

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, *et al.*,

Defendants.

**MOTION TO DETERMINE CONFIDENTIALITY OF DEFENDANTS' MOTION
IN LIMINE NO. 2: EVIDENCE CONCERNING PLAINTIFF'S USE OF
RACIAL SLURS ON A SEX TAPE**

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 hereby move to determine the confidentiality of their Motion *in Limine* No. 2: Evidence Concerning Plaintiff's Use of Racial Slurs on a Sex Tape ("Motion *in Limine* No. 2"), and the Exhibits attached thereto.

As grounds for this motion, Defendants 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, the 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, Defendants are filing their Motion *in Limine* No. 2, and the Exhibits attached thereto. Through that Motion, Defendants seek to use at trial evidence regarding Plaintiff’s use of racial slurs on one of the sex tapes filmed in the Clems’ bedroom because (1) that evidence is relevant to Bollea’s alleged emotional distress damages and the alleged value of “Hulk Hogan” sex tapes; (2) excluding reference to those slurs and their relevance to other admissible evidence would be prejudicial to Defendants and likely would confuse the jury; and (3) the evidence calls into question the credibility of Bollea and other key witnesses at trial.

6. The Motion *in Limine* and accompanying exhibits refer to and include documents that have been designated as “Confidential” or “Attorneys’ Eyes Only” by Bollea in accordance with these prior rulings.

7. Counsel for Defendants certifies that this motion is made in good faith and is supported by a sound factual and legal basis. Although Defendants do not agree that these

materials 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, Defendants respectfully request that this Court determine the confidentiality of their Motion *in Limine* No. 2 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.

February 1, 2016

Respectfully submitted,

THOMAS & LOCICERO PL

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of February, 2016, 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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