

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. 13
TO EXCLUDE ALLEGATIONS OF "ADULTERY" OR SIMILAR TERMS**

Plaintiff Terry Bollea, professionally known as "Hulk Hogan" ("Mr. Bollea"), hereby moves this Court in limine under Fla. Stat. §§ 90.104, 90.401, 90.402, 90.403, 90.404, 90.410, 90.609, and 90.610 for an Order prohibiting Defendants from introducing any evidence or argument, during any portion of the trial, characterizing Mr. Bollea's encounter with defendant Heather Clem as "adultery," an "extramarital affair," "affair," "cheating," "infidelity," "unfaithfulness," "disloyalty," or other similar terms.

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. It is clear from Gawker's filings that it intends to characterize Mr. Bollea's encounter with Defendant, Heather Clem, as "adultery," an "extramarital affair," "affair," "cheating," "infidelity," "unfaithfulness," "disloyalty," or other similar terms.

3. Mischaracterizing Mr. Bollea's encounter with Heather Clem as adultery, which constitutes a criminal offense, is improper, inflammatory, and highly prejudicial to Mr. Bollea.

4. Florida Statute Section § 798.01, the "adultery" statute cited by Gawker in its summary judgment papers, is a crime that prohibits Floridians from living in an "open state of adultery." Controlling case law clearly establishes that a handful of sexual encounters does not constitute an "open state of adultery." *Braswell v. State*, 101 So. 232, 232-33 (Fla. 1924).

5. Additionally, the undisputed evidence demonstrates that Mr. Bollea's sexual encounter with Heather Clem occurred after he separated from Linda Bollea, Linda Bollea moved thousands of miles away, and when Mr. Bollea considered his marriage over. (Bollea Tr. 279:20-25, 280:4-9, 306:10-12, 306:23-307:1). Accordingly, all of the other inflammatory terms used to describe Mr. Bollea are equally improper.

6. False accusations that Mr. Bollea committed a crime are highly improper, inadmissible character assassination. *See* Fla. Stat. § 90.609 (stating that a witness's character can only be attacked by referring to truthfulness); Fla. Stat. § 90.610 (stating that a party may only attack credibility of a witness regarding criminal activity if the witness was convicted); *see also* Fla. Stat. § 90.410 (stating that even offers to plead guilty are inadmissible).

7. Mr. Bollea did not engage in, and has not been charged with, let alone convicted of, the crime of adultery. Therefore, any mention of Mr. Bollea engaging in adultery would be improper and inadmissible.

8. Allowing Defendants to mischaracterize Mr. Bollea's encounter with Heather Clem as "adultery," an "extramarital affair," "affair," "cheating," "infidelity," "unfaithfulness," "disloyalty," or other such comparable term is not only misleading, it is inflammatory and highly prejudicial to Mr. Bollea.

9. "A motion in limine is especially appropriate when 'addressed to evidence which will be highly prejudicial to the moving party and which, if referred to in a question which the court rules inadmissible, would be unlikely to be disregarded by the jury despite an instruction by the court to do so.'" *Fischman v. Suen*, 672 So.2d 644, 645 (Fla. 4th DCA 1996) (citing Ehrhardt, Florida Evidence § 104.5 (1995 Ed.)).

10. "Obtaining a pretrial order conserves the jury's time and serves as a firm warning to a party not to take the first step toward mistrial or reversal. A practical advantage of a motion in limine is not having to object in the jury's presence to evidence which is logically relevant but legally inadmissible. Being human, jurors typically want to hear all the evidence pertaining to a case. By using a motion in limine, a prudent lawyer can avoid giving the jury the impression that he is concealing something crucial." *Id.*

11. This case is not about whether Mr. Bollea committed "adultery," or engaged in an "extramarital affair," "affair," "cheating," or "infidelity." These terms have no relevance or purpose in this case other than to inflame and confuse the jury, and therefore are inadmissible. *See Fla. Stat. §§ 90.401, 90.402, 90.403.*

12. Gawker's effort to characterize Mr. Bollea's encounter with Heather Clem as "unfaithful," "disloyal" or "dishonest" also amounts to an improper use of character evidence to attack Mr. Bollea's credibility. §§90.404, 90.609.

13. Gawker's use of phrases such as "adultery," an "extramarital affair," "affair," "cheating," "infidelity," "unfaithfulness," "disloyalty," or similar terms would also be impermissibly inflammatory and unfairly prejudicial to Mr. Bollea. *Fischman*, 672 So.2d at 645 (holding that the "unsubstantiated allegation of medicare fraud is precisely the type of inflammatory matter which should be extinguished by an order in limine").

14. These terms have no probative value, and even if they did it would be substantially outweighed by the prejudice of such inflammatory words upon the jury. Fla. Stat. § 90.403. A jury will be irreversibly swayed by the negative connotation of terms such as "adultery," an "extramarital affair," "affair," "cheating," "infidelity," "unfaithfulness," "disloyalty," to such an extent that, even if the court instructs them to disregard these phrases, the harm cannot be undone. *Fischman*, 672 So. 2d at 645; see *Orvis v. Caulkins Indiantown Citrus Co.*, 861 So.2d 1181, 1182-1183 (Fla. 4th DCA 2003) (holding that employer's counsel's violation of order in limine, precluding any evidence or questions regarding alleged impropriety of consultation agreements entered into between employee and growers with potential legal claims against former employer, warranted a new trial in employee's action).

For the foregoing reasons, Mr. Bollea requests that the Court enter an Order prohibiting Defendants from introducing any evidence or argument at trial referencing "adultery," an "extramarital affair," "affair," "cheating," "infidelity," "unfaithfulness," "disloyalty," or other similar terms.

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 12th day of June, 2015 to the following:

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