EXHIBIT 3

Filing # 18992541 Electronically Filed 10/03/2014 02:58:02 PM

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

TERRY GENE BOLLEA professionally known as HULK HOGAN,

Plaintiff,

vs. Case No. 12012447CI-011

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

Defendants.
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PLAINTIFF TERRY GENE BOLLEA'S REPLY IN SUPPORT OF MOTION TO COMPEL FURTHER RESPONSES TO DISCOVERY

INTRODUCTION

Plaintiff Terry Gene Bollea submits this Reply in support of his Motion to Compel Further Responses to Discovery. The Motion should be granted for the following reasons:

First, Kinja documents are within Gawker's control, and Gawker's arguments otherwise are unavailing.

Second, because Kinja documents are within Gawker's control, Gawker's failure to produce such documents violates the Court's February 26, 2014, Order (the "February Order").

Third, evidence relating to Gawker's and Kinja's finances is relevant and reasonably calculated to lead to the discovery of admissible evidence. Contrary to Gawker's contentions, the requests are not precluded by the Court's February Order.

Fourth, evidence relating to the revenues of Gawker's affiliate websites is relevant and reasonably calculated to lead to the discovery of admissible evidence. Contrary to Gawker's contentions, the requests are not precluded by the Court's February Order.

Fifth, Gawker cannot pick and choose which confidentiality agreements it wishes to produce in discovery. A full production of such agreements should be compelled.

ARGUMENT

A. Gawker Should Be Compelled to Comply with the Court's February Order and Produce Responsive Documents in Kinja's Possession

i. Kinja's documents are within Gawker's control and therefore must be produced

Mr. Bollea seeks from Gawker a full production of the following categories of documents ordered compelled by the Court's February Order:

(1) all documents that describe Kinja's functions or line of business;

(2) all documents that describe Kinja's functions with respect to the posting of content on Gawker.com;

(3) all documents that relate to financial transactions between Kinja and Gawker; and

(4) documents that relate to the direct or indirect receipt of advertising revenue by Kinja. Mot. at 4–5.

Gawker contends it has fully complied with the February Order because *Gawker* does not *possess* the documents compelled. Opp. at 8. Rather, it claims the documents are in the possession of Gawker's sister company, Kinja. This is not a valid excuse.

Gawker must produce documents within its "possession, custody, **or control**." Fla. R. Civ. P. 1.350(a) (emphasis added). Whether documents are within a party's control "is broadly

construed" and includes whether the party has the "right, authority, or practical ability to obtain the materials sought on demand." *Costa v. Kerzner Intern. Resorts, Inc.*, 277 F.R.D. 468, 470–71 (S.D. Fla. 2011). Significantly, Gawker's opposition never states that it does not have the "right, authority, or practical ability" to obtain documents held by Kinja. (The evidence shows that Gawker **does** have that ability; they are both wholly owned by the same parent company, which is majority owned by defendant Nick Denton.) Instead, Gawker spends six pages of its opposition citing law that is outside of Florida, with standards that do not apply, and are completely different from the standard in Florida. The Court, applying **Florida** law, should conclude that Gawker **does** have the "right, authority, or practical ability" to obtain documents held by it sister-company, Kinja. (Moreover, many of the out-of-state cases cited by Gawker actually **support** Mr. Bollea's position that Gawker does have legal control over the Kinja documents.)

Gawker cites several Third Circuit cases, apparently hoping to confuse this Court into thinking that a completely different legal standard applies in Florida. To no avail. The Third Circuit has a far narrower view of the "legal control" standard, requiring a finding that the litigating entity is either the "alter ego" of the sister company, or that the two entities "act as one." [1] That is not the standard in Florida, and cases controlling in Florida have expressly so

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[1] The Third Circuit cases cited by Gawker are: (1) *Gerling Intern. Ins. Co. v. C.I.R.*, 839 F.2d 131 (3d Cir. 1988); (2) *In re Global Power Equipment Group Inc.*, 418 B.R. 833 (Bankr. D. Del. 2009); and (3) *Heraeus Electro-Nite Co.v. Midwest Instrument Co., Inc.*, No. CIV.A.06-355, 2006 WL 3004877 (E.D. Pa., Oct. 18, 2006). In *Heraeus,* the court held at page *2: "In *Gerling Intern. Ins. Co. v. C.I.R.,* 839 F.2d 131, 140-41 (3d Cir.1988), the Third Circuit set out the test for when a party to the litigation can be held accountable for failing to produce discovery in the possession of a non-party." According to *Gerling*, "control" over a sister corporation "has been found only where the sister corporation was found to be the alter ego of the litigating entity, or where the litigating corporation had acted with its sister in effecting the transaction giving rise to suit and is litigating on its behalf [also known as "acting as one"]." *Id.* (internal cites omitted). *See In re Global Power Equipment Group Inc.*, 418 B.R. 833, 842 (Bankr. D. Del. 2009) ("As

held. *See*, *e.g.*, *Costa*, 277 F.R.D. 468 (finding legal control over documents **without** finding that the affiliated companies were either alter egos or "acting as one"); *Desoto Health & Rehab, LLC v. Philadelphia Indem. Ins. Co.*, No. 2:09-cv-599-FtM-99SPC, 2010 WL 4853891 (M.D. Fla., Nov. 22, 2010) (same).

The test that applies in Florida is much broader than the far narrower test applicable within the Third Circuit. The test in Florida focuses on the **three factors** identified in Mr. Bollea's moving papers, none of which is dispositive but all of which are relevant: "(1) the corporate structure of the party and the nonparties; (2) the nonparties' connection to the transaction at issue in the litigation; and (3) the degree to which the nonparties benefit from the outcome of the litigation." *Costa*, 277 F.R.D. at 471.

Here, Gawker and Kinja are both wholly owned by the same entity: Gawker Media Group, Inc. ("GMGI"). Further, Scott Kidder, who works out of Gawker's offices in Manhattan, New York City, acts as both Vice President of Operations at Gawker **and** Managing Director of Kinja. In fact, Mr. Kidder testified that he alone is the **sole officer and director of Kinja**. Ex. A (Kidder Tr. 20:7–18; 47:25–48:16). Thus, in addition to common ownership, there is significant overlap between the two companies' officers and management, such that common control of documents can and should be found. This is a similar situation to the case of *Steele Software Sys., Corp. v. DataQuick Information Sys., Inc.*, 237 F.R.D. 561(D. Md. 2006), which Gawker cites in its opposition, but actually supports Mr. Bollea's motion to compel, as discussed in greater detail two paragraphs below.

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the Third Circuit has stated, where two sister corporations act as one in the transaction giving rise to the litigation, it may be presumed that there is control by one sister of the documents in possession of the other.") (emphasis added).

Discovery has shown that there is a close **financial relationship** between sister companies Gawker and Kinja. Mr. Kidder testified: "they have entered into various agreements between each other," Ex. A (Kidder Tr. at 47:21–24). Moreover, Kinja owns the GAWKER trademarks, and licenses them to Gawker. (*Id.* at 103:25–105:11). In doing so, Kinja has filed with the U.S. Patent and Trademark Office ("USPTO") applications, and received registrations, for the GAWKER trademarks indicating that Kinja's business office is located at the exact same address as Gawker's business headquarters. Ex. B (United States Patent and Trademark Office filings). Kinja receives revenues and profits from Gawker by way of royalty payments from Gawker. Ex. A (Kidder Tr. at 57:8–23). Moreover, **Kinja** owns the domain name Gawker.com (the URL address that published the sex video at issue), and permits Gawker to operate the Gawker website at that URL address. (*Id.* at 49:6; 219:11). All of these facts, in addition to commonality of ownership, officers and directors, weigh in favor of finding that Gawker has a "practical ability" and a "right" to obtain the documents sought.

One illustration would be this: if defendant Nick Denton, who is the majority owner of GMGI which owns both Gawker and Kinja, and serves as CEO of Gawker, were to demand of Mr. Kidder, his subordinate, that the documents at issue in this motion be delivered to him within 10 days, Mr. Kidder (the sole officer and director of Kinja) would be able to comply with that request, and presumably would be duty-bound to follow that directive of his superior. This is a classic example of one company having a "practical ability" to obtain the documents sought, and thus, under Florida's standard, "legal control" over the documents.

Several of the cases out-of-state cases cited by Gawker (though not controlling here because Florida's standard applies, rather than the standard of another state), actually **support** a finding of legal control under the facts here. In *Steele Software Sys., Corp. v. DataQuick*

Information Sys., Inc., 237 F.R.D. 561(D. Md. 2006), a case cited by Gawker, the court held that, in addition to the three factors listed above, "[o]ther relevant factors include whether the related entities **exchange documents** in the ordinary course of business, and whether the nonparty has **participated in the litigation**." *Id.* at 564. The court further explained:

> Common relationships between a party and its related nonparty entity are particularly important to the determination of control. **Critical factors here include the ownership of the nonparty, any overlap of directors, officers, and employees, and the financial relationship between the two entities**. [citation]. Control has been found where the party and its related nonparty affiliate are owned by the same individual. . . . Common control of documents is also found where related entities **share management**.

Id. (emphasis added).

Here, Mr. Kidder testified that both Gawker and Kinja have entered into transactions with one another, and thus they presumably exchange documents with one another, particularly given than Mr. Kidder serves as both officer of Gawker and sole officer and director of Kinja. Moreover, Kinja participated in the instant litigation from the fall of 2013 until the present. (Kinja's first motion to dismiss was filed on November 2013; it is presently appealing the denial of its motions to dismiss.)

In *Appleton Papers Inc. v. George A. Whiting Paper Co.*, No. 08-C-16, 2009 WL 2408898 at *2–3 (E.D. Wis., July 31, 2009), another case cited by Gawker, the court provided a helpful example of where shared ownership would justify a finding of legal control:

> [T]he Defendants have established that there is **sufficient intermingling of resources and efforts** here such that one could reasonably expect that Appleton Coated LLC has the ability to obtain documents from Arjowiggins. As they point out, Appleton Coated's website states that it is a subsidiary of Arjowiggins SAS, and it points viewers of its website directly to a link to Arjowiggins' own website …. [Citation]. For its part, Arjowiggins' website lists Appleton Coated LLC as one of its North American Production sites. [Citation.] The only conclusion one could draw from this is that not only are the two entities related in a corporate ownership sense, they are united in a shared business purpose. **Having boasted to the world about its close corporate relationship with Arjowiggins, Appleton Coated cannot now distance itself when it is convenient.**

Accordingly, I conclude that the motion to compel should be granted.

Id. (emphasis added).

Here, Gawker attempts to analogize GMGI (the parent company of Gawker and Kinja) to the diversified investment firm: Berkshire Hathaway, and seeks to characterize Kinja and Gawker as equivalent to Berkshire Hathaway's completely unrelated subsidiaries: See's Candies and Geico Insurance. That is not a fair analogy by any stretch. See's Candies and Geico operate completely separate businesses. But Kinja and Gawker are close, related businesses and **substantially intermingle their resources and efforts**. Kinja developed the software that Gawker uses to operate its family of websites. Ex. A (Kidder Tr. at 39:15–40:7). The KINJA trademark is at the top of every Gawker website page. Ex. C. **Gawker's "Terms of Use" page is headlined "Kinja Terms of Use"** and begins, **"Welcome to Kinja!"** Ex. D. (Emphasis added.) Gawker's "Content Guidelines" and "Privacy Policy" all come from the **"Kinja Legal"** team. Ex. E. Formerly named "Blogwire Hungary Szellemi Alkotast Hasznosito KFT," Kinja changed its corporate name to simply "Kinja KFT" presumably to better identify and align itself with the operating system that it owns and is prominently used by Gawker. Opp. at 4, n.6. Accordingly, having "boasted to the world" about their close corporate relationship, Gawker and Kinja "cannot now distance [themselves] when it is convenient." *Appleton Papers Inc.*, 2009 WL 2408898 at *3.

In another case cited by Gawker, *Uniden America Corp. v. Ericsson Inc.*, 181 F.R.D. 302 (M.D.N.C. 1998), the court describes the relevant legal control factors as including:

"(a) commonality of ownership, (b) exchange or intermingling of directors, officers or employees of the two corporations, (c) exchange of documents between the corporations in the ordinary course of business, (d) any benefit or involvement by the non-party corporation in the

transaction, and (e) involvement of the non-party corporation in the litigation." *Id.* at 306. Applying the foregoing factors, the court found there was sufficient control between two sister corporations where: (a) the parent corporation exerted some control over both sister corporations; (b) there was some exchange of officers between the companies; (c) documents were exchanged between the companies in the ordinary course of business, including relating to the transaction at issue in the litigation; and (d) "although not directly involved in the underlying transaction, there is an indication that defendant Ericsson Mobile had more than a passing interest in the sales in question." *Id.* at 307.

Similarly, here:

(a) "The **sole purpose** of [GMGI] is to facilitate ownership in Gawker Media, LLC and Kinja Hungarian Corporation . . . ." Ex. A (Kidder Tr. at 47:4–10);

(b) Scott Kidder acts as both Vice President of Operations at Gawker and Managing Director of Kinja. *Id.* (Kidder Tr. 20:7–18; 47:25–48:16);

(c) Kinja and Gawker regularly enter into agreements with each other, including Kinja's ownership and licensing of:

- the software platform for Gawker's websites;
- the Gawker.com domain name, and
- the GAWKER registered trademarks used at Gawker.com (the website run by Gawker where the infringing sex video was hosted for six months).

Id. (Kidder Tr. 39:15–40:7; 48:25–49:8; 103:25–105:11); and

(d) Kinja, at the very least, has "more than a passing interest" in the subject of the litigation because: (1) Kinja is a defendant in the litigation (its motion to dismiss was recently denied by Judge Campbell); and (2) Gawker is the "**exclusive licensee**" of the Kinja-owned

"Gawker related trademarks and brand names in the United States" (Ex. A (Kidder Tr. 104:23–105:11)).[2]

In sum, **all** of the applicable "control" factors weigh in favor of finding that Gawker has control over the documents in Kinja's possession – all of which Judge Campbell ordered Gawker to produce in her February Order.

ii. The Court's February Order Requires *Gawker* to Produce *Kinja* Documents

The February Order expressly compels Gawker to: "produce all documents in its possession, custody or control as to… Kinja." Given the forgoing control analysis, Gawker has no basis to claim that the order somehow does not require Gawker to produce documents held by Kinja. Opp'n at 9–10 (arguing that "there is no plausible case to be made that the Court intended its February Order to direct Gawker to produce documents in another entity's possession"). Given the foregoing analysis regarding legal control, if the categories of documents ordered compelled by the Court are in Kinja's possession, then Gawker must produce them, because Gawker has legal control over them. The Court's intent was that the documents be produced. Gawker has not done so and therefore has violated the February Order.

Gawker's other arguments for why it is supposedly in "full compliance" with the Court's February Order are similarly unavailing:

First, Gawker repeatedly states that Kinja has "no role or function in connection with the publication of material on Gawker.com." Opp. at 8. The statement is false and contrary to the

[2] The fact that Kinja licenses its *software* to other companies (*see* Opp. at 22) does not negate the fact that Gawker is Kinja's exclusive licensee of Kinja's Gawker-related trademarks. Any adverse result as to Gawker will have a direct financial impact on Kinja, thus giving Kinja "more than a passing interest" in the outcome of the litigation and its subject matter.

discovery produced to date. As Scott Kidder, Kinja's Managing Director, explained at his deposition:

> Q. Okay. Let me ask you this question. You've just referred to Gawker Media and the broader Kinja network. Can you identify for me what you mean by, by first Gawker, and second, the broader Kinja network?
>
> A. Sure. When I say Gawker Media I'm saying the sites, editorial properties that are operated by Gawker with, with Gawker Media employees. **Kinja is** a – **the proprietary platform that operates Gawker Media, LLC sites** and it's owned by Kinja, which is a Hungarian company, and so **the broader Kinja network refers to content created on the Kinja network, on the Kinja platform**, that's not created by paid employees of Gawker Media, LLC.

Ex. A (Kidder Tr. at 39:15–40:7). Thus, by Gawker's own admission (Scott Kidder was testifying as Gawker's corporate designee), Kinja plays a role or function in connection with the publication of material on the Gawker websites. Mr. Bollea is entitled to further discovery regarding that role or function—both Kinja's role/function generally, and also specifically in connection with the publication of material at Gawker's websites.

Second, the Court's February Order regarding the production of documents evidencing and relating to the **financial transactions** between Gawker affiliated companies mandates Gawker's production of **Gawker's** financial transactions with Kinja and **Gawker's** financial transactions with GMGI, as well as financial transactions between defendant Kinja and its parent company, former defendant GMGI. Gawker urges the Court to read the order narrowly, to require only production of financial transactions between Kinja and GMGI, but that narrow reading is not supported by either the text of the order, or logic, because neither of those defendants was the **principal actor** in the events that gave rise to this litigation: Gawker was the primary actor.

B. Documents and Information Relating to Gawker's Finances Are Relevant and Reasonably Calculated to Lead to the Discovery of Admissible Evidence

i. Gawker should be compelled to produce its financial information relating to its revenues, IP royalties and equity, debt or security offerings.

Mr. Bollea properly seeks discovery that is reasonably calculated to lead to the discovery of admissible evidence supporting his damages theories. Those theories include:

> (1) The reasonable value of a publicly released sex tape featuring Hulk Hogan, released on the Internet with viewership of approximately 5.35 million unique viewers during the period of October 4, 2012, through April 25, 2013, at Gawker.com, and several million more viewers at other sites that obtained the video from Gawker.com;
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> (2) The reasonable value of 5.35 million unique Internet users visiting the Gawker.com homepage and/or the webpage featuring the Hulk Hogan sex tape, and any other Gawker affiliated websites/webpages during the period of October 4, 2012, through April 25, 2013, because of the existence of the Hulk Hogan sex tape at Gawker.com. To clarify, "reasonable value" as used herein includes, without limitation, any increase in value of either Gawker.com and/or Gawker Media, LLC attributable, directly or indirectly, to the existence of the Hulk Hogan sex video at Gawker.com; and
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> (3) Disgorgement of Gawker Media's profits, and the profits of Gawker's owners, managers and/or employees, resulting from the unlawful dissemination of the Hulk Hogan sex tape at issue and the accompanying narrative describing Hulk Hogan naked and having sex in a private place. To clarify, "profits" as used herein includes, without limitation, any increase in profits of either Gawker.com and/or Gawker Media, LLC attributable, directly or indirectly, to the existence of the Hulk Hogan sex video at Gawker.com.[3]

Ex. F. To support those damage theories, Mr. Bollea seeks discovery of documents and information regarding the value to the defendants, including Gawker, of a sex video featuring Hulk Hogan, which was posted on the Internet for six months and viewed by more than five million people.[4] That discovery includes the three narrowly tailored categories of information,

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[3] Mr. Bollea will assert additional damage theories that are not relevant to this motion.

[4] Further, contrary to Gawker's claims, unjust enrichment is a valid damages theory under Mr. Bollea's causes of action. Gawker's citation to 19A Fla. Jur. 2d Defamation & Privacy § 232 does not support its contrary argument. A review of the only case cited in the Florida Jurisprudence section as authority for that proposition, *Cason v. Baskin*, 20 So.2d 243 (Fla.

identified with substantial particularity, that are sought by this motion:

(1) The sources of Gawker's "Other Revenue" as referred to at line 200 of Gawker's Income Statement;

(2) Facts relating to Gawker's payment of any "IP Royalty Expense," which is referred to at line 8300 of Gawker's Income Statement, including the amount paid, to whom the payment was made, and for what products and/or services; and

(3) Documents relating to any proposed equity, debt or other security offering by Gawker.

The requested information is relevant and reasonably calculated to lead to the discovery of admissible evidence. The documents and information are sought for a period of three to four years surrounding Gawker's publication of the sex video so that Mr. Bollea may compare the financial information for the period prior to Gawker's publication, and following Gawker's publication, to ascertain the value derived by defendants, including Gawker, from the unauthorized publication, as well as where and how that value was distributed. Documents relating to any equity, debt or security offerings by Gawker will similarly show the company's evolution in value **prior to** the publication of the sex video, as compared to **after** its publication. Thus, the documents and information sought are reasonably calculated to lead to the discovery of

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1944), reveals that it does not stand for the proposition for which it is cited – i.e., an invasion of the right of privacy by a publication confers no right on the plaintiff to share in the proceeds of the publication on the theory of unjust enrichment. In fact, the Florida Supreme Court in *Cason* instead recognizes that it is legally permissible for a plaintiff to sue the defendant for damages for a publication constituting an invasion of a right of privacy and claim damages upon a theory of entitlement to share in the proceeds of the sale of the publication. *Id.* at 254. ("A claim for unjust enrichment . . . requires examination of the particular circumstances of an individual case as well as the expectations of the parties to determine whether an inequity would result or whether their reasonable expectations were met." *Porsche Cars N. Am., Inc. v. Diamond*, 140 So.3d 1090, 1100 (Fla. 3d DCA 2014) (citing *Kunzelmann v. Wells Fargo Bank, N.A.*, 9:11-cv-81373-DMM, 2013 WL 139913 (S.D.Fla. Jan. 10, 2013)).

admissible evidence and should be produced.

ii. Gawker should be compelled to produce Kinja's financial statements.

Mr. Bollea seeks Kinja's financial statements for the same reasons. Through discovery, Mr. Bollea is aware that Kinja is the creator and licensor of the software platform used by Gawker's websites, the domain name Gawker.com (where the sex video was posted), and the GAWKER trademarks. Ex. A (Kidder Tr. at 39:15–49:8). Mr. Bollea is further aware that **Kinja receives profits** from Gawker by way of royalty payments. *Id.* (Kidder Tr. at 57:8–23). Thus, Mr. Bollea seeks discovery concerning Kinja's finances so that he can compare them as they were **prior** to Gawker's unauthorized publication of the sex video, to Kinja's finances **after** Gawker's publication, and thereby ascertain the degree to which the value to Gawker extended to its affiliated companies, including defendant Kinja.

iii. The Court's February Order does not preclude Mr. Bollea from seeking the requested financial information.

Gawker's argument that the Court's February Order already ruled Kinja's and Gawker's finances off-limits is incorrect. The Court sustained Gawker's objections to producing such information "**without prejudice** to Plaintiff's right to request the subject documents in the future based on a review of the sufficiency of disclosures made in other documents and depositions taken as of November 25, 2013." Ex. G (2/26/14 Order at ¶9 (emphasis added)); *see also id.* (2/26/14 Order at ¶12 (sustains objections "without prejudice to Plaintiff's right to request the subject documents in the future"). The financial information requested from Gawker is targeted, follow-up information based on a review of Gawker's financial statements. Gawker has refused to provide any detailed information relating to Kinja. Therefore, because Gawker's disclosures to date are insufficient, Mr. Bollea has renewed his request for the information, precisely in

accordance with the Court's February Order.[5]

C. Revenue Information Relating to Gawker's Affiliate Websites Is Not Precluded By the Court's February 26, 2014 Order

Gawker's only argument opposing Mr. Bollea's entitlement to the revenue information relating to Gawker's affiliate websites entails a blatant misreading of the language in the Court's February Order. The February Order clearly states that its ruling sustaining Gawker's objections to producing revenue information for Gawker's affiliate websites is **without prejudice** to Mr. Bollea seeking such documents in the future **if he is unable to obtain them from publicly available sources**. Ex. G (2/26/14 Order at ¶5). Thus, the Court did not previously "reject" Mr. Bollea's arguments for production of this information, as Gawker contends. Opp. at 16. Rather, the February Order demonstrates the Court's intent to **allow** Mr. Bollea access to the information, but requires him to seek the information from public resources, **first**, if they are available, and from Gawker, **second**, if they are not publicly available. Mr. Bollea has tried and been unable to obtain the revenue information from publicly available sources. Therefore, he has renewed his request for such information in accordance with the Court's Order.

Links to **each of Gawker's affiliated websites** were featured at Gawker.com on the **same webpage where the sex video was published**. Ex. I (preservations of the page hosting the sex video; *see specifically*, BOLLEA000041). Mr. Bollea is entitled to discover whether the

[5] Contrary to Gawker's contentions, the Court's February Order as to Interrogatory 13 is inapplicable to the requests here. That interrogatory sought the identification of all individuals or entities who receive compensation **from** Gawker.com and its content. Ex. H (Plaintiff's Second Set of Interrogatories to Defendant Gawker Media, LLC). Interrogatory 18, which is at issue in this motion, seeks identification of individuals or entities which generate revenue **to** Gawker. *See* Mot. at 11. In addition, Interrogatory 19 seeks only the identification of individuals or entities who receive "IP Royalty Expenses" from Gawker, which is a much more narrowly tailored and targeted request than that which was at issue in the February Order. *Id.*

publication of the sex video, including its association with the other websites jointly owned and affiliated with Gawker.com, benefitted from increased revenue as a result of the five million people who flocked to Gawker.com to view the sex video. The requested information is reasonably calculated to lead to the discovery of admissible evidence and should be produced.

D. Gawker's Privacy and Confidentiality Policies, Notices and Agreements Are Relevant and Reasonably Calculated to Lead to the Discovery of Admissible Evidence

Mr. Bollea seeks from Gawker the full production of Gawker's policies, notices and agreements relating to Gawker's protection of its privacy and confidentiality. Gawker refuses to fully produce these documents, but makes no showing why such a production would be "unduly burdensome." Gawker's concerns over confidentiality are adequately addressed by the Protective Orders in this case. The documents are relevant to Gawker's state of mind when it published private footage of Mr. Bollea nude and having sex in a private bedroom, and Gawker's insistence that third parties respect its privacy and confidentiality, while claiming that others, including Mr. Bollea, do not have a right to privacy or confidentiality, including when then are naked and having private sex in a private bedroom. Gawker cannot pick and choose which responsive documents it would like to produce and "respectfully decline" to produce the remainder. Gawker must fully produce the requested policies, notices and agreements.

E. Gawker Should Be Required to Pay Mr. Bollea's Attorneys' Fees in Bringing this Motion

Contrary to Gawker's assertions, Mr. Bollea made a good faith effort to obtain the

discovery sought by this motion without court action. On July 25, 2014, Mr. Bollea's counsel sent Gawker's counsel a meet and confer letter detailing the reasons why Mr. Bollea believed he was entitled to the documents and information sought. Gawker's counsel's letter in response made clear that Gawker would not change its position as to the information and documents requested. Thus, in order to quickly and efficiently resolve the parties' dispute, Mr. Bollea filed the instant motion and notified Gawker's counsel beforehand that he would be doing so. Mr. Bollea's counsel invited Gawker's counsel to contact him after reading the motion, if Gawker was subsequently inclined to change its position as to any of the discovery sought by Mr. Bollea. Gawker's counsel never accepted that invitation.

Therefore, if the Court grants Mr. Bollea's Motion to Compel, Gawker should be required to pay Mr. Bollea his expenses and attorneys' fees incurred in obtaining this relief.

CONCLUSION

For the foregoing reasons, as well as those stated in Mr. Bollea's moving papers, Mr. Bollea respectfully requests that the Special Discovery Magistrate recommend that this motion to compel be granted, and that Gawker must: (1) fully comply with this Court's February Order by producing **all** documents responsive to Requests 89, 90, 92, and 93 that are within Gawker's **control**, including all responsive documents within the possession or custody of Kinja; (2) produce Kinja's financial statements responsive to Request 121, including all financial statements reflecting transactions between Kinja and Gawker; (3) provide full and complete responses to Interrogatories 18 and 19, and documents in response to Second Request 116, regarding Gawker's finances, including its sources of revenue, IP royalty expenses and any proposed equity, debt or other security offerings by Gawker; (4) produce all documents responsive to Requests 119 and 120 relating to the revenue generated by, and financial

statements for, each of Gawker's affiliated websites; (5) make a complete production of documents responsive to Request 126, including its policies, notices and agreements relating to protection of Gawker's privacy or confidentiality; and (6) pay Mr. Bollea his reasonable attorneys' fees incurred in bringing this motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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