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

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In re	: Chapter 11
Gawker Media LLC, <i>et al.</i> , <sup>1</sup>	: Case No. 16-11700 (SMB)
Debtors.	: (Jointly Administered)
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**OMNIBUS REPLY IN SUPPORT OF MOTION FOR LEAVE PURSUANT TO RULE  
2004 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE TO CONDUCT  
DISCOVERY CONCERNING POTENTIAL CAUSES OF ACTION AND TO  
ESTABLISH DISCOVERY RESPONSE AND DISPUTE PROCEDURES**

<sup>1</sup> The last four digits of the taxpayer identification number of the debtors are: Gawker Media LLC (0492); Gawker Media Group, Inc. (3231); and Gawker Hungary Kft. (f/k/a 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 10022. Gawker Hungary Kft.'s mailing address is c/o Opportune LLP, Attn: William D. Holden, 10 East 53rd Street, 33rd Floor, New York, NY 10022.

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William D. Holden, as Plan Administrator for the above-captioned debtors (the “Debtors”), through his attorneys Ropes & Gray LLP, files this omnibus reply in support of the *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* [Docket No. 341] (the “Rule 2004 Motion”) and in response to the objections filed by Harder Mirell & Abrams LLP (“Harder Law Firm”), Charles J. Harder (and together with Harder Law Firm, “Harder”), Thiel Capital LLC, Peter Thiel (and together with Thiel Capital LLC, “Thiel”), and Terry G. Bollea (collectively, the “Objecting Parties”) to the Rule 2004 Motion<sup>2</sup> (collectively, the “Objections”), and respectfully represents and states as follows:

#### **PRELIMINARY STATEMENT**

1. The Debtors have a fiduciary duty to maximize value for all stakeholders and to do so, a corresponding obligation to prudently investigate potentially viable estate causes of action. To that end and others, the Debtors filed the Rule 2004 Motion on October 11, 2016.

2. Since filing the Rule 2004 Motion, the Debtors have significantly advanced these bankruptcy cases in part, they believe, because of the Rule 2004 Motion. Indeed, shortly after filing the Rule 2004 Motion, the Debtors settled outstanding litigations brought by Mr. Bollea, Ms. Terrill, and Dr. Ayyadurai (collectively, the “Creditor Settlement Agreements”). These Creditor Settlement Agreements were approved as part of the December 22, 2016 order

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<sup>2</sup> The Objections are: (i) *Objection of Harder Mirell & Abrams LLP and Charles J. Harder, Esq. 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* [Docket No. 869] (the “Harder Objection”); (ii) *Objection of Peter Thiel and Thiel Capital LLC 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* [Docket No. 870] (the “Thiel Objection”); and (iii) *Objection of Terry G. Bollea 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* [Docket No. 871] (the “Bollea Objection”).

confirming the *Amended Joint Chapter 11 Plan of Liquidation for Gawker Media Group, Inc., Gawker Media LLC, and Gawker Hungary Kft.* [Docket No. 638-1] (the “Plan”), which Plan went effective on March 17, 2017.<sup>3</sup>

3. Accordingly, the Debtors readily concede that parts of the relief originally requested in the Rule 2004 Motion are no longer being pursued, and have advised the Objecting Parties of the limited relief the Plan Administrator still seeks. Specifically, in light of the foregoing developments and consistent with the Creditor Settlement Agreements, at this juncture, the Plan Administrator only seeks relief under Rule 2004<sup>4</sup> to determine whether he should commence any cause of action against Mr. Thiel and/or related parties, including an action for *prima facie* tort under New York law (collectively, the “Potential Estate Causes of Action”). In that regard, the Rule 2004 Motion is directed solely to Thiel and Harder,<sup>5</sup> and as their counsel have been advised, no longer involves Plan-related issues and does not seek any expedited relief.

4. Such an examination is entirely proper. The Debtors have not released Thiel, nor have they waived their right to pursue the Rule 2004 Motion and discovery that is not expressly prohibited by the Creditor Settlement Agreements. Indeed, the Debtors maintain that at least certain discovery, which Thiel and Harder would not consensually provide, is necessary for the Debtors to enter into the proposed settlement agreement that included the “mutual releases” contemplated by the Cooperation to Secure Agreements attached as Exhibit C to the Creditor

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<sup>3</sup> The Debtors have adjourned the hearing on the Rule 2004 Motion seven times in order to work in good faith with Mr. Thiel, Harder, and Mr. Bollea to facilitate a global resolution among Nick Denton, Mr. Thiel, Thiel Capital LLC and the Debtors, which would consensually resolve the Rule 2004 Motion. To date, these efforts have not borne fruit and indeed, the parties did not even engage the Debtors until February 2017, when they delivered an agreement already fully negotiated among Thiel, Bollea and Denton and included a full release of Thiel. At that point, the Debtors requested information that would have enabled them to assess whether to agree to release Thiel. Counsel to Thiel would not agree to provide such information.

<sup>4</sup> Capitalized terms not defined herein shall have the meanings ascribed to them in the Rule 2004 Motion.

<sup>5</sup> The Debtors acknowledge that they have released Harder from any liability under the settlement agreement with Bollea.

Settlement Agreement with Bollea (the “Bollea Settlement Agreement”). Thus, while the Objecting Parties seize on the Debtors’ acknowledgement of that they will need to carry a heavy burden should they pursue a *prima facie* tort claim, the Objecting Parties entirely ignore the fact that Thiel sought a release from the Debtors, but provided no information upon which the Debtors could agree to that release and ignore the Debtors’ and Plan Administrator’s fiduciary obligation to determine whether there is a Potential Estate Cause of Action to pursue. Consequently, by advocating the denial of the Rule 2004 Motion, the Objecting Parties are seeking what they could not obtain from the Debtors and Plan Administrator directly: a full release of any Potential Estate Causes of Action against Thiel for no consideration.

5. So, it is no surprise that the Objecting Parties may want to “move on,” and not respond to the Rule 2004 Motion. Mr. Bollea is free to do so as he has no obligations given the Bollea Settlement. But for Thiel and Harder it is simply not that simple. The Debtors’ chapter 11 cases not only had their genesis in actions taken by Thiel but also stakeholder recoveries may have been adversely affected by his conduct. Thus, although Mr. Thiel may facially point to financial or other reasons for his financing of the *Bollea I* lawsuit, and possibly other litigations against Gawker, the Debtors should be permitted discovery pursuant to the Rule 2004 Motion as to whether such reasons were pretext and whether there is a colorable claim that Mr. Thiel was solely motivated by malice or another actionable intention. Moreover, although while the Objecting Parties all wish to contend that the hardships outweigh the potential benefits of such limited discovery, the potential value of the Plan Administrator’s successful prosecution of a Potential Estate Cause of Action could well run in the millions to tens of millions of dollars. Accordingly, the Debtors respectfully request that the Court exercise its discretion to grant the

Rule 2004 Motion as modified by the representations set forth herein and as the Court determines is just and proper.

**OMNIBUS REPLY**

**I. THE DEBTORS ARE ENTITLED TO CONDUCT A RULE 2004 EXAMINATION TO DETERMINE WHETHER TO PURSUE POTENTIAL ESTATE CAUSES OF ACTION**

6. As set forth in the Rule 2004 Motion, the Court may authorize a Rule 2004 examination of any entity relating to the acts, conduct, or property or to the liabilities and financial condition of the Debtors, or to any matter which may affect the administration of the Debtors' estates. *See* Fed. R. Bankr. P. 2004(b). To prevail on such a request, the party seeking to conduct a Rule 2004 examination must show good cause by establishing that the proposed examination "is necessary to establish the claim of the party seeking the examination, or ... denial of such request would cause the examiner undue hardship or injustice. *In re SunEdison, Inc.*, 562 B.R. 243, 249 (Bankr. S.D.N.Y. 2017) (internal citations omitted) (emphasis added). Furthermore, although the proponent of the Rule 2004 examination may not conduct a "fishing expedition," the scope of Rule 2004 discovery is still broad and may encompass broader discovery than is available under the Federal Rules of Civil Procedure. *Sec. Inv. Prot. Corp. v. Bernard L. Madoff Inv. Secs. LLC*, Adv. Pro. Nos. 08-01789 (SMB), 14-01840 (SMB), Case No. 09-11893 (SMB), 2014 WL 5486279, at \*2 (Bankr. S.D.N.Y. Oct. 30, 2014).

7. The Objecting Parties do not even contend that the Debtors are pursuing a "fishing expedition," nor could they. The Debtors have tailored the discovery to obtain the information necessary to determine whether facts exist upon which they may prosecute a Potential Estate Cause of Action. Instead, the Objecting Parties challenge the Debtors' ability to bring a *prima facie* tort claim (one of the Potential Estate Causes of Action that the Debtors may bring against Thiel and/or other related persons/entities) on procedural grounds and on the merits

of the claim itself. As discussed below, none of these arguments is a basis upon which to deny the Debtors the opportunity to conduct a Rule 2004 examination.

**A. The Debtors Have Good Cause To Conduct A Rule 2004 Examination To Determine Whether A Potential Estate Cause Of Action Against Thiel Exists**

8. The Debtors seek to use a Rule 2004 examination to ascertain whether Thiel's conduct gives rise to a Potential Estate Cause of Action. The use of Rule 2004 as a pre-litigation discovery tool to determine whether a debtor can bring a cause of action against a third party is entirely appropriate so long as the proposed examination is not designed to abuse or harass. *See, e.g., In re Wash. Mutual, Inc.*, 408 B.R. 45, 53 (Bankr. D. Del. 2009) (internal citations omitted) ("One of the primary purposes of a Rule 2004 examination is as a pre-litigation device."); *In re Recoton Corp.*, 307 B.R. 751, 756 (Bankr. S.D.N.Y. 2004) ("The Rule 2004 discovery sought by the Committee is thus *prima facie* consistent with the Rule's above-stated purposes of allowing the Committee to obtain information necessary to determine whether claims beneficial to the estates exist and whether to pursue such claims. The Committee also states unequivocally and convincingly that it has not decided whether or not to pursue litigation.").

9. As set forth more fully in the Rule 2004 Motion and below, the Debtors have pled sufficient facts to show that there is good cause for their investigation. Accordingly, the Plan Administrator requests that the Motion be granted.

**B. The Objecting Parties' Legal Challenges To The Potential Estate Causes Of Action Are Not Grounds To Deny The Rule 2004 Motion.**

10. The Objecting Parties request that this Court deny the Rule 2004 Motion because the Debtors could not possibly prevail on the *prima facie* tort claim. As demonstrated below, these objections miss the point. Moreover, to the extent the Court considers them, they fail to support the Objecting Parties contention that the Rule 2004 Motion should be denied. *In re Roman Catholic Church of the Diocese of Gallup*, 513 B.R. 761, 764-65 (Bankr. D.N.M. 2014)

(internal citation omitted) (Committee not required to show it would likely prevail in suit against Rule 2004 target as a condition to taking Rule 2004 discovery).

11. First, the Objecting Parties' legal grounds for denying a *prima facie* tort claim belong in a motion to dismiss or motion for summary judgment if and when the Plan Administrator determines to pursue a Potential Estate Cause of Action. *See, e.g.*, Bollea Objection ¶¶ 11, 42, 46; Harder Objection ¶¶ 14-16, 18-19; Thiel Objection ¶¶ 14-17. At this stage, the Court is simply to determine whether the Debtors have shown that good cause exists for a Rule 2004 examination. *SunEdison*, 562 B.R. at 249. And, to rule on the merits of a Potential Estate Cause of Action now would defeat one of the fundamental uses of Rule 2004: to conduct a pre-litigation examination to determine whether facts exist upon which to pursue a potential estate claim. *See, e.g., In re Symington*, 209 B.R. 678, 684 (Bankr. D. Md. 1997) (“As an investigatory tool, [the] nature [of Rule 2004] is inquisitory rather than accusatory, although information discovered by its employment may presage litigation.”); *In re J & R Trucking, Inc.*, 431 B.R. 818, 822 (Bankr. N.D. Ind. 2010) (“[A 2004 examination] allows the trustee to do the necessary investigatory work without the need for initiating formal litigation . . . one purpose for such an examination is to give the trustee the information needed to determine whether litigation should be filed.”).

12. Moreover, in pursuing the Rule 2004 Motion, the Debtors are not, as Harder contends, circumventing the limitations on discovery in adversary proceedings. *See* Harder ¶¶ 24-25. There is no pending adversary proceeding that limits the permissible discovery as Harder contends, and as noted above, Rule 2004 permits broader discovery.<sup>6</sup>

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<sup>6</sup> Each of the cases that Harder cites in support of his argument support the proposition, not applicable here, that a litigant to a pending adversary proceeding should not conduct a Rule 2004 examination. *See, e.g., In re Enron Corp.*, 281 B.R. 836, 844 (Bankr. S.D.N.Y. 2002) (plaintiffs in an ongoing class action law suit in which discovery was stayed could not employ Rule 2004); *In re Bellville*, Case No. 00-11144, 2002 WL 31761279, at \*3 (Bankr. D.

13. Additionally, even if the Court were to consider the merits of a *prima facie* tort claim, the Rule 2004 Motion should still be granted. As discussed in the Rule 2004 Motion, the Debtors would have an actionable *prima facie* tort claim to the extent that Mr. Thiel intended to destroy the Debtors' business without excuse or justification and motivated solely by malice toward the Debtors.<sup>7</sup> See Rule 2004 Motion ¶¶ 41-42. Thiel asserts that there is no possible cause of action because a newspaper article that the Debtors cite to references a range of possible motivations that Mr. Thiel may have had for funding *Bollea I*. Thiel Objection ¶ 15-16. But this ignores the possibility that some of those asserted grounds may merely be pretext. Thiel also analogizes his situation to *Brandt v. Winchell*, 3 N.Y. 2d 628 (N.Y. 1958), which affirmed dismissal of a *prima facie* tort claim where the defendant had openly reported the plaintiff's alleged crimes to law enforcement authorities. The factual circumstances in *Brandt* are simply different than Mr. Thiel's secret funding of civil litigation against the Debtors.

14. The Objecting Parties have not provided a consistent explanation of Mr. Thiel's motivation in funding *Bollea I*, any other litigation or other efforts to end the Debtors' business operations. Indeed, recently Mr. Thiel offered another explanation for his actions "to take down Gawker." Specifically, in an interview at the National Press Club on October 31, 2016 made subsequent to the filing the Rule 2004 Motion, Mr. Thiel was asked why he funded third-party litigation "to take down Gawker" and responded as follows:

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Vt. Aug. 9, 2002) (movant could not procure information through Rule 2004 that it could not otherwise obtain through pending adversary proceeding); *First Financial Savings Ass'n v. Kipp*, 86 B.R. 490, 491 (Bankr. W.D. Tex. 1988) (since Rule 2004 movant had already initiated an adversary proceeding, "it may no longer use Rule 2004 to obtain discovery relevant to the adversary.")

<sup>7</sup> Harder argues that a *prima facie* tort claim is barred because New York courts have rejected claims for champerty and maintenance. However, New York continues to recognize both claims under appropriate circumstances. See, e.g., *Justinian Cap. SPC ex rel. Blue Heron Segregated Portfolio v. WestLB AG*, 981 N.Y.S. 2d 302, 303 (N.Y. Sup. Ct. 2014) ("New York . . . continues to recognize the [champerty and maintenance] doctrine under Judiciary Law § 489); *Schoolcraft v. City of New York*, 103 F. Supp. 3d 465, 527 (S.D.N.Y. 2015) (explaining elements of *prima facie* tort claim).

**Thomas Burr, President of the National Press Club (moderator):**

You've had a feud with Gawker for more than a decade, as I said in my introduction. When did you decide that funding another person's lawsuit would be the best course of action to take down Gawker, and when did you set this in motion?

**Mr. Thiel:** You know, it would have been roughly co-equal with the time the Harder firm started to work with Hogan, so over four or five years ago. You know, my initial view was that what you were supposed to do was you were supposed to take you beatings, crouch down, go into a fetal position and then hope they moved on to somebody else. And sort of around 2011, one of my friends convinced me that if Gawker could get away with this sort of sociopathic repeat behavior over and over, it was this tragedy of the commons. Nobody would ever – you know, they would continue to ruin lives one after another.

And there were many people they did things to far worse than me. And so, I was convinced that if I didn't do something, nobody would.

Transcript of Interview by Thomas Burr with Peter Thiel, in Washington, D.C. (Oct. 31, 2016), at 14-15.<sup>8</sup> Mr. Thiel's response did not dispute his intention – to take down Gawker – and simply recounted when he settled on his method – to fund the Bollea litigation.

15. Furthermore, based on unsolicited filings in these chapter 11 cases, it is also clear that Harder was providing legal advice and/or information to Meanith Huon in his lawsuit against Gawker Media since at least 2012, with Harder's "client" paying the costs. *See* Letter from Meanith Huon to the Honorable Stuart M. Bernstein (Dec. 12, 2016) [Docket No. 582] (the "Huon Letter") at 5 (Emails between Messrs. Huon and Harder, dated Feb. 1, 2016) (Huon: "Do you think your client would be willing to reimburse [costs]?" Harder: "No problem.") and at 7 (Email from Mr. Harder to Mr. Huon dated Dec. 11, 2013) (Harder: "Yes, the cavalry is still behind you. We would need to discuss specifics . . . .").<sup>9</sup> The foregoing facts introduced into the

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<sup>8</sup> A true and correct copy of the foregoing interview is attached hereto as **Exhibit A**.

<sup>9</sup> A true and correct copy of the Huon Letter is attached hereto as **Exhibit B**.

public record since the filing of the Rule 2004 Motion further demonstrate the Debtors' need for a targeted Rule 2004 examination into Mr. Thiel's motivations and actions toward the Debtors.<sup>10</sup>

16. Finally, Harder's contention that the Debtors' potential *prima facie* tort claim is barred by the statute of limitations is also incorrect. Specifically, Harder argues that a *prima facie* tort claim is time barred because the statute of limitation runs from accrual, not discovery, of the cause of action – without mentioning when it believes the *prima facie* tort cause of action accrual occurred. Harder Objection ¶ 20. One of the elements of a *prima facie* tort claim necessary for accrual of the cause of action is the plaintiff's special damages resulting from the defendant's intentional infliction of harm. For the Debtors, this would have occurred following the specific economic loss caused by entry of the judgment in the *Bollea I* lawsuit on June 7, 2016. *See, e.g., Glob. Fin. Corp. v. Triarc Corp.*, 93 N.Y.2d 525, 529 (1999) (a plaintiff has no cause of action until it has suffered an injury); *Glob. Burns, Jackson, Miller, Summit & Spitzer v. Lindner*, 437 N.Y.S. 2d 895, 904 (N.Y. Sup. Ct. 1981) (special damages properly alleged in form of loss of business that could be established by documentary proof). Thus, a *prima facie* tort claim is not barred by the three-year statute of limitations applicable here where the harm alleged would be to the Debtors' economic interests.<sup>11</sup> *Barrett v. Huff*, 776 N.Y.S.2d 678, 680 (App. Div. 2004); *see also Jemison v. Crichlow*, 139 A.D.2d 332, 336 (N.Y. App. Div. 1988) (*aff'd*. 74

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<sup>10</sup> Harder misses the mark in arguing that Mr. *Bollea's* intent or motives are relevant to a *prima facie* tort claim against Thiel and/or related persons. *See* Harder Objection ¶ 15 (*Bollea* bringing suit is not tortious); ¶ 16 (*Bollea* had a valid reason to sue); ¶¶ 16-18 (comparing *prima facie* tort claim to malicious prosecution action). A *prima facie* tort claim would focus on Mr. Thiel's actions and intentions, not Mr. *Bollea's*. Nor would the Debtors bring a malicious prosecution claim against Mr. Thiel, as Harder suggests. *Id.* at ¶ 18. Thiel was not the plaintiff in the *Bollea I* litigation.

<sup>11</sup> Separately, Thiel posits that Florida's substantive law, and not New York law would "likely" apply to a *prima facie* tort claim because New York choice of law rules provide that torts intended to deter or regulate conduct are governed by the substantive law of the jurisdiction in which the injury occurred. Thiel Objection ¶ 13 fn. 7. Here, the "injury" was to Gawker Media in New York, its principal place of business. While Thiel may have committed wrongful conduct outside of New York (a Rule 2004 examination would be required to determine where), the effect of the wrongful conduct was felt by Gawker Media in New York. In cases of purely economic injury, the cause of action generally accrues where the plaintiff resides and therefore sustains the economic loss. *See Global Fin.*, 93 N.Y.2d at 529. Accordingly, New York's substantive law would apply if the Debtors brought a *prima facie* tort claim.

N.Y.2d 726); *Stacom v. Wunsch*, 173 A.D.2d 401 (N.Y. App. Div. 1991) (*lv. denied* 78 N.Y.2d 859, 575 N.Y.S.2d 455, 580 N.E.2d 1058).

**C. The Proposed Rule 2004 Examination Is Proportional To The Needs Of These Cases**

17. As explained above, the Debtors' targeted Rule 2004 examination request is aimed at determining whether they may be able to assert any Potential Estate Causes of Action against Thiel and/or related parties, which could bring millions of dollars in recovery for distribution to beneficiaries pursuant to the Plan. Thiel and Harder contend that even if the Rule 2004 examination is necessary to determine whether a Potential Estate Cause of Action exists or if denial of the Rule 2004 Motion would cause the Debtors undue hardship or injustice to the Debtors, the harm of responding to the information requested by the Rule 2004 Motion outweighs any potential estate benefits. This argument should be rejected.

18. First, Thiel is simply wrong in arguing that the requested discovery is not important to the outcome of the cases and unrelated to creditor recoveries. Thiel Objection ¶¶ 18-19. The proposed discovery requests for Thiel and Federal Rule of Civil Procedure 30(b)(6) subpoena for Thiel Capital is aimed at just two topics: (i) documents and communications regarding Thiel's relationship with Harder and potential or actual causes of action against the Debtors and (ii) documents and communications relating to Scott Sonnenblick's efforts to purchase, to take control of, or to facilitate a purchase of or taking control of, GMGI. *See* Rule 2004 Motion Appendices 2-3. Notably, Thiel does not argue that complying with the proposed Rule 2004 examination would be unduly burdensome. More fundamentally, the Court should decline Thiel's self serving request to substitute the Debtors' business judgment with Thiel's. It is uncontroverted that Mr. Thiel funded at least the *Bollea I* lawsuit, which judgment resulted in these chapter 11 cases and the loss of millions of dollars in the Debtors' enterprise value. It is

also incontestable that in order to effectuate a sale that maximized value for the Debtors' stakeholders, the Debtors had to remove gawker.com from the purchased assets and endure threats of litigation by Harder, potentially backed by funding Thiel, which depressed the market for potential buyers unwilling to risk a bid and be sued by Harder clients funded by Thiel. Thus, the Debtors believe that the Potential Estate Causes of Action could yield millions if not tens of millions dollars in recovery. Consequently, the importance and scope of the Debtors' proposed Rule 2004 examination plainly outweighs any hardship imposed on Harder and Thiel.

19. Nor are Harder's contentions correct that the Rule 2004 Motion should be denied because the Debtors are seeking privileged information and in any event because the Debtors have not met a heightened standard in requesting discovery from a law firm. Harder Objection ¶¶ 22, 33. First, Harder need not produce privileged information. As in any discovery, Harder may withhold documents on account of privilege and provide a privilege log, subject to the Debtors' right to challenge any such documents as not privileged. And, as Harder's own case citations provide, being an attorney or a law firm does offer an automatic shield from discovery. *The Official Comm. of Unsecured Creds. of Hechinger Inv. Co. of Del., Inc. v. Friedman (In re Subpoena Issued to Dennis Friedman)*, 350 F.3d 65, 72 (2d Cir. 2003) ("...the fact that the proposed deponent is a lawyer does not automatically insulate him or her from a deposition nor automatically require prior resort to alternative discovery devices, but it is a circumstance to be considered.").

20. Moreover, Harder's request that the Court employ a heightened standard for the Debtors to obtain discovery from "litigation counsel" misses an important point – he was not Thiel's litigation counsel. Moreover, Harder's argument is divorced from the law and the facts of this Rule 2004 Motion. Harder offers no legal support for his argument that the Debtors need

to meet a heightened legal standard to obtain discovery in the context of a request for a Rule 2004 examination. Further, to the extent that the Court considers additional factors in connection with discovery relating to attorneys, each of Harder's cited cases make clear that such a review is made when a party is seeking to *depose* opposing counsel in a lawsuit. *See, e.g., Creditsights, Inc. v. Ciasullo*, No. 05 Civ. 9345(DAB)(MHD), 2009 WL 3821441, at \*1 (S.D.N.Y. Nov. 6, 2009) ("We decline to authorize a deposition of plaintiff's trial attorney"); *Yash Raj Films (USA) v. Kumar*, No. 05-CV-3811 (FB)(KAM), 2007 WL 3124557, at \*5 (E.D.N.Y. Oct. 25, 2007) (denying reconsideration of order which denied party the opportunity to depose opposing counsel in lawsuit); *Gragg v. Int'l Mgmt. Group*, No. 5:03-CV-0904 (NPM/DEP), 2007 WL 1074894, at \*9-10 (N.D.N.Y. Apr. 5, 2007) (denying plaintiff's application for leave to depose opposing party's counsel in lawsuit). Here: (i) the Debtors are not seeking to depose Harder as part of a Rule 2004 examination; (ii) there is no pending lawsuit; and (iii) Harder has not held itself out as Thiel's litigation counsel even if there was a lawsuit.

## **II. THE RELIEF REQUESTED IN THE RULE 2004 MOTION IS CONSISTENT WITH THE CREDITOR SETTLEMENT AGREEMENTS**

21. The Objecting Parties also suggest, if not expressly contend, that the Rule 2004 Motion is being pursued in violation of or barred by the Creditor Settlement Agreements. *See* Harder Objection ¶ 14; Thiel at 2; Bollea ¶ 12. This is simply not true.

22. The Debtors' settlement agreements with Ms. Terrill and Dr. Ayyadurai provide in relevant part:

**2004 Motion and Associated Claims:** The Gawker Entities shall, upon execution of this Term Sheet, immediately suspend prosecution of the 2004 Motion until at least the Effective Date (the "**Suspension Period**"). The Gawker Entities shall not seek from [Ayyadurai] [Terrill] or any third party any discovery about [Ayyadurai] [Terrill], including, without limitation, discovery concerning the subject matter of the 2004 Motion, litigation funding or finance, the [Ayyadurai] [Terrill] Action, the Gawker BK Action, the Denton BK Action, and any and all related proceedings,

except for the following discovery to [Ayyaduari] [Terrill] only: any litigation financing agreement(s) relating to the Lawsuit or claims in the lawsuit, and any non-privileged retainer agreements with Charles J. Harder, Esq. or the law firm of Harder Mirell & Abrams LLP to the Lawsuit or claims in the Lawsuit.

Ayyadurai Settlement Agreement ¶ 9; Terrill Settlement Agreement ¶ 10. The Bollea Settlement Agreement provides in relevant part:

**2004 Motion and Associated Claims:** The Gawker Debtors will continue to suspend prosecution of the 2004 Motion through at least the Effective Date (the “**Suspension Period**”). In the event that the Suspension Period expires and the Gawker Debtors pursue the 2004 Motion, the Debtors shall not seek from Bollea or any other third party any discovery about Bollea, including, without limitation, discovery concerning the subject matter of the 2004 Motion, litigation funding or finance, the Bollea I Lawsuit, the Bollea II Lawsuit, the Bankruptcy Cases, the Denton Bankruptcy Case, the Daulerio Collection Proceedings, and/or any and all related proceedings, whatsoever.

Bollea Settlement Agreement ¶ 18. Nothing in the Creditor Settlement Agreements prevents the Debtors from pursuing the Rule 2004 Motion or seeking information from Thiel or Harder regarding Mr. Thiel’s actions and motivations.<sup>12</sup> The Debtors are not requesting information about any of the three settled lawsuits in particular, and all of the Creditor Settlement Agreements expressly contemplated the continuation of the Rule 2004 Motion. And finally, Thiel is simply not a third-party beneficiary to any of the Creditor Settlement Agreements and thus cannot use them as cover to avoid a Rule 2004 examination.<sup>13</sup>

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<sup>12</sup> Bollea makes the strained argument that the Debtors violate the Bollea settlement agreement in pursuing the Rule 2004 Motion because the Debtors have not provided releases to Thiel. Bollea ¶ 44. The Debtors did not agree to release Thiel as part of the Bollea settlement agreement. The Debtors and Bollea jointly agreed to cooperate and work in good faith to secure settlement agreements with Thiel and others. Bollea Settlement Agreement ¶ 19. As discussed in further detail below, the Debtors have worked in good faith to achieve a consensual resolution of the Rule 2004 Motion. That such efforts have not borne fruit to date does not mean, as Bollea argues, that the Debtors are required to release Thiel or else be in violation of the Bollea Settlement Agreement.

<sup>13</sup> Under New York law, only an intended third party beneficiary to a settlement agreement may enforce the settlement agreement. *Noveck v. PV Holdings Corp.*, 742 F. Supp. 2d 284, 295-96 (E.D.N.Y. 2010), *aff’d*, *appeal dismissed sub nom. Noveck v. Avis Rent A Car Sys., LLC*, 446 F. App’x 370 (2d Cir. 2011). In particular, there is nothing in the Creditor Settlement Agreements to suggest that any of their provisions were intended for Thiel’s benefit. *See State of California Pub. Employees’ Ret. Sys. v. Shearman & Sterling*, 741 N.E.2d 101, 104 (2000).

**III. THE DEBTORS HAVE ACTED IN GOOD FAITH IN ACCORDANCE WITH THE BOLLEA SETTLEMENT AGREEMENT**

23. Throughout these chapter 11 cases, the Debtors have worked in good faith with all constituencies to effectuate a sale of substantially all of the Debtors assets and confirm the Plan. Taken together, these efforts resulted in the continuity of the Debtors' business through a sale to a subsidiary of Univision Communications, no job losses, a 100% distribution to the Debtors' creditors, and an initial distribution to the Debtors' equity holders. These results were hardly pre-ordained when the Debtors filed their petitions. As the Court is well aware, the \$130 million judgment against the Debtors in *Bollea I* threatened an immediate shutdown and dismantling of the Debtors' business. It was not a given that the Debtors would be able to settle with Bollea, Ayyadurai, Terrill, and others or sell their assets for more than the stalking horse bid. The Debtors have achieved these results by working in good faith to achieve practical solutions that have benefited the estates and the Debtors' stakeholders.

24. Thiel and Bollea, however, argue that the Debtors have not worked in good faith because they have not withdrawn the Rule 2004 Motion. In particular, Thiel and Bollea point to the existence of an "agreement in principle" (according to Bollea) and "settlement discussions" (according to Thiel) between Messrs. Thiel and Denton. Bollea Objection ¶ 17; Thiel at 1. According to Thiel and Bollea, the Debtors have not worked in good faith because the Debtors have not agreed to provide Thiel with releases. Missing from either objection is the full set of facts.

25. Specifically, in February 2017, nearly two months after confirmation, the Debtors were provided with a fully negotiated settlement in February 2017 for signature between Messrs. Thiel and Denton and supported by Bollea, which the Debtors had no part in negotiating. The proposed settlement required the Debtors to release Thiel from all possible estate causes of

action for no consideration. Despite not being involved in the settlement discussion, the Debtors were nonetheless prepared to consider providing Thiel with releases, but advised the parties that the Debtors would do so only upon Thiel providing the Debtors with information that would enable them to determine whether any Potential Estate Causes of Action exist. As the Debtors explained, only after reviewing such information could the Debtors weigh the costs and benefits of any such litigation and determine whether an express release of Thiel was proper and brought to this Court. Thiel, however, refused to provide any such information.

26. Thus, the Debtors were left with no option but to pursue the Rule 2004 Motion and seek the information necessary for the Plan Administrator to discharge his fiduciary obligation to stakeholders to make an informed decision as to whether to pursue a Potential Estate Cause of Action or not.<sup>14</sup>

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<sup>14</sup> The Debtors respectfully disagree with Thiel's interpretation of their views on Article 9.05 of the Plan, and find it curious that Mr. Thiel chooses to highlight the extent of his good faith efforts in these cases by noting that he has offered not to sue the Debtors' former employees and contractors in exchange for a free release from the Debtors. Indeed, such a statement is nothing more than a continued threat to bring litigation that would have no economic motive behind it, as the employees and writers have waived their indemnification claims, and would be suspect and arguably vindictive.

**CONCLUSION**

27. For all of the reasons set forth in the Rule 2004 Motion and in this Omnibus Reply, the Debtors respectfully request that the Court overrule the Objections, grant the Rule 2004 Motion as modified, and grant such other relief as is just and proper.

Dated: April 24, 2017  
New York, New York

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**Exhibit A**

NATIONAL PRESS CLUB NEWSMAKER WITH PETER THIEL

SUBJECT: THE PRESIDENTIAL ELECTION OF 2016

MODERATOR: THOMAS BURR, PRESIDENT OF THE NATIONAL PRESS CLUB

LOCATION: THE HOLEMAN LOUNGE, WASHINGTON, D.C.

TIME: 11:00 A.M.

DATE: MONDAY, OCTOBER 31, 2016

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**THOMAS BURR:** (Sounds gavel.) Welcome to the National Press Club. My name is Thomas Burr; I'm the Washington correspondent for the *Salt Lake Tribune* and the 109<sup>th</sup> President of the National Press Club. Our guest today is billionaire, businessman and tech pioneer, Peter Thiel.

I would like to welcome our Public Radio and C-SPAN audiences, and want to remind you that you can follow the action live on Twitter using the hashtag NPCLive. That's NPCLive. Today's format follows the same tradition of National Press Club luncheons with some remarks by our guest, and then a question and answer session concluding in an hour. I'll ask as many questions submitted from journalists online and from the reporters in the audience.

Peter Thiel is a man who wears many hats. He helped found PayPal and Palantir Technologies. He's a venture capitalist. He successfully sued Gawker and is a rare vocal supporter of Donald Trump in Silicon Valley. That's what he's here to talk about today.

Thiel, a billionaire, has used his money recently to invest in electing Trump as America's next president. Before garnering headlines for that, he used his reserves to fund Facebook, LinkedIn, Yelp! and other companies associated with the so-called PayPal mafia, and his own Thiel Foundation and Thiel Fellowship.

Thiel's plans to donate \$1.25 million towards the efforts to elect Trump have raised eyebrows in liberal-leaning Silicon Valley. The *New York Times* called him

“toxic” among technology investors and entrepreneurs. But Facebook CEO, Mark Zuckerberg, a Democratic donor, defended Thiel’s choice saying it would set a bad precedent to cut ties with him because of his political views.

Thiel laid out his support for the Republican presidential candidate in a prime time speech at the Republican National Convention in July. He didn't donate to the campaign until earlier this month, announcing the contribution shortly after revelations of recorded comments Trump made about women. He said he’d like to contribute through a combination of direct giving to the campaign and via Super PACs including \$1 million donation to the Super Pac, Make America #1.

In media circles, Thiel is best known for funding wrestler Hulk Hogan’s successful lawsuit against Gawker. This irreverent news website ended up closing its doors in August after filing for bankruptcy because of the ruling in the case. Thiel had long feuded with the site which has outed him as gay nearly a decade earlier.

Thiel is a Stanford alum who bills himself as a contrarian and has backed Libertarian politician Ron Paul. He’s also the author of books such as *The Diversity Myth, Multiculturalism and Political Intolerance on Campus*; and *Zero to One: Notes on Startups and How to Build the Future*. Please help me welcome to the National Press Club to talk about his political choices and motivations, Mr. Peter Thiel. (Applause)

**MR. THIEL:** Thank you very much for having me here. Everybody knows we've been living through a crazy election year. Real events seem like the rehearsals for “Saturday Night Live.” Only an outbreak of insanity would seem to account for the unprecedented fact that this year a political outsider managed to win a major party nomination.

To the people who are used to influencing our choice of leaders, to the wealthy people who give money and the commentators who give reasons why, it all seems like a bad dream. Donors don't want to find out how and why we got here. They just want to move on. Come November 9<sup>th</sup>, they hope everyone else will go back to business as usual.

But it is just this heedlessness, this temptation to ignore difficult realities indulged in by our most influential citizens that got us where we are today. A lot of successful people are too proud to admit it, since it seems to put their success in question, but the truth is no matter how crazy this election seems, it is less crazy than the condition of our country. Just look at the generation that supplies most of our leaders. The baby boomers are entering retirement in a state of actuarial bankruptcy. Sixty-four percent of those over the age of 55 have less than a year’s worth of savings to their name.

That is a problem, especially when this is the only country where you have to pay up to ten times as much for simple medicines as you would pay anywhere else. America's overpriced healthcare system might help subsidize the rest of the world, but that doesn't help the Americans who can't afford it, and they've started to notice.

Our youngest citizens may not have huge medical bills, but their college tuition keeps on increasing faster than the rate of inflation, adding more every year to our \$1.3 trillion mountain of student debt. America has become the only country where students take on loans they can never escape, not even by declaring bankruptcy. Stuck in this broken system, millennials are the first generation who expect their own lives to be worse than the lives of their parents.

While American families' expenses have been increasing relentlessly, their incomes have been stagnant. In real dollars, the median household makes less money today than it made 17 years ago. Nearly half of Americans wouldn't be able to come up with \$400 if they needed it for an emergency.

Yet while households struggle to keep up with the challenges of everyday life, the government is wasting trillions of dollars of taxpayer money on far-away wars. Right now, we're fighting five of them in Iraq, Syria, Libya, Yemen, and Somalia.

Now, not everyone is hurting. In the wealthy suburbs that ring Washington, D. C., people are doing just fine. Where I work in Silicon Valley, people are doing just great. But most Americans don't live by the beltway or the San Francisco Bay. Most Americans haven't been part of that prosperity. It shouldn't be surprising to see people vote for Bernie Sanders or for Donald Trump, who's the only outsider left in the race.

Very few people who vote for president have ever thought of doing something so extreme as running for president. The people who run are often polarizing. This election year, both major candidates are imperfect people, to say the least. Now, I don't agree with everything Donald Trump has said and done, and I don't think the millions of other people voting for him do, either. Nobody thinks his comments about women were acceptable. I agree, they were clearly offensive and inappropriate.

But I don't think the voters pull the lever in order to endorse a candidate's flaws. It's not a lack of judgment that leads Americans to vote for Trump. We're voting for Trump because we judge the leadership of our country to have failed. This judgment has been hard to accept for some of the country's most fortunate, socially prominent people. It's certainly been hard to accept for Silicon Valley where many people have learned to keep quiet if they dissent from the coastal bubble.

Louder voices have sent a message that they do not intend to tolerate the views of one-half of the country. This intolerance has taken on some bizarre forms. *The Advocate*, a magazine which once praised me as a gay innovator even published an article saying that as of now I am, and I quote, "Not a gay man" because I don't agree with their politics. The lie behind the buzz word of diversity could not be made more clear. If you don't conform, then you don't count as diverse, no matter what your personal background.

Faced with such contempt, why do voters still support Donald Trump? Even if they think the American situation is serious, why would they think that Trump, of all people, could make it any better? I think it's because the big things that Trump gets right.

For example, free trade has not worked out well for all of America. It helps Trump that the other side just doesn't get it. All of our leads preach free trade; the highly educated people who make public policy explain that cheap imports make everyone a winner, according to economic theory. But in actual practice, we've lost tens of thousands of factories and millions of jobs to foreign trade. The heartland has been devastated. Maybe policymakers really believe that nobody loses, or maybe they don't worry about it too much because they think they're among the winners.

The sheer size of the U. S. trade deficit shows that something has gone badly wrong. The most developed country in the world should be exporting capital to less developed countries. Instead, the United States is importing more than \$500 billion every year. That money flows into financial assets, it distorts our economy in favor of more banking and more financialization, and it gives the well connected people who benefit a reason to defend the status quo. But not everyone benefits and the Trump voters know it.

I think Trump voters are also tired of war. We have been at war for 15 years and we have spent more than \$4.6 trillion, more than two million people have lost their lives, and more than 5,000 American soldiers have been killed. but we haven't won. The Bush Administration promised that \$50 billion could bring democracy to Iraq. Instead, we've squandered 40 times as much to bring about chaos.

Yet, even after these bipartisan failures, the Democratic Party is more hawkish today than at any time since it began the war in Vietnam. Harking back to the no fly zone that Bill Clinton enforced over Iraq before Bush's failed war, now Hillary Clinton has called for a no fly zone over Syria. Incredibly, that would be a mistake even more reckless than invading Iraq. Since most of the planes flying over Syria today are Russian planes, Clinton's proposed course of action would do worse than involve us in a messy civil war, it would risk a direct nuclear conflict.

What explains this eagerness to escalate a dangerous situation? How can Hillary Clinton be so wildly over optimistic about the outcome of war? I would suggest that it comes from a lot of practice. For a long time, our elites have been in the habit of denying difficult realities. That's how bubbles form. Whenever there is a hard problem, but people want to believe in an easy solution, they'll be tempted to deny reality and inflate a bubble.

Something about the experience of the baby boomers whose lives have been so much easier than their parents' or their children's, has led them to buy into bubbles again and again. The trade bubble says everyone's a winner. The war bubble says victory's just around the corner. But these overoptimistic stories simply haven't been true and voters are tired of being lied to.

It was both insane and somehow inevitable that D.C. insiders expected this election to be a rerun between the two political dynasties who led us through the two more gigantic financial bubbles of our time. President George W. Bush presided over the inflation of a housing bubble so big that its collapse is still causing economic stagnation today.

But what's strangely forgotten is that last decade's housing bubble was just an attempt to make up for the gains that had been lost in the decade before that. In the 1990s, President Bill Clinton presided over an enormous stock market bubble and a devastating crash in 2000 just as his second term was coming to an end. That's how long the same people have been pursuing the same disastrous policies.

Now that someone different is in the running, someone who rejects the false reassuring stories that tell us everything is fine, his larger than life persona attracts a lot of attention. Nobody would suggest that Donald Trump is a humble man. But the big things he's right about amount to a much-needed dose of humility in our politics. Very unusually for a presidential candidate, he has questioned the core concept of American exceptionalism. He doesn't think the force of optimism alone can change reality without hard work.

Just as much as it's about making America great, Trump's agenda is about making America a normal country. A normal country doesn't have a half trillion dollar trade deficit. A normal country doesn't fight five simultaneous undeclared wars. In a normal country, the government actually does its job. And today, it's important to recognize that the government has a job to do. Voters are tired of hearing conservative politicians say that government never works. They know the government wasn't always this broken. The Manhattan Project, the interstate highway system, the Apollo program, whatever you think of these ventures, you cannot doubt the competence of the government that got them done. But we have fallen very far from that standard. We cannot let free market ideology serve as an excuse for decline.

No matter what happens in this election, what Trump represents isn't crazy and it's not going away. He points toward a new Republican Party beyond the dogmas of Reaganism. He points even beyond the remaking of one party to a new American politics that overcomes denial, rejects bubble thinking and reckons with reality. When the distracting spectacles of this election season are forgotten and the history of our time is written, the only important question will be whether or not that new politics came too late. Thank you. (Applause)

**MR. BURR:** Thank you, Mr. Thiel. Appreciate you being here at the National Press Club. Let's start off with, as a part of our conversation, I think I want to get to a lot of topics. We have a few hundred questions, I think, already submitted from people. But let's talk about the campaign here. Your candidate has talked a lot about how what's wrong with America. There are a lot of dissatisfied voters right now. Do you see this election as anything more than a contest to see who'll be the next captain of the *Titanic*?

**MR. THIEL:** Well, I hope not. I have always had a bias of favoring outsider candidates. I supported Ron Paul in '08 and 2012. I supported Carly Fiorina early in this race so I have a strong bias for outsiders. I think the insiders are often much more polished, they're talented politicians, but a lot of what they do does feel, to me, like rearranging deck chairs on the *Titanic*. So it's precisely because I'm worried about that

that I think we need to think a little bit outside the conventional policy box and we need to have a sort of broader public debate about the kinds of things we might want to do. But certainly, I worry about the decline. I take it very seriously, and one of the things-- I would have liked to see a race between Trump and Sanders because I think both of them viscerally felt the decline and viscerally-- they very much disagreed about what caused it, what to do about it, but that would have been a very different sort of debate.

What we have is a debate between one candidate who says everything is more or less fine, or it's as good as it can be. And then another one who says we're on the *Titanic*, it's about to sink. And so I prefer the second one.

**MR. BURR:** You talk a lot about backing an outsider and how that's important for America. But isn't there also something to be said about somebody who understands how Washington works better to actually get things done?

**MR. THIEL:** You know, we've been trying that for-- I would argue we've been trying that for quite a long time. On the kinds of issues I talked about today, the trade bubble, the war bubble, the globalization bubble, these various bubble policies, the insiders have been getting it wrong for a long time. You know, they were asleep at the switch when we had the dot com bubble in the '90s. They were even more asleep, I would argue, when we had the housing bubble in the last decade.

And the insiders have somehow been doing very micro policy adjustments and then letting these massive bubbles inflate on their watch. And so I think there is an argument-- the Trump point that he's made repeatedly that Hillary's experienced, but it's bad experience, somehow resonates with me a lot.

**MR. BURR:** Has your support of Mr. Trump affected any relationships or close business relationships in Silicon Valley?

**MR. THIEL:** You know, it certainly has generated a tremendous amount of discussion, gotten a lot of pushback from people, to say the least. But I think my friendships, close working business relationships, I think all those are very well intact.

**MR. BURR:** Do you have any other Silicon Valley businessmen you deal with who are more privately supporting Mr. Trump and don't want to say it publicly?

**MR. THIEL:** You know, it's one of the strange things of doing this. It has surfaced not a large number, but a small number of those people who all feel like they can't say it in public, and what not and are, you know, happy that I've done it. So they've sort of been conjured out of the ether, yes.

**MR. BURR:** Well, let me talk about that for a second. What have you learned this election cycle about Silicon Valley's appetite for political difference?

**MR. THIEL:** Well, it's more polarized than I realized. You know, I certainly-- I thought of Silicon Valley as a fairly liberal, fairly democratic place, it overwhelmingly backed Obama in 2008. But I didn't think-- I didn't think it was going to be this-- that there would be this sort of a visceral reaction where-- you know, and again, you know, most of the larger tech companies, you know, most of the-- many of these people have not said you shouldn't be able to back Trump or anything like this, but it's surprising to me that anybody would say that you're beyond the pale for taking a position that's held by half the country, you know?

There are positions that are beyond the pale. There are extreme fringe views. I've often supported, you know, fringe views in life extension or fringe views in sea studying, which are very minority views. This is the first time I've done something that's actually conventional. It didn't feel contrarian. This was the first-- it's like the first time I've done something big in my life that was just what half the country believed in. And it's been the most controversial thing ever, so that really surprised me.

**MR. BURR:** Has your company suffered any blowback because of your position?

**MR. THIEL:** I don't think so. I think that would be an even crazier thing. You know, it's like I'm not Trump. You know, the founders of the companies I invest in are not me. Their employees are not the founders, and if you sort of conflate two or three or four groups of people like this, that's a really crazy thing to do. You know, perhaps we should occasionally be held partially responsible for people who are one degree of separation from us. If you hold people responsible for people who are two degrees or three degrees of separation, that way lies insanity.

**MR. BURR:** But just to clarify, you don't believe your company's faced any blowback from consumers or other vendors you deal with because of your position?

**MR. THIEL:** Not in any meaningful way, no.

**MR. BURR:** In your RNC convention speech, you said, "Where I work in Silicon Valley, it's hard to see where America has gone wrong." Do you think Silicon Valley understands America? And what's that source of disconnect there?

**MR. THIEL:** Silicon Valley has been extremely successful over the last decade or so. But it's been a success that is a success of specific companies. You know, a number of which I've been involved in. And the story people in Silicon Valley always want to tell is one in which their specific success as individuals and as companies gets conflated with the story of general success and general progress in the United States. So we're doing well; therefore, our whole civilization is doing well, everybody's doing well. The whole country's taken to the next level. And so that's the narrative people love to tell, specific success linked to general success.

And I think the truth has been more one of specific success but more general failure. And I've been a critic of Twitter, for example, where on my-- on our website we've said, you know, they promised us flying cars and all we got was 140 characters. But, you know, it's not a critique of Twitter as a company. It's a perfectly good company. The people who work there have well-paying jobs. It's a perfectly great company, it's just not enough to improve living standards for 300 million-plus Americans.

**MR. BURR:** While we're on the topic, I want to get back to Trump for a second, but how do you think that disconnect in some ways shapes the companies and the products that are created there?

**MR. THIEL:** You know, this gets very speculative. But I would say that-- one way I've often described the dichotomy is that Silicon Valley deals in the world of bits. Most of the economy is the world of atoms. So the world of bits is computers, internet, mobile internet software, that ensemble. And there's been a narrow cone of progress around those kinds of industries.

But then you often have a less good of an understanding for the sort of industries that involve-- in atoms that are involved in building things. Sort of real estate, which Trump is in is sort of maybe the stereotypical industry involving atoms. Those are the ones that are often much more heavily regulated than the world of bits. And so if you're in the world of atoms, you might be very concerned about government regulation.

If you're in the world of bits, which is much less regulated, you might be much less concerned about government regulation. So there is this big separation just in terms of what they do. I wouldn't blame that on just a blind spot Silicon Valley has. I think that's a little bit too easy. Perhaps Silicon Valley has focused on the world of bits because it's actually gotten very hard to do things in the world of atoms.

When I was an undergraduate at Stanford, you know, there were still a lot of different engineering fields you could study in the 1980s. They were all bad decisions. It was a bad idea to become an aero astro engineer. It was a bad idea to become a chemical engineer or mechanical engineer. These were all industries that were sort of in structural decline because they were getting outlawed. They were getting regulated to death. Nuclear engineering, I mean your parents would have-- it would have been irresponsible to let you study that as a field in the 1980s.

You know, even electrical engineering, which was semiconductors, and that's sort of on the boundary between atoms and bits, that was a good field for about a decade. Not so much anymore. Computer science, not even an engineering field, that was the only sort of scientific technical field that actually had a future in the 1980s.

**MR. BURR:** Let's go back to Mr. Trump; we'll have more questions about Silicon Valley in a minute. Was the timing of your donation in any way related, donation to the Trump campaign, in any way related to the revelation of the "Access Hollywood" tape about Mr. Trump?

**MR. THIEL:** No. I mean, I think the tape was-- I think the tape was an extremely-- in extremely poor taste, extremely inappropriate, as I said. I didn't, you know, I didn't think as much even about the donation as I should have. My general perspective on this year was that money actually didn't matter that much. The candidates who raised the most money on the presidential level did incredibly badly. I didn't even think that Trump needed my money. You know, he hadn't raised that much money, they hadn't asked me for money, I hadn't donated. And so when they asked me, you know, I wasn't sure they needed it, but I thought I'd go ahead and write them a check. But I didn't think that much of this connection.

And, of course, I didn't think anybody would think that you would donate to a candidate because of the worst thing they've done. You support candidates normally because of the things you like about them, not the things you dislike. And it's odd-- like, I think almost all the people who are voting for Trump are voting because of the sense that the U. S. is very badly off track and perhaps we have to do some things to fix it.

**MR. BURR:** You mentioned in your speech that Mr. Trump is not necessarily humble. But are you concerned about some of the personality traits, the comments about women, his more bombastic style? Are you concerned what that says to younger Americans and says to our political discourse today?

**MR. THIEL:** Well, I think we've been pretty clear this year that there are a lot of things that are beyond the pale and I think there are things that Trump said a decade ago that even he would absolutely no longer say today. So, you know, I think that part of our discourse is getting policed adequately and will continue to be policed adequately.

I think that temperament, you know, the kind of place where I worry about that most on a policy level is do we get into more wars or not. And I'm not sure whether that's sort of a matter of temperament or more a matter of world view. But certainly I would worry much more on that with Hillary getting us into wars. The nuclear one, which is the most dangerous probably involves still a confrontation with Russia. And I don't think, you know, I don't think Hillary Clinton has accused Trump of being overly hostile to Putin.

**MR. BURR:** But are you concerned about Mr. Trump's temperament when it comes to the nuclear codes at all?

**MR. THIEL:** Well, I don't think that-- I think he wouldn't even get us into a situation where it would even be close with respect to Russia. So I think if you actually look at the specifics, where might something happen, where might something go wrong, I would think that in some ways Hillary's much more dangerous than Trump. I don't think Hillary will get us in nuclear war, either, but it's a much more confrontational foreign policy.

**MR. BURR:** What about Mr. Trump's temperament with other countries; North Korea, China, that could pose some trouble if he were elected president because of how he responds?

**MR. THIEL:** Well, North Korea has been a problem for a long time. I think at this point, it's actually more a problem for China than for the U. S. It's a pure client state of China. You know, I don't like the way China's managing it, I'd like them to do something to change things around rather than tolerate the horrible dictatorship that exists there. But I think China will keep it a very bad, very unhappy but a very low volatility situation.

**MR. BURR:** Let's go back to domestic politics. As an entrepreneur yourself, where do you place Donald Trump's economic plan against Hillary Clinton's plan? What key factors in this plan do you think will nurture small business ascension versus Secretary Clinton?

**MR. THIEL:** Well, I think it is-- first off, it is just this general way in which it is rejecting the sort of bubble thinking. And I think what we have to acknowledge is that the bubbles we've had in this country since the 1990s have on net been catastrophic. You know, the tech bubble that I experienced first hand in the late '90s in Silicon Valley was extremely exciting. It seemed to accelerate things tremendously. But then, you know, after it crashed, B2C meant back to consulting, B2B meant back to banking. And I think the whole thing ended up leading to an enormous misallocation of capital; even worse, an enormous misallocation of talent. People went into new industries, they lost their jobs. Their careers went sideways for many years.

And so I think that the sort of bubble history has been very catastrophic and that's sort of an honest assessment of our economy and what to do, would start with talking about that. Temperamentally, I think that Trump understands, he viscerally understands, the ways in which government regulations are-- you know, they're not that bad for big business, because big business often has the resources to deal with them. Sometimes, big business even likes regulation because it knocks out the small businesses that might compete.

But it's catastrophic for small businesses. And there's been much less formation of small businesses in the last decade or so in the U. S. relative to historical baseline. You can debate why this happens, why questions are always hard to answer. But my instinct is that it does have something to do with the toughness of the regulatory climate in this country.

**MR. BURR:** Mr. Trump bills himself as a big, good businessman. Yet, there's been a lot of stories recently about the bankruptcies he's had in his companies, the fact he won't release his taxes to say how much he's actually contributed to charities. Do those raise any concerns in your mind?

**MR. THIEL:** Well, you know, I think he's been a successful businessman. I think he's been a very successful real estate developer. There's no question about that. We can debate how many zeros exactly he has in his net worth, but he has-- you know, he has a lot, so-- he has a huge number, even. I think that-- real estate is an industry that's very different from tech and so it's not one I would consider myself that expert at evaluating the specifics of what someone has done. I think it's a fairly zero sum business, it's a very tough industry especially in our big urban cities like Manhattan or San Francisco.

And I suspect that in many ways, you know, what Trump did was par for the course in that context. You know, we have an enormous amount of transparency on our political leaders, I think that's a good thing. On the whole, there's always a question of-- there's a point where it gets pushed too far. I would worry that we ask so much-- we examine people under an electron microscope if you're running for dog catcher in this country. And at some point, I would-- I do think that this is the single biggest reason that more talented people do not run for political office and do not get involved.

You know, there's the transparency in some ways, is-- often gets taken in this very toxic direction. So I don't know whether or not Trump should release his tax returns, but I think at this point the American people know far more than enough to make up their minds about the two candidates.

**MR. BURR:** You do believe, though, that the vetting process for our American political candidates should be strong and thorough?

**MR. THIEL:** Oh, it should be very strong, and it is very strong. But I also believe that there are a large number of-- that we have, in some ways, have a less talented group of people running today versus 40 or 50 years ago. I think the vetting process was very tough, you know, when Kennedy was running for president in 1960. But it's not clear somebody like Kennedy would be electable in today's world.

**MR. BURR:** Has Mr. Trump given you any private assurances he wouldn't roll back progress on LGBT rights or his appointments to the Supreme Court wouldn't undo the rulings for same sex marriage nationwide?

**MR. THIEL:** You know, I've not had conversations with Mr. Trump on that specific subject. I do think that he represents a sea change from the Republican Party of Bush 43. You just think about the way Bush 43 was speaking negatively about gay marriage at every single campaign event in the 2004 election. It's something where Trump has-- everything he's indicated is that he would be quite expansive on gay rights.

**MR. BURR:** Lastly, and I'll move on to another topic, but do you personally support Mr. Trump's comments and rhetoric before about banning Muslims from traveling to the United States?

**MR. THIEL:** You know, I don't support a religious test. I wouldn't use-- you know, I certainly don't support, you know, the specific language Trump has used in every instance. But I think one thing that should be made distinguished here is the media always is taking Trump literally. It never takes him seriously, but it always takes him literally. I think a lot of the voters who vote for Trump take Trump seriously, but not literally.

And so when they hear things like the Muslim comment or the wall comment or things like that, it's not-- the question is not are you going to build a wall like the Great Wall of China or, you know, how exactly are you going to force these tests. What they hear is we're going to have-- we're going to have a saner, more sensible immigration policy. We're going to try to figure out a way to-- figure out how do we strike the right balance between costs and benefits.

And, you know, immigration, it's not an all or nothing. It's not that you should let everybody in, it's not that you should let nobody in. Those are two very different positions. They're exclusive, but they're not exhaustive. There's a lot of room in between and the question, the policy question is how to tackle that. And I do think there's something-- you know, we live in a-- there's an immigration bubble where we say, you know, it's all good. You shouldn't ask questions. And I think we could have a better policy. I personally would like one like Canada or Australia. I think those countries have much better policies than our country and we could become a more normal country, learn from places that are doing it better than we are.

**MR. BURR:** Switching subjects, you're sitting here at the National Press Club surrounded by journalists. Do you believe you've set a dangerous precedent in secretly suing Gawker in connection with its publication of the Hulk Hogan video? And are you engaged in any other lawsuits? But let's start with that precedent. Is that a dangerous precedent to set?

**MR. THIEL:** I don't think so. You know, let's start with the facts of the case. It involved a sex tape. If you make a sex tape of someone with their permission, you are a pornographer. If you make a sex tape without their permission, we were told now, you are a journalist. I would submit that is an insult to all journalists. This is not about the first amendment, it is about the most egregious violation of privacy imaginable. Publishing a sex tape surreptitiously filmed in the privacy of someone's bedroom and to hide behind the first amendment, behind journalism, that is an insult to journalists.

And that's why, that's why Gawker lost so catastrophically at the court in Tampa, Florida, because they were arguing all these sort of abstract theories and we kept focusing on the facts of the case. There was a deposition of A. J. Daulerio, the editor, who published the sex tape. In the deposition we asked him, "So is there a sex tape you wouldn't publish?" "Well, maybe if it involved a child." Then we asked, you know, "What age child?" He said, "Well, if it was a four year old child." There were sort of gasps by the jury at that point.

So maybe it was-- you know, it's sort of was like he's an aspiring child pornographer. And that's not what journalism's about. So, I strongly believe in the first amendment. I believe, you know, journalists are a privileged group in our society. They play an important role in getting us information and our system of checks and balances. But, these were not-- these were not journalists.

**MR. BURR:** Do you think what happened to Gawker could happen to other news publications? I mean, could wealthy, powerful people seek revenge against a news organization because of something they didn't like and use their influence and money to take them out?

**MR. THIEL:** You know, they shouldn't-- wealthy people shouldn't do that. I think if they try, they won't succeed. You know, it's-- Gawker was-- it was a pretty flimsy business. It was a bad business. It didn't make that much money. But they could have withstood all of the lawsuits. You know, they lost because of an enormous verdict that came in against them. That's why they lost at the end of the day. I could have underwritten many more lawsuits. That wasn't the problem. The problem was that they lost on the facts.

You know, I thought that it-- I was very careful in the Hulk Hogan litigation in picking a lawsuit where the fight was over privacy. We did not even bring a libel action because that was sort of the way I wanted to make clear in the Hogan case that it was not about the media, it was not about the media more generally.

**MR. BURR:** Are you engaged in any other lawsuits against news organizations?

**MR. THIEL:** I've been involved in the Gawker case, nothing else. And part of, you know, part of my thought was, again, they we're a singularly-- they were a singularly sociopathic bully. My view is that other journalists, other media organizations, were not remotely in the same ball park.

**MR. BURR:** Tell us how you got involved, and especially how and when you got connected to Charles Harder, Hulk Hogan's lawyer in the Gawker case, and why you did this secretly?

**MR. THIEL:** Well, you know, it was a multi-year-- I have to be little bit careful on what I comment on this since the litigation is still ongoing. But I got involved over a number of years. And it was one of these things where as you got involved, you came to believe in the justice of the case more and more because there were so many different people that you interacted with who had been destroyed. In many cases, in most cases, it was not super prominent people, it was-- or super wealthy people. It was people who couldn't afford to do anything.

And one of the striking things is that if you're middle class, if you're upper middle class, if you're single digit millionaire like Hulk Hogan, you have no effective access to

our legal system, it costs too much. And this was the modus operandi of Gawker in large part. It was to go after people who had no chance of fighting back.

You know, we can debate about whether the more appropriate thing for me would have been to be transparent about funding it all the way through. But, my judgment was that Mr. Hogan deserved to have his day in court and that that would have distracted from his day in court. You know, he-- that transparency and that would have turned it into this very different narrative, into the Gawker narrative, that it's the billionaire trying to squash the first amendment rather than what I think it was actually about, which was an egregious violation of privacy, the publication of a sex tape.

And one other perspective on this is that I've been involved with the internet for the last 20 years. I'm generally in favor of the internet. I generally think it's been a good thing. But I think there are some parts of it where things have gone wrong and one kind of phenomenon that's very new that can take place on the internet is this sort of transparency anonymity combined. We have this sort of-- these mobs, flash mobs that get directed at specific individuals. That's a very new phenomenon, and Gawker in some ways perfected it where you'd pick on people and you would destroy their lives and you'd write nasty stories. The writers might then even add comments that were even more vicious than the ones in the story, all so as to generate a virtual mob that would go after these people.

There were many different targets they had. They had targets in Silicon Valley, they had celebrities as targets. But one big class of targets that Gawker went after were people in the media. You know, sort of one class of people they especially hated were other reporters, other writers. And in the sort of pre-history, as I was-- as we were building up this case, a few people I talked to about it, and some of the people who encouraged me to keep going were some of my friends in the media because they knew how much Gawker had actually specifically targeted more successful writers and reporters over the years.

**MR. BURR:** You've had a feud with Gawker for more than a decade, as I said in my introduction. When did you decide that funding another person's lawsuit would be the best course of action to take down Gawker, and when did you set this in motion?

**MR. THIEL:** You know, it would have been roughly co-equal with the time the Harder firm started to work with Hogan, so over four or five years ago. You know, my initial view was that what you were supposed to do was you were supposed to take your beatings, crouch down, go into a fetal position and then hope they moved on to somebody else. And sort of around 2011, one of my friends convinced me that if Gawker could get away with this sort of sociopathic repeat behavior over and over, it was this tragedy of the commons. Nobody would ever-- you know, they would continue to ruin lives one after another.

And there were many people they did things to far worse than me. And so, I was convinced that if I didn't do something, nobody would.

**MR. BURR:** The candidate you're supporting for president, Mr. Trump, has spoken several times about changing libel laws in this country so that he can sue news outlets essentially for stories that he doesn't like. We have laws in place right now to protect public figures, as well as ordinary citizens. Where do you draw the line?

**MR. THIEL:** Well, I don't think the libel laws need to be changed. I think that there certainly are questions about how we-- are there some new facts and circumstances that are a little different, so I think it's always good to ask questions. If you're the child of a celebrity, do you get subjected to the same amount of scrutiny as celebrity? Even if you're a public figure, can your sex tape be made public? Don't think so. If you're a tech CEO of a startup with 12 people, should you be subject to the same level of scrutiny as a presidential candidate or other public figure? So I always think there are some corner cases like this that we should explore. I think there are ways that the internet has changed these boundaries some. And so I do think we need to reexamine some of these corner cases.

But I think on the core principle of something like *New York Times v. Sullivan*, that obviously should stand and that's been a good thing. I don't think that needs to change, or should change.

**MR. BURR:** Speaking of Charles Harder's now developed a reputation as the go-to lawyer for the rich and powerful when they want to threaten media outlets. He now represents Roger Ailes against the *New York* magazine, Melania Trump against the *Daily Mail*, and other clients. As a Libertarian, do you feel this is a threat to freedom of the press in any way? How would you characterize what he does?

**MR. THIEL:** You know, I'm not going to speak to all the-- you know, I'm not familiar with all the details of all the litigation. I'm not underwriting any of those lawsuits, just to be very clear. I do think what actually matters in litigation is what happens at the end game. Sort of like the-- it's like the-- if you want to understand litigation, it's like the Capablanca line in chess. You must begin by studying the end game. You must begin by thinking about do you actually ultimately win or lose?

And if you bring a harassing lawsuit and you lose, that also sets a precedent, and that's a precedent for greater press freedom over time. And so I think that when one brings litigation, you have to think all the way through to the end game. And I wouldn't do it because, number one, I think the first amendment should be respected. But number two, many of these sorts of cases I wouldn't bring because I think you ultimately won't win. It's very different from Gawker where we could map out with a high level of certitude that if we had our day at court, we would win.

**MR. BURR:** Well, since you came to the lion's den of National Press Club in some ways, let me ask you about your concerns about the media today. What do you think are the problems with the media, the news media? And what do you think that means for society and what would you do to fix them?

**MR. THIEL:** Well, identifying the problems and how to fix them are two very difficult, different kinds of questions. You know, I always am fixated on economic questions and the economic challenge that's very severe is that a lot of the business models that media companies have are not working as well as they used to. I don't exactly know what you need to do to fix that. But I think the way I tell the history of media, newspapers, magazines, a lot of print media, was that these were incredibly robust monopoly businesses in the 1980s and 1990s. And if you worked at a newspaper, it's like you were working at a utility company. You had this cushy, fairly sinecured position because you were a local monopoly. And the internet inadvertently sort of eroded these business models.

You actually have more power, you know. The stories you write reach more people, so the media is, in some ways, more powerful than ever. But it's economically not doing as well. And I think that is a big challenge. I think the monopolies that media enjoyed were in some ways a good thing because even though we don't want monopolies in many cases, they did provide a positive externality for our society. The monopolies were good. Monopolies have been eroded and that's sort of the core challenge.

It's not the self understanding people have. You know, you normally don't like to say I'm working at a monopoly company and that's why we're doing so well. But I think that's the history of what happened and what needs to be understood better.

**MR. BURR:** Sticking with the Gawker situation for a second, on the opposite side, since you say you're a believer in freedom of the press and good journalism, do you think it's the responsibility of folks like yourselves who have the resources and the ability to help fund good journalism out there and would you do so?

**MR. THIEL:** You know, I wouldn't want to compete with Jeff Bezos ever. You know, so he's the-- I think he's the toughest person in the world to compete with at this point, so just to be very clear, I have no plans to buy the *Washington Times*. But I think that-- I think sort of getting-- I think, you know, I think it's possible that that's a direction that media will change in where it becomes almost a sort of nonprofit undertaking. I'm not sure that's the healthiest way for the media industry to develop because I think a lot of nonprofit organizations are not that effective. They're sort of weirdly distorted. They do good, but it's actually-- they're often not managed all that well.

And so perhaps it moves in that direction. But I'm not sure that's the solution to the problem.

**MR. BURR:** Switching subjects a little bit, as a Libertarian, what do you think are the greatest threats to your freedom today and what do you think can help increase people's individual freedoms?

**MR. THIEL:** Well, I think it is-- you know, the sort of-- look, the ideological Libertarian answer to that is always the government and then probably from a civil

Libertarian perspective it's government fighting too many wars. It's government incarcerating too many people in our society. It's government regulating the economy too much. And then I would like to see-- so I'd like to see less involvement by the U. S. in-- as a global-- less of the U. S. as a global policeman. I would like to see fewer people in jail in the U. S. It's another place where the U. S. is an exceptionally crazy country where we have incarceration rate that's completely out of synch with the rest of the developed world. And I'd like to see if we had an incarceration rate like Western Europe or Canada or Australia, that would be a sane direction for us to go in.

And then the regulation of businesses. So I think, you know, I don't think-- I think there are parts of Libertarianism that always sound fringe. I think the issues I would want to focus on are ones where the U. S. actually just becomes like other developed countries.

**MR. BURR:** Going back to your Republican National Convention speech, you said, "Our nuclear bases still use floppy disks. Our newest fighter jets can't even fly in the rain. And it would be kind to say the government software works poorly because so much of the time it doesn't work at all." If you're talking about less government and more Libertarian things, how does America fix that stuff still?

**MR. THIEL:** Well, this is where I think my ideal would be a smaller government that does more with less. You know, not-- the ideological debates we have in Washington, D. C. are always more with more versus less with less. It's sort of runaway spending with no controls or austerity where, you know, you're 300 pounds and you will chop off your thumb as a weight control measure. So that's sort of the weird-- that's the weird public policy debate we have.

And what the technology industry is about, what-- is always doing more with less. And I think that would be a healthy perspective for us to have in D.C. So the question is can we have-- whatever we spend on the military, can we achieve the same for less? So if you have an F35 fighter jet that doesn't fly in the rain, maybe you could have-- is there such a thing as a less expensive jet that can fly in the rain? I suspect there is and so-- and this is where I differ from Libertarians because they might be excited about the F35 jet and say, "Good, we can just shut down the whole government." And I think we should take as a challenge to make it work better.

If you can never do better than the F35, that's a super Libertarian perspective, because then you just have to shut everything down. If everything is as bad as the F35, you should just shut down everything in this town, have everyone go home. And what I always point out to in these things, though, is there's been a decline. You know, Libertarianism would not have sold as well in the '40s or '50s or '60s in the U. S. If you were a Libertarian, that was-- it's fringe today, it was super fringe in the '50s and '60s because that was a society where the premise is the government couldn't do anything, didn't make sense.

The Libertarian Party got started in the 1970s in the U. S. That's when it took off, and the 1970s is the decade where things really stopped working in this country and

especially on the governmental side. And so I think there's this deep link between libertarianism and the decline of our governmental institutions.

**MR. BURR:** Before I ask the final question, a quick reminder. The National Press Club is the world's leading professional organization for journalists and we fight for a free press worldwide. For more information about the Club, please visit our website at [Press.org](http://Press.org). That's [Press.org](http://Press.org). Also quick reminder about some upcoming programs. On November 21, Gina McCarthy, the Administrator of the Environmental Protection Agency will speak here. November 30, Paul Wiedenfeld, the general manager of the Washington Metropolitan Transit Authority will be here. And on December 2<sup>nd</sup>, we'll host MGM Resorts Chairman and CEO, James Murren.

I'd like to ask again the audience to remain seated until our guest has departed. I'd also like to present our guest with the traditional National Press Club mug.

**MR. THIEL:** Thank you very much. (Applause)

**MR. BURR:** So my final question, sir, what's your future in politics? After this race is over, how do you decide which candidates or, perhaps, political parties you're going to support?

**MR. THIEL:** Well, you know, I think my future is going to continue to be in the tech industry. That's what I am good at, that's what I enjoy doing. I always have this view of-- a somewhat schizophrenic view of politics where I think it's a horrible business, it's incredibly destructive. A lot of it is like trench warfare on the western front where there's crazy amounts of carnage and nothing ever changes. And then that's one part of my schizophrenic view.

The other part is that it's really important. There's some problems that can't be solved outside of this political arena. And the way I deal with my schizophrenia is that I occasionally get involved, but don't want to make it a full time thing.

**MR. BURR:** Thank you for being here, Mr. Thiel, appreciate it.

**MR. THIEL:** Awesome, thank you very much.

**MR. BURR:** Thank you. (Applause)

END

**Exhibit B**

**Meanith Huon**  
**PO Box 441**  
**Chicago, Illinois 60690**  
**312-405-2789**  
**312-268-7276 FAX No.**  
**Huon.meanith@gmail.com**

December 12, 2016

**VIA EMAIL, REGULAR MAIL, AND E-FILING**

Hon. Judge Stuart M. Bernstein  
Courtroom: 723  
One Bowling Green  
New York, NY 10004-1408

Re: Request to appear via telephonic conference  
In re Gawker Media, LLC  
Chapter 11  
Case No.: 16-11700 (SMB)

Dear Judge Bernstein:

Out of an abundance of caution, I am making the following disclosures under New York Rule 3.3, Conduct before Tribunal, and New York Rule 3.4, Fairness to Opposing Counsel:

I was provided with legal advice and/or information from Charles Harder and the law firm of Harder, Mirell & Abrams LLP in appealing my case against Gawker Media in Huon v. Denton, et. al., Case No.: 15-3049 (7th Circ. 2016.). I was reimbursed for certain of my costs.

I was provided with legal advice and/or information from Charles Harder and Harder's prior firm, the law firm of Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP, in litigating my case against Gawker Media in Huon v. Denton, et. al., Case No.: 11-cv-3054, before the U.S. District Court in the Northern District of Illinois. I was reimbursed for certain of my costs.

I was provided with legal advice and/or information from Michael Kernan, an attorney retained by Charles Harder, in litigating my case against Gawker Media in Huon v. Denton, et. al., Case No.: 11-cv-3054, before the U.S. District Court in the Northern District of Illinois. See attached email correspondence attached as Exhibit "A".

Page 1 of 2

By making these disclosures, I am not waiving the Attorney Client Privilege regarding my communications with the aforesaid attorneys and law firm. Thank you.

Very truly yours,

/s/ Meanith Huon

Meanith Huon

cc: (VIA EMAIL ONLY)  
Gregg M. Galardi  
Elizabeth Beruit  
Jonathan Agudelo  
Ropes & Gray, LLP

(VIA EMAIL ONLY)  
Mark Tsukerman  
Cole Schotz PC



Meanith Huon <huon.meanith@gmail.com>

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## Emails

1 message

---

**Charles Harder** <charder@hmafirm.com>

Mon, Oct 31, 2016 at 10:52 AM

To: Meanith Huon <huon.meanith@gmail.com>

Cc: Dilan Esper <DEesper@hmafirm.com>, Douglas Mirell <dmirell@hmafirm.com>

Meanith: Can you please discontinue emails to my firm? It is not necessary for us to receive them, and we would prefer not to receive them. We wish you good luck with your matter. Thank you. –Charles

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Meanith Huon <huon.meanith@gmail.com>

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## Status

1 message

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**Charles Harder** <charder@hmafirm.com>  
To: Meanith Huon <huon.meanith@gmail.com>

Sun, Aug 14, 2016 at 1:52 PM

Hi. What is the status of your appeal? I saw that you were dismissed from the BK proceeding. Are you ending the appeal as to Gawker? Thanks

Charles J. Harder  
HARDER MIRELL & ABRAMS LLP  
132 S. Rodeo Drive, Fourth Floor  
Beverly Hills, CA 90212  
[\(424\) 203-1600](tel:(424)203-1600)

Sent from iPhone; please excuse any typos.

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Meanith Huon <huon.meanith@gmail.com>

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## Re: Request for reimbursement/Huon v. Gawker

1 message

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**Charles Harder** <charder@hmafirm.com>  
To: Meanith Huon <huon.meanith@gmail.com>

Mon, Feb 1, 2016 at 8:24 PM

No problem.

Charles J. Harder  
HARDER MIRELL & ABRAMS LLP  
132 S. Rodeo Drive, Suite 301  
Beverly Hills, CA 90212  
[\(424\) 203-1600](tel:(424)203-1600)

Sent from iPhone; please excuse any typos.

> On Feb 1, 2016, at 5:30 PM, Meanith Huon <[huon.meanith@gmail.com](mailto:huon.meanith@gmail.com)> wrote:  
>  
> Hi Charles:  
>  
> Do you think your client would be willing to reimburse the Fedex cost for copying and binding of 344.30?  
>  
> If so, please send a check to: Meanith Huon, PO Box 441, Chicago, IL 60690.  
>  
> Thanks.  
>  
>

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Meanith Huon <huon.meanith@gmail.com>

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## Your case

1 message

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**Charles Harder** <charder@hmafirm.com>  
To: Meanith Huon <huon.meanith@gmail.com>

Wed, Dec 11, 2013 at 12:22 PM

Yes, the cavalry is still behind you. We would need to discuss specifics. I would probably retain a contract attorney in Chicago for your case. Any clue when the judge is going to rule on the pending motions?

[REDACTED]

Charles J. Harder  
HARDER MIRELL & ABRAMS LLP  
1801 Avenue of the Stars, Suite 1120  
Los Angeles, California 90067  
[www.HMAfirm.com](http://www.HMAfirm.com)  
(424) 203-1600

Sent from my iPhone



Meanith Huon <huon.meanith@gmail.com>

---

## Opposition

1 message

---

**Charles Harder** <charder@hmafirm.com>  
To: "huon.meanith@gmail.com" <huon.meanith@gmail.com>

Wed, Mar 6, 2013 at 4:53 PM

I have no further comments to the draft that I sent you earlier, so feel free to file as is or further revise as you see fit.



### CHARLES J. HARDER

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Editor, *ENTERTAINMENT LITIGATION* (Oxford University Press, 2011)

Listed, *Top 100 "Power Lawyers" in America*, *The Hollywood Reporter*

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Meanith Huon <huon.meanith@gmail.com>

## Gawker's Memo re Mtn to Dismiss

1 message

**Charles Harder** <charder@hmafirm.com>  
To: "huon.meanith@gmail.com" <huon.meanith@gmail.com>

Tue, Jan 22, 2013 at 6:24 PM

Meanith: Can you please send me a copy of Gawker's Memo of Ps and As supporting its Motion to Dismiss? I can't seem to find a copy of it, and it is not available at Pacer (Dkt 175). Thank you.

### CHARLES J. HARDER



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Editor, *ENTERTAINMENT LITIGATION* (Oxford University Press, 2011)

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Meanith Huon <huon.meanith@gmail.com>

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## Huon/Gawker

1 message

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**Douglas Mirell** <dmirell@hmafirm.com>

Thu, Apr 14, 2016 at 11:05 AM

To: "Meanith Huon Esq. (huon.meanith@gmail.com)" <huon.meanith@gmail.com>

Cc: Dilan Esper <DEesper@hmafirm.com>

Dear Meanith,

Are we still expecting to receive the appellees' brief today?

Best regards,

Doug



**DOUGLAS E. MIRELL, ESQ.**

HARDER MIRELL & ABRAMS LLP

132 S. RODEO DRIVE, SUITE 301

BEVERLY HILLS, CA 90212-2406

DIRECT: (424) 203-1603

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Meanith Huon <huon.meanith@gmail.com>

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**RE: 15-3049 Meanith Huon v. Nick Denton, et al "Submit a Brief"**

1 message

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**Dilan Esper** <DEsper@hmafim.com>

Thu, Apr 14, 2016 at 3:42 PM

To: Meanith Huon <huon.meanith@gmail.com>, Douglas Mirell <dmirell@hmafim.com>, Charles Harder <charder@hmafim.com>

Meanith:

I will review this and be in touch with you with my thoughts on the reply.

Dilan

**From:** Meanith Huon [mailto:[huon.meanith@gmail.com](mailto:huon.meanith@gmail.com)]

**Sent:** Thursday, April 14, 2016 12:12 PM

**To:** Douglas Mirell; Dilan Esper; Charles Harder

**Subject:** Fwd: 15-3049 Meanith Huon v. Nick Denton, et al "Submit a Brief"

Here you go. Thanks.

----- Forwarded message -----

From: <[CA07\\_CMECFMail@ca7.uscourts.gov](mailto:CA07_CMECFMail@ca7.uscourts.gov)>

Date: Thu, Apr 14, 2016 at 2:05 PM

Subject: 15-3049 Meanith Huon v. Nick Denton, et al "Submit a Brief"

To: [huon.meanith@gmail.com](mailto:huon.meanith@gmail.com)

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**Seventh Circuit Court of Appeals**

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The following transaction was entered on 04/14/2016 at 2:05:20 PM CDT and filed on 04/14/2016

**Case Name:** Meanith Huon v. Nick Denton, et al

**Case Number:** [15-3049](#)

Document(s): [Document\(s\)](#)

Huon Letter 18 of 24

**Docket Text:**

Submitted appellee brief by CHAD R. BOWMAN for Appellees Nick Denton and Gawker Media. [41] [6743153] [15-3049] (Bowman, Chad)

**Notice will be electronically mailed to:**

Mr. Meanith Huon, Attorney  
Mr. Chad Russell Bowman, Attorney

The following document(s) are associated with this transaction:

**Document Description:** Submit a Brief

**Original Filename:** 15-3049, Appellees Brief.pdf

**Electronic Document Stamp:**

[STAMP acecfStamp\_ID=1105395651 [Date=04/14/2016] [FileNumber=6743153-0] [9b557c11a952ea8e103a32568f98d2a41da52ad186315874e3a72867c1ec97295b96c370f6f19872335c0f9ac5a4ca1b647eebf689eb24c5161ab1c9edb3026b]]

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Meanith Huon <huon.meanith@gmail.com>

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**RE: 15-3049 Meanith Huon v. Nick Denton, et al "Brief filed"**

1 message

---

**Dilan Esper** <DEsper@hmafirm.com> Thu, Jan 28, 2016 at 5:36 PM  
To: Meanith Huon <huon.meanith@gmail.com>, Charles Harder <charder@hmafirm.com>, Douglas Mirell <dmirell@hmafirm.com>

Congratulations on completing and filing your brief, Meanith. We were happy to be of assistance. We will obviously be in touch when you receive Gawker's response.

**From:** Meanith Huon [mailto:[huon.meanith@gmail.com](mailto:huon.meanith@gmail.com)]  
**Sent:** Thursday, January 28, 2016 3:33 PM  
**To:** Charles Harder; Dilan Esper; Douglas Mirell; Meanith Huon  
**Subject:** Fwd: 15-3049 Meanith Huon v. Nick Denton, et al "Brief filed"

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From: <[CA07\\_CMECFMail@ca7.uscourts.gov](mailto:CA07_CMECFMail@ca7.uscourts.gov)>  
Date: Thu, Jan 28, 2016 at 2:20 PM  
Subject: 15-3049 Meanith Huon v. Nick Denton, et al "Brief filed"  
To: [huon.meanith@gmail.com](mailto:huon.meanith@gmail.com)

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**Seventh Circuit Court of Appeals**

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**Case Name:** Meanith Huon v. Nick Denton, et al

**Case Number:** [15-3049](#)

**Document(s):** [Document\(s\)](#)

**Docket Text:**

Appellant's brief filed by Appellant Meanith Huon. Paper copies due on 02/04/2016 Electronically Transmitted. [31] [6724461] [15-3049] (SK)

**Notice will be electronically mailed to:**

Amy J. Hansen, Attorney

The following document(s) are associated with this transaction:

**Document Description:** Brief filed

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[STAMP acecfStamp\_ID=1105395651 [Date=01/28/2016] [FileNumber=6724461-0] [6a50e46213324d1284b4469a122978dd4e2d57be82b74b81c2301a51acfda5a75204ce14adfefcf8d6593dba25e0521a6b7dfe5691221e39734aa65125f460cf]]

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Meanith Huon <huon.meanith@gmail.com>

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## Huon - Gawker, Breaking Media

1 message

---

**Charles Harder** <charder@wrslawyers.com>  
To: huon.meanith@gmail.com

Tue, Sep 18, 2012 at 6:25 PM

Meanith:

Please see the attached corporate documents re Gawker entities and Breaking Media.

My corporate associate, who ordered these documents, states: "Nothing indicates the membership, other than Gaby Darbyshire signing as member or managing member in a couple places, Denton signing as manager in one instance, and each of them signing with corporate officer titles (Pres for Denton, and VP and COO for Darbyshire). We'll see if the California filings say anything substantive ..."

---

Charles J. Harder, Esq.  
WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP  
11400 W. Olympic Blvd., Ninth Floor  
Los Angeles, California 90064  
[310\) 478-4100 x6605](tel:3104784100)  
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E-Mail: [CHarder@WRSlawyers.com](mailto:CHarder@WRSlawyers.com)

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Bio: <http://www.wrslawyers.com/attorneys/charles-harder.asp>

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Meanith Huon <huon.meanith@gmail.com>

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## Revised TAC

1 message

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**Charles Harder** <charder@wrslawyers.com>  
To: huon.meanith@gmail.com

Fri, Sep 7, 2012 at 7:01 PM

Meanith,

My partner, Les, and I added a few additional edits to the draft TAC. See attached. You can generate a redline using Word, comparing this version with the prior version. Also, please note that the new Gawker defendants are not included in this draft – you would need to add them. I also removed my name and firm's name from the bottom. You will be filing this yourself. We are simply helping you out at this point. If we have the opportunity to take depositions on your behalf, then at that point we could formally associate into the case, with you.

Charles

---

Charles J. Harder, Esq.  
WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP  
11400 W. Olympic Blvd., Ninth Floor  
Los Angeles, California 90064  
 [\(310\) 478-4100 x6605](tel:(310)478-4100)  
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E-Mail: [CHarder@WRSlawyers.com](mailto:CHarder@WRSlawyers.com)

Web: [www.WRSlawyers.com](http://www.WRSlawyers.com)

Bio: <http://www.wrslawyers.com/attorneys/charles-harder.asp>

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