

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

TERRY GENE BOLLEA professionally  
known as HULK HOGAN,

Plaintiff,

vs.

Case No. 12012447CI-011

GAWKER MEDIA, LLC, *et al.*,

Defendants.

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**DEFENDANTS' POSITION STATEMENT NO. 6: ADMISSIBILITY OF  
BUBBA CLEM'S STATEMENTS ON HIS OCTOBER 16 AND 17, 2012 RADIO SHOWS**

In June 2015, Plaintiff Terry Bollea filed a motion *in limine* that sought to exclude evidence of, or testimony about, statements made by Bubba the Love Sponge Clem on his radio program on October 16 and 17, 2012 about this litigation and matters and events giving rise to it. *See* Pl's Mot. *in Limine* No. 11 (filed June 12, 2015). This Court heard argument on that motion on July 1, 2015, ultimately reserving on the motion. Ex. A (July 1, 2015 Hrg. Tr.) at 185:16 – 193:6. Pursuant to Paragraph 8 of the Second Pretrial Order (dated November 19, 2015), Defendants hereby submit their Position Statement regarding the admissibility of those statements and testimony about them:

**1. Mr. Clem's Statements:** On October 16 and 17, 2012, shortly after Bollea filed this lawsuit, Mr. Clem took to his radio program and made a series of statements about Bollea in connection with both the conduct giving rise to this lawsuit and his decision to file the lawsuit itself. In those broadcasts, Mr. Clem stated, *inter alia*, that (a) Bollea knew that the sexual encounter with Heather Clem was being recorded, (b) Bollea may have played some role in disseminating the tape for publication, (c) Bollea was not genuinely aggrieved by the conduct

giving rise to the lawsuit, and (d) Bollea was feigning outrage over the sex tape in order to bolster his public image.

2. **Mr. Clem's About-Face:** Shortly after Mr. Clem made those statements on his radio program, Bollea settled his claims against Mr. Clem. Mr. Clem then read an "Apology" over the air in which he recanted his prior statements. In his subsequent deposition in this case, Mr. Clem stuck with the story he told in the "Apology" (*i.e.*, that he was lying when he made those critical statements about Bollea). Yet, on two other occasions after his settlement and radio "Apology," Mr. Clem has reiterated those original statements, at least as regards to Bollea's awareness that he was being filmed. He did so once in a formal interview with the FBI in November 2012 (Defs.' Trial Ex. 771), and he did so again on the Howard Stern Show in March 2013 (Defs.' Trial Ex. 304A).

3. **Impeachment:** Mr. Clem's statements on his radio show about matters and events giving rise to this litigation, and Bollea's alleged emotional distress, are relevant impeachment material if Mr. Clem testifies at trial consistent with what he said in his deposition. *See, e.g., Morowitz v. Vistaview Apartments, Ltd.*, 613 So. 2d 493, 495 (Fla. 3d DCA 1993) (trial court erred in not admitting evidence to impeach witness where that evidence "clearly contradicted" the witness's testimony regarding a fact at issue). This Court acknowledged as much during an exchange with Bollea's counsel at the July 1 hearing:

THE COURT: . . . [W]hy would you call [Mr. Clem] as a witness?

MR. VOGT: Because he's going to testify, as he did in his deposition, that the truth was that Mr. Bollea had no idea he was being taped and I did it without his knowledge.

THE COURT: But if he's going to testify to those things, they have the opportunity to impeach him on it.

Ex. A at 192:4-12. And this extends not only to those prior statements specifically about whether Bollea knew he was being filmed, but also to other matters, such as Mr. Clem's

statements that Bollea was not actually aggrieved by the conduct giving rise to this lawsuit. As in any case, Defendants should be permitted to impeach Mr. Clem with his prior inconsistent statements.

**CONCLUSION**

Defendants respectfully request that this Court rule that evidence of, and testimony about, the statements Mr. Clem made on his October 16, 2012 and October 17, 2012 radio broadcasts about this litigation and/or matters and events giving rise to this litigation are admissible as impeachment evidence to the extent that Mr. Clem testifies inconsistently with the statements he made on those broadcasts.

Dated: February 12, 2016

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 12th day of February, 2016, I caused a true and correct copy of the foregoing to be served via the Florida Courts' E-Filing Portal on the following counsel of record:

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