

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA**

TERRY GENE BOLLEA professionally  
known as HULK HOGAN,

Case No. 12012447 CI-011

Plaintiff,

vs.

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

Defendants.

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**TERRY BOLLEA’S OPPOSITION TO DEFENDANTS’ RENEWED  
MOTION FOR DISMISSAL FOR FRAUD ON THE COURT OR, IN  
THE ALTERNATIVE, AMENDED MOTION FOR A NEW TRIAL**

Plaintiff, Terry Bollea professionally known as Hulk Hogan (“Mr. Bollea”), responds to the Renewed Motion for Dismissal for Fraud on the Court or, in the Alternative, Amended Motion for a New Trial (the “Third Fraud Motion”) filed by Defendants, Gawker Media, LLC (“Gawker”), Nick Denton (“Denton”) and A.J. Daulerio (“Daulerio”) (collectively, “Gawker Defendants”), as follows:

**Introduction**

Once again, Gawker Defendants have resorted to making false allegations of misconduct against Mr. Bollea and his attorneys. And once again, these allegations rest upon Gawker Defendants’ self-serving interpretation of evidence and the manipulation of isolated statements taken out of context. The Court rejected this tactic twice before, and should do so again. This time, the Court should also consider sanctions for bad faith litigation.

On this, the third instance of Gawker Defendants accusing Mr. Bollea of committing a fraud upon the Court, Gawker Defendants’ objective is to avoid a \$140.1 million verdict awarded

after a full and fair trial on the merits. The overwhelming evidence at trial established that Mr. Bollea suffered economic damages and severe emotional distress from Gawker Defendants' posting of surreptitious video of Mr. Bollea naked and engaged in sexual activity on the Internet. Mr. Bollea's emotional distress at issue in this case was caused by the footage that Gawker Defendants maliciously and intentionally posted on their website, which over seven million people watched. It was not caused by anything else, real or imagined by Gawker Defendants.

During the trial, Gawker Defendants admitted that the "pornographic" video (Denton's words) of Mr. Bollea naked and engaged in sexual activity that they posted on their website (the "Gawker Video") was not a matter of legitimate public concern. Facing the grim reality that they admittedly "owe" and "must pay" the damages awarded by the jury (defense counsel's words), Gawker Defendants again want the Court to dismiss this case, or to reward them with a new trial, based on the "offensive language" issue that remains totally irrelevant to the merits of **this** case. Mr. Bollea is not going to reargue the plethora of reasons why this Court already ruled that evidence associated with offensive language that emanated from untrustworthy copies of surreptitiously recorded video was irrelevant to the matters tried before the jury in this case. The Court's prior rulings are clear and correct.

The platform Gawker Defendants are using to re-argue their failed fraud on the court motion for a **third** time is their twisted interpretation of certain allegations in a new lawsuit filed by Mr. Bollea against Gawker and other individuals and entities who enabled Gawker Defendants to post the Gawker Video ("Bollea II"). In Bollea II, Mr. Bollea primarily seeks two things: (1) to hold the people and entities who stole, disseminated and exploited surreptitious footage of Mr. Bollea accountable for these actions; and (2) to hold these individuals and

entities, along with Gawker, accountable for the public disclosure of a sealed transcript of an audio recording that destroyed Mr. Bollea's career and legacy.

This time, Gawker Defendants have bootstrapped their previously rejected fraud arguments about Mr. Bollea's "motivation" for filing this lawsuit, and their misguided contentions about the "true" cause of Mr. Bollea's emotional distress, to partial allegations they pulled from the Bollea II Complaint and have taken completely out of context. As this Court already recognized at the January 13, 2016 hearing on Gawker Defendants' second fraud on the court motion, the suggestion that Mr. Bollea suffered the emotional distress at issue in this case because of his supposed "concern that his 'racial remarks' might be publicly released" is rank speculation unsupported by any modicum of factual support. It was and remains a lawyer-created fiction that was invented as a vehicle to try to improperly inject race into this lawsuit. Amongst other overwhelming evidence already considered by this Court, three key pieces stand out in rebuking Gawker Defendants' supposition that the instant lawsuit and Mr. Bollea's severe emotional distress at issue herein emanated from "concern" that racially offensive language would be released.

First, on **April 26, 2012** (approximately **6 months before** this case was filed), thedirty.com posted a story about the "Hulk Hogan Sex Tape" which states, "Terry, do you remember what you said about black people in this sex tape..." [See **Exhibit A**] Mr. Bollea did not, as Gawker Defendants now suggest, immediately file a lawsuit as subterfuge to seize the tape because of his "concern that his racial remarks might be publicly released." If Gawker Defendants' underlying theory in the Third Fraud Motion was correct, then Mr. Bollea would have immediately sued thedirty.com in April 2012. He did not.

Second, the severe emotional distress that Mr. Bollea endured because Gawker Defendants posted the Gawker Video online was obvious during his TNA Wrestling media tour in New York on **October 9 and 10, 2012**. The overwhelming and compelling evidence presented at trial, such as Mr. Bollea's testimony, video footage of Mr. Bollea's media interviews during that time, and Jules Wortman's testimony about witnessing Mr. Bollea crying following the Today Show interview, proved that Mr. Bollea suffered severe emotional distress over the publication of the Gawker Video **before** Keith Davidson ("Davidson") ever spoke to David Houston. Davidson's first contact with Mr. Houston was by email on the afternoon of **October 10, 2012** (after the TNA press tour interviews), and makes no mention of offensive language. (See **Exhibit B**; GAWKER-9-10)

Third, during the FBI sting operation on December 14, 2012, Mr. Bollea's concern was to get the Gawker Video taken down. Excerpts of the transcript of the sting operation, attached as **Exhibit C**, show that the Gawker Video was Mr. Bollea's "real" concern:

TB: **Well that's what I want is to take it off GAWKER.**

TB: So if we could get.

KD: I'm gonna try to do everything that I can in my power.

TB: So you can't write them a letter saying.

KD: Well yes I will, I will do that.

TB: **Can we do that today before we leave so we have it to get GAWKER's thing off the Internet? My wife is due to ask me right now is it off yet, I (sic) you know.**

...

TB: You have no idea what I've been through (IA) I can tell her.

(See GAWKER-708)

TB: **I just want this off GAWKER.**

(See GAWKER-716)

Gawker Defendants want the Court to ignore these facts. Instead, they are asking for the drastic sanction of dismissal or to nullify the jury's verdict based on misleading arguments that are devoid of any competent factual support. Gawker Defendants want this Court to allow them to escape from a \$140.1 million verdict based on a fabricated theory about an alternative cause of emotional distress that is not supportable.

**Mr. Bollea Has Not Committed a Fraud Upon the Court**

The allegations in Bollea II do not contravene the positions Mr. Bollea took before trial in this case, and they do not assert nor prove that Mr. Bollea suffered emotional distress because of "concern" over offensive language being exposed. Gawker Defendants have manipulated piecemeal portions of the allegations in Mr. Bollea's new Complaint to argue their position. Once again, this strategy should be rejected.

In Bollea II, Mr. Bollea asserts several claims against the individuals and entities involved in the theft, dissemination and exploitation of surreptitious recordings of him naked, engaged in sexual activity and having private conversations with Heather Clem in a private bedroom. Mr. Bollea alleges an overview of his claims in Bollea II as follows:

4. Consequently, Mr. Bollea brings this action to seek redress for the damages and injuries caused by the use, exploitation and public dissemination of the contents of the illegally recorded footage, including a willful and malicious conspiracy to extort him, invade his privacy, profit from his name and likeness and the contents of the illegally recorded footage, and to destroy Mr. Bollea economically and emotionally, ruin his career and reputation and eradicate his legacy, including the following:
  - a. The Buchwald Defendants, and each of them, individually or in concert with and/or as an agent for one another, engaged in acts of civil conspiracy, aiding and abetting civil extortion, violation of Plaintiff's rights of privacy, public disclosure of private facts, invasion of privacy by intrusion, intentional infliction of emotional distress, interference with Plaintiff's contractual and advantageous

business relationships, and violation of Florida's Security of Communications Act;

- b. The Cox Defendants, and each of them, individually or in concert with and/or as an agent for one another, engaged in acts of civil conspiracy, civil extortion, aiding and abetting civil extortion, violation of Plaintiff's rights of privacy, public disclosure of private facts, invasion of privacy by intrusion, intentional infliction of emotional distress, interference with Plaintiff's contractual and advantageous business relationships, and violation of Florida's Security of Communications Act;
  - c. The Davidson Defendants, and each of them, individually or in concert with and/or as an agent for one another, engaged in acts of civil conspiracy, civil extortion, aiding and abetting civil extortion, violation of Plaintiff's rights of privacy, public disclosure of private facts, invasion of privacy by intrusion, intentional infliction of emotional distress, interference with Plaintiff's contractual and advantageous business relationships, and violation of Florida's Security of Communications Act; and
  - d. Gawker intentionally interfered with Plaintiff's contractual and advantageous business relationships, and intentionally inflicted emotional distress upon him by leaking a sealed transcript of surreptitiously recorded private oral communications in a bedroom to the media. (Mr. Bollea's claims against Gawker are based on events that transpired in the summer of 2015, and therefore do *not* overlap with the claims that Plaintiff brought against Gawker in the 2012 action titled *Bollea v. Gawker Media, LLC, et al.*, Case No. 12012447-CI-011 in this Court (the "Prior Action")).
- 5. Plaintiff seeks damages against the Buchwald Defendants, Cox Defendants and Davidson Defendants, jointly and severally, as well as a permanent injunction against said Defendants.
  - 6. Plaintiff seeks damages against Gawker, which are not duplicative of the damages sought in the Prior Action.

In paragraph 14 of their Third Fraud Motion, Gawker Defendants selectively quote and misleadingly combine portions of paragraphs 91 and 95 of the Bollea II Complaint; intermixed with their own "spin" on what Mr. Bollea has alleged. The result is a mischaracterization of Mr. Bollea's allegations. Gawker Defendants' misleading assertion in paragraph 14 of the Third Fraud Motion reads as follows:

14. Now, in Bollea’s new complaint, he and his counsel state the exact opposite. The new lawsuit expressly states that Davidson acted maliciously by “participating and aiding a civil extortion scheme” to threaten the release of Bollea’s racist statements “when [he] knew or should have known that *Plaintiff would suffer severe emotional distress.*” Ex. A ¶ 91. And, the new complaint specifically admits – just as defendants previously contended – that “[a]s a *direct and proximate result*” of Davidson’s actions, Bollea in fact “*suffered emotional injury . . . and severe emotional distress.*” *Id.* ¶ 95.

When the allegations are manipulated in this manner, it appears that Mr. Bollea is suing Davidson for emotional distress caused by a civil extortion scheme to threaten the release of offensive language. However, the phrase “to threaten the release of racist statements” is not in quotes in paragraph 14 of the Third Fraud Motion. In fact, that language does not appear in paragraphs 91 or 95 of the Bollea II Complaint.

Paragraphs 91 and 95 allege “emotional distress” arising out of “a civil extortion scheme.” This scheme and the resulting emotional distress are identified in paragraph 33 of Mr. Bollea’s Complaint, which apparently Gawker Defendants have ignored:

33. The Extortionists and the Buchwald Defendants agreed and worked in concert with one another to send the 30 Minute Video to Gawker and Daulerio in **furtherance of the scheme to extort** Plaintiff with the surreptitious recordings, promote Loyd and Calta’s broadcast careers (while injuring the career of a competitor), and cause substantial economic harm and severe emotional distress to Plaintiff **through the release to Gawker and Daulerio of the 30 Minute Video.** (Emphasis added)

Thus, the severe emotional distress associated with the extortion scheme is tied to “the release to Gawker and Daulerio of the 30-Minute Video,” and **not**, as Gawker Defendants claim, tied to a threat to release offensive language. (The 30-minute video did not contain any such language).

There is a second aspect of damages Mr. Bollea seeks to recover from all of the defendants in Bollea II, including Gawker. These damages are associated with the **actual** release of the offensive language; not the threat of release. Paragraphs 45-47 of the Bollea II Complaint outline these damages:

45. The actions of all of Defendants culminated in the *Enquirer's* publication of the court-protected confidential transcript, which caused Plaintiff to be immediately terminated by his employer, World Wrestling Entertainment ("WWE"). Hundreds of articles were published by news organizations immediately thereafter, accusing Plaintiff of being a "racist."

46. As a result of the Defendants' actions, Plaintiff's highly valuable global brand (which Plaintiff had developed through personal sacrifice, hard work, talent and an immense physical toll on his body over the course of more than 35 years) was decimated within days, and has been permanently damaged if not completely destroyed. Among other things, all of Plaintiff's endorsement contracts were terminated shortly after the *Enquirer's* publication of the court-protected confidential transcript, and his name and likeness were erased from the WWE website and its Hall of Fame.

47. Shortly before his 62<sup>nd</sup> birthday, because of Defendants' use, exploitation and dissemination of the contents of the illegally-recorded 2007 footage, Plaintiff's income was cut off, his legacy in entertainment was severely damaged (if not completely destroyed), and his global brand was forever tarnished.

Despite what Mr. Bollea has actually alleged in Bollea II, Gawker Defendants have also misconstrued paragraph 31 of the Bollea II Complaint to support their theory. In paragraph 15 of their Third Fraud Motion, Gawker Defendants assert that, "[a]s the new Complaint admits, Bollea and Houston understood that the release of those statements 'could have the effect of causing great economic harm to Plaintiff.'" However, Gawker Defendants selectively quoted and manipulated the full allegation in the Bollea II Complaint, which reads as follows:

31. In October 2012, the Davidson Defendants, acting on behalf of and in concert with the Cox Defendants (collectively, the "Extortionists"), contacted counsel for Plaintiff seeking to extort money from Plaintiff. The Extortionists threatened to release the entirety of the surreptitious recordings of Plaintiff, if Plaintiff did not agree to make a very large payment in exchange for all copies of the recordings. Davidson, representing and acting on behalf of and in concert with the other Extortionists, specifically stated to Plaintiff's counsel that certain of the surreptitious recordings that were created illegally, and obtained illegally by the Extortionists, contained insensitive racial remarks which could have the effect of causing great economic harm to Plaintiff if released publicly. Initially, the Extortionists demanded \$1 million.

Read in its entirety, this allegation refers to Davidson's statement that the surreptitious recordings contained insensitive racial remarks "which could have the effect of causing great



economic harm to Plaintiff if released publicly.” This allegation addresses what Davidson **said**. It does not specify what Mr. Bollea and Mr. Houston “understood.”

Gawker Defendants also mischaracterize the Bollea II lawsuit as a whole. Specifically, in paragraph 21 of the Third Fraud Motion, they assert the following:

21. According to plaintiff’s latest lawsuit, Davidson’s October 2012 “threat” to Houston that he or others would “release the entirety of the surreptitious recordings” – including the “insensitive racial remarks” – caused Bollea to suffer “severe emotional distress.” Ex. A ¶¶ 31, 91, 95. That threat, as plaintiff now admits, prompted Bollea to complain to the FBI and preceded his filing of this suit against defendants.

Again, Gawker Defendants employ the tactic of selectively combining bits and pieces of allegations from throughout the Bollea II Complaint in order to misrepresent that Mr. Bollea now claims that Davidson’s actions alone caused the emotional distress Mr. Bollea suffered. And again, this assertion contradicts what Mr. Bollea has actually alleged.

For a third time, Gawker Defendants have failed to demonstrate, by clear and convincing evidence, that Mr. Bollea committed a fraud related to the central issues of this case. Mr. Bollea has not alleged anything in Bollea II that contradicts his positions in this case.

Gawker Defendants have tried over and over again to invent theories to use as an excuse to inject race into this case so they can assassinate Mr. Bollea’s character. These arguments were repeatedly rejected because Florida law provides that the offensive language does not meet the threshold of admissibility, and falls far short of anything “central” to the merits. *MCI Express, Inc. v. Ford Motor Co.*, 832 So.2d 795, 801-02 (Fla. 3d DCA 2002) (holding that the trial court committed reversible error when it did not exclude testimony that executive of plaintiff used derogatory language about Cubans); *Simmons v. Baptist Hospital*, 454 So.2d 681, 682 (Fla. 3d DCA 1984) (same, holding: “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.”) (emphasis added); accord *State v. Gaiter*, 616 So.2d 1132, 1133 (Fla. 3d DCA 1993) (trial court redacted racial slurs even though probative). Thus, there can be no dismissal for “fraud on the court” based on an allegation that inadmissible (or even collateral) evidence was concealed.

“Fraud on the court” is a narrow doctrine, consistent with the policy of trying cases on the merits. *Cox v. Burke*, 706 So.2d 43, 46 (Fla. 5th DCA 1998) (“policy favoring adjudication on the merits” must be considered in determining fraud on the court argument). It does not permit dismissal or a new trial because Gawker Defendants are once again feigning outrage over inadmissible evidence and a factually unsupported theory about what caused Mr. Bollea’s emotional distress.

To the contrary, as set forth above, Gawker Defendants are the only ones guilty of misleading this Court. This time, they have intentionally manipulated and mischaracterized the allegations in the Bollea II Complaint to try to avoid the \$140.1 million verdict.

Given the history of this case and the strategy employed in the Third Fraud Motion, the Court should consider using its inherent authority to impose sanctions for bad faith litigation. *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). “Bad faith may be found not only in the actions that led to the lawsuit, but also in the conduct of the litigation.” *Moakley v. Smallwood*, 826 So.2d 221, 224 (Fla. 2002) (internal citations omitted). Bad faith exists where “an attorney knowingly or recklessly raises a frivolous argument...” *Barnes v. Dalton*, 158 F.3d 1212, 1214 (11th Cir. 1998). Bad faith conduct also includes “abuse of the judicial process.” *Moakley*, 826 So.2d at 226 (quoting *Van Eps v. Johnston*, 553 A.2d 1335, 1338 (1988)).

The Court may award attorneys' fees against a party under the inequitable conduct doctrine when that party has exhibited "egregious conduct or acted in bad faith." *Bitterman v. Bitterman*, 714 So.2d 356, 365 (Fla. 1998). Also, "[a] trial court possess the inherent authority to impose attorneys' fees against an attorney for bad faith conduct." *Moakley*, 826 So.2d at 226.

### **Conclusion**

Gawker Defendants' meritless Third Fraud Motion should be denied. Sanctions, including attorneys' fees, should also be considered for Gawker Defendants' continued bad faith litigation tactics.

*/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 and via separate e-mail this 24th day of May, 2016, to the following:

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