

# Exhibit 3

to

GAWKER'S EXCEPTIONS TO THE SPECIAL DISCOVERY  
MAGISTRATE'S REPORT AND RECOMMENDATION TO  
GRANT PLAINTIFF'S MOTION TO COMPEL

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

-----  
TERRY GENE BOLLEA, professionally  
known as HULK HOGAN,

Plaintiff,

No. 12-012447-CI-011

vs.

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

Defendants.

-----/

TELEPHONIC HEARING BEFORE  
THE HONORABLE JAMES CASE

DATE: October 20, 2014  
TIME: 3:07 p.m. to 5:37 p.m.  
PLACE: 201 East Kennedy Boulevard  
Suite 712  
Tampa, Florida  
REPORTED BY: Susan C. Riesdorff, RPR, CRR  
Notary Public, State of  
Florida

Pages 1 - 114

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

APPEARANCES:

CHARLES J. HARDER, ESQUIRE  
Harder Mirell & Abrams, LLP  
1925 Century Park East  
Suite 800  
Los Angeles, California 90067

- and -

DAVID HOUSTON, ESQUIRE  
Law Office of David Houston  
432 Court Street  
Reno, Nevada 89501

- and -

KENNETH G. TURKEL, ESQUIRE  
Bajo Cuva Cohen & Turkel, P.A.  
100 North Tampa Street  
Suite 1900  
Tampa, Florida 33602

Attorneys for Plaintiff

SETH D. BERLIN, ESQUIRE  
MICHAEL BERRY, ESQUIRE  
ALIA L. SMITH, ESQUIRE  
Levine Sullivan Koch & Schulz, LLP  
1899 L Street, N.W.  
Suite 200  
Washington, D.C. 20036

- and -

RACHEL FUGATE, ESQUIRE  
Thomas & LoCicero, PL  
601 South Boulevard  
Tampa, Florida 33606

Attorneys for Defendant Gawker Media, LLC

I N D E X

PROCEEDINGS	Page 3
REPORTER'S CERTIFICATE	Page 114

1 attorney's fees, which was not argued during this  
2 time, I'll take that matter under advisement and  
3 we'll address that issue at some further time.  
4 That would be my recommendation to the Court with  
5 respect to the motions made here today.

6 Next question, do you still have a hearing  
7 time with Judge Campbell on the 22nd of October?

8 MR. HARDER: Yes, Your Honor.

9 MR. BERLIN: Yes, Your Honor.

10 THE COURT: Okay. Next then I guess would be  
11 to take up the subject of the scheduling.

12 MR. HARDER: This is Charles, Your Honor.  
13 The motion to compel?

14 THE COURT: Let's take that one up.

15 MR. HARDER: That was plaintiff's motion. So  
16 if now's a good time, I can go into the argument.

17 THE COURT: Let's do it.

18 MR. HARDER: Okay. Great. This is Charles  
19 Harder, so that we have a clear record.

20 Plaintiff has filed a motion to compel  
21 further response from Gawker relating to financial  
22 documents and other types of documents. And I'll  
23 take them all in turn.

24 Judge Campbell granted our request as to a  
25 lot of things. And as to other things, she -- she

1 did not grant, but she said without prejudice to  
2 the plaintiff seeking the same information through  
3 publicly available means and then if we cannot  
4 find this information through publicly available  
5 means -- because Gawker has said it's publicly  
6 available -- then we could revisit and re-request  
7 the information. So in large part, that's what  
8 we've done. In some cases, we're seeking  
9 information that Judge Campbell said Gawker needs  
10 to provide. So I'll go through this information.

11 The first is requests for production Nos. 89,  
12 90, 92, and 93. 89 pertains to the documents that  
13 describe the role and function or line of business  
14 of Kinja KFT. That's a sister company of Gawker  
15 Media.

16 Request No. 90 is all documents that describe  
17 the role and function of Kinja with respect to the  
18 publication of the sex tape.

19 Request No. 92 is all documents that relate  
20 to financial transactions between or among the  
21 different Gawker entities. That includes Gawker  
22 Media, Kinja, and their parent. They're both  
23 owned by the same company, which is Gawker Media  
24 Group, Inc. Sometimes we refer to it as GMGI.

25 Judge Campbell ordered the production of

1 financial transactions between GMGI and Kinja, to  
2 which the defendants responded that Gawker is not  
3 in possession. Gawker Media, LLC is not in  
4 possession of those documents, but we've -- A,  
5 we've requested production by Kinja of those  
6 materials and also we're requesting production --  
7 let me step back. We're requesting production by  
8 Gawker Media, LLC of those materials because these  
9 companies are so closely related, and we're also  
10 requesting the transactions between Kinja and  
11 Gawker Media, LLC. I apologize if it gets a  
12 little bit confusing, but if we take one step  
13 back, we're asking for all of the transactions  
14 between these different related companies.

15 And then Request No. 93 is documents that  
16 relate to the direct or indirect receipt of  
17 advertising revenue in connection with Gawker.com  
18 by Kinja. So a lot of these -- let me just take  
19 up one of the defenses they've raised, which is  
20 that we're not allowed to seek from Gawker Media  
21 any documents that are in the possession of Kinja,  
22 its sister company. The analogy that Gawker made  
23 was look at Berkshire Hathaway; it's like asking  
24 one Berkshire Hathaway subsidiary for documents  
25 that are in possession of another Berkshire

1 Hathaway subsidiary, which is a completely  
2 unrelated business. That's not an applicable  
3 analogy here. Everything is extremely closely  
4 held between these different companies. GMGI, the  
5 parent, is owned predominantly by Nick Denton,  
6 who's a defendant in this case. He's the CEO of  
7 Gawker. He lives and works in New York City. He  
8 was involved in the posting of this sex tape,  
9 which is why he's a defendant.

10 Gawker Media, LLC is the main defendant.  
11 It's located in New York City. Its office is in  
12 New York City. It employs a number of employees  
13 who do various things. Among others, they  
14 receive, edit, and post this particular sex tape  
15 among other similar types of material.

16 And then there is this sister company called  
17 Kinja. Kinja has one officer and director, and  
18 his name is Scott Kidder. Scott Kidder is an  
19 employee of Gawker Media. He's an executive. And  
20 he was the person who was deposed as the corporate  
21 designee of Gawker Media when we asked for a  
22 deposition of the corporate designee to answer  
23 questions about corporate issues and finances  
24 related to Gawker Media. Again, he's the only  
25 officer or director in existence for Kinja, which

1 is the sister company.

2 If you look at the Gawker.com website, in the  
3 upper left-hand corner, it has a very large word  
4 that says Kinja, and if you click on Kinja, it  
5 shows every single one of the different Gawker  
6 affiliated websites, like Deadspin and Jezebel and  
7 Lifehacker and io9 and all of those other  
8 affiliated websites. That's because Kinja  
9 supplies the software platforms upon which  
10 everything operates. Kinja owns all of the  
11 trademarks of Gawker and all of the affiliated  
12 websites like Deadspin and Jezebel and Lifehacker  
13 and io9. Kinja owns the domain name Gawker.com  
14 where the sex tape was posted and all of the other  
15 domain names. Kinja and Gawker Media, LLC work  
16 hand in hand, arm in arm every day, every second  
17 to put out the information and content, including  
18 the information and content that is at issue in  
19 this case.

20 The standard for legal control in Florida is  
21 that there is legal control when the party that is  
22 being requested for the information has either the  
23 right to the documents or it has authority to  
24 obtain the documents or it has practical ability  
25 to get the documents. That's the standard.



1 That's in the Costa versus Kerzner International  
2 Resorts case that we cited from 2011, Southern  
3 District of Florida.

4 There can't really be any reasonable debate  
5 here that Gawker Media, LLC has the practical  
6 ability to obtain all of the documents that we're  
7 talking about that relate to Kinja. It's as  
8 simple as this. Scott Kidder is the executive who  
9 in part runs Gawker Media and he's the only  
10 officer and director of Kinja. If Scott Kidder  
11 wants to get the Kinja documents as the sole  
12 officer and director and he wants to do that on  
13 behalf of Gawker Media, which he is an executive  
14 of and employee of and subordinate of Nick Denton,  
15 who owns both of them, GMGI, it's very easy to do.  
16 Scott Kidder just gets the documents.

17 So under the standard in Florida, there is  
18 legal control of Gawker Media, LLC over all of the  
19 documents that we're talking about here in request  
20 89, 90, 92, and 93. And the responses that we  
21 received from Gawker on these documents range from  
22 Gawker doesn't have access, Gawker Media does not  
23 have access, which is not to say it doesn't have  
24 legal control because it does, to -- I mean there  
25 are various shell game type of answers that we've

1 gotten.

2           What we would like to get, Your Honor, is  
3 just an order that says -- or at least a  
4 recommendation that says Gawker Media has to  
5 produce these documents. All of these documents  
6 are pertinent to damages in this case which  
7 focuses on Gawker's finances and accounting and  
8 how Gawker has profited from the sex tape. They  
9 show that Gawker profited from the sex video and  
10 where those profits went, because when you look at  
11 the financial documents, you will see millions and  
12 millions and millions of dollars flowing from  
13 Gawker Media over to Kinja. In one year, I think  
14 it was six and a half million dollars. Or there's  
15 a line item of IP royalty expenses. What we've  
16 been told is that Kinja receives IP royalty  
17 expenses for providing the domain name Gawker.com  
18 and the trademark Gawker and the others and the  
19 software. So the IP expenses are either entirely  
20 or in large part Kinja. Kinja is the company that  
21 receives these profits.

22           So essentially we're just -- part of it is  
23 we're just trying to follow the money. We're  
24 trying to find out where the money went where  
25 Gawker received substantial economic rewards

1 immediately after and in the months after the  
2 posting of the Hulk Hogan sex video. It's also  
3 relevant to Kinja being an alter ego of Gawker  
4 because of the way in which these companies do  
5 business. And it's also relevant to Kinja's  
6 claims that it has no contact with the United  
7 States. It's interesting because if you look at  
8 the Gawker website -- and they have terms and  
9 conditions in which users must agree in order to  
10 use a software program. In the terms and  
11 conditions, which we provided a copy in our  
12 material, it says Kinja. It says this is the  
13 Kinja terms and conditions. It lists Kinja's  
14 address as being in New York City. So a lot of  
15 these documents are relevant to the finances and  
16 also relevant to, again, the shell game that's  
17 been played, which is that Kinja supposedly is  
18 some Hungarian company that has nothing to do with  
19 Gawker and it has no contact with the United  
20 States and has no contact with the Hulk Hogan sex  
21 tape and it has no contact with anybody, but every  
22 time we look at anything, we find that these  
23 defenses that are being put out there simply don't  
24 hold water. We're just trying to find out what  
25 happened and who did it, Gawker and Kinja, and who

1 profited from it, Gawker and Kinja.

2 So in our requests for production, we're  
3 trying to be as limited as possible. It's very  
4 limited on the time period. We're very limited on  
5 the scope of the documents. We're not trying to  
6 go beyond the scope of anything that we feel is  
7 legitimate. Financial information has already  
8 been produced by Gawker so far. Gawker points  
9 that out and we're the first to admit that, and we  
10 appreciate it. But it's not the full story here,  
11 and we feel like we have to jump through every  
12 hoop in the world just to obtain it.

13 MR. TURKEL: I'm going to have to jump in  
14 airport security here. So I wanted to let  
15 everybody know I'm going to jump off the call.  
16 This is Ken. I'm sorry. I didn't want to  
17 interrupt. I'm in Phoenix in an airport. So I'm  
18 going to be dropping off right now. Thanks.

19 (Mr. Turkel no longer in attendance.)

20 THE COURT: Okay.

21 MR. HARDER: I'll move on to request for  
22 production No. 121. We asked for all financial  
23 statements including balance sheets, income  
24 statements, statements of retained earnings, and  
25 cash flow for Kinja covering the period of January

1           2011 to the present. Again, for the same reasons  
2           that I just explained, that information is  
3           discoverable and relevant to Kinja's role in this  
4           and Kinja's income and profits received from the  
5           content at Gawker.com, which included for six  
6           months the Hulk Hogan sex tape, which drove over  
7           five million people to go to that page that had  
8           the tape.

9           Interrogatories 18 and 19 and our second  
10          request No. 116, these request Gawker's finances,  
11          its sources of revenue, its IP royalty expense.  
12          I'm just kind of summarizing here. Interrogatory  
13          18 asks for every source of Gawker's other revenue  
14          that's referred to at line 200 of an income  
15          statement. We have the income statement that  
16          shows substantial amounts of revenue. There's  
17          other revenue. We're simply asking for what other  
18          revenue it was receiving, again, because it's  
19          relevant to our damages claim. What was Gawker  
20          making off this content which included the sex  
21          tape?

22          Interrogatory No. 19, this is a request --  
23          interrogatory, state all facts related to Gawker's  
24          payments of IP royalty expenses, which is referred  
25          to in line 8300 of Gawker's income statement.

1 Again, this is where the line item has -- it's  
2 actually the second highest line item of all of  
3 Gawker's income. The only highest -- expenses.  
4 I'm sorry. These are expenses. The highest line  
5 item of about 20 or so line items is salary for  
6 all of the employees, and number two in number is  
7 the IP royalty expenses that are flowing out of  
8 Gawker and flowing into somebody. We think it's  
9 going into Kinja, but we're interested to find out  
10 where that money is going. And, second, this is  
11 actually relevant to other types of software that  
12 Gawker may employ that would shed light on things  
13 like web traffic statistics and income statistics,  
14 because Gawker has told us that it has certain  
15 information about other information, but if it has  
16 software programs that track web data, then we  
17 would like to find out what web data is being  
18 tracked and by whom. If Gawker is paying a third  
19 party to track its web data and that has not been  
20 disclosed, then we'd like to get that web tracking  
21 information. And explaining the line items on IP  
22 royalty expenses may well explain what sort of IP  
23 software is being utilized by Gawker and why.

24 Second request 116 asks for all documents and  
25 communications that relate to any proposed equity,

1 debt or other security offerings by Gawker during  
2 the period of January 1, 2011 through the present.  
3 The reason we're asking for this is because Gawker  
4 has provided us with certain representations of  
5 its finances, its income it's earned month by  
6 month before the sex tape until through -- I  
7 believe to the present or close to the present  
8 including after the sex tape. We're interested in  
9 finding out if those representations provided by  
10 Gawker are consistent with representations that  
11 Gawker was making if it was seeking debt or equity  
12 financing. If the numbers are completely  
13 different, then it's going to require us to have  
14 to ask some questions about the accuracy of the  
15 financial representations that we received in this  
16 case. If the information is consistent, then it's  
17 going to give us some comfort level that the  
18 representations that Gawker is making on its  
19 income is accurate and we don't need to go  
20 further.

21 As far as confidentiality or privacy, a  
22 protective order is in place. We've had to live  
23 with disclosing all kinds of private and  
24 confidential information in this case and we don't  
25 see any reason why it should apply in any

1 different way towards Gawker.

2           Regarding requests 19 and 20, document  
3 requests 19 and 20 -- 119 and 120, all documents  
4 and communications that relate to all revenue  
5 generated by each of Gawker's websites from  
6 January 1, 2011 to the present, and then request  
7 No. 120, all financial statements of Gawker and  
8 each of its affiliated websites during that same  
9 period of time. This is why we're asking for the  
10 information. Gawker.com had the sex tape on it  
11 for six months, and five million people showed up  
12 to Gawker.com to view the page that had the sex  
13 tape. It's our very strong theory -- and it's  
14 been supported by a lot of things that we've come  
15 to learn about the industry from talking to  
16 experts and through reading about the synergy that  
17 occurs between companies like Gawker that have  
18 multiple websites -- which is that when you draw  
19 traffic into a main website, that traffic tends to  
20 populate other websites within that same family of  
21 web environment. So if you analogize it like a  
22 shopping mall and then you analogize Gawker as  
23 being a major store in a shopping mall like a  
24 Macy's or a Nordstrom's or Sears or somebody like  
25 that, if you get five million people to show up to



1           Macy's or to that flagship store, not only do they  
2           go to Macy's, they might come into the mall and go  
3           into the store next-door, which may be called, for  
4           example, Jezebel and have things that might  
5           pertain to women, and then next-door there might  
6           be a store called Jalopnik and it has things that  
7           pertain to cars. And on the other side of Macy's,  
8           you might have io9 and people can go check out  
9           sci-fi. And maybe there's another store called  
10          Lifehacker and it has things that pertain to  
11          health. These five million people who come  
12          because they are drawn in by -- in this case it  
13          was drawn into Gawker.com by a sex tape -- they  
14          tend to spill over into the other aspects of the  
15          business and they patronize the other stores. Or  
16          here it's websites, where every time somebody  
17          clicks, they generate an advertising -- an  
18          advertisement and revenue that flows into Gawker  
19          Media which owns all of these different websites.

20                 So in order for us to determine, A, did --  
21                 was there a bump in the business of all of the  
22                 sites when the five million people showed up for  
23                 the Hulk Hogan sex tape, and, B, how big of a bump  
24                 did each of these sites have? It's possible that  
25                 some of the sites didn't have much of a bump at

1 all, and it's possible that some of these sites  
2 bumped up quite a bit. The theory is this, that a  
3 rising tide rises all boats, and if you have  
4 Gawker which promotes all of its websites at the  
5 home page -- again, in the upper left-hand corner,  
6 it has Kinja. If you click on that, you can go to  
7 any of the different affiliated Gawker websites.  
8 If five million new people, 5.35 million, show up  
9 to the Gawker web environment to come and see  
10 something that should not be there, a sex tape of  
11 Hulk Hogan that was not allowed, that was not  
12 permitted, that was prohibited, we're entitled to  
13 find out which of these sites -- and perhaps all  
14 of them -- received a benefit, received a  
15 financial benefit from the flow of traffic because  
16 of that sex tape. And we're entitled to have an  
17 expert take a look at that and make a calculation  
18 that says this is the profit to Gawker Media, LLC,  
19 Gawker.com, and all the other sites, all of which  
20 saw a bump in traffic during the six-month period  
21 and even potentially after the six-month period  
22 because the web traffic came and didn't  
23 necessarily leave the day that the sex tape went  
24 off. They came and became new customers of  
25 Gawker.com.

1 Request No. 126 is all documents regarding  
2 Gawker's policies of confidentiality and privacy.  
3 The reason why this is relevant is because  
4 Gawker's -- one of Gawker's main defenses in this  
5 case is that Hulk Hogan has no right of privacy  
6 and no right of confidentiality, or if he does  
7 have any at all that it does not apply to his  
8 sexual activity in a private bedroom and it does  
9 not apply to when he's naked in a private bedroom.  
10 We think it's relevant for the jury to consider  
11 the fact that Gawker itself guards privacy and  
12 guards its confidentiality in a very major way.  
13 And it is hypocritical of Gawker to say that Hulk  
14 Hogan has no privacy and no confidentiality, but  
15 yet Gawker has privacy and confidentiality with  
16 respect to a whole host of things that it deals  
17 with on a daily basis, whether it's with vendors,  
18 whether it's with employees, whether it's with  
19 companies they have entered into contracts with,  
20 whether it's with its own affiliated companies,  
21 whether it's with whomever happens to be out  
22 there, Gawker has provided us with contracts that  
23 have blanks on them, none of them are signed, none  
24 of them identified who they entered into  
25 agreements with. We would like to be able to show

1 to the jury that -- if Gawker is going to continue  
2 to make the argument that there is no privacy or  
3 confidentiality of Hulk Hogan in this case, we  
4 would like to be able to show the jury a stack of  
5 documents that Gawker has signed with individuals  
6 and signed with companies that spell out all the  
7 confidentiality of Gawker that must be protected,  
8 all of the privacy that must be protected of  
9 Gawker and any of the individuals who may be  
10 associated with Gawker that fall within that  
11 privacy or confidentiality, because it's relevant.  
12 Confidentiality and privacy you've heard many,  
13 many, many times throughout this case and  
14 throughout -- this entire phone conversation is at  
15 the heart of our case. And if Gawker is going to  
16 treat other people's privacy and confidentiality  
17 in a way that is one hundred percent inconsistent  
18 with the way it treats folks like Hulk Hogan and  
19 anyone else who it chooses to disclose things  
20 about them that are private, like being in a  
21 bedroom, the jury is entitled to see that and  
22 consider it in considering the issue of privacy  
23 and confidentiality.

24 Gawker has not shown any undue burden. There  
25 has been no declaration saying it's going to take

1 X number of minutes or hours or days to compile  
2 this information. I assume it's not particularly  
3 burdensome. I used to be in-house counsel for a  
4 company. We had 150 employees. I had all the  
5 contracts of the company in my files. If the CEO  
6 said, Charles, I would like to see all of our  
7 nondisclosure agreements, I walked to my file, I  
8 grabbed them, and I handed them to him. If it's  
9 online, which they also were, I would have them  
10 all in one place and I could just e-mail them or  
11 burn them onto a disk pretty easily, same with  
12 other types of agreements.

13 So the documents are relevant. There's been  
14 no showing of undue burden.

15 Just one second.

16 So that's that issue. I think I covered the  
17 issues, and I will answer any questions or respond  
18 to either Mr. Berry or Mr. Berlin. Thank you.

19 THE COURT: Okay. Mr. Berry or Mr. Berlin?

20 MR. BERLIN: It's actually neither,  
21 Your Honor. Ms. Smith is going to take this one,  
22 if that's all right with you.

23 THE COURT: Fine. Thank you. Alia?

24 MS. SMITH: I'm sorry. I forgot to unmute  
25 myself. I apologize.

1 I will take the argument in the order that  
2 Charles went. Hopefully we can keep everything  
3 straight. So the first thing I want to talk about  
4 is the discovery as to Kinja that was part of the  
5 November hearing. That's requests 89, 90, 92, and  
6 93. One of the things that Mr. Harder didn't  
7 mention but that was a big part of our brief is  
8 all of this discovery about Kinja is something  
9 that is currently pending before the Court of  
10 Appeals. All the decisions about discovery  
11 against Kinja should await a decision from the DCA  
12 on whether the Florida courts even have  
13 jurisdiction over Kinja. The Second DCA has held,  
14 a trial court is divested of jurisdiction upon  
15 notice of appeal except with regard to those  
16 matters which do not interfere with the power and  
17 authority of the appellate court or with the  
18 rights of a party to be appealed which are under  
19 consideration by the appellate court. And Judge  
20 Pavadano in his treatise says the same thing  
21 saying that appeals from orders determining  
22 personal jurisdiction are unlike appeals from most  
23 other nonfinal orders. Irrespective, almost all  
24 proceedings in the trial court, including  
25 discovery, will be suspended until resolution of

1 the appeal.

2 Now, Kinja's personal jurisdictional motion  
3 is now fully briefed before the DCA, and it's  
4 clear that the appellate court has jurisdiction  
5 given that plaintiff in its appellate proceedings  
6 moved to dismiss the appeal for lack of  
7 jurisdiction, and the DCA denied that motion. So  
8 it's clear that the DCA has appellate  
9 jurisdiction, and the question of whether  
10 discovery from Kinja is proper is definitely under  
11 consideration by the appellate court as plaintiff  
12 in his own appellate brief says that the sole  
13 question before the DCA is whether the trial court  
14 abused its discretion in requiring Kinja to submit  
15 to jurisdictional discovery.

16 So we submit here that the plaintiff should  
17 not be permitted to circumvent this prohibition on  
18 discovery regarding the finances or the operations  
19 of Kinja by seeking it from Gawker instead. The  
20 DCA needs to rule on what's permitted as to Kinja  
21 and then this Court can take up the issue  
22 depending on what the DCA says.

23 The plaintiff up until now and the Court --  
24 excuse me. Judge Campbell has from the beginning  
25 treated Gawker -- discovery from Gawker separately

1 from discovery from Kinja. And to now claim that  
2 Gawker is supposed to produce documents in Kinja's  
3 possession is clearly not proper.

4 It also makes sense from a practical  
5 standpoint to wait until the DCA rules on the  
6 propriety of discovery from Kinja, because if  
7 Kinja is out of the case, then none of the  
8 discovery that plaintiff seeks is even remotely  
9 relevant anymore.

10 I'll go on now to address the specific  
11 arguments on the control issue, but I really want  
12 to emphasize that this is not a proper subject of  
13 consideration by this Court at this time given the  
14 pendency of these various issues before the DCA.

15 THE COURT: Let me ask Charles to address the  
16 jurisdictional issues before you go much further.

17 MR. HARDER: Sure. I'll be happy to. It's  
18 true that Kinja has appealed a motion to dismiss  
19 that was denied. We are not seeking this  
20 discovery against Kinja. We are seeking the  
21 discovery to Gawker Media, LLC, which is still in  
22 the case and has answered. And we are asking for  
23 information about its transactions with Kinja,  
24 just as we can ask about its transactions with  
25 anybody, but its transactions with Kinja are



1 particularly relevant to, A, who was involved in  
2 the content at Gawker Media, including companies  
3 and individuals, and B, how much money were these  
4 companies and individuals paid out of revenue that  
5 went to Gawker Media? And Gawker Media has access  
6 to that information. The transactions were with  
7 Kinja, so Gawker has those transactions. Also,  
8 Gawker Media has legal control over documents that  
9 are within Kinja, which is separate from the  
10 jurisdictional issue.

11 Let's say we never even sued Kinja at all.  
12 We would still be able to seek the same  
13 information from Gawker Media under the theory  
14 that Gawker Media has legal control over Kinja's  
15 documents as I explained, and the fact that they  
16 are in the case or out of the case or on appeal is  
17 not relevant to the legal control issue.

18 Also, when Ms. Smith said that if Kinja is  
19 not in the case and all of this stuff is  
20 irrelevant, that's not true. I've explained why  
21 we're seeking this information, and it's as to  
22 Gawker Media as a defendant. And it also happens  
23 to be of the Kinja defendant as well. If Kinja  
24 was not in the case, it would still be relevant to  
25 Gawker.

1 THE COURT: Okay. Back to you, Alia.

2 MS. SMITH: I'll just respond to those points  
3 real quick and then I'll move on.

4 Mr. Harder says that the question is -- that  
5 they're trying to get from Gawker Media is who was  
6 involved in the content? In other words, was  
7 Kinja involved in the content and how much was  
8 Kinja paid with respect to the content and what  
9 kind of transaction occurred as between Kinja and  
10 Gawker and the parent company, GMGI? Those exact  
11 issues are what the Court of Appeals is looking at  
12 right now. So to say, oh, okay, I get it. We  
13 can't get this information from Kinja, so we're  
14 going to go through the back door and get it from  
15 Gawker instead, that's just not proper. These are  
16 the substantive issues that the Court of Appeals  
17 is considering. Until they make a ruling on these  
18 substantive issues, this Court should leave it  
19 alone.

20 On the question of whether they can get this  
21 information about Kinja if they had never sued  
22 Kinja, that's just not right. Kinja is a licensor  
23 of Gawker of certain information, and they haven't  
24 asked for specific information about other  
25 licensors of Gawker, like AP licenses information

1 to Gawker, Getty licenses information to Gawker.  
2 A lot of people license information to Gawker, and  
3 that doesn't mean that you can go and get all of  
4 that information. It's completely irrelevant even  
5 on a damages claim.

6 So that's the end of my discussion on that  
7 point, but just to turn very briefly to the  
8 control issue. I'd like --

9 MR. BERLIN: This is Seth. I'm sorry to  
10 interrupt, Judge Case. It might be proper for you  
11 to address the jurisdictional issue and also to  
12 confirm that if you are inclined to deny what Alia  
13 is saying on the jurisdictional issue that the  
14 remainder of her argument is without intending to  
15 waive our jurisdictional objection to proceeding  
16 on this particular set of discovery. I just want  
17 to have a clear record that by advancing the rest  
18 of the substantive arguments, we're not intending  
19 to waive the jurisdictional point that Alia just  
20 raised.

21 THE COURT: Understood. Thank you.

22 Go ahead, Alia.

23 MS. SMITH: Just to turn to the control  
24 issue, Gawker doesn't dispute what the legal test  
25 for control is, which is analysis of the corporate

1 structure, the connection to the transaction at  
2 issue, and the degree to which the nonparty, in  
3 this case Kinja, benefits from the outcome of the  
4 litigation. Here, on the corporate structure  
5 point, plaintiff claims that both Gawker and Kinja  
6 are wholly owned by GMGI, but the fact that they  
7 have the same corporate parent doesn't necessarily  
8 mean that they control each other's documents.  
9 And we've cited case law on that point in our  
10 brief.

11 They also claim that there's a sufficiently  
12 tight relationship because Nick Denton is the  
13 majority owner of GMGI, but as he testified, Nick  
14 Denton is not actually the majority owner of GMGI.  
15 He does own a portion of the company and he is  
16 obviously involved in it, but he is not a majority  
17 owner.

18 I also need to correct the record on another  
19 important point about Scott Kidder. Plaintiff  
20 claims that by arguing -- plaintiff claims that  
21 Scott Kidder acts as both the VP of operations at  
22 Gawker and of managing director of Kinja and that  
23 he is the sole officer and director of Kinja, and  
24 so, therefore, Nick Denton could just tell Scott  
25 Kidder to go and get Kinja's documents. That is

1           actually not correct. It is true that at the time  
2           of the deposition of Scott Kidder, he was the  
3           interim managing director of Kinja because the  
4           previous managing director, who was a Hungarian,  
5           had died. He served as the managing director of  
6           Kinja for a brief period of some months. And in  
7           December of 2013, Peter -- and I'm going to  
8           mispronounce this name -- Szasz, S-z-a-s-z -- took  
9           over the role and Mr. Kidder relinquished his role  
10          as the interim managing director. We can provide  
11          an affidavit on this fact if you would like one.

12                 On the notion that there is a significant  
13          overlap between the two companies' officers and  
14          management, that's just not true. Scott Kidder  
15          only works for Gawker Media and Peter Szasz is the  
16          full officer and director of Kinja and he does not  
17          have any relationship with Gawker.

18                 Also, in its brief, plaintiff claims that  
19          Florida courts have -- cases controlling in  
20          Florida have expressly held that a very close  
21          relationship is not required to -- for this factor  
22          to weigh in its favor. But the only cases he  
23          cites are from a Federal District Court in Florida  
24          and one from Maryland. Many other federal courts  
25          which we have cited in our brief have held that

1 companies must be something close to alter egos in  
2 order to satisfy the control test. Indeed, Wright  
3 & Miller, the seminal federal practice guide,  
4 confirms that in analyzing this question, courts  
5 have looked to whether the alter ego doctrine  
6 would justify piercing the corporate veil and  
7 whether the litigating corporation was an agent of  
8 the nonparty corporation.

9 Similarly, in *Costa*, the case that he cites  
10 as their main authority, the Southern District of  
11 Florida, the companies were united and they shared  
12 business purpose. And in that case, it was  
13 selling resort vacations.

14 Here, the business purpose of Gawker and  
15 Kinja are different. Gawker publishes editorial  
16 content, and Kinja is primarily a software  
17 development company. So those don't jive either.

18 In *Steele*, the Maryland case he cites, one  
19 man was the owner, sole shareholder, and president  
20 of all the entities whose documents were being  
21 sought. As I mentioned here, the overlap does not  
22 exist as between the officers and directors.

23 Turning to the connection to the transaction,  
24 that's the second prong of the control test. The  
25 plaintiff doesn't mention this factor in his

1 brief. Again, this particular factor is another  
2 reason to show why the Court should await the  
3 resolution of Kinja's appeal because one of the  
4 issues the DCA is deciding is what connection, if  
5 any, Kinja has to the article at issue in this  
6 case. But to the extent the Court does analyze  
7 this issue now, does analyze the connection to the  
8 transaction, discovery shows that there is no  
9 connection between Kinja and the publication of  
10 the Gawker story that's at issue in this case.  
11 Kinja did not write or edit or otherwise have any  
12 involvement with the content of the article.  
13 Kinja has a general business relationship with  
14 Gawker in that it licenses software and IT, but  
15 that general connection is not a specific  
16 connection to the transaction at issue in this  
17 case, which is what the law requires. We've cited  
18 other cases in our brief that talk about this  
19 point, which is that you need a specific  
20 connection to the very transaction at issue, not  
21 just a general business relationship, which is  
22 what Kinja and Gawker has.

23 The final factor in the control analysis is  
24 interest in the outcome. One of the things that  
25 plaintiff has asked for is removal of the post

1 from the Gawker website. Obviously Kinja wouldn't  
2 be affected by that. Kinja might be affected by a  
3 large monetary judgment against Gawker to the same  
4 extent that any vendor would be affected by a  
5 material change in the financial circumstances of  
6 one of its customers. But this type of general  
7 speculative injury is not the type of interest in  
8 the outcome that courts require.

9 The Costa case again says that -- in that  
10 case, there was a direct financial interest in the  
11 outcome of the litigation and the nonparty may  
12 ultimately be responsible for damages to the  
13 plaintiff class. And there is no showing again in  
14 this case that Kinja would be responsible for the  
15 damages. So to the extent that that is an issue,  
16 that's also before the Court of Appeals.

17 Just one final thing about the control test  
18 and then I'll move on to the rest of the argument,  
19 which is that the purpose of the control test is  
20 to prevent fraud and deceit and to keep the real  
21 company and interest from hiding documents in a  
22 subsidiary or sister company. But here, as we  
23 outlined extensively in the beginning of our  
24 brief, Gawker has produced every paper it has  
25 about Hulk Hogan, about the post at issue, about



1 the editorial process. It's produced significant  
2 amounts of financial data, including its own  
3 balance sheets and income statements and invoices  
4 for all of its advertising. It's not hiding  
5 anything. It's trying to respect corporate  
6 formalities and keep its sister company, which is  
7 a Hungarian corporation with no ties to this  
8 particular post, from being dragged into this  
9 litigation and forced to reveal and disclose the  
10 copious financial information that Gawker -- or  
11 that plaintiff is seeking from it.

12 With that said, I will move on to the next  
13 set of -- set of interrogatories and document  
14 requests that Mr. Harder spoke about. These are  
15 requests related to information about Gawker  
16 Media's finances, that Gawker Media is the main  
17 defendant company. One of the things they ask for  
18 in interrogatory 18 is the sources of other  
19 revenue. Interrogatory 19 is the payment of IP  
20 royalty expenses. And second request 116 is the  
21 communications related to proposed equity, debt or  
22 security offerings.

23 One thing that didn't get mentioned earlier  
24 is that we had a hearing in this case in November  
25 on a motion to compel by the plaintiff on a lot of

1           these same issues. The Court already ruled on a  
2           lot of these issues. So, for example, the Court  
3           already ruled that Gawker was not required to  
4           produce documents sufficient to show all revenues  
5           by Gawker Media, LLC and/or the basis for its  
6           receipt of such revenue. So given that ruling by  
7           Judge Campbell, a request to identify every source  
8           of Gawker's other revenues is clearly not proper.

9           Second, interrogatory No. 19 is relating to  
10          payment of IP royalty expense. The Court already  
11          ruled that Gawker was not required to identify  
12          individuals or entities such as employees or  
13          vendors who may have received compensation  
14          indirectly as a result of Gawker's use of revenues  
15          generated from the publication of the Gawker story  
16          to pay usual and customary obligations. What  
17          they're asking for is identification of vendors to  
18          whom Gawker paid usual and customary obligations.  
19          So, again, not proper.

20          The second RFP 116 is information about the  
21          post equity, debt and security offerings. The  
22          Court ruled that Gawker was not required to  
23          produce documents that relate to the identity of  
24          owners of any affiliated company. So those things  
25          are all precluded by Judge Campbell's prior

1 ruling. And in any event, the information, that  
2 sort of very specific financial information is  
3 irrelevant in any case because the plaintiff  
4 already has enough financial information from  
5 Gawker to make the arguments that he needs to make  
6 about his damages theories. One of the things  
7 that he says in his brief is that he wants to  
8 compare the financial information for the period  
9 prior to Gawker's publication and following  
10 Gawker's publication to ascertain the value  
11 derived by the defendant. Gawker has already  
12 provided many years worth of income statements and  
13 balance sheets that would enable plaintiff to make  
14 these comparisons. He doesn't need the specific  
15 information about the line items on Gawker's  
16 income statement to do that. We've already given  
17 him the revenue data for all of Gawker which he  
18 can compare from year to year, and whatever  
19 specific line item payments were made is just  
20 utterly irrelevant.

21 If plaintiff is entitled to some portion of  
22 the profit, which we don't actually think he is,  
23 but assuming that he is, who he pays, whether it's  
24 a software vendor or an office supply company,  
25 it's just -- it's just not relevant.

1           Let's move to the financial information about  
2           the other websites. He asked for all documents  
3           relating to other revenue generated by each of the  
4           other websites and all financial statements,  
5           including balance sheets, income statements,  
6           statements of retained earnings and cash flow and  
7           statements of changes in financial position,  
8           including the identification of all revenue  
9           sources and expenses for each of the other  
10          websites. Again, Judge Campbell already ruled on  
11          this at the November hearing. She said Gawker was  
12          not required to produce documents that relate to  
13          all revenue generated by each of the other  
14          websites. She said that Gawker was not required  
15          to produce documents showing all revenue,  
16          compensation, funding, or assets generally, only  
17          to show revenue flowing from the publication of  
18          the Gawker story, which as we know, was only  
19          published on Gawker.com and not on the other  
20          websites.

21                 Mr. Harder mentioned at the beginning of his  
22                 argument this notion that they were -- that Judge  
23                 Campbell said that they could come back if the  
24                 information was not publicly available to them.  
25                 Well, the only information that Gawker has ever

1 argued was publicly available was traffic  
2 information, that is, the number of visitors going  
3 to Gawker's various websites. We've explained how  
4 that information is public. So the notion that we  
5 somehow argued that specific financial information  
6 for a privately-held company is publicly available  
7 is just not true.

8 Again, as was the line item, the information  
9 about where the money goes for the other websites  
10 is just not relevant given that Gawker has already  
11 provided the aggregate data for all the Gawker  
12 Media websites as a whole, and there is no reason  
13 why you need an additional breakdown. If you knew  
14 that Gawker Media made, say, one million dollars  
15 one year and two million dollars the next year,  
16 where it went, you know, how that money was  
17 distributed between the various websites is just  
18 not relevant to anything that plaintiff needs to  
19 prove.

20 One of the things that plaintiff mentions was  
21 a shopping mall analogy where he said that Gawker  
22 is like Macy's and it draws in people to go to the  
23 other websites. Well, as a matter of fact, that's  
24 not actually true because Gawker is not the most  
25 visited website within the Gawker Media universe.

1           That I believe is Gizmodo. But in any event, I  
2           think a more apt analogy would be to say Time,  
3           Inc. Time, Inc. is a well-known old media  
4           publisher. It publishes Entertainment Weekly. It  
5           publishes People. It publishes Sports  
6           Illustrated. Sometimes it plugs for other  
7           publications in its magazines. No one would think  
8           that a plaintiff suing Time magazine could get the  
9           financial data from Sports Illustrated even if  
10          Time magazine might have an advertisement in its  
11          pages for an upcoming issue of Sports Illustrated.  
12          That's just way too attenuated to be workable.

13                 Another analogy might be if you're watching  
14          60 Minutes on CBS and you see an ad for the CBS  
15          sitcom The Big Bang Theory, a plaintiff who sues  
16          CBS over a 60 Minutes segment can't then get  
17          financial data about the sitcom. It's just not  
18          related and doesn't go to anything the plaintiff  
19          needs to show.

20                 Finally, a quick word about the  
21          confidentiality agreement. We had serious doubts  
22          that information about business agreements have  
23          any relationship to this case, but in any event,  
24          we have produced all the templates for various  
25          agreements with independent contractors, with

1 employees, with vendors to show that this is the  
2 language that we use in our confidentiality  
3 agreement. And we've sent that to the plaintiff.

4 The notion that he needs to get every single  
5 contract from every employee, every vendor, and  
6 everyone else that contains the specific language  
7 is not right. Like, that can't be something that  
8 Gawker has to go to the burden of producing. In  
9 addition, it would invade the privacy rights of  
10 those people with whom Gawker has the  
11 relationships. The relevant language has already  
12 been provided, and plaintiff just doesn't need  
13 anything else.

14 I will stop talking now unless Your Honor has  
15 any questions.

16 THE COURT: Your last comments were directed  
17 to request No. 126?

18 MS. SMITH: Yes. I'm sorry. I should have  
19 said that. You are correct.

20 THE COURT: Do you have that in front of you?

21 MS. SMITH: Request No. 126?

22 THE COURT: Yes.

23 MS. SMITH: Hold on a second. I can bring it  
24 up. Would you like me to read it to you?

25 THE COURT: Read the request, please.

1 MS. SMITH: Sure. Just one second.

2 MR. BERLIN: I have it here, Your Honor, if  
3 it would be helpful.

4 MS. SMITH: Go ahead. I pulled it up, but --

5 MR. BERLIN: This is Seth Berlin. I'll be  
6 happy to read it. I'm reading from their brief.  
7 So I assume this to be an accurate transcription.  
8 Request No. 126, all documents that constitute,  
9 refer to, or relate to any and all policies,  
10 notices and agreements in the period January 1,  
11 2011 through the present relating to the  
12 protection of your privacy, your confidentiality,  
13 including without limitation nondisclosure  
14 agreements and confidentiality agreements with  
15 actual or prospective employees, vendors, business  
16 partner, or any other person or entity.

17 MS. SMITH: And I just pulled up the request  
18 and that's right.

19 THE COURT: Okay. Charles?

20 MR. HARDER: Yes. Judge Case, thank you.  
21 With respect to the issue we were just talking  
22 about, request No. 126, I just want it to be clear  
23 that I'm not asking for any financial information  
24 between Gawker and any of its employees or vendors  
25 or business partners. So if Gawker wanted to



1           blacken out any dollar amount, I don't have a  
2           problem with that. The point of the request is to  
3           obtain the contract which has, among other things,  
4           the confidentiality or privacy protection language  
5           in the contract. Now, that said, I would like to  
6           leave as much of the contract intact as possible  
7           so that a jury or we could see what the nature of  
8           the contract is so that we could say, well, in  
9           this particular type of contract where business  
10          was being requested or provided, there was a  
11          confidentiality clause, and then we would be able  
12          to speak about the different types of things that  
13          would be confidential in a relationship such as  
14          that. If it was an employee, then obviously it's  
15          employment information. If it's a vendor, then  
16          obviously it's things that pertain to the  
17          particular business that's being provided by that  
18          vendor. I'm not trying to get into anybody's  
19          financial information as to this request. So I'm  
20          open to any kind of redaction of financial  
21          information, dollar amounts or percentages, for  
22          example, but I don't think that this invades  
23          anybody's privacy rights to provide these  
24          contracts based upon the protective order with all  
25          the stamps with attorney's eyes and all of that

1           any more than Mr. Bollea has to provide  
2           information regarding all of his telephone calls  
3           for an entire year with all of the people that had  
4           nothing to do with this case. There were privacy  
5           of locations with that, and the ruling was that  
6           the protections of the protective order are  
7           sufficient to deal with the privacy rights, but  
8           that the information was sufficiently relevant to  
9           be produced in discovery. So we're just asking  
10          for the same type of treatment as to these  
11          confidentiality clauses within these contracts.

12                 I will go back to the appellate issue just  
13          because that was the first thing that was being  
14          discussed. The appellate -- the appeal is not  
15          dealing with the specifics of personal  
16          jurisdiction because we never -- we on the  
17          plaintiff's side never had an opportunity to  
18          conduct any jurisdiction -- I'm sorry --  
19          jurisdictional discovery. We propounded  
20          jurisdictional discovery to Kinja -- let me step  
21          back a little.

22                 Kinja brought a motion to dismiss based upon  
23          personal jurisdiction. The judge denied it  
24          without prejudice saying -- agreeing with our  
25          argument that we're entitled to some

1 jurisdictional discovery and that she would  
2 revisit that issue later. We propounded  
3 jurisdictional discovery to Kinja. Kinja never  
4 provided any substantive response, and it -- it  
5 objected to everything. It also filed a motion to  
6 dismiss on the merits, meaning on the First  
7 Amendment issue, at the same time that all the  
8 other Gawker defendants submitted a motion to  
9 dismiss on the First Amendment issue, Gawker  
10 Media, LLC, Nick Denton, and A.J. Daulerio. Judge  
11 Campbell denied all of those motions. And then  
12 Kinja filed an appeal to take to the Court of  
13 Appeal the fact that it shouldn't be in the case.  
14 But we never even got to the jurisdictional  
15 discovery aspect. We propounded but never  
16 received. So when Ms. Smith says filed with the  
17 Court of Appeal dealing with all these  
18 jurisdictional issues, not really. It's dealing  
19 with the issue that Gawker -- I'm sorry -- that  
20 Kinja feels that it doesn't have to be subjected  
21 to jurisdictional discovery and that the First  
22 Amendment allows it to escape the case, but those  
23 issues -- the jurisdictional aspect really hasn't  
24 been discussed.

25 As I argued earlier, the discovery that we're

1 seeking as to Gawker Media, LLC, the documents are  
2 relevant to Gawker Media, LLC. In one way they  
3 are relevant because the line items for IP  
4 expenses, if Kinja is the only IP royalty  
5 expense -- if Kinja is the only IP royalty  
6 expense, that's relevant. And I'll explain in a  
7 minute.

8 If there are other companies that are  
9 providing some sort of IP such as software like  
10 Microsoft or Google or some of these other  
11 companies that provide software, then that's  
12 relevant because we need to know who Gawker's  
13 paying how much money on software licenses. If  
14 they're paying a substantial amount of money to a  
15 company that provides very high level tracking  
16 information, then we can either, A, ask Gawker for  
17 that tracking information, or if Gawker says we  
18 don't have it, we can ask the company to provide  
19 that tracking information, because this case is  
20 about the five million plus people who went to  
21 Gawker.com at first -- they may have gone to other  
22 affiliated websites -- and the value of that.

23 So tracking information is very relevant.  
24 Tracking information has been provided in this  
25 case, but Gawker says they only have limited

1 tracking information. So that requires us to seek  
2 additional tracking information from other  
3 sources.

4 The other way that this is relevant is that  
5 the more I hear of the arguments and the more I  
6 think about it, and the more I hear arguments like  
7 Ms. Smith where she says -- she's analogizing  
8 Kinja to being nothing more than like an office  
9 supplier or a software supplier like any number of  
10 companies that you might hire, you might get  
11 Microsoft Office and pay a hundred dollars per  
12 seat license and Kinja is basically like that or  
13 somebody who brings in a bunch of boxes of paper  
14 into the office and you pay them for it. Kinja is  
15 so much more than that. In one way -- the way  
16 that I'm starting to really get the sense is that  
17 Kinja and Gawker are two sides of the same coin.  
18 Kinja owns Gawker.com, the domain name. Kinja  
19 owns all of the trademarks associated with Gawker  
20 and all of the affiliated websites. Kinja owns  
21 all of the software that makes Gawker Media  
22 operate. Kinja -- when you look at the terms of  
23 use on the website of Gawker.com, it gives you the  
24 Kinja terms of use. It was disclosed by  
25 Mr. Kidder that Kinja has one client for software.

1           It's Gawker Media. So it's not like -- I'm sorry.  
2           Did I misspeak? I may have misspoken on that last  
3           one.

4           But Kinja supplies a tremendous amount of  
5           value to Gawker Media, and Kinja owns a lot of the  
6           assets that are associated with Gawker Media. And  
7           if this line item is correct, the second largest  
8           line item on expenses is that a huge amount of  
9           money is flowing from Gawker Media over to Kinja.  
10          I actually just identified another line item. In  
11          Gawker Media, LLC's income statement, it says  
12          Kinja's salaries, and Gawker Media, LLC was paying  
13          Kinja's salaries, which is interesting. Why is  
14          Gawker Media paying Kinja employees their  
15          salaries? The IP royalties, millions and millions  
16          and millions of dollars are flowing out of Gawker  
17          Media into Kinja. It's like this is two halves of  
18          the same coin where Kinja has the assets. Kinja  
19          has the trademarks. Kinja has the domain names.  
20          Kinja has the software, which is valuable. Kinja  
21          has been receiving millions and millions and  
22          millions of dollars every year in what we call IP  
23          royalty expenses which leaves you as really just  
24          the advertising royalty -- the advertising revenue  
25          of Gawker that is flowing in, a huge amount of it

1 is flowing right out.

2 What does Gawker Media have? Gawker Media  
3 has a whole lot of liabilities. It has the office  
4 lease. It has employees who it has to pay. I'm  
5 not saying employees are liabilities. Employees  
6 are tremendous assets, but the obligation to pay  
7 the employees is a liability. So the more we look  
8 at it, the more we think about it, the more we  
9 find out about it, it really shows this huge  
10 interrelation between these two sister companies  
11 that are owned by the same parent and that share  
12 at certain times the same exact executives. When  
13 you look at the control issue again, I know that  
14 Gawker cited a lot of cases that are outside of  
15 Florida, and they're saying, well, you supply this  
16 standard from this state and that standard from  
17 that state and look at the national treatise which  
18 has kind of a generalized standard, but you don't  
19 need to apply any of those. Just look at the  
20 Florida standard. The Florida standard is that if  
21 Gawker Media has the right to or the authority to  
22 or practical ability to obtain the documents, then  
23 it has sufficient legal control and should be  
24 ordered to produce them.

25 So for all of the reasons I've said so far

1 and also in our papers, those documents should be  
2 produced.

3 As far as affiliated websites, let me just  
4 talk about the representation that was made with  
5 respect to Judge Campbell's order. Her order as  
6 to everything that is at issue in this motion, to  
7 the extent that she ever didn't give it to us, she  
8 said without prejudice. And she says without  
9 prejudice because Gawker said that information is  
10 available out there and we should go get it from  
11 other places. And we have taken her directive and  
12 we have tried our utmost to find all of the  
13 information that is at issue in this motion from  
14 other sources. And we have -- to the extent that  
15 this motion is concerned, we have not been able to  
16 obtain the information from the other sources.  
17 And so as suggested by Judge Campbell, we are  
18 coming back and requesting this information from  
19 the parties, who apparently are the only parties  
20 that have it, or the party being Gawker Media  
21 which has access to its own documents as well as  
22 the documents that are in possession of its sister  
23 company.

24 Again, there hasn't been any declaration  
25 relating to burden. No one said it's going to



1 take a certain amount of time or effort to produce  
2 the documents that are at issue. Based on my  
3 understanding of how companies operate these days,  
4 things like we're asking for tend to be scanned  
5 and kept in a particular place and they can be burned  
6 onto a disk, and it is not an inordinate task to  
7 produce these things.

8 Relating to Time, Inc. and CBS, it's not an  
9 apt analogy. Those companies -- Time sells  
10 magazines. And if it's selling Time magazine and  
11 Sports Illustrated magazine, those are different  
12 magazines and they're done under different  
13 divisions of the company. It works in a different  
14 way.

15 If you go to Gawker.com, from the home page,  
16 you can go to every single one of these affiliated  
17 websites with one click. It literally takes one  
18 click to go to each of these different websites  
19 that I mentioned. First you have to click on the  
20 word "Kinja." Then it will take you to any one of  
21 those websites within that domain, and there's a  
22 lot of cross promotion of the two companies. And  
23 Gawker.com, which I guess historically has been  
24 kind of the flagship, although perhaps the other  
25 ones are more special interests, but perhaps some

1 of the special interest ones have given them  
2 popularity. That's not really relevant to whether  
3 they're affiliated and you can get from one to the  
4 next very easily. It's also not relevant about  
5 whether people who go to Gawker.com to see the  
6 Hulk Hogan sex tape, which never should be there,  
7 never should have been there, whether those folks  
8 go to the affiliate sites with one click of the  
9 mouse. The documents that we're asking for will  
10 show whether there was a bump in the business of  
11 the affiliated sites. If they produce this  
12 information, we will know very, very quickly which  
13 of these sites got a bump and which didn't. It's  
14 possible that some people who have certain types  
15 of interest are not interested in the Hulk Hogan  
16 sex tape. It might be directed to a demographic  
17 that might appeal to the Hulk Hogan sex tape and  
18 really causes one of the other affiliates' sites  
19 to go off the charts because that's -- the key  
20 demographic of a sex tape may be the key  
21 demographic of another site. It's certainly  
22 relevant and absolutely calculated to lead to  
23 discoverable evidence. We tried to find this  
24 information from other sources. We've not been  
25 able to. Gawker has this information. It's

1 affiliated because they're not being run by a  
2 different company. They're being run by Gawker  
3 Media, the defendant in the case, which has  
4 answered the lawsuit. So we're asking for that  
5 information as to the affiliated sites.

6 THE COURT: Alia, go ahead.

7 MS. SMITH: Charles, are you finished?

8 MR. HARDER: I was just going to check my  
9 notes and see about some of these other items that  
10 you were arguing. One of them is interest in the  
11 outcome. Kinja obviously has an interest in the  
12 outcome. It's a defendant in the case. The same  
13 amount of interest that Gawker Media has in the  
14 case; it is not just related to an injunction.  
15 It's also related to damages. So that test is  
16 easily met for that reason.

17 I think I covered it. So that's it. Thank  
18 you.

19 THE COURT: Okay.

20 MS. SMITH: I won't beat a dead horse. So  
21 I'll just be very quick with a few responses to  
22 plaintiff's claims. One is that all of the issues  
23 that Mr. Harder raised about what is the  
24 relationship between Kinja and Gawker, what is the  
25 nature of their relationship, you know, is it

1 relevant how the money flows between them, those  
2 are the exact issues before the DCA. And,  
3 therefore, those are not appropriate for  
4 resolution by this Court at this time.

5 Second, one of the things they also talked  
6 about separately was whether Gawker should have to  
7 disclose its line item as to IP royalty expense to  
8 see if there is tracking information, but, again,  
9 I just want to reiterate that the Court has  
10 already ruled in its February order that Gawker is  
11 not required to identify individuals or entities  
12 such as employees or vendors who may have received  
13 compensation from Gawker. So whether Gawker  
14 employs services that do tracking that it hasn't  
15 already disclosed, which to my knowledge it  
16 doesn't, but that's not something that the  
17 plaintiff is entitled to under Judge Campbell's  
18 prior order.

19 Just a couple of other points. Mr. Harder  
20 mentioned that Kinja holds a number of assets  
21 related to Gawker.com. And that's true. We  
22 haven't denied that Kinja owns certain  
23 intellectual property. But the main asset of  
24 Gawker Media is the editorial content that it  
25 publishes, the thousands and thousands and

1 thousands of posts per month that get published on  
2 the Gawker Media website. Gawker Media owns that  
3 content. Kinja does not own that content. Gawker  
4 owns that content. That is its most substantial  
5 asset. So the notion that somehow Gawker is  
6 flowing its assets out to a foreign affiliate is  
7 just not right.

8 Finally, one more thing about the notion that  
9 her prior -- that Judge Campbell's prior order was  
10 without prejudice. Specifically with respect to  
11 financial information about the affiliated  
12 websites, I was at the November hearing. I  
13 personally argued it. I can tell you that I never  
14 ever said that financial data from the affiliated  
15 websites was publicly available. I did say that  
16 traffic data was publicly available. There was  
17 never any mention by me or anyone else that  
18 financial data was publicly available. So the  
19 notion that Judge Campbell said, go out and see if  
20 you can find this financial data for this  
21 privately-held company, and if you can't, you can  
22 come back and get it, that's just not the way it  
23 happened. She clearly held that this type of far  
24 afield financial information where Gawker has  
25 already provided a lot of aggregate data, a lot of

1 information about Gawker.com, a lot of information  
2 about the post and about the company as a whole,  
3 that's just not right.

4 So I think with that, I will stop talking and  
5 let Your Honor speak.

6 THE COURT: Okay. Once again, you've done a  
7 great job, both of you, in terms of presenting the  
8 issues with respect to the plaintiff's motion to  
9 compel and the various items that have been  
10 outlined in the record in these proceedings.

11 It's going to be my recommendation that based  
12 on the argument I have heard today that  
13 plaintiff's motion to compel should be granted as  
14 it is directed to Gawker and the related  
15 defendants over which jurisdiction is currently  
16 not an issue. I understand that there is some  
17 argument with respect to Judge Campbell's prior  
18 ruling on maybe somewhat same or similar issues.  
19 And based on my recommendation, I think she'll  
20 have an opportunity to fine tune my recommendation  
21 and the motion to compel be granted. That's the  
22 decision and recommendation on that one.

23 MS. SMITH: I'm sorry, Your Honor. Just to  
24 clarify, that's with respect to all of the  
25 requests?

1 THE COURT: Yes, ma'am.

2 MS. SMITH: Okay. And can I ask you if you  
3 would be willing to agree to a stay while we take  
4 that issue up with Judge Campbell and potentially  
5 with the DCA?

6 THE COURT: Well, it's going to happen by  
7 default since you have a hearing with her on  
8 Wednesday and I won't be signing or publishing  
9 anything with respect to this ruling before then.  
10 So you are welcome to tell her that it is my  
11 recommendation, but it's subject to her prior  
12 rulings and that she can fine tune it as she sees  
13 fit.

14 MR. BERLIN: Your Honor, that hearing -- this  
15 is Seth Berlin. That hearing is only an hour, and  
16 it's a substantive motion to dismiss by our  
17 codefendant, Heather Clem. So I'm not sure how  
18 much time there will be to take these up. I think  
19 what Ms. Smith was asking was -- I guess there are  
20 two pieces of clarification. I understood Your  
21 Honor to say that you are not making a  
22 recommendation with respect to Kinja, or is that  
23 wrong? Are you making that recommendation with  
24 respect to Kinja as well?

25 THE COURT: I'm making that recommendation

1 with respect to Gawker and the related defendants  
2 over which jurisdiction is currently not an issue  
3 in the pending litigation.

4 MR. BERLIN: I'm sorry. I don't mean to be  
5 dense, Your Honor. What you have done is -- as  
6 you know, Judge Campbell denied Kinja's motion  
7 and, therefore, there's jurisdiction over Kinja.  
8 The other way to look at that is that's on appeal.  
9 The Court of Appeal has already denied a motion to  
10 dismiss for lack of appellate jurisdiction. So  
11 I'm not sure what -- just in terms of  
12 understanding how to respond whether Kinja is  
13 being covered by that or not --

14 THE COURT: It has been argued here today by  
15 Mr. Harder that this motion to compel is directed  
16 to Gawker and the other defendants that are  
17 currently under the jurisdiction of this Court.

18 MR. BERLIN: Actually the motion was directed  
19 to Gawker. His argument, I think, was that Gawker  
20 has control over documents that are maintained by  
21 Kinja.

22 THE COURT: Then Gawker will be the one that  
23 it's granted to. That's the way it's granted.

24 MR. BERLIN: I'm sorry. Again, I don't mean  
25 to be dense, Your Honor. But I'm trying to



1 understand whether you're directing Gawker to  
2 provide documents that are maintained by Kinja or  
3 not so that we know how to respond.

4 THE COURT: I think under the Florida Rules  
5 of Civil Procedure, with respect to the discovery,  
6 if it is within Gawker's power and control that  
7 they have that information available to them, then  
8 to that extent, they would be required to comply.

9 MR. BERLIN: We had -- there are two issues.  
10 One, we had an issue today about -- Ms. Smith  
11 argued about whether or not the Court has the  
12 jurisdiction to adjudicate that given what's gone  
13 on with Kinja. And I gather from what you're  
14 saying, you're not accepting that argument. The  
15 second argument is there's a dispute about whether  
16 or not Kinja is under the control of Gawker. I  
17 just wanted to make sure I understand Your Honor's  
18 recommendation on that, I guess.

19 THE COURT: I think the Florida Rules of  
20 Civil Procedure with respect to the discovery  
21 requirements speak for themselves.

22 MR. BERLIN: Your Honor, I don't mean any  
23 disrespect, but you need to rule on that issue.  
24 That's not a thing where -- there is a dispute  
25 between the parties about whether the rules

1           require that. So we sort of need to know what  
2           Your Honor is saying. As applied to these  
3           circumstances, those rules would require you to  
4           answer on behalf of Kinja or they wouldn't.  
5           There's a dispute as to whether or not Kinja is  
6           under the rule of Gawker. So we need to  
7           understand what the ruling is so that we know how  
8           to proceed.

9           THE COURT: The ruling is, as I stated  
10          before, that Gawker's motion to compel -- as  
11          related to Gawker, that the motion to compel is  
12          granted.

13          MR. BERLIN: Okay. So I take that to mean  
14          that the argument that they advanced in that  
15          motion, which is that Kinja was -- that Kinja was  
16          somehow under the control of Gawker, has been  
17          accepted and that, therefore, that's been  
18          incorporated into the ruling. I just wanted to  
19          make sure I was understanding that correctly. I  
20          appreciate you clarifying that.

21          THE COURT: I think you're trying to confuse  
22          the facts. I'm not saying that Kinja is under the  
23          control of Gawker. I'm just saying that if that  
24          information that has been required or ordered to  
25          compel by Gawker, if they have it and it's

1 available to them and it's within their control,  
2 then they would be required to comply. I'm not  
3 saying it the way you're saying it.

4 MR. BERLIN: Okay. Then I appreciate you  
5 saying it again the way you said it so I  
6 understand. I wasn't trying to put words in your  
7 mouth. I was merely trying to understand because  
8 I had some legitimate confusion about what  
9 Your Honor has ruled.

10 THE COURT: All right.

11 MR. BERLIN: And we wanted to know how to  
12 proceed.

13 Then the second question, Your Honor, which  
14 Ms. Smith alluded to, is would you be willing to  
15 include in your recommendation, similar to what  
16 was adopted by Judge Campbell, a stay, which was  
17 the plaintiff's request for a stay under  
18 authorization for the final request so that they  
19 could seek a stay from the Court of Appeals?  
20 She -- Judge Campbell authorized a 45-day stay so  
21 that the Court of Appeals wasn't confronted with  
22 some kind of emergency motion and having to scurry  
23 around. We were agreeable to that. Judge  
24 Campbell ordered that. So I was wondering if you  
25 would include that in your recommendation so that

1 we might have that opportunity without having to  
2 make the appellate court scurry around.

3 THE COURT: Mr. Harder?

4 MR. HARDER: I would agree with a 45-day  
5 stay.

6 THE COURT: All right. So be it, then.  
7 45-day stay.

8 MR. BERLIN: Thank you very much, Your Honor.

9 THE COURT: All right.

10 MR. HARDER: Thank you, Your Honor.

11 THE COURT: What else do we want to do?

12 MR. HARDER: Your Honor, this is Charles. We  
13 exchanged some letters, Mr. Berlin and I, that  
14 went to you relating to a discovery plan. I think  
15 perhaps the first thing that needs to happen is  
16 that Judge Campbell needs to set the case for a  
17 trial. Then we can go from there in terms of  
18 dates, but as far as the overview, we would like  
19 to bring the case to a trial -- the case is now  
20 two years old. We're proposing a trial on her  
21 first available two-week trial date, which is June  
22 1st of next year, which is about seven months away  
23 from now or so. And I don't know if Seth wants to  
24 have any discussion about this issue or,  
25 Your Honor, if you do, but I just thought I would

REPORTER'S CERTIFICATE

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

STATE OF FLORIDA :  
COUNTY OF HILLSBOROUGH :

I, Susan C. Riedsorph, RPR, CRR certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the outcome of the foregoing action.

Dated this 21st day of October, 2014, IN THE CITY OF TAMPA, COUNTY OF HILLSBOROUGH, STATE OF FLORIDA.

Susan C. Riedsorph, RPR, CRR, CLSP