# EXHIBIT 1

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

TERRY GENE BOLLEA professionally known as HULK HOGAN

Plaintiff,

vs.

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

Defendants.
_____/

Case No.: 8:12-cv-02348-JDW-TBM

**DISPOSITIVE MOTION**

**DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT FOR FAILURE TO STATE A CLAIM AND FOR LACK OF PERSONAL JURISDICTION**

Pursuant to Federal Rules of Civil Procedure 12(b)(2) and 12(b)(6) and Local Rule 3.01, by and through the undersigned counsel, defendants Gawker Media, LLC, Gawker Media Group, Inc., Gawker Entertainment, LLC, Gawker Technology, LLC, Gawker Sales, LLC, Nick Denton, A.J. Daulerio, and Kate Bennert (collectively, "defendants")[1] hereby move this Court for an order dismissing plaintiff's First Amended Complaint ("Complaint" or "FAC") against them in its entirety for failure to state a claim upon which relief may be granted and, as to defendants Gawker Media Group, Inc., Gawker Entertainment, LLC, Gawker Technology, LLC, and Gawker Sales, LLC (the "Tag-Along Defendants"), for want of personal jurisdiction. As grounds for their motion, defendants state as follows:

1. Plaintiff alleges various claims at common law and under the Copyright Act arising out of the publication on www.gawker.com of a report (the "Gawker Story") about a

[1] Defendant Blogwire Hungary Szellemi Alkotast Hasznosito KFT has not been served with process, and so does not join in this motion. Nevertheless, the same arguments in favor of dismissal advanced here under both Rules 12(b)(2) and 12(b)(6) would apply to it as well.

(dismissing copyright claim because plaintiffs did not attach copyright registration to complaint and thus had not "adequately alleged facts to support their claim of registration"), *aff'd*, 468 F. App'x 304 (4th Cir. 2012); *Derminer v. Kramer*, 386 F. Supp. 2d 905, 911 n.10 (E.D. Mich. 2005) (concluding that copyright claim was invalid where "Plaintiffs failed to provide a date of registration or a registration number, much less a certificate of that registration"); *Vargas v. Pfizer, Inc.*, 418 F. Supp. 2d 369, 373 (S.D.N.Y. 2005) (concluding that plaintiff's copyright claims were deficient because plaintiff failed to attach copyright registration).

Finally, even if plaintiff had adequately stated a cause of action for copyright infringement (which he has not), his specific claims for statutory damages and attorneys' fees, *see* FAC ¶¶ 82, 84, 85, should be dismissed. A copyright plaintiff is only eligible for statutory damages or attorneys' fees where the effective date of registration of the copyright preceded the infringement. *See* 17 U.S.C. § 412; *see also Pegasus Imaging Corp. v. Northrop Grumman Corp.*, 2010 WL 4627721, at *4 (M.D. Fla. Nov. 5, 2010) (same). Here, plaintiff has pleaded nothing to indicate that the purported copyright in the Video was registered prior to Gawker's publication of Excerpts from it. Accordingly, at a minimum, plaintiff's claims for statutory damages and attorneys' fees must be dismissed. *See, e.g., Inst. For The Dev. Of Earth Awareness v. PETA*, 2009 WL 2850230, at *4 (S.D.N.Y. Aug. 28, 2009) (dismissing claims for statutory damages and attorneys' fees where complaint "offer[ed] no factual allegations to support its theory that post-registration infringement occurred").

## III. THE TAG-ALONG DEFENDANTS SHOULD BE DISMISSED BECAUSE THE AMENDED COMPLAINT ALLEGES NO ACTIONABLE CONDUCT BY THEM NOR FACTS SUFFICIENT TO ESTABLISH JURISDICTION OVER THEM.

Altogether apart from the adequacy of plaintiff's pleading more generally, plaintiff has failed to plead sufficient facts to connect any of the Tag-Along Defendants to the complained of conduct, or to establish any basis for this Court's exercise of personal jurisdiction over them.

### A. Failure to State a Claim

Each of plaintiff's purported causes of action arises out of the publication of the Gawker Story and/or the Excerpts from the Video on the Gawker website. *See* FAC ¶¶ 1, 3-4, 27, 35-39, 41-43, 45-51, 53, 56-62, 64-69, 71-76, 79, 81-84, 86. While Gawker Media, LLC concedes that it, as the operator of the Gawker website, published the Gawker Story and the Excerpts, plaintiff has not otherwise pleaded any facts to indicate that the other named business entities – Gawker Media Group, Inc., Gawker Entertainment, LLC, Gawker Technology, LLC, Gawker Sales, LLC and the not-yet-served Blogwire Hungary Szellemi Alkotast Hasznosito KFT – played any role in that publication. Simply grouping all of the entities together as "Gawker Media," and then generally alleging that this collective "owns, operates, controls and publishes several Internet websites, including the Gawker site," FAC ¶¶ 16-17, is insufficient in the absence of any specific facts about each particular's entity's role.[12] Under the applicable pleading standard, "allegations of 'generalized conduct' against multiple defendants are only proper if the complaint also alleges *facts* which evoke more than the 'the mere possibility' that *each individual defendant* acted unlawfully." *Lawrie v. Ginn Cos.*, 2010 WL 3746725, at *4 (M.D. Fla. Sept. 21, 2010) (emphasis added). Here, no such facts are alleged.[13]

Nor can plaintiff make these other business entities liable for the conduct of Gawker Media, LLC simply by pleading that all the entities are part of the same "Gawker" family of

[12] The same goes for plaintiff's general "information and belief" allegation that "Defendants, and each of them, were and are the agents, licensees, employees, partners, joint-venturers, co-conspirators, owners, principals, and employers of the remaining Defendants, and each of them are, and at all times herein mentioned were, acting within the course and scope of that agency, license, partnership, employment, conspiracy, ownership, or joint venture." FAC ¶ 22. Those are simply legal conclusions that need not be credited. *See FTC v. Phoebe Putney Health Sys., Inc.*, 663 F.3d 1369, 1375 (11th Cir. 2011) (on a motion to dismiss, a court is not "bound to accept as true a legal conclusion couched as a factual allegation").

[13] Putting aside that it has yet to be served, *see* note 1 *supra*, plaintiff does allege that Blogwire Hungary Szellemi Alkotast Hasznosito KFT "owns the Internet domain name GAWKER.COM." FAC ¶ 15. But that is, by itself, plainly insufficient to make it a publisher of the Gawker Story or Excerpts.

businesses. As plaintiff alleges, Gawker Media, LLC is a limited liability company organized and operating under the laws of Delaware. *See* FAC ¶ 8. As such, it is a legally distinct entity, the conduct of which cannot be imputed to any affiliated entity absent some basis for disregarding Gawker Media, LLC's separate legal status. *See, e.g., Arbor Place, L.P. v. Encore Opportunity Fund, LLC*, 2002 WL 205681, at *6 (Del. Ch. Jan. 29, 2002) (observing, in case involving affiliated LLCs, that "[t]he separate existence and rights of discrete entities is well established in Delaware law and the Court is reluctant to ignore such separate existence even in the case of a wholly-owned subsidiary."). Here, plaintiff simply alleges that the other Gawker entities "were and are all under the control of defendant Gawker Media Group, Inc.," FAC ¶ 13, but otherwise alleges no facts to justify disregarding their status as distinct entities. This general and purely conclusory assertion of "control" by "Gawker Media Group" provides an insufficient basis for disregarding the separate legal status of the different business entities named as defendants. *See, e.g., Centrifugal Air Pumps Australia v. TCS Obsolete, LLC*, 2010 WL 3584948, at *2 (M.D. Fla. Sep. 9, 2010) (claims were fatally defective where plaintiff failed to plead facts to support a valid theory of corporate veil piercing); *Bochardt v. Mako Marine Int'l, Inc.*, 2009 WL 3856678, at *6 (S.D. Fla. Nov. 17, 2009) (dismissing claims where plaintiffs' "conclusory allegations" did not "allege[] sufficient information to pierce the corporate veil" of defendants); *see also, e.g., Stern v. News Corp.*, 2010 WL 5158635, at *4 (S.D.N.Y. Oct. 14, 2010) (parent corporation could not be liable for publication of its subsidiary absent some basis for piercing corporate veil).

**B. Failure to Allege Any Facts That Would Establish Personal Jurisdiction**

For these same reasons, plaintiff has also failed to provide any basis for this Court to exercise personal jurisdiction over the Tag-Along Defendants. As plaintiff concedes, none is a

citizen or resident of Florida. *See* FAC ¶¶ 9, 10, 11, 12, 14 (indicating that the various business entities are located in the Cayman Islands, New York and Hungary). Nor does plaintiff contend that any of these defendants has sufficient contacts with the State of Florida to provide for this Court's general jurisdiction, as the only asserted bases for jurisdiction are Fla. Stat. §§ 48.193(1)(a) and 48.193(1)(b), *see* FAC ¶¶ 26(a)-(b), which provide for specific jurisdiction. *See Virgin Health Corp. v. Virgin Enters. Ltd.*, 393 F. App'x 623, 626 (11th Cir. 2010) (noting that section 48.193(1) is the provision for specific jurisdiction).

But specific jurisdiction, whether premised on section 48.193(1)(a), which applies to defendants who do business in the state, or section 48.193(b), which applies to defendants who commit tortious acts within the state, requires what is manifestly missing in the case of these defendants – conduct in the forum state that gave rise to the cause of action. *See Oldfield v. Pueblo de Bahia Lora, S.A.*, 558 F.3d 1210, 1221 n.27 (11th Cir. 2009) ("'[S]pecific jurisdiction' refers to jurisdiction over causes of action arising from or related to a defendant's actions within the forum."); *RC3, Inc. v. Bieber*, 2012 WL 4207457, at *3 (M.D. Fla. Sep. 18, 2012) ("A court may exercise specific jurisdiction over a nonresident defendant only when plaintiff's cause of action arises from or is directly related to the defendant's contacts with the forum state."); *Schwartzberg v. Knobloch*, 98 So. 3d 173, 177 (Fla. 2d DCA 2012) ("[J]urisdiction may be asserted upon nonresident persons or entities in accordance with [section 48.193(1)(a)] where the cause of action arises from that person's business activities in Florida."). As noted above, plaintiff has not pleaded sufficient facts to indicate either that any of these defendants published the Gawker Story and/or the Excerpts, or that the conduct of Gawker Media, LLC can be imputed to them. Accordingly, there is no basis for exercising specific jurisdiction over these defendants. *See Kertesz v. Net Transactions, Ltd.*, 635 F. Supp. 2d 1339, 1347 (S.D. Fla. 2009)

(no basis for specific jurisdiction over particular defendant where causes of action arose out of an act of publication and plaintiff did not plead acts of publication by that defendant); *see also PVC Windoors, Inc. v. Babbitbay Beach Constr., N.V.*, 598 F.3d 802, 808-09 (11th Cir. 2010) (no basis for specific jurisdiction over defendants where causes of action were inadequately pleaded); *Ellis v. Celebrity Cruises, Inc.*, 2010 WL 6730808, at *1 (S.D. Fla. July 15, 2010) (plaintiff failed to adequately plead basis for personal jurisdiction where complaint merely provided conclusory allegations tracking the language of Florida's long-arm statute).

In sum, the claims against the Tag-Along Defendants should be dismissed both for failure to state a claim upon which relief can be granted and for lack of personal jurisdiction.