

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.

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**PLAINTIFF TERRY BOLLEA'S  
CONFIDENTIAL 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 Confidential Supplemental Statement of Undisputed Material Facts filed by defendants Gawker Media, LLC ("Gawker"), Nick Denton, and A.J. Daulerio (together, the "Gawker Defendants").

Plaintiff has submitted the materials below under seal to comply with this Court's Agreed Confidentiality Order (July 25, 2013) and the parties' designation of the materials. Plaintiff makes no representations or admissions as to the confidentiality of any item listed below, which has been designated by any party to this suit other than himself. Plaintiff has simultaneously

filed a motion asking this Court to adjudicate the confidentiality of the documents and testimony listed below pursuant to Rule 2.420 of the Florida Rules of Judicial Administration.

In order to assist the Court, the paragraph numbers below correspond to the paragraph numbers in Plaintiff’s publicly-filed Statement of Disputed and Undisputed Facts in Opposition to Gawker Defendant’s Motion for Summary Judgment:

**THE PARTIES**

**A. Plaintiff**

<b>Moving Parties’ Undisputed Material Facts and Supporting Evidence:</b>	<b>Opposing Party’s Response and Supporting Evidence:</b>
4. In 2000, Hogan also announced to Jay Leno on <i>The Tonight Show</i> that he was “going to run – to seek the office of the president of the United States.” Hogan Dep. (Conf. Ex. 108-C) at 404:2 – 405:13 (describing poll in which he got “66 and two thirds percent of the votes”). <sup>1</sup>	<b>Undisputed.</b> <sup>2</sup>  <b>Objection</b> , on relevance grounds, as to Mr. Bollea’s statement on a 2000 episode of <i>The Tonight Show</i> that he intended to run for office.
5. Hogan also testified that his public persona includes “train, say your prayers, and eat your vitamins,” being a “person of faith,” “being a family man” and “being wholesome.” <i>Id.</i> at 42:14 – 43:12.	<b>Undisputed.</b>

**B. Former Defendant Bubba the Love Sponge Clem**

<b>Moving Parties’ Undisputed Material Facts and Supporting Evidence:</b>	<b>Opposing Party’s Response and Supporting Evidence:</b>
7. Bubba Clem was sued by a woman named	<b>Undisputed.</b>

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

<sup>2</sup> 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.

<b>Moving Parties' Undisputed Material Facts and Supporting Evidence:</b>	<b>Opposing Party's Response and Supporting Evidence:</b>
Brooke Skye, who “sued him for forcing her to perform a sex act on the air.” H. Clem Dep. (Conf. Ex. 112-C) at 41:15 – 42:4.	<b>Objection</b> , on relevance and prejudice grounds, as to the fact that a non-party was sued by a woman not related to this lawsuit.
13. Until shortly before this lawsuit began, Bubba Clem was Hogan’s best friend. Hogan Dep. (Conf. Ex. 108-C) at 191:7-8. Hogan was the best man at Bubba Clem’s wedding. <i>Id.</i> at 192:8-9. Hogan lived at Bubba Clem’s house for somewhere between one and three months. <i>Id.</i> at 253:23 – 254:5; B. Clem Dep. (Conf. Ex. 109-C) at 67:7 – 69:10.	<b>Undisputed.</b>
15. On October 29, 2012, Elizabeth Rosenthal-Traub, Hogan’s publicist, sent an email to Hogan containing a press release announcing the settlement of Hogan’s lawsuit against Bubba Clem. Conf. Ex. 110-C.	<b>Undisputed.</b>

### C. Defendant Heather Clem

<b>Moving Parties' Undisputed Material Facts and Supporting Evidence:</b>	<b>Opposing Party's Response and Supporting Evidence:</b>
17. Bubba the Love Sponge Clem and Heather Clem would discuss their “sex life on the air” because “[t]here was nothing off limits.” H. Clem Dep. (Conf. Ex. 112-C) at 54:25 – 56:7. Bubba Clem also testified that he spoke “on the air about [his] sex life with Heather.” B. Clem Dep. (Conf. Ex. 109-C) at 77:12-21.	<b>Undisputed</b> that Bubba Clem discussed his sex life on his radio show.  <b>Disputed</b> to the extent the remainder of the paragraph, including the supposed reason why Bubba Clem discussed his sex life on his radio show, is argument, and is not a fact.

### D. The Gawker Defendants

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

<b>Moving Parties' Undisputed Material Facts and Supporting Evidence:</b>	<b>Opposing Party's Response and Supporting Evidence:</b>
24. Hogan “does not remember the exact number of sexual encounters with Heather Clem. To the best of [Hogan’s] recollection, there were at least two, and	<b>Undisputed</b> as to Mr. Bollea’s testimony about the number and location of his sexual encounters with Ms. Clem.

<b>Moving Parties’ Undisputed Material Facts and Supporting Evidence:</b>	<b>Opposing Party’s Response and Supporting Evidence:</b>
<p>possibly three, sexual encounters with Heather Clem” in her bedroom, and “one brief sexual encounter with Heather Clem at the radio station” of Bubba the Love Sponge Clem’s radio program. Conf. Ex. 111-C (Hogan’s Confidential Suppl. Resp. to Gawker Int. No. 9); <i>see also</i> Hogan Dep. (Conf. Ex. 108-C) at 269:1-16 (confirming accuracy of interrogatory response on this point “to the best of [his] recollection”). For her part, Mrs. Clem recalls four sexual encounters with Hogan: “once . . . at our house when I was married to Mr. Clem; once at Mr. Bollea’s house; and once in a hotel room” on a trip to Tennessee, H. Clem. Dep. (Ex. 112-C) at 12:17 – 13:11, and once “at Bubba’s radio station,” <i>id.</i> at 94:13-17. To the best of Hogan’s recollection, “these encounters all occurred in approximately late spring/early summer of 2007.” Conf. Ex. 111-C. At Hogan’s deposition, he testified as follows:</p> <p style="padding-left: 40px;">Q. Just so I understand, as you sit here now, is it your best understanding that when these sexual encounters with Mrs. Clem happened were in the late spring and early summer of 2007?</p> <p style="padding-left: 40px;">A. About.</p> <p style="padding-left: 40px;">Q. About?</p> <p style="padding-left: 40px;">A. Yes.</p> <p>Hogan Dep. (Conf. Ex. 108-C) at 305:11 – 306:3.</p>	<p><b>Disputed</b> as to Ms. Clem’s testimony, to the extent it is inconsistent with Mr. Bollea’s recollection.</p>
<p>25. Hogan testified that Bubba the Love Sponge Clem “had bragged about him having a swinging lifestyle . . . where him and Heather had an open marriage.” <i>Id.</i> at 275:14-21; <i>id.</i> at 281:10-14 (“At the time, I was under the understanding that it was an open marriage”); <i>see also</i> B. Clem Dep.</p>	<p><b>Undisputed.</b></p>

<b>Moving Parties' Undisputed Material Facts and Supporting Evidence:</b>	<b>Opposing Party's Response and Supporting Evidence:</b>
(Conf. Ex. 109-C) at 264:8-9 (“Q: Was your marriage with Heather monogamous? A: No.”).	

**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.**

<b>Moving Parties' Undisputed Material Facts and Supporting Evidence:</b>	<b>Opposing Party's Response and Supporting Evidence:</b>
26. Hogan conceded that, at the time Hogan had sexual relations with Heather Clem, although their marriage was troubled, he was still married to Linda Hogan. Hogan Dep. (Conf. Ex. 108-C) at 306:4-6 (“Q: And in that time frame, you were still married to Linda? A. Yes.”).	<p><b>Undisputed</b> that Mr. Bollea was legally married to Linda Bollea at the time that he had sexual relations with Heather Clem.</p> <p><b>Disputed</b> as to the characterization that the marriage was merely “troubled.” Mr. Bollea and Linda Bollea were legally separated at the time of the encounters, Mr. Bollea considered his marriage over, and Linda had moved out of their house.</p> <p><b>Evidence:</b> [Bollea Tr. 279:20–25, 280:4–9, 306:10–12, 306:23–307:1]</p>

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

<b>Moving Parties' Undisputed Material Facts and Supporting Evidence:</b>	<b>Opposing Party's Response and Supporting Evidence:</b>
28. Bubba Clem testified that he used his surveillance system to create a DVD recording of Hogan and Heather Clem having sex (the “Video Recording”). B. Clem Dep. (Conf. Ex. 109-C) at 84:17 – 85:2.	<b>Undisputed.</b>
29. Heather Clem testified that she “didn’t know how to use the camera” in their bedroom. H. Clem Dep. (Conf. Ex 112-C) at 67:7-10. She also testified she had no “idea before the sexual encounter happened that it was going to be filmed.” <i>Id.</i> at 18:12-16. She testified that she first learned of the recording “several weeks” later when Mr. Clem showed the video footage to her. <i>Id.</i> at 17:20-23, 21:20 – 22:1.	<p><b>Disputed</b> that Heather Clem did not know the sexual encounter would be filmed before and during the encounter, and that she first learned about the recording several weeks later.</p> <p><b>Evidence:</b> [Defendant Heather Clem/Cole’s Notice of Serving Answers to Plaintiff Terry Gene Bollea’s First Set of Interrogatories No. 8; Heather Clem Tr. 17:15–23, 25:13–18, 65:8–24; Bubba Clem Tr. 329:22–330:19, 412:8–11, 459:1–3]</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**

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

<b>Moving Parties’ Undisputed Material Facts and Supporting Evidence:</b>	<b>Opposing Party’s Response and Supporting Evidence:</b>
48. Hogan has denied that he sexually assaulted Kate Kennedy. Hogan Dep. (Conf. Ex. 108-C) at 159:25 – 161:16.	<b>Undisputed.</b>  <b>Objection</b> , 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.
54. Hogan testified about Linda Hogan’s public statements on this subject as follows: “she was basically singing to the heavens that I was a homosexual” and later “just went on a TV show and said, oh, I was mad. I was just kidding.” Hogan Dep. (Conf. Ex. 108-C) at 264:6-25.	<b>Undisputed.</b>  <b>Objection</b> , on relevance and prejudice grounds, as to any discussion of an alleged relationship with Brutus Beefcake.

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

**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.**

<b>Moving Parties’ Undisputed Material Facts and Supporting Evidence:</b>	<b>Opposing Party’s Response and Supporting Evidence:</b>
72. Peirce re-transmitted the “timeline” he received on March 12, 2012, meaning he received it no later than that date. Peirce Dep. (Conf. Ex. 116-C) at 95:12 – 97:7.	<b>Undisputed.</b>
75. During his deposition testimony in this case, Hogan stated that he “didn’t feel uncomfortable at all” sharing “with the public that” he had slept with a lot women “in the period between when [his] marriage	<b>Undisputed.</b>

<b>Moving Parties' Undisputed Material Facts and Supporting Evidence:</b>	<b>Opposing Party's Response and Supporting Evidence:</b>
to Linda ended and when [he] met Jennifer.” Hulk Dep. (Conf. Ex. 108-C) at 336:15-19.	

**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.**

<b>Moving Parties' Undisputed Material Facts and Supporting Evidence:</b>	<b>Opposing Party's Response and Supporting Evidence:</b>
114. On or about September 27, 2012, defendant Daulerio was contacted by Tony Burton, an agent with Don Buchwald & Associates, Inc. (the “Buchwald Agency”). Conf. Ex. 113-C (email from T. Burton to A.J. Daulerio, dated Sept. 27, 2012); Burton Dep. (Conf. Ex. 114-C) at 13:13 – 14:24.	<b>Undisputed.</b>
115. Burton serves as the agent for Mike “Cowhead” Calta, a Tampa radio personality who had a show on the same channel as Bubba the Love Sponge Clem. Burton Dep. (Conf. Ex. 114-C) at 15:13-17.	<b>Undisputed.</b>

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

**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.**

<b>Moving Parties' Undisputed Material Facts and Supporting Evidence:</b>	<b>Opposing Party's Response and Supporting Evidence:</b>
134. The media tour was arranged by Jules Wortman, then Vice-President for Public Relations for TNA. Wortman Dep. (Conf. Ex. 115-C) at 16:11-16, 26:2-6; <i>see also id.</i> at 24:22 – 25:13 (describing tour).	<b>Undisputed.</b>
135. Ms. Wortman described this media attention at her deposition. <i>Id.</i> at 32:1 – 40:3.	<b>Undisputed.</b>
141. Hogan’s interview on <i>TMZ</i> had not been scheduled as part of the media tour. <i>Id.</i> at 77:20 – 79:14 (testimony of Wortman,	<b>Undisputed.</b>

<b>Moving Parties’ Undisputed Material Facts and Supporting Evidence:</b>	<b>Opposing Party’s Response and Supporting Evidence:</b>
explaining “I didn’t set [the TMZ interview] and I don’t know why he would be doing that.”).	
144. During his deposition in this case, Bubba Clem stated that, during the period between the filing of the lawsuit against him and his settlement with Hogan, he was in “cover my ass” mode and that what he said on his radio program had not been true. <i>See, e.g.</i> , B. Clem Dep. (Conf. Ex. 109-C) at 420:3-8.	<b>Undisputed.</b>

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

<b>Moving Parties’ Undisputed Material Facts and Supporting Evidence:</b>	<b>Opposing Party’s Response and Supporting Evidence:</b>
148. Hogan did not seek “medical treatment” or “psychological counseling” as a result of the Gawker Publication. Hogan Dep. (Conf. Ex. 108-C) at 525:22 – 528:19.	<b>Undisputed.</b>

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

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

162. Also while at Deadspin, Daulerio and Gawker paid \$12,000 for a photo of NFL quarterback Brett Favre’s penis and published it. Ex. 44\_C (Daulerio Tr. 54:12–54:24).

***The Surreptitious and Illegal Recording of Mr. Bollea***

166. The sexual encounter between Mr. Bollea and Ms. Clem, which is the subject of this litigation, was not Mr. Bollea’s idea. Ex. 42\_C (Bollea Tr. 273:17–275:6); Ex 41\_C (Bubba Clem Tr. 309:6–25); Ex. 45\_C (Heather Cole Tr. 11:8–12).

167. Mr. Bollea was at a very low point in his life. He was physically, emotionally and legally separated from his wife, who made clear their marriage was permanently over and who



had gone to live somewhere else. Ex. 42\_C (Bollea Tr. 279:20–25, 280:4–9, 306:10–12, 306:23–307:1). When Mr. Bollea was at his most vulnerable, in mid-2007, the Clems lured Mr. Bollea into a sexual encounter with Heather in their private bedroom. Ex. 42\_C (Bollea Tr. 280:4–9).

168. Mr. Bollea did not know that his encounter with Ms. Clem had been recorded. Ex. 42\_C (Bollea Tr. 258:05–12, 215:19–20); Ex. 1 (Bubba Clem Tr. 238:15–240:11; 469:18–25); Ex. 41\_C (459:1–7; 470:2); Ex. 45\_C (Heather Cole Tr. 30:3–12).

169. Mr. Bollea did not authorize the recording of his sexual encounter with Heather Clem. Ex. 42\_C (Bollea Tr. 215:19–20, 233:14–21); Ex. 1 (Bubba Clem Tr. 329:04–333:02); Ex. 41\_C (459:1–7); Ex. 45\_C (Heather Clem Tr. 19:07–14).

#### ***The Gawker Defendants' Receipt of the Illegally Recorded Sex Video***

172. In late September 2012, A.J. Daulerio was approached via email by talent agent Tony Burton of Buchwald & Associates in New York. Ex. 49\_C. Following their phone and email conversations, Daulerio authorized and facilitated the shipment to Gawker's offices of a 30-minute video featuring footage of "Hulk Hogan" having sex. Ex. 49\_C; Ex. 4 (Daulerio Tr. 113:22–114:18).

173. The video arrived in the mail from an anonymous source. Ex. 42\_C.

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. 48\_C.

#### ***The Gawker Defendants' Production of the Highlight Reel***

182. Daulerio used the term "highlight reel" to describe the video that he and his staff produced and broadcast to the world. Ex. 49\_C.

183. Harvard Professor Leslie John described the Sex Video as including the preamble, the sexual acts themselves, and the *denouement*. Ex. 46\_C (John Rough Tr. 227:24–228:19).

***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. 51\_C.

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

201. Approximately 4.5 million people watched the Gawker-produced video at other websites that had lifted the video from Gawker.com. Ex. 52\_C; Ex. 38.

205. Gawker Defendants’ expert witness, Peter Horan, agreed that he would characterize Gawker’s Facebook post as “inviting people to watch the Hogan sex tape.” Ex. 47\_C (Horan Tr. 187:18–188:18). Horan further conceded that Gawker used the Sex Video as a form of “viral marketing” to generate additional viewers. Ex. 47\_C (Horan Tr. 192:10–24).

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. 42\_C ( Bollea Tr. 415:7–20).

213. The interviews regarding the Sex Video were tremendously embarrassing to Mr. Bollea. Ex. 42\_C (Bollea Tr. 443:11–13).

214. Mr. Bollea reluctantly went on the “Bound for Glory” tour and was asked about the Sex Video as well as the pay-per-view wrestling event, though he dreaded questions about the former and wanted to talk about the latter. Ex. 53\_C; Ex. 42\_C (401:17–404:01; 415:7–29).

215. The publication of the Sex Video destroyed Mr. Bollea's life. He could not function, sleep, eat, or think straight. Ex. 42\_C (Bollea Tr. 526:2-5, 527:19-528:19, 529:9-530:11, 531:5-19, 532:23-533:6, 535:2-4).

216. Gawker's release of the Sex Video was the most stressful situation Mr. Bollea ever faced in his life. Ex. 42\_C (Bollea Tr. 531:5-19).

217. Mr. Bollea has cried, worried about its impact on his children, and its impact on his current marriage, and he often is confronted by strangers who have seen the Sex Video and try to engage him in conversation about it, often with his wife and/or children present. Ex. 42\_C (Bollea Tr. 526:2-5, 527:19-528:19, 529:9-530:11, 531:5-19, 532:23-533:6, 535:2-4, 537:14-538:3).

Respectfully submitted,

/s/ Kenneth G. Turkel

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### **CERTIFICATE OF SERVICE**

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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