

**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.

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**AFFIDAVIT OF MIKE FOLEY**

STATE OF FLORIDA

COUNTY OF ALACHUA

MIKE FOLEY, being duly sworn, deposes and says:

1. I am a resident of Gainesville, Florida over the age of 18 years. I have been retained as an expert witness by the law firm Harder Mirell & Abrams LLP, counsel for Plaintiff Terry Gene Bollea, professionally known as Hulk Hogan. The statements made herein are based on my personal knowledge, and if called as a witness, I could and would competently testify to the matters stated herein.

2. I am the Master Lecturer in the Journalism Department in the College of Journalism and Communications at the University of Florida. It's the latest phase of a career in journalism that has spanned more than 40 years. I started as a reporter after college. I then served

in a variety of editor roles at the Times Publishing Co., which owns the *St. Petersburg Times*, now called the *Tampa Bay Times*. I was city editor, managing editor and, finally, executive editor responsible for everything in the paper except the ads and editorials. For the last eight of my nearly 30 years at the *Times*, I was a vice president in charge of community affairs, scholarships and corporate giving. I was a juror for the Pulitzer Prizes twice, president of the Florida Society of Newspaper Editors, judge for the Hearst Foundation's college journalism awards and a trustee of the Freedom of Information Foundation of Florida. I retired in 1999 and began teaching at the University of Florida in 2001. I am the first Hugh Cunningham Professor in Journalism Excellence and was named the university's Teacher of the Year in 2006-2007. I received the Distinguished Teaching in Journalism Award, a national honor, from the Society of Professional Journalists in 2013 and was selected as one of *The Best 300 Professors* by the Princeton Review in 2012. I was honored in 1994 as a distinguished alumnus of the college.

3. I have a bachelor's degree in journalism and a master's in mass communications, both from the University of Florida. I also have an honorary doctorate from Tampa College.

4. In the past, I have been retained as an expert witness on at least two occasions by Gregg Thomas of the Thomas & LoCicero law firm of Tampa.

5. Journalists don't check their humanity at the door when they enter the profession. They don't have to have cold hearts or lack sympathy or eliminate their empathy. In fact, just the opposite is true. A journalist is sensitive and understands the power he or she has—tremendous power to help or harm.

6. That's why I find this case troubling.

7. Is it news that a sex video involving a famous professional wrestler exists? Probably. He is a celebrity, after all. Is it news that the ex-wife of the wrestler's friend also is on

the tape? Yes. Is it news that the video was shot secretly and that the person(s) responsible is (are) unknown? Yes.

8. But is the video itself news? Absolutely not.

9. My opinions are based on a review of the video, the story describing it, depositions and other documents related to this case. I also have read extensively about the parties involved and news coverage of the court cases. It is also based on my more than four decades in the news business as a journalist, corporate officer and college professor.

10. Real journalists are ethical journalists. Journalism has standards and news values. Certainly, the First Amendment protects our rights of speech and press. It ensures freedom to publish, and its scope is broad. But journalists don't see that power as unlimited. And real journalists respect the rights of the people they cover.

11. Consider this excerpt from the Society of Professional Journalists' Code of Ethics (currently being updated):

“MINIMIZE HARM

“Ethical journalists treat sources, subjects, colleagues and members of the public as human beings deserving of respect. Journalists should:

“Recognize that gathering and reporting information may cause harm or discomfort.

Pursuit of the news is not a license for arrogance, irreverence or an invasive behavior.

“Recognize the harm in using photos or information, including any photos and data from social media forums, for which the source is unknown, or where there is uncertainty regarding the authenticity of the images or information.”

12. Journalists respect privacy. While it is sometimes necessary to publish intimate details of a story, it is hardly the goal. We do not publish grisly images of car accidents, for

example, unless it is absolutely necessary to the telling of the story. And when it is deemed necessary, the least-offensive material is used.

13. Take the case of celebrity Erin Andrews. The fact that some criminal made a surreptitious video of her naked in a hotel room is news. However, I know of no reputable journalistic enterprise that published the tape or even a detailed description of them.

14. This month, the *Los Angeles Times* published a story about a dance company worker who was arrested and accused of video recording underage girls in a dressing room. Is it a good news story? You bet. Did the *Times* print any of his pictures? Of course not. I doubt the possibility was even raised.

15. Earlier this year, a Tampa businessman was arrested and charged with secretly recording hundreds of instances of women showering and using the toilets at his company. The *Tampa Bay Times* and other news outlets ran stories. Not one published the video.

16. In fact, the archives of the *Times* and other Florida outlets contain numerous stories about men being arrested for secretly taping women in the restroom or in the dressing room in a clothing store. I am certain none of the videos ever was considered for publication.

17. The fact that these events occurred is news. The criminal videos and photos are not.

18. Gawker did not post this video because of its “news” value. Consider this headline on the site:

*Even for a Minute, Watching Hulk Hogan*

*Have Sex in a Canopy Bed is Not Safe For*

*Work but Watch it Anyway*

19. Real journalists eschew salaciousness. We do our best to avoid sensationalizing our report.

20. Posting this video shows a total disregard for privacy. It's insensitive. It shows contempt for the community and, from everything I have read, incredible arrogance.

21. In newsrooms across the country, editors employ something called the "Cheerios Test." They consider graphic photos and descriptions—even graphic language—using a simple standard: How would it play for readers eating breakfast?

22. This video fails that test and others.

23. I teach my students that journalism has three components. It has to be accurate. It has to be complete, and it has to be fair.

24. The Gawker video definitely is not fair. Terry Bollea had no idea he was on camera. The video is hurtful and embarrassing. And it doesn't add to the story or move it along.

25. The highest calling of journalism is to help the reader/viewer make sense of a confusing world. Does this video do that? No.

26. If Gawker tries to hide behind the First Amendment and pose as a journalistic enterprise, the actions in this case fall far short of accepted customs and practices.

27. I have reviewed the comments of the late *New York Times* media critic David Carr in an interview with NBC, a true and correct copy of which is attached hereto as Exhibit A. He drew what I believe is an excellent analogy as to what Gawker is and stands for: "There was a group of ninth grade girls who knew everything, who saw everything, who said everything, the mean girls who just you know ran the show and laid waste to everyone they saw. That's Gawker. They rule the playground." Mr. Carr also calls Gawker "disgusting" and "despicable" in that same interview. I agree with Mr. Carr's assessment.

28. This is not journalism. At best, it's pandering; at worst, pornography.

I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information and belief.

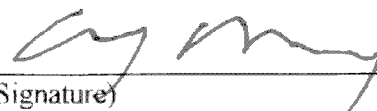
Executed this 3<sup>rd</sup> day of May, 2015.

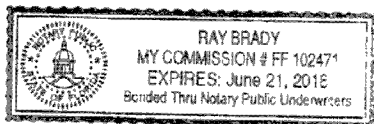
  
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MIKE FOLEY

State of Florida  
County of Alachua

Subscribed and sworn to (or affirmed) before me, Ray Brady  
this 3<sup>rd</sup> day of MAY, 2015, by MIKE FOLEY who proved to me on the basis of satisfactory evidence to be the person who personally appeared before me.

He/she is personally known to me  or he/she has produced \_\_\_\_\_  
(type of I.D.) as identification.

  
\_\_\_\_\_  
(Signature)



\_\_\_\_\_  
(Type or Print Name)  
Notary Public  
My Commission Expires:  
Commission No.: