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PLAINTIFF EXHIBIT# 119 ID 2/26/16
(Date)

PLAINTIFF EXHIBIT# 115 Evidence 3/8/16
(Date)

KEN BURKE, Clerk of the Circuit Court

By: 
Deputy Clerk

From: Nick Denton [nick.denton@gmail.com]
Sent: 10/5/2012 1:05:44 PM
To: AJ Daulerio [ajd@gawker.com]
CC: Jesse Ma [jesse@gawker.com]
Subject: Fwd: 10.5.12 Cease & Desist Letter re. Hogan
Attachments: 10.5.12 DRH to Denton re. Hogan Tape Kc.pdf

Redacted

Begin forwarded message:

From: Kristy Rosser <krosser@houstonatlaw.com>
Date: October 5, 2012, 13:02:32 EDT
To: "nick@gawker.com" <nick@gawker.com>
Subject: 10.5.12 Cease & Desist Letter re. Hogan

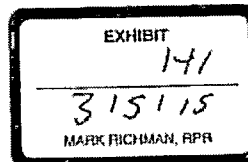
10/5/2012 10:02 AM

Mr. Denton:
Please read the attached letter from Mr. David Houston.
Thank you
Kc

Kc Rosser, Business Manager to
David R. Houston, Esq.
432 Court Street
Reno, NV 89501
775-786-4188
775-786-5091 FAX

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119-0001

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Via Federal Express

Gawker Media
Nick Denton
Publishing & Editorial
210 Elizabeth Street, Fourth Floor
New York, NY 10012

Re: Terry Bollea v. Gawker Media et al.

SETTLEMENT COMMUNICATION UNDER F.R.E. 408

Dear Mr. Denton:

We are litigation counsel for Terry Bollea, professionally known as Hulk Hogan, in the protection of his right of privacy and his right of publicity, as well as his other trade identity and intellectual property rights.

As you know, Hulk Hogan has worked as a public performer, an actor, a television personality, and a professional wrestler for over 30 years. During this time, our client has made countless public performances in film, television, and radio, he has appeared in commercial advertisements, he has endorsed products and services, and he has gained the attention of hundreds of millions of viewers and fans throughout the world. Obviously, Hulk Hogan's trade identity is an extremely valuable asset which our client actively protects. Likewise, Hulk Hogan vigorously protects his privacy interest in the most intimate details of his life.

It has come to our attention an anonymous third party recently approached you about a secretly filmed and unauthorized video depicting sexual relations between Hulk Hogan and an anonymous woman. The acts of secretly filming, releasing, and "shopping" the most intimate, private details of Hulk Hogan's life are morally and legally appalling. From a legal standpoint, the unauthorized use of Hulk Hogan's name, likeness, and other symbols of his celebrity identity by you to your advantage, commercial or otherwise, would result in grave injury to Hulk Hogan, including substantial monetary damages and harm to his future licensing and endorsement opportunities, thereby violating his right to publicity. In addition, the unauthorized display, distribution, and other uses of the video would constitute any one of the four distinct torts included under the rubric of the right to privacy, (1) including public disclosure of Hulk Hogan's

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private facts, (2) intrusion upon Hulk Hogan's solitude or into his private affairs, (3) false light publicity, and (4) appropriation of Hulk Hogan's name and likeness. See, e.g., *Michaels v. Internet Entm't Group, Inc.*, 5 F. Supp. 2d 823 (C.D. Cal. 1998); *Eastwood v. Superior Court (Nat'l Enquirer)*, 198 Cal. Rptr. 342 (Cal. App. 1983). See also *White v. Samsung Electronics America, Inc.*, 971 F.2d 1395 (9th Cir. 1992).

Furthermore, any attempt to hide behind the veil of the "newsworthiness privilege" will fail and cannot possibly save anyone making unauthorized use of the video from liability. At a minimum, the newsworthiness exception to the right of privacy must fail, as it did in *Michaels v. Internet Entm't Group, Inc.*, 5 F. Supp. 2d 823, 841 (C.D. Cal. 1998), because "[i]t is difficult if not impossible to articulate a social value that will be advanced by dissemination of the [video]." Moreover, "a video recording of two individuals engaged in [sexual] relations represents the deepest possible intrusion into such [private] affairs." *Id.*

We can assure you that Hulk Hogan intends to pursue all civil and criminal remedies available against anyone connected with "shopping" around, distributing, or otherwise using the video. To this end, we will commence consultations with federal and state law enforcement about the criminal aspects of this matter. Hulk Hogan would like to end this matter immediately by learning the identity of all persons involved with "shopping" the video to you and any other party. If you immediately disclose the requested information and refrain from becoming involved with any use of the video, Hulk Hogan will consider this matter closed and will not seek legal remedies against you for the issues raised in this letter.

We look forward to receiving your response by immediately.

Sincerely,



David R. Houston

DRH:kc

Gawker 00144

119-0003

From: Cameron Stracher [cameron@gawker.com]
Sent: 10/9/2012 6:12:09 PM
To: dhouston@houstonatlaw.com
Subject: Claim of Terry Bollea
Attachments: gmg.png

Dear Mr Houston:

I write in response to your undated letter to Nick Denton regarding a news article on Gawker.com about a video depicting Terry Bollea, aka Hulk Hogan, and an unidentified woman. You ask that Gawker disclose the identity of the person who provided the video and "refrain from becoming involved with any use of the video." Under the circumstances, we respectfully decline your request.

The existence and content of the video were widely reported prior to Gawker's publication. Indeed, various news outlets had already identified the woman in the video and her husband. Moreover, the video depicts Mr. Bollea having sex with a married woman in the woman's home, under circumstances and in a place where he has no reasonable expectation of privacy. (In fact, it appears that there was a surveillance camera in the bedroom from which the video was made) Finally, the one minute clip shows very little sexual activity and is clearly newsworthy given the public interest in Mr. Bollea's marriage, divorce, and his extramarital activities.

As for the specific claims you allege: 1) Given the wide disclosure of the content of the video prior to publication, the content actually posted, and the newsworthiness of the video, there can be no claim for publication of private facts; 2) given that the video was made by a third party, not Gawker, there can be no claim for intrusion upon seclusion; 3) no false light publicity claim may be maintained where the content of the video is true; 4) there can be no claim for appropriation of Mr. Bollea's name and likeness where the video is not being used for a "commercial" purpose (as the law defines it), is true, and is newsworthy. Your citations to the *Michaels* and *Eastwood* cases are not applicable here. In *Michaels*, the plaintiffs had an expectation of privacy in their own home, defendants had used plaintiffs images to promote the video at issue, and the video was significantly longer than the short clip posted by us. In *Eastwood*, the key issue was the alleged falsity of the publication, which is not relevant here.

If your client wishes to make a statement on the video or any matter related to it, we would be happy to post his response.

Regards,

Cameron Stracher
Litigation Counsel
Gawker Media

Office: 212.743.6513
Cell: 917.501.6202

THE GAWKER MEDIA GROUP
MEMBER JEREBEL HUNTER GROUP
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