

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

HEATHER CLEM; GAWKER MEDIA, LLC  
aka GAWKER MEDIA; GAWKER MEDIA  
GROUP, INC. aka GAWKER MEDIA;  
GAWKER ENTERTAINMENT, LLC;  
GAWKER TECHNOLOGY, LLC; GAWKER  
SALES, LLC; NICK DENTON; A.J.  
DAULERIO; KATE BENNERT, and  
BLOGWIRE HUNGARY SZELLEMI  
ALKOTAST HASZNOSITO KFT aka  
GAWKER MEDIA,

Defendants.

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**PLAINTIFF TERRY BOLLEA'S MOTION IN LIMINE NO. 7  
TO EXCLUDE PREJUDICIAL AND IRRELEVANT IMPROPER  
CHARACTER EVIDENCE REGARDING TERRY BOLLEA**

Plaintiff Terry Bollea, professionally known as "Hulk Hogan" ("Mr. Bollea"), hereby moves this Court in limine under Fla. Stat. §§ 90.104, 90.401, 90.402, 90.403, 90.404, 90.609, 90.801 and 90.802 for an Order prohibiting Defendants from introducing evidence or argument, during any portion of the trial, concerning various public statements made by or about Mr. Bollea, which are irrelevant, highly prejudicial, inflammatory, and constitute improper character evidence.

In support of his motion, Mr. Bollea states the following:

1. Mr. Bollea's claims in this case arise out of defendant Gawker Media, LLC's ("Gawker") publication of a secretly filmed recording of Mr. Bollea naked and engaged in sexual relations with Heather Clem (the "Sex Video"). Mr. Bollea has brought claims for invasion of

privacy and related torts. Gawker's central defense is that the publication of the Sex Video is protected by the First Amendment as a matter of "legitimate public concern."

2. Gawker intends to introduce or reference certain public comments made by and/or about Mr. Bollea, which are irrelevant to the claims and defenses at issue in this case, and of a graphic and sexual nature, to inflame the jury and/or attack Mr. Bollea's character and reputation.

3. In particular, Gawker likely will seek to introduce statements from, including but not limited to, the following:

- a. November 1982 *Oui* magazine article "My Boy Hulk," published in a men's magazine, featuring photographs of Mr. Bollea with partially-clad female models [Gawker Trial Exhibit #366];
- b. Video taken of Mr. Bollea using a toilet [produced in discovery by Gawker as video files on Flash Drive Bates-Labeled GAWKER 27120] [Gawker Trial Exhibit #271];
- c. Statements in Mr. Bollea's book *My Life Outside the Ring*, published in 2009, most notably regarding Mr. Bollea's relationship with an employee of a recording label named Christiane Plante and including descriptions of sexual conduct [Gawker Trial Exhibit #68];
- d. February 9, 2006 broadcast of *Bubba the Love Sponge Show*, most notably regarding a conversation between Bubba Clem, Mr. Bollea, and a Penthouse Pet, in which there is a joking discussion of private parts [produced in discovery by Gawker as audio files on Flash Drive Bates-Labeled GAWKER 23417 (all *Bubba the Love Sponge Show* shows from 2006 to 2009)] [Gawker Trial Exhibit #238];
- e. August 28, 2006 broadcast of *Bubba the Love Sponge Show*, most notably regarding a conversation between Bubba Clem and Mr. Bollea in which there is a joking discussion regarding ejaculation during sex [Gawker Trial Exhibit #239];
- f. October 16, 2006 broadcast of *Bubba the Love Sponge Show*, most notably regarding a conversation between Bubba Clem, Mr. Bollea, and Mr. Bollea's then wife Linda Bollea, regarding oral sex preferences and practices [Gawker Trial Exhibit #240, 278-285];
- g. October 17, 2006 broadcast of *Bubba the Love Sponge Show*, most notably regarding a conversation between Bubba Clem, Mr. Bollea, and Linda Bollea, regarding oral sex in a car [Gawker Trial Exhibit #241, 286-293];

- h. October 20, 2006 broadcast of *Bubba the Love Sponge Show*, most notably regarding a conversation between Bubba Clem and Mr. Bollea in which there is a joking discussion regarding how to calculate penis size [Gawker Trial Exhibit #242];
- i. November 1, 2006 broadcast of *Bubba the Love Sponge Show*, most notably regarding a conversation between Bubba Clem and Mr. Bollea in which there is a joking discussion regarding sex and Mr. Bollea in a speedo-style bathing suit [Gawker Trial Exhibit #244, 298];
- j. October 23, 2006 broadcast of *The Howard Stern Show*, most notably regarding a conversation between Howard Stern, Mr. Bollea, Linda Bollea, Brooke Bollea, and Nick Bollea, in which there is a joking discussion about each of their sex lives [produced in discovery as video files on Flash Drive Bates-Labeled STERN (all files except 10/9/12 appearance should be excluded)] [Gawker Trial Exhibit #299];
- k. April 29, 2010 broadcast of *The Howard Stern Show*, most notably regarding a conversation between Howard Stern, Mr. Bollea, and Mr. Bollea's then wife and now current wife Jennifer Bollea, in which there is a joking discussion regarding aspects of their sex life [Gawker Trial Exhibit #300].

4. Gawker's strategy to use this highly prejudicial and inflammatory evidence will be to argue that it somehow justifies Gawker's publication of the Sex Video, in which Mr. Bollea was secretly filmed in a private bedroom while fully naked and engaged in consensual sex, as a matter of legitimate public concern.

5. None of the aforementioned evidence relates to the contents of the video Gawker published. None of the aforementioned evidence depicts images of Mr. Bollea naked or engaged in sexual intercourse with Heather Clem. None of the aforementioned evidence is in any way related, temporally or proximally, to the events depicted in the video. None of the aforementioned evidence is even referenced in the Gawker.com posting containing the video.

6. Accordingly, none of the aforementioned evidence tends to prove or disprove whether the images and audio of Mr. Bollea naked and engaged in sexual intercourse which Defendants chose to post on the Internet were themselves a matter of legitimate public concern.

Fla. Stat. §§ 90.401-402.

7. The purpose for which Gawker actually intends to use these statements is to inflame and prejudice the jury by attacking Mr. Bollea's character. This improper use of character evidence is prohibited. *See* Fla. Stat. §§ 90.404, 90.609.

8. A number of the statements in the aforementioned evidence also are hearsay and inadmissible under Fla. Stat. §§ 90.801, 90.802.

9. The aforementioned evidence has no bearing on, and no tendency to prove, whether images of Mr. Bollea naked and engaged in sexual intercourse were themselves newsworthy. The issue for the jury to decide in this case will be whether Gawker's posting of a video containing images and audio of Mr. Bollea naked and engaged in sexual intercourse ceased to be the giving of information to which the public is entitled, and became a morbid and sensational prying into Mr. Bollea's private life for its own sake. *Toffoloni v. LFB Publ'g. Group*, 572 F.2d 1201, 1210 (11th Cir. 2009). The aforementioned evidence has no bearing on this issue.

10. Assuming *arguendo* that there is some relevance to the evidence cited above, any probative value it might have in this case is substantially outweighed by the prejudice of putting these matters before the jury, especially considering their graphic nature and high likelihood of inflaming the jury. Fla. Stat. § 90.403; *MCI Express, Inc. v. Ford Motor Co.*, 832 So.2d 795, 801-02 (Fla. 3d DCA 2002) (trial court committed reversible error when it did not exclude testimony that executive of plaintiff used derogatory language about Cubans); *Simmons v. Baptist Hosp. of Miami, Inc.*, 454 So.2d 681, 682 (Fla. 3d DCA 1984) (same; "We think these unfair character assassinations could have done nothing but inflame the jury against these witnesses, who were so essential to the plaintiff's case, and in so doing, denied the plaintiff the

substance of a fair trial below.”); *State v. Gaiter*, 616 So.2d 1132, 1133 (Fla. 3d DCA 1993) (trial court redacted racial slurs even though probative).

11. In the event Gawker is permitted to introduce some or all of this evidence, the jury should be provided with an instruction detailing the limited purpose for which it is admitted, and further advising them that it must not be considered for any other purpose, including, without limitation, attacking Mr. Bollea’s credibility and character.

For the foregoing reasons, Mr. Bollea requests that the Court enter an Order prohibiting Defendants from introducing any evidence or argument at trial referencing public comments made by and/or about Mr. Bollea that are of a graphic and sexual nature, which do not refer or relate to the specific events depicted in the video Gawker published, including without limitation those cited above, or, alternatively, if such evidence is admitted, provide a limiting instruction to the jury.

Respectfully submitted,

/s/ Kenneth G. Turkel  
Kenneth G. Turkel, Esq.  
Florida Bar No. 867233  
Shane B. Vogt  
Florida Bar No. 0257620  
BAJO | CUVA | COHEN | TURKEL  
100 North Tampa Street, Suite 1900  
Tampa, Florida 33602  
Tel: (813) 443-2199  
Fax: (813) 443-2193  
Email: [kturkel@bajocuva.com](mailto:kturkel@bajocuva.com)  
Email: [svogt@bajocuva.com](mailto:svogt@bajocuva.com)

-and-

Charles J. Harder, Esq.  
PHV No. 102333  
Douglas E. Mirell, Esq.  
PHV No. 109885  
Jennifer J. McGrath, Esq.  
PHV No. 114890  
Sarah E. Luppen, Esq.

PHV No. 113729  
HARDER MIRELL & ABRAMS LLP  
1925 Century Park East, Suite 800  
Los Angeles, CA 90067  
Tel: (424) 203-1600  
Fax: (424) 203-1601  
Email: [charder@hmafirm.com](mailto:charder@hmafirm.com)  
Email: [dmirell@hmafirm.com](mailto:dmirell@hmafirm.com)  
Email: [jmcgrath@hmafirm.com](mailto:jmcgrath@hmafirm.com)  
Email: [sluppen@hmafirm.com](mailto:sluppen@hmafirm.com)

Counsel for Plaintiff

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-mail via the e-portal system this 12th day of June, 2015 to the following:

Barry A. Cohen, Esquire  
Michael W. Gaines, Esquire  
The Cohen Law Group  
201 E. Kennedy Blvd., Suite 1950  
Tampa, Florida 33602  
[bcohen@tampalawfirm.com](mailto:bcohen@tampalawfirm.com)  
[mgaines@tampalawfirm.com](mailto:mgaines@tampalawfirm.com)  
[jhalle@tampalawfirm.com](mailto:jhalle@tampalawfirm.com)  
[mwalsh@tampalawfirm.com](mailto:mwalsh@tampalawfirm.com)  
*Counsel for Heather Clem*

David R. Houston, Esquire  
Law Office of David R. Houston  
432 Court Street  
Reno, NV 89501  
[dhouston@houstonatlaw.com](mailto:dhouston@houstonatlaw.com)  
[krosser@houstonatlaw.com](mailto:krosser@houstonatlaw.com)

Michael Berry, Esquire  
Levine Sullivan Koch & Schultz, LLP  
1760 Market Street, Suite 1001  
Philadelphia, PA 19103  
[mberry@lkskslaw.com](mailto:mberry@lkskslaw.com)  
*Pro Hac Vice Counsel for  
Gawker Defendants*

Kirk S. Davis, Esquire  
Shawn M. Goodwin, Esquire  
Akerman LLP  
401 E. Jackson Street, Suite 1700  
Tampa, Florida 33602  
[kirk.davis@akerman.com](mailto:kirk.davis@akerman.com)  
[shawn.goodwin@akerman.com](mailto:shawn.goodwin@akerman.com)  
*Co-Counsel for Gawker Defendants*

Gregg D. Thomas, Esquire  
Rachel E. Fugate, Esquire  
Thomas & LoCicero PL  
601 S. Boulevard  
Tampa, Florida 33606  
[gthomas@tlolawfirm.com](mailto:gthomas@tlolawfirm.com)  
[rfugate@tlolawfirm.com](mailto:rfugate@tlolawfirm.com)  
[kbrown@tlolawfirm.com](mailto:kbrown@tlolawfirm.com)  
[abeene@tlolawfirm.com](mailto:abeene@tlolawfirm.com)  
*Counsel for Gawker Defendants*

Seth D. Berlin, Esquire  
Paul J. Safier, Esquire  
Alia L. Smith, Esquire  
Michael D. Sullivan, Esquire  
Levine Sullivan Koch & Schulz, LLP  
1899 L. Street, NW, Suite 200  
Washington, DC 20036  
[sberlin@lkskslaw.com](mailto:sberlin@lkskslaw.com)  
[psafier@lkskslaw.com](mailto:psafier@lkskslaw.com)  
[asmith@lkskslaw.com](mailto:asmith@lkskslaw.com)  
[msullivan@lkskslaw.com](mailto:msullivan@lkskslaw.com)  
*Pro Hac Vice Counsel for  
Gawker Defendants*

*/s/ Kenneth G. Turkel*  
\_\_\_\_\_  
Attorney