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.

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

Defendants.
_____/

Case No. 12012447 CI-011

SUPPLEMENTAL REPLY OF TERRY BOLLEA RE: GAWKER'S PURPORTED "WITHDRAWAL OF CONSENT" TO JURISDICTION OF SPECIAL DISCOVERY MAGISTRATE

Gawker Defendants waited until after Mr. Bollea filed his opposition before Gawker Defendants supported their purported "withdrawal of consent" to Judge Case serving out the term of his engagement as Special Discovery Magistrate, with any citation to legal authorities. This practice has become a hallmark of Gawker Defendants' practices in this case: holding back on legal authorities until the reply brief, in order to try to prevent Mr. Bollea from commenting on those authorities – usually because the authorities are off point, distinguishable and/or the authorities are misrepresented in the reply brief. Because Gawker Defendants once again sandbagged Mr. Bollea and this Court with authorities in this instance – authorities that are entirely distinguishable and inapplicable – Mr. Bollea files this supplemental reply.

Gawker Defendants' reply brief completely ignores a central fact highlighted in Mr. Bollea's initial response: **this Court's initial appointment of Judge Case specifically states that he would continue as Special Discovery Magistrate until the end of this case**. Thus, this is not a situation where Gawker Defendants are objecting to the referral of additional matters to Judge Case;

Gawker Defendants **already consented** to the referral of **all** discovery issues, on a prospective basis, to Judge Case.

Gawker Defendants claim in their reply brief asserts that Judge Case's appointment has "expired", but the claim is not true. Judge Case's appointment, by the plain terms of this Court's order, extends until the conclusion of the case.[1] The case has not yet concluded. Moreover, the discovery disputes also have not concluded. Mr. Bollea has requested electronic and other discovery regarding the sources of the leak to *The National Enquirer*, and financial worth discovery also is ongoing and additional discovery motions are anticipated on that issue – because Gawker Defendants are stonewalling on financial worth discovery. Judge Case's appointment therefore continues, and applies to those discovery matters, and any other discovery matters that may arise between now and entry of judgment.

The cases cited by Gawker Defendants **do not support** their argument that they supposedly can withdraw the consent they previously gave for Judge Case to preside over discovery issues until the conclusion of this case. *Gielchinsky v. Vibo Corp.*, 5 So.3d 785, 785 (Fla. 3d DCA 2009), involved an impecunious litigant who could no longer afford to pay the special magistrate. That

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[1] Gawker Defendants claim they are objecting to Judge Case hearing future matters because it results in duplication of effort, not because they did not like his prior rulings. However, that explanation does not make sense—Gawker Defendants knew from the outset that Judge Case would charge fees, render a recommendation, and that exceptions could be filed challenging his recommendations, resulting in potential additional expense to the parties. Gawker Defendants voiced no objection to the process during the period of October 2013, when Judge Case was first appointed, through July 2015, after the initial trial date. It was not until August 2015, when Mr. Bollea sought discovery to find out the source of the leak to *The National Enquirer* that Gawker Defendants first voiced an objection to Judge Case's involvement. Moreover, Gawker Defendants were the cause of any "duplication of effort" about which they now claim to belatedly object. Gawker Defendants are the parties who have filed Exceptions to nearly every (if not every single) recommendation by Judge Case that was unfavorable to them. Mr. Bollea, by contrast, has filed very few Exceptions, and instead has followed Judge Case's recommendations, even when they were unfavorable to Mr. Bollea, based on the assumption that the Court likely would follow the recommendation, and also because the process of challenging the recommendation adds unnecessary expense.

situation, which involves due process considerations (forcing a poor litigant to pay substantial fees to litigate the case) is very different than purporting to withdraw consent, as Gawker Defendants have done, apparently because they do not like the Special Discovery Magistrate's rulings, or perhaps because they wish to conceal the fact that Gawker Defendants were involved in the leak to *The National Enquirer*, in violation of the Court's order, and they do not want Judge Case to preside over that issue, because he is likely to get to the bottom of the issue, and disallow Gawker Defendants' practices of stonewalling in discovery and otherwise being evasive in the investigation process.

Moreover, Gawker Defendants have no financial difficulty whatsoever. Unlike Mr. Bollea, whose career and income were impacted severely by the leak to *The National Enquirer*, which caused him to lose his job and income, Gawker Defendants issued a press release on July 2, 2015, the very afternoon that the Second DCA vacated the July 7 trial date, boasting Gawker Media LLC's increasing revenues as follows:

Year	Gawker Revenues
2010	$19,776,543
2011	$23,928,421
2012	$26,335,834
2013	$34,999,653
2014	$44,293,076

Gawker Defendants, with projected 2015 revenues likely exceeding $50 million, are hardly in the same position as the moving party in the *Gielchinsky* case, who claimed to be impoverished and unable to pay the fees of the special master. Gawker Defendants, by contrast, can easily afford to pay half the fees of Judge Case, and have no basis to cite the *Gielchinsky* case.

Wilson v. McKay, 568 So.2d 102, 103 (Fla. 3d DCA 1990) held that a **new referral order**, referring an attorney's fees issue to a master who had previously heard other issues in the case, could be objected to by a party. *Wilson* has no applicability to the case at bar, where the original

order extended to discovery issues throughout the remainder of the case. There has been no new referral of additional matters to Judge Case not covered in the original order.

Rosenberg v. Morales, 804 So.2d 622, 623 (Fla. 2d DCA 2002) held that the trial court could not refer a **non**-discovery issue (the valuation of stock shares) to a discovery referee without obtaining consent of all parties. *Rosenberg* is completely distinguishable because Gawker Defendants are objecting to Judge Case's continued hearing of discovery issues pursuant to his current appointment; the Court has not referred to Judge Case any matters that are beyond his initial appointment, to which both parties consented.

Joara Freight Lines v. Perez, 160 So.3d 114, 116 (Fla. 3d DCA 2015) held that the initial appointment of a special master is invalid if one party did not consent. Gawker Defendants admit that the initial appointment of Judge Case was proper, so *Perez* is inapplicable.

Washington Park Properties, LLC v. Estrada, 996 So.2d 892 (Fla. 4th DCA 2008) held that a reference could not extend to issues involving third parties who did not consent to the reference. Here, there are no issues with third parties, and Gawker Defendants did consent to the reference.

Rosen v. Solomon, 586 So.2d 1348 (Fla. 3d DCA 1991), involved an initial objection to a reference, as did *Novartis Pharmaceuticals Corp. v. Carnoto*, 798 So.2d 22 (Fla. 4th DCA 2001). Here, Gawker Defendants made no objection to the reference to Judge Case at the time. Gawker Defendants cannot object to him after he has ruled on several motions, and Gawker Defendants apparently are not happy with his rulings.

Gawker Defendants cites to no legal authority for the proposition that a party can simply "change its mind" and decide, after it previously consented to a special master, and now wishes to unilaterally terminate the appointment of that special master. On the contrary, Judge Case was duly appointed with the parties' consent, and therefore is empowered to continue ruling on discovery

matters for the remainder of the case. Gawker's improper "withdrawal" of its consent thus is without merit should be rejected or stricken.

Dated: August 20, 2015.

Respectfully submitted,

/s/ Kenneth G. Turkel

Kenneth G. Turkel, Esq.
Florida Bar No. 867233
Shane B. Vogt
Florida Bar No. 0257620
BAJO | CUVA | COHEN | TURKEL
100 North Tampa Street, Suite 1900
Tampa, Florida 33602
Tel: (813) 443-2199
Fax: (813) 443-2193
Email: kturkel@bajocuva.com
Email: svogt@bajocuva.com

-and-

Charles J. Harder, Esq.
PHV No. 102333
Jennifer J. McGrath, Esq.
PHV No. 114890
HARDER MIRELL & ABRAMS LLP
1925 Century Park East, Suite 800
Los Angeles, CA 90067
Tel: (424) 203-1600
Fax: (424) 203-1601
Email: charder@hmafirm.com
Email: jmcgrath@hmafirm.com

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by E-Mail via the e-portal system this 20th day of August, 2015 to the following:

Barry A. Cohen, Esquire
Michael W. Gaines, Esquire
The Cohen Law Group
201 E. Kennedy Blvd., Suite 1950
Tampa, Florida 33602
bcohen@tampalawfirm.com
mgaines@tampalawfirm.com
jhalle@tampalawfirm.com
mwalsh@tampalawfirm.com
Counsel for Heather Clem

David R. Houston, Esquire
Law Office of David R. Houston
432 Court Street
Reno, NV 89501
dhouston@houstonatlaw.com
krosser@houstonatlaw.com

Michael Berry, Esquire
Levine Sullivan Koch & Schultz, LLP
1760 Market Street, Suite 1001
Philadelphia, PA 19103
mberry@lskslaw.com
Pro Hac Vice Counsel for Gawker Defendants

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

Gregg D. Thomas, Esquire
Rachel E. Fugate, Esquire
Thomas & LoCicero PL
601 S. Boulevard
Tampa, Florida 33606
gthomas@tlolawfirm.com
rfugate@tlolawfirm.com
kbrown@tlolawfirm.com
abeene@tlolawfirm.com
Counsel for Gawker Defendants

Seth D. Berlin, Esquire
Paul J. Safier, Esquire
Alia L. Smith, Esquire
Michael D. Sullivan, Esquire
Levine Sullivan Koch & Schulz, LLP
1899 L. Street, NW, Suite 200
Washington, DC 20036
sberlin@lskslaw.com
psafier@lskslaw.com
asmith@lskslaw.com
msullivan@lskslaw.com
Pro Hac Vice Counsel for Gawker Defendants

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

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

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

/s/ Kenneth G. Turkel
Attorney