

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

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

Defendants.

**MOTION TO DETERMINE CONFIDENTIALITY OF MOTION FOR ACCESS
TO CORRECTED AND UNREDACTED DVDS PRODUCED BY THE FBI**

Pursuant to Rule 2.420 of the Florida Rules of Judicial Administration and this Court's Agreed Protective Order Governing Confidentiality, dated July 25, 2013 (the "Protective Order"), Defendants Gawker Media, LLC ("Gawker"), Nick Denton, and A.J. Daulerio (collectively, "Gawker"), through their undersigned counsel, respectfully move to determine the confidentiality of their Motion for Access to Corrected and Unredacted DVDs Produced by the FBI ("Motion for Access"), and the Exhibits attached thereto.

As grounds for this motion, Gawker and its counsel state as follows:

1. Florida Rule of Judicial Administration 2.420(c)(9)(A)(iv) provides that certain court records are confidential if the Court determines that confidentiality is required in order to "obtain evidence to determine legal issues in a case."

2. This Court's Protective Order provides that both the parties and non-party witnesses may designate testimony and/or documents as "Confidential" if their substance falls into certain enumerated categories.

3. On April 23, 2014, this Court ordered Plaintiff Terry Gene Bollea to produce discovery related to an FBI investigation into the dissemination of sex tapes depicting plaintiff and Heather Clem (the “FBI discovery”). The Court instructed that this discovery could be designated “Attorneys’ Eyes Only” and treated as confidential under the Confidentiality Order.

4. On September 28, 2015, this Court further expanded the scope of the Agreed Protective Order, affirming a prior Report and Recommendation of the Special Discovery Magistrate that permitted Bollea to designate as “Attorneys’ Eyes Only” materials produced by the federal government in connection with a Freedom of Information Act lawsuit brought by Gawker.

5. Concurrent with this motion, Gawker is filing its Motion for Access, and the Exhibits attached thereto. That Motion asks the Court to (a) provide both parties’ counsel with copies of DVDs containing video from the FBI’s sting operation on December 14, 2012, involving plaintiff Terry Bollea, his lawyer David Houston, and Keith Davidson; and (b) permit counsel for the parties to watch three DVDs that contain corrected and unredacted copies of three sex tapes involving Bollea and Heather Clem.

6. The Motion for Access explains that, based on documents and other records produced by the FBI, the DVDs are directly relevant to issues bearing on plaintiff’s claims for liability and damages, and to the credibility of key witnesses, including Bollea.

7. The Motion refers to and includes (a) records produced in the federal FOIA litigation that are provisionally subject to “Attorneys’ Eyes Only” treatment, and (b) other discovery material that plaintiff has provisionally designated as “Confidential” and/or “Highly Confidential – Attorneys’ Eyes Only.”

8. Counsel for Gawker certifies that this motion is made in good faith and is supported by a sound factual and legal basis. Although counsel for Gawker does not agree that the materials referenced in and attached to the Motion for Access warrant “Confidential” or “Attorneys’ Eyes Only” treatment, this motion is being filed to comply with Rule 2.420 and the Protective Order entered in this case.

WHEREFORE, Gawker respectfully requests that this Court determine the confidentiality of the Motion for Access and the Exhibits attached thereto, including treating as confidential only those materials that are properly treated as such under Rule 2.420 and this Court’s Protective Order.

Dated: December 22, 2015

Respectfully submitted,

THOMAS & LOCICERO PL

By: /s/ Gregg D. Thomas

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of December, 2015, I caused a true and correct copy of the foregoing to be served via the Florida Courts' E-Filing Portal upon the following counsel of record:

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