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March 4, 2015

VIA ELECTRONIC MAIL

The Honorable James R. Case
205 Palm Island NW
Clearwater, FL 33767

Re: ***Bollea v. Clem, Gawker Media, LLC, et al.,***
No. 12012447-CI-011 (Fla. Cir. Ct.)

Dear Judge Case:

In an effort not to belabor the question of the corporate deposition topics on which Gawker's corporate witness should be compelled to prepare and testify, we submit this short letter in lieu of a formal reply brief. By and large, Gawker rests on its opening papers demonstrating why various topics are improper, and does not intend to waive its arguments by not addressing each topic below. Rather, we have confined ourselves to correcting various misstatements made by plaintiff in his opposition:

First, plaintiff argues that Gawker should be sanctioned for filing its objections. But Gawker filed its specific objections ***at Your Honor's express request.*** *See* Feb. 13, 2015 Tr. at 26:11-20 (JUDGE CASE: "I don't think it would be prudent for us to try and tackle all [the deposition topics] in this phone conference, but it would probably be helpful if you could identify in writing the topics which you want to have considered and ruled on . . . . And that gives Mr. Harder, the plaintiff, an opportunity to consider whether they want to agree with you or not agree with you."). While Gawker intended for its brief objections to be addressed quickly and informally in a telephone conference (see my letter dated February 23, 2015), plaintiff escalated the matter into a broadside attack on Gawker's participation in discovery over the past two years. Particularly because plaintiff's own conduct has resulted in substantial delay – *e.g.*, it took a full year and a ruling by the DCA for plaintiff to provide an FBI records release, New York appellate courts twice rejected claims that his publicist's records were protected by attorney-client privilege, plaintiff produced numerous texts with Bubba Clem only after Clem's deposition, and so on – his attempt to turn simple objections, which were expressly directed by Your Honor, into a motion for sanctions should be rejected out of hand.

Second, plaintiff concedes (Opp. at 6 & n.1) that, in the February 26, 2014 Order, Judge Campbell drew the line between payments that related to the post at issue in this lawsuit (the "Gawker Story"), on the one hand, and payment of usual and customary obligations, on the other. Given that line, it is clear that the following topics are out of bounds unless they relate to

the Gawker Story: "the identities of PERSONS or ENTITIES that have received compensation," the "circumstances relating to the payment/receipt of such compensation," and "the services provided in exchange for such compensation" (Topic No. 9); the "identity of every PERSON (including both individuals and ENTITIES) with whom Kinja has done business" and "who is located in the United States" (Topic No. 33); and the location of each of Kinja's and GMGI's vendors (Topic Nos. 5 and 6). While Judge Campbell required production of basic financial information to allow plaintiff to make arguments, for whatever they are worth, concerning Gawker's profits supposedly derived from the post, and, as discussed below, about the connection between Gawker and Kinja, the Court eschewed intrusive financial discovery of the type plaintiff now seeks where it was unrelated to those two subjects.

Third, the expansive nature of plaintiff's numerous topics relating to Kinja are improper. Here again, the Court's rulings demarcate a line between what discovery is allowed and what is not. For example, the Court required Gawker to produce evidence sufficient to show its specific transactions with Kinja, and Gawker has done so by producing those lines from its bank statements reflecting all such transactions from 2011 through 2014. But expanding those rulings into incredibly broad discovery about Gawker's and Kinja's – and GMGI's – general finances, all assets, all transactions, all vendors, all bank accounts (including account numbers and quarterly balances), all tax payments, all persons and entities with whom they do business, all of their vendors, and all persons who receive compensation from them, *see, e.g.*, Topic Nos. 5-6, 9, 12, 14, 15-19, & 33, dramatically exceeds the discovery that has been authorized on this point or that would be reasonable in this action. In addition, in many cases, these topics are particularly ill-suited to witness testimony (bank balances, account numbers, tax payments, individual transactions, etc.).

Fourth, plaintiff misrepresents the connection between Gawker and Kinja, asserting that Kinja receives all of Gawker's profits every year. Opp. at 6. That is flatly incorrect, as reflected in the financial statements provided to plaintiff for a multi-year period, the bank statements reflecting all payments to Kinja (described above), and the detailed itemization of the "IP Royalty Expense" category of Gawker's financials, all of which I can make available to Your Honor if you would like to review them. While Gawker pays Kinja a license fee – for the use of the "Kinja" software, and, by extension, the work that a team of engineers in Budapest performs in developing, refining and maintaining that software – Gawker retains the lion's share of its revenues, and that license fee accounts for roughly 16-20 percent of Gawker's revenues. Plaintiff's suggestion that Gawker is paying all its money to Kinja is simply not borne out by the facts, including the substantial financial information provided to date. To the extent that misstatement is designed to color the discovery allowed about Kinja, or to expend the scope of discovery beyond what was authorized by Judge Campbell, we wanted to correct it.

Fifth, plaintiff's claim that he is entitled to testimony about Gawker's, Kinja's and GMGI's bank accounts, account numbers, and account balances (Topic No. 12) because he is seeking "disgorgement of profits" (Opp. at 10-11) is wrong. While such sensitive financial data might be appropriate in a case involving an actual profit-sharing agreement (*see Aspex Eyewear,*

Inc. v. Ross, 778 So. 2d 481 (Fla. 4th DCA 2001)), it has no place in an invasion-of-privacy case, and plaintiff cites no case – from any jurisdiction – so holding. This is particularly true given the substantial financial data showing profits and revenues that Gawker has already provided (which, again, I would be happy to share with Your Honor). Specific account information is wholly unwarranted, the only purpose of which is to allow plaintiff to issue subpoenas to Gawker's bank, which would be equally improper and unwarranted.

Fifth and finally, in addition to seeking sanctions for filing objections at the direction of Your Honor, plaintiff also accuses Gawker of "refusing to produce several of its key employees for deposition." Opp. at 12-13. By the end of this week, Gawker will have facilitated depositions of eight of its executives/employees, and plaintiff's two examples do not withstand scrutiny. Gawker objected to a ninth deposition of a records custodian because the parties should be able to stipulate to authentication issues (a subject Gawker raised with plaintiff last September but did not hear back about for months), and it appears that the parties will now in fact do so. And plaintiff subpoenaed John Cook even though he was not included in the joint discovery plan submitted to Your Honor despite being known to plaintiff for almost two years. Mr. Cook, who was subpoenaed in New York, is challenging the subpoena in New York because he had nothing whatsoever to do with the Gawker Story and because, as to various other editorial matters on which he may be questioned, he is individually asserting his rights under the New York reporter's shield law, N.Y. Civ. Rts. Law § 79-h, which, as a New York journalist, he is fully entitled to do. With respect, with a trial date upon us, Gawker is simply trying to streamline and focus discovery, while keeping plaintiff from unnecessarily expanding discovery further, after the Gawker defendants have responded to over 400 document requests, produced more than 25,000 pages of documents, and are sitting for eight depositions.

For these reasons, and the reasons stated in Gawker's initial objections, Gawker respectfully requests that Your Honor limit the deposition topics as indicated. We were prepared to address the topics at the telephone hearing on February 13, 2015, and would still be prepared to do so, but we understand that Your Honor would prefer to rule on the papers. Thank you.

Respectfully submitted,

LEVINE SULLIVAN KOCH & SCHULZ, LLP

By: 

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