

# Even for a Minute, Watching Hulk Hogan Have Sex in a Canopy Bed is Not Safe For Work but Watch it Anyway

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## Even for a Minute, Watching Hulk Hogan Have Sex in a Canopy Bed is Not Safe For Work but Watch it Anyway

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A.J. Daulerio

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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. We watch this footage because it's something we're not supposed to see (sometimes) but we come away satisfied that when famous people have sex it's closer to the sex we as civilians have from time to time. Meaning: it's hardly ever sexy the way we expect it to be sexy, even when the participants are ostensibly more attractive than the majority of our sex partners will be.

But naked, they're still having sex like people who don't usually have sex on camera. Even if their dicks are big enough to smash a boat horn with authority, or their faces are lit up like Gulf War scud missile footage after midnight. their sex- purposeful, vaunted celebrity sex-is still incredibly dull.

EXHIBIT 21

\*\*\*ELECTRONICALLY FILED 4/24/2013 9:29:36 AM: KEN BURKE, CLERK OF THE CIRCUIT COURT, PINELLAS COUNTY\*\*\*

## Even for a Minute, Watching Hulk Hogan Have Sex in a Canopy Bed is Not Safe For Work but Watch it Anyway

The normalcy of it is exciting, though. When you see glimmers of sloppy kissing or some shoulder moles or just an earnest, breathy, post-coital "thoooooooo" it becomes mesmerizing.

Up top, you'll see one minute from the 30 minutes of footage taken of 59-year-old Hulk Hogan, professional wrestler, Real Life American Hero to many, fucking a woman rumored to be the ex-wife of his best friend, a famous radio DJ named Bubba the Love Sponge. This footage was stealthily circulated last April. TMZ reported its existence, The Dirty showed some screen shots, and Hulk lawyered up because he claims he was "secretly filmed." Last week, a burned DVD copy of Hulk having sex with the woman rumored to be Heather Clem (Bubba's ex-wife), was delivered to us through an anonymous source. They wanted no payment. They wanted no credit. Their only request was that we watch it. So I did—all 30:17 of it—and hyperbole aside, it's a goddamn masterpiece.

It opens with Hulk Hogan performing oral sex on the woman as she lays on the bed. Then another man's voice can be heard from inside the room off-camera and both Hulk and the naked woman engage in idle chit-chat with the mystery man. Because the woman closely resembles Mrs. Clem, some have suggested that the voice of the mystery man is, in fact, Bubba the Love Sponge. If this is true, Bubba has no problem sharing his wife with his best friend.

"You guys do your thing," this man says. "I'll be in the office if you need me."

He exits swiftly and allows Hulk and this woman their privacy. Hulk and the woman engage in more chit-chat and Bubba's name is mentioned. The woman says "We just fucked earlier today." Hulk asks "Who? You and Bubba?" She just laughs. It doesn't matter.

Hulk strips down. His tan line is exposed and his hairline is vulnerable and silly without the do-rag, but there is sex to be had regardless. Hulk must get hard, though, and the woman is eager to make that happen. Her fellatio is successful and Hulkamania is about to run wild on her but then his cell phone rings. He checks it because he thinks it might be his son, Nick. The ringtone on Hulk Hogan's phone is a song by his daughter, Brooke Hogan, called "About Us" featuring Paul Wall. He is a proud father.

But Hulk checks the caller and does not want to talk that person at all. "Fuck no," he says.

He stands on the side of the bed and the woman scoots up from the pillows and resumes giving the former WWE heavyweight champion of the universe a blowjob. It is a slow, dutiful blowjob and Hulk is thrusting himself into her mouth to speed up the process. This goes on for a few minutes and at one point Hulk examines the canopy bed curtains in a way that suggests he'd like to purchase this particular style for his own canopy bed some day. She takes a break. She spits loudly. She resumes for a few seconds, but it appears the spit has worked because Hulk mutters something in a growly sex voice. The woman removes him from her mouth and spins around on the bed like an excited puppy. She stands. They grope each other and stare at each other. "What did you say?" she asks, laughing and tying up her hair in a pony tail. Then they both laugh because there was a miscommunication during the sex act and they don't want to feel awkward.

## Even for a Minute, Watching Hulk Hogan Have Sex in a Canopy Bed is Not Safe For Work but Watch it Anyway

"You got a rubber? I want you to climb on top of me," Hulk repeats, but not as sexy as it was the first time, which she didn't hear. Yes, she does have a rubber. Then we watch Hulk stand up and clumsily attempt to roll a condom on to 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. Hulk hurls his massive body on to the canopy bed and the woman climbs on top, finally, and they begin. There is lots of squealing and moaning from her and she says stuff like, "I want to make you cum" and, "Your dick feels so good inside me"—that sort of thing. There is light spanking from Hulk done to show he supports her efforts and is close to orgasming.

Then, Hulk grunts. Hulk grunts more. Then Hulk grunts like he's doing an impression of old Hulk Hogan grunting right before he's about to cum/come. Climax happens for both participants and they seem pleased with the results. The woman provides two tender kisses on Hulk's upper chest. Hulk says, "Mmmk," because he's a little bemused by the situation he finds himself in on this day as we'll soon find out. Here's how Hulk explains his reaction to the woman he just had sex with:

"The rubber almost came off," he says.

She's not concerned. "It did what it was supposed to."

Hulk thought that was funny and makes her repeat it.

She does so and then peels off the rubber from his penis and carries it away. She holds the condom full of Hulk jiz like it's a random dirty sock she found in the dryer. Hulk is still coming down from his orgasm and is making quick, loud Tony Soprano wheezes.

"Oh my god," he exhales. "Can't believe I have to drive back home. Fuuuuck."

The woman giggles, climbs back into bed with him and reminds Hulk that this is why he should move to this neighborhood. They engage in some cuddling for a couple minutes but Hulk does have to go because he has to go meet his son Nick who was presumably no longer in prison during the time this was filmed. Playful banter resumes amidst the afterglow. Hulk gets up naked and accepts the invitation from the woman to take a shower. But then he tells the woman that he's shocked that the fucking took place at all because he'd just eaten ten minutes before he got there and "felt like a pig." He had sashimi. He smacks his large stomach and makes his way to the shower.

Hulk begins to put on his clothes. "Bubba's shirt," he says when he puts on his shirt. He's pulling on his jeans one giant leg at a time, still mumbling. The woman is naked in bed and not at all concerned by his early exit. She does suggest that he go talk to the mystery man in the office before he leaves. But Hulk has to go meet his son Nick at midnight. Then Hulk tells a story about how Nick's new girlfriend has a twin sister who called Hulk on the phone. Hulk reveals that the young woman inquired about his divorce and, if that's true, she would like to be the first to go out with him.

Hulk sits on the bed and puts on his socks. "You're a hot commodity," the woman says to Hulk. "Yeah, right. Huh," Hulk says. Even Hulk Hogan needs to be told he's handsome sometimes.

## **Even for a Minute, Watching Hulk Hogan Have Sex in a Canopy Bed is Not Safe For Work but Watch it Anyway**

But he has to go, he leans over and kisses the woman. They joke about him loving and leaving but it's okay. "Be cool," he says to the woman on his way out the door. They thank each other for the sex. "You're awesome," Hulk says on his way out the door. "So are you," she says back in a very sincere way. Everybody's awesome. Hulk asks her if he should close the door on the way out. "No, leave it open," she says. "Thank you." Off he went.

*Video edited by Kate Bennert.*

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## Hulk Hogan -- Yes, I Banged Bubba's Wife Heather Clem

TMZ Sports

10/9/2012 6:08 AM PDT BY TMZ STAFF

Hulk Hogan

Yes, I Banged Bubba's Wife

Breaking News



Hulk Hogan just appeared on the Howard Stern show ... and admitted the woman in his sex tape is the estranged wife of his best friend, Bubba the Love Sponge ... who gave Hulk his blessing to nail her.

Hulk spilled his guts to Stern ... saying Bubba -- a nationally syndicated radio DJ -- allowed Hogan to have sex with Heather Clem six years ago.

During the interview, Hogan says he was still married to Linda at the time of the sex tape ... but says she drove him to have sex outside the marriage because she was so verbally and emotionally abusive to him.

Hulk also admitted his performance wasn't exactly tip top.

Hogan says he's working with officials to find out who released the tape ... because he swears he didn't know he was being recorded ... and vows to press charges against the perpetrator.



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Tries to Blunt Romney Criticism Over Candy



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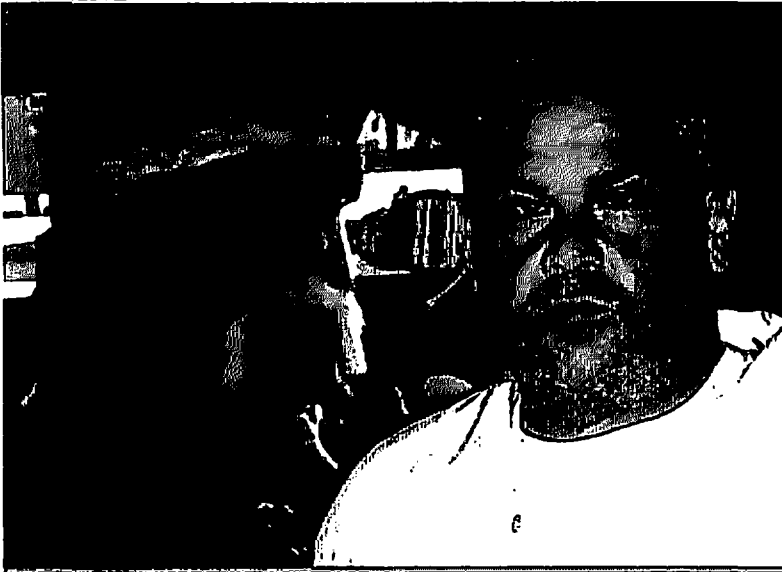
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## Bubba the Love Sponge Knew Hulk Hogan Sex Tape Could Be Worth A Fortune

10/9/2012 2:00 PM PDT BY TMZ STAFF

Bubba the Love Sponge  
He Knew Hulk Sex Tape  
Could Be Worth A Fortune  
EXCLUSIVE



TMZ.com / Getty

Hulk Hogan's best friend, Bubba the Love Sponge, not only secretly videotaped Hulk having sex -- he bragged afterwards that the tape was a goldmine that could be the key to Bubba's retirement.

TMZ has seen the last few minutes of Hulk's leaked sex tape -- in which he bangs Bubba's wife Heather Clem. It's very clear -- Bubba was in on it. Moments after the deed is done and Hulk leaves, Bubba says to his wife ... "If we ever did want to retire, all we'd have to do is use this footage."

...s wife shoots back, "You'd never do that." Bubba then tries to recover, saying, "I wouldn't do that, you'd be the biggest ret/

<http://www.t TMZ.com/2012/10/09/hulk-hogan-sex-tape-leaked-bubba-heather-clem-retire/>

EXHIBIT  
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you'd be dead."

The revelation is interesting ... considering Hulk went on the Howard Stern show TODAY and said he and Bubba are still good friends -- and sounded confident Bubba was NOT the culprit.

There's more, TMZ just broke the story ... Hulk is filing a criminal police report in FL and trying to HUNT DOWN whoever leaked the tape -- claiming he was filmed illegally.

See also

- [Hulk Hogan to Cops -- Help Me Find the Bastard Who Leaked My Sex Tape](#)
- [Hulk Hogan -- HUGE Offer for Sex Tape](#)
- [Hulk Hogan -- Threatening LAWSUIT Over Leaked Sex Tape Footage](#)

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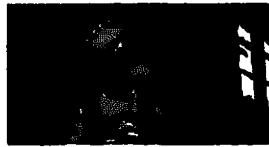
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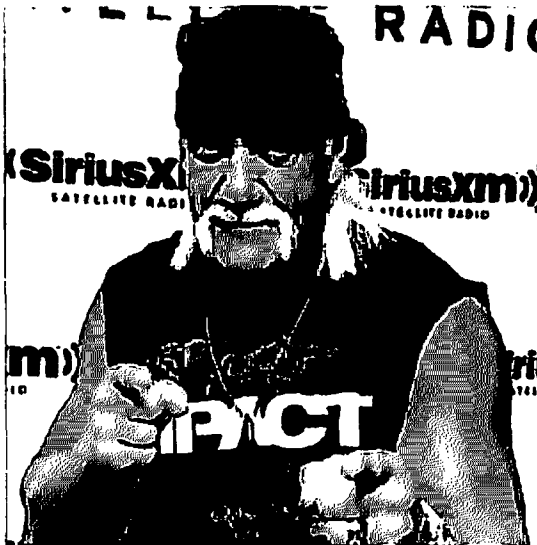
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# Bubba the Love Sponge Slams Hulk Hogan's Sex-Tape Lawsuit, Blasts Wrestler as "Ultimate, Lying Showman"

by Rebecca Macales

Tue., Oct. 16, 2012 7:16 AM PDT

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Andrew H. Walker/Getty Images

There's more than one side to every sex tape.

On Monday, Hulk Hogan filed a civil lawsuit against Bubba the Love Sponge and his ex-wife, Heather Clem (now Heather Cole). The 59-year-old wrestler alleges that the sex tape that hit the Web earlier this month was leaked by Bubba (real name: Todd Clem) without the Hulkster's consent. But according to Mr. Love Sponge, his ex-best friend Hulk was in on the sex tape's release from the get-go.

Tuesday morning, Bubba said on his radio show that Hulk "brainwashed" Bubba into giving his blessing for his then-wife Heather to have sex with the wrestler. Bubba also claimed that contrary to Hulk's claims of being secretly taped during sex, the athlete and reality star was in on the stunt. "You can't play the victim like that," said Bubba.

Read more about the Hulk's lawsuits

EXHIBIT  
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# Bubba The Love Sponge Slams Hulk Hogans Sex Tape Lawsuit Blasts Wrestler As Ultimate Lying Sh...

"He's a one-way piece of crap who doesn't care about anyone but himself," said Bubba. "You're the ultimate, lying showman."

In addition to the complaint against Bubba and the radio host's ex-wife, Hulk is suing Gawker Media, which posted excerpts of the tape, for \$100 million.

Both lawsuits request that Hulk is given the sex tape so it can be destroyed.

**UPDATE:** An attorney for Bubba tells E! News that his client is a victim in this "very unfortunate" situation.

"I don't understand how you can sue a victim and I also I don't understand how you can sue your best friend," the lawyer says. "I'm hopeful we never get served and can work together to find out [what happened with the tape]. I am convinced Bubba had nothing to do with it. And I don't believe Heather had anything to do with it. So lets find that party who has caused harm to everyone/ That is our objective, our hope."

The attorney also noted that they have not yet seen the lawsuit.

"The reality is that these guys shouldn't be fighting each other," he adds. "They should be fighting the person who stole it, released it and those who broadcast it...I don't know what [Hogan's] objective is in suing Bubba. We will respond if and when we are served."

—Additional reporting by Claudia Rosenbaum

2010 was a big year for sex tape scandals



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Rob Tue Oct 16 2012

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All the Hogan clan is trash. They are all victims of there own stupidity. I used to like Hogan when I was a kid, but now, I see the truth and how awfull he really is.

Meat Kolwalski Tue Oct 16 2012

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## Bubba the Love Sponge -- HULK HOGAN May Have Leaked Sex Tape

10/16/2012 6:09 AM PDT BY TMZ STAFF

Bubba the Love Sponge  
HULK HOGAN May Have  
Leaked Sex Tape  
Breaking News



**Bubba the Love Sponge just went on his radio show ... and claimed Hulk Hogan may have played a role in the release of the sex tape ... despite several public denials.**

During the show, Bubba made it clear ... he and Hulk are no longer best friends -- in fact, it sounds like they pretty much hate each other's guts.

At one point in the show, Bubba called Hulk a "self-centered" man who has delusionally convinced himself that Nick was innocent in that 2007 car crash, Brooke actually has talent and that Linda is "whore." Bubba actually *defends* Linda throughout the show.

Bubba never really denied having anything to do with the sex tape -- but said, "I'm gonna be honest with you, I have not seen the tape ... including me supposedly bragging and being a horse's ass."

We broke the story, there is footage of Bubba on the sex tape ... talking about selling the footage if he ever wanted to be rich enough to retire.

On the radio show, Bubba continued, "At the end of the day, I can't even comment on the validity ... [Hulk] could have had something to do with the leak of it,"

Bubba also touched on the fact that he let Hulk have sex with his then-wife Heather Clem -- saying they all consensually agreed to it and reminding Hulk, "Nobody put a gun to your head."

As we previously reported, Hulk is suing Bubba and Heather over the footage -- claiming they taped him without his consent.





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# Hulk Hogan Sex Tape Leaked By Bubba The Love Sponge's Disgruntled Former Employee

Posted on Oct 11, 2012 @ 01:00PM

By Amber Goodhand - Radar News Editor



Hulk Hogan has vowed to find out who leaked his sex tape, and RadarOnline.com can exclusively reveal it was a disgruntled former employee of his best friend, Bubba the Love Sponge, who was behind the release of the embarrassing footage.

A source close to the situation claims that after Bubba left his gig with Sirius XM Radio, he also left behind an unpaid staff – who he had shared the sex tape with – and one of them took advantage.

"Even though Bubba knew how much the Hulk sex tape would be worth, he didn't stab his friend in the back and he's not the one who released it," the source said.

PHOTOS: Sexy Sex Tape Celebs

"It's a former employee of Bubba's who was outraged when he left Sirius to go back to terrestrial radio. He wanted payback."

Interestingly, the source says Hulk's "surprise"

at the tape being leaked is a ruse and that he's known about it for years and even had the ability to stop the sale last year!

"Hulk acting all shocked at the release of the tape is crap," the source says.

PHOTOS: Top Celebrity Sex Scandals



## Hulk Hogan Sex Tape Leaked By Bubba The Love Sponge's Disgruntled Former Employee | Radar O...

"The tape was first shopped about three years ago, and Hulk was initially blindsided by it. But he's been fully aware this whole time that it's out there."

According to the insider, the PR forces that be within Hulk's camp prevented stopping the sale because they were more interested in publicity and press than what this would do to Hulk and his family.

"Bubba didn't secure the tape properly and showed it to a bunch of people," the source says.

PHOTOS: Scandalous Hollywood Ladies

"And that's why they're all in this mess now."

As RadarOnline.com previously reported, Hulk's sex tape partner was Heather Clem, Bubba's then-wife, who was obsessed with the wrestling legend and made it her mission to sleep with him.

PHOTOS: 10 Stars Involved In Nude Photo Scandals

"Heather has been obsessed with Terry [Hulk Hogan] Bollea forever. She took advantage of her husband's friendship with him and used Bubba to get to Terry," an insider revealed .

"She's a voyeur and her fantasy was to have sex with Terry and then have a tape of her conquest."

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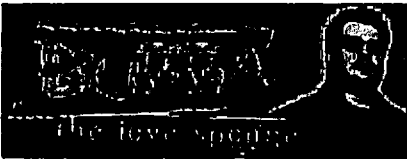
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OCTOBER 16, 2012

### Bubba the Love Sponge calls Hulk Hogan a "hypocritical fraud" over sex tape lawsuit

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Tampa Bay area shock jock Bubba the Love Sponge Clem finally spoke out this morning about the growing scandal around a sex tape featuring wrestling star Hulk Hogan and Clem's ex-wife, calling his former friend Hogan a "hypocritical fraud" for filing a lawsuit over the video's public release.

Clem used much of his radio show at WHFT-FM (102.5 The Bone) this morning to bitterly criticize Hogan, once described as his best friend, one day after the wrestler filed a lawsuit in state court seeking in excess of \$15,000 in damages, naming the shock jock and his former wife Heather Cole as defendants.

Attorneys for Hogan faced the press Monday on the federal courthouse steps in Tampa, saying the star did not know he was being filmed during the encounter; he also filed a federal lawsuit seeking \$100 million in damages from Gawker Media, owner of a gossip website which has posted clips of the footage.

Clem disputed Hogan's assertions indirectly this morning, saying his former friend "drove me crazy" asking to have sex with his wife. The shock jock also accused Hogan of trying to save his public image and endorsements by trying to appear like the biggest victim.



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E-mail Eric Deggans: [deggans@tampabay.com](mailto:deggans@tampabay.com)

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"The true victim here is Heather," said Clem, referring to his ex-wife, who was recorded having sex with Hogan in 2006; clips of the video were eventually posted on Gawker.com. "I made a mistake in approving him to get together with my wife...There were three people in that room, and they all knew what time it was."



Representatives for Clem have been saying the shock jock couldn't talk about the video scandal, pointing to language in his divorce settlement in which the couple agreed "not to interfere with, annoy, molest or harass the other party or disparage the other party in public," with special mention made of speaking "on air" about each other.

But Clem appeared to find a loophole around these provisions this morning, focusing his insults on Hogan, referencing the wrestler's bitterly

public divorce from Linda Hogan and other past controversies. Clem never spoke directly about why the encounter was recorded or who may have released it to the public; Gawker has not identified who provided them with a 30-minute video burned on a DVD.

Hogan's lawsuit received extensive media coverage locally and nationally, providing the first opportunity for mainstream media outlets to weigh in on a scandal which had been percolating on gossip websites such as TMZ and Gawker for more than a week.

News outlets ranging from *The New York Daily News* to the *Los Angeles Times* published stories on the lawsuit Monday, ensuring the media frenzy continues.



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DAILY NEWS

G O S S I P

## Hulk Hogan settles sex tape lawsuit with former friend Bubba the Love Sponge Clem

The lawsuit was over a sex tape involving the pro wrestler and Clem's wife

BY NANCY DILLON / NEW YORK DAILY NEWS

FILED IN THE NEW YORK COURTS ON OCTOBER 15, 2014

UPDATED MONDAY, OCTOBER 13, 2014 11:01 AM



Hulk Hogan has abandoned a lawsuit against his former best friend Bubba the Love Sponge now that the shock jock has apologized for saying Hogan had something to do with the release of a sex tape featuring the wrestler and Bubba's wife

Hulk Hogan has ended his royal rumble with Bubba the Love Sponge over a sex tape involving the pro wrestling legend and the Florida shock jock's wife that went viral on the internet.

Bubba Clem apologized in a statement issued early Monday as the Hogan camp announced the legal settlement. Terms of the pact were confidential.

"After further investigation, I am now convinced that Hulk Hogan was unaware of the presence of the recording device in my bedroom. I am convinced he had no knowledge that he was being taped. Additionally, I am certain that he had no role in the release of the video," state Bubba's apology letter, which he also read on his syndicated radio show.

"It is my belief that (he) is not involved, and has not ever been involved, in trying to release the video, or exploit it, or otherwise gain from the video's release in any way," he said.

In a lawsuit filed Oct. 15, Hogan said he had consensual sex with Bubba's wife, Heather Clem, six years ago in the Clems' home.

The former wrestling star said Bubba, his best friend at the time, suggested the kinky coupling and gave his blessing. The then-married Hogan said he was having difficulties with his wife, Linda.



## Hulk Hogan settles sex tape lawsuit with former friend Bubba the Love Sponge Clem - NY Daily News



Release of a rumored sex tape starring Hulk Hogan angered the former pro wrestler earlier this year.

The grainy video of the coupling made its way to the Internet.

Hogan, 59, claimed he had no idea there was a recording device in the room and considered the filming and eventual leak of the tape to Gawker.com an invasion of privacy.

Bubba quickly blasted Hogan as a "hypocritical fraud."

"There were three people in that home. All three knew what time it was," Bubba said on his airwaves a day after Hogan named Bubba and Heather as lead defendants.

Bubba said Hogan lived in his house for several months prior to the swinging shenanigans and knew there were security cameras everywhere.

"You know I have surveillance. You knew of everything going on," Bubba said, addressing Hogan directly. "But now that your feelings are hurt ... you're trying to cover your a-- with your wife and your jobs and your social standing."

But now Bubba has changed his mind.

"Regrettably, when Hulk filed the lawsuit against me, I instinctively went on the offensive. The things that I said about him and his children were not true," Bubba said in his settlement letter Monday.

"I was wrong and I am deeply sorry for my reaction, and for the additional pain that it caused Hulk and his children on top of the pain that they already were feeling," he said.

Hulk Hogan, whose real name is Terry Bollea, is still pursuing his \$100 million lawsuit against New York-based Gawker Media in federal court.

A case against Heather Clem is pending, Hogan's lawyer said.

"Mr. Bollea is pleased that Mr. Clem finally stated the truth and apologized for his false statements," lawyer David Houston said Monday.

ndillon@nydailynews.com

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**BUBBA**

October 29, 2012

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# BUBBA CLEM

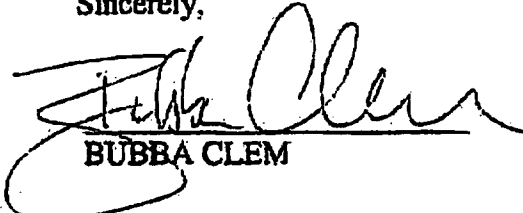
October 29, 2012

Re: Public Apology to Hulk Hogan (Terry Bollea) and Retraction of Statements

After further investigation, I am now convinced that Hulk Hogan was unaware of the presence of the recording device in my bedroom. I am convinced he had no knowledge that he was being taped. Additionally, I am certain that he had no role in the release of the video. It is my belief that Terry is not involved, and has not ever been involved, in trying to release the video, or exploit it, or otherwise gain from the video's release in any way. Regrettably, when Hulk filed the lawsuit against me, I instinctively went on the offensive. The things that I said about him and his children were not true. I was wrong and I am deeply sorry for my reaction, and for the additional pain that it caused Hulk and his children on top of the pain that they already were feeling from having learned that Terry was taped without his knowledge, and the public release of the video.

I am committed to helping Hulk and his attorneys find whoever is responsible for the release of the tape and holding them accountable to the fullest extent of the law.

Sincerely,

  
BUBBA CLEM



1 UNITED STATES DISTRICT COURT  
2 MIDDLE DISTRICT OF FLORIDA  
3 TAMPA DIVISION

4 TERRY GENE BOLLEA,

5 Plaintiff,

6 vs.

7 CASE NO. 8:12-CV-2348-T-27TBM  
8 NOVEMBER 2012  
9 TAMPA, FLORIDA  
10 PAGES 1 - 46

11 GAWKER MEDIA, LLC, et al.,

12 Defendant.

13 \_\_\_\_\_/  
14  
15 TRANSCRIPT OF PRELIMINARY INJUNCTION HEARING  
16 BEFORE THE HONORABLE JAMES D. WHITTEMORE  
17 UNITED STATES DISTRICT JUDGE

18 APPEARANCES:

19 For the Plaintiff: **Kenneth George Turkel**  
20 **Christina K. Ramirez**  
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24 Tampa, Florida 33602

25 For the Defendant: **Gregg Darrow Thomas**  
**Rachel E. Fugate**  
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Court Reporter: **Linda Starr, RPR**  
Official Court Reporter  
801 N. Florida Avenue  
Suite 13B  
Tampa, Florida 33602

Proceedings recorded and transcribed by  
computer-aided stenography.



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I N D E X

Plaintiff's argument.....  
Defendant's argument.....  
Plaintiff's rebuttal argument.....  
Certificate of Reporter.....

E X H I B I T S

There were no exhibits marked or made a part of this record.

1           COURTROOM SECURITY OFFICER: All rise. This  
2 Honorable Court is now in session, The Honorable  
3 James D. Whittemore presiding.

4           Be seated, please.

5           THE COURT: All right. Good afternoon. We're  
6 here for argument on the plaintiff's motion for  
7 preliminary injunction.

8           Let's first get the appearances of counsel.  
9 For the plaintiff?

10          MR. TURKEL: Your Honor, for the plaintiff,  
11 Ken Turkel and Christina Ramirez of Bajo, Cuva,  
12 Cohen and Turkel.

13          THE COURT: Good afternoon. And for the  
14 defense?

15          MR. THOMAS: Good afternoon. Gregg Thomas and  
16 Rachel Fugate for Gawker Media, LLC.

17          THE COURT: Good afternoon. A couple of  
18 housekeeping matters, first of all.

19          Filed -- well, submitted for filing to the  
20 clerk earlier today was a document that is entitled,  
21 Motion to Intervene by Duane Lee Chapman.

22          I was involved in hearings, and directed that  
23 if a pleading is filed, it needs to be docketed.

24          When I had an opportunity to take a look at  
25 this particular document, as well as the envelope in

1       which it arrived, substantial questions of  
2       authenticity arose. I have, therefore, directed the  
3       clerk to remove its image from the public docket.  
4       Electronically the lawyers would have received this  
5       because it was docketed, and on its face I think you  
6       can understand my concerns.

7               I don't know who filed it, whether it's  
8       legitimate or not. But because of its content, it  
9       is certainly not something that, if questioned in  
10      terms of authenticity, should be in the public  
11      domain.

12              I have, therefore -- am, therefore, prepared  
13      to deny whatever the document purports to be,  
14      construed to be a motion to intervene, because there  
15      is simply no legal basis for intervention.

16              I'll handle that administratively. If there's  
17      an objection from anybody, then so be it.

18              But we are here today on the plaintiff's  
19      motion. I have read everything, counsel. I do not  
20      want to dwell on the facts of the case, necessarily,  
21      other than to the extent that they may be material  
22      to legal issues.

23              But it seems to me, Mr. Turkel, that first and  
24      foremost, the plaintiff must overcome the contention  
25      that the requested relief constitutes a prior



1 restraint.

2 If it does, it seems to me that that renders  
3 somewhat moot the requested relief, at least to the  
4 extent it seeks removal of the video clip from the  
5 website of Gawker Media.

6 So I'll hear you on that, sir.

7 MR. TURKEL: Thank you, Your Honor. May it  
8 please the Court.

9 Judge, I don't -- there are some cases that  
10 I'm going to refer to that were submitted to the  
11 Court in a supplemental memo that was not accepted  
12 into the record. Some of them are cited in defense  
13 counsel's memo, also.

14 But we have copies of those here. And if  
15 you're unfamiliar with any of them, I can elaborate  
16 on them to some degree. But there's certainly a lot  
17 of case law cited throughout, and I want the Court  
18 to be fully advised as to where the citations are or  
19 where the cases have been mentioned.

20 Judge, I think at the inception of this, it's  
21 important to note a couple of threshold issues, both  
22 factual and legal. And I think the important  
23 threshold issue legally -- and this dovetails with  
24 Your Honor's request that I address the prior  
25 restraint issue -- is if you read the defendant's

1 memoranda carefully and you read the cases cited  
2 therein, there's not a case in there that stands for  
3 the proposition that the surreptitious,  
4 non-consensual video and audio recording of a  
5 private sex act in a bedroom and subsequent  
6 publication thereof is protected in any valid way by  
7 the First Amendment. To the contrary, Judge.

8 THE COURT: Let me stop you for a moment.

9 MR. TURKEL: Sure.

10 THE COURT: That may be, but there's no  
11 allegation that this defendant surreptitiously  
12 recorded the video; correct?

13 MR. TURKEL: Yes. There is nothing in the  
14 record that would support that. However, there is,  
15 obviously, clear and uncontested evidence that they  
16 published it.

17 We've brought two separate or three separate  
18 torts that are under Florida's right of privacy  
19 torts. One of them would be public disclosure or  
20 private facts, the other one intrusion by seclusion.

21 Under the public disclosure or private facts,  
22 there's no necessity that Gawker actually take the  
23 tape. To the contrary, the tort is actually meant  
24 to protect someone from the publication of something  
25 that's private, regardless of how it's obtained.

1           In that respect, Judge, I would also disagree  
2 with Gawker's contentions, and I would -- I would  
3 direct the Court to read the cases they cited for  
4 this contention that the tort of intrusion by  
5 seclusion doesn't apply to a publication.

6           Because I've, frankly, read the cases pretty  
7 carefully that they cited, and they just don't say  
8 what they cite them for. And I can't be any more  
9 direct than that.

10           Frankly, Judge, the most instructive opinion I  
11 believe to guide this Court in its decision making  
12 today is the *Michaels* opinion versus *IEG*, which is a  
13 California opinion and, frankly, based on our  
14 research, the only published opinion other than a  
15 Michigan appellate court opinion that we could find  
16 that was factually on point that dealt with the same  
17 claims, the same procedural level of the case, and  
18 the same law applicable.

19           And interestingly, Judge, they sort of  
20 relegate this opinion that provides more guidance  
21 than anything they've cited to a footnote in this  
22 halfhearted attempt at distinguishing it by saying  
23 it was founded and the holding was based on the fact  
24 that there was a copyright claim in there. And  
25 that's just not true, Judge. It's just not.

1           The *Michaels* court found in a very detailed  
2 opinion dealing with celebrity rights to restrain  
3 and enjoin the publication of a private sex tape,  
4 and in this case, Judge, I would say our facts are  
5 even worse because the tape at issue was recorded  
6 without the plaintiff's knowledge or consent.

7           Whereas, in the *Michaels* case, the recording  
8 was actually consensual. And they had a copyright  
9 claim that was filed -- actually, they perfected  
10 their copyrights very shortly before they filed the  
11 lawsuit to enjoin the publication of the video.

12           However, everything else about that case is so  
13 drastically similar to this case that the fact that  
14 it was dumped into a footnote by the defendants and  
15 not discussed in any way, shape or form almost  
16 accentuates and emphasizes its importance and its  
17 applicability.

18           Judge, the *Michaels* case handles virtually  
19 every element of the two torts at issue and takes  
20 the Court through a very detailed analysis of why  
21 the First Amendment protections, which, concededly,  
22 Judge, are heightened would not apply.

23           And underlying it, Judge, is this idea that,  
24 just because somebody becomes a celebrity, they  
25 don't sacrifice their rights to have the most

1 intimate details of their life withheld from  
2 public -- publication without their consent.

3 In that respect, Your Honor, Florida's a  
4 restatement state, as most of the states are going  
5 to adopt the restatement as it relates to the  
6 element of these torts. And so the elements of the  
7 Florida tort publication, public disclosure or  
8 private facts, are almost identical to the  
9 California elements that were at issue in *Michaels*.

10 Moreover, Judge, in reading the *Michaels*  
11 opinion, the --

12 THE COURT: Tell me a little bit about the  
13 defendant in that case. I read the briefs. But I  
14 didn't pull *Michaels*. I have it up now. But was  
15 the defendant an entity similar to this defendant?

16 MR. TURKEL: The defendant in that case was  
17 IEG. It think it's called Internet Entertainment  
18 Group. It was an adult internet company that  
19 published adult movies and similar content, I  
20 believe.

21 THE COURT: For resale?

22 MR. TURKEL: Not just for resale. I mean,  
23 there was -- there was, I think, a website involved,  
24 also. But they were going to release this tape  
25 online, I believe. And that was what the injunction

1 was -- was sought for in that case.

2 It was barring display of the tape on the  
3 internet. And that's what they sought. That was  
4 the relief that Mr. Michaels sought. Obviously,  
5 Mr. Michaels --

6 THE COURT: All right. The distribution of  
7 adult entertainment material through a subscription  
8 service on the internet. That's how IEG operated,  
9 according to the case. Is that your recollection?

10 MR. TURKEL: Yes, Judge. I don't know the  
11 mechanics of how you sought display, but it was  
12 going to be displayed and published on the internet.  
13 Whether it was for free or cost money, I don't  
14 believe would be pertinent to the First Amendment  
15 aspects of it. You had access to it, it was  
16 published. And in that respect, I don't think  
17 anything in the Court's analysis focused on that.

18 But in analyzing the claims at issue in that  
19 case, Judge, they discuss the elements of the tort  
20 of intrusion into private affairs and the tort of  
21 public disclosure or private facts.

22 And notwithstanding the fact that they found  
23 independent grounds for injunctive relief based on  
24 the copyright claim, they found a predicate and,  
25 indeed, the Court's holding was based on all of

1 these different substantive areas of law.

2 In analyzing the success of the merits aspect  
3 of it, there were certain things that, obviously,  
4 weren't going to be disputed. The tape was going to  
5 be disclosed publicly.

6 Going through the elements of that tort, it  
7 was private facts. There's an element that requires  
8 it be offensive or objectionable or offensive to the  
9 reasonable person and not a public concern.

10 And the Court at pages -- and I want to get my  
11 pages right -- 840 on engaged in its analysis of  
12 that. As a predicate to its reasoning, the Court  
13 found that sexual relations are among the most  
14 personal and intimate of acts. The Court is not  
15 prepared to conclude that public exposure of one's  
16 sexual encounter forever removes a person's privacy  
17 interest and all subsequent and previous sexual  
18 encounters.

19 In that case, Judge, one of the arguments was  
20 that there had been some previously disclosed sexual  
21 content, I think, of Ms. Lee. And even that didn't  
22 remove her right even as a celebrity to seek  
23 protection from a Court for the un-consented and  
24 unauthorized disclosure of what was a consensual  
25 sexual tape in that case.

1           The Court went on to say that it is also clear  
2           that *Michaels* has a privacy interest in his sex  
3           life. While *Michaels*' voluntary assumption of fame  
4           as a rock star throws open his private life to some  
5           extent, even people who voluntarily enter the public  
6           sphere retain a privacy interest in the most  
7           intimate details of their lives.

8           And, Judge, what is instructive about the case  
9           and what, really, when we cut through -- and, Judge,  
10          this isn't to look at the First Amendment as  
11          something we talk about flippantly or whimsically.  
12          But what the defense has done in their opposition  
13          memo is sort of avoided this issue.

14          They've cited numerous cases that stand for  
15          axiomatic propositions of First Amendment law, all  
16          of which arise from cases that aren't factually  
17          similar to what's happened here.

18          And what's happened here is exactly what  
19          happened in *Michaels*, which, as best as we could  
20          tell, was the only reported decision regarding a sex  
21          tape between celebrities.

22          If you look at some of the other cases cited,  
23          such as the *Tommy Lee, Pamela Anderson* case, that  
24          was still photographs that had been published by  
25          three separate media entities by the time they



1 sought injunction. There's been a contention in  
2 this case that, because one or two of these stills  
3 got out, that the privacy is waived. And I don't  
4 think that comports at all with what the *Michaels*  
5 case was saying.

6 The reality of it is, Judge, is that every  
7 court that's discussed the issue of sexual relations  
8 behind a closed door has noted that these are among  
9 the most intimate and private acts a person can  
10 engage in.

11 And even a celebrity who has subjected himself  
12 to higher scrutiny of their public and private life  
13 enjoys the protection of the courts in cases where  
14 that intimate affair, that intimate act is being  
15 displayed publicly. And that's what happened in the  
16 *Michaels* case.

17 And the court very notably noted in that case  
18 that the private matter at issue here is not the  
19 fact that *Lee* and *Michaels* were romantically  
20 involved. Because they sought fame, *Lee* and  
21 *Michaels* must tolerate some public exposure of the  
22 fact of their involvement.

23 The fact recorded on the tape, however, is not  
24 that *Lee* and *Michaels* were romantically involved,  
25 but, rather, the visual and oral details of their