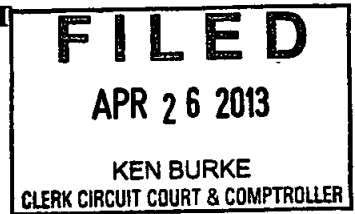


IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA



TERRY GENE BOLLEA professionally  
known as HULK HOGAN,

Plaintiff,

Case No 12012447CI-011

vs

HEATHER CLEM, GAWKER MEDIA, LLC  
aka GAWKER MEDIA, GAWKER MEDIA  
GROUP, INC aka GAWKER MEDIA,  
GAWKER ENTERTAINMENT, LLC;  
GAWKER TECHNOLOGY, LLC; GAWKER  
SALES, LLC; NICK DENTON, A J  
DAULERIO; KATE BENNERT, and  
BLOGWIRE HUNGARY SZELLEMI  
ALKOTAST HASZNOSITO KFT aka  
GAWKER MEDIA,

Defendants

**AFFIDAVIT OF CHARLES J. HARDER**

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

CHARLES J HARDER, Esq being duly sworn, deposes and says

1 I am a resident of Los Angeles, California over the age of 18 years I am an attorney duly licensed to practice before all courts of the State of California, among other courts I am a partner at the law firm Harder Mirell & Abrams LLP, counsel (admitted *pro hac vice*) for Plaintiff Terry Gene Bollea, professionally known as Hulk Hogan ("Mr Bollea" or "Plaintiff"). The statements made herein are based on my personal knowledge

2. This proceeding pleads various privacy and related causes of action, arising out of Defendant Gawker Media, LLC's and the other Gawker Defendants' publication, on their website at www Gawker com, of a clandestine recording of Plaintiff naked and engaging in

private sexual activities.

3 On April 24, 2013, this Court, Hon Pamela A.M. Campbell presiding, heard Plaintiff's motion for a temporary injunction and, at the conclusion of the hearing, ordered from the bench "that Gawker.com remove the sex tape and all portions and content therein from their websites." A true copy of the transcript of the hearing is attached hereto as **Exhibit D**. The Court's oral order is found starting on page 32 of that transcript.

4 At approximately 1:20 p.m. EST on April 25, 2013, and subsequently thereafter, I visited the Gawker.com webpage where the sex tape footage had been posted, and found that the sex tape footage and accompanying graphic narrative was still up at the website, and the sex tape footage could be played by clicking the Play button, just as it appeared before the Court's Temporary Injunction Order of the prior day. Accordingly, at 1:31 p.m. EST, I sent an email to counsel for Gawker Media and demanded that the sex tape footage and accompanying narrative be taken down immediately so to comply with Judge Campbell's order. A true copy of that email is attached hereto as **Exhibit E**. I received no response to **Exhibit E** and the footage and accompanying article remained accessible on the Gawker.com website.

5 At 3:34 p.m. EST on April 25, 2013, Judge Campbell issued written orders granting Plaintiff's motion for a temporary injunction and denying Gawker Media's motion for a stay pending appeal. Counsel for Gawker Media sent an email at 3:42 p.m. EST confirming that they had "received" the Court's orders. The order granting the temporary injunction stated that "Gawker Media, LLC [and other Defendants] are hereby .. [o]rdered to remove the audio and video recording of Plaintiff Terry Gene Bollea in a private bedroom with Heather Clem, which recording includes depictions of Mr. Bollea naked and engaged in sexual activity (the "Sex Tape"), which is currently posted at *www.gawker.com* [and] to remove from their websites,

including Gawker.com, the written narrative describing activities occurring during the private sexual encounter.” A true copy of the order granting the motion for a temporary injunction is attached hereto as **Exhibit F**, and a true copy of the order denying the motion for a stay pending appeal is attached hereto as **Exhibit G**.

6 After **Exhibit F** was issued, also on April 25, 2013, Plaintiff served a copy of **Exhibit F** by hand on Gawker Media’s counsel at 4:14 p.m. EST.

7. After **Exhibit F** was issued and received by Gawker Media’s counsel, at 5:53 p.m. EST that same day, I once again visited the Gawker.com website. The footage from the video recording of Plaintiff no longer played directly at the same Gawker.com page, but the graphic narrative description of the private sexual activities captured on the tape was still up at the Gawker.com website. A true copy of the webpage as I found it at 5:53 p.m. EST on April 25, 2013 is attached hereto as **Exhibit B**.

8 In addition, another page appeared on Gawker.com entitled “A Judge Told Us To Take Down Our Hulk Hogan Sex Tape Post. We Won’t.” That post stated that Gawker Media was taking down the sex tape footage itself, “[b]ut the portion of the order compelling us to remove the entirety of Daulerio’s post—his words, his *speech*—is grossly unconstitutional. We won’t take it down.” The post further directed readers to “go here to read Daulerio’s account of watching Hulk Hogan fuck his friend’s ex-wife for 30 minutes, as is your right.” That text contained an embedded link to the narrative of the sex tape footage that Gawker Media was required to remove by this Court’s order. In addition, the post linked to the sex tape itself as posted on another website, with the text “And if you’d really like to watch the tape for some reason, it’s online here.” I clicked on the link and it took me to DailyMotion.com, where I viewed the sex tape. The post is found at <http://gawker.com/a-judge-told-us-to-take-down->

our-hulk-hogan-sex-tape-po-481328088 and I viewed and printed it at 7.22 p.m. EST on April 25, 2013. A true copy of that webpage is attached hereto as **Exhibit A**.

9. In response to Gawker Media's decision to leave the graphic narrative of the sex tape footage up on the Gawker.com website and to continue to link to the sex tape, I sent an email demanding that Gawker Media immediately comply with this Court's order in full. A true copy of that email is attached hereto as **Exhibit C**. I have received no response to **Exhibit C** and, as of the time of my execution of this affidavit, the pages containing the narrative, and linking to the narrative and to the sex tape itself (**Exhibits A and B**), are still up on the Gawker.com website.

I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information and belief.

Executed this 25<sup>th</sup> day of April, 2013.

  
CHARLES J HARDER

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013 by \_\_\_\_\_ who is personally known to me or \_\_\_\_\_ who has produced \_\_\_\_\_ (type of ID) as identification (check one)

*See attached CA Jurat form  
8/13*

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(Signature)

\_\_\_\_\_  
(Type or Print Name)  
Notary Public  
My Commission Expires  
Commission No .



# EXHIBIT A



### A Judge Told Us to Take Down Our Hulk Hogan Sex Tape Post. We Won't.

Yesterday the Hon Pamela A M Campbell, a circuit court judge in Pinellas County, Fla., issued an order compelling Gawker to remove from the internet a video of Hulk Hogan fucking his friend's ex-wife, as well as a 1,400-word narrative of the video written by former Gawker editor A.J. Daulerio and 466 user-submitted comments. Here is why we are refusing to comply



JOHN COOK  
/ 284  
@ 10/13/08  
11/13/08

Campbell made the command at the request of Charles J. Harder, an attorney for Hogan. Hogan is suing Gawker Media and a variety of other parties in Florida state court for, among other things, invasion of privacy stemming from publication of the video of him fucking his



Even for a Minute, Watching Hulk Hogan Have Sex in a Canopy Bed is Not Safe For Work. Not Worth It.

other parties in Florida state court for, among other things, invasion of privacy stemming from publication of the video of him fucking his friend's ex-wife and its accompanying narrative. Hogan initially brought a copyright claim against us in federal district court, but after a judge issued a series of preliminary rulings disadvantageous to his case, he dropped the matter and shifted his focus to the state invasion of privacy claim.

Yesterday, Campbell held a hearing to consider Harder's motion for a temporary injunction against our continued publication of the video and accompanying text. This is what Campbell ordered at the hearing's end, from a transcript of the proceedings provided by Gawker's in-house counsel:

*I'm ordering that the Gawker.com remove the sex tape and all portions and content therein from their website, including Gawker.com. Ordering to remove the written narrative describing the private sexual encounter, including the quotations from the private sexual encounter from websites and including Gawker.com.*

This afternoon, she released a written order saying, in substance, the same thing. It requires us to remove the video as well as "the written narrative describing activities occurring during the private sexual encounter, including: (a) all descriptions of visual images and sounds captured on the Sex Tape or any other video of this private sexual encounter, and (b) all direct quotations of words spoken during this private sexual encounter and recorded on the Sex Tape or any other video of this private sexual encounter." Campbell, who represented the parents of Terry Schia in their effort to portray their daughter as conscious and alert and was appointed to the bench by former Florida Gov. Jeb Bush, described her order as serving "the public interest." She stated very clearly during the hearing that she had never watched, and did not intend to watch, the video that she was ordering us to remove. "I'm not going to look at the tape. I don't think at this point in time I need to look at the tape."

We publish all manner of stories here. Some are serious, some are frivolous, some are dumb. I am not going to make a case that the future of the Republic rises or falls on the ability of the general public to watch a video of Hulk Hogan fucking his friend's ex-wife. But the Constitution does unambiguously accord us the right to publish true things about public figures. And Campbell's order requiring us to take down not only a very brief, highly edited video excerpt from a 30-minute Hulk Hogan fucking session but also a lengthy written account from someone who had watched the entirety of that fucking session, is viable and contemptuous of centuries of First Amendment jurisprudence.

Campbell's grasp on the ramifications of that jurisprudence, such as it is, can be gleaned from a moment in the transcript of yesterday's hearing wherein she seemed to fail to understand the

WEEKLY FROM CRIPPER  
Here Sex in a Comedy  
Bed is Not Safe For  
Work but Watch It  
Anyway

Update: The video posted here has been ordered removed by Hon. Pamela A. XI Campbell, a circuit. Read



Campbell's grasp on the ramifications of that jurisprudence, such as it is, can be gleaned from a moment in the transcript of yesterday's hearing wherein she seemed to fail to understand the basic First Amendment principle that "speech" includes forms of communication beyond word sounds coming out of people's mouths. This is a moment when Gawker Media's attorney, Gregg Thomas, is interrupted by Campbell to attempt to clarify a point.

**THOMAS** Since 1789, we've had a Constitution that honors speech. And I'm the last person here, Your Honor, to tell you that this is the speech of the highest quality or tenor, but the cases seem to say Your Honor can't make that judgment. You can't -

**CAMPBELL.** Let me ask you this. I'm sorry for interrupting, but directly on that point. This is the part that was irritating to me in the lawyers pleading, where they are describing comments that are made allegedly during this tape. So is that the speech that you are trying to protect? The speech that was made during the scope of this videotape between these two consenting adults having sex in a private setting with allegedly no notice to the plaintiff? I'm not sure what speech you're trying to protect.

**THOMAS** Your Honor, I'm trying to protect multiple parts of speech. The first part is the private version of the story. This is not a sex tape by itself, Your Honor. There is a private version...and a sex tape that goes with it. It's not a sex tape alone. Yes, Your Honor, I'm trying to protect that speech. I'm also trying to protect the speech that's there.

**CAMPBELL.** I'm thinking this injunction is only about the tape.

**THOMAS** Yes, Your Honor. I understand that. But I also think, Your Honor, when we think of the history of the First Amendment, we think of the Pentagon papers, maybe because I'm a First Amendment lawyer. There, a top secret document that was clearly stolen that could have injured men in war in Vietnam was considered by the United States Supreme Court. And they said we're not going to stop its publication. The analogy perhaps is not appropriate.

**CAMPBELL.** It doesn't even have any - it's apples and oranges, worse than that actually.

**THOMAS** Well, Your Honor, I don't think I'm out of order when I say speech is speech.

Despite her misapprehension that the issue at hand was "only about the tape," Campbell has seen clear to order us to disappear a 1,400-word article—words composed and published by Gawker Media editorial employes—simply because Hulk Hogan didn't like it.

A detailed order from a court never finding it is common sense. US: The new... of common sense.

Despite her misapprehension that the issue at hand was "only about the tape," Campbell has seen clear to order us to displace a 1,400-word article—words composed and published by Gawker Media editorial employees—simply because Hulk Hogan didn't like it.

A lawful order from a circuit court judge is a serious thing. While we vehemently disagree with Campbell's order with respect to the video itself, we have chosen to take it down pending our appeal.

But the portion of the order compelling us to remove the entirety of Dealeno's post—his words, his speech—is grossly unconstitutional. We won't take it down.

You can read the transcript of yesterday's hearing, as well as Campbell's ruling below. And go here to read Dealeno's account of watching Hulk Hogan fuck his friend's ex-wife for 30 minutes, as is your right. And if you'd really like to watch the tape for some reason, it's online here.

DOCUMENT PAGE Zoom

1 IN THE COURT OF THE COMMON PLEAS OF THE COUNTY OF COLUMBIA

2

3

4 STATE OF OHIO, )  
Plaintiff, )  
vs. )  
5 THOMAS CAMPBELL, )  
Defendant. )

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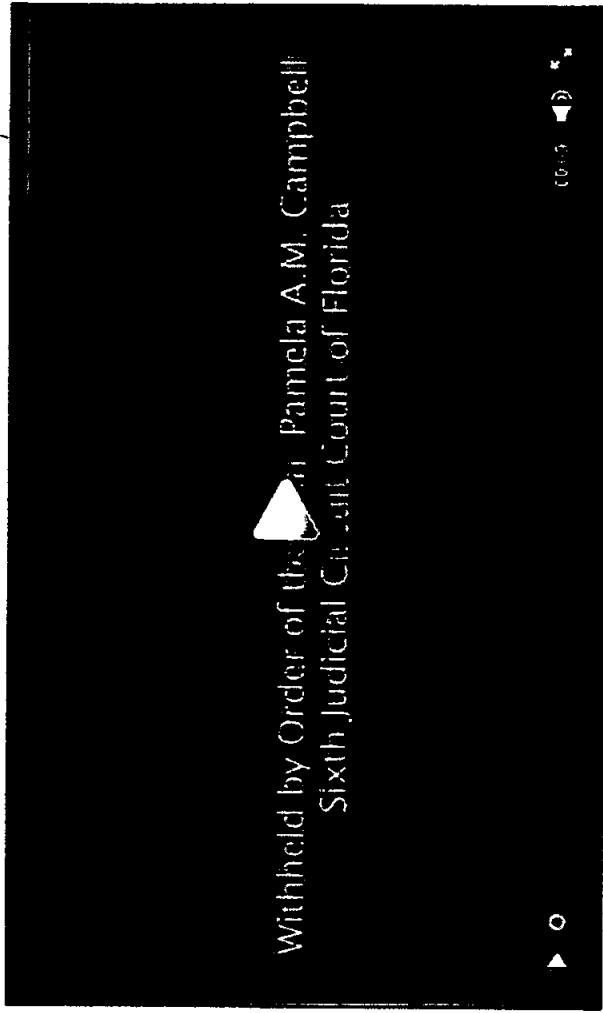
# **EXHIBIT B**

Even for a minute watching hulk hogan have sex in a canopy bed is not safe for work but watch it anyway

Fees  Venture Superior Court  Treatises  Dye & Durham Corpor  Montgomery Miles  Business Search and C

RECOMMENDED ITEMS

Welcome to the new Content Management System

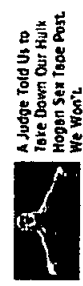


### Even for a Minute, Watching Hulk Hogan Have Sex in a Canopy Bed is Not Safe For Work but Watch it Anyway

**Update** The video posted here has been ordered removed by Hon Pamela A M Campbell, a circuit court judge in Pinellas County, Fla. See here for details If you'd like to watch it elsewhere, you may do so here

Because the internet has made it easier for all of us to be shameless voyeurs and deviants, we love to watch famous people have sex. We watch this footage because it's something we're not supposed to see (sometimes) but we civilians have from time to time "cleaning it's hardly ever sex, the way we expect it to be sexy, even when the participants are ostensibly more attractive than the majority of our sex partners will be

But naked that re still having sex like people who don't usually have sex on



**A Judge Told Us to Take Down Our Hulk Hogan Sex Tape Post We Won't**  
Yesterday the Hon Pamela A.M. Campbell, a circuit court judge in Pinellas County, Fla issued an



even for a minute watching hulk hogan have sex in a canopy bed-s not safe for work but what it anyway

- Fees

RECOMMENDED LINKS



Log

something we're not supposed to see (sometimes) but we come away satisfied that when famous people have sex its 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 even when the participants are ostensibly more attractive than the majority of our sex partners will be

But naked there's still having sex like people who don't usually have sex on camera. Even if their dicks are big enough to smother a boathorn with around their faces are lit up like Gai War's scandalous footage after midnight their sex purposeful. I wanted celebrity sex. I still incredibly dull. The normalcy of it is exciting, though when you see glimmers of sloppiness or some shoulder moles or just an earnest breathy post-coital burp. It becomes mesmerizing

Up top you'll see one minute from the 30 minutes of footage taken of 59 year-old Hulk Hogan, professional wrestler. Real Life American Hero to many. fucking a woman rumored to be the ex-wife of his best friend, a famous radio DJ named Bubba the Love Sponge. This footage was stealthily circulated last April. The reported assistance, The "Hulk" photoed some screen shots, and Hulk law sued up because he claims to be an actor. Last week a burned DVD copy of Hulk having sex with the woman rumored to be Heather Clem (Bubba's ex-wife) was delivered to us through an anonymous source. They wanted no payment. They wanted no credit. Their only request was that we watch it. So I did--all 30 1/2 of it--and here's the gist: it's a goddamn masterpiece

It opens with Hulk Hogan, performing oral sex on the woman as she lays on the bed. Then another man's voice can be heard from inside the room off-camera and both Hulk and the naked woman engage in idle chat with the mystery man. Because the woman closely resembles Mrs. Clem, some have suggested that the voice of the mystery man is in fact Bubba the Love Sponge. If this is true Bubba has no problem sharing his wife with his best friend

You guys do your thing this man says. I'll be in the office if you need me

He exits swiftly and allows Hulk and the woman their privacy. Hulk and the woman engage in more chat and Bubba's name is mentioned. The woman says "We just fucked earlier today." Hulk asks "Who? You and Bubba?" She just laughs. It doesn't matter

Hulk strips down. His tan line is exposed and his hairline is vulnerable and silly without the do-rag but there is sex to be had regardless. Hulk must get hard, though, and the woman is eager to make that happen. Her fellatio is successful and Hulkamania is about to run wild on her but then his cell phone rings. He checks it because he thinks it might be his son Nick. The ringtone on Hulk Hogan's phone is a song by his daughter Brooke Hogan called "About a Girl" featuring Paul Wall. He is a proud father

But Hulk checks the caller and does not want to talk that person at all. "Fuck no" he says

He stands on the side of the bed and the woman scoots up from the pillows and resumes giving the former WWE heavy weight champion of the universe a blowjob. It is a slow, dutiful blowjob and Hulk is thrusting himself into her mouth to speed up the process. This goes on for a few minutes and at one point Hulk examines the canopy bed curtains in a way that suggests he'd like to purchase this particular style for his own canopy bed some day. She takes a break. She spits



even for a minute watching Hulk Hogan have sex in a canopy bed is not safe for work but watch it anyway

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Log

He stands on the side of the bed and the woman scoots up from the pillows and resumes giving the former WWE heavyweight champion of the universe a blowjob. It is a slow, dutiful blowjob and Hulk is thrusting himself into her mouth to speed up the process. This goes on for a few minutes and at one point Hulk examines the canopy bed curtains in a way that suggests he'd like to purchase this particular style for his own canopy bed some day. She takes a break. She spits loudly. She resumes for a few seconds, but it appears the spit has worked because Hulk mutters something in a growly sex voice. The woman removes him from her mouth and spins around on the bed like an excited puppy. She stands. They grope each other and stare at each other. What did you say? she asks laughing and trying up her hair in a pony tail. Then they both laugh because there was a miscommunication during the sex act and they don't want to feel awkward.

"You got a rubber?" I want you to climb on top of me," Hulk repeats, but not as sexy as it was the first time which she didn't hear. Yes, she does have a rubber. Then we watch Hulk stand up and clumsily attempt to roll a condom on to his erect penis which, even if it has been ravaged by steroids and middle age, still appears to be the size of a thermos you'd find in a child's lunchbox. Hulk hurls his massive body on to the canopy bed and the woman climbs on top finally and they begin. There is lots of squealing and moaning from her and she says stuff like "I want to make you cum and your dick feels so good inside me - that sort of thing. There is light spanking from Hulk done to show he supports her efforts and is close to orgasming.

Then Hulk grunts. Hulk grunts more. Then Hulk grunts like he's doing an impression of old Hulk Hogan grunting right before he's about to cum/corrupt. Climax happens for both participants and they seem pleased with the results. The woman provides two tender kisses on Hulk's upper chest. Hulk says, "Mmmk" because he's a little bemused by the situation he finds himself in on this day, as we'll soon find out. Here's how Hulk explains his reaction to the woman he just had sex with.

The rubber almost came off, he says.

She's not concerned. It did what it was supposed to.

Hulk thought that was funny and makes her repeat it.

She does so and then peels off the rubber from his penis and carries it away. She holds the condom full of Hulk just like it's a random dirty sock she found in the drawer. Hulk is still coming down from his orgasm and is making quick, loud Tony Soprano wheezes.

Oh my god, he exhales. Can't believe I have to drive back home. Fuuuuuck.

The woman giggles, climbs back onto bed with him and reminds Hulk that this is why he should move to this neighborhood. They engage in some cuddling for a couple minutes but Hulk does have to go because he has to go meet his son Nick who was presumably no longer in prison during the time this was filmed. Playful banter resumes amidst the afterglow. Hulk gets up naked and accepts the invitation from the woman to take a shower. But then he tells the woman that he's shocked that the fucking took place at all because he'd just eaten ten minutes before he got there and felt like a pig. He had sashimi. He smacks his large stomach and makes his way to the shower.





even for a minute watching hulk hogan have sex in a canopy bed is not safe for work but watch it any day

- Fees Ventura Superior Court Treatises Dye & Durhan Corpor Business Search and C

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who was presumably no longer in prison during the time this was filmed. Playboy benter resumes amidst the afterglow Hulk gets up naked and accepts the invitation from the woman to take a shower. But then he tells the woman that he's shocked that the fucking took place at all because he'd just eaten ten minutes before he got there and felt like a pig. He had sashimi. He smacks his large stomach and makes his way to the shower.

Hulk begins to put on his clothes. Bubba's shirt he wears when he puts on his shirt. He's pulling on his jeans one gartleg at a time still mumbling. The woman is naked in bed and not at all concerned by his early exit. She does suggest that he go talk to the master's man in the office before he leaves. But Hulk has to meet his son Nick at midnight. Then Hulk tells a story about how Nick's new girlfriend has a twin sister who called Hulk on the phone. Hulk reveals that the young woman inquired about his divorce and if that's true she would like to be the first to go out with him.

Hulk sits on the bed and puts on his socks. You're a hot commodity, the woman says to Hulk. Yeah, right. Hulk says. Even Hulk Hogan needs to be told he's handsome sometimes.

But he has to go. He leans over and kisses the woman. The joke about him loving and leaving but it's okay. Be cool, he says to the woman on his way out the door. They thank each other for the sex. You're awesome. Hulk says on his way out the door. So are you, she says back in a very sincere way. Everybody's awesome. Hulk asks her if he should close the door on the way out. No, leave it open, she says. Thank you. Off he went.

Video edited by Raiz Bernert

235 d...  
d...  
d...  
Following participants

★ Author's participating

★ Author's visible

Note to editor: Thank you for respecting the fact that some people prefer the verb form to be spelled 'come' as opposed to 'cure'.

AJ Duce  
I wrestled with it myself

A while ago there was a guy commenting on here who claimed to have created a porn manual of style for the distribution company he was working for and his take was to come for the verb form cum for the noun form. I'm ok with that but I prefer come in either case. Spelling wise, I mean.

★ Author's participating

★ Author's visible

Needs more thetmos

Used

Serious! Wh isn't that man doing porn?

Feb 1969

★ Author's participating

★ Author's visible

35 participants

★ Author's visible

uh, this feels like a transaction given the presence of a master's man and the fact that it was filmed, makes me

# **EXHIBIT C**

## Sarah Luppen

---

**From:** Charles Harder  
**Sent:** Thursday, April 25, 2013 3:39 PM  
**To:** Gregg D. Thomas, Rachel E. Fugate, Katie Brown, 'Seth Berlin (SBerlin@lskslaw.com)', 'Paul Safier (PSafier@lskslaw.com)'  
**Cc:** 'bcohen@tampalawfirm.com', 'mgaines@tampalawfirm.com', 'dhouston@houstonatlaw.com', 'dkthomas@tampalawfirm.com', 'lisa.meriwether@bajocuva.com', 'kturkel@BajoCuva.com', 'cramirez@BajoCuva.com', Sarah Luppen, Douglas Mirell  
**Subject:** Continued Contempt of Court  
**Importance:** High

Dear Counsel

Please take notice that the Gawker Defendants remain in Contempt of Court, and therefore we will be bringing a Motion for an Order to Show Cause re Contempt. Gawker Defendants continue to make the sex tape at issue available to the public by providing at Gawker.com a link to the sex tape. Moreover, Gawker Defendants have failed and refused to remove the graphic narrative describing the private sexual acts in the illegal video and quoting its participants, as ordered. Please advise whether Gawker Defendants intended to refuse to comply with the Court's order to turn over to Mr. Bollea's counsel all versions and copies of the full-length video and all clips, still images, transcripts, etc. thereof within ten days of the order.

All rights are reserved.

Sincerely,

Charles Harder

---

**From:** Charles Harder  
**Sent:** Thursday, April 25, 2013 10:31 AM  
**To:** 'Gregg D. Thomas'; 'Rachel E. Fugate'; 'Katie Brown'; 'Seth Berlin (SBerlin@lskslaw.com)'; 'Paul Safier (PSafier@lskslaw.com)'  
**Cc:** 'bcohen@tampalawfirm.com'; 'mgaines@tampalawfirm.com'; 'dhouston@houstonatlaw.com', 'dkthomas@tampalawfirm.com'; 'lisa.meriwether@bajocuva.com', 'kturkel@BajoCuva.com', 'cramirez@BajoCuva.com', Sarah E. Luppen (SLuppen@HMAfirm.com); Douglas Mirell  
**Subject:** Contempt of Court  
**Importance:** High

Dear Counsel.

Please take notice that the Gawker Defendants are in Contempt of Court, and we intend to take appropriate action. If the Gawker Defendants wish to mitigate the sanctions that we intend to seek against them, then they should comply immediately with the Court's Order (stated in Court yesterday at about 5:00 pm EST) and **immediately** remove the Hulk Hogan sex tape.

All rights are reserved.

Sincerely,

Charles Harder



**CHARLES J. HARDER**

1801 AVENUE OF THE STARS

SUITE 1120

LOS ANGELES CA 90067

TEL (424) 203-1600

[CHARDER@HMAFIRM.COM](mailto:CHARDER@HMAFIRM.COM)

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# **EXHIBIT D**

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

3

4 TERRY GENE BOLLEA, professionally  
5 known as HULK HOGAN,

6

Plaintiff,

7

vs.

CASE NO : 12012447 CI-011

8 HEATHER CLEM; GAWKER MEDIA, LLC,  
9 a/k/a GAWKER MEDIA; GAWKER  
10 MEDIA GROUP, INC. a/k/a GAWKER  
11 MEDIA; GAWKER ENTERTAINMENT, LLC;  
12 GAWKER TECHNOLOGY, LLC, GAWKER  
13 SALES, LLC; NICK DENTON, A J  
14 DAULERIO, KATÉ BÉNNÉRT, and  
15 BLOGWIRE HUNGÁRY SZÉLLEMI  
16 ALKOTAST HASZNOSITO KFT a/k/a  
17 GAWKER MEDIA,

18

19

20

Defendants.

21

22

23

PROCEEDINGS:           MOTION FOR TEMPORARY INJUNCTION

24

25

BEFORE:                HONORABLE PAMELA A M CAMPBELL

26

27

DATE:                   April 24, 2013

28

29

PLACE:                 St. Petersburg Judicial Building  
30                           545 First Avenue North  
31                           St. Petersburg, Florida

32

33

REPORTED BY:           Stacy D. Miller, Court Reporter  
34                           Notary Public  
35                           State of Florida at Large

36

37

38

♀

1 APPEARANCES:

2 ON BEHALF OF THE DEFENDANT:

Bollea v Clem et al Hearing before Judge Campbell 04-24-13.txt

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7

8  
9 ON BEHALF OF THE PLAINTIFF:

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cramirez@bajocuva.com  
16

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3

1 P R O C E E D I N G S

2 THE COURT. We are here on Case Number  
3 12-012447, Terry Gene Bollea vs Gawker Media and  
4 others Christina Ramirez here representing the  
5 plaintiff Charles Harder here representing the  
6 plaintiff, who as been ordered as pro hoc to  
7 appear today. Greg Thomas here representing

Page 2

8 Gawker and Rachel Fugate here representing  
9 Gawker.

10 We're here today for plaintiff's Motion for  
11 Temporary Injunction. I have reviewed both the  
12 plaintiff's and the defendant's responses that  
13 had been filed for this hearing.

14 First off, I would like to say one initial  
15 thing, and that is professionalism, civility,  
16 integrity. Anything less will not be tolerated.  
17 I would like to remind the parties that when they  
18 file pleadings, they are lawyers first. They are  
19 officers of the Court first You write pleadings  
20 for legal proceedings, not for tabloid or  
21 sensational effect.

22 So, please, the next time any future filings  
23 that are in this court file, please keep that in  
24 mind. I think some of the language that was  
25 used, especially in the response, is offensive.

♀

4

1 I think that it is unnecessary, that it is more  
2 written for sensational issues I will remind  
3 you all that you are professionals and lawyers  
4 first above anything else. So please keep that  
5 in mind in the future in these kinds of filings.

6 All right. So, Mr. Harder, are you making  
7 the argument?

8 MR. HARDER: I would like to, Your Honor.

9 MR. THOMAS Go ahead.

10 THE COURT: Thank you

11 MR. HARDER: Your Honor, I'm going to try to



Bollea v Clem at al Hearing before Judge Campbell 04-24-13.txt  
12 avoid repeating anything from the moving papers

13 because I assume you've read them and you don't  
14 want to hear it again I have read the response.  
15 I was in route in an airport, and I read it on my  
16 iPhone, but I got a sense of it

17 I did want to address the issue of the  
18 collateral estoppel argument first. There are  
19 several cases that say that a ruling on a  
20 preliminary injunction is not collateral estoppel  
21 because it is not a ruling on the merits of the  
22 case, and it does not stop a second hearing on a  
23 second motion for preliminary injunction

24 I can -- I would cite to the Abbott  
25 Laboratories case, 473 F.3d 1196 from the Federal

♀

5

1 Circuit, 2007, which says that, "Rulings on  
2 earlier preliminary injunction motions do not  
3 have collateral estoppel effect in subsequent  
4 preliminary injunction proceedings.

5 In the 11th Circuit controlling here in  
6 Florida, there's a case called David Vincent,  
7 Inc. vs Broward County, 200 F.3d 1325, 11th  
8 Circuit, 2000. In that case, the Court held that  
9 findings made on a prior motion for preliminary  
10 injunction proceeding were not binding in  
11 subsequent proceedings and do not have collateral  
12 estoppel and res judicata effect.

13 I'm sure that there are lots more cases out  
14 there I just saw the opposition yesterday So  
15 we could provide additional cases

16 I think it's pretty clear that the ruling  
Page 4

17 that was in the Federal court was not on the  
18 merits. We filed a temporary restraining order  
19 immediately after we had been retained in the  
20 case when this sex tape video was on the  
21 internet. And we immediately filed because we  
22 felt it was an emergency, and we wanted to stop  
23 the spread of that tape. We wanted to put an end  
24 to it right away.

25 We filed initial papers. We expected that

to

6

1 we would be able to file subsequent papers. We  
2 were denied leave to file additional papers which  
3 had a lot more authority.

4 And so it was a hearing that took place very  
5 quickly, and I know that there were other  
6 requests made that were related to that, but that  
7 was the only hearing that was ever -- that has  
8 ever taken place on those issues.

9 So we believe that the Federal court did a  
10 rush job on that preliminary injunction motion  
11 and didn't really give it the full consideration  
12 with all of the cases that we were prepared to  
13 put before the Court. We also think that the  
14 Court got it wrong, and we explained to some  
15 extent why we think that. I'm not going to go  
16 into that because it's in our papers.

17 I do want to point out to the Court, Your  
18 Honor, though, because there is this issue of  
19 prior restraint of free speech. I think that's  
20 one of the main arguments that the defendants are

Bollea v Clem at al Hearing before Judge Campbell 04-24-13.txt  
21 relying upon. They are alleging that what we're  
22 trying do is enjoin prior restraint of free  
23 speech, that this is somehow protected  
24 constitutional speech. And it is not, Your  
25 Honor. The speech that is at issue, which is the

8

7

1 sex tape, is not constitutional protected speech.

2 There is a case that we came across when we  
3 were doing some research on the opposition. We  
4 came across it yesterday. It happens to be from  
5 the California Supreme Court, but it cites  
6 heavily to the United States Supreme Court That  
7 case is called Aguilar vs. Avis Rent-A-Car  
8 System, Inc. The citation is 21 Cal.4th 121.  
9 It's from 1999.

10 And the -- I'm not going to get into the  
11 facts too much, but there was an employee at Avis  
12 Rent-A-Car who was being subjected to racial  
13 epithet And the employee -- his co-worker who  
14 was subjecting him to these, wouldn't stop and  
15 Avis wouldn't put a stop to it. So he filed a  
16 lawsuit and he sought an injunction to stop this  
17 co-worker from using racial epithets towards him.

18 The argument from the defense was that this  
19 was an attempt at prior restraint of free speech.  
20 It went all the way up to the California Supreme  
21 Court. The California Supreme Court enjoined  
22 this conduct and said it's not a prior restraint  
23 because it's not constitutionally protected. And  
24 the Court even went into a whole list of the  
25 types of conduct and types of speech that's not

Bollea v Clem at al Hearing before Judge Campbell 04-24-13.txt  
3 in public dialogue, that is communication in

4 which the participants seek to persuade or are  
5 persuaded, communication which is about changing  
6 or maintaining beliefs, or taking or refusing to  
7 take action on the basis of one's beliefs."

8 The Court even goes into slander and  
9 intentional infliction of emotional distress.  
10 And it says to -- as to all of this whole list of  
11 types of speech, "Types of speech that produce  
12 special harms distinct from their communicative  
13 aspect, such practices are entitled to no  
14 constitutional protection."

15 And the Court concludes, "The foregoing high  
16 court decision" -- it's referring to several U.S.  
17 Supreme Court decisions -- "recognize that once a  
18 Court has found the specific pattern of conduct  
19 is unlawful, an injunction order prohibiting the  
20 repetition, perpetuation, or continuation of that  
21 practice is not a prohibited prior restraint of  
22 speech."

23 And here, Your Honor, we have a situation,  
24 as you are aware, of one other area that's not  
25 protected is copyright and trademark

+

10

1 infringements. Courts are all the time enjoining  
2 copyright infringements and trademark  
3 infringements, particularly in California where  
4 I'm from, where somebody will post either a TV  
5 show or a movie or excerpts from it and the owner  
6 of that will say, wait a second, you have to pay  
7 for that. You have to get a license from me. I

8 get money when I put that on TV or I put that on  
9 the internet. Courts enjoin that all the time.  
10 well, that's beyond prior restraint. That's not  
11 constitutionally protected.

12 There is also the case that we cited,  
13 Michaels -- the first Michaels case, Bret  
14 Michaels, where it involved a celebrity sex tape.  
15 The Court enjoined it. The Court said just  
16 because you're a celebrity doesn't mean you gave  
17 up your rights of privacy. In some ways you do,  
18 but not in all ways, not when you're behind  
19 closed doors in a bedroom or another private  
20 place.

21 And in preparing for this, Your Honor, I  
22 went on the internet, and I just looked up video  
23 voyeurism in Florida just to see what was --  
24 what's the whole point of the video voyeurism  
25 law There were some articles about some of the

♀

11

1 recent prosecutions, and one was a fellow named  
2 Michael Drey, D-R-E-Y. Last year the article  
3 came out in the Orlando Sentinel in September of  
4 last year

5 This was fellow who was an employee at a  
6 Target store. He set up allegedly -- I guess I  
7 have to say allegedly He set up two cameras in  
8 the changing rooms, filmed what was going on in  
9 the changing rooms.

10 And one of the victims, who was 26 years  
11 old, was mortified that she had changed into a

Bollea v Clem at al Hearing before Judge Campbell 04-24-13.txt  
12 bikini, had no idea that she was being filmed.

13 And this individual, Michael Drey, was  
14 prosecuted. He was facing a five-year prison  
15 sentence, according to the article I don't know  
16 whatever happened to it.

17 But it's -- it's -- the courts look at the  
18 balancing of the public interests. And the  
19 balancing of the public interests on the one hand  
20 is the right to be -- have privacy in a private  
21 place. And everybody has that right Everybody  
22 has that expectation, and they should if we're  
23 going to be a civilized society. You just can't  
24 burst in anywhere or surreptitiously video  
25 someone when you don't have their permission.

7

12

1 It's a very substantial interest.

2 And the Michaels 1 case talks about the  
3 substantial interest that people have to privacy  
4 in their private homes and private places.

5 On the other hand, the counter balance is  
6 the right of people to watch videos that they are  
7 not supposed to watch well, there is no right.  
8 There is no such right to watch a video of  
9 somebody in a private bedroom naked or having sex  
10 or in a changing stall when they are putting on a  
11 bikini There is no such right.

12 Now, the Gawker defendants try to tie in a  
13 newsworthiness to this. They say, well, he's a  
14 celebrity, so therefore, we can talk about it  
15 well, the Michaels 1 decision says, no, you  
16 can't. You can't -- you can't just tie in a

17 newsworthy aspect to something that is a  
18 violation of someone's rights.

19 Now, the interesting thing is that in  
20 Michaels, it wasn't a violation of the criminal  
21 statute of video voyeurism. First it was in  
22 California, and here we're in Florida where there  
23 is such a statute. And, second, Pamela Anderson  
24 and Bret Michaels created the film on their own.  
25 The violation was that they created it for their

♀

13

1 personal usage and not for public usage.

2 Here we have a different situation where Mr.  
3 Bollea was filmed without his knowledge and  
4 without his permission in a private place. That  
5 was a violation. And it is equally a violation  
6 to post that. So it's even more of a violation  
7 of his privacy rights and of the law here in  
8 Florida.

9 Also, Florida has a two-person -- a statute  
10 that requires two people to consent to the taping  
11 and recording of someone. That was violated, as  
12 well.

13 There is a famous case that involves a  
14 celebrity outside of all of these cases that  
15 we've cited. That's of Erin Andrews. She was an  
16 ESPN reporter who was in a hotel room. A person  
17 rented the hotel room next to her and somehow had  
18 peep holes into her room, and he videoed her in  
19 her hotel room.

20 She was mortified, and she suffered extreme

Bollea v Clem at al Hearing before Judge Campbell 04-24-13.txt  
21 emotional distress. It was a huge news story.

22 No one doubts that that was a big news story,  
23 that there was a newsworthy aspect to that  
24 incident.

25 But that doesn't mean you get -- a news

8

14

1 organization gets to post video of Erin Andrews  
2 naked in a hotel room. It's not necessary to  
3 post that to tell the news story. You can still  
4 tell the five ws of the story, the who, what,  
5 where, when, why, how, without posting the actual  
6 content.

7 And here, Gawker defendants stepped over the  
8 line. No one is disputing that they had a right  
9 to write a legitimate news story. Even to have a  
10 picture of Terry Bollea next to the news story  
11 saying, this is the guy that we're talking about.  
12 You know him as Hulk Hogan.

13 And then talking about he had an  
14 extramarital affair. He was in a bedroom. It  
15 was not his bedroom. It was not his wife, et  
16 cetera. A tape was made allegedly. Someone is  
17 trying to shop that tape. You can say all of  
18 that in words. You don't have to post the  
19 content.

20 Can you imagine a world where every time  
21 someone was surreptitiously videoed, and if there  
22 was some news aspect of it, they got to post the  
23 content? Erin Andrews or the situation with  
24 Michael Drey at the Target store? Or news flash,  
25 ladies and gentlemen, there is a Peeping Tom in



1 your neighborhood. This is how he operates.  
2 Here is some video that he took. That's crossing  
3 the line.

4 They crossed the line. We're asking for an  
5 injunction to stop that. The Courts say you're  
6 entitled to an injunction, a mandatory  
7 injunction Yes, they posted it up. We're  
8 entitled to an injunction to take it down.

9 The case that I was telling you about  
10 earlier, Aguilar, the Supreme Court of California  
11 said you're entitled to a mandatory injunction  
12 against this co-worker who was using racial  
13 epithets because his speech is not  
14 constitutionally protected and you can stop him.

15 I think you need to look no further than the  
16 Gawker story itself where they admit this isn't  
17 about telling the news. They say it's not safe  
18 for work. They say it reduces us all to voyeurs  
19 and deviants They say you're not supposed to  
20 watch it.

21 Well, they are not describing the front page  
22 of the New York Times. The New York Times is  
23 something -- is not something you're not supposed  
24 to watch It's not something that reduces you to  
25 a voyeur or a deviant if you look at it. It's

1 perfectly safe for work

2 If it was a legitimate news content -- I'm

Bollea v Clem at al Hearing before Judge Campbell 04-24-13.txt  
3 talking about the sex tape. If that was

4 legitimate, they wouldn't be saying you're not  
5 supposed to watch it.

6 I think it's also telling that no other news  
7 organizations in the world have this sex tape up.  
8 There was one other instance where following  
9 their lead, they posted the same content And in  
10 a Cease & Desist letter, it was taken down  
11 immediately.

12 No other news organization has posted this  
13 up. Hundreds, if not thousands, have written  
14 about the story of the Hulk Hogan sex tape. It  
15 became big news, but nobody has posted the  
16 contents.

17 I reserve for further Thank you, Your  
18 Honor.

19 THE COURT: All right. Mr. Thomas.

20 MR. THOMAS: Your Honor, can I approach?

21 THE COURT: Yes.

22 MR THOMAS: Your Honor, there's a chart we  
23 would like to talk to you about. Your Honor, I  
24 would like for you to think for a second about  
25 the reverse of what happened in this case. Let's

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17

1 assume Mr Bollea comes to you firsthand and he  
2 presents these arguments. Your Honor spends a  
3 consider amount of judicial labor on those  
4 arguments.

5 And this is the same thing, Your Honor  
6 Mr. Hogan chose the court of first resort  
7 Didn't come to this court first. He came to the

8 United States District Court in Tampa, Florida  
9 and filed this claim. He chose it. We didn't.

10 He files a Motion for Temporary Restraining  
11 Order and Preliminary Injunction. The Court,  
12 seven days later, denies the temporary  
13 restraining order, but says you're going to have  
14 your day in court. You're going to have a  
15 hearing. You take as much time as you want.

16 I argued. Ms. Ramirez's partner,  
17 Mr. Turkel, argued. We were there for an hour  
18 and a half. There is a lengthy transcript of  
19 that hearing in Tampa, Your Honor.

20 The Judge -- the same day we had that  
21 hearing, they file an Amended Complaint that adds  
22 a copyright claim Copyright, as Mr. Harder  
23 says, is exactly right. Copyright gives you an  
24 entitlement to an injunction if you satisfy the  
25 other criteria.

♀

18

1 So Judge Whittemore after that hearing,  
2 three weeks, issues -- denies the preliminary  
3 injunction. Lengthy order. We have a copy of it  
4 right here for Your Honor.

5 THE COURT: I have a copy Thank you I  
6 have two copies, in fact, that were attached  
7 to -- I believe it was Ms. Fugate's declaration,  
8 and there was a copy of the Order dated  
9 November 14, 2012. There is also an Order that  
10 is dated December 21, 2012

11 MR THOMAS: Exactly, Your Honor That

Bollea v Clem at al Hearing before Judge Campbell 04-24-13.txt  
12 first Order is the Order -- the key Order about

13 the preliminary injunction. The Court spends a  
14 considerable amount of time analyzing the four  
15 criteria, talking about prior restraint, makes  
16 the determination that it is a prior restraint to  
17 enjoin this, looks at the four criteria that are  
18 necessary for an injunction and makes a ruling.

19 But then the Court goes on -- well, the next  
20 day, Your Honor, the 15th, they appeal to the  
21 11th Circuit Court of Appeals. They are on their  
22 way to the 11th Circuit to the get relief there.

23 And they come back to Judge Whittemore and  
24 they say, "You need to stay this while we  
25 consider the 11th Circuit Order " The Judge

♀

19

1 looks at that and he denies it.

2 They file a motion, the same sort of motion,  
3 in the 11th Circuit, and the 11th Circuit never  
4 gets there. The Court then -- they file a  
5 next -- a second Motion for Preliminary  
6 Injunction, Your Honor, on the copyright claim.

7 Then, again, Judge Whittemore denotes --  
8 devotes judicial labor to that claim and, again,  
9 denies the preliminary injunction.

10 So they've had three bites at the apple;  
11 temporary restraining order, preliminary  
12 injunction on the first claim, and preliminary  
13 injunction on the second claim. So to say that  
14 the Court in Tampa did not devote sufficient  
15 labor to this matter, Your Honor, that's what  
16 Judges like Your Honor do. You consider the

17 matter and you rule. Here, Judge Whittemore did  
18 exactly that. He made a ruling.

19 At some point they decide to abandon that  
20 claim. They dismiss in trial court exactly the  
21 same claims Your Honor is presented with today;  
22 intrusion, private facts, video voyeurism, all  
23 the same claims.

24 And I would ask Mr. Harder to tell you on  
25 rebuttal what's changed since then. You know,

20

1 you can have a second injunction if the facts and  
2 circumstances have changed

3 Your Honor, the collateral estoppel rule is  
4 clear. You can't form shop. That's exactly  
5 what's happening here. Considerable judicial  
6 labor there followed by decisions on the merits.

7 Your Honor, if we look at the -- what the --  
8 what the standard is adopted by Florida and  
9 Federal courts, if it's a Federal decision, the  
10 Federal rules apply, will estoppel apply?  
11 Florida courts agree with that

12 The criteria are the issue the stake is  
13 identical to the one involved in the prior  
14 proceeding. The issues are identical, Your  
15 Honor The Complaint doesn't really change  
16 between State court and Federal court.

17 The issue was actually litigated in a prior  
18 proceeding. Not only litigated, but we have a  
19 decision. We have adjudication on the merits

20 The determination of the issue in prior

Bollea v Clem at al Hearing before Judge Campbell 04-24-13.txt  
21 litigation had a critical and necessary part of

22 the judgment in the first action. That's exactly  
23 what happened here. Judge Whittemore looked at  
24 it and made a decision.

25 The party against whom the collateral

21

♀

1 estoppel is asserted had a full and fair  
2 opportunity for a hearing. Your Honor, fully  
3 briefed, fully argued. A decision made by Judge  
4 Whittemore.

5 Your Honor, if we look at the merits, and we  
6 really can look to what Judge Whittemore said  
7 about prior restraints, since 1789, we've had a  
8 non-English interpretation of the way the speech  
9 works. If I said something in England, I would  
10 be stopped and not allowed to proceed and then  
11 we'd have a trial

12 In the United States, it's just the reverse.  
13 It's publish first, punish later. That's the  
14 rule about speech. We're not saying that Mr.  
15 Bollea may at some time in a trial be able to  
16 recover damages for any loss that he suffered.  
17 And we're not saying that at a subsequent point  
18 Your Honor can't enjoin it, but not at this  
19 status of the proceedings, Your Honor.

20 Since 1789, we've had a Constitution that  
21 honors speech. And I'm the last person here,  
22 Your Honor, to tell you that this is the speech  
23 of the highest quality or tenor, but the cases  
24 seem to say Your Honor can't make that judgment.  
25 You can't --

1 THE COURT: Let me ask you this. I'm sorry  
2 for interrupting, but directly on that point  
3 This is the part that was irritating to me in the  
4 lawyers' pleading, where they are describing  
5 comments that are made allegedly during this  
6 tape.

7 So is that the speech that you are trying to  
8 protect? The speech that was made during the  
9 scope of this videotape between these two  
10 consenting adults having sex in a private setting  
11 with allegedly no notice to the plaintiff? I'm  
12 not sure what speech you're trying to protect.

13 MR. THOMAS: Your Honor, I'm trying to  
14 protect multiple parts of speech. The first part  
15 is the printed version of the story. This is not  
16 a sex tape by itself, Your Honor. There is a  
17 printed version like in the Michaels 2 case and a  
18 sex tape that goes with it. It's not a sex tape  
19 alone. Yes, Your Honor, I'm trying to protect  
20 that speech. I'm also trying to protect the  
21 speech that's there.

22 THE COURT. How does that butt up against  
23 the Florida Constitution, Article I, Section 23,  
24 a right to privacy?

25 MR THOMAS: Well, Your Honor, I think

1 Federalism would mandate that Article I, Section  
2 4 of the Florida Constitution is equally

Bollea v Clem at al Hearing before Judge Campbell 04-24-13 txt  
3 significant. Your Honor, we're talking about the

4 First Amendment and Article I, Section 4.

5 THE COURT I'm thinking this injunction is  
6 only about the tape.

7 MR. THOMAS. Yes, Your Honor. I understand  
8 that. But I also think, Your Honor, when we  
9 think of the history of the First Amendment, we  
10 think of the Pentagon papers, maybe because I'm a  
11 First Amendment lawyer.

12 There a top secret document that was clearly  
13 stolen that could have injured men in war in  
14 Vietnam was considered by the United States  
15 Supreme Court. And they said we're not going to  
16 stop its publication. The analogy perhaps is not  
17 appropriate

18 THE COURT: It doesn't even have any -- it's  
19 apples and oranges, worse than that actually.

20 MR. THOMAS: Well, Your Honor, I don't think  
21 I'm out of order when I say speech is speech  
22 Your Honor is not permitted to make an editorial  
23 judgment about which speech is permissible and  
24 which speech is not permissible.

25 THE COURT: I'm only talking about the tape

♀

24

1 MR. THOMAS: Your Honor, I'm talking about  
2 the tape, too. Your Honor, I don't know if  
3 you've taken the time to look at the tape.

4 THE COURT: No. I'm not going to look at  
5 the tape I don't think at this point in time I  
6 need to look at the tape.

7 But I will tell you that I had case not too  
Page 20



8           recently that had to do with a man here in town  
9           that was allegedly hiring bikini-clad women to go  
10          beat up homeless men, and they were recording  
11          these sessions, and the men allegedly would  
12          receive \$50 at the end of 12 minutes.

13                 Well, it was a crime in beating up these  
14          disabled people, so the man went to jail. The  
15          case ultimately resolved, but there were  
16          injunctions. He couldn't be posting those. He  
17          was selling those videotapes. He couldn't be  
18          selling those videotapes of this crime that was  
19          occurring in his garage. And I liken that  
20          similar to something that's here.

21                 MR. THOMAS: Your Honor, the Michaels case  
22          that's talked about by Plaintiff, a sex tape  
23          created and copyrighted, and then Michaels 1 was  
24          about the sale of that videotape. The Michaels 2  
25          case comes along, it's a hard copy, which is a

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25

1           news television program, has a section of the  
2           same videotape and text and discussion of the  
3           videotape

4                 And the Court, Federal Court, contrary to  
5          Michaels 1, says that's permissible when you --  
6          when you put speech together with writing, as in  
7          the hard copy case and in this case. Your Honor,  
8          there is a lengthy article about this that  
9          appears in Gawker.

10                 Your Honor, the tape, as I understand it, is  
11          101 seconds long --

Bollea v Clem at al Hearing before Judge Campbell 04-24-13.txt  
12 THE COURT That's what your motion says.

13 MR THOMAS: -- out of 30 minutes. And in  
14 that are about nine seconds of something that  
15 could be deemed sexual conduct Your Honor, I  
16 think as Judge Whittemore said, that sort of  
17 speech in our Constitution is entitled  
18 protection.

19 Mr Bollea says he wants \$100 million In  
20 our system, that's what you do. You litigate the  
21 merits. And a jury in this courtroom can make  
22 that, and that could remedy the wrong here, Your  
23 Honor. The Constitution and prior restraint  
24 simply does not permit Your Honor to do that

25 And here, given the fact that another

♀

26

1 Federal Judge -- or a Federal Judge has looked at  
2 exactly the same issues and made a determination,  
3 Your Honor, I think -- does everybody get a  
4 second bite at the apple? I don't think so. I  
5 think Your Honor would be -- what's the purpose  
6 of us having a hearing here today if tomorrow we  
7 could go into Federal court and raise the same  
8 issues?

9 THE COURT: Well, you know, this same case  
10 was filed here on October 15, 2012. So it was  
11 filed.

12 MR. THOMAS: Not with these defendants, Your  
13 Honor.

14 THE COURT: I don't know. There was a case  
15 that was filed here with this same case number on  
16 October 15, 2012. I'm not sure who were the

17 parties.

18 MR. THOMAS: Not with these parties, Your  
19 Honor, not with the Gawker defendants. The  
20 Gawker defendants in Federal court, adjudicated  
21 in Federal court. After they dismissed the case  
22 in Federal court, Your Honor, they amended the  
23 Complaint, I think, in December 25

24 THE COURT: It was filed December 28.

25 MR. THOMAS: 28. Yeah. So adjudicated,

27

1 lost, dismissed, amended here and came to Your  
2 Honor.

3 Your Honor, the principals of comity where  
4 you give deference to other judicial labors I  
5 think is critical here, Your Honor. The waste of  
6 time and effort by Judge Whittemore would be  
7 wasted. So do we all get two shots at the apple?

8 Your Honor, I think when you consider the  
9 elements, the four elements required for  
10 injunctive relief, is this newsworthy? Hulk  
11 Hogan, Your Honor, I think we've mentioned, has  
12 written books about his exploits. He is a major,  
13 major person when he does things, he writes  
14 about it. When he divorced his wife, he wrote  
15 about it. When he did other things, he wrote  
16 about it.

17 And now when something is intensely  
18 embarrassing, does he get to shut the spicket on  
19 news about that matter, that he has an affair  
20 with his best friend's wife in the presence of

Bollea v Clem at al Hearing before Judge Campbell 04-24-13.txt  
21 the same person? Your Honor, I think if he opens

22 the spicket in circumstances like this, he can't  
23 close it as easily.

24 Your Honor, we think you should deny the  
25 Motion for Preliminary Injunction

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1 THE COURT: All right. Thank you.  
2 Response, Mr. Harder?

3 MR. HARDER: Thank you, Your Honor Just  
4 briefly. Judge, as I said before, Judge  
5 Whittemore's ruling was not on the merits. And  
6 Mr. Thomas says that you can't go into one court  
7 and ask for injunction and go to another court  
8 and ask for injunction That's not true.

9 I've cited to you cases where someone did go  
10 into one court, was denied an injunction in State  
11 court, went to Federal court, and the Court did  
12 not deny it based on collateral estoppel. The  
13 Court in the second case did a full hearing. And  
14 that's all we're asking for here, Your Honor, is  
15 to -- just to be heard

16 What Judge Whittemore did is not a waste in  
17 any sense because he wrote up an Order. And that  
18 Order has case citations and an explanation as to  
19 how he viewed the case and how he viewed the  
20 issues

21 That doesn't mean that you have to be a  
22 rubber stamp, Your Honor You, as you are fully  
23 aware, I'm sure, can make your own decisions, and  
24 we assume that you will do so

25 Collateral estoppel, however, does not apply  
Page 24

1 here You are not forced to adopt Judge  
2 whittemore's ruling. You can rule how you see  
3 fit.

4 It's true that we can seek damages, and we  
5 are seeking damages, but that's not what an  
6 injunction is about. An injunction is about  
7 putting a stop to wrongful, illegal criminal  
8 conduct that is taking place today. A criminal  
9 conduct that we're here about is occurring right  
10 now at Gawker.com, this web page, where they will  
11 not take this video down

12 Just to clarify, it's about the video, and  
13 it's about the quotations from that video that  
14 are in print. If you're not supposed to ever  
15 tape someone behind closed doors, you're also --  
16 you shouldn't be quoting from what people are  
17 saying or the descriptions of what so and so  
18 looked like and that so and so's genitals were as  
19 X, Y, Z, and I'm going to stop there. That's  
20 what is on the website They go into great  
21 length about describing things

22 From our viewpoint, the description should  
23 be taken down, the quotation should be taken  
24 down, and definitely the video should be taken  
25 down.

1 They talk about 101 seconds isn't very much  
2 because the video is 30 minutes long supposedly,

Bollea v Clem at al Hearing before Judge Campbell 04-24-13 txt  
3 although no one has ever seen the full 30

4 minutes.

5 Let's say their encounter lasted three days  
6 Let's say it was a long weekend. Does that mean  
7 you can have 30 minutes because the percentage is  
8 small?

9 101 seconds is a great deal of time when  
10 you're looking at the types of things that we're  
11 looking at. There was oral sex. There's  
12 intercourse. There's all kinds of -- there's  
13 changing of positions. There's climaxing, excuse  
14 me, Your Honor. There's all kind of things  
15 within that 101 seconds.

16 It's a highlight reel is what it is. They  
17 make it sound like it's minor portions of the  
18 video. It's a highlight reel. It's ladies and  
19 gentlemen, this is all you ever need to see.  
20 we've cut it all down to the best stuff.

21 They're making money off of this That's  
22 why they are doing it. The owner of their  
23 company -- we've provided the blog entries that  
24 he wrote He brags He brags about how they  
25 made 100 million views because people are going

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1 to watch the sex tape. well, now it's up to  
2 4 million because so much time has elapsed. It's  
3 still about 5,000 people going every single week  
4 to take a look at this.

5 My clients can't move past this. That's why  
6 they've asked me to continue this endeavor  
7 because they can't move past this with their

8 lives as long as that tape is still showing Mr.  
9 Bollea having sex with somebody and people are  
10 still going to see it, and they comment about,  
11 oh, I just saw it, on Twitter and in interviews  
12 and various other places. Once this thing is  
13 down, they will begin the process of moving past  
14 it, but they can't do that.

15 And they've provided affidavits, Your Honor,  
16 and you can read them. I don't want to put words  
17 in their mouths, but I think that they are  
18 articulate in how they describe what they're  
19 having to go through and still having to go  
20 through. That's why we're seeking the  
21 injunction. If you have any questions, Your  
22 Honor, I'm happy to address them.

23 THE COURT: All right. Thank you.

24 MR. THOMAS: Your Honor, briefly can I  
25 respond?

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1 THE COURT: Well, typically you have the  
2 movant, the response, and the rebuttal, and  
3 that's it. Is there something that you feel  
4 really pressing that's also not in your papers?

5 MR. THOMAS: Your Honor, just the video  
6 voyeurism claim. It's not a private cause of  
7 action in Florida. It's not permissible to bring  
8 it as a private cause of action. In the Barnicki  
9 (phonetic) case from the United States Supreme  
10 Court --

11 THE COURT: That was in his initial part.

12

MR. THOMAS: Yes, Your Honor.

13

THE COURT: Thank you All right The

14

Court is going to grant the temporary injunction,

15

finding that plaintiff will suffer irreparable

16

harm. There is no adequate remedy of law, the

17

likelihood of success on the merits, and that

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public interest will definitely be served by

19

granting this public and temporary injunction.

20

I'm ordering that the Gawker.com remove the

21

sex tape and all portions and content therein

22

from their websites, including Gawker.com

23

ordering to remove the written narrative

24

describing the private sexual encounter,

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including the quotations from the private sexual

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encounter from websites and including Gawker com.

2

I would like to comment that -- perhaps

3

comments on the news aspect of it, I'm not

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addressing the news aspect of it or the book that

5

Mr. Bollea wrote or any of those other aspects.

6

Simply the language that describes what's on the

7

tape, the tape itself, and the exact quotations

8

that are entailed during the course of the tape

9

I have more to go Did you have a question?

10

MR THOMAS: Your Honor, I'm sorry I'm

11

just trying to be professional and stand when I'm

12

talking, but I'll wait until you finish.

13

THE COURT. I didn't know if you had a

14

specific point on that particular issue.

15

MR THOMAS. No, Your Honor

16

THE COURT Okay. Also enjoined from  
Page 28



17 posting, publishing, exhibiting, or broadcasting  
18 the full length video recording, any portions,  
19 clips, still images, audio, or transcripts of the  
20 video recording

21 And ordering the turn over to Mr. Bollea's  
22 attorneys all copies of the full length video  
23 recording, any portions of any clips, still  
24 images, audio, or transcripts of that video  
25 recording; and that turn over is to be

f

34

1 accomplished within the next 10 business days.  
2 No bond will be required.

3 And so, Mr. Thomas, did you want a  
4 clarification?

5 MR. THOMAS: Your Honor, they say that we've  
6 made millions off of this, but you're not going  
7 to require a bond?

8 THE COURT: I think that it was really -- in  
9 the paper there's millions that have been  
10 watching it. I don't know how much money has  
11 been made on it.

12 MR. THOMAS: But, Your Honor, you have to  
13 protect us if the injunction is improperly  
14 entered so that there is bond money there. I  
15 mean, a bond -- if we're making millions off this  
16 and you take it down, shouldn't we have some  
17 monetary bond?

18 MR. HARDER: Your Honor, we never said they  
19 made millions of dollars. The quote is from Nick  
20 Denton saying a million people have watched --

Bollea v Clem at al Hearing before Judge Campbell 04-24-13.txt  
21 have gone to Gawker.com.

22 THE COURT: Yeah, now 4.9 some million  
23 people.

24 MR THOMAS: So, Your Honor, if you can  
25 monetize it at .10 a piece, that's still a

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1 significant amount of money.

2 THE COURT: I'm not going to require a bond  
3 Did you have anything else?

4 MR THOMAS: Yes, Your Honor. Can we have a  
5 stay pending our time to go to the 2nd DCA to  
6 seek appellate review of your decision?

7 THE COURT: Do you know of any authority  
8 that requires me to stay it?

9 MR THOMAS. No, Your Honor.

10 THE COURT: Okay No. Denied. Stay is  
11 denied

12 So, Mr. Harder, would you please prepare  
13 that Order for me and send it to me. Do you know  
14 how long it will take you to prepare that?

15 MR HARDER: I would expect that we would  
16 get that in to you hopefully tomorrow or the next  
17 day, as soon as we possibly can.

18 THE COURT: Okay Thank you. Anything else  
19 for today?

20 MR. THOMAS: Thank you, Your Honor.

21 THE COURT: All right. Thank you very much

22 (Thereupon, a discussion was held off the  
23 record )

24 THE COURT: Additionally on the record, Mr  
25 Keith Thomas had called our office, was not able

1 to be here today. He represents Ms. Clem and has  
2 no objection to the entry of an injunction.

3 Thank you.

4 (Thereupon, the proceedings were concluded.)

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CERTIFICATE OF REPORTER

2

3

4 STATE OF FLORIDA )  
5 COUNTY OF PASCO ) ss

6 I, Stacy D. Miller, Court Reporter, certify that  
7 I was authorized to and did stenographically report  
8 the foregoing proceedings and that the transcript is a  
9 true record thereof

10 I further certify that I am not a relative,  
11 employee, attorney, or counsel of any of the parties,  
12 nor am I a relative or employee of any of the parties'  
13 attorneys or counsel connected with the action, nor am  
14 I financially interested in the action

15 DATED this 24 day of April, 2013

16

17

18

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\_\_\_\_\_  
STACY D. MILLER, Court Reporter

20

21

22

23

24

25

♀

# EXHIBIT E

## Sarah Luppen

---

**From:** Charles Harder  
**Sent:** Thursday, April 25, 2013 10:31 AM  
**To:** 'Gregg D. Thomas', 'Rachel E. Fugate', 'Katie Brown', 'Seth Berlin (SBerlin@lskslaw.com)', 'Paul Safier (PSafier@lskslaw.com)'  
**Cc:** 'bcohen@tampalawfirm.com', 'mgaines@tampalawfirm.com', 'dhouston@houstonatlaw.com', 'dkthomas@tampalawfirm.com', 'lisa.meriwether@bajocuva.com', 'kturkel@BajoCuva.com', 'cramirez@BajoCuva.com', Sarah E. Luppen (SLuppen@HMAfirm.com), Douglas Mirell  
**Subject:** Contempt of Court  
**Importance:** High

Dear Counsel

Please take notice that the Gawker Defendants are in Contempt of Court, and we intend to take appropriate action. If the Gawker Defendants wish to mitigate the sanctions that we intend to seek against them, then they should comply immediately with the Court's Order (stated in Court yesterday at about 5:00 pm EST) and **immediately** remove the Hulk Hogan sex tape.

All rights are reserved.

Sincerely,

Charles Harder



**CHARLES J. HARDER**  
1801 AVENUE OF THE STARS  
SUITE 1120  
LOS ANGELES CA 90067  
TEL (424) 203-1600  
[CHARDER@HMAFIRM.COM](mailto:CHARDER@HMAFIRM.COM)  
[WWW.HMAFIRM.COM](http://WWW.HMAFIRM.COM)

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# EXHIBIT F

**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**

**HEATHER CLEM; GAWKER MEDIA, LLC  
aka GAWKER MEDIA; GAWKER MEDIA  
GROUP, INC. aka GAWKER MEDIA;  
GAWKER ENTERTAINMENT, LLC;  
GAWKER TECHNOLOGY, LLC; GAWKER  
SALES, LLC; NICK DENTON; A.J.  
DAULERIO; KATE BENNERT, and  
BLOGWIRE HUNGARY SZELLEMI  
ALKOTAST HASZNOSITO KFT aka  
GAWKER MEDIA,**

**Defendants.**

---

**ORDER GRANTING PLAINTIFF'S MOTION FOR TEMPORARY INJUNCTION**

This cause came before the Court on Plaintiff's Motion for Temporary Injunction (the "Motion"). The Court having reviewed and considered the Motion and Response papers, all oral argument at the hearing, and the Court file, and being otherwise fully advised,

**IT IS ORDERED.**

The Motion is GRANTED for the reasons stated on the record at the hearing held on April 24, 2013.

For the duration of the captioned action and until judgment is entered, Defendants Gawker Media, LLC aka Gawker Media, Gawker Media Group, Inc aka Gawker Media, Gawker Entertainment, LLC, Gawker Technology, LLC, Gawker Sales, LLC, Nick Denton, A.J.

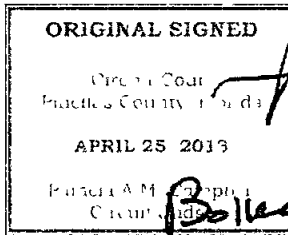


Daulerio, Kate Bennert, Blogwire Hungary Szellemi Alkotast Hasznosito KFT aka Gawker Media (collectively, the “Gawker Defendants”) are hereby:

1. Ordered to remove the audio and video recording of Plaintiff Terry Gene Bollea in a private bedroom with Heather Clem, which recording includes depictions of Mr. Bollea naked and engaged in sexual activity (the “Sex Tape”), which is currently posted at *www.gawker.com* (“Gawker.com”);
2. Ordered to remove from their websites, including Gawker.com, the written narrative describing activities occurring during the private sexual encounter, including: (a) all descriptions of visual images and sounds captured on the Sex Tape or any other video of this private sexual encounter; and (b) all direct quotations of words spoken during this private sexual encounter and recorded on the Sex Tape or any other video of this private sexual encounter;
3. Enjoined from posting, publishing, exhibiting, or broadcasting the full-length video recording, from which the Sex Tape was derived, and all portions, clips, still images, audio, and transcripts of that video recording;
4. Ordered to turn over to Mr. Bollea’s counsel of record, Charles J. Harder, Esq. of Harder Mirell & Abrams LLP, all versions and copies of the full-length video recording, from which the Sex Tape was derived, and all portions, clips, still images, audio, and transcripts thereof within ten (10) days of the date of this Order; and
5. Mr. Bollea is not required to post a bond.

DONE AND ORDERED in Chambers at Pinellas County, Florida, this 25 day of

April, 2013.



*Pamela A. M. Campbell*  
Pamela A. M. Campbell  
Circuit Court Judge

*Ballea v. Clem/Gawter*  
12-012447 CI-11

- Copies furnished to:  
Barry Cohen, Esq.  
D. Keith Thomas, Esquire  
Michael W. Gaines, Esquire  
Gregg D. Thomas, Esquire  
Seth D. Berlin, Esquire  
Paul J. Safier, Esquire  
Kenneth G. Turkel, Esq.  
Charles J. Harder, Esq.  
David Houston, Esq.

# EXHIBIT G

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.

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**ORDER ON DEFENDANT'S MOTION FOR STAY PENDING APPEAL**

This cause came to be heard on April 24, 2013 on Defendant Gawker Media, LLC's oral motion for stay, which was denied Defendant Gawker Media, LLC having filed a written motion, and the Court having reviewed the Motion, and having been otherwise advised in the premises, it is hereby.

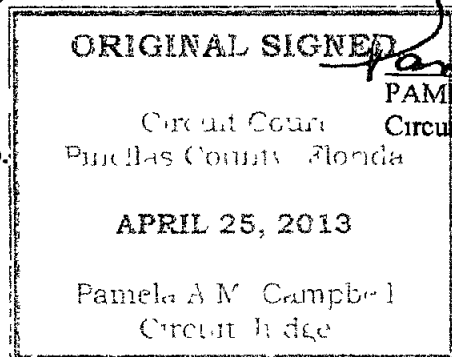
**ORDERED AND ADJUDGED:**

Defendant's Motion for Stay Pending Appeal is hereby DENIED.

DONE AND ORDERED in Chambers, at ~~Clearwater~~ <sup>St. Petersburg</sup> Pinellas County, Florida, this

*25* day of April, 2013.

Copies furnished to  
Counsel fo Record



*Pamela A.M. Campbell*  
PAMELA A.M. CAMPBELL  
Circuit Court Judge