

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.

**SUPPLEMENTAL OPPOSITION OF PLAINTIFF TERRY GENE BOLLEA TO
HEATHER CLEM'S MOTION TO DISMISS**

Plaintiff Terry Gene Bollea respectfully submits this Supplemental Opposition to Heather Clem's Motion to Dismiss, which were originally filed in this court on November 28, 2012. **Exhibit 1** (Heather Clem's November 28, 2012 Motion to Dismiss). Heather Clem filed a virtually identical Motion to Dismiss (this time as to Mr. Bollea's First Amended Complaint) in the United States District Court for the Middle District of Florida on January 25, 2013, after Gawker purported to remove this case to the U.S. District Court. **Exhibit 2** (Heather Clem's January 25, 2013 Motion to Dismiss). Mr. Bollea filed an opposition to Heather Clem's motion in federal court before the U.S. District Court found Gawker's removal to be improper, and remanded the matter back to this Court. **Exhibit 3** (Mr. Bollea's February 8, 2013 Opposition to Heather Clem's Motion to Dismiss). Ms. Clem's motion was never ruled upon by the

District Court, and the motion has remained pending in this Court ever since. Given that over a year has passed since the original motion and opposition was filed, Mr. Bollea believes that it is appropriate to file this supplemental opposition to Heather Clem's motion in advance of the hearing set for October 22, 2014.

In addition to those grounds stated in Mr. Bollea's February 8, 2013 Opposition, which he fully incorporates herein, Heather Clem's Motion to Dismiss should be denied for the following reasons:

First, this Court already rejected the First Amendment as a ground for dismissal in ruling on the Gawker defendants' motions to dismiss. **Exhibit 4** (5/14/14 Order denying Gawker defendants' motions to dismiss "for the reasons stated by this Court at the April 23, 2014 hearing and because the Court finds that each of the causes of action in Plaintiff's First Amended Complaint alleges sufficient facts to state a valid cause of action"). Thus, Heather Clem's incorporation of Gawker's arguments regarding same should similarly be rejected. **Exhibit 2** at fn. 1. (Independently, the First Amendment is also inappropriate as a ground for dismissal of Heather Clem's claims because Heather Clem is not only being sued for her involvement in the dissemination of the Sex Video, but also for her involvement in recording it. Thus, Heather Clem does not have a First Amendment defense even if Gawker were to prevail on its argument that the First Amendment supposedly protects its publication of the sex video.)

Second, this Court already rejected Gawker defendants' arguments that Mr. Bollea did not adequately plead facts sufficiently outrageous to support an intentional infliction of emotional distress claim (the sixth cause of action). **Exhibit 4** (5/14/14 Order); **Exhibit 5** (relevant excerpts of transcript of 4/23/14 hearing on Gawker defendants' motions to dismiss)

(Tr. 87:22–23: “No. 6 is denied; for cause of action No. 6”). Thus, Heather Clem’s similar arguments should likewise be rejected. **Exhibit 2** at ¶5.

Third, this Court already rejected Gawker defendants’ argument that the impact rule prevented Mr. Bollea from seeking injunctive relief for his negligent infliction of emotional distress claim. **Exhibit 4** (5/14/14 Order); **Exhibit 5** (relevant excerpts of transcript of 4/23/14 hearing on Gawker defendants’ motions to dismiss) (Tr. 64:6–20: holding that this issue is one for summary judgment and that “there is potential for the plaintiff to still maintain that action”). Thus, Heather Clem’s identical argument should also be rejected. **Exhibit 2** at ¶6.

For the foregoing reasons, as well as those articulated in Mr. Bollea’s February 8, 2013 Opposition, Heather Clem’s Motion to Dismiss should be denied. Should any portion of Heather Clem’s motion be granted, Mr. Bollea should be granted leave to amend.

DATED: October 17, 2014

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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 17th day of October, 2014 to the following:

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