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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 STATEMENTS BY GAWKER DEFENDANTS DENIGRATING PRIVACY (STYLED "Publisher Defendants' Motion In Limine to Preclude Plaintiff from Introducing Evidence Related to Statements that Denton, Daulerio, And Current And Former Gawker Employees Have Made About Privacy Unrelated to Plaintiff or the Publication At Issue")

One of the central issues in this case is intent. Specifically, whether Gawker Media, LLC, Nick Denton, and A.J. Daulerio (together, the "Gawker Defendants") intentionally invaded Mr. Bollea's privacy and inflicted emotional distress upon him by posting a video of him naked and engaged in sexual intercourse (the "Sex Video"), and inviting millions of people to watch it on the Internet.

Evidence associated with the Gawker Defendants' views on privacy is critical to demonstrating intent, as well as the Gawker Defendants' true motivation for posting the Sex

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Video. This evidence also is crucial to establishing that the Gawker Defendants **knew** that their actions were wrong, and nevertheless chose to violate Mr. Bollea's rights.

The Gawker Defendants have historically been very vocal about their views on privacy. CEO Nick Denton, in particular, has frequently expressed his philosophy that privacy does not exist; should not exist; and that he and the public do not care about it.

At trial, the Gawker Defendants will argue, consistent with this philosophy, that Mr. Bollea had no right to privacy when he was naked and engaged in sexual intercourse in a private bedroom. They will make this argument even though the Sex Video they posted was illegally recorded without Mr. Bollea's knowledge or consent.

However, on several occasions, the Gawker Defendants have publicly stated very **inconsistent positions** about privacy—even acknowledging the wrongfulness of posting illegally-obtained images of celebrities on the Internet. Now, the Gawker Defendants seek to exclude the evidence demonstrating these inconsistencies, and admissions that what they did to Mr. Bollea was wrong.

A. The Evidence the Gawker Defendants Want to Exclude.

The Gawker Defendants want to exclude their own articles addressing the nonconsensual posting of pornography on the Internet, where the Gawker Defendants condemned this as a "crime." This admission against interest (and hypocrisy) is precisely the type of evidence that Florida's hearsay exceptions and impeachment rules were designed to **admit**.

Moreover, Mr. Denton has publicly stated to the press that he believes people "don't give a f---" about privacy, and that "supposed invasion of privacy has incredibly positive effects on society." [Bollea Trial Ex. 30, 115] Mr. Denton encouraged writers to be "even more provocative" and to search out "spy photos" to drive traffic to gawker.com so that advertisers

would "shower [Gawker] with dollars." [Bollea Trial Ex. 81] True to this policy, the Gawker Defendants post images of people naked and engaged in intimate, private sexual encounters, both famous and non-famous people alike. [Bollea Trial Ex. 6, 7, 8, 13, 25, 60]

However, when other websites have engaged in virtually identical conduct—thus taking traffic away from gawker.com—the Gawker Defendants have condemned them. The Gawker Defendants publicly acknowledged that "revenge porn" is wrong and should be a crime. [Bollea Trial Ex. 71, 50] They referred to the posting of illegally recorded photos of people in a public restroom as "clearly a violation of people's privacy." [Bollea Trial Ex. 70] They referred to the posting of nude photos without consent as "violating" women and a "crime." [Bollea Trial Ex. 50] They also referred to this practice as being "wrong." [Bollea Trial Ex. 73] After ESPN reporter Erin Andrews was illegally recorded through a hotel room door peephole naked, gawker.com and deadspin.com posted articles condemning publicizing the illegally obtained images. [Bollea Trial Ex. 64, 65, 74]

The Gawker Defendants are asking the Court to exclude this substantially probative and relevant evidence establishing intent, motivation and liability. Stated simply, the jury should be entitled to all of the relevant facts, including these.

B. The Evidence Is Relevant.

The relevance of the Gawker Defendants' admissions and statements against interest is clear, as is the futility of the Gawker Defendants' mischaracterization of this evidence as being "unrelated." The Gawker Defendants' admissions reveal their central philosophy—a philosophy that was being followed when they posted the Sex Video to the Internet, allowing millions of people to watch it, and refused the multiple cease and desist demands of Mr. Bollea's counsel to remove it—that traffic and revenue take priority over privacy. The Gawker Defendants'

statements about privacy and self-righteous condemnation of other websites for doing the same type of acts that the Gawker Defendants did to Mr. Bollea is quintessential evidence of intent and knowledge of the wrongfulness of their conduct. Ultimately, the Gawker Defendants seek to exclude this highly probative evidence because it shows the wrongfulness of their conduct toward Mr. Bollea, and knowledge of its wrongfulness, **not** because it is "unrelated" or irrelevant.

C. The Evidence is Not Unfairly Prejudicial.

"Relevant evidence is inherently prejudicial; however it is only unfair prejudice, substantially outweighing probative value, which permits exclusion of relevant matters." *State v. Gad*, 27 So.3d 768, 770 (Fla. 2d DCA 2010); *accord Carr v. State*, 156 So.2d 1052, 1063 (Fla. 2015) (evidence must "go beyond the inherent prejudice associated with . . . relevant evidence" to be excluded as unfairly prejudicial). The Gawker Defendants' admissions and statements against interest are precisely the sort of evidence that may **not** be excluded as unduly prejudicial—it is damaging to the Gawker Defendants, but it is in no way **unfairly** damaging. There is nothing unfair about imparting this information to the jury.

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

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
Jennifer J. McGrath, Esq.
PHV No. 114890
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: jmcgrath@hmafirm.com

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:

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
Kenneth G. Turkel