

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

TERRY GENE BOLLEA professionally
known as HULK HOGAN,

Plaintiff,

Case No.: 12012447-CI-011

vs.

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

Defendants.

_____ /

**PUBLISHER DEFENDANTS' STATEMENT OF UNDISPUTED
MATERIAL FACTS ON PUNITIVE DAMAGES**

Pursuant to Rule 1.510 of Florida Rules of Civil Procedure, defendants Gawker Media, LLC ("Gawker"), Nick Denton, and A.J. Daulerio (collectively, the "Publisher Defendants") hereby submit, through the undersigned attorneys, their statement of undisputed material facts in support of their concurrently-filed motion for summary judgment on plaintiff's proposed claim for punitive damages. The exhibits referenced herein are attached to the accompanying Affidavit of Alia L. Smith.

The Publisher Defendants also incorporates by reference (a) the Publisher Defendants' Statement of Undisputed Material Facts in support of their motion for summary judgment, filed on April 20, 2015 (referred to herein as the "Merits SUMF"), (b) the Affidavit of Rachel E. Fugate, with exhibits, which accompanied the Merits SUMF, (c) the Publisher Defendants' Confidential Statement of Undisputed Material Facts ("Conf. Merits SUMF"), and (d) the Confidential Affidavit of Rachel E. Fugate, with exhibits, which accompanied the Confidential Merits SUMF.

THE PUBLISHER DEFENDANTS

1. Defendant Gawker Media, LLC is a publisher of eight popular websites on a range of topics. In addition to gawker.com, which is at issue in this lawsuit and focuses on news and entertainment, Gawker publishes www.gizmodo.com (focusing on technology), www.deadspin.com (sports), www.jezebel.com (women's interests), www.lifehacker.com (general life tips and tricks), www.io9.com (science fiction, fantasy and futurism), www.kotaku.com (video games), and www.jalopnik.com (cars and the auto industry). Gawker Media as a whole publishes more than 90,000 posts per year. *See* Ex. 2 (site post counts for 2012 and 2013). Gawker's most popular site is Gizmodo, its technology-focused site. *See* Ex. 3 (site-wide traffic data for Gawker's websites for 2012 and 2013).

2. Gawker's mission is to provide its readers with "a bold and unflinching news resource." Carmichael Dep. (Ex. 4) at 86:22-23; *see also* Denton Dep. (Ex. 5) at 45:21-24 (Gawker has a "reputation amongst readers for telling the truth, for being authentic, for being conversational, for being real"); *id.* at 65:15-19 (Gawker Media sites provide news "without access, favor or discretion").

3. Defendant Nick Denton is the Chief Executive Officer and founder of defendant Gawker. Am. Compl. (Ex. 1) ¶ 21. Before founding Gawker in 2002, he was a journalist for *The Financial Times* and *The Economist*. *See* Denton Dep. (Ex. 5) at 24:17-20, 25:21 – 29:4, 36:2-5.

4. Defendant A.J. Daulerio served as the editor of gawker.com from November 2011 to January 2013, following two earlier stints as a writer and then editor for one of Gawker's other websites (deadspin.com). Daulerio Dep. (Ex. 6) at 22:5 – 25:9. He is the author of the article at

issue in this action. *See* Ex. 7 (article at issue identifying Daulerio as author); *see also* Hogan Ex. 35 (same); Fugate Ex. 12 (same).

I. UNDISPUTED FACT NO. 1: Gawker published the news report and commentary at issue in this action, accompanied by one minute and 41 seconds of heavily-edited excerpts from a 30 minute video recording of Hulk Hogan and Heather Clem conversing and engaging in sexual activity (the “Publication”).

5. As fully described in the Merits SUMF, prior to the Publication, there had been substantial media coverage and public discussion, including extensive public discussion by Hogan himself, of both (a) Hogan’s romantic affairs and sexual practices, often in graphic detail, and (b) the existence of a sex tape featuring Hogan and speculation over the identity of the woman appearing in the video. Merits SUMF ¶¶ 33-112.

6. On or about September 27, 2012, defendant Daulerio was contacted by Tony Burton, an agent with Don Buchwald & Associates, Inc. (the “Buchwald Agency”). Daulerio Dep. (Ex. 6) at 136:18-22; *see also* Conf. Merits SUMF ¶ 114. The Buchwald Agency serves as the agent for a number of radio and television personalities, including Howard Stern. Peirce Dep. (Ex. 8) at 110:3-15.

7. In that communication, Burton advised that a client had contacted him to obtain a suitable address to send a significant DVD anonymously, which Daulerio subsequently learned related to the “Hulk Hogan sex tape story.” Daulerio Dep. (Ex. 6) at 139:9-17. *See also* Conf. Fugate Ex. 113-C.

8. A package containing the DVD was thereafter sent to Daulerio’s attention at Gawker sometime between September 27, 2012, and October 2, 2012. Daulerio Dep. (Ex. 6) at 114:8 – 115:24; Ex. 9 (Gawker’s Resp. to Interrogatory No. 5).

9. Daulerio viewed the DVD he received (the “Video Recording”) and made a determination to publish a post about it. Daulerio Dep. (Ex. 6) at 116:14-22, 118:9-13.

10. Daulerio decided that he would “write [a] commentary about both the Hogan tape and celebrity sex tapes in general, . . . using the Hogan tape as kind of the catalyst for that commentary.” *Id.* at 118:25 – 119:4.

11. Daulerio decided that the post would also include short excerpts from the Video Recording to support the commentary. *Id.* at 118:9-21. In keeping with the commentary’s emphasis on the public’s fascination with celebrity sex tapes, Daulerio wanted the excerpts to include examples of “the innocuous back and forth between [Hogan] and the woman in the tape that was supposed to be Heather Clem, his best friend’s wife at the time, and some of the substance of the conversation in showing how not sexy it was.” *Id.* at 120:9-17. Daulerio also wanted the excerpts to include “small snippets” of sex so as “to verify the fact that they were actually having sex.” *Id.* at 120:18-24.

12. Gawker posted the Publication on October 4, 2012. Ex. 7 (copy of Publication at issue); Hogan Ex. 35; *see also* Merits SUMF ¶¶ 120-124.

13. The written commentary referenced and hyperlinked to some of the prior coverage of the Hulk Hogan sex tape and explained the circumstances under which a copy ended up in Gawker’s possession. *See* Ex. 7 at 1 (including the hyperlinks as originally published: “This footage was stealthily circulated last April. TMZ reported its existence. The Dirty showed some screen shots, and Hulk lawyered up because he claims he was ‘secretly filmed.’ Last week, a burned DVD copy of Hulk having sex with a woman rumored to be Heather Clem (Bubba’s ex-wife), was delivered to us.”).

14. The written commentary also provided a description of some of what appeared on the Video Recording. *Id.* at 1-3. That description highlighted the previously unreported detail that Bubba Clem appeared to have consented to Hogan’s encounter with his then-wife. *Id.* at 1. This was in stark contrast to, for instance, how the story had previously been reported elsewhere including a prior report that Bubba Clem had set up cameras to catch Hogan and Heather Clem in a clandestine affair that served as the reason that the Clems later divorced. *See* Merits SUMF ¶ 109; Fugate Ex. 89 (lengthy *National Enquirer* article reporting same).

15. The written commentary also attempted to use the Hulk Hogan sex tape and the controversy generated by it as a springboard for commenting generally on the public’s fascination with both celebrity and celebrity sex tapes, and the unglamorous nature of them. *See* Ex. 7 at 1 (when we see celebrity sex tapes “we come away satisfied that when famous people have sex it’s closer to the sex we as civilians have from time to time. Meaning: it’s hardly ever sexy the way we expect it to be sexy”); *id.* (“celebrity sex is still incredibly dull”).

16. The written commentary was accompanied by brief and heavily edited video excerpts, in grainy black-and-white footage. *Id.*; Fugate Aff. ¶ 94 & Ex. 92 (video excerpts that originally accompanied written article). The posted excerpts lasted one minute and forty seconds in total. *Id.* Those 101 seconds included fewer than nine seconds of sexual activity. *Id.* The rest of the excerpts consisted of conversation between Hogan and Mrs. Clem. *Id.*

17. No advertising was displayed on the Publication, and thus Gawker derived no revenue from it. First Kidder Dep. (Ex. 10) at 175:6-15 (explaining that no advertising was displayed on the Publication because it was “tagged” NSFW or “not safe for work,” and Gawker does not run ads on such posts); Ex. 9 (Gawker Resp. to Interrog. No. 4, verifying that Gawker “did not receive any revenue” directly as a result of the Publication).

18. A pageview is a single view of a website posting. First Kidder Dep. (Ex. 10) at 182:8-10, 200:13-15. Thus, if an individual viewed a webpage ten times, that would count as ten page views, and if ten individuals each viewed that webpage one time, that would also count as ten page views. *Id.*; *see also* Ex. 11 (Google Analytics definitions: “A pageview is defined as a view of a page on your site that is being tracked by the [Google] Analytics tracking code. If a user clicks reload after reaching the page, this is counted as an additional pageview. If a user navigates to a different page and then returns to the original page, a second pageview is recorded as well.”) A “unique pageview . . . aggregates pageviews that are generated by the same user during the same session,” meaning that if a user views the same webpage twice, that would count as two page views, but one unique page view. Ex. 11 (definition from Google Analytics).

19. According to plaintiff, the Publication received approximately 5 million unique page views. Pl. Mot. at 4. Gawker Media received a total of 7.2 **billion** total page views during 2012. Ex. 3 (page view data for Gawker sites for 2012). The traffic to the Publication reflected approximately one tenth of one percent of the overall number of page views Gawker’s publications received in 2012.

20. Gawker earns the majority of its revenues from selling advertising. Most of its advertisers are mainstream brands such as Microsoft, Starbucks, Verizon, Ford, and Target. *See* Ex. 12 (excerpt from Gawker’s Media Kit). Advertisers typically do not want their products advertised next to controversial or “not safe for work” content, which is why Gawker does not display advertising on such posts. Gorenstein Dep. (Ex. 13) at 137:25 – 140:10.

21. The Publisher Defendants did not sell copies of, or access to, either the complete Video Recording they received or the brief excerpts that accompanied the Publication. Ex. 9 (Gawker’s Resp. to Interrogatory No. 5).

II. UNDISPUTED FACT NO. 2: The Publisher Defendants played no role in creating the Video Recording.

22. The Publisher Defendants played no part in recording the Video Recording. Ex. 9 (Gawker’s Resp. to Interrogatory No. 5) (“Gawker did not make the Video and has no personal knowledge about its creation.”).

23. The Publisher Defendants did not know about the Video Recording until more than five years later, in late 2012. *Id.*; *see also* Daulerio Dep. (Ex. 6) at 112:14-24.

III. UNDISPUTED FACT NO. 3: The Publisher Defendants believed that the Publication addressed a matter of public concern.

24. Each of Gawker’s witnesses testified, consistently, that they believed the Publication, including the brief video excerpts accompanying it, to be newsworthy, including because the video was the subject of a then-ongoing public controversy.

25. For example, defendant Daulerio testified that the existence of the video was matter of “public record” and had “news value,” Daulerio Dep. (Ex. 6) at 123:10-11, and he “thought it was newsworthy and it was something that was worth discussing and putting up on the site,” *id.* at 159:5-7. In reaching that conclusion, he noted that the “sex tape . . . had already been talked about publicly,” *id.* at 122:7-8, and that he had discussed with Tony Burton the fact that that the video “had been talked about on *TMZ* and other sites,” *id.* at 114:2-7.

26. Mr. Daulerio also explained that he viewed the video excerpts as newsworthy, because they “would give a little more insight into the stuff that was already in the public record and also show some inconsistencies in what Hulk had stated publicly and what there was as visual evidence.” *Id.* at 124:14-22; *see also id.* at 181:19-21 (“the tape was actually part of the story”); 182:9-12 (point of the story was to address existence of the tape and provide

commentary); 120:6-8 (aim “was just to give a brief overview of the content to both verify its existence and to also just tie into the commentary”). He explained that, consistent with this purpose, he “turned the [DVD] over to our video editor and . . . selected various spots of the tape” that Daulerio “considered both newsworthy in the context of [the] story, and had her [whittle] it down” to under two minutes. *Id.* at 118:15-21. Ultimately, Mr. Daulerio testified, while he found parts of the tape amusing, *id.* at 158:12 – 159:7, its overall “newsworthiness at that point was both with the existence of the tape and verifying its existence and then my own personal commentary about celebrity sex tapes and the one in particular involving Hulk Hogan and Heather Clem.” *Id.* at 214:24 – 215:8.

27. Emma Carmichael, who was the Managing Editor of gawker.com at the time, similarly testified that the story concerned “a public figure who had contextual stories related to this incident that were already out in the public and we had information related to those contextual stories.” Carmichael Dep. (Ex. 4) at 60:6-12. Ms. Carmichael further explained that, as a result, she “was very comfortable with the way we framed the story and the context we gave the story.” *Id.* at 55:11-16.

28. Defendant Nick Denton, the CEO of Gawker, testified that he was consulted briefly about the subject before the Publication was posted, but that he otherwise did not participate in editing it, and did not review its text or the video prior to publication. *See* Denton Dep. (Ex. 5) at 100:22-25 (confirming that he was “made aware of the Hulk Hogan story, the sex tape story before it was published,” but not testifying to any editorial involvement); 103:2-5, 103:23 – 104:25 (testifying that, although he cannot recall specifically, he believes that his only connection to the post before publication was a very brief conversation with Daulerio, in which he “encouraged [Daulerio] to avoid gratuitous[ness],” and to “mak[e] a point”); 106:11-16

(testifying that he first read the text of the Publication in September 2013, roughly a year after it was published, in preparation for his deposition);104:7-11 (testifying that, as of his deposition, “I actually still haven’t seen” the video “in whole or in part”). He also explained that the story had “as much detail as . . . needed,” *id.* at 107:6-7, and that he believed the video excerpts to be “an essential part of the whole story,” *id.* at 224:19-21. In sum, Mr. Denton “believe[d] in its newsworthiness.” *Id.* at 243:16-17.

29. Mr. Denton also explained that the story’s headline and lead in deliberately captured the public’s tension between wanting to watch celebrity sex tapes and at the same time being embarrassed about doing so. *Id.* at 213:10-25 (Q: If a “hypothetical reader” asked “do you want me to watch this at work or don’t you?” what would Daulerio say? A: “I think we’re all a little schizophrenic. We are all interested and we’re all a little bit embarrassed about our interests.”); *id.* at 213:6-9 (“I think the meaning [of the “go ahead and watch it anyway” statement] is relatively transparent”).

30. Gawker’s corporate designee, Chief Operating Officer Scott Kidder, testified on behalf of the company that Gawker “felt that . . . the video along with the narrative was extremely newsworthy and that was the primary motivation in publishing it.” First Kidder Dep. (Ex. 10) at 235:17-20. Mr. Kidder further explained:

The video, when taken with the post, looked at a well-known American celebrity who had put himself out there by appearing in television shows, showing himself as a 1950s-style father, had written at length in a book about, about his marriage, contemplating suicide, cheating . . . on his wife. The video had been rumored online, but there was no . . . evidence that it . . . truly exist[ed]. And in addition to that A.J.’s narrative described how celebrity sex at the end of the day is rather boring and pedestrian

Id. at 235:23 – 236:13.

IV. UNDISPUTED FACT NO. 4: After publication, the Publisher Defendants continued to believe that the Publication was newsworthy.

31. Post-publication conduct is not germane to the question of punitive damages, including a defendant’s knowledge at the time it acted or, in this case, published. For the avoidance of doubt, however, the Publisher Defendants note that the undisputed record confirms that they continued to believe after publication – and continue to believe to this day – that the Publication was newsworthy and related to a matter of public interest.

32. Shortly after Gawker posted the Publication, Hogan’s attorney, David Houston, sent it a “cease and desist” letter threatening “all civil and criminal remedies.” Hogan Ex. 19 (cease and desist letter); *see also id.* (“We will exhaust every legal avenue possible including criminal charges”).¹ Gawker’s then-counsel responded shortly thereafter and explained:

The existence and the content of the video were widely reported prior to Gawker’s publication. Indeed, various news outlets had already identified the woman in the video and her husband [and] the video depicts Mr. Bollea having sex with a married woman in the woman’s home. . . . [T]he one minute clip shows very little sexual activity and is clearly newsworthy given the public interest in Mr. Bollea’s marriage, divorce and his extramarital activities.

Ex. 14 (Oct. 9, 2012 email from Gawker’s counsel to D. Houston); *see also id.* (noting “the wide disclosure of the content of the video prior to publication, the content actually posted, and the newsworthiness of the video”); *id.* (noting that “the video is not being used for a ‘commercial’ purpose (as the law defines it), is true, and is newsworthy”).

That correspondence also offered, “If your client wishes to make a statement on the video or any matter related to it, we would be happy to post his response.” *Id.*

¹ No criminal charges were ever brought against the Publisher Defendants. To Gawker’s knowledge, no criminal charges have been brought against anyone arising out of the Hulk Hogan sex tape.

33. Mr. Denton testified that he continued to believe that the Publication was newsworthy after receiving the “cease and desist” letter. Denton Dep. (Ex. 5) at 243:13-17 (Q: “After the [cease and desist] letter was received, why did Gawker not remove the sex tape from its site?” A: “Because we continued to believe in its newsworthiness.”). At his deposition, he explained that he did not think the Publication was “unnecessary or gratuitous,” including because the “piece showed Hulk Hogan as a person [and] as a celebrity”:

You know, we have very distorted views of celebrities, we have very distorted views of their, of their importance as role models. I think they are held up to a ridiculous, a ridiculous standard, you know, both of looks and morality.

Denton Dep. (Ex. 5) at 170:21 - 171:23.

34. A few months after the Publication, in January 2013, Mr. Daulerio left Gawker to take a position as Editorial Director of Spin Media, the publisher of numerous national media publications, including *Spin* and *Vibe*. Daulerio Dep. (Ex. 6) at 25:9, 26:16 – 27:21. He was replaced as editor of gawker.com by John Cook. First Kidder Dep. (Ex. 10) at 73:7-16. At his deposition, Mr. Cook testified that in his view “the tape was clearly newsworthy.” Cook Dep. (Ex. 15) at 103:6-7. Mr. Cook further explained that he “absolutely” believed that the Publication was newsworthy because:

The existence of the tape, the circumstances under which it was made, the identity of the participants . . . had been the subject of the intense scrutiny by TMZ and other news organizations and it was something circulating . . . in the talk radio community. . . . And it was of sufficient interest that Hulk Hogan himself called in to TMZ to discuss it. But the actual tape that we are talking about was a lacuna, it was a missing piece. No one knew what the actual tape was. No one knew what they were talking about. The post actually let people know what everyone was talking about. It is informative in that context.

Id. at 104:2-20.

V. UNDISPUTED FACT NO. 5: The Publisher Defendants believe that whether something is newsworthy depends on the context.

35. The Publisher Defendants and other Gawker employees were asked at their depositions about decisions regarding whether to publish other controversial material, some real and some hypothetical. Their testimony consistently demonstrated that they do not believe it appropriate to publish all content, no matter what, but that they carefully evaluate the newsworthiness of each particular story and, if they decide to publish, assess the proper way to “mak[e] a point” and to avoid being “gratuitous.” Denton Dep. (Ex. 5) at 104:12-24.

36. For example, Mr. Denton testified that “a sex tape that featured a sexual encounter between Hulk Hogan and his wife while the two of them were married” would “be less newsworthy than a tape of him having sex with a woman who was not his wife.” Denton Dep. (Ex. 5) at 218:25 – 219:12. Similarly, Mr. Denton was asked a hypothetical question whether a sex tape involving President and Mrs. Obama would “be newsworthy,” to which Mr. Denton responded: “I confess I would have problems with that one, because I know there would be a lot of public interest, but I wouldn’t like the story. . . . [T]hey seem like a loving couple and if the tape does nothing but establish the fact that they are a loving couple, I don’t see that it would have any real value in changing perceptions or establishing any truth.” *Id.* at 221:12 – 222:10. *See also id.* at 223:7 – 224:5 (asked whether it would be newsworthy to report “[i]f someone made a sex tape with his wife and never slept around,” Mr. Denton responded that, if the tape simply “establishes the fact that they are a loving couple,” there would be “voyeuristic interest, but not much news interest”).

37. Mr. Denton went on to testify that “I assume that most, I hope most celebrities have sex . . . But I don’t think the fact of somebody having sex alone is that interesting to me. I

know everyone has voyeuristic impulses, but we – I don't particularly, and I hope that's reflected in the company's editorial policy." *Id.* at 219:20 – 220:4.

38. In that regard, Mr. Denton testified that he is not interested in "traffic whoring," which he described as an "article that is cheap, that is gratuitous, that seeks only to, to provoke without truly informing. Empty calories would probably be the kind of closest metaphor [that] would probably capture it best." Denton Dep. (Ex. 5) at 118:23 – 119:8. (In his Motion, at 3, plaintiff takes this testimony out of context to suggest that Denton testified he was in favor of traffic whoring *and* that the Publication at issue was an example of it. As Mr. Denton's actual testimony confirms, he said neither.)

39. Similarly, Mr. Daulerio was asked whether "any celebrity sex tape is newsworthy," and he replied "No." Daulerio Dep. (Ex. 6) at 208:15:17. Elaborating, Mr. Daulerio explained that whether a particular celebrity sex tape is newsworthy must be evaluated "on a story-by-story basis just like everything else" to determine whether it was "newsworthy or not." *Id.* at 209:6-22. *See also id.* at 210:14-20 (it does not "necessarily matter if the celebrity is cheating" but, if so, and therefore the "celebrity is a hypocrite," that "in some way makes it a little more newsworthy"); *id.* at 210:21 – 211:13 (asked about a hypothetical celebrity sex tape of pop star Miley Cyrus, Mr. Daulerio testified that he would "judge it accordingly based on what was on the tape" to assess whether or not it was newsworthy).

40. Emma Carmichael, who had served as Managing Editor of *gawker.com* at the time the Publication was published, was asked about a news report (which she had not read and which she was not shown) involving a Florida employer secretly filming his female employees while they were showering. Ms. Carmichael testified that whether and what to publish would depend on the "context," including how the story fit "[w]ithin the context of a larger reported

story” and whether “the journalism is meant to keep this from happening again.” Carmichael Dep. (Ex. 4) at 77:18 – 81:25. She further explained that it would be “hard to come up with a context of why” a news organization would “post an unedited video of somebody naked” in those circumstances. *Id.*

41. Ms. Carmichael was also asked a series of hypothetical questions about covering a story involving revenge porn and testified that whether the footage was newsworthy “depends” on “[c]ontext, who the figure is, what the story is, what the commentary is,” and was unable, without additional details, to “say for sure” whether a particular example could be newsworthy. *Id.* at 73:2 – 74:1.

42. Although he did not play a role in the publication of the web posting at issue, John Cook, who succeeded Mr. Daulerio as editor-in-chief of gawker.com, also testified repeatedly that whether something is newsworthy depends on its context. Cook Dep. (Ex. 15) at 55:23 - 56:5 (testifying that whether revenge porn is newsworthy “depends on the context in which that information was published”); 62:3-8 (whether the publication of sexually explicit photos is newsworthy “depends on the context”); 64:12 – 65:2 (asked to distinguish between photographs previously posted by Gawker’s site deadspin.com, which he was not shown and did not recall, and revenge porn posted by a person named Hunter Moore, who had been criminally prosecuted, Cook testified: “I have not seen the posts you’re referring to. I’m confident based on my knowledge of Deadspin and the people who work there that there is a vast gulf between what Mr. Moore was doing and what Deadspin was doing. . . . Deadspin would not gratuitously publish photos of private individuals with no news value to those images. So what Hunter Moore was doing was publishing pornography without context of people who were not public figures. . . . What Deadspin does is publish newsworthy information.”); 66:18-21 (discussing

images of private figures, and testifying that “I would need to know the context. I would need to know the exact circumstance. I would need to know what image we are talking about”).

43. As Hogan points out in his papers, Gawker publications have routinely criticized the publication by *others* of content involving sex and nudity where it was published with no news purpose. *See, e.g., See Hogan Ex. 15* (Gawker article criticizing others for posting non-newsworthy nude photos of private persons obtained from photosharing website); *Hogan Ex. 22* (Gawker article condemning different publisher who was posting sexualized images of underage girls); *Hogan Ex. 23* (Gawker article from 2014 denouncing “revenge porn,” which involves posting sexually explicit images of private figures for the purpose of humiliation and without any newsworthiness); *Hogan Ex. 24* (article from Gawker Media’s women’s issues site, jezebel.com, excoriating Tumblr for refusing to take down non-newsworthy photos of private figure women in bathrooms that had been taken with a hidden camera). These examples confirm that Gawker and its editorial employees believe that they may not publish such things unless they are newsworthy, and further confirms that they had that belief here.

Dated: May 8, 2015

Respectfully submitted,

THOMAS & LOCICERO PL

By: /s/ Gregg D. Thomas

Gregg D. Thomas

Florida Bar No.: 223913

Rachel E. Fugate

Florida Bar No.: 0144029

601 South Boulevard

P.O. Box 2602 (33601)

Tampa, FL 33606

Telephone: (813) 984-3060

Facsimile: (813) 984-3070

gthomas@tlolawfirm.com

rfugate@tlolawfirm.com

Seth D. Berlin
Pro Hac Vice Number: 103440
Michael Sullivan
Pro Hac Vice Number: 53347
Michael Berry
Pro Hac Vice Number: 108191
Alia L. Smith
Pro Hac Vice Number: 104249
Paul J. Safier
Pro Hac Vice Number: 103437
LEVINE SULLIVAN KOCH & SCHULZ, LLP
1899 L Street, NW, Suite 200
Washington, DC 20036
Telephone: (202) 508-1122
Facsimile: (202) 861-9888
sberlin@lskslaw.com
msullivan@lskslaw.com
mberry@lskslaw.com
asmith@lskslaw.com
psafier@lskslaw.com

*Counsel for Defendants Gawker Media, LLC,
Nick Denton, and A.J. Daulerio*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of May 2015, I caused a true and correct copy of the foregoing to be served via the Florida Courts' E-Filing portal and by hand upon the following counsel of record:

Kenneth G. Turkel, Esq.
kturkel@BajoCuva.com
Shane B. Vogt, Esq.
shane.vogt@BajoCuva.com
Bajo Cuva Cohen & Turkel, P.A.
100 N. Tampa Street, Suite 1900
Tampa, FL 33602
Tel: (813) 443-2199
Fax: (813) 443-2193

David Houston, Esq.
Law Office of David Houston
dhouston@houstonatlaw.com
432 Court Street
Reno, NV 89501
Tel: (775) 786-4188

Charles J. Harder, Esq.
charder@HMAfirm.com
Douglas E. Mirell, Esq.
dmirell@HMAfirm.com
Sarah Luppen, Esq.
sluppen@HMAfirm.com
Harder Mirell & Abrams LLP
1925 Century Park East, Suite 800
Los Angeles, CA 90067
Tel: (424) 203-1600
Fax: (424) 203-1601

Attorneys for Plaintiff

Barry A. Cohen, Esq.
bcohen@tampalawfirm.com
Michael W. Gaines
mgaines@tampalawfirm.com
Barry A. Cohen Law Group
201 East Kennedy Boulevard, Suite 1000
Tampa, FL 33602
Tel: (813) 225-1655
Fax: (813) 225-1921

Attorneys for Defendant Heather Clem

Gregg D. Thomas
Attorney