

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.

---

**DEFENDANTS' POSITION STATEMENT NO. 2:**  
**ADMISSIBILITY OF UNRELATED CEASE AND DESIST COMMUNICATIONS**

In June 2015, Defendants Gawker Media, LLC (“Gawker”), Nick Denton, and A.J. Daulerio, filed a motion *in limine* in which they sought to exclude evidence of, or testimony about, cease and desist communications concerning publications by Gawker other than the publication at issue in this case. *See* Defs.’ Mot. *in Limine* to Exclude Cease and Desist Communications (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 262:21 – 263:25. Pursuant to Paragraph 8 of the Second Pretrial Order (dated November 19, 2015), Defendants hereby submit their Position Statement regarding the admissibility of evidence of, and testimony about, cease and desist communications regarding unrelated publications.

The exhibits that fall into that category are inadmissible for at least the following reasons:

1. **Other Allegations Are Inadmissible To Prove Similar Conduct:** Bollea may not use the fact that others may have made similar allegations against Defendants to establish his own allegations. This is so for two reasons. First, under Fla. Stat. § 90.404, Bollea cannot use evidence of supposed prior “bad acts” by Defendant to prove wrongful conduct in this case. Any probative value that might come from learning that others have made similar complaints is far

outweighed by the potential for prejudice. *See Long Term Care Found., Inc. v. Martin*, 778 So. 2d 1100, 1103 (Fla. 5th DCA 2001) (complaint making similar allegations against defendant was barred under Section 90.403). Second, these are not even evidence of “bad acts.” Rather, the allegations contained in these cease and desist communications are just that – *allegations*. *See, e.g., id.* (excluding admission of complaint because it “contained bare allegations against [defendant] in the form of rank hearsay”). To go down this road, the Court would need to have a mini-trial to determine whether those allegations were valid. Of course, even if they were, such prior “bad acts” evidence is inadmissible.

2. **Settlement Communications:** In addition, the cease and desist communications reflect settlement negotiations, which are inadmissible under Fla. Stat. § 90.408. Here, the cease and desist communications relate directly to a settlement offer and response. Under Florida law, such communications are not admissible to prove that a party committed the torts that are the subject matter of the settlement communications.

### CONCLUSION

Defendants respectfully request that this Court preclude Bollea from admitting into evidence, or seeking testimony about, these unrelated cease and desist communications.

Dated: February 12, 2016

Respectfully submitted,

THOMAS & LOCICERO PL

By: /s/ Gregg D. Thomas

Gregg D. Thomas

Florida Bar No.: 223913

Rachel E. Fugate

Florida Bar No.: 0144029

601 South Boulevard, P.O. Box 2602 (33601)

Tampa, FL 33606

Telephone: (813) 984-3060

Facsimile: (813) 984-3070

gthomas@tlolawfirm.com

rfugate@tlolawfirm.com

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

*Counsel for Defendants*

**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:

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

*Attorneys for Plaintiff*

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

*Attorney for Plaintiff*

Timothy J. Conner  
Holland & Knight LLP  
50 North Laura Street, Suite 3900  
Jacksonville, FL 32202  
timothy.conner@hkllaw.com

Charles D. Tobin  
Holland & Knight LLP  
800 17th Street N.W., Suite 1100  
Washington, D.C. 20006  
charles.tobin@hkllaw.com

*Attorneys for Intervenors First Look Media, Inc., WFTS-TV and WPTV-TV, Scripps Media, Inc., WFTX-TV, Journal Broadcast Group, and The Associated Press*

Charles J. Harder, Esq.  
charder@HMAfirm.com  
Jennifer McGrath, Esq.  
jmcgrath@hmafirma.com  
Harder Mirell & Abrams LLP  
132 S. Rodeo Drive, Suite 301  
Beverly Hills, CA 90212  
Tel: (424) 203-1600  
Fax: (424) 203-1601

*Attorneys for Plaintiff*

Allison M. Steele  
Rahdert, Steele, Reynolds & Driscoll, P.L.  
535 Central Avenue  
St. Petersburg, FL 33701  
amneste@aol.com  
asteel@rahdertlaw.com  
ncampbell@rahdertlaw.com

*Attorney for Intervenor Times Publ'g Co.*

/s/ Gregg D. Thomas  
Attorney