

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.

**DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION CONCERNING
AUDIO-VISUAL EXHIBITS OR, IN THE ALTERNATIVE, MOTION
FOR PLAINTIFF TO IDENTIFY THE SPECIFIC ASPECTS OF HIS
HUNDREDS OF EXHIBITS HE INTENDS TO INTRODUCE AT TRIAL**

Defendants Gawker Media, LLC (“Gawker”), Nick Denton, and A.J. Daulerio hereby oppose the Motion of Plaintiff Terry Gene Bollea, professionally known as Hulk Hogan, concerning Defendants’ audio and video exhibits (hereinafter, “A/V exhibits”). In that motion, Bollea asks the Court to order Defendants to identify “the exact portions of these audio-visual exhibits that they intend to introduce at trial.” Pl.’s Mot. at 2. Defendants respectfully request that this motion be denied for the reasons set forth below. Alternatively, if the Court entertains Plaintiff’s request, it should order him to undertake the same exercise and identify the exact portions of the hundreds of exhibits that he intends to introduce at trial.

ARGUMENT

Since the summer of 2014, Bollea has pressed for this case to go to trial. Time and again, he has told this Court that he is trial ready. Now, just two weeks before the actual trial, Bollea complains that he will be “prejudiced” if forced to prepare for trial.

Nearly all of the A/V exhibits mentioned in Bollea’s motion were produced long ago. Indeed, he has had almost all of this material for at least *a year and a half*. And, of the 124 A/V

exhibits Bollea mentions in his motion, nearly every one of them was on the trial exhibit lists that Defendants filed and served well before the original trial date *last July*.¹ At that time, Bollea did not ask for this relief. Rather, he castigated Defendants for seeking a continuance and told the Court he was ready for trial. Since the trial was postponed, Bollea has had *seven and a half months* to review these exhibits and prepare for trial. He offers no reason for failing to review this material during discovery, prior to the July 2015 trial date, or in the many months leading up to the March trial.

Bollea's belated request is nothing more than a transparent effort to obtain a roadmap to Defendants' trial strategy and to get Defendants to provide him with a "cheat sheet" to use in preparing himself and his witnesses for their cross-examinations. Nothing in the law requires a party to reveal its trial plans or demands that a party give its opponent any early preview.

Significantly, in making his request, Bollea fails to inform the Court of two points:

First, there is no surprise about Defendants' reasons for using the A/V exhibits. Key audio and video evidence has been played in depositions throughout the case. A lot of it has been featured prominently in motions (including Defendants' motion for summary judgment). And, it has been at the heart of many of Plaintiff's motions *in limine* – as the A/V exhibits include, among other things, (a) Bollea discussing his personal life and sex life in extraordinarily explicit detail, (b) Bollea discussing with national media the underlying events giving rise to his claims in this case, and (c) Bubba Clem talking at length about Bollea knowing he was being filmed and filing this lawsuit as a publicity stunt (or, as Mr. Clem put it in his own words, this

¹ The only new A/V exhibits on Defendants' updated exhibit list are materials produced by the FBI (which Bollea received within two days time of Defendants receiving them), two interviews given by Bollea after July, two radio broadcasts featuring Bubba Clem, an interview given by Bubba Clem, a short press conference by Bubba Clem, and a short clip broadcast by TMZ.

lawsuit reflects “the typical Hogan M.O.” and another example of Bollea being “the ultimate lying showman”).

Second, Defendants already have told Plaintiff which of the A/V exhibits they will use at trial, which A/V exhibits they might use at trial, and which A/V exhibits they do not anticipate using at trial. They provided that list to Plaintiff’s counsel in writing, and discussed it with Plaintiff’s counsel on January 28, as part of the meet-and-confer mandated by the Pretrial Order. Then, following that meeting, Defendants went an extra step: They identified which of the A/V exhibits fell into various categories of disputed evidentiary issues. (Although Defendants disclosed this information to Plaintiff about their own exhibits, Plaintiff has not reciprocated.)

There is simply no reason that Defendants should do more work for Bollea. Indeed, Bollea’s one-sided request is a blatant overreach and plainly unreasonable. Bollea and his best friend Bubba Clem – the man who filmed Bollea engaging in a sexual encounter with Mr. Clem’s then-wife – are media personalities. They both have made countless statements that are relevant to the issues that Bollea has brought to this Court. As this case proceeded through discovery, Defendants obtained and reviewed these two men’s media work, culled through their appearances, and then provided Bollea with a small slice of the A/V evidence that is relevant to his claims. Of that small slice, Defendants have identified a portion as potential trial exhibits. All of this work has taken significant time and come at great expense.

Bollea, who has made many of the statements and appearances on the A/V exhibits, could have done the same. Or, he could have reviewed these exhibits before the previous trial date or any time over the past seven and a half months. Having sat on his hands for many months, Bollea should not be able to piggyback on Defendants’ work. If the Court nonetheless allows Bollea and his counsel to benefit from Defendants’ labors, then Bollea should be required to split

the expense that Defendants incurred in obtaining reviewing, preparing, and producing A/V material throughout discovery and this litigation.

ALTERNATIVE REQUEST FOR RELIEF

To the extent that the Court entertains Bollea's outlandish request, Defendants' respectfully request that he be ordered to take the same steps. Bollea has identified 591 trial exhibits. To the extent that Bollea claims that "it will be unfairly prejudicial to require Plaintiff to prepare for trial by reviewing" the A/V exhibits, Defendants also will be "prejudiced" in the same way, as they will need to review hundreds of exhibits in the coming two weeks and be forced "to guess as to what portions of these files [Plaintiff] actually intend[s] to use" at trial. Pl.'s Mot. at 2. Many of Bollea's exhibits are long. The review will take substantial time. To expedite Defendants' "pre-trial preparations" and "simplify the issues," if the Court is inclined to grant Bollea's request, it also should order plaintiff to "identify the specific portions of those exhibits that [he] intend[s] to introduce." Pl.'s Mot. at 2. If that is what is ordered for Plaintiff's benefit, the same should be ordered for the Defendants' benefit.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that this Court deny plaintiff's Motion or, in the alternative, to require plaintiff to identify the specific aspects of his exhibits that he intends to introduce at trial.

February 15, 2016

Respectfully submitted,

THOMAS & LOCICERO PL

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th 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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