

# EXHIBIT 46

to the

**THE GAWKER DEFENDANTS' MOTION TO DISMISS  
ON THE GROUNDS OF FRAUD ON THE COURT**

**Confidential**

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IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA  
CIVIL DIVISION

TERRY GENE BOLLEA,  
professionally known as HULK  
HOGAN,

Plaintiff,

Case No.  
12-012447-CI-011

vs.

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

Defendants.

\_\_\_\_\_ /

CONFIDENTIAL -- ATTORNEY'S EYES ONLY

HEARING BEFORE THE HONORABLE JAMES R. CASE

DATE: July 18, 2014

TIME: 9:10 a.m. to 12:50 p.m.

PLACE: Riesdorph Reporting Group  
601 Cleveland Street  
Suite 600  
Clearwater, Florida

REPORTED BY: Aaron T. Perkins, RPR  
Notary Public, State of  
Florida at Large

Pages 1 to 168

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1 fabricating reasons for doing so, and in making  
2 repeated misrepresentations to you and to  
3 Judge Campbell, and although less important, also  
4 to us. And this conduct to us strikes at the  
5 heart of the adversarial process, and we think it  
6 should be dealt with accordingly.

7 Thank you.

8 JUDGE CASE: All right. Thank you.

9 MR. HARDER: Thank you, Judge Case, for  
10 having this hearing.

11 There is so much that's not true about what  
12 Mr. Berlin just said, I don't know where to begin.  
13 There is so much half truth and misrepresentation  
14 to you, sir, that it's tremendous. And I believe  
15 that this whole proceeding is a waste of our  
16 resources because so much of it is turning the  
17 facts on their head.

18 What a lot of this boils down to is  
19 communications with law enforcement. Mr. Berlin's  
20 premise is that those communications were asked  
21 for and concealed, that there was a court order,  
22 and that we refused the court order. And none of  
23 that is the case.

24 We were first asked for FBI communications  
25 when they propounded discovery asking for FBI

1 communication. And we immediately provided them  
2 with a privilege log as to those communications.  
3 We had a hearing before Your Honor about those  
4 communications, which was on -- I'm trying to  
5 remember the date of the hearing. It was part of  
6 their February 12 and February 13 motions. I  
7 think it was maybe late February or early March.

8 And Your Honor ruled that your recommendation  
9 was that we had to provide FBI communications. We  
10 took the issue to Judge Campbell, and we agreed  
11 with Your Honor, and we promptly produced the FBI  
12 communications. We did not conceal them. We  
13 produced them. We redacted out five words, and  
14 they repeated a few times. They were located on  
15 three pages, two pages from one source and one  
16 page from another source.

17 We've produced over 2,000 pages of documents  
18 in this case, so redacting out five words -- and  
19 these are words, Your Honor, they are racial  
20 words, and Your Honor had previously ruled that  
21 they were off limits in the case.

22 But the point is that we did not conceal  
23 that. They had never asked for those documents  
24 before. One of the documents that they've  
25 presented in there motion was, if I have it here,

1           it was a story from TMZ from October of 2012.  
2           October 14th, 2012, Hulk Hogan contacts FBI over  
3           leaked sex tape. This is from -- I think it's the  
4           day before this lawsuit was filed, one day before.  
5           It was public information that we were seeking FBI  
6           assistance with this. They didn't ever propound  
7           discovery about this FBI investigation until about  
8           six months ago. I think maybe it was right before  
9           Christmas, December 19th. I may have my dates  
10          slightly off.

11                 That's what prompted us to provide a  
12          privilege log and to resist that discovery. Your  
13          Honor heard it. You ruled with them. We took it  
14          to Judge Campbell. She agreed with you. And we  
15          promptly produced the FBI communications. Every  
16          FBI and AUSA communication that we had, we  
17          produced to them. There was no concealment, none.

18                 The premise is they think that they asked for  
19          these FBI communications a year ago, and they  
20          didn't. And they haven't presented to you  
21          anything about that to show that they asked for it  
22          before they really asked for it.

23                 They keep saying over and over again that  
24          Judge Campbell made a ruling on October 29th  
25          compelling us to produce FBI communications.

1 That's not true. Look at the February 29 --  
2 actually, she put it into writing, I think, in  
3 March, and it's been produced in the case as part  
4 of the records here.

5 Take a look at Judge Campbell's ruling on  
6 that. It doesn't say anywhere that we are  
7 compelled to do anything except two things. We're  
8 compelled to provide a further response to  
9 interrogatory No. 12, which we did promptly after  
10 she said on October 29th that we had to. And the  
11 second thing was that we were required to produce  
12 a privilege log as to communications preceding the  
13 filing of this lawsuit with the implication that  
14 the privilege log would apply to responsive  
15 documents that have been asked of us.

16 The AUSA and FBI communications had never  
17 been asked of us as of October 29. There was  
18 nothing to put on a privilege log. And all of  
19 those communications were after the filing of this  
20 lawsuit, in any event. So I just wanted to  
21 address that issue.

22 Mr. Berlin says that we have disregarded  
23 court orders. There is not a single court order  
24 that we have disregarded.

25 When he talks about how we were ordered to



1 produce phone records, we have produced all the  
2 phone records except for the three digits of the  
3 prefix, so they have -- as to nonparties and  
4 nonwitnesses, because nonparties and nonwitnesses  
5 have a privacy right in the state of Florida.  
6 They have a privacy right that their phone  
7 communications should not be disclosed.

8           Nevertheless, we disclosed it except for a  
9 three-digit prefix, and we have brought a motion  
10 for protective order with Your Honor as to that.  
11 If you rule against us, we will provide you --  
12 we'll provide them with all the prefixes. I  
13 believe it's an invasion of the privacy of  
14 nonparties and nonwitnesses. I also believe that  
15 it is a reasonable middle ground so that they can  
16 see all of the phone calls that were made to or  
17 from Mr. Bollea using the area code and the last  
18 four digits.

19           And if the area code and the last four digits  
20 matches up with anyone who they determine to be a  
21 witness, I will be happy to immediately unredact  
22 the prefix so they will have that full  
23 information. It's been about a month now. They  
24 have not identified a single phone call of a  
25 redacted prefix where they say this is a witness.

1 But I will get to that when we get to the motion  
2 for protective order.

3 I do not believe that is disregarding a court  
4 order. I believe that that is protecting the  
5 privacy rights of people who are not parties and  
6 not witnesses. And we brought a motion. If Your  
7 Honor disagrees with us, we will be happy to  
8 comply with the order. But I feel that I have to  
9 do my job to uphold Florida's privacy laws as to  
10 nonparties and nonwitnesses.

11 Mr. Bollea -- I'm sorry. Mr. Berlin said  
12 over and over again, concealed evidence, concealed  
13 evidence, concealed evidence. We have not  
14 concealed anything. When they gave us a document  
15 request or a request for information, we provided  
16 it. And when Judge Campbell, the one time she  
17 compelled, she compelled a further response to  
18 interrogatory 12 and we provided it.

19 And when Your Honor said we had to provide  
20 certain information and Judge Campbell entered the  
21 order, we provided it. What's interesting is that  
22 Mr. Berlin did not put up an order, point to an  
23 order and say, Here is the order; it says we have  
24 to do X, Y and Z and we never did it, because that  
25 doesn't exist. That scenario doesn't exist.

1           There is a lot of half truth here. There is  
2 lot of innuendo. There is a lot of things that  
3 just aren't accurate. And I will go through it.  
4 These are just some preliminary things here.

5           Here is just an example. Mr. Berlin said,  
6 The sting operation all happened before Gawker was  
7 a named defendant in this case. You heard him.  
8 Gawker was named in a lawsuit that was a federal  
9 court case, and we ended up dismissing the matter,  
10 the federal court case, and that same day naming  
11 them as a party to the state court case, because  
12 there were two actions that were pending.

13           The sting operation happened after Gawker had  
14 been a named defendant in the same exact causes of  
15 action. So for him to say, All of this happened  
16 before Gawker was ever named in the case, that's  
17 just a half truth. And there is so many examples  
18 of that.

19           All of the examples about how we supposedly  
20 flaunted court orders, we've never flaunted a  
21 court order. All of the discovery that he's  
22 talking about was when they asked for it. And  
23 when it was ordered, we gave it. And now I'm  
24 going to go through some additional things here.

25           One of the things -- the first thing I want

1 to point out is the similarity of this motion with  
2 their February 12th motion. They brought a motion  
3 to compel compliance with the Court's October 29  
4 order and for sanctions. Your Honor heard it and  
5 Your Honor denied it. The things that are in  
6 their motion now, it's a lot of the same stuff  
7 that was in that prior motion that you denied. It  
8 was things that, We never got the date right. We  
9 initially said that the sexual encounters happened  
10 in or about 2006 and then later we said in or  
11 about 2008 and then later on we said mid 2007.

12 They already brought a motion for sanctions  
13 on that. It was denied. There is no reason for  
14 sanctions for something like that. If somebody  
15 makes an estimate and then they revise their  
16 estimate, you don't sanction them because they  
17 revised their estimate. And it was certainly not  
18 concealing anything. We did not have the dates  
19 quite right. We did not have records about the  
20 dates.

21 He talks about a letter from the AUSA which  
22 identified communications that came from an  
23 extortionist. He talks about how there exists  
24 certain other tapes. I have never seen any of  
25 those tapes. They have never seen any of those

1 tapes. Mr. Bollea has never seen any of those  
2 tapes. Nobody on either side of this table or  
3 Your Honor or Judge Campbell has ever seen any of  
4 these supposed tapes. We don't know if they exist  
5 or not. Nobody has seen them. Maybe they exist  
6 and maybe they don't.

7 An extortionist said they exist, an  
8 extortionist who wanted money and wanted to make  
9 certain representations of what was in the  
10 supposed tapes, that there is racial comments,  
11 that there is all kinds of other comments in  
12 there, nobody has seen any of these things.

13 But yet Mr. Berlin says these tape exist. He  
14 told you that about ten times. These tapes exist,  
15 and I concealed that. Nobody has seen them. I  
16 haven't concealed anything. I don't know if they  
17 exist. When he asked for communications with the  
18 FBI, we produced it. Those communications had in  
19 there communications from an extortionist saying,  
20 These are the -- these tapes exist, and these are  
21 what's on them. We produced them. They have it.

22 I think the only potential prejudice here is  
23 that -- it's not even a prejudice. If they had  
24 wanted the FBI communications sooner -- they knew  
25 that we were talking to the FBI. They waited a

1           happened.

2           And so the -- and just to carry that out, at  
3           a certain opportune time, about 10 or so federal  
4           agents storm into a room with the extortionist's  
5           lawyer and the extortionist's agent, but the  
6           actual Mr. X, is what they call the person, never  
7           actually showed up. So they had a sting without  
8           Mr. X but with the other two people. And that's  
9           when the FBI took over and the AUSA got involved  
10          and all that.

11          Well, tab 3 is this dummy settlement  
12          agreement between Mr. Bollea and the extortionist.  
13          And it has certain communications from the  
14          extortionist to Mr. Bollea's team. It's really  
15          David Houston who is handling it. And it was  
16          describing -- alleging that there were three  
17          tapes, alleging that the first tape is dated July  
18          3rd; the second one is dated July 13th; and the  
19          third one is undated. But when you compare that  
20          with what the assistant U.S. attorney has, the  
21          first tape is July 13, and the second tape is July  
22          13.

23                 JUDGE CASE: I saw that.

24                 MR. HARDER: So we've got an -- either the  
25                 extortionist is not telling -- is not giving

1 accurate information, or the AUSA made a typo. I  
2 don't know. And then the third one has no date on  
3 it.

4 And so it's possible that these were all from  
5 July 13 and that maybe it's a first part, a second  
6 part, and a third part. Maybe it's three copies  
7 of the same thing. We don't know. We've never  
8 seen it. But in the extortionist's effort to try  
9 to get money and as much money as possible and to  
10 scare Mr. Bollea into thinking that his life is  
11 going to come to a screeching halt if he doesn't  
12 pay them off, it makes all these allegations about  
13 what are in these various tapes. And, again, we  
14 redacted out a few words out of here based upon  
15 the prior ruling.

16 This actually falls within Judge Campbell's  
17 protocol that these things actually should be  
18 going to you, to determine if any of these words  
19 are relevant to the case, because -- I mean, there  
20 is a lot of graphic words here. I'm about to read  
21 it, but he's typing this in. Can we go off the  
22 record one second so I can say some of these  
23 words.

24 JUDGE CASE: I think the record can stand it.  
25 Judge Campbell may not like it, though.

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REPORTER'S CERTIFICATE

STATE OF FLORIDA  
COUNTY OF HILLSBOROUGH

I, Aaron T. Perkins, Registered Professional Reporter, certify that I was authorized to and did stenographically report the above hearing and that the transcript is a true and complete record of my stenographic notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

Dated this 22nd day of July, 2014.

\_\_\_\_\_  
Aaron T. Perkins, RPR