

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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**MEMORIALIZATION OF PROFFER REGARDING  
TESTIMONY OF BUBBA THE LOVE SPONGE CLEM**

In response to the Court's oral ruling on May 14, 2016, Plaintiff Terry Gene Bollea, Defendants Gawker Media, LLC, Nick Denton and A.J. Daulerio and non-party witness Bubba the Love Sponge Clem, hereby memorialize the following, including the proffer recited below, and state as follows:

1. Defendants Gawker Media, LLC, Nick Denton and A.J. Daulerio issued a trial subpoena to Bubba the Love Sponge Clem.
2. Bubba the Love Sponge Clem moved to quash the subpoena.
3. In an oral ruling on March 14, 2016, the Court granted the motion, but authorized Defendants to create a record of the topics on which they had hoped to examine Mr. Clem, and directed Mr. Clem to appear on March 16, 2016 to do so.
4. Subsequently, counsel for Defendants provided counsel for Mr. Clem, and counsel for Plaintiff, with the following list of topics on which they would, if they had been permitted, question Mr. Clem at trial.

5. Mr. Clem's counsel advised that Mr. Clem intended to invoke his Fifth Amendment right against self-incrimination in connection with all such topics and agreed to appear on Mr. Clem's behalf to confirm that invocation to the Court on March 16, 2016.

6. The topics, including illustrative questions, on which Defendants would, if permitted, examine Mr. Clem are as follows:

- a. Mr. Clem's relationship with Plaintiff, including whether they have shared secrets that they will literally take to their graves and whether they would do anything for each other or each other's family;
- b. Plaintiff's relationship with and knowledge of Heather Cole (f/k/a Heather Clem), including whether Mr. Clem told Plaintiff that Ms. Cole's encounters with other men were filmed, whether Plaintiff approached Mr. Clem because he wanted to have sex with Ms. Cole, and whether Ms. Cole approached Plaintiff about having sex with her.
- c. Cameras in the Clems' house that filmed Plaintiff and Ms. Cole, including whether Plaintiff knew he was being recorded during his sexual encounter with Ms. Cole, whether Ms. Cole knew that she was being recorded during that encounter, whether Mr. Clem held onto the tape for years, whether others knew about Mr. Clem's practice of recording, and whether others knew about the tape of Plaintiff and Ms. Cole having sex;
- d. Mr. Clem's interactions with Plaintiff and plaintiff's counsel David Houston, including whether they ever threatened to prosecute Mr. Clem for a crime and whether he is concerned that they will seek to prosecute him for a crime or cooperate in any such prosecution;

- e. Mr. Clem's interactions, or lack thereof, with Gawker, including to confirm that after Gawker published the video excerpts at issue in this case, he did not contact or complain to Gawker;
- f. Mr. Clem's meeting with the FBI, including to confirm that he told the FBI that he, Ms. Cole and Plaintiff all knew Plaintiff's sexual encounter with Ms. Cole was being recorded;
- g. The sex lives of public figures generally and the sex life of Plaintiff in particular, including whether Plaintiff's sex life has become a matter of public concern, whether Plaintiff was appearing as Terry Bollea or Hulk Hogan or some combination when he appeared on Mr. Clem's radio program, to confirm that Mr. Clem only asks some guests questions about their sex lives (depending on the person and the circumstances), to confirm that Mr. Clem and Plaintiff discussed Plaintiff's sex life on Mr. Clem's radio program, and to confirm that shortly before Mr. Clem and Ms. Cole were married he broadcast a parody on his radio show about a fake sexual encounter involving the two of them and plaintiff, and whether he thought that topic would be appropriate to joke about on his radio program;
- h. Mr. Clem's connection to Vivid Entertainment through "Bubba Raw," including to confirm that Bubba Raw shows women engaging in sex acts, and that Bubba Raw DVDs are sold by Vivid;
- i. Plaintiff's motives to "work" a sex tape, including that by 2012 Plaintiff's earning capacity had diminished, that Plaintiff was worried about running out of money, that Plaintiff needed to reinvent himself following his divorce, that Mr. Clem

thought Plaintiff was “damaged goods,” that Mr. Clem advised Plaintiff not to talk about the sex tape, that Plaintiff was trying to make this a public spectacle, that Mr. Clem thought Plaintiff’s lawyer David Houston was trying to stay in the media, that Plaintiff and Mr. Clem had discussed making a sex tape to get Plaintiff money, and that Mr. Clem does not know whether Plaintiff had anything to do with providing the sex tape to TMZ, The Dirty or Gawker,

- j. Plaintiff’s practice of handling scandals, including that Plaintiff has a reputation for using the Hulk Hogan character and persona to dodge public scandals dishonestly, and that Mr. Clem publicly described him as “the ultimate lying, working showman.”

7. Counsel for Mr. Clem has advised that his client will invoke his Fifth Amendment right against self-incrimination in connection with each of the foregoing topics and questions concerning those topics. Based on that representation, Defendants will agree that counsel for Mr. Clem may appear in Court in person on March 16, 2016 and may do so on behalf of Mr. Clem.

8. Defendants’ agreement is not intended to be, and shall not be deemed to be, a waiver of their position that Mr. Clem be required to appear in court to provide substantive answers with respect to each of these topics or in the alternative that he be required to assert his Fifth Amendment rights in front of the jury and/or that the jury be informed of the circumstances of Mr. Clem’s failure to appear before it to give testimony.

9. Plaintiff preserves all objections to questions relating to each of the foregoing proffered topics were they to be asked at trial and preserves all objections to any documents that Defendants would seek to admit in connection therewith or that are identified herein. Were

Defendants permitted to question Mr. Clem, Plaintiff expressly preserves his right to question Mr. Clem as well, including without limitation concerning his statements to the Tampa Police Department, including without limitation to confirm that Plaintiff did not know that Plaintiff's sexual encounter(s) with Ms. Cole was(were) being recorded. Plaintiff also expressly reserves his right to question Mr. Clem and to elicit testimony as reflected in his deposition taken on March 3-4, 2014. Defendants expressly preserve all objections to such questions by Plaintiff and preserve all objections to documents Plaintiff would seek to admit in connection therewith.

10. Based on the Court's ruling, neither Plaintiff nor Defendants will seek to introduce Mr. Clem's prior statements concerning the above, including without limitation his deposition testimony, his statement to the FBI and/or his statement to the Tampa Police Department.

11. Plaintiff agrees that Defendants would call a witness from the FBI who would be able to authenticate records produced by the FBI pursuant to Gawker's Freedom of Information Act request (or would stipulate to the authenticity of such records), but will not require Defendants to do so because the Court has ruled such documents inadmissible.

Dated: March 16, 2016

Respectfully submitted,

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