

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 TO
DISMISS ON THE GROUNDS OF FRAUD ON THE COURT**

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") respectfully move to determine the confidentiality of their Motion to Dismiss on the Grounds of Fraud on the Court ("Motion to Dismiss"), 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 to Dismiss, and the Exhibits attached thereto. The Motion to Dismiss argues that plaintiff Terry Bollea has engaged in a systematic fraud on the Court to conceal the existence of additional sex tapes depicting him having sex with Heather Clem, including one that shows him making racist statements. As explained in the Motion to Dismiss, the effect of plaintiff’s fraud was to cover up key evidence on many core issues relating to liability, credibility, and damages. In particular, plaintiff’s years-long fraud suppressed evidence of the existence of an alternative and intervening cause for Bollea’s alleged distress following Gawker’s publication of brief, grainy excerpts from one tape, and an alternative explanation for why the tapes depicting him and Ms. Clem had value and what that value actually is. The full extent of plaintiff’s fraud only became clear on November 30 and December 2, 2015, when the FBI produced hundreds of unredacted records to Gawker’s counsel.

6. The Motion to Dismiss 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.”

7. 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 to Dismiss 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 to Dismiss 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

Gregg D. Thomas

Florida Bar No.: 223913

Rachel E. Fugate

Florida Bar No.: 0144029

601 South Boulevard

P.O. Box 2602 (33601)

Tampa, FL 33606

Telephone: (813) 984-3060

Facsimile: (813) 984-3070

gthomas@tlolawfirm.com

rfugate@tlolawfirm.com

Seth D. Berlin

Pro Hac Vice Number: 103440

Michael D. Sullivan

Pro Hac Vice Number: 53347

Michael Berry

Pro Hac Vice Number: 108191

Alia L. Smith
Pro Hac Vice Number: 104249
Paul J. Safier
Pro Hac Vice Number: 103437
LEVINE SULLIVAN KOCH & SCHULZ, LLP
1899 L Street, NW, Suite 200
Washington, DC 20036
Telephone: (202) 508-1122
Facsimile: (202) 861-9888
sberlin@lskslaw.com
msullivan@lskslaw.com
mberry@lskslaw.com
asmith@lskslaw.com
psafier@lskslaw.com

*Attorneys for Defendants Gawker Media, LLC,
Nick Denton and A.J. Daulerio*

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:

Kenneth G. Turkel, Esq.
kturkel@BajoCuva.com
Shane B. Vogt, Esq.
shane.vogt@BajoCuva.com
Bajo Cuva Cohen & Turkel, P.A.
100 N. Tampa Street, Suite 1900
Tampa, FL 33602
Tel: (813) 443-2199
Fax: (813) 443-2193

David Houston, Esq.
Law Office of David Houston
dhouston@houstonatlaw.com
432 Court Street
Reno, NV 89501
Tel: (775) 786-4188

Charles J. Harder, Esq.
charder@HMAfirm.com
Douglas E. Mirell, Esq.
dmirell@HMAfirm.com
Jennifer McGrath, Esq.
jmcgrath@hmafirma.com
Harder Mirell & Abrams LLP
132 South Rodeo Drive, Suite 301
Beverly Hills, CA 90212-2406
Tel: (424) 203-1600
Fax: (424) 203-1601

Attorneys for Plaintiff

/s/ Gregg D. Thomas
Attorney