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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.: 12012447-CI-011

vs.

GAWKER MEDIA, LLC aka
GAWKER MEDIA, et al.,

Defendants.
_____________________________________/

PLAINTIFF'S MOTION TO STRIKE GAWKER DEFENDANTS' MOTION FOR NEW TRIAL OR, ALTERNATIVELY, FOR REMITTITUR ON THE GROUNDS OF BAD FAITH AND JUDICIAL ESTOPPEL

Plaintiff Terry Bollea known professionally as Hulk Hogan ("Mr. Bollea"), by counsel and pursuant to Rule 2.515, *Fla. R. Jud. Admin.*, and the Court's inherent authority, moves to strike the April 4, 2016 Motion for a New Trial or, In the Alternative, Remittitur (the "Motion") filed by Defendants, Gawker Media, LLC ("Gawker"), Nick Denton ("Denton") and A.J. Daulerio ("Daulerio") (collectively, "Gawker Defendants") ("Gawker's Motion"), on the grounds of bad faith and judicial estoppel, and in support states as follows:

Introduction

On March 21, 2016, Gawker Defendants affirmed to the jury that they **"owe"** and **"must pay"** Mr. Bollea $115 million. Having made this admission and affirmative representation to the jury to successfully limit punitive damages, Gawker Defendants cannot challenge the Verdict, liability nor the $115 million compensatory damage award. In Florida, parties are bound by and held to their representations to a jury.

ELECTRONICALLY FILED 05/02/2016 05:28:32 PM: KEN BURKE, CLERK OF THE CIRCUIT COURT, PINELLAS COUNTY

Preserving the integrity of the judicial process and protecting the proper administration of justice are of paramount importance. That is why attorneys are primarily officers of the Court, bound to serve the ends of justice with openness, candor and fairness to all—even when it appears in conflict with a client's interests. *Ramey v. Thomas*, 382 So.2d 78, 81 (Fla. 5th DCA 1980). In fact, the duty of candor toward the tribunal is viewed as one of the most sacrosanct ethical and legal obligations in the Rules of Professional Conduct and under Florida law. See, Rules 4-3.3 and 4-8.4, Fla. R. Prof. Cond.; *Phillip Morris USA, Inc. v. Green*, 175 So.2d 312, 315 (Fla. 5th DCA 2015) (the integrity of our system of justice is the quintessence of the judicial estoppel rule).

"Every court has the prerogative and duty to see that its processes are not abused." *Marine Transport Lines, Inc. v. Green*, 114 So.2d 710, 711 (Fla. 1st DCA 1959). In furtherance of this duty, all courts have the inherent authority to impose sanctions for bad faith litigation, and the explicit authorization under the Rules of Judicial Administration to strike documents which are filed without "good ground to support." *Patsy v. Patsy*, 666 So.2d 1045, 1046-47 (Fla. 4th DCA 1996); *Sheldon Greene & Assoc., Inc. v. Williams Island Assoc., Ltd.*, 592 So.2d 307 (Fla. 3d DCA 1991); *Emerson Realty Group, Inc. v. Schanze*, 572 So.2d 942, 945 (Fla. 5th DCA 1991); Rule 2.515, *Fla. R. Jud. Admin.*

Based upon the arguments and factual assertions set forth in Gawker's Motion, it appears that Gawker Defendants intend to ignore the duty of candor, disavow their admissions to the jury and undermine the integrity of this Court. Gawker Defendants' counsel induced the jury to limit punitive damages based on the size of the $115 million compensatory damage award; an award which Gawker Defendants' counsel acknowledged to the jury that Gawker Defendants **"owed"** and **"must pay."** Counsel also represented to the jury that the Gawker Defendants accepted the

verdict and had learned their lesson. By doing so, they successfully limited their punitive damages exposure based upon the compensatory damage award (while typically punitives might equal or be based on a multiplier of compensatory damages, Gawker Defendants successfully convinced the jury to limit punitives to a fraction of the compensatory award) and a stipulation regarding net worth that was explicitly entered into **"solely for purposes of punitive damages."**

Now, Gawker Defendants have asked this Court to disregard their counsel's representations to the jury, and to ignore express terms of the net worth stipulation, so that they can completely avoid or substantially reduce the amount of the jury's verdict. First, they are claiming that they do not owe and don't have to pay the compensatory damages. Second, immediately upon returning to New York, Gawker Defendants thumbed their noses at the Verdict and guaranteed victory on appeal. Third, Gawker Defendants are using the net worth stipulation as a basis to challenge the compensatory damages award; in direct contradiction of its express terms.

While it is certainly ethical and appropriate for a litigant to disagree with a verdict and take issue with the trial process, it is not proper to seek to reduce compensatory damages after representing otherwise to a jury to successfully limit punitive damages on the basis that the defendants would already be paying the compensatory award and have suffered enough. Gawker Defendants could have made any number of arguments to the jury. They chose to represent that the jury's compensatory damages verdict was just, appropriate and would be paid. They cannot avoid the consequences of their calculated choice; which was made with an array of lawyers, including specially retained appellate counsel and Gawker's in-house counsel, participating at trial.

Under these circumstances, to allow Gawker's Motion to proceed would condone bad faith litigation and misrepresentations to the jury, as well as an affront to the integrity of the trial process.

Background

Following a three-week jury trial during which Gawker Defendants admitted that the video they posted of Mr. Bollea naked, engaged in consensual sexual activity and having private conversations in a private bedroom was "pornographic" and was not posted to address any matter of legitimate public concern, a Pinellas County jury diligently followed the law, decided and applied the salient facts, and entered a well-reasoned and factually justified verdict awarding damages against Gawker Defendants based upon the significant harm they intentionally and maliciously inflicted upon Mr. Bollea, as well as the extraordinary benefit they received by virally marketing their brand at Mr. Bollea's expense.

In the years leading up to and during the **first phase** of the trial, Gawker Defendants arrogantly stood behind their decision to invade Mr. Bollea's privacy and violate his rights for their own economic gain. The jury recognized that this arrogance was endemic of a culture of callousness within Gawker and demonstrated a specific intent to harm Mr. Bollea. The Gawker Defendants' own testimony and admissions established that they knew what they were doing was wrong and that they had no good faith belief that their conduct was lawful. The jury weighed all of the evidence and rightfully determined that Gawker Defendants' attempt to justify posting an illegally recorded, "pornographic" video without the participants' consent under the guise of the First Amendment was a sham.

After hearing Mr. Bollea's testimony, as well as the unrefuted testimony of independent third-party and expert witnesses, the jury awarded $115 million to compensate Mr. Bollea for the

substantial harm Gawker Defendants inflicted on him, and the significant benefit they derived from gratuitously and unnecessarily posting the surreptitious video for a profit. The jury also found, by clear and convincing evidence, that Mr. Bollea was entitled to recover punitive damages.

Although Gawker Defendants did not have a financial worth expert for the second phase of the trial,[1] Mr. Bollea agreed to a stipulation establishing defendants' net worth ***"solely for punitive damages."*** (**Exhibit A**) This stipulation was based on the opinions of James Donohue, Mr. Bollea's financial worth expert. Mr. Donohue's opinions established the **floor** of Gawker Defendants' net worth. Specifically, Mr. Donohue opined that Denton's and Gawker's net worth were **"at least"** certain amounts, and did so **solely** for the purposes of the punitive damages phase of the case (the "Net Worth Stipulation"). Mr. Bollea was prepared to use the valuation methodology employed by Jeff Anderson (Mr. Bollea's intellectual property valuation expert) to establish the **ceiling** for net worth. However, in an effort to compromise, and based upon the jury's compensatory damage award, Mr. Bollea stipulated with Gawker Defendants as to their net worth **only** for purposes of punitive damages.

On March 21, 2015, during closing arguments in the punitive damages phase of the case, Gawker Defendants relied heavily upon the Jury's compensatory damage award and the Net Worth Stipulation to beg the Jury to show the type of leniency and decency that Gawker Defendants do not afford their victims. Specifically, Gawker Defendants' counsel told the jury that the Gawker Defendants "heard" their judgment, that the message was clear, and that their compensatory damage verdict would already **"deter"** the Defendants. Gawker Defendants'

[1] Pursuant to the Court's November 19, 2015 Second Order Setting Jury Trial and Pretrial Conference, the parties were required to disclose financial worth experts by December 11, 2015, and rebuttal experts by January 25, 2016. Gawker Defendants **never** identified a financial worth expert.

counsel further represented to the jury that they **"owe"** and **"must pay"** the $115 million compensatory damage award; while asking the jury to limit punitive damages because of the amount of this compensatory damage obligation. (3/21/16 Trans. pp. 3907-3909) The jury listened to and acted upon those representations: awarding punitive damages that were a fraction of the compensatory award.

Incredibly, after beseeching to and accepting the jury's leniency, Gawker Defendants immediately disavowed their counsel's representations. Within days of the jury's decision, Denton attacked the Verdict on Gawker.com and he and Daulerio used the press to attack the Court, Mr. Bollea's counsel, and the judicial process, asserting that the jury was fooled and the trial was a "sham." Gawker Defendants denounced any notion that they were remorseful or contrite, instead guaranteeing victory and vindication on appeal.

Despite mocking this Court, the jury, opposing counsel and the judicial process, Gawker Defendants have again returned to this Court asking for additional leniency. They are asking this Court to absolve them of all responsibility for the harms they intentionally and maliciously caused, while ignoring their own testimony and their counsel's misrepresentations to the jury about their remorse and financial responsibility. At the same time, they are ignoring the rules of evidence, their own stipulations to the admission of evidence, and their agreement to the submission of questions posed by the jury. They are also ignoring the specific language set forth in the Net Worth Stipulation, so they can use it for purposes other than punitive damages; namely, to try to attack Jeff Anderson's valuation methodology.

Gawker Defendants are again blaming everyone but themselves for the harms they caused, and refusing to accept responsibility for their actions. Given the facts, Gawker's Motion

is frivolous, vexatious, made in bad faith, sanctionable and should be stricken and disregarded entirely to prevent a fraud upon this Court.

The Well-Supported Verdict

On March 18, 2016, the jury entered its Verdict awarding Mr. Bollea $115 million in compensatory damages against Gawker Defendants, and determining that Mr. Bollea was entitled to recover punitive damages. In the March 18, 2016 Verdict, the jury also determined that the Gawker Defendants acted with a specific intent to harm Mr. Bollea. Unbeknownst to the jury, this finding dispensed with any statutory cap on punitive damages.

Ample evidence supported the jury's verdict on liability and damages. Denton and Daulerio's own testimony proved clearly and convincingly that every after-the-fact reason Gawker Defendants claimed as to why the video was "newsworthy" was a sham—mere excuses concocted to try to hide behind the First Amendment. Over the course of a few minutes, Daulerio admitted under oath that there was no matter of legitimate public concern to justify posting the video. (3/14/16 Trans. pp. 2785-86; 2790-92) In fact, Daulerio admitted that every reason why Judge Whittemore[2] and the Second District Court of Appeal[3] thought the video was "newsworthy" at the preliminary injunction phase, had absolutely nothing to do with Daulerio's post (*i.e.,* Mr. Bollea's wrestling career, his autobiography, his wife's autobiography, his statements about his sex life on shock jock shows, his "reality" show, his affair with Heather Clem, his penis and sexual positions, and even the existence of the tape). (3/14/16 Trans. pp. 2785-86; 2790-92).

After establishing liability, Mr. Bollea's damages case was factually unrefuted. Gawker Defendants' own experts provided a substantial portion of the foundation for Mr. Bollea's

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[2] 2012 WL 5509624 (M.D. Fla. Nov. 14, 2012)

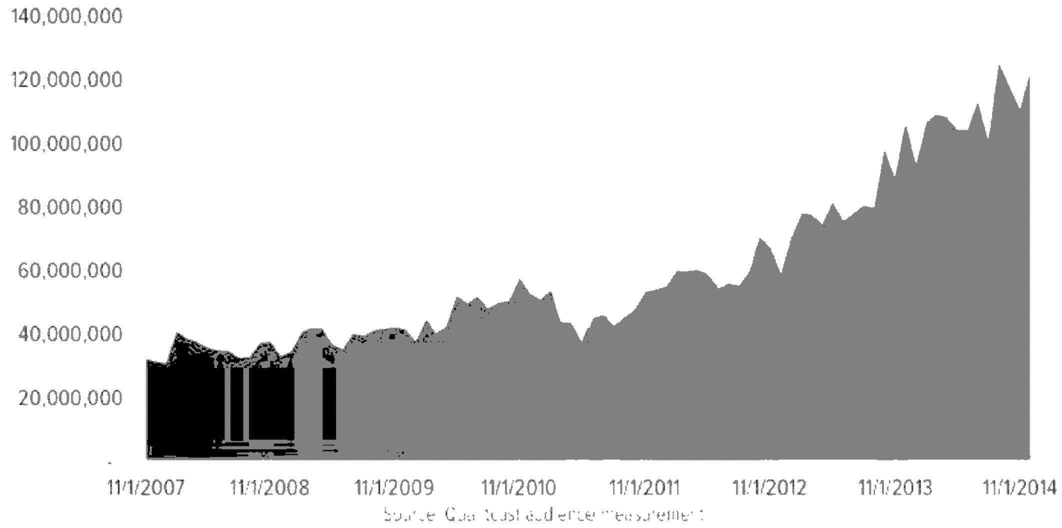
[3] 129 So.3d 1196 (Fla. 2d DCA 2014)

economic damages. Gawker's internet media expert, Peter Horan, confirmed that the video was used to virally market Gawker's brand. He also confirmed that one of his own companies spent nearly $100 million on a marketing campaign to draw (virtually no) traffic to its website; and that another of his companies was devalued by $195 million because its audience decreased by 6 million monthly unique visitors. Kevin Blatt, a celebrity sex tape expert (initially retained by Gawker), confirmed that celebrity sex tapes are used to market websites and that the minimum amount of money someone would have to pay to see a celebrity having sex was at least $4.95.

Gawker Defendants' invitation to the public to watch Mr. Bollea naked and having sex drew over 5 million unique visitors to Gawker's website. Mr. Bollea's damages expert, Jeff Anderson, attributed $15 million in value to this benefit (comparably less than the hundreds of millions justified by Mr. Horan's testimony). Mr. Bollea's internet expert, Shanti Shunn, confirmed the accuracy of video view counters, which demonstrated that over 7 million people watched the video of Mr. Bollea naked and engaged in sexual activity and having private conversations in a private bedroom. Notably, Gawker Defendants stipulated to the authenticity and admissibility of the web pages upon which these view counters appeared. (*See* Trial Ex. 5)

Gawker Defendants' efforts to mislead the jury (which continue in Gawker's Motion) about the steady increase in web traffic they enjoyed following the Bollea post were unavailing. These efforts, which included the selective use and manipulation of traffic charts and the omission of key intervening events (such as Superstorm Sandy, which crashed Gawker's servers), could not overcome the fact that a steady increase in traffic was evident:

Audience Growth in Global Unique Visitors, 2007-2014



The jury was presented with a unique factual situation for emotional distress damages: millions of people watched Mr. Bollea naked and having sex and heard his private conversations, which were illegally recorded without his knowledge or consent. His name and likeness appeared on pornography websites, alongside highly offensive, graphic sexual images. His privacy was violated in a way more disgusting and widespread than perhaps any other person has ever experienced. Mr. Bollea vividly described the emotional distress, humiliation and embarrassment he endured as a result. This severe distress was evident on his face during media interviews and at trial. It was also evident when he explained how his name and likeness appearing alongside highly offensive, graphic images on pornography websites severely impacted him.

On March 21, 2016, after hearing the net worth stipulation and parties' closing arguments, the jury entered its Verdict establishing the amount of punitive damages to be awarded against each of the Gawker Defendants, including an additional $15 million against Gawker, an additional $10 million against Denton and an additional $100,000 against Daulerio. Gawker Defendants used the Net Worth Stipulation and their admission that they already owed

$115 million to convince the jury to award a reduced amount of punitive damages, including: (1) counsel's argument that a sufficient amount of money had already been awarded and would be paid for compensatory damages to punish and deter Gawker Defendants; and (2) the parties' stipulation regarding the net worth of Gawker Defendants, and a resulting jury instruction advising the jury that it could not award an amount of punitive damages that would financially destroy or bankrupt Gawker Defendants.

Gawker Defendants' Misrepresentations to the Jury

If the arguments raised in Gawker's Motion are accepted at face value, and their post-trial conduct and statements are taken into account, it is evident that Gawker Defendants made material misrepresentations to the jury, Mr. Bollea and the Court, which greatly reduced the amount of punitive damages that were awarded. Such duplicity should not be condoned.

An attorneys' obligation to serve the ends of justice with openness, candor and fairness to all is paramount in closing arguments made to juries. Appropriately, closings are governed by Rule 4-3.4 of the Rules of Professional Conduct. *Panchoo v. State*, 185 So.3d 562, 565 (Fla. 5th DCA 2016). Attorneys cannot allude to matters that they do not reasonably believe to be supported by the evidence, and cannot make misrepresentations to the jury. *Id.*; *see also,* Rules 4-3.3 and 4-8.4, *Fla. R. Prof. Cond.* Making factual statements on the record without first verifying the accuracy or veracity of those statements has been recognized as "bad faith." *Korte v. U.S. Bank N.A.*, 64 So.3d 134, 138 (Fla. 4th DCA 2011).

In closing argument during the second phase of trial, and in order to convince the jury to award a reduced amount of punitive damages, Gawker Defendants' counsel admitted the appropriateness and validity of the $115 million compensatory damages award against Gawker

Defendants, and expressed to the jury that the defendants learned their lesson and would be deterred. Specifically, Gawker Defendants' counsel stated to the jury:

> "We have heard your judgment, and **we take it very seriously**."
>
> "My clients have heard your judgment. That judgment is serious and it is clear and it is punishment enough."
>
> "You are now being asked to punish my clients further, an additional punishment that is unnecessary. **$115,000,000 is punishment enough**."
>
> "Nothing more is needed. Your verdict will deter. It is enough."
>
> "Now, after paying all of those expenses, **it must pay an award of $115,000,000.**"
>
> "**Gawker Media owes $115,000,000**."
>
> "As the judge told you, you have the discretion to decline to award punitive damages. We ask that you exercise that discretion. Your compensatory damage award has already punished my clients."
>
> "As the damages you have leveled are severe, another large award is not necessary."

(Trial Trans. pp. 3907: 25-3908:1; 3908: 2-4; 3909: 10-11; 3909: 21; 3911:6-8, 23-25; 3912:16-17) (Emphasis added).

In Gawker's Motion, Gawker Defendants now claim that the Verdict was against the manifest weight of the evidence and the result of passion and prejudice. As a result, Gawker Defendants ask for the jury's damage award to be vacated entirely or "greatly reduced." They also filed a separate motion seeking judgment notwithstanding the verdict.

However, just two weeks after telling the jury that they **"owe"** and **"must pay"** $115 million, Gawker Defendants have completely reversed course and are asking this Court to rule that they owe **nothing**. This is precisely the type of improper conduct that Florida law and our ethical rules prohibit.

Gawker Defendants cannot be permitted to mislead the jury, this Court and Mr. Bollea to avoid the consequences of their malicious invasion of Mr. Bollea's privacy and violation of his rights. Gawker Defendants never had any intention of paying the damages the jury awarded. Thus, when they told the jury they "**owed**" and "**must pay**" the $115 million compensatory award, and when they told the jury they "**heard your judgment**" and that their "**verdict will deter,**" they were not being truthful. Consequently, they should not be permitted to return to this Court with unclean hands begging for further relief.

Gawker Defendants' public statements about the trial and Verdict in the days following their counsel's closing argument confirm that the jury was deceived. On March 22, 2016, Denton posted a story titled "The Verdict," in which he states that "we now know that the trial was a sham from the start." *See* Exhibit B [Denton article]. In his article, Denton asserts that Mr. Bollea's attorneys "played" the trial as a popularity contest and guarantees that Gawker Defendants "will be vindicated" on appeal. During subsequent interviews, Denton reaffirmed his belief in the appropriateness of Gawker Defendants' actions.

During a March 23, 2016 interview on CNBC, Denton was asked about the amount of the Verdict and stated as follows:

> Sorkin: Walk through what happened. This is the business story of Gawker now. So you owe these people $140 million as of now.
>
> Denton: I feel a little bit poorer than I did before.
>
> Sorkin: You have to post a bond of at least $50 million, is that right?
>
> Denton: The rules are that. But this has been a convoluted case. It's been through the state appeals court. It's been through federal court.
>
> Sorkin: Can you stay in business?
>
> Denton: Yeah, absolutely.

(*See* Exhibit C [CNBC's Published Transcript of Interview])

During a March 24, 2016 interview on The View, Denton stated:

> "A Federal Judge and the appeals court down in Florida have all deemed the story complete with the video excerpt, which, lets be honest, had nine seconds of very very murky sex, this was not a porn video."
>
> "The story was newsworthy. I wish I'd known how litigious Hulk Hogan was, and, but the story was newsworthy, a judge has found it newsworthy."

(*See* Exhibit D [Video of interview, at 2:28-2:40; 8:27-8:34])[4]

During a March 24, 2016 interview for *Nightline*, Denton stated:

> "I'm confident that this decision will be reversed or radically reduced."
>
> "This has got nothing to do with privacy. This is all about publicity. The sex tape had been talked about. He didn't like our story."
>
> "Hulk Hogan is very charming on the stand, but he has been shown to have lied on the stand as much as he is charming liar and we were a bunch of honest jerks."

(*See* fn. 5)

During an interview with ABC News on that same date, Denton stated:

> Reporter: "Do you feel any **remorse** over the sex tape release?
>
> Denton: **"No, you know I don't.** We didn't post the sex tape. We posted 9 seconds of sexual activity in an excerpt of a much, much longer tape. It was in a context of a story. The story has been found newsworthy by a federal judge. By the appeals court on repeated occasions. I believe it was newsworthy. Those judges agreed it was newsworthy and so **it is a story that we would do again**."

(*See* Exhibit E [Video of interview, at 2:59-3:24])[6] (Emphasis added.)

For his part, Daulerio was expectedly more blunt. After begging the jury for mercy days prior, Daulerio reaffirmed his loyalty to Denton and Gawker while attacking the trial process. *See* Exhibit F [3/23/16 *Daily Beast* article]. He referred to his deposition as "basically a nonsense and completely ludicrous formal deposition over something we had already won." He also claimed the verdict resulted from Mr. Bollea's "side" being "better liars."

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[4] Provided on compact disc to the Court

[5] Plaintiff was unable to obtain a copy of the video of this interview and is unaware of a verbatim copy of the words used being published. The video of the interview is available online at http://abcnews.go.com/Nightline/video/hulk-hogan-trial-jurors-gawkers-nick-denton-respond-37920027

[6] Provided on compact disc to the Court

The Jury's Post-Trial Statements

While arguing, based on both juror questions to which they agreed and supposition about the jury's thought process, that the Verdict was the result of passion and prejudice, Gawker Defendants have noticeably ignored the public interviews given by the jury members after trial. These interviews dispel any suggestion that the jury did not follow the law.

The entire jury sat together for an interview on *Nightline*, which aired on March 24, 2016, during which they stated:

> "Gawker made it clear to everyone that they were all around about crossing the line."
>
> "When we saw the tape it was pretty clear that it is not something you would want to do and put out in the public. You know it was just things like you know I just ate and I feel you know bloated or I don't feel good. It was just things you wouldn't say if you were filming a video."

(*See* fn. 5)

In an interview with the *New York Post* as a group, the jurors also stated:

> "There was a lot of potential for [damages] to go up a lot higher."
>
> "A lot higher"
>
> "Could you get more to a lower point than to have a guy who gets an anonymous video, never checks on the source [or] tries to understand the motivation of that video, never contacts the participants of that video, never tests himself about whether he should post that video, but instead writes an article that he can wrap around it?"

(*See* Exhibit G [New York Post article])

In another interview with ABC News, the jurors stated:

> "Even if he knew he was being recorded, there's still no right to put that out there if he doesn't want it put out"
>
> "We drew a line and we hope others draw a line"

(*See* Exhibit D [Video of interview, at 0:40-0:46; 1:49-1:51]; Exhibit H [ABC News article])

In a March 29, 2016 interview with CNN, the jurors stated:

> "The evidence showed that basically the lost for revenue that Hulk Hogan could have made off the video and also the pain and suffering that he went through because of the entire ordeal. Basically, the evidence that was presented in front of us. That's what we had to work with. That's what the judge's orders were, to have us look and examine that evidence without any bias towards either side and that's exactly what we did."
>
> "And we had a great jury. There were six of us. We all came from different perspectives of life and we all came in with really different thoughts and we balanced each other real well through that."
>
> "It wasn't about judging arrogance or perception of someone. It was strictly following the law based on what we were told and what we were given. And even though, yes there was an arrogance, we did not consider that at all when making our decision."

(*See* fn. 7)

Gawker Defendants' Bad Faith Abuse of the Stipulation

The parties stipulated to Gawker Defendants' net worth **solely** for purposes of punitive damages based upon the opinions of James Donohue. Indeed, the Net Worth Stipulation itself, which the Court read to the jury, recites this limitation in bold, italicized print:

> To streamline the remaining issues in this case, the parties stipulate to the following ***solely for purposes of the punitive damages phase of the trial*** and for no other purpose

(*See* Exhibit A [Stipulation Regarding Defendants' Financial Worth, p. 1])

Gawker Defendants are willfully ignoring their stipulation. In Gawker's Motion, they use the Net Worth Stipulation as a basis to argue that Jeff Anderson's valuation methodology was flawed. In support, they blatantly misrepresent the agreed-upon purpose of the stipulation:

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[7] Plaintiff was unable to obtain a copy of the video of this interview and is unaware of a verbatim copy of the words used being published. The video of the interview is available online at http://www.cnn.com/videos/tv/2016/03/29/hulk-hogan-gawker-jurors-ctn.cnn

> The second component of the jury's economic damages award – the $15 million increase to the value of gawker.com supposedly brought about by the Hogan post – was no more based in the actual evidence than Plaintiff's $4.95-per-view theory. In support of that $15 million increase, plaintiff presented the testimony of Jeff Anderson to opine that the gawker.com website alone was worth $286 million as of April 2013, testimony clearly designed to make a $15 million increase for just one post seem modest by comparison. Tr. at 2523:20 – 2524:16 (testimony of Mr. Anderson). But then, at the net-worth stage in the proceedings, Plaintiff stipulated that Gawker Media, LLC – the company that owns gawker.com, ***along with seven other websites*** – has a value of $83 million. Tr. at 3891:8-20 **(NET-WORTH STIPULATION ENTERED INTO FOR PURPOSES OF THIS CASE)**. That valuation was based on a report submitted by Plaintiff's net worth expert, which was based on Gawker and its parent company's actual records and financial performance. That is a clear signal that Mr. Anderson's analysis is unsupportable and must be set aside.

[Gawker's Motion, p. 23] (emphasis added)

The mischaracterization of the Net Worth Stipulation as being **"for purposes of this case,"** when it is **only** "**for purposes of punitive damages**" is a blatant falsehood intended to deceive this Court; and potentially an appellate court. Legally and ethically, this bad faith, knowing misrepresentation of the limited purpose of the Net Worth Stipulation should be sanctioned.

<u>Gawker Defendants are Estopped or Barred from Challenging the Verdict</u>

As a rule, parties are held to the theories upon which they secure action by the court, and cannot take inconsistent positions in litigation. *Phillip Morris USA, Inc. v. Green*, 175 So.3d 312, 314 (Fla. 5th DCA 2015). The judicial estoppel doctrine prevents litigants from unfairly asserting inconsistent positions, and is founded upon legal and equitable concepts of justice under the law in order to protect the integrity of our system of justice. *Id.* at 315. The party estopped need not prevail by way of a judgment against his adversary, all that is necessary is that he successfully assume a factual position on the record, whether by verdict, factual findings or admissions. *Kaufman v. Lassiter*, 616 So.2d 491, 493 (Fla. 4th DCA 1993). Estoppel prevents a

litigant from making representations to a jury to secure a beneficial result, only to file a motion asking the court to take action post-trial that is inconsistent with the representations made to the jury. *Green*, 175 So.3d 312, 315-16.

As applied here, judicial estoppel prohibits Gawker Defendants from challenging the Verdict and compensatory damage award. Gawker Defendants' counsel represented to the jury that the defendants **"owe"** and **"must pay"** $115 million. Those representations were made in support of a request that the jury limit the amount of punitive damages – which they did. Gawker Defendants successfully assumed a position on the record to the jury, and convinced the jury to award a fraction of punitive damages available. As a result, they are estopped from challenging verdict and the compensatory award, and from remitting it.

Conclusion

To allow Gawker Defendants to assert positions contrary to those taken on the record at trial in closing arguments to the jury and in the Net Worth Stipulation would be tantamount to condoning bad faith litigation. Gawker Defendants chose to tell the jury that they owe and must pay the $115 million compensatory damages award. They also chose to stipulate to net worth solely for purposes of punitive damages. They cannot ignore the consequences of those choices, nor mislead this Court into believing that those choices were not made.

WHEREFORE, Plaintiff, Terry Bollea, respectfully requests that the Court enter an Order Striking Gawker Defendants' Motion for New Trial or, Alternatively, for Remittitur, on the grounds of bad faith and judicial estoppel, disregard the arguments raised in the motion, deny the motion and grant such other and further relief as the Court deems just and appropriate.

DATED: May 2, 2016.

/s/ Kenneth G. Turkel

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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 2nd day of May, 2016 to the following:

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