

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.

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**PLAINTIFF TERRY BOLLEA'S OPPOSITION TO GAWKER DEFENDANTS'  
MOTION *IN LIMINE* TO EXCLUDE EVIDENCE OF MR. BOLLEA'S EMOTIONAL  
DISTRESS (STYLED "Publisher Defendants' Motion *In Limine* to Preclude Evidence And  
Testimony of Any Adverse Health Consequences or Alleged Emotional Distress")**

The motion to exclude evidence of emotional distress, filed by Gawker Media, LLC ("Gawker"), Nick Denton, and A.J. Daulerio (together, the "Gawker Defendants"), is one of many improper summary judgment motions Gawker Defendants have filed under the guise of a motion *in limine*. This practice is prohibited by well-established Florida law. *Saunders v. Alois*, 604 So.2d 18 (Fla. 4th DCA 1992); *Rice v. Kelly*, 483 So.2d 559 (Fla. 4th DCA 1986). This particular instance of improper motion practice is especially egregious because Gawker Defendants already raised the very same arguments in their Motion for Summary Judgment, which this Court denied on May 29, 2015. *See Gawker Defendants MSJ* at 25–26.

A jury instructed to consider compensatory damages for emotional harm is asked to place a dollar amount on one person's suffering. *Myers v. Cent. Fla. Invs., Inc.*, 592 F.3d 1201, 1213 (11th Cir. 2010). The inquiry is inherently subjective because jurors bring their own experiences to bear on another person's humiliation, discomfort, and shame. *Id.* The objective—to make a plaintiff whole—plainly is a difficult one, because it is “admittedly difficult to place a value upon the resulting emotional injury from the deprivation of a constitutional right.” *Id.* (citing *Williams v. Trans World Airlines, Inc.*, 660 F.2d 1267, 1273 (6th Cir. 1981)).

Emotional damages need not be proven through medical evidence. *Id.* at 1214 (citing *Hagan v. Coca-Cola Bottling Co.*, 804 So.2d 1234 (Fla. 2001)). “A plaintiff's trial testimony is sufficient to establish compensable damages.” *Myers v. Cent. Fla. Invs., Inc.*, 2008 U.S. Dist. LEXIS 98935, \*38 (M.D. Fla. Oct. 23, 2008), *aff'd*, 592 F.2d 1201.

The plaintiff's testimony can describe the anxiety and emotional distress, as well as the pain and mental anguish suffered. *Id.* at \*39. Other facts and circumstances that can be presented to the trier of fact to establish and support an award include, but are not limited to: “whether the plaintiff lost the esteem of her peers . . . the degree of emotional distress . . . the context of the events surrounding the distress . . . the evidence tending to corroborate the plaintiff's testimony . . . [and] the nexus between the challenged conduct and the emotional distress . . . .” *Id.* at \*42 (citing *City of Hollywood v. Hogan*, 986 So.2d 634, 648 (Fla. 4th DCA 2008)). Awards of compensatory damages for intangible, emotional harms is deferential to the fact finder because the harm is subjective and evaluating it depends considerably on the demeanor of the witnesses.” *Id.* at \*43 (citations omitted).

Mr. Bollea is entitled to testify before the jury about all of the emotional harms he suffered and the ways in which those harms impacted his life. The particularly egregious

circumstances surrounding that harm—the publication of a video depicting Mr. Bollea naked and engaged in sexual intercourse, on the Internet, watched by millions of people—are certainly relevant to the severity of the harm Mr. Bollea suffered.

Sufficient proof of emotional distress “includes all highly unpleasant mental reactions, such as . . . grief, shame, humiliation, embarrassment, anger, chagrin, disappointment, worry and nausea.” *Ford Motor Credit Co. v. Sheehan*, 373 So.2d 956, 959 (Fla. 1st DCA 1979) (citing Restatement (Second) of Torts, §46). A plaintiff’s testimony, combined with reprehensible conduct such as that exhibited by Gawker Defendants in this case, is sufficient to prove Mr. Bollea’s claims.

Numerous cases permit plaintiffs to adduce vivid evidence describing the distress that they suffered. For instance, in *Johnson v. Sawyer*, 760 F. Supp. 1216 (S.D. Tex. 1991), the court awarded **\$5 million** in emotional distress in favor of a taxpayer where the IRS had publicly released private tax information that portrayed him as a tax evader. The plaintiff in *Johnson* did not rely on medical evidence, but was permitted to testify in vivid detail about how the IRS’s invasion of his privacy had destroyed his career and his life.

In *Gagliardo v. Connaught Laboratories, Inc.*, 311 F.3d 565 (3d Cir. 2002), the plaintiff was awarded \$1.55 million in pain and suffering for being fired from his job because he suffered from multiple sclerosis, in violation of discrimination statutes. The plaintiff did not introduce any medical testimony regarding his emotional distress. Rather, the distress was established by testimony from co-workers and friends. In *Townsend v. Bayer Corp.*, 774 F.3d 446 (8th Cir. 2014), the plaintiff was permitted to testify that he suffered 30 months of sleeplessness and depression due to the defendant’s conduct in order to establish his damages. Here, Gawker Defendants want to preclude testimony of this very same type of evidence.

Gawker Defendants' contention that Mr. Bollea's testimony regarding his emotional distress would be a form of "unfair surprise" lacks merit. Mr. Bollea was **extensively deposed** on the subject of his emotional distress, including the various physical manifestations of the distress, such as lack of sleep, loss of appetite, depression, and the like. There is no surprise.

The case law cited by Gawker Defendants does not impose the strict limitations on Mr. Bollea's testimony that Gawker Defendants claim it does. As noted above, there is ample support in the case law for plaintiffs to describe their emotional distress on the witness stand, despite the absence of medical testimony. *City of Hollywood v. Hogan*, 986 So.2d 634 (Fla. 4th DCA 2008), merely states that damages awards are limited where a plaintiff presents no medical testimony and describes his or her mental anguish in **conclusory** terms. The *City of Hollywood* case nowhere says that plaintiffs are **prohibited** from offering more detailed testimony.

Similarly, *Menghi v. Hart*, 745 F. Supp. 89, 106-07 (E.D.N.Y. 2010), a discrimination case, makes clear that even claims of **severe** emotional distress do not require medical testimony so long as the conduct of the defendant is egregious: "egregious emotional distress claims generally involve **either** outrageous or shocking discriminatory conduct **or** a significant impact on the physical health of the plaintiff" (emphasis added).

*Flowers v. Owens*, 274 F.R.D. 218, 225 (N.D. Ill. 2011), cited by Gawker Defendants, **endorses Mr. Bollea's contention** that garden variety emotional distress damages refer not to any specific level of severity of distress, but rather to "the distress that any healthy, well-adjusted person would likely feel as a result of being so victimized." *Id.* In other words, **if any healthy, well-adjusted person would be severely distressed, the plaintiff can claim such distress (and testify to it)**. *Flowers* **permitted** testimony as to the plaintiff's anger, humiliation, desire not to

enter a restaurant to eat, and similar symptoms of emotional distress. Such symptoms were “the kinds of ordinary and usual emotions that one in Mr. Flowers’ position would feel.” *Id.* at 227.

Lastly, even if the Court is inclined to limit Mr. Bollea’s testimony in some way, the limitation requested by Gawker Defendants is impossibly vague. If any *in limine* order is imposed, it should be free of ambiguity and limited to specific areas where the privacy objection was interposed in discovery, such as questions about Mr. Bollea’s medical records or treatment generally.

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

Respectfully submitted,

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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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