

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.

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**NOTICE OF HEARING AND SUPPLEMENTAL STATEMENT  
ON MOTIONS TO DETERMINE CONFIDENTIALITY  
OF VARIOUS COURT RECORDS AND TRANSCRIPTS**

Defendants Gawker Media, LLC, Nick Denton, and A.J. Daulerio (collectively, the “Gawker Defendants”), through their undersigned counsel and in accordance with Rule 2.420(e)(2) of the Florida Rules of Judicial Administration and the Agreed Protective Order entered in this action, notice for hearing (a) their Motion to Determine Confidentiality of Transcripts of Closed Court Proceedings, (b) the Motion For An Order Declaring that Plaintiff Has Improperly Designated Certain Discovery Materials as “Attorneys’ Eyes Only,” and (c) the pending motions to determine the confidentiality of the following court records that were provisionally filed under seal:

- Plaintiff’s Confidential Motion for Protective Order re: Certain Content in Documents Produced in Discovery, as well as the Exhibits thereto, filed on May 27, 2014;
- Affidavit of Charles J. Harder, and the Exhibits thereto, filed on May 27, 2014;
- Defendant’s Confidential Statement of Violations of Court Orders and Misrepresentations by Plaintiff and Plaintiff’s Counsel, as well as the Exhibits thereto, filed on June 6, 2014;

- The Gawker Defendants' Opposition to Plaintiff's Confidential Motion for Protective Order re: Certain Content in Documents Produced in Discovery, and the Exhibits thereto, filed on June 9, 2014;
- Plaintiff's Confidential Reply in Support of Motion for Protective Order re: Certain Content in Documents Produced in Discovery, as well as the Exhibits thereto, filed on June 16, 2014;
- Plaintiff's Confidential Supplemental Opposition to Defendants' Motion for Sanctions and Response to Evidence Raised By Gawker for the First Time on Reply, and the Exhibits and Affidavits thereto, filed on June 18, 2014;
- Opposition to Plaintiff's Motion for Setting of Trial Date and for Severance of Claims against Kinja, KFT, and Exhibits thereto, filed on October 16, 2014;
- Exhibits A and B to the Gawker Defendants' Exceptions to Report and Recommendation Denying Motions for Sanctions, filed on October 30, 2014;
- Confidential Supplemental Statement of Undisputed Material Facts in Support of Publisher Defendants' Motion for Summary Judgment and the Confidential Supplemental Affidavit of Rachel E. Fugate in Support of the Publisher Defendants' Motion for Summary Judgment, as well as the Exhibits thereto, filed on April 20, 2015;
- Confidential Information within Plaintiff's Opposition to the Gawker Defendants' Motion for Summary Judgment, Confidential Statement of Disputed and Undisputed Facts in Opposition to the Gawker Defendants' Motion for Summary Judgment, and the Confidential Supplemental Affidavit of Kenneth G. Turkel and Exhibits thereto, filed on May 11, 2015;
- Confidential Information within Plaintiff's Opposition to Heather Cole's (sued as Heather Clem) Motion for Summary Judgment, Confidential Supplemental Affidavit of Charles J. Harder, and Exhibits thereto, filed on May 11, 2015;
- Plaintiff's Trial Exhibits 15 and 16, which were attached to the Gawker Defendants' Motion *in Limine* to Exclude Letters Purporting to be Offers to Commercially Exploit the Sex Tape at Issue, filed on June 16, 2015;
- Exhibits A, B, and G to the Gawker Defendants' Motion for Continuance, filed on June 29, 2015;
- Confidential Declaration of Gregg D. Thomas, Esq., and the Exhibits thereto, filed on July 30, 2015;
- Notice of Filing Confidential Exhibits, and the Exhibits thereto, in Support of the Joint Opposition 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, filed on August 11, 2015; and

- Notice of Filing Confidential Exhibits, and Exhibits thereto, in support of Motion for an Order Declaring that Plaintiff Has Improperly Designated Certain Discovery Materials as “Attorneys’ Eyes Only,” filed this same day.

Each of these motions will be brought up for hearing before the Honorable Pamela A.M. Campbell on October 1, 2015, at 9:30 a.m.<sup>1</sup>

The Gawker Defendants respectfully request that the various transcripts and court filings be unsealed and made available on the public docket of this case. Each of these documents was filed under seal because plaintiff Terry Bollea, professionally known as Hulk Hogan, designated certain material in them to be “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

Florida “strongly disfavor[s] court records that are hidden from public scrutiny.” *In re Amendments to Florida Rule of Judicial Admin. 2.420-Sealing of Court Records & Dockets*, 954 So. 2d 16, 17 (Fla. 2007). This applies to discovery materials that have been submitted to the court as part of filings. *See Palm Beach Newspapers, Inc. v. Burk*, 504 So. 2d 378, 384 (Fla. 1987) (deposition transcripts become subject to a public right of access once filed with the court); *see also Media Gen. Convergence, Inc. v. Chief Judge*, 840 So. 2d 1008, 1016 (Fla. 2003) (documents received by chief judge in connection with court business are judicial records subject to public disclosure absent an applicable exemption). Plaintiff, who has designated the court filings listed above as confidential, “has a heavy burden to overcome” to keep those records hidden from the public. *Brugmann v. State*, 117 So. 3d 39, 55 (Fla. 3d DCA 2013), *on reh’g* (June 12, 2013). Because he is unable to meet that burden, the court records enumerated above

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<sup>1</sup>Although Florida Rule of Judicial Administration 2.420(e)(2) provides for a hearing on these motions within thirty days of their filing, the Gawker Defendants have noticed the hearing for October 1, 2015 because the Court previously reserved that date for a hearing in this case.

should be made public.<sup>2</sup> Each document was considered by the Court and/or the Special Discovery Magistrate before rendering rulings, and each is integral to these proceedings. In addition, as set forth in the motion challenging plaintiff's "ATTORNEYS' EYES ONLY" designations, we respectfully request that the various documents plaintiff designated as "CONFIDENTIAL – ATTORNEYS' EYES ONLY" under the Agreed Protective Order in this case be ruled either non-confidential or, at a minimum, simply "CONFIDENTIAL."

Plaintiff's proffered bases for confidentiality in nearly all of these documents no longer applies, given his own public statements and those of the federal government, which have in turn been widely reported in the media, concerning (1) the FBI investigation, (2) the fact that the FBI had collected as evidence DVDs of three separate sexual encounters he had with Heather Clem, and (3) the fact that one of those DVDs contains racist and homophobic statements by plaintiff.

In addition, each of these documents is relevant to the issues raised by plaintiff's pending Emergency Motion to Conduct Discovery Concerning Potential Violation of Protective Order, to Compel Turnover of Confidential Discovery Materials and for Order to Show Cause. Among other things, the various sealed court filings and records document the various false statements and misrepresentations that plaintiff made to persuade the Special Discovery Magistrate and the Court to allow him to designate the documents relating to the federal criminal investigation and documents related to plaintiff's "offensive language" as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" and to prevent the Gawker Defendants from pursuing discovery that was reasonably calculated to lead to the discovery of admissible evidence.

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<sup>2</sup> Even though the Gawker Defendants disagreed with plaintiff's confidentiality designations, they filed material designated by plaintiff as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," as required under the Agreed Protective Order, and filed motions to determine the confidentiality of court records in accordance with the Florida rules. The Gawker Defendants object to those designations and believe that these documents should now be made public.

Now that plaintiff has publicly accused the Gawker Defendants and their counsel of violating the Agreed Protective Order, the public should be permitted to see why plaintiff was permitted to designate as “ATTORNEYS’ EYES ONLY” the information that was produced to counsel and to scrutinize plaintiff’s accusations, including to see that the information counsel had is different than what was reported by the *National Enquirer*. To the extent that any of these documents should ever have been permitted to be filed under seal or treated as confidential, given recent events, plaintiff’s public admissions, and the Court’s denial of summary judgment and ordering the case to trial, there is no basis for maintaining their confidentiality. Indeed, the Court has made numerous significant rulings based on these sealed documents, and the public is entitled to understand the basis for those rulings.<sup>3</sup>

WHEREFORE, the Gawker Defendants respectfully request that the Court unseal the aforementioned court records and transcripts of proceedings, and grant its motion concerning the “Attorneys’ Eyes Only” designation, following a hearing held on or before October 1, 2015.

Dated: August 20, 2015

Respectfully submitted,

THOMAS & LOCICERO PL

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

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<sup>3</sup> In that regard, the Gawker Defendants also respectfully request that the Court reconsider its oral rulings during the July 1, 2015 hearing provisionally sealing the motions *in limine* dealing with the DVDs and plaintiff’s belief about statements on the DVDs, *see* July 1, 2015 Afternoon Session, Hrg. Tr. at 217:13 – 218:14, attached hereto as Exhibit 1, the substance of which is now a matter of public record. Specifically, these include the motions to determine the confidentiality of (a) the Motion *in Limine* on Evidence Relating to Plaintiff’s Admission that He Believed the Sex Tape(s) Showed Him Making Statements that Have Been Marked as Confidential, (b) plaintiff’s Confidential Opposition to Gawker Defendants’ Motion to Permit Presentation of Offensive Language at Trial, (c) Plaintiff’s Confidential Motion in Limine No. 6 to Exclude Evidence or Argument Related to Alleged Additional Videos of Terry Bollea, and (d) the Opposition to Plaintiff’s Motion in Limine No. 6 to Exclude Evidence Relating to Additional Videos.

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Nick Denton and A.J. Daulerio*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 20th 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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