

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

TERRY GENE BOLLEA professionally
known as HULK HOGAN,

Plaintiff,

vs.

Case No. 12012447CI-011

HEATHER CLEM; GAWKER MEDIA, LLC
aka GAWKER MEDIA; GAWKER MEDIA
GROUP, INC. aka GAWKER MEDIA;
GAWKER ENTERTAINMENT, LLC;
GAWKER TECHNOLOGY, LLC; GAWKER
SALES, LLC; NICK DENTON; A.J.
DAULERIO; KATE BENNERT, and
BLOGWIRE HUNGARY SZELLEMI
ALKOTAST HASZNOSITO KFT aka
GAWKER MEDIA,

Defendants.

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**PLAINTIFF TERRY GENE BOLLEA’S MOTION TO COMPEL FURTHER
RESPONSES TO DISCOVERY REQUESTS**

I. INTRODUCTION

Plaintiff Terry Gene Bollea (professionally known as Hulk Hogan) served two rounds of basic written discovery covering the major issues of the case. Gawker Media served deficient responses to two interrogatories and a number of document demands, and the parties were unable to informally resolve their dispute.

The discovery at issue is not burdensome and is targeted towards the major issues in the case. It includes the following interrogatories: (1) what knowledge Gawker Media has regarding how the sex tape depicting Bollea, which it posted on its website, was created; and (2) what persons or entities receive moneys generated from content on the Gawker website, and the amounts.

The discovery at issue also includes the following document demands: (1) cease and

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desist letters received by Gawker Media, which could contain information relating to the good faith defense that Gawker Media has asserted in this action; (2) documents relating to the ownership of Gawker Media and its affiliates; (3) documents reflecting traffic and revenue statistics for Gawker's various websites (all of which benefitted from the influx of new viewers attracted by the Sex Tape); (4) documents evidencing advertising revenues received from Gawker websites; (5) documents authored by officers or directors of Gawker Media that contain standards for publishing content on Gawker websites; (6) documents that show the roles of various companies affiliated with Gawker Media; (7) documents evidencing financial transactions between or among Gawker entities; (8) documents evidencing each Gawker entity's role in producing content on the Gawker.com website; (9) documents evidencing monies received by Gawker websites during relevant time periods; and (10) communications between Gawker Media and the company it engaged to assist in e-discovery.

II. STATEMENT OF FACTS

On May 21, 2013, Bollea served his first round of written discovery on Gawker Media, which consisted of 10 interrogatories, 22 requests for admissions, and 88 document demands. Gawker Media insisted that it needed more time to respond to the discovery, and this Court granted Gawker Media a thirty day extension of the time to respond.

On June 27, 2013, Bollea served his second round of written discovery, which consisted of 4 interrogatories and 18 document demands.

On July 25, 2013, Gawker Media served its responses to the first round of written discovery, and on August 12, 2013, Gawker Media served its responses to the second round of written discovery. These interrogatories, document demands, and Gawker Media's responses thereto are attached as **Exhibits A–H** to the accompanying Affidavit of Charles J. Harder

(“Harder Affidavit” or “Harder Aff.”).

Counsel exchanged meet and confer correspondence regarding the issues set forth herein but were unable to resolve their disputes. Harder Aff. ¶ 11. The parties’ meet and confer correspondence is attached as **Exhibit I** to the Harder Affidavit.

III. ARGUMENT

A. Standard of Review

“Parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action.... It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.” Fla. R. Civ. Proc. 1.280(b)(1); *see Peebles v. Kilday*, 257 So.2d 627, 628 (Fla. 1st D.C.A. 1972) (interrogatories may properly cover any subject matter that is relevant under Rule 1.280).

“[T]he test is relevancy to the subject matter of the action rather than to the precise issues framed by the pleadings.” *Charles Sales Corp. v. Rovenger*, 88 So.2d 551, 553 (Fla. 1956).

A party responding to interrogatories must provide any information within its knowledge as well as information within the knowledge of its lawyers, agents, and employees. *Surf Drugs, Inc. v. Vermette*, 236 So.2d 108, 113 (Fla. 1970). Similarly, a business entity responding to document demands must produce records of its subsidiaries. *American Honda Motor Co. v. Votour*, 435 So.2d 368, 369 (Fla. 4th D.C.A. 1983).

“Objections to interrogatories must be sufficiently specific that the court may, in considering such objections with interrogatories propounded, ascertain therefrom their claimed objectionable character.” *Carson v. City of Fort Lauderdale*, 173 So.2d 743, 745 (Fla. 2d D.C.A. 1965); *American Funding, Ltd. v. Hill*, 402 So.2d 1369, 1370 (Fla. 1st D.C.A. 1981) (holding

that “any objections [to a document demand] be specifically stated”). “The burden of proving the validity of objections is, of course, upon the objecting party.” *Rovenger*, 88 So.2d at 554; *accord Carson*, 173 So.2d at 744.

“If the motion is granted and after opportunity for hearing, the court shall require the party... whose conduct necessitated the motion or the party or counsel advising the conduct to pay to the moving party the reasonable expenses incurred in obtaining the order that may include attorney’s fees, unless the court finds... that the opposition to the motion was justified or that other circumstances make an award of expenses unjust.” Fla. R. Civ. Proc. 1.380(a)(4).

B. Gawker Media Should Be Compelled to Answer Interrogatory Nos. 5 And 13

Bollea’s Interrogatory No. 5 requests Gawker Media to provide the following information:

State all facts regarding the making, editing, subtitling, dissemination, transmission, distribution, publication, sale and/or offering for sale of the Video, including without limitation, the name, company, title, all addresses and all telephone numbers of each person who was involved in such activities, and the specific involvement that each such person had in connection with such activities.

Gawker Media’s response to Interrogatory No. 5 is deficient. Gawker Media states that it did not create the video and has **no personal knowledge** about its creation. However, Interrogatory 5 is not limited to first-hand knowledge. Bollea is entitled to **any** information Gawker Media may have as to how the video was created, even if that information came from other sources. Such information is reasonably calculated to lead to the discovery of admissible evidence.

Gawker Media’s objections are without merit. Gawker Media objects on grounds of overbreadth, burden, lawyer-client privilege, and the work product doctrine, but none of these objections excuse Gawker Media’s failure to disclose whether it has knowledge as to how the video was created.

Bollea’s Interrogatory No. 13 requests Gawker Media to:

Identify each entity and/or individual which directly or indirectly receives money or other compensation that is generated by or originated by Gawker.com or any content thereon.

This interrogatory seeks to discover what persons or entities receive profits from Gawker.com content. Bollea is entitled to know this information because he has pleaded an alter ego / veil piercing claim, and also because such moneys could be recoverable on any number of legal theories, depending on how and when such conveyances were made and for what reasons.

In response to Interrogatory 13, Gawker Media refers to its response to Interrogatory 12, describing the lines of business of the Gawker entities, but this response does not answer Interrogatory 13 and is deficient.

In addition to failing to adequately respond to the Interrogatory, Gawker's objections are without merit. This was only the 13th interrogatory served by Bollea, and is thus well under the threshold of 30 set by the Florida Rules of Civil Procedure. The Florida Rule of Civil Procedure on subparts is patterned after the similar federal rule, and federal courts have rejected the absurd interpretation that any time an interrogatory asks for two or more pieces of information about the same subject matter, it counts as multiple subparts. *Carpenter v. Donegan*, 2012 WL 893472 at *2 (N.D.N.Y. Mar. 15) (interrogatory's subparts are counted as separate interrogatories only where "they are not logically or factually subsumed within and necessarily related to the primary question") (citing cases and *Moore's Federal Practice* treatise). Bollea's interrogatories meet this standard.

Gawker Media's other objections (overbreadth and burden) are also without merit. Gawker Media has not made a showing of the burden of responding to this interrogatory or why it is an undue burden to do so. *See Topp Telecomm, Inc. v. Atkins*, 763 So.2d 1197, 1199 (Fla. 4th DCA 2000).

C. The Motion to Compel Production of Documents Should Be Granted

i. Gawker Media Should Be Compelled To Respond To Document Demand No. 28

Request No. 28: All documents that constitute, refer or relate to all cease and desist communications that you received from January 1, 2005 through the present that refer to alleged copyright, trademark and/or other intellectual property violations, including your response to such cease and desist communications, and your internal communications regarding same.

Gawker Media's Response: Gawker objects to this Request on the grounds that it seeks the production of documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Gawker further objects to this Request to the extent that it seeks the production of documents protected from discovery by privilege, including but not limited to the attorney client privilege and the attorney work-product doctrine.

Gawker Media objects to the production of cease and desist correspondence relating to intellectual property claims, on the ground that Bollea's copyright claim is not being asserted in the state court action. However, whether Gawker Media engaged in proper IP clearance, and its policies and practices when it receives cease and desist communications, including those relating to IP claims, are relevant to this action because Gawker Media asserts a good faith defense in its papers opposing the temporary injunction (specifically, Gawker Media contends that Florida's wiretap statute provides a complete defense for its conduct because Gawker Media published the video based on a "good faith" reliance on a "good faith" determination that Florida or federal law permitted its conduct), and Gawker Media's scienter is relevant to the issue of punitive damages. If Gawker Media either did not do proper IP clearance or did not follow its ordinary customs and practices that would constitute evidence that Gawker Media did not act in good faith.

Gawker Media makes a privilege objection; however, to the extent that there are communications between Gawker Media and its lawyers with respect to cease and desist communications, Gawker Media can claim privilege and produce a privilege log.

ii. Gawker Media Should Be Compelled To Respond To Document Demand No. 30

Request No. 30: All documents that relate to the identity of the owners of Gawker or any affiliated company.

Gawker Media's Response: Gawker objects to this Request on the grounds that it (1) seeks the production of documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, (2) is overly broad and unduly burdensome in that it requests the production of "all documents" related to owners of multiple companies, including companies other than Gawker Media, LLC, and (3) seeks the production of documents protected from discovery by privilege, including but not limited to the attorney client privilege and the attorney work-product doctrine. Subject to and without waiving these objections, Gawker refers Plaintiff to the Corporate Disclosure Statements previously filed in the Lawsuit, which confirm that Gawker Media, LLC is wholly owned by Gawker Media Group, Inc.

Bollea is entitled to information with respect to the ownership of the entire Gawker family of companies. Gawker Media has sought to limit production to ownership information about Gawker Media, LLC. However, Bollea has asserted an alter ego claim to pierce the corporate veil, and the relationships between the various Gawker companies, and their shareholders, are thus relevant to this action. Gawker makes an overbreadth and undue burden objection, but has not shown why compliance with this demand would be unduly burdensome.

iii. Gawker Media Should Be Compelled To Respond To Document Demand Nos. 39–40

Request No. 39: All documents that relate to website traffic, clicks, hits, visitors and/or page views at each of the Gawker websites from January 1, 2010 to the present, including the websites Deadspin, Gizmodo, io9, Jalopnik, Jezebel, Kotaku, and Lifehacker.

Gawker Media's Response: Gawker objects to this Request to the extent that it seeks the production of documents protected from discovery by privilege, including but not limited to the attorney client privilege and attorney work-product doctrine.

To the extent that this Request seeks the production of documents related to traffic at gawker.com, Gawker objects on the grounds that it duplicative [sic] of Plaintiff's Document Request No. 37. Subject to and without waiving these objections, Gawker refers Plaintiff to, and incorporates by reference its Response to Plaintiff's Document Request No. 37.

To the extent that this Request seeks the production of documents relating to traffic at other websites published by Gawker, which are not at issue in this lawsuit, Gawker objects on the grounds that such documents are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Gawker further objects on the grounds that the Request is overly broad and unduly burdensome in that it calls for “all documents” related to traffic for at least seven different websites for a three-and-a-half year period.

Request No. 40: All documents that relate to all revenue generated by each of the Gawker websites from January 1, 2010 to the present, including the websites Deadspin, Gizmodo, io9, Jalopnik, Jezebel, Kotaku, and Lifehacker.

Gawker Media’s Response: Gawker objects to this Request to the extent that it seeks the production of documents protected from discovery by privilege, including but not limited to the attorney client privilege and attorney work-product doctrine.

To the extent that this Request seeks the production of documents related to revenue at gawker.com, Gawker objects on the grounds that it duplicative [sic] of Plaintiff’s Document Request No. 38. Subject to and without waiving these objections, Gawker refers Plaintiff to, and incorporates by reference its Response to Plaintiff’s Document Request No. 38.

To the extent that this Request seeks the production of documents relating to revenue generated by other websites, which are not at issue in this lawsuit, Gawker objects on the grounds that such documents that [sic] are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Gawker further objects on the grounds that the Request is overly broad and unduly burdensome in that it calls for “all documents” related to revenue generated by at least seven different websites for a three-and-a-half year period.

Gawker Media has sought to limit its production of traffic and revenue statistics to the Gawker.com website. However, this limitation is artificial. If the sex tape boosted traffic and revenue at other Gawker websites, because of links, Bollea is entitled to discover that and to assert at trial a damages theory based on that information. Gawker Media’s overbreadth and undue burden objection is without merit, as it has not shown why compliance with the demand would be unduly burdensome.

iv. Gawker Media Should Be Compelled To Respond To Document Demand No. 49

Request No. 49: All documents authored by Nick Denton or any officer or director of Gawker Media that relate to any standards for posting content at Gawker.com.

Gawker Media's Response: Gawker states that, other than general mission statements which are publicly available at Gawker.com (such as that found at <http://gawker.com/5951868/the-purpose-of-gawker>), Gawker has no documents responsive to this Request.

Gawker Media asserts that there are no responsive documents, but the employment agreement which starts at page 1083 in Gawker Media's document production states that there is an Editor Wiki that contains written standards for publishing content. The Editor Wiki has not been produced and is clearly discoverable under this document demand. Gawker Media contends that the Editor Wiki is a "style guide"; however, there is no basis for Gawker Media to withhold production of the document simply because it claims that it is merely a style guide; Bollea is entitled to receive and verify Gawker Media's characterization.

v. Gawker Media Should Be Compelled To Respond To Document Demand No. 50

Request No. 50: All documents authored by Nick Denton or any officer or director of Gawker Media that relate to any standards for posting content at any and/or all Gawker Media websites.

Gawker Media's Response: To the extent that this Request seeks the production of documents related to standards for posting content at gawker.com, Gawker objects on the grounds that it duplicative [sic] of Plaintiff's Document Request No. 49. Subject to and without waiving this objection, Gawker refers Plaintiff to, and incorporates by reference its Response to Plaintiff's Document Request No. 49.

To the extent that this Request seeks the production of documents relating to standards for posting content at websites other than gawker.com, which are at [sic] not at issue in this lawsuit, Gawker objects on the grounds that such documents are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Gawker objects to the production of content standards from other Gawker websites, but

such standards are potentially relevant for several reasons—they may evidence the standards in place at Gawker.com, and they may also show that Gawker.com’s standards are different and/or lower than standards that other Gawker websites adhere to.

vi. Gawker Media Should Be Compelled To Respond To Document Demand Nos. 89–90

Request No. 89: All documents that describe the role, function and/or line of business of Gawker Media, LLC, Gawker Media Group, Inc., Gawker Entertainment LLC, Gawker Technology, LLC, Gawker Sales, LLC, Blogwire Hungary Szellemi Alkotast Hasznosito KFT, and/or their affiliates.

Gawker Media’s Response: Gawker objects to this Request on the grounds that it (a) is overly broad and unduly burdensome in that it seeks the production of “all documents” describing six separate companies “and/or their affiliates,” and (b) seeks the production of documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, as confirmed by Gawker’s Responses to Plaintiff’s Interrogatory Nos. 11 and 12 (explaining under oath the role and function of Gawker Media, LLC; that Gawker Media, LLC is the publisher of the Gawker Story; and that no other entity participated in any way in writing, editing or publishing the Gawker Story, or in receiving or editing the Video from which the Excerpts accompanying the Gawker Story were derived). Gawker further objects to this Request to the extent that it seeks the production of documents protected from discovery by privilege, including but not limited to the attorney client privilege and attorney work-product doctrine. Subject to and without waiving these objections, Gawker directs Plaintiff to Gawker’s Responses to Interrogatory Nos. 11 and 12, as well as publicly available documents describing Gawker Media, LLC, such as <http://advertising.gawker.com/about/>.

Request No. 90: All documents that describe the role or function of Gawker Media, LLC, Gawker Media Group, Inc., Gawker Entertainment LLC, Gawker Technology, LLC, Gawker Sales, LLC, Blogwire Hungary Szellemi Alkotast Hasznosito KFT, and/or their affiliates, with respect to the publication of material on Gawker.com.

Gawker Media’s Response: Gawker objects to this Request on the grounds that it (a) is overly broad and unduly burdensome in that it seeks the production of “all documents” describing information with respect to six separate companies “and/or their affiliates,” and (b) seeks the production of documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, as confirmed by Gawker’s Responses to Plaintiff’s Interrogatory Nos. 11 and 12 (explaining under oath the role and function of Gawker Media, LLC; that Gawker Media, LLC is the publisher of the Gawker Story; and that no other entity participated in any way in writing, editing or publishing the Gawker Story, or in receiving or editing the Video from which the Excerpts accompanying the

Gawker Story were derived). Gawker further objects to this Request to the extent that it seeks the production of documents protected from discovery by privilege, including but not limited to the attorney client privilege and attorney work-product doctrine. Subject to and without waiving these objections, Gawker directs Plaintiff to Gawker's Responses to Interrogatory Nos. 11 and 12, as well as publicly available documents describing Gawker Media, LLC, such as <http://advertising.gawker.com/about/>.

Document Demands 89 and 90 seek the documents which will show the roles of the various Gawker entities within the organizational structure. This is necessary to confirm the veracity of the response to Interrogatory 12 (wherein Gawker Media states what the roles of each of the Gawker entities are) and to determine which Gawker entities were legally responsible for the publication of the Sex Tape.

vii. Gawker Media Should Be Compelled To Respond To Document Demand No. 91

Request No. 91: All financial statements, including but not limited to balance sheets, income statements, and statements of changes in financial position, for Gawker Media, LLC, Gawker Media Group, Inc., Gawker Entertainment LLC, Gawker Technology, LLC, Gawker Sales, LLC, Blogwire Hungary Szellemi Alkotast Hasznosito KFT, and/or their affiliates, including any combined financial statements, covering all periods from January 1, 2010 through the present.

Gawker Media's Response: Gawker objects to this Request on the grounds that it is overly broad and unduly burdensome in that it seeks the production of "all financial statements" of six separate companies "and/or their affiliates" for a three-and-a-half year period. Moreover, to the extent that this Request seeks the production of documents related to companies other than Gawker Media, LLC, Gawker objects on the grounds that such documents are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, as confirmed by Gawker's Responses to Plaintiff's Interrogatory Nos. 11 and 12 (explaining under oath the role and function of Gawker Media, LLC; that Gawker Media, LLC is the publisher of the Gawker Story; and that no other entity participated in any way in writing, editing or publishing the Gawker Story, or in receiving or editing the Video from which the Excerpts accompanying the Gawker Story were derived). Subject to and without waiving these objections, Gawker will produce an income statement and balance sheet for Gawker Media, LLC from January 2010 through June 2013.

Document Demand 91 demand seeks financial statements of Gawker Media's affiliates.

Plaintiff is entitled to know the extent to which any Gawker entities and/or websites profited from the publication of the Sex Tape. The financial statements of Gawker Media affiliates are thus discoverable. Gawker Media makes an undue burden objection, but has not established that it would be unduly burdensome to produce financial statements for several years for a handful of companies.

viii. Gawker Media Should Be Compelled To Respond To Document Demand No. 92

Request No. 92: All documents that relate to any and all financial transactions between or among Gawker Media, LLC, Gawker Media Group, Inc., Gawker Entertainment LLC, Gawker Technology, LLC, Gawker Sales, LLC, Blogwire Hungary Szellemi Alkotast Hasznosito KFT, and/or their affiliates, including any combined financial statements, between January 1, 2010 through the present.

Gawker Media's Response: Gawker objects to this Request on the grounds that it (a) is overly broad and unduly burdensome in that it seeks the production of "all documents that relate to any and all financial transactions" among six separate companies "and/or their affiliates" for a three-and-a-half year period, and (b) seeks the production of documents are [sic] neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, as confirmed by Gawker's Responses to Plaintiff's Interrogatory Nos. 11 and 12 (explaining under oath the role and function of Gawker Media, LLC; that Gawker Media, LLC is the publisher of the Gawker Story; and that no other entity participated in any way in writing, editing or publishing the Gawker Story, or in receiving or editing the Video from which the Excerpts accompanying the Gawker Story were derived; and the distribution of revenue and/or profits among various affiliated entities). Gawker further objects to this Request to the extent that it seeks the production of documents protected from discovery by privilege, including but not limited to the attorney client privilege and attorney work-product doctrine. Subject to and without waiving these objections, Gawker refers Plaintiff to the income statement and balance sheet for Gawker Media, LLC from January 2010 through June 2013, produced in response to Plaintiff's Document Request No. 91.

Document Demand 92 demand seeks documents evidencing financial transactions between Gawker entities. These are discoverable because if any monies attributable to the Sex Tape were transferred, they may be recoverable. Further, these documents are relevant to Bollea's alter ego / veil piercing claim. Gawker Media makes an overbreadth / undue burden objection, but it has not established why producing these documents would be unduly

burdensome.

ix. Gawker Media Should Be Compelled To Respond To Document Demand No. 93

Request No. 93: All documents that relate to the direct or indirect receipt of advertising revenue in connection with Gawker.com by Gawker Media, LLC, Gawker Media Group, Inc., Gawker Entertainment LLC, Gawker Technology, LLC, Gawker Sales, LLC, Blogwire Hungary Szellemi Alkotast Hasznosito KFT, and/or their affiliates.

Gawker Media's Response: Gawker objects to this Request on the grounds that it (a) is overly broad and unduly burdensome in that it seeks the production of "all documents" relating to "the direct or indirect receipt of advertising revenue" for an unlimited period of time; and (b) seeks the production of documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, as confirmed by Gawker's Responses to Plaintiff's Interrogatory Nos. 11 and 12 (explaining under oath the role and function of Gawker Media, LLC; that Gawker Media, LLC is the publisher of the Gawker Story; and that no other entity participated in any way in writing, editing or publishing the Gawker Story, or in receiving or editing the Video from which the Excerpts accompanying the Gawker Story were derived; and the distribution of revenue and/or profits among various affiliated entities). Gawker further objects to this Request to the extent that it seeks the production of documents protected from discovery by privilege, including but not limited to the attorney client privilege and attorney work-product doctrine. Gawker further objects to this Request as duplicative of Plaintiff's Request No. 38, which sought the production of "all documents that relate to all revenue generated by Gawker.com." Subject to and without waiving these objections, Gawker refers Plaintiff to (a) the income statement for Gawker Media, LLC from January 2010 through June 2013, produced in response to Plaintiff's Document Request No. 91; (b) the documents Gawker produced in response to Plaintiff's Document Request No. 38, including without limitation the document Bates numbered Gawker 01147_C (produced on July 25, 2013), which shows gawker.com's monthly revenues for 2012; and (c) Gawker's Responses to Plaintiff's Interrogatory No. 4 and Plaintiff's Document Request No. 36 concerning the advertising revenue (or lack thereof) received in connection with the publication of the Gawker Story and the Excerpts.

Bollea has sought to discover whether any advertising revenues that are attributable to the publication of the Sex Tape (including the 4 million+ viewers of the Sex Tape webpage), were received by **any and all** Gawker Media websites. Gawker Media declines to produce anything other than summary documents regarding Gawker Media's and Gawker.com's revenues.

However, there are a number of Gawker websites and entities and Bollea is entitled to discovery

as to whether the traffic generated by the publication of the Sex Tape “spilled over” and generated revenues for other Gawker websites or affiliated entities. Gawker Media makes an overbreadth / undue burden objection, but has not shown why it would be unduly burdensome to comply with this demand.

x. Gawker Media Should Be Compelled To Respond To Document Demand Nos. 94–99

Request No. 94: All documents that relate to any and all action by Blogwire Hungary with respect to Gawker.com and/or its content

Request No. 95: All Documents that relate to any and all action by Gawker Media Group, Inc. with respect to Gawker.com and/or its content.

Request No. 96: All Documents that relate to any and all action by Gawker Entertainment, LLC with respect to Gawker.com and/or its content.

Request No. 97: All Documents that relate to any and all action by Gawker Technology, LLC with respect to Gawker.com and/or its content.

Request No. 98: All Documents that relate to any and all action by Gawker Sales, LLC with respect to Gawker.com and/or its content.

Gawker Media’s Response to Request Nos. 94–98: Gawker objects to this Request on the grounds that it seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, as confirmed by Gawker’s Responses to Plaintiff’s Interrogatory Nos. 11 and 12 (explaining under oath the role and function of Gawker Media, LLC; that Gawker Media, LLC is the publisher of the Gawker Story; and that no other entity participated in any way in writing, editing or publishing the Gawker Story, or in receiving or editing the Video from which the Excerpts accompanying the Gawker Story were derived; and the distribution of revenue and/or profits among various affiliated entities), and as such searching for and producing such documents presents an undue burden. Gawker further objects to this Request to the extent that it seeks the production of documents protected from discovery by privilege, including but not limited to the attorney client privilege and attorney work-product doctrine.

Request No. 99: Documents sufficient to show all revenues received by Gawker Media, LLC, since January 1, 2012, and/or the basis for its receipt of such revenues.

Gawker Media’s Response: Gawker objects to this Request to the extent that it seeks the production of documents concerning the “basis” for Gawker’s receipt of “all revenues” on the grounds that the Request is overly broad, unduly

burdensome, and requests information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

To the extent that this Request seeks the production of documents sufficient to show revenues generated by gawker.com, Gawker objects on the grounds that it duplicative [sic] of Plaintiff's Document Request No. 38. Subject to and without waiving these objections, Gawker refers Plaintiff to, and incorporates by reference, its Response to Plaintiff's Document Request No. 38, including without limitation the document Bates numbered, Gawker 01147_C (produced on July 25, 2013), which shows gawker.com's monthly revenues for 2012.

To the extent that this Request seeks the production of documents relating to revenue generated by other websites, which are at not [sic] at issue in this lawsuit, Gawker objects on the grounds that (a) this Request is duplicative of Plaintiff's Document Request No. 40, and (b) such documents that are [sic] neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Document Demands 94 through 99 seek documents that show the roles of each Gawker entity with respect to the posting of content on Gawker.com. Gawker Media points to its response to Interrogatory 12, where it sets out what it contends each entity's role was, but Bollea is entitled to test the credibility of the interrogatory response by reviewing the responsive documents. Gawker Media makes an overbreadth / undue burden objection, but has not shown why it would be unduly burdensome to comply with these demands.

xi. Gawker Media Should Be Compelled To Respond To Document Demand Nos. 101-04

Request No. 101: Documents sufficient to show all revenues, compensation, funding and/or assets received by Gawker Entertainment, LLC since January 1, 2012, and/or the basis for its receipt of revenues, compensation, funding and/or assets.

Request No. 102: Documents sufficient to show all revenues, compensation, funding and/or assets received by Gawker Technology, LLC since January 1, 2012, and/or the basis for its receipt of revenues, compensation, funding and/or assets.

Request No. 103: Documents sufficient to show all revenues, compensation, funding and/or assets received by Gawker Sales, LLC since January 1, 2012, and/or the basis for its receipt of revenues, compensation, funding and/or assets.

Request No. 104: Documents sufficient to show all revenues, compensation, funding and/or assets received by Blogwire Hungary since January 1, 2012,

and/or the basis for its receipt of revenues, compensation, funding and/or assets.

Gawker Media’s Response to Request Nos. 101–04: Gawker objects to this Request on the grounds that it calls for Gawker Media, LLC to produce documents in the possession of a separate corporate entity, which is now dissolved, which is not a served defendant in this lawsuit and which had nothing to do with the publication of the post at issue. Further, Gawker objects to this Request on the grounds that it seeks the production of documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, as confirmed by Gawker’s Responses to Plaintiff’s Interrogatory Nos. 11 and 12 (explaining under oath the role and function of Gawker Media, LLC; that Gawker Media, LLC is the publisher of the Gawker Story; and that no other entity participated in any way in writing, editing or publishing the Gawker Story, or in receiving or editing the Video from which the Excerpts accompanying the Gawker Story were derived; and the distribution of revenue and/or profits among various affiliated entities). Gawker further objects on the grounds that the Request is overly broad and unduly burdensome in that it seeks the production of documents related to “all revenues, compensation, funding and/or assets” and the “basis” for such “revenues, compensation, funding and/or assets.”

Document Demands 101 through 104 seek documents relating to monies that were received by other Gawker websites during the time periods relevant to this lawsuit, in order to determine if and how much of those monies were attributable to the publication of the Sex Tape. These documents are clearly relevant and discoverable. Gawker Media makes an overbreadth / undue burden objection, but has not shown why it would be unduly burdensome to comply with these demands.

xii. Gawker Media Should Be Compelled To Respond To Document Demand No. 105

Request No. 105: All Documents that Relate to Communications between Gawker, on the one hand, and any vendor engaged to conduct, assist in, or otherwise participate in any electronic discovery, computer searches, or database management with respect to Documents that are relevant to this Action.

Gawker Media’s Response: Gawker objects to this Request on the grounds that it seeks the production of documents protected from disclosure by privilege, including but not limited to the attorney-client privilege and the attorney work product doctrine. Gawker further objects on the grounds that a Request for “all documents that relate to communications between Gawker” and its vendors is overly broad, unduly burdensome, and requests information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving these objections, and without conceding that any of the documents requested by Plaintiff and produced by Gawker are necessarily “relevant to this Action,” Gawker will produce (1) a list of the individuals whose computers and emails were searched by its vendor in connection with Gawker’s Responses to Plaintiff’s First Request for Production of Documents, and (2) a list of the search terms used by the vendor in connection therewith.

The communications with Gawker Media’s e-discovery provider will allow Bollea to verify the credibility of Gawker Media’s interrogatory and document demand responses with respect to the vendor and search protocols used. Accordingly, they are discoverable. Gawker Media makes a privilege objection, but has not established why these communications would be privileged under either the lawyer-client privilege or the work product doctrine, and has not produced a privilege log. Gawker Media also objects on the ground of undue burden, but has not shown how compliance would be unduly burdensome.

* * *

There were also improper redactions of documents that were made by Gawker Media, and in each case Gawker Media should be required to produce the full, unredacted document. First, a “memo about traffic” from Nick Denton was redacted by Gawker Media. This redaction was not listed in the privilege log, and there is no indication given as to why it was proper to redact this document or why it is not discoverable. Accordingly, the Court should compel production of an unredacted copy.

Similarly, Gawker Media redacted another document (bates stamped 555) as “nonresponsive.” However, no privilege was asserted and the full document is therefore discoverable. The motion to compel should be granted.

IV. Florida Rule of Civil Procedure 1.380(a)(4) Requires Gawker Media To Pay

Bollea's Expenses Of Bringing This Motion

Florida Rule of Civil Procedure 1.380(a)(4) provides:

Award of Expenses of Motion. If the motion is granted and after opportunity for hearing, the court shall require the party or deponent whose conduct necessitated the motion or the party or counsel advising the conduct to pay to the moving party the reasonable expenses incurred in obtaining the order that may include attorneys' fees, unless the court finds that the movant failed to certify in the motion that a good faith effort was made to obtain the discovery without court action, that the opposition to the motion was justified, or that other circumstances make an award of expenses unjust.

Bollea made a good faith effort to obtain the discovery sought by this motion without court action. Harder Aff. ¶ 11. Therefore, if the Court grants Bollea's Motion to Compel, Gawker Media should be required to pay Bollea its expenses and attorneys' fees incurred in obtaining the order, which amount is \$6,530.00 as of the date of this filing. Harder Aff. ¶¶ 12-14.

V. CONCLUSION

For the foregoing reasons, the motion to compel should be granted.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via e-mail and U.S. First Class Mail this 21st day of August, 2013 to the following:

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