

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.

**PLAINTIFF TERRY BOLLEA'S
STATEMENT OF DISPUTED AND UNDISPUTED FACTS IN OPPOSITION TO
GAWKER DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Pursuant to Rule 1.510 of Florida Rules of Civil Procedure, Plaintiff Terry Bollea hereby submits, through undersigned counsel, his statement of disputed and undisputed facts in response and opposition to the Motion for Summary Judgment and Statement of Undisputed Material Facts filed by defendants Gawker Media, LLC ("Gawker"), Nick Denton, and A.J. Daulerio (together, the "Gawker Defendants").

THE PARTIES

A. Plaintiff

Moving Parties' Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
<p>1. Plaintiff Terry Gene Bollea, better known as “Hulk Hogan” (“Hogan”), is a “professional champion wrestler, motion picture actor, and television personality.” Am. Compl. (Ex. 1) ¶ 25; <i>see also id.</i> ¶ 77 (same).¹ He is a “twelve-time world wrestling champion,” <i>id.</i>, and “was inducted in the WWF Hall of Fame in 2005,” Aff. of T. Bollea, dated Apr. 18, 2013 (“Hogan Aff.”) (Ex. 2) at ¶ 2. He has appeared in films such as <i>Rocky III</i>, <i>Suburban Commando</i>, and <i>Mr. Nanny</i>. <i>Id.</i> ¶ 3. He also “starred in the reality television series <i>Hogan Knows Best</i>,” <i>id.</i>, as well as in other television shows such as <i>Thunder in Paradise</i> and <i>American Gladiators</i>, Hogan Dep. (Ex. 3) at 131:16-22. <i>See also</i> Ex. 4 at ¶ 41 (complaint filed by Hogan in different action, asserting that he “starred with his family in a VH1 reality show titled <i>Hogan Knows Best</i>,” which was set in their family home and purported to give the public a glimpse into the lives of Hogan and his then-wife Linda as they struggled “to fulfill their dreams for their children while still maintaining their sense</p>	Undisputed. ²

¹ Exhibits cited by Defendants are attached to the Affidavit of Rachel E. Fugate, Esq.

² Throughout their separate statement, the Gawker Defendants (Gawker, Denton and Daulerio) refer to Mr. Bollea as “Hogan,” the name of his wrestling character. Mr. Bollea prefers that he be called by his given name in this litigation, where he is suing for damages done to him, not his wrestling character. However, rather than disputing every fact on this ground, Mr. Bollea will construe Gawker Defendants’ references to “Hogan” to refer to him and will address the merits of Gawker Defendants’ factual allegations rather than the name that they use to refer to him.

The characterization of facts as “undisputed” is for purposes of this motion only. This separate statement is not a response to requests for admissions or written discovery, and Mr. Bollea has the right to assume that certain facts are not disputed for purposes of this motion and reserves the right to dispute any fact raised by Gawker Defendants in subsequent proceedings.

Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
of closeness”).	
2. According to Hogan, since the mid-1980s, he has been a famous “celebrity,” which he defines as “someone who’s been around long enough or made enough of an impact doing radio or TV” such that “they are recognizable by name [or] look” and are “very, very well established” in the media. Hogan Dep. (Ex. 3) at 58:13 – 59: 21; <i>see also id.</i> (noting that he “became a household word”); B. Clem Dep. (Ex. 5) at 53:25 – 54:1 (describing Hogan as “one of the biggest celebrities in the world”).	Undisputed.
3. Hogan has participated in numerous “commercial endorsement opportunities, including for a blender known as the Hulk Hogan Thunder Mixer, an indoor grill known as The Hulk Hogan Ultimate Grill, and an energy drink known as Hogan Energy.” Hogan Aff. ¶ 4 (Ex. 2). Hogan has endorsed Right Guard deodorant, Hogan Dep. (Ex. 3) at 148:22 – 149:1, as well a “line of microwavable hamburgers, cheeseburgers and chicken sandwiches,” known as “Hulkster Burgers.” Hogan Aff. (Ex. 2) ¶ 4. He also launched “a website called Hogan Nutrition, which features many nutritional and dietary products.” <i>Id.</i>	Undisputed.
4. Hogan has a “sports agent,” a second agent for “[p]rimarily film and TV stuff,” and a publicist. Hogan Dep. (Ex. 3) at 69:5-10, 70:13-23; Traub Dep. (Ex. 6) at 31:20 – 32:20. Working with partners, he has a “Hulk Hogan” website, a website hosting service called Hostamania, a shop selling memorabilia, and a “Hogan’s Beach” restaurant. Hogan Dep. (Ex. 3) at 50:16-20, 163:1 – 164:4, 177:22 – 178:3. <i>See</i>	Disputed that Mr. Bollea has a regular publicist. His publicist’s employment has been on and off. Evidence: Ex. 42_C (Bollea Tr. 76:13–25) ³ Otherwise undisputed.

³ Exhibits cited by Plaintiff are attached to the Affidavit of Kenneth G. Turkel, Esq. Confidential exhibits are attached to the Confidential Affidavit of Kenneth G. Turkel, Esq.

Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
<i>also</i> Confidential Supplemental Statement of Undisputed Material Facts in Support of Publisher Defendants’ Motion for Summary Judgment (“Conf. SUMF”) ¶ 4.	
5. According to Hogan, he has attempted to create an “impeccable” public image as “the all America hero, you know, the training, prayers and vitamins.” Hogan Dep. (Ex. 3) at 28:16-24; <i>see also id.</i> at 36:19 – 38:5 (testifying that “the character Hulk Hogan is an all American character,” and “an all American hero,” with the “all American California tan”) <i>id.</i> at 45:15-19 (testifying that he believes he has “a reputation for honesty” and “[f]or being a straight shooter”). <i>See also</i> Conf. SUMF ¶ 5.	<p>Undisputed that Mr. Bollea has attempted to create a public image for the character “Hulk Hogan,” as described.</p> <p>Disputed that Terry Bollea has attempted to create the same public image for himself as for his “Hulk Hogan” character.</p> <p>Evidence: Ex. 42_C (Bollea Tr. 35:10–36:11)</p>

B. Former Defendant Bubba the Love Sponge Clem

Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
6. Former defendant Bubba the Love Sponge Clem is a radio “shock jock.” Hogan Dep. (Ex. 3) at 205:24 – 206:1; H. Clem Dep. (Ex. 7) at 40:12-20; B. Clem Dep. (Ex. 5) at 99:23. Previously known as Todd Clem, his “legal name” is now “Bubba the Love Sponge Clem,” which is based on a “big contraceptive.” B. Clem Dep. (Ex. 5) at 11:10-13, 236:10-17, 237:14 – 238:14.	<p>Undisputed that Mr. Clem is a radio disk jockey.</p> <p>Disputed whether Mr. Clem qualifies as a “shock jock” on the ground that this is argument, not a fact.</p> <p>Objection, on relevance and prejudice grounds, to the contraceptive reference.</p>
7. He is “very controversial,” <i>id.</i> at 102:2-3, and has often “courted controversy,” H. Clem Dep. (Ex. 7) at 41:5-9; <i>see also id.</i> at 42:5-11 (Mr. Clem’s former wife describing him as “saying that there is no such thing as bad publicity, as long as they spell your name right”); Conf. SUMF ¶ 7. Bubba Clem frequently talked about sex on his show, including with his guests, who include porn stars and strippers – for example, Stormy Daniels, a “triple X star.” B. Clem Dep. (Ex. 5) at 148:4 – 151:7. He	<p>Undisputed that Mr. Clem has included sexual content on his radio show and has had strippers and porn stars as guests.</p> <p>Disputed whether Mr. Clem’s show “courts controversy” on the ground that this is argument, not a fact.</p>

Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
<p>has also had “people perform sex acts on [his] radio show” when it was on satellite radio and “uncensored.” <i>Id.</i> at 153:16 – 154:23.</p>	
<p>8. In that regard, from 2006 to 2008, Clem broadcast his program on Howard Stern’s channel on Sirius, and then in 2008 he “started doing double duty where [he] did afternoons for Howard [Stern] and mornings at WHPT locally, syndicated in several different other places.” B. Clem Dep. (Ex. 5) at 48:5-11; <i>see also id.</i> at 93:17 – 95:25 (same and also describing Internet broadcasts for 2-3 years). According to Clem, his show was ranked first in his target demographic of men aged 25 to 54. <i>Id.</i> at 97:19 – 98:18; <i>see also id.</i> at 381:2-3 (B. Clem: “I’ve been number one for nine years”).</p>	<p>Undisputed.</p>
<p>9. One of Bubba Clem’s former employees, Richard Peirce, whose on-show nickname was “Big Dick,” described the show as “insane, frat house, just fun.” Peirce Dep. (Ex. 8) at 19:1-5; <i>see also id.</i> at 19:19 – 20:1 (“We were definitely a dirty, juvenile show” that was “controversial” in “[e]very way. I don’t think there was a way we weren’t.”); <i>id.</i> at 20:18 –22:13 (describing sexual nature of show, including having strippers and porn stars as guests and having people “call in and have sex on the air,” adding “We were on satellite for a reason.”); <i>id.</i> at 91:1-21 (describing that porn star named “Akira” was a regular guest who was “naked all the time” and that Bubba Clem aired excerpts of a recording of her having sex with co-host Matt Loyd).</p>	<p>Undisputed that Mr. Peirce was a former employee of Mr. Clem and performed on Mr. Clem’s radio show.</p> <p>Disputed to the extent the remainder of this paragraph contains argument, not facts.</p>
<p>10. David Rice, another of Bubba Clem’s employees, testified that “sexual topics” made up a “pretty high percentage of the content” of his radio show, and that, when guests would appear on the show, Bubba Clem would steer the conversation to</p>	<p>Undisputed that Mr. Clem discussed sex on his radio show.</p> <p>Disputed to the extent Defendants suggest Mr. Clem’s radio show exclusively discussed sex. His show covered many other topics as well.</p>

Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
sexual topics when the guest would allow it. Rice Dep. (Ex. 9) at 13:21 – 15:8.	Evidence: Ex. 1 (Bubba Clem Tr. 99:12–20, 100:9–14, 105:24–107:7).
11. Bubba Clem also has a website called Bubba Raw, which posts videos either created for that purpose or taken from events occurring in the studio during broadcasts. <i>See, e.g.</i> , B. Clem Dep. (Ex. 5) at 117:7-19 (describing video, “instead of ‘Rock Me Amadeus,’” they “did ‘F--k me . . . General Petraeus,’” in which they “Photoshopped General Petraeus’ head on a bunch of male strippers”). On that companion video site, visitors could see “graphic things that were filmed,” such as “nudity” or having one of their “guys have a sex act with a rubber vagina.” Peirce Dep. (Ex. 8) at 24:1-15.	Undisputed that Mr. Clem created Bubba Raw and posts content ancillary to his radio show on that website, including uncensored content. Objection , on relevance and prejudicial grounds, to Gawker Defendants’ reference to the alleged David Petraeus sketch, which appears to have been included solely because it is inflammatory.
12. Bubba Clem’s studios had widespread electronic surveillance, including in the green room. <i>Id.</i> at 25:22 – 27:17 (“we secretly mic’d up the green room so they wouldn’t know they were being listened to” and “[w]e would use that for bits.”); B. Clem Dep. (Ex. 5) at 190:7 – 191:14 (describing listening in on guests in the green room), 193:21-24 (describing that some guests were not told there was a camera in the green room).	Objection , on hearsay grounds, to the admission of Mr. Clem’s and Richard Peirce’s out-of-court statements about alleged surveillance equipment.
13. Until shortly before this lawsuit began, Bubba Clem was Hogan’s best friend. H. Clem Dep. (Ex. 7) at 9:23 – 10:1; B. Clem Dep. (Ex. 5) at 54:18-24. Hogan was the best man at Bubba Clem’s wedding. B. Clem Dep. (Ex. 5) at 54:18-24. <i>See also</i> Conf. SUMF ¶ 13.	Undisputed that Mr. Clem was Mr. Bollea’s close friend and was the best man at Mr. Clem’s wedding.
14. For many years, Hogan was a “regular guest on the Bubba the Love Sponge’s radio show.” Ex. 4 at ¶ 46; Hogan Dep. (Ex. 3) at 206:4-6. Because the Bubba the Love Sponge Show had a national radio audience, Hogan used it as a vehicle for keeping his name in the public eye. <i>Id.</i> at 209:8-17.	Undisputed that Mr. Bollea appeared on Bubba Clem’s radio show on a number of occasions. Disputed on the ground that the term “regular guest” is argument, not a fact. Disputed to the extent Defendants suggest Mr.

Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
	<p>Bollea’s only reason for appearing on Mr. Clem’s radio show was to keep his name in the public eye. Mr. Bollea testified as to the many reasons he appeared on Mr. Clem’s show.</p> <p>Evidence: Ex. 2 (Bollea Tr. 207:7–17, 209:8–17, 210:7–211:25).</p>
<p>15. Bubba Clem was named as a defendant in this case when the Complaint was filed on October 15, 2012. <i>See</i> Complaint (filed Oct. 15, 2012) (Ex. 10). That Complaint alleged that Bubba Clem was responsible for the creation of the sex tape at the center of this litigation. <i>Id.</i> at ¶ 1; Part I <i>infra</i>. On October 29, 2012, exactly two weeks after the lawsuit was filed, Hogan’s publicist issued a press release announcing that Hogan had settled his claims against Bubba Clem. Traub Dep. (Ex. 6) at 149:2 – 150:16; <i>see also</i> Conf. SUMF ¶ 15. When Hogan later amended his complaint to include claims against the Publisher Defendants, Bubba Clem was no longer listed as a defendant. <i>See</i> Am. Compl. (Ex. 1).</p>	<p>Undisputed that Mr. Clem was named as a defendant in this lawsuit when it was filed, that Mr. Bollea and Mr. Clem settled their dispute, and that Mr. Clem was dismissed from the case.</p> <p>Disputed that the Complaint alleged that Mr. Clem alone was responsible for the creation of the Sex Video.</p> <p>Evidence: Am. Compl. (Ex. 1 to Aff. of R. Fugate) ¶ 26; Orig. Compl. (Ex. 10 to Aff. of R. Fugate) ¶ 12.</p>

C. Defendant Heather Clem

Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
<p>16. Defendant Heather Clem was married to Bubba the Love Sponge Clem from January 2007 to February 2012. H. Clem Dep. (Ex. 7) at 9:6-13; B. Clem. Dep. (Ex. 5) at 44:21-25. Since her divorce, she is known as Heather Cole. To avoid confusion, and with no disrespect intended to Ms. Cole, she is referred to herein as “Heather Clem,” the name used to identify her in the caption of this case.</p>	<p>Undisputed.</p>
<p>17. Heather Clem was an occasional guest on Bubba Clem’s radio show. Rice Dep. (Ex. 9) at 20:17-18. <i>See also</i> Conf. SUMF ¶ 17.</p>	<p>Undisputed.</p>

Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
<p>18. One of Bubba Clem’s former employees testified that Heather Clem participated in photo shoots for Bubba Clem’s website in which she was “practically nude.” Peirce Dep. (Ex. 8) at 85:4-24 (if she was not “completely nude . . . , there might have been her hand – they were suggestive photos”). That employee also testified that Bubba Clem would show others “topless photos of [Heather Clem] on his phone,” that he “shot a wet T-shirt video [of] her in her shower” so “we had all seen her naked,” and that in the time he worked for Bubba Clem, he saw two or three such videos of Heather Clem. <i>Id.</i> at 83:15-25. According to that employee, Bubba “did it like a bragging thing. She’s good looking for him, especially.” <i>Id.</i> at 84:13-25.</p>	<p>Objection, on hearsay and relevance grounds, to Richard Peirce’s recollection of nude photos of Ms. Clem.</p>
<p>19. As described in greater detail below, with Bubba Clem’s blessing, Heather Clem had sexual relations with Hogan. <i>See</i> Part I <i>infra</i>.</p>	<p>Undisputed that Mr. Bollea had sexual relations with Heather Clem with Bubba Clem’s blessing.</p>

D. The Gawker Defendants

Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
<p>20. Defendant Gawker Media, LLC (“Gawker”) 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 (focusing on sports), www.jezebel.com (focusing on women’s interests), www.lifehacker.com (focusing on general life tips and tricks), www.io9.com (focusing on science fiction, fantasy and futurism), www.kotaku.com (focusing on video games), and www.jalopnik.com (focusing on cars and the auto industry).</p>	<p>Undisputed that Gawker is the publisher of the enumerated blogs.</p> <p>Disputed as to the remainder of this paragraph to the extent it is argument and is not a fact.</p>

Moving Parties' Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
21. Defendant Nick Denton is the Chief Executive Officer of defendant Gawker. Am. Compl. (Ex. 1) ¶ 21.	Undisputed.
22. 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. 11) at 22:5 – 25:9. He is the author of the article at issue in this action. <i>See, e.g.</i> , Ex. 12 (article at issue identifying Daulerio as author).	Undisputed.
23. Gawker, Denton and Daulerio are collectively referred to herein as the "Publisher Defendants."	Mr. Bollea refers to Defendants as "Gawker Defendants" or "Defendants."

I. UNDISPUTED FACT NO. 1: Hogan and Heather Clem engaged in sexual relations while each married to someone else (the "Sexual Affair").

Moving Parties' Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
24. Hogan concedes that he engaged in "sexual relations with defendant Heather Clem," in Clem's bedroom. Am. Compl. (Ex. 1) ¶ 26. In public statements addressing the sex-tape controversy, Hogan stated that he had sexual relations with Mrs. Clem at least "twice." Ex. 13 (<i>Howard Stern Show</i> , Oct. 9, 2012) at 21:26 – 21:55. <i>See also</i> Conf. SUMF ¶ 24.	Undisputed.
25. Hogan made various public statements following Gawker's Publication, in which he stated that he had "heard stories" that the Clems "partied," and that he was aware that the Clems "had kind of, like, an alternative lifestyle," and were "swingers." Ex. 14 (<i>Sway in the Morning</i> , Oct. 10, 2012) at 5:35 – 6:15; Ex. 15 (<i>HuffPost Live</i> , Oct. 9, 2012) at 11:14-11:28. <i>See also</i> Conf. SUMF ¶ 25.	Undisputed that Mr. Bollea made the statements referenced.

II. UNDISPUTED FACT NO. 2: At the time of the Sexual Affair, Hogan was married to Linda Hogan, and Heather Clem was married to Bubba Clem.

Moving Parties' Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
26. Hogan was married to Linda Hogan for 23 years. Hogan Dep. (Ex. 3) at 109:24 – 110:3. Linda filed for divorce in November 2007. <i>Id.</i> at 110:4-9. <i>See also</i> Conf. SUMF ¶ 26.	Undisputed.
27. Heather Clem and Bubba Clem were married in January 2007. H. Clem Dep. (Ex. 7) at 9:6-7; B. Clem. Dep. (Ex. 5) at 44:21-25. A number of celebrities, including Howard Stern and Hulk Hogan, attended their wedding; it was covered by the press; and it received “a lot of publicity.” B. Clem Dep. (Ex. 5) at 135:1-5, 162:21 – 163:1; H. Clem Dep. (Ex. 7) at 38:22 – 40:6. Heather and Bubba Clem were ultimately divorced in February 2012. <i>Id.</i> at 9:8-13.	Undisputed.

III. UNDISPUTED FACT NO. 3: The Sexual Affair was recorded by Bubba Clem, and the Gawker Defendants played no role in the recording.

Moving Parties' Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
28. The Video Recording of the Sexual Affair was made by Bubba Clem. Compl. ¶ 1, 12. <i>See also</i> Conf. SUMF ¶ 28.	<p>Undisputed as to Mr. Clem’s admitted role in the recording.</p> <p>Disputed to the extent Gawker Defendants suggest Mr. Clem was solely responsible for the recording. There is evidence that Heather Clem was involved as well.</p> <p>Evidence: Ex. 41_C (Bubba Clem Tr. 327:21–24, 412:8–11, 459:1–7); Ex. 9 (Defendant Heather Clem/Cole’s Notice of Serving Answers to Plaintiff Terry Gene Bollea’s First Set of Interrogatories, No. 8).</p>
29. At his deposition, Bubba Clem described his home video surveillance system, including the camera installed in the bedroom. B. Clem Dep. (Ex. 5) at 194:11 – 195:3. <i>See also</i> Conf. SUMF ¶ 29.	Undisputed.
30. Peirce, Bubba Clem’s former employee, testified that he “knew [Bubba Clem] had surveillance cameras in his house similar to what we had at the studio” because “[h]e	<p>Undisputed that Peirce gave this testimony.</p> <p>Objection, on hearsay grounds, as to Peirce’s recollection of what Bubba Clem said in out-</p>

Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
would talk about that all the time, nanny cams and stuff like that.” Peirce Dep. (Ex. 8) at 72:4-21.	of-court statements.
31. The Publisher Defendants played no part in recording the Sexual Affair. Ex. 16 (Gawker Media, LLC’s Response to Interrogatory No. 5) (“Gawker did not make the Video and has no personal knowledge about its creation.”).	Undisputed.
32. The Publisher Defendants did not know about any the Video Recording until more than five years later, in late 2012. <i>Id.</i> ; see also Daulerio Dep. (Ex. 11) at 112:14-24.	<p>Disputed. Evidence shows Defendants had actual knowledge of the Video Recording as early as March 2012, via press reports received by the Gawker Tips email account. Photos that confirmed the existence of a recording were published in April 2012.</p> <p>Evidence: Ex. 13; Ex. 3 (Carmichael. Tr. 21:19–23:12); Gawker SMUF ¶ 94.</p>

IV. UNDISPUTED FACT NO. 4: Prior to any conduct by the Gawker Defendants, there was widespread public discussion, including by Hogan himself, of intimate details of Hogan’s personal life, including specifically his romantic and sexual affairs.

A. Widespread Public Attention Focused on Hogan’s Personal Life Generally, Including By Hogan Himself

Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
33. In 2002, Hogan published his first autobiography, <i>Hollywood Hulk Hogan</i> , in which he chronicled his career to that point. Ex. 17 (excerpts from <i>Hollywood Hulk Hogan</i>).	<p>Undisputed that the book was published in 2002.</p> <p>Disputed to the extent the remainder of this paragraph is argument, and is not a fact.</p>
34. In 2009, Hogan published his second autobiography, <i>My Life Outside the Ring</i> , which he described as his opportunity finally to “open up about everything in his life.” Ex. 18 (excerpts from <i>My Life Outside the Ring</i>) at 8. The book chronicled the various personal controversies that had consumed Hogan’s life in recent years and how those controversies played out in the press. See, e.g., <i>id.</i> at 1-2, 185-88, 252-54, 276-78,	<p>Undisputed that the book was published in 2009.</p> <p>Disputed to the extent the remainder of this paragraph is argument, and is not a fact.</p> <p>Objection, on relevance and prejudice grounds, to the enumeration of specific portions of the book, such as prison sentences and suicide attempts, which the Gawker Defendants include solely for inappropriate,</p>

Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
<p>284-87 (describing, <i>inter alia</i>, an alleged suicide attempt, an affair he had, a drawn-out dispute with his ex-wife, his son’s accident and prison sentence, and the controversy over attempts to monetize his son’s subsequent release from prison). Hogan’s second autobiography also specifically discusses his romantic and sexual life, and that aspect of his book is described in the next section.</p>	<p>salacious purposes.</p>
<p>35. From 2005 to 2007, Hogan and his entire family participated in a reality show, <i>Hogan Knows Best</i>, which centered on their domestic lives. Ex. 4 at ¶ 41; Hogan Dep. (Ex. 3) at 161:17 – 162:6. At the time the show started production, his daughter Brooke was 16 and his son Nick was 14. Hogan Dep. (Ex. 3) at 161:17 – 162:6. According to Hogan, the “premise of the show was Hulk Hogan and his celebrity family pretty much doing a lightly-scripted, fun, over-the-top show, an entertainment show.” <i>Id.</i> at 135:6-10. In <i>My Life Outside The Ring</i>, Hogan stated that he told his family that agreeing to do the show would mean “no more privacy,” further explaining that he had given “the producers the keys to the house, so they could come in super early in the morning and shoot us in bed while we were still sleeping. I didn’t care if my butt was hanging out or if I had drool on my pillow. That was part of the appeal of the show – to let people into the Hogans’s ‘real life.’” Ex. 18 at 175-77.</p>	<p>Undisputed that Mr. Bollea appeared with his family on a reality show beginning when his children were teenagers, and that he described the show as set forth in this paragraph.</p> <p>Undisputed that he wrote in his book, <i>My Life Outside the Ring</i>, that he said to his family that the show would mean that the family would have diminished privacy.</p> <p>Disputed to the extent Defendants take this quotation out of context to suggest that Mr. Bollea was voluntarily ceding his legal privacy rights, as opposed to warning his family to use discretion because personal moments could be recorded as part of the production of the show.</p> <p>Evidence: Ex. 2 (Bollea Tr. 135:11–137:22); Ex. 42_C (137:23–139:03).</p>
<p>36. <i>Hogan Knows Best</i>, like his book <i>My Life Outside the Ring</i>, purported to provide an inside glimpse into Hogan’s personal life, and, as such routinely put seemingly personal details of Hogan and his family on display. See Ex. 19 (<i>Hogan Knows Best</i>, Season 2, Ep. 1) at 14:36 – 19:00 (discussing use of birth control); Ex. 20 (<i>Hogan Knows Best</i>, Season 4, Ep. 1) at 3:43 – 6:05 (showing counseling session</p>	<p>Undisputed that <i>Hogan Knows Best</i> contained discussions of contraception and sexuality.</p> <p>Disputed that these discussions were “routine,” and further disputed that these discussions were authentic discussions of his private life. Mr. Bollea testified that the show deliberately exaggerated crises and problems in Mr. Bollea’s life for the purpose of creating compelling television.</p>

Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
<p>where Hogan and his wife discussed sexual problems they were having in their marriage and, in particular, that his sex drive outstripped hers).</p>	<p>Evidence: Ex. 2 (Bollea Tr. 135:11–136:19).</p>
<p>37. In addition to agents and managers, Hogan has employed a New York public relations consultant, Elizabeth Rosenthal Traub (“Traub”), for at least a decade. Traub Dep. (Ex. 6) at 31:20 – 32:20. Traub and her public relations agency also provided public relations services in connection with the Video Recordings and this Lawsuit. <i>Id.</i> at 85:22 – 86:5.</p>	<p>Undisputed that Traub provided services in relation to the filing of this lawsuit.</p> <p>Disputed that Mr. Bollea has employed Ms. Traub for over a decade. Her employment has been more sporadic.</p> <p>Evidence: Ex. 42_C (Bollea Tr. 76:13–25).</p>
<p>38. According to Traub, Hogan’s personal life, including his romantic and sexual life, has been the subject of significant media attention, due to his status as a celebrity who has been a “part of the national conscience” for over thirty years. <i>Id.</i> at 34:19 – 35:21. Traub confirmed that Hogan is widely known by the public not only for his wrestling exploits, but also for his reality show and the “personal drama” that has pervaded his life and defined the later part of his career. <i>Id.</i> at 35:16-21; <i>see also id.</i> at 43:16 – 45:12 (agreeing that Hogan’s “personal” and “family” life are covered by the press, including “the tabloids”).</p>	<p>Undisputed that Ms. Traub gave the referenced testimony.</p> <p>Disputed to the extent the remainder of the paragraph is argument, and is not fact.</p>
<p>39. As Ms. Traub acknowledged, the press has routinely reported on Hogan’s personal and family life. This includes his divorce from his long-time wife and reality television co-star, Linda Hogan; the imprisonment of his son, Nick Bollea, in connection with an accident that left a family friend permanently disabled; the release of a tape of jailhouse conversations with his son in which the two are heard discussing plans to turn Nick’s release from prison into another reality television show; and revelations of an alleged affair with Christiane Plante, a close friend of his daughter, Brooke. <i>See, e.g.,</i> Ex. 21 (April</p>	<p>Undisputed that the press has covered Mr. Bollea’s private life.</p> <p>Disputed to the extent the quotation from the <i>Rolling Stone</i> article is taken out of context.</p> <p>Objection, on relevance and prejudice grounds, to any discussion of Nick Bollea’s imprisonment, and any discussion of Mr. Bollea’s relationship with Christiane Plante. All relationships beyond that of Mr. Bollea’s and Ms. Clem’s have been ruled outside the scope of discovery by this Court on two occasions.</p>

Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
<p>2009 <i>Rolling Stone</i> article entitled “Hulk at Twilight,” describing various scandals that had pervaded Hogan’s life since the height of his fame as a wrestler in the 1980s and 90s, quoting Hogan as saying, about his ex-wife’s dalliance with a much younger man during the divorce, “I could have turned everything into a crime scene, like O.J. Simpson cutting everybody’s throat,” a statement that itself generated substantial additional media coverage); Ex. 22 (<i>New York Times</i> review of Hogan’s book, <i>My Life Outside the Ring</i>, noting its confessional subject matter); Ex. 23 (March 7, 2012 <i>The New York Post</i> article, published seven months before the Publication at issue in this action, placing sex-tape controversy in context of other personal scandals involving Hogan that have received substantial public attention).</p>	<p>Objection, on hearsay, relevance, and prejudice grounds, to the quotations from the <i>Rolling Stone</i> article.</p>

B. Widespread Public Attention Focused on Hogan’s Romantic and Sex Life, Including by Hogan Himself.

Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
<p>40. In addition to the attention Hogan’s personal life has consistently received in general, Hogan’s sexual and romantic life – including his marital fidelity – also has been the subject of widespread public attention, including, with great frequency, by Hogan himself.</p>	<p>Undisputed that Mr. Bollea’s private life has received media coverage, and that Mr. Bollea has sometimes discussed aspects of his private life in public.</p> <p>Disputed to the extent the remainder of this paragraph is argument, and is not a fact.</p>
<p>41. For example, in <i>My Life Outside the Ring</i>, Hogan described an extramarital affair he had in 2007 with Christiane Plante, a close friend of his daughter Brooke, who had been assigned by Brooke’s record company to assist her. Ex. 18 at 186-88. According to Hogan’s book: “Christiane was so great with Brooke. She did everything she could to look after her, and I loved seeing someone take care of my daughter that way. She was just so positive and</p>	<p>Undisputed that Mr. Bollea discussed a relationship with Ms. Plante in his book, <i>My Life Outside the Ring</i>.</p> <p>Objection, on relevance and prejudice grounds, to any discussion of Mr. Bollea’s relationship with Christiane Plante. All relationships beyond that of Mr. Bollea’s and Ms. Clem’s have been ruled outside the scope of discovery by this Court on two occasions. The remainder of the paragraph, regarding how</p>

Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
<p>caring. . . [s]he and Brooke became really close. Almost like best friends in a way.” <i>Id.</i> at 186.</p>	<p>close a friend Ms. Plante supposedly was to Mr. Bollea’s daughter, is an impermissible and transparent attempt to prejudice the Court, and has zero to do with Defendants’ public concern argument.</p>
<p>42. Hogan described his affair with Ms. Plante in his book as follows: Next thing I know, the two of us started kissing. Not to sound perverted or anything, but it was fantastic. Here I am in my fifties now, and this was a really attractive thirty-four-year-old woman, with dark hair and a curvaceous body. . . . It was such an emotional and physical release. We didn’t have sex that night, but it opened the door. Over the course of the next two months we did have sex, maybe five different times. That was it. Linda had no idea. For a while it had that sort of a naughty appeal, like a kid sneaking some chocolate he’s not supposed to have. <i>Id.</i> at 187-88.</p>	<p>Undisputed that this passage appears in Mr. Bollea’s book.</p> <p>Objection, on relevance and prejudice grounds, as to any discussion of Mr. Bollea’s relationship with Christiane Plante. All relationships beyond that of Mr. Bollea’s and Ms. Clem’s have been ruled outside the scope of discovery by this Court on two occasions.</p>
<p>43. The affair became public when the <i>National Enquirer</i> published a letter Plante wrote to Brooke, admitting that the affair had happened and apologizing. Ex. 24 (<i>National Enquirer</i> article); <i>see also</i> Ex. 18 at 253 (portion of <i>My Life Outside the Ring</i> describing same).</p>	<p>Undisputed that Mr. Bollea’s relationship with Ms. Plante became public.</p> <p>Objection, on hearsay grounds, as to anything the <i>National Enquirer</i> reported Ms. Plante as saying.</p> <p>Objection, on relevance and prejudice grounds, as to any discussion of Mr. Bollea’s relationship with Christiane Plante. All relationships beyond that of Mr. Bollea’s and Ms. Clem’s have been ruled outside the scope of discovery by this Court on two occasions.</p>
<p>44. Hogan acknowledged in his book that his “affair became national news. I don’t think there’s a blog or entertainment show in</p>	<p>Undisputed that this passage appears in Mr. Bollea’s book, <i>My Life Outside the Ring</i>, and that the relationship with Ms. Plante was the</p>

Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
<p>America that didn’t run with the story of Hulk Hogan cheating on his wife. I was humiliated. I was angry. I didn’t know what to do. There was no one to sue – the story was true. I couldn’t even figure out who to be angry with, except for myself for letting it happen in the first place.” Ex. 18 at 253. In <i>My Life Outside the Ring</i>, Hogan also wrote: “Almost from the outset of our marriage Linda was sure I was cheating with some girl or another. It never made any sense to me. <i>I’m just not the cheating kind.</i>” <i>Id.</i> at 159 (emphasis added). In that book, Hogan also declared, about his affair with Ms. Plante, “Like I said, I had never done anything like this in twenty-two years of marriage.” <i>Id.</i> at 188.</p>	<p>subject of press coverage.</p> <p>Objection, on relevance and prejudice grounds, as to any discussion of Mr. Bollea’s relationship with Christiane Plante. All relationships beyond that of Mr. Bollea’s and Ms. Clem’s have been ruled outside the scope of discovery by this Court on two occasions.</p>
<p>45. As Hogan noted in his book, the news coverage of the Plante affair was extensive. <i>See, e.g.</i>, Ex. 25 (article published on the <i>Perez Hilton</i> website on March 8, 2008 entitled “Hulk’s Other Woman SPEAKS!” which noted that Plante confessed to reporter for the <i>National Enquirer</i> after being confronted with concrete evidence of affair with Hogan); Ex. 26 (March 10, 2008 <i>National Enquirer</i> article entitled “Trouble on the Horizon,” which noted that “[w]hile Hulk grappled with his troubled marriage during last season’s ‘Hogan Knows Best’, ... he was carrying on a shocking affair with [Plante,] the former assistant and friend of daughter Brooke”); Ex. 27 (March 17, 2008 <i>National Enquirer</i> article entitled “Hulk Hogan Reeling After More Cheating Allegations,” which noted that after revelation of Plante affair, “Hulk Hogan is fighting more claims that he cheated on his wife,” including an affair with Elizabeth Hulette, the one-time wife of Hogan’s wrestling rival Randy “Macho Man” Savage); Ex. 28 (November 6, 2008 <i>E-Online</i> article entitled “Linda Hogan: Hulk’s Affair Killed Our Marriage” which</p>	<p>Undisputed that the relationship with Ms. Plante was the subject of press coverage.</p> <p>Objection, on hearsay grounds, as to the quotations from the articles, which are based on unauthenticated statements from undisclosed sources.</p> <p>Objection, on relevance and prejudice grounds, as to any discussion of Mr. Bollea’s relationship with Christiane Plante. All relationships beyond that of Mr. Bollea’s and Ms. Clem’s have been ruled outside the scope of discovery by this Court on two occasions.</p>

Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
<p>quoted Linda’s publicist describing “the real reason Linda filed for divorce, two words: HULK’S CHEATING!”).</p>	
<p>46. This was not the first time that sexual relations outside Hogan’s marriage had been the subject of widespread media coverage. In 1996, Hogan received substantial public attention in connection with a 1995 incident in which a Minnesota woman named Kate Kennedy claimed that he sexually assaulted her by forcing her to perform oral sex on him. <i>See</i> Ex. 29 (affidavit from Kate Kennedy). Hogan sued Kennedy in the United States District Court for the District of Minnesota, accusing her and her counsel of extortion, and she countersued for sexual battery. Ex. 30 (Answer and Counterclaim filed by Kennedy) at ¶ 6.</p>	<p>Undisputed that the Kate Kennedy matter received press coverage and resulted in litigation.</p> <p>Disputed to the extent the remainder of this paragraph is argument, and is not a fact.</p> <p>Objection, on relevance and prejudice grounds, as to any discussion of the Kate Kennedy allegations and litigation. All relationships beyond that of Mr. Bollea’s and Ms. Clem’s have been ruled outside the scope of discovery by this Court on two occasions.</p>
<p>47. According to Ms. Kennedy’s court filings: On September 2, 1995, I was sexually assaulted by Terry Gene Bollea, aka ‘Hulk Hogan.’ On that date at the Bloomington Marriott Hotel, Terry Gene Bollea forcibly placed his penis in my mouth. He did so in spite of my clear verbal demands that he stop the assault. The assault occurred under circumstances where he could not possibly have believed that based upon my conduct, I was consenting to his actions. Upon information and belief, Terry Gene Bollea stands 6’7” tall and weighs 275 lbs.</p> <p><i>See</i> Ex. 29 (Kate Kennedy affidavit) at ¶ 2; <i>see also</i> Ex. 30 (Answer and Counterclaim).</p>	<p>Undisputed that this quotation appeared in the court filings.</p> <p>Disputed as to the allegations of sexual assault.</p> <p>Objection, on relevance and prejudice grounds, as to any discussion of the Kate Kennedy allegations and litigation. All relationships beyond that of Mr. Bollea’s and Ms. Clem’s have been ruled outside the scope of discovery by this Court on two occasions.</p> <p>Objection, on hearsay grounds, as to statements made by Ms. Kennedy.</p> <p>The fact that Gawker includes this quotation in its separate statement is outrageous. Even fully crediting Gawker’s argument (<i>i.e.</i>, that the Kate Kennedy matter was an example of Mr. Bollea receiving publicity surrounding allegations of a sexual encounter), Ms. Kennedy’s allegations in a court filing has nothing to do with that argument. Ms. Kennedy’s filing was not press coverage. It</p>

Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
	<p>says nothing about whether the public was concerned with any aspect of Mr. Bollea’s life. Gawker included this only so it could attempt to prejudice the Court, assassinate Mr. Bollea’s character, and accuse him of sexual assault. This passage is demonstrative of the sort of “evidence” that Gawker will attempt to adduce at trial if it is not strictly required to stick to the actual issues in this case.</p>
<p>48. In his court filings at the time, Hogan denied that he had sexually assaulted Ms. Kennedy. Ex. 31 ¶ 2 (“I d[id] not sexually assault defendant Kate Kennedy on September 2, 1995 or at any other time.”); <i>see also</i> Ex. 32 (Hogan’s federal court complaint). <i>See also</i> Conf. SUMF ¶ 48.</p>	<p>Undisputed that Mr. Bollea denied then, and denies now, the allegations made by Ms. Kennedy.</p> <p>Objection, on relevance and prejudice grounds, as to any discussion of the Kate Kennedy allegations and litigation. All relationships beyond that of Mr. Bollea’s and Ms. Clem’s have been ruled outside the scope of discovery by this Court on two occasions.</p>
<p>49. The subsequent litigation over Ms. Kennedy’s accusations and Hogan’s denials received nationwide media coverage. <i>See, e.g.</i>, Exs. 33-37 (articles in AP Online, <i>St. Paul Pioneer Press</i>, <i>South Florida Sun-Sentinel</i>, <i>Chicago Tribune</i>, and <i>USA Today</i> addressing allegations and lawsuit).</p>	<p>Undisputed that the litigation with Ms. Kennedy received media coverage.</p> <p>Objection, on relevance and prejudice grounds, as to any discussion of the Kate Kennedy allegations and litigation. All relationships beyond that of Mr. Bollea’s and Ms. Clem’s have been ruled outside the scope of discovery by this Court on two occasions.</p>
<p>50. Hogan himself discussed the incident in his second autobiography saying Kennedy “showed up” at his hotel room and that, “[h]er lawsuit against me was eventually settled, and part of that settlement involved confidentiality agreements.” Ex. 18 at 158.</p>	<p>Undisputed that the quoted words appear in Mr. Bollea’s book, <i>My Life Outside the Ring</i>.</p> <p>Objection, on relevance and prejudice grounds, as to any discussion of the Kate Kennedy allegations and litigation. All relationships beyond that of Mr. Bollea’s and Ms. Clem’s have been ruled outside the scope of discovery by this Court on two occasions.</p>
<p>51. The Kate Kennedy incident received renewed public attention in 2011, following the publication of <i>Wrestling the Hulk: My Life Against the Ropes</i>, a book by Hogan’s ex-wife, Linda Hogan. There, she discussed the Kate Kennedy episode, including the toll it had taken on her</p>	<p>Undisputed that Linda Bollea’s book contains the quoted passages.</p> <p>Disputed that the alleged statements of Ms. Bollea resulted in renewed media attention, on ground that the claim is argument, not fact, and is not supported by any citation to evidence.</p>

Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
<p>marriage to Hogan, and his efforts to enlist her in helping him repair his image in the media in light of the public attention garnered by Ms. Kennedy’s allegations. See Ex. 38 (excerpts from <i>Wrestling the Hulk</i>) at 110 (“I never really knew the circumstances surrounding the Kate Kennedy accusations and Terry certainly wasn’t telling me the whole truth. From what I gathered, Kennedy had filed a claim for sexual battery and Terry needed to fight these charges in court and in the media. Unless I stood proudly beside him, he would lose both battles.”); <i>id.</i> at 105 (“Terry swore up and down that he did not sleep with her, but what he did admit doing was more than enough: he cheated on me, and this time it definitely wasn’t my imagination.”).</p>	<p>Objection, on relevance and prejudice grounds, as to any discussion of the Kate Kennedy allegations and litigation. All relationships beyond that of Mr. Bollea’s and Ms. Clem’s have been ruled outside the scope of discovery by this Court on two occasions.</p> <p>Objection, on hearsay grounds, as to out-of-court statements made by Linda Bollea.</p>
<p>52. Hogan’s divorce from Linda, and the allegations of infidelity that accompanied those proceedings, were thus played out in the media, especially because of the public attention focused on their marriage that resulted from the reality show (<i>Hogan Knows Best</i>) that centered on it. For example, a November 25, 2007 E-Online article reported that Linda Bollea had filed for divorce, noting that “[t]he possibility that the couple would part ways was the subject of an episode of their VH1 reality show, Hogan Knows Best,” though, “[o]n the show, however, they ultimately reconciled.” Ex. 39.</p>	<p>Disputed to the extent the paragraph consists entirely of argument, and not facts.</p>
<p>53. During an October 12, 2011 interview on the <i>Howard Stern Show</i>, Hogan complained that his ex-wife had been wrongfully accusing him of serial infidelity when all she had on him was that “one mistake in Minnesota” (Kate Kennedy) and that he had been “running with one of the record execs in Miami” (Christiane Plante). Ex. 40 at 17:42 – 18:01.</p>	<p>Undisputed that Mr. Bollea discussed aspects of his private life in radio interviews.</p> <p>Disputed to the extent the remainder of this paragraph is argument, and not facts.</p> <p>Objection, on relevance and prejudice grounds, as to any discussion of the Kate Kennedy allegations and litigation, and Mr. Bollea’s relationship with Christiane Plante.</p>

Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
	All relationships beyond that of Mr. Bollea’s and Ms. Clem’s have been ruled outside the scope of discovery by this Court on two occasions.
<p>54. Finally, Linda Hogan also leveled public accusations that Hogan had an affair with long-time friend and fellow wrestler Ed “Brutus Beefcake” Leslie. There was substantial coverage of those allegations, Hogan’s denials, and the defamation lawsuit he filed against her as a result. <i>See, e.g.</i>, Ex. 41 (August 16, 2011 <i>Radar Online</i> article entitled “Linda Hogan Suggests Hulk Hogan Had ‘Intimate Relationship’ With Brutus Beefcake,” which noted that ex-wife implied on radio show that Hogan had an “intimate relationship” with fellow wrestler Ed “Brutus Beefcake” Leslie); Ex. 42 (December 10, 2011 <i>US Weekly</i> article entitled “Hulk Hogan Sues Ex-Wife Linda Bollea for Claiming Abuse, Gay Affair,” which noted that Hogan had filed a defamation suit against ex-wife Linda following her claims that he was physically abusive during the marriage and had an extra-marital affair with male wrestler Ed “Brutus Beefcake” Leslie). <i>See also</i> Conf. SUMF ¶ 54.</p>	<p>Undisputed that Linda Bollea’s statements and the ensuing lawsuit received media coverage.</p> <p>Disputed to the extent the remainder of this paragraph consists entirely of argument, and not facts.</p> <p>Objection, on relevance and prejudice grounds, as to any discussion of an alleged relationship with Brutus Beefcake.</p> <p>Objection, on hearsay grounds, as to any reports of statements made by Linda Bollea.</p>

C. Widespread Public Discussion of the Graphic Details of Hogan’s Sex Life, Including By Hogan Himself

Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
<p>55. In addition to the widespread public attention focusing on Hogan’s personal life and romantic affairs, there has also been widespread public discussion of the intimate and graphic details of his sex life, including by Hogan himself and often in connection with his efforts to promote his career or those of his family members.</p>	<p>Disputed to the extent this paragraph consists entirely of argument, is not a fact, and cites to no evidence.</p>
<p>56. For instance, in 1982, to promote his appearance in <i>Rocky III</i>, Hogan posed for a</p>	<p>Undisputed that the photo shoot occurred and appeared in <i>Oui</i> magazine in 1982.</p>

Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
<p>photo spread in <i>Oui</i> magazine, in which he appeared with a number of naked or mostly naked women. Ex. 43. In the photo spread, Hogan is shown fondling the naked buttocks and breasts of the women, having them rub their naked breasts against his skin, and shown with one of the mostly naked women straddling him across his pelvis while he grabs her naked breasts. <i>Id.</i> During an exchange between Hogan and Bubba Clem on the <i>Bubba the Love Sponge</i> radio program on October 31, 2006, Bubba Clem referred to this photo shoot, stating, “Hogan, you’re the one who did a photo shoot with <i>Oui</i> magazine and had a threesome.” Ex. 44 at 13:35 – 13:50. <i>See also</i> Hogan Dep. (Ex. 3) at 18:12 – 19:20 (describing photo shoot).</p>	<p>Disputed as to Gawker’s characterizations of the photos on the ground that such characterizations are argument, and not facts.</p> <p>Objection, on relevance and prejudice grounds, as to a magazine shoot from more than 30 years ago.</p> <p>Objection, on hearsay, relevance, and prejudice grounds, as to Mr. Clem’s statement on his radio show, which is presented by Defendants solely to insinuate (without evidence) that Mr. Bollea engaged in group sex more than 30 years ago, an allegation that has nothing to do with this case.</p>
<p>57. During a broadcast of the <i>Bubba the Love Sponge Show</i> that aired on February 9, 2006, Hogan engaged in sexual banter with a “Penthouse Pet” who was being interviewed, and described his erection. Specifically, after noting that his wife would not hear the broadcast because “Linda ain’t got no satellite radio,” Hogan was asked by the <i>Penthouse</i> model, “Hulk, have you seen my p---y?,” to which Hogan replied, “What are you talking about, brother, you know I’ve seen that thing,” adding that he was working out in just a towel and now would not have a problem keeping his towel in place because he could just use his “hard on.” Ex. 45 at 33:30 – 37:10.</p>	<p>Undisputed that Mr. Bollea engaged in discussions about sex on radio programming.</p> <p>Disputed to the extent the quoted discussion is taken out of context. It is clear that Mr. Bollea did not intend his comments to be taken seriously.</p> <p>Objection, on relevance and prejudice grounds, as to Mr. Bollea’s 2006 appearance on a comedy segment of a radio show.</p> <p>Objection, on hearsay grounds, as to statements made by the alleged <i>Penthouse</i> model.</p>
<p>58. During an August 28, 2006 broadcast of the <i>Bubba the Love Sponge Show</i>, Hogan discussed where he prefers to ejaculate when he has sex with a woman (or, in Clem’s vernacular, where he “like[s] to nut at”). In response to Bubba Clem’s specific question of whether he preferred to ejaculate inside a woman’s vagina or “to pull out and squirt it all over,” Hogan</p>	<p>Undisputed that Mr. Bollea engaged in discussions about sex on radio programming.</p> <p>Disputed to the extent the quoted discussion is taken out of context. It is clear that Mr. Bollea did not intend his comments to be taken seriously.</p> <p>Objection, on relevance and prejudice</p>

Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
<p>announced that he was “in it to win it,” a detail he shared with Clem’s national radio audience. Ex. 46 at 48:20 – 49:16.</p>	<p>grounds, as to Mr. Bollea’s 2006 appearance on a comedy segment of a radio show.</p> <p>Objection, on hearsay grounds, as to statements made by Bubba Clem.</p>
<p>59. During an October 16, 2006 broadcast of the <i>Bubba the Love Sponge Show</i>, Hogan and his then-wife Linda engaged in a detailed discussion of their sexual practices on the air. Calling in from the car on the drive from Miami to Tampa, Hogan reported that he threw his back out having sex the previous night, after which Linda stated that, “instead of me, like, trying to sit up on top banging it down to a nub, he was – he was trying to bang it down to a nub and he broke something.” Ex. 47 at 24:20 – 25:45. Hogan and Bubba Clem then had the following exchange:</p> <p>HOGAN: I was standing up. And instead of going back and forth like a log like Frankenstein, I was actually trying to get some hip movement like I seen on the pornos, you know . . . where those young guys get those hip things going, you know?</p> <p>CLEM: You got a – you got a fake hip, though.</p> <p>HOGAN: And I threw my lower back out. Whatever Linda, shut the f--k up</p> <p>...</p> <p>CLEM: Did that affect your boner at all?</p> <p>HOGAN: Oh, dude, that sucker went away instantly. That pain makes everything go away.</p>	<p>Undisputed that Mr. Bollea engaged in discussions about sex on radio programming.</p> <p>Disputed to the extent the quoted discussion is taken out of context. It is clear that Mr. Bollea did not intend his comments to be taken seriously.</p> <p>Objection, on relevance and prejudice grounds, as to Mr. Bollea’s 2006 appearance on a comedy segment of a radio show.</p> <p>Objection, on hearsay grounds, as to statements made by Bubba Clem, Linda Hogan, and Hatley.</p>

Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
<p>HATLEY [one of Clem’s producers]: Did you at least try to finish yourself off later on?</p> <p>...</p> <p>L. HOGAN: I made him finish the job.</p> <p><i>Id.</i> Bubba Clem also asked Hogan “Did Linda get an orgasm?” to which Hogan replied, “Oh, yeah, yeah. She always gets one when I’m around, dog.” <i>Id.</i> at 25:29 – 25:40.</p>	
<p>60. In that same broadcast, Hogan also described in detail performing oral sex on his wife, including that he preserves the smell of her fluids in his mustache, so that, as Clem put it, during a wrestling match, Hogan “could pay homage to the oral that [he] gave [Linda] backstage”:</p> <p>CLEM: Hey, Hogan. You can – you can always resort to just oral. I mean – I mean, you’re probably pretty good at that. That Fu Manchu probably feels good.</p> <p>HATLEY [one of Clem’s producers]: Oh, man. That thing’s got to tickle.</p> <p>HOGAN: Hey, brother, I’ve had that on for a long time for a reason. This ain’t for show. This is for go. (Laughter.)</p> <p>HATLEY: The flavor saver?</p> <p>CLEM: The flavor saver.</p> <p>HOGAN: Oh, yeah, why do you think when I make that face in the middle of the ring, when I’m sniffing my mustache?</p>	<p>Undisputed that Mr. Bollea engaged in discussions about sex on radio programming.</p> <p>Disputed to the extent the quoted discussion is taken out of context. It is clear that Mr. Bollea did not intend his comments to be taken seriously.</p> <p>Objection, on relevance and prejudice grounds, as to Mr. Bollea’s 2006 appearance on a comedy segment of a radio show.</p> <p>Objection, on hearsay grounds, as to statements made by Bubba Clem and Hatley.</p>

Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
<p><i>Id.</i> at 28:15 – 28:55. Linda Hogan then described how, when Hogan “does the sniffy-the-mustache thing or whatever you call that gimmick” in the ring, “[i]t’s his little sign to show me that he’s thinking about me.” <i>Id.</i> at 28:55 – 29:21. Clem then opined to Hogan, “you threw your hip out but you better not throw out your tongue or you’re out of here.” <i>Id.</i> at 29:21 – 29:35.</p>	
<p>61. The following day, on October 17, 2006, Hogan again called into Bubba Clem’s radio program. Hogan confessed that he and his wife were pleasuring each other in the car the previous day:</p> <p>CLEM: I thought maybe you – I thought you were getting some head.</p> <p>HOGAN: Oh, we were playing stick shift.</p> <p>CLEM: Does she still give head in the car?</p> <p>HOGAN: No, man, we were playing stick shift, though.</p> <p>CLEM: Oh, hand job?</p> <p>HOGAN: You shift mine, and I’ll shift yours.</p> <p>Ex. 48 at 40:15 – 40:40. Further describing his wife’s technique for manually pleasuring him, Hogan stated, “She’s got a – she’s got a torque converter.” <i>Id.</i></p>	<p>Undisputed that Mr. Bollea engaged in discussions about sex on radio programming.</p> <p>Disputed to the extent the quoted discussion is taken out of context. It is clear that Mr. Bollea did not intend his comments to be taken seriously.</p> <p>Objection, on relevance and prejudice grounds, as to Mr. Bollea’s 2006 appearance on a comedy segment of a radio show.</p> <p>Objection, on hearsay grounds, as to statements made by Bubba Clem.</p>
<p>62. On an October 20, 2006 broadcast of the <i>Bubba the Love Sponge Show</i>, Hogan engaged in a discussion of the most women he ever had sex with at one time:</p> <p>CLEM: What’s the most women you ever had in your</p>	<p>Undisputed that Mr. Bollea engaged in discussions about sex on radio programming.</p> <p>Disputed to the extent the quoted discussion is taken out of context. It is clear that Mr. Bollea did not intend his comments to be taken seriously.</p>

Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
<p>hotel room at one time?</p> <p>HOGAN: Me?</p> <p>CLEM: Yeah.</p> <p>HOGAN: Back in the diz [i.e., day]?⁴</p> <p>CLEM: Back in the day –</p> <p>HOGAN: Well, there’s been several at one time, but then they scrizammed when I started playing Hulkster says And I had five of them that – I made them stand on the bized, you know?</p> <p>CLEM: Mmm hmm.</p> <p>HOGAN: . . . [F]ive of them stand on the bized and then, as Hulkster says, take your tizop off. They hung in there. Then Hulkster says, take your briz off. They hung in there.</p> <p>CLEM: Right.</p> <p>HOGAN: And when I give them the, [take] off your panties grizanny, a couple of them scrizammed.</p> <p>CLEM: So you’re down to three?</p> <p>HOGAN: And then I said, you</p>	<p>Objection, on relevance and prejudice grounds, as to Mr. Bollea’s 2006 appearance on a comedy segment of a radio show.</p> <p>Objection, on relevance and prejudice grounds, as to any discussion of Mr. Bollea’s alleged relationship with anyone other than Heather Clem, a subject this Court has ruled out-of-bounds for discovery on at least two occasions.</p> <p>Objection, on hearsay grounds, as to any statements made by Bubba Clem.</p>

⁴ During his appearances on the *Bubba the Love Sponge Show*, Hogan and Bubba Clem would routinely modify words inserting the letter “z,” a style of speaking that Hogan has explained is associated with professional wrestling and traceable to its origins in the world of “carnies.” See Ex. 17 Aff. of R. Fugate at 36 (excerpts from *Hollywood Hulk Hogan*).

Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
<p>know, do the Bubba Thumb McGillicutty gimmick.</p> <p>CLEM: You did the Two-Finger Cul-de-sac Jones?</p> <p>HOGAN: Yeah, and that broke it down to two, and the two stayed. Stay all night. Stay a little longer.</p> <p>Ex. 49 at 53:35 – 54:40.</p>	
<p>63. In that same broadcast, Bubba Clem reported that a fan had emailed to ask Hogan, “How big is your penis?” Hogan initially responded that, if Bubba Clem “tell[s] all your fans right now, keep Brooke at number one while her record release is sold, Tuesday all through the week, . . . I’ll tell you exactly how big that Loch Ness monster is.”</p> <p>CLEM: How big your c--k is?</p> <p>HOGAN: Yeah.</p> <p><i>Id.</i> at 56:00 – 56:30. Later, after Clem stated that he has seen Hogan’s penis before, he and Hogan participated in an extended discussion about the size of Hogan’s penis, including various mathematical computations involving that subject and its relationship to the size of Hogan’s feet:</p> <p>HOGAN: They called me – they called me King Triton.</p> <p>CLEM: Exactly. I would say hard you’re probably 7 ½ or 8 inches.</p> <p>HOGAN: Sh-t.</p> <p>...</p> <p>HOGAN: Dude, I got size 15 feet. I wear a size 15 ring on</p>	<p>Undisputed that Mr. Bollea engaged in discussions about sex on radio programming.</p> <p>Disputed to the extent the quoted discussion is taken out of context. It is clear that Mr. Bollea did not intend his comments to be taken seriously.</p> <p>Objection, on relevance and prejudice grounds, as to Mr. Bollea’s 2006 appearance on a comedy segment of a radio show.</p> <p>Objection, on hearsay grounds, as to statements made by Bubba Clem and Ned.</p>

Moving Parties' Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
<p>my – wedding ring.</p> <p>...</p> <p>HOGAN: Figure it out.</p> <p>CLEM: Well, you ain't got a 15-inch c--k, Hogan.</p> <p>HOGAN: No, it's two-thirds the size of your feet and your hands, jack-off.</p> <p>CLEM: Well, what's 66 percent of 15, Brent?</p> <p>NED [a recurring character on Clem's show]: Ten.</p> <p>HOGAN: What the f--k? What is – what is – what is – what's five times three?</p> <p>CLEM: So you're saying – Ned said that you're right at 10.</p> <p>HOGAN: Ned should know. I done bent his ass over – (laughter) –</p> <p>NED: It felt like 10.</p> <p>CLEM: So Hogan, you're claiming – you're claiming to maybe have a 10-inch c--k.</p> <p>HOGAN: I'm not claiming. Those are the facts, Jack.</p> <p><i>Id.</i> at 56:50 – 57:45; <i>see also</i> Ex. 50 at 34:30 (Nov. 1, 2006 broadcast of the <i>Bubba the Love Sponge Show</i> in which Hogan and Bubba Clem discussed a magazine photo of Hogan in a Speedo-style bathing suit with a visible erection, and, in response to Bubba Clem's questions about whether the magazine was</p>	

Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
<p>“trying to accentuate [Hogan’s] boner” and whether it “always hang[s] out to the left,” Hogan stated he “was sleeping in the sun with a hizalf hizard-on,” or, as Bubba Clem and his co-host put it, he was “just half hard” and “it’s always left”); <i>id.</i> at 42:49 – 43:08 (Clem stating to Hogan, “It’s f-king Hulk Hogan with a big boner . . . to the left – seven and a half inches of f-king King Triton”).</p>	
<p>64. Hogan also repeatedly discussed the details of his sex life – and the sex lives of his entire family – during numerous appearances on the <i>Howard Stern Show</i>. For instance, on October 23, 2006, Hogan and his entire family appeared on the show to promote <i>Hogan Knows Best</i>, and his daughter’s recording career, including her new album that was being released the next day. Ex. 51. During the national broadcast, each member of the Hogan family answered questions from Stern and his colleagues about each of their sex lives. Brooke (then 18) was asked about and discussed what “base” she had reached. <i>Id.</i> at 8:49-9:20. When Stern told her, “I would love to take your virginity,” Hogan responded with a “Wow” and “Howard, she’s the right height.” <i>Id.</i> at 36:40 – 36:53. During that same broadcast, Nick (then 16) talked about his sex life (according to Brooke: “Nick’s swinging and banging and doing his thing”); whether he would “bang” Brooke’s friends or various celebrities; the size of his penis (according to Stern: “Don’t measure from your testicles. That’s cheating.”); and his use of condoms. <i>Id.</i> at 26:31 – 26:54, 30:50 – 32:20. For their part, Hogan and his then-wife, Linda, talked about the last time they had had sex, whether “in all the women that [he has] been with” Hogan ever had sex with a virgin (“no”); whether Linda was a virgin when they met (“no”); and how large his penis is (“ten inches”).</p>	<p>Undisputed that Mr. Bollea engaged in discussions about sex on radio programming.</p> <p>Disputed to the extent the quoted discussion is taken out of context. It is clear that Mr. Bollea did not intend his comments to be taken seriously.</p> <p>Objection, on relevance and prejudice grounds, as to Mr. Bollea’s 2006 appearance on a comedy segment of a radio show.</p> <p>Objection, on hearsay, relevance, and prejudice grounds, as to the statements allegedly made by Brooke Bollea, Nick Bollea, and Linda Bollea.</p>

Moving Parties' Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
<i>Id.</i> at 26:38 – 26:45, 36:55 – 37:07.	
<p>65. On April 29, 2010, Hogan and his then-fiancée (and now wife) Jennifer McDaniel, appeared on the <i>Howard Stern Show</i>, during which they discussed their sex life in graphic detail before a national audience. Ex. 52. For example, Stern, Hogan and Jennifer (along with Stern's co-host Robin Quivers) had the following exchange describing their sex life in detail:</p> <p>STERN: [Hogan] he has tremendous demands, doesn't he? Physical needs? Yes?</p> <p>MCDANIEL: Yes, which – I find that flattering.</p> <p>STERN: And you have no –</p> <p>MCDANIEL: I'm happy that he wants it all the time. That's good.</p> <p>STERN: And you willingly give it to him at least once a day?</p> <p>MCDANIEL: Sometimes not, if we're busy –</p> <p>STERN: Right, right.</p> <p>MCDANIEL: – or tired – but usually.</p> <p>STERN: And the lovemaking is violent, you say? It's very fierce?</p> <p>MCDANIEL: Sometimes, especially if we drink saki.</p> <p>STERN: Really? What</p>	<p>Disputed to the extent the quoted discussion is taken out of context. It is clear that Jennifer Bollea did not intend her comments to be taken seriously.</p> <p>Objection, on hearsay, relevance, and prejudice grounds, as to the statements made by Jennifer Bollea in a 2010 appearance on a comedy segment of a radio show.</p> <p>Objection, on hearsay grounds, as to statements made by Stern and McDaniel.</p>

Moving Parties' Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
<p>happens? I mean, are you saying –</p> <p>MCDANIEL: He's putting – (inaudible) –</p> <p>HOGAN: Uh-oh, oh, yeah, I'm out. I'm done.</p> <p>STERN: What are you saying? You're saying –</p> <p>HOGAN: I'm done.</p> <p>STERN: – you're saying that he – does he put it in you and ram you very hard?</p> <p>HOGAN: (Laughs.)</p> <p>STERN: Does he?</p> <p>MCDANIEL: Yes.</p> <p>STERN: He does?</p> <p>HOGAN: Oh, easy! (Laughter.)</p> <p>STERN: When you – and you like it hard, right?</p> <p>MCDANIEL: I don't think I have a choice.</p> <p>STERN: You don't have a choice?</p> <p>QUIVERS: (Laughs.)</p> <p>MCDANIEL: I mean, sometimes like, in the morning, he'll be, like, hey baby.</p> <p>STERN: Right.</p>	

Moving Parties' Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
<p>MCDANIEL: You know, like, good morning. Wake up. But –</p> <p>STERN: But he takes you very, very fast.</p> <p>MCDANIEL: But usually it's –</p> <p>STERN: Yeah, and rams it in? Wow. From behind? I picture him like a wild –</p> <p>MCDANIEL: How do you know this? Is he psychic?</p> <p>STERN: I picture him like a wild animal.</p> <p>MCDANIEL: He's sexually psychic.</p> <p><i>Id.</i> at 28:35 – 29:42.</p>	
<p>66. As the conversation continued, Hogan and McDaniel then proceeded to discuss in detail the size of Hogan's penis and their use of lubrication as a result, prompting Hogan to suggest a video of their sex life called "Hulk Gone Wild":</p> <p>STERN: [W]ere you scared when you looked at his Hulk Hogan c--k . . . if I may be blunt? (Laughter.)</p> <p>MCDANIEL: I was, like –</p> <p>HOGAN: (Laughs.) It was painted red and yellow.</p> <p>MCDANIEL: – where's the lube?</p> <p>STERN: No kidding? Did you have to lube in order to accommodate him?</p>	<p>Undisputed that Mr. Bollea engaged in discussions about sex on radio programming.</p> <p>Disputed to the extent the quoted discussion is taken out of context. It is clear that Mr. and Mrs. Bollea did not intend their comments to be taken seriously.</p> <p>Objection, on relevance and prejudice grounds, as to Mr. Bollea's 2010 appearance on a comedy segment of a radio show.</p> <p>Objection, on hearsay, relevance, and prejudice grounds, as to the statements made by Jennifer Bollea in a 2010 appearance on a comedy segment of a radio show.</p> <p>Objection, on hearsay grounds, as to statements made by Stern and McDaniel.</p>

Moving Parties' Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
<p>MCDANIEL: Heck, yeah.</p> <p>STERN: Really?</p> <p>MCDANIEL: Yes.</p> <p>STERN: Oh, for Christ –</p> <p>MCDANIEL: Yes.</p> <p>STERN: No kidding? Look at Robin salivating.</p> <p>QUIVERS: I'm just fascinated. (Laughs.)</p> <p>STERN: Wow, he was so thick or long that you –</p> <p>MCDANIEL: Both –</p> <p>STERN: – became panicked? Did you become panicked?</p> <p>MCDANIEL: I got a little bit nervous, yes.</p> <p>STERN: And you said, I'm –</p> <p>MCDANIEL: I think I had to have a little shot of champagne or something. I was, like –</p> <p>STERN: And was lube really involved that first time?</p> <p>HOGAN: Brutal –</p> <p>STERN: Wow, no kidding?</p> <p>MCDANIEL: Yeah.</p> <p>HOGAN: Brutal –</p>	

Moving Parties' Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
<p>QUIVERS: But apparently you are. (Laughs.)</p> <p>STERN: [to Hogan] You're a brute. You're an animal.</p> <p>HOGAN: Hulk it up, brother. Hulk it up.</p> <p>STERN: Hulk it up. Hulk it up.</p> <p>...</p> <p>STERN: Why couldn't – why couldn't – why couldn't the Hulkster prepare you with oral sex and everything?</p> <p>MCDANIEL: Oh, no, he –</p> <p>STERN: He did?</p> <p>QUIVERS: Still doesn't help – apparently that's what's going on here.</p> <p>MCDANIEL: I mean, he's very gracious. He's very gracious.</p> <p>STERN: And it still doesn't help? Even with nature's lube?</p> <p>MCDANIEL: He's not a selfish lover.</p> <p>...</p> <p>STERN: So in other words, even with natural lubrication to handle his girth, it was impossible? . . .</p> <p>MCDANIEL: That's correct.</p> <p>STERN: Whoa, what a story.</p> <p>QUIVERS: (Laughs.)</p> <p>HOGAN: Hulk gone wild.</p> <p>STERN: Wow.</p>	

Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
<p>HOGAN: Hulk, I feel – I’m feeling a video coming out here: “Hulk Gone Wild.”</p> <p><i>Id.</i> at 33:25 – 34:42.</p>	
<p>67. In that same broadcast, Hogan and McDaniel also discussed Hogan’s practice of spanking his then-fiancée:</p> <p>STERN: Does he spank you? He does?</p> <p>MCDANIEL: It hurts.</p> <p>STERN: Oh, my God. Look at the size of these –</p> <p>MCDANIEL: Look at his hands.</p> <p>STERN: Look at those hands.</p> <p>HOGAN: Oh, man!</p> <p>STERN: Often you spank her? Why? Because she’s bad, right?</p> <p>HOGAN: She’s bad. . . .</p> <p>STERN: She’s bad. She’s running around naked in front of the neighbors. . . .</p> <p>STERN: She likes being spanked? . . .</p> <p>HOGAN: Yeah.</p> <p><i>Id.</i> at 40:23 – 40:45.</p>	<p>Undisputed that Mr. Bollea engaged in discussions about sex on radio programming.</p> <p>Disputed to the extent the quoted discussion is taken out of context. It is clear that Mr. and Mrs. Bollea did not intend their comments to be taken seriously.</p> <p>Objection, on relevance and prejudice grounds, as to Mr. Bollea’s 2010 appearance on a comedy segment of a radio show.</p> <p>Objection, on hearsay, relevance, and prejudice grounds, as to the statements made by Jennifer Bollea in a 2010 appearance on a comedy segment of a radio show.</p> <p>Objection, on hearsay grounds, as to statements made by Stern and McDaniel.</p>
<p>68. In that same broadcast, Hogan also discussed the size of his penis, the fact that he needed to use “Magnum” condoms, and that he was not currently using condoms to have sex:</p> <p>STERN: When you buy condoms, do you buy those Magnums, the extra-large ones?</p>	<p>Undisputed that Mr. Bollea engaged in discussions about sex on radio programming.</p> <p>Disputed to the extent the quoted discussion is taken out of context. It is clear that Mr. Bollea did not intend his comments to be taken seriously.</p> <p>Objection, on relevance and prejudice</p>

Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
<p>HOGAN: Back in the day, yeah.</p> <p>STERN: No kidding? Magnums?</p> <p>QUIVERS: Oh, but he’s not using them now?</p> <p>HOGAN: Yeah, they fit – they fit like a thimble.</p> <p>STERN: Are you serious? You buy a Magnum?</p> <p>HOGAN: No, I don’t buy them.</p> <p>STERN: No, but I mean, I’m saying. Is that the brand you use, Magnums?</p> <p>HOGAN: Back in the day, yeah.</p> <p>STERN: No kidding? You’re that big? . . . No kidding? A Magnum? That’s the crème de la crème for big men. Good lord.</p> <p>HOGAN: Hulk it up, brother.</p> <p><i>Id.</i> at 56:30 – 57:04.</p>	<p>grounds, as to Mr. Bollea’s 2010 appearance on a comedy segment of a radio show.</p> <p>Objection, on hearsay grounds, as to statements made by Stern and Quivers.</p>
<p>69. All of the above public discussion of Hogan’s sex life preceded the publication of the Gawker Publication. For the avoidance of doubt, the Publisher Defendants take no position on whether any of the conduct described, including by Hogan, occurred or occurred in the manner described. They simply rely on the fact that these topics were the subject of extensive national media coverage and public discussion, including in significant respects by Hogan himself, prior to the Publication.</p>	<p>Disputed to the extent the paragraph consists entirely of argument, and is not a fact.</p>

V. UNDISPUTED FACT NO. 5: Prior to any conduct by the Publisher Defendants, there was widespread discussion in the media, including by Hogan himself, of the Video Recording of Sexual Affair Between Hogan and Heather Clem.

Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
<p>70. The topic of sexual relations between Hogan and Heather Clem was first discussed publicly during an October 12, 2011 appearance by Hogan on the <i>Howard Stern Show</i>.⁵ In the midst of a discussion of whether the Clems (who had just separated) were going to end up divorcing, including whether “there was any cheating involved,” Stern asked Hogan “would you ever f--k Heather?” Ex. 40 at 11:33 – 13:39. Hogan responded, “No,” citing “man law, brother.” <i>Id.</i> (At the time of Hogan’s denial, he already had engaged in sexual relations with Heather Clem.)</p>	<p>Undisputed that the discussions set forth by Gawker occurred, and that the 2006 discussion was in jest.</p> <p>Undisputed that, in 2011, Mr. Bollea wanted to protect his former relationship with Heather Clem from media scrutiny, and keep it private. Mr. Bollea did not discuss the sexual encounters with Heather Clem publicly until he was forced to defend himself in the wake of coverage concerning an alleged sex tape and false reports that Mr. Bollea had something to do with it. Mr. Bollea spoke to the press to make it known that the video was recorded illegally, that he did not consent to it, did not authorize its release, and intended to pursue criminal prosecution of anyone involved.</p> <p>Evidence: Bollea Tr. 241:15–25; <i>id.</i> 326:25–327:13; GAWKER 00061–00069 (Depo Ex. 140).</p>
<p>71. Despite Hogan’s public denial, in early 2012, there was widespread discussion in the radio community about a sex tape involving Hogan and Heather Clem. Richard Peirce, Bubba Clem’s former employee testified, that “prior to anything being published on the internet,” it “spread through radio pretty quick,” Peirce Dep. (Ex. 8) at 78:7-20, and “it wasn’t just people that were in the satellite world,” but the discussion extended to “the terrestrial world too. It got around in radio to people kind of fast,” <i>id.</i> at 82:4-7.</p>	<p>Objection, on hearsay grounds, as to any statements by Peirce as to what the radio community’s discussions were.</p>

⁵ Prior to that, the topic was raised – albeit in jest – during a November 1, 2006 broadcast of the *Bubba the Love Sponge Show*. There, Bubba Clem played a parody sketch that portrayed Hogan, Bubba Clem, and Heather Clem in what the sketch described as a “threesome,” with the punch line being that both men were ignoring Heather Clem sexually. Ex. 50 Aff. of R. Fugate at 0:01 – 0:50.

Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
72. Peirce received an instant message with what he described as “a timeline” of the video footage, and explained that he had been hearing such rumors for “a couple of months” before “receiving the instant message.” Peirce Dep. (Ex. 8) at 79:4-10, 82:8-10, 95:12 – 97:7. <i>See also</i> Conf. SUMF ¶ 72.	Objection , on hearsay grounds, as to any statements by Peirce regarding instant messages he received and rumors he heard.
73. The first public report about a Hulk Hogan sex tape appeared on March 7, 2012, seven months before the Publication at issue was published by Gawker. On that date, the celebrity news website <i>TMZ</i> reported that “[a] sex tape featuring legendary wrestler Hulk Hogan has surfaced,” and that it is “currently being shopped to a major porn studio.” Ex. 53. <i>See also</i> B. Clem Dep. (Ex. 5) at 390:17 – 393:16 (describing reaction to March 7, 2012 <i>TMZ</i> article).	Undisputed.
74. That same day, <i>TMZ</i> published two additional articles on the sex-tape story. <i>See</i> Exs. 54, 55. <i>TMZ</i> also posted a satirical video about the sex-tape controversy, including about Hogan’s wrestling persona and his family life. Ex. 56.	Undisputed.
75. On the day that <i>TMZ</i> broke the sex-tape story (March 7, 2012), Hogan addressed the emerging sex-tape scandal during an interview that was broadcast on <i>TMZ Live</i> . Ex. 57 at 2:06 – 11:45. Accompanied by his attorney, David Houston, Hogan stated that he did not know who the woman in the tape – who had not yet been identified as Heather Clem – might be, saying: “between the divorce from Linda and the time I met Jennifer I had about four and a half months that I really went crazy. And I actually wrote about it in my book, about staying drunk and crazy and hitting all the bars. So I was really out of my mind for a while.” <i>Id.</i> at 3:10 – 3:27. After hearing a brief description of what is on the tape, and being asked whether that rang any bells as	Undisputed.

Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
<p>to who the woman could be, Hogan responded:</p> <p>You know . . . , I’m not trying to be a smart aleck. I’m horrible with remembering names, you know? . . . But during that time, that four- or five-month window where I was going crazy, I was – the first thing I did was I – when I sat down with Jennifer, I said, I don’t even remember people’s names, you know, last weekend that I met, I meet so many people, much less girls five or six or seven years ago, or five years ago, whenever it was, it’s just I couldn’t remember a name if I had to. And the truth is it wasn’t just one brunette. I was running pretty wild there for a few months.</p> <p><i>Id.</i> at 4:52 – 6:17. <i>See also</i> Conf. SUMF ¶ 75.</p>	
<p>76. During that same interview, Hogan and his attorney repeatedly joked with the show’s hosts about the sex tape, exchanging banter about the thong-shaped tan line allegedly on display on the tape, and also expressing mock relief that the tape did not show Hogan “with a guy.” Ex. 57 at 9:34 – 10:45 (“Houston: ‘Yeah, well, that was the only thing we thought could be worse: if it was a young male. So we were grateful.’”).</p>	<p>Undisputed that the quoted statements were made during the interview.</p> <p>Disputed to the extent Defendants characterize the statements as Mr. Bollea and his lawyer “repeatedly jok[ing]” about the Sex Video, on grounds that such characterization is argument, and is not a fact.</p> <p>Evidence: Ex. 43_C (D. Houston Tr. 40:21–41:02)</p>
<p>77. Based on this initial reporting, the sex-tape story became national news in March 2012, seven months before Gawker’s Publication was published. For example, on March 7, 2012, <i>E-Online</i> published an article entitled: “Hulk Hogan Sex Tape: Shop at Your Own Risk.” Ex. 58. The article stated that Hogan and his attorney,</p>	<p>Undisputed that <i>E-Online</i> and <i>NBC Today</i> ran the stories cited by Gawker.</p> <p>Disputed as to Defendants’ characterization of the stories on the ground that such characterization is argument, and is not a fact.</p>

Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
Houston, seem to know who the woman in the sex tape is, quoting Houston as saying, “We are two shades short of referring her to the state attorney in Florida,” and that “This is a felony in Florida.” <i>Id.</i> ; <i>see also</i> Ex. 59 (same article published by NBC on its <i>Today Show</i> website on March 8, 2012). ⁶	
78. Also on March 7, 2012, the <i>Huffington Post</i> published an article entitled “Hulk Hogan Sex Tape Surfaces: Wrestler Claims He Was Filmed in Secret,” which noted Hogan’s “thong-shaped tan line” and that the “unidentified brunette” was neither his ex-wife nor his current wife. Ex. 60.	Undisputed.
79. Also on March 7, 2012, the <i>VH1 Access</i> website published an article entitled “Hulk Hogan Sex Tape Surfaces,” which noted that the video shows Hogan getting naked and “messing around” with a “mystery woman.” Ex. 61.	Undisputed.
80. Also on March 7, 2012, VH1 published another article on its website entitled “Report: A Hulk Hogan Sex Tape Is Out There,” which noted: “As is the case with many-a-celebrity-sex tape, it’s the [pornography distributor] Vivid Entertainment boss, Steve Hirsch, who broke the news as he was the one given the tape by a third party.” Ex. 62.	Undisputed that VH1 published the article referenced. Objection , on hearsay grounds, as to the statement that Steve Hirsch was “the one given the tape by a third party.”
81. Also on March 7, 2012, the wrestling website <i>TWNPnews.com</i> published an article entitled “Sextape Featuring Hulk Hogan with Another Woman Being Shopped Around,” which noted that the video shows Hogan bragging that he has been “working out again.” Ex. 63.	Undisputed.
82. Also on March 7, 2012, the <i>National Enquirer</i> published an article on its website entitled “Hulk Hogan Sex Tape,” which noted that a sex tape had surfaced, was	Undisputed.

⁶ To the Publisher Defendants’ knowledge, no charges were ever brought by any law enforcement agency, state or federal, related to the sex tape.

Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
<p>being shopped to “a major porn studio,” and showed “Hulk disrobing as a naked brunette offers herself to him lying on a bed.” Ex. 64.</p>	
<p>83. Also on March 7, 2012, the sports focused website <i>Bleacher Report</i> published an article entitled “Pro Wrestling News: Hulk Hogan Sex Tape Surfaces: ‘I’m the Victim,’” which noted that “according to TMZ.com Hogan believed the tape’s time-line was approximately five years ago, and he does not remember who this woman was” and quoted Hogan as stating, “‘During that time, I don’t even remember people’s names, much less girls.’” Ex. 65.</p>	<p>Undisputed that <i>Bleacher Report</i> published the article referenced.</p> <p>Disputed to the extent <i>Bleacher Report</i> took Mr. Bollea’s statement out-of-context when quoting him in the article.</p> <p>Evidence: Ex. 57 to Aff. of R. Fugate; Ex. 43_C (D. Houston Tr. 25:19–22).</p>
<p>84. Also on March 7, 2012, <i>The Daily Caller</i> published an article entitled “Finally, a Hulk Hogan Sex Tape,” which noted that the tape showed Hogan “wearing nothing except his thong-shaped tan line and blindingly white mustache” and that he bragged to his “evening companion” that he had started to work out again. Ex. 66.</p>	<p>Undisputed.</p>
<p>85. The next day, on March 8, 2012, still seven months before the Publication at issue was published by Gawker, <i>Digital Spy</i> published an article entitled “Hulk Hogan Urged by Porn Producer to Officially Release Sex Tape,” which reported that the video features Hogan with a woman who was neither his wife or ex-wife and also noted that Hogan had sued his ex-wife over “claims that he carried on a homosexual affair during their marriage.” Ex. 67.</p>	<p>Undisputed that <i>Digital Spy</i> published the article referenced.</p> <p>Objection, on hearsay, relevance, and prejudice grounds, to Defendants’ inclusion of the article’s reference to Mr. Bollea’s lawsuit against his ex-wife. Defendants include this detail, again, only to insinuate that Mr. Bollea had an affair with a man while married to Linda. The tactic is improper and inadmissible.</p>
<p>86. Also on March 8, 2012, <i>The Hollywood Gossip</i> published an article entitled “Hulk Hogan on Sex Tape Partner Identity: Got Me!,” which noted that Hogan did not deny the existence of the sex tape but “pleaded ignorance” as to the identity of the woman in the video, pointing to a “four-month alcohol/banging binge he went on between the period of divorcing long-time wife Linda and meeting new wife Jennifer</p>	<p>Undisputed that <i>The Hollywood Gossip</i> published the article referenced.</p> <p>Disputed as to Defendants’ characterization of the article on the ground that such characterization is argument, and is not a fact.</p>

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McDaniel.” Ex. 68.	
87. Also on March 8, 2012, <i>The Daily Telegraph</i> published on its website an article entitled “Wrestling great Hulk Hogan cannot recall women in sex tape as he slept with many after Linda Hogan marriage break-up,” which noted that Hogan explained that “he hasn’t had sex with another woman since meeting his new wife five years ago so the tape must be at least five years old.” Ex. 69.	Undisputed.
88. Also on March 8, 2012, the wrestling publication <i>PWMania</i> published a post entitled “Hulk Hogan & His Lawyer Respond To Sex Tape (Audio),” which noted that Hogan “strongly questions” the motivations of the woman in the tape for “secretly taping” the incident and “now coming forward out of the blue after 5 years later.” Ex. 70.	Undisputed.
89. Also on March 8, 2012, <i>USA Today</i> published an article on its website entitled “Hulk Hogan’s attorney issues sex tape warning,” which noted that Hogan and his attorney know the identity of the woman in the video and that Hogan believed tape was made “when his drinking and partying got out of hand in the wake of his divorce in 2007.” Ex. 71.	Undisputed.
90. The next day, on March 9, 2012, and still seven months before the Publication at issue was published by Gawker, <i>The New Zealand Herald</i> published an article on its website entitled “Hulk Hogan ‘appalled’ at mystery sex tape release,” which noted that Hogan admitted to a period where he went “crazy” and was “running wild” with several women. Ex. 72.	Undisputed that <i>The New Zealand Herald</i> published the article referenced. Disputed as to Defendants’ characterization of the article on the ground that such characterization is argument, and is not a fact.
91. Many of these initial reports about the sex tape (all of which preceded the Publication at issue by seven months), placed the emerging controversy within the context of prior public controversies about Hogan’s sexual and romantic life. Thus, on March	Undisputed that <i>The New York Post</i> published the article referenced. Disputed as to Defendants’ characterization of the article, and other reports about the Sex Video, on the ground that such characterization

Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
<p>7, 2012, <i>The New York Post</i> published an article on its website <i>PageSix.com</i> entitled “Hulk Hogan sex tape being shopped around: report,” which, in reporting about the sex-tape revelation, noted Hogan’s life in the public eye, including his family’s appearance in the <i>Hogan Knows Best</i> series, his divorce from ex-wife Linda following allegations of an extra-marital affair, and his remarriage to Jennifer McDaniel. Ex. 23.</p>	<p>is argument, and is not a fact.</p>
<p>92. On March 12, 2012, <i>TMZ</i> published an article on its website entitled “Linda Hogan: I Want to See Hulk’s Sex Tape!,” reporting that Hogan’s ex-wife was eager to see the tape to bolster her allegations of infidelity against him, in part to strengthen her position in the then-pending defamation lawsuit that Hogan had filed against her. Ex. 73.</p>	<p>Undisputed that <i>TMZ</i> published the article referenced.</p> <p>Disputed as to Defendants’ characterization of the article on the ground that such characterization is argument, and is not a fact.</p> <p>Objection, on hearsay grounds, as to statements allegedly made by Linda Bollea.</p>
<p>93. That article was followed three days later by an article by <i>Digital Spy</i> entitled “Hulk Hogan ex-wife Linda ‘wants sex tape to be released,’” which noted that Hogan’s ex-wife Linda wanted to introduce the tape as evidence of infidelity in defending against Hogan’s defamation suit against her for stating in her book that he was abusive and engaged in extra-marital affairs. Ex. 74.</p>	<p>Undisputed that <i>Digital Spy</i> published the article referenced.</p> <p>Disputed as to Defendants’ characterization of the article on the ground that such characterization is argument, and is not a fact.</p> <p>Objection, on hearsay grounds, as to statements allegedly made by Linda Bollea.</p>
<p>94. Roughly a month after the initial wave of reporting and commentary about the sex tape, on April 19, 2012, and still more than five months before the Publication at issue was published by Gawker, the story received renewed attention when the website <i>The Dirty</i> published screen shots purporting to be from a Hulk Hogan sex tape. Ex. 75.</p>	<p>Undisputed that <i>The Dirty</i> published the article and screen shots referenced.</p> <p>Disputed as to Defendants’ claim that the story received renewed attention on the ground that it is argument and Defendants cite no evidence to support such claim.</p>
<p>95. A few days later, <i>The Dirty</i> published a second batch of stills purporting to be from a Hulk Hogan sex tape. Ex. 76. The screen shots published by <i>The Dirty</i>, although grainy, appeared to show Hogan and Heather Clem in various states of</p>	<p>Undisputed that <i>The Dirty</i> published the article and screen shots referenced.</p> <p>Disputed as to Defendants’ description of the screen shots. The still images were dim, blurry, and not comparable to the footage later</p>

Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
sexual activity. <i>Id.</i>	published and subtitled by Defendants. Evidence: Ex. 76 to Aff. of R. Fugate.
96. Peirce, Bubba Clem’s former employee, explained that, “before the screen caps came out, I started hearing that there was a sex tape that she [Heather] was in. And the when they came out, I was like, Okay, it’s true.” Peirce Dep. (Ex. 8) at 77:3-14.	Undisputed to the extent <i>The Dirty’s</i> story established that a “Hulk Hogan sex tape” existed, and thus there was no reason for Defendants to publish footage of the video to “establish” a fact that was already established by other media coverage. Objection , on hearsay grounds, as to rumors heard by Peirce.
97. This led to still more press coverage of the story – all five-plus months before Gawker’s Publication. For example, on April 23, 2012, the website <i>In Flex We Trust</i> published an article entitled “WWE: Hulk Hogan Sex-Tape Images Leaked Online,” which noted that screen shots from the tape had been published online, reproduced a selection of the screen shots, and stated: “I have a feeling we may see that sex tape sometime soon.” Ex. 77.	Undisputed that <i>In Flex We Trust</i> published the article referenced. Disputed as to Defendants’ claim that this led to more press coverage of the story on the ground that this is argument and Defendants cite no evidence to support such claim. Objection , on hearsay and relevance grounds, as to the article’s author’s “feeling” as to whether and when “we may see that sex tape.”
98. Also on April 23, 2012, the <i>Wrestle Zone</i> website published an article entitled “Photos Released From Alleged Hulk Hogan Sex Tape,” which hyperlinked to the screen shots of the sex tape. Ex. 78.	Undisputed.
99. Two days later, on April 26, 2012, and still more than five months before Gawker’s Publication, <i>The National Enquirer</i> published an article on its website entitled “Hulk Hogan Sex Tape War,” which noted that Hogan was “fighting mad over a website that posted highly graphic XXX B&W stills from a sex tape said to be of [Hogan] doing the sleeper hold on a bodacious babe in a highly <i>RAW</i> manner.” Ex. 79.	Undisputed.
100. Also on April 26, 2012, <i>The Examiner</i> published an article entitled “Hulk Hogan alleged sex tape pictures are still online despite his demands,” which noted that Hogan’s attorney had sent a cease-and-	Undisputed that <i>The Examiner</i> published the article referenced. Objection , on hearsay grounds, as to any statements allegedly made by Nik Richie.

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desist letter to <i>The Dirty</i> and that its founder Nik Richie had “no intention” of removing the photos. Ex. 80.	
101. The next day, on April 27, 2012, <i>The Christian Post</i> published an article on its website entitled “Hulk Hogan Nude Photos Must Be Taken Down, Says Wrestler,” which noted that Hogan’s lawyer’s “veiled threat” to <i>The Dirty</i> “never confirmed that [Hogan] was in the sex tape.” Ex. 81.	Undisputed.
102. A week later, on May 3, 2012, and still five months before Gawker’s Publication, the sports website <i>Bleacher Report</i> published an article on its website entitled “Hulk Hogan Sex Tape: If It Gets Out, Will It Help or Hurt His Image?,” which noted that “[s]creen shots of an alleged Hulk Hogan sex tape had surfaced and the entire video might soon follow” and opined that release of the tape would have no effect on his reputation. Ex. 82.	Undisputed that <i>Bleacher Report</i> published the article referenced. Objection , on hearsay and relevance grounds, as to the article’s author’s speculation that the “entire video might soon follow,” and his opinion as to whether the tape’s release would affect Mr. Bollea’s reputation.
103. The publication of the screen shots in <i>The Dirty</i> added a new wrinkle to the public controversy over the sex tape – speculation that the tape was filmed in the home of Hogan’s best friend, Bubba the Love Sponge Clem, and that the woman in the tape was Bubba Clem’s ex-wife, Heather Clem. For example, on April 24, 2012, more than five months before Gawker’s Publication, <i>The Dirty</i> published a posting entitled “Hulk Hogan Porn Video Revealed To Be Shot At Bubba The Love Sponge’s Bedroom,” which noted that after “some detective work” a group of readers had concluded “that the Hogan sex tape was filmed inside Bubba’s bedroom.” Ex. 83. The article included previously published photographs of the Clems’ bedroom in order to make the case. <i>Id.</i>	Undisputed that <i>The Dirty</i> published the article referenced. Disputed as to Gawker’s characterization of the effect of the screen shots on the ground that such characterization is argument, and is not a fact. Objection , on hearsay grounds, as to statements based on readers’ “detective work.”
104. Other publications followed suit in speculating about the connection between the sex tape and the Clems. For example, on April 23, 2012, <i>eWrestlingNews.com</i>	Undisputed that <i>eWrestlingNews.com</i> published the article referenced. Disputed as to Gawker’s characterization of

Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
<p>published an article entitled “Shocking Details on the Hulk Hogan Sex-tape Revealed,” which noted that “several people close to the tape” reported that the woman in the tape is Bubba the Love Sponge’s ex-wife, Heather Clem. Ex. 84.</p>	<p>unidentified “[o]ther publications” on the ground that such characterization is argument, is not a fact, and is not based on evidence.</p> <p>Objection, on hearsay grounds, as to what “several people close to the tape” reported.</p>
<p>105. Also on April 23, 2012, the wrestling site <i>TWNPnews.com</i> published an article entitled “Images Leak from Hulk Hogan’s Sextape – Woman Identified?,” which addressed speculation about whether the woman in the tape is Heather Clem, noting that “Bubba has said on his radio show that when he and Heather were still married, he would ‘offer her’ to his close personal friends, which Hulk happens to be” and that wrestler Ultimate Warrior had made similar allegations about Hogan, claiming he would let other wrestlers “party” with his then-wife Linda. Ex. 85.</p>	<p>Undisputed that <i>TWNPNews.com</i> published the article referenced.</p> <p>Objection, on hearsay, relevance, and prejudice grounds, to the alleged statement by Ultimate Warrior regarding Mr. Bollea’s marriage to Linda Bollea.</p>
<p>106. Also on April 23, 2012, <i>TNA Wrestling News</i> published an article entitled “Linda Hogan Addresses the Hulk Hogan Sex Tape,” which noted that Linda Hogan had stated on a radio show three weeks prior that it would be “impossible” for the woman on the tape to be Heather Clem because Hogan and Bubba were “best friends.” Ex. 86.</p>	<p>Undisputed that <i>TNA Wrestling News</i> published the article referenced.</p> <p>Objection, on hearsay grounds, as to alleged statements made by Linda Bollea.</p>
<p>107. Three days later, on April 26, 2012, <i>The Daily Telegraph</i> published an article on its website entitled “Hulk Hogan and Bubba the Love Sponge’s Ex-wife Heather Clem: Is This the Infamous Muscleman’s Sex Tape?,” which noted speculation that the woman in the tape is Heather Clem. Ex. 87.</p>	<p>Undisputed.</p>
<p>108. Also on April 26, 2012, <i>The Blemish</i> published an article on its website entitled “Hulk Hogan Wants Sex Tape Stills Off Internet,” which noted the “strong consensus” that the woman in the tape is Bubba Clem’s ex-wife Heather Clem and the location is Bubba’s “very own</p>	<p>Undisputed that <i>The Blemish</i> published the article referenced.</p> <p>Objection, on relevance and prejudice grounds, to Defendants’ inclusion of a quote from the story to implicitly accuse Mr. Bollea of litigiousness.</p>

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<p>bedroom” and also noted that, “[a]s is always the case,” Hogan was threatening to sue. Ex. 88.</p>	
<p>109. In May 2012, the possible connection between the sex tape and the Clems was the subject of a lengthy article published in the <i>National Enquirer</i>, entitled “Hulk Hogan Sex Tape Shocker: Mysterious woman in video was his best friend’s wife.” Ex. 89. The article stated that “insiders told the Enquirer that the scandalous tape was the secret reason behind Heather and Bubba’s February divorce.” <i>Id.</i> The article cited a source “who ha[d] seen stills from the video and confirmed that the woman was Heather Clem,” and who reportedly contended that the recording equipment used to make the video had been set up by Bubba Clem because he suspected that Hogan and Mrs. Clem were having an affair and wanted to catch them in the act. <i>Id.</i> The article stated that Hogan and his attorney, Houston, “declined to confirm that it was Heather in the video, but they did acknowledge that they knew the woman’s identity.” <i>Id.</i> The article also quoted Bubba Clem as saying that he would not comment until “Terry (Hulk) talks about it in public,” adding that “Hulk is still my friend. We’re friends forever, man.” <i>Id.</i></p>	<p>Undisputed that the <i>National Enquirer</i> published the article referenced.</p> <p>Objection, on hearsay, relevance, and prejudice grounds, to Defendants’ inclusion of unauthenticated hearsay statements made by unknown declarants as to the cause of the Clems’ divorce. Defendants’ obvious intent is to insinuate that Mr. Bollea is a home-wrecker, even though there is no evidence to support the allegations made in the article.</p>
<p>110. Later that month, on May 15, 2012, Howard Stern pressed Bubba Clem about what had been reported in the <i>National Enquirer</i>, during a radio show that was simultaneously broadcast on the <i>Howard Stern Show</i> and the <i>Bubba the Love Sponge Show</i>. Ex. 90. Once again, Mr. Clem declined to discuss the details of the sex tape, but did reiterate that he was still best friends with Hogan. <i>Id.</i> at 24:30 – 26:25, 34:30 – 35:11, 41:40 – 42:26.</p>	<p>Undisputed.</p>
<p>111. On July 18, 2012, during a broadcast of the <i>Bubba the Love Sponge Show</i>, Hogan</p>	<p>Undisputed that the conversation referenced occurred.</p>

Moving Parties' Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
<p>and Bubba Clem appeared to joke about the sex-tape controversy. Specifically, when Hogan asked about Bubba Clem's new girlfriend, he responded, "Stop talking about my significant others. It has already gotten us in enough trouble, ok?" Ex. 91 at 13:08 – 13:35. After Bubba Clem described his new girlfriend, Hogan repeatedly implored him to "Make sure everything is cool, make 'em pass the initiation," to which Bubba Clem responded by saying: "I know Hogan is not going to be any overnight guest at my house." <i>Id.</i> at 17:13 – 18:59.</p>	<p>Disputed as to Gawker's characterization of what the conversation "appeared" to be about on the ground that such characterization is argument, and is not a fact.</p> <p>Objection, on hearsay grounds, as to statements made by Bubba Clem.</p>
<p>112. All of this national (and often international) coverage of the sex tape, including speculation over the identity of the woman in the tape and including Hogan's own participation in the ongoing public discussion, occurred before the Publication at issue was published by Gawker.</p>	<p>Disputed to the extent that the paragraph consists entirely of argument, and no facts.</p>

VI. UNDISPUTED FACT NO. 6: After all this prior media coverage, Gawker published its news report and commentary, accompanied by one minute and 41 seconds of heavily-edited footage from the full 30 minute Video Recording.

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<p>113. In the wake of the substantial public discussion of both (a) Hogan's romantic affairs and sexual practices generally and (b) the specific reports about the existence of a sex tape and speculation over the identity of the woman appearing in the video, Gawker received a 30-minute DVD depicting a sexual encounter between Hogan and Mrs. Clem. Gawker has provided to Hogan's counsel a copy of the 30-minute DVD footage it received, and if requested, will make that footage available to the Court.</p>	<p>Undisputed that Gawker received a 30-minute DVD depicting a sexual encounter between Mr. Bollea and Ms. Clem.</p> <p>Disputed to the extent that the remainder of the paragraph consists entirely of argument, and no facts.</p>
<p>114. On or about September 27, 2012, defendant Daulerio was contacted by Tony</p>	<p>Undisputed.</p>

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<p>Burton, an agent with Don Buchwald & Associates, Inc. (the “Buchwald Agency”). Daulerio Dep. (Ex. 11) at 136:18-22; <i>see also</i> Conf. 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.</p>	
<p>115. 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. 11) at 139:9-17. <i>See also</i> Conf. SUMF ¶ 115.</p>	<p>Undisputed.</p>
<p>116. 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. 11) at 114:8 – 115:24; Ex. 16 (Gawker’s Resp. to Interrogatory No. 5). Although the package contained no return address, Gawker does not believe the Video was sent to Gawker by Burton. <i>Id.</i></p>	<p>Undisputed that the DVD was sent to Gawker.</p> <p>Disputed as to Gawker’s belief that the DVD was not sent by Burton on the ground that Gawker cites no evidence to support that belief.</p>
<p>117. Daulerio viewed the Video Recording he received and made a determination to publish a post about it. Daulerio Dep. (Ex. 11) at 116:14-22, 118:9-13.</p>	<p>Undisputed.</p>
<p>118. 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.” <i>Id.</i> at 118:25 – 119:4.</p>	<p>Disputed as to Mr. Daulerio’s reasons for writing about and publishing the video.</p> <p>Mr. Daulerio made numerous derogatory comments about the content of the Sex Video.</p> <p>Evidence: Ex. 14; Ex. 48_C; Ex. 15.</p> <p>He instructed his video editor to prepare a “highlight reel” of the DVD he received.</p> <p>Evidence: Ex. 49_C; Ex. 4 (Daulerio Tr. 119:25–121:25); Ex. 3 (Carmichael Tr. 37:23–38:8).</p>

Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
	<p>Mr. Daulerio’s story contains very little commentary about the Sex Video or about sex tapes in general; most of the story consists of lurid details about the content of the DVD, including a description of Mr. Bollea’s genitals and the sounds he makes at climax.</p> <p>In addition, the story’s headline confirms that the story’s purpose is not to comment on the Sex Video and on celebrity sex tapes in general, but to goad readers into viewing the Sex Video because of its pornographic content.</p> <p>Evidence: BOLLEA 00038–00041.</p> <p>Also, there is extensive evidence that the explicit footage of Mr. Bollea fully nude, aroused, and having sex was included to drive traffic to Gawker.</p> <p>Evidence: Ex. 16; Ex. 17; Ex. 18; Ex. 5 (S. Kidder Tr. 178:20–179:4, 186:20–187:08); Ex. 19; Ex. 10 (Defendant Gawker Media, LLC’s Responses to Plaintiff’s Requests for Admission, Request 15); Ex. 20; Ex. 3 (Carmichael Tr. 133:11–21); Ex. 21; Ex. 50_C; Ex. 6 (Blatt Tr. 58:18–59:18, 61:17–23, 130:14–25); Ex. 22; Ex. 47_C (Horan Tr. 187:18–188:8, 192:10–24).</p>
<p>119. Daulerio decided that the post would also include short excerpts from the Video Recording to support the commentary. <i>Id.</i> 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.” <i>Id.</i> at 120:9-17. Daulerio also wanted the excerpts to include “small snippets” of sex</p>	<p>Undisputed that Mr. Daulerio included footage of conversation between Mr. Bollea and Ms. Clem.</p> <p>Disputed as to the issue of how “short” the excerpts of the DVD were, either in absolute terms or in relation to the entire recording, on grounds that such characterization is a matter of argument. The excerpts include the key, privacy-invasive footage of Mr. Bollea fully nude, aroused, and having sex, including 45 seconds of Mr. Bollea naked.</p> <p>Evidence: Gawker Exhibit 92.</p>

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<p>so as “to verify the fact that they were actually having sex.” <i>Id.</i> at 120:18-24.</p>	<p>Disputed that Daulerio wanted to “verify the fact that they were actually having sex.” The existence of the Sex Video was already widely reported and confirmed; thus there was no new news for Gawker to report. The only new information Gawker was imparting to its readers was the footage of sexual activity, which was highly invasive of Mr. Bollea’s privacy.</p> <p>Evidence: Daulerio Tr. 121:07–122:22; <i>see also</i> Gawker SUMF ¶ 95.</p>
<p>120. Gawker posted the Publication on October 4, 2012. Ex. 12 (copy of Publication at issue).</p>	<p>Undisputed.</p>
<p>121. 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. <i>See id.</i> 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.”).</p>	<p>Undisputed.</p>
<p>122. The written commentary also provided a description of some of what appeared on the Video Recording. <i>Id.</i> 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: “Because the woman closely resembles Mrs. Clem, some have suggested that the voice of the mystery man [in the Video Recording] 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</p>	<p>Disputed that Bubba Clem appearing to consent to the encounter was a previously-unreported detail. There already were news reports that Mr. Clem had consented to the encounter.</p> <p>Regardless, the detail could have been reported without showing the video at all or without showing footage of Mr. Bollea nude, aroused, and having sexual intercourse.</p> <p>Evidence: <i>See</i> Gawker SUMF ¶105, Ex. 85.</p>

Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
<p>office if you need me.”” <i>Id.</i> at 1. This was in stark contrast to, for instance, how the story had previously been reported elsewhere including that Bubba Clem had set up cameras to catch Hogan and Heather Clem in a clandestine affair that served as the reason that Clems later divorced. <i>See</i> ¶ 109 <i>supra</i>; Ex. 89 (<i>National Enquirer</i> article).</p>	
<p>123. 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. <i>See</i> Ex. 12 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”); <i>id.</i> (“celebrity sex is still incredibly dull”).</p>	<p>Disputed as to Defendants’ characterization that Daulerio used the Sex Video as a “springboard” for commenting on the public’s fascination with celebrity on the ground that such characterization is argument, is not a fact, and is inaccurate. Daulerio’s “commentary” about celebrity sex being dull is, in the context of the story, insignificant and simply an excuse for the commentary’s real purpose, which is to get people to watch the Sex Video and to bring traffic to the Gawker websites.</p> <p>Evidence: Ex. 16; Ex. 17; Ex. 18; Ex. 5 (S. Kidder Tr. 178:20–179:4, 186:20–187:08); Ex. 19; Ex. 10 (Defendant Gawker Media, LLC’s Responses to Plaintiff’s Requests for Admission, Request 15); Ex. 20; Ex. 3 (Carmichael Tr. 133:11–21); Ex. 21; Ex. 50_C; Ex. 6 (Blatt Tr. 58:18–59:18, 61:17–23, 130:14–25); Ex. 22; Ex. 47_C (Horan Tr. 187:18–188:8, 192:10–24).</p>
<p>124. The written commentary was accompanied by brief and heavily edited video excerpts, in grainy black-and-white footage. <i>Id.</i>; Ex. 92 (video excerpts that originally accompanied written article). The posted excerpts lasted one minute and forty seconds in total. <i>Id.</i> Those 101 seconds included fewer than nine seconds of sexual activity. <i>Id.</i> The rest of the excerpts consisted of conversation between Hogan and Mrs. Clem. <i>Id.</i></p>	<p>Disputed as to Defendants’ description of the Sex Video it edited, produced and published on the ground that such description is argument, and is not a fact. Further disputed as to the description on grounds that it is inaccurate and incomplete.</p> <p>Defendants deliberately chose to include footage of Mr. Bollea nude, fully aroused, receiving oral sex, and having sexual intercourse in two positions. The Sex Video is one minute 41 seconds long. The footage is black and white. It is not “grainy.” Mr. Bollea and his genitals, and Ms. Clem and her bare</p>

Moving Parties' Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
	<p>breasts, are clearly visible, as is the fact that they are engaging in oral sex and sexual intercourse. Mr. Bollea is identifiable in the video footage. Gawker admitted that it could have blurred or blocked the footage and deliberately did not do so.</p> <p>Evidence: Ex. 3 (Carmichael Tr. 39:02–39:06, 39:16–40:03); Ex. 4 (Daulerio Tr. 121:07–122:22); Exhibit 92 to Aff. of R. Fugate; Ex. 11 (Defendant Gawker Media's Responses to Plaintiff's Second Set of Requests for Admission, Requests 23 and 24).</p>
<p>125. No advertising was displayed on the Publication. Ex. 93 (Gawker's Supplemental Resp. to Interrogatory No. 13) at 3; Kidder Dep. (Ex. 94) at 175:6-15 (explaining that no ads were run on the Publication because it was "tagged" NSFW or "not safe for work," and Gawker does not run ads on such posts).</p>	<p>Undisputed.</p>
<p>126. The Publisher Defendants did not sell copies of, or access to, either the complete video they received or the brief excerpts that accompanied Gawker's post. Ex. 16 (Gawker's Resp. to Interrogatory No. 5).</p>	<p>Undisputed that Gawker did not sell copies of, or access to, the Sex Video or the DVD recording.</p> <p>Disputed that the excerpts were "brief," on the ground that it is argument and that the key, privacy-invasive footage was shown, including 45 seconds of nudity.</p> <p>Evidence: Exhibit 92 to Aff. of R. Fugate.</p>

VII. UNDISPUTED FACT NO. 7: The Publisher Defendants believed that the Publication addressed a matter of public concern.

Moving Parties' Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
<p>127. 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 an ongoing public controversy.</p>	<p>Undisputed that Gawker-affiliated witnesses defended their actions at deposition (as would be expected).</p> <p>Disputed that the publication of the Sex Video was newsworthy and/or a matter of public concern, and disputed that Defendants had a</p>

Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
<p>128. For example, defendant Daulerio, who authored the Publication and was the editor of gawker.com at the time, testified that the existence of video was matter of “public record” and had “news value,” Daulerio Dep. (Ex. 11) at 123:10-11, and he “thought it was newsworthy and it was something that was worth discussing and putting up on the site,” <i>id.</i> at 159:5-7. In reaching that conclusion, he noted that the “sex tape . . . had already been talked about publicly,” <i>id.</i> at 122:7-8, and that he had discussed with Tony Burton the fact that that the video “had been talked about on <i>TMZ</i> and other sites,” <i>id.</i> at 114:2-7.</p>	<p>good faith belief that the Sex Video was a matter of public concern, for the reasons stated in Mr. Bollea’s opposition papers.</p> <p>Undisputed that Gawker-affiliated witnesses defended their actions at deposition (as would be expected).</p> <p>Disputed that the publication of the Sex Video was newsworthy and/or a matter of public concern, and disputed that Defendants had a good faith belief that the Sex Video was a matter of public concern, for the reasons stated in Mr. Bollea’s opposition papers.</p> <p>Also, the fact that the Sex Video had already been extensively discussed in prior news reports meant there was nothing new for Defendants to “report;” Defendants’ only purpose was driving up traffic and humiliating Mr. Bollea by showing the footage of Mr. Bollea fully nude, aroused, receiving oral sex, and having intercourse in two sexual positions.</p> <p>Evidence: Ex. 4 (Daulerio Tr. 121:07–122:22); <i>see also</i> Gawker SUMF ¶ 95; Exhibit 92 to Aff. of R. Fugate; Ex. 16; Ex. 7 (Denton Tr. 118:23–119:8); Ex. 17; Ex. 18; Ex. 5 (S. Kidder 2013 Tr. 178:20–179:4, 186:20–187:08); Ex. 19; Ex. 10 (Defendant Gawker Media, LLC’s Responses to Plaintiff’s Requests for Admission, Request 15); Ex. 20; Ex. 3 (Carmichael Tr. 133:11–21); Ex. 21; Ex. 50_C; Ex. 6 (Blatt Tr. 58:18–59:18, 61:17–23, 130:14–25); Ex. 22; Ex. 47_C (Horan Tr. 187:18–188:8, 192:10–24).</p>
<p>129. Daulerio also explained that he viewed the video excerpts to be newsworthy, because “it 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,” <i>id.</i> at 124:14-22; <i>see also id.</i> at 181:19-21 (“the</p>	<p>Undisputed that Daulerio found the secretly-recorded footage of Mr. Bollea and Heather Clem having sexual relations in a private bedroom “amusing.”</p> <p>Disputed as to Daulerio’s characterization of the Sex Video as newsworthy, adding “more insight,” and showing inconsistencies, on the</p>

Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
<p>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. <i>Id.</i> at 118:15-21. Ultimately, Daulerio testified, while he found parts of the tape amusing, <i>id.</i> 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.” <i>Id.</i> at 214:24 – 215:8.</p>	<p>ground that such characterization is argument, and is not fact. Further disputed as to the characterization on the grounds that it is inaccurate.</p> <p>The portions of the Sex Video showing Mr. Bollea nude, aroused, and having sex did not expose any inconsistency with anything Mr. Bollea said in public, and Defendants fail to identify any way in which they did. Daulerio’s “commentary” could have described any alleged inconsistencies, but failed to do so.</p> <p>Evidence: Ex. 15</p> <p>Daulerio did not need to show Mr. Bollea nude, aroused, and having sex to verify the Sex Video’s existence. After <i>The Dirty’s</i> story, it was already clear, as Defendants admit, that the footage existed.</p> <p>Evidence: Ex. 4 (Daulerio Tr. 121:07–122:22); Gawker SUMF ¶ 95.</p> <p>Daulerio did not select “newsworthy” footage to include in the “highlight reel.” Daulerio directed Gawker’s video editor to create a “highlight reel.” He admitted showing Mr. Bollea’s penis was not newsworthy and was done purely to add “color” to the story. Further, Daulerio’s personal commentary on celebrity sex tapes, which was not the focal point of his story, could have been published without showing footage of Mr. Bollea nude, aroused, and having sex.</p> <p>Evidence: Ex. 49_C; Ex. 4 (Daulerio Tr. 121:21–25).</p> <p>Disputed that the publication of the Sex Video was newsworthy and/or a matter of public concern, and disputed that Defendants had a good faith belief that the Sex Video was a matter of public concern, for the reasons stated</p>

Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
<p>130. 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. 95) at 60:6-12. 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.” <i>Id.</i> at 55:11-16.</p>	<p>in Mr. Bollea’s opposition papers.</p> <p>Undisputed that Gawker-affiliated witnesses defended their actions at deposition (as would be expected).</p> <p>Disputed that Defendants had any new information related to the contextual stories, apart from the Sex Video itself, which invaded Mr. Bollea’s privacy by showing him nude, aroused, and having sexual intercourse.</p> <p>Evidence: Ex. 4 (Daulerio Tr. 122:10–22).</p> <p>Disputed that Carmichael “was very comfortable” with the story. When asked whether Carmichael would be okay with a publication of a sex video depicting her without her approval, Carmichael testified that she would not be okay with it, she would be “upset,” “angry,” “feel violated,” “feel it was wrong,” and would consider responding by filing a lawsuit. Carmichael also testified that, in a similar circumstance relating to publishing criminal, secretly-recorded footage of Erin Andrews, that she does not think that “the video is needed to illustrate that point in this case.”</p> <p>Evidence: Ex. 3 (Carmichael Tr. 62:18–64:24, 191:03–192:11).</p> <p>Disputed that the publication of the Sex Video was newsworthy and/or a matter of public concern, and disputed that Defendants had a good faith belief that the Sex Video was a matter of public concern, for the reasons stated in Mr. Bollea’s opposition papers.</p>
<p>131. 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. <i>See</i> Denton Dep. (Ex.</p>	<p>Undisputed that Denton testified that, as CEO of Gawker, and after being made aware that his company planned to edit, produce and publish a surreptitiously-recorded video of Mr. Bollea naked, aroused, and having sex, he did not review the video or Daulerio’s “commentary” prior to publication.</p>

Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
<p>96) 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). He also explained that the story had “as much detail as . . . needed,” <i>id.</i> at 107:6-7, and that in his view the video excerpts were “an essential part of the whole story,” <i>id.</i> at 224:19-21. In sum, he “continued to believe in its newsworthiness.” <i>Id.</i> at 243:16-17.</p>	<p>Undisputed that Denton’s testimony reveals that he was involved in the publication of the video and was consulted before the video was published.</p> <p>Disputed that the publication of the Sex Video was newsworthy and/or a matter of public concern, and disputed that Defendants had a good faith belief that the Sex Video was a matter of public concern, for the reasons stated in Mr. Bollea’s opposition papers.</p>
<p>132. 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.” Kidder Dep. (Ex. 94) at 235:17-20. Kidder further explained:</p> <p>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</p>	<p>Undisputed that Gawker-affiliated witnesses defended their actions at deposition (as would be expected).</p> <p>Disputed as to Kidder’s characterization of the Sex Video as “extremely newsworthy,” and disputed as to Kidder’s argument that the Sex Video was newsworthy because Mr. Bollea had discussed his life publicly and because the article supposedly provided evidence that the footage existed, on the grounds that such characterization is argument, and is not fact. Further disputed as to the characterization on the grounds that it is inaccurate.</p> <p>As is explained in more detail in Mr. Bollea’s concurrently-filed opposition papers, Mr. Bollea’s discussion about certain aspects of his private life in an autobiography and in interviews is not license to show secretly-recorded footage of him nude, aroused, and having sex. In addition, Daulerio’s</p>

Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
<p>to that A.J.’s narrative described how celebrity sex at the end of the day is rather boring and pedestrian</p> <p><i>Id.</i> at 235:23 – 236:13.</p>	<p>“commentary” did not include any discussion whatsoever of Mr. Bollea supposedly portraying himself as a 1950s-style father, his contemplating suicide, or his marriage to Linda Bollea.</p> <p>Evidence: Ex. 15.</p> <p>Defendants did not need to show Mr. Bollea nude, aroused, and having sex to verify the Sex Video’s existence.</p> <p>Evidence: Ex. 4 (Daulerio Tr. 121:07–122:22); Gawker SUMF ¶ 95.</p> <p>The description of Daulerio’s “commentary” as describing how celebrity sex is boring is misleading. The “commentary” was mostly devoted to a play-by-play description of the sex acts between Mr. Bollea and Ms. Clem, rather than any commentary about celebrity sex tapes generally.</p> <p>Evidence: Ex. 15.</p>

VIII. UNDISPUTED FACT NO. 8: Following the Publication, there continued to be widespread public discussion About the Video Recording of the Sexual Affair, including by Hogan himself.

Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
<p>133. The posting of the Publication spurred continued public discussion of the sex-tape story, especially in light of the Publication’s revelation that Hogan’s sexual encounter with Heather Clem appeared to have taken place with the blessing of Bubba Clem. As had been the case throughout the life of the story, Hogan continued to discuss it publicly. <i>See</i> Daulerio Dep. (Ex. 11) at 220:21-25 (testimony from Daulerio observing that the story “became more newsworthy after our publication, after Hulk Hogan talked about it on many different talk shows, and</p>	<p>Undisputed that Gawker’s publication of the Sex Video led to extensive publicity and media coverage, including of Gawker itself.</p> <p>Evidence: Ex. 16; Ex. 17; Ex. 18; Ex. 19; Ex. 5 (S. Kidder Tr. 178:20–179:4, 186:20–187:08); Ex. 10 (Defendant Gawker Media, LLC’s Responses to Plaintiff’s Requests for Admission, Request 15); Ex. 20; Ex. 3 (Carmichael Tr. 133:11–21); Ex. 21; Ex. 50_C; Ex. 6 (Blatt Tr. 58:18–59:18, 61:17–23, 130:14–25); Ex. 22; Ex. 47_C (Horan Tr. 187:18–188:8, 192:10–24)</p>

Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
<p>the relationship between he and his best friend’s wife became a news story on its own”).</p>	<p>Undisputed that Mr. Bollea was asked about the Sex Video in media interviews and that he gave responses and talked about the matter in an attempt to contain the damage that Defendants had done.</p> <p>Disputed that the Sex Video “revealed” that Mr. Clem authorized the sexual encounter.</p> <p>Evidence: <i>See</i> Gawker SUMF ¶105, Ex. 85.</p> <p>Disputed that the post-release publicity made the Sex Video “more newsworthy” on the ground that the claim is argument, is not a fact, and is inaccurate. Publishing a matter that is not of public concern cannot retroactively receive First Amendment protection because the public discusses the unlawful publication.</p>
<p>134. At the time that the Publication came out, Hogan was scheduled to embark on a media tour to promote “Bound for Glory,” the flagship event for TNA Wrestling (“TNA”), the organization with which he was affiliated at the time. Hogan Dep. (Ex. 3) at 389:13 – 390:12; Ex. 97. <i>See also</i> Conf. SUMF ¶ 134.</p>	<p>Undisputed.</p>
<p>135. During that tour, he appeared on the <i>Today</i> show on NBC, <i>Piers Morgan Tonight</i> on CNN, <i>The Howard Stern Show</i> and other programs on Sirius Satellite Radio, <i>Huff Post Live</i>, <i>TMZ Live</i>, VH-1’s <i>Big Morning Buzz Live</i> and <i>Showbiz Tonight</i>. He also gave an interview to Tim Ryan of <i>USA Today</i>. <i>See</i> Conf. SUMF ¶ 135.</p>	<p>Undisputed.</p>
<p>136. During that tour, Hogan responded addressed the details of his sexual encounter with Mrs. Clem, the nature of the Clems’ marriage, and speculation that Bubba Clem was responsible for the taping. For instance, during an October 9, 2012 appearance on the <i>Howard Stern Show</i>, Hogan explained that Bubba Clem was “cool” with him having sex with his wife,</p>	<p>Undisputed that Mr. Bollea made media appearances in which he discussed his relationship with the Clems, that he made the quoted statements, and that the Clems goaded Mr. Bollea into having a sexual relationship with Ms. Clem.</p> <p>Disputed to the extent the remainder of this paragraph is argument and is not a fact.</p>

Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
<p>and that Heather Clem, for her part, had been “relentless” in pursuing him, repeatedly saying to him: “I want to see your thing. I want to F. you.” Ex. 13 at 26:00 – 26:21.</p>	
<p>137. During that broadcast, Stern and Hogan also repeatedly joked together about the sex tape as well. For instance, Stern said he was not sorry for Hogan because there is a video of an attractive woman telling him “you were hung like a beer can” and “you were ‘thick, girthy and long,’” adding that Hogan is strong enough to recover from having had “a woman put her mouth on [his] penis.” <i>Id.</i> at 1:05:35 – 1:06:04. Hogan joined in this exchange:</p> <p>STERN: Do you think they’re going to put this into the storyline? Are the other bad wrestlers going to be, like, f--king with you, going, hey, Mr. Big Shot, Big C--k, blah, blah, blah? You know, not c--k – but you know, they’re going to – do you think they’re going to work it into the storyline?</p> <p>HOGAN: Maybe instead of dropping the leg on people’s neck, I’ll start dropping something else on them.</p> <p>STERN: Drop those loads. That’s right.</p> <p>HOGAN: Drop the tripod. (Laughter.)</p> <p><i>Id.</i> at 44:19 – 44:40.</p>	<p>Undisputed that Mr. Bollea made an appearance on the <i>Howard Stern Show</i>, a comedy show, in which he discussed the Sex Video.</p> <p>Disputed to the extent the quoted discussion is taken out of context. It is clear that Mr. Bollea did not intend his comments to be taken seriously.</p> <p>Objection, on hearsay, relevance, and prejudice grounds, to comments made by Howard Stern.</p>
<p>138. During that same broadcast, Hogan explained that the sexual performance depicted on the sex tape was not him at his most impressive: “I’m not trying to be a really pompous ass but . . . the situation I was in, I didn’t want to be overly aggressive” because he was with his “friend’s girl.” <i>Id.</i> at 17:25 – 17:51.</p>	<p>Undisputed that Mr. Bollea discussed his sexual relationship with Ms. Clem on the Howard Stern show.</p> <p>Disputed to the extent the remainder of this paragraph is argument, and is not a fact.</p>
<p>139. During that media tour, Hogan made</p>	<p>Undisputed that Mr. Bollea made the quoted</p>

Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
<p>nearly identical comments during appearances on the <i>Sway in the Morning Show</i> and <i>Huff Post Live</i> about the sexual encounter at issue. <i>See</i> Ex. 14 (<i>Sway in the Morning</i>) at 5:37 – 6:05 (explaining that Bubba Clem’s “wife . . . kept saying, I want to get with you. I want to do this and that and the other stuff and I want to have sex with you.”); Ex. 15 (<i>HuffPost Live</i>) at 11:14 – 12:00 (explaining that the “husband and wife, they had kind of, like, an alternative lifestyle,” and “[t]he chick was always hitting me. Hey, man, I’d love to party with you. . . . And you know, the – my buddy, you know, who’s a radio DJ, you know, was like, cool, hey, don’t worry about it. You know, Heather’s got this crush on you and this and that and the other and all. But she was just relentless. I want to see this and I want to do that with you.”).</p>	<p>comments.</p> <p>Disputed as to Defendants’ characterization of his comments as “identical” to those made on the <i>Howard Stern Show</i>. The characterization is argument, not a fact, and inaccurate.</p>
<p>140. During Hogan’s appearance on <i>Huff Post Live</i> on the same day as the appearance on the <i>Howard Stern Show</i>, Hogan continued to joke with the host, as he had with Howard Stern. The host observed that “some people were talking about the performance, but some people wondered if the 24 – I mean, is that what the 24-inch python was really about all those years?” While Hogan protested that “it’s a serious thing,” he also joked about the events depicted on the sex tape, referring to tweets saying he was “not a two-pump chump” and “it’s Hulk Hogan with an Andre the Giant package.” Ex. 15 at 18:30 – 19:57.</p>	<p>Undisputed that Mr. Bollea gave an interview to <i>Huffington Post</i> in which he discussed the Sex Video and protested that “it’s a serious thing.</p> <p>Disputed to the extent the quoted discussion is taken out of context. It is clear that Mr. Bollea did not intend his comments to be taken seriously.</p> <p>Objection, on hearsay, relevance, and prejudice grounds, to comments made by the host of <i>Huff Post Live</i>.</p>
<p>141. On October 9, 2012, while in the midst of this media tour, Hogan appeared once again on the program <i>TMZ Live</i>, specifically to address the sex-tape controversy. Hogan Dep. (Ex. 3) at 476: 4 – 483:16; Ex 98 at 23:15 – 32:44. <i>See also</i> Conf. SUMF ¶ 141.</p>	<p>Undisputed.</p>

Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
<p>142. During that interview, <i>TMZ</i> advanced the sex-tape story further, disclosing evidence that Bubba Clem deliberately recorded the sex tape. Ex. 98 at 24:50 – 25:50. Specifically, in the interview, Mike Walters of <i>TMZ</i> informed Hogan that he “actually saw the tape,” and that, on the tape, “[y]ou leave, and Bubba comes back in the room, and Heather’s on the bed. And Bubba says – I quote – ‘if we ever did want to retire, all we’d have to do is use this footage of him.’ So I just kind of want your reaction to that. I know you know that this might be in one of the tapes. I can tell you 100 percent that is what Bubba says when you leave the room.” <i>Id.</i></p>	<p>Undisputed that the <i>TMZ</i> interview took place as described. Unlike Gawker, <i>TMZ</i> reported the story that Mr. Clem deliberately recorded the Sex Video without publishing any footage of Mr. Bollea and Ms. Clem naked, aroused, or having sex.</p> <p>Objection, on hearsay grounds, as to Mike Walters’ description of what he saw on the tape, and what he said he heard Bubba Clem say on the tape.</p>
<p>143. When Hogan subsequently named Bubba Clem in the lawsuit, that led to a public feud, in which Bubba Clem took to the airwaves to denounce his former friend. For example, on his radio program on October 16, 2012 (the day after the lawsuit was filed), Bubba Clem told his listeners that Hogan “has known about the tape from the time it was made. Period.” Ex. 99 (Hour 2, Track 1 from Oct. 16, 2012 broadcast) at 6:54 – 6:56. Bubba Clem also stated that Hogan:</p> <p style="padding-left: 40px;">knew of everything going on. Don’t play like you don’t know now, Hogan, just to cover your ass. . . . You know – you lived in my home for three months. You know I have surveillance. You knew of everything going on. But now that your feelings are hurt and you’re trying to cover your ass with your wife and your jobs and your social standing[.] . . . Hogan, you fired the first shot, buddy. I told you not to open your mouth on the courthouse steps and that we</p>	<p>Undisputed that Bubba Clem made the quoted statements.</p> <p>Disputed that Bubba Clem’s statements were anything other than complete lies.</p> <p>Evidence: Ex. 1 (Bubba Tr. 251:18–252:12, 258:25–259:19).</p>

Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
<p>could deal with this. And you didn’t because you’re selfish. This is my opinion. You’re selfish and you’re all – you don’t care about Heather and what this has caused her. You don’t care about what this has caused me. You don’t care about what this has caused your son, your daughter, my son, Heather’s daughter.</p> <p>Ex. 100 (Hour 2, Track 2 from Oct. 16, 2012 broadcast) at 13:15 – 15:01. Bubba Clem also stated that Hogan is “the ultimate, lying, working showman” and that this “is a pro-wrestling script” in which Hogan has “been able to, in my opinion, turn this all around to make everybody but himself look like the bad guy,” instigated by “a bunch of . . . fee-churning lawyers that have thoughts of grandeur.” <i>Id.</i> at 47:00 – 47:06, 15:20-15:23, 22:55 – 23:10.</p>	
<p>144. On October 29, 2012, after the press release announcing that Hogan’s claims against Bubba Clem had been settled, <i>see</i> ¶ 15 <i>supra</i>, Bubba Clem issued an on-the-air apology to Hogan stating that, “[a]fter further investigation,” he is “now convinced that Hulk Hogan was unaware of the presence of the recording device in my bedroom,” and that “he had no knowledge that he was being taped,” adding that, “when Hulk filed the lawsuit against me, I instinctively went on the offensive. The things that I said about him and his children were not true.” Ex. 101 at 0:17 – 1:00. <i>See also</i> Conf. SUMF ¶ 144.</p>	<p>Undisputed.</p>
<p>145. For purposes of this motion, this ongoing public discussion after the Publication, in which additional aspects of the story continued to be revealed, further illustrates that the subject was newsworthy.</p>	<p>Disputed that the post-release publicity “further illustrate[s]” that the Sex Video was “newsworthy” on the ground that the claim is argument, is not a fact, and is inaccurate. Publishing a matter that is not of public concern cannot retroactively receive First</p>

Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
	Amendment protection because the public discusses the unlawful publication. Nor would such a rule make any sense; there often will be public debates about the publication or utterance of unprotected speech, whether it be child pornography, revenge porn videos, cross burnings, or high school students displaying a “Bong Hits for Jesus” sign. In no sense does such “after-the-fact” discussion turn the speech into protected speech on a matter of public concern.

IX. UNIDSPUTED FACT NO. 9: By his own admission, Hogan has suffered at most only “garden variety” emotional distress.

Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
146. Hogan has expressly limited his claim of emotional distress in this lawsuit to a claim for “‘garden variety’ emotional distress.” Ex. 102 (Hogan’s Resp. to Gawker Interrogatory No. 19 (Aug. 21, 2013)).	Undisputed.
147. This concession was memorialized in an Order by this Court, having been offered by Hogan to limit the Publisher Defendants’ discovery. <i>See</i> Ex. 103 (Feb. 26, 2014 Order Re: Motions of Plaintiff for Protective Order and Motion of Gawker Media, LLC and A.J. Daulerio to Compel Further Responses to Written Discovery) at ¶ 4. Specifically, the Court limited discovery that could be undertaken by the Publisher Defendants and indicated that “[t]his portion of the Court’s ruling is based on the representations of [Hogan’s] counsel at the hearing that . . . [Hogan] is not asserting claims for any physical injury and is limiting claims for emotional injuries to ‘garden variety emotional distress damages’”).	Undisputed as to the fact that discovery was limited because Mr. Bollea pleaded a garden variety emotional distress claim. Disputed that it was a “concession.” Rather, it was a statement of the legal and factual basis for Mr. Bollea’s damages claims.
148. Hogan did not go “to the hospital, or have to consult with doctors, or anything similar” as a result of the Publication. Ex.	Undisputed.

Moving Parties’ Undisputed Material Facts and Supporting Evidence:	Opposing Party’s Response and Supporting Evidence:
104 (Plaintiff’s Opposition to Gawker’s and Daulerio’s Motion to Compel, filed Oct. 23, 2013); Ex. 105 (Oct. 29, 2013 Hrg. Tr.) at 10 (Hogan’s Counsel: Hogan “is not saying that . . . he had to seek medical treatment” or “take medication”). <i>See also</i> Conf. SUMF ¶ 148.	

**PLAINTIFF TERRY BOLLEA’S FACTS RELEVANT TO HIS OPPOSITION, AND
FACTS ESTABLISHING TRIABLE ISSUES OF FACT**

The Defendants: Gawker, Denton & Daulerio and Their Philosophy on Journalism Ethics

149. Tommy Craggs, Editor-in-Chief of Deadspin.com, Gawker’s website focused on sports, describes Gawker as “a tabloid at heart.” Ex. 23.

150. Gawker CEO Nick Denton testified that the tagline “without access, favor, or discretion” “captures the essence of Gawker Media.” Ex.7 (Denton Tr. 65:15–66:02). Denton agrees that Gawker is “sexual,” and sometimes “mean.” Ex. A to Foley Aff.

151. Emma Carmichael, former Managing Editor of Gawker.com and current Executive Director of Jezebel.com, Gawker’s website focused on women’s issues, testified that the stories Gawker covers could be described as “yellow journalism.” Ex. 3 (Carmichael Tr. 121:19–24).

152. Master Lecturer of Journalism at the University of Florida, Professor Mike Foley, says Gawker’s website is more akin to pornography than journalism. Foley Aff. ¶28. As Professor Foley’s affidavit states, the Society of Professional Journalists’ Code of Ethics requires that journalists “minimize harm” to the subjects about whom they report. Foley Aff. ¶11.

153. Denton rejects the label of journalism, and is quoted by *The Washington Post* as saying: “We don’t seek to do good. We may inadvertently commit journalism. That is not the institutional intention.” Ex. 24.

154. Gawker executives reject professional journalist ethics, describing them as “nothing more than a measure of the scurrilousness your brand will bear” and “the same as plumber ethics.” Ex. 23; Ex. 25; Ex. 26. An editor of one of Gawker’s blogs characterizes what Gawker’s reporters are doing as “professionalized rudeness.” Ex. 23.

155. Denton described his philosophy at his deposition as follows: “I believe in total freedom and information transparency. I want everybody to know everything. And I think society, this country that I moved to will be better off if we could talk freely about everything. So that’s – I’m an extremist when it comes to that.” Ex. 7 (Denton Tr. 166:02–08).

156. In an interview with *Playboy* magazine, Denton was asked: “Is it possible you set a lower value on privacy than most people do?” His response: “I don’t think people give a f*ck, actually.” Ex. 27.

157. A.J. Daulerio was Editor-in-Chief of Gawker.com at the time the Sex Video was published, and he was the author of the accompanying commentary. Ex. 4 (Daulerio Tr. 24:14–25:09); Ex. 15. Before becoming Editor-in-Chief at Gawker.com, Daulerio was Editor-in-Chief at Deadspin.com, Gawker’s website focused on sports. Ex. 4 (Daulerio Tr. 22:05–21).

158. While at Deadspin, Daulerio linked readers to where they could view video featuring surreptitiously-recorded footage of ESPN reporter Erin Andrews naked in her private hotel room, recorded by a “peeping tom.” Ex. 4 (Daulerio Tr. 87:12–88:03); Ex. 28. Carmichael admitted that she would not have included the link had she been reporting the story, and that the video was not “needed” to tell the story. Ex. 3 (Carmichael Tr. 191:13–192:11).

159. Also while at Deadspin, Daulerio published a video of a young and extremely intoxicated girl (who was not famous or a public figure) having sex in a pool of urine on the floor of a men’s restroom in an Indiana sports bar. Ex. 29; Ex. 4 (Daulerio Tr. 98:08–17).

Daulerio later admitted that the young girl may have been raped based on her high level of intoxication. Ex. 30. When asked by the girl to remove the video, Gawker’s counsel and COO at the time, Gaby Darbyshire, responded: “This is a news story, and completely newsworthy. It’s the truth, which can be hurtful, granted, but one’s actions can have unintended consequences . . . we believe that we are publishing this legitimately and as such, we will not remove the clip.” Ex. 31.

160. Gawker published private footage of actor Eric Dane in a hot tub with his wife, actress Rebecca Gayheart, and a female friend of theirs (topless but not having sex). Ex. 7 (Denton Tr. 182:3–18).

161. Gawker published photos of Kate Middleton sunbathing topless, taken by a paparazzo with a telephoto lens. Ex. 32.

162. See ¶162 of Plaintiff Terry Bollea’s Confidential Statement of Disputed and Undisputed Facts in Opposition to Gawker Defendants’ Motion for Summary Judgment (herein referred to as “Bollea Conf. SDUF”).

163. Professor Foley agrees with the late *New York Times* media critic, David Carr, in analogizing Gawker to “a group of ninth grade girls who knew everything, who saw everything, who said everything, the mean girls who just you know ran the show and laid waste to everyone they saw.” Foley Affidavit ¶27. Foley also agrees with Carr that Gawker is “disgusting” and “despicable.” *Id.*

Gawker’s Focus on Driving Traffic to Its Site

164. Gawker maintains a “Big Board” in its offices—a large screen monitor “that shows the most popular stories throughout the blog network in a given day or minute.” Ex. 3 (Carmichael Tr. 114:16–115:14). The Big Board is visible on Gawker employees’ computer

screens. *Id.* Every Gawker story prominently lists the number of visitors who viewed the story. Ex. 15; Ex. 5 (S. Kidder Tr. 145:14–24).

165. Denton, in one of his email memos to his staff, told them: “Scandal sells. . . . The staples of old yellow journalism are the staples of new yellow journalism: sex, crime; and, even better, sex crime.” Ex. 33. Those are the sort of stories that Denton says will cause advertisers to “shower” Gawker “with dollars” because they draw in unique viewers. Ex. 16.

The Surreptitious and Illegal Recording of Mr. Bollea

166. *See* Bollea Conf. SUDF ¶166.

167. *See* Bollea Conf. SUDF ¶167.

168. Mr. Bollea also did not know that Bubba Clem had downloaded the secretly-recorded footage onto a disc and taken it to his office at the radio station. Ex. 1 (Bubba Tr. 329:04–333:02). *See also* Bollea Conf. SUDF ¶168.

169. *See* Bollea Conf. SUDF ¶169.

The Early Reports of a Sex Video, and Mr. Bollea’s Early Public Statements that He Was Illegally Recorded

170. In March and April 2012, in response to media reports of a “Hulk Hogan sex tape,” Mr. Bollea made media appearances in an attempt to quell negative publicity and counter the false impression that he might have been involved in its production or release. Ex. 2 (Bollea Tr. 327:3–13, 415:7–20). Mr. Bollea told the press that any such footage was secretly recorded illegally, that he knew nothing about it, never authorized it, and wanted the video never to “see the light of day.” Ex. 13.

171. Gawker received press reports of Mr. Bollea’s March and April 2012 statements via e-mails sent to the “Gawker tips” account, which were automatically distributed to every

member of Gawker's editorial staff, including all editors and all writers. Ex. 13; Ex. 3 (Carmichael Tr. 21:19–22:13).

The Gawker Defendants' Receipt of the Illegally Recorded Sex Video

172. See Bollea Conf. SUDF ¶172.

173. See Bollea Conf. SUDF ¶173.

174. Upon receipt of the 30-minute video of Mr. Bollea, Gawker employees immediately watched the video and made cruel comments about the video and Mr. Bollea in internal e-mails and messages. Ex. 14.

175. Carmichael testified that she was the first person at Gawker to watch the video. Ex. 3 (Carmichael Tr. 26:6–27:22). As of the time Carmichael viewed the video, it was assumed at Gawker that Mr. Bollea did not approve the release of the video. Ex. 3 (Carmichael Tr. 67:13–18).

176. The positioning of the camera appears to be high and away from the bed, like a surveillance camera, which Carmichael admits. Exhibit 92 to Aff. of R. Fugate; Ex. 3 (Carmichael Tr. 68:3–9). Mr. Bollea never looks towards the camera in the video, which Carmichael also admits. Exhibit 92 to Aff. of R. Fugate; Ex. 3 (Carmichael Tr. 69:4–8).

177. Daulerio admitted that he has never seen any evidence that Mr. Bollea knew at the time of the encounter that he was being videotaped. Ex. 4 (Daulerio Tr. 184:22–185:02). Carmichael concurred. Ex. 3 (Carmichael Tr. 67:13–69:08).

178. Daulerio saw no difference between someone being surreptitiously recorded and someone who voluntarily recorded himself having sex. Ex. 4 (Daulerio Tr. 57:23–58:9, 220:11–18). Daulerio would have published the Sex Video even if he definitively knew that it was surreptitiously recorded without Mr. Bollea's consent. Ex. 4 (Daulerio Tr. 221:12–16).

The Gawker Defendants' Production of the Highlight Reel

179. Nobody at Gawker contacted Mr. Bollea, or his lawyer, David Houston, or Heather or Bubba Clem before publishing the Sex Video. Ex. 10 (Defendant Gawker Media, LLC's Responses to Plaintiff's [First Set of] Requests for Admission, Requests 3, 5, 7–9).

180. Gawker did not blur, block, or pixelate the footage, even though Gawker had the technical capability to do so. Exhibit 92 to Aff. of R. Fugate; Ex. 4 (Daulerio Tr. 189:16–22, 191:12–16); Ex. 11 (Defendant Gawker Media, LLC's Responses to Plaintiff's Second Requests for Admission, Requests 23–24).

181. Gawker edited the video to include footage of each of Mr. Bollea's and Heather Clem's multiple sexual positions, sexual acts, their oral sex, and Mr. Bollea aroused. Exhibit 92 to Aff. of R. Fugate; Ex. 12 (Gawker Media LLC Response to Interrogatory No. 5). Gawker editors Daulerio and Carmichael expressly instructed Gawker's video editor to include footage of Mr. Bollea having sex, and to include footage of Mr. Bollea aroused. Ex. 4 (Daulerio Tr. 119:25–121:20, 188:22–189:15); Ex. 3 (Carmichael Tr. 37:23–38:08).

182. *See* Bollea Conf. SUDF ¶182.

183. The Sex Video contains one minute and forty-one seconds of a private sexual encounter, including 45 seconds of Mr. Bollea naked. Exhibit 92 to Aff. of R. Fugate. *See also* Bollea Conf. SUDF ¶183.

The Gawker Defendants' Publication of the Sex Video Violated Journalism's Ethical Rules and Guidelines

184. According to Professor Foley, while the story that Mr. Bollea had sex with Heather Clem and that a sex tape existed were news, the actual content of the tape was not. Foley Aff. ¶¶ 7–8.

185. Journalists routinely avoid publishing material that is invasive of people’s privacy unless absolutely necessary to tell the story. Foley Aff. ¶ 12. Where such material is necessary to the story, journalists use the least invasive material. *Id.*

186. Where stories involve video footage of persons in the nude in private settings (such as stories of women who were secretly recorded in locker rooms), journalistic outlets never run the footage. Foley Aff. ¶¶ 13–16.

187. It was not necessary for Gawker to publish the Sex Video to tell the story of its existence and the circumstances surrounding it. Foley Aff. ¶¶ 7–8.

188. Daulerio included footage of Mr. Bollea’s penis, even though he did not consider it newsworthy, because he believed it added “color.” Ex. 4 (Daulerio Tr. 121:21–25).

189. Daulerio titled his so-called “commentary”: “Even for a Minute, Watching Hulk Hogan Have Sex in a Canopy Bed is Not Safe For Work But Watch it Anyway.” Ex. 15; Ex. 4 (Daulerio Tr. 45:06–12).

190. Daulerio, in his “commentary,” says that when readers watch famous people have sex, they are “shameless voyeurs and deviants.” Ex. 15. He admits that “we are not supposed to see” celebrity sex footage. *Id.*

191. Daulerio’s “commentary” includes a graphic description of the sex acts and positions of Mr. Bollea and Ms. Clem. *Id.* He includes a graphic description of Mr. Bollea aroused. *Id.* He further includes a graphic description of the noises Mr. Bollea made at climax in his narrative story. *Id.*

192. The story was “tagged” “not safe for work.” *Id.*; Ex. 3 (Carmichael Tr. 57:05–07). Gawker’s style guide states that the lead tag of the story (in this case, “not safe for work”) is one of the most important aspects of the story in bringing readers to the story. Ex. 34.

Gawker Refuses to Remove the Highlight Reel

193. On October 5, 2012, Mr. Bollea’s counsel wrote to Gawker and Denton demanding the Sex Video be removed from the site, stating that the video was surreptitiously recorded, released without Mr. Bollea’s consent, and that the continued publication of it was offensive and harmful to Mr. Bollea. Ex. 35. *See also* Bollea Conf. SUDF ¶193.

194. Gawker replied to the October 5, 2012 letter four days later, on October 9, 2012, and refused to remove the video. Ex. 16. Denton later testified that Mr. Bollea’s counsel’s demands were “not persuasive.” Ex. 7 (Denton Tr. 244:06–11).

195. After this Court entered a temporary injunction order that the Sex Video and Daulerio’s “commentary” be taken down, Gawker left the narrative up on the website and ran a story entitled “A Judge Told Us to Take Down Our Hulk Hogan Post. We Won’t.” Ex. 37.

196. Along with the story entitled “A Judge Told Us to Take Down Our Hulk Hogan Post. We Won’t,” Gawker included a link to the Sex Video on another website. Ex. 37.

197. During the course of this litigation, Gawker threatened through its counsel to publish additional footage of Mr. Bollea having sexual intercourse. Harder Aff. ¶2.

198. Gawker prepared and edited, but never published, a second sex video of Mr. Bollea. Ex. 3 (Carmichael Tr. 95:3–98:20).

Gawker Generates Traffic, Revenues and Profits as Mr. Bollea Suffers Extreme and Continued Distress

199. From October 4, 2012 through April 25, 2013, there were 5.35 million unique visitors to the page that featured the Sex Video. Ex. 17.

200. 2.5 million people watched the Sex Video at Gawker.com. Ex. 19.

201. *See* Bollea Conf. SUDF ¶201.

202. The Sex Video generated the second-most page views of any Gawker.com story in 2012 and spiked Google searches for the term “Gawker” (not Hulk or Hogan sex tape) to their highest level ever. Ex. 10 (Defendant Gawker Media LLC’s Responses to Plaintiff’s [First] Requests for Admissions, Request 15); Ex. 5 (Kidder Tr. 157:9–21); Ex. 21; Ex. 50_C.

203. Kevin Blatt testified that “it doesn’t hurt to draw attention to the website” for a media outlet to use photographs or excerpts from a sex tape. He further testified that by “attention to the website,” he meant “traffic” to the website. Ex. 6 (Blatt Tr. 130:14–25).

204. Kevin Blatt also testified that advertising revenue is generated by publishing a celebrity sex tape on a website, even if the celebrity sex tape is posted for free. Ex. 6 (Blatt Tr. 61:17–23). Blatt himself has used a celebrity sex tape to promote traffic to a website, testifying that his promotion of the Paris Hilton sex video on the *Howard Stern Show* resulted in “a lot” of hits to sexbrat.com, which was hosting the video. See Ex. 6 (Blatt. Tr. 58:18–59:18).

205. Gawker advertised the Sex Video on its Facebook page, where Gawker posted: “It’s probably time you watched this snippet from the Hulk Hogan sex tape with a woman some claim is Bubba the Love Sponge’s wife. Work’s over. You’re fine.” Ex. 22. See also Bollea Conf. SUDF ¶205.

206. Gawker had an employee bonus program tied to traffic and paid the maximum possible employee bonus to Gawker employees during the month of October 2012, when the Sex Video was published. Ex. 5 (Kidder Tr. 127:24–128:22).

207. Had the story been published without the Sex Video, it would have generated significantly less traffic. Ex. 4 (Daulerio Tr. 197:22–199:12); Ex. 7 (Denton Tr. 110:11–20).

208. Denton stated in one of his email memos to employees that Gawker “scored with royal breasts and Hulk sex,” boosting daily U.S. traffic to Gawker.com to over one million users

per day for the first time ever, and “[t]hose stories bring the site to new readers.” Ex. 39; Ex. 7 (Denton Tr. 195:24–196:10).

209. Gawker’s corporate designee, COO Scott Kidder, further conceded that the publication of the Sex Video could produce revenue for Gawker by bringing new, repeat visitors to Gawker.com, who read other articles with advertising. Ex. 5 (Kidder Tr. 107:21–108:17).

210. Michael Kuntz, Gawker’s current Vice President, Advertising Sales, testified at deposition: “From an advertising perspective, if I knew that those five million people that visited the site were ultimately going to be people that came back to the site time and time again is what we call repeat visitors or readers and they visit certain sections of the site that we have an opportunity to monetize, then yes, there could be some value there.” Ex. 8 (Kuntz Tr. 133:13–22).

211. The Jan. 28, 2015 *Business Insider* article, “Gawker Media Generated \$45 Million In Net Revenue Last Year And It’s Raising A \$15 Million Round of Debt,” at page BOLLEA 004421, depicts a graph of Gawker’s revenue from 2010 through 2014, and shows that its revenues close to doubled between 2012 and 2014. Ex. 40.

212. Mr. Bollea’s media appearances in Spring and October 2012 were intended to prevent further release of the Sex Video, and to quell speculation in published reports that he supposedly had something to do with the release of the Sex Video. Ex. 2 (Bollea Tr. 327:3–13). *See also* Bollea Conf. SUDF ¶212.

213. *See* Bollea SUDF ¶213.

214. In October 2012, Mr. Bollea had been scheduled months in advance for a media tour to promote a pay-per-view wrestling event called “Bound for Glory” and was contractually obligated to do so. Ex. 2 (Bollea Tr. 390:22–392:22). *See also* Bollea Conf. SUDF ¶214.

215. See Bollea Conf. SUDF ¶215.

216. See Bollea Conf. SUDF ¶216.

217. See Bollea Conf. SUDF ¶217.

Respectfully submitted,

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I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-mail via the e-portal system this 11th day of May, 2015 to the following:

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