EXHIBIT D

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. 12012447 CI-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.
_____/

PLAINTIFF'S MOTION FOR AN ORDER TO SHOW CAUSE WHY GAWKER MEDIA, LLC SHOULD NOT BE HELD IN CIVIL CONTEMPT

Plaintiff, Terry Bollea, by counsel, moves this Court for an Order to Show Cause why Defendant Gawker Media, LLC aka Gawker Media should not be held in civil contempt for violating the Court's Order issued orally from the bench on April 24, 2013, and in a written order dated April 25, 2013, to remove the audio and video recording of Plaintiff Terry Gene Bollea in a private bedroom with Heather Clem, which recording includes depictions of Mr. Bollea naked and engaged in sexual activity, from *www.gawker.com* and to remove from their websites, including Gawker.com, the written narrative describing activities occurring during the private sexual encounter. The grounds upon which this motion is based and the reasons why it should be granted are as follows:

1. In this action, Plaintiff Terry Gene Bollea (professionally known as Hulk Hogan) has pleaded various privacy and related causes of action, arising out of Gawker Media, LLC's and the other Gawker Defendants', publication on their website Gawker.com of a clandestine recording of Plaintiff naked and engaged in sexual activities.

2. Plaintiff moved for a temporary injunction, and the Court ordered Gawker Media, LLC and the other Gawker Defendants "to remove the audio and video recording of Plaintiff Terry Gene Bollea in a private bedroom with Heather Clem, which recording includes depictions of Mr. Bollea naked and engaged in sexual activity (the "Sex Tape"), which is currently posted at *www.gawker.com* and to remove from their websites, including Gawker.com, the written narrative describing activities occurring during the private sexual encounter." This Court's April 25, 2013 written order granting Plaintiff's motion for temporary injunction is attached as **Exhibit F** to the Affidavit of Charles J. Harder (hereinafter "Harder Aff." or "Harder Affidavit").[1]

3. The Court denied Gawker Media's request to stay the order, which remains in full force and effect. This Court's Order denying Gawker Media's Motion for a Stay Pending Appeal is attached as **Exhibit G** to the Harder Affidavit.

4. Gawker Media's response to the Court's order was to flagrantly violate it. Gawker Media has flatly refused to remove the written narrative describing the activities occurring during the private sexual encounter, stating that "the portion of the order compelling us to remove the entirety of Daulerio's post—his words, his *speech*—is grossly unconstitutional. We won't take it down." Gawker Media's April 25, 2013 post, wherein Gawker Media says that

[1] The order was initially made orally at approximately 5:00 p.m. EST on April 24, 2013. A written order was sent electronically at 3:34 p.m. EST on April 25, 2013. Counsel for Gawker Media acknowledged receipt at 3:42 p.m. that same day.

it will not comply with this Court's Order, is attached as **Exhibit A** to the Harder Affidavit.

5. Additionally, Gawker Media simultaneously removed the video footage of Plaintiff from its website and added a link at that same website to the video footage hosted at another website, stating "And if you'd really like to watch the tape for some reason, it's online here." A copy of the webpage is attached as **Exhibit B** to the Harder Affidavit.

6. Plaintiff has repeatedly demanded that the narrative, the video footage, and the link to the video footage be removed from Gawker Media's site. However, Gawker Media continues to ignore the demand and refuses to comply with this Court's Order. A copy of Plaintiff's counsel's April 25, 2013 emails demanding that Gawker Media comply with this Court's order are attached as **Exhibits C & E** to the Harder Affidavit.

7. The violation of a portion of a court's order necessary to secure a litigant's right constitutes civil contempt. *Seaboard Air Line Railway Co. v. Tampa Southern Railroad Co.*, 134 So. 529, 532 (Fla. 1931). The civil contempt power "is a necessary and integral part of the judicial power and is absolutely essential to the performance of the duties imposed by law upon courts of equity. Without it, such courts are mere boards of arbitration, whose judgments and decrees are only advisory." *Id.* at 533. "A party proceeded against for disobedience of an injunction is never allowed to allege as a defense for his misconduct that the court erred in its judgment in granting the injunction. . . ." *Id.*

8. Gawker Media argues in **Exhibit A** that it has the right to continue to publish the narrative description of Plaintiff's private sexual activities because such discourse is protected by the First Amendment. Not only is this contention incorrect on the merits (Plaintiff established in his Motion for Temporary Injunction that Gawker Media's post was unprotected expression), but it is well-established that even if the terms of an injunction are inconsistent with the First

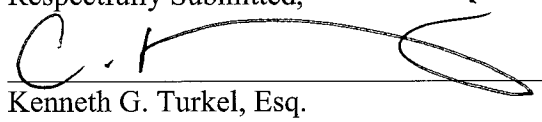
Amendment, a party has no right to disobey it but must challenge the injunction through legal channels. *Walker v. City of Birmingham*, 388 U.S. 307, 320 (1967) (parties had no right to raise First Amendment arguments against temporary injunction prohibiting protests in contempt proceedings after the injunction was violated: "These precedents clearly put the petitioners on notice that they could not by-pass orderly judicial review of the injunction before disobeying it."). "Normally, when injunctions are enforced through contempt proceedings, only the defense of factual innocence is available. The collateral bar rule of *Walker v. [City of] Birmingham*, 388 U.S. 307 (1967), eliminates the defense that the injunction itself was unconstitutional." *Madsen v. Women's Health Center, Inc.*, 512 U.S. 753, 793 (1994).

9. Linking to another website that broadcasts the video footage of Plaintiff engaging in sexual activity is a violation of the Court's Order as well. The Order prohibits "posting, publishing, exhibiting, or broadcasting" the footage. Harder Aff., **Exhibit F**. Linking to the footage falls within this definition. *See, e.g., Universal City Studios, Inc. v. Corley*, 273 F.3d 429, 456–57 (2d Cir. 2001) (rejecting argument that a link is not a publication of material: "[Appellants] confidently asserted that publication of bookstore locations carrying obscene material cannot be enjoined consistent with the First Amendment, and that a prohibition against linking to web sites containing DeCSS is similarly invalid…. [I]f others publish the location of the bookstore, preventive relief against a distributor can be effective before any significant distribution of the prohibited materials has occurred. The digital world, however, creates a very different problem. If obscene materials are posted on one web site and other sites post hyperlinks to the first site, the materials are available for instantaneous worldwide distribution before any preventive measures can be effectively taken.").

WHEREFORE, Plaintiff respectfully requests that the Court issue an Order to Show

Cause why Defendant Gawker Media, LLC should not be held in contempt of court and requiring Nick Denton, the founder of Gawker Media and current owner of all of, or a controlling or substantial interest in, Gawker Media, to appear in person on behalf of Defendant Gawker Media, LLC. At the hearing on the Motion for Order to Show Cause, Plaintiff will seek monetary sanctions, reasonable attorney's fees, and any other and further relief that is appropriate under the circumstances.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via e-mail this 26th day of April, 2013 to the following:

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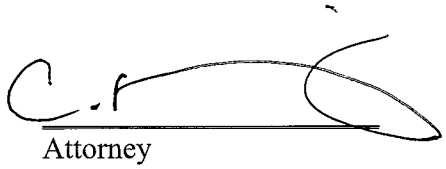

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