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

TERRY GENE BOLLEA professionally known as HULK HOGAN,

Plaintiff,

vs.

Case No.: 12012447-CI-011

HEATHER CLEM; GAWKER MEDIA, LLC aka GAWKER MEDIA; et al.,

Defendants.
_____/

REPLY IN SUPPORT OF THE MOTION TO DISMISS OF DEFENDANT GAWKER MEDIA GROUP, INC.

Because the Opposition filed by Plaintiff Terry Gene Bollea aka Hulk Hogan ("plaintiff") contains a series of demonstrably incorrect statements of law and fact, Gawker Media Group, Inc. ("GMGI") respectfully submits the following brief reply in support of the motion to dismiss, limited to addressing those misstatements:

1. **The inadequacy of plaintiff's allegations**. In asserting that he has adequately alleged a veil piercing claim against GMGI, plaintiff relies exclusively on *Vantage View, Inc. v. Bali East Development Corp.*, 421 So. 2d 728 (Fla. 4th DCA 1982). Plaintiff contends that, under that case, "'in order to state a cause of action against a parent corporation for the acts of its subsidiary, it is sufficient to allege the latter to be the alter ego or agent of the parent.'" Opp. at 3 (quoting *Vantage View*, 421 So. 2d at 732). But the Florida Supreme Court subsequently overruled *Vantage View* on precisely this issue and articulated the necessary elements of a veil-piercing claim. In *Dania Jai-Alai Palace, Inc. v. Sykes*, 450 So. 2d 1114, 1117 (Fla. 1984), the Supreme Court rejected the doctrine articulated in *Vantage View* that stating a claim against a

parent corporation based on the actions of its subsidiary merely requires alleging that the latter is acting as an alter ego or agent of the former. *Id.* at 1117; *see also Steinhardt v. Banks*, 511 So. 2d 336 338 (Fla. 4th DCA 1987) (explaining that "[t]he *Sykes* court expressly rejected the alter ego or instrumentality test which this court had applied for piercing the corporate veil in *Vantage View*"). Instead, under *Sykes*, piercing the corporate veil requires showing "improper conduct" with regard to the parent's formation or use of the subsidiary. *Sykes*, 450 So. 2d at 1121. As set forth in GMGI's opening motion papers, plaintiff has not alleged *any* improper conduct on GMGI's part in establishing or improperly using Gawker Media, LLC, the subsidiary whose conduct is at issue. Mot. at 8-10. Plaintiff should not be permitted to get around that failure, which is utterly fatal to his claims, by relying on a legal standard that has not been good law for nearly thirty years.

2. Nor is plaintiff correct that he can proceed against GMGI because he has alleged that "GMGI is directly responsible for the publication of the Sex Tape." Opp. at 3 n.1. Plaintiff's complaint attributes *no* tortious conduct specifically to GMGI and could not in good faith do so. *See* Mot. 2-3, 7-8. Instead, plaintiff lumps together six Gawker entities, including GMGI, labels this collective entity "Gawker Media," and then attributes the act of publication at the center of this litigation to that entity. Am. Compl. ¶¶ 19-20, 28-29, 35. The law is clear that purely "conclusory allegations," unsupported by the necessary "ultimate facts," are insufficient to state a claim. *Valdes v. Gab Robins N. Am., Inc.*, 924 So. 2d 862, 867 (Fla. 3d DCA 2006); *see also, e.g., Eagletech Commc'ns, Inc. v. Bryn Mawr Inv. Group, Inc.*, 79 So.3d 855, 863 (Fla. 4th DCA 2012) (conspiracy claims were insufficiently pleaded where plaintiff failed "to allege sufficient facts from which a reasonable inference could be drawn that all of the named

defendants participated in the conspiracy"). Here, plaintiff has pleaded no facts to support the conclusion that all of these different business entities can be treated as one collective actor.

3. **GMGI properly introduced jurisdictional facts**. Plaintiff is also wrong in asserting that GMGI's motion inappropriately introduces facts outside the pleadings. *See* Opp. at 5-6. It is, of course, perfectly appropriate to rely on facts, whether disclosed during discovery or otherwise, when moving to dismiss based on lack of personal jurisdiction. *See* Mot. at 10-11 (citing cases). By contrast, GMGI's arguments as to plaintiff's failure to state a claim are confined solely to the four corners of the Amended Complaint. *See id.* at 7-10. Accordingly, plaintiff's assertion that GMGI's use of discovery material constitutes "an inappropriate attempt to prejudice the Court," Opp. at 5, is without merit.

4. **No need for jurisdictional discovery**. Finally, there is no need to grant plaintiff additional jurisdictional discovery. Plaintiff is simply misrepresenting the facts in suggesting that he was somehow sandbagged because GMGI filed its motion to dismiss after plaintiff took his depositions of Gawker's witnesses. *See* Opp. at 4-5. Plaintiff was aware, well in advance of those depositions, that GMGI planned to move to dismiss on the ground that it cannot be liable for the conduct of its subsidiary. As set forth in the exhibits attached to GMGI opening motion papers, counsel for the Gawker Defendants has made clear, for over a year, that none of the Gawker entities, other than Gawker Media, LLC, is a proper party in this case. *See* Mot. Exs. A-B (email correspondence from counsel for the Gawker Defendants to counsel for plaintiff). Indeed, while this dispute was in federal court, the Gawker Defendants filed a motion to dismiss, which, among other things, sought dismissal of GMGI on the same grounds asserted now. *See* Mot. to Dismiss, 12/7/2012 (relevant excerpts attached hereto as Exhibit 1) at pp. 21-24. In addition, during a "meet and confer" telephone conference on August 30, 2013, counsel for

defendants reiterated that GMGI, and the other non-Gawker Media, LLC entities, would move to dismiss on the grounds asserted here, and plaintiff's counsel agreed that the upcoming depositions would be used in part to determine whether there was any basis for asserting claims against Gawker Media LLC's subsidiaries (Gawker Technology, LLC and Gawker Sales, LLC). *See* 9/3/2013 Email from C. Harder to S. Berlin (attached hereto as Exhibit 2).

5. Moreover, not only was plaintiff on notice, prior to those depositions, of the dismissal grounds GMGI asserts here, but his counsel in fact used those depositions to acquire information about GMGI. During the deposition of Scott Kidder, Gawker Media, LLC's corporate designee, counsel for plaintiff questioned Mr. Kidder about GMGI, including about "the relationship between [GMGI] and Gawker Media, LLC," which is the precise issue upon which plaintiff seeks additional discovery. Kidder Tr. 44:18-21 (relevant pages attached hereto as Exhibit 3). And, in response to that line of questioning, Mr. Kidder explained that the "sole purpose of [GMGI] is to facilitate ownership in Gawker Media, LLC and Kinja, which is a Hungarian company." Kidder Tr. 42:12-15. In short, there is simply no reason to permit further discovery where the relevant facts are clear: GMGI did not publish the Gawker Story and there are no grounds for piercing the corporate veil separating GMGI from Gawker Media, LLC (the actual publisher).

For these reasons, and the reasons set for in GMGI's opening motion papers, GMGI respectfully requests that the Court grant its Motion and dismiss Plaintiff's First Amended Complaint with prejudice as to it.

Dated: October 25, 2013

Respectfully submitted,

THOMAS & LOCICERO PL

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of October 2013, I caused a true and correct copy of the foregoing to be served electronically upon the following counsel of record at their respective email addresses via the Florida Courts E-Filing Portal:

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