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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.

GAWKER MEDIA, LLC aka GAWKER MEDIA; NICK DENTON; A.J. DAULERIO,

Defendants.
_____/

PLAINTIFF'S OPPOSITION TO GAWKER DEFENDANTS' MOTION TO PRECLUDE EVIDENCE OF ADMISSIONS BY GAWKER EMPLOYEES (STYLED "Defendants' Motion in Limine No. 4: Statements By Non-Witness Employees")

Mr. Bollea opposes Gawker Defendants' motion in limine number 4 seeking to preclude evidence of the admissions of Gawker's employees regarding the privacy issues in this case, as follows:

I. ADMISSION OF THE STATEMENTS AT ISSUE DOES NOT VIOLATE THE HEARSAY RULE.

Gawker's motion in limine to categorically exclude statements made by their own employees is overbroad and seeks to exclude evidence which is relevant, admissible, and important. Because these are authorized admissions of Gawker employees, they are not inadmissible hearsay.

Gawker Defendants concede that most of the statements at issue were made by people who were employed by Gawker at the time they made the statement. Gawker Defendants argue that the statements were not made within the scope of their employment. However, the Fla. Stat. § 90.803(18)(d)'s scope of employment test is extremely broad. All that is required for an admission of an employee to be authorized is that the statement is "**connected** with a duty within

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the scope of the employee's agency or employment." *Lee v. Department of Health and Rehabilitative Services*, 698 So.2d 1194, 1200 (Fla. 1997) (emphasis added).

That "connection" test is easily met here. The job of these employees of Gawker (reporters and editors of Gawker's various online publications) is to communicate with the public, including in publications posted on Gawker, as well as by talking to other media outlets and on their social media accounts. These accounts are promoted by Gawker Defendants and are used to direct readers to the Gawker websites. Statements made by Gawker employees in press interviews and social media are thus intimately "connected" to their employment. Their job is to make statements to the public.

Independently, the statements at issue are not offered for the truth of the matters asserted, but rather to establish Gawker Defendants' state of mind with respect to privacy issues. This non-hearsay purpose of these statements is permitted because **intent** is an element of Mr. Bollea's claims.

II. THE STATEMENTS ARE ADMISSIBLE WHETHER OR NOT THEY ARE BASED ON PERSONAL KNOWLEDGE.

Gawker Defendants' other arguments against admissibility also lack merit. First, Gawker Defendants argue that the statements contain opinions rather than facts based on the employees' personal knowledge. However, statements that fall within the hearsay exception as admissions against interest are admissible even if they are not based on personal knowledge. "[T]he established rule in Florida, and the clear majority rule throughout the country, is that an admission by a party opponent or his agent need not be based on the personal knowledge of a party or his agent. This is so because when a person or his agent speaks against his own interest, as here, or otherwise makes relevant admissions of substantial importance to himself, it may be assumed that he or his agent has made an adequate investigation so that such statements possess,

even if not based on firsthand observation, a substantial indicia of reliability." *Metropolitan Dade County v. Yearby*, 580 So.2d 186, 189 (Fla. 3d DCA 1991).

The bulk of the statements at issue in this motion are statements by Gawker employees, against Gawker's interests, about Gawker's editorial policies and views on privacy. *See, e.g.,* Ex. 390 (Gawker employee calling an article sympathizing with Mr. Bollea's position regarding privacy "idiotic"); Ex. 395 (Gawker editor calling the notion that a celebrity can have a right to privacy the "grossest thing in 2015"); Ex. 482 (Gawker employee quoting Nick Denton in an internal meeting admitting that the Bollea Sex Video post "was actually on the edge"). Gawker Defendants cannot exclude these statements, simply because they are damaging to their case.

III. THE EVIDENCE IS NOT UNFAIRLY PREJUDICIAL.

Finally, Gawker Defendants' argue that any probative value of this evidence is substantially outweighed by its prejudicial effect. However, none of this evidence unfairly prejudicial under Fla. Stat. § 90.403. It is not offered to suggest that Gawker employees are "callous and flippant" about the lawsuit, as Gawker Defendants claim. Infact, many of the exhibits do not even mention the lawsuit. Isntead, the evidence is offered, *inter alia*, to show that Gawker employees are "callous and flippant" about **privacy**. Such evidence is entirely admissible. *King v. State*, 89 So.3d 209, 227 (Fla. 2012) ("However, it has been observed that most evidence that is admitted will be prejudicial or damaging to the party against whom it is offered. **The question under the statute is not prejudice but instead, *unfair* prejudice.**") (emphasis added; internal quotations omitted). It is not "unfair" to admit into evidence the views of Gawker Defendants's own employees regarding the privacy issues at the center of this case.

IV. CONCLUSION

For the foregoing reasons, Gawker Defendants' motion in limine number 4 should be denied.

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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 February, 2016 to the following:

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