



1899 L Street, NW  
Suite 200  
Washington, DC 20036  
(202) 508-1100 | Phone  
(202) 861-9888 | Fax

Seth D. Berlin  
(202) 508-1122  
sberlin@lskslaw.com

Michael Berry  
(215) 988-9773  
mberry@lskslaw.com

August 17, 2015

**VIA EMAIL AND HAND DELIVERY**

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

**Re: *Terry Gene Bollea v. Clem, Gawker Media, LLC, et al.***  
**Case No.: 12012447-CI-011**

Dear Judge Campbell:

I write with respect to the correspondence dated August 14, 2015 from counsel for plaintiff Terry Bollea concerning proposed orders on plaintiff's Emergency Motion for Clarification. Defendants Gawker Media, LLC, Nick Denton, and A.J. Daulerio (collectively, the "Gawker Defendants") strenuously object to the proposed order submitted by plaintiff for the following reasons:

First, the Gawker Defendants object to plaintiff's proposed order to the extent it recites various rulings about the treatment of documents produced by the federal government (and their disclosure to Gawker's General Counsel Heather Dietrick) that the Court simply did not make. *See, e.g.*, Pl.'s Proposed Order ¶¶ 4, 6, 7-9, 11. The Court made clear that it had not reviewed the documents at issue, and that they would need to be reviewed before conclusive rulings could be issued. *See, e.g.*, July 30, 2015 Hrg. Tr. at 74:8-11 (THE COURT: "I haven't seen the 1100 pages [of FBI documents]. I haven't seen the audio. I'm handed five inches of paper this morning to review and I've not reviewed it."); *see also id.* at 76:19-22 (THE COURT: "I have not seen those materials . . ."). Indeed, under Florida law and the Agreed Protective Order, it is plaintiff's burden to establish that documents are properly designated as Confidential or "Attorneys' Eyes Only," or to exclude a party's counsel from the "Attorneys' Eyes Only" designation, but he has not yet submitted a single document for review. As such, not only was no definitive ruling made on those issues, but one could not have been made without judicial review.

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Second, while the Court indicated that it would like “to send [these issues] over to Judge Case as the discovery magistrate to make those rulings,” *id.* at 74:20-22; *see also id.* at 73:9-12, 73:22 – 74:7, 77:4-5 (same), the Gawker Defendants have notified the Court that they do not consent to further proceedings before a Special Discovery Magistrate and object to the Special Discovery Magistrate’s considering any of these issues or any issues that might arise in the future. While plaintiff has filed an objection to the Gawker Defendants’ notice, the Gawker Defendants’ continued consent is required as a matter of law. *See, e.g.*, Fla. R. Civ. P. 1.490(c). As a result, the Gawker Defendants object to the various provisions of plaintiff’s proposed order that would refer issues to the Special Discovery Magistrate. *See* Pl.’s Proposed Order ¶¶ 1, 5, 6, 12.

Third, the Gawker Defendants object to the provisions of plaintiff’s proposed order stating that “[n]o copies of any records, video and audio recordings, documents and other materials” produced by the federal government “shall remain in Ms. Dietrick’s possession, custody, or control.” Pl.’s Proposed Order ¶ 7. Although the Court did not rule on the confidentiality of each document and record produced by the federal government, Your Honor made clear that the parties should provisionally treat all of those materials as “Highly Confidential – Attorneys’ Eyes Only” and should no longer share them with Ms. Dietrick until further judicial review could be conducted. July 30, 2015 Hrg. Tr. at 72:23 – 73:7. While we have and will continue to comply with that directive, plaintiff’s proposed order goes far beyond that in two respects, first, by purporting to adjudicate that issue decisively and permanently even though the Court did no such thing and, second, by purporting to require Ms. Dietrick to dispose of information and documents she already possessed.

With respect to the latter provision, plaintiff never requested such relief in his motion, in the proposed order accompanying his motion, or at the July 30 hearing. Moreover, plaintiff’s after-the-fact attempt to include such relief in his proposed order submitted last week directly conflicts with this Court’s August 6, 2015 Preservation Order. It is simply impossible for Ms. Dietrick to both preserve all evidence and simultaneously delete certain evidence, and this is particularly significant in light of counsel’s need to defend themselves against plaintiff’s baseless charge that they might have leaked that very evidence. That said, as we have confirmed to Your Honor previously, Ms. Dietrick is complying with the August 6 preservation order, and, since the July 30 hearing, we have not and will not share with Ms. Dietrick any material produced by the federal government or its contents, and will continue not to do so until the scope of plaintiff’s “Attorneys’ Eyes Only” designation has been more fully adjudicated as contemplated by the Court.

Fourth, the Gawker Defendants object to the provision of plaintiff’s proposed order providing that “[n]o copies of the audio recordings shall remain in Gawker Defendants’ counsels’ possession, custody, or control” and that they shall be turned over to Judge Case. Pl.’s Proposed Order ¶ 6. Putting aside the Gawker Defendants’ lack of consent to further proceedings before a Special Discovery Magistrate, this request for relief was not included in plaintiff’s motion for clarification nor in the proposed order that accompanied that motion, and

the Gawker Defendants therefore had no meaningful opportunity to address it. More significantly, the oral request for relief was based on two factual misstatements to the Court. First, plaintiff represented to the Court that the audio footage is, “in essence, the same thing as the DVDs,” creating the impression that it was simply audio from the sex tapes. July 30, 2015 Hrg. Tr. at 71:11-12. In truth, the audio footage is from the FBI sting operation and

See, e.g., Confidential Exhibit 18-C to Opposition to Plaintiff’s Emergency Motion (copy of audio of Dec. 2012 sting operation); Conf. Decl. of G. Thomas, filed July 30, 2015 at ¶¶ 16, 20. Second, plaintiff represented to the Court that neither he nor his counsel knew about this footage, which is why it had not been addressed earlier. July 30, 2015 Hrg. Tr. at 71:5-9. That, too, is not true,

See, e.g., Conf. Thomas Decl. at ¶ 22.

The audio footage is central evidence in this case, as it reveals, among other things, that plaintiff and his counsel made numerous false statements to the Court during this case. See, e.g., Conf. Thomas Decl. ¶¶ 49 – 61. The audio footage also disproves plaintiff’s charges that the Gawker Defendants or their counsel violated the Agreed Protective Order as it clearly shows that the *National Enquirer’s* reporting was not based on footage held by counsel. Finally, that audio footage also continues to be central evidence that the Gawker Defendants need in connection with the ongoing FOIA litigation. Plaintiff’s request that it be turned over is a transparent effort to prevent the Gawker Defendants from using this key evidence in their defense of this action, in their response to his charges that they or their counsel violated a court order, in their litigation of the FOIA case, or in documenting plaintiff’s fraud on the court.

Finally, the Gawker Defendants object to the portion of plaintiff’s proposed order that seeks to limit how the FOIA Authorizations signed by plaintiff and counsel are to be construed “by the United States Government.” Pl.’s Proposed Order ¶ 11. The FOIA Authorizations make plain that release of records is authorized to Gregg Thomas, and the Stipulated Protocol and this Court’s prior orders make clear that counsel in this case may access the documents, setting forth a procedure for requesting and handling those records. Counsel for the Gawker Defendants have complied with those procedures, provisionally modified going forward with respect to Ms. Dietrick. Plaintiff has never explained his purpose in seeking to impose further limitations on how the federal government might construe the Authorizations, and the Court did not rule on this issue at the July 30 hearing. In any event, this Court does not have authority to direct the federal government’s actions in this regard. See U.S. CONST. art. VI, cl. 2.

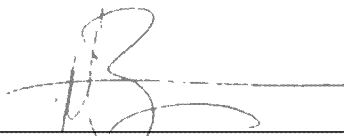
The Gawker Defendants respectfully request that the Court enter their proposed order on plaintiff’s Motion for Clarification, a copy of which is enclosed and which includes a provision excluding Ms. Dietrick from receiving material produced by the federal government going forward until the Court is able to adjudicate this issue more fully. We also respectfully request

that the Court advise when and how you would like to address the open matters identified during the July 30 hearing.

Thank you for your consideration.

Respectfully,

LEVINE SULLIVAN KOCH & SCHULZ, LLP

By:  \_\_\_\_\_  
Seth D. Berlin  
Michael Berry

cc: All counsel of record (via electronic mail)