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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,

Case No.: 12012447-CI-011

vs.

GAWKER MEDIA,LLC
aka GAWKER MEDIA, et al.,

Defendants.
_____________________________________/

GAWKER DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR ATTORNEYS' FEES AND COSTS ON DISCOVERY RULINGS

Plaintiff's remarkable motion effectively seeks to re-litigate more than a dozen motions adjudicated over the past two-and-a-half years, claiming that Gawker's actions were so unjustified that he is entitled to more than $400,000 in attorneys' fees and costs. As an initial matter, is it improper to re-open long-ago concluded discovery battles six months after the discovery period has closed, and plaintiff vastly overreaches in describing the extent to which he prevailed in those disputes (he actually lost some, and a good number were split decisions). But his motion is flawed for a more fundamental reason. This case has been litigated at a high level by both sides, which is not surprising given that plaintiff is very publicly seeking $100 million, a monumental sum. In the process, this Court – as well as the Special Discovery Magistrate and the Court of Appeal – have been called upon to confront a number of novel issues, with each side prevailing some of the time. In those circumstances, awarding one side hundreds of thousands of dollars in fees, along with all of the fees paid to the Special Discovery Magistrate, is simply not warranted. Indeed, Gawker could easily file its own motion seeking fees and costs for the many

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discovery motions on which it prevailed, but it has so far treated fees and costs it incurred prevailing on those motions as part of the process.

At the end of the day, Bollea's motion tries to paint the fees both sides have incurred litigating this high-profile case as solely Gawker's responsibility, and so unjustified that, on top of the fees it has incurred for itself, Gawker should be ordered to pay plaintiff's as well. The record shows otherwise, the Court knows it, and plaintiff's motion should be denied. *See, e.g.*, *Maris Distrib. Co. v. Anheuser-Busch, Inc.*, 2001 WL 862642, at *8 (M.D. Fla. May 4, 2001) (denying request for fees under equivalent federal rule in hotly litigated case and explaining that "[s]anctions are not warranted simply because a party's arguments were eventually rejected or certain motions were ultimately denied"); *id.* ("the Court is not inclined to extend this extended litigation any further," and thus the motion seeking recovery on various discovery motions is "[d]enied in all respects").[1]

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[1] As explained herein, Gawker believes that re-opening long-settled discovery motions and parsing through fee requests is not an effective use of the Court's or the parties' resources. However, if the Court is inclined to do so, Gawker reserves its right to seek its own fees and costs for discovery motions it won, in whole or in part, including: (1) Gawker's June 7, 2013 motion for extension of time (granted after plaintiff failed to agree to routine extension request on discovery responses); (2) plaintiff's August 21, 2013 motion to compel (granted in part and denied in part); (3) plaintiff's August 26, 2013 motion to limit depositions (resolved mostly in Gawker's favor); (4) plaintiff's October 8, 2013 motion to preclude the videotaping of plaintiff's deposition (denied); (5) Gawker's December 18, 2013 motion to compel FBI authorizations (granted); (6) plaintiff's petition for writ of certiorari in the Second District Court of Appeal regarding FBI authorizations (dismissed by the appeals court); (7) Gawker's February 13, 2014 motion to compel compliance with subpoena to plaintiff's publicist in New York (granted); (8) Gawker's February 13, 2014 motion to compel documents concerning plaintiff's media appearances, law enforcement communications, and phone records (granted); (9) plaintiff's August 9, 2014 motion to compel (granted in part and denied in part); (10) the February 11, 2015 motion to quash subpoena to Gawker employee John Cook in New York (granted); (11) Gawker's motion to quash subpoena to Young America Capital (subpoena withdrawn by plaintiff as directed by this Court); (12) plaintiff's March 11, 2015 motion for clarification on that same issue (denied in significant part); (13) Gawker's May 22, 2015 motion for protective order regarding financial worth discovery (granted in significant part); and (14) plaintiff's June 22, 2015 motion to compel financial worth discovery (denied in significant part).

ARGUMENT

Plaintiff contends that he is entitled to a $400,000 fee award based on Gawker's conduct, including because its discovery positions were not "substantially justified" and because it filed exceptions to reports and recommendations issued by the Special Discovery Magistrate. Pl. Mot. at 1-2, 17-18. As an initial matter, it would be extremely counterproductive to require the court and parties to revisit the numerous motions at issue (some of which are now more than two years old) to determine if a fee award could be justified. Second, the substance of plaintiff's contentions have no merit, as explained below and, with respect to each of the underlying discovery motions individually, in the appended chart (the "Discovery Motions Chart").[2] And, finally, the amounts plaintiff requests are unreasonable, including because (a) he seeks fees for motions on which he was only partly (or not at all) successful, (b) more than half of the fees he seeks were incurred by attorneys who are neither licensed in Florida nor admitted *pro hac vice* in this case, and (c) the Affidavit of Charles Harder otherwise contains woefully insufficient detail to support any fee award.

A. A Fee Award is Unwarranted Because Both Sides Have Hotly Litigated the Numerous Issues in this Case.

Plaintiff's principal argument is that Gawker should be punished because its litigation conduct has seriously increased the cost of this litigation. In this case, both sides have hotly litigated a number of issues. That should not be surprising given the importance of the privacy and First Amendment issues at stake, and that plaintiff is seeking $100 million. Gawker cannot properly be punished for trying to carefully litigate a case with such huge stakes. Moreover,

[2] This brief addresses the overarching reasons why plaintiff's instant motion – seeking the recovery of fees on 15 different discovery motions, which are included in the binder plaintiff provided to the Court – should be denied. The Discovery Motions Chart separately enumerates the individual reasons why fees are unwarranted for each motion.

plaintiff's contention – that Gawker is at fault for "exponentially increas[ing]" the "fees and costs" plaintiff was required to incur – is simply not borne out by the facts. Pl. Mot. at 1-2.

Over the course of this litigation, plaintiff has served a truly extraordinary number of discovery requests on the Gawker Defendants – 680 document requests, 152 interrogatories, and 63 requests for admission. *See* Ex. A (listing each set). In response to plaintiff's requests, the Gawker Defendants have provided a staggering amount of discovery, including more than 30,000 pages of documents, voluminous responses to interrogatories and admission requests, and Gawker employees have sat for more than a dozen depositions. In contrast, the Gawker Defendants have served on the plaintiff just 80 document requests, 56 interrogatories and 25 requests for admission, *id.*, and plaintiff has produced just 7,000 pages of documents, many of which are simply printouts from Gawker's website or the websites of third parties.

Moreover, Gawker has incurred substantial fees of its own prevailing on numerous matters, both generally (*e.g.*, on the temporary injunction or on the various issues related to Kinja, only to have plaintiff voluntarily dismiss it) and specifically in the discovery motions context. Thus, if the Court is inclined to accompany plaintiff in his journey down this road, it should also take into account the many issues on which Gawker has prevailed, including the numerous discovery motions enumerated in note 1 *supra.* Just by way of example, on one motion, plaintiff litigated for close to a year claiming that he was entitled to assert a law enforcement privilege on behalf of the FBI, even though such a privilege is not his to assert and the FBI itself has not asserted it. His claim was rejected by the Special Discovery Magistrate, then by this Court, and, after full briefing, his appellate writ petition was dismissed and the provisional stay he obtained was dissolved, finally allowing discovery to proceed. *See Bollea v. Clem*, 151 So. 3d 1241 (Fla. 2d DCA 2014).

Plaintiff's counsel interposed an equally unsupportable assertion of privilege on behalf of plaintiff's New York publicist, again for the better part of a year, claiming that her communications with plaintiff's counsel were somehow protected by attorney-client privilege. After the New York trial court rejected that claim of privilege, *see Gawker Media, LLC v. EJ Media Group, LLC*, 2014 WL 1789293 (N.Y. Sup. Ct. May 6, 2014), plaintiff's counsel filed an appeal, which was viewed as sufficiently weak by the New York Appellate Court that – twice – it unanimously (5-0) denied a motion for stay, *see Gawker Media, LLC v. EJ Media LLC*, 2014 WL 2721901 (N.Y. App. Div. June 12, 2014); *Gawker Media, LLC v. EJ Media LLC*, 2014 WL 4810420 (N.Y. App. Div. Sept. 30, 2014). Moreover, Gawker was forced to litigate that issue in New York to begin with because the documents at issue had not been produced (or included on a privilege log) as part of plaintiff's *own* document production, even though both his publicist and his counsel are unquestionably under his direct legal "control."

These kind of tactics extended to numerous other areas as well. For example, after plaintiff testified that he had only limited memory of individual conversations, Gawker successfully moved for plaintiff to produce records detailing telephone calls and texts. After the Special Discovery Magistrate agreed with Gawker, Ex. B (Report and Recommendation), plaintiff re-litigated that issue in this Court, which affirmed the discovery magistrate, Ex. C (Order). Despite those rulings, plaintiff failed to comply: instead, he redacted the records he produced to hide portions of every number he called or texted, requiring Gawker to litigate the question a third and fourth time, *see* Pl.'s Tabs 6(e)-(f) (Report and Recommendation; Order), successfully securing production of unredacted records some 10 months after they were first sought.

Gawker obviously objects to having had to incur the expense of litigating multiple rounds to address plaintiff's unjustified objections and assertions of privilege in connection with these and many other issues. Its point here is not to catalog them all, but to illustrate that Gawker could legitimately file its own motion seeking the substantial fees and costs it incurred. Gawker has not done so and believes that plaintiff's unilateral effort to escalate matters in this Motion should properly be rejected. *See, e.g.*, *Maris*, 2001 WL 862642, at *8 (declining to entertain fee award in case aggressively litigated by both sides); *Pucket v. Hot Springs Sch. Dist. No. 23-2*, 239 F.R.D. 572, 589 (D.S.D. 2006) (finding award of fees under equivalent federal rule "inappropriate" where many of the motions at issue were "granted in part and denied in part" and where discovery was especially "protracted" and "contentious").

B. Gawker Cannot Be Penalized for Exercising Its Right to Take Exceptions to the Special Discovery Magistrate's Reports and Recommendations.

Plaintiff also complains that Gawker has exercised its right to file exceptions to adverse "reports and recommendations" of the Special Discovery Magistrate.[3] But awarding fees for that reason would also be improper. Florida Rule of Civil Procedure 1.490(i) specifically permits review by the Court, and exercising a right specifically contemplated by the rules simply cannot constitute the type of "unjustified" conduct that warrants an award of attorneys' fees under Rule 1.380, which expressly disallows an award of attorneys' fees to the prevailing party where the other party's position was "substantially justified."

Indeed, taking exceptions to a Report and Recommendation is not just a *right*, it is effectively an *obligation*, because doing so is necessary to preserve the issue for later appeal. *See Rosen v. Wilson*, 922 So. 2d 401, 402 (Fla. 4th DCA 2006) (right to appeal an issue decided

[3] In fact, of the 15 motions (or sets of motions) on which plaintiff seeks attorneys' fees, Gawker sought to hold hearings on exceptions in just five. As explained above in Part A, plaintiff has himself similarly filed exceptions challenging rulings by the discovery magistrate.

by a magistrate may be waived if losing party does not file exceptions with the trial judge). Punishing Gawker for taking the steps necessary to preserve its rights for a post-trial appeal would certainly be reversible error.

Moreover, there is no small irony in plaintiff's argument that Gawker is responsible for duplicating expenses by making arguments to both the Special Discovery Magistrate and the trial court. Gawker itself has tried to solve this very problem by withdrawing its consent to continued appointments to the Special Discovery Magistrate and requesting that any remaining issues be heard directly by this Court. *See* Withdrawal of Consent to Proceeding before Special Discovery Magistrate, Aug. 11, 2015. But plaintiff has vigorously objected and urged that the Special Discovery Magistrate remain involved. Plaintiff cannot have it both ways: on one hand, insisting on referring matters to the Special Discovery Magistrate while, on the other, continuing to complain about the expense or the fees charged by the magistrate.

C. The Court Should Decline to Re-Examine the Merits of the Discovery Motions Now and, In Any Event, Gawker's Discovery Positions Were "Substantially Justified."

Under Florida Rule of Civil Procedure 1.380(a)(4), a Court "*may*" award the prevailing party attorneys' fees in connection with discovery motions "unless" the losing party's position was "substantially justified" or "other circumstances make an award of expenses unjust." This Rule "is derived from Federal Rule of Civil Procedure 37." *Wallraff v. T.G.I. Friday's, Inc.*, 490 So. 2d 50, 51 (Fla. 1986); Fla. R. Civ. P. 1.380 cmt. An argument is "substantially justified" if it involves a "genuine dispute"; the fact that a party did not ultimately prevail in its argument does *not* mean that its position was unjustified or warrants sanctions. *Pierce v. Underwood*, 487 U.S. 552, 565 (1988); *Maris Distrib. Co.*, 2001 WL 862642 at *8.

To determine whether a party's discovery position was "substantially justified" under Rule 1.380, a court necessarily must review the merits of that position, including the supporting

facts and case law. *See, e.g.*, *Maddow v. Procter & Gamble Co.*, 107 F.3d 846, 853 (11th Cir. 1997) (analyzing case law cited by parties to determine that award of fees was abuse of discretion). For this reason, fee awards are typically adjudicated at the time the underlying motion is decided, when the issues are fresh in the court's and the litigants' minds, and not months or years later when memories have faded and issues have changed. Reconstructing, for example, whether the parties adequately met the "meet and confer" requirement or had "justifiable" basis for their positions, in connection with a motion made in, say, the summer of 2013, is very difficult even when one is evaluating just *one* several-years-old motion, and plaintiff here wants to revisit more than 15! Moreover, if the Court is willing to revisit the underlying motions in plaintiff's instant fee request, then Gawker would ask to revisit the discovery motions on which it prevailed, thus adding to the total. This is not a good use of anyone's time.

Moreover, waiting until after the end of discovery to make a fee request also undermines one of the core purposes of Rule 1.380(a)(4) – to encourage compliance with ongoing discovery. *See, e.g.*, *Winn Dixie v. Teneyck*, 656 So. 2d 1348, 1351 (Fla. 1st DCA 1995) ("the principal purpose of discovery sanctions is to assure compliance with the rules"); *Hurley v. Werly*, 203 So. 2d 530, 537 (Fla. 2d DCA 1967) ("The [discovery] sanctions are set up as a means to an end, not the end itself. The end is compliance."). Here, discovery is closed, and thus an award of fees would not and could not serve this purpose; rather, it would simply be punitive.

Even if the Court were to undertake this exercise, Gawker's positions in the underlying discovery disputes were reasonable and well-supported in fact at law, even if not ultimately successful before this Court. *See Maris Distrib. Co.*, 2001 WL 862642, at *8 (fact that a party's position was unsuccessful does not mean that it was unjustified); *Maddow*, 107 F.3d at 853

(party which won discovery motion not entitled to fees where losing party's position had basis in law and fact). The substantial justification for Gawker's arguments with respect to particular motions is addressed in their briefs (contained in the Plaintiff's Binder) and in the attached Discovery Motions Chart. However, a few overarching points concerning why Gawker was "substantially justified" and why an award of attorneys' fees against it would be particularly "unjust" are worth noting.

First, as reflected in the Discovery Motions Chart, several of the motions on which plaintiff seeks fees he actually lost or were "split decisions." In some cases, matters plaintiff identifies as victories were not victories at all, including for example, the subpoena matters litigated in New York, *see* Discovery Motions Chart discussing Tabs 14 and 15. In other cases, plaintiff prevailed on certain issues and Gawker prevailed on others, *see id.* (discussing Tabs 1, 2, 3, and 11). The fact that plaintiff either lost or only partly prevailed on the motions for which he seeks fees – combined with the fact that Gawker prevailed, in whole or in part, in numerous other discovery motions, *see* note 1 *supra* – certainly suggests that the positions it took in discovery were not frivolous, unsupported or otherwise of the type to merit the imposition of a substantial fee award.

Second, plaintiff prevailed on several of the underlying motions on which he now seeks substantial fees through fraud and misrepresentations. Given the protective order in place in this case, Gawker is constrained in what it may recount in this public filing. A more detailed explanation is contained in the Confidential Declaration of Gregg D. Thomas filed on July 30, 2015. Here, suffice it to say that the documents produced by the FBI in the federal FOIA litigation contradict material representations by plaintiff and his counsel in litigating a number of discovery motions, including statements made under oath. Plaintiff cannot be allowed to recover

fees for motions he won based on making representations to the Court that are now known to be completely false.

Third, both this Court and the Special Discovery Magistrate have repeatedly expressed that the case – including in the discovery context – has been ably litigated and presents serious legal issues, further undermining any notion that the positions Gawker has taken were unjustified. *See* Oct. 1, 2015 Hrg. Tr. at 28:3-6 (THE COURT: "I find the attorneys in this case to have been highly professional. It's an interesting case. It poses very interesting, very serious constitutional law issues.").[4] Moreover, as outlined in the Discovery Motions Chart, plaintiff previously requested an award of fees under Rule 1.380(a)(4) in connection with several of the underlying motions at the time they were litigated, and no request for attorneys' fees was either granted by the Court or recommended by the Special Discovery Magistrate. This too confirms that neither the Court nor Judge Case considered fee awards appropriate at the time each of these motions was heard, and there is no reason to revisit those conclusions now.[5]

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[4] *See also* Apr. 23, 2014 Hrg. Tr. at 68:15-16 (THE COURT: "I think the [arguments were] artfully presented on both sides"); May 12, 2014 Hrg. Tr. at 62:2-3 (SPECIAL DISCOVERY MAGISTRATE: "I appreciate all of the effort that you put in here today in your arguments"); July 18, 2014 Hrg. Tr. at 122:13-20 (SPECIAL DISCOVERY MAGISTRATE: "On both sides you have represented your clients very capably. . . . Most of the time the lawyers are not as competent as you are, and you do a good job, so I appreciate that"); Oct. 20, 2014 (SPECIAL DISCOVERY MAGISTRATE: "Once again, you've done a great job, both of you, in terms of presenting the issues with respect to the plaintiff's motion to compel . . ."); Dec. 1, 2014 Hrg. Tr. at 39:25 – 40:5 (SPECIAL DISCOVERY MAGISTRATE: "I appreciate the time and effort that went into the presentation as well as the material that was forwarded to me . . . . I thank both counsel for doing a great job and making a good presentation."); March 17, 2015 Hrg. Tr. at 38:3-4 (SPECIAL DISCOVERY MAGISTRATE: "You both have done an excellent job of presenting the issue.").

[5] In addition, plaintiff did not file exceptions to those Reports and Recommendations in which his request for fees was not granted. Save for two instances where Judge Case reserved on that issue, plaintiff's has waived his right to challenge them now. See Fla. R. Civ. P. 1.490 (challenges to magistrates' reports must be made to circuit court within 10 days).

Fourth, if the Court decides to entertain plaintiff's motion despite the practical difficulties in doing so and its prior recognition that Gawker's positions were justified, it should at this point defer any ruling – and certainly any award – until after trial. Trial may very well clarify further whether the various discovery positions taken by both sides were "justified." *See, e.g.*, *Graef v. Dames & Moore Grp., Inc.*, 857 So. 2d 257, 262 ("It is only after the case has been terminated that a sensible judgment can be made by a party as to whether the adverse party's [actions were] completely frivolous."); *Amlan, Inc. v. Detroit Diesel Corp.*, 651 So. 2d 701, 705 (Fla. 4th DCA 1995) ("[T]he actual trial of the case may assist the trial court in understanding the true significance of the discovery sought and the motivation of either party to thwart legitimate discovery efforts."). This is particularly true where this Court is being asked to award substantial fees, shortly before trial, in connection with a host of discovery rulings that the parties may challenge on their merits in any post-trial appeal.

D. The Amount of Fees Requested by Plaintiff is Unreasonable and Unsupported.

Plaintiff's motion also fails because the accompanying Affidavit of Charles Harder, which purports to justify the fee request, is woefully inadequate for the following reasons:

1. Plaintiff does not adequately describe the work performed or parse the time to reflect those portions of the motions that he lost. The chart at pages 5-10 of the Harder Affidavit contains generic descriptions of the work done on each motion (*e.g.*, "meet and confer communications," "research," "prepare for and attend hearing," etc.) and then lists the names of several attorneys, their billing rates, and the hours spent on each of those vaguely-described tasks. It does not break down when the work was undertaken, who specifically (among the listed lawyers) performed the work, or any of the details of the work performed. Neither Gawker nor the Court can determine whether, for example, there was duplication of effort, whether work was

performed by a lawyer too senior for the task, whether individual tasks were completed within a reasonable time, and so on.[6] This failure, by itself, dooms plaintiff's motion. *See, e.g.*, *Tutor Time Merger Corp. v. MeCabe*, 763 So. 2d 505, 506 (Fla. 4th DCA 2000) (record must contain "competent substantial evidence to support the attorneys' fee award," otherwise the award will be reversed "without remand for additional evidentiary findings"); *Martin v. Laidlaw Tree Serv., Inc.*, 619 So. 2d 435, 440 (Fla. 2d DCA 1993) (court must be given enough information "to determine if those fees and expenses are appropriate" and are "related to obtaining the discovery" at issue).[7]

But plaintiff's failure to break down dates, to explain which lawyers worked on which tasks, or to provide any detail about those tasks is not the only problem. Plaintiff also has not, in the Harder Affidavit, accounted for those portions of discovery motions which plaintiff *lost*. In fact, Gawker won, in whole or in part, at least *six* of the motions for which plaintiff now seeks fees, as explained in the Discovery Motions Chart's discussion of Tabs 1, 2, 3, 11, 14, and 15. It is black-letter law, set out in the text of Rule 1.380 itself, that where a motion is granted in part

[6] Obviously Gawker is unable to meaningfully assess Mr. Harder's claim that he and his colleagues spent, for example, 160 hours (and $72,960) opposing Gawker's motion for sanctions (Pl. Tab 9) or 75 hours (and $34,295) on a motion to compel (Pl. Tab 11) given the extremely limited information provided. But one smaller example raises serious questions about the reasonableness of amounts being claimed. For litigating plaintiff's request for 30 additional interrogatories, Pl. Tab 8, Mr. Harder claims that plaintiff's attorneys expended 13 hours. But all counsel did was to write one short letter to the Special Discovery Magistrate (there was no motion), to spend a few minutes discussing this issue with him, to write a 2½-page opposition to Gawker's exceptions, and then to address the topic briefly at a hearing before this Court. Thirteen hours on these small tasks seems excessive – particularly when Gawker simply asked that plaintiff be required to explain why he was seeking additional interrogatories before they were authorized, which certainly could have been answered in far less time.

[7] If plaintiff's motion is not rejected outright, Gawker reserves its right to a hearing at which plaintiff must present evidence to justify the hours expended and rates charged. *See, e.g.*, *Martin*, 619 So. 2d at 440 (a hearing is required "to determine if those fees and expenses are appropriate" and legitimately "related to obtaining the discovery which was the basis of the imposition of sanctions"); *Weiss v. Rachlin & Cohen*, 745 So. 2d 527, 528-29 (Fla. 3d DCA 1999) (trial judge must "conduct an evidentiary hearing" in connection with fee award).

and denied in part, if fees and expenses are to be awarded, apportionment is appropriate. *See also, e.g.*, *Liebreich v. Church of Scientology Flag Serv. Org., Inc.*, 855 So. 2d 658, 660 (Fla. 2d DCA 2003) (remanding fee award for such an apportionment). The Harder Affidavit apparently seeks to recover *all* the attorneys' fees occurred in connection with each motion, even if plaintiff lost meaningful portions of them. Such a position is fundamentally unfair and contrary to law.

The same problem occurs in connection with plaintiff's request that Gawker pay all $35,190.46 of the fees that he has paid to the Special Discovery Magistrate. *See* Harder Aff. ¶ 7. Putting aside that this Court's initial order appointing the magistrate split the fees between plaintiff and defendants (and that Gawker paid the defendants' half for all defendants including Heather Clem, because she refused), plaintiff's request effectively attempts to penalize Gawker for preserving its appeal rights by filing exceptions from the magistrate's rulings, which for the reasons explained in Part B is improper. Moreover, plaintiff cannot seriously expect Gawker to pay *the entire cost* of a Special Discovery Magistrate whose fees covered not only his adjudication of motions on which plaintiff prevailed, but also his adjudication of motions on which Gawker prevailed (*see* note 1 *supra*), his supervision of multiple depositions (that are not at issue here), and his assistance on other matters (also not at issue here).

2. Plaintiff seeks recovery of attorneys' fees for lawyers who were neither licensed to practice in Florida nor admitted *pro hac vice*. Plaintiff has sought the recovery of substantial fees for work performed by a number of lawyers who appear not to be licensed to practice law in Florida and who were not admitted *pro hac vice* in this case. Specifically, plaintiff seeks to recover fees for work performed by California attorneys Dilan Esper, Matthew Blackett, and Nick Kurtz, *see* Harder Aff. at 3-10, who all appear to fit this description. And, he seeks to recover the fees of John Golaszewski, *see* Harder Aff. at 4, 9-10 (regarding Plaintiff's

Tabs 14 and 15), a New York lawyer who exclusively handled subpoena disputes in New York which were not brought under Florida Rule of Civil Procedure 1.380 and on which Gawker substantially prevailed. *See* Discovery Motions Chart at 6-7.[8] Taken together, these portions of the fees requested total approximately $237,000.

This is not permitted. A Florida Court may not award attorneys' fees for work done by out-of-state attorneys who have not been admitted to this Court *pro hac vice*. *See, e.g.*, *Morrison v. West*, 30 So. 3d 561, 566-67 (Fla. 4th DCA 2010) (denying request for fees for work performed by out-of-state lawyer because "[a]llowing an attorney to recover fees for the unauthorized practice of law is a violation of *public policy*, irrespective of the private interests and understandings of the parties"); *see also* Fl. Bar Rule 4-5.5 & comment (requiring out-of-state lawyers who practice in Florida cases to seek admission *pro hac vice*).

3. Plaintiff does not, and could not, explain why he is entitled to recover Los Angeles and New York rates for lawyers in a Pinellas County case. Finally, a large percentage of plaintiff's request is for work performed by Los Angeles-based lawyers and, in the case of Mr. Golaszewski, a New York-based lawyer. *See* Harder Aff. at 5-10. These lawyers' rates far exceed those of their counterparts in the Tampa/St. Petersburg market. For example, Mr. Harder, a name-partner in his Los Angeles-based firm, charges $550 per hour. But Ken

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[8] In addition, plaintiff improperly seeks recovery of fees for work performed by Sarah Luppen and Douglas Mirell for work done well before they were admitted *pro hac vice* on November 19, 2014, and May 16, 2014, respectively. *See* Harder Aff. at 5-8 (seeking recovery for Ms. Luppen's work on the motions found at Plaintiff's Tabs 1-3 and 6-11, which were all litigated, in whole or substantial part, well prior to her *pro hac vice* admission); *id.* at 5 (seeking recovery Mr. Mirell's work on the motion found at Plaintiff's Tab 4, which was litigated well prior to his *pro hac vice* admission). Indeed, in the case of Mr. Mirell, he only moved for *pro hac vice* admission when Gawker's counsel expressly raised the issue. Even assuming out-of-state counsel may properly begin work on a matter while moving for *pro hac vice* admission on a reasonably contemporaneous basis, they may not work on a matter for an extended period, and then seek to recover fees for Florida practice undertaken without adherence to the Florida Bar's procedures for such practice on matter before Florida courts.

Turkel, a name-partner in his Tampa-based firm with six years more experience, charges just $425 per hour. The Second District Court of Appeal has expressly held that a party "should not have to bear liability for additional fees absent some showing that these (out-of-state) attorneys had a special expertise that required their participation at hourly rates above those normally charged by local attorneys handling comparable cases, or a showing of some alternative basis warranting fees above the market rate in this district." *Sourcetrack, LLC v. Ariba, Inc.*, 34 So. 3d 766, 768 (Fla. 2d DCA 2010). Even if plaintiff were to contend that Mr. Harder and his colleagues possess specialized expertise on the merits of the privacy and publicity issues underlying this case, plaintiff has provided no reason why Gawker should be forced to pay Los Angeles (or in the case of Mr. Golaszewski New York) rates for fees on discovery disputes in a Florida case. Plaintiff's motion should be rejected for this reason as well.

CONCLUSION

For the foregoing reasons, and those stated in the attached Discovery Motions Chart, the Gawker Defendants respectfully request that this Court deny plaintiff's motion in its entirety.

Dated: November 12, 2015

Respectfully submitted,

THOMAS & LOCICERO PL

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of November 2015, I caused a true and correct copy of the foregoing to be served via the Florida Courts' E-Filing Portal upon the following counsel of record:

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