

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.

**PLAINTIFF TERRY BOLLEA'S MOTION IN LIMINE NO. 8 TO EXCLUDE
PREJUDICIAL, IRRELEVANT AND IMPROPER CHARACTER EVIDENCE AND
HEARSAY WITHIN TABLOIDS CONCERNING TERRY BOLLEA**

Plaintiff Terry Bollea, professionally known as "Hulk Hogan" ("Bollea"), hereby moves this Court in limine under Fla. Stat. §§ 90.104, 90.401, 90.402, 90.403, 90.404, 90.609, 90.801 and 90.802, for an Order prohibiting Defendants from introducing evidence or argument, during any portion of the trial, concerning various statements made by third parties about Mr. Bollea, Mr. Bollea's sexual activities, and the video at issue, that were not published by Gawker, including without limitation the tabloids and other hearsay, irrelevant, highly prejudicial, inflammatory and improper character evidence identified in paragraph 3, below.

In support of his motion, Mr. Bollea states the following:

1. Mr. Bollea's claims in this case arise out of defendant Gawker Media, LLC's ("Gawker") publication of a secretly filmed recording of Mr. Bollea naked and engaged in sexual

relations with Heather Clem (the “Sex Video”). Mr. Bollea has brought claims for invasion of privacy and related torts. Gawker’s central defense is that the publication of the Sex Video is protected by the First Amendment as a matter of “legitimate public concern.”

2. Gawker intends to introduce or reference articles and statements by third parties about Mr. Bollea, Mr. Bollea’s sexual activities, and the Sex Video, that were not published by Gawker, and which are irrelevant to the claims and defenses at issue in this case, in order to inflame the jury and/or attack Mr. Bollea’s character and reputation.

3. In particular, Gawker likely will seek to introduce statements from, including but not limited to, the following:

- a. January 5, 1996 AP Online article entitled “People in the News,” most notably unsworn, out-of-court statements made by lawyers and publicists regarding allegations from a woman, Kate Kennedy, who accused Mr. Bollea of sexual assault at a promotional event, though the allegations were never substantiated or proven [Gawker Trial Exhibit #535];
- b. January 5, 1996 *USA Today* article entitled “Hogan, Acquaintance Wrestle Over Charges,” most notably unsworn, out-of-court statements made by lawyers and publicists regarding Kate Kennedy’s allegations [Gawker Trial Exhibit #534];
- c. January 6, 1996 *South Florida Sun-Sentinel* article entitled “Hulk Hogan Wrestles With Serious Charges,” most notably unsworn, out-of-court statements from lawyers regarding Kate Kennedy’s allegations [Produced in discovery as GAWKER 25430-25431];
- d. January 7, 1996 *Chicago Tribune* article entitled “Hulk Hogan Sues Over Sex Charge,” most notably unsworn, out-of-court statements allegedly made in court filings regarding Kate Kennedy’s allegations [Gawker Trial Exhibit #532];
- e. March 3, 1997 *St. Paul Pioneer Press* article entitled “Hulk Hogan Wrestling With Legal System In Alleged Assault,” most notably statements from lawyers and statements allegedly made in court filings regarding Kate Kennedy’s allegations [Gawker Trial Exhibit #533];
- f. October 31, 2006 broadcast of *Bubba the Love Sponge Show*, most notably out-of-court, unsworn statement by Bubba Clem that Mr. Bollea supposedly had a “threesome” during the 1982 *Oui* magazine photo shoot

[produced in discovery by Gawker as audio files on Flash Drive Bates-Labeled GAWKER 23417 (all *Bubba the Love Sponge Show* shows from 2006 to 2009)] [Gawker Trial Exhibit #243];

- g. February 28, 2008 *National Enquirer* article entitled “Hulk Hogan Mistress Revealed! Family Torn Apart!,” most notably regarding unsworn, out-of-court statements allegedly made by an employee of a recording label named Christiane Plante [Gawker Trial Exhibit #370].
- h. March 8, 2008 *Perez Hilton* article entitled “Hulk’s Other Woman SPEAKS!,” most notably quotes from an alleged letter written by Christiane Plante [Gawker Trial Exhibit #371];
- i. March 10, 2008 *National Enquirer* article entitled “Hulk Hogan mistress revealed,” most notably quotes from an unnamed “insider” [Gawker Trial Exhibit #503];
- j. March 17, 2008 *National Enquirer* article entitled “Hulk Hogan Reeling After More Cheating Allegations,” most notably quotes from an unnamed “insider” [Gawker Trial Exhibit #452];
- k. November 6, 2008 *E-Online* article entitled “Linda Hogan: Hulk’s Affair Killed Our Marriage,” most notably quotes from Gary Smith, the publicist for Mr. Bollea’s wife Linda Bollea who had just filed for divorce [Gawker Trial Exhibit #372];
- l. April 30, 2009 *Rolling Stone* article entitled “Hulk at Twilight,” most notably unsworn, out-of-court statements made by Vince McMahon and Bret Hart and Mr. Bollea’s detailed description of the anger he felt at his wife having an affair with a 19-year-old [Gawker Trial Exhibit #374];
- m. 2011 book entitled *Wrestling the Hulk: My Life Against the Ropes* by Mr. Bollea’s ex-wife Linda Bollea, most notably Linda Bollea’s unsworn, out-of-court statements regarding her alleged conversations with Mr. Bollea, as well as her alleged impressions, concerning Kate Kennedy’s 1996 allegations [Gawker Trial Exhibit #586];
- n. August 16, 2011 *Radar Online* article, “Linda Hogan Suggests Hulk Hogan Had ‘Intimate Relationship’ With Brutus Beefcake,” most notably out-of-court, unsworn statements allegedly made by Mr. Bollea’s ex-wife Linda Bollea suggesting Mr. Bollea had an alleged “intimate” relationship with male wrestler Brutus Beefcake [Gawker Trial Exhibit #378];
- o. October 12, 2011 broadcast of *The Howard Stern Show*, most notably regarding a discussion of Mr. Bollea’s ex-wife Linda Bollea’s unsubstantiated allegations of infidelity [produced in discovery as video files on Flash Drive Bates-Labeled STERN (all files except 10/9/12 appearance should be excluded)] [Gawker Trial Exhibit #301];

- p. December 10, 2011 *US Weekly* article, “Hulk Hogan Sues Ex-Wife Linda Bollea for Claiming Abuse, Gay Affair,” most notably out-of-court, unsworn statements allegedly made by Mr. Bollea’s ex-wife Linda Bollea alleging abuse and suggesting Mr. Bollea had an alleged “intimate” relationship with male wrestler Brutus Beefcake [Gawker Trial Exhibit #383];
 - q. March 7, 2012 *Huffington Post* article entitled “Hulk Hogan Sex Tape Surfaces: Wrestler Claims He Was Filmed in Secret,” most notably out-of-court, unsworn statements allegedly made by Mr. Bollea’s ex-wife Linda Bollea suggesting Mr. Bollea had an alleged “intimate” relationship with male wrestler Brutus Beefcake [Gawker Trial Exhibit #455];
 - r. March 8, 2012 *Digital Spy* article entitled “Hulk Hogan Urged by Porn Producer to Officially Release Sex Tape,” most notably out-of-court, unsworn statements allegedly made by Mr. Bollea’s ex-wife Linda Bollea suggesting Mr. Bollea had an alleged “intimate” relationship with male wrestler Brutus Beefcake [Gawker Trial Exhibit #458];
 - s. April 23, 2012 *eWrestlingNews.com* article entitled “Shocking Details on the Hulk Hogan Sex-tape Revealed,” most notably out-of-court, unsworn statements allegedly made by wrestler The Ultimate Warrior regarding Mr. Bollea and his ex-wife, Linda Bollea [Gawker Trial Exhibit #460];
 - t. April 23, 2012 *TWNPnews.com* article entitled “Images Leak from Hulk Hogan’s Sextape,” most notably out-of-court, unsworn statements allegedly made by wrestler The Ultimate Warrior regarding Mr. Bollea and his ex-wife, Linda Bollea [Gawker Trial Exhibit #461];
 - u. April 23, 2012 *TNA Wrestling News* article entitled “Linda Hogan Addresses the Hulk Hogan Sex Tape,” most notably out-of-court, unsworn statements allegedly made by wrestler The Ultimate Warrior regarding Mr. Bollea and his ex-wife, Linda Bollea [Gawker Trial Exhibit #463];
 - v. May 21, 2012 *National Enquirer* article entitled “Hulk Hogan Sex Tape Shocker,” most notably out-of-court, unsworn statements made by unnamed “sources” [Gawker Trial Exhibit #177].
4. These hearsay statements are all inadmissible. Fla. Stat. §§ 90.801, 90.802.

Many include hearsay within hearsay, none of which falls within hearsay exceptions. Fla. Stat. § 90.805. In some cases, these statements are not even attributed, and thus lack authenticity and foundation.

5. For example, Gawker seeks to rely upon articles allegedly quoting Linda Bollea accusing Mr. Bollea of having an alleged extra-marital affair with a male wrestler (Mr. Bollea emphatically denies the charges and sued his ex-wife for defamation related to the statements).

6. Gawker will argue that such statements are not being offered for the truth of the matters asserted therein, but only to demonstrate that Mr. Bollea's private life was the subject of public discussion.

7. This ruse is belied by Gawker's actions, including quoting and highlighting such hearsay statements in their filings as evidence that prove certain aspects of Mr. Bollea's sex life—most notably, in its summary judgment motion.

8. Mr. Bollea does dispute that images of his penis and of him engaged in sexual intercourse were a matter of legitimate public concern. The aforementioned evidence has no bearing on, and no tendency to prove, whether images of Mr. Bollea naked and engaged in sexual intercourse were themselves newsworthy. The issue for the jury to decide in this case will be whether Gawker's posting of a video containing images and audio of Mr. Bollea naked and engaged in sexual intercourse ceased to be the giving of information to which the public is entitled, and became a morbid and sensational prying into Mr. Bollea's private life for its own sake. *Toffoloni v. LFP Publ'g. Group*, 572 F.2d 1201, 1210 (11th Cir. 2009). The above evidence has no bearing on this issue.

9. Accordingly, this evidence is not relevant to the claims and defenses of this litigation. Fla. Stat. §§ 90.401, 90.402.

10. Assuming arguendo that there is some relevance to the evidence cited above, any probative value the salacious, inflammatory, unsubstantiated and anonymous rumors and gossip

Gawker cherry-picked from these articles has is substantially outweighed by the prejudice of putting these matters before the jury. Fla. Stat. § 90.403.

11. For example, Gawker intends to use allegations from an affidavit filed in a 1996 court case (and articles about that case), wherein the affiant (Kate Kennedy) claims she was allegedly sexually assaulted by Mr. Bollea. Mr. Bollea emphatically denied the allegations, and no judgment against him was ever entered. The allegation is extremely prejudicial, highly inflammatory and has no probative value concerning the video in this case. Moreover, the affidavit was written 20 years ago, Ms. Kennedy is not available for cross-examination, and even if her allegations were accurate (which they were not), they have nothing to do with whether secretly-recorded footage of Mr. Bollea naked and having sex in a private bedroom with Heather Clem in 2007 was a matter of legitimate public concern in October 2012. The real impact of this evidence is to attack Mr. Bollea's character and reputation by painting him in a negative light before the jury. Fla. Stat. §§ 90.404, 90.609.

12. Any mention of these articles and statements about Mr. Bollea will confuse and inflame the jury, substantially prejudicing Mr. Bollea. *Perper v. Edell*, 44 So. 2d 78, 80 (Fla. 1949) (stating that "if the introduction of the evidence tends in actual operation to produce a confusion in the minds of the jurors in excess of the legitimate probative effect of such evidence—if it tends to obscure rather than illuminate the true issue before the jury—then such evidence should be excluded").

13. In the event Gawker is permitted to introduce some or all of this evidence, the jury should be provided with an instruction detailing the limited purpose for which it is admitted, and further advising them that it must not be considered for any other purpose, including, without limitation, attacking Mr. Bollea's credibility and character.

For the foregoing reasons, Mr. Bollea requests that the Court enter an Order prohibiting Defendants from introducing any evidence or argument at trial referencing articles about Mr. Bollea, Mr. Bollea's sexual activities, and the Sex Video, that were not published by Gawker, or which do not refer or relate to the specific events depicted in the video Gawker published, including without limitation those listed in paragraph 3, above, or, alternatively, if such evidence is admitted, provide a limiting instruction to the jury.

Respectfully submitted,

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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 12th day of June, 2015 to the following:

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