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

TERRY GENE BOLLEA professionally known as HULK HOGAN,

Case No. 12012447 CI-011

Plaintiff,

vs.

GAWKER MEDIA, LLC aka GAWKER MEDIA; NICK DENTON; A.J. DAULERIO,

Defendants.
_____/

BOLLEA'S AMENDED MOTION FOR SANCTIONS AND FOR ORDER TO SHOW CAUSE AGAINST DAULERIO AND HIS COUNSEL

Plaintiff, Terry Bollea known professionally as Hulk Hogan ("Mr. Bollea"), by counsel, moves this Court for an order imposing sanctions against Defendant A.J. Daulerio ("Mr. Daulerio")[1] and his counsel, Levine, Sullivan, Koch & Schultz, LLP ("LSKS"), because they knowingly and routinely misled the jury, this Court and Mr. Bollea about central issues in this case, concealed and misrepresented material facts, and engaged in a scheme to improperly influence the trier of fact and interfere with the proper administration of justice. The grounds upon which this motion is based are as follows:

Introduction

It is axiomatic that the "integrity of the civil litigation process depends on truthful disclosure of facts." *Morgan v. Campbell*, 816 So.2d 251, 254 (Fla. 2d DCA 2002) (citing *Cox v. Burke*, 706 So.2d 43, 47 (Fla. 5th DCA 1998). Indeed, few wrongs strike more viciously against the integrity of our system of justice than subverting the truth. *Empire World Towers,*

[1] Because of their bankruptcy proceedings and the associated automatic stays, Mr. Bollea does not seek any relief against Defendants, Gawker Media, LLC and Nick Denton. Mr. Bollea fully reserves his right to do so upon the lifting of the stay(s).

LLC v. CDR Creances, S.A.S., 89 So.3d 1034, 1038 (Fla. 3d DCA 2012). That is why, on the spectrum of sanctionable conduct, perjury is perhaps the most egregious. *Id.* "Perjury, regardless of the setting, is a serious offense that results in incalculable harm to the functioning and integrity of the legal system as well as to private individuals." *Ramey v. Haverty Furniture Companies, Inc.*, 993 So.2d 10114, 1020 (Fla. 2d DCA 2008) (*citing U.S. v. Holland*, 22 F.3d 1040, 1047 (11th Cir. 1994)).

The Defendants in this case, including Mr. Daulerio, at least outwardly acknowledged the importance of being honest. They purported to be the proverbial watchdog of modern journalism, committed to exposing the "unvarnished truth" and practicing complete "transparency" under the rubric that "hypocrisy is the only modern sin." (*See* Trial Trans. p. 1310:10-15; Trial Ex. 30.) For their part, Mr. Daulerio's attorneys from LSKS are officers of the Court who took oaths to perform their duties with honesty and integrity and, at the outset of this case, swore under penalty of perjury to abide by the Florida Rules of Professional Conduct. Having filed three of their own motions for sanctions against Mr. Bollea (all of which were correctly denied), Mr. Daulerio and LSKS are aware of the standards governing sanctionable conduct in Florida.[2]

The recent revelation of numerous instances in which Mr. Daulerio and LSKS concealed and misrepresented material facts about issues central to this case, in sworn filings and proceedings before this Court and before the jury, are deeply troubling. Their misconduct goes well beyond mere oversight or failed memory concerning collateral issues. Rather, we are dealing with a calculated effort to impede fair decision-making on core issues presented to the

[2] On May 8, 2014, December 22, 2015 and May 18, 2016, the Defendants moved for sanctions against Mr. Bollea based on alleged frauds upon the Court. All of these motions failed because, among other reasons, they were based on incidents that, even if true, were at worst examples of oversight or failed memory about collateral and immaterial issues.

trier of fact, as part of a calculated scheme to allow intentional tortfeasors found guilty of maliciously posting illegally recorded, sexually explicit footage of Mr. Bollea on the Internet to avoid accountability for their actions. Stated simply, we are dealing with an unconscionable scheme to subvert the truth and the integrity of the Court.

We now know that Mr. Daulerio, LSKS and others forged a path of deception that can be traced back to the trial of this case. Their goals were to try to spare Nick Denton from personal liability, protect his Gawker empire from exposure for indemnity, reduce Mr. Daulerio's and Mr. Denton's responsibility for punitive damages, and prevent Mr. Bollea from collecting the $140.1 million Final Judgment he is owed.

Mr. Daulerio, the man who was convinced to fall on the sword to protect Nick Denton's blog empire, finally seems to be realizing that he was used and abandoned by those he trusted. As a result, the truth has slowly come to light. For example, in a recent interview, Mr. Daulerio revealed that "the lawyers that were representing Gawker in this case… ***need[ed] me to remember things in a certain way***." Recent court filings have also confirmed that Mr. Daulerio and LSKS knew, from the outset of this case, that Mr. Daulerio and Mr. Denton had valuable indemnity rights that they were concealing, which had a direct impact on the core issue of punitive damages awarded at trial. Recently, Mr. Daulerio filed bankruptcy Proofs of Claim against each of the Gawker entities[3] seeking to enforce the indemnity rights that he and LSKS hid from the jury and this Court.

Even after this Court determined, on July 29, 2016, that it had been misled about Mr. Daulerio's and Mr. Denton's Gawker Media Group, Inc. ("GMGI") stock (in connection with their request to stay execution), Mr. Daulerio and his lawyers continued concealing assets from Mr. Bollea. Mr. Daulerio signed and his lawyers filed financial affidavits that they knew

[3] Copies of the Proofs of Claim are attached as **Exhibits A** (Gawker), **B** (GMGI) and **C** (Kinja).

were inaccurate. They continued to omit his indemnity rights, several laptop computers (some of which LSKS physically possesses) and a copy of the illegally recorded, sexually explicit 30-Minute Video of Mr. Bollea. Incredibly, after Mr. Daulerio and LSKS openly mocked Mr. Bollea with a flippant letter and press statements offering to return Mr. Daulerio's rice cooker and a golf club,[4] Mr. Daulerio publicly threatened Mr. Bollea with the release of this entire 30-minute sex tape—the very same tape which Mr. Daulerio repeatedly failed to disclose in his affidavits and at his deposition.

The evidence is clear. It convincingly establishes that Mr. Daulerio and LSKS thumbed their noses at the integrity of this proceeding by routinely misrepresenting and omitting material facts that went to the heart of liability, punitive damages and execution upon the Final Judgment. Accordingly, harsh sanctions should be imposed.

Overview of the Web of Deceit

In what is best described as a concerted effort to protect Nick Denton and his Gawker empire, Mr. Daulerio was admittedly urged to "remember things in a certain way," and he and LSKS knowingly concealed and misrepresented facts and evidence that were material to this case on numerous occasions:

- LSKS advised Mr. Daulerio to "remember things a certain way," which seems to explain why Mr. Daulerio tried to take the fall at trial for Nick Denton, by remembering their fire escape conversation about posting the Bollea video[5] inconsistently with Mr. Denton's sworn testimony.

- Mr. Daulerio's and Mr. Denton's indemnity rights against Gawker Media, LLC ("Gawker"), Kinja, Kft. ("Kinja") and Gawker Media Group, Inc. ("GMGI"), were concealed in order to shield Kinja and GMGI from liability and reduce Mr. Daulerio's and Mr. Denton's exposure to punitive damages.

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[4] *See* Daulerio's 8/23/16 Claim of Exemption, Ex. A.

[5] This was the conversation during which Mr. Denton testified at his deposition that he was informed of and approved the publication of the sexually explicit footage of Mr. Bollea, which helped to establish Mr. Denton's personal liability.

- Mr. Daulerio and his LSKS counsel misled the Court about Mr. Daulerio's and Mr. Denton's assets and their value in order to obtain a temporary stay of execution, which they then rejected and misled a bankruptcy court about receiving.

- On several different occasions, Mr. Daulerio and his LSKS counsel knowingly executed and filed Court ordered financial disclosures which they knew did not identify all of Mr. Daulerio's assets.

The Already Adjudicated Misconduct

On July 29, 2016, this Court entered its Order Granting in Part Plaintiff's Motion to Vacate; Denying Stay of Execution Pending Appeal; and Denying Defendants' Motion for Stay to Seek Appellate Review (the "July 29 Order"). In the July 29 Order, this Court found that Mr. Daulerio "misled" the Court in connection with his pledge of GMGI stock as "adequate" security to stay execution of the $115,100,000 judgment against him. (July 29 Order ¶ 8) This Court further found that Mr. Daulerio and his counsel failed to advise the Court about material facts of which they were aware that significantly impacted the value of the GMGI stock that was pledged. (Id. ¶ 11)

The Court reserved jurisdiction "to award attorneys' fees and costs as a sanction, impose additional sanctions and remedies, and to issue an order to show cause as to why Mr. Daulerio and/or [his] counsel should not be held in contempt of court, all of which this Court takes under advisement at this time." The Court specially set a sanctions hearing for October 31, 2016.

The Coaxing of Daulerio's Memory

On or about September 28, 2016, an interview of Mr. Daulerio was posted on the *Longform Podcast*,[6] during which Mr. Daulerio threatened to release the full 30-Minute Video of Mr. Bollea in violation of this Court's Permanent Injunction. As set forth below, Mr. Daulerio

[6] *See* Ex. A. to Bollea's 10/6/16 Emergency Motion to Enforce Permanent Injunction.

repeatedly failed to disclose that he had this video, including at a deposition attended by LSKS counsel.

During this interview, Mr. Daulerio expressed his frustration over his lawyers, whom he identified as "representing Gawker," and revealed that as "some paranoia" set in during this case "they [the lawyers] need[ed] me to remember things in a certain way."[7] Looking back, Mr. Daulerio thinks that "Gawker at that time was also trying to basically protect their company as best as they possibly can."[8]

Within the context of these statements, Mr. Daulerio's testimony at trial regarding the conversation that he had with Nick Denton on the fire escape outside Gawker's offices about whether to publish the Bollea video stands out. On direct examination at trial, Mr. Daulerio testified that he did not speak with Nick Denton before posting the Bollea video. (Trial Trans. 2738:25-2739:5) This testimony was elicited to support Mr. Denton's argument that he did not participate in the posting of the video, and therefore was not personally liable for its publication. (Verdict Form Question 3)

However, Mr. Denton previously testified at his deposition that he had spoken to Mr. Daulerio on Gawker's fire escape outside the fourth floor of the Gawker office, and that Mr. Daulerio was excited about posting the video. (Trial Trans. 2769:7-2770:14) When confronted with this on cross-examination, Mr. Daulerio claimed that "the conversation never occurred… [and that].. I think he [Denton] was confusing two different conversations." (Id. at 2770:15-2771:4) In closing argument, Mr. Bollea's counsel pointed out this transparent attempt to "circle the wagons around Denton." (Id. at 3700:16-21)

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[7] *See* 9/28/16 Trans. pp. 54:3-22; 9:4-10:5; 17:14-18:6.
[8] *Id.* at p. 64:4-17.

In his September 28, 2016, interview, Mr. Daulerio confirmed this strategy. When asked about whether he would do it all over again, Mr. Daulerio acknowledged that Nick Denton *was* involved in the decision to post the Bollea video:

> MR. DAULERIO: Well, and that's the thing is just like I had gone over that scenario actually and prepared for that question specifically in terms of just like going back in time and, you know, this is -- ***I hope this doesn't incriminate*** -- I mean, ***what the f*ck is there to lose at this point***, obviously, but, you know, I'm saying this -- ***like if I had that conversation with Nick, and Nick and I are sitting there basically just saying this story will result in this culture war***.
>
> INTERVIEWER: Yeah.
>
> MR. DAULERIO: ***If it smokes out those enemies, yes, you absolutely do it.*** I think Nick fights this one hundred percent of the way. If it can potentially like just end Gawker.com, no, nobody would absolutely do that. And, you know, that wasn't -- that wasn't -- that wasn't at risk here, you know.

(*See* 9/28/16 Trans. pp. 72:7-73:2.) (Emphasis added) The clear implication of Mr. Daulerio's recent "self-incrimination" is that he, at the urging of his counsel, heeded their call to "remember" the fire escape conversation differently to try to protect Nick Denton from individual liability.

The seriousness of lying under oath, particularly by those professing to be purveyors of the "unvarnished truth," cannot be ignored. Perjury regarding a material matter is a third degree felony in Florida. *See* § 837.02, *Fla. Stat.* Witness tampering is also a crime. *See* § 914.22, *Fla. Stat.*[9] Florida's Rules of Professional Conduct prohibit lawyers from offering false testimony, and require the disclosure and correction of false evidence once it is presented to the Court—even after the conclusion of the proceeding. *See* Rule 4-3.3 (Candor Toward the Tribunal).

[9] It bears mentioning that during the pendency of this case, Nick Denton approved a $500,000 Gawker investment in Mr. Daulerio's new gossip website, Ratter.com. (Trial Ex. 366)

Additional Misrepresentations About & Concealment of Assets

Mr. Daulerio and LSKS also made several material misrepresentations about his (and, as to LSKS, Mr. Denton's) assets and net worth that materially impacted the punitive damages phase of the trial, as well as this Court's initial decision to grant a temporary stay of execution. Specifically, they knowingly concealed indemnity rights that Mr. Daulerio and Mr. Denton hold against Gawker, Kinja and GMGI, and entered into a financial worth stipulation that they knew to be false because it excluded these indemnity rights and other assets. These indemnity rights and assets should have been disclosed and included within the Defendants' net worth for purposes of punitive damages, as well as for purposes of their request for a stay of execution based on alternative security and in connection with discovery and execution upon the Final Judgment. They were not.

Prior to trial, Mr. Bollea propounded financial worth discovery to Mr. Denton and Mr. Daulerio, including interrogatories which asked them to identify *all* of their assets and, specifically, their choses in action. In their verified responses, Mr. Denton and Mr. Daulerio did not disclose their indemnity rights as an asset. (*See* 6/4/2015 Responses # 3) In fact, Mr. Denton and Mr. Daulerio affirmatively represented that they did not have any such rights. (*Id.* #4). LSKS served these responses.

The parties entered into a Stipulation at trial for purposes of punitive damages regarding Mr. Denton's and Mr. Daulerio's net worth. This Stipulation did not identify any indemnity rights. Moreover, as to Mr. Daulerio, the Stipulation stated: "A.J. Daulerio has no material assets and has student loan debt in the amount of $27,000." (*See* Stipulation ¶ 6) This stipulation was read to the jury. (3891:10-3892:21)

Mr. Bollea's counsel (and the Court) took Mr. Daulerio and LSKS at their word, relied upon the net worth Stipulation, and structured Mr. Bollea's argument to the jury accordingly. At one point, LSKS even objected to a portion of the punitive damages closing that addressed GMGI's $276 million stipulated value, because "Gawker Media Group is not a party to this case." (3899:16-3901:15) Mr. Daulerio's counsel followed by arguing that the **"$115,000,000 verdict ... means financial ruin for Mr. Daulerio ... he has no material assets ... he will never be able to pay $115,000,000**." (3910:25-3911:5) Mr. Daulerio's counsel also addressed the financial condition and exposure of Mr. Denton, Gawker and GMGI:

> As you just heard from Mr. Turkel, [Mr. Denton's] main asset is his ownership interest in Gawker Media's Parent Company, GMGI. That company is not a party to this case. It is not before you to be held liable.
> ...
> Mr. Denton owns a percentage of that company. Besides that, besides that ownership interest, he has total assets—besides that, he has total assets, as the judge told you of $3.6 million. That includes his home, his checking account, his savings account, his retirement funds. **Everything.** $3.6 million. **The verdict already rendered will be financially devastating to Mr. Denton.**

(3910:5-24) (emphasis added)

On rebuttal, Mr. Bollea's counsel acknowledged Mr. Daulerio's position that GMGI was not a party to the case. (3915: 14-24) Mr. Bollea's counsel also acknowledged, based on Mr. Daulerio's factual representations and the Stipulation, (all of which counsel believed to be true), that Mr. Bollea, in fairness, could not tell the jury that a "gentleman who has no assets and $27,000 worth of student loans as his present worth would not be bankrupted or be financially destroyed by this." (3917: 5-10)

At Defendants' request and over Mr. Bollea's objection, the jury was instructed that it could not award an amount "that would financially destroy or bankrupt any of the defendants." (3890:20-22) The jury followed that instruction, particularly as to Mr. Daulerio, by assessing only $100,000 in punitive damages against him.

After trial, in support of the Defendants' motion to stay execution, LSKS filed Mr. Denton's and Mr. Daulerio's sworn affidavits. Mr. Denton's Affidavit was signed June 9, 2016, and states as follows:

> 2. As has been previously documented in this litigation, my principal asset is my ownership interest in Gawker Media Group, Inc.
>
> 3. I have a retirement account whose current value is $91,707.14 (See Ex. 1), a brokerage account whose current value is $13.50 (See Ex. 2), a personal banking account whose value is $5,078.64 (See Ex. 3), and a joint bank account with my spouse whose value is $3,661.71 (See Ex. 4). I also recently opened a second personal banking account which contains $45,000 that I withdrew from my retirement account to pay for living expenses. See Ex. 5
>
> …
>
> 7. As security for the appeal in the above-captioned matter, I am willing to pledge the entirety of my interest in GMGI.
>
> 8. I respectfully request that the Court deem that full ownership interest to be adequate security to stay the judgment pending appeal. (emphasis added)

At the June 10, 2016 hearing on the motion for stay, LSKS reaffirmed Denton's representations regarding his assets:

> We understand that plaintiff has an interest in seeking security for his judgment. We have taken time. We have employed other people to come up with a solution to balance that interest, that interest in security and judgment with the interest in a right to appeal that means something.
>
> We've undertaken a serious analysis, and what we are offering is a serious condition. **We have pledged what, between the three defendants, is the most meaningful asset they have. And, again, it's effectively what the plaintiff could get if he were to execute.**

(6/10/16 Trans. pp. 16:16-17:4)(emphasis added).

Mr. Denton's Affidavit is materially false in two respects. First, Mr. Denton did not disclose that, on June 8, 2016, his now-bankrupt company loaned him $200,000 for personal expenses; this $200,000 appears nowhere in any of his disclosed bank accounts. Second,

Mr. Denton did not disclose that GMGI owed him contractual indemnity rights under an Indemnity Agreement, dated December 31, 2009. With respect to these indemnity rights, Heather Dietrick had already assured Mr. Denton, both **before trial** and after, that GMGI would honor its indemnity obligations. (Denton 7/6/16 Depo. pp. 76-80; Dietrick 7/6/16 Depo. pp. 56-59)[10]

Mr. Daulerio's Affidavit in support of the motion for stay also was signed June 9, 2016, and filed by LSKS, and states as follows:

> 2. My assets are:
>
> a. A 44.7% ownership interest in RGFree, Inc. ("RGFree"), a privately-held start-up media company. RGFree is not currently operational, and it has not earned any revenue. As a result, my ownership interest in RGFree is not of material value.
>
> b. 5,900 shares in Gawker Media Group, Inc.
>
> c. Checking and savings accounts holding approximately $13,000. The money comes exclusively from gifts and some freelance writing work. I do not currently have full-time employment.
>
> 3. **I do not own a home, a car, or any other material assets.**

Like Mr. Denton, Mr. Daulerio concealed his indemnification rights from Mr. Bollea, from the jury and from the Court. In reality, Mr. Daulerio is also "subject to a company practice and policy of indemnification, by which the Debtor[s] defend and indemnify their writers and editorial staff in connection with lawsuits related to the company's web content." (*See* Holden Dec. ¶ 24)

We now know, based on Gawker's June 10, 2016 bankruptcy filings, subsequent deposition testimony, and the verified bankruptcy Proofs of Claim recently filed by Mr. Daulerio, that Nick Denton and Mr. Daulerio do indeed have indemnity rights which were

[10] The deposition transcripts of Denton and Dietrick have already been filed confidentially under seal.

concealed from the Court, the jury and Mr. Bollea. In fact, Mr. Daulerio testified at his August 17, 2016 deposition in aid of execution that he fully expects GMGI to pay the amount of the judgment he owes. (8/17/16 Trans. p. 71:17-21) Consequently, when Mr. Daulerio and LSKS represented to the jury that there was no way Mr. Daulerio could pay the $115 million compensatory damage award, they were not being truthful.[11] When LSKS argued that Mr. Denton's only material assets were his GMGI stock, financial accounts, and his condo, they were not being truthful. And, when Mr. Daulerio and LSKS represented to the jury that Mr. Daulerio "has no material assets," they were likewise not being truthful. Under Florida law, indemnity rights and choses in action are indisputably assets. *See Puzzo v. Ray*, 386 So.2d 49, 51 (Fla. 4th DCA 1980); *General Guaranty Ins. Co. of Fla. v. DaCosta*, 190 So.2d 211, 213-14 (Fla. 3d DCA 1966). Moreover, as set forth below, Mr. Daulerio had several other undisclosed, material assets.

When the jury, this Court and Mr. Bollea took Mr. Daulerio and LSKS at their word about Mr. Daulerio's true financial condition, we were all deceived. In no uncertain terms, LSKS represented to the jury that the compensatory damage award would financially destroy Mr. Daulerio because he was worth so little, when in fact Mr. Daulerio and LSKS knew that he held valuable indemnity rights which would ensure that the Gawker entities (worth at least $276 million) would pay any judgment entered against Mr. Daulerio and Mr. Denton. The Court should have been told about these facts before the jury was given punitive damages instructions. And the jury was entitled to know the whole truth about Mr. Daulerio's and Mr. Denton's financial condition when it was deciding the amount of punitive damages to assess.

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[11] Regardless of whether Mr. Daulerio's indemnity rights flow from GMGI and/or Gawker, GMGI's President and General Counsel had already assured Mr. Denton that GMGI would pay all of the $115 million compensatory damages awarded by the jury.

As for materiality, the fact that Mr. Daulerio and Mr. Denton had indemnity rights that were concealed during financial worth discovery would have justified striking Mr. Denton's and Mr. Daulerio's "pauper" defense at trial. Improperly withholding net worth information justifies disallowing a "low net worth" defense. *Belle Glade Chevrolet-Cadillac Buick Pontiac Oldsmobile, Inc. v. Figgie*, 54 So.3d 991, 996-97 (Fla. 4th DCA 2011). More importantly, once LSKS made the argument to the jury that a large punitive award would "financially destroy" Mr. Daulerio and Mr. Denton, their indemnity rights became relevant. *Humana Health Ins. Co. of Florida, Inc. v. Chipps,* 802 So.2d 492, 497-98 (Fla. 4th DCA 2011), is directly on point: "Once [defendant] claimed that a large award would hurt or bankrupt the company financially, the [indemnity] agreement became relevant for purposes of proving otherwise." If there is evidence to rebut a defendant's assertion that a large award would force it into financial straits, then it should be admitted. *Id.; see also Wheeler v. Murphy*, 452 S.E.2d 416, 424 (W.Va. 1994) ("A defendant's net worth is relevant to the issue of punitive damages, and in this case, where defense counsel offered evidence of Mr. Murphy's meager finances, the plaintiff's rebuttal evidence disclosing the existence and policy limits of Mr. Murphy's liability insurance is not barred…"); *Wallace v. Poulos*, 861 F.Supp.2d 587, 602 (D. Md. 2012) ("[I]nforming the jury of the indemnification agreement makes jurors aware that Defendants' ability to pay is essentially a moot point [and] ensures that jurors have an accurate understanding of the likely deterrence effect of their judgment.")

Here, Mr. Bollea was denied his right to discover and present this highly relevant evidence to the jury because Mr. Daulerio and LSKS concealed valuable indemnity rights. While the validity and enforceability of these indemnity rights may be subject to debate, that fact is of no consequence at this point because the preemptive deception of the jury and this Court at

trial cannot be undone – any debate about that should have been raised after full disclosure and before the jury rendered its punitive damages award, not after the trial and a final judgment has been entered. Moreover, as set forth above, Gawker and GMGI's General Counsel and President, Heather Dietrick, already assured Mr. Denton, before and after the trial, that his indemnity rights for the entire amount of the Bollea judgment would be honored. (*See* Dietrick 7/6/15 Depo. at pp. 55-70.) Unless GMGI and Gawker intend to take an inconsistent position against Mr. Daulerio, and leave him exposed (notwithstanding Gawker's bankruptcy case argument and public assertion that doing so would have a "chilling effect" on Gawker's other writers), Mr. Daulerio must have been extended the same assurances that Mr. Denton received. Regardless, the entire $276 million stipulated value of GMGI should have been available to the jury to support a punitive damage award against Mr. Denton and Mr. Daulerio. It was not.

Making matters worse, Mr. Daulerio only recently revealed that he also has indemnity rights against Kinja. For some reason, Mr. Daulerio and LSKS did not disclose these indemnity rights against Kinja in connection with the Proceedings Supplementary initiated by Mr. Bollea – including before, at and after the August 11, 2016 hearing held to address Mr. Daulerio's indemnity rights. Nevertheless, on September 29, 2016, Mr. Daulerio filed a Proof of Claim against Kinja in its pending bankruptcy proceeding based on his indemnity rights against that entity. (*See* **Exhibit C**)

Mr. Daulerio's and LSKS's concealment of this relevant and material evidence directly impacted the trial. The fact that Mr. Daulerio and Mr. Denton, who were represented by the same counsel, *both* concealed their indemnity rights demonstrates a calculated scheme to reduce their exposure to punitive damages, while simultaneously shielding Gawker, GMGI and Kinja from liability.

Mr. Daulerio's and LSKS's concealment of Mr. Daulerio's and Mr. Denton's true net worth also impacted the post-trial proceedings. At the hearing held in this Court at 9:00 a.m. on June 10, 2016, Mr. Daulerio's counsel acknowledged that they and their clients "understood that the plaintiff wants security for the judgment." (6/10/16 Trans. p. 6:19-21)[12] They also urged this Court to accept the pledge of Mr. Daulerio's GMGI stock and options as adequate security in exchange for a stay of execution pending appeal. They represented to the Court that, "we're not seeking some sort of free ride. We're not seeking an unsecured stay." (6/10/16 Trans. p. 7:14-17) "Mr. Denton, as we [LSKS] said in [the Motion for Stay] and now I can say the same for Mr. Daulerio, are literally willing to put their money where their mouth is. Both of them will pledge their shares of Gawker Media Group, Inc., as security for the judgment that has been entered…" (6/10/16 Trans. pp. 7:20-8:4). Then, LSKS reaffirmed Mr. Daulerio's and Mr. Denton's false representations regarding their assets:

> We've done a **serious analysis**, and what we are offering is a serious condition. We have pledged what, between the three defendants, is the **most meaningful asset** they have. And, again, it's **effectively what the plaintiff could get if he were to execute**.

(6/10/16 Trans. pp. 16:16-17:4) (emphasis added). This assertion was also untrue.

Within hours of LSKS making this statement to this Court, Gawker obtained a temporary restraining order from the bankruptcy court that protected Mr. Denton and Mr. Daulerio; that TRO was based, in part, on the sworn assertion that Mr. Daulerio and Mr. Denton have indemnity rights – a fact that directly contradicts what LSKS had just represented to this Court. Moreover, those indemnity rights are indeed assets which are reachable through proceedings supplementary to help satisfy the judgment. *Puzzo*, 386 So.2d 49, 51; *DaCosta*, 190 So.2d 211,

[12] The June 10, 2016 Hearing Transcript has previously been filed.

213-14; *see also In re. Celotex Corp.*, 204 B.R. 586, 613-14 (M.D. Fla. 1996) (indemnification rights are property of a debtor's estate, which can be assigned or transferred).

Having undertaken a "serious analysis," Mr. Daulerio and LSKS certainly knew that indemnity rights against Gawker, GMGI and Kinja were available to help satisfy Mr. Bollea's judgment. In fact, according to Mr. Daulerio's August 9, 2016 Objection to Notice of Hearing (*see* Footnote 2 herein), LSKS even told Daulerio, *at the outset of this case*, that, because of a conflict, they could not advise Mr. Daulerio about his indemnity rights. Importantly, these indemnity rights flowed from a non-party, GMGI, whose stipulated value was $276 million; as well as non-party, Kinja, to which Defendants have attributed 2/3 of the value of GMGI.

Mr. Daulerio's recent filings and *Longform Podcast* interview further crystalized why the indemnity rights against Gawker, GMGI and Kinja were concealed. In Mr. Daulerio's August 9, 2016, Objection to Notice of Hearing, he objected to proceeding with an August 11, 2016 hearing on Mr. Bollea's already pending request for sanctions (referred to as one of "many matters the Levine Sullivan firm has been handling"). Tellingly, Mr. Daulerio's objection states:

> Undersigned counsel explained to Mr. Daulerio at the outset of the case that, under the Rules of Professional Responsibility, they could not advise him about indemnification rights against Gawker since they are also representing the company. Because Plaintiff[13] has objected in the bankruptcy proceeding to Gawker's continuing to pay for his defense in this action, making that matter a live issue for the first time, Mr. Daulerio is attempting to engage separate counsel to address indemnification issues.

Mr. Daulerio's indemnification rights did not become a "live issue for the first time" in August 2016. His indemnity rights were a core issue before, during and after trial. The concealment of those rights, given the above admissions about when Mr. Daulerio and LSKS knew those rights existed and the associated conflict of interest involved with them, raises grave

[13] Mr. Bollea did not object. The Creditors Committee did.

concern over why the indemnity rights were not disclosed long before Gawker's June 10, 2016 bankruptcy filing.

According to Mr. Daulerio's *Longform Podcast* interview, he operated under the assumption that, because he was indemnified, Mr. Bollea couldn't pursue him personally. (9/28/16 Trans. p. 17:14-24) However, Mr. Daulerio wasn't offered advice because "there were so many conflicts at that point." (Id. at 18:3-6) After apparently being blindsided by the reality of his personal liability at the last minute, Mr. Daulerio concluded that "everything that was told to me from the beginning about that this would actually impact me personally – was bullsh*t." (Id. at 20:10-18)

Mr. Daulerio has now retained independent counsel to advise him about his indemnity rights. (*See* Marburger 10/7/16 Motion for *Pro Hac Vice* Admission.) However, according to Mr. Daulerio, he still has no intention of conceding his wrongdoing:

> MR. DAULERIO: Because that's the part about this that's really hard is definitely being trapped, and also that feeling of being trapped and kind of just not only being trapped but still I have a hearing on October 31st where I'm basically going to be sitting in front of that judge who is going to kind of decide whether or not I was lying on my financial affidavit about these indemnity rights which apparently are worth money, that I was lying about them to cover up this fact, and then she can fine me some more. Like that's preposterous, but that's the way the legal system works right now, and that's the position that I'm in. And, you know, the choices ultimately just like they're giving me are kind of just like take back everything you loved about Nick, Gawker, and your job, and we'll give you your thousand dollars back, or your ability to make money, or you can walk away from this, but you just can't talk about it ever again. I don't see there's any question for me. I mean, I definitely thought long and hard about it, and I've definitely talked to a lot of people about it. It's just not in me.

(9/28/16 Trans. p. 78:7-79:10)

Incredibly, the pattern of deception continued even after Mr. Bollea had already moved for relief and sanctions (based on *some* of Mr. Daulerio's and LSKS's misconduct), and after this Court had already issued its July 29 Order and set the October 31st sanctions hearing.

Mr. Daulerio and LSKS persisted in concealing Mr. Daulerio's assets. For example, after the Court issued its August 1, 2016 Notice to Appear and Show Cause on Proceedings Supplementary, Mr. Daulerio signed, and his LSKS counsel filed, an affidavit and an accompanying Response, in which they still failed to identify Mr. Daulerio's indemnity rights against Kinja, and also failed to disclose Mr. Daulerio's ownership of three (3) laptop computers and his possession of the 30-Minute Video of Mr. Bollea.[14]

After the Court issued its August 16, 2016 Order on Proceedings Supplementary, Mr. Daulerio appeared on August 17, 2016 for the taking of his deposition in aid of execution, at which he was represented by LSKS counsel. At that deposition, Mr. Daulerio revealed that he owned *two* (2) laptop computers, one of which LSKS stated on the record was being preserved in LSKS's physical possession. (Daulerio 8/17/16 Depo. pp. 7:5-8; 7:21-24) After Mr. Daulerio was asked about all of the other items of personal property he possessed, the undersigned sought to confirm that Mr. Daulerio had finally disclosed all of his assets:

> Q. Do you have any other property, or property interest, that we haven't discussed so far?
>
> A. No.
>
> …
>
> Q. And other than what we've talked about today, are you aware of any other personal property, intellectual property, rights under contracts, anything like that, that we haven't talked about?
>
> A. No.

(Daulerio 8/17/16 Depo. pp. 59:12-14; 73:16-20)

In fact, Mr. Daulerio had *another* (third) laptop computer that was also in LSKS's physical possession,[15] as well as a copy of the full 30-minute illegally recorded, sexually explicit

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[14] Mr. Daulerio also failed to disclose numerous other assets, including property he sold and gave to another person before moving to Florida.

[15] *See* Daulerio 8/31/16 Response to Plaintiffs' Objection to Claim of Exemption, p. 2, FN1.

video of Mr. Bollea.[16] Mr. Daulerio's and his LSKS counsel's concealment of these assets is not immaterial. The significant value of the 30-Minute Video is evidenced by the damages awarded at trial. And Mr. Daulerio's laptops (which he values at $2,000 each) were in and of themselves sufficient to exceed the amount of the personal property exemptions to execution that Mr. Daulerio claimed under Florida and New York law. (*See* Daulerio's 8/23/16 Claim of Exemption.)

While Mr. Daulerio and LSKS were concealing Mr. Daulerio's assets, Mr. Daulerio was also squandering substantial amounts of money traveling and pampering himself on a lavish full-time vacation in Florida. (*See* Bollea's 8/26/16 Objection to Daulerio's Claim of Exemption.) He dissipated tens of thousands of dollars, which included several trips from Florida to New York and Los Angeles, regular golf outings and massages. (Id. at p. 4) He also sold personal property worth at least $1,000 for $300 to a bar in New York, and gave furniture, artwork and sports memorabilia worth at least a few thousand dollars to a friend. (Id.)

In all, Mr. Daulerio blew through $50,000 given to him by his family and a friend, and failed to disclose at least $10,000 of personal property. These assets could have satisfied a substantial portion of the $100,000 punitive damage award against him. Incredibly, Mr. Daulerio and LSKS responded by claiming that his undisclosed assets are not "material." (*See* Daulerio's 8/31/16 Response p. 2.)

The fact that Mr. Daulerio and LSKS have publicly taunted Mr. Bollea with personal property they knowingly and repeatedly failed to disclose, while also knowing that they had concealed indemnity rights throughout this case from the jury, this Court and Mr. Bollea, and that Mr. Daulerio's attempt to "remember things in a certain way" to protect Nick Denton had failed at trial, clearly establishes that the misconduct at issue is intentional, inexcusable and

[16] *See* Bollea 10/6/16 Emergency Motion to Enforce Permanent Injunction.

intolerable. This misconduct struck a severe blow to the integrity of this Honorable Court, and must be dealt with accordingly.

Argument

As set forth above, the civil litigation process depends on truthful disclosure of facts. *Morgan*, 816 So.2d at 254. ***"Revealing only some of the facts does not constitute [the] 'truthful disclosure' that is required to maintain the 'integrity of the civil litigation process.'"*** *Ramey*, 993 So.2d at 1019 (citing *Morgan*, 816 So.2d at 254; and quoting *Cox*, 706 So.2d at 47) (emphasis added). Preserving the integrity of the judicial process and protecting the proper administration of justice are of paramount importance. That is why attorneys are primarily officers of the Court, bound to serve the ends of justice with openness, candor and fairness to all—even when it appears in conflict with a client's interests. *Ramey v. Thomas*, 382 So.2d 78, 81 (Fla. 5th DCA 1980). In fact, the duty of candor toward the tribunal is viewed as one of the most sacrosanct ethical and legal obligations in the Rules of Professional Conduct and under Florida law. See, Rules 4-3.3 and 4-8.4, Fla. R. Prof. Cond.; *Phillip Morris USA, Inc. v. Green*, 175 So.2d 312, 315 (Fla. 5th DCA 2015).

"Every court has the prerogative and duty to see that its processes are not abused." *Marine Transport Lines, Inc. v. Green*, 114 So.2d 710, 711 (Fla. 1st DCA 1959). In furtherance of this duty, all courts have the inherent authority to impose sanctions for bad faith litigation. *Patsy v. Patsy*, 666 So.2d 1045, 1046-47 (Fla. 4th DCA 1996); *Sheldon Greene & Assoc., Inc. v. Williams Island Assoc., Ltd.*, 592 So.2d 307 (Fla. 3d DCA 1991); *Emerson Realty Group, Inc. v. Schanze*, 572 So.2d 942, 945 (Fla. 5th DCA 1991).

Section 45.045, Florida Statutes, also gives this Court substantial discretion to impose sanctions. Under Section 45.045(4), "[i]f the trial or appellate court determines that an appellant

has dissipated or diverted assets outside the course of its ordinary business or is in the process of doing so, the court may enter orders necessary to protect the appellee… and impose other remedies and sanctions as the Court deems appropriate." *See also*, Fla. R. App. P. 9.310(b)(3).

Mr. Daulerio and LSKS knowingly and intentionally misled this Court, the jury and Mr. Bollea about the core issues in this case by "remembering things in a certain way" and concealing Mr. Daulerio's and Mr. Denton's indemnity rights so they could cry poverty in order to reduce their punitive damages exposure and protect the Gawker entities. Then, they continued to intentionally mislead this Court and Mr. Bollea by purposely concealing material facts associated with Mr. Daulerio's and Mr. Denton's assets and the value and legitimacy of the alternative security they pledged in exchange for a request, which this Court orally granted, to stay execution of the Final Judgment. The pledge of GMGI stock was illusory, and at the time this Court was asked to grant the extraordinary remedy of staying execution without having to post a "good and sufficient bond" required under Florida law, Mr. Daulerio and LSKS were also concealing other material assets. Then, after Mr. Bollea and this Court unwittingly accepted their false representations and illusory stock pledge, Mr. Daulerio and LSKS were implicitly, if not directly, participants in the scheme to misrepresent this Court's June 10, 2016 ruling in order to obtain a stay on more preferable conditions in Gawker's bankruptcy proceedings. When that tactic failed, Mr. Daulerio and LSKS continued to misrepresent Mr. Daulerio's financial condition and assets to try to prevent Mr. Bollea from collecting what he is owed. All of these misrepresentations involve matters at the core of this case, not collateral issues. *Ramey*, 993 So.2d at 1020. Such misrepresentations by their very nature unfairly hampered the presentation of Mr. Bollea's claims. *Id.* (citing *Aoude v. Mobil Oil Corp.*, 892 F.2d 1115, 1118 (1st Cir. 1989).

Mr. Daulerio's and his counsel's misconduct interfered with this Court's and the jury's ability to impartially adjudicate this case, and improperly influenced the trier of fact regarding the central issues of liability, punitive damages, a stay of execution and collection. Mr. Daulerio and LSKS are guilty of making material misrepresentations that directly impacted core issues at trial and during post-trial proceedings, and should be sanctioned accordingly.

"Tampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is a wrong against the institutions set up to safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society." *Ramey*, 933 So.2d at 1020-21 (citing, *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246 (1944), *receded from on other grounds by Standard Oil Co. of Cal. v. U.S.*, 429 U.S. 17 (1976)).

In light of the severity and repetition of the misconduct at issue, Mr. Daulerio and LSKS also should be required to show cause why they should not be held in contempt. Contempt is an act that hinders or obstructs a court in the administration of justice. *Ex parte Crews*, 173 So. 275 (1937). Florida cases have recognized the use of direct and indirect criminal contempt to punish the making of false statements. *Haeussler v. State*, 100 So.3d 732, 734 (Fla. 2d DCA 2010). Direct criminal contempt is an act committed in the presence of the court so as to hinder judicial proceedings, and may result in serious consequences, including immediate imprisonment. *Emanuel v. State*, 601 So.2d 1273, 1275 (Fla. 4th DCA 1992). Intentionally underrepresenting one's financial condition in sworn documents filed with a trial court is punishable by at least indirect criminal contempt. *Haeussler*, 100 So.3d at 734.

In situations such as this one, courts have the discretion to cite a guilty person for contempt, direct that the record be sent to the State Attorney's office for investigation or, in

proper cases, strike pleadings or testimony shown to be a sham. *Parham v. Kohler*, 134 So.2d 274, 276 (Fla. 3d DCA 1961). Remedies for perjury, slander and the like committed during judicial proceedings are left to the discipline of the courts, the bar association, and the state. *Wright v. Yurko*, 446 So.2d 1162, 1164 (Fla. 5th DCA 1984); *Sheldon Greene & Assoc., Inc.*, 592 So.2d 307; *Emerson Realty*, 572 So.2d at 945; Rule 2.515, *Fla. R. Jud. Admin.*; *Emanuel*, 601 So.2d at 1275; *Parham*, 134 So.2d at 276; *Wright*, 446 So.2d at 1164.

"[B]asic, fundamental dishonesty… is a serious flaw, which cannot be tolerated" because dishonesty and a lack of candor "cannot be tolerated by a profession that relies on the truthfulness of its members." *The Florida Bar v. Head*, 27 So.3d 1, 8 (Fla. 2010). "Dishonest conduct demonstrates the utmost disrespect for the court and is destructive to the legal system as a whole." *Id.* at 8-9. When such conduct occurs, courts have the authority to assess sanctions against parties as well as their counsel. *Patsy*, 666 So.2d at 1047; *Levine v. Keaster*, 862 So.2d 876, 880 (Fla. 4th DCA 2003).

The case of *The Florida Bar v. Dupee*, 160 So.3d 838 (Fla. 2015), illustrates the sorts of repercussions that can flow from conduct like the conduct at issue here. In *Dupee*, a lawyer knowingly filed an inaccurate financial affidavit, failed to disclose the existence of an asset (a cashier's check) belonging to her client, and allowed her client to provide "false evasive testimony" at a deposition. The attorney was suspended one year for violating Rule 3-4.3 (unlawful and dishonest acts), Rule 4-3.3 (making or failing to correct a false statement of material fact made to a tribunal), Rule 4-3.4 (a lawyer must not fabricate evidence), Rule 4-4.1 (making a false statement or failing to disclose a material fact) and Rule 4-8.4 (a lawyer shall not violate the Rules of Professional Conduct or do so through the acts of another and shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.). *Id.* at 847. When

the lawyers from LSKS sought permission to appear *pro hac vice* in this case, they agreed to be bound by these very same rules, and to subject themselves to the jurisdiction of this state for enforcement. The violation of that agreement has consequences.

CONCLUSION

The misconduct engaged in by Mr. Daulerio and LSKS cannot be ignored nor justified. The integrity of this Court and our justice system must be protected. To achieve that, this Court is empowered to consider the full array of available sanctions.

WHEREFORE, Mr. Bollea respectfully requests that this Court adjudicate Mr. Daulerio and LSKS guilty of engaging in a pattern of deception involving core issues and material facts that misled the jury and this Court,[17] sanction Mr. Daulerio and LSKS, consider entering an order to show cause why Mr. Daulerio and/or his counsel should not be held in contempt, consider referral for other remedial measures; and grant any other relief this Court deems just and appropriate.

DATED: October 13, 2016.

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- and -

[17] Mr. Bollea seeks specific findings regarding Mr. Daulerio's misconduct because such misconduct may impact his rights in his appeals of the Final Judgment and this Court's Order on Proceedings Supplementary. *See Andrews v. Palmas De Majorca Condo.*, 898 So.2d 1066, 1070 (Fla. 5th DCA 2015) (Fraud committed against trial court may warrant dismissal of an appeal, given that fraud on court, any court, infects the entire proceeding.)

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by E-Mail via the e-portal system this 13th day of October, 2016 to the following:

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