

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.

ORDER ON PLAINTIFF'S EMERGENCY MOTION FOR CLARIFICATION

THIS CAUSE came before the Court on July 30, 2015 on the Emergency Motion of Plaintiff Terry Gene Bollea for an order clarifying and confirming the stipulated procedure governing documents and materials produced in response to the FOIA request of Gawker Media, LLC ("Gawker") and its attorneys (the "Motion"), as well as the July 14, 2015 letter response filed by Gawker Defendants. The Court has reviewed the Motion, letter response, pleadings and Court file, and is otherwise fully advised in the premises. It is thereupon, ORDERED and ADJUDGED as follows.

1 The Report and Recommendation of Special Discovery Magistrate Judge James Case (Ret.), dated October 20, 2014, and the parties' Stipulated Protocol governing the production of records, documents and materials by the United States Government to Gawker and its attorneys under FOIA (the "Stipulated Protocol"), a copy of which is attached hereto as **Exhibit A**, is AFFIRMED.

FILED
S. J. PETERSBURG BRANCH
2015 SEP 28 PM 2:31
K. BURKE
CLERK OF CIRCUIT COURT

2 Plaintiff has designated all records, video and audio recordings, documents and other materials produced by the United States Government to Gawker's counsel and the Court under FOIA and the Authorizations ordered by this Court on February 26, 2014 as "Highly Confidential – Attorneys' Eyes Only" under the Court's July 25, 2013 Agreed Protective Order Governing Confidentiality and the Court's permission to designate certain materials as "Highly Confidential Attorney's Eyes Only" at the hearing on February 26, 2014.

3 In the Gawker Defendants' July 14, 2015 letter, they maintain that they have "scrupulously followed the protocol approved by Judge Case . [and] ... will continue to do so " They also confirm that all records and materials produced by the United States Government are being treated as "Highly Confidential—Attorneys' Eyes Only" in light of plaintiff's confidentiality designations

4 All records, video and audio recordings, documents and other materials produced by the United States Government to Gawker's counsel under FOIA and the Authorizations ordered by this Court on February 26, 2014 are "Highly Confidential – Attorney's Eyes Only" under the Court's July 25, 2013 Agreed Protective Order Governing Confidentiality, subject to the rulings set forth herein, and unless otherwise ordered by this Court.

5 The DVDs provided to this Court on June 29, 2015 and on July 16, 2015 by the United States Government ~~shall be~~ ^{were} immediately delivered to Judge Case for preservation and compliance with the procedures set forth in the Stipulated Protocol.

6 The originals and all copies of all audio recordings produced by the United States Government to Gawker's counsel under FOIA and the Authorizations ordered by this Court on February 26, 2014 shall be treated in the same manner as DVDs, and shall be immediately delivered to Judge Case for preservation and compliance with the procedures set forth in the

Stipulated Protocol No copies of the audio recordings shall remain in Gawker Defendants' counsels' possession, custody or control.

7 Gawker Media, LLC President/General Counsel, Heather Dietrick, is hereby REMOVED as a "Qualified Person" under the Court's July 25, 2013 Agreed Protective Order Governing Confidentiality with respect to any and all records, video and audio recordings, documents and other materials produced by the United States Government to Gawker's counsel under FOIA and the Authorizations ordered by this Court on February 26, 2014. No copies of any records, video and audio recordings, documents and other materials produced by the United States Government to Gawker's counsel under FOIA and the Authorizations ordered by this Court on February 26, 2014 shall remain in Ms Dietrick's possession, custody or control.

8 Within seven (7) days of the date of this Order, counsel for Gawker Defendants shall file a Notice with the Court confirming compliance with paragraphs 6 and 7, above

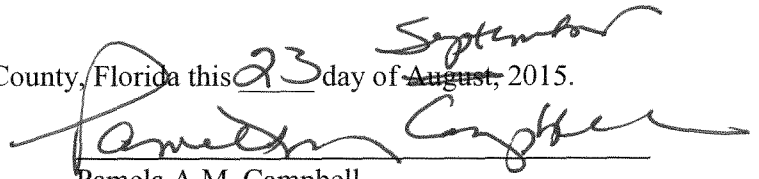
9 For the purpose of any records, video and audio recordings, documents and other materials produced by the United States Government to Gawker's counsel under FOIA and the Authorizations ordered by this Court on February 26, 2014, the term "Highly Confidential – Attorney's Eyes Only" shall mean that such materials may only be received or viewed by: (a) attorneys of record for the parties in this litigation, and staff of such attorneys to whom it is necessary that the material be shown for purposes of this litigation, (b) the Court and its staff, and any mediator, provided they are filed under seal or otherwise provided to the Court or mediator outside of the public docket, and (c) any other person designated by the Court after notice to all parties and an opportunity to be heard Further, these materials and their contents shall not be disclosed, discussed or made available to any other person or entity absent further court order.

10 As set forth in the Stipulated Protocol, Gawker's counsel shall provide copies of all records, documents and materials produced to them by the United States Government to Mr. Bollea's counsel within two business days of receiving them.

11 The Authorizations executed by Mr. Bollea and his counsel pursuant to this Court's February 26, 2014 Order are limited and provide exclusively for records, documents and materials (other than DVDs and audio recordings, as set forth above) to be provided to Gregg Thomas, Esq. in this lawsuit. The Authorizations do not and shall not be construed to authorize the release of any records, documents, DVDs, audio recordings or other materials by the United States Government to any other person, for any other purpose.

12 The Court refers the balance of Mr. Bollea's Emergency Motion for Clarification, including any requests to modify the rulings set forth herein, to Special Discovery Magistrate James Case.

DONE and ORDERED at Pinellas County, Florida this 23 day of ~~August~~ ^{September}, 2015.


Pamela A.M. Campbell
Circuit Court Judge

Copies furnished to: Counsel of Record

EXHIBIT A

OCT 22 2014

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.

STIPULATED REPORT & RECOMMENDATION

Plaintiff Terry Gene Bollea and Defendant Gawker Media, LLC jointly stipulate to the protocol for the Freedom of Information Act request to be made by Gawker's counsel as outlined in the correspondence attached hereto as Exhibit 1

Dated: October 14, 2014

Respectfully submitted,

HARDER MIRELL & ABRAMS LLP

THOMAS & LOCICERO PLLC

By: 

By: 

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Counsel for Defendant Gawker Media, LLC

SO RECOMMENDED:

10.20.14
vs. JAMES R. CASE
James R. Case
Special Discovery Magistrate

Copies furnished to: Counsel of Record

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of October, 2014, 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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September 29, 2014

VIA E-MAIL

Charles J. Harder, Esq.
Harder Mirell & Abrams LLP
1925 Century Park East, Suite 800
Los Angeles, CA 90067

Re: *Bollea v. Clem, et al.*
No. 12012447-CI-011 (Fla. Cir. Ct.)

Dear Charles:

I write to follow up our conversations about a mutually agreeable protocol for our Freedom of Information Act ("FOIA") request seeking records concerning the federal government's investigation relating to the sex tape(s) involving plaintiff.

As Seth, you, and I discussed, we understand that plaintiff firmly believes that these records are not relevant and that our request for this information is not reasonably calculated to lead to the discovery of admissible evidence. We, in turn, disagree with plaintiff's belief about the records' relevance and his position that Gawker and its counsel should not be able to review certain materials that might be in the government's files without the Court reviewing them first. Nevertheless, both sides recognize that the Court has issued rulings that bear on these issues, and, in the spirit of compromise and in an effort to move the process along, we have agreed to establish a protocol for facilitating the FOIA request and subsequent review of any records provided by the government, without intending to waive our respective positions in connection with earlier rulings by the Court.

Based on our discussion, I set out below what I understand we agreed to in principle. Both sides understand that this agreement is intended only to address the procedure with respect to the FOIA request. Each party is preserving its rights and positions concerning the discoverability, relevance, or admissibility of any material the government produces in response to the FOIA request, and each party is preserving its right to challenge Judge Case's rulings, including any rulings on a party's confidentiality designations:



Washington New York Philadelphia Denver



LEVINE SULLIVAN
KOCH & SCHULZ, LLP

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- Counsel for the Gawker defendants, along with counsel for plaintiff, will call the U.S. Attorney's office and/or FBI before Gawker's counsel makes the FOIA request to explain our agreed upon protocol and seek their guidance on how best to ensure the government's assistance in complying with it.
- Plaintiff and his counsel will provide signed authorizations for the release of records to the Gawker defendants. Gawker will treat the Social Security numbers on the authorizations as "Highly Confidential – Attorney's Eyes Only" and will not disseminate them to anyone other than in submitting the FOIA request to the government.
- Counsel for the Gawker defendants will make the FOIA request, copying plaintiff's counsel. The request will note that plaintiff believes that records relating to the investigation are not relevant to this litigation, but he and his counsel have provided signed FOIA waivers based on a court order. We will provide a draft of the request to you before submitting it to the government, for you to review and revise as it pertains to plaintiff's position. Alternatively, if plaintiff prefers, we will include a separate letter from you stating plaintiff's position.
- **Responsive Documents:** Any documents that Gawker's counsel receives from the government will be treated as "Highly Confidential – Attorney's Eyes Only" pending plaintiff's review of the documents. Gawker's counsel will FedEx copies of the documents to plaintiff's counsel within two business days of receiving them. Plaintiff then will have 30 days from the date of receipt to review the documents and decide whether to designate any of them as "Confidential" under the Protective Order or "Highly Confidential – Attorney's Eyes Only" under Judge Campbell's April 23, 2014 ruling.
- **DVDs or Other Video Footage:** In the call with the government and in the FOIA request itself, counsel for Gawker will ask the government to provide any videos that the government agrees to produce in response to the request in a separate sealed envelope addressed to Judge James Case (Ret.), who will personally pick up the videos in Tampa. If the government inadvertently sends any video to Gawker's counsel, counsel will not open any sealed envelope containing videos and will not review any videos provided by the government, except as provided below. Gawker's counsel will send any videos to Judge Case within two business days of receiving them.



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- Prior to reviewing any video, Judge Case will provide the parties' counsel with an index of what he has received, describing the number of videos, their form (*i.e.*, DVD, tape, etc.), and any title that is on the video. Judge Case will preserve the videos until the final disposition of this case, including any appeals.
- Judge Case will review any videos provided to him, in their entirety, to determine if they contain any nudity, or any sexual content, or any material covered by the protective order plaintiff sought during the July 18, 2014 hearing (any and all of which is referred to herein as "Nudity, Sexual Content, or Protective Order Material"). If any videos do not contain any Nudity, Sexual Content, or Protective Order Material, then Judge Case will provide such videos to Gawker's counsel, and Gawker's counsel will then provide copies to plaintiff's counsel and will treat them as "Highly Confidential – Attorney's Eyes Only" until plaintiff's counsel has had 30 days to review them and make any confidentiality designations.
- With respect to videos that contain any Nudity, Sexual Content, or Protective Order Material, Judge Case will review them to determine whether the videos or any portions of the videos are relevant or reasonably calculated to lead to the discovery of admissible evidence. In connection with Judge Case's conducting that review and making his recommendations, Gawker might request of Judge Case to make a confidential, *ex parte* proffer to Judge Case about Gawker's theories on why content that might be on the recordings should be deemed to be relevant or reasonably calculated to lead to the discovery of admissible evidence. (Plaintiff opposes any *ex parte* communications between Gawker and Judge Case, or any protocol contemplating any such *ex parte* communications.) If Judge Case permits any *ex parte* proffer by Gawker's counsel: Judge Case will not provide Gawker's counsel with any information about the contents of any videos, except as provided below; any such proffer by Gawker will be treated as confidential and not shared with plaintiff or his counsel; and any such proffer will be made on the record and transcribed by a court reporter, in case it is needed for further review of Judge Case's recommendations concerning his review of the videos.
- If Judge Case recommends that any portion of the videos is not relevant or reasonably calculated to lead to the discovery of admissible evidence, he will provide the parties with something akin to a privilege log, generally describing any footage being withheld and the basis for withholding it, providing sufficient detail so that his recommendations could, if needed, be subject to further review, but while respecting the privacy interests of the plaintiff.



LEVINE SULLIVAN
KOCH & SCHULZ, LLP

Charles J. Harder, Esq.

September 29, 2014

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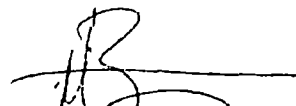
- If Judge Case determines that any statements reflected on the videos containing Nudity, Sexual Content, or Protective Order Material or any portion thereof are relevant or reasonably calculated to lead to the discovery of admissible evidence, then he will arrange for a court reporter to transcribe those statements (at Gawker's expense). Each side retains the right to seek from Judge Case any portions of the videos, including any portions of the audio, that he finds to be relevant or reasonably calculated to lead to the discovery of admissible evidence in which there is no Nudity, Sexual Content, or Protective Order Material. Any transcript, audio recording, or video will be treated as "Highly Confidential – Attorney's Eyes Only" until plaintiff has had 30 days to review them and make any confidentiality designations.
- Prior to Gawker's counsel making the FOIA request, the parties will inform Judge Case of the agreed-upon protocol and provide him with a stipulation and proposed recommendation memorializing the proposed procedure for his receipt, review, and ruling on any videos.

Please confirm that plaintiff agrees to this protocol or let us know if he proposes any revisions. If you have any questions or would like to discuss the protocol, please call me or Seth. If this is otherwise agreeable, please provide us with the signed authorizations as directed by the Court.

We appreciate your working with us to develop a mutually agreeable procedure.

Very truly yours,

LEVINE SULLIVAN KOCH & SCHULZ, LLP

By: 
Michael Berry

cc. Seth D. Berlin, Esq.