

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.

FILED
 S. PETERSON
 2015 JUN 30 PM 4:38
 KEN BURKE
 CLERK OF CIRCUIT COURT

UNIFORM PRE-TRIAL CONFERENCE ORDER (JURY TRIAL)

On this date, the parties to this action and/or their respective attorneys appeared before the court at a Pre-trial Conference, pursuant to Rule 1.200, Florida Rules of Civil Procedure. The following action was taken:

APPEARING FOR PLAINTIFF TERRY GENE BOLLEA:

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APPEARING FOR DEFENDANT(S):

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1. CONCISE AND NEUTRAL STATEMENT OF THE CASE:**PROPOSED STATEMENT OF PLAINTIFF TERRY BOLLEA**

Plaintiff Terry Bollea, professionally known as Hulk Hogan, alleges in this case that the defendants, Gawker Media LLC, Nick Denton and A.J. Daulerio, posted on the Internet website Gawker.com secretly-recorded video and audio footage of Mr. Bollea fully naked and engaged in consensual sexual intercourse in a private bedroom. Mr. Bollea alleges that he did not consent to the defendants' posting of the secretly-recorded video, and had no knowledge that he was even being recorded. Mr. Bollea alleges that several million people watched the video posted by the defendants.

Mr. Bollea asserts claims against the defendants for invasion of privacy, intentional infliction of emotional distress, violation of right of publicity, and violation of Florida's Security of Communications Act. Mr. Bollea seeks compensatory damages, punitive damages, and a permanent injunction to prevent the defendants from being permitted to ever again play any of the secret video of him that is in their possession, and to turn over all such video to him.

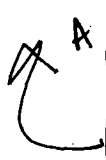
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~~Defendants deny Mr. Bollea's claims and contend that the video is a matter of legitimate public concern and therefore protected by the First Amendment. Defendants further maintain that they posted the video with a good faith belief that their conduct was lawful. Defendants further maintain that Mr. Bollea is not entitled to any monetary damages and that a permanent~~

injunction preventing them from playing the video, or requiring them to turn over the video to Mr. Bollea, should not be granted.

PROPOSED STATEMENT OF DEFENDANTS GAWKER MEDIA LLC, NICK DENTON AND A.J. DAULERIO

This is a case about a post on the website Gawker.com that included a written commentary as well as video and audio footage of the plaintiff, Terry Bollea (professionally known as Hulk Hogan), in the bedroom of Bubba Clem and Heather Clem. The lawsuit relates just to the video and audio footage (hereinafter, "Video").

Mr. Bollea maintains that he had no knowledge of and did not consent to being recorded in the Clems' bedroom, nor did he consent to the Publisher Defendants' posting of the Video online. Mr. Bollea claims that, because the Video included portions in which he was naked and engaged in sexual intercourse, its posting invaded his privacy. He also claims that the posting of the Video violated his rights of publicity, intentionally inflicted emotional distress upon him, and violated Florida's Security of Communications Act.

 The Publisher Defendants deny Mr. Bollea's claims. They also contend that their post was protected by the First Amendment because it related to matters of legitimate public concern. The Publisher Defendants further maintain that they posted the Video with a good faith belief that the posting was lawful and protected by the First Amendment.

2. ISSUES:

PROPOSED STATEMENT OF ISSUES OF PLAINTIFF TERRY BOLLEA

- 1) Was the video and audio footage that was posted on Gawker.com, which showed plaintiff Terry Bollea naked and engaged in sexual intercourse, a legitimate public concern?
- 2) Did defendants Gawker Media, LLC, Nick Denton or A.J. Daulerio wrongfully intrude into plaintiff Terry Bollea's private affairs by posting online on Gawker.com video and audio footage of plaintiff Terry Bollea showing him naked and engaged in sexual intercourse?
- 3) Was the posting online by defendant(s) of video and audio footage of plaintiff Terry Bollea, which showed him naked and engaged in sexual intercourse, offensive?
- 4) Was the video and audio footage of plaintiff Terry Bollea, showing him naked and engaged in sexual intercourse, posted online on Gawker.com, in such a manner as to outrage or cause mental suffering, shame or humiliation to a person of ordinary sensibilities?
- 5) Did plaintiff Terry Bollea suffer harm as a result of the video and audio footage showing him naked and engaged in sexual intercourse being posted online on Gawker.com?

- 6) Did defendants Gawker Media, LLC, Nick Denton and/or A.J. Daulerio post on Gawker.com video and audio footage of plaintiff Terry Bollea, which showed him naked and engaged in sexual intercourse, for any commercial or advertising purpose?
- 7) Did plaintiff Terry Bollea consent to the posting online by defendant(s) of the video and audio footage of plaintiff Terry Bollea, which showed him naked and engaged in sexual intercourse?
- 8) Did defendants Gawker Media, LLC, Nick Denton and/or A.J. Daulerio engage in extreme and outrageous conduct by posting online the video and audio footage of plaintiff Terry Bollea, which showed him naked and engaged in sexual intercourse?
- 9) Did defendants Gawker Media, LLC, Nick Denton and/or A.J. Daulerio act with the intent to cause plaintiff Terry Bollea severe emotional distress, or act with reckless disregard of the high probability of causing severe emotional distress to plaintiff Terry Bollea?
- 10) Did defendant(s)' conduct cause plaintiff Terry Bollea severe emotional distress?
- 11) Did the video and audio footage of plaintiff Terry Bollea, posted online by defendant(s), contain oral communications of plaintiff Terry Bollea?
- 12) Were the oral communications of plaintiff Terry Bollea, which were contained within the video and audio footage posted online by defendant(s), recorded without plaintiff Terry Bollea's knowledge or consent?
- 13) Did plaintiff Terry Bollea have a reasonable expectation of privacy in his oral communications, which were contained in the video and audio footage posted online by defendant(s)?
- 14) Did defendants Gawker Media, LLC, Nick Denton and/or A.J. Daulerio intentionally post online the oral communications of plaintiff Terry Bollea?
- 15) Did defendants Gawker Media, LLC, Nick Denton and/or A.J. Daulerio know or have reason to know that the oral communications of plaintiff Terry Bollea, contained in the video and audio footage posted online, were recorded without the knowledge or consent of plaintiff Terry Bollea?
- 16) Did defendants Gawker Media, LLC, Nick Denton and/or A.J. Daulerio post online the video and audio footage of Terry Bollea in good faith reliance on a good faith determination that Florida or federal law permitted them to post online that video and audio footage?
- 17) What damages did Plaintiff Terry Bollea suffer as a result of defendant(s)' conduct?
- 18) Whether punitive damages are warranted against defendants, and, if so, the total amount of punitive damages that should be assessed against each of the defendants.

- 19) Whether defendants had a specific intent to harm plaintiff Terry Bollea.
- 20) Whether defendants' wrongful conduct was motivated solely by unreasonable financial gain.
- 21) Whether the unreasonably dangerous nature of defendants' conduct, together with the high likelihood of injury resulting from the conduct, was actually known by defendants?

**PROPOSED STATEMENT OF ISSUES OF DEFENDANTS GAWKER MEDIA
LLC, NICK DENTON AND A.J. DAULERIO**

- 1) Whether the Video related to matters of public concern.
- 2) Whether the evidence presented at trial establishes a claim for publication of private facts.
- 3) Whether the evidence presented at trial establishes a claim for intrusion upon seclusion.
- 4) Whether the evidence presented at trial establishes a claim for commercial misappropriation of plaintiff's right of publicity.
- 5) Whether the evidence presented at trial establishes a claim for intentional infliction of emotional distress.
- 6) Whether the evidence presented at trial establishes a claim for violation of the Florida Wiretap Act.
- 7) Whether the evidence presented at trial establishes that plaintiff suffered damages as a result of the Publisher Defendants' posting of the Video.
- 8) If the evidence establishes that plaintiff suffered damages as a result of the Publisher Defendants' posting of the Video, what amount in damages should be awarded.
- 9) Whether plaintiff is entitled to punitive damages.
- 10) If plaintiff is entitled to punitive damages, how much he should be awarded.

3. ADMISSIONS:

- 1) The Video (defined herein as the one minute and forty-one seconds of video and audio footage of Terry Bollea and Heather Clem) was published at Gawker.com on October 4, 2012, where it remained through April 25, 2013.
- 2) A commentary accompanying the Video was written by A.J. Daulerio and entitled "Even for a Minute, Watching Hulk Hogan Have Sex in a Canopy Bed is Not Safe For Work But Watch it Anyway."

- 3) Defendants Gawker Media, LLC, Nick Denton and A.J. Daulerio did not contact Mr. Bollea or his legal counsel, or Heather Clem or her legal counsel, or Bubba Clem or his legal counsel, before publishing the Video.
- 4) The stipulation attached hereto as **Exhibit A** outlines the parties' agreements regarding the authenticity of certain documents, media and audio files for purposes of trial.

4. STIPULATIONS AND WAIVERS: (Yes or No)

- a) Less than 6 jurors if one becomes incapacitated. No.

Defendants will not stipulate to less than 6 jurors if one or more becomes incapacitated. Defendants agree to having, and request, two (2) alternate jurors in case jurors become incapacitated or are discharged.

Because Defendants refuse to stipulate to less than 6 jurors, if one or more becomes incapacitated, Plaintiff requests three (3) alternate jurors in case jurors become incapacitated or are discharged.

- b) Use of expert testimony at any time during trial as a result of unavailability at other time. The Defendants do not agree at this time, but agree to work cooperatively with Plaintiff's counsel and the Court should this situation arise.

- c) Waive technicians for imaging studies identified in discovery to date. N/A

- d) Waive records custodians for documents produced in discovery to date. This is not the equivalent of a stipulation to the admissibility of the documents in question. Yes

- e) Copies of ordinances or foreign laws. N/A

- f) The prior stipulations of the parties concerning Ron Howard, Ben Mallah, Bay Harbor Hotel and Convention Center, LLC, Darren Prince, Prince Marketing Group, Peter Young, Matt Loyd, Jennifer Bollea, Brooke Bollea, Nick Bollea, World Wrestling Entertainment, Inc. ("WWE"), and any employee of WWE (other than Mr. Bollea).

5. PLEADINGS: A list of pleadings upon which the case will be tried, including the date of filing for each.¹

LIST OF PLEADINGS OF PLAINTIFF TERRY BOLLEA

First Amended Complaint, originally filed December 28, 2012; on June 18, 2015, the same pleading was re-filed adding claim for punitive damages by interlineation

¹ The parties agree that this topic should be discussed at the pretrial conference on June 29, 2015.

Answer and Affirmative Defenses of Defendant Gawker Media, LLC, filed May 27, 2014

Answer and Affirmative Defenses of Defendant Nick Denton, filed May 27, 2014

Answer and Affirmative Defenses of Defendant A.J. Daulerio, filed May 27, 2014

LIST OF PLEADINGS OF DEFENDANTS GAWKER MEDIA LLC, NICK DENTON AND A.J. DAULERIO

First Amended Complaint, filed December 28, 2012

Answer and Affirmative Defenses of Defendant Gawker Media, LLC, filed May 27, 2014

Answer and Affirmative Defenses of Defendant Nick Denton, filed May 27, 2014

Answer and Affirmative Defenses of Defendant A.J. Daulerio, filed May 27, 2014

First Amended Complaint With Claim For Punitive Damages, filed June 18, 2015

Answer and Affirmative Defenses of Defendant Gawker Media, LLC, to be filed June 29, 2015

Answer and Affirmative Defenses of Defendant Nick Denton, to be filed June 29, 2015

Answer and Affirmative Defenses of Defendant A.J. Daulerio, to be filed June 29, 2015

6. REMAINING MATTERS: A list of all remaining matters that require action by the Court, including the dates of filing for any motions:

- 1) *Daubert* Motions (Plaintiff: Horan; Defendants: Foley, Anderson, Shunn, John) – parties' briefing complete as of June 12, 2015
- 2) Plaintiff's Motion to Determine Confidentiality of Court Records and for Protective Order to Exclude the Public at Trial for Certain Evidence and Argument – parties' briefing complete as of June 26, 2015
- 3) Motions in *Limine* (Plaintiff: 1–22; Defendants: 1–13) – parties' briefing complete as of June 26, 2015
- 4) Plaintiff's Motion to Compel Full and Complete Financial Worth Discovery and Additional Financial Worth Depositions – filed June 22, 2015, opposition to be filed on June 26, 2015
- 5) Objections to Deposition Designations – all designations, counter-designations, and objections filed by June 26, 2015
- 6) Objections to Exhibits (if necessary)
- 7) Jury instructions, pre-voir dire instructions, special instructions, and verdict form – all initial proposed instructions and objections filed by June 26, 2015, with any

modifications and additional instructions and objections to be submitted by the instruction conference at the close of evidence

- 8) All pending Motions to Determine Confidentiality
- 9) Documents and DVDs produced by the FBI and EOUSA as a result of Defendants' FOIA request and recent federal lawsuit.
- 10) The parties reserve the right to file additional motions in response to witnesses or exhibits identified after June 8, 2015.

7. PARTIES AND WITNESSES:

- a) Special needs: None
- b) Interpreter: None
- c) Limitations on the number of witnesses (e.g. expert witnesses, before and after witnesses, etc.): [N/A]

8. A LIST OF SPECIAL DAMAGES CLAIMED IS ATTACHED. [N/A]

9. JURY PREEMPTORY CHALLENGES PER LITIGANT: 6

10. ESTIMATED LENGTH OF THE CASE IN CHIEF FOR EACH LITIGANT AND THE ENTIRE TRIAL, INCLUDING VOIR DIRE:

Plaintiff: 5 days

Defendants: 5 days

11. MAXIMUM NUMBER OF TRIAL DAYS, EXCLUDING JURY SELECTION:

10.

12. SETTLEMENT POSSIBILITIES: Settlement is unlikely at this time.

13. THE Plaintiff IS RESPONSIBLE FOR ATTENDANCE OF THE COURT REPORTER.

14. ADDITIONAL MATTERS:

- 1) Plaintiff proposes the redaction of irrelevant nudity/graphic images and profanity from trial exhibits. Defendants object to this proposal.
- 2) Plaintiff proposes redaction of the name and email address of the woman that is the subject of Plaintiff's Trial Exhibit #27, at Plaintiff's Trial Exhibit #20, 144, 247. Defendants maintain that these exhibits are wholly inadmissible for the reasons stated in their pending motions *in limine*.
- 3) Plaintiff proposes redaction of the names of the individuals mentioned by Kevin Blatt at his deposition as having sex videos that were never released. Defendants maintain that Mr. Blatt's deposition testimony is wholly inadmissible for the reasons stated in their

pending motion *in limine*, and that, even if it is not inadmissible in its entirety, the portions of deposition testimony to which this proposal refers are inadmissible on multiple independent grounds.

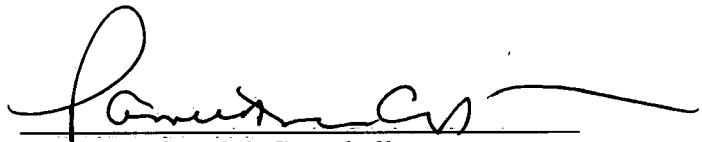
- 4) Methods of publishing audio and video to jurors at trial.
- 5) Plaintiff proposes that references to parties at trial be by their legal names. Defendants believe that the parties should be permitted to refer to parties and witnesses either by their legal names or the names by which they are commonly known.
- 6) *Shuchman* Revise case caption to remove all dismissed defendants: Bubba Clem, Gawker Media Group, Inc., Gawker Entertainment LLC, Gawker Technology LLC, Kate Bennert, and Blogwire Hungary Szellemi Alkotast Hasznosito KFT aka Kinja KFT.
- 7) Evidence and demonstrative aids may be used during opening statements. The parties must provide each other with copies of any demonstratives they intend to use during opening statements by July 3, 2015.
- 8) Length of opening and closing statements.
- 9) Courtroom layout for trial, additional desks for counsel, positioning of A/V equipment for presentation to jury.
- 10) The courtroom to be used for trial
- 11) Matters relating to jury selection, including the time for voir dire and the use of a jury questionnaire
- 12) Hardship qualification of jurors, and possibility of sequestration.
- 13) Rule of sequestration for witnesses, as it relates to media coverage of trial.
- 14) Counsel providing 48 hours' notice of witnesses they intend to call to testify.
- 15) Treatment of motions, documents, and testimony designated as CONFIDENTIAL.

15. THE PARTIES WILL COMPLY WITH THE UNIFORM ORDER SETTING TRIAL AND PRE-TRIAL CONFERENCE SPECIFICALLY REGARDING MEETING PRIOR TO TRIAL AND ACTIONS TO BE TAKEN ON THE FIRST DAY OF TRIAL.

16. FAILURE TO COMPLY WITH THE REQUIREMENTS OF THIS ORDER WILL SUBJECT THE PARTY AND/OR COUNSEL TO APPROPRIATE SANCTIONS.

DONE AND ORDERED in Chambers, at St. Petersburg Pinellas County,

Florida, this 29 day of June, 2015


Hon. Pamela A.M. Campbell