

# EXHIBIT B



offering to occur later this year (in 2015). The subpoena seeks extensive financial information (both testimony and documents) about Gawker and its affiliates. A true and correct copy of that subpoena is attached hereto as Exhibit A.

### **Discovery in the Florida Litigation**

3. In the Florida Litigation, Gawker and its co-defendants have responded to more than 400 written discovery requests from Hogan about numerous topics, including even, for example, the wedding of Gawker's founder. They have produced more than 24,000 pages of documents, including, as is relevant here, multiple years' worth of Gawker's:

- income statements;
- balance sheets;
- monthly revenue reports;
- advertising orders;
- financial statements that were reviewed and/or audited by its outside accountants, and then provided to its lender; and
- records of transactions between it and Kinja, KFT, a Hungarian software company owned by the same parent..

4. In addition, numerous Gawker employees and executives have been or will shortly be deposed in this case, including Gawker's corporate representative (its Chief Operating Officer, Scott Kidder), its founder and Chief Executive Officer (Nick Denton), the former editor-in-chief of gawker.com and author of the Gawker Story (A.J. Daulerio), its Chief Strategy Officer (Erin Pettigrew), its Chief Revenue Officer/President of Advertising and Partnerships (Andrew Gorenstein), its Chief Technology Officer (Tom Plunkett), and its Vice President of Advertising Sales (Michael Kuntz) among others.

5. In various orders entered over the course of 2014, the court in the Florida Litigation substantially limited the additional discovery that Hogan could take concerning Gawker's finances and those of affiliated companies. True and correct copies of those orders are attached hereto as follows:

- Exhibit B: Order dated February 26, 2014
- Exhibit C: Order dated May 14, 2014
- Exhibit D: Order dated December 17, 2014

In addition, I also attach hereto a true and correct copy of certain of Hogan's document requests to Gawker, which are referenced in Exhibits B and D. Specifically, Exhibit E contains Hogan's Document Request Nos. 30, 91, 99, 104, 126 and his "second" Request No. 116, as well as Interrogatory No. 13. (Hogan labeled two different requests both as No. 116, and the relevant request is referred to as the "second" Request No. 116.)

6. While these orders collectively impose substantial limitations on financial discovery in general, the Florida court also specifically ruled on the discovery sought here related to a debt issuer. Specifically, Hogan sought from Gawker "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." Ex. E (Second RFP No. 116). After a lengthy hearing, the Court limited discovery on this topic to "documents sufficient to show representations" to lenders from "2011, 2012 [and] 2013." Ex. D at 2.

7. Discovery in the Florida Litigation is ongoing, and the parties recently submitted a joint proposed discovery plan to the Florida court. In that proposed plan, Hogan listed the Gawker executives referenced above as deponents/witnesses, but made no mention of needing any testimony or documents from YAC.

### Correspondence Regarding the Subpoena

8. On February 10, 2015, my law partner Seth Berlin and I wrote to counsel for Hogan, asking that he withdraw the subpoena to YAC on the grounds that (a) YAC had nothing to do with the case, (b) the requests in the subpoena exceeded the limits placed on discovery by the Florida court in its orders, and (c) it was improper to subpoena documents from an out-of-state non-party when they should, if discoverable, be obtained directly from Gawker, an actual party to the lawsuit. A true and correct copy of that letter is attached hereto as Exhibit F.

9. On February 12, 2015, counsel for YAC, Danielle Lesser, likewise sent a letter to Hogan objecting to the subpoena for the same reasons. A true and correct copy of Ms. Lesser's letter is attached hereto as Exhibit G.

10. Counsel for Hogan, Charles Harder, forwarded a lengthy email dated February 11, 2015 to counsel for Gawker and counsel for YAC, in which he refused to withdraw the subpoena and instead threatened YAC – an disinterested non-party – with sanctions. Hogan's counsel also asserted unfounded claims that Gawker would be liable for punitive damages in the Florida action, even though (a) such claims cannot, in fact, be asserted in that action, and (b) he made no mention of punitive damages in seeking discovery from the Florida court about debt offerings (or for that matter on any other topic). Hogan's counsel marked that email "Confidential." He gave no indication of the reason for that designation, but he may have been attempting to invoke the provisions of an Agreed Protective Order governing discovery in the Florida Litigation. While it is unclear how the terms of that stipulated order would apply to a meet-and-confer letter in connection with this New York proceeding, I have, in an abundance of caution, not included a copy here. If Hogan withdraws his confidential designation, or otherwise consents, I would be pleased to supply a copy to the Court.

11. Mr. Berlin responded to Mr. Harder's email in a letter dated February 12, 2015, a true and correct copy of which is attached hereto as Exhibit H. In particular, that correspondence noted that Hogan had conceded that the discovery allowed by the Florida court on this topic was limited to 2011, 2012 and 2013, and explained that, if Hogan disagreed with that ruling, the proper course was to seek reconsideration of that ruling in Florida, not to issue a subpoena in New York for discovery that exceeds what the Florida court allowed. In response, Hogan's counsel has refused to withdraw or modify the Subpoena.

12. I hereby affirm, pursuant to Rule 202.7(a)(2) and (c) of the Uniform Rules for the Supreme Court, that I and my partner Seth Berlin conferred with Hogan's counsel about the subpoena by letter and by email as described herein, but he declined to withdraw the subpoena.

Dated: February 13, 2015

  
Alia L. Smith