

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

GAWKER MEDIA, LLC, *et al.*,

Defendants.

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**DEFENDANTS' MOTION *IN LIMINE* NO. 3:  
RELEVANT EXCERPTS FROM DVDS PRODUCED BY THE FBI**

On January 20, 2016, this Court directed counsel for plaintiff Terry Bollea and defendants Gawker Media, LLC, Nick Denton, and A.J. Daulerio to view DVDs produced by the FBI. The Court explained at that time that it was “not saying [the DVDs] are admissible” and that its preliminary impression was that the portions of the DVDs that would be admissible might be “slim and none.” Ex. 1 (Jan. 20, 2016 Hrg. Tr. at 9:7-12). Nevertheless, the Court instructed that after counsel review the DVDs, “then we can discuss what each side wants to do with them.” *Id.* at 9:10-11. Consistent with that instruction, Defendants submit this motion *in limine* seeking to use only certain, limited portions of the DVDs at trial. None of these portions includes graphic nudity or sexual content, and, as explained below, each is relevant to material issues in this case.

**I. THE THREE SEX TAPE DVDS<sup>1</sup>**

Defendants seek to use limited portions of each of the three sex tape DVDs to address key facts in the case.

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<sup>1</sup> For ease of reference, the DVD labeled as “First Tape 7-3-2007” is referred to herein as “First DVD”; the DVD labeled “Second Tape 7-13-2007” is referred to as “Second DVD”; and the DVD labeled as “Undated” is referred to as “Third DVD.”

**1. The Last Minute of The Third DVD.** In the very last minute of the Third DVD, Bubba Clem and Heather Clem have a brief exchange, after Mr. Bollea has left the room, about the recording they were in the process of making. This segment is significant for three reasons. First, it conclusively establishes that Heather Clem was aware that her encounter with Bollea was being filmed. Indeed, this segment shows she and Mr. Clem discussing that fact, with Ms. Clem making a comment about what her then-husband would see on the tape. That footage directly contradicts Ms. Clem's testimony at her deposition, where she said that she did not know that she was being filmed and only learned of the recording after the fact. *See, e.g.*, Ex. 2 (H. Clem Dep.) at 20:19 – 22:1. Second, this segment shows that Mr. Clem is aware of more than one sexual encounter and the fact that more than one sex tape was filmed in his bedroom. At his deposition, Mr. Clem testified that he was aware of only one encounter and one sex tape – the tape from which Gawker posted excerpts. *See, e.g.*, Ex. 3 (B. Clem Dep.) at 322:5-8, 18-20. This segment shows that testimony is false. Third, this segment shows that Mr. Clem recognized that the DVD was valuable because it depicted Bollea making racist statements. Indeed, as soon as Bollea left the Clems' home, Mr. Clem commented that "if we ever did want to retire, all we have to do is use that ... footage of him talking about [REDACTED] people." As explained in Defendants' Motion *in Limine* No. 2, that comment reflects that the tape's commercial value stemmed from the fact that it contained footage of Bollea's racial slurs, not from the fact that it included footage of a sexual encounter.

**2. Segments of All Three Tapes Showing Bollea Was Not At An "All Time Low."** In this litigation and in many media interviews, Bollea has stated that the tapes were filmed when he succumbed to Heather Clem's repeated advances and that the encounters occurred at a particularly vulnerable moment during an "all time low" in his life. *See, e.g.*, Ex. 4 (T. Bollea

Dep.) at 273:17 – 275:21, 277:11 – 280:9; Ex. 5 (transcript of *TMZ Live* interview, Oct.9, 2012) at 1; Ex. 6 (transcript from *Sway in the Morning* interview, Oct. 10, 2012) at 4. Several segments from the three sex tape DVDs suggest that this testimony is false. In the Second DVD, which is the same DVD Gawker received, Bollea is shown animatedly telling Ms. Clem incredible stories about an incident with men from the Coast Guard at a local strip club and bragging about how the twin sister of his son’s girlfriend had said that she would like to date him. Likewise, in the First DVD, the first one and a half minutes shows Bollea talking with the Clems in a manner that hardly suggests that he was depressed or upset, as he testified in this litigation. This segment also suggests that Mr. Bollea was, at best, telling half the truth when he testified that he succumbed to Ms. Clem’s sexual advances, as this segment shows Bollea making advances on Ms. Clem in Mr. Clem’s presence.

**3. Segments Showing That Mr. Clem Knew About Three Sexual Encounters.** In addition to the segments identified above on the First and Second DVDs, the first minute of the Third DVD includes footage establishing that Mr. Clem was in the bedroom and aware of the encounter between Bollea and Ms. Clem, with Mr. Clem exiting upon saying “I’ll be in my office. You guys have fun.” As explained above, this footage directly contradicts his sworn deposition testimony.

## **II. THE STING VIDEO**

Defendants seek to play only one portion of the Sting Operation Video, which appears in the file labeled “2012-12-14\_15-41-13” on the DVD titled “Video Footage (1 of 2).” During this litigation, Bollea has testified that he never watched the excerpts posted by Gawker, that Davidson did not describe the content of the tapes to him, and that he was “not aware of any transcript that’s been provided by Mr. Davidson.” Ex. 4 (T. Bollea Dep.) at 417:2-5, , 792:20 –

793:1, 812:7-9; 812:12-13, 813:9-16. Yet, the final three minutes or so of this video file from the Sting Video show that this testimony was false. In this video segment, Davidson describes the content of the tapes, Bollea states that one of the videos described by Davidson “was on Gawker,” and then Bollea reads the page from the Davidson Summary that summarizes his racial slurs on the Third DVD. *See Ex. 7* (transcript of sting audio matching this portion of the video) at GAWKER-813 to -814. After Bollea reads the Summary, Houston states “you know pretty damaging stuff,” to which Bollea responds, “Yeah, I’d say.” *Id.*

### **III. THE OFFENSIVE STATEMENTS**

Defendants do not plan to use the portions of the Third DVD with Bollea’s racist and homophobic statements. *See generally* Defendants’ Motion *in Limine* No. 2. As Defendants have explained throughout this litigation, the statements are not relevant in and of themselves. What is relevant about Bollea’s use of racial slurs is the additional evidence indicating that (a) at the time Bollea filed this lawsuit, he was principally concerned about preventing the dissemination of that footage, and (b) the footage capturing those statements is what was truly commercially valuable about the three sex tapes depicting Bollea with Ms. Clem. Nevertheless, if Bollea testifies that he was not concerned about the possible release of footage of those statements and denies ever making them, Defendants reserve their right to use that footage to refresh his recollection and/or impeach him.

### **CONCLUSION**

For the foregoing reasons, Defendants respectfully request that the Court grant their Motion *in Limine* No. 3, and permit them to use the following segments from the DVDs produced by the FBI:

- First DVD – opening minute and a half;

- Second DVD – approximately 16:30 – 17:45 (story about twin sister of his son’s girlfriend) and approximately 18:15 – 23:15 (story about incident with men from the Coast Guard);
- Third DVD – opening minute when Mr. Clem is present, and the final minute; and
- The short segment of the Sting Video identified in Section II above.

February 1, 2016

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 1st day of February, 2016, I caused a true and correct copy of the foregoing to be served via the Florida Courts' E-Filing Portal on the following counsel of record:

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