

EXHIBIT 1

to the

PUBLISHER DEFENDANTS' MOTION IN LIMINE ON EVIDENCE
RELATING TO PLAINTIFF'S ADMISSION THAT HE BELIEVED
THE SEX TAPE(S) SHOWED HIM MAKING STATEMENTS THAT
HAVE BEEN MARKED AS CONFIDENTIAL

Case No. 12012447-CI-011

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

-oOo-

TERRY GENE BOLLEA professionally known as
HULK HOGAN,

Plaintiff,

vs.

HEATHER CLEM; GAWKER MEDIA, LLC aka GAWKER MEDIA;
et al.,

Defendants.

=====

CONFIDENTIAL - ATTORNEYS' EYES ONLY

VIDEOTAPED DEPOSITION OF
DAVID HOUSTON

FRIDAY, APRIL 10, 2015

Reno, Nevada

Reported by: KIMBERLY J. WALDIE, NV CCR #720, RPR
CALIFORNIA CSR #8696

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3 APPEARANCES OF COUNSEL:

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5 For the Plaintiff Terry Gene Bollea
and Deponent David Houston:

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9

10 For the Defendant Gawker Media, LLC:

11 LEVINE SULLIVAN KOCH & SCHULZ, LLP
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12 1899 L Street NW
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13 Washington, DC 20036

14

Also Present:

15

James Case, Special Master

16

17 Videographer:

18 Jeff Waldie, CCVS

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1 A I do see that.

2 Q Okay. Are you aware of any other defamation
3 case involving Mr. Hogan and Linda Hogan that was going
4 on at the time?

5 A No, I'm not really certain what Mr. Rafool
6 means by this, and I think he would be your best source
7 of information.

8 I'm really not quite clear on everything that
9 had occurred in reference to the divorce litigation,
10 whether this relates to that, whether it's after the
11 fact or whether this may relate to something entirely
12 different from that, but certainly he would be a great
13 source for an interpretation of what he's talking about.

14 Q All right. All right. Now, I'm going to
15 direct your attention to Defendant's Exhibit 117, which
16 was previously marked in these proceedings, and it is
17 video materials from a TMZ Live interview on March 7th,
18 2012.

19 MR. SULLIVAN: I'll just give you that to mark.
20 Charles, do you want another copy?

21 MR. HARDER: No, I'd rather not. Thank you.

22 MR. SULLIVAN: Okay. Judge Case, you want a
23 copy?

24 SPECIAL MASTER CASE: No, thanks.

25 MR. SULLIVAN: So you guys going to make me

1 carry these all the way back to DC?

2 THE WITNESS: I'll take a copy.

3 Q MR. SULLIVAN: You'll take a copy?

4 A Sure. Why not?

5 Q There you go.

6 (Exhibit 240 marked for Identification.)

7 Q MR. SULLIVAN: Mr. Houston, what I'm going to
8 do is play for you, just to save our time, rather than
9 play for you the whole broadcast, obviously, fiddle
10 around trying to fast forward, all of that.

11 A Okay.

12 Q I've got it broken down, for our purposes here,
13 into two clips which appear on that Exhibit 117. The
14 first clip is just 26 seconds, and it is the intro to
15 that day's broadcast on TMZ live. I'll play that for
16 you.

17 MR. SULLIVAN: Judge Case, do you want to --

18 SPECIAL MASTER CASE: I'm fine.

19 MR. SULLIVAN: Okay.

20 SPECIAL MASTER CASE: I've heard it before.

21 So your question is do you want the court
22 reporter to transcribe what comes off the tape?

23 MR. SULLIVAN: Let's talk about that.

24 (Discussion off the record.)

25 Q MR. SULLIVAN: Okay. You all set?

1 A Yes, sir.

2 Q Okay. Tell me if you want me to move this
3 closer.

4 A No, I can see it fine.

5 If that helps you, you can leave it slanted a
6 little towards you.

7 (Video playing.)

8 THE WITNESS: Got it.

9 Q MR. SULLIVAN: As you can see from that clip,
10 it indicates that the Hulk Hogan sex tape matter was
11 going to be the lead story that day on TMZ Live.

12 Do you see that?

13 A I see what I just saw, yes.

14 Q Okay. All right. Did you know ahead of time
15 that that was going to be the lead story?

16 A No.

17 Q Okay.

18 A I think that's their editorial content. That's
19 their decision.

20 Q Okay. You had no discussion to --

21 A No.

22 Q -- as to that subject?

23 A No. We don't control what TMZ says.

24 Q Okay. All right. What we'll do now is I'll go
25 to the second clip. This is -- like I say, this is just

1 jumping in, playing the actual content.

2 A I understand.

3 Q All right.

4 MR. HARDER: Is this from March 2012?

5 MR. SULLIVAN: Yes.

6 THE WITNESS: Is this March 7th?

7 Q MR. SULLIVAN: It is. This is March 7th, 2012?

8 A That's what I thought.

9 Q The second clip goes from -- if you want to
10 link it up to what we had on the disc, it is -- the
11 exhibit goes from two minutes, three seconds, to
12 11 minutes, 45 seconds.

13 A Right. But March 7th?

14 Q Yes, sir --

15 A All right.

16 Q -- that's correct.

17 A So voice appears to be going.

18 (Video playing.)

19 Q MR. SULLIVAN: All right. Mr. Houston, do you
20 recognize that as the interview that you did with
21 Mr. Hogan on March 7, 2012, on TMZ Live?

22 A It would appear to be, yes.

23 Q Okay. Now, for purposes of that interview, you
24 were on the phone. Correct?

25 A Correct.

1 Hey, gentlemen, real clearly, if it's on the tape, then
2 I think Hulk made clear -- pardon me -- Hulk made
3 himself clear there was never a friendship. We've given
4 Bubba every opportunity to tell the truth and to avoid
5 what's obviously coming. And for whatever reason
6 Bubba's chosen not to do so, and I'll certainly be happy
7 to talk to you off air to try to get a time when I might
8 be able to view that personally, closed quote.

9 Do you recall that --

10 A Yes, sir.

11 Q -- being said? Okay.

12 Did you subsequently speak with TMZ off air
13 about the sex tapes?

14 A Yes, sir.

15 Q And who did you speak to?

16 A I believe it was Mike Walters.

17 Q All right. And when did you speak to
18 Mr. Walters?

19 A It would have been immediately thereafter.

20 Q Okay. And what was said in that discussion?

21 A I had a desire to personally view the videotape
22 and had requested an opportunity to do so, number one.
23 I was also attempting to gather additional information
24 as to who the source of the videotape may have been and
25 as a consequence, of course, hopefully receive some

1 MR. HARDER: -- could -- could you read that
2 back.

3 (Record read by the court reporter.)

4 MR. HARDER: I'm going to mark the transcript
5 as "attorneys' eyes only, confidential, attorneys' eyes
6 only," and I'm going to ask that one of the words that
7 was just read be redacted.

8 (Discussion off the record.)

9 SPECIAL MASTER CASE: Have we agreed?

10 MR. SULLIVAN: I assume we have.

11 MR. HARDER: That's how we've been doing it all
12 along.

13 SPECIAL MASTER CASE: Yeah.

14 MR. SULLIVAN: All right. I think we kind of
15 over protest, but whatever. Okay.

16 SPECIAL MASTER CASE: Do you need a few more
17 minutes?

18 (Comments off the record by the reporter.)

19 MR. HARDER: Did you hear him say, "No, sir"?

20 (Discussion off the record.)

21 THE WITNESS: "No, sir."

22 Q MR. SULLIVAN: Mr. Houston, did TMZ say during
23 that conversation that they were going to hold off on
24 reporting that part of the story, i.e., that Mr. Hogan
25 made derogatory comments about (redacted) people on one

1 of the sex tapes?

2 A I do not recall that.

3 Q Okay.

4 MR. HARDER: Again, request to redact out that
5 word.

6 MR. SULLIVAN: Right.

7 THE WITNESS: Right.

8 Q MR. SULLIVAN: Whether in that conversation
9 with Mr. Walters or in any other discussions with TMZ
10 people to which you were a part of, did they ever make a
11 statement like that to you?

12 A As far as my recollection, that was never an
13 issue. Our issue was the sex tape. Had nothing to do
14 with what you are speaking of. Comes as somewhat of a
15 surprise that you even believe that.

16 Q Okay. Let me ask you this: Did TMZ ask for
17 Mr. Hogan's cooperation on future stories in return for
18 not reporting that information about what he said about
19 (redacted) folks?

20 A No, sir. I --

21 MR. HARDER: Okay. First I need to object that
22 you are saying he made a statement, because you are
23 assuming that something exists, and there's no evidence
24 whatsoever. So I have to object on that grounds.
25 Object to form and assumes facts not in evidence.

1 tape No. 3 of the video-recorded deposition of David
2 Houston.

3 The time is approximately 2:08 p.m.

4 MR. SULLIVAN: All right. I'm going to ask the
5 court reporter to mark as Defendant's Exhibit 250 a
6 single-page document bearing the ID number Bollea
7 001074.

8 (Exhibit 250 marked for Identification.)

9 THE WITNESS: Yes, sir, I've reviewed.

10 Q MR. SULLIVAN: Okay. If you would look,
11 please, at the e-mail that appears kind of in the middle
12 of the page from Kristy Rosser to Keith Davidson dated
13 October 10, 2012, 3:28 p.m.

14 Do you see that?

15 A Yes, sir.

16 Q Okay. Re line being October 10, 2012, Hogan
17 Matter.

18 Do you see that?

19 A Yes, I do.

20 Q Okay. And the third paragraph you'll see it
21 says: "I do not have any objection speaking with you,
22 however wanted you to be aware of those facts in
23 advance. When is a good time to call you?"

24 Do you see that?

25 A Yes, sir.

1 Q Okay. In fairness, if you could look, please,
2 and if you'd read the two prior paragraphs to
3 yourself --

4 A Done so.

5 Q -- just so you have context.

6 A Complete.

7 Q Okay. Did the conversation that's referenced
8 in the third paragraph, did that take place?

9 A It did.

10 Q Okay. And when did you -- when did you two
11 speak?

12 A After 12:00 noon that day.

13 Q Okay. All right. And was it just you and
14 Mr. Davidson?

15 A Yes, it was.

16 Q Okay. What was said in that conversation?

17 A I made contact with him, advised obviously my
18 position, how I felt about the matter and, in fact, was
19 somewhat bold to the extent that I told him what I
20 thought he was suggestion -- suggesting in reference to
21 purchasing this, quote, "tape" was extortion.

22 Obviously, he didn't share my concern. He
23 discussed with me his purpose, why they had provided the
24 information to Gawker and Gawker's role and the
25 consequence of which is we terminated the conversation

1 with an agreement to talk more in the future.

2 Q He told you he'd provided the tape to Gawker?

3 A How it -- why it was provided. "He," meaning
4 their side, not personally, and I don't want to misstate
5 that. In other words, his people, whomever that may
6 have been.

7 Q So he told you that the people he represented
8 were the ones that sent the tape to Gawker?

9 A In so many words, with the idea being that it
10 was provided to Gawker to send a warning shot over our
11 bow to demonstrate that Gawker would publish the rest of
12 it based upon their willing to provide -- willingness to
13 provide it to them and how we better take the
14 opportunity to pay him because otherwise there would be
15 increasing problems for Mr. Hogan.

16 Q How long did the conversation last?

17 A Wasn't long.

18 Q Roughly?

19 A Ten minutes, five minutes.

20 Q Okay.

21 A It was a preliminary conversation to gauge,
22 number one, whether I felt he was genuine and truly had
23 a reason for me wasting my time with him, and number
24 two, I wanted, if at all possible, to determine whether
25 or not I felt he was legitimate with the potential hope,

1 A No, no.

2 Q Did you take notes or, you know --

3 A Did not.

4 Q -- prepare, dictate a memo --

5 A No.

6 Q -- to the file --

7 A No.

8 Q -- or anything of that nature?

9 A Don't do that.

10 Q Okay.

11 MR. SULLIVAN: I'll ask the court reporter to
12 mark as Defendant's Exhibit 251 a single-page document
13 bearing Bollea 001075.

14 (Exhibit 251 marked for Identification.)

15 THE WITNESS: I've had a chance to review.

16 Q MR. SULLIVAN: All right. All righty.

17 Mr. Houston, did you receive this e-mail
18 message that we have here as Defendant's Exhibit 251?

19 A I believe so, yes.

20 Q Okay. You'll see this is dated -- looks like
21 an e-mail from Keith Davidson to you dated October 12th,
22 2012. And the re line says: "Hulk Hogan Tape."

23 Do you see that?

24 A I do.

25 Q Okay. And then I'm focusing on the e-mail at

1 the top of the page. It says: "David, I have viewed
2 all materials and am now able to speak more
3 substantively. Call at your convenience."

4 Do you see that?

5 A Right.

6 Q Okay. When you spoke with him the previous
7 day, the conversation you told us about just a moment
8 ago, had he not viewed all the materials at that point?

9 A That's what I indicated to you, he was kind of
10 vague as to what he held or didn't hold and what his
11 people had or didn't have or person, depending on the
12 plurality of that.

13 But the end result was he's contacting now
14 based upon my conversation initially of find out what
15 the heck you are talking about because, really, until
16 you know, it's sort of pointless for me to speculate
17 what you may have as value being appropriate. And
18 that's when he had indicated, as I think you saw in the
19 other e-mail, that he wanted to determine whether he was
20 going to be representing not only the possessor, but as
21 he phrased it, I believe, the legal rights owner.

22 Q Uh-huh.

23 A And I had wanted him to get things straight
24 because you can imagine -- even though I never really
25 intended to go forward with any sort of sham deal, you

1 can imagine that it would be somewhat pointless, and I'm
2 looking as though I'm being rude, to simply say, "Okay.
3 Let me buy it from the possessor" without worrying about
4 whether there are copies. That would be akin to burning
5 money.

6 So I wanted to certainly, playing the role,
7 appear at least as though I was somewhat questioning
8 what the circumstances were.

9 Q All right. After you received Defendant's
10 Exhibit 251, did you then have a subsequent phone
11 conversation with Mr. Davidson?

12 A I'm sure I did.

13 Q Okay. And when did you two speak next?

14 A It would have been close thereafter because
15 this became a very pressing matter.

16 Q Okay. And how long was that conversation?

17 A Again, that would have been a bit more lengthy
18 as far as substance and his description to me of his
19 role, what his intentions were. He then was relaying to
20 me the fact that he'd been in this business for quite
21 some time, how he made a living doing this, how he had
22 represented many other people that had these sorts of
23 images in reference to other celebrities. And in fact
24 he prided himself on the fact he also went after
25 noncelebrities that may have had a profile position that

1 his profession.

2 Q Uh-huh. Who -- who did he say he represented?

3 A He would never advise. He --

4 Q Okay.

5 A -- informed me for rather apparent reasons he
6 did not want to reveal who his clients were and
7 initially tried to couch it in the notion that, "You
8 know, I would never do that. You could go around me,
9 and at that point in time I'm defeating my own financial
10 interest." All sorts of things. But the real answer is
11 I don't know that he even knew who all the players were
12 at once.

13 I think his goal was to reach out to me to see
14 if he had one on the line, as they say, so that he could
15 then attempt to manipulate it further. But I think his
16 first goal was to see whether we had any interest in
17 working with him and would pay him.

18 Q All right. What did you say in that
19 conversation? What did you -- what did you say to him?

20 A I've kind of told you, but in specific, what I
21 would have been doing was trying to indicate to him, A,
22 we had an interest because I did not, if he were
23 genuine, want to lose him. B, I also wanted him to
24 believe that if we had the interest, financially, we
25 would be willing to compensate him for his work on our

1 behalf as far as securing these tapes and then allowing
2 us to meet in the future.

3 We talked about, from my perspective, what --
4 the problems I saw as far as buying a pig in a poke,
5 what we were getting, how can he verify or prove to me
6 that it's not just a copy and someone else has an
7 original.

8 That was my question area as it concerned my
9 conversation with him at that point.

10 Q Okay. All right. Let me ask you this: Was --
11 what is your best recollection in terms of timing? He
12 said --

13 A I don't have -- I don't have one. I'm sorry.
14 I didn't want you to go on.

15 Q Okay. I mean, this thing's dated October 12th,
16 and he's -- 2012, 11:30 in the morning, and he says:
17 "Call at your convenience."

18 A It would have been after that.

19 Q I would have made a bet on that.

20 A There you go.

21 Q But you can't recall if it was the same day --

22 A No.

23 Q -- or --

24 A And without appearing as -- you know, like I'm
25 trying to obfuscate here, I really don't know. I'm not

1 a time, date kind of person.

2 Q Okay. Did -- what, if anything, did he say?

3 Have you told me as -- as best you recall pretty much

4 all he said?

5 A Yes.

6 Q Okay. Did he mention Gawker in any way in that

7 second conversation?

8 A I don't recall. I know that Gawker was
9 mentioned in the first conversation. It may have come
10 in again just on the basis of value, when he was
11 discussing value, and how it was in our best interest to
12 make certain it never happened again, meaning more
13 information to be published by Gawker. If it was, it
14 was a sidenote more so than the primary, as in the
15 first.

16 Q Okay. And do you have a precise recollection
17 of that in the second conversation?

18 A You mean precise as to verbiage?

19 Q That that did in fact come up in the second
20 conversation.

21 A I -- I believe so, but if you asked me for --
22 specifically to tell you what was said, I couldn't.

23 Q Oh.

24 A And the only reason I think that is because I
25 know more was discussed financially in the second

1 conversation as it concerned what we were prepared to
2 pay and these not quite so veiled threats of what would
3 happen if we didn't. And I believe it was mentioned in
4 that concept of what we would happen -- what would
5 happen if we didn't pay.

6 Q Okay. All right.

7 A In fact, I actually asked him the question
8 "What if we don't pay? What are you going to do?" And
9 I think that's probably when it comes up, although I
10 can't give you a specific.

11 Q So what is your recollection on that?

12 A I -- I think I questioned him if we didn't, as
13 he put it, buy the product or the tape, what would
14 happen next? And I believe that's when Gawker was
15 discussed as far as the first one, as previously stated,
16 being only a shot across the bow, that there was more
17 information that could be provided.

18 Q All right. And in terms of the number of the
19 sex tapes, did he say anything about the number of the
20 sex tapes?

21 A I don't know whether it was the second or the
22 third conversation. Because at one point we got into
23 the money issue. And the money issue, in his world,
24 was -- at some point he was trying to base it on the
25 tapes, and that's when the plurality of this whole mess

1 became forefront because I thought he wanted 500,000 per
2 tape because he was talking, I believe, either it was 3
3 million or 1.5 million, but regardless, it was in
4 reference to valuation for each tape. And I think that
5 was probably the first opportunity I had to hear of more
6 than one.

7 Q All right.

8 A Although I'm not certain, but that's my
9 recollection.

10 Q Okay. Did he tell you -- he says here: "I
11 have viewed all materials and am now able to speak more
12 substantively."

13 A Right.

14 Q Did he tell you what was on the tapes in terms
15 of their content?

16 A Very general terms in reference to individuals,
17 sex acts, things like that.

18 Q What did he say?

19 A I don't remember the specifics. It wasn't
20 detailed, play by play, as concerns a sex act, but it
21 was more on the notion of "and this tape also has your
22 client and -- you know, with the individual, that your
23 client and this individual are on the tape for X number
24 of minutes." Things of that nature. Nothing really
25 prurient, but more or less an advisement.

1 putting out there?

2 A He referenced, I believe, three tapes, although
3 I'm not positive, but I believe so, two or three.

4 Q Okay. And in his effort to try to convince you
5 about the value of these tapes, did he say anything
6 about the tape, one of the tapes containing footage of
7 Mr. Hogan, using -- making (redacted) comments?

8 MR. HARDER: Again, same request that the word
9 (redacted) be redacted.

10 SPECIAL MASTER CASE: Correct.

11 MR. HARDER: Yes. Then in my question, same
12 thing. I'm not trying not to use the word because you
13 are redacting.

14 THE WITNESS: And I hesitate because I know it
15 came up at some point. I just don't know specifically
16 when. And it could have been not during the
17 conversations, but at the final meeting. I'm just not
18 sure.

19 Q MR. SULLIVAN: Okay. Okay. You don't have a
20 specific recollection to place it in time?

21 A I know it was toward the end, but I can't tell
22 you whether it was toward the end of final conversations
23 or whether it was actually at the Sand Pearl Hotel in
24 Clearwater, Florida, on the day everybody met. I think
25 it was December 12th.

1 I, KIMBERLY J. WALDIE, a Certified Shorthand
2 Reporter licensed in the State of California and the
3 State of Nevada, do hereby certify:

4 That on FRIDAY, APRIL 10, 2015, at the offices
5 of Hoogs Reporting Group, 435 Marsh Avenue, Reno,
6 Nevada, personally appeared DAVID HOUSTON, who was duly
7 sworn to testify and deposed in the matter entitled
8 herein; that, before the proceedings' completion, the
9 reading and signing of the deposition were not requested
10 by the parties; that said deposition was taken in
11 verbatim stenotype notes by me, a Certified Shorthand
12 Reporter, and thereafter transcribed into typewriting as
13 herein appears;

14 That the foregoing transcript, consisting of
15 pages 1 through 229, is a full, true and correct
16 transcription of my stenotype notes of said deposition
17 to the best of my knowledge, skill and ability.

18 I further certify that I am not a relative or
19 employee of counsel of any of the parties, nor
20 a relative or employee of any party involved in said
21 action, nor financially interested in the action

22 Dated at Reno, Nevada, this 14th day of April,
23 2015.

24 

25 KIMBERLY J. WALDIE, CSR No. 8696
NV CCR #720, RPR