

EXHIBIT 11

to the

**AFFIDAVIT OF RACHEL E. FUGATE IN SUPPORT OF THE PUBLISHER
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

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IN THE CIRCUIT COURT OF THE
SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
Case No. 12012447CI-011
-----)
TERRY GENE BOLLEA professionally
known as HULK HOGAN,
Plaintiff,
vs.
HEATHER CLEM, GAWKER MEDIA, LLC a/k/a
GAWKER MEDIA, GAWKER MEDIA GROUP, INC.
a/k/a 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 a/k/a GAWKER MEDIA,
Defendants.
-----)
CONFIDENTIAL PORTION INCLUDED
VIDEOTAPED DEPOSITION OF
ALBERT JAMES DAULERIO
New York, New York
Monday, September 30, 2013
Reported by:
Toni Allegrucci
JOB NO. 337256

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September 30, 2013
10:58 a.m.

Videotaped Deposition of
ALBERT JAMES DAULERIO, held at the
offices of Esquire Deposition Solutions,
1384 Broadway, New York, New York 10018,
pursuant to Notice, before
Toni Allegrucci, a Notary Public of the
State of New York.

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A P P E A R A N C E S:

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ALSO PRESENT:

ANDREW RITCHIE, Videographer

HEATHER L. DIETRICK, Counsel, Gawker Media

1 A.J. Daulerio

2 It was a combination of both.

3 Q. Okay. And why did you leave
4 Philadelphia Magazine?

5 A. I went back to Deadspin to work
6 full-time as a staff writer around, I
7 believe, late 2007, maybe early 2008.

8 Q. Okay. And what did you do as a
9 staff writer at Deadspin?

10 A. I did various stories about sports
11 and sports culture.

12 Q. Okay. And Deadspin is one of the
13 Gawker Media websites, correct?

14 A. Yes.

15 Q. And how long did you stay as a
16 staff writer?

17 A. I believe six or seven months.

18 Q. And then what was your next job?

19 A. Editor in chief of Deadspin.

20 Q. And when did you assume that role?

21 A. Around June of 2008, I believe.

22 Q. Incidentally, when you were a staff
23 writer at Deadspin did you receive
24 compensation based upon page views?

25 A. Yes.

1 A.J. Daulerio

2 Q. Okay. And you did as well when you
3 were editor in chief, correct?

4 A. At that time I don't recall.

5 Q. Okay. We'll come back. All right.
6 And how long did you remain as editor in
7 chief of Deadspin?

8 A. Up until November of 2011.

9 Q. Okay. And during that time were
10 you writing for any of the other websites of
11 Gawker Media?

12 A. I probably contributed a post or
13 two here and there throughout the years, but
14 nothing that I was compensated for.

15 Q. Okay. All right.

16 And then you left Deadspin in
17 November of 2011?

18 A. Yes.

19 Q. Why?

20 A. I was about to take another job
21 with another publication.

22 Q. And what was that?

23 A. Animal New York, A-n, you know,
24 Animal NY.

25 Q. Okay. What kind of publication is

1 A.J. Daulerio

2 that?

3 A. It's a street art and culture
4 magazine which is now online.

5 Q. Was it at the time?

6 A. It was online and it is, was in
7 print originally.

8 Q. Okay. At the time you joined was
9 it, was it wholly online or --

10 A. Yes.

11 Q. -- or was it in print.

12 A. But I never took that job.

13 Q. Oh, okay. Why not?

14 A. Because Nick Denton asked me if I
15 wanted to be editor of Gawker.com.

16 Q. And when did he do that?

17 A. About November 2001.

18 Q. And what was your job as editor of
19 Gawker.com?

20 A. Can you -- how would you like me to
21 answer that?

22 Q. Can you tell me what were your
23 responsibilities as editor?

24 A. Oversee the staff, hiring, firing,
25 story planning, interacting with other parts

1 A.J. Daulerio

2 of the company, writing, editing.

3 Q. Okay. Editors at Gawker.com did
4 not only edit they write as well, correct?

5 A. Yes, some.

6 Q. And -- okay, well, can you -- well,
7 let me ask you this. How long did you serve
8 as editor of Gawker.com?

9 A. Up until January of 2013.

10 Q. And within that period of time,
11 what percentage of your time was spent
12 writing would you estimate?

13 A. Estimate less than ten.

14 Q. Were there any particular stories
15 you wrote during that period of time that you
16 are particularly proud of?

17 A. Nothing springs to mind.

18 Q. All right. And why did you leave
19 Gawker.com in January of 2013?

20 A. Because I was -- had fulfilled my
21 year at Gawker and I thought the site was in
22 very good shape and wanted to go out and do
23 other things.

24 Q. Had you made a specific commitment
25 to remain for only a year as editor?

1 A.J. Daulerio

2 A. I don't.

3 Q. Did you have to sign any similar
4 documents in connection with the Hulk Hogan
5 sex tape story?

6 A. No, I did not.

7 Q. And did you discuss the legality of
8 posting the Hogan video with anyone before
9 you did so?

10 MR. BERLIN: Let me object. You
11 can answer that question, except for as
12 it relates to discussions with counsel
13 which you should not divulge.

14 A. Yes, I had discussions with
15 Gawker's inhouse attorney.

16 Q. Okay. Did you discuss it with, the
17 story with Nick Denton or with Mr. Kidder?

18 A. If so it was very brief, but I'm
19 sure it came up at some point during
20 conversation.

21 Q. Okay. This is before it was
22 actually posted, correct?

23 A. That, I don't recall.

24 Q. Do you recall whether you believed
25 you had sufficient authority to post the

1 A.J. Daulerio

2 story without asking either Mr. Kidder or
3 Mr. Denton?

4 A. It's always been my understanding
5 that the editor in chief is in charge of
6 their own site and that only under unique
7 circumstances do Scott or Nick get involved
8 in the editorial process.

9 Q. Okay. And you don't recall them
10 that -- strike that.

11 You don't recall any such unique
12 circumstances being involved in this case
13 such that they were involved prior to
14 publication?

15 A. No.

16 Q. All right. But without revealing
17 what was said between the two of you, you do
18 recall having a conversation with inhouse
19 counsel at Gawker Media prior to the story
20 being published?

21 MR. BERLIN: Objection, asked and
22 answered. You can answer it.

23 A. Yes.

24 Q. And if I were to ask you what was
25 discussed during those conversations your

1 A.J. Daulerio

2 you can recall, similar to that?

3 A. Not that I can recall, no.

4 Q. And by similar to that, I mean
5 instances where you and Mr. Denton disagreed
6 about what was publishable and what shouldn't
7 be published?

8 A. Nothing specifically, no.

9 Q. And the Hulk Hogan sex tape video
10 story was not one of those about which you
11 disagreed about publishability?

12 A. No, I don't believe we even had a
13 conversation about it until after the fact.

14 Q. Okay. When did you first hear
15 about the Hulk Hogan sex video?

16 A. I believe it was when it was a
17 story on TMZ, on TMZ.

18 Q. And when did that story appear?

19 A. That, I don't know.

20 Q. Did the story indicate that there
21 was a sex video or do you recall the
22 substance of the story on TMZ?

23 A. Yeah, I believe it was discussing
24 about the existence of a sex video.

25 Q. When -- what did you do when you

1 A.J. Daulerio
2 had a subsequent follow-up phone call, as to
3 which he hinted that the, the contents of
4 that package that he wanted to mail to me had
5 something to do with the Hulk Hogan sex tape
6 that had been talked about on TMZ and other
7 sites.

8 Q. Okay. What happened then after
9 that?

10 A. I don't recall the exact details,
11 but there was a follow-up and I had given him
12 my address, or, the Gawker Media address at
13 work, and depending on the time frame, and I
14 don't remember exact timing of it, but I was
15 going on vacation, and I believe the package
16 arrived while I was on vacation and I had
17 asked the managing editor to view the
18 contents of that package.

19 Q. And the managing editor being?

20 A. Emma Carmichael.

21 Q. And did she do so?

22 A. Yes.

23 Q. Did she report back to you?

24 A. Yes, via text message.

25 Q. What did she say?

1 A.J. Daulerio

2 A. I don't remember the exact phrasing
3 of it but...

4 Q. What was the substance?

5 A. I believe she said thank you.

6 Q. Thank you to you?

7 A. Yes.

8 Q. For what?

9 A. For her next few minutes of viewing
10 the sex tape.

11 Q. Did she view the sex tape while you
12 were out of the office on vacation?

13 A. Yes.

14 Q. And then did she report back to you
15 about what the tape contained?

16 A. Briefly. But I mean it was, it
17 was, you know, the general gist of it. I
18 mean, I think that's what she reported back
19 was the general gist of it. I don't know how
20 long she watched the tape, or the disk,
21 sorry, I guess that's what it was at that
22 point.

23 Q. It was a DVD?

24 A. Yes.

25 Q. And where were you on vacation at

1 A.J. Daulerio

2 the time?

3 A. I was on the west coast. I was at
4 both Portland, Montana and Seattle.

5 Q. And during what time frame is that?

6 A. I believe it was the end of
7 September, it was about last year at this
8 time.

9 Q. And do you recall when you returned
10 to New York?

11 A. Not the exact date.

12 Q. Roughly?

13 A. I would say early October.

14 Q. And what did you do when you
15 returned to New York with respect to this DVD
16 that you now had in your possession?

17 A. I watched it and watched it one or
18 two times and then, then decided whether or
19 not we were going to publish some of the
20 contents of it, and was discussing how we
21 could possibly share some of the footage on
22 Gawker.com.

23 Q. Let me just stop you there. I
24 appreciate the narrative and I want to go
25 back to it but let me ask you this. With

1 A.J. Daulerio

2 A. No.

3 Q. This was not a tape that aired,
4 that was published on Deadspin?

5 A. No, it was published on Gawker.com.

6 Q. Do you know who the author of the
7 article was?

8 A. I don't.

9 Q. All right. So back to the Hulk
10 Hogan sex tape. You made the determination
11 that you wanted to publish at least some
12 portion of it?

13 A. Yes.

14 Q. Okay. Then what did you do?

15 A. Then I turned the tape and/or disk
16 over to our video editor and, you know,
17 selected various spots of the tape that I
18 considered both newsworthy in the context of
19 our story and had her twiddle it down to
20 whatever the time frame was, I believe it was
21 close to two minutes of footage.

22 Q. Okay. Then what?

23 A. Then there was probably a back and
24 forth about the footage, and then I was going
25 to write the commentary about both the Hogan

1 A.J. Daulerio

2 tape and celebrity sex tapes in general, and
3 using the Hogan tape as kind of the catalyst
4 for that commentary.

5 Q. All right. And then do you recall
6 there having been a -- well, let me go back.
7 You said you turned the disc over to your
8 video editor, who was that at the time?

9 A. It was Kate Bennert.

10 Q. Was Ms. Bennert involved in the
11 Eric Dane sex tape?

12 A. No, she was not employed there at
13 the time.

14 Q. She was a new hire, a relatively
15 new hire at the time?

16 A. Relatively new hire at the time.

17 Q. And do you have a recollection of
18 having had her do two sets of edits, one a
19 longer one and one a shorter one that
20 ultimately was uploaded onto the site?

21 A. Yeah, I believe there were a couple
22 different versions based on length.

23 Q. And why were there two different
24 versions?

25 A. We usually go through a simple

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A.J. Daulerio

editing process of any tape, even not of a sex tape nature, just based on what we think the readers will, like, devote enough time to and to just give a -- in regard to this it was just to give a brief overview of the content to both verify its existence and to also just tie into the commentary.

Q. Okay. So what did you want to be sure to include within the edited version that was ultimately published?

A. You know, some of the innocuous back and forth between Hulk and the woman in the tape that was supposed to be Heather Clem, his best friend's wife at the time, and some of the substance of that conversation in showing how not sexy it was.

Q. Okay. Anything else other than innocuous back and forth that you wanted your readers to see?

A. Yeah. Well, we wanted to verify the fact that they were actually having sex, so I believe we did small snippets of those two having intercourse.

Q. Anything else you wanted to be sure

1 A.J. Daulerio

2 Q. Is the same true with respect to
3 showing the actual sex act between Heather
4 Clem and Hulk Hogan?

5 A. That, you know, as I previously
6 stated, was done to actually show that they
7 were having sex in regard to the sex tape
8 that had already been talked about publicly
9 at that point.

10 Q. Right. So it was a matter of
11 public record already prior to your
12 publication of this story that, that there
13 was a sex tape and that the two had been
14 having sex, correct?

15 A. I believe that, you know,
16 Hulk Hogan had verified that there was a sex
17 tape in existence and that it was published
18 on TMZ. Who it was with, that I found out,
19 you know, later was discussed publicly and
20 that it was just based on some of the rumors
21 about whether or not it was Bubba the
22 Love Sponge's wife, Heather Clem.

23 Q. Right. But the fact of them having
24 sex was a matter of public record. The fact
25 that he had -- that there was this sex tape

1 A.J. Daulerio
2 and that he was having sex with someone --

3 MR. BERLIN: Objection.

4 A. Yeah.

5 Q. -- was a matter of public record at
6 the time?

7 MR. BERLIN: Let me object.

8 Object, asked and answered. You can
9 answer the question.

10 A. Yes, based on my understanding of
11 public record and its news value.

12 Q. Right. But, but that fact was not
13 newsworthy, that was, that was already a
14 known fact, correct?

15 A. Well, it was --

16 MR. BERLIN: Let me object.

17 Objection, that's already been asked and
18 answered. It's argumentative and it
19 calls for a legal conclusion.

20 To the extent that you want to
21 answer based on your understanding
22 please go ahead and do so.

23 A. Yeah, based on my understanding the
24 existence of the sex tape, you know, was out
25 there, the actual contents of that sex tape

1 A.J. Daulerio
2 were not out there and this was the best way
3 of at least giving, showing some of that.

4 Q. Yeah, so that's what I'm sort of
5 getting at. I mean, what, what did you
6 regard as newsworthy about the sex tape that
7 wasn't already known and that was shown by
8 having the sex tape posted as opposed to
9 simply your description of what was --

10 A. Right.

11 Q. -- contained?

12 MR. BERLIN: Same objection.

13 Sorry, same objection. You can answer.

14 A. You know, that's really done by a
15 story by story basis. But, you know, at the
16 time I was thinking that as we can show some
17 of the sex that was taking place it would
18 give a little more insight into the stuff
19 that was already in the public record and
20 also show some inconsistencies in what Hulk
21 had stated publicly and what there was as
22 visual evidence.

23 Q. Okay. Well, was there anything
24 that was added to the store of public
25 knowledge about those subjects by uploading

1 A.J. Daulerio
2 record can be clear on this subject, I think
3 the reference to April 25 at the top and
4 bottom of page 9 is meant to be 2013 rather
5 than 2012.

6 A. Yeah.

7 MR. BERLIN: That is correct.

8 Q. Okay. All right.

9 MR. BERLIN: In fact it says it.

10 MR. MIRELL: Okay.

11 Q. That's no -- make no mind about
12 that. Just so we're clear on the record and
13 everybody is on the same page --

14 A. Okay.

15 Q. -- literally and figuratively.
16 All right. So let me ask you a
17 couple of follow-up questions about this.

18 Who at Gawker did Tony Burton
19 initially contact?

20 A. That was me.

21 Q. And how did he do that?

22 A. Via e-mail.

23 Q. And do you recall what he said in
24 that e-mail?

25 A. Not specifically other than that he

1 A.J. Daulerio

2 A. No.

3 Q. And did you respond to him?

4 A. I did.

5 Q. And what did you say?

6 A. I believe I asked what it was about
7 or could he give me any idea what was being
8 sent.

9 Q. And what was the response from
10 Mr. Burton?

11 A. I believe then we had a phone
12 conversation after that.

13 Q. Okay. What was discussed during
14 that phone conversation?

15 A. It was discussed about whether or
16 not I was familiar with the Hulk Hogan sex
17 tape story.

18 Q. Okay. And what did you say?

19 A. I said I remember vaguely about it,
20 but nothing too specific.

21 Q. And when was this e-mail received,
22 or -- strike that.

23 When was, when was the conversation
24 you had with him?

25 A. I'd say soon after the e-mail, so I

1 A.J. Daulerio

2 exchange for publishing the videotape?

3 A. No.

4 Q. Did you feel obligated in any way
5 to the source of this sex tape?

6 A. Not knowing who the source was
7 exactly, no.

8 Q. Had they -- had you known who the
9 source was would you have felt any sort of
10 obligation toward that individual?

11 A. No.

12 Q. By publishing the story that you
13 did, we previously discussed this part of
14 Exhibit 7, did you -- was this something that
15 you were excited about publishing?

16 A. This particular story?

17 Q. Um-hm.

18 A. The original story?

19 Q. Yes.

20 A. I was very enthusiastic about
21 writing about it, yes.

22 Q. And why was that?

23 A. Because I enjoyed watching the
24 video.

25 Q. Okay. And the reason you enjoyed

1 A.J. Daulerio

2 it?

3 A. Because I found it very amusing.

4 Q. Any other reason?

5 A. I thought it was newsworthy and it
6 was something that was worth discussing and
7 putting up on the site.

8 Q. Did you believe that publishing the
9 video would generate traffic to the site?

10 A. I believed that it would be
11 somewhat popular, yes.

12 Q. Was it?

13 A. Eventually.

14 Q. I'm sorry, your answer eventually?

15 A. Eventually, yes.

16 Q. Why do you say eventually?

17 A. Because initially I don't think it
18 was one of the top stories on the site. And
19 I was curious as to actually why that was the
20 case and then it became a lot more popular a
21 couple days afterwards.

22 Q. Do you know what caused that?

23 A. I believe it became national news
24 at that point. And Hulk Hogan was doing a
25 very good job promoting it.

1 A.J. Daulerio

2 Q. In reference to stories posted on
3 the internet?

4 A. Not specifically, no.

5 Q. Okay. Well, let's put it this way.
6 What would be the opposite of an NSFW story,
7 would you have a term for it or have you ever
8 coined or used a term for it?

9 A. Not to my knowledge.

10 Q. Was any consideration ever given to
11 running a story about the Hulk Hogan sex tape
12 without using any of the video footage?

13 MR. BERLIN: Objection.

14 You can answer.

15 A. Without any of the video footage?

16 Q. Correct?

17 A. Not to my knowledge.

18 Q. Why not?

19 A. Just first time writing about the
20 story was when we received the tape so the
21 tape was actually part of the story.

22 Q. That's what made the story an
23 exclusive for you, right?

24 A. Yes.

25 Q. And nobody had aired the tape

1 A.J. Daulerio
2 itself before your story, correct?

3 A. Not to my knowledge.

4 Q. And so what you wanted to do is to
5 run the NSFW footage, that was the whole
6 point of the story, correct?

7 MR. BERLIN: Objection.

8 You can go ahead and answer.

9 A. Okay. No, the whole point of the
10 story was to, A, prove its existence and, B,
11 for me to commentate on what I witnessed of
12 that tape.

13 Q. But you never considered running a
14 story with just your commentary?

15 MR. BERLIN: Objection, asked and
16 answered.

17 You can answer.

18 A. The story as it pertains to this
19 tape, no.

20 Q. Okay. And if you had done that the
21 number of page views and unique visitors
22 would have been far less than what it
23 actually was, correct?

24 MR. BERLIN: Objection, calls for
25 speculation. You can answer if you can.

1 A.J. Daulerio

2 Q. Do you recall ever seeing a TMZ
3 story in or about October the 6 of 2012?

4 A. No.

5 Q. Discussing the Hulk Hogan sex tape?

6 A. No.

7 Q. In editing the tape down from
8 3 minutes to 1 minute 41 seconds you could
9 have edited out all the explicit footage,
10 could you not?

11 A. Yes.

12 Q. And the decision not to do that,
13 was that your decision solely?

14 A. Yes, for the most part. I mean, I
15 did have a discussions with Gawker's legal
16 team.

17 MR. MIRELL: And any, any question
18 that I would ask the witness about what
19 was said by the legal team to him or
20 that he said to that legal team you
21 would object to and instruct?

22 MR. BERLIN: Yes.

23 Q. Okay. And you would take that
24 instruction?

25 A. Yes.

1 A.J. Daulerio

2 MR. BERLIN: Let me object same --

3 Q. Would that be newsworthy?

4 MR. BERLIN: Same objection.

5 A. Yes. These are all under the
6 hypothetical brown envelope mailed to?

7 Q. Sure.

8 A. Sure.

9 Q. So, I mean, so long as the
10 celebrity is prominent enough a sex tape
11 involving them is going to be newsworthy?

12 A. Yes.

13 MR. BERLIN: Objection. Let me
14 object first, please. Same objection.
15 Go ahead and answer.

16 Q. Did you believe that the fact that
17 still photographs of the, from the Hulk Hogan
18 video had previously been published, gave you
19 the right to publish the more explicit video
20 that you actually posted?

21 MR. BERLIN: Objection to the
22 extent that it calls for a legal
23 conclusion. Go ahead and answer.

24 A. I, I would, I would say yes to the
25 fact that in my opinion that was what really

1 A.J. Daulerio
2 justified it being newsworthy to begin with
3 and its newsworthiness at that point was both
4 with the existence of the tape and verifying
5 its existence and then my own personal
6 commentary about celebrity sex tapes and the
7 one in particular involving Hulk Hogan and
8 Heather Clem.

9 Q. Okay. If Hulk Hogan had -- strike
10 that.

11 If the Hulk Hogan sex tape had not
12 existed, but Hulk Hogan had talked about his
13 wife's infidelity while he was having affairs
14 of his own, you could have reported about
15 that as hypocrisy, correct?

16 MR. BERLIN: Let me object on the
17 basis that it calls for speculation, but
18 go ahead, answer it.

19 A. If, if that was something that I
20 wanted to report about or wanted the site to
21 report about, sure.

22 Q. Okay. And that conduct is
23 hypocritical whether or not a sex tape ever
24 was made?

25 A. Between?

1 A.J. Daulerio

2 You can answer the question.

3 A. Yeah, correct.

4 Q. Do you think the fact that
5 Hulk Hogan was set up makes the sex tape more
6 newsworthy?

7 MR. BERLIN: Objection.

8 You can go ahead and answer.

9 A. I wasn't aware that he was set up
10 at the time of the publication.

11 Q. If Hulk Hogan was not voluntarily
12 recorded do you think that impacts the
13 newsworthiness or non-newsworthiness of the
14 publication of your story?

15 MR. BERLIN: Objection.

16 You can answer the question if you
17 can.

18 A. Prior to publication, no.

19 Q. Why do you insert the caveat "prior
20 to publication"?

21 A. Because it became more newsworthy
22 after our publication, after Hulk Hogan
23 talked about it on many different talk shows,
24 and the relationship between he and his best
25 friend's wife became a news story on its own.

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C E R T I F I C A T E

STATE OF NEW YORK)

: ss.

COUNTY OF NEW YORK)

I, Toni Allegrucci, a Notary Public within and for the State of New York, do hereby certify:

That ALBERT JAMES DAULERIO, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 9th day of October, 2013.



TONI ALLEGRUCCI