EXHIBIT 49

to the

THE GAWKER DEFENDANTS' MOTION TO DISMISS ON THE GROUNDS OF FRAUD ON THE COURT

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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,

vs. Case No. 12012447CI-011

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 GENE BOLLEA'S *CONFIDENTIAL* MOTION IN LIMINE NO. 6 TO EXCLUDE EVIDENCE OR ARGUMENT RELATED TO ALLEGED ADDITIONAL VIDEOS OF TERRY BOLLEA

Plaintiff Terry Bollea, professionally known as "Hulk Hogan" ("Mr. Bollea"), hereby moves this Court in limine under Fla. Stat. § 90.104 for an Order prohibiting Defendants from introducing any evidence or argument, during any portion of the trial, referencing alleged additional videos of Mr. Bollea and his alleged use of offensive language therein.

In support of his motion, Mr. Bollea states the following:

1. Mr. Bollea's claims in this case arise out of defendant Gawker Media, LLC's ("Gawker") publication of excerpts from one secretly filmed recording of Mr. Bollea naked and engaged in sexual relations with Heather Clem (the "Sex Video"). Mr. Bollea has brought claims for invasion of privacy and related torts. Gawker's central defense is that the publication of the Sex Video is protected by the First Amendment as a matter of "legitimate public concern."

2. The issue the jury will decide is whether the video Gawker published online on its website showing images and audio of Mr. Bollea naked and engaged in sexual intercourse was a matter of legitimate public concern.

3. As part of a systematic defense strategy to defend this case by attacking Mr. Bollea personally, Gawker is persisting in efforts to obtain and use alleged additional video footage of Mr. Bollea and Heather Clem involving encounters other than the encounter at issue in this case.

4. This alleged additional video footage was the subject of an FBI investigation emanating from an attempt to extort Mr. Bollea using such alleged footage.

5. Gawker's unyielding efforts to obtain and use the fruits of crimes committed against Mr. Bollea as leverage in this case have now reached new heights.

6. Without obtaining leave from this Court to conduct additional discovery, and without even advising this Court that it was continuing to pursue such discovery (including during the past three status conferences on March 19, 2015, April 22, 2015 and May 29, 2015), Gawker is now jeopardizing an ongoing criminal investigation into the crimes committed against Mr. Bollea by pursuing a federal lawsuit against the FBI and EOUSA. A true and correct copy of the filings in that case, Gawker Media, LLC v. FBI, Case No. 8:15-cv-01202-SCB-EAJ (M.D. Fla.), are appended as Exhibit A hereto; *see also* Gawker Trial Exhibit #84 (Plaintiff's Privilege Log: Correspondence re FBI Criminal Investigation, Dep. Ex. 102). [Attach Gawker's Complaint, MSJ, and FBI Opposition]

7. Gawker's "discovery" in violation of this Court's orders should not be permitted, and any fruits of such discovery should be excluded at trial on this basis alone.

8. Even if these additional videos exist and Gawker is able to obtain them, they would have no relevance to the video footage Gawker published in this case. Rather, Gawker's true intent in wanting to use this alleged "evidence" arises from certain offensive language supposedly recorded therein. Indeed, Gawker cites to media reports speculating that Mr. Bollea may have made such remarks on a secret recording of an encounter with Heather Clem.

9. At this point, "summaries" have been produced in discovery that consist of purported descriptions of the contents of alleged recordings of Mr. Bollea in which Mr. Bollea allegedly uses offensive language. These "summaries" were prepared by an extortionist trying to steal money from Mr. Bollea in exchange for an agreement not to release alleged recordings of Mr. Bollea. These "summaries" include, but are not limited to, documents bates-labeled BOLLEA 1210-1214, BOLLEA 1249-1253, DBA 54, and DBA 327.

10. Gawker also has produced documents in discovery referring to the alleged offensive language contained in these recordings. Those statements, within documents bates-labeled DBA 0065-0068 and AJD 005_C (an email exchange between A.J. Daulerio and Tony Burton) and Gawker 23891-23893 (April 26, 2012 *The Dirty* article entitled "EXCLUSIVE: Hulk Hogan Sex Tape"), lack foundation and are unauthenticated hearsay. The documents, and the alleged recordings, were never verified by anyone in discovery who had personal knowledge of the alleged recordings nor their contents.[1]

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[1] Bollea 002654-2667 consists of text messages between Mr. Bollea and Bubba Clem in which, among other things, Mr. Bollea refers to the **media** reports about the alleged recordings, in the phrase starting with "We know there's more than one tape out there…." Bollea 002658 (text message of October 12, 2012 a 12:18 p.m.). Mr. Bollea did not and does not have personal knowledge whether there exist more recordings than the 30-minute video that was sent to Gawker by an "anonymous" source. Mr. Bollea was trying to elicit information from Mr. Clem regarding whether more than one tape exists. Mr. Clem stated at the time, and testified at his deposition, that he is aware of only **one** disk containing a recording, and that disk was stolen from him.

11. On April 22, 2015, the Court adopted the October 20, 2014 Report and Recommendation of the Special Discovery Magistrate, which ordered the redaction of certain offensive words from documents bates-labeled BOLLEA 1213, BOLLEA 1214, BOLLEA 1252, BOLLEA 1253, DBA 54, and DBA 327. A true and correct copy of the Court's April 22, 2015 Order and October 20, 2014 Report and Recommendation are appended as Exhibit B hereto.

12. Because discovery is closed, and Gawker has not obtained, nor is it entitled to obtain, FBI records that are part of an ongoing criminal investigation, any and all evidence regarding alleged additional recordings of Mr. Bollea should be excluded.

13. Such evidence should also be excluded because it is completely irrelevant to the material issues in this case.

14. It is undisputed that Mr. Bollea was illegally recorded without his knowledge or consent. These alleged additional recordings do not refute these facts.

15. Rather, the only purpose evidence of these alleged additional recordings serves is to inflame and prejudice the jury against Mr. Bollea.

16. There is nothing within the documents produced during discovery demonstrating that these recordings contain any evidence that Mr. Bollea knew he was being recorded or consented to being recorded.

17. Allowing evidence about these alleged recordings to be admitted, even while redacting the alleged offensive words, would still be improper. The sentences and phrases in which the alleged offensive statements appear, in their entirety (and any reference to or argument about them), should be excluded at trial. Allowing the sentences and phrases with the redactions only encourages the jurors to infer negatively on the redactions, thus severely prejudicing Mr. Bollea. Further, the offensive statements allegedly made by Mr. Bollea referenced within

documents bates-labeled DBA 0065-0068 and AJD 005_C (an email exchange between A.J. Daulerio and Tony Burton) and Gawker 23891-23893 (April 26, 2012 *The Dirty* article entitled "EXCLUSIVE: Hulk Hogan Sex Tape") were not redacted in discovery purposes, yet redaction at trial is necessary to prevent juror confusion and potential prejudice to Mr. Bollea.

18. The alleged use of offensive language, even if it occurred, is not probative of any material fact underlying the claims and defenses at issue in this litigation. Fla. Stat. §§ 90.401, 90.402.

19. Further, even assuming arguendo there was some relevance, any probative value would be substantially outweighed by the prejudice of putting these matters before the jury. Fla. Stat. § 90.403; *MCI Express, Inc. v. Ford Motor Co.*, 832 So.2d 795, 801-02 (Fla. 3d DCA 2002) (trial court committed reversible error when it did not exclude testimony that executive of plaintiff used derogatory language about Cubans); *Simmons v. Baptist Hosp. of Miami, Inc.,* 454 So.2d 681, 682 (Fla. 3d DCA 1984) (same; "We think these unfair character assassinations could have done nothing but inflame the jury against these witnesses, who were so essential to the plaintiff's case, and in so doing, denied the plaintiff the substance of a fair trial below."); *State v. Gaiter,* 616 So.2d 1132, 1133 (Fla. 3d DCA 1993) (trial court redacted racial slurs even though probative).

20. Even if the alleged offensive language were somehow relevant, and its probative value is not substantially outweighed by prejudice, it is nothing more than rank hearsay of an extortionist, who was seeking money in exchange for delivery of the recordings. Moreover, the tabloid media does not appear to have ever seen the alleged recordings but, rather, is perpetuating a rumor about their possible existence. The extortionist likely is the source of the rumor as part of a coordinated effort to scare Mr. Bollea into paying the extortion money.

For the foregoing reasons, Mr. Bollea requests that the Court enter an Order prohibiting defendants from introducing any evidence or argument at trial referencing any alleged additional recordings of Mr. Bollea in their entirety or, if not, then at a minimum, prohibiting any introduction of or argument about alleged use of offensive language by Mr. Bollea. In particular, the following should be excluded: the phrase starting with "but has more . . ." in DBA 0065-0068 and AJD 005_C; the phrase starting with "Sorry Hulkster . . ." in Gawker 23891-23893 (April 26, 2012 *The Dirty* article entitled "EXCLUSIVE: Hulk Hogan Sex Tape"); the text message starting with "We know there's more than one tape out there...." in Bollea 002658 (text message of October 12, 2012 a 12:18 p.m.); and the entirety of the sentences containing the redactions already approved by the Court in BOLLEA 1213, BOLLEA 1214, BOLLEA 1252, BOLLEA 1253, DBA 54, and DBA 327. Again, these statements are **alleged** summaries of **alleged** recordings, created by an unknown person as part of an extortion attempt; there is no evidence the recordings actually exist or contain the language included on the alleged summaries.

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 12th day of June, 2015 to the following:

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