

**APPENDIX: SUMMARY OF REASONS PLAINTIFF'S BELATED FEE MOTION SHOULD BE DENIED  
("DISCOVERY MOTIONS CHART")**

The following chart identifies reasons specific to each motion that plaintiff's fee request should be denied. Gawker's accompanying brief explains the overarching reasons why plaintiff's fee request should be rejected in its entirety out of hand, without needing to undertake a motion-by-motion analysis.

PLAINTIFF'S TAB NO.	MOTION	REASONS FEES ARE UNWARRANTED
1	Plaintiff's Motion to Compel additional information about Gawker's business	<ul style="list-style-type: none"> <li>• Although the Court compelled Gawker to produce some additional documents, the February 26, 2014 Order largely <i>denied</i> plaintiff's requests. See Pl. Tab 1(e) (order). Indeed, the Court sustained in whole or in part Gawker's objections to 17 of the 22 discovery requests at issue. <i>Id.</i></li> <li>• Gawker's Opposition was "justified" and well supported by both the law and the facts as described in Gawker's Opposition to Plaintiff's Motion to Compel (Pl. Tab 1(c)).</li> <li>• Plaintiff did not meaningfully "meet and confer" concerning this motion, thus precluding any award of fees. See Pl. Tab 1(c) at 15-17.</li> <li>• Plaintiff requested a fee award in connection with this motion, and it was not granted by this Court. Plaintiff did not move for reconsideration, and should not be permitted to do so now.</li> </ul>
2-3	Gawker's Motion to Compel/Plaintiff's Motion for Protective Order regarding plaintiff's medical, romantic, and business history; limitations on depositions	<ul style="list-style-type: none"> <li>• Plaintiff did not prevail on significant portions of these motions, including his requests (a) that depositions not be video recorded at all, (b) that Linda Bollea not be deposed at all, (c) that Jennifer Bollea's deposition be limited to two hours, and (d) that any aspects of his relationship with Heather Clem other than the one encounter depicted in the footage published by Gawker be off-limits. See Pl. Tab 2(e), 3(e) (order).</li> <li>• In addition, plaintiff ultimately informed Gawker that he did not intend to call Jennifer Bollea at trial, and the parties stipulated that she therefore would not be deposed or appear as a witness at trial. Gawker never sought to depose Linda Bollea.</li> <li>• The ruling limiting discovery of medical and financial information came only after plaintiff, <i>for the first time at the hearing</i>, disclaimed that he was seeking damages based on injury to his health or business relationships. See Oct. 29, 2013 Hrg. Tr. at 94:6-14 (THE COURT: "It seems as though today in your oral presentation, you have significantly eliminated a number of theories of damages. So with that being said, that then sort of eliminates a lot of the areas of inquiry on the – for the defense.")</li> </ul>

		<ul style="list-style-type: none"> <li>Plaintiff's argument that Gawker's requests regarding "personal" matters were unreasonable is belied by his submission of nearly identical "personal" questions to Heather Clem (then a co-defendant). See Pl. Tab 2(c) at 7 (explaining that plaintiff himself made identical requests to Heather Clem).</li> <li>Gawker's Opposition was "justified" and well supported by both the law and the facts as described in Gawker's Motion to Compel (Pl. Tab 3(b)), and in Gawker's Opposition to Plaintiff's Motion for Protective Order (Pl. Tab 2(c)).</li> </ul>
4	Gawker's Motion to Compel Compliance with October 29, 2013 Rulings and for Sanctions	<ul style="list-style-type: none"> <li>Gawker had evidence that plaintiff had not fully complied with an order compelling him to provide certain information (including about his relationship with Heather Clem), and so it moved to compel. As a result of filing that motion, plaintiff did, in fact, provide some of the discovery that was then months overdue, specifically including interrogatory responses.</li> <li>Although the Special Discovery Magistrate recommended denying the motion based on plaintiff's "representations" that he had by then produced all "information or documents requested," Pl. Tab 4(e)), he acknowledged that Gawker had made a serious and substantial showing by further stating that, "if it is later determined that [plaintiff has] been less than candid in these proceedings and with the Court, the Special Discovery Magistrate will make an appropriate recommendation to the Court, which would likely include a strong recommendation of a preclusion order . . ." <i>Id.</i> Subsequent discovery has confirmed that plaintiff's assurances were misrepresentations. See, e.g., Pl. Tab 9(d)(2) (Confidential Statement of Violations); Confidential Declaration of Gregg. D. Thomas, filed July 30, 2015.</li> <li>Gawker's Opposition was "justified" and well supported by both the law and the facts. See Gawker's Motion to Compel (Pl. Tab 4(b)), and in Gawker's Reply (Pl. Tab 4(d)).</li> </ul>
5	Gawker's Discovery Motions Relating to Bubba Clem (to compel documents from B. Clem, and to compel settlement communications from plaintiff)	<ul style="list-style-type: none"> <li>Gawker's motion to compel documents from Bubba Clem was "granted in part and denied in part" (Pl. Tab 5(a)(3)), and Mr. Clem was ordered to produce nearly all of the documents requested by Gawker. Plaintiff is not entitled to fees for opposing a motion on which Gawker substantially prevailed.</li> <li>With respect to the motion to compel settlement communications, documents subsequently produced by the FBI have revealed that Bollea waived any "settlement privilege" he might have had by disclosing the substance of the settlement discussions to the FBI. Bollea failed to disclose that at the time, and the adjudication of the motion would have no doubt gone differently had he been fully candid with the Court.</li> </ul>

		<ul style="list-style-type: none"> <li>Although this motion to compel “settlement communications” was denied on grounds of “settlement privilege,” it was not “unjustified” as a matter of fact or law, as explained in Gawker’s Motions at Plaintiff’s Tabs 5(a)(1) and 5(b)(1) (and the many cases they cite). Given that Bubba Clem initially claimed that plaintiff was “in” on the taping, but then reversed himself completely when he settled with plaintiff (and claimed plaintiff had nothing to do with it), Gawker’s efforts to obtain information about what prompted this reversal were entirely reasonable. This is particularly true in light of post-settlement statements by Bubba Clem, subsequently uncovered by Gawker, that are consistent with his earlier assertions that Bollea was “in” on the taping and/or aware of Clems’ practice of taping.</li> </ul>
6	Plaintiff’s Confidential Motion for Protective Order	<ul style="list-style-type: none"> <li>This was a motion plaintiff brought <i>not</i> based on any supposed discovery failure by Gawker, but because he desired to redact <i>his own</i> use of “inflammatory” (Pl. Mot. at 7) language and to redact phone records.</li> <li>Gawker prevailed on the portion of the motion in which Bollea sought to redact telephone records. <i>See</i> Pl. Tab 6(e) (Report and Recommendation); Pl. Tab 6(f) (order).</li> <li>Gawker’s opposition to plaintiff’s highly unusual request to redact “inflammatory” language – including in documents produced by third parties – was reasonable because plaintiff’s concerns could be addressed by marking the documents “confidential” or “attorneys eyes only,” and because redacting information received from third parties is contrary to the principles governing discovery. <i>See</i> Pl. Tab 6(c) (Gawker Opp.). Gawker’s opposition was “justified” and well supported by both the law and the facts.</li> <li>Records later produced by the FBI reveal that plaintiff’s motion concerning the “inflammatory” language was based on material misrepresentations. <i>See</i> Conf. Thomas Decl. at ¶¶ 49-58.</li> </ul>
7	Gawker’s Motion to Overrule Objections (to non-party subpoenas)/Plaintiff’s Motion for Protective Order	<ul style="list-style-type: none"> <li>Plaintiff is seeking \$100 million in this lawsuit for, among other things, improper use of his name and likeness. Plaintiff objected to Gawker’s efforts to subpoena certain information from non-parties about the value of his name and likeness. Although the Court ultimately agreed with plaintiff, seeking discovery about the value of publicity rights in a case in which plaintiff seeks to recover substantial sums for an infringement of those rights is justified and reasonable, as explained in Gawker’s papers. <i>See</i> Pl. Tabs 7(c), 7(e), and 7(g). Indeed, Florida case law shows that such evidence is not only discoverable, but <i>admissible at trial</i>. <i>See id.</i>, Tab 7(e) at 7-9.</li> </ul>

8	Plaintiff's "Motion" for Leave to Serve Additional Interrogatories	<ul style="list-style-type: none"> <li>Plaintiff did not file a noticed motion requesting additional interrogatories, which is required by the rules. <i>See, e.g., Fla. R. Civ. P. 1.340; Beekie v. Morgan</i>, 751 So. 2d 694 (Fla. 5th DCA 2000) (party must show good cause and "seek an order" allowing additional interrogatories). Rather, he simply informally requested additional interrogatories in a letter to the Special Discovery Magistrate, without specifying why he needed them. Gawker's response, indicating that plaintiff should be required to explain what additional information he was seeking before being granted additional interrogatories <i>carte blanche</i>, was certainly reasonable and justified.</li> <li>This motion is not one for which fees are available under Rule 1.380. And even if it was, fees would not be permitted here because plaintiff "failed to certify in the motion that a good faith effort was made to obtain the discovery without court action," as required by the Rule.</li> </ul>
9	Gawker's Motion for Sanctions	<ul style="list-style-type: none"> <li>For the reasons stated in Gawker's papers found at Plaintiff's Tabs 9(b), 9(c)(1), 9(d)(2), and 9(e) as well as in the Confidential Thomas Declaration, Gawker's request for sanctions was neither unjustified nor unreasonable. In fact, as revealed by the records produced by the federal government, plaintiff's opposition was based on material misrepresentations. In addition, certain relief sought by the Gawker Defendants in connection with this motion was granted, including an additional deposition of the plaintiff based on belatedly-produced documents. Pl. Tabs 9(f) and 9(i). Plaintiff also admitted that a number of the discovery responses at issue had been incomplete or misleading.</li> <li>Plaintiff sought an award of attorneys' fees in connection with this motion. See Pl. Tab 9(c)(1) at 16. The Special Discovery Magistrate did not recommend an award of fees, and plaintiff failed to take exceptions.</li> </ul>
10	Plaintiff's Motion to Overrule Objections to Subpoenas to Google and Fastly	<ul style="list-style-type: none"> <li>Gawker objected to plaintiff's subpoenas to its service-providers because (among other reasons) Gawker had already provided the requested and available information from Google, and Fastly did not have any relevant data. See Pl. Tab 10(c). Although the Court allowed the subpoenas, Gawker's position was ultimately proven correct, as neither Google nor Fastly provided any relevant information in response to plaintiff's subpoenas. (Indeed, Google provided nothing, and Fastly provided a small handful of irrelevant documents, none of which plaintiff designated as trial exhibits.)</li> <li>Because plaintiff "failed to certify in the motion that a good faith effort was made to obtain the discovery without court action," an award of fees is precluded. See Rule 1.380(a)(4).</li> </ul>

11	Plaintiff's Motion to Compel Compliance with February 26, 2014 Order and to produce information about debt and security offerings	<ul style="list-style-type: none"> <li>• Plaintiff's motion sought additional information about Gawker's sister company Kinja, information about its "debt" offerings, substantial data about websites other than Gawker.com, and "all" documents relating to its confidentiality agreements. <ul style="list-style-type: none"> <li>○ The Court granted portions of the motion, and denied other portions. For example, this Court limited and narrowed plaintiff's requests related to debt offerings, other websites, and confidentiality agreements, meaning that Gawker's opposition as to these points was obviously justified. Pl. Tab 11(h) at 2-3.</li> <li>○ In the instant motion, plaintiff argues that Gawker "clearly had legal 'control' over [Kinja's] documents," and thus its position to the contrary was unjustified. See Pl.'s Mot. at 10. But neither the Special Discovery Magistrate nor this Court ever held any such thing. See Pl. Tabs 11(e), 11(h). In addition, the Court otherwise <i>limited</i> plaintiff's Kinja-related requests. <i>Id.</i></li> <li>○ After this motion was adjudicated, the Second DCA found that this Court erred by not properly adjudicating Kinja's motion to dismiss for lack of personal jurisdiction. See <i>Blogwire Hungary Szellelemi Alkotásit Hasznosító, KFT v. Bollea</i>, 162 So. 3d 1116 (Fla. 2d DCA 2015). Seeking fees for discovery when an appellate court held that the jurisdictional issue needed to be resolved first is improper.</li> <li>○ Plaintiff ultimately elected to voluntarily dismiss Kinja from the case with prejudice. If anything, Kinja should be entitled to recover its fees for being forced to litigate over its jurisdiction for two years only to be voluntarily dismissed.</li> </ul> </li> <li>• Although plaintiff's motion was ultimately granted in part, Gawker's opposition was fully justified for the reasons stated in its papers (Pl. Tab 11(c)(1) &amp; 11(f)(1)). This Court implicitly recognized that Gawker's position was not unreasonable by granting a stay of its order so that Gawker could seek appellate review. Pl. Tab 11(h) at 5.</li> <li>• Although plaintiff requested attorneys' fees in connection with the motion, he did not "meet and confer" in good faith, as required by Rule 1.380(a)(4). See Pl. Tab 11(c)(1) at 25.</li> </ul>
12	Gawker's Exceptions regarding rulings at E. Traub deposition	<ul style="list-style-type: none"> <li>• Gawker was justified in contending that since Bollea is claiming an invasion of privacy in connection with a publication about his sexual affairs, it should be permitted to question plaintiff's publicist about prior press coverage of plaintiff's romantic life, including because such press coverage is directly relevant to whether Gawker's publication addressed a matter of public concern, as explained in Gawker's Exceptions. See Pl. Tab 12(b).</li> </ul>

13	Plaintiff's Motion to Compel second deposition of Gawker and Gawker's Motion for Protective Order on Deposition Topics	<ul style="list-style-type: none"> <li>Gawker's opposition to a second deposition of its corporate representative was justified for the reasons stated in its papers, see Pl. Tab 13(a)(3) and (a)(6), including that requiring a corporate witness to prepare for and sit for a second deposition – when plaintiff was aware of all the relevant issues at the time he chose to take the first deposition – was unwarranted and unreasonably burdensome.</li> <li>Gawker's objections to plaintiff's additional corporate deposition topics were also reasonable for the reasons stated in its papers. See Pl. Tab 13(b)(1) and (b)(4). Gawker's position – that many of the topics had previously been ruled out-of-bounds by the Court and were otherwise irrelevant – was not ultimately accepted by this Court, but it was not unjustified or frivolous.</li> <li>As with the motion at Tab 11, many of the proposed deposition topics related to Kinja. The Court should not require Gawker to pay for discovery regarding an entity that the plaintiff ultimately voluntarily dismissed from the case.</li> </ul>
14	Plaintiff's Motion to Compel John Cook to Testify as Corporate Designee (FL)/Gawker's Motion to Quash Subpoena to John Cook (NY)	<ul style="list-style-type: none"> <li>Plaintiff appears to be seeking fees, including for New York counsel, for a motion in New York state court filed by a non-party (Gawker employee John Cook) seeking to quash a New York subpoena, a motion which Cook won. Plaintiff is not entitled to fees for a motion (a) filed by a non-party, (b) in another state's court where Rule 1.380(a) does not apply, (c) that plaintiff lost.</li> <li>Plaintiff then seeks fees for a second motion he filed in Florida seeking the same relief. Gawker's opposition was justified because plaintiff had already litigated and lost the motion in New York, and because he was not entitled to compel a specific corporate designee in any event. See Pl. Tab 14(b)(3) at 3.</li> <li>Plaintiff then brought a third round of proceedings, again in New York, trying to expand the scope of deposition authorized by this Court. When that was brought to the attention of this Court, it directed him to withdraw that New York motion. Plaintiff should not be awarded fees when he litigated three rounds and lost two of them.</li> <li>Because plaintiff "failed to certify in the motion that a good faith effort was made to obtain the discovery without court action" an award of fees is precluded. See Rule 1.380(a)(4).</li> </ul>
15	Gawker's Motion to Quash (re YAC subpoena) in New York; Plaintiff's Motion for Clarification (re YAC subpoena) in Florida	<ul style="list-style-type: none"> <li>This Court limited discovery as to Young America Capital ("YAC") to three years and to certain documents. Gawker produced those.</li> <li>Not satisfied, plaintiff sent a much broader subpoena to YAC in New York, and Gawker <b>and</b> YAC moved to quash in New York state court to the extent the subpoena exceeded this Court's limitations. The New York court never ruled in plaintiff's favor. He is not entitled to have this</li> </ul>

	<p>Court award him fees for New York lawyers for a motion he did not win and that was litigated in another state's court. Nor is he entitled to recover fees from Gawker for litigating a motion filed by a non-party (YAC).</p> <ul style="list-style-type: none"> <li>• Plaintiff then re-litigated that question in Florida where this Court directed plaintiff to withdraw the New York subpoena and authorized one limited to the categories previously approved. Plaintiff is not entitled to fees for trying to exceed limitations put in place by this Court, only to have this Court reiterate them.</li> <li>• Because plaintiff "failed to certify in the motion that a good faith effort was made to obtain the discovery without court action" an award of fees is precluded. See Rule 1.380(a)(4).,</li> <li>• For the reasons stated herein and in Gawker's brief, this motion should be denied in its entirety.</li> </ul>	
		<p>Plaintiff's current motion for attorneys' fees and reimbursement of Special Discovery Magistrate's fees (see Harder Aff. at 10).</p>