

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. 12-012447-CI-011

GAWER MEDIA, LLC, et al.

Defendants.

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FIRST LOOK MEDIA, INC., TAMPA BAY  
TIMES, THE ASSOCIATED PRESS, SCRIPPS  
MEDIA, INC., JOURNAL BROADCAST  
GROUP, and CABLE NEWS NETWORK, INC.

Intervenors.

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**INTERVENORS' MOTION TO UNSEAL ALL JUDICIAL RECORDS CURRENTLY  
FILED UNDER SEAL**

Intervenors, First Look Media, Inc., WFTS-TV, WPTV-TV, Scripps Media, Inc.,  
WFTX-TV, Journal Broadcast Group, The Associated Press, the Times Publishing Company,  
and Cable News Network, Inc. (collectively "Intervenors"), move the Court to unseal all judicial  
records filed in this action that remain under seal, and in support hereof state:

1. On October 28, 2015, and November 18, 2015, this Court entered orders  
(collectively, the "October 2015 Sealing Orders") which sealed hundreds of pages of judicial  
records including motions, memoranda, exhibits, and hearing transcripts filed with the Court in  
the preceding two years.

2. The Intervenors filed a Petition for Writ of Certiorari with the Second District Court of Appeal on November 20, 2015, with respect to the October 2015 Sealing Orders. During the pendency of that Petition, this Court sealed numerous additional judicial records including motions, memoranda, exhibits and transcripts relying on its October 2015 Sealing Orders.

3. On March 17, 2016, the Second District Court of Appeal granted the Intervenors' Petition and quashed the October 2015 Sealing Orders. In compliance with that ruling, on March 18, 2016, this Court issued its Order Directing Clerk to Unseal Records and unsealing the judicial records which were directly at issue in the Intervenors' Petition.

4. Because the principles at issue in Intervenors' Petition are the same with respect to the judicial records that remain under seal, and the rationale of the Second District Court of Appeal's ruling of March 17, 2016, is equally applicable, Intervenors now respectfully move the Court to unseal all additional judicial records currently remaining under seal in this action.

5. As this Court is aware, Florida courts strictly adhere to a long tradition of public access to judicial proceedings: “[A] strong presumption of openness exists . . . A trial is a public event, and the filed records of court proceedings are public records available for public examination.” *See Barron v. Florida Freedom Newspapers*, 531 So. 2d 113, 118 (Fla. 1988); *Miami Herald Pub. Co. v. Lewis*, 426 So. 2d 1 (Fla. 1982) (Florida Supreme Court holds that before closing a proceeding, court must make specific findings that closure essential to prevent specific harm, and tailor remedy no broader than necessary); *Carnegie v. Tedder*, 698 So. 2d 1310, 1312 (Fla. 2d DCA 1997) (“Historically, litigants have had no reasonable expectation of privacy with regard to trial proceedings and court files.”); *Florida Freedom Newspapers, Inc. v. Sirmons*, 508 So. 2d 462, 463 (Fla. 1st DCA 1987) (“There is no private litigation in the courts of

Florida.”); *Goldberg v. Johnson*, 485 So. 2d 1386, 1388 (Fla. 4th DCA 1986) (“[T]he public and press have a right to know what goes on in a courtroom whether the proceeding be civil or criminal.”)

6. Florida’s stalwart presumption of public access to court proceedings and records stems from both this state’s own tradition of openness and the safeguards of the First Amendment to the U.S. Constitution. The First Amendment, as the U.S. Supreme Court has said time and again, requires open courts and court records to ensure the “appearance of fairness [that is] so essential to public confidence in the system.” *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501, 508 (1984). The media’s access to judicial proceedings and records keeps the public informed and helps instill public confidence in both the process and the results of trials. *Nebraska Press Ass’n v. Stuart*, 427 U.S. 539, 559-60 (1976); *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 609 (1978). “The press does not simply publish information about trials but guards against the miscarriage of justice by subjecting the police, prosecutors, and judicial processes to extensive public scrutiny and criticism.” *Landmark Commc’ns, Inc. v. Virginia*, 435 U.S. 829, 838-39 (1978).

7. The First Amendment and Florida’s common law tradition of openness are reflected in Florida Rule of Judicial Administration 2.420. The Rule sets forth that all orders granting closure must:

- Recite the justifications “with as much specificity as possible” (Rule 2.420(e)(3));
- Specify “particular grounds” under the Rule “for determining the information is confidential” (Rule 2.420(e)(3)(B));
- Specify the particular information that is determined to be confidential (Rule 2.420(e)(3)(E));

- Include findings that “(i) the degree, duration, and manner of confidentiality ordered by the court are no broader than necessary to protect the interests set forth” in [the Rule]; and (ii) no less restrictive measures are available to protect [those] interests” (Rule 2.420(e)(3)(G)).

These determinations must be made with particularity on a document-by-document and redaction-by-redaction basis, confirming the specific grounds for sealing each document or portion thereof and confirming for each document or redaction that no less restrictive means is available to protect the affected interest. *See Fla. Jud. Admin. R. 2.420(e)(3).*

8. In entering its Order of March 17, 2016, the Second District Court of Appeal reviewed each item sealed by this Court and determined that sealing was not warranted under Rule 2.420(e), and specifically rejected each of the stated reasons for sealing.

9. Since October 28, 2015, this Court has sealed numerous other Court records by applying the same criteria that the Second DCA expressly rejected in its March 17, 2016 Order. *See* January 27, 2016 Order on Defendants’ (1) Motion To Dismiss For Fraud Upon The Court, (2) Motion To Compel Plaintiff To Produce Improperly Withheld Documents, (3) Motion For Access To Corrected and Unredacted DVDs, (4) Associated Motions to Determine Confidentiality, and (5) Sealing Of Transcripts; January 13, 2016 Hearing Transcript; January 20, 2016 Hearing Transcript. These include:

- Defendants’ Motion to Dismiss on Grounds of Fraud on the Court, including the full brief and all exhibits thereto;
- All exhibits to Defendants’ Motion to Compel Improperly Withheld Documents (the brief was previously unsealed);
- Defendants’ Motion for Access to Corrected and Unredacted DVDs, including the full brief and all exhibits thereto;
- Plaintiff’s Omnibus Response in Opposition to Defendants’ “Disguised Motion for Rehearing,” including the full brief and all exhibits thereto;

Defendants' Motion *in Limine* No. 1: Evidence Concerning the FBI Investigation and exhibits thereto;

- Defendants' Motion *In Limine* No. 2: Evidence Concerning Plaintiff's Use Of Racial Slurs On A Sex Tape and exhibits thereto;
- Appendix Containing A Timeline Of Key Events, Evidence, And Testimony In Support Of Defendants' Motion *In Limine* No. 2: Evidence Concerning Plaintiff's Use Of Racial Slurs On A Sex Tape, and exhibits thereto;
- Defendants' Motion *In Limine* No. 3: Relevant Excerpts From DVDs Produced By The FBI and exhibits thereto;
- Defendants' Supplemental Brief Re: Plaintiff's Motion *In Limine* No. 3 To Exclude Evidence Or Argument Related To Settlement, and exhibits thereto; and
- Defendants' Opposition to Plaintiff's Motion *in Limine* No. 24: To Exclude Argument or Evidence of Illegally Recorded Audio of Terry Bollea and Any Evidence Derived Therefrom, and exhibits thereto.

10. Although this Court entered its Order Directing Clerk to Unseal Records on March 18, 2016, confirming its compliance with the Second DCA's Order dated March 17, 2016, the judicial records referenced above that were sealed after October 28, 2015, remain sealed. Those judicial records, like those unsealed by the Second DCA, are "inherent in the proceedings pending in the trial court." The sealing of those judicial records does not comport with the Second DCA's March 17, 2016 Order, and Fla. Jud. Admin. R. 2.420(e) because "confidentiality of the items at issue is not necessary to avoid substantial injury to innocent third parties" and "confidentiality is not required to comply with established public policy." The Plaintiff and the other parties to this litigation "do not have a reasonable expectation of privacy in matters inherent to a civil proceeding."

11. Moreover, the trial on the merits of the Plaintiff's claim is over at this point. There is no basis for continuing to seal judicial records on the ground that unsealing could be prejudicial to the trial itself.

12. In addition, Defendant Gawker Media, LLC' motion challenging the plaintiff's

confidentiality designations remains pending. That motion was filed in August, and joined by Intervenor in September. One of the records unsealed by the DCA's March 17, 2016 Order is an index of all of those documents, including numerous records ordered produced by the federal court pursuant to FOIA. Given the DCA proceedings, in which the parties and Intervenor addressed whether it was proper to seal such documents, and the fact that trial is now concluded, Intervenor respectfully request that the Court address this motion and remove the confidentiality designations from documents that should, in light of the DCA's ruling, be available to the public.

Accordingly, for the foregoing reasons, Intervenor respectfully request that this Court enter a further Order Directing Clerk to Unseal Records and unsealing the judicial records which remain under seal in this action.

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**CERTIFICATE OF SERVICE**

I CERTIFY THAT on March 21, 2016, I electronically filed the foregoing with the Florida Courts E-Filing Portal, which will serve the foregoing via electronic mail to:

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