

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. 3:
ADMISSIBILITY OF UNRELATED STATEMENTS ABOUT PRIVACY

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, statements made by present or former Gawker employees taking positions about privacy with regard to matters unrelated to the Video Excerpts and/or Plaintiff Terry Bollea. *See* Defs.’ Mot. *in Limine* to Preclude Plaintiff From Introducing Evidence Related to Statements About Privacy (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 268:6 – 271:21. 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, these privacy statements.

For these purposes, there are two different sets of exhibits that fall broadly within this category. First, there are proposed trial exhibits consisting of articles published on one of the Gawker websites that take positions on specific privacy issues, such as “revenge porn” or hacking. None of these articles was written by a party to this case. Second, there are proposed

trial exhibits consisting of non-Gawker articles that contain alleged statements by Denton or Daulerio opining in general terms about privacy issues.

1. **Articles About Privacy By Persons Other than Defendants:** Bollea apparently intends to argue to the jury that articles published on a Gawker website condemning violations of privacy in other contexts prove that Defendants knew that their conduct was wrong in this case, thus entitling him to punitive damages. Leaving aside that these articles addressed privacy rights in very different contexts, they are not admissible to prove anything about what *Defendants* knew or believed. At the July 1, 2015 hearing, counsel for Bollea took the position these statements made by Gawker writers are party statements, properly attributed to Gawker itself, under Fla. Stat. § 90.803(18)(d). *See* Ex. A (July 1, 2015 Hrg. Tr.) at 271:11-20. That is incorrect. Under Section 90.803(18)(d), a statement by an employee of a party is admissible to establish the truth of some matter only if “the matter [is] within the scope of” the employee’s employment. *Chaney v. Winn Dixie Stores, Inc.*, 605 So. 2d 527, 529 (Fla. 2d DCA 1992). Writers who express their opinions in articles published on Gawker platforms are not empowered to articulate the beliefs of Denton, Daulerio or Gawker as an institution. On the contrary, Gawker, like virtually every other publisher, provides a forum for the expression of opinions without necessarily adopting as its own the opinions being expressed, and, in fact, regularly airs internal disagreements on its website. Accordingly, the publications Bollea seeks to admit cannot be used to establish facts about *Defendants*’ position about privacy or their state of mind, which is the purpose for which Bollea intends to use them.

2. **Articles Purporting To Quote Denton’s or Daulerio’s Views About Privacy:** The articles that quote statements allegedly made by Denton or Daulerio should be excluded because they likely would confuse the jury and their prejudicial impact far outweighs their

probative value. *See Fla. Stat. § 90.403.* None of these statements relates to Defendants' decision to publish the post giving rise to this lawsuit. Instead, the statements express general and abstract views about privacy. While a jury might find Denton's abstract views on privacy unappealing or distasteful, any jury award, including an award of punitive damages, must be based on Defendants' conduct, not the unpopularity of their views. Accordingly, allowing these statements to be admitted into evidence, or permitting questioning about them, would likely confuse the jury, unfairly prejudice Defendants, and would serve no proper purpose.

CONCLUSION

Defendants respectfully request that this Court preclude Bollea from admitting into evidence, or seeking testimony about, these unrelated privacy statements.

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
amnestee@aol.com
asteel@rahdertlaw.com
ncampbell@rahdertlaw.com

Attorney for Intervenor Times Publ'g Co.

/s/ Gregg D. Thomas
Attorney