EXHIBIT C

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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 BOLLEA'S OPPOSITION TO GAWKER MEDIA, LLC'S OBJECTIONS TO CORPORATE DESIGNEE DEPOSITION TOPICS AND MOTION FOR PROTECTIVE ORDER

I. INTRODUCTION

"It's déjà vu all over again."

- Yogi Berra

Defendant Gawker Media, LLC ("Gawker") previously objected to producing a corporate designee witness for a second day of deposition. Because of that objection, Mr. Bollea was required to incur substantial attorneys' fees (and time) to bring a motion to compel and litigate that issue. The motion to compel was filed on January 23, 2015, and on February 13, 2015, the Special Discovery Magistrate heard the motion and ruled entirely in Mr. Bollea's favor: recommending a Court order compelling Gawker to produce its corporate designee for a second day of deposition, as noticed. Shortly thereafter, Gawker announced that its corporate designee

was **not** available for deposition on the day that it had been noticed – some seven weeks earlier – or, for that matter, at any time during the entire week of New York depositions that had been scheduled and agreed to by the parties **months** earlier.

Gawker also filed – **after** the hearing and ruling on Mr. Bollea's Motion to Compel – a document called "Objections and Motion for Protective Order" regarding the **same deposition** that had already been ruled could proceed. Gawker's penchant for evading and delaying discovery seems to know no bounds, and has repeatedly and is continuously forcing Mr. Bollea to incur greater and greater legal fees simply to obtain Gawker's compliance with its discovery obligations. Enough is enough. Mr. Bollea requests sanctions (both monetary and non-monetary) substantial enough to have the effect of causing Gawker and its counsel to stop its gamesmanship and continued bad-faith litigation tactics calculated to delay, evade and cause Mr. Bollea to spend more and more money simply to complete discovery and bring this case to trial.

Gawker's objections and motion for protective order (untimely served – nearly seven (7) weeks after the deposition notice was sent, and after Mr. Bollea's motion to compel was filed, briefed, heard and ruled on) challenge virtually every deposition topic noticed by Mr. Bollea. In filing this new (untimely) document, Gawker once again seeks to deny Mr. Bollea from conducting any meaningful corporate deposition. Gawker's objections should be overruled, and its motion for protective order denied, for at least the following reasons:

First, Gawker's objections and motion are untimely. Mr. Bollea served Gawker with the deposition notice on December 29, 2014. Only after Gawker lost its opposition to Mr. Bollea's Motion to Compel (heard on February 13, 2015) did Gawker serve any objections at all. The objections are untimely and should be overruled in their entirety for this reason alone.

Second, Gawker's objections and motion for protective order are a thinly-veiled attempt to avoid any meaningful discovery from its corporate designee. Of 36 deposition topics listed in the notice, Gawker has objected to 21 of them. Those 21 topics pertain to its corporate structure, transactions, intellectual property, and revenues. Gawker has no legitimate basis to seek to evade discovery regarding these relevant and important subject areas. Gawker's objections and motion are simply a continuation of its ongoing gamesmanship and improper litigation tactics. Gawker has proven it will do anything to evade and delay discovery regarding important and relevant information. Its improper tactics should not be allowed to prevail.

Accordingly, Mr. Bollea respectfully requests that the Discovery Magistrate recommend that Gawker's objections be overruled; Gawker's motion for protective order be denied; order the deposition of Gawker's corporate designee witness(es) without objection (other than privilege) as to **all** of the topics listed in Mr. Bollea's Notice of Taking Videotaped Deposition (Exhibit A to Gawker's objections and motion for protective order); and impose appropriate monetary and non-monetary sanctions in favor of Mr. Bollea and against Gawker – designed to adequately incentivize Gawker to end its bad faith litigation tactics once and for all. At the very least, Mr. Bollea should not be required to pay legal fees for motion after motion, to obtain Gawker's compliance with its statutory discovery obligations.

II. ARGUMENT

A. Gawker's Objections and Motion are Untimely.

On December 29, 2014, Mr. Bollea served a Notice of Taking Videotaped Deposition on Gawker, for a deposition dated March 6, 2015. Gawker did not serve objections to the specific topics at that time. Instead, it took the position that it would not produce a corporate designee for deposition at all. Mr. Bollea was forced to file a motion to compel, and on February 13, 2015,

the Special Discovery Magistrate conducted a telephonic hearing, heard extensive oral argument from both sides, and ruled entirely in Mr. Bollea's favor: recommending an order compelling a second day of deposition of Gawker's corporate designee witness(es), as noticed.

Undeterred, Gawker then prepared "specific objections" to the topics listed in the deposition notice, and filed its objections and motion for protective order on February 23, 2015 – nearly seven (7) weeks after the deposition notice was originally served, and well after the filing, briefing, hearing and ruling on Mr. Bollea's Motion to Compel the deposition.

Gawker's failure to serve its specific objections or its motion for protective order until after the filing, briefing, hearing and ruling on Mr. Bollea's Motion to Compel should serve as a waiver of Gawker's right to object. Otherwise, there would be no end to the discovery motions pertaining to depositions. Every deposition notice would be met with a refusal to appear; a motion to compel, full briefing and hearing; an order compelling the deposition; and then **another round of litigation** on a late-filed motion for protective order regarding the very same deposition. Such a process only favors the party seeking to evade and delay the discovery, at a tremendous economic cost to the party that merely seeks to take a deposition. The topsy-turvey nature of Gawker's litigation tactics should be turned around, through an appropriate recommendation which includes meaningful monetary and non-monetary sanctions.

B. Gawker's Objections are Unwarranted.

"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). To justify a protective order limiting the further deposition, Gawker has the burden of proving good cause "to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense that justice requires." Fla. R. Civ. P. Rule 1.280(c).

i. Topics Seeking Information About Corporate Shareholders

Gawker objects to Topic Nos. 3, 8, 20, and a portion of Topic 4 on the basis that the Court supposedly ruled that the subject matter of corporate shareholders is out-of-bounds. Not so. These topics are within the scope of allowable discovery.

The ruling cited by Gawker from the Court's February 26, 2014 Order (Exhibit B to Gawker's motion) specifically stated that the Gawker objections that were sustained were made **without prejudice**. The Court expressly stated that Mr. Bollea retained the "right to request the subject documents in the future." February 26, 2014 Order at p. 2, ¶ 4. The issue of re-visiting discovery following the initial "without prejudice" ruling has already been litigated, both before Judge Campbell and the Special Discovery Magistrate, and Mr. Bollea prevailed. Therefore, Mr. Bollea should be permitted to ask questions of Gawker's corporate witness at the second day of deposition.

ii. Transactions and Payments with/from Kinja KFT

Gawker objects to Topic Nos. 9, 12, 14, 15, 16, 17, 18, 19, 29, 33, and portions of 5 and 6 on the basis that the Court ruled that the subject matter of the identities of "employees or vendors" who are paid "usual and customary obligations" is out-of-bounds. Gawker has taken this very narrow ruling completely out of context, and attempts to apply it to nearly every topic related to finances. That is improper.

Gawker's characterization of the Court's ruling is highly misleading. First, the provision

cited by Gawker was for specific, and unrelated discovery requests.[1] Second, Gawker intentionally omits from discussion the portions of the Court's December 17, 2014 Order (Exhibit C to Gawker's motion) **granting** Mr. Bollea's motion to compel regarding the finances and corporate structure of Gawker and its affiliated companies, including its sister-company Kinja KFT located in Budapest, Hungary, which receives all of Gawker's profits every year, and is owned by the same parent: Gawker Media Group, Inc. ("GMGI"), based in the Cayman Islands. In particular, the Court compelled Gawker to produce, among other corporate and financial information:

- Information related to Gawker's sources of "other revenue" (Interrog. No. 18)
- Documents sufficient to show the Defendants' financial representations to actual and prospective lenders and financiers (Request for Production No. 116)
- Financial transactions between Gawker and Kinja (Request for Production No. 92)
- Revenue received by Kinja from Gawker (Request for Production No. 93), and
- Kinja's financial statements (Request for Production No. 121).

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[1] Paragraph 2 of the Court's February 26, 2014 Order provides:

> As to Interrogatory number 13, Defendant's objections are sustained in part and overruled in part. Defendant's response may be limited to identifying any individual or entity who, directly or indirectly, received money or other compensation flowing from the publication of the article, the full-length tape itself or excerpts from the full-length tape, which are at issue in this lawsuit, on gawker.com ("publication of the Gawker Story"). Defendant's response may exclude individuals or entities such as employees or vendors, who may have received compensation indirectly as a result of Defendant's use of revenues generated from the publication of the Gawker Story to pay usual and customary obligations, however, shall not exclude the identification of principals or other personnel whose compensation arose from or related to, in whole or part, revenues generated from the publication of the Gawker Story.

February 26, 2014 Order at pp. 1-2, ¶ 2.

The Court's message (following the Special Discovery Magistrate's recommendation) was clear: **Mr. Bollea is entitled to discovery regarding these topics; they are by no means out-of-bounds**.

Gawker's attempt to apply the narrow limitation to **all** of the cited topics is unsubstantiated. Most of the topics objected to have **nothing to do** with "employees or vendors" who are paid "**usual and customary obligations**." For example, information regarding Gawker's, Kinja's, and GMGI's financial accounts (Topic No. 12) will in no way reveal the identities of "employees or vendors" who are paid "usual and customary obligations." As further examples, Topic Nos. 14, 15, 16, 17, 18, 19, and 29 are limited to activities between Gawker, Kinja, and GMGI, and have nothing to do with employees or vendors, let alone anything about payment to them of "usual and customary obligations."

Therefore, all of these topics are properly within the scope of discovery.

iii. Additional Financial Discovery

Gawker objects to the portion of Topic No. 28 referring to "data underlying all such income and financial statements" for the statements **produced by Gawker** in this action. This topic is within the scope of allowable discovery and does not present an undue burden.

This topic expressly states that it involves only the documents and information **already produced by Gawker** and therefore cannot possibly be deemed to be out-of-bounds. Further, Gawker's assertion that the subject matter was already ruled out-of-bounds is blatantly untrue. Gawker has no legitimate basis to object to Mr. Bollea's counsel asking questions of Gawker regarding the financial information that it has produced in this action, and Gawker's objection on this basis is nothing short of outrageous.

Similarly, Gawker's conclusory argument that it would be "impossible to meaningfully

prepare a witness" on this topic is unsupported and improper. Gawker is required to produce the person or persons who are best able to answer questions regarding the financial information produced in this action, and for those witnesses to adequately familiarize themselves with that information so that they are capable of fully answering the questions posted. This would include Gawker's highest ranking financial officer, as well as the individual whom Gawker has identified: its COO, Scott Kidder. Moreover, Mr. Bollea's counsel, Charles Harder, offered to take the deposition of Gawker's outside accountant who prepared certain of its financial documents, in order to obtain answers to its questions, if such person is more knowledgeable than Gawker's employees.

For the foregoing reasons, the topics are proper and Gawker's objections should be overruled and its motion for protective order denied.

iv. Additional Objections

i. **Definitions**

Gawker objects to the definitions used by Mr. Bollea for the terms Gawker, other individuals and entities, and Gawker websites. Gawker's objections regarding the definitions are yet another example of Gawker's gamesmanship. Gawker does not state how these definitions render any topic outside the permissible scope of discovery or prevent Gawker from adequately understanding a term or topic. Therefore, this objection should be overruled as well.

ii. **Time Period**

Gawker argues that previous rulings limiting the time period of certain discovery requests should somehow apply to all deposition topics. There is no such general limitation on discovery in this case. While certain, specific discovery requests were limited in time by the Court, other discovery requests regarding similar topics were not. By way of example, the Court has ordered

production of Gawker's financial information from 2010 through the present, but other specific discovery items were limited to December 31, 2013. Nevertheless, Gawker has produced financial information from 2010 through the present, and Mr. Bollea therefore should be permitted to question Gawker's witnesses regarding that time period. Gawker does not state why **all** deposition topics should be limited to the most narrow time limit of **any** one particular discovery item. Moreover, Gawker has not presented any viable explanation why any time limitation is necessary to prevent undue burden on any particular topic. Therefore, this objection should be overruled as well.

iii. **Scope**

Gawker argues that the scope of discovery should be limited as to Kinja and GMGI. It should not.

First, Gawker's representation that the Court "denied discovery related to GMGI" is not accurate. Motion at p. 7. The Court's May 14, 2014 Order (Exhibit D to Gawker's motion) ruled that Gawker's motion for protective order related to certain GMGI discovery was denied as moot. The Court has **never** denied discovery **from Gawker** as to its relationships and interactions with other companies, including GMGI and Kinja. On the contrary, the Court has **ordered** Gawker to produce **its** documents and information regarding those affiliated companies (its parent and sister company, respectively).

Second, again, while the Court limited some prior discovery in its December 17, 2014 Order, that order did not place a wholesale limitation on discovery. Further, all of the topics listed in Mr. Bollea's deposition notice **relate to Gawker**, some of which relate to Gawker's relationships and interactions with its affiliated companies Kinja and GMGI. Therefore, a deposition of Gawker's designee is proper as it relates to Gawker's business, including its

business relationships, and this objection should be overruled.

iv. **Topic No. 2**

Gawker argues that it is "virtually impossible" for a Gawker designee to testify about the intellectual property that Gawker owns. Motion at p. 7. Gawker's argument again is made in conclusory fashion with no support. Is no one at Gawker aware of the intellectual property assets the company owns?

v. **Topic No. 12**

Gawker argues that any information regarding its financial accounts is not discoverable. However, the first case that Gawker cites **directly contradicts** its position and shows why this topic is proper:[2]

> Ordinarily the financial records of a party are not discoverable unless the documents themselves or the status which they evidence is somehow at issue in the case. **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**. As to any alleged confidential or classified trade secrets of the petitioner or the non-parties, the trial court, upon appropriate motion, can easily fashion safeguards to prevent dissemination of this information to other entities which are not involved in the litigation.

Aspex Eyewear, Inc. v. Ross, 778 So. 2d 481, 481-482 (Fla. Dist. Ct. App. 2001) (citations omitted).

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[2] Gawker's citation to *Wyndham Vacation Resorts, Inc. v. Ocean Walk Resort Condo. Ass'n, Inc.*, 86 So. 3d 592 (Fla. Dist. Ct. App. 2012) has no application to this case. There, the court ruled that a subpoena comprising a condominium association's requests for unredacted W–2s of condominium management company's employees, and the bank, credit card, and social security numbers of the residents of a condominium who were not directly involved in the litigation between the condominium association and the management company was invasive and overly broad. Gawker's citation to *Capco Properties, LLC. v. Monterey Gardens of Pinecrest Condo.*, 982 So. 2d 1211 (Fla. Dist. Ct. App. 2008) is equally unhelpful, as that case involved the personal finances of individuals where there was no showing that their personal wealth had any relevance.

Similarly, here, Gawker's finances are relevant to Mr. Bollea's damages claims, including damages for disgorgement of Gawker's ill-gotten gains (aka "disgorgement of profits") from its unauthorized and unlawful publication of the sex video featuring Mr. Bollea. *See* February 26, 2014 Order (Exhibit E to Gawker's motion) at pp. 2-3, ¶ 4. Therefore, this topic is appropriate, and the objection should be overruled.

vi. **Topic No. 19**

Gawker argues that it should not be subject to discovery regarding its taxes because that information is confidential. Gawker's primary argument is that the Court found that Mr. Bollea's taxpayer information is not discoverable. However, Gawker's finances are **directly relevant** to the claims and damages, whereas Mr. Bollea's are not. The Court's February 26, 2014 Order (Exhibit E to Gawker's motion) was premised on Mr. Bollea's representations that his damages claims are not based upon his own personal finances (*see* pp. 2-3, ¶ 4).

vii. **Topic No. 22**

Gawker argues that this topic seeks information on an unrelated website. Aside from the fact that the website is only one aspect of this topic, Gawker does not explain how its involvement with this website (if any) is not discoverable. The Court has found that other websites, other than Gawker.com, are relevant in this case if Gawker has any involvement. *See, e.g.*, December 17, 2014 Order (Exhibit C to Gawker's motion) at p. 2.

viii. **Topic No. 30**

Gawker argues that discovery regarding Kinja is "limited to documents sufficient to show transactions between Kinja and Gawker." Motion at p. 9 (emphasis in original). The limitation that Gawker cites imposed by the Court only for a specific (unrelated) discovery request, and also the ruling was "without prejudice" to Mr. Bollea's right to request the discovery

subsequently. There is no general limitation as to discovery involving Kinja – as shown by the extensive discovery that the Court has ordered Gawker to produce regarding Kinja – and Gawker has no legitimate basis to object to this topic of questioning. The objection therefore should be overruled.

ix. **Topic Nos. 33 and 34**

Gawker argues that discovery regarding Kinja's contacts with the United States is "utterly irrelevant" because only Kinja's contacts with Florida matter. Motion at p. 9. Yet the discovery standard is broader: "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). Information regarding contacts with the United States is reasonably calculated to lead to discovery of contacts with Florida.

C. Gawker's Bad Faith Discovery Practices

Gawker has engaged in nearly two years worth of bad faith discovery practices. From withholding relevant documents until after the initial Gawker depositions; to refusing to produce relevant documents and discovery; to forcing Mr. Bollea to file motion after motion for the same documents and information; to Gawker seeking to take discovery of Mr. Bollea's entire sexual history; to efforts to continually delay and drive up the legal fees of Mr. Bollea. The laundry list of Gawker's bad faith discovery practices is too long to set forth here with any degree of detail. Notwithstanding, it is worth pointing out that Gawker has repeatedly stated to the Special Discovery Magistrate, and to the Court, that it is being "cooperative" in the completion of discovery, particularly with the fact discovery cutoff of April 10, 2015, fast approaching. However, the opposite is true: Gawker has outright refused to produce several of its key employees for deposition. Gawker has refused to produce its custodian of records for deposition

during the week of New York depositions – notwithstanding Mr. Bollea's deposition notice served last December for this deposition, and the parties' agreement to take Gawker's depositions that week. Moreover, Gawker has refused to produce for depositions its senior executive, John Cook, who served as Gawker.com's Editor-in-Chief during the time that Gawker.com was posting the Bollea sex video; and as Editor-in-Chief, Mr. Cook also blogged about Judge Campbell and her ruling granting Mr. Bollea a temporary injunction as to the sex video; and Mr. Cook also participated in written communications (and presumably oral communications as well) with Gawker's executives and staff regarding the Bollea sex video **before** it was posted, during the six months that it was **being** posted, and **after** it was removed. Gawker has forced Mr. Bollea's counsel to litigate in the New York state court system the issue of whether Mr. Bollea is entitled to take Mr. Cook's deposition – to answer questions regarding his direct involvement in the Bollea sex video.

The instant "Objections and Motion for Protective Order" filed by Gawker is merely the latest example of Gawker seeking once again to re-do a matter that has already been litigated: Mr. Bollea's right to take a second day of deposition of Gawker's corporate witness(es).

III. CONCLUSION

For the foregoing reasons, Mr. Bollea requests that the Special Discovery Magistrate recommend that:

Gawker's objections be overruled;

Gawker's motion for protective order be denied;

Gawker (again) be compelled to produce its corporate designee witness(es) for a second day of deposition – as to **all** of the topics listed in Mr. Bollea's Notice of Taking Videotaped Deposition, without objection (except for privilege objections);

Gawker be ordered to pay monetary sanctions of **at least** the amount that Mr. Bollea has incurred in connection with litigating the issue of a second day of Gawker's corporate designee witness, including his recent motion to compel as well as the instant "Objections and Motion for Protective Order" filed by Gawker after the ruling on Mr. Bollea's motion to compel; and

An appropriate order of non-monetary sanctions against Gawker to properly incentivize Gawker and its counsel from further gamesmanship and bad faith litigation practices.

Respectfully submitted,

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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 26th day of February, 2015 to the following:

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