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

TERRY GENE BOLLEA professionally known as HULK HOGAN,

Case No. 12012447 CI-011

Plaintiff,

vs.

GAWKER MEDIA, LLC aka GAWKER MEDIA; NICK DENTON; A.J. DAULERIO,

Defendants.
_____/

SUPPLEMENTAL MEMORANDUM OF LAW REGARDING MOTION FOR ENTRY OF FINAL JUDGMENT AND PERMANENT INJUNCTION

As authorized by the Court at the May 25, 2016 hearing on post-trial motions, Plaintiff Terry Bollea, professionally known as Hulk Hogan ("Mr. Bollea"), files this supplemental memorandum of law regarding his motion for entry of final judgment and permanent injunction. As explained below, judgment should be promptly entered on the jury's verdict and a final injunction should issue to preserve Mr. Bollea's rights.

I. Background

The jury returned a substantial verdict against the Gawker Defendants and in favor of Mr. Bollea more than two months ago, on March 18, 2016. Seventeen days later—on the last possible day—the Gawker Defendants filed a motion for judgment notwithstanding the verdict and a motion for new trial or, in the alternative, remittitur. A hearing was scheduled on those authorized post-trial motions for May 25, 2016.

About a week before the May 25 hearing, the Gawker Defendants tried a new tactic to avoid entry of a judgment on the jury's verdict. They filed a "renewed motion for dismissal for fraud on the court or, in the alternative, amended motion for new trial." This renewed motion

incorporated a prior motion to dismiss for fraud on the court that this Court had previously denied. Gawker Defendants contend the *renewed* motion is based on allegations Mr. Bollea made in a newly filed lawsuit. While the Gawker Defendants' motion was styled—at least in the alternative—as an "amended motion for new trial," in reality it is in the nature of a motion for relief from judgment under Florida Rule of Civil Procedure 1.540 because it attempts to allege newly discovered evidence or fraud. Motions for relief under Rule 1.540 are by their very nature post-judgment motions.

Around the same time the Gawker Defendants filed their renewed motion in this case, they also moved to disqualify the presiding judge in the newly filed lawsuit. The same judge currently presides over both cases.

At the hearing on the post-trial motions on May 25, the Gawker Defendants argued their motions for judgment notwithstanding the verdict and for new trial or remittitur. The Court denied these authorized motions. The Gawker Defendants then took the position that the Court should deny Mr. Bollea's motion for entry of a judgment on the verdict and an injunction. They also argued that the Judge should not decide their renewed motion to dismiss in this case until she has first ruled on the motion to disqualify her in the newly filed lawsuit.[1] According to the Gawker Defendants, it would be inappropriate to enter judgment while the renewed motion remained pending.

To give the parties an opportunity to file supplemental memoranda on the issue of whether judgment can be entered while the renewed motion to dismiss remains pending, the Court deferred ruling on the renewed motion to dismiss. As explained below, the Gawker

[1] Notably, the same issues raised in the Motion to Disqualify have been pending before this Court for eleven months. The Gawker Defendants never sought disqualification until now.

Defendants' argument is incorrect. The Court can and should enter judgment now, without further delay.

II. There is no basis to delay entry of a judgment or issuance of a permanent injunction, and doing so severely prejudices Mr. Bollea.

Longstanding Florida Supreme Court precedent holds that a pending motion for new trial does not stay entry of a judgment after a verdict. *See, Hazen v. Smith*, 100 Fla. 767, 135 So. 813 (Fla. 1931) ("judgment may be entered and execution may be issued and enforced whether the motion for a new trial remains undisposed of or not"); *Winn & Lovett Grocery Co. v. Luke*, 156 Fla. 638, 64, 24 So. 2d 310, 313 (Fla. 1945) ("the entry of a motion for new trial does not prevent the entry of a judgment on the verdict"). The defense has identified no case that holds that the pendency of a post-trial motion of *any* type is a legitimate basis for delaying entry of a judgment on a jury verdict.

Here, the Court has already denied the Gawker Defendants' authorized post-trial motions. The only motion now pending attempts to upset the verdict based on a claim of newly discovered evidence and fraud. Such motions are disfavored. *See, Brown v. McMillian*, 737 So. 2d 570, 571 (Fla. 1st DCA 1999). That is because "to favor such applications would bring about a looseness in practice and encourage counsel to neglect to gather all available evidence for a first trial . . . and then, once defeated, allow counsel to become for the first time duly diligent in securing evidence to cure the defects and omissions in the showing during the first trial." *Id.* And the use of such motions to rehash matters previously litigated and lost, at or before trial is improper. *Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co. Inc.*, 20 So. 3d 952, 955 (Fla. 4th DCA 2009). The Gawker Defendants' renewed motion is the very type of motion the Courts disfavor. It cannot justify delaying entry of the judgment in favor of Mr. Bollea.

In addition, delaying entry of judgment severely prejudices Mr. Bollea. As noted, the jury returned its verdict over two months ago. Ordinarily, interest on a money judgment in a tort case begins to accrue only on the date that the trial court enters the judgment fixing the amount of the monetary award. *See, Amerace Corp. v. Stallings*, 823 So. 2d 110, 112 (Fla.2002); *see also,* § 55.03, Fla. Stat. (2015). As a result, the "proper procedure" is "to request that [a] trial court enter a judgment promptly after verdict"—even if post-trial motions remain pending. *Amerace Corp.*, 823 So. 2d 110 (Fla. 2002). The current statutory interest rate is 4.75%. The Gawker Defendants' delay tactics have already cost Mr. Bollea thousands of dollars of daily interest that he should have been entitled to collect.

Further, until a judgment is entered, the requirement that the Gawker Defendants post a bond to protect the judgment is also delayed. The Gawker Defendants have repeatedly declared that they intend to appeal the judgment. Recent articles indicate Gawker Defendants have now hired a senior banker with expertise in "corporate restructuring," which suggests that before posting bond, the Gawker Defendants are working to shield assets a judgment might otherwise reach.[2]

There is no doubt that given the opportunity, the Gawker Defendants will try again to postpone judgment day and manufacture even more arguments to challenge the verdict against them. In fact, the Gawker Defendants have already indicated they will do this. At the very close of the May 25 hearing, the Gawker Defendants stated their intent to launch yet another attack on the verdict. Their counsel asserted that recently released newspaper articles about litigation

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[2] Steven Perlberg, Gawker Media Looking at Possible Sale of Company, WALL ST. J., May 26, 2016, available at http://www.wsj.com/articles/gawker-media-looking-at-possible-sale-for-company-1464273859.

financing "potentially relates to our efforts to get post-trial relief," and requires post-trial "discovery" to see whether there "is something that happened improper in the case." T178-79.

Enough is enough. The Gawker Defendants lost at trial and their authorized post-trial motions have been denied. Their continued delay tactics should be stopped. Mr. Bollea is entitled to entry of a judgment based on the verdict he won at trial, just as he is entitled to the issuance of a permanent injunction.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-mail via the e-portal system this 31st day of May, 2016 to the following:

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