

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. 4**  
**ADMISSIBILITY OF PLAINTIFF'S PRIOR PUBLIC DISCUSSIONS OF SEX LIFE**

In June 2015, Plaintiff Terry Bollea filed three motions *in limine* that sought to exclude, *inter alia*, evidence of, and testimony about, Bollea's prior public discussions of his sex life. *See* Pl.'s Mot. *in Limine* No. 7 (filed June 12, 2015); Pl.'s Mot. *in Limine* No. 8 (filed June 12, 2015); Pl.'s Mot. *in Limine* No. 9 (filed June 12, 2015). This Court heard argument on those motions on July 1, 2015, reserving on each. Ex. A (July 1, 2015 Hrg. Tr.) at 150:4 – 181:8. 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, Bollea's prior public discussions of his sex life.

The exhibits that fall into that category, which consist primarily of national radio and television broadcasts in which Bollea discussed such matters as the size and shape of his penis and where he prefers to ejaculate, are admissible for at least the following reasons:

1. **Public Concern:** Evidence that Bollea voluntarily made his sex life a subject of public discussion goes directly to the public concern issue that is dispositive of each of his claims. In cases such as this one involving the publication, over a celebrity plaintiff's objections, of images of sex or nudity, courts consider, as part of the public-concern analysis, whether the

celebrity has made his or her sex life a topic of public discussion. *See, e.g., Gawker Media, LLC v. Bollea*, 129 So. 3d 1196, 1201-02 & n.5 (Fla. 2d DCA 2014) (placing sex tape controversy within the broader context of plaintiff’s long history of publicly discussing his personal life, including other alleged affairs); *Michaels v. Internet Entm’t Grp., Inc.*, 1998 WL 882848, at \*8-10 n.4 (C.D. Cal. Sept. 11, 1998) (prior media reports sexualizing plaintiff’s public image were relevant to whether sex tape excerpts addressed matter of public concern); *Lee v. Penthouse Int’l, Ltd.*, 1997 WL 33384309, at \*5 (C.D. Cal. Mar. 19, 1997) (concluding that “the sex life of Tommy Lee and Pamela Anderson is . . . a legitimate subject for an article,” and that the sexually explicit pictures of the couple accompanying the article were “newsworthy,” based on their extensive prior discussion of their sex lives).

2. **Privacy and Outrageousness:** Among the questions the jury is going to have to decide is (a) whether Defendants published facts about Bollea that he considered private, and (b) whether Defendants’ conduct in publishing those facts was extreme and outrageous. In answering those questions, it is only fair that the jury be reliably informed about what kinds of facts Bollea has seen fit to share with the public in the past.

3. **Emotional Distress:** Bollea contends that the publication of brief excerpts from the sex tape caused him “severe” emotional distress, for which he is entitled to millions of dollars in damages. *See, e.g., Clemente v. Horne*, 707 So. 2d 865, 866-67 (Fla. 3d DCA 1998) (intentional infliction of emotional distress claim requires “severe” emotional distress). In assessing that contention, the jury should be permitted to learn facts about Bollea’s baseline comfort level with the public exposure of graphic details of his sex life, as well as facts about the pervasiveness of his voluntary public exposure of those details.

4. **Evidence Is Not Unfairly Prejudicial:** Evidence of Bollea’s prior discussion of his sex life is not unfairly prejudicial because such evidence goes directly to core issues in this case. If,

for instance, the jury were to conclude that Bollea is considerably more comfortable discussing the details of his sexual life in public than is the ordinary person on the street, that would be a proper basis on which to decide some of the liability and damages issues in the case. *See, e.g., State v. Williams*, 992 So. 2d 330, 334 (Fla. 3d DCA 2008) (“Most evidence that is admitted will be prejudicial or damaging to the party against whom it is offered. The question under the statute is not prejudice but instead, unfair prejudice . . . .”(citations and internal quotation marks omitted)). To the extent that this Court is nonetheless concerned about prejudice, that can be dealt with through a limiting instruction to the jury.

### CONCLUSION

Defendants respectfully request that this Court rule that evidence of, and testimony about, Bollea’s prior public discussions of his sex life are admissible.

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@hmafirms.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