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.: 12012447-CI-011

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

Defendants.
_____/

OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE TO CONDUCT EXPEDITED POST-TRIAL FINANCIAL WORTH DISCOVERY

Plaintiff's motion seeks "to conduct expedited financial discovery," primarily in connection with a reduced supersedeas bond that he clearly anticipates the Court will likely set if it enters judgment against the Gawker Defendants. This motion should therefore be denied first and foremost because it is obviously premature, since the Court has not resolved defendants' post-trial motions nor entered any judgment. However, defendants do not disagree that if the Court were to enter a judgment and set a reduced supersedeas bond, which plaintiff's motion implicitly envisions is likely to happen, then at that point plaintiff might be entitled to some limited discovery under the statute he invokes, Fla. Stat. § 45.045(1).

For the reasons discussed below, the breadth of the discovery plaintiff prematurely seeks is far broader than what the statute would authorize in the event of a judgment with a reduced supersedeas bond. Nonetheless, if all the events plaintiff anticipates come to pass, the parties may be able to narrow the scope of any disagreement about financial discovery before the Court is asked to rule on that issue. Therefore, defendants respectfully submit that the Court should deny plaintiff's motion without prejudice to his right to renew his request after (1) any judgment

has been entered, (2) a reduced bond has been set, and (3) the parties meet and confer to try to resolve or narrow any disputes about financial discovery.

ARGUMENT

Plaintiff's Motion should be denied for the following reasons:

1. The Motion is Premature. Plaintiff seeks discovery, under Florida Statute § 45.045, "in anticipation of the entry of a final judgment based on the verdicts," in connection with "Defendants' anticipated motions for stay and/or to reduce the required bond," in order "to establish facts relevant to the [anticipated] supersedeas bond," and, under Florida Rule of Civil Procedure 1.560, "in aid of execution" of the judgment. Pl. Mot. at 1, 3, 9. In reality, virtually all of plaintiff's motion is brought under § 45.045. *See id.* at 5-8.

As the Motion acknowledges, both Section 45.045 and Fla. R. App. P. 9.310 authorize a trial court to issue a stay of execution of any judgment pending appeal subject to any conditions that it may set, including specifically requiring that the defendant(s) post a reduced supersedeas bond or imposing other conditions. Fla. Stat. § 45.045(2); *see id.* (court "may set other conditions for the stay with or without a bond"). In addition, only *after* an appellant has posted a reduced bond, the statute further provides that "the appellee may engage in discovery for the limited purpose of determining whether the appellant has dissipated or diverted assets outside the course of its ordinary business or is in the process of doing so." *Id.* at § 45.045(3). It is that statutory provision that plaintiff's Motion principally invokes.

However, the plain meaning of the statute is unambiguous – a party may seek post judgment discovery only *after* (1) there is a judgment, (2) there is an appeal – hence the party would be an "appellant," and (3) the trial court has set, and the appellant has posted, a reduced supersedeas bond. Clearly, notwithstanding the Motion's introductory rhetoric, plaintiff would

not have brought this motion now if he did not recognize that, if there is a judgment for any significant amount in this case, a reduced supersedeas bond would be appropriate here.

Moreover, defendants likewise do not dispute that the plain meaning of the statute states that if all the events the Motion anticipates come to pass, he could take discovery consistent with "the limited purpose" set forth in the statute. *Id.* However, since none of those events have yet taken place, the motion is plainly premature. And since if they do occur, the parties may not disagree entirely regarding scope of post-judgment discovery, the most prudent course is simply to deny the motion, without prejudice to renew it when if it ever becomes ripe.

Finally, at the very end of his Motion, plaintiff briefly mentions Rule 1.560, and seeks discovery in aid of execution. But that too is premature, since Rule 1.560 authorizes post-trial discovery only *after* judgment has been entered, and only if there is not otherwise a stay of execution entered. Plaintiff has cited no authority, and defendants are aware of none, permitting "expedited post-trial financial worth discovery" before judgment has even been entered. Indeed, plaintiff concedes that "ordinarily, discovery in aid of execution is not appropriate until after a judgment has been entered and becomes final." Pl. Mot. at 9.[1] The Motion should therefore be denied, without prejudice.

2. The Discovery Plaintiff Seeks Is Inappropriate, Overbroad, and Unnecessary. As it is presently framed, plaintiff's request for discovery is also improper

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[1] The cases plaintiff cites both involve post-*judgment* discovery and make clear that even then such discovery is only authorized if a judgment creditor is unsuccessful in his efforts to collect the judgment. *See 2245 Venetian Ct. Bldg. 4, Inc. v. Harrison*, 149 So. 3d 1176, 1178-79 (Fla. 2d DCA 2014) (Pl. Mot. at 10) (permitting discovery *after* the creditors had "unsuccessfully attempt[ed] to recover on their judgment"); *Gen. Elec. Capital Corp. v. Nunziata*, 124 So. 3d 940, 943 (Fla. 2d DCA 2013) (Pl. Mot. at 10) (disallowing even post-judgment discovery from non-party where no predicate for it had been laid). He nevertheless argues that this Court should invent an exception to the rule that discovery may only be authorized *after* judgment and apply it for the first time in this case.

because it seeks permission to conduct a wide-ranging fishing expedition into Gawker's finances, even though plaintiff already has significant information about Gawker's finances and the breadth of the discovery sought would not be necessary even if the motion were ripe. Under Fla. Stat. § 45.045(3), if a reduced bond is posted, a trial court may permit post-judgment "discovery for the *limited purpose* of determining whether the appellant has dissipated or diverted assets *outside the course of its ordinary business*." *BDO Seidman, LLP v. Banco Espirito Santo Int'l, Ltd.*, 26 So. 3d 1, 3 (Fla. 3d DCA 2009) (emphasis added). Likewise, under Rule 1.560, post-judgment discovery cannot be a "fishing expedition." *Nunziata*, 124 So. 3d at 943; *Winderting Investments, LLC v. Furnell*, 144 So. 3d 598, 602 (Fla. 2d DCA 2014) (post-judgment discovery limited to specific "information that will enable the judgment creditor to collect the debt").

Here, plaintiff simply requests "discovery" without any indication of any specific requests he intends to make. Instead, he states only that he should be "permitted to obtain discovery from Gawker Defendants" as well as from six separate non-parties (discussed below). Pl. Mot. at 10; *see also id.* at 3 (seeking "depositions of Gawker Defendants, interrogatories, and requests for production, and the issuance of subpoenas duces tecum without deposition to third-parties"). Plaintiff's open-ended request finds no support in the rules or cases and should be rejected out of hand.

In addition, it is difficult to imagine how all of that discovery could be appropriate or necessary. The gist of plaintiff's argument for additional discovery is that, to avoid liability in this case, (a) Gawker is somehow diverting money to Kinja (Pl. Mot. at 6-8), and (b) Mr. Denton is somehow diverting money to his niece and nephews abroad and can control their shares of GMGI (Pl. Mot. at 8-9). But neither argument bears even passing scrutiny. As explained in

Gawker's Opposition to plaintiff's Renewed Motion to Compel (concerning the Mayer Brown Report) at 4-5 (submitted contemporaneously herewith), the undisputed evidence shows that Kinja and Gawker have a regular and well-established relationship governed by a written agreement that has been in place since 2011 (well before the post at issue in this lawsuit was published), and thus the royalty payments Gawker makes to Kinja are squarely within the "ordinary" course of its business. *See also id.* at 6 (explaining how substantial discovery previously-produced to plaintiff also confirms this long-standing relationship between Gawker and Kinja). Likewise, the undisputed evidence also establishes that Mr. Denton's niece and nephews received their shares of GMGI in 2010 – again well before the events at issue in this lawsuit – and later (without Mr. Denton's involvement) those shares were placed in a trust. (Conf. Ex. A, submitted herewith; Pl. Ex. 6-C.) And, despite taking substantial discovery already from Mr. Denton's family in the UK, plaintiff has offered no evidence contradicting Mr. Denton's sworn affidavits confirming that he has no involvement in the Weinbrecht Family Trust, and does not control how the shares held by the trust are managed or voted. Indeed, although plaintiff attaches the trust agreement itself, he simply ignores its plain terms which demonstrate that Mr. Denton has no control over it. *See, e.g.*, Pl. Ex. 6-C at 9-14 (enumerating trustee's unencumbered authority).[2]

Moreover, as the preceding discussion makes clear, plaintiff has not yet made the showing necessary to entitle him to discovery either to show dissipation of assets or to collect on any judgment ultimately entered. As this Court is aware, plaintiff has already obtained substantial amounts of financial discovery in this litigation concerning both the relationship

[2] Instead, plaintiff focuses on transactions entered by the trust long after Mr. Denton transferred his shares to his niece and nephews in 2010, but plaintiff tellingly does not even allege that Mr. Denton was involved in those transactions. Pl. Mot. at 8-9.

between Gawker and Kinja and the GMGI shares owned by Mr. Denton's relatives. As explained in Gawker's Opposition to plaintiff's Renewed Motion to Compel at 4-6, plaintiff already has the licensing agreement which sets forth the basis for the license payments Gawker pays Kinja, the income statements and bank records showing the actual dollar amounts that were paid to Kinja, the promissory notes showing the amounts borrowed from Kinja, financials from GMGI and Kinja, and copious other financial documents. With respect to Mr. Denton's family's shares in GMGI, plaintiff has, among other things, the capitalization table for GMGI showing the shares he and other significant shareholders own, the 2010 irrevocable deeds of gift transferring shares of GMGI to Mr. Denton's minor relatives (Conf. Ex. A), as well as exhaustive discovery from Mr. Denton's family about the shares held in trust for the Weinbrecht children (*see, e.g.*, Pl. Mot. at 8-9 and Exs. 3_C – 6_C, 8_C thereto). There is no basis to authorize still more discovery on these issues, even were this motion ripe.

3. The Request for Non-Party Discovery is Improper. In addition to seeking undefined discovery from the Gawker Defendants, plaintiff also seeks discovery from six foreign entities: Kinja, GMGI, Columbus Nova (an investor in/lender to GMGI), Univision (a company which plaintiff alleges was in discussions with GMGI about a possible transaction that never occurred), Citrin Cooperman & Co., LLC (Gawker's accountants), and Silicon Valley Bank (Gawker's bank). Pl. Mot. at 10. This would be improper for a number of reasons. First, the appropriate avenue for seeking discovery from non-parties is not through the type of vague request for carte blanche discovery plaintiff has submitted here. Rather, *if and when* discovery becomes appropriate, plaintiff must submit a "Notice of Intent to Serve Subpoena" pursuant to Rule 1.410 of the Florida Rules of Civil Procedure, enumerating the *specific* discovery the plaintiff plans to seek from the non-party, in order to provide Gawker an opportunity to object.

Then, *if* the objections are resolved in the plaintiff's favor, he must take the necessary steps for the issuance of out-of-state and/or out-of-country subpoenas.

Second, to obtain post-trial discovery from a non-party, a creditor must "provide a good reason and close link between the unrelated entity and the judgment debtor." *Nunziato*, 124 So. 3d at 942 (denying request to serve discovery on lender to debtor's parent company, and explaining that creditors may not "pry into the assets and business of persons other than the judgment debtor"). Stated differently, a creditor must "lay a proper predicate" for discovery and cannot rely on unsupported allegations that a debtor is diverting assets or has an alter-ego. *See, e.g.*, *Winderting Inv., LLC*, 144 So. 3d at 604. As discussed above, plaintiff has made no showing here that Gawker has engaged in conduct warranting intrusive discovery from non-parties.

Third, plaintiff's efforts to take discovery from GMGI and Kinja are particularly improper, given that both of those entities have been dismissed from the case. The only possible purpose for seeking discovery from them is to advance an argument that these companies and Gawker are alter-egos (or that the corporate veil may be pierced) and that GMGI and Kinja may somehow be responsible for any judgment ultimately rendered. But, plaintiff forfeited any such argument when (1) this Court dismissed GMGI from the case, and plaintiff failed to re-plead against it, and (2) plaintiff, for his own strategic reasons, dismissed Kinja from the case before the question of whether it and Gawker could be considered alter-egos was resolved (*see* Opp. to Pl. Renewed Mot. to Compel at 5-6). Given those dismissals, plaintiff could not under any circumstances seek to hold them responsible; as such, taking discovery from them in the pursuit of such an argument is unwarranted. *See, e.g.*, *id.* at 603-04.

CONCLUSION

The Gawker Defendants do not dispute that *if* judgment is entered against them and/or *if* a bond is set for less than the full amount of the judgment and/or *if* there comes a time when a judgment is executable and the Gawker Defendants cannot pay it, *then* certain limited and *specific* post-trial discovery may be appropriate. But that time is not now, and plaintiff's premature attempts get carte-blanche authorization to take extensive, expedited and unspecified discovery from the defendants and from non-parties should be rejected. The Gawker Defendants respectfully request that plaintiff's motion be denied, without prejudice.

Dated: May 20, 2016

THOMAS & LOCICERO PL

By: */s/ Gregg D. Thomas*
Gregg D. Thomas
Florida Bar No.: 223913
Rachel E. Fugate
Florida Bar No.: 0144029
601 South Boulevard
P.O. Box 2602 (33601)
Tampa, FL 33606
Telephone: (813) 984-3060
Facsimile: (813) 984-3070
gthomas@tlolawfirm.com
rfugate@tlolawfirm.com

Seth D. Berlin
Pro Hac Vice Number: 103440
Michael Sullivan
Pro Hac Vice Number: 53347
Michael Berry
Pro Hac Vice Number: 108191
Alia L. Smith
Pro Hac Vice Number: 104249
Paul J. Safier
Pro Hac Vice Number: 103437

LEVINE SULLIVAN KOCH & SCHULZ, LLP
1899 L Street, NW, Suite 200
Washington, DC 20036

Telephone: (202) 508-1122
Facsimile: (202) 861-9888
sberlin@lskslaw.com
mberry@lskslaw.com
msullivan@lskslaw.com
asmith@lskslaw.com
psafier@lskslaw.com

Counsel for Gawker Media, LLC, Nick Denton, and A.J. Daulerio

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of May, 2015, I caused a true and correct copy of the foregoing to be served via the Florida Courts' E-Filing Portal on the following counsel of record:

Kenneth G. Turkel, Esq.
kturkel@BajoCuva.com
Shane B. Vogt, Esq.
shane.vogt@BajoCuva.com
Bajo Cuva Cohen & Turkel, P.A.
100 N. Tampa Street, Suite 1900
Tampa, FL 33602
Tel: (813) 443-2199
Fax: (813) 443-2193

David Houston, Esq.
Law Office of David Houston
dhouston@houstonatlaw.com
432 Court Street
Reno, NV 89501
Tel: (775) 786-4188

Charles J. Harder, Esq.
charder@HMAfirm.com
Douglas E. Mirell, Esq.
dmirell@HMAfirm.com
Jennifer McGrath
jmcgrath@HMAfirm.com
Harder Mirell & Abrams LLP
132 South Rodeo Drive, Suite 301
Beverly Hills, CA 90212-2406
Tel: (424) 203-1600
Fax: (424) 203-1601

Attorneys for plaintiff

/s/ *Gregg D. Thomas*
Attorney