

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA

TERRY GENE BOLLEA professionally
known as HULK HOGAN,

Plaintiff,

Case No. 12012447CI-011

vs.

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 TERRY BOLLEA'S MOTION TO STRIKE IRRELEVANT AND
PREJUDICIAL HEARSAY FROM GAWKER DEFENDANTS' STATEMENT OF
UNDISPUTED MATERIAL FACTS ISO MOTION FOR SUMMARY JUDGMENT**

Pursuant to Florida Rule of Civil Procedure 1.140(f), Plaintiff Terry Gene Bollea moves to strike all citation to, quotation of, and reliance on irrelevant, prejudicial, unauthenticated, and unverified hearsay statements contained in the Statement of Undisputed Material Facts in Support of Motion for Summary Judgment (the "SUMF") submitted by Defendants Gawker Media, LLC ("Gawker"), Nick Denton, and A.J. Daulerio (together, "Gawker Defendants"), specifically the quotations contained in SUMF ¶¶ 39, 43, 45–47, 51, 54, and 56, 64–67, 85, 92, 105–106, and 108–110 and in support states as follows:

In Florida, "[a] party may move to strike or the court may strike redundant, **immaterial**, **impertinent**, or **scandalous** matter from any pleading at any time." Fla. R. Civ. P. 1.140(f) (emphasis supplied). Gawker Defendants' SUMF reads like a page from Gawker.com. It is

replete with **immaterial, impertinent, scandalous**, unverified and unauthenticated **gossip and rumor**, included for the transparent and improper purpose of prejudicing the Court against Mr. Bollea. Gawker Defendants' inclusion of gossip and rumors in its SUMF is objectionable on at least the following grounds, and should be stricken:

First, the gossip and rumors about Mr. Bollea, going back 20 years in some cases, is entirely **irrelevant** to the arguments made in Gawker Defendants' Motion for Summary Judgment. For example, Gawker Defendants quote extensively from *National Enquirer* articles, repeating unsubstantiated **allegations** made by **undisclosed sources** that Mr. Bollea had sexual relationships with women other than Heather Clem. SUMF ¶45. Even assuming *arguendo* Gawker Defendants' argument that press coverage of Mr. Bollea's private life is relevant to their First Amendment defense (it is not), the cherry-picked quotations from those articles that represent the salacious and scandalous, unsubstantiated and anonymous gossip and rumors about Mr. Bollea can have no relevance to that argument, let alone to the facts and claims in this case.

Second, even if the gossip and rumors are somehow relevant (they are not), their probative value is **substantially outweighed** by the danger of unfair prejudice to Mr. Bollea. For example, Gawker Defendants quote extensively from an affidavit filed in a 1996 court case, wherein the affiant (Kate Kennedy) claims she was sexually assaulted by Mr. Bollea. SUMF ¶47. No judgment against Mr. Bollea was ever entered. The allegation is extremely prejudicial, and has no probative value whatsoever to this case. The affidavit was written 20 years ago. Ms. Kennedy is not available for cross-examination. Moreover, the affidavit she filed in 1996 has nothing to do with whether secretly-recorded footage of Mr. Bollea fully naked and having sexual relations in a private bedroom in 2007 was a matter of legitimate public concern in 2012.

Third, the quotes pulled from the articles are hearsay and, in many cases, hearsay within hearsay. For example, Gawker Defendants quote articles allegedly quoting Linda Bollea accusing Mr. Bollea of having an extra-marital affair with a male wrestler. SUMF ¶54. Gawker Defendants claim that they do not offer the articles to prove the truth of the matters asserted therein. If that truly is not Gawker Defendants' intention, then what is the purpose of including the salacious quotations in their SUMF? If the point is to show the extent of press and public discussions of Mr. Bollea's private life, citation to the articles' **existence** and **general subject matter** would be more than sufficient. Gawker Defendants' true motive can be seen from the fact that even though their SUMF extensively sets forth and quotes the salacious, unsubstantiated allegations contained in these articles, Gawker Defendants **do not reference any of them** in their legal argument in their points and authorities. If the quoted hearsay were truly relevant to their contentions, one would expect them to appear somewhere in their legal argument; but they never do. Instead, Gawker Defendants seek to prejudice Mr. Bollea before the Court, and assassinate his character by gathering together in one document all of the salacious, unsubstantiated rumors ever lodged against Mr. Bollea—a **gossip column in the form of a statement of facts**. Their intentions are transparent, and their tactics offensive, outrageous, unprofessional and improper.

For the foregoing reasons, and those stated in Mr. Bollea's concurrently-filed Opposing Statement of Facts, Mr. Bollea moves the Court to strike all quoted material, and statements based on gossip and rumor, found in the following paragraphs of the SUMF, as immaterial, impertinent, and scandalous under Florida Rule of Civil Procedure 1.410(f): SUMF ¶¶ 39, 43, 45–47, 51, 54, and 56, 64–67, 85, 92, 105–106, and 108–110. Mr. Bollea attaches hereto, as

Exhibit A, a computer redline of Gawker Defendants' SUMF, with the objectionable text stricken.

Respectfully submitted,

/s/ Kenneth G. Turkel

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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 22nd day of May, 2015 to the following:

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