Filing # 30748485 E-Filed 08/11/2015 05:07:43 PM

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.
_____/

JOINT OPPOSITION OF THE GAWKER DEFENDANTS AND THEIR COUNSEL TO PLAINTIFF'S EMERGENCY MOTION TO CONDUCT DISCOVERY CONCERNING POTENTIAL VIOLATION OF PROTECTIVE ORDER, TO COMPEL TURNOVER OF CONFIDENTIAL DISCOVERY MATERIALS AND FOR ORDER TO SHOW CAUSE

Gawker Media, LLC, Nick Denton, A.J. Daulerio (collectively, "Gawker") and their counsel – including the law firms of Levine Sullivan Koch & Schulz, LLP ("LSKS") and Thomas & LoCicero PL ("TLo") – hereby jointly respond in opposition to the emergency Motion of plaintiff Terry Bollea.

Bollea's Motion seeks relief that is breathtaking in scope against both Gawker and its counsel. By his own admission, Bollea seeks this relief based on nothing but speculation that Gawker, its in-house counsel, or its outside law firms supplied the *National Enquirer* and its sister publication *Radar Online* (collectively, "the *Enquirer*") with information about racist and homophobic statements he made during one of his recorded sexual encounters with Heather Clem. Given that there is no factual or legal basis to support Bollea's Motion, it should be denied in its entirety.

First, to be entitled to any discovery into an alleged violation of a court order or contempt of court, Bollea must make a meaningful threshold showing both that a court order has been violated and that Gawker or its counsel are the likely culprits. He has not made either showing.

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Neither Gawker nor its attorneys provided the *Enquirer* with any information designated "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS' EYES ONLY." That is confirmed by actual evidence, as opposed to the mere speculation Bollea offers. Indeed, one of the reporters who wrote the *Enquirer* articles has publicly stated that Gawker was not the source. That statement is not surprising – after all, the information held by Gawker's counsel does not match the information reported by the *Enquirer*. The reported information, however, was known by literally dozens of people who are not parties to this litigation.

Second, the specific relief Bollea seeks – to have Gawker and its attorneys turn over all their computers, email systems, and electronic devices to wholesale inspection and review by a third party – is patently impermissible under Florida law. That conclusion applies with even more force to the discovery Bollea seeks from LSKS, TLo, and Gawker's in-house counsel. In effect, Bollea's Motion would vitiate the privileges of hundreds of these attorneys' clients who are not before this Court and whose communications do not relate to this litigation.

The Motion should, accordingly, be denied.

FACTUAL BACKGROUND

I. SINCE AT LEAST EARLY 2012, MANY PEOPLE HAVE HAD ACCESS TO RECORDINGS OF HOGAN'S RACIST AND HOMOPHOBIC STATEMENTS.

Neither Gawker nor its counsel have *ever* possessed or had access to much of what the *Enquirer* quoted Bollea saying. *See infra* at 5-7, 9-10. In particular, of the three DVDs depicting sexual encounters between Bollea and Ms. Clem that are now known to exist, Gawker only received one, and it was not the one with the racist and homophobic statements. But many other people have had access to that information for years, starting well before Gawker published the video excerpts at issue in October 2012.

Bubba Clem and Heather Clem have known about the racist language since the sexual encounters first took place eight years ago. Both were present for Bollea's statements, *see* Ex. 1, and Mr. Clem has stated that he retained a copy of at least one of the tapes, *see* Ex. 2.

By March 2012, a timeline summarizing the contents of the sex tapes was circulating in the Tampa and New York radio communities. *See* Conf. Ex. 3-C (Third-Party Dep.) at 77:3 – 79:20, 95:17 – 101:9; Conf. Ex. 4-C (timeline).[1]

Then, on April 26, 2012, the website *TheDirty.com* posted still photos from one of the tapes. The photo's caption read, *"Terry, do you remember what you said about black people in this sex tape . . . you are not Dog the Bounty Hunter?"* Ex. 5. Nik Richie, the publisher of *TheDirty.com*, whom the *Enquirer* described as "the first man to have listened to the Hulk tapes," was interviewed for the *Enquirer*'s reports and said that, on the tape, Bollea "100 percent said the N-word. He was just saying it like it was part of his vocabulary." Ex. 6 (*Enquirer* print edition dated Aug. 10, 2015, but available on newsstands on July 30).

On October 4, 2012, Gawker published the commentary and video excerpts that are at issue in this lawsuit. Gawker did not have a tape with the racist language on it. However, reports quickly surfaced showing that other media entities had access to different Hulk Hogan sex tapes or had sources who had seen different tapes. For example, on October 9, 2012, *TMZ* reported that it had seen a Hulk Hogan sex tape, and had a transcript of that tape, in which Bubba Clem stated: "If we ever did want to retire, all we'd have to do is use this footage of him." Ex. 7 (copy of Oct. 9, 2012 *TMZ Live* broadcast) at 23:50 – 25:31, *available at*

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[1] Because numerous aspects of the record in this case have been designated as confidential by Bollea, including portions that bear on his Motion, Gawker and its counsel submit herewith various confidential exhibits, which are referenced as "Conf. Ex." The confidential exhibits (3-C, 4-C, 11-C, 12-C, 18-C – 22-C, 30-C, and 39-C – 42-C) are attached to the Notice of Filing Confidential Exhibits, which is being filed contemporaneously with this Opposition.

http://www.tmz.com/videos/0_5fb6c0hk/. Gawker did not have that tape or know about what Mr. Clem actually said on that tape. Then, on October 18, 2012, the *Philadelphia Daily News* reported that "[a]nother source says he saw footage on one of the surreptitious recordings of Hogan . . . using the N-word and making other derogatory remarks about black people." Ex. 8. That report was followed by additional articles in other publications reporting the same fact. *See* Exs. 9 - 10. Again, Gawker did not have recordings with that language. Indeed, neither Gawker nor its counsel have *ever* had access to or seen such recordings.

During the same period, Keith Davidson, a Los Angeles attorney, attempted to facilitate, on behalf of a client, the sale of three sex tapes to Bollea, culminating in an FBI "sting" operation. Mot. at 18. In connection with that proposed transaction, Davidson or his client created a summary transcript of the tapes. *Id.*; Conf. Ex. 11-C (Davidson Transcript). As part of the proposed transaction and related criminal investigation, many other people watched or possessed these tapes, including, at a minimum, Davidson, Davidson's client, employees of the FBI and the U.S. Attorneys' Office, and additional people known to the FBI and federal prosecutors. *See* Conf. Ex. 12-C (list of persons who had access to these materials).

More recently, Tampa police and state law enforcement authorities have confirmed that they too are conducting an investigation relating to the tapes. *See* Ex. 13 (news report); Ex. 14 (Tampa Police Department General Offense Information); Ex. 15 (correspondence reflecting same); *see also* Conf. Ex. 16-C.

Finally, the same day that the *Enquirer* first reported that a tape showed Bollea using racist language, *TMZ* reporter Mike Walters confirmed on a television show that "I've actually seen this tape" and discussed having watched and heard Bollea's statements on the tape. *See*

Ex. 17 (July 24, 2015 *TMZ Live* broadcast) at 1:50 – 2:15, *available at* http://www.tmz.com/videos/0_vqdoqg2j/.

II. THE LIMITED SCOPE OF INFORMATION PROVIDED TO GAWKER'S COUNSEL IN THIS LITIGATION.

In contrast to the above, neither Gawker nor its attorneys have ever seen, heard, or had access to a video or audio recording containing the full racist and homophobic language disclosed in the *Enquirer*'s reporting. Instead, Gawker's attorneys – and only Gawker's attorneys – have had access only to the following materials, all of which Bollea has designated "CONFIDENTIAL – ATTORNEYS' EYES ONLY":

(1) ***The Sting Audio***. Contrary to what Bollea implies in his Motion, *see* Mot. at 5, 10, the FBI did not produce to counsel for Gawker audio of any of the sex tapes. Rather, it produced heavily redacted audio of the FBI sting operation (the "Sting Audio"). As counsel for Bollea noted at the July 30 hearing before this Court, that audio contains "offensive language on it," specifically in the portion of the audio in which the parties to the sting operation watched the tape with the racist language. *See* July 30, 2015 Hrg. Tr. (Ex. 32) at 32:4-14; *see also* Conf. Ex. 18-C at 3:04:45 – 3:08:50 (relevant portion of Sting Audio); Confidential Declaration of Gregg D. Thomas, filed July 30, 2015, at ¶ 20. Significantly, the redacted audio from the sting operation produced to Gawker's counsel simply does not include most of the quotes reported by the *Enquirer* and does not match what was reported. *See* Conf. Ex. 18-C at 3:04:45 – 3:08:50.

(2) ***The Radio Timeline***. In discovery, counsel for Gawker also received a copy of the timeline that was circulated in the Tampa and New York radio communities in early 2012, which it obtained in connection with a subpoena Bollea had served on a third party. *See* Conf. Ex. 4-C (timeline). That timeline does not contain the racist language published by the *Enquirer*. *See id.* It also does not reference Bollea's use of homophobic slurs, as reported by the *Enquirer*. *Id.*

(3) ***The Davidson Transcripts***. Lastly, counsel for Gawker received two redacted versions of the summary transcript prepared by Davidson or his client, one directly from Bollea and the other from the FBI. *See* Conf. Exs. 11-C (Bollea Davidson Transcript), 19-C (FBI Davidson Transcript) (together, the "Davidson Transcripts"). As demonstrated below, these transcripts do not match up with the statements attributed to Bollea in the *Enquirer* articles. *See infra* at 9-10.

Counsel for Gawker has never possessed proof that Bollea made the racist statements of the kind apparently obtained by the *Enquirer*, in large part because Bollea successfully thwarted Gawker's efforts to obtain that proof or take any discovery about the contents of the timeline and transcripts. *See, e.g.*, Conf. Exs. 20-C (Third-Party Dep.) at 431:17 – 436:10; Ex. 3-C (Third-Party Dep.) at 100:19 – 101:6; Ex. 21-C (Third-Party Dep.) at 57:9 – 61:5; Ex. 22-C (Plaintiff Dep.) at 816:5 – 832:6. Bollea's success at thwarting this discovery was based on his repeated representations both to this Court and to the Special Discovery Magistrate that he had no knowledge of the existence of any other tapes, and that any suggestion he had used racist language during one of his sexual encounters with Ms. Clem was nothing but the concoction of an extortionist. *See, e.g.*, Conf. Thomas Decl. at ¶¶ 51-56; Plaintiff's Motion *in Limine* No. 6 at ¶¶ 8-9, 20 & n.1, 49-56.[2]

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[2] *See, e.g.*, Ex. 23 (Resp. to Gawker Int. No. 5, in which Bollea states under oath that he "does not know if any other clandestine recordings exist other than the video . . . which was excerpted and posted by Gawker Media on its website"); Ex. 24 (July 1, 2015 Hrg. Tr.) at 201:5-11 (Bollea's counsel arguing that the DVDs should be excluded from the case because, "even if there is another third DVD which allegedly has the things they have been speculating might be on there, it could be an extortionist manipulating the audio through an impersonator"); *id.* at 225:9-20 (Bollea's counsel arguing that published reports about racist language should be excluded from the case because they are "tabloid stories that were speculating about a rumor" that "may have been coming from the extortionist"); *id.* at 246:2 – 247:9 (Bollea's counsel arguing that any mention of the FBI investigation should be excluded from the case because the investigation was "predicated on these tapes purportedly saying something that they don't say").

The only tapes that Gawker's counsel has ever seen are the versions initially produced by the FBI on three DVDs, which outside counsel for both parties viewed on June 30, 2015 and which did not include any of the racist language reported by the *Enquirer*. The FBI produced two re-processed DVDs to this Court on July 16, 2015. Gawker's counsel has never seen or had access to those DVDs. *See* Ex. 25 (July 22, 2015 letter from S. Berlin to the Court requesting opportunity to review "re-processed" DVDs).

III. THE *ENQUIRER* STORIES AND BOLLEA'S IMMEDIATE EFFORT TO BLAME GAWKER

On July 24, 2015, the online edition of the *Enquirer* broke the news that Bollea repeatedly made racist statements during one of the recorded sexual encounters he had with Ms. Clem. *See* Ex. 26. According to the report, among other things, Bollea repeatedly called African-Americans "n*ggers," and stated, "I guess we're all a little racist. Fucking n*gger." *Id.*; *see also id.* (reporting Bollea's statement that he objected to his daughter's African-American boyfriend and would prefer that, "if she was going to f*ck some n*gger, I'd rather have her marry an 8-foot-tall n*gger worth a hundred million dollars! Like a basketball player!").

On July 27, the *Enquirer* issued a follow-up story, reporting that Bollea mentioned singer/actor Jamie Foxx in making his racially offensive statements. Ex. 27. The next day, it broke the news that the tape depicted Bollea uttering homophobic slurs about the current owner of one of his earlier residences, including that "a big f*g lives there now!" Ex. 1; *see also* Ex. 6 (*Enquirer* print edition).

Despite his repeated representations to this Court and Judge Case, *see, e.g.*, *supra* at 6 & n.2, when Bollea was confronted with whatever evidence the *Enquirer* possesses, he quickly

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Despite these and other similar representations, Bollea and his counsel have possessed unredacted copies of the Davidson Transcripts and have had first-hand knowledge of the language on the tapes since 2012. *See* Conf. Thomas Decl. at ¶¶ 20, 49-56.

admitted that he made racist statements during one of his sexual encounters with Ms. Clem. *See* Mot. at 10 (referencing Bollea's communication with *Enquirer* before its initial report was published). Specifically, on the morning the first *Enquirer* report was published, Bollea issued an "exclusive" statement to *People Magazine* in which he admitted the accuracy of the *Enquirer*'s report and stated that he viewed the controversy over his racist remarks as an "important learning experience," one that he would use to "improve as a person." Ex. 28. Within a few hours of issuing this press statement, Bollea's attorney, David Houston, issued his own statement to *Fox News* seeking to blame Gawker for the *Enquirer*'s report: "I have my suspicions, as you can imagine. . . . If I can find out it is Gawker who leaked the transcripts, we will bury them." Ex. 29.

While Houston made this hasty public threat, the *Enquirer*'s report that day and in the days that followed undercut his theory entirely:

1. The *Enquirer* Never Claimed To Have Obtained Or Had Any Access To Any Documents Or Transcripts Produced In This Litigation. Tellingly, Bollea's Motion does not attach the actual *Enquirer* articles. In fact, the initial *Enquirer* report expressly stated that its reporting was based on "an extensive news probe" that "uncovered five independent sources who provided the dramatic contents of the tape to this publication." Ex. 26 (July 24 *Enquirer* article). That initial article repeatedly indicated that the *Enquirer* had multiple sources with first-hand knowledge of the *tape*, who had either conveyed what it said or provided some kind of transcript themselves. *See id.* ("'I guess we're all a little racist,' he crowed *on the tape*, multiple sources have confirmed exclusively to The ENQUIRER") (emphasis added); *id.* ("At that point *on the tape*, the former 'Hogan Knows Best' star bemoaned how a 'black billionaire guy' had offered to fund her music career.") (emphasis added). The article's only reference to sealed materials

indicated that the publication had *not* obtained access to any sealed transcripts, stating merely that the *Enquirer* "*learned* explosive transcripts of the loathsome conversation have been filed in a Florida court, under seal." *Id.* (emphasis added).

2. The *Enquirer*'s Reporting Does Not Match The Contents Of Any Materials Covered By This Court's Protective Order. That the *Enquirer*'s source material was different from any records Gawker's counsel has ever possessed or seen is borne out by the simple fact that the text of the conversation reported by the *Enquirer* does not match any of the records produced to Gawker's counsel, a fact that can be gleaned just by comparing those records to what the *Enquirer* reported. This is true in two respects. First, the *Enquirer* reported statements by Bollea that are not contained in any of the sealed records. Second, even where certain aspects of the conversation appear to overlap, the *Enquirer*'s version of what Bollea said contains significant differences.

A full comparison of the many differences between the Davidson Transcripts and the statements attributed to Bollea in the *Enquirer* reports is set forth in a chart contained in the accompanying confidential submission. Conf. Ex. 30-C. Just by way of example, the discrepancies detailed in that chart include:

- The *Enquirer* reported that Bollea can be heard on the tape saying, "'I guess we're all a little racist. Fucking n*gger,'" but that quote does not appear anywhere in the Davidson Transcripts, *id.*;
- The *Enquirer* reported that, in discussing his daughter, Brooke, Bollea said, "'I'd rather have her marry an 8-foot-tall n*gger worth a hundred million dollars! Like a basketball player!,'" but the statement that appears in the Davidson Transcripts

does not include the phrase "n*gger worth a hundred million dollars" or the statement "[l]ike a basketball player," *id.*; and

- The *Enquirer* reported that, on the tape, Bollea is given "a pair of inscribed 'Hulk Hogan' Oakley sunglasses," but the Davidson Transcripts indicate only that Bollea received inscribed sunglasses and say nothing about the substance of the inscription. *Id.*

Similarly, none of these statements can be heard in the Sting Audio. *See* Conf. Ex. 18-C.

3. The *Enquirer* Reporter Stated Gawker Was Not The Source. That Gawker was not a source for the *Enquirer* was confirmed by the *Enquirer* itself. On the day the *Enquirer* first broke this story, shortly after Houston threatened to "bury" Gawker, and days before Bollea filed his Motion, one of the story's authors, Lachlan Cartwright, publicly stated in a tweet that Gawker did ***not*** provide the information it reported about Hogan's racist and homophobic statements. After Houston accused Gawker of leaking protected material, Peter Sterne, the media reporter for *Capital New York*, tweeted the *Fox News* story containing Houston's threat and commented: "Just for the record, I HIGHLY doubt that Gawker had anything to do with the racist Hulk Hogan transcript leak." Ex. 31.

Cartwright responded to Sterne's tweet as follows: "@petersterne ***they didn't***. An exhaustive @radar_online @NatEnquirer investigation uncovered multiple sources who provided us with transcript." *Id.* (emphasis added). This statement by Cartwright is consistent with what is actually stated in the *Enquirer*'s news reports, which make clear that the reporting was based on "interviewing" multiple "independent sources."

IV. BOLLEA'S REQUEST FOR UNPRECEDENTED DISCOVERY AND RELIEF

Despite the foregoing record, Bollea nevertheless seeks discovery that is so breathtaking in its scope that we have found no precedent for anything like it in the State of Florida. For example, Bollea seeks an order that would require the individual defendants in this case, all of Gawker's employees, and their attorneys and agents to grant to a third-party "electronic forensic expert" access to all of their work *and* personal "computer network(s), systems, servers, tablets, and smart phones." Mot. at 2, 21. The "electronic forensic expert" would search all of those thousands of devices for any data using terms like "Hulk," "Hogan," "Terry," "Bollea," or the "offensive language." *Id.* Then, any record containing any one of those terms would be produced to Bollea, so long as the "electronic forensic expert" thinks that the record is not privileged and regardless of whether it has anything to do with the alleged leak, information under the Protective Order, or Bollea's racist statements. *Id.* at 2-3, 21. Moreover, although Bollea's Motion states that Gawker and its counsel can seek the return of privileged documents within a week, the "electronic forensic expert" would be making privilege determinations in the first instance. Thus, Bollea's lawyers would be able to scrutinize improperly produced privileged documents and then are empowered to hold on to those documents until it is "ascertained that they are privileged." *Id.*

The Motion asks that this entire process be supervised by the Special Discovery Magistrate, who, contrary to Florida law, would be empowered to make "binding rulings." *Id.* at 3, 22. And, throughout this massive investigation, Bollea requests that "any discovery violations by Gawker will be met with discovery sanctions and treated as a contempt of court." *Id.*

Despite the absence of any evidence or law, Bollea seeks an order to show cause and hopes this dragnet will support such an order. *Id.* at 4. Buried deep within his Motion, Bollea makes clear that he hopes to use this episode to avoid a trial on the merits and secure "judgment as to liability against [the] Gawker Defendants" in this $100 million lawsuit, to "incarcerat[e]" Gawker employees and their counsel, and to obtain "restitution for all damages caused to Mr. Bollea" by the disclosure of any protected information. *Id.* at 23. In other words, Bollea asks this Court to declare that in 2015 it is the public policy of the State of Florida to award him judgment as a matter of law and, despite the fact that the evidence demonstrates Gawker and its counsel were not involved, reward him with additional compensation because the public learned the true and newsworthy fact that he called African-Americans "fucking n*ggers" and gay Floridians "f*gs."

As demonstrated below, none of this relief is appropriate. Indeed, Bollea has not met his burden of even showing any discovery or investigation is warranted.

ARGUMENT

Not once in his Motion, or at the hearing before this Court, has Bollea cited *any* authority supporting the relief he seeks. There are clear legal standards governing this type of request, and they impose a high burden on Bollea. His Motion does not even come close to meeting them.

I. BOLLEA PROVIDES NO BASIS TO CONCLUDE THAT A COURT ORDER WAS VIOLATED OR THAT GAWKER OR ITS COUNSEL PERPETRATED ANY VIOLATION.

A party seeking discovery to support accusations of a violation of a court order or contempt of court must make two showings before a court can order such discovery. First, there must be some meaningful showing that a court order has been disobeyed. *See, e.g.*, *800 Adept, Inc. v. Murex Secs., Ltd.*, 2007 WL 2412900, at *2 (M.D. Fla. Aug. 21, 2007) ("Before a court

initiates a contempt proceeding or *permits extensive discovery of suspected violations* of its [order], there should be at least a prima facie showing by the aggrieved party of disobedience of the order.") (quoting *N.W. Controls, Inc. v. Outboard Marine Corp.*, 349 F. Supp. 1254, 1256 (D. Del. 1972)) (emphasis added); *Privitera v. Amber Hill Farm, LLC*, 2012 WL 1900559, at *3 (M.D. Fla. May 24, 2012) ("More than Defendants' unverifiable belief that a violation of law has occurred is required before the discovery Defendants seek will be permitted."); *Fla. v. Jones Chem., Inc.*, 1993 WL 388645, at *4 (M.D. Fla. Mar. 4, 1993) (rejecting request for discovery into an alleged violation of a protective order where the evidence the requesting party submitted was insufficient to raise the possibility of a violation beyond the level of speculation); *Gyrodata Inc. v. Gyro Techs., Inc.*, 2010 WL 4702363, at *2-3 (D. Conn. Nov. 12, 2010) (denying request for discovery where the "only possible relevance of the production request . . . is to suss out a possible violation of a protective order" and the grounds for concluding that a violation occurred were "too speculative").

If that first hurdle is surmounted, there must then be a similar showing that the party from whom discovery is sought is likely responsible for disobeying the order. *See, e.g.*, *Privitera*, 2012 WL 1900559, at *2 (declining to permit discovery related to alleged violations of a protective order because "all Defendants have is their own suspicion concerning who published information about this case on the internet"); *800 Adept*, 2007 WL 2412900, at *2 (rejecting request for discovery into possible disobedience of a court order where "there [we]re plenty of suspicions and lots of conclusory allegations," but nothing more).

In this case, Bollea's Motion does not reference these tests, let alone try to satisfy them. Instead, by his own admission, he has offered this Court only "suspicions" that "Gawker could

be the source of the leaked information published by the *National Enquirer*." Mot. at 6. Worse still, he has offered "suspicions" that are directly at odds with the available evidence.

A. There Is No Evidence That A Protective Order Was Violated.

Bollea offers two reasons why he contends this Court's Protective Order was violated. First, he repeatedly asserts that the *Enquirer* articles say they are based on leaked, sealed documents. *See, e.g.*, July 30, 2015 Hrg. Tr. (Ex. 32) at 11:21 – 12:3 (the articles "actually state that the documents upon which they were basing the story were sealed under this Court's protective order").[3] Second, he contends that the articles must be taken directly from "ATTORNEYS' EYES ONLY" documents because the articles are just "verbatim statements from this sealed discovery." Mot. at 16; *see also* July 30, 2015 Hrg. Tr. (Ex. 32) at 59:14-15 (Bollea's counsel arguing that there are "two transcripts. They match up.").

Both assertions are wrong. First, it is telling that Bollea did not attach the *Enquirer* articles that purportedly form the basis for his Motion. The text of those articles makes clear that the *Enquirer* never stated that its reporting was based on sealed documents. *See supra* at 8-9. Rather, the articles indicated that sources with direct access to the tape itself had provided the *Enquirer* with "the contents of the tape." *Id.* It is thus hopelessly speculative to suggest that the *Enquirer* obtained any access at all to any materials subject to this Court's Protective Order. Indeed, Gawker's counsel never had access to "the contents of the tape" that included the statements reported by the *Enquirer*. *See supra* at 5-7, 9-10.

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[3] *See also* July 30, 2015 Hrg. Tr. (Ex. 32) at 21:17-19 ("On the 24th, the *Enquirer* publishes the story disclosing the contents of what they call 'sealed transcripts.'"); *id.* at 22:14-24 ("The *Enquirer*, in its concession that the documents or materials upon which its story were based were sealed documents, sealed court documents" and "one of the three parties that had access to these materials, Gawker's counsel, Bollea's counsel, or the FBI's counsel or the FBI, would have had to provide it to the *Enquirer*."); *id.* at 31:16-23 ("I mean, with the *Enquirer* referring to the fact that their story is based on sealed court documents"); *id.* at 56:2-19 (claiming that *Enquirer* says it is "quoting language from sealed court documents").

Second, and more importantly, the articles clearly do not consist of "verbatim statements" from any "sealed discovery" materials provided to Gawker's counsel. To the contrary, the *Enquirer* reported some statements that are not contained at all in the protected materials, and other statements that appear to be based on something other than the transcripts produced in this litigation because, in many instances, the words quoted by *Enquirer* differ from those transcripts. *See* Conf. Ex. 30-C (chart comparing statements in *Enquirer* stories with Davidson Transcripts). Bollea does not explain how the information obtained and published by the *Enquirer* supposedly came from sealed documents in this case when that information is not contained in sealed documents in this case. Bollea cannot simply wave away these discrepancies by insisting that the *Enquirer*'s reporting somehow *had* to have been based on sealed materials, since so many people outside of this litigation had access to the information the *Enquirer* reported.

B. There is No Basis to Infer That Gawker or Its Counsel Was The *Enquirer*'s Source For Bollea's Statements.

The *Enquirer*'s reporter has publicly stated that Gawker was not the source of the information reported about Bollea's racist and homophobic slurs. Bollea offers no basis at all for the Court to ignore the reporter's explicit statement – a statement that refuted Bollea's theory before he even filed the instant Motion. That alone should end this matter.[4]

[4] At the July 30 hearing, Bollea's counsel argued – with absolutely no evidence – that the *Enquirer* reporter must have been lying. July 30, 2015 Hrg. Tr. (Ex. 32) at 55:25 – 56:1 ("he's not the guy I'm going to believe"). Yet, Bollea has admitted that the same reporter accurately recounted Bollea's statements on the tapes, while Bollea and his counsel previously told this Court that the claim Bollea had made racist statements was a fabrication. *See, e.g.*, *supra* at 6 & n.2 (citing to transcripts and filings). In any event, Bollea cannot show an entitlement to incredibly invasive discovery merely because his counsel is "a skeptic" and "a little cynical" about evidence that directly contradicts his unsupported accusations. July 30, 2015 Hrg. Tr. (Ex. 32) at 55:21-25. That is not the test, and a hunch on the part of plaintiff's counsel falls woefully short of the showing required.

Moreover, there are numerous people who, unlike Gawker or its counsel, did have access to the full tape and/or the contents of that tape, including:

- Bubba Clem;
- Heather Clem;
- Keith Davidson, whoever provided Davidson with copies of the three tapes, and whoever worked with him in attempting to sell the rights to the tapes;
- Multiple law enforcement personnel connected with the federal and state investigations relating to the DVDs and the subsequent FOIA litigation;
- Nik Richie and whoever provided a copy of the tape to him in April 2012;
- Mike Walters of *TMZ* and whoever provided him with a copy of the tape in October 2012;
- The people who were the sources for the multiple other media reports about Bollea's racist language in October 2012; and
- Additional people identified in Confidential Exhibit 12-C.

Simply put, Bollea cannot get discovery into an alleged "leak" by Gawker or its counsel where the facts show that the *Enquirer* reported information Gawker did not have, ***but multiple other people did***. *See Privitera*, 2012 WL 1900559, at *3 (denying discovery into conduct that, if committed by plaintiffs, would constitute a violation of the protective order where "the conduct complained of could have been committed by anyone").

And while it is not Gawker's burden to attempt to prove a negative, Gawker's counsel, as officers of the Court, have stated unambiguously that neither Gawker nor its lawyers leaked any protected material, including, in the case of Gawker, because counsel did not provide that information to their clients. *See, e.g.*, July 30, 2015 Hrg. Tr. (Ex. 32) at 35:3 – 36:17, 47:19 – 48:5 (statements by S. Berlin at this Court's July 30, 2015 hearing); Mot. Ex. F (July 14, 2015 correspondence from S. Berlin to the Court confirming that Gawker and its counsel have

complied with the Protective Order). Courts have repeatedly held that such representations are conclusive absent a clear showing to the contrary by the movant. *Privitera*, 2012 WL 1900559, at *1 ("Plaintiff and her lawyer deny responsibility for the internet posts," to which movant offers nothing more than speculation); *Gyrodata Inc.*, 2010 WL 4702363, at *3 (denying discovery into alleged violation of protective order where counsel for alleged leaker represented, as officers of the court, that no such leak had occurred).

C. Bollea's Speculative Bases For Seeking Discovery Are Unfounded And Misstate The Record.

Bollea's Motion asks the Court to ignore these indisputable facts and instead accept his suspicion as a sufficient ground for unprecedented discovery and other wide-ranging relief. Bollea's conjecture is based on four things, each of which is based on a distortion of the actual record and fatally flawed logic. We address each of them in turn.

1. Mr. Berlin's Argument at the July 2 FOIA Hearing

First, Bollea points to a single sentence lifted from a lengthy argument by Gawker's lead counsel, Seth Berlin, at the July 2 hearing in the FOIA lawsuit in which he referred to "Gawker's interest as a news organization" in "how the government is operating." *See* Mot. at 7 (quoting Mot. Ex. B, excerpts of July 2, 2015 FOIA Hrg. Tr.). According to Bollea, by this statement Berlin announced in open court that Gawker was "shifting gears to write a news story," July 30, 2015 Hrg. Tr. (Ex. 32) at 60:11-15, for which he planned to violate this Court's protective order and disclose the contents of the transcripts. In other words, Bollea maintains that, as a 25-year veteran of the bar, Mr. Berlin announced to the Court and the national media, with Bollea's counsel present in the courtroom, that he was about to violate a court order that he knew would place him in legal jeopardy. That thesis is absurd on its face.

In any event, Bollea's theory is wholly disproved by the full transcript from that proceeding. Mr. Berlin made his comments in response to repeated questions from Judge Bucklew about the public interest served by Gawker's records request, which is an aspect of the legal inquiry under FOIA with respect to one of the exemptions claimed by the Government. *See* July 2, 2015 FOIA Hrg. Tr. (Ex. 33) at 65:17-22 (THE COURT: "it's up to you to tell me what . . . the public interest is . . . in the disclosure of these . . . documents").[5] Berlin's point had nothing to do with publishing the content of any tapes, but rather addressed Judge Bucklew's questions about whether the FOIA request reflected a public "interest in understanding . . . how is the government operating." *Id.* at 71:7-12; *see also id.* at 71:23-25 (Berlin responding to question by explaining that "the main point of FOIA is to allow the public to understand how the government is operating"); *id.* at 72:11-18 ("Gawker as a news organization" was questioning "how . . . the government is operating. And maybe there [are] good and valid reasons, but the whole point of this statute is to be able to scrutinize those reasons."). When Mr. Berlin was finished, Judge Bucklew accepted his argument and granted Gawker much of the relief it was seeking. *Id.* at 91:19-22 ("The items that I am ordering produced or that they have produced were pursuant to a FOIA request and that's what FOIA is, it's something the public 'is entitled to.'").[6] Bollea's effort to transform an attorney's necessary and successful legal argument into a public announcement of an impending violation of a court order should be soundly rejected.

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[5] *See also* July 2, 2015 FOIA Hrg. Tr. (Ex.33) at 65:17-18 (Judge Bucklew directing Mr. Berlin to address "what the public interest is"); *id.* at 19:17-19 (THE COURT: "But that's probably a fair exemption unless there is some public interest that outweighs it or it's been previously disclosed."); *id.* at 20:22 – 21:1 (THE COURT: "[U]nless . . . there is a public interest that outweighs, that would seem probably fair."); *id.* at 23:9-16 (THE COURT: "without Mr. Berlin on behalf of Gawker weighing in either on public interest . . . I can't really tell" how to rule).

[6] Bollea contends that Judge Bucklew was "indignant," offended by, and "challenged" Berlin's statements, which Bollea contends revealed a bait-and-switch strategy on both this

2. Mr. Berlin's Email Concerning The FBI's Audiotapes

Next, at the July 30 hearing, Bollea's counsel repeatedly claimed that Mr. Berlin sent an email on July 22 in which he refused to treat the audio produced by the FBI as confidential.[7] The inference Bollea seems to suggest is that Berlin therefore felt free to share it with the media. These representations that Bollea's counsel made five times in the course of his argument are demonstrably false. Berlin's email stated exactly the opposite:

> Finally, in response to Ken Turkel's recent correspondence, this will confirm that, although we do not think plaintiff's designations are appropriate, we will maintain all materials produced by the FBI as "Confidential-Attorney's Eyes Only" and will move to file any such documents under seal.

Mot. Ex. O. In any event, as noted above, the audiotape produced to Gawker's counsel indisputably could not have been the basis for the *Enquirer*'s reports. *See supra* at 5, 10.

3. Mr. Denton's Posting About The Lawsuit's "Third Act"

Bollea makes the same absurd argument about defendant Nick Denton, Gawker's CEO, that he made about Mr. Berlin's statements at the FOIA hearing. He points to a July 10 commentary Denton wrote about the state of the case after the postponement of the trial. Among many other things in the column, Denton noted that Gawker's lawyers were "pursu[ing] a lead about a suspicious audio track" and offered a prediction that "[t]here will be a third act which we

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Court and Judge Bucklew. July 30, 2015 Hrg. Tr. (Ex. 32) at 24:19 – 25:2; 60:16-18. This is demonstrably false. The full transcript of the July 2 FOIA hearing confirms that Mr. Berlin made the remarks cited by Bollea in response to questions posed by Judge Bucklew, that his point was about how the *government* was operating, that Judge Bucklew credited that point, and that she granted Gawker significant relief.

[7] *See* July 30, 2015 Hrg. Tr. (Ex. 32) at 21:12-14 ("And so now we see, again, he's taken his position the audio is not confidential, what are they going to do with the audio."); *id.* at 21:20-22 ("We look at Mr. Berlin's statement that he's not treating the audio as confidential."); *id.* at 22:12-13 ("Mr. Berlin's refusal to treat the audio as confidential."); *id.* at 24:7-11 ("Judge, when you look at it against the background of Mr. Berlin telling us that he doesn't believe the audiotapes are confidential and within a couple days the *National Enquirer* is publishing an article"); *id.* at 59:10-12 ("what I didn't hear Mr. Berlin talk a lot about was him telling Mr. Harder he didn't think the audiotapes were confidential.").

believe will center on the real story: the additional recordings held by the FBI, the information in them that is Hulk Hogan's real secret, and irregularities in the recordings which indicate some sort of cover-up." *See* Mot. Ex. D. In the very next passage of the commentary, which Bollea's Motion simply ignores, Denton explained that his "**prediction is based on court filings, existing press reports and publicly available information. Our external lawyers and in-house counsel are severely limited in what they can tell me**." *Id.* (emphasis added).

Denton's commentary thus explicitly states that he did not have any access to information only attorneys were privy to. And, while Bollea nevertheless speculates that the reference to his "real secret" means that Denton knew about information designated "ATTORNEYS' EYES ONLY" and intended to leak that information, this speculation is again premised on the illogical thesis that someone would boldly announce to the world that he intended to violate a court order.

Actually, as Denton's commentary itself makes clear, the "third act" referred to the next phase of the litigation and the "real story" referred to the widely reported fact that there were newly discovered tapes and other information held by the federal government that Gawker's counsel believed contained damaging information, and which Bollea's legal team was fighting tooth-and-nail to conceal – *i.e.*, what undoubtedly was Bollea's "real secret." Indeed, Denton's commentary pointed to and quoted from many prior press reports stating the exact same things, including:

- An article published by the *New York Observer* on June 23, 2015, which stated that "[a]n official document, never reported on until now, outlines some of the evidence held by the FBI in the course of its investigation, including a case containing three DVDs. . . . What's on the DVDs? We have no idea," Ex. 34 (http://observer.com/2015/06/in-hulk-hogan-v-gawker-fbi-holds-three-mystery-dvds/);

- A June 29, 2015, column published by *The Hollywood Reporter* titled "Hulk Hogan's Sex Tape Case Against Gawker Has a Lot of Secrets," which noted that "Hogan's lawyers are also marking nearly every court document confidential. . . . our personal favorite: Hogan's opposition to *Gawker*'s motion to permit presentation of offensive language at trial" and reported that "Hogan's lawyers have brought motions to exclude a wide-range of possible evidence including . . . evidence in connection to the FBI's investigation of the sex tape," Ex. 35 (http://www.hollywoodreporter.com/thr-esq/hulk-hogans-sex-tape-case-805741);

- A July 1, 2015 article from *Vice*, which reported that "[t]he court's decision to allow the defense access to the FBI materials prompted an avalanche of filings from Hogan's lawyers, who are now frantically trying to close the trial to the public and press, and to seal a multitude of documents. . . . [I]t appears that Hogan and his lawyers are moving heaven and earth to prevent the very thing they originally sought: an airing of the facts. It's difficult to avoid the impression that the FBI documents and DVDs . . . might contain information that is damaging to Hogan in some other way," Ex. 36 (http://motherboard.vice.com/read/hulk-hogans-sex-tape-is-about-to-go-to-trial-gawker); and

- An article from *Buzzfeed* published on July 2, 2015 that reported on the FOIA hearing that day and noted that "a portion [of a tape] didn't match up to the transcripts," which prompted Gawker's counsel to explain "[t]here is something that is particularly sensitive and of interest to us in the case and that is the portion that has been overdubbed," Ex. 37 (http://www.buzzfeed.com/maryanngeorgantopoulos/hulk-hogan-sex-tape-trial-against-gawker-is-postposed-no-new#.kuy6XwnVP).

In other words, Denton was simply saying what many others in the media had observed: The FBI files appeared to contain damaging information that Bollea was aggressively seeking to hide from public view. No lawyer needed to tell Denton that. Numerous published reports, which he cited and quoted, made those facts clear.

4. Gawker's Supposed "Desperation"

Finally, Bollea asks this Court to infer that Gawker and its counsel had a "motive" to violate the Protective Order because of Gawker's supposedly "desperate" litigation position. Mot. at 5, 11-17. Leaving aside the unprofessional suggestion that Gawker's counsel would risk their careers and violate court orders out of fear of losing a trial, Gawker would hardly characterize its prospects of ultimately prevailing in this case as "dismal." *Id.* at 5. Indeed, Gawker has confidence in the ability of a jury, when presented with the full facts, to reject Bollea's claims, and, were an appeal necessary, the Court of Appeal already has ruled unanimously that Gawker's publication addresses a matter of public concern and is protected by the First Amendment. *See Gawker Media, LLC v. Bollea*, 129 So. 3d 1196 (Fla. 2d DCA 2014).

In addition, Gawker's litigation position was substantially **strengthened** after it received the FBI materials. As Bollea notes, Gawker has been seeking the FBI's investigative file to use in conjunction with this case since 2013. Mot. at 18. Gawker has sought those materials because it believed they would include relevant statements by Bollea and his counsel. *See, e.g.*, Ex. 38 (Gawker's Mot. to Compel FBI Authorization, filed Dec. 18, 2013) at 1, 2, 3-4. In fact, that is *exactly* what the FBI materials include – and, significantly, they also include numerous statements that contradict both sworn testimony in this litigation and numerous representations by Bollea's counsel to this Court. *See* Conf. Thomas Decl. at ¶¶ 49-61. Simply put, although Bollea claims he was injured to the tune of $100 million by the publication of nine seconds of

grainy black and white footage of him having sex, the record before this Court now demonstrates that (a) he is not concerned with publicity about his sex life, which he has often discussed in graphic detail; (b) he instead publicly filed a $100 million lawsuit and initiated a federal criminal investigation to send a clear message to anyone who might have had access to the DVD containing the racist and homophobic comments (Gawker didn't) not to publish them; and (c) he and his counsel repeatedly misrepresented the facts to argue otherwise. *See, e.g.*, Pl.'s Mot. *in Limine* Nos. 4, 6, 17; note 2 *supra*. Having discovered relevant evidence that undermines plaintiff's claims in this case and evidence concerning plaintiff's misrepresentations, and looking forward to using the FBI materials in this litigation, the last thing Gawker or its counsel would want is to create a sideshow over leak accusations.[8]

At bottom, Bollea's argument is based on speculation and distortion that is debunked by the very material on which he bases his Motion and undermined by actual evidence he ignores. Bollea simply has made no showing that a court order was violated or that Gawker and/or its counsel was a source of the *Enquirer* stories, and there is a substantial factual record indicating exactly the opposite. The Motion should be denied on this ground alone.

II. THE ELECTRONIC DISCOVERY BOLLEA SEEKS IS NOT PERMITTED BY THE FLORIDA RULES AND IS UNCONSTITUTIONAL.

Bollea demands that an "electronic forensic expert" be given direct access to all the electronic devices possessed by anyone at Gawker, LSKS, and TLo. Even before addressing the unique problems associated with ordering such discovery from Gawker's attorneys, which are

[8] Bollea contends that this Court already ruled that the materials relating to the FBI's investigation, other sex tapes, and Bollea's use of racist language were inadmissible. Mot. at 17. In fact, that ruling was made **without prejudice** because Gawker had not yet received the FBI's documents. *See* July 1, 2015 Hrg. Tr. (Ex. 24) at 216:25 – 217:8. Gawker trusts that evidence of possible fraud on this Court, the perjury of certain witnesses, and plaintiff's lack of damages will be admissible at trial, and it looks forward to filing appropriate motions and seeking other relief addressing these issues once the FBI's production (which is ongoing) has been completed.

discussed below, this kind of electronic discovery is simply not permitted under these circumstances. Florida courts have held over and over again that discovery of this type presents grave dangers to the preservation of privileges and confidentiality, including constitutional privileges, and have, accordingly, repeatedly granted certiorari relief in the face of orders compelling such discovery. *See, e.g.*, *Holland v. Barfield*, 35 So. 3d 953, 956 (Fla. 5th DCA 2010); *Menke v. Broward Cty. Sch. Bd.*, 916 So. 2d 8, 12 (Fla. 4th DCA 2005); *So. Diagnostics Assoc. v. Bencosme*, 833 So. 2d 801, 803 (Fla. 3d DCA 2002); *Strasser v. Yalamanchi*, 669 So. 2d 1142, 1145 (Fla. 4th DCA 1996).[9]

Indeed, courts have held that the ***only*** circumstance in which a court may compel the wholesale inspection of a party's computers, phones, or other data device by an adversary or third party is where there is evidence of ***spoliation***, and, even then, there must be a further showing that there is a "likelihood the information exists on the device[s]" being inspected, and that "no less intrusive means exists of obtaining the requested information." *Holland*, 35 So. 3d at 955 (citing *Menke*, 916 So. 2d at 12). Bollea has not – and cannot – meet this demanding showing, and therefore the incredibly intrusive relief he seeks (literally rummaging through hundreds of devices, both professional and personal) is simply not permitted as a matter of law.

[9] Bollea demands that each of Gawker's more than 250 employees and each of its law firms' more than 70 attorneys and employees turn over all of their personal devices to an expert who would then search and review them for any document containing words like "Hogan" or "Terry" or "hulk" or any offensive language. That would strip all those persons of any right or privilege at all in connection with any document that happened to contain such a word, including documents consisting of spousal communications. *Cf. Riley v. California*, 134 S. Ct. 2473, 2485, 2489-91 (2014) (recognizing that "[c]ell phones . . . place vast quantities of personal information literally in the hands of individuals" and cataloging the scope of that information).

III. THE ELECTRONIC DISCOVERY BOLLEA SEEKS FROM LSKS, TLo, AND GAWKER'S IN-HOUSE COUNSEL IS PATENTLY UNCONSTITUTIONAL AND BARRED BY FLORIDA LAW.

The case law discussed above makes clear that even with respect to an opposing party, the law prohibits the electronic discovery Bollea seeks. But Bollea wants far more than that, because he wants to take the same discovery of LSKS, TLo, and Gawker's in-house counsel. He demands that these firms and lawyers hand over to an expert *all* of their client's electronic documents and communications, so that the expert may produce any that happen to contain a common name like "Terry," a common word like "hulk," and all communications with the *Enquirer*.

In effect, Bollea demands that the Court destroy the attorney-client and all other privileges of hundreds of non-parties who are not present before this Court. We have found no precedent where a party has even had the audacity to propose such patently extreme, impermissible, and unconstitutional discovery of a law firm and in-house counsel. That reality speaks volumes in itself.

The law places severe restrictions on a party's ability to take discovery from opposing counsel, even where, as is not the case here, only routine discovery is sought that implicates a narrow issue in a specific case. *See, e.g.*, *Eller-I.T.O. Stevedoring Co., LLC v. Pandolfo*, --- So. 3d ---, 2015 WL 3759570, at *1 (Fla. 3d DCA June 17, 2015); *Steinger, Iscoe & Greene, P.A. v. Geico Gen. Ins. Co.*, 103 So. 3d 200, 206 (Fla. 4th DCA 2013). Bollea's request goes far beyond that, and the principles which have caused Florida courts to declare such discovery out-of-bounds with respect to an opposing party apply with even more force to opposing law firms. Indeed, the scope of the potential infringement of the law firm's and in-house counsel's privileged communications and documents is staggering. For example:

A. Bollea Demands That the Court Divest Numerous Parties Who Are Not Before this Court of Their Attorney-Client Privilege.

Bollea asks the Court to order that a third-party "expert" "examine . . . any and all" LSKS and TLo files to determine whether they communicated with "any other members of the media or third parties, directly or indirectly, concerning Mr. Bollea or this lawsuit." Mot. at 2, 21. As this Court is aware, LSKS and TLo are law firms that specialize in media law, who between them represent hundreds of "other members of the media" throughout the country. And, it is no secret that this case is being closely watched by media lawyers around the country for its potential impact on First Amendment law.

As a result, this request would require LSKS and TLo to disclose to an "expert" any legal advice they may have given to any client concerning the possible impact of this case on that client's activities – including the impact of the multiple opinions issued by the Court of Appeal and federal court in this litigation – or any work product that might have been prepared for such client. Far more broadly, it would divest the privilege from any client who had any incidental connection to any of the search terms the expert would utilize – such as any employee, client, adversary, or witness named "Terry" or who had some matter related to someone named "Hogan" or involved "offensive language." In fact, Bollea actually demands that this Court divest all of these unknown entities of their attorney-client privilege immediately, without giving them, or LSKS or TLo, an opportunity to assert it. But such a disclosure of all client communications to the expert would itself vitiate the privilege, as it would constitute a disclosure of client confidences to a third party. *See, e.g.*, *Holland*, 35 So. at 955 (quoting *Menke*, 916 So. 2d at 12).

B. Bollea Demands That This Court Entirely Strip the *Enquirer*'s Attorney-Client Privilege For Its Media Litigation.

Bollea further demands that the "expert" get "any communications between Gawker Defendants or their counsel and the *National Enquirer* or *Radar Online*." Mot. at 2, 21. But as Bollea's experienced media counsel undoubtedly knows, both LSKS and TLo have for years represented the *Enquirer* in First Amendment cases, along with much of the rest of the nation's media. Thus, Bollea demands that this Court entirely eliminate these publications' attorney-client privilege for all matters in which LSKS and TLo represent them within whatever time frame the Court might choose.

C. Bollea Demands That This Court Entirely Divest Gawker of Its Attorney-Client Privilege for This Litigation.

Bollea demands that an expert review all electronic documents possessed by anyone within Gawker, LSKS, and TLo containing words like "Hogan." This would completely destroy Gawker's right to have any privilege for anything connected in any way to this litigation, as well as any other legal matter that had a word like "Hogan" or any "offensive language" (presumably "n*gger" or "f*g") contained somewhere in some document.[10]

IV. THE OTHER RELIEF BOLLEA SEEKS IS IMPERMISSIBLE.

Bollea seeks extensive relief in addition to electronic discovery, none of which should be granted. By his own admission, Bollea does not have any basis for seeking sanctions at this time and purports only to seek "leave to conduct discovery" that might uncover such a basis. Mot.

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[10] Bollea also requests an order that Gawker and its counsel provide a "privilege log . . . with respect to all privileged communications that are found that use such search terms." Mot. at 2, 21. That log would literally contain tens of thousands of documents and require all of Gawker's counsel to log every single one of their communications concerning the case and every single document they have created relating to this case throughout the life of this litigation.

at 2, 20. Yet, despite this concession, he is seeking relief that has nothing to do with his supposed desire to uncover the truth and is flatly disallowed by Florida law. For instance,

- He seeks an order requiring Gawker to turn over substantial swaths of discovery materials that have been designated "CONFIDENTIAL – ATTORNEYS' EYES ONLY," *id.*, even though there has been no finding of wrongdoing; he has cited no law holding that a party can be dispossessed of materials properly produced to it in discovery by a witness or otherwise lawfully obtained; and this requested relief would dramatically interfere with counsel's ability to defend this case, violating Gawker's rights under the First, Fourth, and Fourteenth Amendments in the process;

- He seeks an order appointing a Special Discovery Magistrate to oversee the investigation and empowering the Magistrate to issue "binding rulings," *id.*, even though the law explicitly requires "the consent of the parties" for such an appointment and provides that parties cannot be deprived of their right to file exceptions from the Magistrate's rulings, Fla. R. Civ. P. 1.490(c), (i); and

- He wants any conduct during this discovery process perceived to constitute a discovery violation to be automatically "met with discovery sanctions and treated as contempt of court," Mot. at 3, 22, yet cites no authority that would entitle him to this punitive relief without a hearing and an order to show cause based on actual evidence.

In sum, Bollea asks this Court to create an unprecedented Star Chamber in which he would be permitted to obtain wide-ranging records from Gawker and its lawyers' computers and electronic devices and to review their privileged communications, and this procedure would be subject to newly created rules that contradict well-established Florida procedure and basic due process. Bollea's request should be flatly and firmly rejected.

CONCLUSION

For the foregoing reasons, Gawker and its counsel respectfully request that Bollea's Motion be denied in its entirety.

August 11, 2015

Respectfully submitted,

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I HEREBY CERTIFY that on this 11th day of August, 2015, I caused a true and correct copy of the foregoing to be served via the Florida Courts' E-Filing Portal on the following counsel of record:

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