

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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**DEFENDANTS' POSITION STATEMENT NO. 7:  
ADMISSIBILITY OF SEX TAPE OFFER LETTERS**

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, purported offer letters Plaintiff Terry Bollea received for the commercial distribution rights to his complete sex tape. This Court heard argument on that motion on July 1, 2015, ultimately reserving on the motion. Ex. A (July 1, 2015 Hrg. Tr.) at 296:7 – 299:4. 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 purported offer letters.

The exhibits that fall into that category, which were provided to the Court previously, are inadmissible for at least the following reasons:

1. **Hearsay:** To the extent that Bollea intends to offer these letters to establish that his sex tape was the subject of bona fide commercial interest among pornography distributors, the letters are hearsay. Bollea could have, for instance, tried to depose Steven Hirsch, the author of the letter from Vivid Entertainment, LLC (Pl.’s Ex. 15), and laid a foundation for its admission. He chose not to. That choice on his part is particularly telling because there are

reasons to be highly skeptical about whether that letter was a bona fide offer as opposed to a publicity stunt. The letter was simultaneously published on *TMZ*, and is filled with the kind of hyperbolic language – e.g., “we feel this would be one of the best selling celebrity sex tapes of all time” – that a company actually interested in negotiating an offer price – as opposed to getting its name in the press – would be disinclined to use. *See* Ex. B (*TMZ* report).

2. **Kevin Blatt:** Bollea has argued that the Sex.com letter (Pl.’s Ex. 16) does not face the same hearsay problem because it was ghostwritten by Kevin Blatt, Defendants’ withdrawn expert. This argument fails for two reasons. First, Blatt’s deposition testimony should not be admitted for the reasons outlined in Defendants’ motion *in limine* and supplemental brief on that topic. Second, Blatt himself testified, consistent with the fact that this letter was also published on *TMZ*, that it was a “pseudo offer letter.” Ex. C (K. Blatt Dep.) at 146:16. As he explained, the letter was used by Sex.com as a “loss leader,” a way “of getting sex.com’s name out in the press” and “piggybacking on” the press attention already generated by the “Hulk Hogan” sex-tape story. *Id.* at 146:9 – 147:7. Accordingly, even with Blatt’s testimony, the letter cannot be used to establish that the full tape was the subject of genuine commercial interest in the pornography market.

### CONCLUSION

Defendants respectfully request that this Court preclude Bollea from admitting into evidence, or seeking testimony about, these sex-tape offer letters.

Dated: February 12, 2016

Respectfully submitted,

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**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:

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