

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

CASE NO. 12 012447 CI 11
UCN: 522012CA012447XXCICI

TERRY GENE BOLLEA, professionally known as
HULK HOGAN,

Plaintiff,

v.

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

Defendants.

**ORDER PERMITTING LIMITED DISCOVERY ON POTENTIAL
VIOLATION OF PROTECTIVE ORDER AND
APPOINTING ELECTRONIC FORENSIC EXPERT**

THIS CAUSE came before the Court for hearing on July 30, 2015 and October 1, 2015 on the Emergency Motion of Plaintiff, Terry Bollea (“Bollea”), for Leave to Conduct Discovery Concerning Potential Violation of Protective Order and to Compel Turnover of Confidential Discovery Materials (the “Motion”). On August 11, 2015, Defendants, Gawker Media, LLC (“Gawker”), Nick Denton (“Denton”) and A. J. Daulerio (“Daulerio”) (collectively, “Gawker Defendants”) and their counsel filed their Joint Opposition to the Motion. On August 25, 2015, Gawker Defendants filed their Supplemental Joint Opposition to the Motion. On August 28, 2015, Bollea filed his Reply to the Joint Opposition and Supplemental Joint Opposition. The Court has reviewed the Motion, Opposition and Reply papers, heard argument of counsel, and is otherwise fully advised. Accordingly, it is hereby

ORDERED as follows:

1. Bollea’s Motion is GRANTED IN PART to conduct limited discovery concerning a potential violation of this Court’s agreed upon Protective Order. In granting this limited discovery the Court has specifically considered the following:
 - a. the seriousness of this potential violation of the agreed upon Protective Order;
 - b. the time-line of reported events that transpired between June 26, 2015, through August 6, 2015;

- c. the events surrounding the Gawker Defendants at the time;
- d. the basis for the Court granting the Defendant's request requiring the Plaintiff to execute an FBI Authorization form in the first place, which was to determine whether or not the Plaintiff knew he was being recorded, or knew of the existence of a camera in the bedroom (Order February 26, 2014), and
- e. the motive and opportunity for leaking said irrelevant and inflammatory information which was excluded from this trial by court order.

2. Bollea is entitled to a forensic inspection of desktop and laptop computers, computer network systems, servers, tablets, smart phones and any other electronic data equipment of Defendants, **Gawker Media, LLC, Nick Denton, A. J. Daulerio, and Heather Dietrick**, for any data, files, emails, messages, texts, phone records and similar electronically stored information concerning the Plaintiff, Terry Bollea, in this action and including the U. S. District Court case of *Gawker Media v. FBI* ("FOIA" lawsuit), **for the time frame of June 26, 2015, through August 6, 2015**, with the search terms identified in Exhibit A, which information shall be subject to the requirements and limitations set forth in this Order (the "Inspection").

3. Appointment of Court's Expert Examiner: Gawker Defendants shall permit and cooperate with the computer forensic examiner, SANTIAGO AYALA, with ATX FORENSICS ("EXPERT"), to forensically image and inspect computers, computer networks, systems, servers, tablets, smart phones and any other electronic data equipment, including without limitation, backup tapes and devices such as disks and USB drives, cloud based services, which are in the care, custody or control of or used by Gawker Defendants (Network and Devices).

4. Purpose of Inspection: The court intends for all parties to understand the purpose which the information is sought, the components and respective relevance of the data at issue, the workings of the technology that stores and manipulates the data, and the processes to ensure that the data produced is what it purports to be.

It is alleged by the Plaintiff that the defense team potentially leaked irrelevant and inflammatory information that was under a "Confidential – Attorney's Eyes Only" designation, and that the information was subsequently published by *National Enquirer* or *Radar Online*, and then others. The limited discovery is being permitted for the sole purpose of determining whether or not this serious allegation is true.

5. Scope of Inspection: From June 26, 2015 through August 6, 2015:

The inspection is intended to provide Bollea only that narrow relevant information and provide context to such information, not provide the entire database in which the information resides or the underlying database application or database engine. Bollea shall obtain information and discovery regarding the following topics or issues:

- a. Any data or material which in any way demonstrates that Gawker Defendants, directly or indirectly, communicated with anyone associated with the *National Enquirer* or *Radar Online*, including, without limitation Dylan Howard, Lachlan Cartright, Melissa Cronin, Michael Jaccarino or Amber Goodhand/Ryland, or any other member of the media or third-parties (other than third parties permitted to receive such information under this Court's protective orders) concerning Bollea, this lawsuit or the "FOIA" action;
- b. The search terms identified in Exhibit A;
- c. The statements quoted in Exhibit B;
- d. Any video or audio recording of Bollea, Heather Clem or Bubba The Love Sponge Clem, as well as any actual or purported transcripts of such recordings; and
- e. Identification of any system operations, specific commands, or other evidence of processes or events by or during said time period, within this Scope of Inspection during which data have been moved, modified, deleted, or erased from the Network or other devices, whether through normal operation or otherwise, that may explain or affect the presence or absence of the information falling within this designated Scope of Inspection;

This Scope of Inspection may be modified and amended by stipulation of the parties or by Court order.

6. Procedure for Inspection: Within ten (10) business days of this Order, Gawker Defendants shall permit EXPERT access to the Network and Devices to inspect and copy information from them. Gawker Defendants shall have the right to be present during EXPERT's inspection and imaging of Gawkers Defendants' Network and Devices, but shall not interfere with the inspection or copying in any way. EXPERT shall be permitted to perform any nondestructive forensic tests necessary to obtain the information described in the Scope of Inspection herein, including, but not limited to, making a copy of any programs, or data contained in the Network and Devices. EXPERT shall be permitted to take forensic images

back to its place of business for further testing and inspection. EXPERT shall not use any inspection or copying methods that result in the destruction of any business or personal information contained on Gawker Defendants' Network and Devices.

7. Restrictions on Disclosure by EXPERT: EXPERT shall strictly observe the procedure described in this paragraph, and shall not transmit to or discuss with Plaintiff or any other third party the information obtained or copied from Gawker Defendant's Network and Devices, until after EXPERT has complied with all of the requirements of this paragraph.

a. Once EXPERT completes its inspection, EXPERT shall provide counsel for Gawker Defendants with one or more discs containing all information obtained by EXPERT that appears to be responsive to the Scope of Inspection set out above.

b. Within ten (10) days after Gawker Defendants' counsel's receipt of such disc(s), counsel for Gawker Defendants shall give written notice to counsel for Plaintiff and to EXPERT of all items or data on the disc(s) that Gawker Defendants object to EXPERT producing to Plaintiff. Such objections shall be limited to the following grounds: (i) attorney-client privilege; (ii) work product privilege; (iii) journalist's privilege. Any objections must identify the specific document or data for which protection is sought, and must state specifically for each document or data the foundation for the claim of privilege or protection. The sender, all recipients and subject matter of each document or data shall be identified. Failure to object within the ten (10) day time period shall be deemed a waiver of objection.

c. Any information within the Scope of Inspection that is not the subject of an objection from Gawker Defendants shall be produced to Plaintiff by EXPERT after the expiration of this ten-day period.

d. If objections are made, counsel shall meet (telephonically or in person) within ten (10) days to confer with the objective of resolving any disputed objections. Any unresolved objections that remain after this meeting shall be presented to the Special Discovery Magistrate, James Case, in the form of a Motion for Protective Order filed by Gawker Defendants within ten (10) days after the meeting of counsel above, and Judge Case will review expeditiously Gawker Defendants' objections.

e. EXPERT shall not produce or disclose any information that is subject to an objection by Gawker Defendants unless and until the objections are eliminated by agreement of the parties or by Order of the Court.

8. Appointment by Court. EXPERT and all its employees shall be deemed to be acting as a Court-appointed expert as of the date on which EXPERT first gains access to Gawker Defendants' Network and Devices. EXPERT shall continue to function in this capacity until the conclusion of this matter, or released by Stipulation of the parties or Court Order. During the period that EXPERT is functioning as Court-appointed expert, neither party shall have *ex parte* contact with EXPERT regarding the substance of the information obtained by EXPERT during its inspection. However, counsel for the parties may discuss technical issues with EXPERT regarding the methods used by EXPERT to conduct its inspection or the format used by EXPERT to produce documents to Gawker Defendants for review. Neither party shall be permitted to retain the services of this expert for further investigative issues in this matter without a court order or by stipulation of the parties for the duration of this action.

9. Confidentiality. Other than as specified in this Order, or subsequent order of this court, EXPERT shall not provide, discuss, or disclose information derived from the Network and Devices, or in any way reveal the nature of information derived from the Network and Devices, to any person. EXPERT shall produce such information only after EXPERT has complied with the notice process described above in this Order. EXPERT is prohibited from producing to Plaintiff any information obtained during the inspection that does not fall within the Scope of Inspection.

10. No Retention of Information. At the conclusion of this litigation, EXPERT shall return to Gawker Defendants or destroy, as instructed by the Gawker Defendants', all information retrieved and copied from Gawker Defendants' Network and Devices including all copies.

11. Cost of Expert. The costs related to the hiring of EXPERT or its participation in this lawsuit shall be borne initially by Plaintiff, without prejudice, to the Court's jurisdiction to later determine the ultimate allocation of this expense.

12. Written Discovery: Bollea is also entitled to serve written discovery upon Gawker Defendants concerning each of the topics of issues listed in the Scope of Inspection set forth above. However, such written discovery shall be limited to requests for production of non-electronic documents and records (*i.e.*, phone records/bills, letters,, etc.) not to exceed ten (10) interrogatories.

13. Depositions. Bollea may notice and take the limited depositions of (1) any current or former Gawker employees or agents revealed by the computer forensic examination to have been in contact with or communicated with the *National Enquirer* or *Radar Online*, directly or indirectly, concerning Bollea, this lawsuit, or the "FOIA" suit; and (2) any current or former Gawker employees or

agents who otherwise provided to any third party (other than third parties permitted to receive information pursuant to the protective orders entered in this case) any information or materials containing any of the statements attributed to Bollea in the reporting by the *National Enquirer* and *Radar Online*. Bollea may also notice and take the depositions of Nick Denton, A.J. Daulerio and Heather Dietrick on the topic of communications or contact, directly or indirectly, with the *National Enquirer* or *Radar Online*, or any other members of the media or third-parties (other than third parties permitted to receive such information under this Court's protective orders), concerning Bollea, this lawsuit or the "FOIA" action.

14. Third-Party Discovery: Bollea may also subpoena documents/records and take depositions of third-parties concerning each of the topics or issues identified in the Scope of Inspection set forth above.

15. Judge Case as Special Discovery Magistrate for E-Discovery: Honorable James Case shall continue to serve as Special Magistrate, and shall supervise the electronic discovery process, written discovery, depositions and any Court-permitted access to audio and video recordings ordered herein. This appointment is made for expeditious access to the Court and for economy as Judge Case is already familiar with the parties and issues presented in this matter.

16. The Court recognizes the discovery permitted Plaintiff in this Order, while limited, is unusual; however, under the unfortunate circumstances presented in this case, and the extensive agreements to maintain confidentiality of certain issues, this appears to be the least intrusive alternative to seek the truth.

17. Given the extraordinary nature of the relief the Court is granting within Plaintiff's Motion, this Order shall not be effective until November 18, 2015, in order to give Gawker Defendants the opportunity to seek the relief by certiorari.

ORDERED in Pinellas County, Florida, on 21st day of October, 2015.

Pamela A.M. Campbell
Circuit Judge

ORIGINAL SIGNED
Circuit Court
Pinellas County, Florida

OCTOBER 21, 2015

Pamela A.M. Campbell
Circuit Judge

Copies to:
Attached Service List

SERVICE LIST

Kenneth Turkel, Esquire
Christina Ramirez, Esquire
Barry Cohen, Esquire

kturkel@bajocuva.com
cramirez@bajocuva.com
bcohen@tampalawfirm.com

Charles Harder, Esquire
Douglas E. Mirell, Esquire
Gregg D. Thomas, Esquire

charder@hmafirm.com
dmirell@hmafirm.com
gthomas@tlolawfirm.com

Michael W. Gaines, Esquire

mgaines@tampalawfirm.com

Paul Saifer, Esquire
Seth Berlin, Esquire

psaifer@lskslaw.com
sberlin@lskslaw.com msullivan@lskslaw.com
mberry@lskslaw.com asmith@lskslaw.com

Rachel Fugate, Esquire
David R. Houston, Esquire

rfugate@tlolawfirm.com
dhouston@houstonatlaw.com

Santiago Ayala, ATX
Judge James R. Case

Santiago@ATXForensics.com
jimcase@tampabay.rr.com

EXHIBIT "A"

Search Terms

The Scope of Inspection shall include the following search terms, including all reasonable iterations of these terms that are calculated to obtain responsive documents and to avoid false positive hits:

1. "Hulk Hogan"
2. "Bollea"
3. "Keith Davidson"
4. "Davidson"
5. "Calta"
6. "Cowhead"
7. "MRCOWHEAD"
8. "Richard Peirce"
9. "richpeirce"
10. "Tony Burton"
11. "Burton"
12. "Bostick"
13. "DVD details"
14. "Hulk Hogan/Heather Clem Sex Tape from July 2007"
15. "Hulk_Hogan_Sex_Tapes.doc"
16. "Matt Loyd"
17. "SpiceBoy"
18. "racist"

EXHIBIT "B"

Statements

1. "my daughter Brooke jumped sides on me"
2. "black billionaire guy"
3. "He had Jamie Foxx coming in on the 22nd track"
4. "she is making some real bad decisions now"
5. "the one option Brooke had, Brooke's career besides me"
6. "sell beach records"
7. "south beach records"
8. "VH1 wanted me to do a big thing and go back to the house I grew up in"
9. "enamored with Linda"