Filing # 18517182 Electronically Filed 09/22/2014 03:14:21 PM

EXHIBIT 18

ELECTRONICALLY FILED 9/22/2014 3:14:31 PM: KEN BURKE, CLERK OF THE CIRCUIT COURT, PINELLAS COUNTY

Filing # 18186631 Electronically Filed 09/12/2014 03:47:50 PM

IN THE SECOND DISTRICT COURT OF APPEAL
STATE OF FLORIDA

CASE NO. 2D14-2630

BLOGWIRE HUNGARY SZELLEMI ALKOTAST HASZNOSITO, KFT

Specially Appearing Defendant/Appellant

v.

TERRY GENE BOLLEA,
Professionally known as HULK HOGAN

Plaintiff/Appellee

ON APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT IN AND FOR PINELLAS COUNTY, FLORIDA
(Case No. 12012447-CI-011)

ANSWER BRIEF OF PLAINTIFF/APPELLEE TERRY GENE BOLLEA

CHARLES J. HARDER
Pro Hac Vice No.: 102333
DOUGLAS E. MIRELL
Pro Hac Vice No.: 109885

HARDER MIRELL & ABRAMS LLP
1925 Century Park East, Suite 800
Los Angeles, CA 90067

KENNETH G. TURKEL
Florida Bar No.: 867233
CHRISTINA K. RAMIREZ
Florida Bar No.: 954497

BAJO CUVA COHEN & TURKEL, P.A.
100 North Tampa Street, Suite 1900
Tampa, FL 33602

Attorneys for Plaintiff/Appellee Terry Gene Bollea

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Treatises

I. INTRODUCTION

Appellant Blogwire Hungary Szellemi Alkotást Hasznosító, KFT's (now known as Kinja, KFT; hereinafter "Kinja") opening brief is an exercise in obfuscation—an effort to muddy an otherwise clear record for Kinja's procedural benefit. Kinja moved to dismiss for lack of personal jurisdiction. The trial court denied the motion without prejudice so that Appellee Terry Bollea (professionally known as Hulk Hogan) could conduct jurisdictional discovery. Before that discovery was complete, Kinja joined its co-defendants in moving to dismiss **on the merits**. The court denied Kinja's motion to dismiss on the merits (and all of the other defendants' merits dismissal motions as well). Kinja noticed this appeal of both the jurisdiction order **and** the merits order, but has only made arguments in its opening brief based on alleged lack of personal jurisdiction (that is, the trial court's ruling **without prejudice** to permit jurisdictional discovery). Kinja's opening brief makes no arguments regarding the merits order and therefore has waived its right to argue that issue on reply or otherwise in this appeal.

The sole question presented thus presented by this appeal is: Did the trial court abuse its discretion in requiring Kinja to submit to jurisdictional discovery before determining its motion to dismiss asserting lack of personal jurisdiction? As discussed herein, the trial court's order was well within its sound discretion.

First, the applicable standard of review for orders permitting jurisdictional discovery is abuse of discretion, not, as Kinja contends, *de novo*.

Second, Florida courts hold that it is proper to permit jurisdictional discovery **before** deciding motions to dismiss on personal jurisdiction grounds.

Mr. Bollea has shown sufficient grounds for jurisdictional discovery. He seeks to show specific jurisdiction due to Kinja's direct involvement in the conduct at issue, or as an alter ego of the lead defendant, Gawker Media, LLC, or both. Kinja is a sister company of Gawker Media, LLC. Kinja owns the domain name Gawker.com, where the sex video depicting Mr. Bollea, which lies at the heart of this action, was posted. Kinja also owns the registered trademarks to the Gawker trademark GAWKER, and other marks that were and are used at Gawker.com, which serve to drive traffic to the site and specifically to the sex video. Kinja lists a New York address as its business address in its filings with the United States Patent and Trademark Office. Kinja also enters into license agreements and related business transactions with defendant Gawker Media, LLC, a Delaware corporation, with its headquarters in New York City, as Gawker Media, LLC has admitted in depositions.

Mr. Bollea therefore is entitled to serve discovery testing Kinja's assertions that it had no involvement in the conduct at issue in this litigation, that Kinja did not profit in any manner (whether directly or indirectly) from that conduct, and that

all of its financial transactions were at arm's length and not used as a way to move money out of the reach of creditors. Thus, the trial court's order allowing Mr. Bollea to conduct such discovery before making a final ruling that there was no personal jurisdiction over Kinja was correct, and certainly was not an abuse of discretion.

Kinja spends much of its brief arguing the merits of its personal jurisdiction argument (which is not at issue in this appeal, because the trial court ordered only jurisdictional **discovery**; the issue of personal jurisdiction over Kinja has yet to be finally determined by the trial court). Kinja's argument is based on a complete fabrication—that the trial court supposedly made a final ruling that it had personal jurisdiction over Kinja. The trial court's ruling was nothing of the kind; Kinja's jurisdictional motion was denied **without prejudice** so that Mr. Bollea could take jurisdictional discovery.

Once one looks past Kinja's deliberate misdirection, Kinja's only response on the jurisdictional discovery issue is its claim that an alleged 25,000 pages have been produced in this litigation. However, Kinja points to no evidence in the record that supports either its claim that there were 25,000 pages of documents produced, or what those documents allegedly contained. Kinja has not met its burden to show that the jurisdictional discovery ordered by the Court below has been conducted or completed. (The true facts are that **Kinja** has not produced **any**

documents, or **any** substantive responses to discovery—including both jurisdictional discovery and discovery on the merits.[1]) Kinja certainly has not shown that the trial court—which is in the best position to determine if jurisdictional discovery has been completed—abused its discretion in ruling that jurisdictional discovery should proceed.

One final important issue is this: The instant appeal is a stalling tactic by Kinja and its affiliated Gawker defendants, who are using this appeal to prevent Kinja from having to file an answer, thereby (indefinitely) delaying the scheduling of a trial date. *See* Fla. R. Civ. P. 1.440 (prohibiting the setting of a trial date until the case is "at issue"). Such obstructionist tactics should not be countenanced—Kinja should be required to fully respond to the jurisdictional discovery so that its

---

[1] Mr. Bollea represents to the Court the following: (1) the "25,000 pages" are documents produced by **Gawker Media, LLC**, Kinja's co-defendant, not Kinja, and **Kinja has yet to produce a single page in response to document demands in this action**; (2) Kinja has objected to producing **any** responses to discovery on the grounds that this appeal is pending and has not substantively responded to any discovery directed to it; (3) Gawker Media, LLC's witnesses have testified that Kinja and Gawker Media, LLC have engaged in business transactions, yet the documents produced **do not include the records of any transactions between Kinja and Gawker Media, LLC, or any other Gawker entities for that matter**, and thus provides no basis to determine if any of the Gawker entities are engaging in "sham" transactions or defrauding creditors; and (4) the "25,000 pages" were produced in response to discovery **on the merits** (*i.e.*, relating to Gawker Media, LLC's publication of the sex video). Should this Court desire that the record be supplemented, Mr. Bollea will provide an affidavit of counsel substantiating the above representations and attaching a copy of Kinja's written objections to responding to any discovery while this appeal is pending.

motion to dismiss alleging the absence of personal jurisdiction may be finally determined.

II. STATEMENT OF FACTS

A. The Surreptitious Recording

Several years ago, Mr. Bollea had a private sexual encounter with a woman in a private bedroom. Kinja App., TAB A (First Amended Complaint ("FAC") ¶¶1, 26). Mr. Bollea was unaware that the encounter would be recorded and never consented in any way to any audio or video recording of that encounter. *Id.* (FAC ¶2). Unbeknownst to Mr. Bollea, a hidden camera and microphone recorded the encounter. *Id.* At no time did Mr. Bollea consent to the release or distribution of any recording of the encounter. *Id.* (FAC ¶29).

B. The Publication of the Sex Video

On or about October 4, 2012, Gawker.com, a website domain owned by Kinja and operated by Gawker Media, LLC, obtained and posted footage of Mr. Bollea fully naked, with an erect penis, and engaging in oral sex and sexual intercourse in different positions (the "Sex Video"). *Id.* (FAC ¶¶27, 28). The images and audio were not blocked, blurred or obscured in any way. *Id.* The web page containing the Sex Video was capable of being (and was) viewed millions of times since it was posted. *Id.* (FAC ¶30).

C. The Allegations Against Kinja

Mr. Bollea filed his Complaint in the case at bar on October 15, 2012, and on December 28, 2012, filed an amended complaint in this action naming Gawker Media, LLC and Kinja as defendants (the "FAC"). Kinja App., TAB A. Mr. Bollea alleges facts regarding how the Sex Video was posted on Gawker.com, how Mr. Bollea's privacy was invaded, and also alleges that: (1) Kinja owned the domain Gawker.com where the Sex Video was posted, *id.* (FAC ¶18); (2) Kinja was one of the companies that owned and controlled the Gawker website, *id.* (FAC ¶20); (3) Kinja, as an agent, partner, co-venturer, or otherwise, was responsible for the acts of Gawker Media, LLC, and Kinja had authorized and ratified the actions alleged in the FAC, *id.* (FAC ¶24); and (4) Kinja, along with the other Gawker entities, was responsible for posting the Sex Video and invading Mr. Bollea's privacy, *id.* (FAC ¶1).

D. Summary of the Jurisdictional Discovery that Mr. Bollea Seeks from Kinja

Kinja is the sister company of lead defendant Gawker Media, LLC. Kinja owns the domain name Gawker.com where the Sex Video was posted; it also owns the registered trademarks for GAWKER, which serve to drive traffic to Gawker.com and the Sex Video. Kinja uses a New York City address for its United States Patent and Trademark Office filings. Kinja disclaims involvement in the publication of the Sex Video and any contacts with Florida. Mr. Bollea wishes

to test the veracity of those allegations by obtaining discovery of documents relating to Kinja's ownership of the domain name Gawker.com, and related trademarks, the extent of Kinja's participation with that website, and Kinja's revenues relating to the site and Gawker Media, LLC generally. Mr. Bollea further seeks discovery of whether there is personal jurisdiction over Kinja under an alter ego theory, and wishes to obtain documents evidencing financial transactions between Gawker Media, LLC and Kinja, whether such transactions are at arm's length, whether Kinja was paid fair market value or is being used by Gawker Media, LLC or its affiliates to hide assets from creditors, and similar information.

III. PROCEDURAL HISTORY

A. Kinja's First Motion to Dismiss Is Denied Without Prejudice to Permit Jurisdictional Discovery.

On November 12, 2013, Kinja moved to dismiss for lack of personal jurisdiction, and also on the ground that Mr. Bollea allegedly failed to state a cause of action against Kinja. Kinja App., TAB D. With respect to the personal jurisdiction part of the motion, the **sole** ground of opposition by Mr. Bollea was that he was entitled to jurisdictional discovery. *See* Kinja App., TAB E at 1 ("Bollea is entitled to jurisdictional discovery to test the veracity of Kinja's claim that it has no contacts with the forum and there is no other basis for jurisdiction."); *id.* at 5 ("The claims against Kinja may not be dismissed for lack of personal jurisdiction until jurisdictional discovery is conducted."); *id.* at 6, n.2 ("As Kinja

contends it is a separate entity, Bollea is entitled to obtain jurisdictional discovery from the supposedly separate Kinja rather than being bound by whatever Gawker Media, LLC says."); *id.* at 6 (citing the fact that Kinja waited until after the deposition of Scott Kidder to file its motion, and contending that "[t]his obvious procedural unfairness precludes Kinja from prevailing on its jurisdictional objection until discovery on the specifics of the objection takes place.").

In its reply brief, Kinja argued that there was "no need for jurisdictional discovery," claiming instead that the discovery provided by Gawker was sufficient. Kinja App., TAB F at 4.

On January 17, 2014, the Court heard argument on Kinja's motion to dismiss. Mr. Bollea argued that he needed, and was entitled to, jurisdictional discovery. Kinja App., TAB G at 89:11–13 ("Now, as to jurisdiction, the cases allow jurisdictional discovery. We haven't gotten it yet."). Kinja argued that the discovery provided by Gawker—in particular, deposition testimony from *Gawker's* corporate designee, Scott Kidder—was sufficient to satisfy any jurisdictional discovery obligations. *Id.* at 95:23–96:2 ("So we have not denied the discovery. They sat with people, including Mr. Kidder, who is the managing director, and asked him a bunch of questions about the relationship between Kinja and Gawker Media, LLC.").

The Court disagreed with Kinja, and ruled in Mr. Bollea's favor. *Id.* at 96:20–22 ("I'm going to deny the motion to dismiss at this time. Some of the discovery needs to go forward."). Kinja submitted a proposed order that confirmed the motion was denied because Mr. Bollea was being given the opportunity to conduct jurisdictional discovery. Bollea App., TAB A ("Kinja may renew its motion after Plaintiff has an opportunity to take additional jurisdictional discovery."). On May 14, 2014, the Court entered the order as proposed by Kinja. Bollea App., TAB B

Following the Court's oral ruling at the January 17, 2014, hearing, Mr. Bollea was forced to file a motion to compel certain categories of documents that Gawker refused to produce, including documents relating to establishing jurisdiction over Kinja. On February 26, 2014, the Court entered a written order **granting** Mr. Bollea's motion to compel for certain of those categories. Kinja App., TAB I.

B. Kinja Files a Second Motion to Dismiss *On the Merits*, And Expressly Admits That Its Motion Does Not Seek to Re-litigate the Earlier Ruling Denying the Jurisdictional Motion to Permit Discovery.

On April 8, 2014, Kinja filed a one-page document "noticing a new hearing date" for its motion to dismiss and setting that hearing for April 23, 2014, without stating any grounds or filing a points and authorities. Bollea App., TAB C. In the same document, Gawker also noticed a hearing on three other motions to

dismiss—by Gawker Media, LLC, Nick Denton, and A.J. Daulerio—all on the merits (not on jurisdictional grounds). Thus, Kinja's second motion to dismiss appeared to relate to its merits issues, and not personal jurisdiction issues, which had already been decided.

On April 16, 2014, in response to Kinja's second motion to dismiss, Mr. Bollea filed an opposition to the re-noticed motion, arguing: (1) Kinja had not provided any grounds for reconsideration of the trial court's prior order; (2) Kinja had not provided any jurisdictional discovery or produced any documents; and (3) because circumstances had not changed since Kinja's previous motion, that Kinja's motion to dismiss should be denied for the same reasons stated in Mr. Bollea's opposition to Kinja's first motion. *See* Kinja App., TAB J. Specifically, Mr. Bollea argued that "Kinja may not re-notice its motion to dismiss unless and until Mr. Bollea has had an opportunity to obtain meaningful jurisdictional discovery." *Id.* at 4.

On April 21, 2014, Kinja filed a reply in support of its re-noticed motion to dismiss. In that reply, Kinja stated that the purpose of its motion was **not** to re-litigate the jurisdictional discovery issue, but rather to argue that the complaint against Kinja failed to "state a viable claim on the merits." Kinja App., TAB K at 1 ("At the January 17, 2014 hearing, the Court *and* the parties—including counsel for plaintiff—addressed only the question of whether Kinja is subject to the

Court's jurisdiction and had sufficiently alleged jurisdictional facts in its Complaint. Kinja expressly reserved its arguments about plaintiff's ability to state a viable claim on the merits. It is now asking the Court to rule on that question."); *id.* at 3 ("Plaintiff has understood for many months that the Court has yet to rule on Kinja's arguments about the merits of plaintiff's claims, and that Kinja is not seeking reconsideration of jurisdictional issues already adjudicated."); *id.* at 3–4 ("In any case, jurisdictional discovery has no bearing on the pending motion to dismiss, which addresses solely whether plaintiff can state a viable claim against any of the Gawker Defendants."). Kinja even stated that Mr. Bollea's concerns regarding Kinja re-noticing its motion on jurisdictional grounds were "not well founded." *Id.* at 3.

Kinja's motion was heard on April 23, 2014. Mr. Bollea's counsel stated that Kinja was not renewing the jurisdictional objection, but rather was moving to dismiss on the merits. Kinja App., TAB L at 42:12–25 ("I believe what it's saying now is that it reserved the right to resume its motion on the merits . . . . And I don't have a problem with that . . . . [B]ecause Your Honor has already ruled on the jurisdictional component of it."); *id* at 43:22–44:3 ("First, Kinja is not moving based upon jurisdiction at this time. It acknowledges that this issue has already been foreclosed. So we haven't prepared anything in opposition to that.").

In rebuttal, Kinja's counsel confirmed **again** that Kinja had **not** renewed its motion with respect to jurisdiction, **and** also conceded that jurisdictional discovery was not complete. *Id.* at 57:4–13. ("It is correct that Your Honor, in addition to allowing us I think to reserve the merits issues about both the DCA opinion and the individual causes of action . . . denied that motion without prejudice to being brought again after discovery. And we've obviously deferred doing that until we had this hearing [on the merits] because it [a continued hearing on the jurisdictional issues, following completion of the jurisdictional discovery] **may be unnecessary**.") (emphasis added); *id.* at 58:6–13 ("[B]ut it sounds to me otherwise like Mr. Harder [counsel for Mr. Bollea] is acknowledging that Kinja is entitled to both litigate **the merits** along with the other Gawker defendants today and, once the discovery is done on jurisdiction, to renew its motion. And if that's true, then I think we're in agreement about that.") (emphasis added).

On May 1, 2014, Mr. Bollea propounded jurisdictional discovery directly to Kinja. Bollea App., TAB D. On May 27, 2014, Kinja filed a notice of appeal. Kinja App, TAB N. There is no evidence in the record that Kinja has served answers to this discovery (and indeed, Kinja has not done so, instead objecting to it on the ground that this appeal is pending).

C. The Trial Court Rules on Kinja's Motion on the Merits and *Leaves in Place* Its Ruling that Mr. Bollea Be Permitted Jurisdictional Discovery Before Kinja's Jurisdictional Motion Is Decided.

During the April 23, 2014 hearing, the Court asked about the status of the jurisdictional discovery as to Kinja. Mr. Bollea's counsel responded that the discovery was not complete—explaining that "we have a meet-and-confer letter to them as to a number of issues," and, specifically, that Gawker has "not produced any documents which are license agreements between Kinja and Gawker Media." Kinja App., TAB L at 44:8–13. Kinja's counsel contended that the discovery was most likely complete, explaining that he had recently sent a meet-and-confer letter addressing certain issues identified by Mr. Bollea. *Id.* at 56:20–58:6. But both parties (including Kinja's counsel) **agreed** that the jurisdictional discovery would need to be completed **before** the jurisdictional motion to dismiss could be re-noticed, and that the matter was not before the Court at that time. Kinja's counsel represented to the trial court at the April 23, 2014 hearing: "And we haven't even scheduled to meet and confer because we were – I believe that that will dispose of the questions. But if not, we'll obviously, you know, talk to them about that. But the Kinja – but it sounds to me otherwise like Mr. Harder is acknowledging that Kinja is entitled to both litigate the merits along with the other Gawker Defendants today and, **once the discovery is done on jurisdiction, to renew its motion**. And

if that's true, then I think **we're in agreement about that**." *Id.* at 58:2–13 (emphasis added).

The trial court ruled that it was denying the Kinja motion to dismiss without prejudice at this time, and would await the results of further discovery. *Id.* at 62:24–63:6.

On May 14, 2014, the trial court entered written orders denying both of Kinja's motions to dismiss. The denial of the November 2013 motion stated that "Kinja's motion to dismiss for failure to state a claim (regarding jurisdiction) and for lack of personal jurisdiction is DENIED WITHOUT PREJUDICE. Kinja may renew its motion after Plaintiff has an opportunity to take additional jurisdictional discovery." Kinja App., TAB H (emphasis in original). As to the April 2014 motion to dismiss on the merits, the Court's ruling denying that motion reads: "Motion to dismiss of Defendant Kinja, KFT is DENIED." Kinja App., TAB M.[2]

---

[2] The record is clear that the trial court denied Kinja's **jurisdictional** motion to dismiss on the ground that jurisdictional discovery was required, given that this was the **only** argument Mr. Bollea made. Thus, the feigned puzzlement that Kinja expresses in its brief over the basis for the trial court's ruling, *Kinja Bf.* at 19 ("the basis for Judge Campbell's decision to deny Blogwire Hungary's motion to dismiss is not entirely clear"), and Kinja's speculation that the trial court must have found Kinja to be Gawker Media, LLC's alter ego, *id.*, is manifestly dishonest.

Additionally, were Kinja's construction of the facts accepted, this would mean that on the **same day**, the trial court signed contradictory orders permitting jurisdictional discovery and (under Kinja's version of the facts) finally resolving the motion to dismiss without jurisdictional discovery. Kinja's version of the facts is both irrational and unsupported by the record.

On May 27, 2014, Kinja noticed the present appeal of **both** May 14, 2014 orders—the denial of the jurisdictional motion without prejudice, **and** the denial of the merits motion. Kinja App. at TAB N. However, Kinja's opening brief addresses **only** the jurisdictional issue. Kinja has thus waived its appeal from the trial court's order denying Kinja's motion to dismiss on the merits.

On June 16, 2014, Mr. Bollea moved to dismiss Kinja's appeal on the ground that no final determination of jurisdiction had been made. Bollea App., TAB E. On July 17, 2014, this Court entered an order denying Mr. Bollea's motion to dismiss. Kinja App., TAB O.

IV. SUMMARY OF ARGUMENT

This is an appeal about one issue—jurisdictional discovery. The issue is whether it is an abuse of discretion for a trial court to deny a motion to dismiss **without prejudice** for lack of personal jurisdiction to allow the plaintiff to conduct jurisdictional discovery as to the entity's contacts with the forum state, as well as whether the corporate veil should be pierced, which would permit the assertion of personal jurisdiction. Mr. Bollea submits that the answer to that question is apparent—there is no abuse of discretion.

First, the applicable standard of review for orders granting jurisdictional discovery is abuse of discretion. This appeal is from an order granting jurisdictional discovery.

Second, Florida courts afford trial courts wide latitude to permit jurisdictional discovery before deciding motions to dismiss on personal jurisdiction grounds. "[A] plaintiff should be able to conduct limited discovery on the jurisdictional question in order to gather facts and file an opposing affidavit." *Gleneagle Ship Management Co. v. Leondakos*, 602 So.2d 1282, 1284 (Fla. 1992). Kinja has adduced **no evidence** that it has submitted to such discovery, and its representations to the contrary are unsupported by anything in the record. Specifically, the purported production of "25,000" relevant pages of documents is not supported by any evidence in the record.[3]

Kinja devotes much of its brief to long discussions of supposedly "unrebutted" evidence and to the legal standards that would apply had there been a full evidentiary record after jurisdictional discovery occurred. However, Kinja never cites to any evidence that would actually be relevant in this appeal—*i.e.*, evidence that Kinja in fact provided all documents and substantive discovery responses relating to the extent of Kinja's involvement in the Gawker.com domain that Kinja owns, the GAWKER trademarks that Kinja owns and licenses to Gawker Media, LLC to drive traffic to Gawker.com (including to the Sex Video),

[3] Mr. Bollea strenuously denies Kinja's contention that any of those alleged pages were responsive to, or relate in any way to, the Kinja jurisdictional discovery propounded by Mr. Bollea. Kinja produced zero pages of documents in discovery, and the documents produced by Gawker Media, LLC were not responsive to the issues relating to Kinja's challenge of personal jurisdiction, or the jurisdictional discovery propounded to it.

Kinja's receipt of revenues from Gawker.com, and Kinja's transactions with its corporate affiliates, including Gawker Media, LLC. Kinja does not cite to that evidence because it is not in the record, and it is not in the record because Kinja has thus far failed to provide any discovery of responsive documents or any discovery responses addressing Kinja's involvement in the publication of the Sex Video at issue.

The trial court was not required to accept Kinja's conclusory affidavits that it had "no contact" with Florida, and the court did not abuse its discretion in permitting jurisdictional discovery to test Kinja's contentions.

In sum, Kinja is asking this Court to allow it to pull off the following trick: (1) move to dismiss based on self-serving and contentless denials that it had any contacts with Florida; (2) fail to provide any discovery responses or responsive documents that would allow Mr. Bollea to test those claims, or alternatively establish that Kinja is an alter ego of its sister company, Gawker Media, LLC, which admittedly did post the Sex Video; (3) appeal the trial court's ruling denying Kinja's motion to dismiss, thereby **staying** the jurisdictional discovery served on Kinja; and (4) after having deprived Mr. Bollea of any jurisdictional discovery, claiming its self-serving affidavits are "unrebutted." It is, of course, easy to point to unrebutted evidence after depriving the other party of an opportunity to discover the evidence that would rebut it. This is exactly why Florida law gives trial courts

discretion to order jurisdictional discovery. The trial court did that here, and Kinja has not provided the slightest basis for this Court to find any abuse of discretion that would warrant disturbing the trial court's ruling.

V. STANDARD OF REVIEW

This appeal is **not** from any **final order** denying Kinja's motion to dismiss, nor from any ruling that Kinja is subject to the personal jurisdiction of the Court (which would be subject to *de novo* review). Rather, it is from an order **deferring** a ruling on Kinja's motion to dismiss to **permit jurisdictional discovery**. Orders permitting jurisdictional discovery are reviewed for **abuse of discretion**, as set forth more fully below.

Specifically, Kinja noticed its appeal from two orders. The first order, arising out of the January 2014 hearing on the motion to dismiss filed in November 2013, expressly stated that Kinja's motion to dismiss was denied without prejudice because Mr. Bollea was permitted to take jurisdictional discovery. Kinja App., TAB H. The second order (as both parties have acknowledged) concerned **only** Kinja's motion to dismiss **on the merits**. Kinja App., TAB L at 43:22–44:1, 57:4–13. Nonetheless, the trial court specifically stated from the bench that the second motion was being denied without prejudice, because the court awaited the results of jurisdictional discovery. *Id.* at 62:25–63:6. Kinja **did not argue the merits in its brief** (thereby waiving that issue on appeal), and is appealing **only** the denial of

its motion to dismiss on grounds of personal jurisdiction, which was denied without prejudice on the sole ground that Mr. Bollea is entitled to take jurisdictional discovery.[4]

Florida law is clear that orders permitting discovery are reviewed for abuse of discretion, because the trial court has wide discretion to control discovery proceedings. "We review orders regarding discovery under an abuse of discretion standard." *Alvarez v. Cooper Tire & Rubber Co.*, 75 So.3d 789, 793 (Fla. 4th DCA 2011). "A trial court is given wide discretion in dealing with discovery matters, and unless there is a clear abuse of that discretion, the appellate court will not disturb the trial court's order." *Id.*; *see also Zapata v. Howett Holdings, Inc.*, 107 So.3d 1190, 1192 (Fla. 3d DCA 2013) (reviewing decision of trial court to hold evidentiary hearing on motion to dismiss for lack of personal jurisdiction under abuse of discretion standard of review).

The fact that the type of discovery at issue is jurisdictional discovery, and that the trial court's order permitting discovery came in the context of the without-prejudice denial of a motion to dismiss, makes no difference. The standard of review is still abuse of discretion, as set forth in a number of persuasive cases from

---

[4] One fact that clearly belies Kinja's pretense that the trial court's order supposedly had nothing to do with discovery, but rather rejected Kinja's jurisdictional objection entirely, is that **Mr. Bollea never once argued that the evidence had established jurisdiction over Kinja**. He **only** argued that he was entitled to jurisdictional discovery. So Kinja would have this Court believe that the trial court granted Mr. Bollea relief that he never even asked for.

other jurisdictions. *Patent Rights Protection Group, LLC v. Video Gaming Technologies, Inc.*, 603 F.3d 1364, 1371 (Fed. Cir. 2010); *Lakin v. Prudential Securities, Inc.*, 348 F.3d 704, 713 (8th Cir. 2003); *Clayton v. Landsing Corp.*, No. 99-7069, 2000 WL 1584583 (D.C. Cir. Sep. 21, 2000); *Wenz v. National Westminster Bank, PLC*, 91 P.3d 467, 469 (Colo. App. 2004).

The cases cited by Kinja are inapplicable—Kinja points to no case where a ruling permitting jurisdictional discovery was reviewed *de novo*. *Redwood Recovery Services, LLC v. Addle Hill, Inc.*, 140 So.3d 1037, 1040 (Fla. 3d DCA 2014), involved review of a ruling granting a motion to dismiss (which the 3d DCA reversed because the trial court had failed to hold an evidentiary hearing) **after** jurisdictional discovery had been conducted. *Id.* at 1039. *Camp Illahee Investors, Inc. v. Blackman*, 870 So.2d 80 (Fla. 2d DCA 2003), reviewed an order denying a motion to dismiss where the facts were undisputed and the issue of jurisdictional discovery was never addressed. Finally, *Edwards v. Airline Support Group, Inc.*, 138 So.3d 1209, 1211 (Fla. 4th DCA 2014), did not involve a motion supported by affidavits, but rather a claim that the pleadings contained a jurisdictional defect; that presented a legal issue which was reviewed *de novo*, but that is nothing like an order permitting jurisdictional discovery.

Accordingly, the standard of review herein is abuse of discretion. "Discretion, in this sense, is abused when the judicial action is arbitrary, fanciful,

or unreasonable, which is another way of saying that discretion is abused only where no reasonable man would take the view adopted by the trial court. If reasonable men could differ as to the propriety of the action taken by the trial court, then it cannot be said that the trial court abused its discretion." *Canakaris v. Canakaris*, 382 So.2d 1197, 1203 (Fla. 1980) (citation omitted). Kinja must establish that **no reasonable judge** would have permitted Mr. Bollea to take jurisdictional discovery. Otherwise, Kinja must lose this appeal.

VI. ARGUMENT

A. Having Chosen to Make Very Limited Arguments in Its Opening Brief on the Issue of Jurisdictional Discovery, Kinja May Not Make New Arguments on Reply.

As stated above, this appeal concerns a single issue—whether the trial court abused its discretion by permitting jurisdictional discovery prior to any dismissal of Kinja. Kinja is quite aware that this is the only issue on appeal; however, it has devoted the bulk of its brief to issues that were not argued by Mr. Bollea below, and has chosen only to briefly discuss the jurisdictional discovery issue. This briefing choice is suspicious, and Mr. Bollea respectfully requests that if Kinja makes new arguments for the first time in reply, those arguments should not be considered by this Court. *J.A.B. Enterprises v. Gibbons*, 596 So.2d 1247, 1250 (Fla. 4th DCA 1992) ("[A]n issue not raised in an initial brief is deemed abandoned and may not be raised for the first time in a reply brief."); *Snyder v.*

Volkswagen of America, Inc., 574 So.2d 1161, 1161 (Fla. 4th DCA 1991) ("An issue raised for the first time on appeal in appellants' reply brief, even though properly preserved for appeal, will not be considered by this court.").

B. The Trial Court Acted Within Its Sound Discretion in Ordering Jurisdictional Discovery.

Florida law provides that it is proper for the trial court to order jurisdictional discovery before granting a foreign defendant's motion to dismiss for lack of personal jurisdiction. In *Gleneagle Ship Management Co. v. Leondakos*, 602 So.2d 1282 (Fla. 1992), the Florida Supreme Court settled this issue. A Florida resident sued a foreign company which owned a ship upon which he suffered personal injuries in the Persian Gulf. The Florida Supreme Court adopted the rule of federal courts and held that the plaintiff was entitled to jurisdictional discovery: "There can be no doubt that this Court has the judicial power to hear and determine questions involving its jurisdiction either of the person or of the subject matter nor that, in order to resolve fact issues on which jurisdiction depends, the ordinary process of the court is available to cause evidence bearing on the fact in issue to be produced." *Id.* at 1284 (citation omitted).

"Limited discovery on jurisdictional issues will assist the trial court in answering the question of whether to grant or deny jurisdiction. While a plaintiff should not file a frivolous complaint alleging personal jurisdiction, we recognize that averments made in good faith may not always rise to assertions which could

be made under oath. Thus, a plaintiff should be able to conduct limited discovery on the jurisdictional question in order to gather facts and file an opposing affidavit." *Id.*

Leondakos remains good law and is followed in the Florida courts. *See Sunseeker International, Ltd. v. Devers*, 50 So.3d 715, 718 (Fla. 4th DCA 2010) (stating that jurisdictional discovery under *Leondakos* is appropriate after service of process is effected on a foreign defendant); *Mason v. Hunton*, 816 So.2d 234, 235 (Fla. 5th DCA 2002) (holding *Leondakos* permits defendants, as well as plaintiffs, to take jurisdictional discovery while a motion to dismiss is pending); *McMillan v. Troutman*, 740 So.2d 1227, 1229 (Fla. 4th DCA 1999) (holding parties were "entitled" to take jurisdictional discovery prior to hearing on motion to dismiss where defendant claimed not to be a Florida resident); *Suroor Bin Mohammed Al Nahyan v. First Investment Corp.*, 701 So.2d 561, 561 (Fla. 5th DCA 1997) (holding jurisdictional discovery was proper under *Leondakos* despite the "sparseness" of the jurisdictional facts alleged in the complaint); *Magic Pan International, Inc. v. Colonial Promenade*, 605 So.2d 563, 567 (Fla. 5th DCA 1992) (reversing and remanding order quashing service of process and stating that the parties would have the right to take discovery under *Leondakos* on remand).

Jurisdictional discovery properly includes discovery on an alter ego theory as well. *Harris Rutsky & Co. Ins. Services, Inc. v. Bell & Clements Ltd.*, 328 F.3d

1122, 1135 (9th Cir. 2003) ("The record is simply not sufficiently developed to enable us to determine whether the alter ego or agency tests are met. This is so because the district court denied ASR's motion for jurisdictional discovery. Further discovery on this issue might well demonstrate facts sufficient to constitute a basis for jurisdiction . . . , and in the past we have remanded in just such a situation. . . . We must conclude, therefore, that the district court abused its discretion in denying ASR's motion for jurisdictional discovery, and that a remand will be necessary to allow ASR the opportunity to develop the record and make a prima facie showing of jurisdictional facts . . . .") (citation omitted).

Leondakos controls this case. The trial court properly denied Kinja's motions and ordered that Mr. Bollea be permitted to take jurisdictional discovery. Under *Leondakos*, that order was not an abuse of discretion. Indeed, it was legally correct and compelled by *Leondakos* even under a *de novo* standard of review.[5]

---

[5] Kinja argues that the trial court's treatment of Kinja was inconsistent with its treatment of GMGI. Kinja cites no authority holding that a trial court is required to deny jurisdictional discovery as to one defendant if it denies discovery as to another defendant. Independently, the trial court exercised its discretion to allow jurisdictional discovery for Kinja while denying it for GMGI, and it had a ratioinal basis for doing so—Kinja owns the domain name Gawker.com, Kinja owns the registered GAWKER trademarks that drove traffic to the website, including the Sex Video, Kinja and Gawker Media, LLC are wholly owned by the same entity (GMGI), entered into numerous licensing transactions with Gawker Media, LLC, and Kinja potentially could be partially responsible for the publication of the Sex Video and/or received revenue generated by the site. Thus, the trial court could reasonably conclude that Kinja had more involvement in the conduct at issue than did GMGI.

C. Kinja Has Adduced No Evidence that Jurisdictional Discovery Has Been Complied With or Completed.

Kinja implies that discovery allegedly provided by Gawker Media, LLC is sufficient to show that there is no personal jurisdiction over Kinja—including a purported production of "25,000" pages of documents. Notably absent is **any citation to any evidence in the record substantiating this claim**. Kinja had the opportunity to put this alleged discovery into the record and show all the jurisdictional discovery that it supposedly provided to Mr. Bollea. Since it did not do so, Kinja has not met its burden on this appeal. *Topp Telecom, Inc. v. Atkins*, 763 So.2d 1197, 1199 (Fla. 4th DCA 2000) ("If a trial judge has no record factual basis—apart from a mere claim or contention of undue burden—to conclude that requested discovery is oppressively excessive, there can be no error and therefore no necessity for any immediate appellate remedy."); *Dean v. Marineways, Inc. of Fort Lauderdale*, 146 So.2d 577, 577 (Fla. 2d DCA 1962) ("[t]he burden is on the appellant to make reversible error appear"; affirming, where the evidence that supposedly established the trial court's error "did not appear in [the] record on appeal"). (Kinja presumably did not make any effort to cite to any such discovery because Kinja did not produce any discovery—instead it objected to all discovery, stonewalled Mr. Bollea, and filed this appeal, which has the effect of preventing Mr. Bollea from moving to compel discovery responses and documents.)

Kinja's brief alludes several times to Mr. Bollea ultimately bearing the

burden of establishing personal jurisdiction, citing *Venetian Salami Co. v. Parthenais*, 554 So.2d 499 (Fla. 1989). However, this burden is not placed upon Mr. Bollea until **after** jurisdictional discovery has been conducted. As the Florida Supreme Court stated in *Leondakos*, "a plaintiff should be able to conduct limited discovery on the jurisdictional question in order to gather facts and file an opposing affidavit. Once discovery on the jurisdictional issue is concluded, the procedure outlined in *Venetian Salami* should be followed by the trial court." 602 So.2d at 1284. At **this** juncture, **Kinja** bears the burden of why the trial court's decision to follow the procedure set forth in *Leondakos* was an abuse of discretion. Kinja has not met its burden.

D. The Cases Cited by Kinja in Support of Its Position That No Jurisdictional Discovery Should Be Permitted Are Inapplicable.

Kinja's purported authorities for its argument that no jurisdictional discovery should be required are inapposite to the facts presented here.

In *Partridge v. Partridge*, 940 So.2d 611, 612 (Fla. 4th DCA 2006), there was no proper service at all—the plaintiff simply mailed a copy of her motion to the defendant. *Partridge* does not address the issue of jurisdictional discovery at all.

Butler v. Sukhoi Co., 579 F.3d 1307 (11th Cir. 2009) (which, notably, applies the **abuse of discretion** standard of review to a jurisdictional discovery

order), is a federal case that cannot be applied here given the clear holdings of the Florida Supreme Court in *Leondakos* and the 5th DCA in *Al Nahyan*. *Butler*, in any event, is distinguishable because it involves **subject matter** jurisdiction and, specifically, whether a suit against a foreign sovereign could go forward under the Foreign Sovereign Immunities Act (the "FSIA"), which is "the sole basis for obtaining jurisdiction over a foreign state in [United States] courts." *Butler*, 579 F.3d at 1312 (quoting *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 434 (1989)).

The court held that jurisdictional discovery regarding an alter ego claim is irrelevant to the issue of subject matter jurisdiction under the FSIA. Obviously, such factors are not present here. Kinja is not a foreign sovereign contesting subject matter jurisdiction under the FSIA. Moreover, if Kinja is determined to be Gawker Media, LLC's alter ego, then personal jurisdiction will be proper over Kinja, pursuant to *Bellairs v. Mohrmann*, 716 So.2d 320, 322 (Fla. 2d DCA 1998) and *Woods v. Jorgenson*, 522 So.2d 935, 937 (Fla. 1st DCA 1988).[6]

---

[6] *Butler* is also inapplicable for another reason: The *Butler* court emphasized the sensitivities involved in permitting discovery of an alter ego claim involving a foreign sovereign (in that case, Russia): "In sum, requiring Russia and its instrumentalities to engage in the burdens and costs of responding to discovery, especially when the jurisdictional question in this case may be resolved simply by reference to the undisputed allegations in the complaint, would 'frustrate the significance and benefit of entitlement to immunity from suit' under the FSIA." 579 F.3d at 1315. There obviously is no such concern in the case at bar.

E. Kinja's Argument That No Jurisdictional Discovery Should Be Permitted Because Mr. Bollea's Complaint Supposedly Is Insufficient Should Be Rejected.

Kinja argues that Mr. Bollea has not met the minimal requirements to plead that Kinja is within the jurisdiction of the Court. This argument was directly rejected by the court in *Suroor Bin Mohammed Al Nahyan v. First Investment Corp.*, 701 So.2d 561 (Fla. 5th DCA 1997). There, a foreign defendant moved to quash service of process of a complaint that the 5th DCA specifically identified as containing an insufficient pleading of jurisdictional facts. 701 So.2d at 561 ("It is doubtful whether service of process on the defendant Suroor Bin Mohammed Al Nahyan through the Secretary of State was proper in light of the sparseness of the allegations contained in the complaint that the defendant was conducting business in Florida. . . ."). Nonetheless, after the trial court denied the motion and ordered jurisdictional discovery, the 5th DCA **denied** the defendant's petition for certiorari seeking review, holding that the trial court's jurisdictional discovery order was **proper**:

> [T]he rationale of [*Leondakos*] logically would apply not only to an issue of *in personam* jurisdiction, but also to service of process where the issue is a factual one going to the underlying jurisdictional basis for use of a particular form of service of process. Here, the question of jurisdiction and service of process share a common factual issue, which is whether Suroor Bin Mohammed Al Nahyan operated, engaged in or carried on a business or business venture in this state. **The defendant has filed an affidavit directed to the issue and the plaintiff is entitled to discovery to test its accuracy.** We agree with the lower court that it is appropriate to permit discovery on such

limited issues.

701 So.2d at 561 (italics in original; boldface added). [7]

Mr. Bollea has properly pleaded jurisdictional facts. His complaint uses the defined term "Gawker Defendants" and alleges that Kinja was involved in **all** of the acts alleged. Further, Mr. Bollea alleges that Kinja was responsible for the acts of its co-defendants under various legal theories and alleges that it authorized and ratified the actions of Gawker Media, LLC, including the publication of the Sex Video.

Kinja cites a number of cases involving insufficient allegations of **causes of action**, and claims that Mr. Bollea failed to plead sufficient facts relating to jurisdiction. *See Kinja Bf.* at 21–22. However, these cases do not hold that parties are required to plead minute detail with respect to allegations of **personal jurisdiction**, and Kinja cites no authority that applies such a rule. Given the holdings of *Leondakos* and *Al Nahyan*, which permit a party to take jurisdictional

---

[7] Importantly, jurisdictional discovery was held permissible in *Al Nahyan* even though (1) the complaint's allegations of jurisdiction were "sparse" and inadequate **and** (2) the defendant had tendered an affidavit denying minimum contacts. In other words, there is **no** threshold showing that plaintiffs must make before a trial court may exercise its discretion to permit jurisdictional discovery, and a trial court is **not** required to credit the defendant's denial of personal jurisdiction prior to discovery simply because it has not been rebutted by the plaintiff. This legal rule makes sense. Often, plaintiffs will have no access to the facts that establish personal jurisdiction, and a requirement that they make a factual showing prior to conducting jurisdictional discovery will allow defendants who **are** subject to personal jurisdiction in Florida to escape that jurisdiction by generally denying the existence of minimum contacts and withholding all evidence to the contrary.

discovery **before** a motion to dismiss is granted, and even when the facts in the pleading are insufficient to establish personal jurisdiction, Kinja cannot analogize jurisdictional allegations to substantive allegations of causes of action that must be more specifically pled.

Mr. Bollea is entitled to amend his complaint even if the Court finds that Kinja is correct that Mr. Bollea's allegations are insufficient and that, due to the insufficient allegations, the trial court abused its discretion in permitting jurisdictional discovery. It is an abuse of discretion to deny a party leave to amend a complaint when dismissing on the pleadings alone, where there is a reasonable possibility that the defect can be cured by amendment. "[T]he trial court is required to exercise the utmost liberality by giving the pleading party every opportunity to correct the defects in the challenged pleading, by dismissing it without prejudice and with leave to amend, provided that the pleading party requests leave to amend." Bruce J. Berman, *Berman's Florida Civil Procedure*, § 1.140:24 at 190 (2014). "Dismissal without leave to amend a petition at least one time has been held to be an abuse of discretion, particularly where it is not clear the complaint could not be made more definite and certain." *Orbe v. Orbe*, 651 So.2d 1295, 1298 (Fla. 5th DCA 1995).[8]

Kinja cites to the rule that where the **facts** show that amendment would be

[8] Mr. Bollea sought leave to amend in the trial court, if the trial court dismissed his complaint. Bollea App., TAB F.

futile, it is not an abuse of discretion to deny leave, but there is not a shred of evidence in the record to support the claim that amendment would be futile. There is no evidence as to what facts will be turned up in jurisdictional discovery, and Kinja has not cited to any evidence in the record that will **conclusively prove** that it had no involvement whatsoever in the posting of the Sex Video at Gawker.com and/or that it never received revenue from the Gawker.com website, and/or that its transactions with Gawker Media, LLC show conclusively that it is treated as a separate company which acts at arm's length and respects corporate formalities. It would be improper to conclude that amendment of the pleadings would be futile based solely on untested and conclusory factual assertions in a self-serving affidavit executed by a Kinja executive.

The implication that there are no circumstances under which there **could be** jurisdiction over Kinja—as a direct actor, an alter ego or otherwise—is incorrect. One of the things that jurisdictional discovery will disclose is whether Kinja's claim that it had no role whatsoever in connection with the publication of the Sex Video is accurate. Additionally, numerous Florida courts have upheld personal jurisdiction on an alter ego theory. This issue is fact-dependent, and Kinja's claim that there can be no facts under which such jurisdiction could possibly be asserted (which is the minimum standard that it would need to meet to show that allowing jurisdictional discovery was an abuse of discretion) is without merit. *See Bellairs*,

716 So.2d at 323 (complaint that alleged that defendant was shell company and instrumentality of parent, and failed to observe corporate formalities or respect the separateness of its existence, was sufficient to state a claim for alter ego and require evidentiary hearing on motion to dismiss on personal jurisdiction grounds); *Merkin v. PCA Health Plans of Florida, Inc.*, 855 So.2d 137, 141 (Fla. 3d DCA 2003) (affirming denial of motion to dismiss for lack of personal jurisdiction where plaintiff alleged that defendants commingled funds and did not maintain corporate formalities); *Woods*, 522 So.2d at 937 (affirming denial of motion to dismiss for lack of personal jurisdiction where plaintiff alleged that defendants did not have separate assets and existed as a financial conduit for their owner's business ventures); *XL Vision, LLC v. Holloway*, 856 So.2d 1063, 1066 (Fla. 5th DCA 2003) (affirming denial of motion to dismiss where plaintiff alleged that defendants commingled funds and that one defendant paid another's liabilities to keep assets away from creditors).

In sum, Kinja has not shown that the trial court—which is in the best position to determine if jurisdictional discovery is necessary or has been completed—abused its discretion in ruling that jurisdictional discovery must proceed.

VII. CONCLUSION

For the foregoing reasons, the trial court's two orders denying Kinja's

motion to dismiss, including the order denying **without prejudice** to permit jurisdictional discovery, should be affirmed.

Respectfully submitted,

Charles J. Harder, Esq.
PHV 102333
Douglas E. Mirell, Esq.
PHV 109885
HARDER MIRELL & ABRAMS LLP
1925 Century Park East, Suite 800
Los Angeles, CA 90067
Tel: (424) 203-1600
Fax: (424) 203-1601
Email: charder@hmafirm.com
Email: dmirell@hmafirm.com

-and-

/s/ Kenneth G. Turkel
Kenneth G. Turkel, Esq.
Florida Bar No. 867233
Christina K. Ramirez, Esq.
Florida Bar No. 954497
BAJO CUVA COHEN & TURKEL, P.A.
100 North Tampa Street, Suite 1900
Tampa, Florida 33602
Tel: (813) 443-2199
Fax: (813) 443-2193
Email: kturkel@bajocuva.com
Email: cramirez@bajocuva.com

Counsel for Plaintiff/Appellee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-mail through the e-portal system this 12th day of September, 2014 to the following:

Barry A. Cohen, Esquire
Michael W. Gaines, Esquire
The Cohen Law Group
201 E. Kennedy Blvd., Suite 1950
Tampa, Florida 33602
bcohen@tampalawfirm.com
mgaines@tampalawfirm.com
jhalle@tampalawfirm.com
mwalsh@tampalawfirm.com
Counsel for Heather Clem

Gregg D. Thomas, Esquire
Rachel E. Fugate, Esquire
Thomas & LoCicero PL
601 S. Boulevard
Tampa, Florida 33606
gthomas@tlolawfirm.com
rfugate@tlolawfirm.com
kbrown@tlolawfirm.com
Counsel for Appellant Kinja and Gawker Defendants

David R. Houston, Esquire
Law Office of David R. Houston
432 Court Street
Reno, NV 89501
dhouston@houstonatlaw.com

Seth D. Berlin, Esquire
Paul J. Safier, Esquire
Alia L. Smith, Esquire
Michael D. Sullivan
Levine Sullivan Koch & Schulz, LLP
1899 L. Street, NW, Suite 200
Washington, DC 20036
sberlin@lskslaw.com
psafier@lskslaw.com
asmith@lskslaw.com
msullivan@lskslaw.com
Pro Hac Vice Counsel for Appellant Kinja and Gawker Defendants

Julie B. Ehrlich, Esquire
Levine Sullivan Koch & Schultz, LLP
321 West 44th Street, Suite 1000
New York, NY 10036
jehrlich@lskslaw.com
Pro Hac Vice Counsel for Appellant Kinja and Gawker Defendants

Michael Berry, Esquire
Levine Sullivan Koch & Schultz, LLP
1760 Market Street, Suite 1001
Philadelphia, PA 19103
mberry@lskslaw.com
Pro Hac Vice Counsel for Appellant Kinja and Gawker Defendants

/s/ Kenneth G. Turkel
Attorney

CERTIFICATE OF COMPLIANCE

I hereby certify that this response complies with the font requirements set forth in Fla. R. App. P. 9.100.

/s/ Kenneth G. Turkel
Attorney