

Hearing Date and Time: September 28, 2017 at 10:00 a.m. (Eastern Time)
Objection Deadline: September 5, 2017 at 4:00 p.m. (Eastern Time)

SAUL EWING LLP

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Attorneys for Ryan Goldberg

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re	: Chapter 11
Gawker Media LLC, <i>et al.</i> , ¹	: Case No. 16-11700 (SMB)
Debtors.	: (Jointly Administered)
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**NOTICE OF RYAN GOLDBERG’S MOTION (I) TO ENFORCE ORDER
CONFIRMING AMENDED JOINT CHAPTER 11 PLAN
OF LIQUIDATION AND (II) TO BAR AND ENJOIN CREDITORS
FROM PROSECUTING THEIR STATE COURT ACTION**

PLEASE TAKE NOTICE that on August 21, 2017, Ryan Goldberg (“Goldberg”), filed the attached *Motion (I) to Enforce Order Confirming Amended Joint Chapter 11 Plan of Liquidation and (II) to Bar and Enjoin Creditors from Prosecuting their State Court Action* (the “Motion”), which includes the reasons underlying the relief requested.

PLEASE TAKE FURTHER NOTICE that a hearing (the “Hearing”) on the relief requested in the Motion will be held before the Honorable Stuart M. Bernstein, in the United

¹ The last four digits of the taxpayer identification number of the debtors are: Gawker Media LLC (0492); Gawker Media Group, Inc. (3231); and Kinja Kft. (5056). Gawker Media LLC and Gawker Media Group, Inc.’s mailing addresses are c/o Opportune LLP, Attn: William D. Holden, Chief Restructuring Officer, 10 East 53rd Street, 33rd Floor, New York, NY 10020. Kinja Kft.’s mailing address is c/o Opportune LLP, Attn: William D. Holden, 10 East 53rd Street, 33rd Floor, New York, NY 10020.

States Bankruptcy Court for the Southern District of New York, One Bowling Green, Courtroom 723, New York, New York 10004 (the “Court”), on **September 28, 2017 at 10:00 a.m. (ET)**.

PLEASE TAKE FURTHER NOTICE that any responses or objections (“Objections”) to the Motion shall be in writing, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the Southern District of New York (the “Local Bankruptcy Rules”), shall set forth the basis for the response or objection and the specific grounds thereon, and shall be filed electronically with the Court on the docket of *In re Gawker Media LLC*, Case No. 16-11700 (SMB), in accordance with General Order M-399 by registered users of the Court’s case filing system (the User’s Manual for the Electronic Case Filing System can be found at <http://www.nysb.uscourts.gov>, the official website for the Court), with a hard copy to be delivered directly to chambers pursuant to Local Bankruptcy Rule 9070-1, and served so as to be actually received no later than **September 5, 2017 at 4:00 p.m. (ET)** (the “Objection Deadline”), upon: (i) the Debtors, Gawker Media LLC, c/o Opportune LLP, 10 East 53rd Street, 33rd Floor, New York, NY 10022, Attn: William D. Holden, Chief Restructuring Officer (WHolden@opportune.com); (ii) counsel for the Debtors, Ropes & Gray LLP, 1211 Avenue of the Americas, New York, NY 10036, Attn: Gregg M. Galardi, Esq. (Gregg.Galardi@ropesgray.com), Michael S. Winograd, Esq. (Michael.Winograd@ropesgray.com) and Kristina K. Alexander, Esq. (Kristina.Alexander@ropesgray.com); (iii) the Office of the United States Trustee for the Southern District of New York, 201 Varick Street, Suite 1006, New York, NY 10014, Attn: Greg M. Zipes, Esq. and Susan Arbeit, Esq.; (iv) the Internal Revenue Service, 2970 Market Street, Philadelphia, PA 19104, Attn: Centralized Insolvency Operation (mimi.m.wong@irsounsel.treas.gov); (v) the United States Attorney for the Southern District of

New York, 86 Chambers Street, 3rd Floor, New York, NY 10007, Attn: Bankruptcy Division (David.Jones6@usdoj.gov; Jeffrey.Oestericher@usdoj.gov; Joseph.Cordaro@usdoj.gov; Carina.Schoenberger@usdoj.gov); (vi) counsel to the Official Committee of Unsecured Creditors, Simpson Thacher & Bartlett, 425 Lexington Avenue, New York, NY 10017, Attn: Sandeep Qusba, Esq. (squsba@stblaw.com) and William T. Russell, Esq. (wrussell@stblaw.com); (vii) counsel to US VC Partners, LP, as Prepetition Second Lien Lender, Latham & Watkins LLP, at both 330 North Wabash Avenue, Suite 2800, Chicago, IL 60611, Attn: David S. Heller (david.heller@lw.com) and 885 Third Avenue, New York, NY 10022, Attn: Keith A. Simon, Esq. (keith.simon@lw.com); (viii) counsel to Cerberus Business Finance, LLC, as DIP Lender, Schulte Roth & Zabel, LLP, 919 Third Avenue, New York, NY 10022, Attn: Adam Harris, Esq. (adam.harris@srz.com) and Frederic Ragucci, Esq. (frederic.ragucci@srz.com); (ix) Harder Mirell & Abrams LLP, 132 S. Rodeo Dr., Suite 301, Beverley Hills, CA 90212, Attn: Charles J. Harder, Esq. (charder@hmafirm.com); (x) Randall Busack (aka RJ Bell), c/o Harder Mirell & Abrams LLP, 132 S. Rodeo Dr., Suite 301, Beverley Hills, CA 90212, Attn: Charles J. Harder, Esq. (charder@hmafirm.com); and (xi) Pregame LLC dba Pregame.com, 5860 S. Pecos Rd. #400, Las Vegas, NV 89120, Attn: Randall J. Busack; and (xii) those persons who have formally appeared and requested service in these cases pursuant to Bankruptcy Rule 2002.

PLEASE TAKE FURTHER NOTICE that a copy of the Motion and copies of all other documents filed in the chapter 11 cases may be obtained free of charge by visiting the website of Prime Clerk LLC at <http://cases.primeclerk.com/gawker>. You may also obtain copies of any pleadings by visiting the Court's website at <http://www.nysb.uscourts.gov> in accordance with the procedures and fees set forth therein.

PLEASE TAKE FURTHER NOTICE that if no Objections to the Motion are timely filed and served in accordance with this notice, the Court may, following the Objection Deadline, enter the proposed order submitted by Goldberg, granting the Motion, with no further notice or opportunity to be heard.

PLEASE TAKE FURTHER NOTICE that the Hearing may be continued or adjourned from time to time without further notice other than an announcement of the adjourned date or dates at the hearing.

PLEASE TAKE FURTHER NOTICE that objecting parties are required to attend the Hearing and failure to appear may result in relief being granted or denied upon default.

Dated: August 21, 2017

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In re : Chapter 11
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Gawker Media LLC, *et al.*,¹ : Case No. 16-11700 (SMB)
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Debtors. : (Jointly Administered)
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**MOTION OF RYAN GOLDBERG (I) TO ENFORCE ORDER CONFIRMING
AMENDED JOINT CHAPTER 11 PLAN OF LIQUIDATION AND (II) TO BAR AND
ENJOIN CREDITORS FROM PROSECUTING THEIR STATE COURT ACTION**

Ryan Goldberg (“Goldberg”), a former independent contractor of Gawker Media LLC (“Gawker Media”), hereby submits this motion (the “Motion”) for entry of an order (i) enforcing the Amended Joint Chapter 11 Plan of Liquidation (the “Plan”) filed by Gawker Media Group, Inc., Gawker Media LLC and Gawker Hungary KFT (collectively, the “Debtors”) and (ii) barring and enjoining Pregame LLC, d/b/a Pregame.com (“Pregame”), and Randall James Busack, professionally known as RJ Bell (“Busack”; and collectively with Pregame, the “Plaintiffs”), from prosecuting claims asserted in a state court complaint against Goldberg,

¹ The last four digits of the taxpayer identification number of the debtors are: Gawker Media LLC (0492); Gawker Media Group, Inc. (3231); and Kinja Kft. (5056). Gawker Media LLC and Gawker Media Group, Inc.’s mailing addresses are c/o Opportune LLP, Attn: William D. Holden, Chief Restructuring Officer, 10 East 53rd Street, 33rd Floor, New York, NY 10020. Kinja Kft.’s mailing address is c/o Opportune LLP, Attn: William D. Holden, 10 East 53rd Street, 33rd Floor, New York, NY 10020.

Gizmodo Media Group, LLC (“GMG”) and certain unnamed Does 1-20 (collectively, the “Defendants”) because the Plan released, and enjoined any actions to assert, these claims.² In further support of this Motion, Goldberg states as follows:

I. PRELIMINARY STATEMENT

1. On June 22, 2017, Plaintiffs filed a lawsuit against the Defendants in the Supreme Court for the State of New York, in the County of New York. The state court complaint asserts claims for defamation, intentional interference with prospective economic advantage and tortious interference with contractual relations (the “Complaint”) arising out of an article authored by Goldberg. The article was posted on Deadspin.com on June 23, 2016, before the free and clear sale of assets to GMG and before confirmation of the Plan. Attached as Exhibit A is a true and correct copy of the Complaint.

2. The confirmed Plan released the claims that Plaintiffs asserted in the Complaint against Goldberg. In exchange for the releases in the Plan, Goldberg and other writers for the Debtors’ websites gave up their rights to indemnification for claims arising from work performed or content provided to the Debtors. This was an essential part of the resolution of the bankruptcy and plan process. Plaintiffs’ counsel, Charles Harder of the law firm of Harder Mirell & Abrams LLP (“Plaintiffs’ Counsel”), was intimately involved in the Plan confirmation process and Plaintiffs and Plaintiffs’ Counsel had actual notice that these claims were released and subject to the injunction provisions set forth in the Plan. Nevertheless, despite full knowledge that the Plan’s third-party release bars these claims and in violation of the Plan injunction, Plaintiffs filed suit in state court alleging claims that arose out of content posted to Deadspin.com before the free and clear sale of assets in these bankruptcy cases without any mention of the bankruptcy, the

² Capitalized terms not otherwise defined herein shall have the same meaning as ascribed to them in the Plan.

Plan, the releases, or the injunction. Additionally, notwithstanding notice of the Claims Bar Date (as defined below), Plaintiffs failed to file proofs of claim by the deadline in these cases. Had Plaintiffs filed timely claims their claims would have been adjudicated through the bankruptcy process and addressed through the Plan.

3. By this Motion, Goldberg seeks to enforce the Plan's release and injunction provisions and to require Plaintiffs to dismiss the disingenuously-filed state court lawsuit. Goldberg also respectfully requests that Plaintiffs be ordered to compensate him for the attorneys' fees and costs incurred in having to bring this Motion since the Complaint is the result of Plaintiffs' blatant disregard of the clear provisions of the Confirmation Order and the Plan.

II. JURISDICTION

4. This Court has jurisdiction over the matters raised in this Motion pursuant to 28 U.S.C. §§ 157(b) and 1334.

5. This Motion addresses matters concerning the administration of these bankruptcy proceedings and other proceedings affecting the liquidation of the Debtors' estates and therefore involves a core proceeding as set forth in 28 U.S.C. § 157(b)(2)(A) and (O).

III. FACTUAL AND PROCEDURAL BACKGROUND

6. On June 10, 2016 (the "Petition Date"), Gawker Media filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). On June 12, 2016, the other Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code.

7. Prior to the Petition Date, Gawker Media operated seven distinct media brands with corresponding websites under the names Gawker, Deadspin, Lifehacker, Gizmodo, Kotaku, Jalopnik and Jezebel (the "Websites") and employed approximately 195 employees and used

numerous independent contractors (the “U.S. Employees and Independent Contractors”). *See* Disclosure Statement for the Debtors’ Amended Joint Chapter 11 Plan of Liquidation for Gawker Media Group, Inc., Gawker Media LLC, and Gawker Hungary Kft. [D.I. 427], p. 9.

8. Goldberg, as well as the other U.S. Employees and Independent Contractors, by way of contract with the Debtors or through the Debtors’ long-standing practices and policies, had the right to indemnification against the Debtors and the Debtors’ bankruptcy estates on account of claims that arose from content provided or services performed.

A. Plaintiffs’ Claims and Actions in Debtors’ Bankruptcy Proceedings

9. On June 23, 2016, Goldberg authored an article (the “Article”) that was posted on Gawker Media’s Deadspin.com website. The Article explored the sports-betting industry, focusing particularly on the activities of Busack, a well-known sports-betting figure, and his company, Pregame.

10. On June 27, 2016, Plaintiffs’ Counsel sent a letter to Gawker Media that demanded the retraction of the Article. A copy of the June 27, 2016 demand letter is attached hereto as Exhibit B. Additionally, Busack published a copy of the June 27, 2016 demand letter via his Twitter page, publicly available on Twitter at: <https://twitter.com/rjinvegas/status/747527258168926212>.

11. On July 20, 2016, Gawker Media filed its Schedules of Assets and Liabilities for Non-Individual Debtors [D.I. 116]. On “Schedule E/F: Creditors Who Have Unsecured Claims,” Gawker Media identifies a claim for “Busack, Randall (aka RJ Bell)” in an “undetermined amount” for a “Threatened Litigation Claim” and categorizes the claim as contingent, unliquidated and disputed.

12. On August 11, 2016, the Bankruptcy Court entered an *Order (I) Establishing a Deadline to File Proofs of Claim, Certain Administrative Claims and Procedures Relating*

Thereto and (II) Approving the Form and Manner of Notice Thereof [D.I. 168] (the “Claims Bar Date Order”).

13. The Claims Bar Date Order required that any person or entity with a claim arising between the Petition Date and July 31, 2016 against any of the Debtors file a request for payment on or before September 29, 2016 (the “Claims Bar Date”). Claims Bar Date Order, ¶ 10. Unsecured claims arising after July 31, 2016, would be considered “General Unsecured Claims” under the Plan.

14. The Claims Bar Date Order warned that, pursuant to Bankruptcy Rule 3003(c)(2), holders of claims that failed to timely file a proof of claim or request for payment “shall be forever barred, estopped and enjoined from asserting such claim against the Debtors.” Claims Bar Date Order, ¶ 13.

15. On August 18, 2016, Gawker Media filed an Affidavit of Publication [D.I. 201], certifying that notice of the Claims Bar Date was published in the national edition of *USA Today* on August 17, 2016.

16. In addition, on August 22, 2016, Gawker Media filed an Affidavit of Service [D.I. 217], certifying that it served on all creditors, including Plaintiffs’ Counsel and Busack, notice of the Claims Bar Date, a Proof of Claim Form and the Administrative Claim Form (as those terms are defined in the Claims Bar Date Order). Affidavit of Service, Exhibits B, p. 30 and H, p. 1, respectively.

17. Notwithstanding Plaintiffs and Plaintiffs’ Counsel actual notice of the Claims Bar Date, Plaintiffs failed or chose not to file a proof of claim or request for payment.

B. Sale of Substantially all of the Debtors’ Assets

18. On August 18, 2016, following a sale process and auction, the Court held a hearing to consider approval of GMG’s bid for the purchase of substantially all of the Debtors’

assets free and clear of all liens, claims and encumbrances. Ultimately, GMG's bid was approved and on August 22, 2016, the Bankruptcy Court entered the *Order (I) Authorizing the Sale of Substantially All of the Debtors' Assets Free and Clear of All Claims, Liens, Rights, Interests and Encumbrances, (II) Approving and Authorizing the Debtors' Entry Into the Asset Purchase Agreement and (III) Authorizing the Debtors to Assume and Assign Certain Executory Contracts and Unexpired Leases* [D.I. 214] (the "Sale Order"). The acquired assets included Deadspin.com.

19. On September 9, 2016, the Debtors closed on the sale to GMG.

C. Approval of the Debtors' Disclosure Statement and Confirmation of the Debtors' Plan of Liquidation

20. On November 2, 2016, the Debtors filed their Disclosure Statement for the Debtors' Amended Joint Chapter 11 Plan of Liquidation [D.I. 403, Exhibit A] (the "Disclosure Statement"). The Disclosure Statement attached the Debtors' Plan.

21. On November, 4, 2016, the Court entered an *Order Approving (I) the Adequacy of the Disclosure Statement, (II) Solicitation and Notice Procedures with Respect to Confirmation of the Amended Joint Chapter 11 Plan of Liquidation for Gawker Media Group, Inc., Gawker Media LLC, and Gawker Hungary Kft., (III) the Form of Ballots and Notices in Connection Therewith, and (IV) the Scheduling of Certain Dates with Respect Thereto* (the "Disclosure Statement Adequacy Order") [D.I. 413].

22. On November 14, 2016, the Debtors' noticing agent filed an Affidavit of Service of Solicitation Materials [D.I. 446], in which the noticing agent certified that it served materials regarding the Debtors' Plan on parties in interest on November 7, 2016. On Exhibit V, at page 13 of 89, the noticing agent confirms that it sent to "Busack, R" a copy of the Notice of Entry of

the Disclosure Statement Adequacy Order (the “Confirmation Hearing Notice”). The Confirmation Hearing Notice is attached as Exhibit A to the Affidavit of Service.

23. The Confirmation Hearing Notice provided notice of the deadline for objecting to confirmation of the Plan and sets forth verbatim, in all capital letters and boldface, the Plan’s provisions regarding the third-party release and injunction. Affidavit of Service, Exhibit A (Confirmation Hearing Notice), pp. 4-6.

24. In addition, on November 14, 2016, the Debtors’ noticing agent filed an Affidavit of Publication [D.I. 440], in which the noticing agent certified that it published notice of the deadlines relating to the Plan and notice of the hearing on confirmation of the Plan in the national edition of *USA Today* on November 10, 2016.

25. On December 22, 2016, this Court entered its *Findings of Fact, Conclusions of Law, and Order Confirming Amended Joint Chapter 11 Plan of Liquidation for Gawker Media Group, Inc., Gawker Media LLC, and Gawker Hungary Kft.* [Docket No. 638] (the “Confirmation Order”).

26. On March 17, 2017, the Plan became effective. *Notice of (I) Entry of Order Confirming the Debtors’ Amended Joint Chapter 11 Plan of Liquidation for Gawker Media Group, Inc., Gawker Media LLC, and Gawker Hungary Kft. and (II) Occurrence of Effective Date* [D.I. 825].

D. Relevant Provisions of the Disclosure Statement, the Plan and the Confirmation Order

1. Third-party Releases of Released Employees and Independent Contractors and Injunction against Asserting such Claims

27. The Plan provides for certain releases in favor of Released Employees and Independent Contractors. The Plan provides:

“Released Employees and Independent Contractors” means each

current and former employee, writer, editor, and independent contractor that was employed by, or paid to contribute articles to, the Debtors, including, without limitation, current and former 1099 employees and current and former independent contractors, that filed a Proof of Claim in the Bankruptcy Cases.

Plan, p. 12.

28. The release, which appears in boldface and all capital letters, reads as follows:

THIRD-PARTY RELEASES OF RELEASED EMPLOYEES AND INDEPENDENT CONTRACTORS. ON THE EFFECTIVE DATE AND EFFECTIVE SIMULTANEOUSLY WITH THE EFFECTIVENESS OF THIS PLAN, FOR GOOD AND VALUABLE CONSIDERATION, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, EACH HOLDER OF A CLAIM OR EQUITY INTEREST THAT HAS RECEIVED OR IS DEEMED TO HAVE RECEIVED DISTRIBUTION(S) MADE UNDER THE PLAN SHALL BE DEEMED TO HAVE FOREVER RELEASED UNCONDITIONALLY EACH OF THE RELEASED EMPLOYEES AND INDEPENDENT CONTRACTORS FROM ANY AND ALL CLAIMS, OBLIGATIONS, SUITS, JUDGMENTS, DAMAGES, DEBTS, RIGHTS, REMEDIES, CAUSES OF ACTION, AND LIABILITIES, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, LIQUIDATED OR UNLIQUIDATED, MATURED OR UNMATURED, EXISTING OR HEREAFTER ARISING, IN LAW, EQUITY, OR OTHERWISE, THAT ARE OR MAY BE BASED IN WHOLE OR IN PART UPON ANY ACT, OMISSION, TRANSACTION, EVENT, OR OTHER OCCURRENCE TAKING PLACE OR EXISTING ON OR PRIOR TO THE SALE CLOSING DATE ARISING OUT OF OR RELATING TO SUCH RELEASED EMPLOYEES AND INDEPENDENT CONTRACTORS' WORK PERFORMED OR CONTENT PROVIDED ON BEHALF OF THE DEBTORS THAT ARE NOT THE RESULT OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT AS DETERMINED BY A FINAL ORDER, THAT ARE NOT PRESERVED BY ANY SETTLEMENTS BETWEEN A HOLDER OF A CLAIM AND ANY OF THE DEBTORS, AND FOR WHICH THE DEBTORS HAVE DEBTOR INDEMNIFICATION OBLIGATIONS, PROVIDED, HOWEVER, THAT THE FOREGOING THIRD-PARTY RELEASES WILL APPLY ONLY TO RELEASED EMPLOYEES AND INDEPENDENT CONTRACTORS WHO VOTE IN FAVOR OF THE PLAN, AND ONLY TO

THE EXTENT THAT EACH SUCH RELEASED EMPLOYEE AND INDEPENDENT CONTRACTOR WAIVES AND RELEASES ANY AND ALL OF ITS CLAIMS AGAINST THE DEBTORS FOR DEBTOR INDEMNIFICATION OBLIGATIONS, EXCEPT FOR ANY AMOUNTS ALREADY DUE AND OWING AS OF THE EFFECTIVE DATE.

Plan, § 9.05 (emphasis in original). The Plan defines “Debtor Indemnification Obligations” as “indemnification, contribution, reimbursement, advance of defense costs, duty to defend or other such obligations of the Debtors, arising out of (i) employment, severance or independent contractor agreements ..., (ii) the Debtors’ organizational documents or governing corporate documents, and (iii) the Debtors’ policies and practices.” Plan, p. 4.

29. To protect the integrity of the Plan and to protect the Released Employees and Independent Contractors, the Plan enjoins the assertion or prosecution of claims:

INJUNCTION AGAINST INTERFERENCE WITH PLAN. UPON THE ENTRY OF THE CONFIRMATION ORDER, EXCEPT AS EXPRESSLY PROVIDED IN THE PLAN, THE CONFIRMATION ORDER, OR A SEPARATE ORDER OF THE BANKRUPTCY COURT, ALL PERSONS AND ENTITIES WHO HAVE HELD, HOLD OR MAY HOLD CLAIMS AGAINST OR EQUITY INTERESTS IN ANY OR ALL OF THE DEBTORS OR RELEASED EMPLOYEES AND INDEPENDENT CONTRACTORS (WHETHER PROOF OF SUCH CLAIMS OR EQUITY INTERESTS HAS BEEN FILED OR NOT), ALONG WITH THEIR RESPECTIVE PRESENT OR FORMER EMPLOYEES, PRESENT OR FORMER INDEPENDENT CONTRACTORS, PRESENT OR FORMER CONTENT PROVIDERS, PRESENT OR FORMER WRITERS, AGENTS, OFFICERS, DIRECTORS OR PRINCIPALS ARE PERMANENTLY ENJOINED, ON AND AFTER THE EFFECTIVE DATE, FROM (I) COMMENCING, CONDUCTING, OR CONTINUING IN ANY MANNER, DIRECTLY OR INDIRECTLY, ANY SUIT, ACTION, OR OTHER PROCEEDING OF ANY KIND (INCLUDING, WITHOUT LIMITATION, ANY PROCEEDING IN A JUDICIAL, ARBITRAL, ADMINISTRATIVE OR OTHER FORUM) AGAINST OR AFFECTING (A) PROPERTY OF ANY OF THE DEBTORS BEING DISTRIBUTED UNDER THE PLAN

AND (B) THE RELEASED EMPLOYEES AND INDEPENDENT CONTRACTORS OR THE PROPERTY OF ANY OF THE RELEASED EMPLOYEES AND INDEPENDENT CONTRACTORS, TO THE EXTENT SUCH PROCEEDINGS AGAINST THE RELEASED EMPLOYEES AND INDEPENDENT CONTRACTORS ARE RELEASED PURSUANT TO SECTION 9.05 OF THE PLAN, ... (V) ACTING OR PROCEEDING IN ANY MANNER, IN ANY PLACE WHATSOEVER, THAT DOES NOT CONFORM TO OR COMPLY WITH THE PROVISIONS OF THE PLAN, AND (VI) TAKING ANY ACTIONS TO INTERFERE WITH THE IMPLEMENTATION OR CONSUMMATION OF THE PLAN; PROVIDED, HOWEVER, THAT (X) THE FOREGOING INJUNCTION SHALL NOT APPLY TO ACTIONS OR OMISSIONS THAT OCCUR AFTER THE SALE CLOSING DATE AND (Y) THE BANKRUPTCY COURT MAY PROVIDE RELIEF FROM THE FOREGOING INJUNCTION WITH RESPECT TO CLAIMS, OBLIGATIONS, SUITS, JUDGMENTS, DAMAGES, DEBTS, RIGHTS, REMEDIES, CAUSES OF ACTION, AND LIABILITIES NOT OTHERWISE RELEASED UNDER SECTIONS 9.03 AND 9.05 OF THIS PLAN.

Plan, § 9.02 (emphasis in original).

30. The third-party releases, the injunction and the other Plan provisions bind any holder of a Claim against the Debtors regardless of whether the Claim is allowed or whether the holder has accepted the Plan. *See* Plan, § 4.12 (confirming binding effect of Plan); Plan, p. 3 (defining Claim as any “claim”, as defined in Section 101(5) of the Bankruptcy Code, which has not yet been disallowed by an order of the Bankruptcy Court).

31. In support of confirmation of the Plan, more than 60 writers joined in submitting a response describing the significant ongoing exposure they faced to potential liability arising from services performed or content provided at the request and direction of the Debtors, without the protection of indemnification from an ongoing operation or adequate reserve. *See* Certain Writers’ Response in Support of Confirmation of the Amended Chapter 11 Plan, or in the Alternative, Limited Objection and Reservation of Rights [D.I. 546] (the “Writers’ Response”).

The writers needed the third-party releases and injunction to protect themselves from personal exposure after confirmation of the Plan. As the individuals who provided Website content, their work contributed to the value reflected in the sale price for the Debtors' assets that funded the Plan.

32. At the hearing on confirmation of the Plan, counsel for the Debtors highlighted the critical need for the third-party releases and injunction and argued for the "greatest protection" possible for the writers, editors and others who contributed to the Websites' content:

We believe that anybody who would be bringing such action should have brought an action or claim in the bankruptcy, knowing that Gawker was in bankruptcy and therefore, Gawker could have dealt with those claims in bankruptcy. And we believe that anybody that would simply go against the writer knowing them -- going against a writer as a Gawker writer -- would only be doing so whether it was for a malicious intent or other intent, because knowing that they do not have substantial assets. And the only assets that they have would be the indemnification claims that they would have against the debtor and not having the resources to defend, we believe that those third party releases under these circumstances for both pre and post-petition articles written on behalf of the debtors are appropriate in these circumstances.

Transcript of Confirmation Hearing [D.I. 628], pp. 72 and 74. A copy of the Transcript of the Confirmation Hearing is attached hereto as Exhibit C.

33. The Confirmation Order states that the Court had jurisdiction under Sections 1334(a) and (b) of Title 28 of the United States Code to approve the third-party releases and injunction and that it was permitted to approve the third-party releases and issue the injunction under Sections 105(a) and 1123(b) of the Bankruptcy Code. Confirmation Order, ¶ 19.

34. Additionally, the Confirmation Order provides as follows:

The Court has jurisdiction to consider the third-party releases described in section 9.05 of the Plan (the "Third-Party Releases"). The Claims and Causes of Action covered by the Third-Party Releases are based on conduct for which a Debtor might be liable for Debtor Indemnification Obligations. Employees and

Independent Contractors have filed Claims against the Debtors for Debtor Indemnification Obligations for potential and threatened litigation.

The Third-Party Releases are given and made after due notice and opportunity for hearing. The Third-Party Releases were conspicuously set off in bold font in the Disclosure Statement, the Plan, the Confirmation Hearing Notice, and the Publication Notice.

The Third-Party Releases are necessary based on the unique circumstances here, are an integral and necessary part of the Plan, and represent a valid exercise of the Debtors' business judgment. As the Court found on the record at the Confirmation Hearing, the Third-Party Releases are in the best interests of the Debtors, the Debtors' estates and all holders of Claims and Equity Interests. Additionally, the Third-Party Releases are fair, equitable, and reasonable. The Third-Party Releases are narrowly tailored.

The Third-Party Releases are given in exchange for good and valuable consideration provided by the Released Employees and Independent Contractors. The Released Employees and Independent Contractors have voted in favor of the Plan and are waiving and releasing all claims against the Debtors for Debtor Indemnification Obligations, unless otherwise agreed to by the Debtors or their insurance carriers. Each holder of a Claim or Equity Interest that has received or is deemed to have received distributions made under the Plan in turn benefits from an immediate distribution. Absent the Third-Party Releases in favor of the Released Employees and Independent Contractors, the Debtors might have been required to set aside additional reserves in respect of Debtor Indemnification Obligations, the Plan Settlements may not have been agreed to, and are therefore important to the Plan. Furthermore, the Debtors would be subject to substantial Claims for Debtor Indemnification Obligations in respect of claims or causes of action brought against the Released Employees and Independent Contractors.

Confirmation Order, ¶¶ 21-24.

35. With regard to the injunction precluding assertion of claims (defined by the Court as the "Plan Interference Injunction" and included in the broader term "Injunction Provisions"), the Confirmation Order provides:

The [Injunction Provisions] ... (a) are an essential means of implementing the Plan pursuant to section 1123(a)(5) of the

Bankruptcy Code; (b) are an integral element of the transactions incorporated into the Plan; (c) confer material benefits on, and are in the best interests of, the Debtors, the Debtor’s estates, and their creditors; and (d) are important to the overall objectives of the Plan. ... The Plan Interference Injunction is necessary to preserve and enforce the terms of the Plan. The Injunction Provisions are a key component of the efficient liquidation of the Debtors’ estates and prevent the potential for collateral attack of the Plan’s terms.

The Injunction Provisions were conspicuously set off in bold font in the Disclosure Statement, the Plan, the Confirmation Hearing Notice, and the Publication Notice.

The Injunction Provisions are narrowly tailored to achieve their purpose. ... The Plan Interference Injunction (a) is limited to conduct arising before the Effective Date and (b) may be lifted after a party obtains relief from the Bankruptcy Court.

Confirmation Order, ¶¶ 27-29.

2. Retention of Jurisdiction by Bankruptcy Court

36. Section 8.01 of the Plan provides that the Bankruptcy Court retained exclusive jurisdiction of the Debtor’s post-confirmation bankruptcy proceedings, including for the following purposes:

(d) to determine any and all controversies and disputes arising under or in connection with the Plan, the settlements contemplated under the Plan, and such other matters as may be provided for in the Confirmation Order;

* * *

(h) to issue orders in aid of execution of the Plan, to the extent authorized by section 1142 of the Bankruptcy Code;

* * *

(j) to hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan and any related documents;

* * *

(l) to hear and determine any request for relief from the injunction provided for under section 9.02 of the Plan;

* * *

(o) to enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Plan and all ... releases . . . in connection with the Plan, the Disclosure Statement or the Confirmation Order . . . ; [and]

(p) to make such determinations and enter such orders as may be necessary to effectuate all the terms and conditions of this Plan
.....

Plan, § 8.01.

E. Plaintiffs' Lack of Action in the Bankruptcy Proceedings

37. As noted above, Busack was listed as a creditor on the Debtors' Schedules, received notice of the Claims Bar Date, received notice that his claim was disputed and received notice of the confirmation hearing.

38. Moreover, Plaintiffs' Counsel appeared and was active throughout the Debtors' bankruptcy proceedings. Among other things,

- Plaintiffs' Counsel represented Terry Bollea a/k/a Hulk Hogan, whose judgment was the single biggest precipitating factor for the Debtors' bankruptcy filings. *See* Disclosure Statement, pp. 14-15.
- Plaintiffs' Counsel also represented members of the Official Committee of Unsecured Creditors in these proceedings.
- The Plan Settlements, which form the foundation for the Plan, included settlements with creditors represented by Plaintiffs' Counsel. Disclosure Statement, pp. 23 and 28-30.
- The Debtors sought to conduct discovery of Plaintiffs' Counsel in connection with the Plan, and Plaintiffs' Counsel opposed the Debtors' efforts [D.I. 341]. Objection to Motion of the Debtors for Leave Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure to Conduct Discovery Concerning Potential Plan Issues and Potential Causes of Action and to Establish Discovery Response and Dispute Procedures [D.I. 869].

39. By virtue of this extensive involvement in these proceedings and receipt of all applicable notices, Plaintiffs and Plaintiffs' Counsel had actual knowledge of the Claims Bar

Date and the confirmation proceedings. Despite this knowledge, Plaintiffs did not: (i) file a proof of claim to preserve any claims they may have had against the Debtors and any non-Debtor individual defendants, (ii) object to confirmation of the Plan or challenge the legality or scope of the third-party release and injunction provisions; (iii) appeal the Confirmation Order or the Sale Order; or (iv) object to the Bankruptcy Court's retention of jurisdiction to implement and enforce the Plan and the claims now asserted by Plaintiffs in the state court proceeding.

40. In fact, this very issue – the applicability of the third-party release on creditors that did not file a claim in the bankruptcy proceedings and the importance of the release of those claims to the writers – was specifically discussed at the December 2016 confirmation hearing:

THE COURT: Let me ask you a question. Are there any creditors who have not filed a claim, did not vote and have not settled, to your knowledge?

MR. GALARDI: That did not file a claim, that did not vote and --

THE COURT: Did not settle.

MR. GALARDI: Well, Your Honor, yes, in the following way and I want to be clear. As I mentioned and Mr. [Harder] mentioned, maybe I'm not getting it right, but I hate to use the President-elect's name, but we have received from one of -- from a law firm, you wrote an article about the President-elect, now that claim never got filed in this case. One of the reasons we're concerned about that is because the statute of limitations on that article has not run.

THE COURT: Okay.

MR. GALARDI: So that's the kind of creditor why we wanted the third-party release.

See Transcript of Confirmation Hearing, pp. 82-83.

F. Plaintiffs' State Court Lawsuit

41. On June 22, 2017 – six months after entry of the Confirmation Order that released all claims against Goldberg and the other Released Employees and Independent Contractors existing prior to September 9, 2016 and arising out of their work performed or content provided

for the Debtors' Websites – Plaintiffs filed the Complaint against the Defendants in the Supreme Court for the State of New York, County of New York.³

42. The Complaint is based on Plaintiffs' allegation that the Defendants published false and defamatory statements about Plaintiffs on June 23, 2016. Complaint, ¶¶ 2 and 17-20. Thus, the alleged tortious conduct occurred before entry of the Sale Order and the closing of the sale of assets to GMG.

43. Plaintiffs claim damages in excess of \$10 million, seek compensatory and punitive damages in an amount to be determined at trial, seek an injunction prohibiting the Defendants from publishing or re-publishing the alleged defamatory statements and seek a jury trial on the Complaint. Complaint ¶¶ 49-50, 56-57, 63-64, Prayer for Relief and Jury Trial Demand.

IV. LEGAL ARGUMENT

A. The Court had Jurisdiction to Approve the Third-party Releases and Injunction, and Approval of the Releases and Injunction was Appropriate

44. As set forth in the Confirmation Order, this Court had the authority to approve the third-party releases and injunction, and such approval of the third-party releases and injunction was appropriate. Confirmation Order, ¶ 19.

45. The Second Circuit has recognized the appropriateness of third-party releases in limited circumstances. *See Deutsche Bank AG v. Metromedia Fiber Network, Inc. (In re Metromedia Fiber Network, Inc.)*, 416 F.3d 136, 141 (2d Cir. 2005) (affirming confirmation of plan with third-party releases because bankruptcy court concluded that releases were important element of plan). Non-debtor releases and exculpations “are permissible under some

³ It is unclear who is included as Does 1-20, but presumably some, if not all, of Does 1-20 are also Released Employees and Independent Contractors.

circumstances, but not as a routine matter.” *In re Adelphia Commc’ns. Corp.*, 368 B.R. 140, 267 (Bankr. S.D.N.Y. 2007). Consistent with applicable Second Circuit case law, the Confirmation Order set forth specific findings that (i) unique circumstances existed to approve the Plan’s third-party releases and (ii) the Injunction Provisions “are an essential means of implementing the Plan” Confirmation Order, ¶¶ 23 and 27.

46. Indeed, Goldberg and the other Released Employees and Independent Contractors were the parties most vulnerable to liability for having done exactly what the Debtors asked of them – provide content. It was this very content, provided by Goldberg and the other Released Employees and Independent Contractors, that gave rise to the Debtors’ value, which in turn resulted in the sale that funded the Plan. These facts, combined with the Released Employees and Independent Contractors’ waiver of their Debtor Indemnification Obligations claims, created the unique circumstances that gave rise to the Court’s approval of the third-party releases.

47. The Confirmation Order has not been challenged or appealed, and the third-party release and injunction provisions of the Plan remain in full force and effect and, as demonstrated below, apply to the claims asserted in the Complaint.

48. Most, if not all, of the claims that were asserted against the Debtors in these proceedings were claims similar to the ones asserted in the Complaint, *i.e.*, claims for defamation and related torts based on content posted on the Websites and creating indemnification or contribution claims against the Debtors’ estates.⁴

49. Parties in interest – including Plaintiffs – had due notice of the releases and injunction and the opportunity to be heard. In fact, the third-party releases and injunction were set forth in bold font and all capital letters in the Disclosure Statement, the Plan, the

⁴ Goldberg expressly reserves the right to move to dismiss the Complaint, which Goldberg believes is insufficient, and file any other appropriate motions at a later time if necessary.

Confirmation Hearing Notice and the publication notice. Confirmation Order, ¶ 22. Plaintiffs' Counsel was also aware of the Plan terms and consequences as he was an active participant throughout these proceedings.

50. Each Released Employee and Independent Contractor, including Goldberg, provided good and valuable consideration for the releases by voting in favor of the Plan and by waiving all claims against the Debtors for Debtor Indemnification Obligations. Without the waivers, the Debtors would have been subject to substantial claims for Debtor Indemnification Obligations for claims or causes of action brought against Released Employees and Independent Contractors. Confirmation Order, ¶ 24. Goldberg and the other Released Employees and Independent Contractors relied on the releases and injunction in waiving their claims against the Debtors.

B. The Claims Asserted in the Complaint were Released Under the Plan

51. The Complaint asserts claims against Goldberg for defamation, intentional interference with prospective economic advantage and tortious interference with contractual relations and alleges compensatory and punitive damages in excess of \$10 million. These are exactly the types of claims sought to be released and enjoined in the Plan, and Goldberg is exactly the type of person intended to be protected by the release. When the release set forth in Section 9.05 of the Plan is broken down into individual components, it is abundantly clear that the release applies to the claims asserted in the Complaint.

52. First, the third-party release became effective on the Plan's effective date, which occurred on March 17, 2017.

53. Second, Plaintiffs are holders of "Claims" against the Debtors. This is true even though Plaintiffs elected to assert the claims against Goldberg, a released party, and GMG, the

purchaser of the Debtors' assets. The claims arose from Gawker Media publishing the Article on Deadspin.com and therefore are "Claims" against the Debtors.

54. The release applies to any holder of a Claim who "has received or is deemed to have received distribution(s) made under the Plan." Plan, § 9.05. Here, Plaintiffs and Plaintiffs' Counsel had actual notice of the Claims Bar Date and confirmation hearing proceedings. They also had the opportunity to file their proofs of claim and prosecute their claims against the Debtors. Therefore, Plaintiffs are deemed to have received a distribution under the Plan and are now bound by the terms of the release. To conclude otherwise would render the "deemed to have received" language meaningless. Plaintiffs cannot and should not be allowed to hide behind their failure to file a claim in these bankruptcy proceedings to make an end run around the release and injunction provisions set forth in the Plan, the express terms of the Confirmation Order, and this Court's jurisdiction to implement and enforce the terms of the Plan and Confirmation Order. As stated above, the Court considered this very scenario – the existence of creditors who did not file claims – at the December 13, 2016 confirmation hearing, *see* ¶ 40 above, before it approved the Plan's release and injunction provisions. Notwithstanding their active participation in these cases – including a demand letter sent to Gawker Media during the pendency of these bankruptcy proceedings – and their receipt of notice of critical deadlines, Plaintiffs failed to file a claim or request payment in these proceedings, or otherwise object to the release. As stated by Debtors' counsel at the Confirmation Hearing, this "kind of creditor [is] why we wanted the third-party release." *See* Transcript of Confirmation Hearing, p. 83.

55. The third-party release and injunction were critical to the implementation of the Plan, confirmation of which inured to the benefit of all creditors with valid and enforceable Claims. Plaintiffs cannot excuse themselves from enforcement of the release simply because

they elected not to participate in a distribution under the Plan. If their claims had any merit, Plaintiffs could have and should have filed a proof of claim or otherwise asserted claims in the bankruptcy proceedings. Plaintiffs cannot just “lie in wait” to pursue an independent contractor who provided content to the Debtors after the fact.

56. Third, Plaintiffs’ claims fall within the scope of the release. As set forth in the Plan, a “Claim” is any claim against any of the Debtors as defined in Section 101(5) of the Bankruptcy Code which has not yet been disallowed by an order of the Bankruptcy Court or for which an order of disallowance of the Bankruptcy Court has been reversed on appeal by a Final Order of an appellate court. Plan, p. 3. At the time of confirmation, when the release was granted, Plaintiffs’ Claim had not been disallowed by an order of this Court.

57. The release broadly describes the released claims as all claims and causes of action based in any way on an act or event taking place before September 9, 2016. Plaintiffs’ claims arose months earlier, as the Article was published on June 23, 2016. As Plaintiffs’ claims against Goldberg arise out of content provided to the Debtors, Goldberg (prior to waiving and releasing the Debtor Indemnification Obligations) had Debtor Indemnification Obligation claims against the Debtors. *See* Plan, p. 4 (defining Debtor Indemnification Obligations).

58. Fourth, Goldberg is a released party. The release is designed to protect current and former writers like Goldberg who (1) provided content for the Debtors’ Websites, (2) had claims asserted against them for that content, and (3) therefore, had a claim against Debtor for Debtor Indemnification Obligations. *See* Plan, pp. 4 and 12 (defining Debtor Indemnification Obligations and Released Employees and Independent Contractors). Goldberg wrote the Article that forms the basis of Plaintiffs’ claims and therefore he falls squarely within the definition of Released Employees and Independent Contractors. Goldberg voted in favor of the Plan and

waived any and all of his claims against the Debtors for Debtor Indemnification Obligations in exchange for the third-party release. The release and injunction provisions were thus part of the bargained-for exchange in connection with Goldberg's waiver of his Claims against the Debtors.

59. Here, the releases were "given in exchange for good and valuable consideration provided by the Released Employees and Independent Contractors" because they "voted in favor of the Plan and are waiving and releasing all claims against the Debtors for Debtor Indemnification Obligations, unless otherwise agreed to by the Debtors or their insurance carriers." Confirmation Order, ¶ 24. If Goldberg and the other Released Employees and Independent Contractors had not waived their claims, the Debtors would have been required to set aside additional reserves to address Debtor Indemnification Obligations. With an increased reserve in place, the Plan Settlements which are the foundation on which the Plan is premised, may not have been reached and the Debtors' Plan for an orderly liquidation may not have been confirmed.

60. Fifth, the holder of a released Claim is deemed to have forever released Goldberg and the other Released Employees and Independent Contractors. The release is unconditional and irrevocable.

61. The facts of this case are similar to those in *In re Philadelphia Newspapers, LLC*, another media-related bankruptcy proceeding. In *In re Philadelphia Newspapers, LLC*, the United States Bankruptcy Court for the Eastern District of Pennsylvania enforced third-party releases approved in a plan of liquidation and barred defamation claims brought by third parties against reporters of the debtors. See *In re Philadelphia Newspapers, LLC*, 450 B.R. 99 (Bankr. E.D. Pa. 2011).

62. In *Philadelphia Newspapers*, third parties sought to pursue claims against writers of articles that were published post-bankruptcy, but prior to confirmation of the debtors' plan of liquidation. Similar to the third-party release and injunction provisions of the Plan in these proceedings, the confirmed plan in *Philadelphia Newspapers* released claims and enjoined parties from bringing post-confirmation claims arising out of articles written before the effective date against the writers of those articles. *In re Philadelphia Newspapers, LLC*, 450 B.R. at 101, 104-05.

63. Like the Plaintiffs in these proceedings, the plaintiffs in *Philadelphia Newspapers* failed to act in any way to preserve their claims. As a result, the *Philadelphia Newspapers* bankruptcy court held that the releases in the plan were valid and ordered the plaintiffs to dismiss their state court defamation claims with prejudice. Additionally, the *Philadelphia Newspapers* bankruptcy court found that the plaintiffs had constructive notice of the plan and releases and should have acted sooner to protect their claims. *See id.* at 103 (“Both Glunk and Brodie, then, had at least constructive notice of the bankruptcy case. They could and should have acted sooner to protect their interests. Their failure to have done so cannot be attributed to a lack of due process.”).

64. Unlike the case in *Philadelphia Newspapers*, where the bankruptcy court upheld third-party releases against claims asserted by individuals who received constructive notice of the plan, here Plaintiffs had actual notice of the Claims Bar Date, the Plan, the Confirmation Order, the third-party releases and injunction, and still did nothing to protect their interests.

65. The claims asserted by Plaintiffs in the Complaint are exactly the types of claims the Debtors sought to release in Section 9.05 of the Plan, and the Confirmation Order specifically found that the third-party releases in the Plan were “necessary based on the unique circumstances

here, [] an integral and necessary part of the Plan, and represent a valid exercise of the Debtors' business judgment." Confirmation Order, ¶ 23.

66. While Goldberg is requesting that the Court enforce the Plan's release and injunction provisions, it should also be noted that the Complaint is fatally flawed as it fails to include an indispensable party. Debtor Gawker Media is a necessary party to any resolution of the claims set forth in the Complaint, and these claims were not filed against Gawker Media prior to the Claims Bar Date. Debtor Gawker Media was the operator of Deadspin.com at the time the Article was published and was deeply involved in the Article's reporting, editing and publication. *See* Claims Bar Date Order (establishing the deadline to file claims and administrative claims as September 29, 2016). *See also Jackson v. Fenway Partners, LLC (In re Coach Am Group Holdings Corp.)*, Case No. 12-10010 (KG), Adv. Proc. No. 13-51197 (KG) (Bankr. D. Del. Oct. 23, 2013) (dismissing a complaint filed against a non-debtor for failure to join certain debtors, whose alleged unlawful actions were the subject of the adversary proceeding, as necessary and indispensable parties following the passing of the claims bar date).

67. Based on the foregoing, Plaintiffs' claims are barred by the Plan's third-party release and injunction.

C. **The First Amendment and Equity Support a Finding that the Claims are Released**

68. The constitutional mandates of the First Amendment, free speech and a free press, provide further support for enforcing the release and injunction to protect Goldberg, a freelance writer and a former independent contractor of the Debtors, for claims arising out of content solicited, and posted, by Gawker Media. As set forth in the Amicus Brief filed by the Society of Professional Journalists, the Reporters Committee for Freedom of the Press, and 19 other media organizations (the "Amicus Brief") [D.I. 547, Exhibit A] in support of granting the third-party

releases, suits against the media inherently implicate the First Amendment because they contravene “the profound national commitment to the principle that debate on public issues should be uninhibited, robust and wide-open.” *New York Times v. Sullivan*, 376 U.S. 254, 270 (1964). Additionally, the Amicus Brief articulates that indemnification provisions between journalists and their employers serve to mitigate the potential chilling effect when journalists – often without independent insurance or sufficient financial resources – seek to report on issues of public importance that may also bring the risk of a defamation suit. “As a practical matter, without the promise of indemnification, even the threat of a baseless libel action may suffice to kill a reporter’s pursuit of a story or place an entire topic out of bounds, rendering the First Amendment’s protection of the freedom of the press a dead letter in every way that counts.” Amicus Brief, at 7. Allowing the Complaint to proceed will cause irreversible harm and lead to a “chilling effect that inexorably produces a silence born of fear” when journalists, like Goldberg, face highly uncertain and potentially crippling personal liability. *See Thomas v. Bd. of Educ.*, 607 F.2d 1043, 1047 (2d Cir. 1979). Goldberg and the other Released Employees and Independent Contractors only waived their rights to indemnification in reliance on the release from potential personal liability for the work they had performed for the Debtors. The Plan’s release provision is specifically designed to respect the First Amendment and protect the Released Employees and Independent Contractors from potential liability arising out of content provided to the Debtors.

69. Equity also demands that the release be upheld. Goldberg is the type of journalist that the Plan release was and is designed to protect. When Goldberg wrote the Article for the Debtors, he was protected by the Debtors’ obligation to indemnify him. After the Article was posted, Goldberg had no way to change the Article or otherwise exert any control over the

Article. Now, the Plan has wiped clean any obligation Debtors had to Plaintiffs. For this Court to hold that the third-party release that Goldberg received in exchange for waiving his claims for Debtor Indemnification Obligations does not apply to Plaintiffs' claims would put the entire onus of defending the Complaint on Goldberg.⁵ It would be inequitable for Goldberg to bear the burden of defending the defamation and other claims when any allegedly harmful impact (which Goldberg strongly denies exist) may have been created or heightened by Debtors. The only reason for Plaintiffs to sue Goldberg is harassment.

D. The Claims Asserted in the Complaint are Barred by the Plan's Injunction

70. Similarly, the claims asserted in the Complaint fall within the scope of the injunction set forth in Section 9.02 of the Plan.

71. First, the injunction took effect immediately upon entry of the Confirmation Order.

72. Second, the injunction applies to the claims asserted in the Complaint, because Plaintiffs held Claims against the Debtors and Goldberg, one of the Released Employees and Independent Contractors. The injunction provision confirms that it applies to Plaintiffs "whether proof of such Claims ... has been filed or not." Plan, § 9.02.

73. Third, the injunction is permanent, unconditional and irrevocable.

74. The injunction precludes Plaintiffs from filing the Complaint, commencing the action against Goldberg (and Does 1-20 to the extent they are Released Employees and Independent Contractors), proceeding in a manner inconsistent with the Plan and taking any action that interferes with the implementation or consummation of the Plan.

⁵ The cost of this Motion is significant. As set forth above, Plaintiffs should be required to compensate Goldberg for the attorneys' fees incurred in having to bring this Motion before this Court. Plaintiffs were well aware that the state court suit was barred by the third-party release and injunction provisions at the time they filed their Complaint.

E. The Writers, the Debtors and the Court Clearly Intended that the Third-party Release and Injunction Apply to Individuals Like Goldberg

75. In the Writers' Response, Goldberg and other Released Employees and Independent Contractors advocated for the third-party release and injunction in exchange for the waiver of their Claims against the Debtors because of the significant potential liability they would face if sued over the services performed or content provided at the request and direction of the Debtors.

76. The Debtors recognized the contributions of Goldberg and the Released Employees and Independent Contractors and the value to the Debtors' estates from waiver of the Debtor Indemnification Obligations. In support of confirmation, Debtors' counsel highlighted the critical need for the third-party releases and injunction and argued vigorously in support of the releases and injunction. *See* Transcript of Confirmation Hearing, pp. 69-75.

77. As discussed above, the Confirmation Order found that the releases are "an integral and necessary part of the Plan" and are in the best interests of the Debtors, the Debtors' estates and all holders of Claims. Confirmation Order, ¶ 23.

F. Plaintiffs' Complaint is Barred by the Doctrine of Res Judicata

78. The Complaint and Plaintiffs' claims are also barred by the doctrine of *res judicata*. The doctrine of *res judicata* bars litigation if an earlier decision was "(i) a final judgment on the merits, (ii) by a court of competent jurisdiction, (iii) in a case involving the same parties or their privies, and (iv) involving the same cause of action." *Jackman v. Tese-Milner (In re Aiolova)*, 496 B.R. 123, 130 (Bankr. S.D.N.Y. 2013) (*quoting EDP Med. Computer Sys., Inc. v. United States*, 480 F.3d 621, 624 (2d Cir. 2007)); *see also Sure-Snap Corp. v. State St. Bank & Trust Co.*, 948 F.2d 869, 873 (2d Cir. 1991) (finding that a confirmation plan binds

“its debtors and creditors as to all the plan’s provisions, and all related, property or non-property based claims which could have been litigated in the same cause of action”).

79. Here, the first element is satisfied because the Confirmation Order is a final judgment on the merits. *See In re Residential Capital, LLC*, 508 B.R. 838, 846 (Bankr. S.D.N.Y. 2014) (“Confirmation of a plan operates as a final judgment for *res judicata* purposes.”); *In re Indesco Int’l, Inc.*, 354 B.R. 660, 665 (Bankr. S.D.N.Y. 2006) (“[T]he confirmation order constitutes a final judgment on the merits with *res judicata* effect”).

80. The second element is also met because the Confirmation Order was issued by a court of competent jurisdiction. *See, e.g., EDP Med. Computer Sys.*, 480 F.3d at 624 (explaining that *res judicata* “applies with full force to matters decided by the bankruptcy courts”); *see also Corbett v. MacDonald Moving Servs., Inc.*, 124 F.3d 82, 89 (2d Cir. 1997) (“[T]he bankruptcy court [is] competent to confirm a plan of reorganization[.]”).

81. The third element of *res judicata* is satisfied as well. Plaintiffs, as creditors, received notice of the confirmation proceedings and had the opportunity to be heard. Thus, the privity requirement is met even though Plaintiffs did not object to confirmation of the Plan. *See, e.g., Aiolova*, 496 B.R. at 131 (“In the bankruptcy context, all creditors of a debtor have the opportunity to be heard in proceedings within that debtor’s case. As such, for *res judicata* purposes, a creditor is a party in interest to orders entered in the administration of the bankruptcy proceeding, even if the creditor fails to object or participate in a matter.”); *see also Nicholas v. Oren (In re Nicholas)*, 457 B.R. 202, 218-19 (Bankr. E.D.N.Y. 2011) (“When considering the third element of *res judicata*, courts look to whether ‘the party against whom claim preclusion is sought has, in essence, already received his or her day in court, and the application of *res judicata* would not alter this conclusion.’” (quoting *Pharr v. Evergreen Garden, Inc.*, 123 Fed.

App'x 420, 424 (2d Cir. 2005)); *In re Henderberg*, 108 B.R. at 411 (“[T]he Order of Confirmation adopting the terms of the Plan is a final judgment for purposes of *res judicata* on all matters relevant to the confirmation, whether raised or not”); *In re Arcapita Bank B.S.C.(c)*, 520 B.R. at 21 (“If a party had adequate information about prospective claims prior to the commencement of a bankruptcy proceeding, that is evidence it could have brought the action in the first instance.”).

82. The fourth element is satisfied as Plaintiffs’ claims involve the same cause of action. “Two proceedings contain the same cause of action where the same transaction, evidence, and factual issues are involved in both cases.” *Aioloa*, 496 B.R. at 131; *see also Sure-Snap Corp.*, 948 F.2d at 875 (“[T]he same cause of action includes, for *res judicata* purposes, ‘all the remedial rights of the plaintiff against the defendant growing out of the relevant transaction’[.]”).

83. The Complaint asserts claims that Plaintiffs could have raised, and should have raised, by filing a proof of claim and/or objecting to confirmation of the Plan. *See Aioloa*, 496 B.R. at 132 *quoting Hendrick v. Avent*, 891 F.2d 583, 587 (5th Cir. 1993) (“[T]he proper medium for a challenge to the original bankruptcy court’s order is through a direct challenge of that order. The collateral attacks brought later are barred by *res judicata*.”).

84. For whatever reason, Plaintiffs did not file a proof of claim, object to confirmation of the Plan, or challenge the Plan’s release and injunction provisions. Regardless of the reason – whether Plaintiffs slept on their rights, schemed to attempt to circumvent the Court’s jurisdiction as set forth in the Plan and Confirmation Order, sought to deceive a state court that does not have knowledge of these complex proceedings or simply chose to brazenly ignore the clear terms and import of the Plan’s release and injunction – the doctrine of *res*

judicata precludes Plaintiffs from now asserting the claims in the Complaint. The claims were released under the Plan, and Plaintiffs are enjoined from asserting them now.

G. This Court Should Enforce the Releases and Injunction in the Plan

85. Plaintiffs did not, at any time during the Debtors' bankruptcy proceedings, object to confirmation of the Plan or object to the third-party release or the injunction provisions of the Plan. Plaintiffs attempt to circumvent the terms of the Confirmation Order and the jurisdiction conferred on this Court by the Bankruptcy Code, the Plan and the Confirmation Order by filing the Complaint in New York state court and asserting released claims against Goldberg (and to the extent they are Released Employees and Independent Contractors, Does 1-20) in violation of the Plan.

86. Through the Plan and Confirmation Order, the Bankruptcy Court retained exclusive jurisdiction of the Debtors' post-confirmation bankruptcy proceedings, including all disputes in connection with the Plan, execution and implementation of the Plan, interpretation and enforcement of the Plan and any request for relief from the Plan Interference Injunction. Plan, § 8.01.

87. This Court – which approved the releases and injunction – not only has the authority to enforce the releases and injunction, but is also the most appropriate forum to rule on these issues because enforcement is “sufficiently close in time to confirmation of the Plan and sufficiently critical to the integrity of the Plan’s structure.” *In re Residential Capital, LLC*, 512 B.R. 179, 189 (S.D.N.Y. 2014); *see also In re Chateaugay Corp.*, 201 B.R. 48, 66 (Bankr. S.D.N.Y. 1996), *aff'd in part*, 213 B.R. 633 (S.D.N.Y. 1997) (stating that bankruptcy courts have the power to enjoin lawsuits against non-debtor third parties if such suits affect the enforcement of the bankruptcy court’s orders).

88. Based on the foregoing, this Court should enforce the terms of the Plan's release and injunction provisions, and bar and enjoin Plaintiffs from prosecuting the claims asserted in the Complaint.

H. Even if the Court were to Determine that the Claims Asserted in the Complaint were not Released, Plaintiffs Must Still Obtain Leave of this Court to File and Prosecute the Complaint

89. Even if the Court determines that the claims asserted in the Complaint do not fall within the scope of the release (which Goldberg vigorously disputes), Plaintiffs must still seek relief from the Plan's injunction provision to assert and prosecute the claims.

90. Section 9.02 of the Plan states: "provided, however, that ... the Bankruptcy Court may provide relief from the foregoing injunction with respect to claims, obligations, suits, judgments, damages, debts, rights, remedies, causes of action, and liabilities not otherwise released under Section[] 9.05 of this Plan." Plaintiffs have not sought relief from the injunction from this Court as provided in the Plan; rather they ignore the Confirmation Order and the Plan and filed the Complaint asserting claims in state court in violation of the Plan's injunction provisions.

91. As discussed more fully in the preceding section, the Court has authority to interpret and enforce its orders and is uniquely situated to do so.

92. Plaintiffs must be held accountable for their brazen disregard for the Confirmation Order and the Court's jurisdiction, and the injunction must be enforced.

V. NOTICE

93. Notice of this Motion has been provided to Plaintiffs and Plaintiffs' Counsel and to other parties in interest in accordance with the *Order Pursuant to 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 1015(c) and 9007 Implementing Certain Notice and Case Management Procedures* [D.I. 93]. Goldberg submits that, in view of the facts and circumstances, such notice is sufficient

and no other or further notice need be provided.

VI. NO PREVIOUS REQUEST

94. No previous request for the relief sought herein has been made by Goldberg to this or any other court.

VII. CONCLUSION

95. For the reasons set forth above, this Court should enforce the Confirmation Order and the Plan's release and injunction provisions and require Plaintiffs to dismiss the Complaint. Plaintiffs' claims are the type of claims from which the Plan sought to protect the released parties, and Goldberg is the type of person whom the Plan sought to release. Plaintiffs opted to ignore these bankruptcy proceedings, the claims allowance process and the confirmation proceedings and now seek to bring claims that were released and enjoined against an individual who is protected by the Plan's release and injunction provisions.

96. The Confirmation Order specifically found that the release and injunction are critical to implementation of the Debtors' Plan and that unique circumstances warranted their approval. Plaintiffs cannot excuse themselves from enforcement of the release because they elected not to participate in a distribution under the Plan. This Court must preserve the integrity of its Confirmation Order by enforcing the Confirmation Order's provisions against Plaintiffs and directing Plaintiffs to dismiss the Complaint.

97. Goldberg reserves the right to amend or supplement this Motion based upon any facts or arguments that come to light prior to the Court's entry of an Order on this Motion.

WHEREFORE, Goldberg respectfully requests that the Court enter an Order substantially in the form attached hereto as Exhibit D, granting the relief requested herein and

such other and further relief, including awarding legal fees and costs, as the Court deems just and appropriate under the circumstances.

Dated: August 21, 2017

SAUL EWING LLP

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EXHIBIT A

The Complaint

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF NEW YORK

PREGAME LLC d/b/a PREGAME.COM, a Nevada limited liability company and RANDALL JAMES BUSAK, professionally known as RJ BELL,

Plaintiffs,

-against-

GIZMODO MEDIA GROUP, LLC, a Delaware Corporation, RYAN GOLDBERG and DOES 1-20, Inclusive,

Defendants.

Index No.:

SUMMONS

Date Purchased:

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer on plaintiff’s attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Plaintiff designates New York County as the place of trial. The basis of venue is the various defendants’ places of business and residence in the County of New York.

Dated: New York, New York
June 22, 2017

HARDER MIRELL & ABRAMS LLP

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SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF NEW YORK

PREGAME LLC d/b/a PREGAME.COM, a Nevada limited liability company and RANDALL JAMES BUSAK, professionally known as RJ BELL,

Plaintiffs,

-against-

GIZMODO MEDIA GROUP, LLC, a Delaware Corporation, RYAN GOLDBERG and DOES 1-20, Inclusive,

Defendants.

Index No.:

COMPLAINT

JURY TRIAL DEMANDED

PRELIMINARY STATEMENT

1. This action by plaintiffs Randall James Busack, professionally known as RJ Bell (“Mr. Bell”) and Pregame LLC dba Pregame.com (“Pregame”) (collectively, “Plaintiffs”) arises out of the publication of numerous false and defamatory statements about Plaintiffs by defendant Ryan Goldberg (“Mr. Goldberg”) on Deadspin.com, which is owned and operated by Gizmodo Media Group, LLC (“GMG”) (collectively with Mr. Goldberg, “Defendants”).

2. Mr. Bell is the Founder and CEO of Pregame.com, the largest sports betting media company compliant with U.S. law and a two-time Inc. 5000 company. Plaintiffs have been vetted by and earned the trust of nearly every major media outlet over the past decade, and Pregame has earned an A+ rating from the Better Business Bureau for the past eight (8) years. Pregame is also the exclusive odds provider for the Associated Press.

3. Mr. Bell is the only sports bettor on Forbes’ list of Gambling Gurus and has been deemed a “Las Vegas maven” by *USA Today*. Mr. Bell was featured in a positive and complimentary *New York Times Magazine* cover story. Mr. Bell’s television appearances

include SportsCenter, Outside the Lines, First Take, CNN, Fox Business, CBS This Morning, CBS Evening News, CNBC, Nightline and Fox Sports. Mr. Bell’s radio program appearances include Dan Patrick, Colin Cowherd, Doug Gottlieb, Kevin & Bean, ESPN’s NFL Countdown to Kickoff, Sirius and NPR. Mr. Bell has also been a solo presenter at the South by Southwest festival. Mr. Bell’s content has been featured by The Wall Street Journal, Bloomberg, Newsweek, The New York Times, Los Angeles Times, Yahoo, Associated Press, Maxim, Pardon the Interruption, Rick Reilly, Sports Nation, Mike & Mike, Jim Rome and Sports Illustrated. Mr. Bell has also served as an expert witness regarding the topic of Las Vegas odds in the United States District Court.

4. On June 23, 2016, an article written by Mr. Goldberg entitled “How America’s Favorite Sports Betting Expert Turned A Sucker’s Game Into An Industry” (the “Story”) was posted on Deadspin.com. The Story contains numerous false, fabricated, fictitious, and outright libelous statements about Plaintiffs and their business practices. Among other things, the Story falsely states that Plaintiffs engage in deceptive and predatory business practices by profiting from customers’ betting losses, are paid by sportsbooks, and own sportsbook websites and services, and presents false estimates of Plaintiffs’ profits and expenses in the form of sensational graphs.

5. Much of Plaintiffs’ revenue is dependent upon the hard-earned trust they have with their customers and being rightly perceived as honest in the eyes of the public, and the truthful perception of being aligned with the interests of their customers. Gamblers want to know that the experts they seek out are giving them honest advice that the experts would stake their own money on. A claim that an expert is not doing this, and in fact stands to profit when his or her customers lose, strikes at the very heart of this relationship and is absolutely poisonous

for anyone in Plaintiffs' line of work. The false and defamatory statements in the Story attack the very high standing Plaintiffs have achieved by claiming that Plaintiffs' ultimate goal is for its customers to lose their bets and that there is a financial incentive for Plaintiffs to deliberately mislead their customers with bad advice, which is completely untrue. Moreover, by virtue of claiming that Plaintiffs own, operate and/or share in the profits of sportsbook websites, the Story falsely accuses Plaintiffs of engaging in improper revenue sharing of bets with sportsbooks - conduct which is potentially a criminal violation under U.S. law.

6. Before the Story was published, Mr. Goldberg, a reporter for Deadspin.com and author of the Story, reached out to Mr. Bell for an interview. The tenor of the questions Mr. Goldberg posed to Mr. Bell exhibited a clear negative agenda by Mr. Goldberg and were premised on numerous false assumptions and inaccuracies. In response, Mr. Bell provided Mr. Goldberg with an official "on the record" statement which attempted to correct many of the inaccuracies in a manner concise enough to ensure a likelihood it would be published in whole. With regard to the other inaccuracies, Mr. Bell offered to answer any and all questions "on background" to correct Mr. Goldberg's errors and ensure that a fair and accurate story was written. Despite being advised that his questions contained "multiple factual errors", Mr. Goldberg refused to allow Mr. Bell to speak "on background", indicating that Mr. Goldberg had no desire to even hear information that contradicted his established narrative and simply wanted to write a "hit piece" about Plaintiffs.

7. Shortly after the Story was published, Plaintiffs' attorney contacted Gawker Media, LLC (the entity which was then operating Deadspin.com), advising it of the specific false and defamatory statements contained in the Story and demanding a retraction and apology. Gawker refused. After GMG took over control of Deadspin.com, Plaintiffs' counsel

subsequently contacted GMG advising it of the same. GMG however, has failed to remove and/or retract the Story, which remains on Deadspin.com as of the date of this Complaint.

8. Defendants’ false and defamatory statements about Plaintiffs have caused tremendous harm to Plaintiffs’ personal and professional reputation, including the hard-earned trust they have with their customers, the high standing they have with the media, and their actual and potential economic interests.

PARTIES

9. Plaintiff Pregame LLC dba Pregame.com is a Nevada limited liability company, with its principal place of business located in Las Vegas, Nevada, and is also licensed in the State of Nevada.

10. Plaintiff Randall James Busack, professionally known for over ten (10) years as RJ Bell, is an individual domiciled in Las Vegas, Nevada.

11. Defendant Gizmodo Media Group, LLC is a Delaware corporation, with its principal place of business in New York, New York. GMG operates and publishes Deadspin.com where the defamatory statements alleged in this Complaint are and were published.

12. Defendant Ryan Goldberg is an individual domiciled in New York, New York, and was a writer for Deadspin.com and the author of the Story.

JURISDICTION AND VENUE

13. This Court has jurisdiction over Defendants under CPLR § 301 because Defendants have offices in, have their principal place of business in and/or are domiciled in New York, New York, and the causes of action alleged arise out of Defendants’ activities in New York, New York.

14. Venue is proper in this county under CPLR § 503 because Defendants have their principal place of business there and/or are domiciled there.

15. Plaintiffs are presently unaware of the identity of the defendants sued herein as Does 1 through 20, and will amend this complaint to identify them once Plaintiffs learns of their identities. GMG, Mr. Goldberg and Does 1 through 20 are collectively referred to herein as “Defendants.”

FACTS

16. On or about June 23, 2016, an article written by Mr. Goldberg was published on Deadspin.com entitled “How America’s Favorite Sports Betting Expert Turned A Sucker’s Game Into An Industry” (the “Story”). A true and correct copy of the Story is attached hereto as **Exhibit A.**

17. The Story contains false and defamatory statements that Plaintiffs profit from their customers’ betting losses (a practice considered by many in the sports prediction industry to be particularly egregious) and are paid by sportsbooks, including:

- a. “It’s a can’t-miss business plan, and it pays off twice. First when customers buy the picks, and again when they fork over their money to sportsbooks on those losing bets. This might explain why Pregame is so generous with discounts like ‘bulk dollars’ and half-price coupons, and why Bell trumpets the savings of subscriptions over single-game purchases. Pregame has every incentive to keep buyers in the fold, and keep them betting.”
- b. “And tout sites are paid lavishly for those coveted referrals. In light of this, what Pregame tells would-be pick-sellers makes sense: Winning really isn’t the issue. Losing is.”

18. The Story also contains false and defamatory statements that Plaintiffs have (or had) ownership and/or operational control of PregameAction.com, SharpBettor.ag and other online sportsbook-related “services” (a practice which could be illegal), including:

- a. “Bell’s comment specifically mentioned Pregame.com. It did not mention Pregame Action or Sharpbettor.ag or any of the other services run by Bell, services through which Pregame customers are funneled when they want to deposit money at sportsbooks.”

19. The Story also contains false and defamatory statements by presenting incorrect records of the won/loss results of multiple Pregame Pros, which understate said won/loss results, and are presented in the form of sensational graphs that are falsely presented as accurate.

20. The Story also contains false and defamatory statements by presenting incorrect estimates of pick expenses, which overstate said expenses, and are presented in the form of sensational graphs that are falsely presented as accurate.

21. The foregoing statements of fact in the Story are false. The facts are: Plaintiffs have had no financial dealings with any online sportsbook since 2008. Plaintiffs receive no advertising revenue from any sportsbook and no revenue based upon a percentage of bettors’ losses. Moreover, in an abundance of caution and to avoid even the perception of having any misaligned interests with its customers, Plaintiffs have not received any revenue to promote any website that promotes sportsbooks in the last five years. Plaintiffs do not have, nor have they ever had, any ownership or operational control of PregameAction.com, SharpBettor.ag or any other online sportsbook-related services. Additionally, the incorrect profit and expense records, including their related graphs, are the result of clear errors in calculation and a gross

exaggeration of Pregame’s expenses in nearly all cases by over 100% (double), and sometimes by as much as 2000%.

22. The foregoing false statements of fact were included in the Story and published on Deadspin.com with knowledge that they were false and were likely to harm Plaintiffs’ personal and professional reputations, and with reckless disregard for the truth of the statements.

23. The allegations in this Complaint, including the allegations below, demonstrate actual malice. Moreover, discovery has not yet commenced and Plaintiffs expect to obtain through discovery additional evidence that would support actual malice.

24. On June 14, 2016, before the Story was published, Mr. Goldberg contacted Mr. Bell for an interview. The tenor of the questions Mr. Goldberg posed to Mr. Bell exhibited a clear negative agenda by Mr. Goldberg and were premised on numerous false assumptions and inaccuracies. In a June 14, 2016 email sent to Mr. Goldberg, Mr. Bell provided Mr. Goldberg with an official “on the record” statement, which attempted to correct many of the inaccuracies in a manner concise enough to ensure a likelihood it would be published in whole. With regard to all the other inaccuracies, Mr. Bell wrote: “[I’m] willing to offer you some guidance on background. This most certainly would assist you in avoiding multiple factual errors stated and implied by your questions posed to me.” Despite being advised of having made “multiple factual errors”, Mr. Goldberg refused to allow Mr. Bell to speak “on background”, indicating that Mr. Goldberg had no desire to even hear information that contradicted his established narrative and simply wanted to write a “hit piece” about Plaintiffs. Mr. Goldberg has stated publicly that he spent over one calendar year researching and writing the Story before first contacting Mr. Bell, and his actions reflect a seemingly non-existent interest in contradictory information that could make his finished story less sensational, even if new information corrected factual errors therein.

25. In response to Mr. Goldberg’s refusal to allow Mr. Bell to speak “on background”, Mr. Bell informed Mr. Goldberg that it was the consensus of Plaintiffs’ journalistic contacts that Mr. Goldberg had “made a clear mistake”. While Mr. Bell did not want to participate in the Story so as to avoid giving the impression that he validated it, he also could not stand idly by and ignore the serious mistakes Mr. Goldberg had made about Plaintiffs. Accordingly, Mr. Bell offered to have a Pregame executive make a written statement “on the record” to address the particularly egregious false claim that Plaintiffs owned or possessed operational control over PregameAction.com in order to “prevent [Mr. Goldberg] from making significant errors.” Mr. Goldberg accepted this offer and the executive’s statement, which explained in detail how Plaintiffs did not own or operate PregameAction.com, was provided to Mr. Goldberg one week before the Story was published. Mr. Goldberg however, failed to include this statement in the Story (nor did he reference the “on the record” denials contained therein), which falsely claimed that Plaintiffs owned and/or operated PregameAction.com and other sportsbook websites when it was published on June 23, 2016.

26. On the day the Story was published, Mr. Bell wrote to Mr. Goldberg and advised him that the Story falsely stated that Plaintiffs owned and operated PregameAction.com and other sportsbook websites, and reiterated that Plaintiffs did not own or operate these websites. Mr. Bell further stated “This now a legal matter. This false statement is causing my company and myself damage. Be aware that every minute this false statement is posted adds to the damage.” Only after being threatened with litigation was the Story updated on the same date to include Mr. Bell’s denial of owning or operating PregameAction.com. Moreover, the tone of the editorial comments included with the update was dismissive in a clear attempt to attack the veracity of the belatedly published denial.

27. In an effort to cover up the fact that false information had been posted about Plaintiffs and to mitigate potential exposure, the update claimed that Mr. Bell had refused to respond to questions about Plaintiffs' purported involvement with PregameAction.com and other sportsbook websites before the Story was published. This statement is false as Plaintiffs provided Mr. Goldberg with the written statement directly from the Pregame executive, which explained in detail how Plaintiffs did not own or operate PregameAction.com, one full week before the Story was published. Mr. Goldberg explicitly confirmed receipt of this communication. This perpetuation of a false timeline further served to minimize Mr. Bell's belatedly published denial by making it appear as though Plaintiffs did not deny that they owned and/operated PregameAction.com until after the Story was published, when, in fact, Plaintiffs provided Mr. Goldberg with a detailed denial (the Pregame executive's statement) before the Story was published and Mr. Goldberg simply chose not to include it - nor reference its existence - in the Story.

28. On June 27, 2016, Plaintiffs' counsel sent a letter to Gawker Media, LLC, demanding that it remove each of the false statements in the Story and publish a correction, apology and retraction of those statements, and allowed Gawker Media, LLC a reasonable amount of time to comply. Gawker Media, LLC did not comply with Plaintiffs' demand.

29. Then, on June 29, 2016, Mr. Bell published an article on Pregame.com, which refuted, in detail, the false and defamatory statements in the Story, including, but not limited to a lengthy discussion on the Story's false statement that Plaintiff owned and/or operated PregameAction and other sportsbook websites. Mr. Bell's article further advised that the aforementioned false statement would subject Deadspin.com to substantial legal liability. Upon information and belief, Mr. Goldberg read this statement at or around the time it was published.

30. On July 1, 2016, more than one week after the article was published and by which time Plaintiffs' reputation was already damaged substantially, the Story was modified again to surreptitiously alter the defamatory statement in Paragraph 18 herein, and buried in the middle of the Story, so that the Story no longer stated that Plaintiffs "r[a]n" PregameAction.com, Sharpbettor.ag or other online sportsbook services. The editorial comment associated with this alteration stated: "This story has been updated to reflect Bell's statement, offered, **after publication**, that he does not 'run' any of the sportsbook referral sites which Pregame sends its customers." (emphasis added) In an attempt to conceal any wrongdoing, this update again falsely implied that Plaintiffs did not deny that they owned and/or operated PregameAction.com and/or other sportsbook websites until after publication of the Story, when, in fact, Plaintiffs provided Mr. Goldberg with a detailed denial (the Pregame executive's statement) a week before publication. Moreover, the removal of the statement that Plaintiffs owned and/or operated PregameAction.com, Sharpbettor.ag or other online sportsbook services constitutes a clear admission that the statement was false and published without any proof or factual basis.

31. The aforementioned "update" was buried deep in the body of the Story in an attempt to conceal the admission that the initial statement was false and published without any proof or factual basis. In the process, Deadspin.com and Mr. Goldberg lied about the fact that he was informed of the truth by Plaintiffs prior to publication.

32. On July 5, 2016, rather than issuing an apology and retraction, as it should have, Gawker posted a story which taunted Plaintiffs and their attorneys for appropriately demanding a retraction of the Story, while at the same time intentionally omitting that the aforementioned "update" purported to correct a major false and defamatory statement and that Mr. Goldberg knew was false prior to publication. This omission was made for the purpose of minimizing

Deadspin.com's liability for publishing false and defamatory statements about Plaintiffs and to perpetuate the illusion that Deadspin.com was a reputable news source and that the Story was well-researched and was truthful (which it was not). Defendants' knowledge of the falsity of the defamatory statements and/or reckless disregard of the truth is further evidenced by the fact that the false statement that Plaintiffs operate PregameAction.com is contradicted in a different part of the Story that states: "Pregame Action's website was operated by Big Juice Media, a marketing company registered in Port Coquitlam, British Columbia."

33. The conduct exhibited in connection with the Story is consistent with Deadspin.com's usual practices and procedures. Deadspin.com routinely engages in wrongful conduct, and specifically, writes and publishes false and defamatory statements about people, invades people's privacy and other rights, and publishes content that is irresponsible and that no other legitimate publication will publish.

34. Deadspin.com's philosophy and practice is to publish false scandal, for the purpose of profit, knowing that false scandal drives readership, which in turn drives revenue, and without regard to the innocent subjects of their stories whose careers are destroyed in the process.

35. For example, in 2010, Deadspin.com published a video of a clearly intoxicated young woman engaged in sexual activity on the men's bathroom floor of an Indiana sports bar (the footage was taken by another patron with his mobile phone). According to published reports, Deadspin.com callously refused to remove the footage from its site for some time, despite repeated pleas from the woman and despite the fact that it was not clear if the sex was consensual or if the video was footage of a rape in progress.

36. Deadspin.com paid a source for a photograph of what the source claimed was NFL quarterback Brett Favre’s penis. Deadspin.com published the uncensored photo and reported that it showed Mr. Favre’s penis.

37. Deadspin.com also published a series of articles providing photographs of the genitals of various sports stars. Ranging from NFL players to professional wrestlers, Deadspin.com published images which were either accidentally posted to social media or leaked by an unknown person and published them without censorship or pixilation. In doing so, Deadspin.com may well have contributed to numerous acts of revenge porn, without regard to the consequences to the victims of exposing their images to millions of Deadspin.com viewers.

38. Deadspin.com published a link to a surreptitiously and criminally recorded peephole video of sports personality Erin Andrews fully naked while changing clothes in her private hotel room, and Deadspin.com encouraged readers to click and view the video. It has been reported that more than a million viewers viewed the video at Deadspin.com.

39. Plaintiffs’ counsel sent a letter to GMG promptly after GMG was reported to be taking control of Deadspin.com, demanding that it remove each of the false statements in the Story and publish a correction, apology and retraction of those statements. Plaintiffs allowed GMG a reasonable amount of time to comply. However, GMG failed to comply with Plaintiffs’ demand.

40. The defamatory statements were greatly harmful to Plaintiffs. Plaintiffs lost ongoing and future business relationships as a result of the statements. In addition, Plaintiffs’ reputation with its current and future customers grievously suffered, because Defendants published one of most harmful and incendiary allegations that can be ever made about anyone in the business of providing advice to gamblers—that rather than providing advice that Plaintiffs

believed in and would risk their own money on, Plaintiffs stood to gain from giving bad advice and seeing their customers lose their wagers.

41. Plaintiffs request herein all available legal and equitable remedies to the maximum extent permissible by law, including without limitation compensatory damages in an amount not less than ten million dollars (\$10,000,000), punitive damages, and a permanent injunction against the defamatory statements at issue.

FIRST CAUSE OF ACTION

(Defamation)

42. Plaintiffs repeat and reallege Paragraphs 1 through 41 of this Complaint as though fully set forth therein.

43. Defendants published, caused to be published and/or maintain the defamatory statements in the Story on Deadspin.com as described in Paragraphs 17 through 20 herein.

44. The defamatory statements in the Story were of and concerning Plaintiffs.

45. The defamatory statements in the Story were false.

46. Defendants published and/or maintain the defamatory statements in the Story on Deadspin.com either knowing they were false or with reckless disregard for the truth.

47. The defamatory statements in the Story also constitute defamation *per se* because they harm Plaintiffs' reputation and business and impugn the basic integrity, creditworthiness and/or competence of Plaintiffs, and accuse Plaintiff of activity that is potentially criminal.

48. The defamatory statements made and/or maintained by Defendants were false, and no applicable privilege or authorization protecting the statements can attach to them.

49. The defamatory statements in the Story have caused Pregame (a two-time Inc. 5000 company) and Mr. Bell (deemed by Deadspin.com in the Story as "America's Favorite

Sports Betting Expert”) damages, including to their reputation and their business interests, and in amount of not less than ten million dollars (\$10,000,000).

50. Defendants’ acts were willful and egregious conduct constituting malice. Defendants’ acts were willful and malicious. As such, in addition to compensatory damages and/or presumed damages, Plaintiffs demands punitive damages relating to Defendants’ making and/or maintaining of the above-referenced defamatory statements, in an amount to be determined at trial.

SECOND CAUSE OF ACTION

(Intentional Interference with Prospective Economic Advantage)

51. Plaintiffs repeat and reallege Paragraphs 1 through 50 of this Complaint as though fully set forth therein.

52. Plaintiffs have, and had, valid business relationships with various third parties. These third parties include but are not limited to: (a) Plaintiffs’ customers; (b) Plaintiffs’ expected customers; (c) media outlets, producers and/or studios for television and radio shows and projects on which Plaintiffs have an ongoing and/or recurring role as writer, correspondent or advisor (including but not limited to NBC, CNN, ABC, CNBC, Fox, CBS, ESPN, NPR, the Associated Press, The Wall Street Journal, The New York Times, Los Angeles Times, Newsweek, Bloomberg, Maxim and Sports Illustrated); (d) third parties with whom Plaintiffs have valid expected business relationships, based on their expertise and qualifications as oddsmakers (including but not limited to current and expected customers, NBC, CNN, ABC, CNBC, Fox, CBS, ESPN, NPR, the Associated Press, The Wall Street Journal, The New York Times, Los Angeles Times, Newsweek, Bloomberg, Maxim and Sports Illustrated); (e) third party content providers with whom Plaintiffs have any valid existing and/or expected business

relationships (including but not limited to current and expected Pregame sports handicappers); and (f) third parties with whom Plaintiffs have any valid existing and/or expected business relationships for sponsorships, endorsements, investments and/or advertising. These business relationships were reasonably likely and probable to result in Plaintiffs' economic advantage.

53. Defendants had knowledge of these valid business relationships and expectancies.

54. Defendants intentionally interfered with these valid business relationships and expectancies, inducing and/or causing the termination of valid relationships and expectancies, including but not limited to, Mr. Bell's role in a show on NBC National Radio which is simulcast on the NBC Sports Network, in which Mr. Bell appeared regularly for several years, by making and/or maintaining false, fabricated, fictitious and outright libelous statements about Plaintiffs in the Story.

55. Defendants' conduct has intentionally interfered with these valid business relationships and expectancies, inducing and/or causing the termination of the valid relationships and expectancies by making and/or maintaining false, fabricated, fictitious and outright libelous statements about Plaintiffs and their business practices.

56. As a direct and proximate result of Defendants' conduct, Plaintiffs have suffered damages in an amount to be determined at trial, but not less than ten million dollars (\$10,000,000).

57. Defendants' actions were willful and constitute egregious conduct constituting malice or other dishonest, unfair or improper means. Plaintiffs demand punitive damages relating to Defendants' conduct in an amount to be determined at trial.

THIRD CAUSE OF ACTION

(Tortious Interference with Contractual Relations)

58. Plaintiffs repeat and reallege Paragraphs 1 through 57 of this Complaint as though fully set forth therein.

59. Plaintiffs have, and had, actual and valid business relationships with various third parties, including but not limited to Mr. Bell’s role in a show on NBC National Radio which is simulcast on the NBC Sports Network, in which Mr. Bell appeared regularly for several years. This business relationship and Plaintiffs’ other business relationships existed at the time Defendants published and/or maintained the false and defamatory statements contained in the Story.

60. Defendants had knowledge of these actual and valid business relationships and expectancies.

61. Defendants intentionally interfered with these actual and valid business relationships and expectancies, inducing and/or causing the termination of actual and valid relationships and expectancies, by making and/or maintaining false, fabricated, fictitious and outright libelous statements about Plaintiffs in the Story.

62. Defendants’ conduct has intentionally interfered with these actual and valid business relationships and expectancies, inducing and/or causing the termination of the actual and valid relationships and expectancies, including Mr. Bell’s role in a show on NBC National Radio, by making false, fabricated, fictitious and outright libelous statements about Plaintiffs and their business practices.

63. As a direct and proximate result of Defendants' conduct, Plaintiffs have suffered damages in an amount to be determined at trial, but no less than ten million dollars (\$10,000,000).

64. Defendants' actions were willful and constitute egregious conduct constituting malice or other dishonest, unfair or improper means. Plaintiffs demand punitive damages relating to Defendants' conduct in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment against Defendants as follows:

- i. Awarding compensatory and punitive damages in appropriate amounts to be determined at trial;
- ii. Awarding Plaintiffs the recovery of their costs associated with this action, including but not limited to their reasonable attorneys' fees and expenses;
- iii. An order enjoining Defendants from publishing, continuing to publish, or republishing the defamatory statements alleged herein in any medium; and
- iv. For such other and further relief as the Court deems just and appropriate.

JURY TRIAL DEMAND

Plaintiffs hereby demand a jury trial.

Dated: New York, New York
June 22, 2017

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By: s/ Charles J. Harder
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EXHIBIT B

June 27, 2016 Demand Letter



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June 27, 2016

**VIA E-MAIL AND
CERTIFIED U.S. MAIL**

Heather Dietrick, Esq.
General Counsel and President
GAWKER MEDIA, LLC
114 5th Ave, Second Floor
New York, NY 10011-5611
Email: HDietrick@Gawker.com

VIA E-MAIL

Mr. Ryan Goldberg
Email: Ryan.Goldberg@gmail.com

Re: Pregame.com, RJ Bell – Demand for Retraction and Apology

Dear Ms. Dietrick and Mr. Goldberg:

This law firm is litigation counsel for Pregame.com (“Pregame”), and its majority owner Randall James Busack, professionally known as RJ Bell (“Bell”), in connection with the libelous story posted at Deadspin.com on or about June 23, 2016, titled: “How America’s Favorite Sports Betting Expert Turned a Sucker’s Game Into An Industry” (the “Story”). The Story makes numerous false and defamatory statements about my clients which convey a highly inaccurate and deceiving portrayal of both Pregame and Bell, as discussed below. Your actions constitute, among other claims, libel, false light invasion of privacy, intentional infliction of emotional distress and intentional interference with actual and prospective business relations. Demand is hereby made that you publish a full, fair and conspicuous retraction, correction and apology as to each false and defamatory statement in the Story, as explained herein.

By way of background, Pregame is a two-time, Inc. 5000 company, and is the largest sports betting media company compliant with U.S. law. Pregame has earned an A+ rating from the Better Business Bureau for the past 7 consecutive years. Pregame and Bell have been vetted by and earned the trust of nearly every major media outlet over the past decade.

There are **numerous** false and defamatory claims and statements in the Story. Set forth below is an extensive, though not comprehensive, list of same.

As a preliminary matter, Bell had numerous written communications with the author, Ryan Goldberg (“Goldberg”), who made several inaccurate statements in writing to Bell about Pregame. Bell engaged in these written communications in an effort to fully advise Goldberg of the true facts about Pregame and Bell, to help ensure a fair and accurate story. However, Goldberg ignored a great deal of the information that Bell provided him, which led to numerous

Heather Dietrick, Esq. and Mr. Ryan Goldberg

June 27, 2016

Re: RJ Bell, Pregame.com

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inaccurate (and defamatory) statements in the Story, and an overall inaccurate and unfair piece about Pregame and Bell. Bell also offered to answer any questions that Goldberg might have on background. Goldberg (in consultation with Deadspin/Gawker) refused to allow Bell to speak on background. Instead, it appears Goldberg and Deadspin/Gawker simply wanted to write and publish a “hit piece” about Pregame and Bell—notwithstanding the fact that, after one full year of research, Goldberg had found nothing substantively negative about them.

FALSE AND DEFAMATORY CLAIMS AND STATEMENTS IN THE STORY

False Claim #1a: Pregame, Bell and entities with common ownership or control (collectively referred to herein also as “Pregame”) are currently or were recently paid by sportsbooks.

False Claim #1b: Pregame currently or was recently paid by sportsbooks based upon any bettor’s losses.

False Statements re #1a and #1b

“It’s a can’t-miss business plan, and it pays off twice. First when customers buy the picks, and again when they fork over their money to sportsbooks on those losing bets. This might explain why Pregame is so generous with discounts like ‘bulk dollars’ and half-price coupons, and why Bell trumpets the savings of subscriptions over single-game purchases. Pregame has every incentive to keep buyers in the fold, and keep them betting.”

“And tout sites are paid lavishly for those coveted referrals. In light of this, what Pregame tells would-be pick-sellers makes sense: Winning really isn’t the issue. Losing is.”

These statements claim that Pregame both is being paid by sportsbooks, and also Pregame benefits from its customers losing. Both are false claims. The practice of benefiting from customers losing is considered by many in the industry to be particularly egregious.

True Facts re: #1a and #1b

Pregame has had no financial dealings with any online sportsbook since 2008. This includes no advertising revenue and no revenue based upon a percentage of bettor’s losses.

For the past four years, Pregame has not even received any revenue to promote any website that promotes sportsbooks.

No evidence is offered by the Story to disprove these facts.

Heather Dietrick, Esq. and Mr. Ryan Goldberg
June 27, 2016
Re: RJ Bell, Pregame.com
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False Claim #2a: Pregame has (or had) ownership and/or operational control of PregameAction.com.

False Claim #2b: Pregame has (or had) ownership and/or operational control or any business dealings with SharpBettor.ag.

False Claim #2c: Pregame has ownership and/or operational control of any online sportsbook related “other services.”

False Statements re: #2a, #2b, and #2c

“Bell’s comment specifically mentioned Pregame.com. It did not mention Pregame Action or Sharpbettor.ag or any of the other services run by Bell, services through which Pregame customers are funneled when they want to deposit money at sportsbooks.”

True Facts re: #2a, #2b, and #2c

Pregame does not have, nor has it had, any ownership or operational control of PregameAction.com. The Story alludes to this fact in one place, stating: “Pregame Action’s website was operated by Big Juice Media, a marketing company registered in Port Coquitlam, British Columbia.” Yet, in a different place in the Story, it contradicts this statement and makes the false statement that Bell runs Pregame Action.

Pregame does not have, nor has it had, any ownership, operational control or business dealings with SharpBettor.ag.

Pregame also has no ownership or operational control of any online sportsbook related “other services.”

No evidence is offered by the Story to contradict these true facts.

Pregame provided Goldberg an on-the-record statement to clarify his confusion regarding PregameAction.com Goldberg confirmed receipt of the statement, yet disregarded it, and printed none of it. Goldberg claimed the statement did not address the key questions, but it addressed **all** of the key questions. The written statement reads:

Pregame.com had an advertising deal with a website owned and operated by a Canadian media company. They named the website PregameAction to highlight having a deal with us. They paid Pregame.com to advertise at our site. They also purchased Pregame Best Bet Credits to give away as part of their promotions – similar to the way companies will purchase bulk magazine subscriptions to give away. The Canadian media company had complete control and total ownership of their site. Their site advertised multiple products and services, including Sports

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Authority and the NFL's official merchandising shop – and they also promoted online sportsbooks, which is legal in Canada. As an added layer of caution, the footer of their site persistently urged visitors to check on legality in other jurisdictions. Pregame received the final advertising payment from the Canadian media company over four years ago. With the benefit of hindsight, having an advertising deal with a company that named its site PregameAction could have caused some confusion. What's certain is that our insistence on always following the letter of the law has cost Pregame multiple millions of dollars in direct sportsbook revenue. Money our major competitors gladly gobbled up. Pregame has had no financial dealings with any online sportsbook since 2008. Not a single penny. Pregame explored such potential deals over the years, but always ultimately decided to not even chance any gray areas.

False Claim #3: The records published in the Story and attributed to Pregame's pick sellers are falsely presented as accurate.

False Statements re: #3 The false statements are the inaccurate records themselves, presented in sensational graphs, which were tailored to be spread virally, and were spread virally.

True Facts re: #3

These inaccurate records underestimate the profits of multiple Pregame Pros—due to calculation errors. If calculated correctly, the records would reflect far more profit.

The records' site-wide pick results also are depressed by combining all results without accounting for the real-world fact that picks on the same game from different Pros will often be opposite sides. Pregame fully refunds any customer who buys opposite sides of the same game. In the real-world, a customer often passes a game with conflicting picks. A customer would never bet both sides, which would result in automatically losing the sportsbook commission. This way, that would never happen, is precisely how the Story assumes it does happen. That guaranteed losing approach is a tremendous unfair drag on the aggregated results.

An additional deception in the Story is failing to make clear which Pros are currently active with Pregame. The reason for this deception is obvious: a majority of Pregame's **active** handicappers are shown to be profitable—even using the Story's inaccurately depressed results. Yet, to bolster the Story's false narrative, the active pick sellers are deceptively mixed with pick sellers who have not been with the site for years.

False Claim #4: The Pregame pick expense estimates published in the Story are falsely presented as accurate.

False Statements re: #4 The false statements are the inaccurate records themselves, presented in sensational graphs, which were tailored to be spread virally, and were spread virally.

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True Facts re: #4

In the case of daily buyers, the Story's estimates of pick expenses are at times at least 400% inflated. For example, they assume that five picks (two 3*s, two 2*s, and one 1*) released on a day would cost \$60. The fact is, no day's picks from any Pro at Pregame costs even **half** of that amount. And the assumption also does not factor in discounts, which are common. For example, Pregame's Bulk Dollar program provides a 50% discount. So, for a daily buyer, the Story doubled the price twice—what the Story claims would cost \$60, would actually cost only \$15.

In the case of subscription buyers, they can easily pay less than \$3 per day for complete access to a pick seller, thus, in those common cases, the Story overestimates cost by **20 times**—what the Story estimates would cost \$60, actually costs only \$3.

DAMAGES

The Story falsely claims that Pregame and Bell engaged in deceptive business practices—claims that are provably not true. Pregame earns millions of dollars per year. Much of its revenue is based upon its hard earned trust with its customers, and being rightly perceived as honest in the eyes of the public. Moreover, Pregame and Bell have earned positive coverage in the media, which leads to positive public attention, and with it, increased customers and revenue.

The Story, which is based on false statements and claims of alleged deceptive business practices, has caused and will continue to cause, a loss of positive exposure in the media, and a significant decrease in the number of customers and amount of revenues. In fact, a main premise of the Story was how much Pregame and Bell have benefited from the good reputation the Story has unfairly attempted to destroy. Thus, significant damages as a result can be easily proven, if and when necessary.

In connection with damages, Pregame and Bell have achieved a very high standing with the media, which threatens to be severely harmed, if not destroyed, by the false and defamatory statements in the Story. Some examples of their high standing with the media include:

RJ Bell of Pregame.com is the only sports bettor on Forbes' list of Gambling Gurus and has been deemed a "Las Vegas maven" by *USA Today*. Bell is a former columnist for ESPN.com and Grantland, a solo presenter at South By SouthWest, an expert witness for the U.S. District Court, and has been featured in a *New York Times Magazine* cover story.

Bell's TV appearances include SportsCenter, Outside The Lines, First Take, CNN, CNBC, Fox Sports, Fox Business, CBS This Morning, CBS Evening News, and Nightline.

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Bell's radio show appearances include Dan Patrick, Colin Cowherd, Scott Van Pelt, Doug Gottlieb, Kevin & Bean, ESPN's NFL Countdown to Kickoff, and NPR.

Bell's content has been featured by Wall Street Journal, Bloomberg, Yahoo, Newsweek, AP, New York Times, LA Times, Maxim, Pardon the Interruption, Rick Reilly, Sports Nation, Mike & Mike, Jim Rome and Sports Illustrated.

DEMAND

Notwithstanding their claims for substantial damages, Pregame.com and RJ Bell are willing to resolve this matter amicably if Goldberg and Deadspin/Gawker immediately publish a full, fair and conspicuous retraction, correction and apology as to each false and defamatory statement in the Story, as explained herein. Failure to publish same will likely result in immediate litigation and, should that occur, my clients would pursue all of their legal claims, causes of action and remedies, including without limitation compensatory damages and punitive damages.

WRITTEN COMMUNICATIONS BETWEEN BELL/PREGAME AND GOLDBERG

The following is a summary of the written communications between Bell and Goldberg, which gives additional context to the foregoing issues:

June 13, 2016

Goldberg emails Bell, asking for an interview. Bell asks Goldberg to instead send him the questions in writing.

June 14, 2016

Goldberg emails Bell 17 questions—all of them very negative. Bell responds that, due to the tenor of the questions, Bell would reply in a single statement. Bell also states that he had spoken with two friends who work as investigative journalists and they stressed the importance of the entire communication being documented in writing, and they also emphasized that journalistic standards dictate the inclusion in the story of Bell's on-the-record reply to his request. Mr. Bell provided that written statement, which was published in the Story.

Bell also writes: “[I’m] willing to offer you some guidance on background. This most certainly would assist you in avoiding multiple factual errors stated and implied by your questions posed to me.”

June 15, 2016

Goldberg confirms receipt of the written statement, and states: “Deadspin and I are going to decline your offer to speak on background. We want to run a fair and accurate story and want

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to give you the opportunity to address the reporting that concerns you and Pregame, but we need to insist that you publicly stand behind anything you have to say.”

Goldberg also addresses how damning he believes his PregameAction report to be, and encourages Bell to address that topic on the record because “it’s in everyone’s best interest that this story be accurate”.

Bell replies that Goldberg’s “misunderstandings about PregameAction are significant. I would be willing to have the Pregame Executive who was key to that deal (he’s still with the company) make a factual statement on-the-record if you’ll include it in the story. His insight will most certainly prevent you from making significant errors.”

Goldberg asks to call the Pregame executive.

Bell states that he discussed his refusal to accept additional information on background with a few of his journalist friends, and that the consensus opinion was that Goldberg had “made a clear mistake”.

Bell further states: “I would be willing to have a Pregame Executive with unique insight into the PregameAction deal (he’s still with the company) make a written statement on-the-record if you’ll include it in the story. His insight will most certainly prevent you from making significant errors.”

Goldberg agrees, but incorrectly repeats back Bell’s proposed terms.

Bell responds: “To avoid any additional misunderstanding, I need your clear agreement that the PregameAction written statement will be include[d] in your article in its entirety. You have Pregame’s commitment that the comment will be of reasonable length – only long enough to address the topics raised by your questions. I am surprised that you consider PregameAction noteworthy, which implies a fundamental misconception, so it’s important to make sure all the salient facts are included.”

Goldberg responds that he cannot assure publishing something he has not seen.

Bell states: “The minimum I would need is for us to agree that you would either include the comment fully or reject it. I am making this concession because I am confident that if your intention is to be fair you’ll accept it whole once you see the value provided. Though I need to protect against the possibility of parts of it being framed in an unfair way.”

Goldberg responds: “On the advice of the counsel at Deadspin, I can’t agree to make a deal over, or give assurances to, publish something that I haven’t seen yet.”

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Bell replies: "I think you misunderstand. I'm saying we provide the statement. You get to CHOOSE to include it or not. But if you do include it, you can't edit it. But you have total power not to include any of it."

Goldberg replies that this would be fine.

Bell replies that he accepts.

June 16, 2016

Pregame's Mark Hoover emails Goldberg the written statement.

Bell states to Goldberg: "Instead of making any additional on-the-record statements, I feel as if making these statements publicly would be better. If you were confused about these matters, others might also be confused ... and I don't want that. Hopefully this info will fill in some blanks for you."

Bell includes this link: <http://pregame.com/pregame-forums/f/14/t/1494832.aspx>

June 23, 2016

The Story is published. Bell emails Goldberg:

"This statement is a lie: 'It did not mention Pregame Action or Sharpbettor.ag or any of the other services run by Bell, services through which Pregame customers are funneled when they want to deposit money at sportsbooks.' I do not and have never run Pregame Action or Sharpbettor.ag. Pregame (or any company I am associated) with has never promoted Sharpbettor.ag ever. Pregame or any company I am associated with stopped promoting Pregame Action years ago, and have not received money from them in over 4 years. This is now a legal matter. This false statement is causing my company and myself damage. Be aware that every minute this false statement is posted it adds to the damage. Think if you can defend this statement in court. I promise you will have to. Randall Busack" [Part of this statement was added to the Story in an update.]

Bell emails Goldberg again: "I once again request that you remove any reference in your story to Pregame or me personally having any direct financial relationships since 2008 with any online sportsbooks. That is not true. I also request that you remove any reference to Pregame or me personally having any ownership or operational control over PregameAction.com. That is not true. I also request that you remove any reference to Pregame currently making any money – directly or indirectly – from online sportsbooks. That is not true. Every minute these lies (among others) remain published, the damages increase. Every page view from the homepage image = more damages. Please stop. The case will go forward either way, but you can limit your damages."

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This letter is not intended, and should not be construed, as a complete expression of my clients' factual or legal positions with respect to this matter. Nothing contained in or omitted from this letter is intended, and should not be construed, as a waiver, relinquishment, release or other limitation upon any legal or equitable claims, causes of action, rights and/or remedies available to my clients, all of which are hereby expressly reserved.

We look forward to your immediate response to this letter.

Very truly yours,



CHARLES J. HARDER Of
HARDER MIRELL & ABRAMS LLP

cc: Mr. RJ Bell (via email)

EXHIBIT C

Confirmation Hearing Transcript

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

In the Matter of:

GAWKER MEDIA, LLC, Case No. 16-11700 (SMB)
Debtor.

----- x

GAWKER MEDIA, LLC, Case No. 16-12239 (SMB)
Debtor.

----- x

U.S. Bankruptcy Court
One Bowling Green
New York, New York
December 13, 2016
10:34 AM

B E F O R E :
HON STUART M. BERNSTEIN
U.S. BANKRUPTCY JUDGE

1 Hearing re: Confirmation hearing

2

3 Hearing re: Bush Ross P.A. retention application

4

5 Hearing re: Debtors first omnibus objection to claims (D&O
6 and employee indemnification claims)

7

8 Hearing re: Case conference

9

10 Hearing re: Debtors' application pursuant to Section
11 327(e), 328(a), and 330 of the Bankruptcy Code, Bankruptcy
12 Rules 2014 and 2016, and Local Rules 2014-1 and 2016-1 for
13 entry of an order authorizing the retention and employment
14 of Akin Gump Strauss Hauer & Feld LLP as special counsel to
15 the special committee of the board of Gawker Media Group,
16 Inc., effective nunc pro tunc to August 3, 2016

17

18 Hearing re: Debtors' motion pursuant to Bankruptcy Code
19 Sections 105 and 502(e)(1) and Bankruptcy Rule 3018 for
20 estimation of claim nos. 293, 294, and 295 filed by Albert
21 James Daulerio

22

23 Hearing re: Debtors' motion pursuant to Bankruptcy Code
24 Sections 105, 502(e), and 1129 and Bankruptcy Rules 3018 and
25 3021 for approval of claims estimation and plan reserve

1 procedures

2

3 Hearing re: Motion of proposed Amici Curiae Society of
4 Professional Journalists, Reporters Committee for freedom of
5 the press, and 19 other media organizations for leave to
6 file memorandum of law as amici curiae

7

8 Hearing re: Notice of agenda for hearing to be held
9 December 13, 2016 at 10:00 a.m. (prevailing Eastern time)

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11 Hearing re: Case conference

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24 Transcribed by: Jamie Gallagher, Nicole Yawn, and Tracey

25 Williams

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1 P R O C E E D I N G S

2 THE COURT: Okay. I read that you're an MVP in
3 law 360, Mr. Galardi. I'm honored that you're hearing here
4 today.

5 MR. GALARDI: Don't believe everything you read,
6 Your Honor.

7 THE COURT: I don't.

8 MR. GALARDI: And it didn't make page 6. So I'll
9 (indiscernible). I was kind of --

10 THE COURT: Okay. Congratulations.

11 MR. GALARDI: Well -- thank you, Your Honor.
12 We'll see how valuable I am after today's hearing. Your
13 Honor, first I'd like to turn to the amended agenda that we
14 filed last night and I think that will set the stage.

15 THE COURT: The amended agenda? I don't have an
16 amended agenda.

17 MR. GALARDI: You don't have an amended agenda, we
18 will --

19 THE COURT: Have we ever seen amended agenda?

20 MR. GALARDI: Again, things are moving.

21 THE COURT: All right. Give one to my clerk.

22 MR. GALARDI: Yes, I have.

23 THE COURT: Thank you.

24 MR. GALARDI: I think we did reach out to your
25 office and advised us to the status of the confirmation

1 hearing, but let me move through the matters on the amended
2 agenda. There's just some updates, but all are positive.
3 First, Your Honor has already entered a CNO with respect to
4 the first matter. Turning to the second matter, there was a
5 motion for a proposed amicus curiae by the Society of
6 Professional Journalists. Your Honor did, in fact, grant a
7 motion to shorten the time to be heard, that is to be heard
8 today in connection with the confirmation. I don't know if
9 Your Honor wants to hear that. I don't think there are any
10 objections.

11 THE COURT: Is there any objection to the receipt
12 of the amicus brief? Hearing no response, I'll grant the
13 motion and receive the brief.

14 MR. GALARDI: And then finally, Your Honor -- and
15 next, rather, Your Honor, the Simpson Thacher fee
16 application by consent has been moved over to December 15th.

17 THE COURT: Let me mark these on my calendar here
18 because I had them in a different order. It's no longer on
19 my calendar, so it may have been moved.

20 MR. GALARDI: Yeah, I think we moved it because we
21 filed a notice of adjournment when we had agreed with the
22 U.S. Trustee to move all the fee application matters over to
23 the 15th and coordinated with Your Honor's office.

24 THE COURT: Okay.

25 MR. GALARDI: Which brings us to matter four,

1 which is the debtors' proposed confirmation of an amended
2 joint plan of liquidation. Your Honor, I think before we
3 start with evidence on that, what I'd like to do is go
4 through the objections. We believe, as I stand here today,
5 that we have resolved all of the objections with the
6 possible exception of what we conclude as an objection from
7 XP Vehicles. I know Your Honor has received a number of e-
8 mails. We've received a number of e-mails. My partner,
9 Mr. Martin, will be handling that.

10 If I could go through the objections, I think it
11 would be helpful for Your Honor in framing the evidence
12 today as to what we had proposed to do to resolve those
13 objections.

14 The first objection is the general objection of
15 Mr. Charles Johnson and Got News to the amended plan. Your
16 Honor may remember that we were here on December 1st with
17 respect to claims objection. We had a motion to estimate.
18 Mr. Johnson filed an objection to the confirmation. We have
19 settled that and, again, Mr. Martin can put more details on
20 as we get through this. But the key for the confirmation is
21 one, we have settled that by reserving \$1.5 million of the
22 Gawker Media unsecured assets to be a reserve to pay any
23 allowed claim of Mr. Johnson. And I'm going to go through
24 the claims reserve. But that resolves his objection and the
25 parties have agreed to other terms. But that was to resolve

1 the confirmation objection.

2 Next you have the limited objection of Albert
3 James Daulerio. Your Honor may recall Mr. Daulerio is
4 subject to the judgment with Mr. Denton and the company with
5 respect to Mr. Bollea. Mr. Daulerio's objection was an
6 objection again to the Gawker Media reserve being not
7 adequate. We have resolved that objection by allocating
8 \$500,000 of the Gawker Media unsecured claims reserve to the
9 payment of the allowed fees and expenses of Mr. Daulerio.
10 Again, the debtor reserving all rights to object to whether
11 that number is too high, but that is a cap. It is not a --
12 it will not go higher. That has resolved the objection to
13 Mr. Daulerio's -- that Mr. Daulerio raised to the plan.

14 There was also a limited objection of Publicist
15 Media Agency's confirmation. They were concerned about set-
16 off rights and the plan not protected their set-off rights.
17 This was a contract, part of which was taken by the buyer,
18 part of which is with us. There is -- they actually owe --
19 we think it's probably the buyer, certain funds. They
20 wanted to maintain their rights of set-off. We have
21 resolved that objection with language in the proposed
22 confirmation order that would, in fact, protect their rights
23 of set-off to the extent that they still have a set-off.

24 The next objection is an objection of Mitchell
25 Williams. Your Honor will recall he was here on

1 December 1st. We had a pending claims objection. We had a
2 pending estimation motion. There was also a stay -- a
3 motion to lift stay to pursue the appeal. As Your Honor
4 will hear in the evidence, we have resolved Mr. Mitchell
5 Williams' objection to confirmation pursuant to an agreement
6 to settle and pay Mr. Williams' claim, the total amount of
7 \$125,000. We'll put on evidence as to how that structured
8 payment, again, subject to Your Honor approving that, his
9 settlement will be -- resolve his objection, resolve the
10 stay motion, resolve the estimation motion, and resolve all
11 of the underlying litigation.

12 Your Honor, the next one listed is the certain
13 writers' response in support of confirmation. It also had
14 the limited objection with respect to the Gawker Media
15 unsecured claims reserve. That was to support the third
16 party releases. Your Honor will hear evidence later on
17 today regarding the benefits of that and I believe that
18 based upon everything that I will tell Your Honor and that
19 will testify for Mr. Holden today, we will fit -- even if we
20 paid all of the claims, the maximum amounts with the
21 agreements in the reserves, we will have more than adequate
22 funds to pay from the reserves as a result of the
23 settlement.

24 The next memorandum, as I mentioned, was the
25 amicus curiae. Your Honor has granted their appearance.

1 They have filed an amicus in support of the third party
2 releases for the writers and journalists and editors of the
3 company.

4 The next objection is really a statement of Dr.
5 Shiva Ayyadurai and Ashley Terrill. Your Honor may recall
6 we lifted the stay with respect to those two individuals.
7 We had entered into settlements. We filed the plan
8 settlement -- the plan supplement. In those plan
9 supplements, you will notice that there are carve-outs with
10 respect to pursuing potential causes of action or getting
11 cooperation agreements. We have settled this objection to
12 confirmation by adding language in the plan that you saw
13 that was filed, I believe, Sunday night and provided to Your
14 Honor on Monday with --

15 THE COURT: I didn't see it.

16 MR. GALARDI: Okay. It has language in it that
17 provides that with respect to specific settlements where
18 there was a carve-out to the third party releases and
19 injunctions, that this is carved out. So they would be
20 permitted to pursue, that is Dr. Ayyadurai and Ms. Terrill
21 would be permitted to pursue the underlying writers. I will
22 address that a little bit later with respect to the
23 settlements. My understanding is the cooperation agreements
24 are done with Mr. -- with Dr. Ayyadurai, so there will be no
25 pursuit with respect to the writers, Mr. Biddle and

1 Mr. Cook. With respect to Ms. Terrill, I think they reached
2 an impasse and you'll hear a little bit about that when I
3 give a proffer or put Mr. Holden on. But that objection to
4 confirmation as been resolved nonetheless.

5 The next one is Mr. Martin has filed a submitting
6 documentation regarding XP Vehicles. The matter has, I
7 said, not been resolved. We have not had XP Vehicles. It
8 was a late objection to the extent it was an objection.
9 Mr. Martin will take up that objection when the Court wants
10 to hear the objection specifically. There was a response by
11 Mr. Bollea as Mr. Williams or Mr. Johnson had said that
12 those settlements were not proper with respect to Mr. Bollea
13 or Mr. -- Dr. Ayyadurai or Ms. Terrill. We will put on
14 evidence to that, but that was a response.

15 And then finally, I believe, yesterday we received
16 a confirmation objection from Meanith Huon who is not, I
17 believe, on the call today but wants to be on the call on
18 the 15th. Your Honor has -- may recall that Your Honor has
19 ruled on parts of his claims objection, found that Mr. Huon
20 has submitted himself to the jurisdiction of this Court.
21 Mr. Huon has, in fact, filed a confirmation objection. We
22 resolved that yesterday with the agreement that we'll also
23 put on the record at the 15th because Mr. Huon wants to be
24 on that hearing. We will settle that claim, resolving all
25 the 7th Circuit litigation, all the litigation in Illinois,

1 all of the claims litigation here for the payment of
2 \$100,000 out of the estate.

3 Those are the objections. If we go -- we can go
4 forward with confirmation in one of two ways, Your Honor,
5 and it's your docket and I understand it's quite full. One
6 is I could proceed by direct testimony with Mr. Holden. I
7 don't believe there's any contested testimony, or I can try
8 to do a -- I can do a proffer for Mr. Holden and spare the
9 direct testimony.

10 THE COURT: Well, I'm happy to hear a proffer
11 subject to possible cross-examination by parties. The
12 questions that are raised are not necessarily in any order:
13 satisfaction of the best interest test; two, the
14 settlements, the reasonableness of the settlements and
15 you've told me about a couple more so we can deal with them
16 today; and there's a third one that I had in mind that will
17 come to me, but --

18 MR. GALARDI: Third party releases, by any chance?

19 THE COURT: The third party releases. All right.
20 So those are the -- obviously there were more issues under
21 1129(a). I note that everybody voted for the plan.

22 MR. GALARDI: Correct --

23 THE COURT: Acceptance of the 1129(b), and fair
24 and equitable test, and all of that other stuff is not
25 present.

1 MR. GALARDI: Correct, Your Honor. Maybe what I
2 will do is do it this way. I will do a proffer and then
3 maybe just to clean up, I'll have Mr. Holden go on the stand
4 a little bit with respect to the liquidation analysis. That
5 will give Your Honor an opportunity --

6 THE COURT: That's fine. You don't have to do a
7 proffer with respect to the 1123(a) and (b) elements because
8 I can read the plan --

9 MR. GALARDI: Right.

10 THE COURT: -- and determine whether or not
11 they're satisfied.

12 MR. GALARDI: And that's what I anticipated, Your
13 Honor. And with respect to the settlements, I think I can
14 put those on. And the third party releases I'll put on. So
15 let me start with the proffer and then see where we go from
16 there.

17 THE COURT: Go ahead.

18 MR. GALARDI: In the Courtroom today is
19 Mr. William Holden who is now sitting over behind me off to
20 what you would look to your right. Mr. Holden, if called as
21 a witness, would testify that he's employed by Opportune and
22 has served as the chief restructuring officer of GMGI and
23 Gawker Media. And since the sale to Unimoda (ph), has been
24 the managing director of Gawker Hungary. He's been employed
25 by the debtor since May of 2016 and has been actively

1 involved in these cases, has attended all board calls, and
2 worked closely with the independent director of the debtors,
3 Scott Tillman, regarding the sale, the claims resolution
4 process, and the formulation and prosecution of the plans of
5 reorganization and disclosure statements that have been
6 filed before the Court.

7 He has been designated by the debtors with the
8 consent of the committee to serve as the plan administrator,
9 should the plan of reorganization be confirmed and go
10 effective. With respect to the plan of reorganization,
11 Mr. Holden would testify that he has reviewed, approved, and
12 signed each of the disclosure statement and plan of
13 reorganization filed in these cases, believe the information
14 therein to be true and correct, and that such plan has been
15 prosecuted in good faith with the intention to maximize
16 value to all stakeholders and provide stakeholders a fair
17 and equitable distribution to the assets in accordance with
18 the absolute priority rule.

19 In that regard, Mr. Holden would testify although
20 styled as a joint plan of reorganization, it consists of
21 three plans of reorganization, one for each individual
22 debtor: GMGI, Gawker Media, and Gawker Hungary. He would
23 also testify that each debtor is organized under different
24 laws. GMGI is organized under Cayman Islands law. Gawker
25 Hungary under Hungarian law. And Gawker Media under

1 Delaware law in the United States.

2 Mr. Holden would then testify that the primary
3 assets to be distributed under the plans of reorganization
4 were derived from the sale of assets to Unimoda and to an
5 allocation of those sale proceeds between Gawker Media and
6 Gawker Hungary. In that regard, Mr. Holden would testify
7 that the assets sold in the sale to Unimoda consisted solely
8 of the assets of Gawker Media and of Gawker Hungary and no
9 assets of Gawker -- of GMGI were sold. That Gawker Media's
10 assets consisted -- so with respect to the Gawker Media
11 plan, which constitutes a POT plan, it consists of sale
12 proceeds and certain other existing bank accounts that have
13 existed since the petition date and had cash that was
14 clearly cash of Gawker Media.

15 Gawker Hungary's assets for the purposes of the
16 distributions under its plan also consisted of its share of
17 sale proceeds and the intercompany claim against Gawker
18 Media. And the Gawker Media -- that Gawker Hungary had no
19 other significant assets as of the petition date or as of
20 the consummation of the sale.

21 And as I said before, Mr. Holden would also
22 testify that GMGI had no material assets other than its
23 equity interest in Gawker Media and Gawker Hungary as of the
24 petition date or as of the closing sale. And consequently,
25 Mr. Holden would describe each of the plans as a POT plan

1 pursuant to which cash proceeds from the sale and other cash
2 that was on hand as of the consummation of the sale dates
3 was being distributed.

4 With respect to the liquidation analysis,
5 Mr. Holden would testify that he and others developed the
6 liquidation analysis filed in support of the plan of
7 reorganization.

8 Your Honor, maybe what would be a good idea is I
9 know you have tons of paper up there, but if I may --

10 THE COURT: Well --

11 MR. GALARDI: -- bring the -- an exhibit that I
12 would have had for Mr. Holden, it may be easy to move around
13 in or --

14 THE COURT: That's fine. Is that the liquidation
15 analysis that's attached to --

16 MR. GALARDI: Yeah. That's the liquidation
17 analysis.

18 THE COURT: Yeah. I've got that. I have it.
19 Okay.

20 MR. GALARDI: If other people -- we have a couple
21 of binders. It may be easier to move around in, but it's
22 Exhibit 5 in mine. It's Exhibit 5 in that binder there,
23 sorry.

24 Now, Mr. Holden will testify that he and others at
25 Opportune developed the liquidation and filed in support of

1 the plan. That he would further testify that the
2 liquidation analysis and Your Honor can see from, I think
3 it's -- I'm going to use the docket pages at the top of it,
4 pages 266 of 557, 267 of 557, and 268 of 557, that those
5 pages reflect individual liquidation analysis with respect
6 to each of the specific debtors.

7 That in doing this liquidation analysis, what
8 Mr. Holden did was to commence the liquidation analysis with
9 the assets, which assets reflect the sale proceeds, net of
10 payments of various secured claims, as well as the other
11 assets remaining on the company's books and records and in
12 their accounts as of the closing of the consummation of the
13 sale, but brought forward to a date of December 31st, 2016
14 so there are fees that would have been taken out in those
15 amounts.

16 With respect to the liquidation analysis, Mr.
17 Holden would testify that he began with the analysis of
18 Gawker Media LLC and proceeded to go through the waterfall
19 with respect to Gawker Media LLC and what would be achieved
20 under that liquidation. With respect to Gawker Media, LLC,
21 he assumed -- and with respect to all of the liquidation
22 analysis, Mr. Holden would testify that he assumed that in
23 each of those cases that a liquidating trustee would accept
24 and be able to consummate each and every one of the plan
25 settlements that is set forth in the plan of reorganization.

1 THE COURT: Does that include the allocation of
2 the sale proceeds?

3 MR. GALARDI: That includes the allocation of the
4 sale proceeds, Your Honor.

5 THE COURT: So what was the allocation to Gawker
6 Media, LLC?

7 MR. GALARDI: The ultimate allocation reached as a
8 result of settlements, and we'll go back to that at some
9 point, but it was 60 percent -- roughly 60 percent of the
10 assets of the sale proceeds, Your Honor.

11 THE COURT: So what does that translate to in
12 dollars?

13 MR. GALARDI: Of the net sale proceeds -- you did
14 this to me last time and then I did it after the fact. So
15 60 percent -- well, let's just start with 135, 60 percent --

16 THE COURT: Well, you're starting with a cash --

17 MR. GALARDI: -- about 88.

18 THE COURT: You're starting with a cash value of
19 55 -- 53,000,869.70.

20 MR. GALARDI: Correct.

21 THE COURT: So it looks like it's about 100
22 million dollars of net proceeds?

23 MR. GALARDI: Well, Your Honor, if you look --
24 let's do it this way. If you look at the cash, you'd see
25 the 53,000,869?

1 THE COURT: Yes.

2 MR. GALARDI: And then if you go to the page to
3 the right, you'll see Gawker Hungary starting with cash of
4 33,970?

5 THE COURT: Yes.

6 MR. GALARDI: Okay. Those are net cash proceeds
7 after paying certain expenses with the sale and paying down
8 secured debt. Those are the resulting numbers and certain
9 expenses. I have to go back and we -- and Mr. Holden would
10 testify, as we're doing it as a proffer, that he treated the
11 debt as 65 -- 60/40 percent debt, 60 percent/40 percent with
12 the Columbus Nova debt to arrive at those numbers. And then
13 also took expenses, for example, there's a break up date and
14 certain expenses to arrive at these net numbers as of that
15 date.

16 THE COURT: So the expenses were allocated just as
17 the proceeds were?

18 MR. GALARDI: Exactly.

19 THE COURT: Okay.

20 MR. GALARDI: Unless there was another reason to
21 allocate them differently, Your Honor.

22 So they're starting with that analysis, Your
23 Honor, what the liquidation analysis with Gawker Media shows
24 that is if you go through the straight absolute priority
25 rule and you move all the way down, you will see, as

1 Mr. Holden would testify, that the low recovery for the
2 unsecured creditors of Gawker Media is 90.6 percent and a
3 high recovery of 93.1 percent.

4 What Mr. Holden would testify is that even
5 assuming that the trustee, a Chapter 7 trustee, could
6 effectuate all of these settlements, including the plan
7 settlement, and get the benefit of all of those settlements,
8 that the creditors -- the unsecured creditors of Gawker
9 Media would receive less than they are receiving or not more
10 than -- less than they are receiving under the plan, because
11 under the plan as now set forth with respect to the
12 settlements that I put on the record with respect to the
13 reserves, unsecured creditors will be paid 100 percent at
14 Gawker Media.

15 THE COURT: Okay.

16 MR. GALARDI: Now, importantly, Your Honor, then
17 once we -- once -- Mr. Holden, he would testify that once
18 you ran through the numbers here with respect to the Gawker
19 Media, I will draw Your Honor to a -- your attention to an
20 intercompany claim line on the Gawker Media, which is three
21 or four lines from the bottom. This is also set forth in
22 the disclosure statement and was subject to certain
23 objections.

24 Mr. Holden would testify that in doing the
25 liquidation analysis that that entire claim was somewhere

1 around \$21 million to \$24 million, but that there was a 90
2 percent payment and what happens is that money gets fed back
3 into the Gawker -- you'll see the intercompany payment
4 receivable in the inter -- in the Gawker Hungary assets.
5 Okay, so that's -- when I said before when Mr. Holden would
6 testify, there was the initial allocation of cash from the
7 sale. And then there was a payment on account of an
8 unsecured claim that then funded the Gawker Hungary account.

9 Mr. Holden would testify today that that number is
10 much higher than what will actually be paid over on account
11 of the intercompany account, which I'll explain a little bit
12 later today, so there were objections to that but there have
13 been other reserves put forth and we'll explain that when I
14 go through the plan.

15 Mr. Holden would then testify with respect to
16 Gawker Hungary based on the assets that it has available to
17 itself and its -- his review of the claims, he would have
18 the allocation of proceeds 40 percent net of all the secured
19 claims, plus anything it receives on the intercompany
20 claims. And since there are very few claims under the
21 Gawker Hungary plan, you will see that all creditors under
22 the Gawker Hungary plan will, in fact, be paid in full under
23 a liquidation analysis. You can't get better than paid in
24 full. Well, maybe you could with some interest.

25 And then what there is is remaining proceeds for

1 distribution. You will see at the bottom of that page 38 to
2 40 million dollars, which those proceeds then form the basis
3 of the liquidation analysis for GMGI.

4 Your Honor, I don't know if you have to turn the
5 page or go to 268, you will see then at the Gawker GMGI
6 level, you will see the gross liquidation proceeds being
7 roughly the same numbers. There was a little bit of bank
8 cash left online. There is a loan that is owed for
9 Mr. Denton of \$200,000 that is added into that, not material
10 assets. But based on the unsecured claims and based on
11 third party releases and resolving the indemnification
12 claims of people who might be at GMGI, that ultimately under
13 the liquidation analysis, and these numbers have changed
14 given certain facts and I'll explain it, that the equity may
15 get anywhere from 34 to 38 million dollars at the end of the
16 case.

17 With respect to the plan itself, Mr. Holden would
18 testify that no junior class of creditors is receiving any
19 distribution under the Gawker Media plan until and only if
20 the Gawker Media unsecured creditors receive payment in
21 full. In particular, there are two --

22 THE COURT: That's a credit down test. You don't
23 have to satisfy that.

24 MR. GALARDI: I'm sorry -- because we haven't --

25 THE COURT: The plan has been accepted by

1 everybody who voted on it.

2 MR. GALARDI: Correct.

3 THE COURT: It doesn't matter.

4 MR. GALARDI: Correct, Your Honor. But there was
5 a couple of questions about the voting and the
6 gerrymandering and so I just wanted to make that point as to
7 that.

8 THE COURT: I didn't understand the objections as
9 to 2(e) and 2(c) but --

10 MR. GALARDI: I won't need to make their objection
11 since we settled with them.

12 THE COURT: Good.

13 MR. GALARDI: So Your Honor, I think I understood
14 it, but I don't need to do it.

15 Your Honor, with respect to the purchase price
16 allocation settlement, and I think, Your Honor, just for the
17 sake of everybody being on the same page because there are a
18 number of settlements, if Your Honor would turn to the
19 disclosure statement. It is, perhaps, helpful to look at
20 the disclosure statement, the revised version, I believe
21 it's on page 23. It starts on the disclosure statement.
22 It's in the binder that I've just handed out. It's behind
23 tab 3. There was a notice of a filing of disclosure
24 statement. But I do want to take up each of the settlements
25 and how those were negotiated.

1 It starts on page 23 of the disclosure statement.

2 I have it on page --

3 THE COURT: Is that 23 of 139? Because that's the
4 leaflet you sent to me.

5 MR. GALARDI: I have actually page 34 of 557. I
6 can hand one up if it makes it easier --

7 THE COURT: Well, I have different --

8 MR. GALARDI: -- it's the (indiscernible) notice
9 of filing.

10 THE COURT: What's the page number on it?

11 MR. GALARDI: It's actually page 23 at the bottom
12 of the page.

13 THE COURT: Yeah.

14 MR. GALARDI: Yeah, it's probably the same
15 version. It hasn't been changed. It was the --

16 THE COURT: This is the November 4th version.

17 MR. GALARDI: That's fine. Yes, Your Honor. With
18 respect to the plan settlements, there are, as Mr. Holden
19 would describe, there were in broad terms three basic plan
20 settlements, all of which were intertwined. One of which
21 was the purchase price allocation settlement that I just
22 went through. But Mr. Holden would testify that a critical
23 settlement was the settlement and allocation of the sale
24 proceeds, which settlement allocated the value of the asset
25 sold to Unimoda approximately 60 percent to Gawker Media,

1 and 40 percent to Gawker Hungary.

2 In that regard, Mr. Holden would testify that
3 historically, asset value was considered to be held 33
4 percent by Gawker Media and 67 percent to Gawker Hungary
5 based on a -- based, in part, on a transfer pricing that the
6 debtors received in December 2011. And, in fact, Mr. Holden
7 would further testify that in the plan that the debtors
8 filed back on September 30th, that was the allocation of
9 assets and value that was taken at that time.

10 Mr. Holden would then testify that the creditors
11 committee and certain creditors, including Mr. Bollea raised
12 challenges to the allocation and the allocation of expenses
13 with respect to that particular allocation, as well as to
14 the importance and validity of that transfer pricing memo,
15 which had not been updated since December of 2011. And as a
16 result, the debtors and creditors committee, and certain
17 creditors have been in negotiations along with negotiations
18 with respect to Unimoda pursuant to the asset purchase
19 agreement and tax advisors to Gawker Hungary regarding the
20 proper allocation.

21 As a result of the negotiations with those parties
22 over the last couple of months, and as a result of the
23 settlements and being able to fund the settlements, the
24 debtors have determined to settle such asset issues by
25 allocating the value received in the Unimoda sale,

1 approximately 60 percent Gawker Media and 40 percent
2 Hungary. That is also the distribution as I've mentioned
3 already. Mr. Holden would testify in the beginning of the
4 liquidation analysis. And then unless otherwise dictated by
5 the circumstances and other considerations, expenses have
6 been allocated consistent with that allocation.

7 As part of the intercompany settlements, there is
8 also an intercompany settlement between Gawker Media and
9 Gawker Hungary. With respect to that settlement, Mr. Holden
10 would testify that --

11 THE COURT: Is that intercompany debt?

12 MR. GALARDI: This is intercompany debt between
13 Media and Hungary, correct, Your Honor. But based on the
14 current books and records of Gawker Media and Gawker
15 Hungary, Gawker Media would owe net Gawker Hungary
16 approximately \$23 million. Again, the creditors committee
17 and other parties raised concerns regarding the bonafides of
18 those intercompany claims, in part because of the -- they
19 were based on the transfer pricing memo.

20 In that regard, Mr. Holden would testify that
21 Opportune and other advisors conducted an investigation into
22 the validity and enforceability of these intercompany
23 claims, the potential causes of action that Gawker Media
24 might be able to assert against Gawker Hungary, and that
25 although it determined -- that is Opportune determined and

1 the debtors determined that they believed that the debt was
2 good, valid, and properly enforceable in the full amount of
3 \$23 million, as part of the sale proceeds allocation
4 settlement, a settlement with Gawker Hungary, the
5 intercompany debt was recharacterized, importantly, to an
6 approximate \$19 million. That's not a write off. Taxes,
7 we're obviously very concerned about taxes. So it's
8 important that it was recharacterized to \$19 million.

9 Under the plan as proposed, it was proposed that
10 Gawker Hungary would then be paid no more than 16 million on
11 account of its intercompany claim by Gawker Media, leaving a
12 balance of \$3 million to be paid if and only if the
13 unsecured creditors of Gawker Media were paid in full.
14 However, Mr. Holden would also testify that as a result of
15 establishing conservative reserves for plan purposes --
16 sources and uses of cash, conservative returns with respect
17 to priority tax claims and tax claims and administrative
18 expenses, that currently Gawker Hungary will likely only be
19 receiving \$10 million on the effective date of the plan,
20 hopeful that it would receive 16. That is part of the
21 settlement that Gawker Hungary had agreed to subordinate, as
22 mentioned, the additional \$3 million in addition to the 16.

23 Mr. Holden would also --

24 THE COURT: How much is Gawker Hungary
25 subordinating?

1 MR. GALARDI: Three of 16, but now it's really 9
2 of the 16 at least, Your Honor.

3 THE COURT: It's getting -- okay.

4 MR. GALARDI: Okay? And, Your Honor, with respect
5 to this, because of circumstances with respect to taxes and
6 ability to pay taxes, Mr. Holden would also testify that if
7 the plan should not go effective before the end of the year,
8 he would like authority to distribute 5 of the \$10 million
9 before the year ends so that Gawker Hungary can pay certain
10 tax obligations that need to be paid before year end. In
11 that regard, Mr. Holden would testify that upon the
12 consummation of the sale, all assets were put into a bank
13 account in the name of Gawker Media, but that, in part,
14 because of the tax implications, it would be best to
15 transfer funds up to \$5 million by year end through the
16 intercompany as a partial pay down.

17 Mr. Holden would then testify that this
18 intercompany settlement with Hungary was part of the arm's
19 length negotiations among the parties with respect to the
20 overall sale proceeds allocation and with respect to the
21 payment of the creditors' claims. That the settlement
22 enables the unsecured creditors of Gawker Media to receive
23 more than they might otherwise receive in the Chapter 11
24 cases. That that is a result of, among other things, tax
25 implications, that the settlement was entered into based

1 upon, among other things, the estimated cost of litigation
2 between the estates, a consideration of the likelihood of
3 prevailing on the litigation, and the effect of the timing
4 of the litigation on the ultimate distribution of proceeds
5 to unsecured creditors.

6 So Mr. Holden would opine that the settlement,
7 both of the sale proceeds, as well as the Gawker Hungary
8 payment on the intercompany claim should be approved as fair
9 and equitable and in the best interest of all of the
10 debtors' estates.

11 Turning now to the other intercompany settlement
12 between GMGI and Gawker Media. With respect to that
13 settlement, Mr. Holden would testify that a result of the
14 sale proceeds and the Gawker Media/Gawker Hungary
15 settlements, GMI -- GMGI is expected to receive a
16 significant distribution of cash, likely in excess of \$30
17 million. Your Honor, I'll stop there. It's \$30 million as
18 opposed to the liquidation analysis because of that \$9
19 million drop that I talked about on the intercompany and the
20 reserves being established at Gawker Media.

21 The committee and the other parties had also
22 raised concerns (indiscernible) of claims and causes of
23 action that Gawker Media might have against GMGI and its
24 officers and directors, including breaches of fiduciary duty
25 and impermissible dividends. But the debtors and the

1 advisors determined that no such causes of action existed
2 and that even if such actions existed, the unsecured
3 creditors of Gawker Media likely would be paid in full and
4 then suffer no damages. That, nonetheless, to provide some
5 consideration in exchange for the releases of the GMGI, as
6 well as their board members, and to otherwise avoid costly
7 and time consuming litigation that might provide no material
8 benefit to Gawker Media estate and its creditors.

9 GMGI agreed to provide the unsecured creditors of
10 Gawker Media with a \$2 million fully funded guarantee. Mr.
11 Holden would then testify that the GMGI settlement is fair
12 and reasonable, and that the potential claims and causes of
13 action that Gawker Media may have against GMGI but that the
14 GMGI guarantee, which is a settlement, is the result of
15 arm's length negotiations among various parties, including
16 the committee, Mr. Bollea, the equity holders.

17 THE COURT: What is the \$2 million guaranteeing?
18 What's the debt that's being guaranteed?

19 MR. GALARDI: The unsecured claims, okay -- and
20 when we had a lot of unsecured claims and we didn't know the
21 full amount of them, right, there was the concern -- Your
22 Honor expressed it and the committee expressed it, that if
23 we only put \$3.75 million of cash aside for those claims,
24 they may exceed that number.

25 So one of the things was to make that 3.75 5.75.

1 GMGI gave a guarantee that if the claims actually exceeded
2 that 3.75, then you'd have another \$2 million of cash funded
3 and it would never be distributed to the unsecured creditors
4 -- to the equity. And that --

5 THE COURT: Is that guarantee necessary now in
6 light of the various settlements?

7 MR. GALARDI: I don't believe it's going to be
8 necessary, but we're going to keep the money there and I'll
9 explain that for writers and other issues, Your Honor. But
10 in light of the reserve numbers and where the claims came
11 out, I think we're going to be well below that number.

12 THE COURT: Okay.

13 MR. GALARDI: That the settling -- this issue
14 saves significant costs and expenses and that the settlement
15 reflects Gawker Media receiving at least its lowest possible
16 recover in an intercompany litigation, and likely more.

17 Your Honor, now I'd like to turn for Mr. Holden to
18 proffer with respect to the specific settlements that are in
19 the plan and then I can also do the other settlements that I
20 mentioned. With respect to the plan settlements with
21 specific creditors, Mr. Holden would testify that as part of
22 the plan and negotiations, the debtors entered into three
23 settlements with three individual creditors. Those
24 creditors are Mr. Bollea, Ms. Terrill, and Mr. -- and
25 Dr. Ayyadurai. That those three -- Mr. Holden would testify

1 that those three creditors are members of the creditors
2 committee and, as such, and in their individual capacity,
3 have been actively involved in the cases. That these three
4 creditors have common outside counsel of Charles Harter, but
5 not the same bankruptcy counsel, although Terrill and Dr.
6 Ayyadurai share bankruptcy counsel. That all three
7 creditors had prepetition litigation, but only Mr. Bollea's
8 litigation had proceeded to judgment, and that the debtors
9 believed that all three litigations, and possibly others,
10 were financed by Peter Thiel, a Silicon Valley billionaire,
11 whom the debtors sought 2004 discovery and have been held in
12 abeyance since the entry of the settled -- the initial
13 settlement agreements.

14 That as a result of those creditors' activities in
15 the cases, the concerns about the litigation financing, and
16 the status of the underlying proceedings and claims, and
17 other considerations the debtors determined to proceed with
18 settlement negotiations with those parties, that in that
19 regard, the plaintiffs creditors were different in material
20 respects from other creditors, such as Mr. Huon,
21 Mr. Johnson, Got News, XP Vehicle, and Williams, who had
22 also filed large, unsecured claims based on defamation and
23 other matters.

24 In particular, debtors have already -- Mr. Holden
25 would testify and particularly the debtors had already

1 received favorable judgments on Wan and Johnson, upon which
2 they intended to rest and didn't want to proceed with
3 negotiations on those. With --

4 THE COURT: Is it favorable judgment with respect
5 to Johnson? Williams?

6 MR. GALARDI: Williams, I'm sorry. Thank you for
7 correcting me, Your Honor. Thank you for correcting my
8 proffer of Mr. --

9 THE COURT: Mr. Johnson's attorney got a little
10 nervous there. He missed that one.

11 MR. GALARDI: Thank you. That's right. That XP
12 Vehicles was an unknown claim at the filing of the
13 bankruptcy case and other than after filing an objection to
14 that claim had we heard -- had not heard much from XP
15 Vehicles.

16 And finally, with respect to Mr. Johnson and Got
17 News, there had been litigation commenced that was
18 dismissed, but ultimately refiled in California as of the
19 petition date, but they had not served the complaint. And
20 despite the action having been on the docket for about six
21 months or more, before the bankruptcy and not taken part in
22 the bankruptcy cases other than to file proofs of claims.

23 That the settlement negotiations with Bollea and
24 Terrill and Dr. Ayyadurai took place over three days near
25 the end of October in the offices of Ropes & Gray, and that

1 prior to those meetings, there were settlement negotiations
2 with those parties directly, with the creditor's committee,
3 and certain other third parties regarding the settlement of
4 those claims either individually or collectively. That
5 there were back and forth offers being made directly through
6 counsel from the debtors, the creditors, and the times
7 communications through third parties. And that Mr. Holden
8 did, in fact, play a part in the negotiations of the
9 settlement. That the debtors were concerned about the cost
10 of litigation, that the debtors were concerned of any
11 judgments, whether even favorable with respect to Ayyadurai
12 and Terrill would be subject to appear given the financing,
13 and that the other defendants -- there were other defendants
14 that the debtors were also concerned about, namely the
15 writers and other editors of their companies that were
16 subject to these litigations, including Mr. Denton and
17 Mr. Daulerio.

18 In that regard, the company in negotiating the
19 settlement was concerned about the time that it would take
20 to litigate these settlements, the appeals that would be
21 involved in these litigations, and the impact that it would
22 have on confirming a plan of reorganization and making a
23 distribution. That the debtors had considered lists and
24 contacts of the plan allocation and wanted to resolve those
25 allocation issues, along with making sure that there were

1 payments both for these claims and that the claims were, in
2 fact -- and the claims of other general, unsecured
3 creditors.

4 Mr. Holden would further testify that, with
5 respect to Mr. Bollea, that the debtor has negotiated a
6 settlement that the debtors believed was too high, because
7 they believed that they would prevail on the appeal. And
8 Mr. Holden would further testify that, based on Mr. Bollea's
9 statements and statements of his counsel, that the Bollea
10 settlement was too low in light of the fact that Mr. Bollea
11 had been successful in obtaining \$115 million compensatory
12 damage judgment as well as a \$15 million punitive judgment
13 against the debtors as well as punitive judgments against
14 Mr. Denton in the amount of \$10 million and 1 against Mr.
15 Daulerio in the amount of \$100,000.

16 Mr. Holden would then testify that the settlement
17 with Mr. Bollea was very favorable to the debtors in the
18 following respects. First, absent an appeal, the judgment
19 could not be overturned, and the appeal would be taken place
20 in the Florida court. And the debtors are paying \$31
21 million on a \$115 million judgment.

22 Two, the debtors were able to have the individual
23 defendants' judgments also settled by the payment of \$31
24 million, except with respect to any potential punitive
25 damage claims against Mr. Denton and against Mr. Daulerio.

1 With respect to the punitive damage claims with respect to
2 Mr. Denton and Mr. Daulerio, the debtors have negotiated a
3 cooperation agreement whereby if they cooperated with
4 Mr. Bollea in securing cooperation agreements with
5 Mr. Denton and Mr. Daulerio, those defendants would not have
6 to pay any amount of damages on punitive damage claims and
7 that they simply would cooperate and receive mutual
8 releases, which in the instance of Mr. Denton would also
9 facilitate a resolution of his own bankruptcy case.

10 I'm pleased to say that as I don't have the
11 document papers, but it has been reported to me by both
12 Mr. Denton's counsel, by Mr. Bollea's counsel, and
13 Mr. Daulerio's counsel that all of those cooperation
14 agreements, as we stand here today, have, in fact, been
15 executed and that those settlements will be, in Mr. Denton's
16 case, separately approved, hopefully, in our case so there
17 will be no further litigation with respect to the underlying
18 judgment. And in addition, as part of the settlement, as
19 Mr. Holden would testify, there was another litigation in
20 which only the company was named. And it only began in the
21 beginning, what we call the Bollea II litigation, that with
22 respect to the Bollea II litigation, that is also settled
23 for no additional payment to Mr. Bollea.

24 And Mr. Bollea, in the settlement agreement, which
25 is attached in the -- in the plan supplement -- and there's

1 a couple little changes that have been made, but nothing
2 substantive. That as part of that settlement, Mr. Bollea
3 has also agreed not to name threatened third parties,
4 including Mr. Daulerio and Mr. Denton and Ms. Dietrick, who
5 is the general counsel, that those parties would not be
6 named in the litigation. That does not, obviously,
7 preclude, to some extent, other parties bringing them in for
8 our discovery. We'll talk about that when I talk about the
9 indemnification.

10 In addition, Mr. Bollea has agreed to receive his
11 share of 45 percent of what we call the Gawker Media
12 contingent proceeds account. That account is to be funded
13 by proceeds, if any, from the actions that the debtors may
14 take with respect to third parties and with respect to the
15 sale of gawker.com. That was going to be shared with any
16 other unsecured creditor, Your Honor. But as a result of
17 the other settlements, there will be no other unsecured
18 creditors sharing in that 45 percent. So Mr. Bollea will be
19 the sole beneficiary of the contingent proceeds account.

20 You can be assured that we do not believe that
21 that will make the 31. We gave them an unsecured claim of
22 \$84 million. It's irrelevant at this point, but we do not
23 believe the assets in that account are anywhere near \$84
24 million. And he will not be receiving anything above
25 payment in full. In fact, we believe the proceeds are

1 probably far less than that.

2 As Mr. Holden would testify, he believes that the
3 cost and expense of the litigation with respect to Bollea,
4 the cost and expense with respect to the Bollea II
5 litigation could range anywhere from 1 to \$10 million and
6 would only delay the distributions. And while the company
7 believes that it could ultimately prevail on appeal and
8 still does believe it could prevail on appeal -- and I know
9 Mr. Denton and Mr. Daulerio still believe that they could
10 prevail on appeal -- it was time to resolve the settlement
11 and put this matter behind us for the benefit of the
12 creditors and the rest of the estate. That will be
13 Mr. Holden's testimony with respect to the settlement with
14 Mr. Bollea.

15 I would say --

16 THE COURT: Can I ask you a question?

17 MR. GALARDI: Sure.

18 THE COURT: All the creditors are being paid in
19 full, right?

20 MR. GALARDI: Correct.

21 THE COURT: So this is essentially a dispute
22 between equity --

23 MR. GALARDI: Correct.

24 THE COURT: -- and the litigants at this point?

25 MR. GALARDI: And it has been, Your Honor, for the

1 most part, since we received the sale proceeds. And I will
2 say from the -- and it really came down to the allocation
3 issue, to a large extent, because of the allocation -- I'll
4 put it on the record that the allocation had been two-
5 thirds, one-third to Gawker Hungary, those creditors could
6 not have been paid in full. And frankly, had we not had a
7 successful auction, this would have been an even uglier case
8 from all parties' concern.

9 THE COURT: Okay.

10 MR. GALARDI: And in regard to the settlements,
11 Your Honor, and since you raised the point, I'll make it
12 clear. All of these settlements -- one, the committee has
13 been the guardian of the Gawker Media unsecured creditors
14 because of the potential issues. Although we don't believe
15 we ever had any conflicts.

16 And with respect to the interests of the preferred
17 shareholders, we have capped the preferred shareholders, who
18 include Mr. Denton as the largest holder, Columbus Nova, who
19 is one of the large holders, Mr. Plunkett (ph), who is one
20 of the large secured involved in these negotiations. And in
21 each time when we had the settlement conversations, we
22 noticed all of the parties -- and Mr. Tillman has been
23 involved bringing everybody together without -- and
24 Mr. Holden have been involved. That basically, on that
25 basis, we believe that the Bollea settlement should be

1 approved.

2 Mr. Holden would also note -- and again, a
3 slightly different request than I'm sure Your Honor has
4 received on other confirmations of plan. And I would say
5 this with respect to Bollea, with respect to Terrill, with
6 respect to Ayyadurai. In the event that the plan does not
7 go effective by December 31st, Mr. Holden would like the
8 authority to make payments to Mr. Bollea on the settlement.
9 And I know Mr. Bollea's counsel doesn't object to that in
10 the amount of \$31 million before year-end.

11 The simple basis for that, as Mr. Holden would
12 testify, is that because the game (ph) occurred in 2016, the
13 payment occurring in 2016 will avoid certain tax
14 implications and then having to refile taxes in subsequent
15 years. So with respect to these payments, that's why one of
16 the reasons why it was so important, as Mr. Holden would
17 testify, that the reserves in all of this, all the amounts
18 be set at the cap so no one will be prejudiced by the early
19 payments. We're going to ask for authority to make certain
20 of those payments actually immediately before or maybe a
21 week or two before going effective on the plan of
22 reorganization.

23 With respect to the Terrill settlement, Your
24 Honor, Mr. Holden would also testify that he participated
25 and was aware of and approved, along with Mr. Tillman, the

1 settlement with Ms. Terrill. In that regard, Mr. Holden
2 would testify that those settlement conversations also
3 occurred in New York in the last two weeks of October and at
4 the same time that the Bollea settlements were negotiated.
5 and Mr. Holden would testify that Mr. Harder (ph) was
6 involved in those negotiations. He was the common counsel
7 to the three defendants -- three plaintiffs.

8 Notwithstanding the fact that those parties were
9 all present in the Ropes offices in New York, those
10 conversations and those settlement negotiations with
11 Ms. Terrill were held separately from the negotiations with
12 Mr. Bollea. Mr. Bollea had additional counsel, and
13 Mr. Harder was only tangentially involved. Mr. Taybeck (ph)
14 was involved primarily on behalf of Mr. Bollea.

15 In those conversations with Mr. Harder with
16 respect to Terrill and those conversations and similarly
17 with Mr. -- Dr. Ayyadurai were held separately and as the
18 result of those conversations, separately negotiated
19 agreements with certain different terms in those agreements.
20 And they were negotiated apart from and the settlement with
21 Mr. Bollea. Mr. Holden would testify that it was not a
22 package deal, that there was not a we'll pay you x and you
23 carve up how you get it paid. It was actually a specific
24 back-and-forth negotiation with Mr. Bollea that was actually
25 a back-and-forth negotiation with counsel to Ms. Terrill and

1 a back-and-forth negotiation with counsel to Dr. Ayyadurai.

2 That those settlements were -- that those
3 settlement negotiations reflected many offers and counter-
4 offers; that Mr. Tillman was involved in those discussions
5 and that both parties, as I mentioned, will resolve in
6 litigation. (Indiscernible) to resolve the litigations with
7 Ms. Terrill in particular for the payment of \$500,000, the
8 debtors and Mr. Holden and Mr. Tillman considered a number o
9 factors, including, one, the costs and expense of
10 litigation; two, the fact that although a pending motion
11 could dismiss this, there was a pending motion to dismiss in
12 the underlying Newark action, that there was a list (ph)
13 that the debtors would lose that motion to dismiss and that,
14 even if the debtors succeeded in that motion, based upon the
15 weeks that Mr. Thiel was financing that litigation, that it
16 would inevitably be an appeal of that litigation. And if
17 there was an appeal, there would be a chance of reversal.
18 And if there was a trial, that it would be a costly and
19 time-consuming litigation.

20 Thus, in connection with the Terrill settlement,
21 the debtors believed that again, there was nothing wrong
22 with what they did, that they did not defame Ms. Terrill,
23 and that they would fight the substance of those
24 litigations. The debtors determined that it was in their
25 best interests to settle that litigation for the payment of

1 \$500,000. As part of that settlement, the debtors also
2 agreed to cooperate to obtain cooperation agreements from
3 the authors or writers that were named in that lawsuit,
4 including Mr. Denton, Mr. Cook and Mr. Biddle.

5 Unfortunately, I am unable to report today that
6 those cooperation agreements have all been entered into. I
7 believe Mr. Denton has one, but I'm not sure. I will leave
8 that to his counsel.

9 That said, that litigation can then -- so as a
10 result of that litigation, the debtors have been able to
11 resolve the Terrill claim for compensatory damages and
12 punitive damages against the debtors, full compensatory
13 damages against all of the other defendants, leaving only
14 the potential of a punitive damage judgment, should
15 Ms. Terrill decide to proceed in that litigation against the
16 writers and potentially Mr. Denton, since I don't know as we
17 stand here right now whether he has received his release.
18 But I believe he has.

19 With respect to that --

20 THE COURT: So are those settlements final, or are
21 you waiting to sign these cooperation agreements?

22 MR. GALARDI: Your Honor, from the debtors'
23 standpoint, our settlement is final. It doesn't -- it's not
24 conditioned on them signing that. With respect to the
25 individuals and the future of the litigation, that is not

1 final as I stand here today. They may still end up with
2 those agreements, as they have in Mr. Ayyadurai's case.

3 THE COURT: But does that prevent the debtor from
4 confirming its plan?

5 MR. GALARDI: No, no. In fact, part of the
6 settlement negotiation was specifically that there was no
7 requirement, simply a duty to cooperate, which we've not
8 heard anything that we did anything other than cooperate.
9 Whether it would be friendly cooperation or threatened
10 cooperation, it was cooperation, as Mr. Holden would
11 testify.

12 With respect to Dr. Ayyadurai's claims, Mr. Holden
13 would also testify with respect to Dr. Ayyadurai that again,
14 those settlement conversations, again, were taken place both
15 prior to the meetings in New York and also during the
16 meetings in New York and also subsequent to the meetings in
17 New York, that during the meetings in New York, that the
18 parties met over the course of three days, that those
19 settlement negotiations were separate and apart from the
20 negotiations with Mr. Bollea, that those negotiations went
21 back and forth regarding offers and counter-offers, that
22 those settlement negotiations were conducted at arms'
23 length, that Dr. Ayyadurai was represented by Mr. Harder,
24 who was independently negotiating the amounts for Dr.
25 Ayyadurai.

1 That as part of those settlements, again, the
2 debtor considered, one, the costs of litigation; two, the
3 likelihood that it would prevail in its pending motion to
4 dismiss; three, the fact that even if it were to prevail in
5 the motion to dismiss, given the potential financing that we
6 -- that the debtors believe that Peter Thiel was providing,
7 that there would be an appeal of that litigation. The
8 appeal itself would be expensive litigation. And that, in
9 fact, if they did not prevail on the motion to dismiss, that
10 the litigation would be costly.

11 The debtors also considered the likelihood of
12 success. Though the debtors believed that there was no
13 likelihood of success with respect to Mr. Ayyadurai, counsel
14 to Dr. Ayyadurai did, in fact, provide his position with
15 respect to why Dr. Ayyadurai may, in fact, prevail in those
16 litigations. As a result of those back-and-forth
17 negotiations, the consideration of costs, the debtors
18 determined that settling the litigation with Dr. Ayyadurai
19 in the amount of \$750,000, again, which amount the debtors
20 would like to pay on or before December 31st of this year,
21 2016 for the reasons that Mr. Holden had, in proper
22 testimony with respect to the tax savings.

23 My understanding and part of that settlement
24 agreement was also that the debtors negotiate cooperation
25 agreements with Dr. Ayyadurai on behalf of Dr. Ayyadurai --

1 between Dr. Ayyadurai and Mr.s Biddle and Cook and that my
2 understanding is that those agreements have, in fact, been
3 reached. And I believe Mr. Goldman, who is counsel here
4 today, has advised me that with respect to Dr. Ayyadurai,
5 the parties have resolved all of their issues.

6 With respect to all of the three -- those three
7 creditor settlements, Your Honor, all of those settlements
8 had a specific provision in it with respect to content that
9 was on either the websites or in the possession of the
10 debtors. With respect to all of that content, the debtors
11 have agreed to either return or quit claim any such content
12 back to the plaintiffs in that action. With respect to that
13 content, Mr. Holden would testify that, indeed, that
14 content, he does not believe, has any value to the estate.
15 But, in fact, it would be detrimental to the estate and
16 would not enhance the sale of the value of gawker.com.
17 Indeed, anybody who would acquire gawker.com or that content
18 could, could -- I won't say will be -- could be subject to a
19 republication risk of that content and therefore, subject
20 themselves to litigation.

21 So in valuing the settlement, the fact that the
22 debtors looked at that content, looked at the fact that the
23 parties were going to pursue that content, possibly pursue
24 republication arguments as they had even pursued with
25 respect to the successor Unimoda (ph), Mr. Holden would

1 testify that he believes that in giving that content and
2 quit claiming that content that he was giving no valuable
3 estate to those creditors in addition to the cash component
4 of those settlements.

5 Your Honor, the other settlement that Dr. -- that
6 Mr. Holden would testify is the settlement with -- I call
7 them Columbus Nova, but it is the second lien they call the
8 settlement that is set forth in the plan. And it is a
9 secured claim. Again, Mr. Holden would testify that he
10 participated in settlement negotiations and meetings with,
11 I'll call them, Columbus Nova with respect to the make-whole
12 plan. Mr. Holden would testify that, upon the consummation
13 of the sale, the debtors paid Columbus Nova the full amount
14 of the outstanding debt, approximately \$15 million; fees
15 with respect to that debt, and default interest with respect
16 to that debt, leaving only the make whole -- what's called
17 the make-whole claim of a 25 percent amount in addition to
18 the amounts that I just listed.

19 Mr. Holden would testify that the debtors raised
20 concerns regarding the belief (ph) that that extra 25
21 percent would be punitive and considered that they could
22 possibly subordinate it and, if not eliminate it,
23 subordinate it and at least subordinate it to all claims
24 against all the estates but still senior to the
25 (indiscernible). In fact, Mr. Holden would testify that in

1 that regard, considered that the loan had allowed the equity
2 to continue to finance the litigation against Bollea and
3 also to be able to help finance these cases and therefore,
4 at worst, that they would be subordinated to the claims.

5 With respect to that settlement, what Mr. Holden
6 would testify is that, as a result of those negotiations,
7 Columbus Nova agreed to payment of \$500,000 from each of the
8 debtors on the effective date and then agreed to subordinate
9 the balance of their payment of 750 of each of the entities
10 until all of the creditors of those entities were paid in
11 full. At the time, obviously, Your Honor, Mr. Holden would
12 testify that Gawker Media would -- I mean, Gawker Hungary
13 would be able to pay its \$750,000. But at the time that
14 settlement was negotiated, there was still a concern that
15 the debtors would not be able to pay all of the unsecured
16 creditors at Gawker Media and might not be able to pay all
17 of the unsecured creditors of GMGI because of the
18 indemnification obligations.

19 As a result, Columbus Nova agreed to subordinate
20 that claim, wasn't impaired, and voted to accept the plan.
21 And the only addition to that was that, as part of and prior
22 to the effective date, the debtors have agreed to pay any
23 accrued and unpaid attorneys' fees at Columbus Nova before
24 year-end as part of the settlement. Mr. Holden would then
25 testify that, based on the probability of a litigation

1 regarding the make-whole, that based upon the costs and
2 expenses of such litigation and the amount that was at risk
3 in that litigation, about \$3.75 million, that he believes
4 that the settlement of that litigation was in the best
5 interests of the debtors because such litigation in that
6 settlement did, in fact, provide \$750,000 that might have
7 been used to top off the unsecured claims at Gawker Media
8 and that they would delay the payment on the GMGI claim in
9 the event that there were large indemnification claims at
10 GMGI. So Mr. Holden would ask for approval of that
11 settlement.

12 Your Honor, what I turn to --

13 THE COURT: What about the Mitch Williams
14 settlement?

15 MR. GALARDI: Okay, I was going to do that last,
16 and we'll do that.

17 THE COURT: All right.

18 MR. GALARDI: With respect to Mr. Williams, what
19 Mr. Holden would testify is the following. That the debtors
20 have filed an objection to the claim of Mr. Williams, that
21 Mr. Williams, in response to that, as well as to estimate
22 that claim, that Mr. Holden would testify that with respect
23 to Williams, the debtors' position was that he had no claim
24 because the New Jersey Court had granted summary judgment
25 and motion to dismiss with respect to all of his claims.

1 Mr. Williams, on the other hand, was, as Your Honor is
2 aware, filed a motion to lift stay to bring -- to pursue an
3 appeal arguing that that summary judgment motion was
4 improvidently granted and take an appeal with respect to
5 that litigation.

6 With respect to the litigation itself, the debtors
7 have agreed to settle the (indiscernible) litigation on the
8 following terms. The debtors have agreed to pay a total
9 consideration to Mr. Williams of \$125,000. With respect to
10 that \$125,000, Mr. Holden would testify that, in
11 conversations with the insurance carriers, he and the
12 insurance carriers believed that the costs of the appeal
13 alone, leaving aside any subsequent trial, would range
14 anywhere from 75,000 to \$125,000.

15 In those conversations, the insurance counsel
16 agreed to reimburse or pay to Mr. Williams, depending upon
17 the timing, 100,000 of the \$125,000 judgment. In addition
18 then, the remaining \$25,000 we would allow Mr. Williams to
19 elect convenience class treatment, which we had offered and
20 paid from the estate \$25,000. As part of the settlement,
21 the insurance carriers also agreed, without us having to put
22 in invoices, that they would reimburse Ropes & Gray 25 --
23 would reimburse the estate for any fees that Ropes & Gray
24 expended on contesting the Williams' claim as a result of
25 our bringing it to a settlement.

1 And as a result, the estates will take that
2 \$25,000 and if necessary -- it may not be necessary now --
3 take that \$25,000 and put it in the unsecured creditors
4 reserve. Therefore, from a settlement standpoint,
5 Mr. Holden would testify that the Williams' settlement has
6 no net effect on any recoveries to the unsecured creditors,
7 that the estate avoids the costs of litigation, some of
8 which, under insurance rates, may not, in fact, be
9 reimbursed, that they are being fully reimbursed for 100,000
10 of that and that, even with respect to the 25,000 with
11 respect to Mr. Williams, that the debtors are receiving and
12 the estates and the unsecured creditors are receiving the
13 benefit of the additional 25 that will be reimbursed to the
14 estate for the Ropes & Gray's fees in litigating that.

15 Mr. Williams has agreed that with respect to --

16 THE COURT: So the estate's paying \$25,000 either
17 to you or to Mr. Williams, right?

18 MR. GALARDI: Yes, but they're getting that
19 reimbursed. Yes, there's a net zero to the estate. But the
20 -- we were looking at it from the unsecured creditors'
21 standpoint, reimburse that estate. That's true.

22 With respect to -- I'm trying to think. Oh, with
23 respect to the Williams' litigation, upon payment of that
24 amount, Mr. Williams has agreed to dismiss his litigation.
25 Mr. Williams will not amend the litigation. Mr. Williams

1 will not pursue in the litigation the various John Does that
2 were possible writers, authors, or editors of articles which
3 he may have pursued. There is no agreement to provide back
4 the content that was put on the website. There was not a
5 republication risk. And Mr. Holden would request that,
6 based on the costs of litigation, based upon the likelihood
7 or prevailing, based upon the insurance recovery, based upon
8 the fact that no unsecured creditors are actually prejudiced
9 by the recoveries to Mr. Williams, and based upon the facts
10 that he believes that this is a fair and reasonable
11 settlement and should be approved by Your Honor.

12 Your Honor, I might as well take up Mr. Meanith
13 Huon's now.

14 THE COURT: Yes.

15 MR. GALARDI: While we may hear more about this,
16 he did want me to say that he wanted to be on, but he didn't
17 want to pay for two court calls. And he'll be on on the
18 15th.

19 With respect to Mr. Huon, Your Honor may recall
20 that the debtors had filed an objection to Mr. Huon's
21 claims, that those claims -- on the basis that those claims
22 have been disallowed on motions to dismiss by the Illinois
23 -- I believe it's the state court. No, it's the federal
24 court.

25 THE COURT: It's the district court.

1 MR. GALARDI: It's the district court, yes, Your
2 Honor. And that he had taken an appeal as of the
3 commencement of these cases to the Seventh Circuit. With
4 respect to the Seventh Circuit, right before his deadline to
5 respond to our objection to his claim, the Seventh Circuit
6 reversed on one of those counts finding that there was not
7 -- it was not proper to grant a motion to dismiss on what
8 we've referred to as the single comment claim. Mr. Huon's
9 single comment claim rested on the fact that either there
10 was at least an evidentiary issue or a factual issue to
11 determine whether or not an employee did that and whether or
12 not the Gawker Media advertising or incentive policies were
13 such that there was an actionable conduct.

14 The Seventh Circuit did find, however, that the --
15 that the comment itself was defamation, per se. With
16 respect to Mr. Huon's conversations -- I've had
17 conversations with Mr. Huon. Mr. Holden has been involved
18 or at least listened in on certain conversations yesterday
19 and Mr. Tillman as well and has heard the back-and-forth
20 with respect to those litigations.

21 Frankly, the debtors wanted to oppose Mr. Huon on
22 that, because it does raise interesting First Amendment
23 issues in the district court as to whether or not you can be
24 liable for comments, whether or not the policy.
25 Notwithstanding that, the debtors determined that it was

1 better not to spend the amount on the litigation, as the
2 debtors considered the litigation, in the event that it went
3 forth in the -- in the district court there, it was going to
4 be a factual litigation with respect to tracking down
5 employees. And that would have been expensive litigation.
6 Even to the extent that Your Honor had jurisdiction, which
7 we believed Your Honor had, Mr. Huon believed that he would
8 take an appeal of that jurisdiction, and that would have
9 cost.

10 If Mr. Huon had proceeded pro se and has actually
11 been quite successful in certain pro se matters --

12 THE COURT: Well, he's a lawyer.

13 MR. GALARDI: Yes. Well, -- and so, he has
14 actually proceeded pro hoc. You're right, Your Honor and
15 has been successful in those litigations and made clear that
16 he was going to take an appeal. Based on the costs and
17 expenses of the appeals, the issues that were raised, and
18 with respect to the underlying issue, which could be a
19 factual issue, the debtors determined that it was better to
20 offer Mr. Huon a settlement.

21 Mr. Huon accepted a settlement. It was \$100,000.
22 I think he'll testify. And he'll say 99,999. We won't go
23 into the reasons, but we're going to say \$100,000 settlement
24 for Mr. Huon with respect to his claim.

25 The debtors believe that entering into that

1 settlement to resolve the claims objection, the estimation,
2 the Seventh Circuit litigation, all of the claims against
3 the writers and other people that were named in the long
4 litigation, including board members and former board
5 members, is a reasonable settlement based upon the
6 likelihood of success, the costs and expense of litigation,
7 the likelihood of prevailing, and any objections that we may
8 have had with respect to the reserves of the debtors under
9 the plan. So we would ask Your Honor to approve the
10 settlement with respect to Mr. Huon as well.

11 Your Honor, I think -- I think maybe it would be
12 good to just put on some evidence about the Gawker available
13 assets so that you can, you know, make those findings. With
14 respect to the Gawker available assets, Your Honor,
15 Mr. Holden would testify that there are really three
16 financial sources for the payment of unsecured claims.
17 First is there is a Gawker unsecured claims reserve.

18 As Mr. Holden would testify, that unsecured claim
19 reserve, after paying the Bollea settlement, after paying
20 the Ayyadurai settlement, after paying the Terrill
21 settlement, and after making any distribution on the inter-
22 company claim would have been funded on the effective date
23 in the amount of \$3.75 million. In addition, Mr. Holden
24 would testify that in addition to those assets, as I had
25 mentioned before, Columbus Nova was leaving \$750,000 behind

1 to pay the unsecured creditors. And those funds would have
2 been funded on the effective date and not released unless
3 and until Gawker Media unsecured creditors received payment
4 in full.

5 Finally, Mr. Holden would also testify that, with
6 respect to the GMGI guarantee, that GMGI agreed to fund up
7 to \$2 million to pay unsecured claims if that first 3.75 and
8 that next 750 were not paid in -- were not sufficient to pay
9 in full the amount of those claims. That's what we would
10 refer to and Mr. Holden would refer to as the Gawker
11 available assets. In addition, Mr. Holden would testify
12 that it was a requirement of the GMGI plan to fully fund in
13 cash the Gawker -- the GMGI guarantee on the date. So all
14 of these would have been funded in cash available to the
15 unsecured creditors.

16 Mr. Holden would testify that one of the concerns,
17 especially after finding out about the settlements with
18 respect to the Bollea, Ayyadurai, and Terrill that the
19 committee had raised was the concern that there would be
20 adequate cash to pay the general unsecured creditors a
21 Gawker Media in full, or at least the same percentage, if
22 not a higher percentage than was being received by
23 Mr. Bollea. As a result, these funds were established to
24 pay the unsecured creditors, and there have been back-and-
25 forth with the unsecured creditors committee during the

1 course of the cases and subsequent to the settlements to
2 confirm that we believed and that they believed that the
3 amounts were sufficient to fund and pay in full these
4 claims, or at least pay a very high percentage, no higher --
5 and no lower percentage than was paid to Mr. Bollea.

6 As a result of the settlements, Mr. Holden can
7 testify as follows. That based upon his review of the base
8 amount of the unsecured liquidated claims in these cases,
9 there is about \$900,000 funded, liquidated, unsecured claims
10 and that the reserve -- we're going to start subtracting
11 numbers -- that the reserve will have funding available for
12 each of those claims.

13 THE COURT: Did he include the two settlements?

14 MR. GALARDI: No, I'm going to include those, Your
15 Honor. So we start with 900. Based upon a review --
16 Mr. Holden would testify that, based on a review of the
17 claims registry, he classified claims into essentially three
18 groups of claims, Your Honor.

19 First, the liquidated -- well, more like the
20 trade-payable type claims, where you may dispute amounts.
21 But they were filed in a liquidated amount. They're not
22 contingent. And they may be disputed as a rounding error,
23 more or less. With respect to those claims, Mr. Holden
24 would testify that there are about \$900,000 worth of those
25 claims.

1 Next, Mr. Holden would testify that, with respect
2 to Mr. Daulerio, he was setting aside \$500,000 for the claim
3 of Mr. Daulerio with respect to attorneys' fees that had
4 been incurred to date. With respect to the balance of the
5 writers and --

6 THE COURT: That's an absolute cap, though, isn't
7 it?

8 MR. GALARDI: It is an absolute cap, right. So
9 all of these are caps. We're taking people on their claim
10 as a cap. We're taking the 500 as a cap. And as Your Honor
11 may recall when I filed the estimation motion, which is late
12 -- which is now going to be withdrawn, the way we were going
13 to do the analysis is let's take all the caps and see what's
14 left of the claims.

15 THE COURT: Right.

16 MR. GALARDI: So right now, it's a claim. So you
17 have 900 plus the 500 for the --

18 THE COURT: Daulerio.

19 MR. GALARDI: -- Mr. Daulerio. Now, with respect
20 to Mr. Williams, that settlement will have no effect on the
21 numbers, because, as I said, they will be reimbursed and put
22 into the proceeds by way of, one, the 100,000 that the
23 insurance carrier is paying and, two, the 25 that will be
24 reimbursed on fees. So that has no net effect on the
25 reserve.

1 As part of the Johnson settlement, the debtors
2 have agreed to reserve, with respect to that, \$1.5 million,
3 again a cap on recovery. So with --

4 THE COURT: And Mr. Huon?

5 MR. GALARDI: Mr. Huon's being paid 100 out of
6 that reserve, Your Honor.

7 (Pause)

8 MR. GALARDI: So if my math is correct, which is
9 always questionable, I have 900. I'll do Mr. Huon next.
10 That brings it to a million and 500 for Mr. Daulerio.
11 That's 1.5 million and a reserve for Mr. Johnson at GotNews
12 at 1.5. So nearly of the 3.75 that's cash, we believe we
13 have 750,000 more than is necessary to be able to pay all of
14 the remaining unsecured claims in this case.

15 THE COURT: Not counting the Columbus Nova
16 subordination and the \$2 million guarantee?

17 MR. GALARDI: Correct. So, in essence, if we go
18 forward with the plan, Your Honor -- and I'm going to talk a
19 little bit about the indemnification plan. Because in
20 addition, there are other indemnification claims and defense
21 costs it's possible that certain writers will have,
22 depending upon Your Honor's ruling on the third party
23 releases and also that Terrill matter that I mentioned.

24 But, Your Honor, with respect to that, we believe
25 all of the claims that are liquidated amount known as of

1 today -- and it's actually extended fees, which is really
2 Mr. Daulerio. We have \$750,000 even at the first level in
3 excess of what we will need to pay those claims.

4 Now, I would also like to now, with respect to
5 Mr. Johnson's claim, Your Honor, to give Your Honor more
6 comfort. It is our understanding and Mr. Holden would
7 testify that we have had conversations with the insurance
8 carrier. Mr. Johnson is now the remaining claim, with
9 respect to one of the policies for which we have, in fact,
10 received coverage for part of Mr. Johnson's proceedings
11 before and that, between the first layer of coverage and the
12 excess coverage, there is at least 1.1 million, 1.2 million
13 remaining of coverage.

14 So with respect to that \$1.5 million reserve and
15 the potential for settlement or otherwise, there is
16 insurance coverage that will also give us a level of comfort
17 with respect to that reserve. But again, the 1.5 is a cap,
18 but I want Your Honor to understand that certain of the
19 monies would then flow through to the inter-company claim
20 and go back up to the parent.

21 Your Honor, so Mr. Holden would testify that, in
22 his view, Gawker available assets are, in fact, based upon
23 the settlements, based upon the reserves, and based upon the
24 agreements, adequate to pay the Gawker Media unsecured
25 claims in full on the effective date or upon their allowance

1 as soon as after. Your Honor will notice -- and we'd like
2 to amend the plan in light of the settlements -- that one of
3 the provisions -- and Mr. Holden would testify, but I'll
4 (indiscernible) -- is that we are not going to make
5 distributions until all of the claims were settled, because
6 there were so many of them and we didn't want to do so.

7 One of the things that we think will be beneficial
8 to, again, facilitate whatever settlements is instead of
9 waiting now, since you have essentially independent
10 reserves, to ask Your Honor to authorize us, in the plan
11 administrator's discretion, to make those distributions as
12 those settlements relieve (ph) instead of waiting for
13 everybody to resolve.

14 THE COURT: Isn't the only unresolved claim at
15 this point the Johnson GotNews?

16 MR. GALARDI: Again, I always preface this with
17 Your Honor -- if Your Honor approves the third party
18 releases, I believe that plus what the equity has agreed
19 after conversations and what I'd like to have Your Honor
20 authorize is -- I said there was \$750,000 left in the
21 reserve. The debtors are standing by the writers and will
22 stand by the writers in their right to defend against the
23 Terrill litigation. We would like to make that money
24 available for that one unique carve-out.

25 I'm seeing Terrill as essentially I opted out of

1 the releases type provision. And what we would do is, if
2 they're going to opt out, we're not going to insist that
3 those writers laid their claims on that. And we would like
4 the administrator -- and we'd have the consent of the major
5 equity people. Again, Mr. Denton's subject to your
6 jurisdiction, but to be able to use that money.

7 And we're going to keep the 2 million out there a
8 little bit. We don't think it's going to cost that much,
9 but we don't think it's fair for the writers to continue to
10 be litigating without costs waiving their claims, with that
11 narrow exception.

12 I think I've gone through the media reserve. Your
13 Honor, let's -- I think maybe now I can go on to the
14 releases and cover all of your topics.

15 Your Honor, with respect to the debtor releases --
16 and if we turn to the plan, which is -- and again, Your
17 Honor, there have been no objections to these. In fact,
18 there's been motions in support of these. But I think it is
19 worth me explaining how do we work through these and then
20 the testimony.

21 Your Honor, as is normal -- I have it on page 40,
22 41, and 42 of the plan. On the filed version, I have 122,
23 123, and 124, and 125 of 557. Are we together?

24 THE COURT: Yes.

25 MR. GALARDI: Okay. Your Honor, with respect to

1 the provisions of the plan, I think that they are common but
2 yet immediately tailored as -- I will put in a proffer.
3 9.01 is an injunction against asserting claims against the
4 debtors. And I don't need to put Mr. Holden, because it's a
5 legal question. I wanted Your Honor to be aware that this
6 injunction is broader than the releases. It --

7 THE COURT: But, you know, this is a liquidating
8 plan, and the debtor doesn't get a discharge. If the debtor
9 doesn't get a discharge, why does the debtor get an
10 injunction against the filing of claims? If somebody wants
11 to go out and sue the debtor, I understand you get an
12 injunction against interference with property that's going
13 to be distributed under the plan. But if somebody wants to
14 go out and get a -- you know, a judgment against a debtor,
15 aren't they entitled to do that?

16 MR. GALARDI: Your Honor, you're 100 percent
17 correct --

18 THE COURT: But --

19 MR. GALARDI: -- that they would be entitled to do
20 that, but let me -- the reason that we have an injunction
21 here -- and I think Your Honor could be, to some extent, the
22 guardian of that injunction. And I think this is unique
23 circumstances, which is why I wanted to bring this out
24 because they go hand-in-hand with the third party releases.

25 THE COURT: Third party releases are something

1 else. All I'm saying is, as a debtor, this is a liquidating
2 plan. The debtor is not entitled to a discharge under
3 1141(d)(3). And if the debtor isn't entitled to a
4 discharge, it's not entitled to a release, injunction,
5 exoneration, limitation of liability, whatever you want to
6 call it.

7 MR. GALARDI: But an injunction is different than
8 a release or discharge, Your Honor. All it means is that
9 they have to come back here before they pursue actions. If
10 Your Honor has exactly the circumstances that you just
11 raised, we have no doubt Your Honor will, in fact, dissolve
12 the injunction.

13 THE COURT: So why put it in the plan?

14 MR. GALARDI: Because, Your Honor, there is a
15 safeguard and an important point here. As we have mentioned
16 in Mr. Holden's testimony, this injunction is partially to
17 protect the writers and the other employees from lawsuits.
18 For example -- and it goes to the third party releases. So
19 I don't believe that they are at all completely separate.

20 Your Honor, the debtors and their writers and
21 editors have written articles straight through the
22 consummation of the sale process, as employees. As
23 Mr. Holden would testify, there have been threats or
24 requests to take down content throughout the cases up until
25 the consummation of the sale. Your Honor, the only people

1 after the debtor gets -- we had a bar date. We get the
2 protection of the bar date.

3 We've had administrative bar dates. We get the
4 protection of those bar dates. That said, the average
5 statute of limitations, depending upon the publication, is
6 one to three years.

7 Your Honor has heard testimony that we want to get
8 all this money out. And obviously, we have legal remedies
9 against the editors and the writers for their contingent
10 claims. You can do 502(c). You can do 502(e)(1).

11 But there is a significant risk, and we do have a
12 pending 2004 motion that says that we want a third party
13 release, we want the writers to have it. But in the event
14 somebody wants to come to this court and pursue those
15 parties or the debtors, we would like Your Honor to be the
16 gatekeeper and determine on a case-by-case is this a cause
17 of action that should, in fact, go forward. Your Honor can
18 make that determination. We'll have the high standard to
19 say no.

20 But if we determine, for example, that there is
21 some other billionaire funding litigation against writers
22 who generally don't have a ton of money but are only going
23 against us for indemnification claims, we would like Your
24 Honor to be the gatekeeper with respect to those actions.

25 THE COURT: Well, I can't -- assuming a third

1 party release is appropriate, why can't the third party
2 release in favor of the writers be broader than the release
3 or the discharge that the debtor is getting?

4 MR. GALARDI: Your Honor -- and I can hear
5 Ms. Levine in the back and Mr. Goldman in the back.

6 Your Honor, if the third party release -- and we
7 tried to narrow it because of the Second Circuit law in the
8 third party release. As Your Honor will notice, if you go
9 to Section 905, the third party release -- and there is an
10 open issue here -- released employees and independent
11 contractors. But it did have the qualifications -- and I
12 know the U.S. Trustee would look -- was looking for this --
13 gross negligence and willful misconduct.

14 THE COURT: It also says to the fullest extent
15 provided by law.

16 MR. GALARDI: Right, but again, then we'll have
17 arguments. Again, arguments that the writers and employees
18 will have to make is okay, Your Honor --

19 THE COURT: Well, that's always an argument --
20 that's always an argument that can be made down the road,
21 though.

22 MR. GALARDI: Sure, but, Your Honor, why not have
23 that argument before Your Honor and make somebody lift the
24 injunction and make the argument before to interpret your
25 own plan?

1 THE COURT: I'm looking at the writers differently
2 from the debtor. I think the law is very clear with the
3 debtor.

4 MR. GALARDI: And, Your Honor, --

5 THE COURT: I suppose that somebody could sue the
6 debtor but be precluded from suing the writers.

7 MR. GALARDI: Your Honor, if -- and if I've missed
8 your point that 901 should not be an injunction against a
9 certain claims against the debtors. But if we can put it
10 with respect to the employees and independent contractors to
11 mirror and work with the third party release, I have no
12 objection to that.

13 THE COURT: I'm just wondering why that can't be
14 done.

15 MR. GALARDI: I think it can be done, Your Honor.
16 mean, I'm happy to come back to Your Honor if somebody wants
17 to pursue an action and say we've gotten -- you know, we've
18 liquidated our assets. There's no more assets.

19 THE COURT: Yeah, well, I don't know why anybody
20 would want to sue a shell.

21 MR. GALARDI: Exactly why I wanted to do it.

22 THE COURT: That's precisely why the shell doesn't
23 get a discharge.

24 MR. GALARDI: Exactly. But, Your Honor, that's --
25 and again, the other aspect of this is look, Your Honor, we

1 had this debate to some extent early on with Mr. Denton. To
2 some extent, I can argue at times that a claim against the
3 writers and directors, because of indemnification
4 obligations, is, in essence -- either it's a claim against
5 us, or it's an extension of the stay. Again, that was the
6 thinking behind 901.

7 THE COURT: I don't have a problem with the
8 jurisdiction. Because if they have indemnification rights,
9 it could have an adverse impact on the estate or the -- I
10 guess the post-confirmation estate.

11 MR. GALARDI: Well, and, Your Honor, --

12 THE COURT: But that's a jurisdictional issue.

13 MR. GALARDI: Correct, but again, if you think of
14 the way in which we're going to be able to make the
15 distributions we're trying to make, indemnification claims
16 could be out there for three years.

17 THE COURT: Uh-huh.

18 MR. GALARDI: The whole point is we don't want
19 that -- we called it the indemnification dam -- to stop the
20 distributions. And frankly, though the debtor has rights
21 under 502(c) and 502(e)(1), it's not what we want to do as a
22 First Amendment media company to be arguing with those
23 individuals that their claims should be disallowed or come
24 back under 502(j) when and if you have claims for costs. An
25 estimation under 502(c) is not an easy fight to have. So

1 one of these reasons was to make sure we gave the writers
2 and editors the greatest protection we could possibly give
3 them, have Your Honor, who sat before this case, understand
4 why we're doing this, and then work through the releases and
5 the third party releases.

6 THE COURT: Well, why don't you tell me why third
7 party releases are the ones you propose are appropriate in a
8 case like this?

9 MR. GALARDI: Your Honor, again, in a case like
10 this, third party releases, I believe, are -- if not in a
11 case like this, I don't know what other case, except one
12 aspect of this. First, the circumstances are unique, Your
13 Honor. As Mr. Holden would testify and has been proffered,
14 one, there are significant First Amendment concerns. And
15 although we are a liquidating debtor, that was our business.
16 And we do want to protect the writers and editors.

17 Two, we believe the writers and editors have, in
18 fact, provided substantial consideration in these cases.
19 One, by continuing to write the articles and generating the
20 revenue, but more importantly, as tailored, the writers and
21 editors that have, in fact, voted in favor of the plan have
22 given consideration, consideration not only with respect to
23 the waiver of their claims, but also consideration that is
24 tantamount and will amount to certain tax advantages and
25 therefore, a bigger pot to all of the entities by allowing

1 us to consummate that plan, make the distributions, and
2 avoid litigation with respect to, as I've mentioned now
3 twice, 502(c) estimation for their defense costs and 502(e)
4 with respect to the rights of indemnification and arguing
5 that their claim should be zero with a right to hold a
6 reserve and come back under 502(j).

7 In addition, Your Honor, we think that these
8 particular provisions of 9.05 have been narrowly tailored.
9 In particular, as I pointed out to Your Honor, if Mr. Holden
10 would testify, we have not -- though there is an issue in
11 the law. We have not tried to give a third party release
12 with respect to gross negligence or willful misconduct.
13 Second, the only parties getting the third party releases
14 are the released employees and independent contractors.

15 And if Your Honor goes back to the definition,
16 those are essentially those people that were writers,
17 editors of articles. With respect to those individuals,
18 Your Honor, Mr. Holden would testify that, based on his
19 knowledge, they are not particularly wealthy individuals,
20 nor can they stand to defend the litigation on behalf of
21 themselves in the event that somebody brought a litigation.
22 In addition, under the circumstances, as I have said, the
23 statute of limitations is one to three years. So we think
24 that the value of these third party releases are really for
25 a limited time.

1 We believe that anybody who would be bringing such
2 action should have brought an action or claim in the
3 bankruptcy, knowing that Gawker was in bankruptcy and
4 therefore, Gawker could have dealt with those claims in
5 bankruptcy. And we believe that anybody that would simply
6 go against the writer knowing them -- going against a writer
7 as a Gawker writer -- would only be doing so whether it was
8 for a malicious intent or other intent, because knowing that
9 they do not have substantial assets. And the only assets
10 that they have would be the indemnification claims that they
11 would have against the debtor and not having the resources
12 to defend, we believe that those third party releases under
13 these circumstances for both pre and post-petition articles
14 written on behalf of the debtors are appropriate in these
15 circumstances.

16 So we think we satisfy the unique circumstances,
17 we think we satisfy the substantial consideration, we think
18 we've narrowly tailored. And to the extent, as I've
19 mentioned, Your Honor, sometimes third-party releases come
20 with a box that you can check to check out, with respect to
21 those parties -- but that's only good as people who have
22 filed claims -- with respect to the one party that
23 essentially checked the box to check out, Terrell, that's
24 left, we're letting them go ahead and pursue it and we're
25 going to indemnify. And that's going to be costly for us to

1 do so, but we think it's valuable to do so.

2 And we are getting consideration from those
3 parties with respect -- from the employees and the other
4 contractors in exchange for not having claims and being able
5 to make distribution and achieve a greater recovery for
6 unsecured creditors. Less risk to the recoveries of the
7 unsecured creditors of Gawker Media and a greater recovery
8 for the other preferred shareholders, though that is -- but
9 with respect to that, the preferred shareholders who as Your
10 Honor has noted really is a fight between preferred
11 shareholders versus the creditors, the preferred
12 shareholders have chosen to leave that reserve there, take
13 less early, and they themselves have chosen to leave at
14 least part of that guaranty available so that they can stand
15 behind the writers.

16 So we think in those circumstances these third-
17 party releases are appropriate under the Second Circuit
18 standard.

19 Your Honor, I think I addressed your topics, I
20 think I addressed what I need: the best interests, the
21 settlements, the third party; is there any other topics that
22 you would like me to address?

23 THE COURT: No.

24 MR. GALARDI: I would turn it over to Mr. Martin
25 just to deal with the XP and some more detail on the Johnson

1 seller. Thank you.

2 Your Honor, just as a record matter, I would move
3 into evidence the certification of the voting tabulation. I
4 don't know if it's been moved --

5 THE COURT: Does anybody object to the receipt of
6 the voting tabulation?

7 It's received.

8 MR. GALARDI: Thank you, Your Honor.

9 MR. MARTIN: Your Honor, for the record, Ross
10 Martin of Ropes & Gray for the debtors, debtors in
11 possession.

12 As Mr. Galardi indicated, I'd like to take up the
13 Johnson settlement and then the various submissions by XP
14 Vehicles, and what I'm going to discuss will be provided for
15 in a red-lined order, which I'm happy to hand up as well, if
16 that would be appropriate.

17 THE COURT: Well, Johnson is not really a
18 settlement, you're just cap -- you're just reserving in
19 capital, right?

20 MR. MARTIN: That is exactly what I was going to
21 start with, Your Honor. Unlike the settlements that
22 Mr. Galardi went through, which are substantive, final
23 settlements with allowed claim amounts, in Mr. Johnson's
24 case we are only resolving the confirmation objection and
25 objection to the estimation motion, which we're withdrawing.

1 THE COURT: As long as nobody has an objection to
2 that, because no money, no property of the estate is being
3 paid, that's fine.

4 MR. MARTIN: Okay. Just for the record, Your
5 Honor, I think as Mr. Galardi indicated, part of that
6 arrangement also is that GotNews and Mr. Johnson will not be
7 pursuing claims against writers who would have
8 indemnification claims over, for much of the reasons that
9 Mr. Galardi just indicated.

10 And I think we spoke on December 1, we have had
11 some discussions with GotNews and Mr. Johnson's counsel
12 about a potential scheduling and sequencing of that
13 litigation; we intend to be back about that. We don't have
14 that all worked out yet, maybe we'll have disputes, maybe we
15 won't, but as Your Honor indicated there's no substantive
16 approval of an allowed claim there. So unless the Court has
17 any other questions on that --

18 THE COURT: No.

19 MR. MARTIN: -- I'll leave that where it is.

20 Your Honor, next is with respect to XP Vehicles
21 and I'll move through this quickly, Your Honor. As the
22 Court is aware, XP Vehicles filed claims against each of the
23 debtors prior to the bar date. Our claims objections to
24 those were heard on December 1st and in fact the Court
25 disallowed all of those claims in an order which is Docket

1 No. 529 for among other reasons, but principally on statute
2 of limitations grounds.

3 At various times subsequent to that order
4 disallowing the claims, XP Vehicles has sent to our office,
5 as well as sent to the Court, not always exactly the same
6 documents as far as we can tell, but has emailed various
7 documents. Some of those, in our view, relate to the claims
8 disallowance and we'll be filing a separate set of papers
9 with respect to that, but some we believe are best
10 characterized as relating to confirmation. And so we would
11 propose that the confirmation order address those and deal
12 with them. And I'm happy to go through that, it will not
13 take very long.

14 THE COURT: What are the objections to
15 confirmation?

16 MR. MARTIN: Your Honor, in --

17 THE COURT: By an entity not holding an allowed
18 claim.

19 MR. MARTIN: That is why they should be
20 disallowed, Your Honor, that is exactly correct.

21 If I could for the record, Your Honor, just point
22 out precisely which items we would like to be considered as
23 objections to confirmation.

24 THE COURT: Go ahead.

25 MR. MARTIN: Your Honor, the debtors filed a

1 declaration, Docket No. 570, it's my declaration, which has
2 four exhibits. And with respect to those, Exhibits A, B and
3 D each relate to confirmation. A mentions the amicus brief
4 of certain writers; Exhibit B, an email from XP Vehicles
5 invokes Mr. Williams' objection to confirmation; and Exhibit
6 D, although it does not expressly note confirmation,
7 discusses the size of the asset pool available to creditors;
8 and we would propose that all of those be considered
9 objections to confirmation and overruled on the grounds that
10 XP Vehicles does not have an allowed claim.

11 Exhibit C actually specifically refers to the
12 claims estimation motion by docket number and we would
13 simply -- in the confirmation order would ask that that
14 objection -- or be deemed an objection to the claims
15 estimation motion, but be deemed moot because we're going to
16 be withdrawing that motion.

17 Last night, Your Honor, yesterday -- last evening
18 we received two more emails from XP Vehicles and last night
19 I filed a follow-up declaration, Docket No. 591, which has
20 only those two emails attached. And one of those, Exhibit
21 A, attaches Mr. Juan's (ph) confirmation objection, and
22 again we would ask that that be treated a confirmation
23 objection by XP Vehicles, but disallowed because they have
24 no claim.

25 Exhibit B appears to be best characterized as a

1 request for discovery, which should also be disallowed
2 because they have no claim and therefore are not allowed to
3 object to confirmation.

4 We would memorialize that all in a single
5 paragraph, Your Honor, of the proposed confirmation order,
6 and unless the Court has further questions, that's how we
7 propose to treat those various items.

8 THE COURT: Does anyone want to be heard in
9 connection with the XP claim object -- confirmation
10 objection?

11 The record should reflect there's no response.

12 I'll sustain the objection for the reason XP
13 doesn't have an allowed claim. XP is not here to articulate
14 its objection. I had raised the issue about whether XP can
15 appear without counsel; the objections were not signed by
16 counsel as far as I can tell. And to the extent they
17 incorporate the objections of others, those objections have
18 been resolved and not hearing from XP, I will assume that
19 their objections have also been resolved.

20 MR. MARTIN: Thank you, Your Honor. I have
21 nothing further.

22 MR. GALARDI: Your Honor, with all due respect, I
23 believe the Court misspoke and said it was sustaining the
24 objection of XP.

25 THE COURT: No, I'm overruling the objection.

1 MR. GALARDI: Okay, thank you.

2 MR. MARTIN: Thank you.

3 THE COURT: Thanks. Now, let me take a step back.
4 Does anybody object to the proffer of Mr. Holden's testimony
5 or want to cross-examine Mr. Holden?

6 MR. ZIPES: Your Honor --

7 THE COURT: Yes, sir.

8 MR. ZIPES: -- Greg Zipes with the U.S. Trustee's
9 Office. I don't think it's necessary to put him on the
10 stand. I just wanted two points of clarification relating
11 to the best-interests test. And these may have been
12 answered and I may have missed them, but one is -- the one X
13 factor might be indemnification and I just wanted to confirm
14 -- and there is money going to equity or proposed money
15 going to equity, so I just wanted to confirm that in the
16 debtor's best estimate that there are sufficient funds set
17 aside for any potential indemnification and/or release
18 claims. And secondly, just to confirm that creditors are
19 not getting interest under this plan and that there is some
20 confirmation that's okay with the creditors as money is
21 going back to equity.

22 THE COURT: Well, they don't vote as to the plan,
23 there's no --

24 MR. ZIPES: The settlement --

25 THE COURT: -- let me stop. There's no absolute

1 priority issue, everybody has voted for the plan. So even
2 if they're not getting interest and they would otherwise be
3 entitled to insist on it, they voted for a plan that doesn't
4 provide for the payment of interest.

5 MR. ZIPES: And we're -- well, okay, we're talking
6 about -- okay. Your Honor, I know as to the settlement
7 parties that isn't an issue because they settled for what
8 they did, but under the best-interests test, theoretically
9 there's some --

10 THE COURT: Oh, I see what you're saying.

11 MR. ZIPES: -- but, Your Honor, I don't think that
12 that's a big number and this is -- these --

13 MR. GALARDI: Your Honor, may I just make one
14 clarification? It's very important and I thought I did, but
15 Mr. Holden would testify --

16 THE COURT: Let me ask you a question. Are there
17 any creditors who have not filed a claim, did not vote and
18 have not settled, to your knowledge?

19 MR. GALARDI: That did not file a claim, that did
20 not vote and --

21 THE COURT: Did not settle.

22 MR. GALARDI: Well, Your Honor, yes, in the
23 following way and I want to be clear. As I mentioned and
24 Mr. Holden mentioned, maybe I'm not getting it right, but I
25 hate to use the President-elect's name, but we have received

1 from one of -- from a law firm, you wrote an article about
2 the President-elect, now that claim never got filed in this
3 case. One of the reasons we're concerned about that is
4 because the statute of limitations on that article has not
5 run.

6 THE COURT: Okay.

7 MR. GALARDI: So that's the kind of creditor why
8 we wanted the third-party release.

9 But I also want to correct Mr. Zipes on one thing.
10 And I thought Mr. Holden and my proffer did it, but as an
11 equity holder -- so again, let's take the capital structure
12 -- GMGI is the equity holder of Gawker Media, LLC; GMGI is
13 not getting any distribution under this plan directly. So
14 when we talk about equity, and we're really talking about
15 Mr. Denton, the only way that money goes is by way of the
16 intercompany claim and whatever residual is left in that
17 estate is going to pay the intercompany claim, it is not a
18 payment on account of its equity interest. That's how the
19 numbers are working out.

20 So I think that's important to make the record
21 clear.

22 THE COURT: You're saying something different
23 then. And maybe Gawker Media is not the best example of it,
24 but take Gawker Hungary, the creditors are getting a hundred
25 percent under the plan --

1 MR. GALARDI: Correct.

2 THE COURT: -- are they getting interest?

3 MR. GALARDI: No one voted there and we don't
4 think there are any creditors --

5 THE COURT: Well, the issue that's being raised
6 though is in a hypothetical Chapter 7 case, if we made all
7 the assumptions that you made --

8 MR. GALARDI: Correct.

9 THE COURT: -- they'd be getting interest.

10 MR. GALARDI: Your Honor, with respect to that,
11 that we will reserve for interest on the one claim we know
12 of of \$30,000 and can modify the plan. That person did not
13 vote, hadn't objected to late claim. So, again, that is
14 more of an academic for me, but --

15 THE COURT: Because for the Gawker Media case, I
16 think the estimate in the liquidation analysis was 91 to 93
17 percent, so they weren't going to get interest in a
18 hypothetical Chapter 7 using that case. And are there any
19 unsecured creditors in the group case?

20 MR. GALARDI: Not other than the indemnification
21 claims, which again, if Your Honor approves the third-party
22 release, we don't believe there are claims.

23 THE COURT: So it sounds like it's only in -- best
24 interest comes down -- putting aside equity for the moment,
25 best interest comes down to the question of paying interest

1 on this one Gawker Hungary claim.

2 MR. GALARDI: And on the Gawker Hungary claim, the
3 claim we've put in the estimation that went through the
4 liquidation analysis, we put in \$100,000 and the claim is
5 \$35,000, and everything else has been paid in the ordinary
6 course and that's a disputed claim.

7 THE COURT: Okay. Does that solve the -- resolve
8 the best interests --

9 MR. ZIPES: That resolves -- it's not going to be
10 an issue in this case obviously.

11 THE COURT: Okay.

12 MR. GALARDI: And I will put on the record,
13 because Mr. Zipes asked me and I said before there's 750
14 left behind in that Gawker Media reserve for the writers and
15 directors, that is a change to the plan, but it is a change
16 that benefits the writers and officers. I think when they
17 came in here today they believed there would be no such
18 funds, but in light of the fact we couldn't settle that one
19 aspect and the potential, that actually is additional and it
20 doesn't harm any creditor.

21 THE COURT: All right. Does anyone else want to
22 be heard in connection with the application to confirm the
23 plans?

24 Hearing no response, I'll grant the application.
25 This turns out to be a hundred-percent case in which the

1 real issue is between the creditors in equity. At this
2 point the debtor has satisfied the elements of 1129(a). The
3 plan is feasible; we've just had the discussion about the
4 best-interests test, so the debtor has satisfied that.
5 Everyone who voted voted in favor of the plan. So in
6 economic terms, the plan is certainly an acceptable plan.

7 With respect to the settlements, I'm satisfied
8 that the settlements are -- certainly fall within the realm,
9 certainly fall within the lowest point of the range of
10 reasonableness, which is the standard in this circuit, which
11 is why I state it that way. The principal claims or all of
12 the claims are, except for Bollea, unliquidated tort claims.
13 And I understand the debtor has defenses or thinks they have
14 defenses and I understand they're going to make motions to
15 dismiss, but if you make a motion to dismiss and lose any
16 one of these cases and go before a jury, you can have
17 another Bollea situation with a devastating judgment.

18 So the ability to settle the claims in the
19 amounts, assure 100-percent payment to the creditors, avoid
20 the litigation risks I just described, and avoid the costs
21 and delays of further litigation certainly makes all these
22 settlements reasonable.

23 With respect to this discharge issue, I'm prepared
24 to enjoin any -- from the debtor's point of view -- any
25 interference with property which is being distributed under

1 the plan. For the reasons I've stated, I don't think that
2 the debtor -- I'm sure that the debtor is not entitled to a
3 discharge and no one -- if someone wants to sue a shell --
4 and I'm putting the writers aside for the moment, but if
5 somebody wants to sue a shell, they're entitled to under the
6 Bankruptcy Code. The writers and -- I'll refer to the
7 writers; I know you refer to them as writers and independent
8 contractors, but I'll just use the phrase writers -- the
9 writers are in a slightly different position. I'm not
10 prepared to say that the First Amendment requires the
11 release of non-debtor writers in a Chapter 11 case of this
12 kind. If Congress thought that was appropriate, Congress
13 would include that in the Bankruptcy Code as it has included
14 non-debtor stays in the Bankruptcy Code, for instance, in
15 Chapter 13.

16 That said, I appreciate the First Amendment
17 issues, I appreciate the tradition and perhaps the legal
18 requirement that the publisher of articles has to stand
19 behind the writers. The writers don't make a lot of money.
20 And the writers have agreed I guess as part of this deal to
21 surrender any indemnification claims, except with respect to
22 the Terrell claim because that's an opt-out claim.

23 I also note that no one has objected to the
24 releases. This is a 100-percent plan or 100-percent plans.
25 And even the preferred shareholders, who are really the

1 parties in interest, the Holcomb (ph) class, as is sometimes
2 said in these cases, is leaving \$2 million on the table at
3 least as a guarantee to make sure that the claims are paid,
4 including any indemnification claim.

5 So under the circumstances, I will approve the
6 third-party releases.

7 I know that there's an appropriate carveout for
8 gross negligence and willful misconduct. If I can make a
9 suggestion that the injunction in favor of the third parties
10 should just say to the extent the claims are released. It
11 may be that people will come back in the future and seek
12 relief from that injunction or take their chance and just
13 bring a litigation against writers, arguing that you were
14 grossly negligent or you committed a willfully wrong act
15 when you did whatever it is you did. But, you know, that's
16 something that we'll just have to allow the events play out,
17 there's nothing that could be done about that.

18 So I understand that you want to make payment
19 before the end of the year. Given the amount of money
20 that's available, I don't have a problem with that -- oh,
21 one other thing. 9.04, your exculpation provision, you
22 should carrot in at the beginning to the extent permitted by
23 Section 1125(b) of the Bankruptcy Code.

24 Get me a confirmation order that I can review.

25 MR. GALARDI: Thank you. And --

1 THE COURT: Shorter is better than longer. And
2 with respect to objections, you can simply say that any
3 objections not resolved prior to the hearing or on the
4 record are overruled.

5 MR. GALARDI: Thank you, Your Honor. One other --
6 and I just -- I missed, but -- I know I listed the money,
7 but I want to make one other request, Your Honor, and I
8 apologize in rushing the proffer.

9 As by my count there would be Bollea, 31 million;
10 Terrell, 500,000; Ayudari (ph), 750; Williams, 125; Juan,
11 100. We do have and the intercompany claim I said is I
12 think around \$5 million. The one other thing, and I
13 apologize for not raising it, there is a sales tax payment
14 that needs to be made of 500 for which individual directors
15 and other former directors have been noticed, we would like
16 to be able to make that \$500,000 payment as well.

17 THE COURT: Well, why can't you go effective
18 before the end of the year?

19 MR. GALARDI: We are still in negotiations with
20 Unimoto (ph) regarding the allocation; we have not resolved
21 that entirely. And we have the ability to waive it and
22 there are other reasons, Your Honor, but we may very well go
23 effective before the end of the year, when I get this order
24 in and we're going to make certain decisions.

25 THE COURT: All right.

1 MR. GALARDI: Okay? So that way I just wanted to
2 let Your Honor be aware and I'm sure Mr. Holden is now happy
3 that I've mentioned that \$500,000.

4 THE COURT: Okay.

5 MR. GALARDI: Thank you very much, Your Honor.

6 THE COURT: So again the only claim left is the
7 Johnson/GotNews claim, at least at this point?

8 MR. GALARDI: That's what I understand to be the
9 case, Your Honor.

10 THE COURT: Okay.

11 MR. GALARDI: Your Honor, now I just -- I think
12 everything else can move rather quickly.

13 The next matter on the agenda I believe is Matter
14 No. 5. Since Your Honor will confirm the plan -- that was
15 the debtor's request to hire special counsel for the
16 independent director, Akin Gump, it's been adjourned a
17 number of times -- with confirmation of the plan, not to ask
18 Your Honor to approve the fees, but we believe that the Akin
19 Gump fees are about \$80,000. The Committee has withdrawn
20 its objection based on confirmation. It will be up to Your
21 Honor, can we submit an order or would you like to have this
22 matter --

23 THE COURT: This is the -- is this counsel for the
24 independent director?

25 MR. GALARDI: Correct.

1 THE COURT: Yeah, it's really a money issue -- I
2 mean duplication-of-services issue.

3 MR. GALARDI: Correct.

4 THE COURT: It's not -- there's nothing improper
5 about the independent director having separate counsel. I
6 had the same concerns you have that you have Ropes & Gray
7 and independent counsel doing the same stuff for the same
8 clients, so -- but we'll deal with that at a fee
9 application.

10 MR. GALARDI: So we'll submit -- counsel for Akin
11 Gump is here, we'll submit a C&L for the order, Your Honor,
12 and obviously the rights are reserved with respect to
13 duplication.

14 Your Honor, the next matter on the agenda was our
15 first omnibus objection to director, officer and employee
16 indemnification claims, they went to Hungary. That matter
17 is now mooted by Your Honor's confirmation, confirming the
18 plan and approval of the releases.

19 THE COURT: Right.

20 MR. GALARDI: With respect to No. 7, it's the
21 motion to estimate that was carried from the December 1
22 hearing. We will withdraw that motion; there is no longer
23 any need for that motion.

24 And with respect to Matter 8, which was the notice
25 of motion from Mr. Daulerio to estimate -- our motion to

1 estimate his claims, obviously we'll resolve that with the
2 \$500,000. So that matter is resolved and need not be
3 prosecuted.

4 I suspect, Your Honor, we have a hearing on
5 December 29th with respect to the underlying merits of
6 Mr. Daulerio's claim of 500, I'm expecting that we will
7 probably request an adjournment as we get the invoices.

8 THE COURT: All right.

9 MR. GALARDI: Your Honor, one, I'd like to thank
10 you for all of your time on this matter so far. I'm sure we
11 will be back, but I do appreciate your efforts in moving
12 these cases forward in the six months.

13 THE COURT: Oh, I thought he was going to object
14 to confirmation.

15 (Laughter)

16 THE COURT: It's always the person who stands up
17 as they're about to leave. All right, what did you forget?

18 MR. GALARDI: Oh, Your Honor, one other thing, I
19 think -- and Counsel to Johnson is here and GotNews -- we do
20 have the status conference on Thursday --

21 THE COURT: The 15th.

22 MR. GALARDI: -- and should we move -- are we
23 having the Johnson status conference?

24 UNIDENTIFIED SPEAKER: Well, it's scheduled as a
25 hearing right now.

1 MR. GALARDI: It's scheduled as a hearing. I
2 don't think it needs to be a hearing, I think we would
3 change it to a status conference on that matter, if that's
4 possible.

5 THE COURT: That's fine. Do you want to come in
6 on Thursday?

7 MR. GALARDI: I think we could. Does that work
8 for you? Because you had --

9 THE COURT: Because you had a lot of issues, as I
10 recall --

11 UNIDENTIFIED SPEAKER: It's a status conference,
12 right?

13 MR. GALARDI: Yeah, just a status conference.

14 UNIDENTIFIED SPEAKER: If it's a status conference
15 now --

16 MR. GALARDI: Just leave it as a status
17 conference?

18 UNIDENTIFIED SPEAKER: Could I just take a look
19 and see? Maybe we could do it on the 29th, that way you
20 don't have to come back up.

21 MR. GALARDI: We'd all like to come back on the
22 29th.

23 (Pause)

24 THE COURT: Why don't the two of you talk?

25 (Laughter)

1 MR. GALARDI: Thank you, Your Honor.

2 THE COURT: What else, anything else?

3 MR. GALARDI: That's it, Your Honor. Thank you
4 very much.

5 THE COURT: Anything -- anybody want to remind Mr.
6 Galardi of anything that he forgot?

7 (Laughter)

8 THE COURT: Thank you very much. Good luck.

9 (A chorus of thank you)

10 THE COURT: Thank you.

11 (Whereupon these proceedings were concluded at 12:24
12 PM)

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C E R T I F I C A T I O N

I, Jamie Gallagher, Nicole Yawn, and Tracey Williams certify that the foregoing transcript is a true and accurate record of the proceedings.

Jamie Gallagher

Nicole Yawn

Tracey Williams

Digitally signed by Tracey Williams
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Tracey Williams

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EXHIBIT D

Proposed Order

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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:

In re : Chapter 11

:

Gawker Media LLC, *et al.*,¹ : Case No. 16-11700 (SMB)

:

Debtors. : (Jointly Administered)

:

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**ORDER APPROVING MOTION OF RYAN GOLDBERG TO
ENFORCE ORDER CONFIRMING AMENDED JOINT CHAPTER 11 PLAN
OF LIQUIDATION AND TO BAR AND ENJOIN CREDITORS
FROM PROSECUTING THEIR STATE COURT ACTIONS**

Upon consideration of the Motion of Ryan Goldberg (“Goldberg”) for entry of an order to enforce the Plan and Confirmation Order and to bar and enjoin Pregame and Busack from prosecuting the claims and causes of action asserted against Goldberg in the Civil Suit (the “Motion”),² the Court finds that: (i) it has jurisdiction over the matters raised in the Motion; (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (iii) notice of the Motion and any hearing thereon was sufficient, proper, and adequate; and (iv) upon the record herein and after due deliberation thereon, good and sufficient cause exists for the granting of the relief as set forth herein. Accordingly, the Court hereby ORDERS that:

1. The Motion is GRANTED in all respects; and
2. Pregame and Busack shall immediately take all necessary action, at their sole cost and expense, to effectuate the dismissal with prejudice of the causes of action asserted against

¹ The last four digits of the taxpayer identification number of the debtors are: Gawker Media LLC (0492); Gawker Media Group, Inc. (3231); and Kinja Kft. (5056). Gawker Media LLC and Gawker Media Group, Inc.’s mailing addresses are c/o Opportune LLP, Attn: William D. Holden, Chief Restructuring Officer, 10 East 53rd Street, 33rd Floor, New York, NY 10020. Kinja Kft.’s mailing address is c/o Opportune LLP, Attn: William D. Holden, 10 East 53rd Street, 33rd Floor, New York, NY 10020.

² Defined terms used but not defined herein shall have the meanings ascribed to such terms in the Motion.

Goldberg in the civil action captioned *PREGAME LLC d/b/a PREGAME.COM, a Nevada limited liability company and RANDALL JAMES BUSACK [sic], professionally known as RJ BELL, Plaintiffs, against Gizmodo Media Group, LLC, a Delaware Corporation, Ryan Goldberg and DOES 1-20, Inclusive, Defendants*, Index No. 155710/2017, pending in the Supreme Court for the State of New York, County of New York (the “Civil Suit”), including signing and filing such pleadings as are necessary and appropriate in furtherance thereof; and

3. Pregame and Busack are each hereby directed to immediately cease and refrain from any further acts to prosecute or continue the claims and causes of action asserted against Goldberg in the Civil Suit (whether in the Supreme Court for the State of New York or any other court) or to, in any other manner, seek to enforce such claims and causes of action against Goldberg; and

4. Goldberg is hereby awarded his costs and attorneys’ fees incurred in connection with the preparation, filing, and arguing of the Motion and defending the underlying Civil Suit. Such fees shall be assessed against Pregame and Busack for their knowing violations of the Plan and Confirmation Order.

Dated: _____, 2017
New York, New York

HONORABLE STUART M. BERNSTEIN
UNITED STATES BANKRUPTCY JUDGE