

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

HEATHER CLEM, *et al.*,

Defendants.

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**ANSWER OF DEFENDANT A.J. DAULERIO  
TO PLAINTIFF'S AMENDED FIRST AMENDED COMPLAINT**

Defendant A.J. Daulerio ("Daulerio") hereby answers Plaintiff's First Amended Complaint, as further amended on June 18, 2015, by "interlineation" to add a claim for punitive damages (Plaintiff's Amended First Amended Complaint is referred to herein as the "AFAC").<sup>1</sup> Daulerio denies each and every allegation except those expressly admitted herein.

In response to the caption and prefatory paragraph appearing on the first page of the AFAC, Daulerio denies that Gawker Media Group, Inc., Gawker Entertainment, LLC, Gawker Technology, LLC, Gawker Sales, LLC, Blogwire Hungary Szellemi Alkotást Hasznosító, KFT or Kate Bennert are still defendants in this action, and interprets the defined terms "Gawker Defendants" and "Defendants" to exclude them and each of them from those terms as used in the AFAC.

Further responding to the specific numbered paragraphs in the AFAC, Daulerio states:

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<sup>1</sup> Pursuant to Fla. Stat. § 768.72, Daulerio objects to Plaintiff's filing of his Amended First Amended Complaint to add a claim for punitive damages prior to the Court's June 19, 2015 Order authorizing the filing of such a complaint. In an abundance of caution, Daulerio answers herein, but preserves that objection.

## NATURE OF THIS ACTION

1. Daulerio admits that Gawker Media, LLC (“Gawker”) posted on www.gawker.com (the “Gawker Site”) a report and commentary (the “Gawker Story”) about a video depicting Plaintiff Terry Gene Bollea professionally known as “Hulk Hogan” (“Plaintiff”) conversing and engaging in sexual relations with Heather Clem (the “Video”), together with 101 seconds of excerpts from the Video (the “Excerpts”). Plaintiff has withdrawn all claims relating to the Gawker Story. The contents of the Excerpts speak for themselves. Daulerio is without sufficient knowledge or information to respond to the allegations of the second sentence of Paragraph 1, and on that basis denies those allegations, although upon information and belief, Daulerio denies that the sexual encounter depicted on the Video and in the Excerpts occurred in 2006. All remaining allegations in Paragraph 1 are denied.

2. Daulerio is without sufficient knowledge or information to respond to the allegations in Paragraph 2 that “Mr. Bollea had no knowledge that the intimate activity depicted in the Video was being recorded” or that “Mr. Bollea believed that such activity was completely private,” and on that basis denies those allegations. All remaining allegations in Paragraph 2 are denied.

3. Daulerio is without sufficient knowledge or information to respond to allegations in Paragraph 3 concerning “Clem’s secret recording” of Plaintiff, and on that basis denies those allegations. All remaining allegations in Paragraph 3 are denied.

4. Daulerio is without sufficient knowledge or information to respond to allegations in Paragraph 4 concerning what Mr. Bollea “is informed and believes” and whether any “activities” of Clem violated Fla. Stat. § 810.45, and on that basis denies those allegations. All remaining allegations in Paragraph 4 are denied.

5. Daulerio is without sufficient knowledge or information to respond to the allegations of the second sentence of Paragraph 5, and on that basis denies those allegations. All remaining allegations in Paragraph 5 are denied.

6. Denied.

### **JURISDICTION**

7. Admitted.

8. Admitted that the Court has personal jurisdiction over defendants Gawker Media, LLC, A.J. Daulerio, and Nick Denton. Admitted, upon information and belief, that the Court has personal jurisdiction over Defendant Heather Clem. All remaining allegations in Paragraph 8 are denied.

9. Admitted that venue is proper in this Court. All remaining allegations in Paragraph 9, including without limitation that any claims properly accrued within this circuit or otherwise, are denied.

### **PARTIES**

10. Admitted, upon information and belief.

11. Admitted, upon information and belief.

12. Admitted.

13. No response is required to allegations concerning Gawker Media Group, Inc., because it has been dismissed from the case, and on that basis such allegations are denied.

14. No response is required to allegations concerning Gawker Entertainment, LLC, because it has been dismissed from the case, and on that basis such allegations are denied.

15. No response is required to allegations concerning Gawker Technology, LLC, because it has been dismissed from the case, and on that basis such allegations are denied.

16. No response is required to allegations concerning Gawker Sales, LLC, because it has been dismissed from the case, and on that basis such allegations are denied.

17. Daulerio admits, on information and belief, that Gawker Media, LLC is 100% owned by Gawker Media Group, Inc. No response is required to allegations concerning Gawker Entertainment, LLC, Gawker Technology, LLC, or Gawker Sales, LLC, or other allegations concerning Gawker Media Group, Inc., because each of those entities has been dismissed from the case, and on that basis such allegations are denied.

18. No response is required to allegations concerning Blogwire Hungary Szellemi Alkotást Hasznosító, KFT, because it has been dismissed from the case, and on that basis such allegations are denied.

19. Admitted that Plaintiff refers in the AFAC to “Defendants Gawker Media, LLC, Gawker Entertainment, LLC, Gawker Technology, LLC, Gawker Sales, LLC, Gawker Media Group, Inc., and Blogwire Hungary” Szellemi Alkotást Hasznosító, KFT collectively as “Gawker Media.” Denied that there exists any basis for treating these separate entities as a single group, including because all entities other than Gawker Media, LLC have been dismissed from the case.

20. Admitted that Gawker Media, LLC owns, operates, controls and publishes Internet websites, including the Gawker Site, which make content available via the Internet. All remaining allegations in Paragraph 20 are denied.

21. Admitted, on information and belief, that Nick Denton (a) was and is a citizen of the United Kingdom and is a resident and domiciliary of the State of New York for jurisdictional purposes, and (b) is a founder of Gawker Media, LLC. No response is required to allegations concerning Gawker Media Group, Inc., Gawker Entertainment, LLC, Gawker Technology, LLC,

Gawker Sales, LLC, or Blogwire Hungary Szellemi Alkotást Hasznosító, KFT because those entities have been dismissed from the case, and on that basis such allegations are denied. All remaining allegations in Paragraph 21 are denied.

22. Admitted that A.J. Daulerio was and is a citizen, resident and domiciliary of the State of New York and that, at the time of the publication of the Gawker Story, was the Editor-in-Chief of the Gawker Site. All remaining allegations in Paragraph 22 are denied.

23. No response is required to allegations concerning Kate Bennert because she has been dismissed from the case, and on this basis such allegations are denied.

24. No response is required to allegations concerning Gawker Media Group, Inc., Gawker Entertainment, LLC, Gawker Technology, LLC, Gawker Sales, LLC, Blogwire Hungary Szellemi Alkotást Hasznosító, KFT or Kate Bennert because they have been dismissed from the case, and on that basis such allegations are denied. All remaining allegations in Paragraph 24 are denied.

#### **FACTS GIVING RISE TO THE CLAIMS**

25. Daulerio admits, upon information and belief, the allegations of the first sentence of Paragraph 25. Daulerio denies the allegations of the second sentence of Paragraph 25.

26. Admitted that Plaintiff engaged in, and was filmed having, sexual relations with Heather Clem. Denied upon information and belief that the sexual encounter at issue took place in 2006. Otherwise, Daulerio is without sufficient knowledge or information to respond to the remaining allegations in Paragraph 26, and on that basis denies those allegations.

27. Admitted that Defendants Gawker Media, LLC and A.J. Daulerio received a copy of the Video and prepared the Excerpts, the contents of which speak for themselves. Daulerio is without sufficient knowledge or information to respond to the allegation that the Video was

obtained “based on the actions of Clem and others.” All remaining allegations in Paragraph 27 are denied, including without limitation the allegations contained in the final sentence of Paragraph 27, as Plaintiff has withdrawn all claims relating to the Gawker Story.

28. Admitted that on or about October 4, 2012, Gawker Media, LLC published the Excerpts, the contents of which speak for themselves; that, at Daulerio’s direction, Bennert edited the Video to create the Excerpts; and, on information and belief, that Plaintiff demanded Gawker and Denton to remove the Excerpts from the Gawker Site. All remaining allegations in Paragraph 28 are denied, including without limitation all allegations concerning the Gawker Story, as Plaintiff has withdrawn all claims relating to the Gawker Story.

29. Daulerio is without sufficient information to respond to the allegations in this paragraph concerning the Excerpts, and on that basis denies those allegations. Daulerio denies all allegations concerning the Gawker Story, as Plaintiff has withdrawn all claims relating to the Gawker Story.

30. Admitted that other media outlets and websites reported on the Video and/or linked to the Excerpts. All remaining allegations in Paragraph 30 are denied, including without limitation all allegations concerning the Gawker Story, as Plaintiff has withdrawn all claims relating to the Gawker Story.

31. Denied, including without limitation all allegations concerning the Gawker Story, as Plaintiff has withdrawn all claims relating to the Gawker Story.

32. Daulerio is without sufficient information to respond to the allegations in this paragraph, and on that basis denies those allegations.

33. Denied, including without limitation all allegations concerning the Gawker Story, as Plaintiff has withdrawn all claims relating to the Gawker Story.

34. Denied.

35. Denied, including without limitation all allegations concerning the Gawker Story, as Plaintiff has withdrawn all claims relating to the Gawker Story.

36. This paragraph states legal conclusions, so no response is required. To the extent a response is required, the allegations of Paragraph 36 are denied.

### **FIRST CAUSE OF ACTION**

#### **(Invasion of Privacy by Intrusion Upon Seclusion Against Defendant Heather Clem)**

37. Daulerio repeats and incorporates by reference his response to the preceding paragraphs as if fully set forth herein.

38. No response is required to allegations purporting to assert a cause of action only against defendant Heather Clem, and on that basis such allegations are denied.

39. No response is required to allegations purporting to assert a cause of action only against defendant Heather Clem, and on that basis such allegations are denied.

40. No response is required to allegations purporting to assert a cause of action only against defendant Heather Clem, and on that basis such allegations are denied.

41. No response is required to allegations purporting to assert a cause of action only against defendant Heather Clem, and on that basis such allegations are denied.

42. No response is required to allegations purporting to assert a cause of action only against defendant Heather Clem, and on that basis such allegations are denied.

43. No response is required to allegations purporting to assert a cause of action only against defendant Heather Clem, and on that basis such allegations are denied.

44. No response is required to allegations purporting to assert a cause of action only against defendant Heather Clem, and on that basis such allegations are denied.

45. No response is required to allegations purporting to assert a cause of action only against defendant Heather Clem, and on that basis such allegations are denied.

46. No response is required to allegations purporting to assert a cause of action only against defendant Heather Clem, and on that basis such allegations are denied.

47. No response is required to allegations purporting to assert a cause of action only against defendant Heather Clem, and on that basis such allegations are denied.

48. No response is required to allegations purporting to assert a cause of action only against defendant Heather Clem, and on that basis such allegations are denied.

### **SECOND CAUSE OF ACTION**

#### **(Publication of Private Facts Against Defendant Heather Clem)**

49. Daulerio repeats and incorporates by reference his response to the preceding paragraphs as if fully set forth herein.

50. No response is required to allegations purporting to assert a cause of action only against defendant Heather Clem, and on that basis such allegations are denied.

51. No response is required to allegations purporting to assert a cause of action only against defendant Heather Clem, and on that basis such allegations are denied.

52. No response is required to allegations purporting to assert a cause of action only against defendant Heather Clem, and on that basis such allegations are denied.

53. No response is required to allegations purporting to assert a cause of action only against defendant Heather Clem, and on that basis such allegations are denied.

54. No response is required to allegations purporting to assert a cause of action only against defendant Heather Clem, and on that basis such allegations are denied.



55. No response is required to allegations purporting to assert a cause of action only against defendant Heather Clem, and on that basis such allegations are denied.

### **THIRD CAUSE OF ACTION**

#### **(Publication of Private Facts as Against the Gawker Defendants)**

56. Daulerio repeats and incorporates by reference his response to the preceding paragraphs as if fully set forth herein.

57. Admitted that Gawker published the Excerpts, the contents of which speak for themselves. No response is required to allegations concerning Gawker Media Group, Inc., Gawker Entertainment, LLC, Gawker Technology, LLC, Gawker Sales, LLC, Blogwire Hungary Szellemi Alkotást Hasznosító, KFT or Kate Bennert because they have been dismissed from the case, and on that basis such allegations are denied. All remaining allegations in Paragraph 57, including to the extent such allegations state legal conclusions as to which no response is required, are denied.

58. Daulerio is without sufficient knowledge or information to respond to the allegation that Plaintiff “had no knowledge of, and did not consent to, the recording” of his sexual activity, and on that basis denies those allegations. No response is required to allegations concerning Gawker Media Group, Inc., Gawker Entertainment, LLC, Gawker Technology, LLC, Gawker Sales, LLC, Blogwire Hungary Szellemi Alkotást Hasznosító, KFT or Kate Bennert because they have been dismissed from the case, and on that basis such allegations are denied. All remaining allegations in Paragraph 58, including to the extent such allegations state legal conclusions as to which no response is required, are denied.

59. Admitted that Gawker Media, LLC published the Excerpts, the contents of which speak for themselves, and that Plaintiff did not explicitly authorize the publication of the Gawker

Story and/or the Excerpts. Daulerio is without sufficient knowledge or information to respond to the allegation that Plaintiff did not consent to the “use, distribution or exploitation” of the Video by “any other persons or entities,” and on that basis denies such allegations. No response is required to allegations concerning Gawker Media Group, Inc., Gawker Entertainment, LLC, Gawker Technology, LLC, Gawker Sales, LLC, Blogwire Hungary Szellemi Alkotást Hasznosító, KFT or Kate Bennert because they have been dismissed from the case, and on this basis such allegations are denied. All remaining allegations in Paragraph 59 – including to the extent such allegations state legal conclusions as to which no response is required, and including without limitation all allegations concerning the Gawker Story, as Plaintiff has withdrawn all claims relating to the Gawker Story – are denied.

60. No response is required to allegations concerning Gawker Media Group, Inc., Gawker Entertainment, LLC, Gawker Technology, LLC, Gawker Sales, LLC, Blogwire Hungary Szellemi Alkotást Hasznosító, KFT or Kate Bennert because they have been dismissed from the case, and on that basis such allegations are denied. All remaining allegations in Paragraph 60 – including to the extent such allegations state legal conclusions as to which no response is required, and including without limitation all allegations concerning the Gawker Story, as Plaintiff has withdrawn all claims relating to the Gawker Story – are denied.

61. No response is required to allegations concerning Gawker Media Group, Inc., Gawker Entertainment, LLC, Gawker Technology, LLC, Gawker Sales, LLC, Blogwire Hungary Szellemi Alkotást Hasznosító, KFT or Kate Bennert because they have been dismissed from the case, and on that basis such allegations are denied. All remaining allegations in Paragraph 61 – including to the extent such allegations state legal conclusions as to which no response is

required, and including without limitation all allegations concerning the Gawker Story, as Plaintiff has withdrawn all claims relating to the Gawker Story – are denied.

62. No response is required to allegations concerning Gawker Media Group, Inc., Gawker Entertainment, LLC, Gawker Technology, LLC, Gawker Sales, LLC, Blogwire Hungary Szellemi Alkotást Hasznosító, KFT or Kate Bennert because they have been dismissed from the case, and on that basis such allegations are denied. All remaining allegations in Paragraph 62, including to the extent such allegations state legal conclusions as to which no response is required, are denied.

63. No response is required to allegations concerning Gawker Media Group, Inc., Gawker Entertainment, LLC, Gawker Technology, LLC, Gawker Sales, LLC, Blogwire Hungary Szellemi Alkotást Hasznosító, KFT or Kate Bennert because they have been dismissed from the case, and on that basis such allegations are denied. No response is required to Plaintiff's claim that he is entitled to a temporary restraining order and/or preliminary injunction enjoining the distribution, dissemination and/or use of the Gawker Story and/or the Excerpts, as that issue has already been adjudicated against him. *See Gawker Media, LLC v. Bollea*, 129 So. 3d 1196 (Fla. 2d DCA 2014). All remaining allegations in Paragraph 63 – including to the extent such allegations state legal conclusions as to which no response is required, and including without limitation all allegations concerning the Gawker Story, as Plaintiff has withdrawn all claims relating to the Gawker Story – are denied.

64. No response is required to allegations concerning Gawker Media Group, Inc., Gawker Entertainment, LLC, Gawker Technology, LLC, Gawker Sales, LLC, Blogwire Hungary Szellemi Alkotást Hasznosító, KFT or Kate Bennert because they have been dismissed from the case, and on that basis such allegations are denied. All remaining allegations in Paragraph 64,

including to the extent such allegations state legal conclusions as to which no response is required, are denied.

65. No response is required to allegations concerning Gawker Media Group, Inc., Gawker Entertainment, LLC, Gawker Technology, LLC, Gawker Sales, LLC, Blogwire Hungary Szellemi Alkotást Hasznosító, KFT or Kate Bennert because they have been dismissed from the case, and on this basis such allegations are denied. All remaining allegations in Paragraph 65, including to the extent such allegations state legal conclusions as to which no response is required, are denied.

#### **FOURTH CAUSE OF ACTION**

##### **(Invasion of Privacy by Intrusion Upon Seclusion Against the Gawker Defendants)**

66. Daulerio repeats and incorporates by reference his response to the preceding paragraphs as if fully set forth herein.

67. No response is required to allegations concerning Gawker Media Group, Inc., Gawker Entertainment, LLC, Gawker Technology, LLC, Gawker Sales, LLC, Blogwire Hungary Szellemi Alkotást Hasznosító, KFT or Kate Bennert because they have been dismissed from the case, and on that basis such allegations are denied. All remaining allegations in Paragraph 67 – including to the extent such allegations state legal conclusions as to which no response is required, and including without limitation all allegations concerning the Gawker Story, as Plaintiff has withdrawn all claims relating to the Gawker Story – are denied.

68. Daulerio is without sufficient knowledge information to respond to the allegation that Plaintiff “had no knowledge of, and did not consent to, the recording or dissemination of” his sexual activity, and on that basis denies that allegation. No response is required to allegations concerning Gawker Media Group, Inc., Gawker Entertainment, LLC, Gawker Technology, LLC,

Gawker Sales, LLC, Blogwire Hungary Szellemi Alkotást Hasznosító, KFT or Kate Bennert because they have been dismissed from the case, and on that basis such allegations are denied. All remaining allegations in Paragraph 68, including to the extent such allegations state legal conclusions as to which no response is required, are denied.

69. No response is required to allegations concerning Gawker Media Group, Inc., Gawker Entertainment, LLC, Gawker Technology, LLC, Gawker Sales, LLC, Blogwire Hungary Szellemi Alkotást Hasznosító, KFT or Kate Bennert because they have been dismissed from the case, and on that basis such allegations are denied. All remaining allegations in Paragraph 69, including to the extent such allegations state legal conclusions as to which no response is required, are denied.

70. No response is required to allegations concerning Gawker Media Group, Inc., Gawker Entertainment, LLC, Gawker Technology, LLC, Gawker Sales, LLC, Blogwire Hungary Szellemi Alkotást Hasznosító, KFT or Kate Bennert because they have been dismissed from the case, and on that basis such allegations are denied. All remaining allegations in Paragraph 70, including to the extent such allegations state legal conclusions as to which no response is required, are denied.

71. No response is required to allegations concerning Gawker Media Group, Inc., Gawker Entertainment, LLC, Gawker Technology, LLC, Gawker Sales, LLC, Blogwire Hungary Szellemi Alkotást Hasznosító, KFT or Kate Bennert because they have been dismissed from the case, and on that basis such allegations are denied. All remaining allegations in Paragraph 71 – including to the extent such allegations state legal conclusions as to which no response is required, and including without limitation all allegations concerning the Gawker Story, as Plaintiff has withdrawn all claims relating to the Gawker Story – are denied.

72. No response is required to allegations concerning Gawker Media Group, Inc., Gawker Entertainment, LLC, Gawker Technology, LLC, Gawker Sales, LLC, Blogwire Hungary Szellemi Alkotást Hasznosító, KFT or Kate Bennert because they have been dismissed from the case, and on that basis such allegations are denied. All remaining allegations in Paragraph 72, including to the extent such allegations state legal conclusions as to which no response is required, are denied.

73. No response is required to allegations concerning Gawker Media Group, Inc., Gawker Entertainment, LLC, Gawker Technology, LLC, Gawker Sales, LLC, Blogwire Hungary Szellemi Alkotást Hasznosító, KFT or Kate Bennert because they have been dismissed from the case, and on that basis such allegations are denied. No response is required to Plaintiff's claim that he is entitled to a temporary restraining order and/or preliminary injunction enjoining the distribution, dissemination and/or use of the Gawker Story and/or the Excerpts, as that issue has already been adjudicated against him. *See Gawker Media, LLC v. Bollea*, 129 So. 3d 1196 (Fla. 2d DCA 2014). All remaining allegations in Paragraph 73 – including to the extent such allegations state legal conclusions as to which no response is required, and including without limitation all allegations concerning the Gawker Story, as Plaintiff has withdrawn all claims relating to the Gawker Story – are denied.

74. No response is required to allegations concerning Gawker Media Group, Inc., Gawker Entertainment, LLC, Gawker Technology, LLC, Gawker Sales, LLC, Blogwire Hungary Szellemi Alkotást Hasznosító, KFT or Kate Bennert because they have been dismissed from the case, and on that basis such allegations are denied. All remaining allegations in Paragraph 74, including to the extent such allegations state legal conclusions as to which no response is required, are denied.

75. No response is required to allegations concerning Gawker Media Group, Inc., Gawker Entertainment, LLC, Gawker Technology, LLC, Gawker Sales, LLC, Blogwire Hungary Szellemi Alkotást Hasznosító, KFT or Kate Bennert because they have been dismissed from the case, and on that basis such allegations are denied. All remaining allegations in Paragraph 75, including to the extent such allegations state legal conclusions as to which no response is required, are denied.

#### **FIFTH CAUSE OF ACTION**

##### **(Violation of Florida Common Law Right of Publicity Against Gawker Defendants)**

76. Daulerio repeats and incorporates by reference his response to the preceding paragraphs as if fully set forth herein.

77. Daulerio admits, upon information and belief, the allegations of the first sentence of Paragraph 77. Daulerio denies the allegations of the second sentence of Paragraph 77. Daulerio is without sufficient knowledge information to respond to the remaining allegations in this paragraph, and on that basis denies those allegations.

78. No response is required to allegations concerning Gawker Media Group, Inc., Gawker Entertainment, LLC, Gawker Technology, LLC, Gawker Sales, LLC, Blogwire Hungary Szellemi Alkotást Hasznosító, KFT or Kate Bennert because they have been dismissed from the case, and on that basis such allegations are denied. All remaining allegations in Paragraph 71 – including to the extent such allegations state legal conclusions as to which no response is required, and including without limitation all allegations concerning the Gawker Story, as Plaintiff has withdrawn all claims relating to the Gawker Story – are denied.

79. No response is required to allegations concerning Gawker Media Group, Inc., Gawker Entertainment, LLC, Gawker Technology, LLC, Gawker Sales, LLC, Blogwire Hungary

Szellemi Alkotást Hasznosító, KFT or Kate Bennert because they have been dismissed from the case, and on that basis such allegations are denied. All remaining allegations in Paragraph 79, including to the extent such allegations state legal conclusions as to which no response is required, are denied.

80. Admitted, on information and belief, that Plaintiff requested that Gawker and Denton remove the Gawker Story and the Excerpts from the Gawker Site and admitted that the Gawker Story remains available on the Gawker Site. No response is required to allegations concerning Gawker Media Group, Inc., Gawker Entertainment, LLC, Gawker Technology, LLC, Gawker Sales, LLC, Blogwire Hungary Szellemi Alkotást Hasznosító, KFT or Kate Bennert because they have been dismissed from the case, and on that basis such allegations are denied. No response is required to Plaintiff's claim that he is entitled to a temporary restraining order and/or preliminary injunction enjoining the publication, distribution, dissemination and/or use of the Gawker Story and/or the Excerpts, as that issue has already been adjudicated against him. *See Gawker Media, LLC v. Bollea*, 129 So. 3d 1196 (Fla. 2d DCA 2014). All remaining allegations in Paragraph 80 – including to the extent such allegations state legal conclusions as to which no response is required, and including without limitation all allegations concerning the Gawker Story, as Plaintiff has withdrawn all claims relating to the Gawker Story – are denied.

81. No response is required to allegations concerning Gawker Media Group, Inc., Gawker Entertainment, LLC, Gawker Technology, LLC, Gawker Sales, LLC, Blogwire Hungary Szellemi Alkotást Hasznosító, KFT or Kate Bennert because they have been dismissed from the case, and on that basis such allegations are denied. All remaining allegations in Paragraph 81, including to the extent such allegations state legal conclusions as to which no response is required, are denied.



82. This paragraph states legal conclusions to which no response is required. To the extent that response to this paragraph is required, Daulerio denies all the allegations therein.

83. No response is required to allegations concerning Gawker Media Group, Inc., Gawker Entertainment, LLC, Gawker Technology, LLC, Gawker Sales, LLC, Blogwire Hungary Szellemi Alkotást Hasznosító, KFT or Kate Bennert because they have been dismissed from the case, and on that basis such allegations are denied. All remaining allegations in Paragraph 83, including to the extent such allegations state legal conclusions as to which no response is required, are denied.

84. No response is required to allegations concerning Gawker Media Group, Inc., Gawker Entertainment, LLC, Gawker Technology, LLC, Gawker Sales, LLC, Blogwire Hungary Szellemi Alkotást Hasznosító, KFT or Kate Bennert because they have been dismissed from the case, and on that basis such allegations are denied. All remaining allegations in Paragraph 84, including to the extent such allegations state legal conclusions as to which no response is required, are denied.

### **SIXTH CAUSE OF ACTION**

#### **(Intentional Infliction of Emotional Distress Against All Defendants)**

85. Daulerio repeats and incorporates by reference his response to the preceding paragraphs as if fully set forth herein.

86. Admitted, on information and belief, that that Plaintiff requested that Gawker and Denton remove the Excerpts from the Gawker Site. Daulerio is without sufficient knowledge or information to respond to the allegations set forth in the first sentence of Paragraph 86, and on that basis denies them. No response is required to allegations concerning Gawker Media Group, Inc., Gawker Entertainment, LLC, Gawker Technology, LLC, Gawker Sales, LLC, Blogwire

Hungary Szellemi Alkotást Hasznosító, KFT, or Kate Bennert because they have been dismissed from the case, and on this basis such allegations are denied. All remaining allegations in Paragraph 86 – including to the extent such allegations state legal conclusions as to which no response is required, and including without limitation all allegations concerning the Gawker Story, as Plaintiff has withdrawn all claims relating to the Gawker Story – are denied.

87. No response is required to allegations concerning Gawker Media Group, Inc., Gawker Entertainment, LLC, Gawker Technology, LLC, Gawker Sales, LLC, Blogwire Hungary Szellemi Alkotást Hasznosító, KFT or Kate Bennert because they have been dismissed from the case, and on that basis such allegations are denied. All remaining allegations in Paragraph 87, including to the extent such allegations state legal conclusions as to which no response is required, are denied.

88. No response is required to allegations concerning Gawker Media Group, Inc., Gawker Entertainment, LLC, Gawker Technology, LLC, Gawker Sales, LLC, Blogwire Hungary Szellemi Alkotást Hasznosító, KFT or Kate Bennert because they have been dismissed from the case, and on that basis such allegations are denied. All remaining allegations in Paragraph 88, including to the extent such allegations state legal conclusions as to which no response is required, are denied.

89. No response is required to allegations concerning Gawker Media Group, Inc., Gawker Entertainment, LLC, Gawker Technology, LLC, Gawker Sales, LLC, Blogwire Hungary Szellemi Alkotást Hasznosító, KFT or Kate Bennert because they have been dismissed from the case, and on that basis such allegations are denied. All remaining allegations in Paragraph 89, including to the extent such allegations state legal conclusions as to which no response is required, are denied.

90. No response is required to allegations concerning Gawker Media Group, Inc., Gawker Entertainment, LLC, Gawker Technology, LLC, Gawker Sales, LLC, Blogwire Hungary Szellemi Alkotást Hasznosító, KFT or Kate Bennert because they have been dismissed from the case, and on that basis such allegations are denied. All remaining allegations in Paragraph 90, including to the extent such allegations state legal conclusions as to which no response is required, are denied.

91. No response is required to allegations concerning Gawker Media Group, Inc., Gawker Entertainment, LLC, Gawker Technology, LLC, Gawker Sales, LLC, Blogwire Hungary Szellemi Alkotást Hasznosító, KFT or Kate Bennert because they have been dismissed from the case, and on that basis such allegations are denied. No response is required to Plaintiff's claim that he is entitled to a temporary restraining order and/or preliminary injunction enjoining the distribution, dissemination and/or use of the Gawker Story and/or the Excerpts, and mandating the delivery of copies of, and transfer of rights to, the Video, Gawker Story and the Excerpts, as that issue has already been adjudicated against him. *See Gawker Media, LLC v. Bollea*, 129 So. 3d 1196 (Fla. 2d DCA 2014). All remaining allegations in Paragraph 91 – including to the extent such allegations state legal conclusions as to which no response is required, and including without limitation all allegations concerning the Gawker Story, as Plaintiff has withdrawn all claims relating to the Gawker Story – are denied.

92. No response is required to allegations concerning Gawker Media Group, Inc., Gawker Entertainment, LLC, Gawker Technology, LLC, Gawker Sales, LLC, Blogwire Hungary Szellemi Alkotást Hasznosító, KFT or Kate Bennert because they have been dismissed from the case, and on that basis such allegations are denied. All remaining allegations in Paragraph 92,

including to the extent such allegations state legal conclusions as to which no response is required, are denied.

93. No response is required to allegations concerning Gawker Media Group, Inc., Gawker Entertainment, LLC, Gawker Technology, LLC, Gawker Sales, LLC, Blogwire Hungary Szellemi Alkotást Hasznosító, KFT or Kate Bennert because they have been dismissed from the case, and on that basis such allegations are denied. All remaining allegations in Paragraph 93, including to the extent such allegations state legal conclusions as to which no response is required, are denied.

### **SEVENTH CAUSE OF ACTION**

#### **(Negligent Infliction of Emotional Distress Against All Defendants)**

94. Daulerio repeats and incorporates by reference his response to the preceding paragraphs as if fully set forth herein.

95. No response to Paragraph 95 is required because the Negligent Infliction of Emotional Distress claim has been dismissed from the case.

96. No response to Paragraph 96 is required because the Negligent Infliction of Emotional Distress claim has been dismissed from the case.

97. No response to Paragraph 97 is required because the Negligent Infliction of Emotional Distress claim has been dismissed from the case.

98. No response to Paragraph 95 is required because the Negligent Infliction of Emotional Distress claim has been dismissed from the case.

99. No response to Paragraph 95 is required because the Negligent Infliction of Emotional Distress claim has been dismissed from the case.

## EIGHTH CAUSE OF ACTION

### **(Violation of section 934.10, Florida Statutes Against All Defendants)**

100. Daulerio repeats and incorporates by reference his response to the preceding paragraphs as if fully set forth herein.

101. Daulerio is without sufficient information to respond to the allegation that Plaintiff “did not know about, nor consent to, the taping of the activity depicted” in the Video or “its publication or dissemination,” and on that basis denies those allegations. All remaining allegations in Paragraph 101, including to the extent such allegations state legal conclusions as to which no response is required, are denied.

102. No response is required to allegations concerning Gawker Media Group, Inc., Gawker Entertainment, LLC, Gawker Technology, LLC, Gawker Sales, LLC, Blogwire Hungary Szellemi Alkotást Hasznosító, KFT or Kate Bennert because they have been dismissed from the case, and on that basis such allegations are denied. All remaining allegations in Paragraph 102, including to the extent such allegations state legal conclusions as to which no response is required, are denied.

103. Admitted that Defendant Gawker Media, LLC published the Excerpts, the contents of which speak for themselves. Daulerio is without sufficient information to respond to the allegation that Defendant Heather Clem “disclosed or caused to be disclosed to third parties the contents of” the Video, and on that basis denies that allegation. No response is required to allegations concerning Gawker Media Group, Inc., Gawker Entertainment, LLC, Gawker Technology, LLC, Gawker Sales, LLC, Blogwire Hungary Szellemi Alkotást Hasznosító, KFT or Kate Bennert because they have been dismissed from the case, and on that basis such

allegations are denied. All remaining allegations in Paragraph 103, including to the extent such allegations state legal conclusions as to which no response is required, are denied.

104. No response is required to allegations concerning Gawker Media Group, Inc., Gawker Entertainment, LLC, Gawker Technology, LLC, Gawker Sales, LLC, Blogwire Hungary Szellemi Alkotást Hasznosító, KFT or Kate Bennert because they have been dismissed from the case, and on that basis such allegations are denied. All remaining allegations in Paragraph 104, including to the extent such allegations state legal conclusions as to which no response is required, are denied.

105. No response is required to allegations concerning Gawker Media Group, Inc., Gawker Entertainment, LLC, Gawker Technology, LLC, Gawker Sales, LLC, Blogwire Hungary Szellemi Alkotást Hasznosító, KFT or Kate Bennert because they have been dismissed from the case, and on that basis such allegations are denied. All remaining allegations in Paragraph 105, including to the extent such allegations state legal conclusions as to which no response is required, are denied.

106. No response is required to allegations concerning Gawker Media Group, Inc., Gawker Entertainment, LLC, Gawker Technology, LLC, Gawker Sales, LLC, Blogwire Hungary Szellemi Alkotást Hasznosító, KFT or Kate Bennert because they have been dismissed from the case, and on that basis such allegations are denied. No response is required to Plaintiff's claim that he is entitled to a temporary restraining order and/or preliminary injunction enjoining the distribution, dissemination and/or use of the Gawker Story and/or the Excerpts, and mandating the delivery of copies of, and transfer of rights to, the Video, Gawker Story and the Excerpts, as that issue has already been adjudicated against him. *See Gawker Media, LLC v. Bollea*, 129 So.

3d 1196 (Fla. 2d DCA 2014). All remaining allegations in Paragraph 106, including to the extent such allegations state legal conclusions as to which no response is required, are denied.

107. No response is required to allegations concerning Gawker Media Group, Inc., Gawker Entertainment, LLC, Gawker Technology, LLC, Gawker Sales, LLC, Blogwire Hungary Szellemi Alkotást Hasznosító, KFT or Kate Bennert because they have been dismissed from the case, and on that basis such allegations are denied. All remaining allegations in Paragraph 107, including to the extent such allegations state legal conclusions as to which no response is required, are denied.

108. No response is required to allegations concerning Gawker Media Group, Inc., Gawker Entertainment, LLC, Gawker Technology, LLC, Gawker Sales, LLC, Blogwire Hungary Szellemi Alkotást Hasznosító, KFT or Kate Bennert because they have been dismissed from the case, and on this basis such allegations are denied. All remaining allegations in Paragraph 108, including to the extent such allegations state legal conclusions as to which no response is required, are denied.

#### **PRAYER FOR RELIEF**

Daulerio denies that Plaintiff is entitled to any of the relief requested in his “prayer for relief,” or in the paragraph beginning with the word “WHEREFORE,” including without limitation any of the relief enumerated in subparagraphs 1 through 9. In particular, no response is required to Plaintiff’s claim that he is entitled to a preliminary injunction enjoining, *inter alia*, the distribution, dissemination, publication, display, posting, broadcasting, and/or use of the Gawker Story and/or the Excerpts, as that issue has already been adjudicated against him. *See Gawker Media, LLC v. Bollea*, 129 So. 3d 1196 (Fla. 2d DCA 2014).

## DEFENSES

Daulerio asserts the following defenses without admitting that he bears the burden of persuasion or presentation of evidence on each or any of these matters.

1. Plaintiff's AFAC fails to state a claim upon which relief may be granted.
2. The publication of the Excerpts, including without limitation in connection with the Gawker Story, is protected by the First Amendment of the United States Constitution and Art. I, Sec. 4 of the Florida Constitution.
3. Plaintiff's claim for injunctive relief fails to allege, and Plaintiff is unable to establish, the essential elements of a legal right to the requested relief and/or that an injunction would serve the public interest.
4. Daulerio and the other Gawker Defendants are entitled to monetary relief, whether as a setoff or otherwise, for costs, fees, and damages, including attorneys' fees, incurred as a result of the preliminary injunction previously entered in this case and reversed by the District Court of Appeal.
5. The publication of the Excerpts, including without limitation in connection with the Gawker Story, related to a matter of public concern.
6. The publication of the Excerpts, including without limitation in connection with the Gawker Story, was not "highly offensive."
7. The content of the Excerpts did not include facts that were private or maintained as private by Plaintiff.
8. Plaintiff did not have a reasonable expectation of privacy.
9. Daulerio did not record or participate in recording the Video, and thus cannot be liable for intrusion upon seclusion.



10. Daulerio did not record or participate in recording the Video, and thus cannot be liable for violation of Section 934.10 of the Florida Statutes.

11. The use of Plaintiff's name and image in the Excerpts was not "commercial," and thus Daulerio cannot be liable for violation of the right of publicity.

12. The use of Plaintiff's name and image in the Excerpts was not for the purpose of promoting a product or service, and thus Daulerio cannot be liable for violation of the right of publicity.

13. Daulerio did not act with actual malice in connection with the publication of the Excerpts. Consequently, and because Plaintiff is a public figure, Plaintiff cannot recover against Daulerio.

14. Daulerio's conduct was not outrageous and thus Plaintiff cannot recover against Daulerio for intentional infliction of emotional distress.

15. Daulerio did not intentionally cause Plaintiff emotional distress and/or mental anguish.

16. Plaintiff did not suffer any actual injury.

17. Any emotional distress and/or mental anguish suffered by Plaintiff was not severe.

18. Daulerio did not cause any injury or damages to Plaintiff, and Plaintiff cannot recover against Daulerio for injuries caused by Defendant Heather Clem or by any other party, including himself.

19. Plaintiff's claim for damages is barred, reduced, or limited by his failure to mitigate his damages.

20. Plaintiffs' claims are barred by the doctrine of unclean hands.

21. Plaintiff's claims are barred by the doctrine of implied consent.

22. By reason of the First and Fourteenth Amendments to the United States Constitution and/or other applicable law, Daulerio may not be held liable for punitive damages under the circumstances alleged in the AFAC.

23. Because an award of punitive damages would violate Daulerio's right to procedural and substantive due process under the Fourteenth Amendments to the United States Constitution in that, among other things, the alleged conduct at issue is not sufficiently reprehensible to warranted punitive damages and in that any punitive damages award would be grossly out of proportion to such conduct, Daulerio may not be held liable for punitive damages.

24. Because the imposition of punitive damages would deny Daulerio equal protection of the laws, in violation of the Fourteenth Amendments to the United States Constitution, Daulerio may not be held liable for punitive damages.

25. Because the imposition of punitive damages would deny Daulerio his right to the protection from "excessive fines" under the Eighth Amendment to the United States Constitution, Daulerio may not be held liable for punitive damages.

26. Daulerio did not act with "actual knowledge" that his conduct was unlawful or a "conscious" disregard or indifference to the Plaintiff's life, safety or rights, and he therefore cannot be held liable for punitive damages under Fla. Stat. § 768.72(2).

WHEREFORE, Daulerio prays for judgment as follows:

1. That Plaintiff takes nothing on his AFAC and that the same be dismissed with prejudice;

2. For Daulerio's costs of suit;

3. For such other and further relief as this Court deems just and proper under the circumstances.

Dated: June 29, 2015

Respectfully submitted,

THOMAS & LOCICERO PL

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*Counsel for A.J. Daulerio*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 29<sup>th</sup> day of June, I caused a true and correct copy of the foregoing to be served via the Florida Courts' E-Filing Portal upon the following counsel of record:

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