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)

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11
Gawker Media LLC, *et al.*,[1]	:	Case No. 16-11700 (SMB)
Debtors.	:	(Jointly Administered)

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@irscounsel.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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By: */s/ Sharon L. Levine*

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11
Gawker Media LLC, *et al.*,[1]	:	Case No. 16-11700 (SMB)
Debtors.	:	(Jointly Administered)

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. <u>Retention of Jurisdiction by Bankruptcy Court</u>

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. <u>Plaintiffs' State Court Lawsuit</u>

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. <u>The Claims Asserted in the Complaint were Released Under the Plan</u>

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, s*ee* ¶ 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 to 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." *Aiolova*, 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 Aiolova*, 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

By: */s/ Sharon L. Levine*

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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

By: s/ Charles J. Harder
Charles J. Harder
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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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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.
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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

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.

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

> 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.

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.

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

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."

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."

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

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

Hearing re: Confirmation hearing

Hearing re: Bush Ross P.A. retention application

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

Hearing re: Case conference

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

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

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

procedures

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

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

Hearing re: Case conference

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

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P R O C E E D I N G S

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

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

THE COURT: I don't.

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

THE COURT: Okay. Congratulations.

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

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

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

THE COURT: Have we ever seen amended agenda?

MR. GALARDI: Again, things are moving.

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

MR. GALARDI: Yes, I have.

THE COURT: Thank you.

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

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

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

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

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

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

THE COURT: Okay.

MR. GALARDI: Which brings us to matter four,

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

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

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

the confirmation objection.

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

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

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

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

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

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

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

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

THE COURT: I didn't see it.

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

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

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

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

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

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

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

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

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

MR. GALARDI: Correct --

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

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

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

MR. GALARDI: Right.

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

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

THE COURT: Go ahead.

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

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

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

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

Delaware law in the United States.

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

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

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

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

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

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

THE COURT: Well --

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. GALARDI: -- about 88.

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

MR. GALARDI: Correct.

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

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

THE COURT: Yes.

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

THE COURT: Yes.

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

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

MR. GALARDI: Exactly.

THE COURT: Okay.

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

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

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

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

THE COURT: Okay.

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

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

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

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

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

And then what there is is remaining proceeds for

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

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

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

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

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

THE COURT: The plan has been accepted by

everybody who voted on it.

MR. GALARDI: Correct.

THE COURT: It doesn't matter.

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

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

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

THE COURT: Good.

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

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

It starts on page 23 of the disclosure statement. I have it on page --

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

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

THE COURT: Well, I have different --

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

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

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

THE COURT: Yeah.

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

THE COURT: This is the November 4th version.

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

and 40 percent to Gawker Hungary.

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

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

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

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

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

THE COURT: Is that intercompany debt?

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

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

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

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

Mr. Holden would also --

THE COURT: How much is Gawker Hungary subordinating?

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

THE COURT: It's getting -- okay.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Okay.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

probably far less than that.

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

I would say --

THE COURT: Can I ask you a question?

MR. GALARDI: Sure.

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

MR. GALARDI: Correct.

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

MR. GALARDI: Correct.

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

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

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

THE COURT: Okay.

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

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

approved.

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

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

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

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

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

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

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

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

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

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

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

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

With respect to that --

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Your Honor, what I turn to --

THE COURT: What about the Mitch Williams settlement?

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

THE COURT: All right.

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

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

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

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

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

Mr. Williams has agreed that with respect to --

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

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

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

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

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

THE COURT: Yes.

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

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

THE COURT: It's the district court.

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

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

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

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

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

THE COURT: Well, he's a lawyer.

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

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

The debtors believe that entering into that

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

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

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

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

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

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

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

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

THE COURT: Did he include the two settlements?

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

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

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

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

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

THE COURT: Right.

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

THE COURT: Daulerio.

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

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

THE COURT: And Mr. Huon?

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

(Pause)

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

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

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

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

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

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

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

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

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

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

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

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

I'm seeing Terrill as essentially I opted out of

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

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

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

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

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

THE COURT: Yes.

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

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

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

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

THE COURT: But --

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

THE COURT: Third party releases are something

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

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

THE COURT: So why put it in the plan?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. GALARDI: And, Your Honor, --

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

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

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

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

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

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

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

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

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

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

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

THE COURT: But that's a jurisdictional issue.

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

THE COURT: Uh-huh.

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

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

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

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

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

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

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

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

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.

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

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

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

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

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

THE COURT: No.

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

seller. Thank you.

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

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

It's received.

MR. GALARDI: Thank you, Your Honor.

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

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

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

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

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

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

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

THE COURT: No.

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

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

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

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

THE COURT: What are the objections to confirmation?

MR. MARTIN: Your Honor, in --

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

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

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

THE COURT: Go ahead.

MR. MARTIN: Your Honor, the debtors filed a

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

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

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

Exhibit B appears to be best characterized as a

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

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

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

The record should reflect there's no response.

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

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

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

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

MR. GALARDI: Okay, thank you.

MR. MARTIN: Thank you.

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

MR. ZIPES: Your Honor --

THE COURT: Yes, sir.

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

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

MR. ZIPES: The settlement --

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

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

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

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

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

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

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. Holden 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.

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

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

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

MR. GALARDI: Correct.

THE COURT: -- are they getting interest?

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

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

MR. GALARDI: Correct.

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

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

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

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

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

on this one Gawker Hungary claim.

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

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

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

THE COURT: Okay.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Get me a confirmation order that I can review.

MR. GALARDI: Thank you. And --

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

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

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

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

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

THE COURT: All right.

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

THE COURT: Okay.

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

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

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

THE COURT: Okay.

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

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

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

MR. GALARDI: Correct.

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

MR. GALARDI: Correct.

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

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

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

THE COURT: Right.

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

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

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

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

THE COURT: All right.

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

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

(Laughter)

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

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

THE COURT: The 15th.

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

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

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

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

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

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

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

MR. GALARDI: Yeah, just a status conference.

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

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

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

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

(Pause)

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

(Laughter)

MR. GALARDI: Thank you, Your Honor.

THE COURT: What else, anything else?

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

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

(Laughter)

THE COURT: Thank you very much. Good luck.

(A chorus of thank you)

THE COURT: Thank you.

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

I N D E X

RULINGS

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
DN: cn=Tracey Williams, o=Veritext, ou, email=digital@veritext.com, c=US
Date: 2016.12.14 15:47:08 -05'00'

_____

Tracey Williams

AAERT Certified Electronic Transcriber CET-914

Date: December 14, 2016

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

EXHIBIT D

Proposed Order

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11
Gawker Media LLC, *et al.*,[1]	:	Case No. 16-11700 (SMB)
Debtors.	:	(Jointly Administered)

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 BUSAK [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