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.
_____/

MOTION TO DISMISS OF DEFENDANT BLOGWIRE HUNGARY SZELLEMI ALKOTAST HASZNOSITO, KFT

Defendant Blogwire Hungary Szellemi Alkotast Hasznosito KFT, now known as Kinja, KFT ("Blogwire Hungary" or "Kinja"), by and through its undersigned counsel, specially appears and hereby moves to dismiss Plaintiff's First Amended Complaint. As grounds for this motion, Kinja states as follows:

1. Plaintiff filed his First Amended Complaint ("Complaint" or "Am. Compl.") on December 28, 2012, which added Blogwire Hungary as a defendant.[1]

2. Plaintiff effectuated service of the Complaint on Kinja in Hungary on October 21, 2013.

3. Blogwire Hungary moves to dismiss the Complaint on the grounds that plaintiff has failed (a) to plead facts alleging any wrongful conduct by it, or (b) to plead any facts or to

[1] In or about early 2013, Blogwire Hungary Szellemi Alkotast Hasznosito KFT was renamed Kinja, KFT. *See* Deposition of Scott Kidder at 55:8-9 (relevant page attached hereto as Exhibit A). Nevertheless, when it was served ten months later, the summons was for the "Blogwire Hungary" entity.

demonstrate any tortious activity in Florida that would support the exercise of this Court's jurisdiction over a Hungarian entity.

4. In addition, Blogwire Hungary joins, and expressly adopts and incorporates, Gawker Media, LLC's Motion to Dismiss Plaintiff's Complaint for Failure to State a Claim, filed January 4, 2013.[2]

MEMORANDUM OF LAW

FACTUAL BACKGROUND

In this lawsuit, plaintiff Terry Gene Bollea, the professional wrestler known as Hulk Hogan, challenges the publication on the website "www.Gawker.com" of an article (the "Gawker Story") commenting on a video (the "Video") depicting him having sexual relations with the wife of his then best friend, along with brief and heavily edited excerpts from the Video ("the Excerpts"). Am. Compl. ¶¶ 1, 26, 28. The basic facts relevant to the publication of the Gawker Story and Excerpts are set forth in the motion to dismiss of Gawker Media, LLC, and need not be repeated here. The following additional facts are relevant specifically to Blogwire Hungary/Kinja and its independent grounds for dismissal.

Plaintiff's allegations. As plaintiff alleges in his Complaint, Blogwire Hungary/Kinja is a Hungarian entity, Am. Compl. ¶ 18, the Hungarian equivalent of a limited liability company. The Complaint does not attribute any tortious conduct specifically to Blogwire Hungary. Instead, the Complaint lumps Blogwire Hungary together with five other Gawker entities, refers

[2] That Motion to Dismiss was initially filed in federal court during the period in which these proceedings were removed to the Middle District of Florida, and was submitted in this Court together with a Notice of Filing dated April 29, 2013, because those motion papers were not forwarded to this Court by the federal court when this case was remanded. Because that motion addresses the merits of each of plaintiff's causes of action, and because those merits are before the District Court of Appeal in connection with Gawker Media, LLC's appeal of this Court's order entering a temporary injunction, defendants have deferred noticing that motion for a hearing until after the appellate court rules so that its decision can inform this court's adjudication of that substantive motion for failure to state a claim.

to them collectively as "Gawker Media," and then attributes to that collective the act of publication giving rise to this lawsuit. *Id.* at ¶¶ 19-20, 28-29, 35. Other than asserting that Blogwire Hungary "owns the Internet domain name GAWKER.COM," *id.* at ¶ 18, no facts are pleaded to explain why it is appropriate to treat Blogwire Hungary and these other parties – which are conceded to be separate and distinct business entities, *see id.* at ¶¶ 12-16 – as a combined entity, collectively responsible for the complained of conduct. Indeed, plaintiff has now voluntarily dismissed three of those entities, Gawker Sales, LLC, Gawker Technology, LLC, and Gawker Entertainment, LLC, presumably because he recognizes that not every Gawker entity is responsible for the conduct of every other Gawker entity. A motion to dismiss a fourth Gawker entity – Gawker Media Group, Inc. ("GMGI") – is already pending before this Court.

In addition, the Complaint pleads, purely on information and belief, that *all* of the Gawker Defendants – including Blogwire Hungary, a foreign corporation operating in Budapest – "were and are agents, licensees, employees, partners, joint-venturers, co-conspirators, owners, principals, and employers of the remaining Gawker Defendants, and each of them are, and at all times herein mentioned were, acting within the course and scope of that agency, license, partnership, employment, conspiracy, ownership, or joint venture," and that "the acts and conduct herein alleged of each of the Gawker Defendants were known to, authorized by, and/or ratified by the other Gawker Defendants, and each of them." *Id.* at ¶ 24. Again, no facts supporting these conclusory legal contentions are alleged.

Subsequent developments. Whatever basis plaintiff might have had when he initially filed his lawsuit for believing that Blogwire Hungary was a proper party, he can have no such basis now. Shortly after the filing of plaintiff's initial complaint in federal court, undersigned

counsel advised plaintiff's counsel that "the only entity that publishes the video challenged in plaintiff's Complaint is Gawker Media, LLC" and that "the entities other than Gawker Media LLC are not in any event subject to the jurisdiction of the Florida court," requesting as a result that plaintiff "voluntarily dismiss the remaining defendants so that we can all focus on what we understand to be plaintiff's primary issue." 10/25/12 Email from S. Berlin to Plaintiff's Counsel (attached hereto as Exhibit B). After the case was re-filed in this Court, Gawker's counsel again advised that "Gawker Media, LLC has voluntarily accepted service and has appeared in the action. It is the one responsible for the content of gawker.com. . . . [T]here are no claims against the other defendants and in most cases no jurisdiction over them in Florida." 4/17/13 Email from G. Thomas to Plaintiff's Counsel (attached hereto as Exhibit C); *see also id.* (reiterating that "we view it as overkill to sue eight defendants . . . in addition to Gawker Media, LLC, which is the entity that actually operates gawker.com"). In response, plaintiff's counsel then advised that, before making a determination, he wanted to take discovery. Although jurisdictional motions are often decided at the outset of a case without the benefit of discovery, plaintiff has now had the opportunity to take significant discovery here since Blogwire Hungary was not served until ten months after Gawker Media, LLC had appeared.

During that discovery process, Gawker Media, LLC has produced various documents – including balance sheets and income statements for the past three-and-a-half years – demonstrating that it has annual revenues in the tens of millions of dollars and is not a sham company created to defraud creditors.[3] Gawker Media, LLC also provided detailed and verified interrogatory responses about itself and the other defendants, including Blogwire Hungary/Kinja.

[3] Given the confidential nature of Gawker Media, LLC's financial records, they have not been submitted to the Court. They have been produced to plaintiff's counsel, marked as "Confidential" under the Agreed Protective Order entered in this case on July 25, 2013.

For example, in response to one of plaintiff's interrogatories, which sought "all facts regarding Blogwire Hungary's role in the creation, editing, and/or posting of content on Gawker.com," Gawker responded under oath 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.'" Gawker Media, LLC's Responses to Second Set of Interrogatories at 1-2 (Resp. to Int. No. 11) (relevant pages attached hereto as Exhibit D). In addition, in response to a second interrogatory asking it to "Describe the role and line of business of Gawker and each company affiliated in any way with Gawker throughout the period between January 1, 2010 and the present," Gawker stated in pertinent part:

> **Kinja, KFT (formerly named "Blogwire Hungary Szellemi Alkotast Hasznosito KFT"):** Kinja, KFT is an intellectual property holding company and a software development company. Pursuant to an agreement with Gawker Media, LLC, Kinja, KFT owns and licenses to Gawker Media, LLC the intellectual property used by Gawker Media, LLC in connection with Gawker.com, Deadspin.com, Gizmodo.com, io9.com, Jalopnik.com, Jezebel.com, Kotaku.com, and Lifehacker.com (the "Gawker Media Websites"), including trademarks, domains and proprietary software. Kinja, KFT also creates content for cink.hu, a Hungarian website. Kinja, KFT does not create, edit, moderate or otherwise review content on Gawker.com.
>
> **Gawker Media, LLC:** Gawker Media, LLC is the publisher of the Gawker Media Websites, and employs writers, editors and administrative staff to create, edit and publish content on the Gawker Media Websites. As is pertinent to this action, Gawker Media, LLC is the publisher of the Gawker Story and the

> Excerpts, is 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. Gawker Media, LLC also employs software engineers who develop software and who ensure that the Gawker Media Websites operate effectively. Gawker Media, LLC additionally employs salespersons who sell advertising for the Gawker Media Websites.

Ex. D at 2-4 (Resp. to Int. No. 12).[4]

Following substantial written discovery, Plaintiff also took full-day depositions of Gawker Media, LLC's President, defendant Nick Denton; its corporate designee, Vice President of Operations Scott Kidder; and gawker.com's former editor, defendant A.J. Daulerio. Mr. Kidder, who is also Managing Director of Kinja, testified under oath that Kinja is "an intellectual property holding and technology development company," Kidder Tr. (Ex. A) at 47:17-18, that is a wholly-owned subsidiary of GMGI, *id.* at 48:21-24. In response to questioning about plaintiff's efforts to secure a take down of the Gawker Story and Excerpts from gawker.com, Mr. Kidder reiterated that Gawker Media, LLC "published the story and Gawker Media, LLC is solely responsible for its content." *Id.* at 246:17-25. For their part, both Mr. Daulerio and Mr. Denton were questioned at great length about the preparation of the Gawker Story and the Excerpts, and none of that testimony even arguably suggested that Blogwire Hungary had any involvement whatsoever.

[4] Gawker Media, LLC also provided a detailed, three-page response to an interrogatory inquiring about the making, editing, subtitling, dissemination, transmission, distribution, publication, sale, and offering for sale of the Video and the Excerpts. *See* Gawker Media, LLC's Responses to Plaintiff's First Set of Interrogatories at 7-10 (Resp. to Int. No. 5) (attached hereto as Exhibit E). Nowhere in that response is there any indication that Blogwire Hungary played any role whatsoever in such conduct.

Following these depositions, plaintiff voluntarily dismissed three of the five entities other than Gawker Media, LLC. *See* page 3 *supra*. But plaintiff has insisted on proceeding against Kinja and its corporate parent, GMGI.

Even were there any doubt at the outset of the case about the proper corporate defendant, the discovery described above has resolved the issue conclusively. Nevertheless, for the avoidance of any doubt, Kinja also submits the attached Affidavit of Scott Kidder ("Kidder Aff.") (attached hereto as Exhibit F), Managing Director of Kinja, which further confirms that Kinja – a Hungarian entity – is a software development and intellectual property company and that it creates content for cink.hu a Hungarian website, but that it played no role in publishing the Gawker Story and Excerpts, which is the allegedly tortious act supposedly giving rise to this Court's jurisdiction over this foreign defendant. As explained below, this Court should not authorize plaintiff to pursue claims and discovery against a Hungarian company that had nothing to do with the allegedly tortious conduct at issue.

ARGUMENT

In the Motion to Dismiss of Defendant Gawker Media Group, Inc., filed on October 11, 2013, GMGI articulated multiple reasons why it should be dismissed as a defendant. Insofar as those reasons are relevant to Kinja's motion to dismiss, we repeat them again herein and apply them to the facts peculiar to Kinja. Indeed, Kinja's connection to the Article is even more attenuated than GMGI's: While GMGI is the parent company of the subsidiary that admits it is responsible for the contents of the Article (*i.e.*, Gawker Media, LLC), Kinja (or Blogwire Hungary as it was previously named) is an entirely separate subsidiary of the same parent and has no direct corporate connection to the entity responsible for the content of gawker.com.

The argument that follows is divided into two parts. Part I demonstrates that, altogether apart from the adequacy of plaintiff's pleading more generally, plaintiff has failed to plead sufficient facts alleging that Blogwire Hungary engaged in any even arguably tortious conduct (whether in Florida or otherwise). This argument is confined to the four corners of plaintiff's Amended Complaint. Part II demonstrates, based on the full record placed before the Court, that plaintiff has failed to meet his burden of establishing any basis for this Court's exercise of personal jurisdiction over Kinja.

I. Failure to State a Claim

Plaintiff's Complaint bases each of his purported causes of action against the Gawker Defendants on the publication of the Gawker Story and/or the Excerpts on the Gawker website. *See* Am. Compl. ¶¶ 1, 5, 28, 57-60, 67-71, 78, 80, 86, 95, 103. While Gawker Media, LLC has conceded that, as the operator of the Gawker website, it published the Gawker Story and the Excerpts, plaintiff has not otherwise pleaded any facts to indicate that any of the other named business entities – including Kinja – played any role in that publication. To the extent that the Complaint attributes *any* relevant conduct at all to Kinja, it does so only through a pleading sleight-of-hand. The Complaint simply designates all the different Gawker entities with the collective short-hand "Gawker Media," and then alleges that this collective entity – which is purely a product of the Complaint's naming conventions – "owns, operates, controls and publishes several Internet websites, including the Gawker site." Am. Compl. ¶¶ 19-20.

Florida law is clear that purely "conclusory allegations," unsupported by the necessary "ultimate facts," are insufficient to state a claim. *Valdes v. Gab Robins N. Am., Inc.*, 924 So. 2d 862, 867 (Fla. 3d DCA 2006). This standard requires that a plaintiff plead his case "with *sufficient particularity* so that the trial judge in reviewing the ultimate facts alleged may rule as a

matter of law whether or not the facts alleged are sufficient as to the factual basis for the inferences the pleader seeks to draw and are sufficient to state a cause of action." *Beckler v. Hoffman*, 550 So. 2d 68, 71 (Fla. 5th DCA 1989) (emphasis added). That standard has plainly not been met here, as there are *no* facts alleged to support the conclusion Kinja, and the other Gawker entities, collectively published the Gawker Story and the Excerpts. *See, e.g., Eagletech Commc'ns, Inc. v. Bryn Mawr Inv. Grp., Inc.*, 79 So. 3d 855, 863 (Fla. 4th DCA 2012) (conspiracy claims were insufficiently pleaded where plaintiff failed "to allege sufficient facts from which a reasonable inference could be drawn that all of the named defendants participated in the conspiracy"); *Lawrie v. Ginn Cos.*, 2010 WL 3746725, at *4 (M.D. Fla. Sept. 21, 2010) ("allegations of 'generalized conduct' against multiple defendants are only proper if the complaint also alleges *facts* which evoke more than the 'the mere possibility' that *each individual defendant* acted unlawfully") (emphasis added).[5]

Nor can plaintiff state a claim against Kinja based on its corporate affiliation with Gawker Media, LLC, the entity whose conduct is actually at issue. As plaintiff himself alleges, Gawker Media, LLC is a distinct business entity, specifically, a limited liability corporation, organized and operating under the laws of Delaware. Am. Compl. ¶ 12.[6] Under Florida law,

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[5] The same goes for plaintiff's general "information and belief" allegation that "Defendants, and each of them, were and are the agents, licensees, employees, partners, joint-venturers, co-conspirators, owners, principals, and employers of the remaining Gawker Defendants, and each of them are, and at all times herein mentioned were, acting within the course and scope of that agency, license, partnership, employment, conspiracy, ownership, or joint venture." Am. Compl. ¶ 24. Those are simply legal conclusions unsupported by specific facts, and the court need not and should not credit them. *See Dr. Navarro's Vein Ctr. of Palm Beach, Inc. v. Miller*, 22 So. 3d 776, 778 (Fla. 4th DCA 2009) (in reviewing sufficiency of complaint on a motion to dismiss, "[m]ere statements of opinions or conclusions unsupported by specific facts will not suffice") (quoting *Brandon v. Pinellas Cnty.*, 141 So. 2d 278, 279 (Fla. 2d DCA 1962)).

[6] Under Delaware law, limited liability companies are legally distinct entities, whose conduct cannot be attributed to an affiliated business entity absent some basis for disregarding the two entities' separate legal status. *See, e.g., Arbor Place, L.P. v. Encore Opportunity Fund, LLC*, 2002 WL 205681, at *6 (Del. Ch. Jan. 29, 2002) (observing, in case involving affiliated LLCs, that "[t]he separate existence

stating a claim against one business entity based on the conduct of an affiliated entity requires pleading both (a) that affiliated entity whose conduct is at issue is a "mere instrumentality" of the other entity, *and* (b) that there has been "improper conduct" in the formation and/or corporate use of the affiliated entity whose conduct is at issue. *Dania Jai-Alai Palace, Inc. v. Sykes*, 450 So. 2d 1114, 1117 (Fla. 1984) (rejecting veil-piercing claim seeking to link two affiliates owned by the same corporate parent); *see also Steinhardt v. Banks*, 511 So. 2d 336, 338 (Fla. 4th DCA 1987) (under *Sykes*, piercing corporate veil requires, *inter alia*, showing that entity responsible for underlying conduct was "formed or used for some illegal, fraudulent, or other unjust purpose").[7]

Here, apart from the patently insufficient allegation that each Gawker Defendant is an "agent" of every other Gawker Defendant, Am. Compl. ¶ 24, plaintiff has not alleged that Gawker Media, LLC is an instrumentality of Kinja. Nor has he alleged that Gawker Media, LLC was improperly formed or that Kinja is somehow misusing Gawker Media, LLC – through their shared parent, GMGI – for an improper purpose like avoiding creditors. As the Florida Supreme Court has repeatedly emphasized, were the law to permit litigants to erase corporate divisions as

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and rights of discrete entities is well established in Delaware law and the Court is reluctant to ignore such separate existence").

[7] In concluding in *Sykes* that a plaintiff must plead improper conduct in the formation or use of the corporate form to state a veil-piercing claim, the Florida Supreme Court expressly rejected the pleading standard previously articulated in *Vantage View, Inc. v. Bali East Development Corp.*, 421 So. 2d 728 (Fla. 4th DCA 1982) – namely, that such a veil-piercing claim merely requires alleging that one entity is acting as an "alter ego" or "agent" of a second, related entity. *Sykes*, 450 So. 2d at 1117; *see also Steinhardt*, 511 So. 2d at 338 (explaining that "[t]he *Sykes* court expressly rejected the alter ego or instrumentality test which this court had applied for piercing the corporate veil in *Vantage View*"). To the extent that *Sykes* approved of the ultimate *result* in *Vantage View*, it did so only because, in *Vantage View*, there *was* "clearly an allegation of improper conduct on the part of the parent corporation," specifically, that the parent established the subsidiary as a mere instrumentality in order "'*to mislead creditors and to avoid liability.*'" *Sykes*, 450 So. 2d at 1117 (emphasis in original) (quoting *Vantage View*, 421 So. 2d at 733). Here, plaintiff has not alleged *any* improper conduct on Kinja's part, let alone wrongful conduct in establishing or improperly using Gawker Media, LLC, the affiliate whose conduct is at issue. Under the applicable pleading standard, that is fatal to plaintiff's claim.

easily as plaintiff urges here, "it would completely destroy the corporate entity as a method of doing business and it would ignore the historical justification for the corporate enterprise system." *Sykes*, 450 So. 2d at 1120 (quoting *Advertects, Inc. v. Sawyer Indus., Inc.*, 84 So. 2d 21, 23-24 (Fla. 1955)).

Plaintiff's sole allegation as to *any* connection between Kinja and Gawker Media, LLC beyond mere corporate affiliation is his contention that Kinja "owns the Internet domain name GAWKER.COM" under which the Gawker Story and Excerpts were published. Am. Compl. ¶ 18. But it is standard practice for entities within the same corporate family to license intellectual property, and that does not in any way alter their status as legally distinct entities. *See, e.g.*, *Diamond Chem. Co. v. Atofina Chems., Inc.*, 268 F. Supp. 2d 1, 8-9 (D.D.C. 2003) ("joint use of trademarks" did not authorize piercing corporate veil); *Shapiro v. Ford Motor Co.*, 359 F. Supp. 350, 353-55 (D. Md. 1973) (use of "Ford" trademark by subsidiaries did not collapse distinction between parent and subsidiaries).

To the extent that plaintiff is somehow contending that Kinja can be considered a joint publisher of the Gawker Story and Excerpts because the Gawker Story and Excerpts were published at a domain address Kinja owns, there is no support for such a theory. Indeed, federal and state court have consistently held that even owning and operating a website – rather than just, as here, owning the domain name – does not make the owner or operator liable for content published on the website. *See, e.g.*, *Cubby, Inc. v. CompuServe, Inc.*, 776 F. Supp. 135, 139 (S.D.N.Y. 1991) (holding Internet service provider not liable for defamatory speech because it was nothing more than a conduit through which the subject statements were posted and distributed); *Zeran v.America Online, Inc.*, 129 F.3d 327, 332 (4th Cir. 1997) (explaining that under common-law principles, "[i]t is undoubtedly true that mere conduits, or distributors" are

not liable for publication-based torts unless they, "at a minimum have knowledge of the existence of a defamatory statement" before publication). Here, Kinja's alleged relationship to the published content is even more attenuated.

Because plaintiff has not properly alleged either that Kinja published the Gawker Story and the Excerpts, or a basis for piercing the multiple corporate veils that separate Kinja and Gawker Media, LLC, he has not properly stated a claim against Kinja. Accordingly, the claims against Kinja should be dismissed with prejudice for failure to state a claim upon which relief can be granted.

II. Failure to Establish Personal Jurisdiction

Plaintiff also has failed to provide any basis for this Court to exercise personal jurisdiction over Kinja. As an initial matter, it is *plaintiff* who bears the ultimate burden of establishing, both legally *and* factually, that the Court has personal jurisdiction. *Venetian Salami Co. v. Parthenais*, 554 So. 2d 499, 502 (Fla. 1980) (holding that once a defendant raises facts challenging personal jurisdiction, "[t]he burden is then placed upon the *plaintiff* to prove by affidavit the basis upon which jurisdiction may be obtained") (emphasis added). *See also Clement v. Lipson*, 999 So. 2d 1072, 1075 (Fla. 5th DCA 2008) (on motion to dismiss for lack of personal jurisdiction, it is the *plaintiff* who must "demonstrate the basis for long-arm jurisdiction by" providing an affidavit "or other evidence, like a deposition transcript"); *Wendt v. Horowitz*, 822 So. 2d 1252, 1255 (Fla. 2002) (same). In adjudicating that issue, the Court properly considers the parties' affidavits as well as facts revealed during any discovery that has already occurred in the case. *See Mancher v. Seminole Tribe of Florida*, 708 So. 2d 327, 328 (Fla. 4th DCA 1998) (noting "that a court may consider affidavits when determining a motion to dismiss under very limited circumstances . . . includ[ing] a challenge of personal jurisdiction");

Blumberg v. Steve Weiss & Co., 922 So. 2d 361, 363 (Fla. 3d DCA 2006) (granting motion to dismiss for lack of personal jurisdiction based upon facts revealed during discovery); *Field v. Koufas*, 701 So. 2d 612, 614 (Fla. 2d DCA 1997) (granting motion to dismiss based on lack of personal jurisdiction where defendants' affidavits contradicted plaintiff's allegations and plaintiff failed to adequately rebut them).

Here, the Kidder Affidavit as well as the record in this case – including both responses to written discovery and multiple days of depositions of Gawker witnesses – conclusively demonstrate that there is no basis for exercising jurisdiction over Kinja. Plaintiff concedes in his complaint that Kinja is not a citizen or resident of Florida. *See* Am. Compl. ¶ 18. Plaintiff does not contend that Kinja has sufficient contacts with the State of Florida to provide this Court with general jurisdiction over it; rather, the only asserted basis for jurisdiction over Kinja is that, by purportedly acting together with all other Gawker defendants, "ha[s] committed tortious acts within the state of Florida," and therefore is within the State's long-arm jurisdiction. Am. Compl. ¶ 8.

But long-arm jurisdiction, whether premised on Florida Statutes § 48.193(1)(a), which applies to defendants who do business in the state, or Florida Statutes § 48.193(1)(b), which applies to defendants who commit tortious acts within the state, requires what is manifestly missing in the case of Kinja – conduct in the forum state that gave rise to the cause of action. *See Execu-Tech Bus. Sys., Inc. v. New Oji Paper Co.*, 752 So. 2d 582, 584 (Fla. 2000) (stating that Florida courts can exercise long-arm jurisdiction when a "foreign corporation commits a 'tortious act' on Florida soil"); *Camp Illahee Investors, Inc. v. Blackman*, 870 So. 2d 80, 85 (Fla. 2d DCA 2003) ("By its terms, section 48.193(1) requires connexity between the defendant's activities and the cause of action."); *Schwartzberg v. Knobloch*, 98 So. 3d 173, 177 (Fla. 2d DCA

2012) ("[J]urisdiction may be asserted upon nonresident persons or entities in accordance with [section 48.193(1)(a)] where the cause of action arises from that person's business activities in Florida.").

As noted above, plaintiff has not pleaded any facts to indicate that Kinja published the Gawker Story and/or the Excerpts or that it otherwise engaged in any other tortious conduct in Florida. And, even apart from the adequacy of plaintiff's pleading, the Kidder Affidavit, interrogatory responses, and deposition testimony all make clear that, in fact, Kinja played no role in publishing the Gawker Story and/or the Excerpts. *See* Kidder Aff. ¶ 7; Interrog. Resps. No. 12(2); *see also* Kidder Tr. at 246:17-25. Accordingly, there is no basis for exercising specific jurisdiction over Kinja. *See, e.g.*, *Koufas*, 701 So. 2d at 614 (no basis for specific jurisdiction where affidavits established that defendants had not committed acts directed toward forum state); *see also Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 781 n.13 (1984) (jurisdiction over publisher does not automatically confer jurisdiction over entity affiliated with publisher; rather, as a matter of due process, "[e]ach defendant's contacts with the forum State must be assessed individually"); *Kertesz v. Net Transactions, Ltd.*, 635 F. Supp. 2d 1339, 1347 (S.D. Fla. 2009) (under Florida law, no basis for specific jurisdiction over particular defendant where causes of action arose out of an act of publication and plaintiff did not plead acts of publication by that defendant).

Finally, this Court cannot exercise jurisdiction over Kinja based on the alleged conduct within the state of Florida by Gawker Media, LLC – a legally independent business entity that merely shares Kinja's corporate parent. To obtain jurisdiction over Kinja based on the alleged actions of Gawker Media, LLC, plaintiff not only would have to pierce the corporate veil but also would have to travel up the corporate structure to the parent *and then down again* to a

separate subsidiary. As noted above, the Complaint provides no basis for piercing these two corporate veils. And, even if the Complaint did provide such a basis, the factual record that may be considered at this stage decisively refutes any contention that Gawker Media, LLC is somehow a sham entity being used for an improper purpose by its parent and its parent's other subsidiary. *See, e.g.*, *McFadden Ford, Inc. v. Mancuso*, 766 So. 2d 241, 242-43 (Fla. 4th DCA 2000) (dismissing case for lack of personal jurisdiction where affidavits in support of motion to dismiss refuted corporate veil-piercing theory); *Hobbs v. Don Mealey Chevrolet*, 642 So. 2d 1149, 1156-57 (Fla. 5th DCA 1994) (same).

For these reasons, Kinja should be dismissed from this case for lack of personal jurisdiction.

CONCLUSION

WHEREFORE, Defendant Blogwire Hungary/Kinja respectfully requests that the Court grant this Motion and dismiss Plaintiff's First Amended Complaint with prejudice as to it.

Dated: November 12, 2013

Respectfully submitted,

THOMAS & LOCICERO PL

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of November, 2013, I caused a true and correct copy of the foregoing to be served electronically upon the following counsel of record at their respective email addresses via the Florida Courts E-Filing Portal:

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