

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

TERRY GENE BOLLEA professionally  
known as HULK HOGAN,

Plaintiff,

v.

GAWKER MEDIA, LLC aka GAWKER  
MEDIA; GAWKER MEDIA GROUP, INC.  
aka GAWKER MEDIA; GAWKER  
ENTERTAINMENT, LLC; GAWKER  
TECHNOLOGY, LLC; GAWKER SALES,  
LLC; NICK DENTON; A.J. DAULERIO;  
KATE BENNERT; BLOGWIRE HUNGARY  
SZELLEMI ALKOTAST HASZNOSITO  
KFT,

Defendants.

Case No. 8:12-cv-2348

**MOTION FOR PRELIMINARY INJUNCTION**

Plaintiff Terry Gene Bollea ("Plaintiff"), by and through his undersigned counsel and pursuant to Rule 65(a) of the Federal Rules of Civil Procedure and Rule 4.06 of the Local Rules for the Middle District of Florida, moves the Court for entry of a Preliminary Injunction to have Defendants remove the excerpts from the Hulk Hogan sex tape that were posted on the www.Gawker.com website on or about October 4, 2012 and to enjoin Defendants from posting, publishing or releasing any portions or content of the sex tape to the public, including that or any other website. In support of this Motion, Plaintiff relies upon, incorporates and refers to the Declaration of Terry Gene Bollea in Support of Plaintiff's Motion for Temporary Restraining

Order and Preliminary Injunction, the Complaint and the matters of fact and law set forth below in the Incorporated Memorandum of Law.

### **MEMORANDUM OF LAW**

#### **I. INTRODUCTION**

Defendants have engaged in intentional, outrageous, irresponsible and despicable conduct by posting to the Internet on or about October 4, 2012, excerpts (herein the "Video Excerpts") of a secretly-taped video depicting Plaintiff engaged in private consensual sexual relations with a woman in a private bedroom (the "Video"). (Declaration of Plaintiff Terry Gene Bollea dated October 15, 2012, ("Bollea Decl."), a true and correct copy of which is attached hereto as **Exhibit 1**, at ¶7.) Defendants posted the Video Excerpts at their website [www.Gawker.com](http://www.Gawker.com) (the "Gawker Site"). Defendants posted the Video Excerpts for the public to view, for the purpose of obtaining tremendous financial benefit for themselves, including without limitation (a) the sale of advertisements at the Gawker Site to viewers of the webpage with a link to the Video Excerpts, and (b) attracting new viewers to the Gawker Site for the long-term financial benefit of Defendants and all of their affiliated websites, and additional revenues from the substantial new viewers brought thereto by the Video Excerpts.

Plaintiff had no knowledge that the intimate activities depicted in the Video were being recorded. To the contrary, Plaintiff believed that such activity was completely private, and Plaintiff had a reasonable expectation of his privacy in his intimate activities in a private bedroom, and reasonably believed that his privacy was safe and protected.

At no time prior to, during, or after the consensual sexual encounter between Plaintiff and the woman depicted in the Video did Plaintiff ever in any way or manner whatsoever authorize or consent to any person or entity recording the private, intimate acts depicted in the Video, or to

the storage, editing, dissemination, publication and exploitation of the Video. Bollea Decl. at ¶6. To the contrary, Plaintiff finds the creation and publishing of the Video Excerpts by Defendants to be outrageous and egregious. The Video and Video Excerpts have never been authorized by Plaintiff for any purpose whatsoever, including any form of disclosure to the public.

Numerous media outlets and websites have reported on the Gawker Story, and feature links to the Gawker Story (though do not feature the Video or Video Excerpts). Thus, millions of people are being exposed to the Video Excerpts. *Id.* at ¶10. As a natural and foreseeable consequence, millions of individuals were drawn to the Gawker Site to view the Video Excerpts. Defendants have reaped and will continue to reap tremendous revenues and profits as a result, and have been and will continue to be unjustly enriched therefrom, both from the short term web traffic of millions of people viewing the Gawker Story that posted the Video Excerpts, the advertisements displayed thereat, the long term increase in viewership to the Gawker Site and Defendants' other affiliated sites, and the revenues and profits associated therewith for a prolonged period of time. Such tremendous benefits are a direct result of the substantial fame and goodwill of Plaintiff, and the public's interest in his life and activities. (A completely unknown person in a sex video posted at the Gawker Site would probably draw very few viewers, and might even cause many viewers to avoid the site in the future due to its distasteful content.)

Plaintiff has devoted a tremendous amount of his time and effort to developing his career as a professional champion wrestler, motion picture actor, and television personality, and to developing his universal goodwill, reputation and brand. Bollea Decl. at ¶¶2-5. Such efforts have created considerable commercial value in his name, image, identity and persona. *Id.* at ¶5.

The commercial value of Plaintiff's name, image, identity and persona is diminished by the unauthorized posting, publishing, distribution and dissemination of the Video Excerpts, which are perceived unfavorably by the public and by the negative portrayal of Plaintiff in the Video Excerpts to the general public.

Defendants' posting of the Video Excerpts at the Gawker Site constitutes a shameful and outrageous invasion of Plaintiff's right of privacy by a group of loathsome Defendants who have no regard for human dignity and care only about maximizing their revenues and profits at the expense of all others.

This lawsuit was necessitated by Defendants' blatant violation of Plaintiff's right of privacy; their wrongful disclosure of the private acts depicted in the Video; their unauthorized commercial exploitation of Plaintiff's name, image, identity and persona; their refusal to remove the Video Excerpts when Plaintiff repeatedly requested and demanded their removal from the Gawker Site; and other calculated, intentional, wrongful and tortious conduct as described herein.

Without preliminary and injunctive relief, Plaintiff will suffer irreparable injury to his reputation, his personal life, and his business ventures, and will continue to suffer severe emotional distress.

## **II. ARGUMENT**

### **A. Plaintiff Is Entitled to the Entry of a Preliminary Injunction**

A movant is entitled to preliminary injunctive relief upon establishing: (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable injury if injunctive relief is not granted; (3) that the threatened injury outweighs any threatened harm of an

injunction to defendants and (4) that granting a preliminary injunction will not disserve public interest. See McDonald's Corp. v. Robertson, 147 F.3d 1301, 1306 (11th Cir. 1998).

In light of the facts and issues presented herein, the four factors favor the issuance of a preliminary injunction in this case. See id.

Plaintiff made numerous and repeated demands to Gawker Media, and also directly to defendant Denton, to remove the Video Excerpts from the Gawker Site. Defendants, however, failed and refused to do so.

Plaintiff is informed that unless enjoined and restrained, Defendants will continue to post, publish, distribute, disseminate and exploit the Video and Video Excerpts, despite Plaintiff's numerous and repeated demands that Defendants cease and desist, and Defendants' clear violation of Plaintiff's rights. Such infringement and violation of Plaintiff's rights will continue to cause Plaintiff severe distress and damage, for which there is no adequate remedy at law, if the Video and/or Video Excerpts continue to be posted, published, distributed, disseminated and exploited by the Defendants. Such conduct and activity has caused and will continue to cause Plaintiff to suffer irreparable harm for which there is no adequate remedy at law.

## **II. Likelihood of Success on the Merits.**

To issue injunctive relief, "a district court need not find that the evidence positively guarantees a final verdict" in favor of the movant. Levi Strauss & Co. v. Sunrise Int'l Trading, Inc., 51 F.3d 982, 985 (11th Cir. 1995). Plaintiff need only demonstrate a likelihood of success on the merits. Plaintiff has pleaded causes of action for invasion of privacy and infliction of emotional distress under Florida law. As demonstrated in the Complaint and the Bollea Declaration, Plaintiff has demonstrated a likelihood of success on the merits.

Invasion of privacy by intrusion is defined as follows:



One who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of privacy, if the intrusion would be highly offensive to a reasonable person.

Restatement (Second) of Torts, Section 652B (1977).

It is clear that Defendants' actions have invaded Plaintiff's privacy rights and their actions are highly offensive to reasonable people.

Further, Defendants have publicly disseminated private facts about Plaintiff. The Restatement (Second) of Torts Section 652D (1977) provides that:

One who gives publicity to a matter concerning the private life of another is subject to liability to the other for invasion of his privacy, if the matter publicized is of a kind that (a) would be highly offensive to a reasonable person, and (b) is not of legitimate concern to the public.

Just as in the "intrusion" area, the news media can be held liable for damages for truthful publication. In order for an offended plaintiff to prevail, he must prove both that the publication was "highly offensive to a reasonable person" and that the matters were not "of legitimate concern to the public." *Id.*

In Cason v. Baskin, 30 So. 2d 635, 638 (Fla. 1947), the Florida Supreme Court held that invasion of privacy by publication of private facts could be accomplished only when "the community has no legitimate concern" in those facts. In the instant action, the community has no legitimate concern in the publication of the Video taken over six years ago of a private, consensual sexual encounter.

Plaintiff has also pleaded that Defendants have negligently and intentionally caused the infliction of emotional distress. The tort of "intentional infliction of emotional distress" is recognized in Florida. Gallogly v. Rodriguez, 970 So. 2d 470 (Fla. 2d DCA. 2007). To state a cause of action for intentional infliction of emotional distress, a complaint must allege four elements:

(1) the wrongdoer's conduct was intentional or reckless, that is, he or she intended his or her behavior when he or she knew or should have known that emotional distress would likely result; (2) the conduct was outrageous, that is, as to go beyond all bounds of decency, and to be regarded as odious and utterly intolerable in a civilized community; (3) the conduct caused emotional distress; and (4) the emotional distress was severe.

Gallogly, 970 So. 2d at 471

Here, Defendants conduct is intentional and outrageous, and Defendants knew or should have known that emotional distress would likely result from their conduct. Although requested, Defendants have refused to remove the offending Video from their website. The dissemination of the Video has caused and will continue to cause Plaintiff severe emotional distress.

As to negligent infliction of emotional distress, Florida's "impact rule" provides that "before a plaintiff can recover **damages** for emotional distress caused by the negligence of another, the emotional distress must flow from physical injuries the plaintiff sustained in an impact." Southern Baptist Hosp. of Florida, Inc. v. Welker, 908 So. 2d 317, 320 (Fla. 2005)(quoting R.J. v. Humana of Florida, Inc., 652 So. 2d 360, 362 (Fla. 1995)(quoting Reynolds v. State Farm Mut. Auto. Ins., 611 So. 2d 1294, 1296 (Fla. 4th DCA 1992)) (Emphasis supplied). With certain exceptions, the "impact rule" bars a Plaintiff from recovering damages for his or her emotional distress that is caused by another's negligence but does not flow from physical injury. The "impact rule," does not, however, bar injunctive relief, as requested here. See id.

Accordingly, for the same reasons Plaintiff has shown likelihood of success on the merits of his claim for Intentional Infliction of Emotional Distress, he has shown a likelihood of success on the merits of his claim for Negligent Infliction of Emotional Distress requesting only injunctive relief.

**III. Plaintiff Will Suffer Irreparable Injury if the Video and/or Video Excerpts Remains on the Gawker Site**

In addition to affecting Plaintiff's fundamental right of privacy, the Defendants' maintenance of the excerpts of the videotape on its website will also cause injuries that "cannot be undone through monetary remedies" and are "actual and imminent." Northeastern Fla. Chapter of Ass'n of Contractors of AM v. Jacksonville, 896 F.2d 1283, 1285 (11th Cir. 1990). Plaintiff has spent considerable time and effort developing his career as a professional champion wrestler and in developing his brand. (Bollea Decl. at ¶5.) Because the acts depicted in the Video Excerpts are likely to be viewed negatively by the public and cast Plaintiff in a negative light by the public, if the Video, and excerpts thereof, remain publicly posted and disseminated, it will have a substantial adverse and detrimental effect on Plaintiff's personal and professional life, including irreparable harm to both. The more widely disseminated the Video Excerpts become, the more unmarketable Plaintiff is likely to become. Not because Plaintiff has done anything publically wrong, but because Defendants chose to publically disseminate Plaintiff's private encounter.

**IV. The Defendants Will Not Suffer Harm if the Video is Removed from the Gawker Media Websites**

The devastating harm to Plaintiff and his continuing severe emotional distress supports an issuance of injunctive relief. The maintenance of the Video Excerpts on the Gawker Site implicates and affects Plaintiff's fundamental rights of privacy. By contrast, the website's maintenance of the video only seeks to advance prurient interests, as well as to drive traffic to their website, thus increasing advertising revenue. Defendants' only incentive is economic, and they are acting without regard for Plaintiff's rights. Requiring Defendants to remove the Video Excerpts from the website will simply put Defendants back into the same position they were before they obtained and posted the Video Excerpts and will cause them no harm.



**V. Public Interest Will be Served by Granting the Requested Relief**

There is a benefit to the public by granting the requested relief because the Video affects Plaintiff's fundamental rights of privacy. The public interest is certainly disserved by Defendants' continuing disregard of the rights of privacy of individuals when their motivation is simply for prurient interests and commercial gain.

**VI. Plaintiff Should Not be Required to Post a Bond.**

"The amount of an injunction bond is within the sound discretion of the district court." Carillon Importers, Ltd. v. Frank Pesce Int'l Group Ltd., 112 F.3d 1125, 1127 (11th Cir. 1997). The Court's discretion is wide and extends to whether any bond should be required at all. Despite the mandatory nature of the language of Federal Rule of Civil Procedure 65(c), "federal courts have come to recognize that the district court possesses discretion over whether to require the posting of security." The Complete Angler, LLC v. City of Clearwater, 607 F. Supp. 2d 1326, 1335, (M.D. Fla. 2009)(quoting Popular Bank of Fla. v. Banco Popular de Puerto Rico, 180 F.R.D. 461, 463 (S.D. Fla. 1998)). "Waving the bond requirement is particularly appropriate where a plaintiff alleges the infringement of a fundamental constitutional right." The Complete Angler, 607 F. Supp. 2d at 1335; see also Cont'l Oil Co. v. Frontier Ref. Co., 338 F.2d 780, 782 (10th Cir. 1964)(noting that exercise of the Court's discretion not to require a bond is particularly appropriate where issues of public concern or important constitutional rights are involved). Here, Plaintiff alleges an infringement of his fundamental and important Constitutional right of privacy. Accordingly, and because Defendants will not suffer any harm if the Court enters an injunction, the Court should not require a bond. If a bond is required, Plaintiff suggests the *de minimis* amount of One Thousand Dollars (\$1,000.00).

### III. CONCLUSION

The standards for issuance of a preliminary injunction having been met, Plaintiff requests that this Court enjoin Defendants from disclosing, disseminating or publishing the Video or any excerpts or portions thereof, and enter a Preliminary Injunction in the form attached hereto as **Exhibit 2**, provided in accordance with Local Rules 4.06(b)(1) and 4.05(b)(3)(iii).

Respectfully Submitted,

DATED: October 16, 2012

/s/ E. Colin Thompson  
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# **EXHIBIT 1**

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

TERRY GENE BOLLEA professionally  
known as HULK HOGAN,

Plaintiff,

v.

GAWKER MEDIA, LLC aka GAWKER  
MEDIA; GAWKER MEDIA GROUP, INC.  
aka GAWKER MEDIA; GAWKER  
ENTERTAINMENT, LLC; GAWKER  
TECHNOLOGY, LLC; GAWKER SALES,  
LLC; NICK DENTON; A.J. DAULERIO;  
KATE BENNETT; BLOGWIRE HUNGARY  
SZELLEMI ALKOTAST HASZNOSITO  
KFT,

Defendants.

Case No.

**DECLARATION OF PLAINTIFF TERRY GENE BOLLEA**

I, Terry Gene Bollea, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am the plaintiff in this action. The facts stated herein are stated on my own personal knowledge and, if called and sworn as a witness, I could and would competently testify thereto. As to those matters stated on the basis of information and belief, I am so informed and believe those matters to be true.

2. This declaration is made in support of the Complaint filed to initiate this action as well as the accompanying application for a temporary restraining order and preliminary injunction ("TRO").

3. I am professionally known as Hulk Hogan. I started wrestling in the late 1970s. I wrestled as the character Hulk Hogan in the World Wrestling Federation ("WWF"). I was inducted into the WWF Hall of Fame in 2005. I am a 12-time world WWF champion.

4. I have also been a motion picture actor, having appeared in such films as *Rocky III*, *Surburban Commando* and *Mr. Nanny*. I also appeared in a television series, and starred in the reality television series *Hogan Knows Best*.

5. I have spent considerable time and effort developing my career as a professional champion wrestler and in developing my brand. My name and image have been used, with my permission, in numerous commercial endorsement opportunities, including for a blender known as the Hulk Hogan Thunder Mixer, an indoor grill known as The Hulk Hogan Ultimate Grill, and an energy drink known as Hogan Energy, distributed by Socko Energy. My name and image also have been used in line of microwavable hamburgers, cheeseburgers, and chicken sandwiches sold at Wal-Mart called "Hulkster Burgers." In or about November 2011, I launched a new website called Hogan Nutrition, which features many nutritional and dietary products. Through years of hard work, I have developed skill, reputation and international notoriety to create substantial value in my identity.

6. Approximately six years ago, I had private consensual sexual relations with a woman named Heather Clem, in her private bedroom. I had no knowledge at the time that anyone was videotaping that encounter, and I would have strenuously objected to any audio or video recording thereof. I learned very recently that Ms. Clem and/or her ex-husband, Bubba the Love Sponge Clem aka Todd Alan Clem, videotaped my sexual encounter with



Ms. Clem, without my knowledge or permission. I had a reasonable expectation of privacy at all times in connection with that sexual encounter with Ms. Clem.

7. On or about October 4, 2012, one or more of the named defendants in this action (collectively, "Gawker Media") posted to their website [www.Gawker.com](http://www.Gawker.com) (the "Gawker Site") excerpts of the videotape showing Ms. Clem and I engaged in private consensual sexual relations (the "Video"). The Video was posted at the Gawker Site without my knowledge or permission.

8. When I learned about the Video at the Gawker Site, I immediately contacted my attorney, David R. Houston, and he then sent a cease and desist letter to the defendants dated October 5, 2012, demanding the removal of the Video from the Gawker Site, and threatening a lawsuit against Gawker Media if it did not comply. A true copy of Mr. Houston's letter is attached hereto as **Exhibit A**. Mr. Houston then followed that letter with an email dated October 5, 2012, to defendant Nick Denton, the owner of Gawker Media, again demanding the removal of the Video from the Gawker Site, a true copy of which is attached hereto as **Exhibit B**.

9. Gawker Media did not remove the Video from the Gawker Site, and it still remains at the Gawker Site to this day. Instead, Gawker responded to Mr. Houston's letter and e-mail with an e-mail dated October 9, 2012, a true copy of which is attached hereto as **Exhibit C**, stating that Gawker Media would not remove the Video excerpts from [www.Gawker.com](http://www.Gawker.com).

10. Further, other media outlets and websites picked up on the story that the Gawker Site was posting the Video, thus driving a tremendous amount of web traffic to the Gawker Site and the Video. A true copy of just a few of the other media reports regarding the Video at the Gawker Site are attached hereto as **Exhibit D**. I have seen many, many more reports of the Video at the Gawker Site, but am not attaching all of them, for purposes

of brevity. The *NY Daily News* article attached hereto within Exhibit D shows two still images from the Video at the Gawker Site.

11. If the Video remains publicly posted and disseminated, it will have a substantial adverse and detrimental effect on my personal and professional life, including irreparable harm to both.

12. The recording of the Video without my knowledge, and the public posting and dissemination of the Video has completely flipped my life upside down, has rattled my current marriage, has been devastating to me and my family, and has caused by severe emotional distress.

13. Based on these facts, I respectfully request that the Court to grant the requested temporary restraining order and preliminary injunction to prevent the defendants from continuing to violate my privacy rights. Specifically, I request that the Court order the defendants to remove the Video and all portions and content therein, from all of their websites, and to turn over to my attorneys all copies of the full-length videotape, the Video, and all content therein, including all clips, still images and audio taken therefrom, and all transcripts prepared of the audio contained within the videotape.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 15th day of October, 2012.

  
TERRY GENE BOLLEA

# **DECLARATION EXHIBIT A**

LAW OFFICE OF  
**DAVID R. HOUSTON**  
*STATE AND FEDERAL CRIMINAL DEFENSE*

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**David R. Houston, Esq.**  
*Attorney*  
**Ke Rosser**  
*Business Manager*  
**Alisha Theofanides**  
*Legal Assistant*  
**Karen Monrreal**  
*Secretary*

**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



**DECLARATION  
EXHIBIT B**

**From:** Kristy Rosser  
**Sent:** Friday, October 05, 2012 11:19 AM  
**To:** [nick@gawker.com](mailto:nick@gawker.com)  
**Subject:** 10.5.12 Hogan Tape Matter

10/5/2012 11:16 AM

Dear Mr. Denton:

I am enclosing herewith as an attachment a cease and desist letter sent to you and your company. As is apparent and quite common knowledge, the sex tape you are showing as it concerns Hulk Hogan was recorded without his knowledge and consent.

As such, the individual filming disseminating and/or publishing may be responsible under Florida criminal statutes. Your republication of the same with complete knowledge as to the fact it was done without his consent and/or knowledge may well subject you to liability.

I am sure your counsel can provide you appropriate legal advice so I will not presume to do the same. I am asking you to remove the sex tape from your website.

If you do not do so, you leave us no option but to proceed legally. We will exhaust every legal avenue possible including potential criminal charges if you do not.

I did not want you to think I was attempting to bully you or make demands that were not warranted. I am asking you to remove the same. I am simply advising what our next steps will be if you do not.

It is not meant to threaten, but rather as an advisement as to what we must do in order to protect the image of Hulk Hogan and Hulk Hogan's privacy rights.

I am sure you must understand as a human being exactly how offensive the same would be. Despite the fact this would have been presented to you anonymously, it is difficult to believe you were not aware this was done without his consent and/or knowledge.

If you did not know, then I ask you at this time not to participate in the perpetration of what might arguably be a criminal act. You of course are free to do whatever you choose, but we would deem the same a significant sign of good faith if you choose to remove it voluntarily and would not proceed against you or your company.

I have no intention of attempting to harm you or your business but rather only protect my client. I hope you understand the necessity of this communication and my purpose.

Sincerely,  
David R. Houston  
/kc

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

The information contained in this transmission may contain privileged and confidential information. It is intended only for the use of the person(s) named above. If you are not the intended recipient, you are hereby notified that any review, dissemination, distribution or duplication of this communication is strictly prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message.  
Tax Advice Disclosure: To ensure compliance with requirements imposed by the IRS under Circular 230, we inform you that any U.S. federal tax advice contained in this communication (including any attachments), unless otherwise specifically stated, was not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code; or (2) promoting, marketing or recommending to another party any matters addressed herein.

# **DECLARATION EXHIBIT C**

**From:** Cameron Stracher [mailto:cameron@gawker.com]  
**Sent:** Tuesday, October 09, 2012 3:12 PM  
**To:** David Houston  
**Subject:** Claim of Terry Bollea

Dear Mr. Houston:

I write in response to your undated letter to Nick Denton regarding a news article on [Gawker.com](http://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



# **DECLARATION EXHIBIT D**



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Monday, October 15, 2012

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## GOSSIP

# Hulk Hogan 'devastated' by leak of sex tape filmed six years ago with friend's wife Heather Clem; Lawyer says wrestler suffered the 'ultimate betrayal'

The mustachloed muscle man star told Howard Stern Tuesday that the racy recording was made without his knowledge six years ago while his marriage to ex-wife Linda Hogan was crumbling. Lawyer says Hogan 'feels absolutely betrayed' by his best friend.

Comments (48)

BY NANCY DILLON / NEW YORK DAILY NEWS

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**Hulk Hogan married his current wife, Jennifer McDaniel, in 2010.**

Hulk Hogan suffered the "ultimate betrayal" when his best friend filmed him having sex, his lawyer said Tuesday.

"He feels absolutely betrayed," lawyer David Houston said.

Houston said "sources" have informed him that the secret sex tape involving his client ends with Bubba the Love Sponge discussing the recording's potential value with wife Heather Clem.

Clem was Hogan's partner during the naked romp, Hogan admitted to Howard Stern Tuesday.

#### **PHOTOS: CHEATING SCANDALS OF THE STARS**

"If we ever did want to retire, all we'd have to do is use this footage," Bubba is heard saying at the tape's tail end, according to celebrity website TMZ.com.

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ETHAN MILLER/GETTY IMAGES

**Hogan identified his bedroom partner as Heather Clem, the estranged wife of radio personality Bubba the Love Sponge.**



URI SCHANKER/FILMMAGIC

**Bubba the Love Sponge and his wife Heather Clem at Homestead-Miami Speedway on November 21, 2010 in Florida.**

Houston said he contacted police in Florida Tuesday to ask about issues of jurisdiction ahead of filing a police report to spur a criminal investigation.

He said Hogan also will file a civil lawsuit against Gawker.com no later than the middle of next week because the New York-based website posted an edited version of the leaked footage.

#### **PHOTOS: CELEBRITY SEX SCANDALS**

The suit, expected in federal court in Florida, will include charges of invasion of privacy, damage to reputation and damage to commercial viability, he said.

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Hogan said his first marriage was 'really screwed up bad' at the time the video was tapped.

"We think whatever lawful means are available for redress should be put into play. That's what Hulk wants to do," Houston told the Daily News, saying it's possible they'll also contact police in New York.

"New York may be best jurisdiction for the criminal case," Houston said. "We're in Florida initially to figure that out."

Hogan, 59, told NBC's "Today" show that the tape happened during a "low point" in his failing marriage to ex-wife Linda Hogan.

"Things were bottomed out completely," he said. "I was with some friends, and I made a wrong choice. And now all of a sudden it surfaces, you know over six years later, and it's just appalling."

He said the scandal has "rattled" his new wife Jennifer McDaniel, whom he married in 2010.

The wrestling star tried to explain the kinky love triangle to Howard Stern Tuesday using a thinly veiled euphemism.

"Let's say I've been doing laundry, brother, for this person forever, and all of a sudden this person hates the way I do laundry. And that person says, 'You suck. I hate you. F-you every single day. I hate the way you do laundry. I'm going to find somebody else to do laundry. Somebody younger, faster, stronger,'" he said, clearly taking a jab at his ex-wife.



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**Hulk Hogan says the video was shot at a 'friend's house.'**

"But my buddy, you know, him and his girl say, 'Hey, you can do our laundry any time you want!' Both of them are saying that," he told Stern. "Finally after the person I was doing laundry with for millions and millions of years left, and all of a sudden there was nobody there to do laundry, I was depressed... I go to my buddy's house and he says, 'Hey man you can do this other person's laundry that I'm partners with.' I said, 'Sure.'"



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## COMMENTS

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LUNAPARA3 1 day ago

0

Just read Hulk's laundry analogy. That's great, Hulk, but it wasn't laundry you were doing. He's making this thing bigger by doing all these interviews, so you have to wonder just how "devastating" it really was to him. I know its hard to start over in your 50's but going the sex route is really tacky.

Reply

USEKIA 4 days ago



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TOP STORIES



NSFW

## Even for a Minute, Watching Hulk Hogan Have Sex in a Canopy Bed is Not Safe For Work but Watch it Anyway

■ A.J. Daulerio

Because the internet has made it easier for all of us to be shameless voyeurs and deviants, we love to watch famous people have sex. We watch this footage because it's something we're not supposed to see (sometimes) but we come away satisfied that when famous people have sex it's closer to the sex we as civilians have from time to time. Meaning: it's hardly ever sexy the way we expect it to be sexy, even when the participants are ostensibly more attractive than the majority of our sex partners will be.

But naked, they're still having sex like people who don't usually have sex on camera. Even if their dicks are big enough to smash a boat horn with authority, or their faces are lit up like Gulf War scud missile footage after midnight, their sex- purposeful, vaunted celebrity sex-is still incredibly dull.

OCT 4, 2012 2:15 PM

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The normalcy of it is exciting, though. When you see glimmers of **sloppy kissing** or some shoulder moles or just an earnest, breathy, post-coital "**iluvvvvvuuuu...**" it becomes mesmerizing.

Up top, you'll see one minute from the 30 minutes of footage taken of 59-year-old Hulk Hogan, professional wrestler, Real Life American Hero to many, fucking a woman rumored to be the ex-wife of his best friend, a famous radio DJ named Bubba the Love Sponge. This footage was stealthily circulated last April. **TMZ reported its existence, The Dirty showed some screen shots**, and Hulk lawyered up because he claims **he was "secretly filmed."** Last week, a burned DVD copy of Hulk having sex with the woman rumored to be **Heather Clem** (Bubba's ex-wife), was delivered to us through an anonymous source. They wanted no payment. They wanted no credit. Their only request was that we watch it. So I did—all 30:17 of it—and hyperbole aside, it's a goddamn masterpiece.

It opens with Hulk Hogan performing oral sex on the woman as she lays on the bed. Then another man's voice can be heard from inside the room off-camera and both Hulk and the naked woman engage in idle chit-chat with the mystery man. Because the woman closely resembles Mrs. Clem, some have suggested that the voice of the mystery man is, in fact, Bubba the Love Sponge. If this is true, Bubba has no problem sharing his wife with his best friend.

"You guys do your thing," this man says. "I'll be in the office if you need me."

He exits swiftly and allows Hulk and this woman their privacy. Hulk and the woman engage in more chit-chat and Bubba's name is mentioned. The woman says "We just fucked earlier today." Hulk asks "Who? You and Bubba?" She just laughs. It doesn't matter.

Hulk strips down. His tan line is exposed and his hairline is vulnerable and silly without the do-rag, but there is sex to be had regardless. Hulk must get hard, though, and the woman is eager to make that happen. Her fellatio is successful and Hulkamania is about to run wild on her but then his cell phone rings. He checks it because he thinks it might be his son, Nick. The ringtone on Hulk Hogan's phone is a song by his daughter, Brooke Hogan, called "**About Us**" featuring Paul Wall. He is a proud father.

But Hulk checks the caller and does not want to talk that person at all. "Fuck no," he says.

He stands on the side of the bed and the woman scoots up from the pillows and resumes giving the former WWE heavyweight champion of the universe a blowjob. It is a slow, dutiful blowjob and Hulk is thrusting himself into her mouth to speed up the process. This goes on for a few minutes and at one point Hulk examines the canopy bed curtains in a way that suggests he'd like to purchase this particular style for his own canopy bed some day. She takes a break. She spits loudly. She resumes for a few seconds, but it appears the spit has worked because Hulk mutters something in a growly sex voice. The woman removes him from her mouth and spins around on the bed like an excited puppy. She stands. They grope each other and stare at each other. "What did you say?" she asks, laughing and tying up her hair in a pony tail. Then they both laugh because there was a miscommunication during the sex act and they don't want to feel awkward.



"You got a rubber? I want you to climb on top of me," Hulk repeats, but not as sexy as it was the first time, which she didn't hear. Yes, she does have a rubber. Then we watch Hulk stand up and clumsily attempt to roll a condom on to his erect penis which, even if it has been ravaged by steroids and middle-age, still appears to be the size of a thermos you'd find in a child's lunchbox. Hulk hurls his massive body on to the canopy bed and the woman climbs on top, finally, and they begin. There is lots of squealing and moaning from her and she says stuff like, "I want to make you cum" and, "Your dick feels so good inside me"—that sort of thing. There is light spanking from Hulk done to show he supports her efforts and is close to orgasming.

Then, Hulk grunts. Hulk grunts more. Then Hulk grunts like he's doing an impression of old Hulk Hogan grunting right before he's about to cum/come. Climax happens for both participants and they seem pleased with the results. The woman provides two tender kisses on Hulk's upper chest. Hulk says, "Mmmk," because he's a little bemused by the situation he finds himself in on this day as we'll soon find out. Here's how Hulk explains his reaction to the woman he just had sex with:

"The rubber almost came off," he says.

She's not concerned. "It did what it was supposed to."

Hulk thought that was funny and makes her repeat it.

She does so and then peels off the rubber from his penis and carries it away. She holds the condom full of Hulk jiz like it's a random dirty sock she found in the dryer. Hulk is still coming down from his orgasm and is making quick, loud Tony Soprano wheezes.

"Oh my god," he exhales. "Can't believe I have to drive back home. Fuuuuck."

The woman giggles, climbs back into bed with him and reminds Hulk that this is why he should move to this neighborhood. They engage in some cuddling for a couple minutes but Hulk does have to go because he has to go meet his son Nick who was presumably no longer in prison during the time this was filmed. Playful banter resumes amidst the afterglow. Hulk gets up naked and accepts the invitation from the woman to take a shower. But then he tells the woman that he's shocked that the fucking took place at all because he'd just eaten ten minutes before he got there and "felt like a pig." He had sashimi. He smacks his large stomach and makes his way to the shower.

Hulk begins to put on his clothes. "Bubba's shirt," he says when he puts on his shirt. He's pulling on his jeans one giant leg at a time, still mumbling. The woman is naked in bed and not at all concerned by his early exit. She does suggest that he go talk to the mystery man in the office before he leaves. But Hulk has to go meet his son Nick at midnight. Then Hulk tells a story about how Nick's new girlfriend has a twin sister who called Hulk on the phone. Hulk reveals that the young woman inquired about his divorce and, if that's true, she would like to be the first to go out with him.

Hulk sits on the bed and puts on his socks. "You're a hot commodity," the woman says to Hulk. "Yeah, right. Huh," Hulk says. Even Hulk Hogan needs to be told he's handsome sometimes.

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But he has to go, he leans over and kisses the woman. They joke about him loving and leaving but it's okay. "Be cool," he says to the woman on his way out the door. They thank each other for the sex. "You're awesome," Hulk says on his way out the door. "So are you," she says back in a very sincere way. Everybody's awesome. Hulk asks her if he should close the door on the way out. "No, leave it open," she says. "Thank you." Off he went.

*Video edited by Kate Bennert.*



# **EXHIBIT 2**

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

TERRY GENE BOLLEA professionally  
known as HULK HOGAN,

Plaintiff,

v.

GAWKER MEDIA, LLC aka GAWKER  
MEDIA; GAWKER MEDIA GROUP, INC.  
aka GAWKER MEDIA; GAWKER  
ENTERTAINMENT, LLC; GAWKER  
TECHNOLOGY, LLC; GAWKER SALES,  
LLC; NICK DENTON; A.J. DAULERIO;  
KATE BENNERT, BLOGWIRE HUNGARY  
SZELLEMI ALKOTAST HASZNOSITO  
KFT aka GAWKER MEDIA

Defendants.

Case No. 8:12-cv-2348

**PRELIMINARY INJUNCTION**

**THIS CAUSE** came before the Court on Plaintiff's Motion for Preliminary Injunction. The Court, has reviewed the Complaint, the Motion, the Declaration of Terry Gene Bollea, the Defendants' Opposition to the Motion, and is otherwise fully advised in the premises. It is, therefore, **ORDERED** that a Preliminary Injunction is hereby granted as follows:

1. Against Defendants, and all persons acting on their behalf or under their control, from any and all activity that would cause or have the effect of distributing, disseminating, publishing, displaying, posting for view or access on or through the Internet or any other manner or media outlet, broadcasting, transferring, licensing, selling, offering to sell or license, or

otherwise using, exploiting or attempting to exploit, any video of Plaintiff engaged in sexual relations ("Video") or any portions or content thereof;

2. Defendants shall turn over to Plaintiff all information pertaining to the Video and excerpts thereof used by Defendants, including, without limitation, all activity by all persons and entities related to the creation, storage, transportation, transfer, acquisition, editing, distributing, disseminating, publishing, displaying, posting for view or access on or through the Internet or any other manner or media outlet, broadcasting, transferring, licensing, selling, offering to sell or license, or otherwise using, exploiting or attempting to exploit, the Video or any portions or content thereof, or any copies thereof, including, without limitation, in any and all formats and media, including all electronic and physical media;

3. Defendants shall deliver to Plaintiff all copies of the Video, and all portions, excerpts, and content thereof, including without limitation still images therefrom, in all formats and all forms of media, including electronic and physical media, within Defendants' possession, custody or control, including, without limitation, any and all storage devices (such as CDs, DVDs, hard drives, flash drives, tapes, and disks) containing same; and

4. A constructive trust is placed upon Defendants and all persons acting on their behalf or under their direction or control, as to all revenues and profits received by such individuals as a result of or in any way connected with the distribution, dissemination, publication, display, posting for view or access on or through the Internet or any other manner or media outlet, broadcast, transfer, license, sale, offer to sell or license, or other use, exploitation or attempt to exploit the Video, to be held for the benefit of Plaintiff.

5. Plaintiff is not required to post a bond. It is so ORDERED.

**DONE and ORDERED** at Tampa, Hillsborough County, Florida, this \_\_\_\_\_ day of  
October, 2012,

\_\_\_\_\_  
District Court Judge

*Conformed copies to:*  
All Counsel of Record