

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, *et al.*,

Defendants.

**PUBLISHER DEFENDANTS' MOTION *IN LIMINE* TO EXCLUDE
EVIDENCE RELATED TO ALLEGED DAMAGES PERTAINING TO THE
HULK HOGAN "BRAND" AND PURPORTEDLY LOST BUSINESS OPPORTUNITIES**

Defendants Gawker Media, LLC ("Gawker"), Nick Denton, and A.J. Daulerio (collectively, the "Publisher Defendants") hereby move the Court for the entry of an order excluding the presentation of any evidence of purported damages allegedly suffered by Plaintiff Terry Gene Bollea (herein, "Hogan") relating to his potential career/professional earnings and the value of his publicity rights. As grounds for this motion the Publisher Defendants state:

1. At the October 29, 2013 hearing in this case, Hogan represented that he would not be seeking damages related to Hogan's career, that is, his "brand" value, and potentially resultant lost earnings allegedly flowing from the Publisher Defendants' actions at issue in this case.

2. Because of this representation by Hogan's counsel, this Court thereafter entered an order on February 26, 2014 sustaining Hogan's objections to numerous discovery requests that, in significant part, sought to discover the extent of any such damages suffered. *See* Order re: Motions of Plaintiff for Protective Order and Motion of Gawker Media LLC and A.J. Daulerio to Compel Further Responses to Written Discovery at 2 ("Terry Bollea is not seeking

damages ‘to his career’ (including without limitation that his ‘brand’ has been diminished or that he has lost business opportunities”), attached hereto as **Exhibit 1**.

3. Discovery as to any damage to Hogan’s “brand” and his business opportunities were further limited when, on December 3, 2014, this Court adopted the November 11, 2014 Special Discovery Magistrate’s recommendation that the Publisher Defendants be forbidden from taking any “discovery from plaintiff or any third parties of any financial information pertaining to (a) plaintiff, (b) plaintiff’s commercial affairs, or (c) the use of plaintiff’s image, name, or likeness.” *See* Report and Recommendation of Special Discovery Magistrate re: Defendant Gawker Media LLC’s Motion to Overrule Objections to Third-Party Subpoenas and Plaintiff’s Motions for Protective Orders at 2; Order Affirming Report and Recommendation on Gawker Media LLC’s Motion to Overrule Objections to Third-Party Subpoenas and Plaintiff’s Motions for Protective Orders, attached hereto at **Exhibits 2** and **3**, respectively.

4. To date, because Hogan has specifically represented that he does not intend to proffer any damages theory related to harm to his “brand,” the Publisher Defendants have not—and cannot—take any discovery on that issue.

5. For this reason, Hogan must now adhere to his pre-trial representations and be precluded from presenting any such “damages” evidence at trial. Florida law restricts a party from offering evidence that has not been made available to the opposing party because of affirmative representations that the issue is one that will not be presented at trial. *See, e.g., Kloster Cruise Ltd. v. Segui*, 679 So. 2d 10, 12 (Fla. 3d DCA 1996) (finding that plaintiff’s failure to raise additional damages allegations until eve of trial constituted unfair surprise as to which defendants were due reasonable opportunity to prepare a defense); *Carnival Cruise Lines, Inc. v. Nunez*, 646 So. 2d 831, 832-34 (Fla. 3d DCA 1994) (finding that plaintiff’s trial damages

claim should have been limited to leg injury and that evidence of aggravated injury to varicose vein condition—which plaintiff initially sought to have evidence of excluded at trial—could not be raised at trial because defendant had no reason to believe it was at issue and could not properly defend against claim); *Martin v. State*, 517 So. 2d 737, 738-39 (Fla. 4th DCA 1987) (failure to provide defendant with documentary evidence of prior crimes before questioning defendant regarding same constituted reversible error because defendant had no opportunity to prepare defense on that matter).

WHEREFORE, Defendants respectfully request that this Court enter an order precluding the admission of any evidence related to damages to Hogan’s “brand” value, lost business, or career generally that allegedly flowed from the Publisher Defendants’ actions in this matter.

June 12, 2015

Respectfully submitted,

THOMAS & LOCICERO PL

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of June 2015, I caused a true and correct copy of the foregoing to be served via the Florida Courts' E-Filing portal upon the following counsel of record:

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