

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

TERRY GENE BOLLEA professionally
known as HULK HOGAN,

Plaintiff,

Case No. 12012447CI-011

vs.

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 OPPOSITION TO GAWKER DEFENDANTS'
MOTION *IN LIMINE* TO EXCLUDE EVIDENCE OF ALLEGED SETTLEMENT
COMMUNICATIONS (STYLED "Publisher Defendants' Motion *In Limine* to Exclude
Evidence of Plaintiff's Settlement Communications And Incorporated Memorandum")**

The motion to exclude evidence of alleged "settlement communications" filed by Gawker Media, LLC, Nick Denton, and A.J. Daulerio (together, the "Gawker Defendants") mischaracterizes the evidence at issue. The communications at issue are demands sent by Mr. Bollea's attorney to Gawker Defendants to take down the sex video that depicted Mr. Bollea fully naked and engaged in sexual intercourse (the "Sex Video"). The Gawker Defendants refused those demands.

Mr. Bollea is not offering these demands to establish "liability or absence of liability for the claim or its value," which is the only thing that Fla. Stat. § 90.408 prohibits. Mr. Bollea is

offering these demands to establish that Gawker Defendants received notice of their wrongful and illegal acts, had actual knowledge of them, and had the intent to continue to publish a wrongful and illegal video for more than six months after receiving that notice, as well as to refute Gawker Defendants' defense that their actions were in "good faith." In *Toffoloni v. LFP Publ'g. Group, LLC*, 483 Fed.Appx. 561, 563 (11th Cir. 2012), the demands sent by the plaintiff and the defendant's response were admitted into evidence and directly relevant to these issues.

Additionally, cease and desist, a/k/a "demand," letters are not "offers to compromise," and thus fall outside the settlement communications doctrine. *Sunstar, Inc. v. Alberto-Culver Co.*, 2004 WL 1899927 at *22 (N.D. Ill. Aug. 23) (holding "a demand for payment accompanied by a threat of legal action is not a settlement offer or a part of settlement negotiations excludable" under Fed. R. Evid. 408, the analogous federal offer to compromise rule).

Gawker Defendants' argument based on a label affixed to one of the two letters as a "settlement communication" places form over substance. The applicability of Section 90.408 is an issue for the Court to decide. Mr. Bollea's demand to take an illegal recording off a website, accompanied by a threat of legal action, is a cease and desist letter, not a settlement offer.

For the foregoing reasons, the motion *in limine* should be denied.

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 25th day of June, 2015 to the following:

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