EXHIBIT 17

IN THE SECOND DISTRICT COURT OF APPEAL
STATE OF FLORIDA

CASE NO. 2D14-2630

BLOGWIRE HUNGARY SZELLEMI ALKOTÁST HASZNOSÍTÓ, KFT

Specially Appearing Defendant-Appellant,

v.

TERRY GENE BOLLEA, professionally known as HULK HOGAN,

Plaintiff-Appellee.

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

INITIAL BRIEF OF SPECIALLY APPEARING DEFENDANT-APPELLANT BLOGWIRE HUNGARY SZELLEMI ALKOTÁST HASZNOSÍTÓ, KFT

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STATEMENT OF THE CASE AND THE FACTS

Nature of the Case

In the case below, the plaintiff, Terry Gene Bollea, better known as the professional wrestler "Hulk Hogan" ("Bollea"), brought invasion of privacy and related claims based on an Internet post on the website, www.gawker.com. He sued Gawker Media, LLC ("Gawker"), the New York-based entity that operates the website – as well as its CEO and the author of the post. But he also sued Gawker's parent corporation, Gawker Media Group, Inc. ("GMGI"), a Cayman Islands holding company, and, as is relevant here, appellant Blogwire Hungary Szellemi Alkotást Hasznosító, KFT ("Blogwire Hungary"), a separate entity operating in Hungary that is also owned by Gawker's parent company.[1]

Both GMGI and Blogwire Hungary moved to dismiss for lack of personal jurisdiction. Although the court below granted GMGI's motion, it denied Blogwire Hungary's. But Blogwire Hungary, a software development and intellectual property holding company, belongs nowhere in this case. First, as a matter of pleading, plaintiff failed to even allege sufficient facts to establish jurisdiction over this Hungarian entity. Second, and moreover, the uncontested evidence before the trial court (which it is required to consider on a motion to

[1] Since this lawsuit was filed, Blogwire Hungary changed its name to "Kinja, KFT" and it was sometimes referred to by that name in the proceedings below. The initials "KFT" in both names stand for "Korlátolt Felelõsségû Társaság," which is the Hungarian equivalent of a limited liability corporation.

dismiss for lack of jurisdiction) conclusively established that: (1) Blogwire Hungary had *no involvement whatsoever* in the creation, editing, or publication of the post at issue in this lawsuit, nor does it have *any* other contacts with the State of Florida, and (2) personal jurisdiction over Blogwire Hungary cannot be obtained on a veil-piercing theory based on the acts of Gawker, because *Gawker is not a sham corporation* being operated by Blogwire Hungary in an effort to evade Gawker's creditors. *See Dania Jai-Alai Palace, Inc. v. Sykes*, 450 So. 2d 1114, 1117 (Fla. 1984). Rather, Gawker is a separate, 11-year-old company that employs hundreds of people, publishes eight websites, attracts millions of viewers per year, and generates annual revenues in the tens of millions of dollars. At no point in this case has plaintiff submitted an affidavit or other evidence challenging these facts.

The Court below twice considered Blogwire Hungary's jurisdictional motion, first denying it without prejudice and ordering additional discovery and then, after that discovery was completed, denying the motion for good. As explained below, the court below erred for three reasons: (1) Bollea failed to adequately *plead* jurisdiction over Blogwire Hungary, (2) Bollea failed to *establish* jurisdiction under the long-arm statute in response to the unrebutted factual showing by Blogwire Hungary, and (3) exercising jurisdiction over Blogwire Hungary would violate the Due Process Clause, including principles of international comity.

Blogwire Hungary specially appears in this Court and has timely appealed both orders.

The Course of the Proceedings

A. Bollea's Jurisdictional Allegations

The basic facts underlying Bollea's claims are set forth in this Court's opinion reversing the Circuit Court's entry of a temporary injunction. *See Gawker Media, LLC v. Bollea*, 129 So. 3d 1196 (Fla. 2d DCA 2014). In sum, Bollea asserts privacy and related claims arising out of the October 2012 publication of a news report and commentary about an extramarital affair between him and a friend's wife, along with brief, heavily-edited excerpts of a longer video documenting that encounter (the "Gawker Publication"). *Bollea*, 129 So. 3d at 1198, 1202; *see also* Appendix Tab A (First Am. Compl.) ¶¶ 1, 26-28. Bollea has asserted six causes of action, each arising out of the Gawker Publication. *Id.* ¶¶ 1, 27, 28, 49-108; *Bollea*, 129 So. 3d at 1198.

Rather than simply pursuing his claims against Gawker, the company that has admitted that it operates gawker.com and that has appeared and defended itself in this litigation for nearly two years, Bollea insisted on prosecuting his claims against five other entities that were otherwise uninvolved in the conduct at issue. *Bollea*, 129 So. 3d at 1199 n.1. Three of those entities were dissolved, and he eventually agreed to dismiss them voluntarily. Tabs A (Am. Compl.) at ¶¶ 14-16

and B (voluntary dismissal). The fourth is Gawker's parent company, GMGI, which the court below correctly dismissed for lack of jurisdiction. Tab C (May 14, 2014 order). The fifth such improperly-sued entity is appellant Blogwire Hungary, a separate subsidiary of GMGI, based in Hungary.

Bollea's complaint concedes that Blogwire Hungary is a Hungarian corporation. Tab A (Am. Compl.) at ¶ 18. Bollea does not allege that Blogwire Hungary itself committed any tortious act within the State of Florida or played any role in posting the Gawker Publication. Nor does he allege that Blogwire Hungary has such persistent contacts with the State of Florida (it has none) that it could be subject to general jurisdiction. Rather, the complaint lumps Blogwire Hungary together with five other Gawker entities, refers to them collectively as the "Gawker Defendants," and then attributes to that collective the act of publication giving rise to this litigation. *Id.* at ¶¶ 19-20, 28-29, 35. Other than asserting that Blogwire Hungary "owns the Internet domain name GAWKER.COM," *id.* at ¶ 18, the complaint pleads no facts to explain why it is appropriate to treat it as part of a combined entity that collectively is responsible for the complained-of conduct. In addition, the complaint pleads, solely upon information and belief, that the so-called "Gawker Defendants" are all "agents, licensees, employees, partners, joint-venturers, co-conspirators, owners, principals, and employers" of the other Gawker

Defendants," *Id.* ¶ 24, but alleges no *facts* to support these boilerplate legal contentions.

B. The Unrebutted Record Evidence Submitted by Blogwire Hungary

In addition to evaluating whether the allegations of a plaintiff's complaint are sufficient, the trial court properly considers record evidence submitted by the parties. It is ultimately the plaintiff's burden to establish jurisdiction over the defendant.[2]

Here, between the summer of 2013 and March of 2014, Bollea took substantial discovery related to the question of whether Florida courts may assert jurisdiction over Blogwire Hungary. Even prior to the first hearing on Blogwire Hungary's motion to dismiss, Gawker and Defendant A.J. Daulerio (the author of the Gawker Publication) had responded to 200 document requests, 19 interrogatories (including many subparts), and 38 requests for admission. And, plaintiff took three full-day depositions of key witnesses: Daulerio; Defendant Nick Denton, Gawker's President; and Scott Kidder, Gawker's corporate designee. All this discovery confirmed two things.

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[2] *See Venetian Salami Co. v. Parthenais*, 554 So. 2d 499 (Fla. 1989) (in adjudicating motion to dismiss for lack of jurisdiction, trial court engages in a two-step process, examining first whether the plaintiff's jurisdictional allegations are sufficient and second whether, based on facts submitted, the plaintiff has met his burden of establishing jurisdiction). Blogwire Hungary asserted below both that the complaint was defective and made a detailed – and unrebutted – factual showing that it was not subject to personal jurisdiction.

First, it confirmed that Blogwire Hungary played no role in creating, editing or publishing the Gawker Publication. *See, e.g.*, Tab D, Ex. D at 1-2 (Resp. to Int. No. 11) (Blogwire Hungary "has no 'role in the creation, editing, and/or posting of content on Gawker.com.'"); Tab D, Ex. D at 2-4 (Resp. to Int. No. 12) (*Gawker* "is the publisher of the Gawker Story and the Excerpts, is solely responsible for writing, editing, and publishing the Gawker Story," and Blogwire Hungary "does not create, edit, moderate or otherwise review content on Gawker.com"); Tab D, Ex. E at 7-10 (Resp. to Int. No. 5) (detailed description of how *Gawker* and *its* employees were solely responsible for "the making, editing, subtitling, dissemination, transmission, distribution, [and] publication" of the video excerpts in the Gawker Publication); Tab D, Ex. A (Kidder Tr.) at 246:21-22 (*Gawker* "published the story and . . . is solely responsible for its content.").

The discovery instead confirmed (a) that Blogwire Hungary is "an intellectual property holding company and a software development company"; (b) that it "owns and licenses to Gawker" certain intellectual property for its websites "including trademarks, domains and proprietary software"; and (c) that it "creates content for cink.hu, a Hungarian website." Tab D, Ex. D at 2-3 (Resp. to Int. 12). Mr. Kidder, who also served as Managing Director of Blogwire Hungary at the time, testified under oath that it is "an intellectual property holding and technology and development company," Tab D, Ex. A (Kidder Tr.) at 47:17-18,

and that, while Blogwire Hungary owns and licenses trademarks and software, it does not "hold the copyright[s] to any *content* that has appeared on any Gawker Media websites," Tab F, Ex. 2 (Kidder Tr.) at 220:21-25 (emphasis added). For their parts, both Mr. Daulerio and Mr. Denton were questioned at length about the preparation of the Gawker Publication, and none of their testimony even arguably suggested that Blogwire Hungary had any involvement whatsoever.

Second, the discovery – including Gawker's balance sheets and income statements, along with web traffic data, for the preceding three-and-a-half years – confirmed that Gawker is not a sham company created to defraud creditors. Rather, it is a fully-functioning entity that operates eight popular websites; attracts millions of readers each month; employs a whole team of writers, editors, advertising staff, software engineers and others; and generates tens of millions of dollars in revenue each year. In addition to gawker.com, Gawker publishes www.gizmodo.com (focusing on technology), www.deadspin.com (focusing on sports), www.jezebel.com (focusing on women's issues), www.lifehacker.com (focusing on general life tips and tricks), www.io9.com (focusing on science fiction, fantasy and futurism), www.kotaku.com (focusing on video games), and www.jalopnik.com (focusing on cars and the auto industry).

Gawker also produced approximately 25,000 pages of additional documents that further confirmed the lack of jurisdiction over Blogwire Hungary. Despite the

extraordinary breadth of this production, no document indicated – or even suggested – that Blogwire Hungary played any role in the content that is posted to gawker.com, in the Gawker Publication at issue, or in the management of Gawker or gawker.com. To the contrary, these tens of thousands of pages of documents confirmed, *inter alia*, that:

- All "insertion orders" for advertising on Gawker's eight websites are handled exclusively by *Gawker* – and not Blogwire Hungary.
- Others who have complained about content on Gawker.com or Gawker's other websites understand that *Gawker* – and not Blogwire Hungary – is the responsible entity and, indeed, it was *Gawker* (not Blogwire Hungary or anyone else) that handled such complaints.
- In its most recently produced set of financials and website traffic data, Gawker's annual traffic and revenues have continued to grow.

All told, Gawker, Denton and Daulerio have to date responded to **318** written discovery requests (219 document requests, 41 interrogatories and 58 requests for admission), produced roughly 25,000 pages of documents, and testified at several full-day depositions. That unrebutted record evidence confirms that: (a) Blogwire Hungary played no role in creating, editing or publishing the post at issue and has no other connection to the State of Florida, and (b) Gawker – the entity that *is* responsible for publishing the post – is not a sham entity created

by Blogwire Hungary for an improper purpose like defrauding creditors, but a fully functional entity of its own (the relevant question on whether Blogwire Hungary can be held liable for the allegedly tortious conduct of Gawker).

C. The Trial Court's Denials of Blogwire Hungary's Motions to Dismiss

1. First Hearing

Because it was clear from the outset that Gawker was the only entity responsible for publishing the post at issue, and was in no way a sham, and because substantial discovery completed before Blogwire Hungary was served confirmed these facts (*see* Part B *supra*), Blogwire Hungary specially appeared and filed a motion to dismiss. It asserted that Bollea (a) had not *alleged* sufficient jurisdictional facts to bring it within the State of Florida's long-arm statute and (b) could not meet his burden of *establishing* any basis for the court's exercise of personal jurisdiction whether under the long-arm statute or the Due Process Clause. Together with its memorandum of law, Blogwire Hungary submitted substantial record evidence discussed above and the sworn affidavit of Blogwire Hungary Managing Director Scott Kidder, in which he confirmed that Blogwire Hungary is a Hungarian corporation that "plays no role in developing or publishing the content" for gawker.com. *See* Tab D, Exs. A, D-F (Blogwire Hungary's motion papers and exhibits, including Kidder Affidavit). In response to Blogwire Hungary's detailed factual showing, Bollea filed only a brief, submitting no

documents or affidavits, despite the requirement under governing law that he do so. Tab E (Bollea's Opp.); *see also* Tab F (Blogwire Hungary's reply).

On January 17, 2014, the first of the two hearings, Judge Campbell addressed Blogwire Hungary's motion, as well as GMGI's separate motion to dismiss for lack of jurisdiction. While Judge Campbell granted GMGI's motion and dismissed the complaint against it, she denied Blogwire Hungary's substantively identical motion. With regard to GMGI, Judge Campbell concluded that the complaint failed to plead facts sufficient to establish jurisdiction and that the discovery provided to date likewise failed to establish that the court could exercise jurisdiction over GMGI. Tab G (Jan. 17 Hrg. Tr.) at 81:12-19. Notably, the court did so without requiring GMGI to respond to jurisdictional discovery since the discovery already provided by *Gawker* addressed the relevant question: whether *Gawker* was a sham or a "real" operating entity. *Id.* *See also* Tab C (order granting GMGI's motion to dismiss and denying discovery). Bollea neither appealed that order nor amended his complaint within the time allowed by the trial court.

Turning to Blogwire Hungary's motion, Judge Campbell opined that it was somehow "different" than GMGI, *id.* at 79:13, and accordingly refused to dismiss it from the case, *id.* at 96:20-22. It is unclear why the court concluded it had jurisdiction over one foreign entity but not the other. Judge Campbell appears to

have credited Bollea's arguments based on the facts (both of which are undisputed) that (a) Blogwire Hungary owns the domain name gawker.com and (b) licenses software to Gawker. *See id.* at 87:24 – 88:3 (plaintiff's argument); *id.* at 96:22-24. She also relied on the fact that both Gawker and Blogwire Hungary "have the same owner." *Id.* at 90:19-22. In reaching these conclusions, Judge Campbell advised that she was "taking" the facts "in [the] light most favorable to the Plaintiff on the motion to dismiss." *Id.* at 90:22-24. (As discussed in Part II of the Argument *infra*, that is not the proper standard for a motion to dismiss for lack of jurisdiction, and these facts were not disputed by Blogwire Hungary in any event.) Judge Campbell also rejected the argument that the Due Process Clause precluded the exercise of jurisdiction over Blogwire Hungary, including under a just-issued decision by the U.S. Supreme Court unanimously holding that a German company could not be subjected to jurisdiction based on the conduct of its U.S. subsidiary. *See id.* at 71:7 – 74:1 (citing *Daimler AG v. Bauman*, 571 U.S. ----, 134 S. Ct. 746 (2014)).

Notwithstanding the substantial discovery already provided to Bollea and submitted to the lower court, Judge Campbell indicated that additional "discovery need[ed] to go forward," but that if no more evidence supporting jurisdiction were uncovered, she likely would dismiss Blogwire Hungary. *Id.* at 96:21-24. Judge Campbell's written order memorializing her ruling at the January 17, 2014 hearing

and denying Blogwire Hungary's motion to dismiss "for failure to state a claim (regarding jurisdiction) and for lack of personal jurisdiction" was ultimately entered on May 14, 2014. Tab H. That order expressly recited that the denial was "WITHOUT PREJUDICE" pending Bollea's "opportunity to take additional jurisdictional discovery." *Id.* (emphasis in original).

2. Second Hearing

After substantial additional discovery occurred over the next several months, in late April the trial court took up the various Gawker defendants' motions to dismiss on the merits, and revisited its earlier denial without prejudice of Blogwire Hungary's motion to dismiss for lack of personal jurisdiction. Tab L (Apr. 23, 2014 Hrg. Tr.) at 42:7 – 45:3, 56:20 – 58:13, 62:25 – 63:6. Prior to that second hearing, Bollea filed an additional brief contending that the trial court should not consider Blogwire Hungary's motion to dismiss (including the separate argument that Bollea had failed to state a claim on the merits) because it had already been adjudicated at the prior hearing. Tab J; *see also* Tab K (Blogwire Hungary response to same). However, he submitted no further evidence rebutting Blogwire Hungary's factual showing.

At the hearing, the trial judge inquired as to whether the discovery she had previously ordered following the first hearing had been completed, and counsel for

plaintiff advised that it had.[3] The court then noted that in Blogwire Hungary's "prior . . . motion to dismiss, at that point in time really discovery had not progressed much at that point in time. And it seemed – part of my basis was to allow plaintiff more time to connect [Blogwire Hungary] to the rest of the case. And so at this point in time, discovery has come about." *Id.* at 43:8-17.

The trial judge expressed that she was "troubled" by the inclusion of Blogwire Hungary in the case, *id.* at 63:2-6, stating that "if there isn't more showing up to me, I'm inclined to grant the [Blogwire Hungary] motion to dismiss because I'm really – I appreciate the jurisdictional aspect of it." *Id.* at 62:25-63:4. Nevertheless, the court denied Blogwire Hungary's motion and, at the conclusion of the hearing, proceeded to address the trial schedule with the parties' counsel. *Id.* at 101:14, 102:4 – 106:3.

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[3] *See* Tab L (Apr. 23, 2014 Hrg. Tr.) at 44:5-8 ("following through on Your Honor's [February 26, 2014] order, . . . their document production occurred. And, it did occur in substantial part."); *see also* Tab I (Feb. 26, 2014 discovery order). Bollea's counsel contended that a few items were missing, had been the subject of a follow up letter and would be addressed in a meet and confer conference call if necessary. *Id.* at 44:2 – 45:3. In response, counsel for Blogwire Hungary advised the trial court that it had answered that letter shortly before the hearing to clarify that among the 20,000 pages produced were the documents plaintiff claimed were missing. *Id.* at 56:20 – 57:25. As a result, no "meet and confer" was ultimately needed. In any event, none of the issues raised in that exchange of correspondence addressed facts relevant to the exercise of jurisdiction over Blogwire Hungary.

On May 14, 2014, the trial court entered a written order memorializing her second denial of Blogwire Hungary's motion "for the reasons stated by this Court at the April 23, 2014 hearing." Tab M.

D. This Appeal

Blogwire Hungary timely appealed from both of the Circuit Court's orders. *See* Tab N (notice of appeal with exhibits).

Bollea moved to dismiss the appeal, contending that this Court lacked appellate jurisdiction. First, despite having contended below that the trial court should not re-hear Blogwire Hungary's motion since it had already been adjudicated, *see* Tab J, Bollea argued that this appeal was premature because the trial court had yet not conclusively "determined" the jurisdictional question. In response, Blogwire Hungary explained that in two hearings and two orders several months apart, the trial court had in fact determined jurisdiction as required by Florida Rule of Appellate Procedure 9.130. Second, Bollea argued that there was still more discovery to be conducted, including wide-ranging discovery served on Blogwire Hungary after the second hearing. Blogwire Hungary explained that (a) the exhaustive discovery to date fully addressed the issues on appeal, (b) the additional 116 document requests and 22 interrogatories that Bollea served on Blogwire Hungary largely addressed the merits rather than personal jurisdiction,

and (c) Bollea's contention that more discovery was needed would not deprive this Court of appellate jurisdiction in any event.

On July 18, 2014, this Court denied Bollea's motion. *See* Tab O.

SUMMARY OF ARGUMENT

The trial court erred in concluding that Blogwire Hungary is subject to personal jurisdiction in Florida. The operative complaint does not assert that Blogwire Hungary – a Hungarian corporation with no assets, employees or operations in Florida – is subject to general jurisdiction in this State. Thus, the only question is whether Florida courts have specific jurisdiction over Blogwire Hungary in this litigation. They do not. Blogwire Hungary did not commit a tort within the State, it did not engage in tortious conduct elsewhere that was directed to and caused injury within the State, and it cannot be held liable for the allegedly tortious conduct of Gawker. The fact that Gawker and Blogwire Hungary share a corporate parent does not change this analysis where, as here, Bollea has not demonstrated that there is any basis to disregard the corporate structure. The trial court's conclusion that Blogwire Hungary is a proper defendant in this litigation, notwithstanding the above, cannot be squared with Florida law or with the meaningful limitations the Due Process Clause places on the exercise of personal jurisdiction over a foreign defendant.

ARGUMENT

I. STANDARD OF REVIEW

This Court "review[s] de novo a trial court's ruling on a motion to dismiss for lack of personal jurisdiction." *Redwood Recovery Servs., LLC v. Addle Hill, Inc.*, 140 So. 3d 1037, 1040 (Fla. 3d DCA 2014). *See also Camp Illahee Investors, Inc. v. Blackman*, 870 So. 2d 80, 83 (Fla. 2d DCA 2003) (same); *Edwards v. Airline Support Grp., Inc.*, 138 So. 3d 1209, 1211 (Fla. 4th DCA 2014) (same).

II. IT IS PLAINTIFF'S BURDEN TO PLEAD AND ESTABLISH PERSONAL JURISDICTION.

Long-arm jurisdiction, whether premised on Florida Statutes § 48.193(1)(a), which applies to defendants who do business in the state, or Florida Statutes § 48.193(1)(b), which applies to defendants who commit tortious acts within the state, requires pleading *and* proof of conduct in Florida giving rise to the cause of action. *See Execu-Tech Bus. Sys., Inc. v. New Oji Paper Co.*, 752 So. 2d 582, 584 (Fla. 2000) (Florida courts can only exercise long-arm jurisdiction when a "foreign corporation commits a 'tortious act' on Florida soil"); *Camp Illahee Investors, Inc.*, 870 So. 2d at 85 ("By its terms, section 48.193(1) requires connexity between the defendant's activities and the cause of action."); *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."). Courts "are required to strictly construe Florida's long-arm statute." *Camp Illahee Investors, Inc.*, 870 So. 2d at 83.

For close to 35 years, the Florida Supreme Court has followed an established "procedure for determining whether a Florida court has personal jurisdiction over a non-resident defendant":

> "Initially, the plaintiff may seek to obtain jurisdiction over a nonresident defendant by pleading the basis for service in the language of the statute without pleading the supporting facts. By itself, the filing of a motion to dismiss on grounds of lack of jurisdiction over the person does nothing more than raise the legal sufficiency of the pleadings. A defendant wishing to contest the allegations of the complaint concerning jurisdiction or to raise a contention of minimum contacts must file affidavits in support of his position. The burden is then placed upon the plaintiff to prove by affidavit the basis upon which jurisdiction may be obtained."

Redwood Recovery, 140 So. 3d at 1040 (quoting *Venetian Salami*, 554 So. 2d at 502). Thus, a court's first step is to determine whether the complaint "allege[s] sufficient jurisdictional facts to bring the action within the ambit of the statute." *Edwards*, 138 So. 3d at 1211 (brackets and internal quotation marks omitted). If it does not, the case must be dismissed.

If the jurisdictional allegations are sufficient, but the defendant also has submitted evidence and affidavits challenging jurisdiction, the court proceeds to the second step. In such circumstances, the plaintiff must submit an affidavit or

other evidence to satisfy his burden of establishing jurisdiction. The court then properly considers all this evidence in deciding the jurisdictional question. *See Mancher v. Seminole Tribe of Florida*, 708 So. 2d 327, 328 (Fla. 4th DCA 1998) (noting "that a court may consider affidavits when determining a motion to dismiss . . . challeng[ing] personal jurisdiction"); *Blumberg v. Steve Weiss & Co.*, 922 So. 2d 361, 363 (Fla. 3d DCA 2006) (granting motion to dismiss for lack of personal jurisdiction based upon facts revealed during discovery).

Here, the lower court erred when it proceeded to evaluate the jurisdictional question in the "light most favorable to the plaintiff," Tab G (Jan. 17, 2014 Hrg. Tr.) at 90:22-24, since settled law provides that *plaintiff* bears the ultimate *burden* of establishing jurisdiction. *See Venetian Salami Co.*, 554 So. 2d at 502 (once a defendant raises facts challenging personal jurisdiction, "[t]he burden is then placed upon the *plaintiff* to prove by affidavit the basis upon which jurisdiction may be obtained") (emphasis added); *Clement v. Lipson*, 999 So. 2d 1072, 1075 (Fla. 5th DCA 2008) (plaintiff must respond to defendant's showing and "demonstrate the basis for long-arm jurisdiction by" providing an affidavit "or other evidence, like a deposition transcript"); *Wendt v. Horowitz*, 822 So. 2d 1252, 1255 (Fla. 2002) (same). Indeed, since Bollea failed to submit *any* affidavit or testimony, Blogwire Hungary's motion should have been granted for this reason alone. *See Carter v. Estate of Rambo*, 925 So. 2d 353, 356 (Fla. 5th DCA 2006)

(reversing trial court's order denying dismissal on basis of lack of personal jurisdiction where plaintiff failed to meet burden); *Field v. Koufas*, 701 So. 2d 612, 614 (Fla. 2d DCA 1997) (granting motion to dismiss based on lack of personal jurisdiction where defendants' affidavits contradicted plaintiff's allegations and plaintiff failed to adequately rebut them); Philip J. Padovano, 5 West's Fla. Practice, Civil Practice § 8:7 & n.40 (2014 ed.).

Finally, even where a plaintiff has submitted affidavits or testimony, the trial court is also required to determine whether exercising jurisdiction comports with the exercise of Due Process, including whether the defendant has the requisite "minimum contacts" with the State of Florida and whether these contacts relate to the litigation before the court. *See, e.g.*, *Carter*, 925 So. 2d at 355. The court below also failed to conduct this analysis.

III. THERE IS NO BASIS FOR THE EXERCISE OF PERSONAL JURISDICTION OVER BLOGWIRE HUNGARY.

Although the basis for Judge Campbell's decision to deny Blogwire Hungary's motion to dismiss is not entirely clear, she appears to have concluded that Bollea's complaint includes facts sufficient to allege personal jurisdiction over Blogwire Hungary and that Blogwire Hungary was somehow the "alter ego" of Gawker (and that Gawker was a sham) sufficient to bring it within the State's long-arm statute. The trial court was wrong on both counts.

As an initial matter, Bollea's complaint purports to assert specific jurisdiction only. The complaint concedes that Blogwire Hungary is not a citizen or resident of Florida. *See* Tab A (Am. Compl.) ¶ 18. Bollea does not contend that Blogwire Hungary has sufficient contacts with the State of Florida to provide its courts with general jurisdiction over it.[4] Rather, the only asserted basis for jurisdiction over Blogwire Hungary is that, by purportedly acting together with all other Gawker defendants, it "ha[s] committed tortious acts within the state of Florida," and therefore is within the State's long-arm jurisdiction. *Id.* ¶ 8. But, as demonstrated to the trial court below, there is no basis for the exercise of jurisdiction over Blogwire Hungary.

A. Bollea Has Neither Alleged Nor Established Any Tortious Conduct by Blogwire Hungary in Florida.

Whether the Court looks to the allegations in the complaint or the factual record before it, the result is the same: There is no personal jurisdiction over

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[4] Any argument that Blogwire Hungary is subject to general jurisdiction in Florida would be futile. The United States Supreme Court has approved general jurisdiction over a foreign corporation in only one case. *See Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437, 447-48 (1952). In *Perkins*, a Philippine defendant was subject to general jurisdiction in Ohio because the corporation's president, who also functioned as its general manager and major stockholder, resided, ran the corporate office, kept the business's files, handled corporate correspondence, drew employees' salaries, and held directors' meetings all in Ohio. *Id.* Blogwire Hungary – a Hungarian entity – has no operations or personnel in Florida and can hardly be said to be "at home there." *Daimler*, 134 S. Ct. at 760 (rejecting assertion of general jurisdiction over foreign corporation even where agent allegedly committed tortious conduct within the state).

Blogwire Hungary because neither Bollea's allegations nor the unrebutted evidence supports a finding that Blogwire Hungary committed tortious conduct within the State of Florida.

Bollea's complaint lacks allegations sufficient to plead personal jurisdiction over Blogwire Hungary. The complaint bases each of his purported causes of action against Blogwire Hungary on the Gawker Publication. *See* Tab A (Am. Compl.) ¶¶ 1, 5, 28, 57-60, 67-71, 78, 80, 86, 95, 103. Gawker has conceded that, as the operator of the Gawker website, it is responsible for the Gawker Publication. Bollea has not otherwise pleaded any facts to indicate that any *other* named entity – including Blogwire Hungary – played any role in that publication. To the extent that the complaint attributes *any* relevant conduct at all to Blogwire Hungary, it does so only through a pleading sleight-of-hand. The Complaint simply groups various entities with the collective shorthand "Gawker Media," or "Gawker Defendants" and then alleges that this collective entity – which is purely a product of Bollea's naming conventions – "owns, operates, controls and publishes several Internet websites, including the Gawker site." *Id.* ¶¶ 19-20.

Florida law is clear that such a purely "conclusory allegation," unsupported by the necessary "ultimate facts," is insufficient. *Valdes v. GAB Robins N. Am., Inc.*, 924 So. 2d 862, 867 (Fla. 3d DCA 2006). This standard requires a plaintiff to plead his case "with *sufficient particularity* so that the trial judge in reviewing the

ultimate facts may rule as a matter of law whether or not the facts alleged are sufficient as to the factual basis for the inferences the pleader seeks to draw and are sufficient to state a cause of action." *Beckler v. Hoffman*, 550 So. 2d 68, 71 (Fla. 5th DCA 1989) (emphasis added). That standard has not been met here, as there are *no* facts alleged to support the conclusion that Blogwire Hungary (or any of the other entities besides Gawker) collectively published the Gawker Publication. *See, e.g.*, *Eagletech Commc'ns Inc. v. Bryn Mawr Inv. Grp., 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"); *Lawrie v. Ginn Cos.*, 2010 WL 3746725, at *4 (M.D. Fla. Sept. 21, 2010) ("allegations of 'generalized conduct' against multiple defendants are only proper if the complaint also alleges *facts* which evoke more than 'the mere possibility' that *each individual defendant* acted unlawfully") (emphasis added); *Dr. Navarro's Vein Ctr. of Palm Beach, Inc. v. Miller*, 22 So. 3d 776, 778 (Fla. 4th DCA 2009) (in reviewing sufficiency of complaint on motion to dismiss, "[m]ere statements of opinions or conclusions unsupported by specific facts will not suffice") (quoting *Brandon v. Pinellas Cnty.*, 141 So. 2d 278, 279 (Fla. 2d DCA 1962)).

To the extent that Bollea contends that jurisdiction is proper because Gawker published the post at issue using a domain name owned and licensed to it by

Blogwire Hungary, his contention is without merit. Courts consistently have held that even owning and operating a *website* – rather than just, as here, owning the *domain name* and *licensing* it to another entity – does not make the website owner liable for content created by another person or entity, even if it is then disseminated on that website.[5] At bottom, Bollea's allegations that Blogwire Hungary (in Budapest) licensed a domain name, or as discussed below, a piece of software, to Gawker (in New York) is flatly insufficient to establish jurisdiction in Florida. That conduct – entering into a licensing agreement – is not tortious. It was not directed at Florida. And, it did not cause any injury in Florida. Bollea does not and could not allege otherwise.

Even if the allegations in the complaint were sufficient – which they are not – Bollea also failed to refute in any way Blogwire Hungary's factual showing that it did not commit any tortious conduct within Florida. Blogwire Hungary provided

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[5] This has long been the case as a matter of common law. *See, e.g.*, *Cubby, Inc. v. CompuServe, Inc.*, 776 F. Supp. 135, 139 (S.D.N.Y. 1991) (holding internet service provider not liable for defamatory speech because it was nothing more than a conduit through which the subject statements were posted and distributed); *Zeran v. America Online, Inc.*, 129 F.3d 327, 332 (4th Cir. 1997) (explaining that under common-law principles, "[i]t is undoubtedly true that mere conduits, or distributors" are not generally liable for publication-based torts). More recently, that immunity has been codified and expanded in the federal Communications Decency Act. *See* 47 U.S.C. § 230; *see also, e.g.*, *Doe v. America Online, Inc.*, 783 So. 2d 1010 (Fla. 2001) (under CDA, which preempts state law, internet service provider could not be held liable for the posting of allegedly pornographic pictures on its website by others, relying heavily on and agreeing with *Zeran*); *Giordano v. Romeo*, 76 So. 3d 1100 (Fla. 3d DCA 2011).

the trial court with ample record evidence and a sworn affidavit attesting to the lack of personal jurisdiction over it. *See generally* Tab D, Exs. A, D-F (deposition testimony, sworn interrogatory responses and Kidder Affidavit). This evidence as well as the voluminous document discovery provided to plaintiff prior to Judge Campbell's two orders, all make clear that Blogwire Hungary had no involvement in publishing the post at issue. *See* Part B *supra* (describing evidence showing Blogwire Hungary's lack of involvement with the content posted on gawker.com).

Bollea's opposition to Blogwire Hungary's motion to dismiss included no evidence whatsoever – no documents, no deposition testimony, no interrogatory responses, and no affidavits. Given Blogwire Hungary's showing, Bollea's complete failure to rebut it is fatal to his claims. *See Tobacco Merchants Ass'n of U.S. v. Broin*, 657 So. 2d 939, 941-42 (Fla. 3d DCA 1995) (holding that trial court *must* grant motion to dismiss on jurisdictional grounds where defendant contests jurisdiction with affidavit and plaintiff fails to provide sworn proof providing the basis for jurisdiction); *Vencap, Inc. v. McDonald Sec. Corp.*, 827 So. 2d 1061, 1063 (Fla. 2d DCA 2002) (dismissing complaint where defendant contesting jurisdiction filed affidavit and the plaintiff failed to provide sworn proof in response); *Jasper v. Zara*, 595 So. 2d 1075, 1076 (Fla. 2d DCA 1992) (affirming dismissal where the plaintiff did "not carr[y] his initial burden to show in the initial complaint compliance with the Long Arm Statute" and, when the defendant's

affidavits showed lack of jurisdiction, "failed to put forth any other facts which would support jurisdiction" under that statute); *Koufas*, 701 So. 2d at 614 (no basis for specific jurisdiction where affidavits established that defendants had not committed acts directed toward forum state).[6]

B. Bollea Has Neither Properly Alleged Nor Established Jurisdiction Over Blogwire Hungary Based on the Allegedly Tortious Conduct of Gawker.

Personal jurisdiction over Blogwire Hungary also cannot be based upon the alleged conduct by Gawker (which the complaint concedes to be a legally independent business entity, *see* Tab A (Am. Compl.) ¶ 12), merely because the two entities share a corporate parent. To the extent that Bollea contends otherwise, he is incorrect.

Under settled Florida law, stating a claim against one business entity based on the conduct of an affiliated entity requires a showing both (a) that the affiliated entity whose conduct is at issue is a "mere instrumentality" of the other entity, *and* (b) that there has been "improper conduct" in the formation and/or corporate use of the affiliated entity whose conduct is at issue. *Sykes*, 450 So. 2d at 1117 (rejecting

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[6] Because Bollea did not come forward with an affidavit or other evidence to contradict Blogwire Hungary's affidavit and the sworn deposition testimony and interrogatories it attached to its motion, no evidentiary hearing was warranted. *See World Class Yachts, Inc. v. Murphy*, 731 So. 2d 798, 800 (Fla. 4th DCA 1999) (absent conflicting affidavits "the trial court can resolve the legal issue" regarding whether there is personal jurisdiction over a defendant "on the basis of the affidavits").

veil-piercing claim seeking to link two affiliates owned by the same corporate parent); *see also Steinhardt v. Banks*, 511 So. 2d 336, 338 (Fla. 4th DCA 1987). The mere allegation that a subsidiary or affiliate is an alter ego or instrumentality of the corporate parent no longer suffices to state a claim under Florida law. *Id.* (explaining that *Sykes* "*expressly rejected* the alter ego or instrumentality test which this court had applied for piercing the corporate veil" in previous cases, including *Vantage View, Inc. v. Bali E. Dev. Corp.*, 421 So. 2d 728 (Fla. 4th DCA 1982)).

Here, apart from the patently insufficient allegation that each Gawker Defendant is an "agent" of every other Gawker Defendant, Tab A (Am. Compl.) ¶ 24, Bollea has not alleged that Gawker is an instrumentality of Blogwire Hungary. Nor has he alleged that Gawker was improperly formed or that Blogwire Hungary is somehow misusing Gawker – through their shared parent, GMGI, or otherwise – for an improper purpose like avoiding creditors. As the Florida Supreme Court has repeatedly emphasized, were the law to permit litigants to erase corporate divisions as easily as Bollea urges here, "'it would completely destroy the corporate entity as a method of doing business and it would ignore the historical justification for the corporate enterprise system.'" *Sykes*, 450 So. 2d at 1120 (quoting *Advertects, Inc. v. Sawyer Indus., Inc.*, 84 So. 2d 21, 23-24 (Fla. 1955)).

Bollea's sole allegation as to *any* connection between Blogwire Hungary and Gawker beyond mere corporate affiliation is his contention that Blogwire Hungary "owns the Internet domain name GAWKER.COM," Tab A (Am. Compl.) ¶ 18, licensed it to Gawker, and therefore is responsible for the content published on gawker.com. But it is standard practice for entities within the same corporate family to license intellectual property, and that does not in any way alter their status as legally distinct entities. *See, e.g.*, *Diamond Chem. Co. v. Atofina Chems., Inc.*, 268 F. Supp. 2d 1, 8-9 (D.D.C. 2003) ("joint use of trademarks" did not authorize piercing corporate veil); *Shapiro v. Ford Motor Co.*, 359 F. Supp. 350, 353-55 (D. Md. 1973) (use of "Ford" trademark by subsidiaries did not collapse distinction between parent and subsidiaries).

Nor does it matter that Blogwire Hungary and Gawker share a corporate parent, GMGI, even though GMGI was dismissed for lack of personal jurisdiction. *See* Tab G (Jan. 17, 2014 Hrg. Tr.) at 90:21-24. In *Unijax, Inc. v. Factory Assurance Association*, 328 So. 2d 448 (Fla. 1st DCA 1976), the Court expressly recognized that "[o]wnership of all the stock in several corporations by one [owner] does not create a single unit or justify a disregard of separate corporations." *Id.* at 452. *See also id.* at 453 ("the rights of [separate but related corporate entities] must be maintained in . . . in accord with Florida law"); *Capital One Fin. Corp. v. Miller*, 709 So. 2d 639, 640 (Fla. 2d DCA 1998) (holding that

the "presence of a subsidiary corporation within Florida is not enough, without more, to subject a non-Florida parent corporation to long-arm jurisdiction within Florida"). Although this case law was presented to the trial court, *see* Tab G (Jan. 17, 2014 Hrg. Tr.) at 91:3-93:25, it relied on shared ownership to deny the motion.

Even if the complaint had *alleged* a basis for piercing the corporate veil, the factual record before the trial court decisively refuted any contention that Gawker is somehow a sham entity or mere instrumentality being used for an improper purpose by its parent's other subsidiary. That record established, among other things, that: (1) Gawker is a fully-functioning business with significant operations (indeed, it and its employees publish more than 100,000 posts a year across its eight websites), and (2) Gawker has substantial independent operations and revenues and is not being used by any related entity as an instrument for hiding assets. *See, e.g.*, *McFadden Ford, Inc. v. Mancuso*, 766 So. 2d 241, 242-43 (Fla. 4th DCA 2000) (dismissing for lack of personal jurisdiction where affidavits in support of the motion to dismiss refuted corporate veil-piercing theory); *Hobbs v. Don Mealey Chevrolet*, 642 So. 2d 1149, 1156-57 (Fla. 5th DCA 1994) (same). The complaint against Blogwire Hungary therefore must be dismissed.[7]

[7] Remand to permit Bollea to amend his complaint would be futile given the substantial unrebutted evidence establishing the lack of jurisdiction over Blogwire Hungary. *See, e.g.*, *Hewitt v. Taffee*, 673 So. 2d 929, 933 (Fla. 5th DCA 1996) ("remand . . . to amend [the] complaint would be futile" where facts presented to the court establish lack of personal jurisdiction); *Hotchkiss v. FMC Corp.*, 561 So.

C. Still More Discovery is Unnecessary to Adjudicate This Question.

Bollea apparently contends that he needs still more discovery as to jurisdiction. But no additional discovery is warranted here for several reasons. First, jurisdictional discovery is not necessary where, as here, a motion to dismiss is based (in part) upon the plaintiff's failure to even properly *plead* jurisdiction. *See, e.g.*, *Partridge v. Partridge*, 940 So. 2d 611, 612 (Fla. 4th DCA 2006) (describing "[*i*]*n personam* jurisdiction" as "a pure question of law" and reversing trial court denial of motion to dismiss); *Butler v. Sukhoi Co.*, 579 F.3d 1307, 1314 (11th Cir. 2009) ("Inasmuch as the complaint was insufficient as a matter of law to establish a *prima facie* case that the district court had jurisdiction, the district court abused its discretion in allowing the case to proceed and granting discovery on the jurisdictional issue").

Second, even if Bollea had alleged sufficient jurisdictional facts in his complaint, further discovery still would not be necessary, because Bollea has already taken exhaustive discovery – including 318 written discovery responses, multiple full-day depositions and the production of roughly 25,000 pages of documents – addressing the two key questions raised by Blogwire Hungary's

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2d 1261, 1262-63 (Fla. 2d DCA 1990) (where "facts" establish that "there is no basis for long-arm jurisdiction," amendment would be futile and may be disallowed); *Ganiko v. Ganiko*, 826 So. 2d 391, 396 (Fla. 1st DCA 2002) (directing "dismissal with prejudice for lack of personal jurisdiction" based on facts presented to court).

motion. The facts revealed are undisputed and unequivocally confirm that (a) Blogwire Hungary has no *direct* connection to Florida (through involvement in the post at issue or otherwise) and (b) it may not be held liable *indirectly* for Gawker's conduct on a veil piercing theory because Gawker was not established by Blogwire Hungary as a sham for an improper purpose. *See* Part B *supra*.

At some point, a plaintiff can always say he needs still more jurisdictional discovery, but the Court is required to limit such discovery so that it is not burdensome. *See Gleneagle Ship Mgmt. Co. v. Leondakos*, 602 So. 2d 1282, 1284 (Fla. 1992) ("We emphasize that [jurisdictional] discovery should not be broad, onerous or expansive, nor should it address the merits of the case. Also, where possible, the discovery should be carried out so as to minimize expense to the defendant."). Permitting Bollea to take still more discovery would do nothing more than require Blogwire Hungary to provide the same information plaintiff has already received, further delaying Blogwire Hungary's dismissal from a case that has been pending for nearly two years and in which there has already been extraordinarily extensive discovery.

IV. THE EXERCISE OF PERSONAL JURISDICTION OVER BLOGWIRE HUNGARY WOULD VIOLATE DUE PROCESS.

Because neither the complaint nor the evidence submitted by Blogwire Hungary provides a basis for personal jurisdiction over it, the trial court's orders should be reversed and the complaint against Blogwire Hungary dismissed without

reaching the question of Due Process. *See Reiss v. Ocean World, S.A.*, 11 So. 3d 404, 407 (Fla. 4th DCA 2009) (court not required to undertake minimum contacts inquiry where there is no basis in the complaint or record for jurisdiction over the moving defendant). Should the Court nevertheless reach the issue, it is clear under established law that exercising personal jurisdiction over Blogwire Hungary would be flatly inconsistent with Due Process.

Personal jurisdiction over a nonresident defendant is proper only if the defendant has "certain minimum contacts with [the forum State] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Execu-Tech Bus. Sys.*, 752 So. 2d at 584 (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). "Adequate minimum contacts are established if the court finds that 'the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there.'" *Reiss*, 11 So. 3d at 407 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)). "There must 'be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.'" *Id.* (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985)).

Applying this test, Florida courts have concluded that minimum contacts are absent even where an out-of-state corporation has "admitted business relationships

with at least five different Florida businesses," and has "sold products in Florida," but had not "purposefully directed [tortious activity] toward the residents of Florida." *Enzyme Envt'l Solutions, Inc. v. Elias*, 60 So. 3d 1158, 1162 (Fla. 4th DCA 2011). The same was true where an Ohio corporation executed a contract requiring it to make a payment to an individual in Florida. *See Bohlander v. Robert Dean & Assocs. Yacht Brokerage, Inc.*, 920 So. 2d 1226, 1228-29 (Fla. 3d DCA 2006); *see also Hartcourt Cos., Inc. v. Hogue*, 817 So. 2d 1067, 1071 (Fla. 5th DCA 2002) (no minimum contacts where out-of-state defendant engaged in "telephone calls and e-mail transmissions [with the Florida plaintiff] to make the arrangements" for the contract at issue in the litigation); *Christus St. Joseph's Health Sys. v. Witt Biomedical Corp.*, 805 So. 2d 1050, 1053-54 (Fla. 5th DCA 2002) ("[T]he minimum contacts required by the due process clause [are] not satisfied by a mere showing that a Florida party entered a contract with an out of state party," even where defendant "purchased two machines from a Florida-based company, payment was made or to be made in Florida" and plaintiff "serviced the machines remotely from Florida").

In each of these cases in which no minimum contacts were found, the moving defendant had a far *more direct* and *more substantial* connection with Florida than does Blogwire Hungary – a foreign corporation that has *no* American operations, has *never* appeared in an American court, and has *no* direct connection

to any allegedly tortious conduct in Florida. *See Casita, L.P. v. Maplewood Equity Partners L.P.*, 960 So. 2d 854, 857-58 (Fla. 3d DCA 2007) (expressing "concern" that exercising jurisdiction over foreign defendant that had not committed tortious conduct in Florida "could raise a substantial federal constitutional question"). Indeed, in an opinion directly addressing jurisdiction over a claim arising out of a publication, the United States Supreme Court made clear that jurisdiction over a publisher does not automatically confer jurisdiction over a separate entity affiliated with that publisher. *See Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 781 n.13 (1984). Rather, the Court emphasized, as a matter of Due Process, "[e]ach defendant's contacts with the forum State must be assessed individually." *Id.*; *see also Universal Music Venezuela, S.A. v. Montaner*, 105 So. 3d 588, 589 (Fla. 3d DCA 2012) (minimum contacts may not be established by reliance on "the activities of an affiliated, but entirely separate corporation, . . . which, under a contract with the appellant, does distribute its products in this state").

Moreover, in an opinion issued just before the trial court first heard argument on Blogwire Hungary's motion to dismiss, and cited to the court below, Tab G (Jan. 17, 2014 Hrg. Tr.) at 71:7-73:19, the U.S. Supreme Court emphasized the added concerns about subjecting entities from other countries to personal jurisdiction. In *Daimler*, the Supreme Court considered whether, consistent with the Due Process Clause, a California court could exercise personal jurisdiction

over Daimler AG, a German corporation, based on the California contacts of its American subsidiary, Mercedes-Benz USA, LLC. *See* 134 S. Ct. at 750, 751. The Court *unanimously* held that the assertion of jurisdiction over Daimler AG would violate Due Process. *Id.* at 761-62. Importantly, the Court further concluded that "[c]onsiderations of international rapport" militated against subjecting foreign companies – like Blogwire Hungary – to jurisdiction and that doing so "would not accord with the 'fair play and substantial justice' due process demands.'" *Id.* at 763 (quoting *Int'l Shoe*, 326 U.S. at 316)); *see also id.* (crediting Solicitor General's brief explaining international issues raised by expansive exercise of jurisdiction by U.S. courts over foreign entities). *Daimler* thus confirms that the circumstances in which a plaintiff can allege jurisdiction based on a corporate relationship are exceedingly limited, and that the boundaries are even more narrowly circumscribed in cases concerning non-American corporate defendants.[8]

In light of these precedents, there can be no doubt that subjecting Blogwire Hungary to personal jurisdiction in this case would offend Due Process.

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[8] While *Daimler* concerned general jurisdiction, its limitation on American courts' ability to exercise personal jurisdiction over foreign defendants based upon the actions of related American corporations applies with equal force to cases involving specific jurisdiction where the jurisdictional claim is based on a veil piercing theory. *See, e.g.*, *Viega GmbH v. Eighth Jud. Dist. Ct.*, 328 P.3d 1152, 2014 WL 2428848, at *7-9 (Nev. 2014) (applying *Daimler* and concluding that German company was not subject to specific jurisdiction in Nevada based upon the conduct of an affiliated company within the state).

CONCLUSION

For the foregoing reasons, Blogwire Hungary respectfully requests that this Court reverse the trial court's order below denying Blogwire Hungary's motion to dismiss and direct it to dismiss Blogwire Hungary with prejudice.

Dated: August 8, 2014

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the requirements set forth in Fla. R. App. P. 9.210.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of August 2014, I caused a true and correct copy of the foregoing, together with the accompanying Appendix, to be served the Florida Courts' E-Filing Portal upon the following counsel of record:

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