Attachment to Notice of Filing Plaintiff's Revised Proposed Permanent Injunction

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.

GAWKER MEDIA, LLC, NICK DENTON, and A.J. DAULERIO,

Defendants.
_____/

Case No. 12012447 CI-011

PERMANENT INJUNCTION

THIS CAUSE came before the Court on May 25, 2016 on the Motion for Entry of Final Judgment and Permanent Injunction filed by Plaintiff, Terry Gene Bollea ("Mr. Bollea"). Mr. Bollea's claim for permanent injunctive relief was tried before the Court concurrently with the jury trial held March 1 through 21, 2016. Upon consideration of all relevant filings, the law, the evidence presented at trial, and the jury's March 18, 2016 and March 21, 2016 verdicts, and being otherwise fully advised in the premises, the Court makes the following findings:

Background

1. After a three-week trial in this invasion of privacy case, the jury found in favor of Mr. Bollea and against Defendants, Gawker Media, LLC ("Gawker"), Nick Denton ("Mr. Denton") and A.J. Daulerio ("Mr. Daulerio") (collectively, "Gawker Defendants") on all five counts of Plaintiff's First Amended Complaint.[1] The jury returned a verdict awarding $115 million in compensatory damages, jointly and severally, against all Gawker Defendants, as well

[1] On June 18, 2015, Plaintiff filed his First Amended Complaint asserting a claim for punitive damages through interlineation, pursuant to the Court's May 29, 2015 ruling.

as punitive damages in the amount of $15 million against Gawker, $10 million against Mr. Denton and $100,000 against Mr. Daulerio.

2. Mr. Bollea promptly sued Gawker Defendants for monetary and injunctive relief after they posted on the Internet a one minute forty-one second (1:41) video of Mr. Bollea naked, engaged in consensual sexual activity and having private conversations in a private bedroom (the "Gawker Video").

3. During the trial, the undersigned closely observed the demeanor and credibility of all witnesses, and carefully weighed the evidence presented. Based on these observations, the undersigned determined that the testimony and evidence presented by Mr. Bollea and his witnesses, as a whole, was more credible, persuasive, competent and substantial than the testimony and other evidence presented by Gawker Defendants.

4. The jury found that Gawker Defendants' actions invaded Mr. Bollea's privacy, intentionally caused him severe emotional distress, and violated Florida's Security of Communications Act. The jury expressly found that Mr. Denton personally participated in the posting of the Gawker Video, and found by clear and convincing evidence that all of the Gawker Defendants acted with malice. The jury also found against Gawker Defendants on their First Amendment and Good Faith affirmative defenses. Based on its first-hand observation of the testimony and other evidence presented, this Court concurs in these and all of the jury's other findings.

5. The Court considered the factual record in full in reviewing the jury's determination that the Gawker Video was not a matter of legitimate public concern. *Harte-Hanks Communications, Inc. v. Connaughton*, 491 U.S. 657 (1989); *Connor v. State*, 803 So.2d 598 (Fla. 2001); *Booth v. Pasco County*, 757 F.3d 1198 (11th Cir. 2014). Based upon the

overwhelming weight and force of the evidence presented at trial, this Court agrees with the jury's finding that the Gawker Video was not a matter of legitimate public concern, and was therefore not protected under the First Amendment.

6. Now that the trial has concluded, Mr. Bollea seeks a permanent, prohibitory injunction against Gawker Defendants' public disclosure, publication, exhibition, posting or broadcasting of any nudity or sexual activity, whether video or audio, contained in the Gawker Video, the full length 30-minute video from which the Gawker Video was excerpted and edited (the "30-Minute Video"), and any other surreptitious video or audio recordings within Gawker Defendants' possession, custody or control, which depicts Mr. Bollea naked or engaged in sexual activity.

7. For the reasons set forth herein, Mr. Bollea is entitled to and the Court grants Mr. Bollea's request for this narrowly tailored permanent injunctive relief.

Standards Governing Permanent Injunctive Relief

8. Permanent injunctive relief may be properly granted only when the plaintiff establishes three elements: (1) the act or conduct to be enjoined violates a clear legal right; (2) there is no adequate remedy at law; and (3) injunctive relief is necessary to prevent and irreparable injury. *Legakis v. Loumpos*, 40 So. 3d 901, 903 (Fla. 2d DCA 2010); *Hollywood Towers Condo. Ass'n, Inc. v. Hampton*, 40 So. 3d 784, 786 (Fla. 4th DCA 2010). Public interest must also be weighed. *Shaw v. Tampa Elec. Co.*, 949 So.2d 1066, 1069 (Fla. 2d DCA 2007). The equities must also be balanced, including whether the potential harm to the defending party outweighs the benefit to the plaintiff. *Liza Danielle, Inc. v. Jamko, Inc.*, 480 So. 2d 735 (Fla. 3d DCA 1982).

9. The Court must consider the totality of circumstances and determine whether injunctive relief is necessary to achieve justice between the parties. *Davis v. Joyner*, 409 So.2d 1193, 1195 (Fla. 4th DCA 1982). The appropriateness of an injunction against a tort depends upon a comparative appraisal of all of the factors in the case, including the following primary factors: (a) the nature of the interest to be protected; (b) the relative adequacy to the plaintiff of injunction and of other remedies; (c) any unreasonable delay by the plaintiff in bringing suit; (d) any related misconduct on the part of a plaintiff; (e) the relative hardship likely to result to defendant if an injunction is granted and to plaintiff if it is denied; (f) the interests of third persons and of the public; and (g) the practicability of framing and enforcing the order or judgment. *Id.* (citing with approval Section 936 Restatement (Second) of Torts (1979)).

10. Before trial, this Court granted a temporary injunction in Mr. Bollea's favor regarding the materials at issue here. Florida's Second District Court of Appeal reversed and held that the pretrial temporary injunction was an "unconstitutional prior restraint under the First Amendment." But that decision, like an even earlier decision made by a federal district court, had no preclusive effect and did not present any insuperable obstacle to Mr. Bollea prevailing on the merits after a full trial. *Gawker Media,* 129 So. 3d 1196, 1204 (Fla. 2d DCA 2014); *P.M. Realty & Investments, Inc. v. City of Tampa*, 863 So. 2d 1269 (Fla. 2d DCA 2004); *Bellair v. City of Treasure Island*, 611 So. 2d 1285 (Fla. 2d DCA 1992). The decisions of Florida's Second District Court and the federal district court applied the strict prior restraint standard, which is inapplicable to a motion for injunction after a full trial on the merits. *Advanced Training Systems v. Caswell Equipment Co.*, 352 N.W.2d 1, 11 (Minn. 1984); *Balboa Island Village Inn v. Lemen*, 156 P.3d 339, 349 (Cal. 2007). Further, Florida's Second District Court and the federal district court were not presented with the extensive trial evidence, the

overwhelming weight and force of which showed, *inter alia*, that Gawker Defendants did not publish the Gawker Video because of its supposed connection to any legitimate matter of public concern regarding Mr. Bollea. Rather, Gawker Defendants published it for various non-journalistic reasons, such as to inflict harm upon Mr. Bollea, to generate traffic and revenue for their websites, to advertise and promote their websites and brand, and to make available sexually explicit footage that voyeuristic and deviant members of the public would enjoy viewing even though they were not supposed to see it.

11. Accordingly, the above preliminary, pretrial rulings are not preclusive and this Court retains the full authority to determine Mr. Bollea's claim for permanent injunctive relief on the merits.

Findings of Fact

A. Mr. Bollea and the Surreptitious Recordings

12. Mr. Bollea is a former professional wrestler who attained international celebrity as a wrestler, actor, television personality and product endorser over three decades playing the role of "Hulk Hogan." He married Linda, his first wife, in December 1983. They had marital problems that escalated in 2004. Linda filed for divorce in November 2007.

13. Before the events that led to this lawsuit, Bubba Clem, a radio "shock jock," was Mr. Bollea's best friend. Mr. Clem and his then-wife, Heather Clem, had an "open marriage."

14. In 2006, Mr. Clem had a security camera installed in the Clems' bedroom. It was installed by David Rice, an employee of Mr. Clem's radio show. The camera was concealed, and was not like the other security cameras at the Clem residence. The other security cameras continuously recorded the outside areas of the house. The bedroom camera was small, and looked like a motion detector or smoke alarm. It did not signal whether it was or was not

recording. Instead, it had a small red light that flashed continuously, even if the camera was not recording. The bedroom camera was installed high in a corner, above cabinets in the bedroom. It was positioned to record the Clems' bed, and fed directly into a dedicated DVD recorder. The bedroom camera recorded only if someone pressed the record button. Mr. Rice showed Mr. Clem how to operate the bedroom camera.

15. For some years before the summer of 2007, Mr. Clem repeatedly told Mr. Bollea that Heather Clem wanted to see Mr. Bollea naked and have sex with him. Mr. Bollea declined but Mr. Clem continued to press him. In the summer of 2007, Mr. Bollea gave in to these advances.

16. By the summer of 2007, while she had not yet formally filed for divorce, Linda Bollea had separated from Mr. Bollea. Mr. Bollea tried repeatedly to persuade her to come back to him, but despite those entreaties, she told Mr. Bollea she would not return. Dealing with the failure of his marriage, Mr. Bollea went to Mr. Clem's house, "one thing led to another," and Mr. Bollea engaged in consensual sexual relations with Ms. Clem. Unknown to Mr. Bollea, he was being recorded by the hidden camera in the Clems' bedroom. Mr. Bollea never noticed the hidden camera in the bedroom. He never consented to a recording.

17. Mr. Bollea's testimony in general, and specifically his testimony that he believed his sexual encounter with Ms. Clem and his conversations in the Clems' bedroom were in private, and that he did not know he was being recorded, was highly credible and persuasive. It was butressed and corroborated by the content of the Gawker Video and by credible testimony of Ms. Clem.

B. Gawker Defendants and Their Business Model

18. Gawker Defendants knew that posting nude and explicit images of people, even celebrities, without their consent was "wrong" and an "invasion of privacy." Even though they condemned other media outlets for posting such material, they consciously chose to violate privacy rights in this manner when they had "exclusive" material because their financial success depends upon the number of visitors they can attract. Mr. Denton testified that his business success and reputation are measured by audience growth. In Gawker's offices was a "big board" that displayed in real time the traffic generated by Gawker's stories. This same information could be accessed on any staff member's computer. Gawker also published page view statistics on each posting, next to the writer's by-line.

19. According to Gawker Defendants' expert, Peter Horan, Gawker's business is driven by spikes in website traffic. Gawker accordingly paid its writers bonuses based on traffic.

20. When Gawker generated traffic, it generated advertising revenue. In fact, when Gawker made sales pitches to advertisers, it needed high traffic numbers to get its foot in the door and pitched its ability to generate traffic. Traffic increases the value of the Gawker brand. Gawker can monetize its traffic to generate revenue in the future. Exclusive, sexually explicit materials generate valuable traffic.

21. Gawker Defendants consciously decided to post sexually explicit material that was their "exclusive" without concern for the privacy of the participants. Yet, they chastised others for doing the same thing. Their own content guidelines forbid users from violating people's privacy and posting pornography. Their websites condemned the dissemination of revenge porn (i.e., nude photos and videos distributed without the consent of the person depicted). They condemned tumblr.com for refusing to take down photos from secret recordings

made in a public rest room. They also chastised the online publication of nude photos of women and even celebrities after those private photos were stolen by hackers and posted on the Internet.

22. Mr. Denton's editorial philosophy controls Gawker. His editorial litmus test is whether something is "true and interesting." This test was the "guiding principal" of Gawker. He admittedly enjoys breaking the rules of mainstream journalism, and believes that the journalistic standards established by print newspapers are irrelevant to the Internet era. In fact, Mr. Denton stated that Gawker only "inadvertently does good" and "inadvertently commit[ting] journalism" because those goals are not the "institutional intention."

23. There is little, if anything, that Mr. Denton considers private. He believes invasion of privacy can have "incredibly positive effects on society." According to Mr. Denton, people don't care about privacy, and "every invasion of privacy is sort of liberating". And Mr. Denton believes in total information transparency. That is, he believes his social function is to disseminate information to inform and entertain Gawker readers, and that it is up to others to determine the bounds of social and journalistic norms. Mr. Denton did concede, however, that celebrities do have some privacy rights, and that gratuitously publishing explicit images of celebrities naked or having sex is not protected by the First Amendment.

24. A.J. Daulerio was the editor in chief of Gawker.com from January 2012 until February 2013. He worked at a different Gawker website before that time period. Like Mr. Denton, there is little, if anything, that Mr. Daulerio considers private. Consistent with Mr. Denton's editorial philosophy, Mr. Daulerio believes in publishing anything he believes to be "true and interesting."

25. Mr. Daulerio testified that "the reality is I work for Nick Denton, the founder of Deadspin's parent company, Gawker, who doesn't adhere to those [ethical] rules. If I worked

somewhere else, would I do that? Probably not. But people want me to adhere to the rules of their job instead of what I'm asked to do here." Mr. Denton asked for provocative, explicit images of celebrities because sex sells.

C. The Publication of the Gawker Video

26. In March 2012, reports surfaced that there could be a "Hulk Hogan sex tape." In an interview to TMZ, Mr. Bollea and his lawyer, David Houston, let it be known that Mr. Bollea never consented to being filmed in any such tape, never consented to its release, and would seek to prosecute anyone who distributed such a tape. TMZ wrote an article about the existence of the tape, but did not post the video.

27. Following this TMZ report, Gawker staff writers and members received an e-mail alert about a "Hulk Hogan sex tape." This alert contained Mr. Bollea's statement that the video was illegally recorded.

28. In April 2012, a website called "thedirty.com" also published grainy still photographs that were purportedly taken from a tape of Mr. Bollea having sex in a private bedroom. These stills did not show Mr. Bollea's penis nor any explicit sexual activity. Mr. Houston promptly contacted thedirty.com and obtained the website's assurances that it would not publish any video footage of Mr. Bollea naked and having sex. The site never did.

29. On September 27, 2012, Tony Burton, an agent for Tampa radio personality Mike Calta, contacted Mr. Daulerio. Mr. Burton told Mr. Daulerio that he had a client who had a "significant" DVD that he wanted to mail anonymously to Mr. Daulerio. Mr. Burton got Mr. Daulerio's address, provided it to Mr. Calta, and a package containing the DVD was mailed to Mr. Daulerio.

30. Mr. Calta followed up with Mr. Burton on October 3, 2012 to confirm that the DVD had been anonymously sent to and received by Mr. Daulerio. Sometime between September 27 and October 3, 2012, after Mr. Calta called Mr. Burton and told him that the DVD contained a "Hulk Hogan sex tape," Mr. Burton gave this information to Mr. Daulerio.

31. The 30-Minute Video arrived at Gawker addressed to Mr. Daulerio. Gawker Managing Editor Emma Carmichael opened the package and watched a minute or two of it.

32. Mr. Daulerio subsequently reviewed the recording and immediately decided he wanted to publish portions of it. He instructed Gawker's video editor to excerpt the 30-Minute Video in such a way that it would show Mr. Bollea's penis, explicit sexual intercourse and Mr. Bollea's conversations with Heather Clem.

33. After Gawker received the 30-Minute Video, several high-ranking Gawker employees and Mr. Daulerio graphically mocked Mr. Bollea and joked about Mr. Bollea's penis and the footage in their internal communications.

34. Mr. Daulerio first decided that he was going to post explicit excerpts of the 30-Minute Video. Then, Mr. Daulerio wrote a graphic narrative to accompany the footage, which he characterized as, and is in fact, almost entirely a "play by play" of the 30-Minute Video.

35. Mr. Daulerio's written narrative did not serve the legitimate purpose of disseminating news. The explicit images of Mr. Bollea naked and having sex on the Gawker Video imparted no information to the reading public.

36. Although Gawker Defendants contended that the Gawker Video was merely illustrative of Mr. Daulerio's narrative, the overwhelming weight and force of the testimony and other evidence, including the content and context of the publication as a whole, conclusively

established that was not the case. Mr. Daulerio's narrative was merely incidental to Gawker Defendants' publication of the Gawker Video and did not render the Gawker Video newsworthy.

37. Mr. Daulerio enjoyed watching the video and found it amusing. And Mr. Daulerio was excited about posting it because exclusive images of sexual content draw traffic.

38. Mr. Daulerio admitted that he knew when he watched the 30-Minute Video that it had been recorded on a hidden camera. It was evident that the camera was positioned at an angle, well above and far from the bed, and that Mr. Bollea and Ms. Clem did not look at the camera during the filming.

39. Mr. Daulerio posted the Gawker Video without investigating the motives of its supplier. In fact, he did not care about the supplier's motives. He did not contact any of the participants before posting it, even though he knew their identities. And Mr. Daulerio testified that he still would have posted the Gawker Video even if he had been absolutely certain that Mr. Bollea had been secretly recorded without his permission.

40. On October 4, 2012, Gawker.com published the Gawker Video, along with Mr. Daulerio's play-by-play narrative. Gawker's post showed Mr. Bollea in a state of full frontal nudity, receiving oral sex, and engaging in sexual intercourse. It also disclosed his oral communications with subtitles.

41. Gawker published the Gawker Video uncensored, even though it had technology to block and blur the footage. Mr. Daulerio admitted that he never even considered blocking or blurring. And Gawker could have run Mr. Daulerio's narrative without any video footage at all, but that option was never considered.

42. The Gawker Video was prominently placed at the top of the webpage on Gawker.com. The video box appeared above the headline written by Mr. Daulerio, which he conceded was an invitation to the public to watch the footage, not to read his narrative. This headline read, "Even for a Minute, Watching Hulk Hogan Have Sex in a Canopy Bed is Not Safe For Work but Watch it Anyway." The headline was accompanied by the metatag "NSFW" ("Not Safe for Work"). Mr. Denton acknowledged that this metatag was used because the Gawker Video was "pornographic."

43. In his narrative accompanying the video, Mr. Daulerio wrote that "Because the internet has made it easier for all of us to be shameless voyeurs and deviants, we love to watch famous people have sex, because it's something the public not supposed to see…" Besides conceding that the Gawker Video was something we're not supposed to see, the narrative acknowledged Mr. Bollea's statement that he was secretly filmed. It also confirmed that Mr. Bollea and Ms. Clem had an expectation of privacy. It notes that a man seen at the beginning of the recording "exits swiftly and allows Hulk and this woman their privacy."

44. Mr. Daulerio's narrative uses graphic language to describe Mr. Bollea's anatomy and the sexual activity depicted in the footage. For example, Mr. Daulerio wrote, "his erect penis which, even if it has been ravaged by steroids and middle-age, still appears to be the size of a thermos you'd find in a child's lunchbox." Sounds made by Mr. Bollea while climaxing and the content of other conversations and sexual activity in the 30-Minute Video are also described in detail.

45. On cross-examination, after being impeached several times with his deposition testimony, Mr. Daulerio admitted that the purpose of the post was not to try to disprove anything Mr. Bollea had previously said in public. Mr. Daulerio's narrative makes no mention of

Mr. Bollea ever writing or talking about his sex life in a public forum. In fact, Mr. Daulerio conceded that he knew of no such statements by Mr. Bollea when he posted the Gawker Video.

46. Mr. Daulerio admitted that neither Mr. Bollea's penis nor sexual positions were newsworthy. And Mr. Daulerio admitted that the post had nothing to do with the biographies written about Mr. Bollea and his ex-wife.

47. Mr. Daulerio also conceded that the existence of the footage of Mr. Bollea was not news. And because the fact that Mr. Bollea's sexual encounter with Ms. Clem also was already publicly known, Mr. Daulerio admitted that fact was not a "news hook" for the publication of the Gawker Video either. Mr. Daulerio also admitted that he did not post the Gawker Video for the purpose of showing Mr. Bollea was a hypocrite.

48. Ultimately, Mr. Daulerio admitted that his only purpose in posting the Gawker Video was to show the public its contents. Thus, Mr. Daulerio effectively conceded that he was needlessly exposing intimate, explicit images of Mr. Bollea's private life to the public, and that there was no interest in Gawker Video beyond the voyeuristic thrill of penetrating the wall of privacy that surrounded one of the most sensitive aspects of Mr. Bollea's private life, an aspect that he did not want to become public.

49. In light of Mr. Daulerio's admissions at trial, Gawker Defendants attempts to argue that the post was a matter of legitimate public concern are not supported by the evidence, credible nor worthy of belief. Mr. Denton even admitted that his view on why the Gawker Video was newsworthy was in "retrospect." The overwhelming weight and force of the evidence established that the Gawker Video was a morbid and sensational prying into Mr. Bollea's private life for its own sake. Mr. Daulerio did not care that Mr. Bollea's privacy was violated by publishing it. Gawker Defendants conceded that a person at work would not feel comfortable

viewing the Gawker Video (and could get fired for doing so) because it contained nudity, was "pornographic," and was "super Not Safe For Work".

50. Even assuming *arguendo* that Mr. Bollea's public statements about his sex life or the existence of the 30-Minute Video were the reasons why Gawker Defendants published the Gawker Video – and they were not – inclusion of the Gawker Video with Mr. Daulerio's narrative was unnecessary, gratuitous and overly intrusive. The fact that Mr. Bollea talked about his sex life or even the existence of a "sex tape" did not give rise to a legitimate public interest in viewing the actual explicit video footage of Mr. Bollea naked and having sex, regardless of the duration of the excerpts Gawker Defendants posted online.

51. Taking into account the customs and conventions of the community, including consideration of community mores, a reasonable member of the public, with decent standards, would not have a legitimate interest or concern in watching the Gawker Video. Indeed, a reasonable member of the public, with decent standards, is the antithesis of the "shameless voyeurs and deviants" to which Mr. Daulerio appealed.

52. Although he was aware of and could have prevented publication the "Hulk Hogan sex tape," Mr. Denton, Gawker's CEO, approved the post without bothering to first view the Gawker Video or read the narrative. When Mr. Denton made this decision, he was aware that there had been a dearth of news for five months.

53. Mr. Denton encouraged his subordinates to find and post explicit content, and he never instituted a policy that required the consent of parties involved before the publication of private sex tapes. Again, Mr. Denton admitted that he would have published the Gawker Video despite knowing that Mr. Bollea was recorded without his knowledge or consent. Mr. Denton

also publicly stated that he was proud of the decision to post the Gawker Video, and would do it again. Mr. Denton was asked personally to take down the Gawker Video and refused to do so.

54. Mr. Daulerio testified that he followed Mr. Denton's instructions and rules with respect to what was appropriate to publish at Gawker.

55. Mr. Denton knowingly participated in, ratified and approved the decision to post the Gawker Video.

D. The Impact of the Post

56. The Gawker Video generated an extraordinary amount of traffic to Gawker.com in 2012. From its posting on October 4, 2012 through June 30, 2013, the post received over 8.6 million page views and over 5.3 million unique page views. By July 2013, the Gawker Video had been viewed 2.5 million times on Gawker.com.

57. When the Gawker Video was posted, there was a spike in unique visitors to Gawker. There were also spikes in search engine queries for "Hulk Hogan," "Heather Clem," "Hogan tape," and similar queries.

58. After the Gawker Video was posted, there was also a spike in the number of people who searched for "Gawker" on search engines. This spike confirms that the Gawker brand derived significant value and advertising benefits from posting the video.

59. In the year after the Gawker Video was posted, Gawker's audience increased by 38 percent. During that same period, Gawker's revenue increased by 30 percent. Mr. Denton told the entire Gawker editorial staff that Gawker "scored" in October 2012 with "Hulk sex." Mr. Denton said Gawker traffic in October 2012 was at an "all-time high."

60. Again, bonuses were based on traffic and, in October 2012, Gawker staff received maximum bonuses.

61. Separate and apart from Mr. Daulerio's post, Gawker Defendants intended to and did use the Gawker Video to virally market their brand and as a mechanism to generate traffic to all of Gawker's websites.

62. While the Gawker Video webpage itself carried no advertising, visitors who clicked on links to other Gawker stories and websites that were found on that webpage saw ads and generated revenue for Gawker. The more people who viewed pages with ads, the more money Gawker made, even if the visitors did not actually click on the ads.

63. In addition to this direct revenue, posting the Gawker Video benefitted Gawker because it exposed its brand and brought in new visitors who would later return to view other content.

64. Mr. Denton told his Gawker staff that scandals and sex sell. Unrefuted testimony demonstrated that mere mention of a new celebrity sex tape causes search engine optimization specialists and webmasters to use it to start seeking out ways to generate revenue. When people hear of a new celebrity sex tape, they go online to search for it.

65. Gawker Defendants used the Gawker Video to promote their brand on social media such as Facebook and Twitter. And on Gawker's Facebook page, viewers were asked only to watch the Gawker Video, not to read Mr. Daulerio's incidental narrative.

66. Media companies including Gawker use social media as a form of viral marketing to attract visitors to their websites. Videos themselves are used as viral marketing. Viral marketing builds the Gawker brand. Provocative stories are the most likely to go viral. Viral marketing is a valuable tool and a low cost advertising mechanism for companies. Stories that go viral are the most valuable stories for content driven websites like Gawker.

67. Gawker Defendants benefitted from virally marketing the Gawker Video. In the 6-1/2 months that followed the posting of the Gawker Video, Gawker.com experienced traffic increases that raised the value of the website by at least $54 million. Twenty-eight percent of that traffic was attributable to the Gawker Video, which means publication of the Gawker Video increased the value of Gawker.com by at least $15,445,000. Mr. Jeff Anderson's expert testimony establishing these facts was far more credible and persuasive than Peter Horan's testimony.

68. The Gawker Video was viewed at least 4,551,415 times on other websites that took the footage from Gawker.com. These websites only presented the Gawker Video. They did not include Mr. Daulerio's narrative. Mr. Daulerio expected that other websites would capture and publish the Gawker Video from his post.

69. Overwhelming evidence, including Mr. Bollea's unrefuted, credible testimony, his demeanor on the stand, and his physical appearance and demeanor in interviews conducted shortly after the Gawker Video was posted, as well as Jules Wortman's unrefuted, credible testimony, established that Mr. Bollea suffered severe emotional distress as a result of Gawker Defendants' conduct.

70. Overwhelming evidence, including Mr. Denton's testimony and his admissions in exhibits admitted at trial, established that Mr. Denton encouraged his staff to post scandalous, sexually explicit materials. He also encouraged his staff to obtain graphic and explicit images, and then write stories to support the posting of those images. Mr. Denton's editorial philosophy and the philosophy of his organization were the same. Mr. Denton expressed in no uncertain terms his disdain for privacy and celebrity, as well as his prurient interest in revealing the most intimate details of the private lives of others.

E. Legitimate Public Concern

71. Overwhelming evidence established that the Gawker Video was not a matter of legitimate public concern. Instead, Gawker Defendants' posting of the prurient, salacious, uncensored contents of the Gawker Video amounted to an outrageously morbid and sensational prying into Mr. Bollea's private life for its own sake. A reasonable member of the pubic, with decent standards, would have no concern in the private, explicit content of the Gawker Video.

72. Based upon Mr. Daulerio's testimony and narrative, the Gawker Video was without question posted to exploit the voracious appetite of voyeurs and deviants for salacious sexual content. Mr. Daulerio was obviously exploiting public curiosity, as no legitimate public interest in the explicit content of the Gawker Video existed. Any contention to the contrary lacks credibility and competent, believable evidentiary support, and is therefore rejected.

73. Gawker Defendants used the Gawker Video for a commercial and advertising purpose, and not to report any matters of public concern. The Gawker Video was used to virally market the Gawker brand, and by using it, Gawker Defendants made the brand and its websites more profitable and valuable.

74. The Gawker Video was posted on Gawker.com without regard to its lack of any legitimate news value.

75. Gawker Defendants' publication of the Gawker Video had no legitimate journalistic purpose.

76. The publication of the Gawker Video did not merely confer an incidental benefit on Gawker Defendants. It was posted as part of Mr. Denton's editorial philosophy encouraging the use of pornographic images and video recordings without the consent of the individuals involved under the pretext that the materials are news, with the ulterior purpose of generating

website traffic and increasing the value and profit-making potential of Gawker, as well as the income of Mr. Denton and Mr. Daulerio.

77. The Gawker Video was secretly recorded in a place where Mr. Bollea had a reasonable expectation of privacy and a reasonable expectation that he was not being recorded. He did not consent to being recorded, and he did not consent to the publication of the Gawker Video.

78. Gawker Defendants knew that Mr. Bollea had been secretly recorded. And they also knew and intended that the publication of the Gawker Video would harm Mr. Bollea.

79. Gawker Defendants did not act with a good faith belief that their actions were lawful. They acted with the belief that they could misuse the protections afforded by the First Amendment to publish whatever content they wanted.

80. Gawker Defendants have possession of the 30-Minute Video and the Video.

81. Gawker Defendants have no remorse over posting the Gawker Video. They are proud of posting it, and competent, substantial evidence supports the conclusion that, if unchecked, Gawker Defendants would release the footage again.

Conclusions of Law[2]

82. Publication of the explicit content of the Gawker Video and/or the 30-Minute Video would violate a clear legal right and cause irreparable injury for which Mr. Bollea has no adequate remedy at law. Consideration of the public interest favors injunctive relief. Injunctive relief is therefore required to prevent that violation and harm, and to protect the public interest. Moreover, balancing the equities demonstrates that imposing a permanent injunction will inflict

[2] The Court recognizes that this section is labeled as "Conclusions of Law," but it should be noted that this section of the order includes factual findings within legal analysis. Based on this Court's first-hand observations of the testimony and other evidence, the factual matters described within this section are supported by overwhelming, competent and substantial evidence.

little, if any, potential harm on Gawker Defendants, and certainly no harm that could possibly outweigh the benefit to Mr. Bollea.

83. The public interest is served by prohibiting any further use or disclosure of the explicit content of the Gawker Video, 30-Minute Video and any other surreptitious footage of Mr. Bollea. Again, the public has no legitimate interest in watching and hearing explicit video footage of Mr. Bollea naked and engaged in sexual activity in a private bedroom.

84. Mr. Bollea established by clear and convincing evidence that Gawker Defendants maliciously engaged in intentional misconduct, including: (1) publicly disclosing private facts regarding Mr. Bollea; (2) intruding on Mr. Bollea's seclusion; (3) infringing on Mr. Bollea's right of publicity under Florida law; (4) intentionally inflicting emotional distress on Mr. Bollea; and (5) violating the Florida Security of Communications Act, *Fla. Stat.* § 934.03.

85. Gawker Defendants' posting of the Gawker Video was the type of "morbid and sensational prying into private lives for its own sake, with which a reasonable member of the public, with decent standards, would say that he had no concern" described in *Toffoloni v. LFP Publishing Group, LLC*, 572 F.3d 1201, 1211 (11th Cir. 2009) as lacking constitutional protection.

86. Regardless of Mr. Bollea's status as a celebrity, the nature of the character he portrays, and any public statements he made about his personal and sex life, the facts and circumstances of this case do not legally justify or authorize what the Gawker Defendants did here: gratuitously post explicit images of Mr. Bollea derived from an illegally recorded, nonconsensual video of Mr. Bollea naked and engaged in sexual activity, the most intimate and private conduct imaginable, in a private bedroom. Consequently, based upon the findings set

forth herein, and as a matter of law, Gawker Defendants' publication of the Gawker Video does not constitute protected speech. *Toffoloni*, 572 F.3d 1201, 1211 (11th Cir. 2009).

87. The fact that people, even celebrities, talk about their sex lives or make private recordings of themselves naked or having sex in the privacy of a bedroom, does not give the public the right to watch that person naked or having sex without that person's consent. These are materials that a reasonable member of the public, with decent standards, is not supposed to see and has no legitimate justification or right to see.

88. Mr. Bollea demonstrated through competent, substantial evidence the violation of several clear legal rights—he has proven by overwhelming evidence that Gawker Defendants violated his privacy rights and right of publicity, intentionally inflicted emotional distress upon him and violated the Florida Security of Communications Act. Gawker Defendants' conduct also violated the Florida Video Voyeurism Act,[3] which, while not providing an additional ground for the imposition of damages, is a criminal statute, the violation of which this Court has the power to enjoin. *Mid-American Waste Systems of City of Jacksonville*, 596 So.2d 1187, 1189 (Fla. 1st DCA 1992). The Florida Security of Communications Act further makes clear that it is illegal to use or disclose the contents of illegally intercepted communications.[4]

89. This case involves a flagrant breach of privacy which has not been waived, as well as an obvious exploitation of public curiosity where no legitimate public interest exists. *Doe v. Sarasota-Bradenton Fla. Tel. Co., Inc.*, 436 So.2d 328, 331 (Fla. 2d DCA 1983).

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[3] Section 810.145(3), *Fla. Stat.*, prohibits video voyeurism dissemination, which is defined as a "person, knowing or having reason to believe that an image was created in a manner described in this section, intentionally disseminates, distributes, or transfers the image to another for the purpose of amusement, entertainment… or profit, or for the purpose of degrading or abusing another person."

[4] Section 934.03(1)(c)-(d), *Fla. Stat.*, prohibits the intentional use and disclosure to any person the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication.

90. Moreover, although in most cases reliance must rest upon the judgment of those who decide what to publish or broadcast,[5] those who exercised the editorial discretion in this case admitted that the Gawker Video was not posted to address any matter of legitimate public concern. Accordingly, even if deference to editorial discretion were required here, the publishers conceded that the explicit content of the Gawker Video was an exploitation of public curiosity where no legitimate public interest exists.

91. Mr. Bollea will suffer irreparable harm unless a permanent injunction is entered to prohibit further public dissemination of the explicit content of the Gawker Video and the 30-Minute Video. Such irreparable harm includes further invasions of Mr. Bollea's privacy and infliction of humiliation, embarrassment, harassment, and emotional distress, as well as degrading and abusing Mr. Bollea, which will occur if the use or disclosure of the private contents of these recordings is permitted.

92. There is no adequate remedy at law for Mr. Bollea. The publication of the explicit contents of Gawker Video, the 30-Minute Video or any other surreptitious recordings of Mr. Bollea would constitute a gross and illegal invasion of Mr. Bollea's privacy and violation of Florida law accompanied by extensive harm which an award of monetary damages is insufficient to address.

93. While the jury's award of compensatory damages represents an attempt to redress the harm and injuries Mr. Bollea suffered in the past as a result of the posting of the Gawker Video, several factors require that an injunction issue to prohibit any further distribution of explicit audio or visual footage of Mr. Bollea naked and engaged in sexual activity in a private bedroom. First, while Gawker Defendants are not currently making the Gawker Video or 30-

[5] *Gawker Media, LLC*, 129 So.3d 1196, 1201 (Fla. 2d DCA 2014)

Minute Video available, there is no court order currently in place that prohibits them from doing so, and they testified that they would post again if given the chance. Second, Gawker Defendants continue to possess additional footage of Mr. Bollea, including a second video that they prepared and edited but have not published as well as the full 30-Minute Video that they received, the contents of which have never been made public. Third, material posted on the Internet is captured or saved and subsequently re-posted by others.

94. Based upon the factual findings contained herein, the totality of circumstances demonstrate that injunctive relief is necessary to achieve justice between the parties. *Davis v. Joyner*, 409 So.2d 1193, 1195 (Fla. 4th DCA 1982).

Injunctive Relief

95. It is, therefore, ORDERED and ADJUDGED that Gawker Defendants, and all those acting in concert with them, are hereby enjoined from publicly posting, publishing, exhibiting, broadcasting or disclosing any nudity or sexual activity, whether video or audio, contained in Gawker Video, the 30-Minute Video from which the Gawker Video was excerpted and edited, and any other surreptitious video footage within their custody, possession or control, that depicts Mr. Bollea naked or engaged in sexual activity.

96. This Court reserves jurisdiction to enforce this Permanent Injunction, to modify it, to supplement it, and to issue additional relief, including, but not limited to, an order requiring that Gawker Defendants deliver all copies of the Gawker Video, the full length 30-Minute Video, any other excerpts thereof, or any other surreptitious footage within their custody, possession or

control that depicts Mr. Bollea naked or engaged in sexual activity, to Mr. Bollea and/or his counsel, pending resolution of any appellate proceedings in this case.

DONE and ORDERED, in chambers, in St. Petersburg, Pinellas County, Florida, this _____ day of _____, 2016.

_____
Hon. Pamela A.M. Campbell

cc: All Counsel of Record
Nick Denton
A.J. Daulerio
Gawker Media, LLC