EXHIBIT 2

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.
_____/

PLAINTIFF TERRY GENE BOLLEA'S MOTION TO COMPEL FURTHER RESPONSES TO DISCOVERY

I. INTRODUCTION

Mr. Bollea brings this motion to compel after a good faith effort to resolve these issues without court action. The motion should be granted for at least the following reasons:

First, on February 26, 2014, the Court **granted** Mr. Bollea's motion to compel certain documents from Gawker, which relate to its sister corporation, Kinja KFT f/k/a Blogwire Hungary Szellemi Alkotast Hasznosito KFT (herein, "Kinja"). Gawker has not complied with the Court's order based on its contention that the documents are within Kinja's possession. The argument cannot withstand scrutiny. Based on the relevant case law, as well as discovery produced to date, Gawker has "control" over Kinja's documents such that Gawker is under an obligation to produce them in discovery.

Second, because Gawker has control over Kinja's documents, it is under an obligation to produce Kinja's financial statements. Discovery has revealed that Gawker and Kinja regularly conduct financial transactions. Any documents reflecting those transactions are relevant, reasonably calculated to lead to the discovery of admissible evidence and should be produced.

Third, Gawker's business model, how it derives revenue therefrom, and where that revenue is distributed thereafter is at the heart of Mr. Bollea's damages claim—which is that Gawker as a whole unjustly benefitted from the unauthorized posting of the sex video depicting Mr. Bollea. Thus, Mr. Bollea's follow-up discovery requests seeking further detail as to certain of Gawker's financial statements are appropriate, relevant and reasonably calculated to lead to the discovery of admissible evidence.

Fourth, Gawker is in the business of cross-promoting its affiliated websites. In this case, anyone viewing the sex video could click on a link to access each of Gawker's affiliated websites. Mr. Bollea is entitled to know whether the affiliated websites received any downstream financial benefit from Gawker's cross-promotion practice generally and, in particular, in connection with the publication of the sex video.

Fifth, Gawker's views on privacy and confidentiality are at the center of this case about Gawker's invasion of Mr. Bollea's privacy. Gawker published a video depicting Mr. Bollea nude and having sex, without asking his permission, without notifying him, without confirming that the video was recorded with his permission, and without asking anyone whether the video was recorded with anyone's permission. Mr. Bollea seeks discovery regarding Gawker's protection of its own privacy in order to test whether Gawker is consistent in its belief, as stated by its founder and CEO Nick Denton, that "the supposed invasion of privacy has incredibly positive effects on society." Affidavit of Douglas E. Mirell ("Mirell Aff."), **Exhibit A**

("Gawker's Nick Denton Explains Why Invasion of Privacy Is Positive for Society," The Hollywood Reporter, 5/22/13, *available at* http://www.hollywoodreporter.com/thr-esq/gawkers-nick-denton-explains-why-526548). The information is relevant, reasonably calculated to lead to the discovery of admissible evidence (both as to the issue of Gawker's intent to commit the torts alleged by Mr. Bollea and as to possible impeachment) and should be produced.

Accordingly, Mr. Bollea respectfully requests that the Discovery Magistrate recommend that Gawker: (1) fully comply with this Court's February 26, 2014, Order by producing **all** responsive documents that are within Gawker's **control**; (2) produce Kinja's financial statements, 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 offering by Gawker; (4) produce all documents relating to the revenue generated by, and financial statements for, each of Gawker's affiliated websites; and (5) make a complete production of its policies, notices and agreements relating to protection of Gawker's privacy or confidentiality.

Pursuant to Fla. R. Civ. P. 1.380(a)(4), Mr. Bollea additionally moves for his expenses and attorneys' fees incurred in bringing this motion, which, at least as to certain of the information, he is having to ask for again, after having already brought a motion to compel and received an order from this Court that Mr. Bollea is entitled to the information sought.

II. LEGAL STANDARD

"Parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action. . . . It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to

lead to the discovery of admissible evidence." Fla. R. Civ. P. 1.280(b)(1). "[T]he test is relevancy to the subject matter of the action rather than to the precise issues framed by the pleadings." *Charles Sales Corp. v. Rovenger*, 88 So.2d 551, 553 (Fla. 1956).

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

III. THE MOTION TO COMPEL SHOULD BE GRANTED

A. Gawker Should Be Compelled to Comply with the Court's February 26, 2014, Order

i. The discovery compelled by the Court's February 26 Order

On or about June 27, 2013, Mr. Bollea served Gawker with Requests for Production relating to Kinja's involvement in the facts and circumstances that gave rise to this lawsuit, and to understand the extent of any downstream benefit Kinja may have received from the unauthorized posting of the sex video at Gawker.com. Gawker refused to produce documents responsive to the Requests, forcing Mr. Bollea to bring a motion to compel the documents. The motion was heard on November 25, 2013. The Court issued a written order on February 26, 2014, granting in part and denying in part Mr. Bollea's motion to compel, as follows:

1. ***Granted***: All documents that describe Kinja's functions or line of business (Request 89).
2. ***Granted***: All documents that describe Kinja's functions with respect to the posting of content on Gawker.com (Request 90).

3. ***Granted***: All documents that relate to financial transactions between Kinja and Gawker (denied as to Gawker's other affiliates) (Request 92).
4. ***Granted***: Documents that relate to the direct or indirect receipt of advertising revenue by Kinja (Request 93).

The Court's order is attached to the Mirell Aff. as **Exhibit B**. Requests 89–90 and 92–93 are attached hereto as **Exhibit C**. Despite the Court's order requiring the discovery, to date, Gawker has not produced any documents compelled by the Court's February 26, 2014 Order, which relate to Kinja's involvement with respect to the delivery of content on Gawker.com, including the sex video at issue in this litigation, Kinja's financial transactions with Gawker, and Kinja's direct and/or indirect receipt of advertising revenue from Gawker.

Gawker's position, as stated in its August 4, 2014, response to Mr. Bollea's July 25, 2014, meet and confer letter on this topic (Mirell Aff., **Exhibit D**), is that "*Gawker* has no additional discovery relating to the 'functions or line of business' of *[Kinja]*," and that "*Gawker* has no documents concerning 'direct or indirect receipt of advertising revenue in connection with Gawker.com' by *[Kinja]*." Mirell Aff., **Exhibit E** (emphasis supplied). As is explained more fully below, Gawker has "control" over documents in Kinja's possession. As such, it is no excuse that *Gawker* does not have the requested discovery. *Gawker* must produce the discovery held by Kinja.

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

Gawker must produce documents within its possession, custody or **control**. Fla. R. Civ. P. 1.350(a). "When construing Florida Rules of Civil Procedure, Florida courts may look to federal case law construing similar or identical Federal Rules of Civil Procedure, such as this

case where Florida Rule of Civil Procedure 1.350(a) is similar to Federal Rule of Civil Procedure 34(a)." *Saewitz v. Saewitz*, 79 So. 3d 831, 834 n.3 (Fla. 3d DCA 2012).[1] Gawker's position here—namely, that it is "not surprising" that *Gawker* does not have *Kinja's* documents—is analogous to that presented to the federal court in the Southern District of Florida in *Costa v. Kerzner Intern. Resorts, Inc.*, 277 F.R.D. 468, 470 (S.D. Fla. 2011). In that case, the "Defendants objected to the majority of Plaintiff's Requests for Production and Interrogatories on the basis that they call for documents and information allegedly not in Defendants' possession, custody, or control but instead in the possession, custody, or control of their Bahamian Affiliates." *Id.* As the *Costa* court explained, however, whether documents are within a party's control "is broadly construed":

> "Control," therefore, does not require that a party have legal ownership or actual physical possession of the documents at issue; indeed, **documents have been considered to be under a party's control (for discovery purposes) when that party has the "right, authority, or practical ability to obtain the materials sought on demand**."

Id. at 470–71 (internal citations omitted) (emphasis added). *See also Searock v. Stripling*, 736 F.2d 650, 653 (11th Cir. 1984) ("Control is defined not only as possession, but as the legal right to obtain the documents requested upon demand."); *Desoto Health & Rehab, LLC v. Philadephia Indem. Ins. Co.*, No. 2:09–cv–599–FtM–99SPC, 2010 WL 4853891, *3 (M.D. Fla. Nov. 22, 2010) (defining control as a "party's legal right, authority, or practical ability to obtain the materials sought on demand"). "In determining whether a party has control over documents and information in the possession of nonparty affiliates, the Court must look to: (1) the corporate

[1] *See also American Honda Motor Co., Inc. v. Votour*, 435 So.2d 368, 369 (Fla. 4th DCA 1983) ("In the absence of Florida precedent we adhere to the view expressed in several federal cases that it is not unreasonable to require the parent corporation, engaged in litigation, to produce records of its wholly owned subsidiary. The cases involve application of Rule 34(a) of the Federal Rules of Civil Procedure, analogous to Rule 1.350(a), Florida Rules of Civil Procedure.").

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." *Id.* at 471. The same "control" analysis applies when both parties are defendants. *See, e.g.*, *Scott v. Arex, Inc.*, 124 F.R.D. 39, 41 (D. Conn. 1989) (holding that one party must respond to discovery concerning another party where the information is within his control); *Haseotes v. Abacab Intern. Computers, Inc.*, 120 F.R.D. 12, 14 (D. Mass. 1988) (holding that "the individual defendants, as officers, directors, and shareholders of Abacab Ltd. and Abacab Inc., can be required to produce documents that are in the possession of the [defendant] corporations," because the documents are within the individual defendants' control).

Regarding the first factor—the entities' corporate structure—"[c]ourts have consistently held that control exists where the party and its related nonparty affiliate are owned by the same individual." *Costa,* 277 F.R.D. at 472 (internal quotations omitted). Further, where there are "financial and operational interactions" between the companies, that fact weighs in favor of finding "control." *Id.* at 472. Here, Gawker and Kinja are both wholly owned by the same entity, Gawker Media Group, Inc. ("GMGI"), and thus are part of a "unified corporate structure," as was the case in *Costa*. *Id.* at 471–72. Further, Gawker's corporate designee testified at his deposition that "the relationship between Kinja KFT and Gawker Media, LLC" is that "[t]hey are 100 percent fully owned by [GMGI] and they have entered into various agreements between each other." Mirell Aff., **Exhibit F** (Kidder Tr. 47:19–24). Thus, the companies are part of a unified corporate structure, owned by the same parent company and have financial and operational interactions. The first factor overwhelmingly weighs in favor of finding "control."

Regarding the second factor—Kinja's connection to the litigation—discovery to date has revealed that Kinja is directly related to the conduct at issue in this litigation, including in its role

as a potential (and probable) recipient of financial benefit from the infringing conduct. Specifically:

1. Kinja owns the software platform that Gawker utilizes for the operation of its websites, including Gawker.com, where the infringing sex video was hosted for six months. Mirell Aff., **Exhibit F** (Kidder Tr. at 39:15–40:7).
2. Kinja owns the domain name Gawker.com, which posted the sex video. *Id.* (Kidder Tr. at 48:25–49:8).
3. Kinja owns the trademarks and trade names for all of Gawker's websites, including Gawker.com. *Id.* (Kidder Tr. 48:25–48:8).
4. Kinja licenses the trademarks that it owns to Gawker. *Id.* (Kidder Tr. 103:25–105:11).
5. Kinja receives profits from Gawker by way of royalty payments from Gawker. *Id.* (Kidder Tr. at 57:8–23).

The fact that Kinja is located in Hungary does not make a difference to whether Gawker is obligated to produce the Kinja-related documents. As the *Costa* court explained, "[t]he fact that the documents are situated in a foreign country does not bar their discovery . . . Defendant cannot be allowed to shield crucial documents from discovery by parties with whom it has dealt in the United States merely by storing them with its affiliate abroad . . . if defendant could so easily evade discovery, every United States company would have a foreign affiliate for storing sensitive documents." *Costa*, 277 F.R.D. at 473 (quoting *Cooper Industries, Inc. v. British Aerospace*, 102 F.R.D. 918, 920 (S.D.N.Y. 1984)). In this case, Gawker and Kinja regularly conduct business with the other. Gawker cannot be allowed to evade discovery of the documents reflecting those transactions, and other relevant documents held by Kinja, by claiming *Gawker* does not possess them. Mirell Aff., **Exhibit E** (8/4/14 letter). As in *Costa*, "[g]iven their

established corporate and transactional connections," it is "unlikely that [Gawker] do[es] not have access to and the ability to obtain documents and information in the possession of [Kinja]." *Costa*, 277 F.R.D. at 473. Thus, the second factor weighs in favor of finding "control."

Regarding the third factor—Kinja's financial interest in the outcome of the litigation—Kinja's financial interest is readily apparent. Kinja is a defendant and, regardless of whether Kinja remains a defendant pending the Second DCA's decision as to jurisdiction, due to Kinja's financial relationship with Gawker, any adverse result as to Gawker (the **only** entity that licenses Kinja's Gawker-related intellectual property in the United States) will have a direct financial impact on Kinja. Mirell Aff., **Exhibit F** (Kidder Tr. 104:23–105:11: Gawker is the "exclusive licensee" of the Kinja-owned "Gawker related trademarks and brand names in the United States.").

Thus, all three factors weigh in favor of finding that Gawker has control over the documents ordered produced by the Court. Gawker cannot continue to hide behind corporate formalities to evade production of these court-ordered documents. Gawker's argument that Mr. Bollea's instant motion is a "set up" for an argument as to Kinja's currently-pending appeal is without any merit. Mirell Aff., **Exhibit E** (8/4/14 letter). The Court ordered production of these documents long ago. Mr. Bollea seeks nothing more than enforcement of the Court's order.

B. Gawker Should Be Compelled to Respond to Discovery Relating to Kinja's Financial Statements

Gawker refused to respond at all to Request No. 121:

> **REQUEST NO. 121:** All financial statements, including but not limited to balance sheets, income statements (which shall include identification of all revenue sources and expenses), statements of retained earnings and cash flows, and statements of changes in financial position, for Kinja KFT f/k/a Blogwire Hungary Szellemi Alkotást Hasznositó, KFT, covering all periods from January 1, 2011, through the present.

> **RESPONSE:** Gawker objects to this Request on the grounds that it seeks financial statements related to Blogwire Hungary, a separate entity that is not the party to which these Requests are directed or the party responding to them. For the avoidance of doubt, Gawker further objects to this Request on the grounds that (1) by requesting "all financial statements," this Request is unduly burdensome and overbroad, (2) financial statements for an entity that played no role in the allegedly tortious conduct at issue are not relevant to this action or likely to lead to the discovery of admissible evidence, and (3) the exercise of this court's jurisdiction over Blogwire Hungary is currently on appeal to the Second District Court of Appeal.

Mirell Aff., **Exhibit C** (excerpts of discovery responses at issue in this motion).

In response to Mr. Bollea's counsel's July 25, 2014, meet and confer letter on this topic, Gawker contended that it "does not have access to Blogwire Hungary's income statements, its balance sheets, or its other financial statements," and suggested that Mr. Bollea should request this information "directly from Blogwire Hungary, in the unlikely event that the District Court of Appeal should conclude that it properly belongs in this case." Mirell Aff., **Exhibit E** (8/4/14 letter). Again, as more fully explained at Part A, above, it is not an appropriate response to the discovery that Mr. Bollea should request the documents directly from Kinja. It is inconceivable that Gawker does not have access to Kinja's financial statements, especially given the testimony that:

- Kinja and Gawker "are 100 percent fully owned by [GMGI]." Mirell Aff., **Exhibit F** (Kidder Tr. 47:21– 22). "The sole purpose of [GMGI] is to facilitate ownership in Gawker Media, LLC and Kinja Hungarian Corporation . . . ." *Id.* (Kidder Tr. 47:4–10).
- Scott Kidder, Vice President of Operations for Gawker, is also the managing director of Kinja. *Id.* (Kidder Tr. 48:7–16).
- "Kinja is an intellectual property holding and technology development company," *id.* (Kidder Tr. 47:17–18), which "owns trademarks and domain names for all of the sites

that Gawker Media, LLC currently operates," *id.* (Kidder Tr. 49:6–8).

In fact, Gawker is the "exclusive licensee" of the Kinja-owned "Gawker related trademarks and brand names in the United States." *Id.* (Kidder Tr. 104:23–105:11). Gawker has "control" over documents in Kinja's possession and, therefore, is under an obligation to produce them.

C. Gawker Should Be Compelled to Respond to Discovery Relating to Its Finances

i. Interrogatories 18 &19

On or about May 23, 2014, Mr. Bollea served Gawker with a third set of interrogatories. Gawker responded on or about July 11, 2014. Gawker refused to respond to Interrogatories 18 and 19, which seek information concerning Gawker's revenue sources and payments of IP Royalty expenses:

> **INTERROGATORY NO. 18:** IDENTIFY every source of GAWKER'S "Other Revenue," as referred to at line 200 of Gawker Media LLC's Income Statement (GAWKER 18323_C), for the period January 1, 2010, to the present.
>
> **RESPONSE:** . . .
>
> Gawker further objects to this Interrogatory on the grounds that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and that, by seeking information about each individual source of "other" revenue over a four year period when Gawker has already produced more than 15,000 pages concerning its advertising revenue and detailed financial statements, the Interrogatory is overbroad and unduly burdensome. Gawker is unable to see how identifying the particular sources of non-advertising revenue it received over a four year period is in any way even arguably relevant to any issue in this action.

> **INTERROGATORY NO. 19:** STATE ALL FACTS RELATING TO GAWKER'S payment of any "IP Royalty Expense," including that which is referred to at line 8300 of Gawker Media LLC's Income Statement (GAWKER 18323_C), for the period January 1, 2010 to the present, including the amount, to whom the payment is made, and for what products and/or services.
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> **RESPONSE:** . . .
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> Gawker further objects to this Interrogatory on the grounds that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and that, by seeking information about each individual intellectual property payment over a four year period (including individual payments to photo agencies for the use of images), the Interrogatory is overbroad and unduly burdensome. Gawker is unable to see how stating all facts

related to these individual expenses is in any way even arguably relevant to any issue in this action.

Mirell Aff., **Exhibit C** (excerpts of discovery responses at issue in this motion).

ii. Second Request No. 116

On or about May 23, 2014, Mr. Bollea served his Fourth Set of Requests for Production on Gawker. Gawker's response to Second Request 116 [sic] was non-responsive:

> **SECOND REQUEST NO. 116:** All DOCUMENTS and COMMUNICATIONS that RELATE TO any proposed equity, debt or other security offering by YOU during the period January 1, 2011, through the present.
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> **RESPONSE:** . . .
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> Gawker further objects to this Request on the grounds that it seeks information Gawker has already provided in response to Interrogatory No. 12 and in the sworn deposition testimony of Gawker's corporate designee, both of which disclosed that (1) GMGI owns 100% of Gawker Media, LLC (Resp. to Interrog. No. 12; Kidder Dep. Tr. at 44:22–44; 60:19–21) and 100% of Blogwire Hungary Szellemi Alkotást Hasznositó, KFT, now known as "Kinja, KFT" ("Blogwire Hungary") (Resp. to Interrog. No. 12; Kidder Dep. Tr. 47:21–24; 48:21–24), and (2) GMGI is not publicly traded (Kidder Dep. Tr. at 59:6–60:10).

Mirell Aff., **Exhibit C** (excerpts of discovery responses at issue in this motion).

In Gawker's August 4, 2014, letter, it took the position that "even if Gawker had any documents related to public offerings of debt, equities or security, this request also reflects an improper attempt to conduct a forensic accounting review of the defendants, and we fail to see how such documents could possibly be related to any issue in this case." Mirell Aff., **Exhibit E** (8/4/14 letter). If Gawker does not have any responsive documents, then it needs to say so—clearly and unambiguously—in a supplemental response. If, however, Gawker does have responsive documents and relies on its irrelevance objection to withhold them, then Gawker's objections should be overruled for the reasons stated below.

iii. Documents and information relating to Gawker's finances are relevant and reasonably calculated to lead to the discovery of admissible evidence

Gawker's refusal to provide further financial information is without merit. Beyond its boilerplate objections, Gawker's sole asserted basis for refusing to respond is irrelevance. This objection cannot withstand muster. The documents and information are plainly relevant. As to Interrogatory 18, Mr. Bollea is entitled to know each of Gawker's sources of revenue so he can determine if any of those revenue streams have been influenced by Gawker's publication of the sex video. As to Interrogatory 19, Mr. Bollea is entitled to trace the money paid by Gawker to Kinja or to any other IP licensors to determine, among other things, whether and to what extent others profited from and/or facilitated Gawker's publication of the sex video. Additionally, Mr. Bollea is entitled to discover whether Gawker and Kinja respected corporate formalities and dealt with each other at arms length. If they did not, such evidence would be relevant to Mr. Bollea's veil-piercing claim, which the trial court has already ordered to be a permissible subject for discovery.

As to Second Request 116, Mr. Bollea is entitled to discover whether Gawker told potential investors or lenders about the sex video's effect on its business, whether Gawker's websites and platforms are designed to encourage visitors to visit the other Gawker websites, which traffic statistics Gawker chose to convey, etc. The content of the information, as well as the fact that it was disclosed (and to whom), goes directly to Mr. Bollea's damages claim and therefore is relevant and reasonably calculated to lead to the discovery of admissible evidence.

Gawker's contention (made without citation to any authority) that "Plaintiff is not entitled to comb through individual line items of Gawker's financial statements . . . by virtue of having asserted an invasion of privacy claim" is simply incorrect. Mirell Aff., **Exhibit E** (8/4/14 letter).

As the Florida Supreme Court has held: "A party's finances, if relevant to the disputed issues of the underlying action," as here, where Gawker's finances relate to damages, "are not excepted from discovery under this rule of relevancy, and courts will compel production of personal financial documents and information if shown to be relevant by the requesting party." *Friedman v. Heart Institute of Port St. Lucie, Inc.*, 863 So.2d 189, 194 (Fla. 2003); *see also Aspex Eyewear, Inc. v. Ross*, 778 So.2d 481, 482 (Fla. 4th DCA 2001) ("The profits of Petitioner are **relevant to the damages element** of an alleged 'profit' sharing participation agreement, thus, making the financial records sought by Respondent relevant.") (emphasis added); *Florida Gaming Corp. of Delaware v. American Jai-Alai, Inc.* 673 So.2d 523, 524 (Fla. 4th DCA 1996) ("At a hearing on plaintiff's motion to compel discovery, there was evidence that the financial information at issue was **relevant to the calculation of damages** under the breach of contract count. Discovery of these matters was proper . . . .") (emphasis added).

The purpose of the foregoing requests is not, as Gawker contends, to obtain a forensic accounting of Gawker (and, indeed, these requests do not ask for one). Rather, they go directly to Mr. Bollea's damages claim—that Gawker as a whole was unjustly enriched by the enormous web traffic that it generated from its unauthorized publication of the sex video.[2] The documents and information should be produced.

[2] Gawker's attempt to compare the documents sought by Mr. Bollea to Mr. Bollea's private financial information (which Gawker unsuccessfully sought to discover) is unsupportable. In Florida, Mr. Bollea, as an individual, has a constitutionally protected right against discovery of his personal financial information, and he has disclaimed the damages theories that would require any such discovery. *Borck v. Borck,* 906 So.2d 1209, 1211 (Fla. 4th DCA 2005) ("the Florida Constitution protects the financial information of individuals if there is no relevant or compelling reason to compel disclosure").

D. Gawker Should Be Compelled to Respond to Discovery Relating to Its Affiliate Websites

Gawker owns, controls and operates several websites in addition to Gawker.com: Deadspin.com (focusing on sports-related content); Gizmodo.com (focusing on tech-related content); iO9.com (focusing on science fiction-related content); Jalopnik.com (focusing on car-related content); Jezebel.com (focusing on content relating to women); Kotaku.com (focusing on videogame-related content); and Lifehacker.com (focusing on life hacks and software-related content) (collectively, the "Affiliated Websites"). Links to each of the Affiliated Websites were featured at Gawker.com on the webpage where the sex video was hosted for more than six months. Mirell Aff., **Exhibit G** (preservations of the page hosting the sex video; *see specifically*, BOLLEA000041). Thus, Mr. Bollea requested the following information relating to the Affiliated Websites, which Gawker wholly refuses to provide:

> **REQUEST NO. 119:** All DOCUMENTS and COMMUNICATIONS that RELATE TO all revenue generated by each of the GAWKER WEBSITES from January 1, 2011, to the present, including the websites GAWKER.COM, DEADSPIN.COM, GIZMODO.COM, IO9.COM, JALOPNIK.COM, JEZEBEL.COM, KOTAKU.COM and LIFEHACKER.COM and any of their respective sub-sites.
>
> **RESPONSE:** Gawker objects to this Request on the grounds that by requesting "all documents and communications" that "relate to all revenue," this Request (1) seeks information protected by the attorney-client privilege and under the work product doctrine, and (2) is overbroad and unduly burdensome.
>
> Gawker further objects to this Request on the grounds that it is duplicative of plaintiff's Request Nos. 38, 40 and 93. To the extent that this Request seeks the production of documents relating to revenue for websites other than gawker.com, Gawker objects on the grounds that such documents are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In that regard, Gawker objects because the Court has already sustained Gawker's objection to providing such information, including in response to plaintiff's Request No. 40. *See* Order dated February 26, 2014 at ¶5 (sustaining Gawker's objections to producing documents concerning revenue generated by websites other than gawker.com).
>
> . . .

> **REQUEST NO. 120:** All financial statements, including but not limited to balance sheets, income statements (which shall include identification of all revenue sources and expenses), statements of retained earnings and cash flows, and statements of changes in financial position, for Gawker Media, LLC, including each of the GAWKER WEBSITES, covering all periods from January 1, 2011 through the present.
>
> **RESPONSE:** Gawker objects to this Request on the grounds that by requesting "all financial statements," this Request is unduly burdensome and overbroad.
>
> Gawker further objects to this Request on the grounds that it is duplicative of plaintiff's Request Nos. 38, 40 and 93. To the extent that this Request seeks the production of documents relating to revenue for websites other than gawker.com, Gawker objects on the grounds that such documents are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In that regard, Gawker objects because the Court has already sustained Gawker's objection to providing such information, including in response to plaintiff's Request No. 40. *See* Order dated February 26, 2014 at ¶5 (sustaining Gawker's objections to producing documents concerning revenue generated by websites other than gawker.com).
>
> . . .

Mirell Aff., **Exhibit C** (excerpts of discovery responses at issue in this motion).

Gawker's ground for refusing to respond to the foregoing discovery is that, *inter alia*, Gawker claims that the Court already determined that Mr. Bollea was not entitled to this information. To the contrary, the Court sustained Defendant's objections "**without prejudice** to Plaintiff's right to request the subject documents in the future **based on Plaintiff's ability to obtain the requested information through publicly available resources**." Mirell Aff., **Exhibit B** (2/26/14 Order on Plaintiff's Motion to Compel Further Responses from Gawker Media, LLC (emphasis added)). The Court also found, with respect to Requests 101 through 104, that "Defendant shall produce responsive documents regarding **any revenue flowing from the publication of the Gawker Story**." *Id.* (emphasis added). That would include revenue that flowed through traffic to the Affiliated Websites.

Mr. Bollea is unable to obtain the requested information through publicly available resources. He thus renewed his requests for certain information relating to the Affiliated

Websites. Discovery relating to the Affiliated Websites' generation of revenue and their financial statements is likely to lead to the discovery of information on the issue of downstream benefit. Mr. Bollea is entitled to discover whether the publication of the sex video benefitted the Affiliated Websites.

E. Gawker Should Be Compelled to Make a Complete Production of Documents Relating to Its Privacy and Confidentiality Policies and Agreements

Gawker refuses to make a complete production in response to Request No. 126:

> **REQUEST NO. 126:** All DOCUMENTS that constitute, REFER TO or RELATE TO any and all of YOUR policies, notices and agreements, for the period January 1, 2011, through the present, RELATING TO the protection of YOUR privacy or confidentiality, including without limitation, non-disclosure agreements and confidentiality agreements with actual or prospective employees, vendors, business partners, or any other PERSON or ENTITY.
>
> **RESPONSE:** . . .
>
> Gawker further objects on the grounds that the Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, including without limitation because any steps taken by Gawker to protect the confidentiality of internal business affairs is not relevant to the publication of content relating to a matter of public concern by a news organization.
>
> Subject to and without waiving these objections, Gawker will produce its standard independent contractor agreement, its standard employment agreement, its standard employee termination certificate, and its standard non-disclosure agreement, all of which contain confidentiality provisions.

Mirell Aff., **Exhibit C** (excerpts of discovery responses at issue in this motion).

The foregoing requests seek to discover the extent to which Gawker keeps its own affairs confidential, which is relevant to Gawker's argument that privacy and confidentiality has no value, or whether (as Mr. Bollea suspects) the argument is an excuse offered when Gawker invades people's privacy. To test the credibility of Gawker's argument, Mr. Bollea needs documents relating to the specific instances where Gawker has requested, or agreed, to keep matters private. Gawker can mark these documents confidential and subject to the parties'

protective order, but Gawker cannot "respectfully decline" to produce the documents. Mirell Aff., **Exhibit E** (8/4/14 letter). The requests do not seek to put Gawker in breach of its confidentiality agreements. (Such agreements almost certainly do not preclude Gawker from cooperating with a court order enforcing lawfully-served discovery in a civil action.) Rather, they seek to show that Gawker's claim that privacy does not exist or that it is worthless is a selective argument. Additionally, such documents are relevant to the issue of Gawker's *scienter* with respect to the intentional tort claims asserted herein by Mr. Bollea. A full production should be compelled.

IV. GAWKER SHOULD BE REQUIRED TO PAY MR. BOLLEA'S ATTORNEY'S FEES IN BRINGING THIS MOTION

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

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

Mr. Bollea made a good faith effort to obtain the discovery sought by this motion without court action, including a meet and confer letter sent July 25, 2014. Further, Mr. Bollea already expended significant time and money in moving to compel the Kinja-related documents that the Court ordered Gawker to produce in its February 26, 2014, Order. Gawker has forced Mr. Bollea to bring this motion by refusing to comply with that order and refusing to respond to Mr. Bollea's more recent discovery. 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 the order. (Evidence of fees incurred will be provided upon an order granting an

award of fees.)

V. CONCLUSION

For the foregoing reasons, the Special Discovery Magistrate should recommend that this motion to compel be granted, and that Gawker must: (1) fully comply with this Court's February 26, 2014, Order by producing **all** responsive documents that are within Gawker's **control**; (2) produce Kinja's financial statements, 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 offering by Gawker; (4) produce all documents relating to the revenue generated by, and financial statements for, each of Gawker's affiliated websites; (5) make a complete production of 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,

/s/ Kenneth G. Turkel
Kenneth G. Turkel, Esq.
Florida Bar No. 867233
Christina K. Ramirez, Esq.
Florida Bar No. 954497
BAJO | CUVA | COHEN | TURKEL
100 North Tampa Street, Suite 1900
Tampa, Florida 33602
Tel: (813) 443-2199
Fax: (813) 443-2193
Email: kturkel@bajocuva.com
Email: cramirez@bajocuva.com

-and-

Charles J. Harder, Esq.
PHV No. 102333
Douglas Mirell, Esq.

PHV No. 109885
Harder Mirell & Abrams LLP
1925 Century Park East, Suite 800
Los Angeles, CA 90067
Tel: (424) 203-1600
Fax: (424) 203-1601
charder@hmafirm.com
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by E-Mail via the e-portal system this 19th day of August, 2014 to the following:

Barry A. Cohen, Esquire
Michael W. Gaines, Esquire
The Cohen Law Group
201 E. Kennedy Blvd., Suite 1000
Tampa, Florida 33602
bcohen@tampalawfirm.com
mgaines@tampalawfirm.com
nferdig@tampalawfirm.com
Counsel for Heather Clem

Gregg D. Thomas, Esquire
Rachel E. Fugate, Esquire
Thomas & LoCicero PL
601 S. Boulevard
Tampa, Florida 33606
gthomas@tlolawfirm.com
rfugate@tlolawfirm.com
kbrown@tlolawfirm.com
Counsel for Gawker Defendants

David R. Houston, Esquire
Law Office of David R. Houston
432 Court Street
Reno, NV 89501
dhouston@houstonatlaw.com

Seth D. Berlin, Esquire
Paul J. Safier, Esquire
Alia L. Smith, Esquire
Michael D. Sullivan
Levine Sullivan Koch & Schulz, LLP
1899 L. Street, NW, Suite 200
Washington, DC 20036
sberlin@lskslaw.com
psafier@lskslaw.com
asmith@lskslaw.com
msullivan@lskslaw.com
Pro Hac Vice Counsel for
Gawker Defendants

Julie B. Ehrlich, Esquire
Levine Sullivan Koch & Schultz, LLP
321 West 44th Street, Suite 1000
New York, NY 10036
jehrlich@lskslaw.com
Pro Hac Vice Counsel for
Gawker Defendants

Michael Berry, Esquire
Levine Sullivan Koch & Schultz, LLP
1760 Market Street, Suite 1001
Philadelphia, PA 19103
mberry@lskslaw.com
Pro Hac Vice Counsel for
Gawker Defendants

Michael D. Sullivan, Esquire
Levine Sullivan Koch & Schultz, LLP
1899 L Street, NW
Washington, DC 20036
Michael D. Sullivan, Esq.
msullivan@lskslaw.com
Pro Hac Vice Counsel for
Gawker Defendants

/s/ Kenneth G. Turkel
Attorney