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. 19 TO EXCLUDE, OR ALTERNATIVELY, MOTION TO STRIKE, EXHIBITS FIRST PRODUCED BY DEFENDANTS AFTER THE DISCOVERY CUT-OFF

Plaintiff Terry Bollea, professionally known as "Hulk Hogan" ("Mr. Bollea"), hereby moves this Court in limine under Fla. Stat. § 90.104 and the Court's Pretrial Order, for an Order prohibiting Defendants from introducing any evidence or argument, during any portion of the trial, or alternatively striking, any exhibits produced by Defendants for the first time after the discovery cut-off in this case.

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

1. Defendants have identified several trial exhibits that they did not disclose and produce prior to the discovery cut-off, including without limitation:

a. Book titled "Right of Publicity" [Gawker Trial Exhibit #592];

b. Article entitled "The Impact of Relative Standards on the Propensity to Disclose" [Gawker Trial Exhibit #593];

c. Statistical numbers from Quantcast [Gawker Trial Exhibits #595-609];

d. Article entitled "The difference between AdWords Clicks, and Sessions, Users, Entrances, Pageviews, and Unique Pageviews in Analytics" [Gawker Trial Exhibit #610];

e. Video file titled "Wrecking Ball" by Miley Cyrus [Gawker Trial Exhibit #276].[1]

2. "A primary purpose in the adoption of the Florida Rules of Civil Procedure is **to prevent the use of surprise, trickery, bluff and legal gymnastics**." *Surf Drugs, Inc. v. Vermette*, 236 So.2d 108, 111 (Fla. 1970) (emphasis added). *Spencer v. Beverly*, the DCA held: "The discovery rules were enacted to eliminate surprise, to encourage settlement, and to assist in arriving at the truth. If that be the acknowledged purpose of those particular rules, then any evidence to be used at trial should be exhibited upon proper motion." 307 So. 2d at 462 (citing *Surf Drugs*).

3. The fact discovery cut-off in this case was April 10, 2015. While the parties engaged in some discovery after that date, it was only for specific, limited purposes as authorized by the Court, including expert depositions and discovery relating to the financial worth of Defendants. Mr. Bollea timely served interrogatories and a request for production seeking updated discovery responses and document production from Defendants immediately before the discovery cut-off.

4. On June 4, 2015, approximately a month before the July 6, 2015 trial date, and while the parties were immersed in pretrial and trial preparation in accordance with rigorous

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[1] Gawker also produced deposition transcripts of Mr. Bollea from his lawsuit against Laser Spine Institute (as also discussed in Mr. Bollea's Motion in Limine to Exclude Evidence or Argument Related to Other Lawsuits, Defendants should be precluded from introducing any evidence or argument related to this other lawsuit), but the transcripts do not appear on Gawker's trial exhibit list. [Produced as GAWKER 27618-28157; *but see* Gawker Trial Exhibit #527 (*Bollea v. Laser Spine Institute*, Complaint (GAWKER 25327-25358))].

deadlines established in the Court's pretrial order, Defendants identified and produced previously undisclosed evidence for the first time.

5. Defendants' withholding of these new documents until after the discovery cut-off is improper, prejudicial and justifies an order precluding Gawker from using the documents as evidence at trial. *See, e.g., Southern Bell Tel. & Tel. Co. v. Kaminester*, 400 So.2d 804, 806 (Fla. 3d DCA 1981) (holding that court abused its discretion in allowing introduction of evidence that had been withheld in discovery on basis of confidentiality); *La Villarena, Inc. v. Acosta*, 597 So.2d 336, 338 (Fla. 3d DCA 1992) (precluding party from using surveillance video at trial that was not previously disclosed to the other side).

6. This untimely evidence also is irrelevant. For example, the music video of "Wrecking Ball" by Miley Cyrus has no probative value as to any material fact in this case.

7. Assuming arguendo there is some relevance to these documents, any probative value is substantially outweighed by the prejudice of putting these matters before the jury. Fla. Stat. § 90.403.

For the foregoing reasons, Mr. Bollea requests that the Court enter an Order prohibiting Defendants from introducing any evidence or argument at trial referencing the trial exhibits they identified and produced after the discovery cut-off.

Respectfully submitted,

/s/ Kenneth G. Turkel
Kenneth G. Turkel, Esq.
Florida Bar No. 867233
Shane B. Vogt
Florida Bar No. 0257620
BAJO | CUVA | COHEN | TURKEL
100 North Tampa Street, Suite 1900
Tampa, Florida 33602
Tel: (813) 443-2199
Fax: (813) 443-2193
Email: kturkel@bajocuva.com

Email: svogt@bajocuva.com

-and-

Charles J. Harder, Esq.
PHV No. 102333
Douglas E. Mirell, Esq.
PHV No. 109885
Jennifer J. McGrath, Esq.
PHV No. 114890
Sarah E. Luppen, Esq.
PHV No. 113729
HARDER MIRELL & ABRAMS LLP
1925 Century Park East, Suite 800
Los Angeles, CA 90067
Tel: (424) 203-1600
Fax: (424) 203-1601
Email: charder@hmafirm.com
Email: dmirell@hmafirm.com
Email: jmcgrath@hmafirm.com
Email: sluppen@hmafirm.com

Counsel for Plaintiff

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:

Barry A. Cohen, Esquire
Michael W. Gaines, Esquire
The Cohen Law Group
201 E. Kennedy Blvd., Suite 1950
Tampa, Florida 33602
bcohen@tampalawfirm.com
mgaines@tampalawfirm.com
jhalle@tampalawfirm.com
mwalsh@tampalawfirm.com
Counsel for Heather Clem

David R. Houston, Esquire
Law Office of David R. Houston
432 Court Street
Reno, NV 89501
dhouston@houstonatlaw.com
krosser@houstonatlaw.com

Michael Berry, Esquire
Levine Sullivan Koch & Schultz, LLP
1760 Market Street, Suite 1001
Philadelphia, PA 19103
mberry@lskslaw.com
Pro Hac Vice Counsel for Gawker Defendants

Kirk S. Davis, Esquire
Shawn M. Goodwin, Esquire
Akerman LLP
401 E. Jackson Street, Suite 1700
Tampa, Florida 33602
kirk.davis@akerman.com
shawn.goodwin@akerman.com
Co-Counsel for Gawker Defendants

Gregg D. Thomas, Esquire
Rachel E. Fugate, Esquire
Thomas & LoCicero PL
601 S. Boulevard
Tampa, Florida 33606
gthomas@tlolawfirm.com
rfugate@tlolawfirm.com
kbrown@tlolawfirm.com
abeene@tlolawfirm.com
Counsel for Gawker Defendants

Seth D. Berlin, Esquire
Paul J. Safier, Esquire
Alia L. Smith, Esquire
Michael D. Sullivan, Esquire
Levine Sullivan Koch & Schulz, LLP
1899 L. Street, NW, Suite 200
Washington, DC 20036
sberlin@lskslaw.com
psafier@lskslaw.com
asmith@lskslaw.com
msullivan@lskslaw.com
Pro Hac Vice Counsel for Gawker Defendants

/s/ Kenneth G. Turkel
Attorney