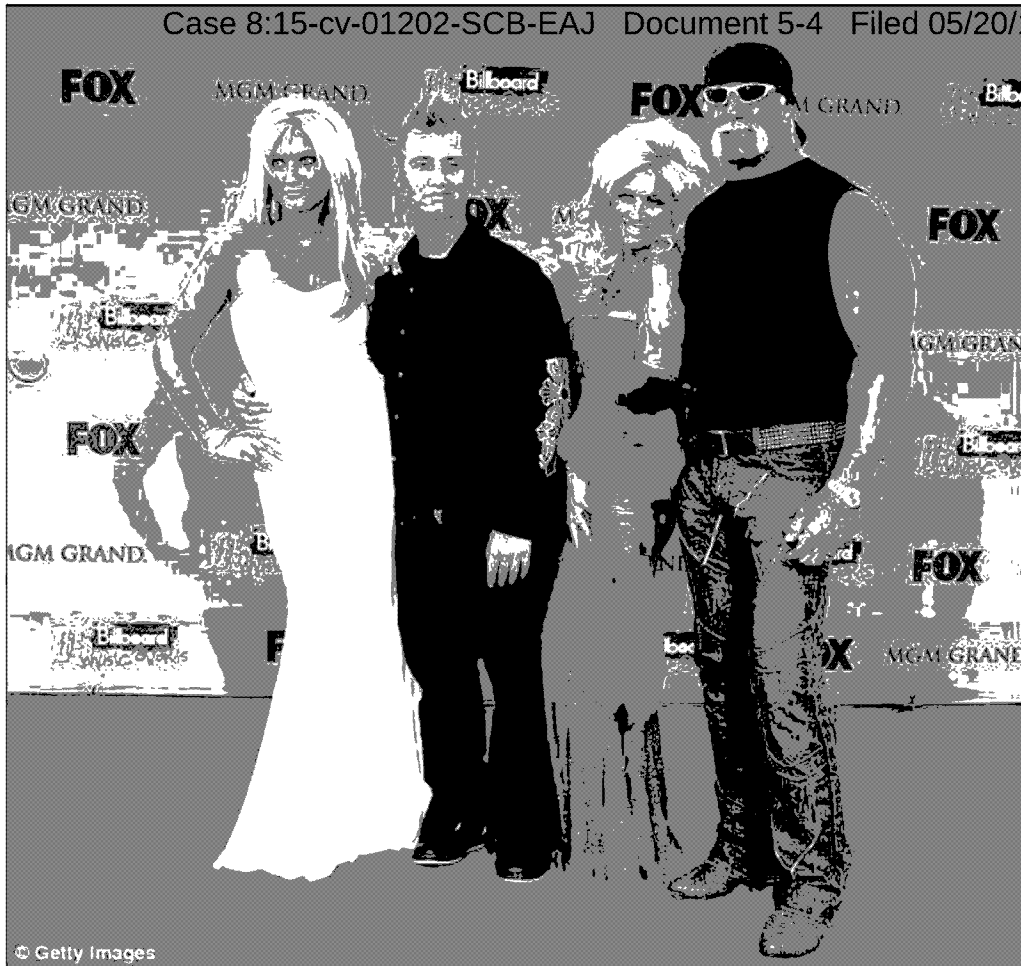


▶ Jude Law steps out as it's confirmed he will portray a 'hard-line' fictional pope in new TV series set at the Vatican The British actor will play a young pontiff



▶ She's out of this world! Diane Kruger shows off her slender limbs in a short stars and planets print dress as she dines out at Cannes Film Festival





© Getty Images

More to come: Hogan has apparently warned children Brooke and Nick and ex-wife Linda that there could be another sex tape of him too, pictured together here in December 2006 in Las Vegas

The interview comes amid fears there could be another sex tape featuring him could be released.

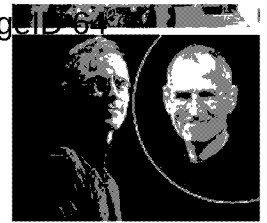
Hulk has apparently warned his ex-wife Linda, son Nick and daughter Brooke - who now works with him on 'TNA IMPACT Wrestling' - to brace themselves for another onslaught.

A source close to the 59-year-old star told RadarOnline: 'Hulk is very concerned a new sex tape could emerge.'

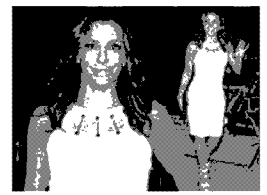
'After the first video was leaked he warned Linda, Brooke and Nick that he could have been caught on camera in the past.

'The family is absolutely mortified their name has been sullied in such a tacky way. They never imagined that Hulk could drag them into such an embarrassing situation.'

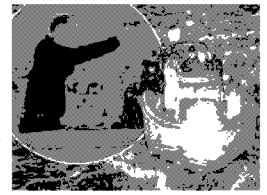
► **FIRST LOOK:** Michael Fassbender appears as Apple founder Steve Jobs as new trailer for hotly-anticipated biopic is released  
Latest star to portray icon



► **Eva Longoria slips into a curve-hugging little white dress after wowing in midnight blue on the red carpet as she continues the party at the Cannes Film Festival**



► **Shoot Another Day!** Daniel Craig wields his gun as he films high-action speed boat chase on the River Thames for eagerly anticipated Bond film Spectre



► **Has she got a stage age?** Rebel Wilson's former classmate claims the actress is actually 36 NOT 29... and was known by a different name



► **It takes two!** Fergie and Josh Duhamel share parenting duties as they take their cherubic son Axl to the park for a kickabout  
Family day out in LA



► **'Thank you for bringing such happiness into my life':** Lea Michele pays tribute to beau Matthew Paetz with touching Instagram post  
Celebrated his 30th



► **Poppy Delevingne stuns in a sheer green gown as she ensures her husband James Cook only has eyes for her at red carpet event in Cannes**

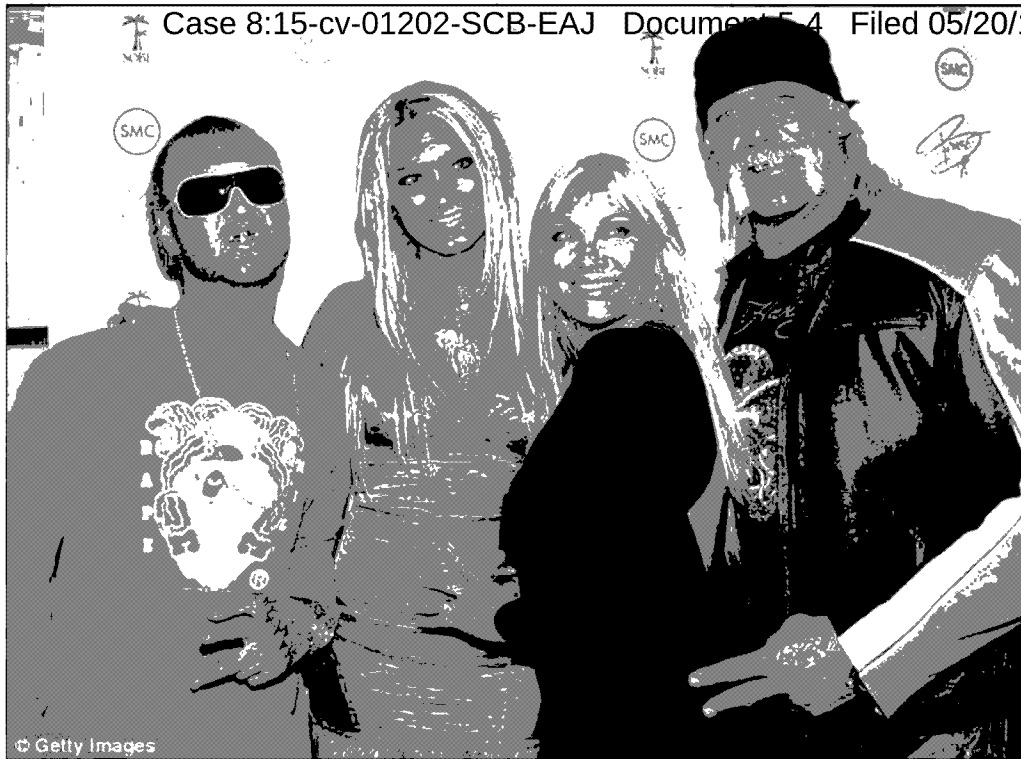


► **Her little Minnie Mouse!** Kim Kardashian takes her cute daughter North West to get her face painted at local farm  
Posted pic of her daughter on Instagram



► **Oh Lorde!** After years of working together the Royals hitmaker and longtime manager Scott MacLachlan have reportedly split





© Getty Images

The way they were: Hulk, his former wife Linda and their two children starred in the reality show Hogan Knows Best for three years

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Can YOU work out what the sound coming from the sky is?



Royals fan filmed demanding fly ball back from little boy



Too far? Louis CK's controversial joke about child...



Teacher uses belt to break up classroom brawl

MOST READ NEWS



► Molly Ringwald, 47, hugs it out with Taylor Swift then introduces Simple Minds for Breakfast Club tribute at Billboard Music Awards Both blonde bombshells



► In The Love Zone: Britney Spears only has eyes for rumored fiancé Charlie Ebersol on red carpet at Billboard Music Awards Third time's a charm?



► Pretty Girls! Britney Spears, 33, and Iggy Azalea, 24, look like sisters as they pose arm-in-arm at the Billboard Music Awards Teamed up for a single



► 'We actually went to high school together:' Extra presenter Renee Bargh reveals she and Iggy Azalea go way back at the Billboard Music Awards



► Pixie-haired Faith Hill joins Little Big Town onstage the Billboard Music Awards to perform controversial song Girl Crush Singer is 47 years old



► 'We want to share this with our brother!' One Direction dedicate Billboard Award win to Zayn Malik... after admitting they were angry when he quit



► That's below the belt! Prankster Harry Styles playfully grabs Niall Horan's crotch as One Direction win big at Billboard Music Awards Boys got hands on



► Balmain babes! Kylie Jenner wears a metallic mini dress while Kendall sports a beaded blazer and thigh-high boots by their favorite designer at Billboard Music Awards



► Mariah Carey performs in a sheer gown at Billboard Music Awards after 17 year break... as it's revealed she has more number one hits than any artist



► It's all about that dress! Meghan Trainor shows off her curves in a sparkly black gown with a thigh-high split at the Billboard Music Awards The 21-year-old stunned



► Troubled star Jonathan Rhys Meyers looks





### Comments (4)

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Newest

Oldest

Best rated

Worst rated

The comments below have not been moderated.

The views expressed in the contents above are those of our users and do not necessarily reflect the views of MailOnline.

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Wince for years as disorientated as he's pictured drinking from a bottle of vodka on a London street



► Bonding over Taylor? Swift's boyfriend Calvin Harris jokes around with her BFF Ed Sheeran as they cheer on the blonde star at Billboard Music Awards



► Hey sweet thing! Justin Bieber and model Jayde Pierce stroll through a Beverly Hills park while cooling down with snow cones  
Writing a breakup album



► Leggy lady! Celine Dion, 47, oozes sex appeal in revealing green leather dress at Billboard Music Awards  
the singer stood out in the skimpy gown



► Tat's interesting! Empire's Taraji P Henson, 44, wears a cut-out dress to Billboard Music Awards so revealing it shows off her very private tattoos



► Spencer Pratt makes bombshell claim that 10 years ago he was aware Bruce Jenner wanted to transition into a woman... and says Brody confirmed it



► Kicking back! LeAnn Rimes and Eddie Cibrian enjoy a picnic with friends after watching the actor's son Jake play soccer  
She's pitch perfect



► Pregnant Hilaria Baldwin 'bumps' into new father Josh Charles while strolling with Carmen in NYC  
She's expecting her second child



► Staying put! Bruce Jenner denies he plans to recover from gender reassignment surgery at an \$8.2m beach-side hideaway in Australia  
A peaceful recovery



► Gwyneth Paltrow in Titanic, Sarah Michelle Gellar in Clueless and John Travolta as Forrest Gump... the blockbuster movie roles actors turned DOWN revealed



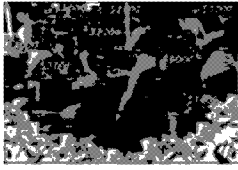
► 'Laughing is the best calorie burner': Kendra Wilkinson looks glum as she wears a statement T-shirt while joining Hank Baskett and son at



# Exhibit 4

to the

# Declaration of Gregg D. Thomas



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[Floyd Mayweather -- Strippers Got \\$3,000 Each For Instagram Twerk-fest](#)



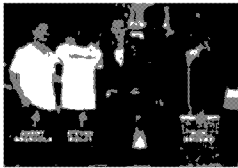
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[Le'Veon Bell Flirts with Jordin Sparks After Record-Breaking Performance](#)



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[Dave Chappelle -- Donald Sterling Got Screwed ... Shouldn't Have Lost the Clippers](#)



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[NFL Star Stevan Ridley Buys \\$20k In Bling From Bravo Star ... For Teammates](#)



•

[Shawne Merriman -- Advice to Raiders ... FIRE EVERYBODY!!](#)

[Home](#)

## **Hulk Hogan -- Yes, I Banged Bubba's Wife Heather Clem**

[Hulk Hogan](#)

[Yes, I Banged Bubba's Wife](#)

10/9/2012 6:08 AM PDT [BY TMZ STAFF](#)

breaking news



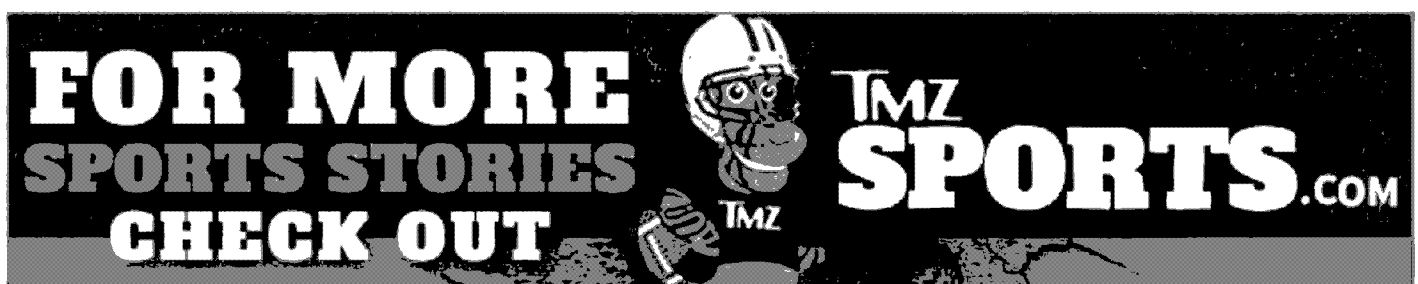
**Hulk Hogan** just appeared on the Howard Stern show ... and admitted the woman in his sex tape is the estranged wife of his best friend, **Bubba the Love Sponge** ... who gave Hulk his blessing to nail her.

Hulk spilled his guts to Stern ... saying Bubba -- a nationally syndicated radio DJ -- allowed Hogan to have sex with **Heather Clem** six years ago.

During the interview, Hogan says he was still married to Linda at the time of the sex tape ... but says she drove him to have sex outside the marriage because she was so verbally and emotionally abusive to him.

Hulk also admitted his performance wasn't exactly tip top.

Hogan says he's working with officials to find out who released the tape ... because he swears he didn't know he was being recorded ... and vows to press charges against the perpetrator.



## See also

- [Arnold Schwarzenegger -- Yes, I Had An Affair With Brigitte Nielsen](#)
- [Lauryn Hill's Ex BF Rohan Marley -- Wyclef Jean is LYING, He Knew I Was the Daddy](#)
- [Liberty Ross -- Cheating Does a Body Good](#)

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Gawker 23960



# Exhibit 5

to the

# Declaration of Gregg D. Thomas

# Hulk Hogan fights sex tape leak

LIFELINE LIVE USATODAY

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Ernie Evans/Becker Gem Images

TAGS

- Sports Hulk Hogan
- Houston Florida

- f 120
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- in
- 11

Hulk Hogan has been caught with his pants down And his doo-rag off!

Yes, the wrestler is the star of a sex tape - in all his naked glory - and Gawker is sharing it with the world

But Hogan is moving to get the video - which TMZ says was shopped around in April - off the Web

Gawker says the tape, which runs about a half hour was sent to them last week. No payment was demanded

**UPDATE, 4 p.m. ET** Hulk's lawyer David R. Houston tells Lifeline Live that he sent a cease and desist letter to Gawker today to get the video taken down

"It is our opinion whoever made this video without the knowledge and/or consent of Hulk Hogan faces potential criminal charges in the state of Florida for doing so. And anyone who publishes with knowledge that it was taken in violation in statute may well find themselves in the very same position."

He added that his team is "doing everything in our power to unearth whomever has done this" and consequently everything in our power to see they are prosecuted to the full extent of the law."

Houston added, "The short version: Whoever did it: Don't sleep too well."

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- 11



**Automakers duke it out at 2015 New York Auto Show**

May 21, 2015



# Exhibit 6

to the

# Declaration of Gregg D. Thomas

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.

\_\_\_\_\_ /

**AFFIDAVIT OF DAVID R. HOUSTON**

STATE OF FLORIDA

COUNTY OF PINELLAS

DAVID HOUSTON, Esq. being duly sworn, deposes and says:

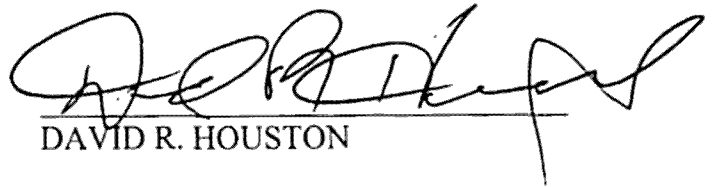
1. I am a resident of Reno, Nevada, over the age of 18 years. I am an attorney duly licensed to practice before all courts of the States of Florida and Colorado, among other courts, including the United States Supreme Court and the Ninth Circuit Court of Appeals. I am counsel (admitted *pro hac vice*) for Plaintiff Terry Gene Bollea, professionally known as Hulk Hogan, in the above-captioned matter. I have been Mr. Bollea's personal attorney for approximately six years. The statements made herein are based on my personal knowledge.

2. On March 5, 2014, I spoke by telephone with an attorney in the United States Attorney's Office for the Middle District of Florida. On this same date, I also spoke by telephone with a representative of the Federal Bureau of Investigation ("FBI"). Both confirmed that the criminal investigation into the source and distribution of the secretly-recorded sex tape that is the subject of this lawsuit remains open.

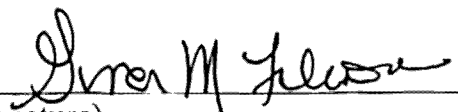
3. In addition, during the period in and around the latter part of 2012, when Mr. Bollea and I initiated our contact with the FBI to discuss the commencement of an investigation into the source and distribution of the secretly-recorded sex tape, various FBI representatives repeatedly told Mr. Bollea and me that, under no circumstances, was anyone affiliated with the investigation allowed to disclose anything about the FBI's investigation to anyone.

I declare under penalty of perjury that the foregoing is true and correct.

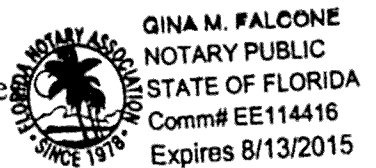
Executed this \_\_\_\_ day of March, 2014.

  
DAVID R. HOUSTON

Sworn to and subscribed before me this 5<sup>th</sup> day of March, 2014 by David R Houston who is personally known to me or \_\_\_\_ who has produced Nevada Drivers License (type of I.D.) as identification (check one).

  
(Signature)  
Gina M. Falcone  
(Type or Print Name)

Notary Public  
My Commission Expires  
Commission No.:

  
GINA M. FALCONE  
NOTARY PUBLIC  
STATE OF FLORIDA  
Comm# EE114416  
Expires 8/13/2015

# Exhibit 7

to the

# Declaration of Gregg D. Thomas

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

TERRY GENE BOLLEA professionally  
known as HULK HOGAN,

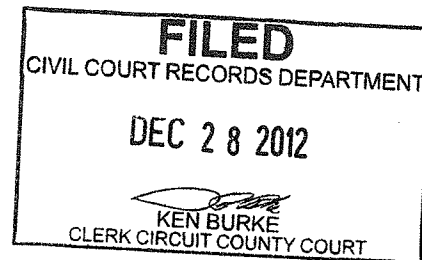
Plaintiff,

v.

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.

Case No. 12012447-CI-011



**FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff Terry Gene Bollea (“Plaintiff” or “Mr. Bollea”), professionally known as “Hulk Hogan,” sues defendants Heather Clem aka Heather Cole (“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, Blogwire Hungary Szellemi Alkotast Hasznosito KFT aka Gawker Media (collectively, the “Gawker Defendants”) (collectively with Clem, “Defendants”), and alleges as follows:

**NATURE OF THIS ACTION**

1. Defendants have engaged in outrageous, irresponsible and despicable conduct that should be punished to the maximum extent under the law. Defendant Clem caused Mr. Bollea to

be secretly videotaped in or about 2006, without his knowledge or consent, while he was engaged in private consensual sexual relations with her in a private bedroom. On or about October 4, 2012, the Gawker Defendants posted to the Internet a one-minute and forty-second “highlight reel” of the secretly-taped video and audio footage depicting Mr. Bollea naked and engaged in private consensual sexual relations with Clem in a private bedroom (the “Video”). The Gawker Defendants also posted, with the Video, a graphic narrative that describes the sexual activity in the Video in lurid detail (the “Narrative”). The Gawker Defendants posted the Video and Narrative at their website [www.Gawker.com](http://www.Gawker.com) (the “Gawker Site”). The Gawker Defendants posted the Video and Narrative for the public to view, for the purpose of obtaining tremendous financial benefit for themselves, including without limitation (a) the sale of advertisements at the Gawker Site to viewers of the webpage with a link to the Video and Narrative, and (b) attracting new viewers to the Gawker Site for the long-term financial benefit of the Gawker Defendants and their numerous affiliated websites, and additional revenues from the substantial new viewers brought to the Gawker Site and its affiliated websites by the Video and Narrative.

2. Mr. Bollea had no knowledge that the intimate activity depicted in the Video was being recorded. To the contrary, Mr. Bollea believed that such activity was completely private, and he had a reasonable expectation of his privacy in the private bedroom, and he reasonably believed that his privacy was safe and protected at all relevant times.

3. Both Clem’s secret recording of Mr. Bollea naked and engaged in private consensual sexual activity, and the Gawker Defendants’ posting of the Video and Narrative at the Gawker Site, constitutes a shameful and outrageous invasion of Mr. Bollea’s right of privacy by a group of loathsome Defendants who have no regard for human dignity and care only about maximizing their revenues and profits at the expense of all others.



4. Mr. Bollea is informed and believes that the activities by both Clem, and the Gawker Defendants, constitutes a criminal violation of Florida's Video Voyeurism law codified at Section 810.145 of the Florida Statutes.

5. This lawsuit was necessitated by Defendants' blatant violations of Mr. Bollea's right of privacy and other rights as discussed herein. Clem violated Mr. Bollea's rights by participating in the secret recording of Mr. Bollea naked and engaged in private sexual activity in a private bedroom. The Gawker Defendants violated Mr. Bollea's rights by their wrongful disclosure of the private acts depicted in the Video; their unauthorized commercial exploitation of Plaintiff's name, image, identity and persona; their refusal to remove the Video and Narrative when Plaintiff repeatedly requested and demanded its removal from the Gawker Site; and other calculated wrongful and tortious conduct as described herein.

6. Defendants' malicious conduct violates Plaintiff's constitutional and common law privacy rights and publicity rights, and exceeds all bounds of human decency. Defendants' gross and egregious intrusion into Plaintiff's privacy must be stopped, and must be punished to the maximum extent of the law.

### JURISDICTION

7. This Court has jurisdiction because Plaintiff seeks relief in an amount greater than \$15,000, exclusive of interest, costs and attorneys' fees.

8. This Court has personal jurisdiction over the Defendants as follows:

a. Defendants committed tortious acts within the State of Florida thereby satisfying Florida's long-arm statute, section 48.193, Florida Statutes;

b. Defendants have committed intentional torts expressly aimed at Plaintiff, the effects of which were suffered in this circuit. Defendants' intentional conduct was calculated

to cause injury to Plaintiff in Florida. Based on their intentional torts, Defendants should have reasonably anticipated being haled into this Court and due process is satisfied.

9. Venue is proper in this Court pursuant to section 47.011, Florida Statutes, because, among other things, the claims at issue accrued within this circuit.

#### PARTIES

10. Plaintiff Terry Gene Bollea is a resident and citizen of the State of Florida, and resident of Pinellas County.

11. Defendant Heather Clem aka Heather Cole is a resident of the State of Florida, believed to reside in Hillsborough County.

12. At all relevant times, defendant Gawker Media, LLC aka Gawker Media, was and is a limited liability company organized and operating under the laws of the State of Delaware, with its principal place of business in New York.

13. At all relevant times, defendant Gawker Media Group, Inc. aka Gawker Media, was and is a Cayman Islands corporation.

14. At all relevant times, defendant Gawker Entertainment, LLC, was and is a New York limited liability company. Thus, defendant Gawker Entertainment, LLC was and is a citizen of New York.

15. At all relevant times, defendant Gawker Technology, LLC was an is a New York limited liability company.

16. At all relevant times, defendant Gawker Sales, LLC was an is a New York limited liability company.

17. Plaintiff is informed and believes and based thereon alleges that defendants Gawker Media, LLC, Gawker Entertainment, LLC, Gawker Technology, LLC, and Gawker

Sales, LLC were and are all under the control of defendant Gawker Media Group, Inc. based in the Cayman Islands.

18. At all relevant times, defendant Blogwire Hungary Szellemi Alkotast Hasznosito KFT aka Gawker Media (“Blogwire Hungary”) was and is a Hungarian off-shore company, and owns the Internet domain name GAWKER.COM.

19. Defendants Gawker Media, LLC, Gawker Entertainment, LLC, Gawker Technology, LLC, Gawker Sales, LLC, Gawker Media Group, Inc., and Blogwire Hungary are collectively referred to herein as “Gawker Media”.

20. Gawker Media owns, operates, controls and publishes several Internet websites, including the Gawker Site, which disseminate information worldwide via the Internet.

21. At all relevant times, defendant Nick Denton (“Denton”) was and is a citizen of Hungary and the United Kingdom, and is a resident and domiciliary of the State of New York. Defendant Denton is the founder of Gawker Media and currently owns all of, or a controlling or substantial interest in, Gawker Media.

22. At all relevant times, defendant A.J. Daulerio (“Daulerio”) was and is a citizen, resident and domiciliary of the State of New York. Plaintiff is informed and believes and based thereon alleges that defendant Daulerio is the Editor in Chief of the Gawker Site and Gawker Media.

23. Plaintiff is informed and believes that defendant Kate Bennert (“Bennert”) is a citizen, resident and domiciliary of the State of New York and is employed by Gawker Media.

24. Plaintiff is informed and believes and based thereon alleges that the Gawker Defendants, and each of them, were and are the agents, licensees, employees, partners, joint-venturers, co-conspirators, owners, principals, and employers of the remaining Gawker

Defendants, and each of them are, and at all times herein mentioned were, acting within the course and scope of that agency, license, partnership, employment, conspiracy, ownership, or joint venture. Plaintiff further is informed and believes and based thereon alleges that the acts and conduct herein alleged of each of the Gawker Defendants were known to, authorized by, and/or ratified by the other Gawker Defendants, and each of them.

### **FACTS GIVING RISE TO THE CLAIMS**

25. Plaintiff is a professional wrestler, motion picture actor, and television personality who has enjoyed mainstream popularity as the character "Hulk Hogan." Plaintiff is a twelve-time world wrestling champion.

26. In or about 2006, Mr. Bollea engaged in private sexual relations with defendant Heather Clem, in Clem's private bedroom. Unbeknownst to Mr. Bollea, and without his knowledge or consent, Mr. Bollea was filmed naked and engaged in private sexual relations with Clem. Plaintiff is informed and believes and on that basis alleges that Clem was involved in filming the private consensual sexual encounter between Mr. Bollea and Clem. Mr. Bollea understood, believed and expected that the sexual activities in which he and Clem engaged in her private bedroom were completely private and would not be viewed by any other persons. Had Mr. Bollea known that his private sexual activities were being secretly filmed, Mr. Bollea would not have engaged in any such activities.

27. Plaintiff is informed and believes and thereon alleges that the Gawker Defendants, based on the actions of Clem and others, obtained a copy of the secretly-filmed recording depicting Mr. Bollea naked and engaged in sexual relations with Clem. The recording was edited by the Gawker Defendants into a one-minute and forty-second "highlight reel" depicting Mr. Bollea fully naked; showing his sex partner, Clem, performing oral sex on him; and showing

him engaged in sexual intercourse with her. The footage was not blocked, blurred or obscured in any way by the Gawker Defendants, who created the edited “highlight reel” and also added English subtitles to the Video to ensure that viewers did not miss a word of their private encounter. The Gawker Defendants also prepared the Narrative describing the sexual encounter in lurid detail.

28. On or about October 4, 2012, the Gawker Defendants published at the Gawker Site the Video depicting Plaintiff having private consensual sexual relations with an anonymous woman in a private bedroom, and the Narrative graphically describing the actions taking place in the Video in lurid detail. Defendant Bennert, with the help or under the direction of defendants Denton and Daulerio, edited the secretly-filmed recording into the Video without Plaintiff’s knowledge or consent. The Narrative was written and edited by defendants Daulerio, Denton and Bennert. Plaintiff made numerous and repeated demands to the Gawker Defendants, including directly to defendant Denton, to remove the Video from the Gawker Site. However, the Gawker Defendants failed and refused to do so.

29. At no time prior to, during, or after the private consensual sexual encounter between Mr. Bollea and Clem did Mr. Bollea ever authorize or consent to any person or entity recording the private, intimate acts depicted in the Video, or the storage of the Video, or the editing of the Video, the dissemination, publishing or exploitation of the Video in any way or manner whatsoever, or the creation of the Narrative or other work based on the Video. On the contrary, Plaintiff finds the secret recording of his private sexual activity by Ms. Clem and the publishing of the Video and Narrative by the Gawker Defendants to be outrageous and egregious. The Video and Narrative have never been authorized by Plaintiff for any purpose whatsoever, including any form of disclosure to the public whatsoever.

30. Numerous media outlets and websites picked up on the Video and Narrative posted at the Gawker Site, and posted links to it, thus exposing hundreds of millions of people to the Video and Narrative. As a natural and foreseeable consequence, massive numbers of individuals were drawn to the Gawker Site, for which the Gawker Defendants have reaped tremendous revenues and profits, and have been unjustly enriched therefrom, based on both the short term web traffic of millions of people who have viewed the Video and Narrative and advertisements displayed thereat, and the long term increase in viewership to the Gawker Site and the Gawker Defendants' other affiliated sites, and the revenues and profits associated therewith for a prolonged period of time. Such tremendous benefits are a direct result of the tremendous fame and goodwill of Plaintiff.

31. As a natural and foreseeable consequence of Defendants' actions, Plaintiff has suffered, and continues to suffer, tremendous emotional distress. His life was "turned upside down" by the unlawful actions of the Defendants, including the continued display of the Video and Narrative at the Gawker Site, and Plaintiff continues to suffer from substantial emotional distress, on a daily basis, as a result. In particular, Plaintiff has suffered, and continues to suffer, substantial embarrassment, humiliation and hurt feelings as a result. Moreover, Plaintiff's goodwill, commercial value, and brand have been substantially harmed as a result as well.

32. Plaintiff has devoted a tremendous amount of his time and effort to developing his career as a professional champion wrestler, motion picture actor, and television personality, and to developing his universal goodwill, reputation and brand. Such efforts have created considerable commercial value in his name, image, identity and persona.

33. The commercial value of Plaintiff's name, image, identity and persona has been, and continues to be, substantially diminished by Defendants' actions, including the secret taping

of Plaintiff naked and having sex; the unauthorized transmission of that recording to the Gawker Defendants; and the unauthorized posting, publishing, distribution and dissemination of the Video and Narrative, which is perceived unfavorably by the public and by the negative portrayal of Plaintiff in the Video and Narrative to the general public.

34. Defendants' conduct manifests a depraved disregard for Plaintiff's privacy rights and an unauthorized commercial exploitation of his publicity rights.

35. Plaintiff is informed and believes and alleges thereon that unless enjoined and restrained, the Gawker Defendants will continue to post, publish, distribute, disseminate and exploit the Video and Narrative, despite Plaintiff's numerous and repeated demands that the Gawker Defendants cease and desist. Such infringement and violation of Plaintiff's rights will continue to cause Plaintiff severe emotional distress and damage, for which there is no adequate remedy at law, if the Video and/or Narrative continue to be posted, published, distributed, disseminated and exploited by the Gawker Defendants. Such conduct and activity has caused and will continue to cause Plaintiff to suffer irreparable harm for which there is no adequate remedy at law.

36. All conditions precedent to the bringing and maintenance of this action and the granting of the relief requested have been performed, have occurred, or have been waived.

#### **FIRST CAUSE OF ACTION**

##### **(Invasion of Privacy by Intrusion Upon Seclusion Against Defendant Heather Clem)**

37. Plaintiff repeats, re-alleges, adopts and incorporates each and every allegation contained in Paragraphs 1 through 36, inclusive, as though fully set forth herein.

38. Clem, without Plaintiff's knowledge or consent, has grossly invaded Plaintiff's protected rights of privacy as recognized under the United States Constitution, Florida Constitution, and the common law, by filming Plaintiff in or about 2006 engaged in private

consensual intimate sexual relations with Ms. Clem in a private bedroom. Plaintiff recently learned of the existence of this secretly-filmed video, and brought this lawsuit promptly thereafter.

39. Clem further violated Plaintiff's rights of privacy by disclosing the secretly-filmed video to third parties, which then resulted in excerpts of the secretly-filmed video being posted on the Gawker Site.

40. The videotaping of Plaintiff engaging in consensual sexual relations in private quarters was not carried out for reasonable or legitimate purposes. Plaintiff had a reasonable expectation of privacy at all relevant times, and did not know about, nor consent to, the taping of the activity depicted in the secretly-filmed video.

41. The unauthorized taking and dissemination of the secretly-filmed video is highly offensive and objectionable to Plaintiff and to any reasonable person of ordinary sensibilities, and is not of legitimate public concern.

42. Clem knew or should have known that the secretly-filmed video contained private and confidential information, that Plaintiff had a reasonable expectation of privacy, that her conduct would cause private and personal things about Plaintiff to be revealed which Clem had no right to disseminate or disclose, and that the publication of these private facts constitute a clear and substantial violation of Plaintiff's right of privacy.

43. Clem violated Plaintiff's fundamental privacy rights by the conduct alleged herein, including the outrageous intrusion into Plaintiff's privacy and the publication, and dissemination of the secretly-filmed video in an unprivileged manner in conscious disregard of Plaintiff's rights.



44. Plaintiff is informed and believes and thereon alleges that Clem acted with actual malice and reckless disregard of Plaintiff's right of privacy.

45. Unless and until enjoined and restrained by order of this Court, Clem's continued acts will cause Plaintiff severe and irreparable injury which cannot adequately be compensated by monetary damages. By reason of the foregoing, Plaintiff is entitled to preliminary and permanent injunctive relief enjoining the distribution, dissemination and use of the secretly-filmed video and all portions and content thereof and all copies thereof, and mandating the delivery of same to Plaintiff and transferring to Plaintiff all right, title and interest in the secretly-filmed video and all portions and content thereof and all copies thereof.

46. Plaintiff is entitled to preliminary and permanent injunctive relief enjoining the distribution, dissemination and use of the secretly-filmed video , and any portions and content thereof; mandating the delivery of all reproductions and copies of the secretly-filmed video and all portions and content thereof; and transferring to Plaintiff all right, title and interest in and to the secretly-filmed video and all portions and content thereof.

47. Unless and until enjoined and restrained by order of this Court, Defendants' continued acts will cause Plaintiff severe and irreparable injury which cannot adequately be compensated by monetary damages. By reason of the foregoing, Plaintiff is entitled to preliminary and permanent injunctive relief enjoining the distribution, dissemination and use of the secretly-filmed video and all portions and content thereof and all copies thereof, and mandating the delivery of same to Plaintiff and transferring to Plaintiff all right, title and interest in the secretly-filmed video and all portions and content thereof and all copies thereof.

48. Plaintiff is informed and believes and on that basis alleges that the aforementioned acts of Clem were done intentionally or with a conscious and/or reckless

disregard of Plaintiff's rights, and with the intent to vex, injure or annoy, such as to constitute oppression, fraud, or malice.

### **SECOND CAUSE OF ACTION**

#### **(Publication of Private Facts Against Defendant Heather Clem)**

49. Plaintiff repeats, re-alleges, adopts and incorporates each and every allegation contained in Paragraphs 1 through 36, inclusive, as though fully set forth herein.

50. Clem disclosed or caused to be disclosed to third parties the contents of the secretly-filmed video depicting Plaintiff in or about 2006 engaged in private consensual sexual relations between with Ms. Clem in a private bedroom. Clem knew, or should have known, that the secretly-filmed video contained private and confidential information; that Plaintiff had a reasonable expectation of privacy in engaging in the activity depicted in the secretly-filmed video; that the secretly-filmed video was taken without Plaintiff's knowledge, consent, or approval and would reveal private and personal things about Plaintiff if disclosed to third parties which Clem had no right to disseminate or disclose; and that this publication of these private facts would be offensive and objectionable to a reasonable person of ordinary sensibilities, and would have the natural tendency of causing substantial damages to Plaintiff.

51. Clem's actions served no legitimate public interest.

52. Plaintiff is informed and believes and thereon alleges that Clem, acted with actual malice and reckless disregard of Plaintiff's right to privacy.

53. Unless and until enjoined and restrained by order of this Court, Defendants' continued acts will cause Plaintiff severe and irreparable injury which cannot adequately be compensated by monetary damages. By reason of the foregoing, Plaintiff is entitled to preliminary and permanent injunctive relief enjoining the distribution, dissemination and use of the secretly-filmed video and all portions and content thereof and all copies thereof, and

mandating the delivery of same to Plaintiff and transferring to Plaintiff all right, title and interest in the secretly-filmed video and all portions and content thereof and all copies thereof.

54. As a direct and proximate result of the aforementioned acts by Defendants, Plaintiff has suffered substantial injury, damage, loss, harm, anxiety, embarrassment, humiliation and shame. As a direct and proximate result of the aforementioned acts by Defendants, Plaintiff has been damaged and will be damaged, in an amount subject to proof.

55. Plaintiff is informed and believes and on that basis alleges that the aforementioned acts of Defendants were done intentionally or with a conscious and/or reckless disregard of Plaintiff's rights, and with the intent to vex, injure or annoy, such as to constitute oppression, fraud, or malice.

### **THIRD CAUSE OF ACTION**

#### **(Publication of Private Facts as Against the Gawker Defendants)**

56. Plaintiff repeats, re-alleges, adopts and incorporates each and every allegation contained in Paragraphs 1 through 36, inclusive, as though fully set forth herein.

57. The Gawker Defendants disclosed to the public the contents of the confidential Video depicting Plaintiff fully naked and engaged in private consensual sexual relations with Clem in a private bedroom. The Gawker Defendants knew or should have known that the Video contained private and confidential information, and that Plaintiff had a reasonable expectation of privacy in being fully naked and engaged in consensual sexual relations in a private bedroom, and that the Video, taken without Plaintiff's knowledge or consent, would reveal private and personal things about Plaintiff which the Gawker Defendants had no right to disseminate, disclose or exploit, and that the publication of these private facts would be offensive and objectionable to a reasonable person of ordinary sensibilities.

58. The Gawker Defendants' posting, publishing, distributing, disseminating and exploiting of Plaintiff engaged in sexual relations in private quarters was not carried out for reasonable or legitimate purposes. Plaintiff had a reasonable expectation of privacy in being fully naked and having private consensual sexual relations with Clem in a private bedroom, and had no knowledge of, and did not consent to, the recording of such private sexual activity.

59. The unauthorized publication by the Gawker Defendants of the Video, Narrative and any portions or content thereof, is offensive and objectionable to Plaintiff, as well as to any reasonable person of ordinary sensibilities, and is not of legitimate public concern. Plaintiff did not consent to any use, distribution or exploitation by Defendants, or any other persons or entities, of the Video, Narrative or any portions or content thereof, whatsoever.

60. The Gawker Defendants knew or should have known that the Video, Narrative and/or any portions or content thereof, contained private and confidential information, and that Plaintiff had a reasonable expectation of privacy in the sexual activities depicted therein, and that the Gawker Defendants' conduct would reveal private and personal things about Plaintiff which the Gawker Defendants had no right to disseminate, disclose or exploit, and that the publication of these private facts would constitute a clear and egregious violation of Plaintiff's right of privacy.

61. The Gawker Defendants violated Plaintiff's fundamental privacy rights by the conduct alleged herein, including the outrageous intrusion into Plaintiff's privacy and the publication, dissemination, exploitation of the Video, Narrative and/or any portions or content thereof, in an unprivileged manner calculated to financial capitalize therefrom and garner publicity throughout the world, to unjustly enrich the Gawker Defendants and in conscious disregard of Plaintiff's right of privacy.

62. Plaintiff is informed and believes and thereon alleges that the Gawker Defendants acted with actual malice and reckless disregard for Plaintiff's right of privacy.

63. The Gawker Defendants have continued to invade Plaintiff's right of privacy by continuing to disseminate and post the Video and Narrative. Unless and until enjoined and restrained by order of this Court, the Gawker Defendants' continued acts will cause Plaintiff to continue to incur severe and irreparable injury that cannot adequately be compensated by monetary damages. By reason of the foregoing, Plaintiff is entitled to a temporary restraining order and preliminary and permanent injunctive relief enjoining the distribution, dissemination and use of the Video and all portions and content therefrom, including without limitation all still images thereof, and the Narrative.

64. As a direct and proximate result of the aforementioned acts by the Gawker Defendants, Plaintiff has suffered injury, damage, loss, harm, anxiety, embarrassment, humiliation, shame, and severe emotional distress in an amount subject to proof.

65. Plaintiff is informed and believes and on that basis alleges that the aforementioned acts of the Gawker Defendants were done intentionally or with a conscious and/or reckless disregard of Plaintiff's rights, and with the intent to vex, injure or annoy, such as to constitute oppression, fraud, or malice.

#### **FOURTH CAUSE OF ACTION**

##### **(Invasion of Privacy by Intrusion Upon Seclusion Against the Gawker Defendants)**

66. Plaintiff repeats, re-alleges, adopts and incorporates each and every allegation contained in Paragraphs 1 through 36, inclusive, as though fully set forth herein.

67. The Gawker Defendants, without Plaintiff's consent and against Plaintiff's will, have grossly invaded Plaintiff's protected rights of privacy as recognized under the United States Constitution, Florida Constitution, and applicable common law, by obtaining, watching and

editing the secretly recorded video and audio footage involving Plaintiff Clem and by posting and publicly disclosing the Video depicting Plaintiff fully naked and engaged in private intimate consensual sexual relations with Clem in a private bedroom, and by describing, in graphic, lurid detail, the private activities that occurred in private quarters. In doing so, the Gawker Defendants “peered into the private bedroom” and enabled the general public to “peer into the private bedroom” and watch Plaintiff when he was fully naked and engaged in private sexual activity, without Plaintiff’s knowledge, authorization or consent.

68. The Gawker Defendants’ acquiring, viewing, editing, posting, publishing, distributing, disseminating and exploiting of Plaintiff fully naked and engaged in sexual relations in private quarters was not carried out for reasonable or legitimate purposes, but rather to reap substantial revenues and profits at the expense of Plaintiff and others. Plaintiff had a reasonable expectation of privacy in having private consensual sexual relations with Clem in a private bedroom, and had no knowledge of, and did not consent to, the recording or dissemination of such private sexual activity.

69. The actions by the Gawker Defendants are offensive and objectionable to Plaintiff, and would be offensive and objectionable any reasonable person of ordinary sensibilities, and is not of legitimate public concern.

70. The Gawker Defendants knew or should have known that the private video and audio footage, depicting Plaintiff naked and engaged in consensual sexual activity in a private bedroom, contained private and confidential information and content, and that Plaintiff had a reasonable expectation of privacy in the activities depicted therein, and that the Gawker Defendants’ conduct would reveal private and personal things about Plaintiff which Defendants

had no right to disseminate, disclose or exploit, and that the publication of these private facts would constitute a clear and egregious violation of Plaintiff's right of privacy.

71. The Gawker Defendants violated Plaintiff's fundamental privacy rights by the conduct alleged herein, including the outrageous intrusion into Plaintiff's privacy and the publication, dissemination, and exploitation of the Video and Narrative in an unprivileged manner calculated to financially capitalize therefrom, to garner publicity throughout the world, and to unjustly enrich the Gawker Defendants in conscious disregard of Plaintiff's right of privacy.

72. Plaintiff is informed and believes and thereon alleges that the Gawker Defendants acted with actual malice and reckless disregard of Plaintiff's right of privacy.

73. The Gawker Defendants have continued their invasion of Plaintiff's right of privacy by continuing to disseminate and post the Video and Narrative. Unless and until enjoined and restrained by order of this Court, the Gawker Defendants' continued acts will cause Plaintiff to continue to incur severe and irreparable injury that cannot adequately be compensated by monetary damages. By reason of the foregoing, Plaintiff is entitled to a temporary restraining order and preliminary and permanent injunctive relief enjoining the distribution, dissemination and use of the Video and all portions and content therefrom, including without limitation all still images thereof, and the Narrative.

74. As a direct and proximate result of the aforementioned acts by the Gawker Defendants, Plaintiff has suffered injury, damage, loss, harm, anxiety, embarrassment, humiliation, shame and severe emotional distress. As a direct and proximate result of the aforementioned acts by the Gawker Defendants, Plaintiff has been damaged and will be damaged, in an amount subject to proof.

75. Plaintiff is informed and believes and on that basis alleges that the aforementioned acts of Defendants were done intentionally or with a conscious and/or reckless disregard of Plaintiff's rights, and with the intent to vex, injure or annoy, such as to constitute oppression, fraud, or malice.

**FIFTH CAUSE OF ACTION**

**(Violation of Florida Common Law Right of Publicity Against the Gawker Defendants)**

76. Plaintiff repeats, re-alleges, adopts and incorporates each and every allegation contained in Paragraphs 1 through 36, inclusive as though fully set forth herein.

77. Plaintiff is a professional wrestler, motion picture actor, and television personality who has enjoyed mainstream popularity as the character "Hulk Hogan." Plaintiff is a twelve time world wrestling champion. Plaintiff has devoted a tremendous amount of time and effort developing his career and developing his universal goodwill, reputation and brand. Such efforts have created considerable commercial value in his name, image, identity and persona.

78. The Gawker Defendants' unauthorized use of Plaintiff's name, image, identity and persona in connection with the Video and Narrative constitutes a violation and misappropriation of Plaintiff's right of publicity in that the Gawker Defendants misappropriated Plaintiff's name, likeness, image, identity and persona by using the Video and Narrative for the purpose of commercial gain, without Plaintiff's consent.

79. The misappropriation of Plaintiff's publicity rights was for the Gawker Defendants' advantage in that Plaintiff's name, likeness, image, identity and persona were used and intended to create and enhance the Gawker Defendants' pecuniary gain and profit.

80. The Gawker Defendants have continued to use Plaintiff's publicity rights continuing to disseminate the Video and Narrative at the Gawker Site, notwithstanding Plaintiff's numerous and repeated requests to Gawker Media and defendant Denton that they



cease and desist immediately and permanently. Unless and until enjoined and restrained by Order of this Court, the Gawker Defendants' continued acts will cause Plaintiff severe and irreparable injury which cannot be adequately compensated by monetary damages. Plaintiff is entitled to a temporary restraining order and preliminary and permanent injunctive relief enjoining the publication, distribution, dissemination and use of the Video and all portions and content therefrom, including without limitation all still images thereof, and the Narrative.

81. As a direct and proximate result of the aforementioned acts by the Gawker Defendants, the Gawker Defendants have earned profits attributable to this unauthorized commercial use and exploitation of Plaintiff's name, image and likeness. The amount of such ill-gotten gains had yet to be ascertained. Plaintiff is entitled to recover all said unjust enrichment, including all profits earned by the Gawker Defendants as a result of the Gawker Defendants' unauthorized commercial exploitation as herein alleged.

82. Moreover, Plaintiff is entitled to seek and hereby does seek the market value of the use of his publicity rights in the manner in which they were commercially exploited, without Plaintiff's permission and against his strenuous objections and legal demands.

83. As a direct and proximate result of the aforementioned acts by the Gawker Defendants, Plaintiff has suffered injury, damage, loss, harm, anxiety, embarrassment, humiliation, shame, and severe emotional distress in an amount subject to proof.

84. Plaintiff is informed and believes and on that basis alleges that the aforementioned acts of the Gawker Defendants were done intentionally or with a conscious and/or reckless disregard of Plaintiff's rights, and with the intent to vex, injure or annoy, such as to constitute oppression, fraud, or malice.

**SIXTH CAUSE OF ACTION**

**(Intentional Infliction of Emotional Distress Against All Defendants)**

85. Plaintiff repeats, re-alleges, adopts and incorporates each and every allegation contained in Paragraphs 1 through 36, inclusive as though fully set forth herein.

86. At all times herein, Clem acted intentionally and unreasonably in creating the secretly-filmed video and audio footage and causing it to be disseminated to third parties when she knew or should have known that Plaintiff's emotional distress would likely result. The Gawker Defendants acted intentionally and unreasonably in acquiring, viewing, editing, publishing, distributing and disseminating the Video, and creating and publishing the Narrative, when they knew or should have known that emotional distress would likely result. Notwithstanding Plaintiff's repeated requests that Defendants cease and desist immediately from their posting and publishing of the Video and Narrative, the Gawker Defendants failed and refused to do so.

87. Defendants' conduct was intentional and malicious and done for the purpose of causing, or was known by Defendants to likely cause, Plaintiff humiliation, mental anguish and severe emotional distress and was done with the wanton and reckless disregard of the consequences to Plaintiff.

88. As such, in doing the acts alleged hereinabove, Defendants acted outrageously and beyond all reasonable bounds of decency, and intentionally inflicted severe emotional distress upon Plaintiff, to his detriment.

89. As a proximate result of the aforementioned wrongful conduct, Plaintiff has suffered substantial monetary damages, including damages to his personal and professional reputation and career, and substantial emotional distress, anxiety and worry.

90. Plaintiff is informed and believes and thereon alleges that Defendants acted with actual malice and reckless disregard of Plaintiff's right of privacy.

91. Unless and until enjoined and restrained by order of this Court, Defendants' continued acts will cause Plaintiff severe and irreparable injury which cannot adequately be compensated by monetary damages. By reason of the foregoing, Plaintiff is entitled to preliminary and permanent injunctive relief enjoining the distribution, dissemination and use of the Video and all portions and content thereof and all copies thereof, and mandating the delivery of same to Plaintiff and transferring to Plaintiff all right, title and interest in the Video and all portions and content thereof and all copies thereof, and the Narrative.

92. As a direct and proximate result of the aforementioned acts by Defendants, Plaintiff has suffered substantial monetary damages, including damages to his personal and professional reputation and career, and substantial injury damage, loss, harm, anxiety, embarrassment, humiliation, shame, and severe emotional distress in an amount that has not yet been fully ascertained. As a direct and proximate result of the aforementioned acts by Defendants, Plaintiff has been damaged and will be damaged, in an amount subject to proof.

93. Plaintiff is informed and believes and on that basis alleges that the aforementioned acts of Defendants were done intentionally or with a conscious and/or reckless disregard of Plaintiff's rights, and with the intent to vex, injure or annoy, such as to constitute oppression, fraud, or malice.

#### **SEVENTH CAUSE OF ACTION**

##### **(Negligent Infliction of Emotional Distress Against All Defendants)**

94. Plaintiff repeats, re-alleges, adopts and incorporates each and every allegation contained in Paragraphs 1 through 36, inclusive as though fully set forth herein.

95. At all times herein, Defendants acted negligently and unreasonably in creating the Video and causing it to be disseminated to third parties. In doing so, Defendants acted beyond all reasonable bounds of decency, and negligently inflicted emotional distress upon Plaintiff, to his detriment.

96. Defendants' conduct was negligent and proximately caused Plaintiff to suffer substantial humiliation, mental anguish and severe emotional distress and was done with the wanton and reckless disregard of the consequences to Plaintiff.

97. As a proximate result of the aforementioned wrongful conduct, Plaintiff has suffered substantial emotional distress, anxiety and worry.

98. Plaintiff is informed and believes and thereon alleges that Defendants acted with actual malice and reckless disregard of Plaintiff's right to privacy.

99. Unless and until enjoined and restrained by order of this Court, Defendants' continued acts will cause Plaintiff severe and irreparable injury which cannot adequately be compensated by monetary damages. By reason of the foregoing, Plaintiff is entitled to preliminary and permanent injunctive relief enjoining the distribution, dissemination and use of the Video and all portions and content thereof and all copies thereof, and mandating the delivery of same to Plaintiff and transferring to Plaintiff all right, title and interest in the Video and all portions and content thereof and all copies thereof.

#### **EIGHTH CAUSE OF ACTION**

**(Violation of section 934.10, Florida Statutes Against All Defendants)**

100. Plaintiff repeats, re-alleges, adopts and incorporates each and every allegation contained in Paragraphs 1 through 36, inclusive as though fully set forth herein.

101. Plaintiff had a reasonable expectation of privacy in engaging in private consensual sexual relations in a private bedroom at all relevant times, and did not know about,

nor consent to, the taping of the activity depicted in the secretly-filmed video, or its publication or dissemination.

102. Defendants violated Plaintiff's fundamental privacy rights by the conduct alleged herein, including the outrageous intrusion into Plaintiff's privacy and the publication, and dissemination of the secretly-filmed Video in an unprivileged manner in conscious disregard of Plaintiff's rights.

103. Defendants disclosed or caused to be disclosed to third parties the contents of the secretly-filmed video depicting Plaintiff in or about 2006 engaged in private consensual sexual relations between with Clem in a private bedroom. Defendants knew, or should have known, that the Video contained private and confidential information; that Plaintiff had a reasonable expectation of privacy in engaging in the activity depicted in the Video; that the Video was taken without Plaintiff's knowledge, consent, or approval and would reveal private and personal things about Plaintiff if disclosed to third parties which Defendants had no right to disseminate or disclose; and that this publication of these private facts would be offensive and objectionable to a reasonable person of ordinary sensibilities, and would have the natural tendency of causing substantial damages to Plaintiff.

104. Defendants' actions have not served any legitimate public interest.

105. Plaintiff is informed and believes and thereon alleges that Defendants have acted with actual malice and reckless disregard of Plaintiff's rights, including his right to privacy.

106. Unless and until enjoined and restrained by order of this Court, Defendants' continued acts will cause Plaintiff severe and irreparable injury which cannot adequately be compensated by monetary damages. By reason of the foregoing, Plaintiff is entitled to preliminary and permanent injunctive relief enjoining the distribution, dissemination and use of

the Video and all portions and content thereof and all copies thereof, and mandating the delivery of same to Plaintiff and transferring to Plaintiff all right, title and interest in the Video and all portions and content thereof and all copies thereof.

107. As a direct and proximate result of the aforementioned acts by Defendants , Plaintiff has suffered substantial injury, damage, loss, harm, anxiety, embarrassment, humiliation, shame, and severe emotional distress. As a direct and proximate result of the aforementioned acts by Defendants, Plaintiff has been damaged and will be damaged, in an amount subject to proof.

108. Plaintiff is informed and believes and on that basis alleges that the aforementioned acts of Defendants were done intentionally or with a conscious and/or reckless disregard of Plaintiff's rights, and with the intent to vex, injure or annoy, such as to constitute oppression, fraud, or malice.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, plaintiff Terry Gene Bollea prays for judgment against defendants Heather Clem aka Heather Cole, 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, Blogwire Hungary Szellemi Alkotast Hasznosito KFT aka Gawker Media as follows:

1. For an award of general and special damages in an amount in excess of the minimum jurisdictional limits of this Court in accordance with proof at trial together with interest thereon at the maximum legal rate;
2. For costs of suit incurred herein;
3. For an Order and Judgment transferring to Plaintiff all of Defendants' right, title and interest in and to the secretly-recorded video and audio footage depicting Plaintiff's sexual

encounter with Clem, and all portions and content thereof, and all copies and reproductions thereof contained in all media;

4. For an Order and Judgment requiring the delivery to Plaintiff of all copies of the secretly-recorded video and audio footage depicting Plaintiff's sexual encounter with Clem, and all portions and content thereof, in all formats and all forms of media, including electronic and physical media, within Defendants' possession, custody or control, including without limitation turning over to Plaintiff any and all storage devices (such as CDs, DVDs, hard drives, flash drives, tapes, and disks) containing same;

5. For preliminary and permanent injunction against Defendants and all persons acting under their control, from any and all activity that would cause the distributing, disseminating, publishing, displaying, posting for view or access on or through the Internet or any other manner or media outlet, broadcasting, transferring, licensing, selling, offering to sell or license, or otherwise using, exploiting or attempting to exploit, the secretly-recorded video and audio footage depicting Plaintiff's sexual encounter with Clem, or any portions or content thereof or any copies thereof, in any and all formats and media, including all electronic and physical media;

6. For an Order and Judgment requiring Defendants to turn over to Plaintiff all information pertaining to the secretly-recorded video and audio footage depicting Plaintiff's sexual encounter with Clem, including without limitation, all activity by all persons and entities related to the creation, storage, transportation, editing, distributing, disseminating, publishing, displaying, posting for view or access on or through the Internet or any other manner or media outlet, broadcasting, transferring, licensing, selling, offering to sell or license, or otherwise using,

exploiting or attempting to exploit, such footage or any portions or content thereof or any copies thereof, in any and all formats and media, including all electronic and physical media;

7. For a constructive trust to be placed upon Defendants and all persons acting on their behalf or under their direction or control, as to all revenues and profits received by any and all such individuals, including Defendants, to be held for the benefit of Plaintiff, and to be disgorged in their entirety to Plaintiff, in connection with the secretly-recorded video and audio footage depicting Plaintiff's sexual encounter with Clem, including the publishing of the Video and Narrative;

8. For such other and further relief as to this court may deem and proper.

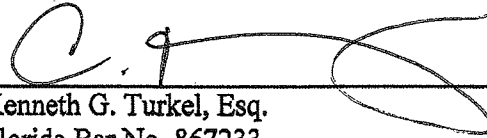
**DEMAND FOR JURY TRIAL**

Plaintiff Terry Gene Bollea hereby demands a trial by jury on all issues so triable.



Respectfully Submitted,

DATED: December 28, 2012



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DATED: December 28, 2012



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*Attorneys for Plaintiff Terry Gene Bollea*

# Exhibit 8

to the

# Declaration of Gregg D. Thomas

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

TERRY GENE BOLLEA professionally  
known as HULK HOGAN,

Plaintiff,

Case No.: 12012447-CI-011

vs.

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

Defendants.

---

**DEFENDANT GAWKER MEDIA, LLC'S SECOND  
REQUEST FOR PRODUCTION OF DOCUMENTS TO PLAINTIFF**

Pursuant to Rule 1.350 of the Florida Rules of Civil Procedure, defendant Gawker Media, LLC, ("Gawker") by its undersigned counsel, hereby requests that plaintiff Terry Gene Bollea produce for inspection and copying the following documents and things within thirty (30) days after service of this request.

**Instructions and Definitions**

1. "You" and "your" mean the plaintiff Terry Gene Bollea, and any agents, attorneys, or other persons or entities acting for or on behalf of him or in concert with him, including without limitation any personal services corporations that make available or license services of plaintiff. Each interrogatory seeks all information in the possession, custody or control of all such persons and/or entities. When documents or things are requested, such request includes materials in the possession, custody or control of your agents, attorneys or other persons acting on their or your behalf.

2. The “Gawker Defendants” means defendants Gawker Media, LLC, Gawker Media Group, Inc., Nick Denton, A.J. Daulerio, and Kate Bennert.
3. The “Video” means the video and audio footage depicting Mr. Bollea that he claims was made without his consent in connection with his claims in this lawsuit.
4. The “Gawker Story” means the story entitled ‘Even For a Minute, Watching Hulk Hogan Have Sex on a Canopy Bed is Not Safe For Work, But Watch It Anyway’ published on [www.gawker.com](http://www.gawker.com) on or about October 4, 2012.
5. “Complaint” means the Amended Complaint filed by you to commence this action against the Gawker Defendants on or about December 28, 2012.
6. “Sexual Relations” means sexual intercourse, anal intercourse, fellatio, or cunnilingus.
7. The words “and” and “or” also have the meaning “and/or.”
8. The terms “all” and “any” shall be considered to include “each” and every.” Use of any of these terms incorporates them all.
9. The term “person” means all individuals and entities.
10. Unless otherwise specified, the term “Relevant Time Period” means the period from 2002 to the present.
11. The term “document(s)” means all materials within the full scope of Rule 1.350, including but not limited to: all writings and recordings, including the originals and all non-identical copies, whether different from the original by reason of any notation made on such copies or otherwise (including but without limitation to, email and attachments, “instant” messages or “IM” messages, “wall” postings on Facebook, Myspace postings, Twitter postings or “tweets,” correspondence, memoranda, notes,

diaries, minutes, statistics, letters, telegrams, contracts, reports, studies, checks, statements, tags, labels, invoices, brochures, periodicals, telegrams, receipts, returns, summaries, pamphlets, books, interoffice and intraoffice communications, offers, notations of any sort of conversations, working papers, applications, permits, file wrappers, indices, telephone calls, meetings or printouts, teletypes, telefax, invoices, worksheets, and all drafts, alterations, modifications, changes and amendments of any of the foregoing), graphic or aural representations of any kind (including without limitation, photographs, charts, microfiche, microfilm, videotape, recordings, motion pictures, plans, drawings, surveys), and electronic, mechanical, magnetic, optical or electric records or representations of any kind (including without limitation, computer files and programs, tapes, cassettes, discs, recordings), including metadata.

12. Throughout these requests, the singular shall include the plural and the plural shall include the singular.

13. The following terms should be read as if they were synonymous, and each should be taken to include the meaning of all of the others: related to, related in any manner to, concerning, referring to, alluding to, responding to, connected with, with respect to, commenting on, about, regarding, announcing, explaining, discussing, showing, describing, studying, reflecting, analyzing or constituting.

14. If you contend that it would be unreasonably burdensome to produce all the documents called for in response to any request, you should:

- (a) produce all documents that are available without unreasonable burden; and

(b) describe with particularity the reasons why production of the remaining documents would be unreasonably burdensome.

15. In the event that any responsive document cannot be produced in its entirety, you are requested to produce the document to the fullest extent possible, specifying the reasons for your inability to produce the remainder and describing to the fullest extent possible the contents of the unproduced portion.

16. With respect to your responses to the following requests for production, if any document or any portion of any document is withheld because of a claim of privilege, please state the basis for your claim of privilege with respect to such document or portion of any document and the specific ground(s) on which the claim of privilege rests, and including, with respect to documents: the date appearing on the document, or if no date appears, the date on which the document was prepared; the name of the person(s) to whom the document was addressed; the name of each person, other than addressee(s), to whom the document, or a copy thereof, was sent or with whom the document was discussed; the name of the person(s) who signed the document, or if not signed, the name of the person(s) who prepared it; the name of each person making any contribution to the authorship of the document; and the general nature or description of the document and the number of pages of which it consists.

17. In the event that any documents or things that would have been responsive to these requests have been destroyed, discarded or lost, please identify each such document or thing, including: the nature of the document or thing; the author(s) and addressee(s) of any document; any indicated or blind copies of any document; the document's subject matter, number of pages and attachments or appendices; all persons

to whom the document was distributed or persons who have seen the thing; the date of destruction, discard or loss; and, if destroyed or discarded, the reasons therefore and the identity of the person(s) authorizing or carrying out any such destruction or discard.

**Requests for Production**

**Request No. 51:** Any and all documents in any manner referring or relating to any media appearance at which you discussed the Video and/or the Gawker Story, including, but not limited to, documents referring or relating to the scheduling of such appearances.

**Request No. 52:** Any and all documents in any manner referring or relating to communications between you or anyone acting on your behalf and any law enforcement person or agency concerning any recording of you having sexual relations with Heather Clem, including without limitation any documents referring or relating to communications identified in Plaintiff's Response to A.J. Daulerio's Interrogatory No. 9.

**Request No. 53:** Any and all documents in any manner relating to photographs published in April 2012, including at the website thedirty.com, that purported to be from a video recording of you having sexual relations with a woman later identified as Heather Clem.

**Request No. 54:** All records from 2012 referring or relating to the cellular phone accounts and telephone landlines identified in Plaintiff's Response to A.J. Daulerio's Interrogatory No. 10, including without limitation monthly paper and/or online billing statements.

Respectfully submitted,

THOMAS & LOCICERO PL

By: Gregg D. Thomas  
Gregg D. Thomas  
Florida Bar No.: 223913  
Rachel E. Fugate  
Florida Bar No.: 0144029



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*Counsel for Gawker Media, LLC*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 19th day of December, 2013, 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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*Attorneys for Defendant Heather Clem*

*/s/ Gregg D. Thomas* \_\_\_\_\_  
*Attorney*

# Exhibit 9

to the

# Declaration of Gregg D. Thomas

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.

\_\_\_\_\_ /

**REPORT & RECOMMENDATION ON THE FIFTH  
MOTION TO COMPEL DISCOVERY FROM PLAINTIFF**

This cause came before Special Discovery Magistrate James Case on February 24, 2014, on the Fifth Motion of Gawker Media, LLC (“Gawker”) and A.J. Daulerio to Compel Discovery from Plaintiff (the “Motion”). After reviewing the Court file, reviewing and considering the Motion, opposition and reply papers, and hearing the argument of counsel, the Special Discovery Magistrate RECOMMENDS that the Motion be GRANTED, and that, in light of depositions commencing March 3, 2014, plaintiff be required to furnish all of the discovery requested in the Motion to counsel for movants by no later than 4:00 p.m. on Thursday, February 27, 2014, including specifically full and complete responses to Daulerio Interrogatory Nos. 9 and 10 and Gawker Requests for Production Nos. 51, 52 and 54.

The parties shall have 10 days from the date of this Report and Recommendation to file objections with the Circuit Court.

Dated: February <sup>28</sup>\_\_\_\_, 2014

**/s/ JAMES R. CASE**

\_\_\_\_\_  
James R. Case  
Special Discovery Magistrate

Copies furnished to:  
Counsel of Record

# Exhibit 10

to the

# Declaration of Gregg D. Thomas

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.

---

**ORDER**

This cause came before Special Discovery Magistrate James Case on February 24, 2014, on the Fifth Motion of Gawker Media, LLC (“Gawker”) and A.J. Daulerio (together, “Defendants”) to Compel Discovery from Plaintiff (the “Motion”). At that hearing, Judge Case concluded that the Motion should be GRANTED and that, in light of depositions commencing March 3, 2014, plaintiff be required to furnish to counsel for movants all discovery requested in the Motion by no later than 4:00 p.m. on Thursday, February 27, 2014, including full and complete responses to Daulerio Interrogatory Nos. 9 and 10 and Gawker Requests for Production Nos. 51, 52 and 54. On February 28, 2014, Judge Case issued a REPORT & RECOMMENDATION memorializing that recommendation. Plaintiff filed Exceptions to Judge Case’s REPORT & RECOMMENDATION, to which Defendants have responded.

After reviewing and considering the REPORT & RECOMMENDATION of the Special Discovery Magistrate, the parties’ briefs on the Motion and on Plaintiff’s Exceptions, and the transcript of the hearing before Judge Case, and being fully advised of the premises, IT IS HEREBY ORDERED AND ADJUDGED that:

1. The REPORT & RECOMMENDATION dated February 28, 2014 is  
AFFIRMED;
2. Defendants' Motion is GRANTED; and
3. Plaintiff shall be required to furnish all of the discovery requested in the Motion to counsel for movants within seven days of the date of this Order, including specifically full and complete responses to Daulerio Interrogatory Nos. 9 and 10 and Gawker Requests for Production Nos. 51, 52 and 54.

DONE AND ORDERED in Chambers at Pinellas County, Florida this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Pamela A.M. Campbell  
Circuit Court Judge

Original Signed  
APR 23 2014  
Pamela A.M. Campbell  
Circuit Judge

Copies furnished to:  
Counsel of Record

# Exhibit 11

to the

# Declaration of Gregg D. Thomas



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

-----  
TERRY GENE BOLLEA, professionally  
known as HULK HOGAN,

Plaintiff,

No. 12-012447-CI-011

vs.

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

Defendants.  
-----/

TELEPHONIC HEARING BEFORE  
THE HONORABLE JAMES CASE

DATE: January 31, 2104  
TIME: 3:34 p.m. to 4:05 p.m.  
PLACE: 201 East Kennedy Boulevard  
Suite 712  
Tampa, Florida  
REPORTED BY: Susan C. Riesdorff, RPR, CRR  
Notary Public, State of  
Florida

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I N D E X

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1 is allowed to get up and say all those things and  
2 we can't even get information, some of which may  
3 not be the subject of any privilege and would be  
4 disclosable if we get a release from him. I think  
5 with that, unless the Court has any questions, I  
6 think I'll stop.

7 THE COURT: I don't think so. You all have  
8 done an excellent job of outlining the issues. I  
9 have, again, reviewed the motion. And having  
10 considered the oral argument that has been  
11 presented here today, as the general master that's  
12 been appointed in this case, it is my  
13 recommendation and my finding that Gawker has made  
14 a sufficient basis for the granting of the motion  
15 to compel for the authorization. And it would be  
16 my recommendation to the judge in this case that  
17 an order be constructed directing Mr. Hogan to  
18 provide the authorization. And I'm -- so that  
19 perhaps we can get the information if it's  
20 available within the time before these  
21 depositions, I'm going to suggest that three days  
22 ought to be allowed.

23 THE COURT REPORTER: I'm sorry, Judge. Three  
24 days?

25 THE COURT: Three days, yes, ma'am.

1 REPORTER'S CERTIFICATE

2  
3 STATE OF FLORIDA :

4 COUNTY OF HILLSBOROUGH :

5  
6  
7 I, Susan C. Riedsorph, RPR, CRR certify that I  
8 was authorized to and did stenographically report the  
9 foregoing proceedings and that the transcript is a true  
10 and complete record of my stenographic notes.

11 I further certify that I am not a relative,  
12 employee, attorney, or counsel of any of the parties,  
13 nor am I a relative or employee of any of the parties'  
14 attorney or counsel connected with the action, nor am I  
15 financially interested in the outcome of the foregoing  
16 action.

17 Dated this 12th day of February, 2014, IN THE  
18 CITY OF TAMPA, COUNTY OF HILLSBOROUGH, STATE OF  
19 FLORIDA.

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26 Susan C. Riedsorph, RPR, CRR, CLSP

# Exhibit 12

to the

# Declaration of Gregg D. Thomas

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.

\_\_\_\_\_ /

**REPORT & RECOMMENDATION**

This cause came before Special Discovery Magistrate James Case on January 31, 2014, on the Motion of Gawker Media, LLC ("Gawker") to Compel FBI Authorization or, in the Alternative, for an Order of Preclusion. After reviewing the Court file, reviewing and considering the Motion and response papers, and hearing the argument of counsel, the Special Discovery Magistrate RECOMMENDS that Gawker's Motion be GRANTED and that Plaintiff (and any counsel acting on his behalf) be compelled to provide the requested release to Gawker within three days.

The parties shall have 10 days from the date of this Report and Recommendation to file objections with the Circuit Court.

Dated: 2-5, 2014

/s/ JAMES R. CASE  
James R. Case  
Special Discovery Magistrate

Copies furnished to:  
Counsel of Record

# Exhibit 13

to the

# Declaration of Gregg D. Thomas



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.

\_\_\_\_\_ /

**ORDER**

This cause came before Special Discovery Magistrate James Case on January 31, 2014, on the Motion of Gawker Media, LLC ("Gawker") to Compel FBI Authorization or, in the Alternative, for an Order of Preclusion. After reviewing and considering the REPORT & RECOMMENDATION of the Special Discovery Magistrate, IT IS HEREBY ORDERED AND ADJUDGED that Gawker's Motion is GRANTED and that Plaintiff (and any counsel acting on his behalf) must provide the requested release to Gawker within three days.

*Repeat and recommendation dated February 5, 2014 is approved.*

DONE AND ORDERED in Chambers at Pinellas County, Florida this 26 day of

February, 2014.

\_\_\_\_\_  
Pamela A.M. Campbell  
Circuit Court Judge

Original Signed  
FEB 25 2014  
Pamela A.M. Campbell  
Circuit Judge

Copies furnished to:  
Counsel of Record



# Exhibit 14

to the

# Declaration of Gregg D. Thomas

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

CASE NO. 12012447-CI-011

TERRY GENE BOLLEA professionally  
known as HULK HOGAN,

Plaintiff,

vs.

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

Defendants.

---

HEARING  
BEFORE THE HONORABLE PAMELA A.M. CAMPBELL  
(Pages 1 through 133)

Friday, January 17, 2014  
9:35 a.m. - 12:09 p.m.

St. Petersburg Judicial Building  
545 First Avenue North  
Courtroom E  
St. Petersburg, Florida 33701

Stenographically Reported By:  
Lori K. Ash, RPR  
Notary Public, State of Florida  
U.S. Legal Support, Inc.  
(813) 876-4722

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and for specially appearing Defendants  
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Hungary Szellemi Alkotast Hasznosito, KFT  
(now known as Kinja, KFT)

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Attorneys for Non-Party Bubba Clem

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EXHIBITS

NO. DESCRIPTION

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(No exhibits marked.)

1 that they were being created. He wouldn't have  
2 consented to any of that. And the fact that  
3 they got published -- a minute and 41 seconds  
4 got published, which was the highlight reel, is  
5 an absolute outrage, and we have been doing  
6 everything we can to contain that situation.

7 What Gawker now wants is if there happens  
8 to be more footage than they received -- they  
9 received 30 minutes of footage. They took that  
10 30 minutes and edited it and then posted it to  
11 the Internet. It was there for six months, and  
12 then pursuant to Your Honor's order it came  
13 down.

14 If there happens to be more video than  
15 they have, we would strongly urge Your Honor to  
16 not allow that video to go anywhere. Frankly,  
17 we want it to be destroyed, but it certainly  
18 shouldn't be going into more hands. Mr. Berlin  
19 doesn't have a right to see my client having  
20 private relations with somebody in a private  
21 place when he didn't consent to it.

22 THE COURT: Do you disagree with  
23 Mr. Berlin's representation as to a ruling that  
24 I made back last October? I don't really  
25 recall that.

1 MR. HARDER: Your ruling was as it  
2 pertained to documentation and testimony. We  
3 made a protective order motion that  
4 Hulk Hogan's general sex life was not allowed;  
5 but just words, testimony, documentation that  
6 would pertain to the relationship between  
7 Hulk Hogan and Heather Clem, you allowed that  
8 discovery, but in order to contain what was a  
9 much broader request for discovery. But  
10 Your Honor never said that all video would have  
11 to be produced.

12 THE COURT: Do you --

13 MR. BERLIN: I have a transcript,  
14 Your Honor.

15 MR. HARDER: Your Honor, that motion was  
16 between Hulk Hogan and Gawker. We don't have  
17 anything at all except what they have given us  
18 in terms of video. So they received a  
19 30-minute video. We never had it until they  
20 gave it to us. And there was 1 minute and 41  
21 seconds that was on the Internet that obviously  
22 we looked at, but if there happens to be more  
23 video, that issue was never litigated, because  
24 we don't have it and apparently they are  
25 telling us they don't have it.

1 THE COURT: I guess so the credibility of  
2 Mr. Bollea as far as his knowledge of the  
3 Clems -- Mr. and Mrs. Clem's practices as far  
4 as taping or any other -- the credibility of  
5 Mr. Bollea, he's actually the one in question,  
6 his knowledge, his sense of taping, those kinds  
7 of things, I think that they are at least  
8 appropriate for deposition and some discovery.

9 Am I asking at this point in time for any  
10 other tapes to be turned over to the defense?  
11 No. But I think that the topic is certainly  
12 one that is appropriate.

13 MR. HARDER: I understand, Your Honor. I  
14 would propose a compromise. If there happens  
15 to be more footage, I would -- rather than  
16 having Gawker or counsel get that footage,  
17 perhaps Judge Case could get that footage and  
18 look to see if it speaks to the issues that  
19 they are saying, because I am very, very  
20 confident that there is nothing on any videos  
21 that would show that Hulk Hogan knew about  
22 this, consented to this, any of that.

23 Now, I think what Mr. Berlin is saying, if  
24 I understand him -- and I don't even -- I'm  
25 operating in the dark here, because he's

1 talking about certain things that happened on  
2 the video and yet they've never produced any  
3 evidence of that to me and this is the first  
4 time I've ever heard of it, that apparently  
5 maybe the Clems were having a discussion that  
6 they were going to get rich from this video,  
7 then that's an issue that would pertain to the  
8 Clems. It wouldn't pertain to Hulk Hogan  
9 knowing about or consenting to, but it would  
10 pertain to the Clems.

11 THE COURT: Mrs. Clem is still a defendant  
12 in this case.

13 MR. HARDER: She is.

14 THE COURT: So it certainly would be  
15 something that even your client would want to  
16 know.

17 MR. HARDER: Probably, yes.

18 MR. THOMAS: Your Honor, what I would ask  
19 as to that is today you ask Mr. Diaco if he  
20 will agree to preserve all tapes that relate to  
21 Ms. Clem and Mr. Hogan.

22 THE COURT: Yes. I think that's  
23 appropriate.

24 So, Mr. Diaco, we don't want to later on  
25 have any spoliation of evidence issues coming



1 up or anything for purposes of jury trial later  
2 on and any issue of Valcin presumption.

3 So if you would please ask Mr. -- and I  
4 would like to enter an order that requires  
5 anybody that has any possession of anything --  
6 and I'm going to say anything really broadly --  
7 so anything, any written material, any audio,  
8 any video, any text messages, anything that  
9 pertains to the video that is the subject  
10 matter of this lawsuit to be preserved.

11 Anybody have a problem with that?

12 MR. BERLIN: I would just add it may be  
13 one longer tape or two shorter tapes. It could  
14 be --

15 THE COURT: I said anything. Anything  
16 means anything.

17 MR. BERLIN: I don't want --

18 THE COURT: If one tape is a minute and  
19 one is 10 minutes, all of it gets preserved.

20 MR. BERLIN: I don't want anybody to come  
21 back later and say, well, this isn't the tape  
22 that Gawker had broadcast, it was a different  
23 tape, so we didn't preserve it. That's all.

24 THE COURT: If you've got ten tapes,  
25 preserve all ten tapes.

1           Mr. Diaco, do you have a problem with any  
2 of that?

3           MR. DIACO: No, Your Honor. I just want  
4 to make sure it's clear again, because of these  
5 undertones that there is some kind of agenda to  
6 hide things, nothing will be destroyed. I'm  
7 not aware of any video other than what is at  
8 issue in this case. I didn't even know how  
9 long Gawker's video was until I heard it today.  
10 So I assure you that everything will be  
11 preserved as it relates to your ruling.

12           THE COURT: Thank you.

13           Mr. Harder, do you have any concerns with  
14 that?

15           MR. HARDER: No, Your Honor.

16           THE COURT: Great. Thank you.

17           So who can prepare that order?

18           MR. BERLIN: I'll be happy to, Your Honor.

19           THE COURT: Thank you, Mr. Berlin.

20           MR. HARDER: Your Honor, without waiver of  
21 my right to act at the end of all this for all  
22 these sex tapes to be destroyed, because that's  
23 part of what we're seeking, but for purposes of  
24 litigation I understand the preservation order.

25           THE COURT: I totally agree.

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CERTIFICATE OF REPORTER

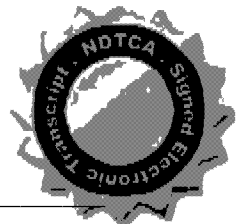
STATE OF FLORIDA )  
COUNTY OF HILLSBOROUGH )

I, Lori K. Ash, RPR-CP, certify that I was authorized to and did stenographically report the foregoing proceedings and that the foregoing pages, numbered 1 through 132, are a true and complete record of my stenographic notes taken during said proceedings.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

Dated this 20th of January, 2014.

*Lori K Ash*  
LORI K. ASH, RPR-CP



# Exhibit 15

to the

# Declaration of Gregg D. Thomas

**From:** Sweeney, Sara (USAFLM) 1 <Sara.Sweeney@usdoj.gov>  
**Sent:** Wednesday, March 19, 2014 12:53 PM  
**To:** Seth Berlin  
**Subject:** RE: Contact information

Hi Seth,

I confirm everything you wrote below, with one addition: on subpoint (c), it is possible that someone may have said requested that of Mr. Bollea or his counsel in the past. But that request, if given, is no longer in force.

Thanks,  
Sara

**Sara C. Sweeney**  
*Assistant United States Attorney*  
*Middle District of Florida*  
*400 N. Tampa St., Suite 3200*  
*Tampa, Florida 33602*  
*Tel: (813) 274-6145*  
*Fax: (813) 274-6178*

**From:** Seth Berlin [<mailto:SBerlin@lskslaw.com>]  
**Sent:** Tuesday, March 18, 2014 4:33 PM  
**To:** Sweeney, Sara (USAFLM) 1  
**Cc:** Seth Berlin  
**Subject:** RE: Contact information

Ms. Sweeney,

Thank you very much for the letter. Following our conversation last week, I also just wanted to confirm my understanding that (a) the Government is not asserting any privilege with respect to documents that Terry Gene Bollea or his counsel have in their possession, including the documents on the privilege log supplied to you (and so informed Mr. Bollea's counsel), (b) we would not be interfering in any way with any investigation if those documents were disclosed or if we contact witnesses who may have provided information to the Government, and (c) Mr. Bollea and his counsel have not been instructed by the Government not to speak about these subjects or any investigation. Could you please confirm that I have that correct? Thank you.

Seth

Seth D. Berlin

**LSKS** | LEVINE SULLIVAN  
KOCH & SCHULZ, LLP

1899 L Street, NW  
Suite 200

Washington, DC 20036  
(202) 508-1122 | Phone  
(202) 861-9888 | Fax  
[www.lskslaw.com](http://www.lskslaw.com)

**From:** Sweeney, Sara (USAFLM) 1 [<mailto:Sara.Sweeney@usdoj.gov>]  
**Sent:** Tuesday, March 18, 2014 8:01 AM  
**To:** Seth Berlin  
**Subject:** RE: Contact information

Hi Seth,  
Attached is the letter you requested.

Thanks,  
Sara

**Sara C. Sweeney**  
*Assistant United States Attorney*  
*Middle District of Florida*  
*400 N. Tampa St., Suite 3200*  
*Tampa, Florida 33602*  
*Tel: (813) 274-6145*  
*Fax: (813) 274-6178*

**From:** Seth Berlin [<mailto:SBerlin@lskslaw.com>]  
**Sent:** Friday, March 14, 2014 10:28 AM  
**To:** Sweeney, Sara (USAFLM) 1  
**Cc:** Seth Berlin  
**Subject:** Contact information

Ms. Sweeney -- As requested, my contact information is below. Thank you for your assistance.

Seth Berlin

Seth D. Berlin

**LSKS** | LEVINE SULLIVAN  
KOCH & SCHULZ, LLP

1899 L Street, NW  
Suite 200  
Washington, DC 20036  
(202) 508-1122 | Phone  
(202) 861-9888 | Fax  
[www.lskslaw.com](http://www.lskslaw.com)

# Exhibit 16

to the

# Declaration of Gregg D. Thomas

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

TERRY GENE BOLLEA professionally  
known as HULK HOGAN,

Plaintiff,

Case No.: 12012447-CI-011

vs.

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

Defendants.

---

**AFFIDAVIT OF SETH D. BERLIN**

I, Seth D. Berlin, hereby affirm under penalty of perjury that the following is true and correct:

1. The statements made in this affidavit are based on my personal knowledge.
2. I am a partner with the law firm Levine Sullivan Koch & Schulz, LLP, counsel to defendants Gawker Media, LLC ("Gawker") and A.J. Daulerio (together, "Defendants"), as well as the other Gawker defendants in the above-captioned action. I am admitted *pro hac vice* in this action.
3. I submit this affidavit in connection with Defendants' Response to Plaintiff's Exceptions Regarding Defendants' Fifth Motion to Compel and, in particular, Special Discovery Magistrate James R. Case's recommendations that (a) Defendants' Motion be granted and (b) plaintiff be directed to produce information and documents referring or relating to communications involving any law enforcement agency. This affidavit is substantively identical to the affidavit I previously submitted on March 14, 2014 in connection with Gawker's Opposition to Plaintiff's Motion for a Stay of the Court's February 26, 2014 order directing



plaintiff to provide a release for records maintained by the FBI, except that I have updated Paragraph 7 below and attached a new Exhibit B, to reflect correspondence I received from the United States Attorney's Office after that earlier affidavit was submitted to the Court.

4. On March 11, 2014, I spoke with Robert Mosakowski, Esq., Chief of the Economic Crime Section for the United States Attorney's Office for the Middle District of Florida. On March 14, I spoke again with Mr. Mosakowski, this time joined by Sara Sweeney, Esq., an Assistant United States Attorney in the United States Attorney's Office for the Middle District of Florida.

5. During those conversations, they advised that Ms. Sweeney had reviewed both the Affidavit of David Houston that accompanied the Motion to Stay and the ten-page privilege log served by plaintiff asserting a law enforcement privilege in connection with 162 documents in plaintiff's possession, custody and control (the "Privilege Log," a true and correct copy of which is attached hereto as Exhibit A).

6. During those conversations, Mr. Mosakowski and Ms. Sweeney also advised that:
- a. The U.S. Attorney's Office is not asserting any law enforcement privilege in connection with any documents in Mr. Bollea's or his counsel's possession, including those listed on the Privilege Log.
  - b. Although they could neither confirm nor deny the existence of any investigation in light of U.S. Department of Justice policies, Gawker would not be interfering in any way with any investigation if either (1) documents in Mr. Bollea's or his counsel's possession, including those listed on the Privilege Log, were disclosed, or (2) Gawker or its counsel contacted

witnesses who may have provided information to the FBI or the United States Attorney's Office, and

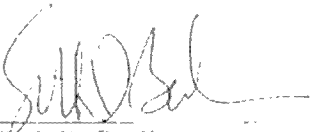
- c. To the extent that Mr. Bollea or his counsel believed that they had been instructed not to speak about the above subjects, that belief was incorrect and likely the result of a misunderstanding or miscommunication.

7. During the March 14, 2014 conversation, Mr. Mosakowski also confirmed that Gawker is "neither a target nor a subject of any investigation by the Middle District of Florida." On March 18, 2014, I received a letter from Ms. Sweeney confirming that information. A true and correct copy of that March 18, 2014 correspondence is attached hereto as Exhibit B.

8. During the March 14, 2014 conversation, Ms. Sweeney also advised that, after Mr. Houston's affidavit was submitted to the Court and provided to her, she advised Mr. Houston that the U.S. Attorney's Office was not asserting a law enforcement privilege with respect to any documents in Mr. Bollea's or his counsel's possession, including the documents listed on the Privilege Log.

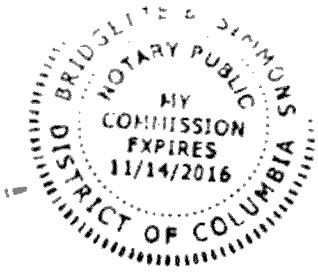
9. At Mr. Mosakowski's suggestion, I also contacted the Tampa office of the Federal Bureau of Investigation. Specifically, on March 11, 2014, I spoke with FBI agent Jason Shearn, and described what Mr. Mosakowski had said on behalf of the United States Attorney's Office. He described the FBI's position as "echoing" that of the United States Attorney's Office, including that: (a) the FBI is not asserting a law enforcement privilege as to any documents that Mr. Bollea or his counsel might have relating to the FBI's investigation, including those listed on the Privilege Log, and (b) although the FBI could neither confirm nor deny the existence or status of any investigation, Gawker could "do what it needed to do" without in any way interfering with any investigation by the FBI.

10. Based on the foregoing, and for the other reasons set forth in its Defendants' Response to Plaintiff's Exceptions, Gawker believes that the Court should affirm Judge Case's Report and Recommendation on Defendants' Fifth Motion to Compel Discovery from Plaintiff and enter the proposed Order filed herewith.

  
Seth D. Berlin

Sworn before me this 18<sup>th</sup> day of March 2014:

  
Notary Public



# Exhibit 17

to the

# Declaration of Gregg D. Thomas

2110 First Street, Suite 3-137  
Fort Myers, Florida 33901  
239/461-2200  
239/461-2219 (Fax)



300 N. Hogan Street, Suite 700  
Jacksonville, Florida 32202  
904/301-6300  
904/301-6310 (Fax)

35 SE 1st Avenue, Suite 300  
Ocala, Florida 34471  
352/547-3600  
352/547-3623 (Fax)

**U.S. Department of Justice**  
*United States Attorney*  
*Middle District of Florida*

400 West Washington Street, Suite 3100  
Orlando, Florida 32801  
407/648-7500  
407/648-7643 (Fax)

Main Office  
400 North Tampa Street, Suite 3200  
Tampa, Florida 33602  
813/274-6000  
813/274-6358 (Fax)

Reply to: Tampa, FL

SCS

March 18, 2014

**VIA EMAIL**

Mr. Seth Berlin, Esq.  
Levine Sullivan Koch & Schulz, LLP  
sberlin@lskslaw.com

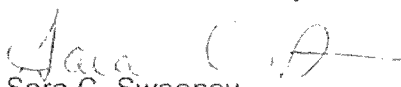
Re: Gawker

Dear Mr. Berlin,

Pursuant to our telephone conversation on March 14, 2014, this is to confirm in writing that your client, Gawker, is neither the target nor the subject of any criminal investigation conducted by the United States Attorney's Office for the Middle District of Florida

Sincerely,

A. LEE BENTLEY, III  
United States Attorney

By:   
Sara C. Sweeney  
Assistant United States Attorney

# Exhibit 18

to the

# Declaration of Gregg D. Thomas



Tampa

601 South Boulevard, Tampa, FL 33606  
ph 813-984-3060 fax 813-984-3070 toll free 866-395-7100

South Florida

401 SE 12th Street, Ste. 300, Fort Lauderdale, FL 33316  
ph 954-703-3416 fax 954-400-5415

8461 Lake Worth Road, Ste. 114, Lake Worth, FL 33467  
ph 561-340-1433 fax 561-340-1432

[www.tlolfirm.com](http://www.tlolfirm.com)

Rachel E. Fugate  
Direct Dial: (813) 984-3065  
[rfugate@tlolfirm.com](mailto:rfugate@tlolfirm.com)

Reply to: Tampa

November 8, 2013

VIA [foiparequest@ic.fbi.gov](mailto:foiparequest@ic.fbi.gov).

FBI  
Record/Information Dissemination Section  
Attn: FOIPA Request  
170 Marcel Drive  
Winchester, VA 22602-4843

Re: Freedom of Information Act Request

Dear FOIA Officer:

This is a formal request for information pursuant to the Freedom of Information Act. Our firm requests a copy of the following:

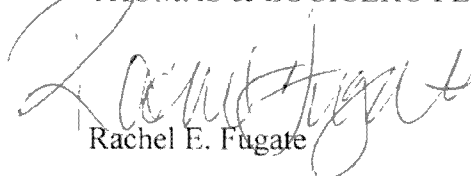
ALL documents relating to an investigation, or a request for investigation, in October 2012 regarding allegations of illegal recording(s) of Terry Bollea a/k/a Hulk Hogan engaged in sexual relations.

The Freedom of Information Act provides that if some parts of a requested document are exempt, "reasonably segregable" portions shall be provided. See 5 U.S.C. § 552(b). Consequently, if you determine that some or all of the information we have requested is exempt, please specify the exemption you believe applies and provide me a copy of the remainder of the information. We reserve the right to appeal any such decisions.

Thank you for your assistance.

Sincerely,

THOMAS & LOCICERO PL



Rachel E. Fugate

# Exhibit 19

to the

# Declaration of Gregg D. Thomas





Federal Bureau of Investigation  
Washington, D.C. 20535

November 19, 2013

Ms. Cherie L. Pacheco  
Thomas & LoCicero PL  
601 South Boulevard  
Tampa, FL 33606

FOIPA Request No.: 1238212-0  
Subject: BOLLEA, TERRY/INVESTIGATION  
IN OCTOBER 2012 REGARDING  
ALLEGATIONS OF ILLEGAL RECORDINGS  
OF TERRY BOLLEA A/K/A HULK HOGAN  
ENGAGED IN SEXUAL RELATIONS

Dear Ms. Pacheco:

This acknowledges receipt of your Freedom of Information Act (FOIA) request to the FBI. The FOIPA number listed above has been assigned to your request.

You have requested records concerning one or more third party individuals. Because you have requested information about a third party and the FBI recognizes an important privacy interest in that information, to help us process your request we ask that you provide one of the following: (1) an authorization and consent from the individual(s) (*i.e.*, express authorization and consent of the third party); (2) proof of death (*i.e.*, proof that your subject is deceased); or (3) a justification that the public interest in disclosure outweighs personal privacy interests). In the absence of such information, the FBI can neither confirm nor deny the existence of any records responsive to your request, which, if they were to exist, would be exempt from disclosure pursuant to FOIA Exemptions (b)(6) and (b)(7)(C), 5 U.S.C. §§ 552 (b)(6) and (b)(7)(C).

Express authorization and consent. If you seek disclosure of any existing records on this basis, enclosed is a Certification of Identity form. You may make additional copies of this form if you are requesting information on more than one individual. The subject of your request should complete this form and then sign it. Alternatively, the subject may prepare a document containing the required descriptive data and have it notarized. The original certification of identity or notarized authorization with the descriptive information must contain a legible, original signature before FBI can conduct an accurate search of our records.

Proof of death. If you seek disclosure of any existing records on this basis, proof of death can be a copy of a death certificate, Social Security Death Index, obituary, or another recognized reference source. Death is presumed if the birth date of the subject is more than 100 years ago.

Public Interest Disclosure. If you seek disclosure of any existing records on this basis, you must demonstrate that the public interest in disclosure outweighs personal privacy interests. In this regard, you must show that the public interest sought is a significant one, and that the requested information is likely to advance that interest.

Fax your request to the Work Process Unit at (540) 868-4997, or mail to 170 Marcel Drive, Winchester, VA 22602. If we do not receive a response from you within 30 days from the date of this letter, your request will be closed. You must include the FOIPA request number with any communication regarding this matter.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c). As such, this response is limited to those records, if any exist, that are subject to the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

You may file an appeal by writing to the Director, Office of Information Policy (OIP), U.S. Department of Justice, 1425 New York Ave., NW, Suite 11050, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's eFOIA portal at <http://www.justice.gov/oip/efoia-portal.html>. Your appeal must be received by OIP within sixty (60) days from the date of this letter in order to be considered timely. The envelope and the letter should be clearly marked "Freedom of Information Appeal." Please cite the FOIPA Request Number in any correspondence to us for proper identification of your request.



## FBI FACT SHEET

- **The primary function of the FBI is national security.**
- **The FBI does not keep a file on every citizen of the United States.**
- **The FBI was not established until 1908 and we have very few records prior to the 1920s.**
- **FBI files generally contain reports** of FBI investigations of a wide range of matters, including counterterrorism, counter-intelligence, cyber crime, public corruption, civil rights, organized crime, white collar crime, major thefts, violent crime, and applicants.
- **The FBI does not issue clearances or non-clearances for anyone other than its own personnel or persons having access to FBI facilities.** Background investigations for security clearances are conducted by many different Government agencies. Persons who received a clearance while in the military or employed with some other government agency should contact that entity. Most government agencies have websites which are accessible on the internet which have their contact information.
- **An identification record or “rap sheet” is NOT the same as an “FBI file.”** It is a listing of information taken from fingerprint cards and related documents submitted to the FBI in connection with arrests, federal employment, naturalization or military service. The subject of a “rap sheet” may obtain a copy by submitting a written request to FBI, Criminal Justice Information Services (CJIS) Division, Record Request, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306. Along with a specific written request, the individual must submit a new full set of his/her fingerprints in order to locate the record, establish positive identification, and ensure that an individual’s records are not disseminated to an unauthorized person. The fingerprint submission must include the subject’s name, date and place of birth. There is a required fee of \$18 for this service, which must be submitted by money order or certified check made payable to the Treasury of the United States. A credit card payment option is also available. Forms for this option and additional directions may be obtained by accessing the FBI Web site at [www.fbi.gov/about-us/cjis/background-checks/background\\_checks](http://www.fbi.gov/about-us/cjis/background-checks/background_checks).
- **The National Name Check Program (NNCP)** conducts a search of the FBI’s Universal Index (UNI) to identify any information contained in FBI records that may be associated with an individual and provides the results of that search to a requesting federal, state or local agency. Names are searched in a multitude of combinations and phonetic spellings to ensure all records are located. The NNCP also searches for both “main” and “cross reference” files. A main file is an entry that carries the name corresponding to the subject of a file, while a cross reference is merely a mention of an individual contained in a file. The results from a search of this magnitude can result in several “hits” and “idents” on an individual. In each instance where UNI has identified a name variation or reference, information must be reviewed to determine if it is applicable to the individual in question.
- **The Record/Information Dissemination Section (RIDS)** searches for records and provides copies of FBI files responsive to Freedom of Information or Privacy Act (FOIPA) requests for information. RIDS provides responsive documents to requesters seeking “reasonably described information.” For a FOIPA search, the subject’s name, event, activity, or business is searched to determine whether there is an associated investigative file. This is called a “main file search” and differs from the **NNCP** search.

**FOR GENERAL INFORMATION ABOUT THE FBI, VISIT OUR WEBSITE AT**  
**[www.fbi.gov](http://www.fbi.gov)**

**EXPLANATION OF EXEMPTIONS**

**SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552**

- (b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information ( A ) could reasonably be expected to interfere with enforcement proceedings, ( B ) would deprive a person of a right to a fair trial or an impartial adjudication, ( C ) could reasonably be expected to constitute an unwarranted invasion of personal privacy, ( D ) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, ( E ) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or ( F ) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

**SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a**

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.

U.S Department of Justice

Certification of Identity



FORM APPROVED OMB NO. 1103-0016  
EXPIRES 10/31/13

**Privacy Act Statement.** In accordance with 28 CFR Section 16.41(d) personal data sufficient to identify the individuals submitting requests by mail under the Privacy Act of 1974, 5 U.S.C. Section 552a, is required. The purpose of this solicitation is to ensure that the records of individuals who are the subject of U.S. Department of Justice systems of records are not wrongfully disclosed by the Department. Requests will not be processed if this information is not furnished. False information on this form may subject the requester to criminal penalties under 18 U.S.C. Section 1001 and/or 5 U.S.C. Section 552a(i)(3).

Public reporting burden for this collection of information is estimated to average 0.50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Suggestions for reducing this burden may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Public Use Reports Project (1163-0016), Washington, DC 20503.

Full Name of Requester <sup>1</sup> \_\_\_\_\_

Citizenship Status <sup>2</sup> \_\_\_\_\_ Social Security Number <sup>3</sup> \_\_\_\_\_

Current Address \_\_\_\_\_

Date of Birth \_\_\_\_\_ Place of Birth \_\_\_\_\_

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I am the person named above, and I understand that any falsification of this statement is punishable under the provisions of 18 U.S.C. Section 1001 by a fine of not more than \$10,000 or by imprisonment of not more than five years or both, and that requesting or obtaining any record(s) under false pretenses is punishable under the provisions of 5 U.S.C. 552a(i)(3) by a fine of not more than \$5,000.

Signature <sup>4</sup> \_\_\_\_\_ Date \_\_\_\_\_

**OPTIONAL: Authorization to Release Information to Another Person**

This form is also to be completed by a requester who is authorizing information relating to himself or herself to be released to another person.

Further, pursuant to 5 U.S.C. Section 552a(b), I authorize the U.S. Department of Justice to release any and all information relating to me to:

**Print or Type Name**

<sup>1</sup>Name of individual who is the subject of the record(s) sought

<sup>2</sup>Individual submitting a request under the Privacy Act of 1974 must be either "a citizen of the United States or an alien lawfully admitted for permanent residence," pursuant to 5 U.S.C. Section 552a(a)(2). Requests will be processed as Freedom of Information Act requests pursuant to 5 U.S.C. Section 552, rather than Privacy Act requests, for individuals who are not United States citizens or aliens lawfully admitted for permanent residence.

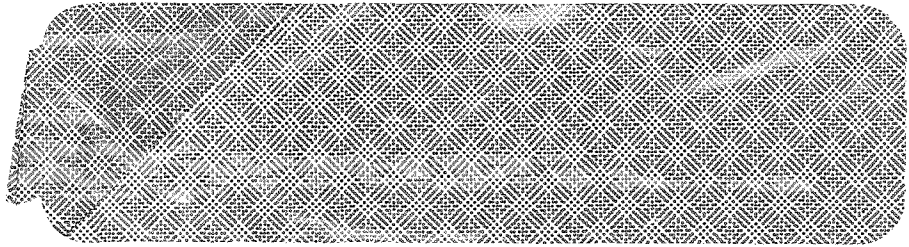
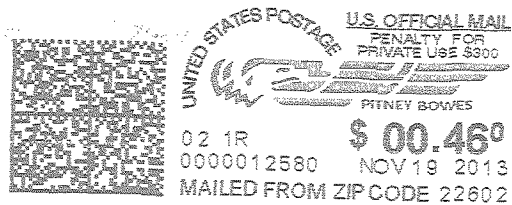
<sup>3</sup>Providing your social security number is voluntary. You are asked to provide your social security number only to facilitate the identification of records relating to you. Without your social security number, the Department may be unable to locate any or all records pertaining to you.

<sup>4</sup>Signature of individual who is the subject of the record sought.

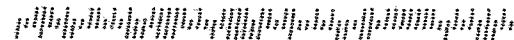
**U.S. Department of Justice**  
Federal Bureau of Investigation

*170 Marcel Drive*  
*Winchester, VA 22602-4843*

Official Business  
Penalty for Private Use \$300



33606262901



# Exhibit 20

to the

# Declaration of Gregg D. Thomas

# THOMAS & LOCICERO

Tampa

111 South Boulevard, Tampa, Florida 33602  
phone: (813) 281-1144 fax: (813) 281-1145

South Florida

401 SE 12th Street, Ste. 401, Fort Lauderdale, Florida  
phone: (754) 346-1444 fax: (754) 346-1445

4901 Lake Worth Road, Ste. 111, Lake Worth, Florida  
phone: (561) 445-1444 fax: (561) 445-1445

www.thomaslocicero.com

David M. Hardy  
Chief, FOIA/PA Section  
Director, Records Management Division  
U.S. Department of Justice

Reply to: Tampa

November 7, 2014

VIA ELECTRONIC MAIL

David M. Hardy, Chief  
Record Information Dissemination Section  
Records Management Division  
Federal Bureau of Investigation  
Department of Justice  
170 Marcell Drive  
Winchester, VA 22602-4843  
Phone: (540) 868-4500  
Fax: (540) 868-4997  
foiparequest@ic.fbi.gov

Re: Freedom of Information / Privacy Act Request

Dear Mr. Hardy:

This is a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a.

I am an attorney who represents Gawker Media, LLC in connection with a lawsuit filed against it by Terry Gene Bollea, known professionally as "Hulk Hogan," in Florida state court. See *Bollea v. Clem et al.*, No. 12012447-CI-011 (Fla. Cir. Ct.).

I hereby request disclosure of any and all records in the possession, custody or control of the United States Department of Justice, including without limitation the agencies described

David M. Hardy  
November 7, 2014  
Page 2

below, relating to an investigation, and complaints or requests for investigation, concerning recording(s) of Terry Gene Bollea a/k/a "Hulk Hogan" engaged in sexual relations with Heather Clem. This request includes, but is not limited to:

- records reflecting any communications with Mr. Bollea or his counsel;
- any statements made by Mr. Bollea or his counsel;
- any records relating to video recording(s) of Mr. Bollea engaged in sexual relations with Heather Clem;
- any records concerning such video recording(s), including the recording(s) themselves;
- any records relating to the source and distribution of such video recording(s); and
- records relating to any attempt to disseminate such video recording(s), including any attempt to sell such video recording(s) to Mr. Bollea or his counsel.

To assist you and your components in tailoring your searches, the following keyword search protocol is reasonably likely to return responsive records:

["Terry Bollea" OR "Terry Gene Bollea" OR "Hulk Hogan" OR "Hogan"  
OR "David Houston" OR "dhouston@houstonatlaw.com" OR "Charles  
Harder" OR "Charles J. Harder" OR "charder@HMAfirm.com" OR  
"charder@wrslawyers.com" OR "Ken Turkel" OR "Kenneth Turkel" OR  
"KTurkel@bajocuva.com"]

-AND-

["Gawker" OR "Sex Tape" OR "Todd Alan Clem" OR "Bubba Clem" OR  
"Bubba the Love Sponge Clem" OR "Heather Clem" OR "Heather Cole"  
OR "Keith Davidson" OR "Vilma Duarte" OR "Matt Lloyd" OR "Matt  
Lloyd"]

This request includes, but is not limited to, records maintained by the Federal Bureau of Investigation, both at its Headquarters in Washington, D.C. and its Tampa field office (the "FBI Records"). In connection with the FBI Records, we request that in addition to searching all files and communications in the records of its field offices reasonably likely to contain responsive records, the FBI perform the above-mentioned keyword searches in both the "main" and "cross-reference" files in its Central Records System. For your information, similar requests have been sent to the Executive Office for U.S. Attorneys and the Criminal Division of the Department of Justice.



David M. Hardy  
November 7, 2014  
Page 3

I have enclosed Certifications of Identity and Authorization to Release Information (Form DOJ-361) that have been executed by Mr. Bollea and three of his lawyers, David Houston, Charles Harder, and Ken Turkel. *See* Exhibit A (Certifications). Please note, Mr. Bollea believes that records relating to the investigation are not relevant to his litigation against Gawker Media, but he and his counsel have provided the signed Certifications based on a court order in the above referenced action. *See* Exhibit B (Special Discovery Magistrate's Report and Recommendation ordering Certifications to be signed, Order of the Court adopting that Recommendation, and Order of the Second District Court of Appeal dismissing Mr. Bollea's petition for a writ of certiorari appealing from that Order).

I also have enclosed a Certification of Identity and Authorization to Release Information (Form DOJ-361) that has been executed by Heather Dawn Cole *f/k/a* Heather Clem. *See* Exhibit C (Certification).

Please produce copies of the records in the original form in which they are maintained. We consent in advance to pay search and duplication charges up to \$500. In order to avoid delay, if you have any questions about this request, please contact me by email, telephone or fax, rather than relying upon regular mail. You may reach me by email at [gthomas@tlolawfirm.com](mailto:gthomas@tlolawfirm.com), by telephone at (813) 984-3060, or by fax at (813) 984-3070.

Finally, in connection with the ongoing litigation in Florida, Gawker Media and Mr. Bollea have agreed, and the court has ordered, that any DVDs or other video footage that is provided in response to this request should be placed in a sealed envelope addressed to Judge James R. Case (Ret.), the Special Discovery Magistrate who is overseeing all discovery in this case. Consequently, please allow Judge Case to personally pick up the sealed envelope containing any DVDs or other video footage from either the FBI's Tampa field office or the office of the United States Attorney for the Middle District of Florida. All other documents can and should be provided directly to me.

When you complete your work on this request, please call me so that I can alert Judge Case that he can pick up any DVDs or other video footage and can arrange for a courier to pick up the other documents.

Thank you for your assistance with this request.

THOMAS & LOCICERO PL

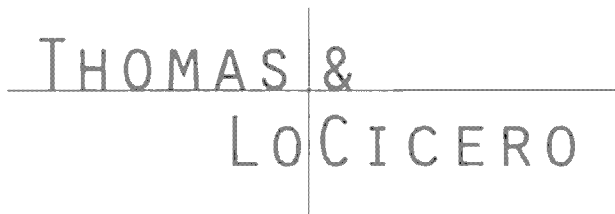
By: /s/ Gregg D. Thomas  
Gregg D. Thomas

601 South Boulevard  
P.O. Box 2602 (33601)  
Tampa, FL 33606  
Telephone: (813) 984-3060

# Exhibit 21

to the

# Declaration of Gregg D. Thomas



Tampa

601 South Boulevard, Tampa, FL 33606  
ph 813-984-3060 fax 813-984-3070 toll free 866-395-7100

South Florida

401 SE 12th Street, Ste. 300, Fort Lauderdale, FL 33316  
ph 954-703-3416 fax 954-400-5415

8461 Lake Worth Road, Ste. 114, Lake Worth, FL 33467  
ph 561-340-1433 fax 561-340-1432

[www.tlplawfirm.com](http://www.tlplawfirm.com)

Gregg D. Thomas  
Direct Dial: (813) 984-3066  
[gthomas@tlplawfirm.com](mailto:gthomas@tlplawfirm.com)

Reply to: Tampa

November 7, 2014

**VIA ELECTRONIC MAIL**

Susan B. Gerson, Acting Assistant Director  
FOIA/Privacy Unit  
Executive Office for United States Attorneys  
Department of Justice  
Room 7300, 600 E Street, N.W.  
Washington, DC 20530-0001  
Phone: (202) 252-6020  
Fax: (202) 252-6047  
[USAEO.FOIA.Requests@usdoj.gov](mailto:USAEO.FOIA.Requests@usdoj.gov)

**Re: Freedom of Information / Privacy Act Request**

Dear Ms. Gerson:

This is a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a.

I am an attorney who represents Gawker Media, LLC in connection with a lawsuit filed against it by Terry Gene Bollea, known professionally as "Hulk Hogan," in Florida state court. *See Bollea v. Clem, et al.*, No. 12012447-CI-011 (Fla. Cir. Ct.).

I hereby request disclosure of any and all records in the possession, custody or control of the United States Department of Justice, including without limitation the agencies described below, relating to an investigation, and complaints or requests for investigation, concerning recording(s) of Terry Gene Bollea a/k/a "Hulk Hogan" engaged in sexual relations with Heather Clem. This request includes, but is not limited to:

- records reflecting any communications with Mr. Bollea or his counsel;

Susan B. Gerson  
November 7, 2014  
Page 2

- any statements made by Mr. Bollea or his counsel;
- any records relating to video recording(s) of Mr. Bollea engaged in sexual relations with Heather Clem;
- any records concerning such video recording(s), including the recording(s) themselves;
- any records relating to the source and distribution of such video recording(s); and
- records relating to any attempt to disseminate such video recording(s), including any attempt to sell such video recording(s) to Mr. Bollea or his counsel.

To assist you and your components in tailoring your searches, the following keyword search protocol is reasonably likely to return responsive records:

["Terry Bollea" OR "Terry Gene Bollea" OR "Hulk Hogan" OR "Hogan"  
OR "David Houston" OR "dhouston@houstonatlaw.com" OR "Charles  
Harder" OR "Charles J. Harder" OR "charder@HMAfirm.com" OR  
"charder@wrslawyers.com" OR "Ken Turkel" OR "Kenneth Turkel" OR  
"KTurkel@bajocuva.com"]

-AND-

["Gawker" OR "Sex Tape" OR "Todd Alan Clem" OR "Bubba Clem" OR  
"Bubba the Love Sponge Clem" OR "Heather Clem" OR "Heather Cole"  
OR "Keith Davidson" OR "Vilma Duarte" OR "Matt Lloyd" OR "Matt  
Lloyd"]

This request includes, but is not limited to, records maintained by the Office of the United States Attorneys and the Office of the United States Attorney for the Middle District of Florida. For your information, an identical request has been sent to the Criminal Division of the Department of Justice, and a similar request has been sent to the FBI.

I have enclosed Certifications of Identity and Authorization to Release Information (Form DOJ-361) that have been executed by Mr. Bollea and three of his lawyers, David Houston, Charles Harder, and Ken Turkel. *See* Exhibit A (Certifications). Please note, Mr. Bollea believes that records relating to the investigation are not relevant to his litigation against Gawker Media, but he and his counsel have provided the signed Certifications based on a court order in the above referenced action. *See* Exhibit B (Special Discovery Magistrate's Report and Recommendation ordering Certifications to be signed, Order of the Court adopting that Recommendation, and Order of the Second District Court of Appeal dismissing Mr. Bollea's petition for a writ of certiorari appealing from that Order).

Susan B. Gerson  
November 7, 2014  
Page 3

I also have enclosed a Certification of Identity and Authorization to Release Information (Form DOJ-361) that has been executed by Heather Dawn Cole f/k/a Heather Clem. *See* Exhibit C (Certification).

Please produce copies of the records in the original form in which they are maintained. We consent in advance to pay search and duplication charges up to \$500. In order to avoid delay, if you have any questions about this request, please contact me by email, telephone or fax, rather than relying upon regular mail. You may reach me by email at [gthomas@tlolawfirm.com](mailto:gthomas@tlolawfirm.com), by telephone at (813) 984-3060, or by fax at (813) 984-3070.

Finally, in connection with the ongoing litigation in Florida, Gawker Media and Mr. Bollea have agreed, and the court has ordered, that any DVDs or other video footage that is provided in response to this request should be placed in a sealed envelope addressed to Judge James R. Case (Ret.), the Special Discovery Magistrate who is overseeing all discovery in this case. Consequently, please allow Judge Case to personally pick up the sealed envelope containing any DVDs or other video footage from either the FBI's Tampa field office or the office of the United States Attorney for the Middle District of Florida. All other documents can and should be provided directly to me.

When you complete your work on this request, please call me so that I can alert Judge Case that he can pick up any DVDs or other video footage and can arrange for a courier to pick up the other documents.

Thank you for your assistance with this request.

THOMAS & LOCICERO PL.

By: /s/ Gregg D. Thomas  
Gregg D. Thomas

601 South Boulevard  
P.O. Box 2602 (33601)  
Tampa, FL 33606  
Telephone: (813) 984-3060  
Facsimile: (813) 984-3070  
[gthomas@tlolawfirm.com](mailto:gthomas@tlolawfirm.com)

Enclosures

cc: Hon. James R. Case, Special Discovery Magistrate, Circuit Court of the Sixth Judicial District, Florida  
Charles J. Harder, Esquire, Counsel for Terry Bollea  
Mr. Robert Mosakowski, Office of the U.S. Attorney for the Middle District of Florida  
Mr. Andrew Sekala, Federal Bureau of Investigation, Tampa Field Office

# Exhibit 22

to the

# Declaration of Gregg D. Thomas

U.S. Department of Justice



Federal Bureau of Investigation  
Washington, D.C. 20535

January 29, 2015

Mr. Gregg D. Thomas  
Thomas & LoCicero PL  
601 South Boulevard  
Tampa, FL 33606

FOIPA Request No.: 1238212-001  
Subject: BOLLEA, TERRY

Dear Mr. Thomas:

This is in reference to your Freedom of Information Act (FOIA) request.

This letter is in response to your letter dated November 7, 2014. The Federal Bureau of Investigation (FBI) has located approximately 1168 pages of records potentially responsive to the subject of your request. Per your request, you have also asked for copies of video material related to your subject. Information in the files reveal that there are 2 Compact Discs (CDs) consisting of video material that is potentially responsive to the subject of your request. By DOJ regulation, the FBI notifies requesters when anticipated fees exceed \$25.00. There is a duplication fee for the release of information in CD format (See 28 C.F.R. §16.11 and 16.49). Per DOJ regulation, the FBI notifies requesters when anticipated fees exceed \$25.00.

Releases are made on Compact Disc (CD) unless otherwise requested. Each CD contains approximately 500 reviewed pages per release. The 500 page estimate is based on our business practice of processing medium and large track cases in segments. DOJ regulations provide 100 pages or the cost equivalent (\$10.00) free of charge. If all potentially responsive pages are released, you will owe \$50.00 in duplication fees to receive the release on CD (4 CDs at \$15.00 less \$10.00 credit). Should you request that the release be made in paper, you will owe \$136.80 in duplication fees.

Please remember this is only an estimate, and some of the information may be withheld in full pursuant to FOIA/Privacy Act exemption(s). Also, some information may not be responsive to your subject. Thus, the actual charges could be less. **No payment is required at this time. However, you must notify us in writing within thirty (30) days from the date of this letter of your format decision (paper or CD). You must also indicate your preference in the handling of your request in reference to the estimated duplication fees from the following four (4) options:**

- I am willing to pay estimated duplication fees up to the amount specified in this letter.
- I am willing to pay duplication fees of a different amount.  
Please specify amount: \_\_\_\_\_
- Provide me 100 pages or the cost equivalent (\$10.00) free of charge.
- Cancel my request.

If we do not receive your duplication format decision and/or estimated duplication fee selection within thirty (30) days of the date of this notification, your request will be closed. Include the FOIPA Request Number listed above in any communication regarding this matter.

You have the opportunity to reduce the scope of your request; this will accelerate the process and could potentially place your request in a smaller processing queue. This may also reduce search and duplication costs and allow for a more timely receipt of your information. The FBI uses a three-queue processing system to fairly assign and process new requests. Requests track into one of the three queues depending on the number of responsive pages - 500 pages or less (small queue), 501 pages to 2500 pages

(medium queue), or more than 2500 pages (large queue). Small queue cases usually require the least time to process.

Please advise in writing if you would like to discuss reducing the scope of your request and your willingness to pay the estimated search and duplication costs indicated above. Provide a telephone number, if one is available, where you can be reached between 8:00 a.m. and 5:00 p.m., Eastern Standard Time. Mail your response to: **Work Process Unit; Record Information/Dissemination Section; Records Management Division; Federal Bureau of Investigation; 170 Marcel Drive; Winchester, VA 22602.** You may also fax your response to: 540-868-4997, Attention: Work Process Unit.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Hardy", with a stylized flourish at the end.

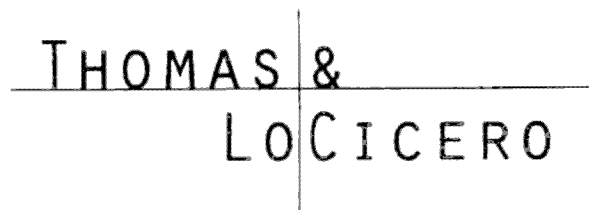
David M. Hardy  
Section Chief,  
Record/Information  
Dissemination Section  
Records Management Division



# Exhibit 23

to the

# Declaration of Gregg D. Thomas



Tampa

601 South Boulevard, Tampa, FL 33606  
ph 813-984-3060 fax 813-984-3070 toll free 866-395-7100

South Florida

401 SE 12th Street, Ste. 300, Fort Lauderdale, FL 33316  
ph 954-703-3416 fax 954-400-5415

8461 Lake Worth Road, Ste. 114, Lake Worth, FL 33467  
ph 561-340-1433 fax 561-340-1432

[www.tlolawfirm.com](http://www.tlolawfirm.com)

Gregg D. Thomas  
Direct Dial: (813) 984-3066  
gthomas@tlolawfirm.com

February 3, 2015

VIA FACSIMILE

Work Process Unit  
Record Information/Dissemination Section  
Records Management Division  
Federal Bureau of Investigation  
170 Marcel Drive  
Winchester, VA 22602  
*Facsimile: (540) 868-4997*

**Re: FOIPA Request No. 1238212-001**  
**Subject: Bollea, Terry**

To Whom It May Concern:

I write in response to the correspondence sent by David M. Hardy on January 29, 2015 concerning FOIPA Request No. 1238212-001. I would like to receive the records on CD, and I am willing to pay for the complete cost of duplication, estimated to be \$50 for four CDs. (As noted in my original request dated November 7, 2014, I am willing to pay estimated duplication fees up to \$500.)

I would greatly appreciate the Bureau expediting my request. As I explained in my November 7 request, I am an attorney who represents Gawker Media, LLC in connection with a lawsuit filed against it by Terry Gene Bollea, known professionally as "Hulk Hogan," in Florida state court. *See Bollea v. Clem. et al.*, No. 12012447-CI-011 (Fla. Cir. Ct.). Since the time that I submitted my request, the court has scheduled the trial in the case to begin on July 6, 2015. And, the requested records are relevant to depositions currently scheduled for early April, in connection with a discovery cut-off of April 10, 2015.

Work Process Unit, FBI

02/3/2015

Page 2 of 2

Finally, please note that in connection with the ongoing litigation in Florida, Gawker Media and Mr. Bollea have agreed, and the court has ordered, that any video footage that is provided in response to my request should be placed in a sealed envelope addressed to Judge James R. Case (Ret.), the Special Discovery Magistrate who is overseeing all discovery in this case. Judge Case will personally pick up the sealed envelope containing any video footage from either the FBI's Tampa field office or the office of the United States Attorney for the Middle District of Florida. All other documents can and should be provided directly to me.

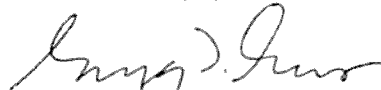
When you complete your work on this request, please call me so that I can alert Judge Case that he can pick up the video footage and can arrange for a courier to pick up the other documents.

In the meantime, to avoid delay, if you have any questions about this request, please contact me by email, telephone or fax, rather than relying upon regular mail. You may reach me by email at [gthomas@tlolawfirm.com](mailto:gthomas@tlolawfirm.com), by telephone at (813) 984-3060, or by fax at (813) 984-3070.

Thank you for your assistance with this request.

Sincerely,

THOMAS & LOCICERO PL

A handwritten signature in cursive script, appearing to read "Gregg D. Thomas".

Gregg D. Thomas

# Exhibit 24

to the

# Declaration of Gregg D. Thomas

U.S. Department of Justice



Federal Bureau of Investigation  
Washington, D.C. 20535

February 4, 2015

Mr. Gregg D. Thomas  
Thomas & LoCicero PL  
601 South Boulevard  
Tampa, FL 33606

FOIPA Request No.: 1238212-001  
Subject: BOLLEA, TERRY

Dear Mr. Thomas:

This responds to your Freedom of Information/Privacy Act (FOIPA) request.

The material you requested is located in an investigative file which is exempt from disclosure pursuant to 5 U.S.C. § 552(b)(7)(A). 5 U.S.C. § 552(b)(7)(A) exempts from disclosure:

records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information ... could reasonably be expected to interfere with enforcement proceedings...

The records responsive to your request are law enforcement records; there is a pending or prospective law enforcement proceeding relevant to these responsive records, and release of the information in these responsive records could reasonably be expected to interfere with enforcement proceedings. For a further explanation of this exemption, see the enclosed Explanation of Exemptions.

In accordance with standard FBI practice and pursuant to FOIA exemption (b)(7)(E)/ Privacy Act exemption (j)(2) [5 U.S.C. § 552/552a (b)(7)(E)/(j)(2)], this response neither confirms nor denies the existence of your subject's name on any watch lists.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

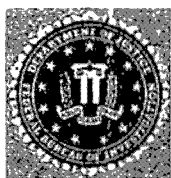
You may file an appeal by writing to the Director, Office of Information Policy (OIP), U.S. Department of Justice, 1425 New York Ave., NW, Suite 11050, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's eFOIA portal at <http://www.justice.gov/oip/efoia-portal.html>. Your appeal must be received by OIP within sixty (60) days from the date of this letter in order to be considered timely. The envelope and the letter should be clearly marked "Freedom of Information Appeal." Please cite the FOIPA Request Number in any correspondence to us for proper identification of your request.

Sincerely,

A handwritten signature in black ink, appearing to read "D Hardy", is written over the word "Sincerely,".

David M. Hardy  
Section Chief,  
Record/Information  
Dissemination Section  
Records Management Division

Enclosures (2)



## FBI FACT SHEET

- **The primary functions of the FBI are national security and law enforcement.**
- **The FBI does not keep a file on every citizen of the United States.**
- **The FBI was not established until 1908 and we have very few records prior to the 1920s.**
- **FBI files generally contain reports** of FBI investigations of a wide range of matters, including counterterrorism, counter-intelligence, cyber crime, public corruption, civil rights, organized crime, white collar crime, major thefts, violent crime, and applicants.
- **The FBI does not issue clearances or non-clearances for anyone other than its own personnel or persons having access to FBI facilities.** Background investigations for security clearances are conducted by many different Government agencies. Persons who received a clearance while in the military or employed with some other government agency should contact that entity. Most government agencies have websites which are accessible on the internet which have their contact information.
- **A criminal history summary check or "rap sheet" is NOT the same as an "FBI file."** It is a listing of information taken from fingerprint cards and related documents submitted to the FBI in connection with arrests, federal employment, naturalization or military service. The subject of a "rap sheet" may obtain a copy by submitting a written request to FBI, Criminal Justice Information Services (CJIS) Division, Record Request, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306. Along with a specific written request, the individual must submit a new full set of his/her fingerprints in order to locate the record, establish positive identification, and ensure that an individual's records are not disseminated to an unauthorized person. The fingerprint submission must include the subject's name, date and place of birth. There is a required fee of \$18 for this service, which must be submitted by money order or certified check made payable to the Treasury of the United States. A credit card payment option is also available. Forms for this option and additional directions may be obtained by accessing the FBI Web site at [www.fbi.gov/about-us/cjis/background-checks/background\\_checks](http://www.fbi.gov/about-us/cjis/background-checks/background_checks).
- **The National Name Check Program (NNCP)** conducts a search of the FBI's Universal Index (UNI) to identify any information contained in FBI records that may be associated with an individual and provides the results of that search to a requesting federal, state or local agency. Names are searched in a multitude of combinations and phonetic spellings to ensure all records are located. The NNCP also searches for both "main" and "cross reference" files. A main file is an entry that carries the name corresponding to the subject of a file, while a cross reference is merely a mention of an individual contained in a file. The results from a search of this magnitude can result in several "hits" and "idents" on an individual. In each instance where UNI has identified a name variation or reference, information must be reviewed to determine if it is applicable to the individual in question.
- **The Record/Information Dissemination Section (RIDS)** searches for records and provides copies of FBI files responsive to Freedom of Information or Privacy Act (FOIPA) requests for information. RIDS provides responsive documents to requesters seeking "reasonably described information." For a FOIPA search, the subject's name, event, activity, or business is searched to determine whether there is an associated investigative file. This is called a "main file search" and differs from the **NNCP** search.

FOR GENERAL INFORMATION ABOUT THE FBI, VISIT OUR WEBSITE AT  
[www.fbi.gov](http://www.fbi.gov)

### EXPLANATION OF EXEMPTIONS

#### SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

- (b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information ( A ) could reasonably be expected to interfere with enforcement proceedings, ( B ) would deprive a person of a right to a fair trial or an impartial adjudication, ( C ) could reasonably be expected to constitute an unwarranted invasion of personal privacy, ( D ) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, ( E ) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or ( F ) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

#### SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.

# Exhibit 25

to the

# Declaration of Gregg D. Thomas





**U.S. Department of Justice**  
Office of Information Policy  
Suite 11050  
1425 New York Avenue, NW  
Washington, DC 20530-0001

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Telephone: (202) 514-3642

Gregg D. Thomas, Esq.  
Thomas & LoCicero  
601 South Boulevard  
Tampa, FL 33606  
[gthomas@tlolawfirm.com](mailto:gthomas@tlolawfirm.com)

Re: Appeal Nos. AP-2015-02411 &  
AP-2015-02440  
Request No. 1238212-001  
CDT:TAZ

**VIA: E-mail**

Dear Mr. Thomas:

You appealed on behalf of your client, Gawker Media, LLC, from the action of the Federal Bureau of Investigation on its request for access to certain records concerning Terry Gene Bollea, otherwise known as "Hulk Hogan," and Heather Clem. I note that your appeal concerns the FBI's withholding of records under Exemption (7)(A).

After carefully considering your appeal, I am affirming the FBI's action on your client's request. The Freedom of Information Act provides for disclosure of many agency records. At the same time, Congress included in the FOIA nine exemptions from disclosure that provide protection for important interests such as personal privacy, privileged communications, and certain law enforcement activities. The FBI properly withheld certain information in full because it is protected from disclosure under the FOIA pursuant to 5 U.S.C. § 552(b)(7)(A). This provision concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to interfere with enforcement proceedings.

Furthermore, I am denying your client's request that we itemize and justify each item of the information withheld. You are not entitled to such a listing at the administrative stage of processing FOIA requests and appeals. See Bangoura v. U.S. Dep't of the Army, 607 F. Supp. 2d 134, 143 n.8 (D.D.C. 2009).

Finally, I note that by letter dated March 23, 2015, this Office informed you that your additional administrative appeal from Request No. 1238212-001 had been received by this Office and would be assigned for adjudication under Appeal No. AP-2015-02440. However, this Office subsequently learned that your appeal file was a duplicate of Appeal No. AP-2015-02411. In light of these circumstances, I am administratively closing Appeal No. AP-2015-02440 in this Office. This Office inadvertently opened two appeal files for the faxed and mailed copies of your appeal letter.

Please be advised that this Office's decision was made only after a full review of this matter. Your appeal was assigned to an attorney with this Office who thoroughly reviewed and

- 2 -

analyzed your appeal, your client's underlying request, and the action of the FBI in response to your client's request.

If your client is dissatisfied with my action on your appeal, the FOIA permits it to file a lawsuit in federal district court in accordance with 5 U.S.C. § 552(a)(4)(B).

For your information, the Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your client's right to pursue litigation. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

5/6/2015

X 

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Sean R. O'Neill  
Chief, Administrative Appeals Staff  
Signed by: Sean O'Neill

**IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

GAWKER MEDIA, LLC and  
GREGG D. THOMAS,

Plaintiffs,

v.

Case No. 8:15-cv-01202-SCB-EAJ

THE FEDERAL BUREAU OF  
INVESTIGATION and THE  
EXECUTIVE OFFICE OF  
UNITED STATES ATTORNEYS,

Defendants.  
\_\_\_\_\_ /

**DEFENDANT’S RESPONSE TO PLAINTIFFS’ DISPOSITIVE  
MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM OF LAW**

Defendants, the Federal Bureau of Investigation (“FBI”) and the Executive Office of United States Attorneys (“EOUSA”), hereby respectfully respond to plaintiff’s motion for summary judgment. Plaintiffs’ motion should be denied for the following reasons:

**I. Undisputed Facts**

1. On November 8, 2013, Gawker submitted a Freedom of Information Act (“FOIA”) request to the FBI and the EOUSA seeking documents and video footage related to an investigation conducted by the FBI in the fall of 2012. See Complaint [Doc. No. 1], ¶¶ 2, 13, 15.

2. The investigation concerned a video tape showing Terry Gene Bollea,

also known as Hulk Hogan (“Hogan”), engaging in a sexual affair with Heather Clem, who at the time was the wife of a local radio personality. See *id.*

3. According to plaintiff, these “records have been ruled to be critical to Gawker’s defense of a \$100 million lawsuit brought by Hogan [in state court] . . . arising from Gawker’s publication [of] a news report and commentary” regarding the above mentioned video. *Id.*, ¶¶ 2-3.

4. Because the records sought by Gawker involved third-party individuals, on November 19, 2013, the FBI sent Gawker a letter stating that Gawker must submit a Certification of Identity, Form DOJ 361, executed by each of the third-party individuals related to the records sought, namely Hogan, Hogan’s attorneys and Heather Clem. See Declaration of David M. Hardy, attached hereto as Exhibit A (“Exh. A”), Exh. E, pp. FBI031-32; Complaint, ¶¶ 16-17.

5. “After nearly a year of litigating the matter in the Florida Litigation, Hogan and his attorneys were eventually required to provide the authorizations . . . .” Complaint, ¶ 17.

6. Heather Clem voluntarily executed the necessary release form. See *id.*, ¶ 18.

7. On November 7, 2014, Gawker submitted a second FOIA request that was virtually identical to the request submitted a year earlier, but this time Gawker included the required Certifications executed by the affected third-parties. See *id.*, ¶ 18.

8. On November 17, 2014, the FBI acknowledged receipt of Gawker’s

new FOIA request, and, on January 29, 2015, the FBI “informed Gawker that it had located 1,168 pages of responsive records and two CDs containing responsive video material.” *Id.*, ¶ 19.

9. In its January 29, 2015 letter, the FBI asked Gawker if it would accept the charges that the FBI would incur in processing the records requested by Gawker. See Exh. A, Exh. E, pp. FBI031-32.

10. On February 3, 2015, Gawker responded and agreed to pay up to \$500.00. See Complaint, ¶ 20.

11. On or before February 4, 2015, the FBI learned that another, non-federal law enforcement agency had commenced a separate investigation related to the video tape and that the investigation was ongoing. See Exh. A, ¶ 11.

12. Accordingly, the FBI sent a letter informing Gawker that the responsive records were exempt from production pursuant to FOIA Exemption 7(A) because they “are law enforcement records; there is a pending or prospective law enforcement proceeding relevant to these responsive records, and release of the information in these responsive records could reasonably be expected to interfere with enforcement proceedings.” Exh. A, Exh. G, p. FBI038; *Complaint*, ¶ 21.

13. The FBI did not produce any records.

14. On March 4, 2015, Gawker filed an administrative appeal with the Office of Information and Policy (“OIP”). See Exh. A, ¶ 12.

15. According to Gawker, it submitted “substantial evidence that there was no ongoing or prospective investigation . . . ,” and claimed that there could be no

interference with a non-existing investigation. Complaint, ¶ 22.

16. However, while Gawker is correct that the FBI's 2012 investigation of the circumstances surrounding the video tape was no longer active, as noted above, the FBI learned that another law enforcement agency had opened an investigation related to the video tape. See Exh. A, ¶¶ 11, 28.

17. On March 4, 2015, plaintiffs appealed the FBI's decision. See Exh. A, ¶ 12.

18. By letter dated March 18, 2015, the Office of Information Policy ("OIP") acknowledged receipt of plaintiffs appeal and assigned it appeal number AP-2015-02411. See *id.*, ¶ 13.

19. On May 6, 2015, the OIP affirmed the FBI's determination and also informed Gawker that it was denying Gawker's request that the OIP itemize and justify each item of the information withheld, since it was not entitled to it at the administrative stage. See *id.*, ¶ 14.

20. In addition, the OIP advised plaintiff of its right to file a lawsuit in the federal district court if it was dissatisfied with its action on the appeal. See *id.* On May 19, 2015, plaintiffs filed their complaint in the present action. See *id.*, ¶ 15.

## **II. Argument**

To prevail in a FOIA action, an agency that is withholds any information pursuant to FOIA Exemption 7(A) must first show that the documents were compiled for a law enforcement purpose. See *Antonelli v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 2005 WL 3276222, \*1, \*4 (D.D.C. Aug. 16, 2005) ("An

agency must prove that the withheld records were compiled for law enforcement purposes 'before [withholding] requested documents on the basis of any of [that exemption's] subparts.'" (quoting *Pratt v. Webster*, 673 F.2d 408, 416 (D.C. Cir. 1982). Here, plaintiff has acknowledged that all the documents at issue were collected by the FBI, a federal law enforcement agency, during an investigation into the source and distribution of the video at issue. See Complaint, ¶ 13. Thus, the FBI has satisfied the first test.

The next step is to analyze sub-part 7(A). Under Exemption 7(A), an agency may withhold from disclosure "records or information compiled for law enforcement purposes, but only to the extent that the production . . . could reasonably be expected to interfere with enforcement proceedings." 5 U.S.C. § 552(b)(7)(A). Plaintiffs argue that Exemption 7(A) does not apply because there is no active or ongoing law enforcement investigation, but that is not necessarily a requirement. See *Center for Nat. Sec. Studies v. United States Dept. of Justice*, 331 F.3d 918, 926 (D.C. Cir. 2003) ("Exemption 7(A) does not require a presently pending 'enforcement proceeding.' Rather, as the district court correctly noted, it is sufficient that the government's ongoing September 11 terrorism investigation is likely to lead to such proceedings.") (citation omitted). However, the Court need not reach that issue because there is an ongoing investigation here as further explained below. See Exh. A, ¶ 28 ("Upon receipt of plaintiffs lawsuit, the FBI contacted the Tampa Field Office ('TPFO') to request information pertaining to the current status of the investigation referenced in the records responsive to plaintiffs request. The TPFO

advised RIDS that another law enforcement agency has an on-going investigation.”). The final step in the analysis here is whether the release of the requested records could perceptibly interfere with the ongoing investigation by a non-federal law enforcement agency. The FBI states that it would interfere with that investigation. *See id.* (“Furthermore, TPFO indicated that release of any information from this file will interfere with that pending investigation; therefore, the information is exempt from disclosure pursuant to FOIA exemption (b)(7)(A), 5 U.S.C. § 552(b)(7)(A).”).

At this phase of the litigation, it is axiomatic that the Court must view the facts in the light most favorable to defendants, as the non-movants. *See Mudd v. United States Army*, 2007 WL 4358262, \*1, \*4 (M.D. Fla. Dec. 10, 2007) (“In ruling on a motion for summary judgment, if there is a conflict in the evidence the non-moving party's evidence is to be believed and all reasonable inferences must be drawn in favor of the non-moving party.”) (citing *Shotz v. City of Plantation, Fl.*, 344 F.3d 1161, 1164 (11<sup>th</sup> Cir. 2003)). Further, “[a]ffidavits submitted by an agency ‘are accorded a presumption of good faith.’” *Carney v. United States Dep’t of Justice*, 19 F.3d 807, 812 (2<sup>nd</sup> Cir. 1994) (citation omitted); *Florida Immigrant Advocacy Center v. National Sec. Agency*, 380 F. Supp.2d 1332, 1343 (S.D. Fla. 2005). Similarly, the decision of an agency that specializes in law enforcement, like the FBI, “to invoke exemption 7 is entitled to deference.” *Bilderbeek v. United States Dept. of Justice*, 2010 WL 1049618, \*1, \*3 (M.D. Fla. Mar. 22, 2010) (citing *Campbell v. United States Dep’t of Justice*, 164 F.3d 20, 32 (D.C. Cir. 1998)).



**a. The Records Sought are the Subject of an Ongoing Law Enforcement Investigation**

Plaintiffs state that “[t]hrough this lawsuit, Gawker seeks to compel the Agencies<sup>1</sup> to provide records it requested through FOIA relating to an FBI investigation, conducted in 2012, into the source and distribution of [the] video” discussed above. Complaint, ¶¶ 2, 13. In addition, plaintiffs correctly assert that the FBI investigation is no longer ongoing and that no criminal charges were ever issued. See *id.*, ¶ 14. To their credit, plaintiffs implicitly acknowledge that their initial FOIA request, filed on November 8, 2013, did not enclose the requisite Certification of Identifications from the necessary third-parties. See *id.*, ¶¶ 15-17. Accordingly, on November 19, 2013, the FBI sent plaintiffs a letter stating that they had to supplement their request with the Certifications, which were enclosed, executed by the third-parties. See *id.*, ¶ 16; Exh. A, ¶ 6. Because plaintiffs did not submit the Certifications, and their first FOIA request was therefore improper. Without the Certifications, defendants were under no obligation to produce or even process any documents.

Plaintiffs state that, originally, Hogan and his attorneys refused to sign the Certifications, but that they were compelled to sign them after one year of litigation in state court. See Complaint, ¶ 17. Thus, on November 7, 2014, plaintiffs submitted their second FOIA request and enclosed the Certifications executed by Hogan, his attorneys, as well as Heather Clem, who voluntarily signed her

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<sup>1</sup> The EOUSA had some responsive documents that it referred to the FBI for processing and response. Accordingly, most of the communication relevant to this case is between plaintiffs and the FBI.

Certification. See *id.*, ¶ 18. The FBI acknowledged the second request by letter on November 17, 2014 and continued to process the request. See Exh. A, ¶¶ 8-9. On or before February 4, 2015, the FBI learned of a “pending or prospective law enforcement proceeding relevant to these records and release of the information could reasonably be expected to interfere with the enforcement proceedings,” so the FBI told plaintiffs that the records were subject to the protections of Exemption 7(A). *Id.*, ¶ 11. Because the FBI deemed the records exempted, it did not produce them to plaintiffs, but the FBI informed plaintiffs they could appeal the decision to the Office of Information Policy (“OIP”) within sixty days. See *id.*

One month later, on March 4, 2015, plaintiffs filed an appeal with the OIP. See *id.*, ¶ 12; Exh. A., Exh. H, pp. FBI042-91. Specifically, plaintiffs argued that the FBI had not made a sufficient showing of an ongoing law enforcement investigation. See Exh. A, Exh. H, p. FBI045. However, it is undisputed that on or before February 4, 2015 the FBI was made aware of an investigation related to the records sought by plaintiffs by another non-federal law enforcement agency that at this point does not want to be identified. Consequently, “[a]fter carefully considering [plaintiffs’] appeal,” the OIP affirmed the FBI’s decision. See *id.*, Exh. J, p. FBI096.

### **III. Releasing the Records Sought Would Interfere with an Ongoing Law Enforcement Investigation**

According to plaintiffs, no investigation, whether ongoing or not, would be interfered with should the FBI be ordered to release the records at issue. See Plaintiff’s Motion for Summary Judgment [Doc. No. 5] (“MSJ”), p. 13. However, they are incorrect. First, the FBI does not need to show that the release of a “particular

document would actually interfere with an enforcement proceeding.” *Solar Sources, Inc. v. United States*, 142 F.3d 1033, 1037 (7<sup>th</sup> Cir. 1998). Instead, it “need show only ‘that, with respect to particular kinds of enforcement proceedings, disclosure of particular kinds of investigatory records while a case is pending would generally interfere with enforcement proceedings.’” *Id.* (citation omitted). This burden has been explained as one where an agency only have to establish that “disclosure could reasonably be expected perceptibly to interfere with an enforcement proceeding.” *North v. Walsh*, 881 F.2d 1088, 1097 (D.C. Cir. 1989) (citation omitted).

The courts have long held that Congress intended that Exemption 7(A) apply “whenever the government’s case in court would be harmed by the premature release of evidence or information,” the harm from disclosure is sufficient to support application of Exemption 7(A).” *Sussman v. United States Marshals Service*, 494 F.3d 1106, 1114 (D.C. Cir. 2007) (citation omitted); *see, e.g., Stolt-Nielsen Trans. Group, Ltd. v. Department of Justice*, 480 F. Supp.2d 166, 180 (D.D.C. 2007) (noting that release of information “would provide potential witnesses with insights into the Division’s strategy and the strength of its position”), vacated and remanded on other grounds, 534 F. 3d 728, 733-34 (D.C. Cir. 2008); *Faiella v. Internal Revenue Serv.*, 2006 WL 2040130, \*1, \*3 (D.N.H. July 20, 2006) (stating that “disclosing information under active consideration” could undermine any future prosecution by “prematurely disclosing the government’s potential theories, issues, and evidentiary requirements”); *Suzhou Yuanda Enter. Co. v. Customs and Border*

*Prot.*, 404 F. Supp.2d 9, 14 (D.D.C. 2005) (agreeing that release of information "would interfere with an agency investigation [by] informing the public of the evidence sought and scrutinized by this type of investigation"); *Environmental Prot. Servs. v. EPA*, 364 F. Supp. 2d 575, 588 (N.D. W. Va. 2005) (explaining that disclosure "would prematurely reveal the EPA's case"); *Rosenglick v. Internal Revenue Serv.*, 1998 U.S. Dist. LEXIS 3920, at \*7-8 (M.D. Fla. Mar. 10, 1998) (explaining that early access could "aid a wrongdoer"); *Durham v. United States Postal Serv.*, 1992 WL 700246, \*1, \*1 (D.D.C. Nov. 25, 1992) (deciding that release of investigative memoranda, witness files, and electronic surveillance material would substantially interfere with pending homicide investigation by impeding government's ability to prosecute its strongest case), *aff'd*, No. 92-5511 (D.C. Cir. July 27, 1993).

Like in those cases, disclosure here would interfere with the non-federal law enforcement agency's investigation. See Exh. A, ¶ 28. Plaintiffs have already identified the purpose for seeking these records. According to them, "Gawker wanted, for example, to determine whether what Hogan was telling the Agencies was consistent with his position in his lawsuit against Gawker and wanted to obtain the raw materials (video, emails, and the like) . . . ." MSJ, p. 2. As found by numerous courts over time, releasing records prematurely will interfere with the ongoing criminal investigation here. The FBI has interviewed a number of people including Hogan. If the public were made aware of such statements, people who have been named by him and could therefore potentially be called as witnesses will

obtain information that may provide them with “insights into the Division's strategy and the strength of its position . . . .” *Stolt-Nielsen Trans. Group*, 480 F. Supp.2d at 180. Such disclosure could therefore undermine the future prosecution under investigation by the non-federal law enforcement agency. *See Faiella*, 2006 WL 2040130, at \*3. Not only could release of the records help potential defendants evade prosecution, *see Rosenglick*, 1998 U.S. Dist. LEXIS 3920, at \*7-8, but it could also possibly chill people’s willingness to cooperate in the investigation and therefore prevent the agency from building its strongest case. *See Durham*, 1992 WL 700246, at \*1. Clearly, the release of the records in this case could “reasonably be expected perceptibly to interfere with an enforcement proceeding.” *North*, 881 F.2d at 1097 (citation omitted).

#### **IV. FOIA is Not a Litigation Tool for Private Individuals and Companies but is a Tool for the Public to be Able to Investigate the Work of Federal Agencies**

The purpose of the FOIA is to ensure that the administrative process may be subject to scrutiny of the press and the general public. *See Roberts v. Internal Revenue Serv.*, 2014 WL 1724383, \*1, \*3 (M.D. Fla. Mar. 17, 2014) (citing *Federal Labor Relations Auth. v. United States Dep’t of Defense*, 977 F.2d 545, 547 (11<sup>th</sup> Cir. 1992) (noting that “FOIA's central purpose is to ensure that the Government's activities be open to the sharp eye of public scrutiny.”)). While decided in the context of privacy and the balancing of private and public interests under Exemption 6, the legal analysis in *Cappabianca v. Commissioner, United States Customs Service*, 847 F.Supp. 1558, 1564 (M.D. Fla. 1994) should apply here as well. In

*Cappabianca*, the Court held that a “private interest in obtaining materials for personal reasons plays no part in the required balancing of interests [of public v. private interests]. Indeed, several courts have noted that FOIA is no substitute for discovery practice, nor do private needs for documents affect determination of whether disclosure is warranted.” *Id.* (citing *L & C Marine Transport, LTD. v. United States*, 740 F.2d 919 (11<sup>th</sup> Cir. 1984); *Nix v. United States*, 572 F.2d 998 (4<sup>th</sup> Cir. 1978)).

Here, plaintiff has an express interest in the release of the documents to use them in a lawsuit between two private entities. Plaintiff’s FOIA request is not intended to shed light on the workings and performance of the FBI. Thus, even though Gawker is a media company and provides services to the public, the interest involved here is purely private – to defend against a \$100 million law suit that is going on in state court. Accordingly, by analogy to *Cappabianca*, the non-federal law enforcement agency’s interest in its ability to conduct a criminal investigation related to the records that plaintiffs are seeking here clearly outweighs plaintiffs’ interest in using FOIA as a replacement for conducting discovery to be better able to defend itself in state court.

///

**CONCLUSION**

Based on the foregoing, defendants respectfully request that this Court deny plaintiffs' motion for summary judgment.

**A. LEE BENTLEY, III**  
United States Attorney

Respectfully submitted,

By: s/ E. Kenneth Stegeby  
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*Attorney for Defendant*

**CERTIFICATE OF SERVICE**

I hereby certify that on June 8, 2015, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

Alia L. Smith  
Gregg Darrow Thomas  
Patrick Kabat  
Rachel E. Fugate  
Seth D. Berlin  
*Plaintiffs' Counsel*

*s/E. Kenneth Stegeby*  
E. Kenneth Stegeby