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

TERRY GENE BOLLEA professionally known as HULK HOGAN,

Plaintiff,

Case No.: 12012447-CI-011

vs.

HEATHER CLEM; GAWKER MEDIA, LLC aka GAWKER MEDIA; et al.,

Defendants.
_____/

GAWKER MEDIA, LLC'S OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL DISCOVERY

Gawker Media, LLC ("Gawker") respectfully submits this Opposition to Plaintiff's Motion to Compel Further Responses to Discovery Requests (the "Motion"). The Motion should be denied because: (a) Gawker has already provided comprehensive discovery addressing the merits of plaintiff's liability and damages claims, (b) the additional discovery plaintiff seeks is completely irrelevant to those issues, given that almost all of it demands information and documents about companies *other* than Gawker Media, LLC and websites *other* than Gawker.com, none of which had anything to do with the web posting at issue in this lawsuit, and (c) plaintiff and his counsel failed to comply with the good faith "meet and confer" requirement, rushing to court just days after sending letters of objection to opposing counsel and refusing to schedule a telephone call aimed at narrowing the issues brought before the Court. (As we were finalizing this opposition for filing, plaintiff's counsel finally participated in a meet and confer about these requests, some ten days *after* the Motion was filed, thereby mooting at least some of the issues raised in the Motion.)

I. Gawker Has Provided Full Discovery Addressing the Merits of Plaintiff's Claims.

As this Court is aware, this case challenges a report and commentary (the "Gawker Story") published on Gawker.com by Gawker Media, LLC, concerning an extramarital affair that the celebrity publicly known as Hulk Hogan conducted with the wife of his then-best friend (Bubba the Love Sponge Clem, himself also a celebrity), with his best friend's blessing. It also challenges the publication, along with the Gawker Story, of brief excerpts (the "Excerpts") of a longer video (the "Video") depicting the encounter. Based on the Gawker Story and the Excerpts, plaintiff alleges claims against Gawker for invasion of privacy, for violation of his publicity rights, for negligent and intentional infliction of emotional distress, and for violation of the publication prong of Florida's wiretap statute.

Plaintiff served Gawker with two waves of extensive discovery requests that, in combination, totaled 106 requests for production of documents, 14 interrogatories (with numerous sub-parts) and 22 requests for admission. In response, Gawker served detailed interrogatory responses, responded to each request for admission, and produced voluminous documents including two DVDs containing numerous video files. *See* Affidavit of C. Harder ("Harder Aff."), Exs. A-H. In so doing, Gawker provided comprehensive information and documents about the facts underlying plaintiff's liability claims, including:

- Identifying all witnesses with knowledge, including two previously-undisclosed witnesses who were involved in helping the source of the Video transmit it to Gawker, and providing detailed descriptions of all of the witnesses' areas of knowledge (*see* Interrogatory No. 2);

- Describing Gawker's knowledge about the creation of the Video, facts indicating that plaintiff knew he was being recorded, facts indicating that plaintiff consented to the dissemination of the Video, and its transmission to Gawker (*see* Interrogatory Nos. 6, 8 & 9; Request for Production ("RFP") Nos. 3, 10, 59 & 85);

- Detailing the drafting and publication of the Gawker Story and the editing of the Excerpts (*see, e.g.*, Interrogatory No. 5, RFP No. 56), and even producing the personnel files of the employees involved (RFP Nos. 46 & 47);

- Providing a detailed explanation (running more than seven full pages) of Gawker's factual support for its contention that the Gawker Story and Excerpts involve a matter of public concern (Interrogatory No. 7; *see also* RFP No. 56);

- Responding to a full set of admission requests, and an interrogatory seeking a full explanation of anything other than a complete admission (Interrogatory No. 10); and

- Producing voluminous documents, including all of Gawker's email that in any way related to the plaintiff (RFP No. 1).

With the exception of one of the nine subparts of Interrogatory No. 5, concerning the *creation* of the original Video in 2006 in which Gawker played no part (addressed below), plaintiff's Motion does not complain about *any* of those responses. And, following the belated meet and confer, that one subpart of one interrogatory response is no longer at issue.

Similarly, in response to plaintiff's damages-related discovery requests, Gawker provided detailed information and documents about its revenues and about traffic to both the Gawker Story and to Gawker.com generally. For example:

- Gawker provided a sworn interrogatory answer stating that Gawker posted no advertisements on the Gawker Story and therefore derived no revenue from it directly (Interrogatory No. 4); and

- To the extent that plaintiff wanted to argue that Gawker received indirect revenue from the publication at issue, it also produced or has agreed to produce:

    - comprehensive information about traffic (*i.e.*, number of website visitors) to the Gawker Story, to the Excerpts, and to the entire gawker.com website, including from three different sources – Google Analytics, Quantcast, and Gawker's own internal tracking software (RFP No. 13); and

    - financial data for both Gawker Media, LLC and for Gawker.com, the website on which the story at issue was published, including three and a half years' worth of income statements and balance sheets for Gawker Media, LLC and monthly revenue totals for both Gawker Media, LLC and gawker.com (RFP Nos. 38, 91-92).

With the exception of seeking information about *other* entities or *other* websites which were in no way involved in the publication at issue (addressed below), plaintiff's Motion does not complain about these responses.[1]

Finally, Gawker responded to a series of discovery demands focused on the role of five companies affiliated with Gawker (three of which are now dissolved), which plaintiff contends might be necessary to pierce the corporate veil. Although Gawker believes such a claim is both far-fetched and premature, Gawker provided detailed information and documents about the facts underlying plaintiff's "veil piercing" theory, including:

- a detailed description of the roles of Gawker's corporate affiliates (Interrogatory No. 12), explaining that:
    - Gawker Media, LLC was "solely responsible for writing, editing, and publishing the Gawker Story, and receiving and editing the Video from which the Excerpts accompanying the Gawker Story were derived" (Interrogatory No. 12);
    - Gawker Media Group, Inc., Gawker's parent company, is a "holding company" that has "no employees and no operations," and, as such, did not and could not have published anything, *id.*;
    - Blogwire Hungary Szellemi Alkotast Hasznosito, KFT (now known as "Kinja, KFT"), a Hungarian company that operates the website cink.hu, "does not create, edit, moderate or otherwise review content on Gawker.com," *id.*;[2]
    - Gawker Sales, LLC, Gawker Technology, LLC and Gawker Entertainment, LLC are dissolved entities that were previously subsidiaries of Gawker, which now "conduct[s] all the business activities previously undertaken by [those] Former Subsidiaries," *id.*;

[1] Plaintiff had also asserted an entitlement to the production of Gawker's entire "general ledger." Harder Aff. Ex. I at 2. Gawker explained that "Plaintiff's demand that Gawker produce its general ledger, which records literally every transaction in which money flows in or out of the company, or other similar documents, is unreasonable. Indeed, courts generally hold that requests for general ledgers and the like are improper unless the case at issue involves a dispute about a financial transaction or financial mismanagement, neither of which is at issue here." *Id.* at 8. Plaintiff's Motion appears to have properly abandoned such an overbroad and burdensome request.

[2] Gawker also provided a verified response to a second interrogatory focused solely on the "Blogwire" entity, explaining that "Blogwire Hungary (now known as 'Kinja, KFT') owns the intellectual property used by Gawker Media, LLC in connection with Gawker.com but has no 'role in the creation, editing, and/or posting of content on Gawker.com'" (Interrogatory No. 11).

- A sworn statement that Gawker Media, LLC has not made distributions to its parent, Gawker Media Group, Inc., so there is no money that was even arguably improperly transferred to the parent company, *id.*;

- The production of Gawker Media, LLC's balance sheet and income statements since 2010 (including through June 2013), confirming tens of millions of dollars in revenues and assets, hardly the type of "shell" entity that would even arguably entitle plaintiff to pursue his veil piercing argument.

Undeterred, plaintiff complained that he was entitled to detailed financial and other information concerning the five unrelated entities. Having fully complied with all of plaintiff's other voluminous discovery demands, Gawker respectfully declined because (a) there is no good faith basis to assert direct claims against those entities since they had nothing to do with the conduct at issue, (b) there is no basis for corporate veil piercing, (c) such information is properly sought, if at all, from those entities directly, and (d) the substantial burden of assembling and producing the substantial information sought by plaintiff far outweighs any arguable relevance to this dispute. Of the 24 responses to interrogatories and requests for production at issue in plaintiff's Motion, all but five seek information and documents pertaining to five *other* companies entirely uninvolved in this dispute – or to seven websites *other* than Gawker.com, also entirely uninvolved in this dispute.[3]

[3] In addition to Gawker.com, Gawker Media, LLC operates seven other websites: Deadspin.com (a sports site), Jezebel.com (a women's issues site), Gizmodo.com (a technology site), io9 (a "futuristic culture and entertainment" site), Lifehacker.com (a site "dedicated to living better in the digital age"), Jalopnik.com (a cars site), and Kotaku.com (a gaming site) (collectively, the "Other Sites"). Plaintiff demanded information and documents detailing multiple years' worth of website traffic to, and revenue from, these Other Sites. Gawker declined to produce such information because (a) the Other Sites had nothing to do with publishing the post at issue, (b) traffic information is publicly available from www.quantcast.com, one of the traffic measures Gawker uses, and (c) Gawker had already produced three-and-a-half years' worth of revenue information for both the entire entity and for gawker.com, and should not be put to the substantial additional burden of breaking down that revenue information individually for seven Other Sites.

II. Gawker's Responses to Plaintiff's Discovery Requests Were Proper, and Plaintiff's Motion for Additional Discovery Not Relevant to this Dispute Should Be Denied.

The Motion to Compel should be denied because the additional information that plaintiff seeks is wholly irrelevant to any actual issues in this case.

A. Standard of Review

Although the applicable rules permit discovery of "any matter, not privileged, that is relevant to the subject matter of the pending action," Fla. R. Civ. P. 1.280(b)(1), the discovery "must be relevant to issues properly framed by the pleadings in the litigation," *Alterra Healthcare Corp. v. Estate of Shelley*, 827 So. 2d 936, 946 (Fla. 2002). Indeed, a party may not use the discovery process as "a fishing expedition," particularly where it would cause undue burden. *Sugarmill Woods Civic Ass'n, Inc. v. S. States Utilities*, 687 So. 2d 1346, 1351 (Fla. 1st DCA 1997); *see also Am. Med. Sys., Inc. v. Osborne*, 651 So. 2d 209, 211 (Fla. 2d DCA 1995) ("[T]here must be a connection between the discovery sought and the injury claimed. Otherwise, it is an improper fishing expedition.").

B. Plaintiff's Motion to Compel Lacks Merit

Plaintiff complains about a small handful of Gawker's numerous discovery responses. Broadly, plaintiff's objections can be divided into four topics: (1) information about the "making" of the original Video that is the subject of the Gawker Story and from which the Excerpts were derived [now moot], (2) information about five entities *other* than Gawker Media, LLC and seven websites *other* than gawker.com, (3) information about cease and desist letters received by Gawker in *other* matters not related to this case and involving legal claims not at issue in this case, and (4) a small grab-bag of other demands, including additional information about Gawker's "style guide" [now moot], Gawker's attorneys' communications with its litigation support vendors, and information redacted as nonresponsive from two specific

documents Gawker produced.[4] None of plaintiff's objections has merit. Gawker addresses each of the categories briefly, in turn, below.

1. Information about the "making" of the Video (Interrogatory No. 5)

In this interrogatory, plaintiff sought "all facts" concerning the "making, editing, subtitling, dissemination, transmission, distribution, publication, sale and/or offering for sale of the Video . . ." Gawker responded with a lengthy substantive answer (nearly three full pages) detailing how it obtained the Video, edited it into the Excerpts that accompanied the Gawker Story, and published those Excerpts. With respect to the request for facts related to the "making" of the Video, Gawker stated that "it did not make the Video and has no personal knowledge about its creation." Plaintiff objects to this response (the only one of eight sub-parts to this request about which plaintiff complains) on the grounds that the interrogatory is not limited to first-hand knowledge. Pl. Mot. at 4. But, as Gawker explained in its pre-motion letter to plaintiff's counsel:

> Gawker has no information about the creation of the Video other than what has been publicly discussed in the media, examples of which Gawker included in its responses to Interrogatory Nos. 7 and 8. Anything Gawker may surmise from those sources would be pure speculation, which would be improper to include in sworn interrogatory responses.

Harder Aff. Ex. I at 7. This additional clarification is nowhere mentioned in Plaintiff's Motion, and once plaintiff's counsel participated in the belated meet and confer it was easily resolved without the Court's involvement, as Gawker knows no additional facts on this point. Plaintiff's motion to compel a further response to Interrogatory No. 5 should be denied.

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[4] Plaintiff also argues that Gawker improperly objected that plaintiff has exceeded the number of interrogatories permitted under Rule 1.340(a). *See* Mot. at 5. This is a red herring. Although Gawker's objection was proper because, counting meaningful sub-parts, plaintiff has now asked well over 30 interrogatories, Gawker nevertheless responded to *all* of plaintiff's interrogatories, further demonstrating its good faith in providing comprehensive discovery to plaintiff.

2. Entities *Other Than* Gawker Media, LLC or Websites *Other Than* Gawker.com (Interrogatory No. 13; RFP Nos. 30, 39-40, 50, 89-90, 91-99, 101-104)

As described above, in its responses to plaintiff's discovery requests, Gawker produced detailed information about itself and its revenues, the website traffic and operations of Gawker.com, and substantial information about affiliated companies to understand the corporate structure and the involvement – or, as is the case, lack thereof – of those affiliated companies. Gawker legitimately objected to assembling and producing voluminous information about *other* companies or *other* websites that had nothing to do with the publication at issue.

Plaintiff apparently claims that he needs further information about the five other companies (a) "because he has pleaded an alter ego/veil piercing claim," *see, e.g.*, Pl. Mot. at 5; *see also id.* at 7, 12; (b) "to determine which Gawker entities were legally responsible for the publication of the" Excerpts, *id.* at 11, and (c) to determine which other Gawker entities "profited" or received "revenues" from the publication of the Excerpts, *see id.* at 12, 13, 16. He similarly claims to need traffic and revenue data from the seven Other Sites published by Gawker, *see* note 3 *supra*, on the theory that website traffic "generated by the publication of the" Excerpts on Gawker.com may have "'spilled over' and generated revenues for other Gawker websites." Pl. Mot. at 14; *see also id.* at 8 (arguing for such discovery based on assertion that Gawker Story may have "boosted" traffic and revenue at those Other Sites); *id.* at 9-10 (claiming to need discovery about "standards for publishing content" at those Other Sites.). None of these theories justifies requiring Gawker Media, LLC, to assemble and to produce voluminous additional data for entities and sites which were uninvolved in any way with the Gawker Story.[5]

[5] During the belated meet and confer, plaintiff's counsel advised that, following the deposition of Gawker's corporate designee, he may dismiss the three former subsidiaries of Gawker (which are now dissolved).

First, despite plaintiff's contention that he has "pleaded an alter ego/veil piercing claim," Pl. Mot. at 5, he has *not* in fact done so. Rather, his Amended Complaint simply states that "Plaintiff is informed and believes" that the various Gawker entities "were and are all under the control of defendant Gawker Media Group, Inc.," Am. Compl. ¶ 17, and that they were all acting as part of some kind of "joint venture," *id.* ¶ 24. These bare allegations do not state an "alter ego" claim. *See, e.g.*, 8A Fla. Jur. 2d, Business Relationships §§ 13, 16 (under Florida law, corporate form will be disregarded "only in exceptional circumstances" where the subsidiary "manifests no separate corporate interests of its own"); *Oginsky v. Paragon Prop. of Costa Rica LLC*, 784 F. Supp. 2d 1353 (S.D. Fla. 2011) ("conclusory allegations" concerning defendants' alleged use of "shell corporations" insufficient). Plaintiff's brief boilerplate allegation of purported joint action is plainly insufficient to warrant broad discovery on this point. *See Diaz-Verson v. Walbridge Aldinger Co.*, 54 So. 3d 1007, 1009-11 (Fla. 2d DCA 2010) (denying discovery of financial information where amended complaint failed adequately to plead facts demonstrating its relevance because "'information sought in discovery must related to the issues involved in the litigation, *as framed in the pleadings*'") (citation omitted, emphasis in original); *Capco Props., LLC v. Monterey Gardens of Pinecrest Condo.*, 982 So. 2d 1211, 1214 (Fla. 3d DCA 2008) (quashing order directing production of financial information where complaint "lack[ed] sufficient allegations to allow the production of petitioners' financial documents").

Applying these principles, plaintiff is not entitled to discovery of copious amounts of sensitive financial data that he has requested about *other* companies who played *no part* in the publication at issue. *See, e.g.*, *O'Barry v. Ocean World, S.A.*, 17 So. 3d 1286, 1287 (Fla. 4th DCA 2009) (quashing order compelling discovery when movant did not establish that financial information it sought was relevant to causes of action alleged in complaint); *Spry v. Prof'l Emp'r*

Plans, 985 So. 2d 1187, 1188 (Fla. 1st DCA 2008) (quashing order granting motion to compel discovery of financial information when movant failed to establish relevance of that information to issues in case). In *O'Barry*, for example, the appellate court had no trouble limiting financial discovery from the party actually alleged to have engaged in actionable conduct, so discovery may certainly be limited here where it concerns *other* entities uninvolved in that conduct.

Moreover, even if plaintiff had validly pled an alter-ego theory at the outset of the case, the discovery provided by Gawker to date is more than sufficient to put such a theory to rest. Gawker has now (a) provided detailed information under oath about each of the affiliated companies, including lack of any role in operating Gawker.com; (b) confirmed under oath that Gawker Media, LLC is the only entity responsible for publishing the Gawker Story and the Excerpts; (c) confirmed under oath that Gawker Media LLC has not made distributions to its parent, Gawker Media Group, Inc.; and (d) confirmed that Gawker Media, LLC has tens of millions of dollars in annual revenues. Through this discovery, Gawker Media LLC has made clear that it is not "under-capitalized," is not organized for the purpose of "mislead[ing] creditors," and otherwise is not a "shell" corporation or corporate fiction. *See, e.g.*, *Hilton Oil Transport v. Oil Transport Co.*, 659 So. 2d 1141, 1151-52 (Fla. 3d DCA 1995) (outlining rare circumstances, not applicable here, in which corporate veil may be pierced). Given that plaintiff has no valid basis for asserting that Gawker Media, LLC is a corporate fraud, and that he has not even attempted to explain any such basis in either his Amended Complaint or his moving papers, his argument that the discovery he seeks is necessary for some sort of "veil piercing" claim should be rejected.

Second, plaintiff asserts that he needs documentation about other companies "to determine which Gawker entities were legally responsible for the publication" of the Excerpts

and "to confirm the veracity" of Gawker's response to interrogatories on this subject. Pl. Mot. at 11. This contention is also without merit. Gawker Media, LLC has already sworn, under oath, that it is the company solely responsible for the content at issue in this lawsuit. *See* Resp. to Interrogatory Nos. 11-12. Plaintiff has pointed to no facts that would establish a good-faith basis for asserting that any entity *other* than Gawker Media, LLC is "legally responsible for the publication" of the Excerpts; as such, additional discovery on this point is unreasonable. *See Elkins v. Syken*, 672 So. 2d 517, 521-22 (Fla. 1996) (affirming denial of discovery that was "duplicative, annoying and oppressive" in light of other information the target party already had provided, and that, accordingly, would "cause[] annoyance and embarrassment, while providing little useful information"); *State Farm Mut. Auto. Ins. Co. v. Parrish*, 800 So. 2d 706, 707 (Fla. 5th DCA 2001) (reversing discovery order which erroneously "expanded the parameters of [R]ule 1.280(b)(1), Florida Rules of Civil Procedure, from permitting discovery of matters relevant to the subject matter of the pending action to authorizing a fishing expedition") (internal quotation marks omitted).

Third, as Gawker has already explained under oath, *see* Resp. to Interrogatory No. 4, no advertising was sold in connection with the post at issue, and therefore not even Gawker.com (much less the other companies or websites) received direct "profits" or "revenue" from the publication. As a result, there is no valid reason that Plaintiff should need, for example, "*all* financial statements" of "Gawker Media, LLC, Gawker Media Group, Inc., Gawker Entertainment LLC, Gawker Technology LLC, Blogwire . . ., and/or their affiliates" (RFP No. 92), "*all* documents that relate to any and all financial transactions between or among" those other companies (*id.*), "*all* documents that relate to the direct or indirect receipt of advertising revenue in connection with Gawker.com" by those other companies (RFP No. 93), or

"documents sufficient to show "*all* revenues, compensation, funding and/or assets" for each of those other companies (RFP Nos. 94-99), particularly when such information has been readily provided for Gawker Media, LLC, the actual publisher of the actual website involved. Plaintiff's requests for all financial documents – covering a three-and-a-half year period – from companies *having nothing to do with the post at issue* are wholly unreasonable and were properly declined.

Finally, plaintiff seeks traffic data, revenues and standards for posting content for the seven Other Sites operated by Gawker Media, LLC, even though they played no role in preparing or publishing the story at issue. *See* RFP Nos. 39-40, 50. With respect to traffic, Gawker has already produced detailed data for Gawker.com (including from three different sources – Google Analytics, Quantcast and its own internal tracking software), and further advised plaintiff, *see* Harder Aff. Ex. I at 8, that traffic data to all Gawker websites is publicly available at quantcast.com (e.g., https://www.quantcast.com/deadspin.com, www.quantcast.com/jezebel.com, etc.). As a result, Gawker properly declined to undertake the burden of assembling additional traffic data for a multi-year period for the seven Other Sites.

With respect to revenue, Gawker already produced its income statements and balance sheets for the whole company, which includes all revenue for the Other Sites. It has also produced monthly revenues for the gawker.com website and has agreed to produce monthly revenues for Gawker Media, LLC as a whole. In all cases, that financial data is being produced for the three-and-a-half year period plaintiff requested (from January 1, 2010 through June 30, 2013), even though the story at issue was not posted until October 2012. Gawker respectfully submits that the substantial burden of breaking down revenue for each of the seven Other Sites it operates far outweighs any arguable relevance of such information to this action, given that those websites focus on decidedly different subjects (ranging from women's issues to technology), did

not publish the post at issue, and otherwise have no involvement in this dispute. Similarly, to the extent that plaintiff seeks documents that may reflect "standards for posting content" at those seven Other Sites, such documents are irrelevant. Requiring Gawker to search the paper and electronic files of those seven Other Sites for such documents is entirely unreasonable (especially given that, to the best of Gawker's knowledge, no such documents exist – as Gawker has already advised plaintiff, *see* Harder Aff. Ex. I at 8).

At bottom, this lawsuit concerns *one* web posting, on *one* website, published by *one* company. The Court should reject plaintiff's attempt to expand it into a fishing expedition directed to five other companies and seven other websites, and should deny this portion of his Motion.

3. Eight Years' Worth of Cease and Desist Letters Regarding Different Matters and Different Legal Claims (RFP No. 28)

Plaintiff has requested "*all documents* that constitute, refer or relate to all cease and desist communications that" Gawker "received from January 1, 2005, to the present that refer to alleged copyright, trademark, and/or other intellectual property violations, including [its] response to such cease and desist communications, and [its] internal communications regarding same." RFP No. 28. Gawker objected to this request because it calls for more than eight years' worth of cease and desist communications concerning (a) stories not at issue in this action, and (b) claims for intellectual property violations, which plaintiff has not asserted in this lawsuit.

Plaintiff now contends that he is entitled to the production of such communications because Gawker "asserted a good faith defense in its papers opposing the temporary injunction, and Gawker Media's scienter is relevant to the issue of punitive damages." Pl. Mot. at 6. Communications regarding years-old "cease and desist" demands over alleged copyright and trademark infringements (demands whose validity has not been established) have nothing to do

with anything at issue in *this* case. *See Nationwide Mut. Fire Ins. Co. v. Hess*, 814 So. 2d 1240, 1242 (Fla. 5th DCA 2002) (concluding that interrogatory seeking information about party's handling of prior, unrelated claims was improper and not relevant to question of its good- or bad-faith in its consideration of the claim at issue in the instant case). Accordingly, the Court should deny this portion of plaintiff's Motion.

4. Plaintiff's Additional Complaints (RFP Nos. 49 & 105; two redacted documents)

Plaintiff's additional complaints can be quickly dismissed. First, plaintiff objects to the fact that Gawker has not produced its "Editor Wiki" in response to Document Request 49, which sought "documents authored by Nick Denton or any officer or director of Gawker Media that relate to any standards for posting content at Gawker.com." Pl. Mot. at 9. Gawker's "Editor Wiki" does not include anything that reasonably could be considered a "standard for posting content" nor was it authored by Mr. Denton or any officer or director of Gawker. As such, Gawker has no responsive documents and has so advised plaintiff. *See* Harder Aff. Ex. I at 8. Nevertheless, despite the fact that it is not responsive, Gawker has agreed to produce its one-page "style guide" (specifically requested for the first time in plaintiff's Motion), which could have been handled without Court intervention had plaintiff complied with his "meet and confer" obligations. *See* Point III *infra*.

Second, plaintiff asserts that he is entitled to "all documents that relate to communications between Gawker" and any vendors it has engaged to assist it in conducting electronic discovery. *See* Mot. at 16-17; Pl. RFP No. 105. In response to this request, and to a related request and interrogatory, Gawker (a) identified the company it has engaged to assist with electronic discovery (which it had already done in open Court at a recent hearing), (b) provided plaintiff with detailed information about the search terms it used to locate potentially responsive

electronic documents, and (c) provided a list of the document custodians whose files were searched. Additional documents related to specific communications between Gawker's attorneys and outside litigation support vendors are both protected by the work-product doctrine and not relevant to any issues in this case. *See, e.g.*, *Huet v. Tromp*, 912 So. 2d 336, 338 (Fla. 5th DCA 2005) (communications between attorneys and outside vendors assisting with litigation protected by work-product doctrine); *Tampa Bay Water v. HDR Eng'g, Inc.*, 2010 WL 3394729 (M.D. Fla. Aug. 26, 2010) (communications with litigation consultant protected as work-product unless consultant is designated as testifying expert).

Finally, plaintiff complains about two documents Gawker produced in redacted form. Pl. Mot. at 17. These documents were each produced simply because of their passing reference to "Hulk." They otherwise do not concern plaintiff, the Gawker Story, or this action. Rather, they concern sites other than Gawker.com, in one (Gawker 00224) addressing general editorial strategy for those other sites and in the other (Gawker 00555_C) addressing placement of specific advertising (unrelated to the post at issue) on those other sites. In both instances, the redaction of such non-responsive information was both fully disclosed and entirely proper.

III. Plaintiff Failed to Comply with the "Meet and Confer" Requirements and is Not Entitled to Attorneys' Fees and Costs.

As described above, plaintiff served two waves of written discovery. After Gawker responded to the first set of requests, plaintiff waited more than two weeks and then sent a letter setting forth his objections at 9:00 p.m. on a Friday night (August 9). Gawker's counsel responded five business days later (on August 16), and, to avoid burdening the court with unnecessary motions practice, proposed a telephonic meet and confer a week later (to facilitate a one week vacation). After plaintiff's counsel advised that he would not wait the week, Gawker's Florida counsel renewed that request in a second letter; although that correspondence was sent

before plaintiff's motion was filed, plaintiff did not include it in his submission. *See* Exhibit 1, attached hereto (requesting plaintiff's counsel to delay filing his motion by three business days and to schedule a telephonic meet and confer when lead counsel returned to the office, extending the same "professional courtesy" shown lead plaintiff's counsel in scheduling depositions around his vacation).[6] Plaintiff did not respond other than to file this motion.

Plaintiff objected to Gawker's responses to the second set of discovery requests on the afternoon of Friday, August 16. Lead counsel advised he was about to leave the office for vacation, but would respond promptly upon his return. Plaintiff waited three business days, and, without any substantive response from Gawker, then filed this motion. (Plaintiff's counsel's declaration misleadingly attaches the two letters from August 16 out of order to suggests that Gawker's counsel had responded with respect to both the first and second set of discovery responses, but that was not in fact the case.)

Florida Rule of Civil Procedure 1.380(a)(2) provides that *before* a party brings a discovery motion, he is required "*in good faith*" to confer or attempt to confer with the other party "in an effort to secure the information or material without court action" (emphasis added). Here, even though there are no discovery deadlines, plaintiff rushed to court rather than wait a few days to discuss the discovery requests upon lead counsel's return from a one-week vacation. In the case of the second set of requests, plaintiff filed his motion just three business days after sending a letter objecting to Gawker's responses, knowing that opposing counsel was on

[6] *See also* Standards of Professional Courtesy for Florida's Sixth Judicial Circuit B.7 – B.9 (counsel are presumptively required to "grant reasonable requests for . . . extensions, and postponements" as "a matter of courtesy," including by "balancing the need for expedition against the deference [given] to opposing counsel's schedule of professional and personal engagements, the reasonableness of the length of extension requested, [and] opposing counsel's willingness to grant reciprocal extensions").

vacation. With respect, this conduct does not constitute meaningful compliance with the "meet and confer" rules, and the motion should be denied on that basis.

Finally, Rule 1.380(a)(4) does not permit the recovery of attorneys' fees and costs where the grounds for resisting discovery were justified and where the moving party has not properly certified that "a good faith effort was made to obtain the discovery without court action." For both of those reasons, plaintiff's request for attorneys' fees and costs should be denied.[7]

CONCLUSION

For the foregoing reasons, Gawker respectfully requests that this Court deny Plaintiff's Motion to Compel, and for such further relief as the Court deems appropriate.

Dated: September 4, 2013

Respectfully submitted,

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and

[7] Moreover, because the California lawyers for whom plaintiff seeks payment of attorneys' fees and costs are not admitted to this Court – even on a *pro hac vice* basis – no recovery should be permitted, particularly at rates that may be customary in Los Angeles, but that far exceed rates properly charged in this venire. *See Morrison v. West*, 30 So. 3d 561, 566-67 (Fla. 4th DCA 2010) (denying attorneys' fees to North Carolina attorney not licensed to practice in Florida and not admitted *pro hac vice* because "[a]llowing an attorney to recover fees for the unauthorized practice of law is a violation of *public policy*, irrespective of the private interests and understandings of the parties") (emphasis in original); Fla. Stat. Ann. Bar Rule 4-5.5(c) & comment (requiring an out-of-state attorney who practices temporarily in Florida to seek *pro hac vice* admission).

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of September 2013, I caused a true and correct copy of the foregoing to be served by email upon the following counsel of record:

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/s/ *Gregg D. Thomas*
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Exhibit 1

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August 21, 2013

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Re: Terry Gene Bollea v. Gawker Media, LLC, et al.
Case No.: 8:12-cv-02348-JDW-TBM

Dear Charles,

Although Seth was handling the substance of Gawker's discovery responses, I will try to respond to your email from last night in his absence. We continue to believe that a phone call early next week between you and Seth to discuss the small fraction of those responses to which plaintiff objected would likely be productive and in the spirit of Florida's rules requiring a "meet and confer." Your letter about Gawker's discovery responses (emailed at about 9 PM on Friday, August 9) was not sent until more than two weeks after the responses were served, and we then responded five business days later and provided additional information. During that same five day period, Gawker responded to (a) plaintiff's second set of written discovery requests, (b) a second letter from you objecting to the affirmative discovery Gawker plans to take, and (c) a motion. Given all that, proposing the required "meet and confer" a little more than a week later – to accommodate Seth's one-week August vacation – is hardly unreasonable, especially considering that (1) no formal discovery schedule has been entered in this case, and there are no looming deadlines, and (2) he worked hard to accommodate your vacation plans in scheduling depositions of Gawker witnesses. I respectfully request that you extend Seth the same professional courtesy by reconsidering your position and agreeing to a "meet and confer" sometime the week of August 26, when he returns.

If you do go forward with a motion to compel before then, however, Gawker will oppose it on substantive grounds as well as on the grounds that plaintiff has failed to comply in good faith with Florida's "meet and confer" rules. (Please note that I could not tell from your email whether you have already filed a motion to compel, or intend to file one. If it is the former, please forward me and other counsel the motion papers promptly.) Thank you.

Sincerely,

THOMAS & LOCICERO PL

Gregg D. Thomas

Cc: David Houston, Esq.
Kenneth Turkel, Esq.
Christina Ramirez, Esq.
Seth Berlin, Esq.
Alia Smith, Esq.