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March 20, 2018

BY FIRST CLASS MAIL

The Honorable Stuart M. Bernstein
United States Bankruptcy Court
Southern District of New York
One Bowling Green
New York, New York 10004

Re: In re Gawker Media, LLC, et al., Case No. 16-11700 (SMB)

Dear Judge Bernstein:

As the court will recall, we represent Gizmodo Media Group, LLC (“GMG”), and this communication is written on its behalf. GMG writes to Your Honor after being served yet another complaint (the “Complaint”) by Charles J. Harder (“Harder”) asserting a cause of action (the “Scherick Action”) based upon the pre-sale (and, in this instance, the pre-bankruptcy) publication of an article on a website that, at the time of publication, was operated by Gawker Media, LLC (“Gawker Media”). A copy of the Complaint, which was filed in the Supreme Court for the State of New York, New York County, is annexed hereto as Attachment 1.

Harder’s continued prosecution of the Complaint is in blatant disregard of this Court’s decisions and orders concerning a nearly identical action brought by Harder in the Supreme Court for the State of New York, New York County on behalf of Pregame LLC and Randall James Busack (the “Pregame Plaintiffs”). On December 26, 2017, this Court entered that certain *Order Granting in Part and Denying in Part the Motion of Gizmodo Media Group, LLC to Enforce the Sale Order* [Docket No. 1071] (the “Enforcement Order”), a copy of which is annexed hereto as Attachment 2.¹ Your Honor’s Enforcement Order expressly prohibits the Pregame Plaintiffs from asserting claims against GMG derived from the publication of an article on a website operated by Gawker Media on June 23, 2016, more than 11 weeks prior to the closing of the sale of substantially all of the assets of the above-referenced debtors to GMG (the “Sale Closing Date”).

¹ On December 12, 2017, Your Honor issued that certain *Memorandum Decision Regarding Motion to Enforce the Sale Order* [Docket No. 1063] (the “Memorandum Decision”), a copy of which is annexed hereto as Attachment 3.

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The Complaint asserts similarly unfounded claims against GMG based, yet again, on the pre-sale publication of an article (the "Scherick Article") on a website that, at the time of publication, was operated by Gawker Media. The Scherick Article was published on May 10, 2016, *one month prior to the Debtors' bankruptcy filing and more than 17 weeks prior to the Sale Closing Date*, and the Complaint fails to allege any post-sale conduct by GMG that would result in a "republishing" of the Scherick Article.² Notwithstanding the unequivocal language in the Enforcement Order prohibiting the prosecution of a nearly identical case, Harder elected to serve the Complaint on GMG on January 2, 2018, three weeks after the Memorandum Decision was issued and one week after the Enforcement Order was entered. GMG has communicated to Harder's office its desire to resolve the Scherick Action by voluntary dismissal (including via the letter dated March 19, 2018, a copy of which is annexed hereto as Attachment 4).

Before GMG devotes the time and resources required to file another motion to enforce the terms of the Sale Order and the APA (each as defined in the Memorandum Decision), it requests that Your Honor schedule a status conference on this matter.

Respectfully,



Peter M. Gilhuly
of LATHAM & WATKINS LLP

Attachments

CC: Thomas G. Hentoff, counsel for Gizmodo Media Group, LLC
Charles J. Harder, counsel to International Scherick, LLC and Gregory Scherick
Gregg M. Galardi, counsel to the Debtors

² Although Harder has recently indicated that the Complaint may be amended to allege post-sale conduct by GMG that would result in a republication, GMG does not believe that any facts exist that would allow such a claim to be asserted.

Attachment 1

Complaint

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

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INTERNATIONAL SCHERICK, LLC,	:	Index No.
a New York limited liability company aka	:	
“Superstar Machine”; and	:	
GREGORY SCHERICK, an Individual,	:	
	:	
Plaintiffs,	:	COMPLAINT
	:	
vs.	:	DEMAND FOR JURY TRIAL
	:	
GIZMODO MEDIA GROUP, LLC,	:	
a Delaware corporation; ANNA MERLAN, an	:	
Individual; EMMA CARMICHAEL, an	:	
individual; and DOES 1-20, inclusive,	:	
	:	
Defendants.	:	
	:	

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PRELIMINARY STATEMENT

1. This action by plaintiffs International Scherick, LLC, aka Superstar Machine (“Superstar Machine”) and Gregory Scherick (“Mr. Scherick”) (collectively “Plaintiffs”) arises out of the publication of numerous false and defamatory statements about Plaintiffs by Defendants Anna Merlan (“Merlan”) and Emma Carmichael (“Carmichael”) in an article featured on Jezebel.com, which is owned and operated by Defendant Gizmodo Media Group, LLC (“Gizmodo Media”) (collectively, “Defendants”).

2. Through this lawsuit, Plaintiffs seek the removal of the false and defamatory article, which remains live on Jezebel.com and is the first Google.com search result for the terms “International Scherick” and “Superstar Machine,” because the article has caused and is continuing to cause substantial reputational and economic harm to the Plaintiffs. Plaintiffs also

seek compensation for the harm that these defamatory statements have caused and are continuing to cause them. Superstar Machine's client base has dramatically declined due to pre-existing members leaving the group and potential members deciding not to join due to adverse persuasions about Plaintiffs' credibility and integrity arising from the defamatory statements at issue and reservations about being affiliated with a group that has been publically accused of being a "cult."

3. Defendants are expected to falsely contend that the purpose of this lawsuit is to harass or intimidate members of the media. Any such contentions would be false and are nothing more than an effort to distract attention away from Defendants' own wrongful, harmful conduct towards Plaintiffs and continued failure to practice ethical journalism by reporting truthful information, and removing the defamatory statements from the article after Plaintiffs demanded months ago that Defendants do so.

INTRODUCTION

4. Mr. Scherick, professionally known as International Scherick, is a successful life coach. He developed Superstar Machine as a secondary-project to provide his services in a group setting to those who cannot afford his one-on-one rate, and to foster a group where members can support each other in their personal development.

5. Throughout his years of practice, Mr. Scherick has successfully assisted many people in overcoming personal trauma, insecurities, and other roadblocks, to allow them to better achieve their goals, develop positive relationships, and possess a healthy sense of self.

6. Superstar Machine did not and does not seek publicity or attention. Its website and social media accounts are limited to its members. Similarly, Mr. Scherick does not seek public appearances or interviews regarding Superstar Machine. This is purposeful because

Superstar Machine was designed to create an environment where its members can be open and honest, without external influences. Similarly, Superstar Machine does not want to attract members looking to network or otherwise exploit the group. Instead, Superstar Machine markets itself only through the positive word-of-mouth recommendations of its members.

7. Merlan wrote an article entitled “Inside Superstar Machine, Which Ex-Members Say Is a Cult Preying on New York’s Creative Women” (the “Article”), which was published by Gizmodo Media on or about September 10, 2016, on Jezebel.com, led by its Editor-in-Chief, Carmichael.

8. Citing primarily to anonymous “sources,” the Article contains numerous false, fabricated, and libelous statements about Plaintiffs.

9. Plaintiffs’ business is based on prospective and current members believing that Mr. Scherick and Superstar Machine can help them to live a more fulfilled life. The existence of the Article, which alleges that Mr. Scherick and Superstar Machine are nothing more than snake-oil salesmen seeking to prey on young women, isolating them from their friends and families, and convincing them that they are powerless without Mr. Scherick’s guidance — allegations which are all completely false and highly defamatory — causes tremendous damage to Plaintiffs’ professional reputations, and Mr. Scherick’s personal reputation as well.

10. Particularly because Superstar Machine lacks a social media and public internet presence, potential members of Superstar Machine and potential clients of Mr. Scherick were and are all but certain to see the Article online and avoid becoming a member of Superstar Machine or a client of Mr. Scherick, believing the defamatory statements to be true or possibly true.

11. Merlan, Carmichael, and Gizmodo Media purposefully and deliberately wrote, edited and published, respectively, the false Article about Plaintiffs without consideration to the consequences that it would cause Plaintiffs, or while knowing that it would cause tremendous harm to Plaintiffs.

12. When Merlan contacted Superstar Machine concerning the Article, she did so in an accusatory manner—requesting that Superstar Machine respond to the accusations made against it rather than attempting to engage it in a fact-finding discussion about its business. Superstar Machine told Merlan that it would provide her with information about Superstar Machine (information that would have refuted all of the defamatory statements in the Article) by a date certain in the near future. But, on just that date, Jezebel.com rushed to publish the Article in order to avoid the receipt of information that would prove all of the Article's defamatory statements false.

13. Carmichael encouraged these unethical "journalistic" tactics. She has previously testified that publishing false rumors about a person is acceptable "journalism" because it supposedly leads to post-publication commentary of whether the rumors are true.

14. Carmichael routinely engages in unethical practices. As one example, she was the Managing Editor of Gawker.com when it published a secretly-recorded sex tape of Terry Bollea aka Hulk Hogan, and was personally involved in the sex tape being edited and published. Carmichael testified at the *Bollea vs. Gawker Media* jury trial that she was "comfortable" with Gawker's actions and that if "history were to repeat itself" Gawker would do the same thing and publish the Bollea sex tape. A few days after her testimony, the jury awarded Mr. Bollea \$115 million in compensatory damages and an additional \$25 million in punitive damages.

15. Gizmodo Media was well aware that Jezebel.com and its sibling websites routinely engaged in unethical journalistic practices when Gizmodo Media took over and published the websites, commencing on or about September 10, 2016. Gizmodo Media purchased the websites, including Jezebel.com, in Gawker Media, LLC's bankruptcy auction, following the \$140 million judgment in the *Bollea v. Gawker Media* lawsuit.

16. On or about August 22, 2016, Gizmodo Media's winning bid for the purchase of the Gawker Media assets, including Jezebel.com and its various articles, was approved by the Bankruptcy Court. That same day, Plaintiff's counsel sent a letter to Gizmodo Media's counsel, listing the false and defamatory statements in the Article, and demanding that Gizmodo Media not publish those statements once it officially acquired Jezebel.com. Gizmodo Media, through its counsel, responded that it would publish the Article in its entirety, and did so starting on or about September 10, 2016.

17. Defendants' false and defamatory statements about Plaintiffs have caused tremendous harm to Plaintiffs' personal and professional reputation and business, by calling into question their honesty, ethics, and motives as professional coaches.

18. Superstar Machine's client base has diminished from over 100 members to less than 30. This decline began after the publication of the Article, because members questioned Superstar Machine and Mr. Scherick, including their capabilities and credibility, and members sought to avoid being associated with the stigma that the Article affixed to Plaintiffs.

PARTIES

19. Plaintiff International Scherick, LLC, aka Superstar Machine, is a New York limited liability company, which does business in the City of New York, County of New York, State of New York.

20. Plaintiff Gregory Scherick is an individual domiciled in Ashland, Oregon.
21. Defendant Gizmodo Media Group, LLC is a Delaware corporation, with its principal place of business in the City of New York, County of New York, State of New York. Gizmodo Media operates and publishes Jezebel.com where the defamatory statements alleged in this Complaint were and are published.
22. Defendant Anna Merlan is an individual domiciled in the State of New York. She is a reporter for Gizmodo Media Group, formerly a reporter for Jezebel.com, and the author of the Article.
23. Defendant Emma Carmichael is an individual domiciled in the State of New York. She is an employee of Gizmodo Media Group and was the Editor-in-Chief at Jezebel.com at the time the Article was written, edited and published.

JURISDICTION AND VENUE

24. This Court has jurisdiction over Defendants under CPLR § 301 because Defendants have offices in, have their principal place of business in and/or are domiciled in New York, New York, and the causes of action alleged arise out of Defendants' activities in New York, New York.
25. Venue is proper in this county under CPLR § 503 because Defendants have their principal place of business there and/or are domiciled there.
26. Plaintiffs are presently unaware of the identity of the defendants sued herein as Does 1 through 20, and will amend this complaint to identify them once Plaintiffs learn of their identities. Gizmodo Media; Merlan, Carmichael, and Does 1 through 20 are collectively referred to herein as "Defendants."

FACTS

The Article

27. The Article makes the following false and defamatory statements about Plaintiffs:
- a. “‘At that point I’m grasping for straws,’ Rose [only identified by her middle name] says. ‘I think I was so damaged I was like, OK, cool. There’s all these women who are really in touch with their emotions, and they seem on on [sic] top of their shit, and I’m not on top of mine right now.’
She pauses, looking for the right words.
‘I was a prime target,’ she says at last, ruefully.”
 - b. “‘Poppy’ says she was invited to join the group in ~~2010~~ 2009 by Princess Superstar, the rapper and DJ. She says Princess told her Scherick was a ‘modern-day guru,’ who would turn her life around, ‘make money flow to you,’ and fix her every romantic problem.”
 - c. “‘Poppy’ says Scherick would also stress that the women couldn’t do anything without his help.”
 - d. “The path for these women is twofold: tapping into the Divine’s plan for their lives, and learning to be subservient to their male romantic partners.”
 - e. “The way he sold everything is that women are the leaders of the world, but, like, ‘They don’t know how powerful they are, that’s my job. The Divine speaks through me. No one connects with the Divine like I do.’”
 - f. “At the time, Scherick was doing private counseling sessions with both men and women, ‘Poppy’ says (Scherick is not listed in any state databases as being licensed as a counselor in New York, California, or Oregon, where he now lives; this was informal spiritual guidance).”
 - g. “Despite all the bubbly positivity, Scherick and his helpers didn’t brook any dissent in the ranks, ‘Poppy’ says: ‘Whatever he says, goes.’”

- h. “The women who left Superstar Machine and spoke to Jezebel all say Scherick has cultivated a group of women who served as his seconds-in-command, and whose role is to praise him, back up his decisions, and remind everyone coming into the group that they needed to give him ‘a good experience.’ Part of the broader emphasis, they say, was on ‘serving the masculine.’”
- i. ““For that reason, there weren’t a whole lot of gay members in SSM,’ ‘Poppy’ says. She instinctively understood that she should be quiet about the fact that she dated both men and women.”
- j. ““Dating women doesn’t support what [SSM does] because they’re all about serving the masculine,’ [‘Poppy’] says. ‘Even when very out women had come to SSM with friends, they were never invited to really sign up.’”
- k. ““She’s not a good fit,’ ‘Poppy’ recalls being told about a woman she brought along, a friend who she describes as ‘very butch.’”
- l. “Scherick’s name change was the subject of a ‘big conversation,’ Poppy says, during a Sunday group discussion for the most “advanced” SSM members.

As she remembers it, Scherick told the group that he had been called ‘to a higher level of holding his value,’ and that his old name no longer satisfied ‘the Divine plan.’”

- m. “The women who left SSM agreed to speak to Jezebel because they came to believe that the group is a cult, one that preys on its members’ insecurities, exploits them financially, and isolates them from friends and family.”
- n. “Scherick’s genius, the woman says, is his ability to identify women who are in transitional places in life – graduating, say, or leaving a long relationship, or arriving in the city.

‘It’s a perfect time to prey on women,’ [Unknown Source who declined to identify herself to Merlan] says. She claims that Scherick convinces Superstar Machine members their problems are due to an innate personal flaw.”

- o. “‘He convinces you that you having problems because there’s something wrong with you, or that you’re not doing,’ [Unknown Source who declined to identify herself to Merlan] says.”
- p. “‘Under the guise of empowerment, he was supposed to be making us heroes in our own lives and making us strong women,’ [‘Poppy’] says now. ‘But really he was disempowering us and making us do whatever he wanted us to do.’”
- q. “Caitlin [last name withheld] also shared that she was having casual sex with a couple people, which Scherick disapproved of.

‘[With] sex, he has strict rules about how soon you should be having sex with someone you’re dating,’ she recalls. ‘There’s no sex without confirmed monogamy. There needs to be a verbal confirmation of monogamy for there to be sex in a relationship. He said a woman’s reasons for having sex is to get a relationship and a man’s is to get more sex.’”

- r. “Caitlin was also unimpressed with the hard sell she got to sign up for the group. ‘At the event, they pull you into another room when everyone’s trying to leave and try to get you to sign up,’ she says. ‘They try to get your credit card info, your home address, all this stuff.’

The whole event left her with a sense that something was deeply wrong, she says.

‘The way they pressured me to get credit card information that first time— I just had this weight sitting on my chest. It felt like the moment before

something really bad is about to happen in a movie. Like, this is not a good thing.”

s. ““When these young women arrived in New York, it was like hitting a speed bump while driving 70 miles per hour,’ Caitlin says. ‘They thought [the setback] was because something was “wrong with them” and were too ashamed to “go back home a failure” or ask for help. So International really filled the void for them the way some people would have fallen into hard drugs in the ‘80s. It was the love and recognition they were longing for in a very simple, glossy packet: ‘If you properly relate to the masculine, all your problems will be solved.”

t. “Both Cantley and Arnold were brought in by the same woman; they said independently that they believe she ... will lose her coveted status if she fails to recruit new members.”

u. “Scherick had specific ideas about what type of sex was best, ‘Poppy’ adds.

‘Having anal sex was a marker of being a true, fierce powerful woman. The length of your orgasms were also markers of how intense your feminine power was.’ In the higher levels, she said, ‘We had phone calls having to share how long our orgasms were, the positions we masturbated in. People were claiming to have like 30-minute orgasms.’

Scherick’s justification for all of this was that he was trying ‘to give you a better feminine experience,’ ‘Poppy’ says.”

v. “Former group member ‘Amber’ says she witnessed the type of sexual advice Scherick doled out, and was so uncomfortable with it she eventually chose to leave the group. He told women, she says, ‘to do stuff like get down on the floor,’ or instructed them to go home and ‘stick fingers up their asses, or stick, like, a carrot up your ass.”

w. “‘Rose’ left the group after witnessing an interaction where a woman, under International’s guidance, ‘recovered’ a memory of having been sexually abused by a family member.

‘She was crying like a child,’ ‘Rose’ remembers.

That was the last straw, she says. ‘As soon as we were done I walked out the door and didn’t say a word to anyone and emailed them like, “I quit. This is crazy.”’

‘Rose’ obviously doesn’t know if the woman was molested, she says now, but at the time the scenario ‘seemed very manufactured,’ she says.”

x. “Besides mandatory meetings and phone calls each week, which the former members say ate up much of their time, they were also expected to post lengthy missives on a group message board, praising ‘The Machine’ for its positive impacts on their lives.”

y. “There’s punishment for falling out of line, Poppy says, which she experienced firsthand and often. ... ‘You’d have to earn things back,’ she says.”

z. “In the end, the sex talk and the punishments ‘started to get creepy for me,’ ‘Amber’ says, as did the general, overwhelming stress Scherick placed on becoming submissive to men, and, as she saw it, to him.”

aa. “They allege that SSM members occasionally attend OA [overeaters anonymous] meetings for the purpose of recruiting new people.”

bb. “One of the things that distinguishes a cult from a spiritual self-help group is the attitude that group has towards communicating with outsiders. There’s disagreement about how to categorize Superstar Machine, of course, but it’s a fact that SSM members are subject to an exceedingly strict set of behavioral rules regarding communication, including restrictions on when they’re allowed to talk to other members of the group.”

cc. "Members have to get permission to call or text each other, 'Rose' says. 'If we wanted to talk to women outside of the events who were in SSM, we had to get permission from Shana,' she explains. Members had to get permission to 'connect,' as phone calls or texts were referred to, and then tell Shana what had been discussed."

dd. "[R]emembers another former member, 'Jane'... 'I couldn't text them freely. I couldn't just hang out with them. If I texted them it had to be about the Machine.'"

ee. "Members also aren't exactly encouraged to talk to outsiders about SSM, unless they seem interested in joining."

ff. "'If you thought anything somebody said wasn't in line with International's teachings, you were required to go back and tell International about it,' she says. 'If you didn't and they found out about it because that person felt guilty, you'd get in trouble and you might be put down in a lower level but still have to pay at Celebrity level.'"

gg. "'Amber' also says that SSM relies on 'finger-pointing.' When she became concerned about being asked to aggressively recruit new members, ('it felt deceptive,' she says) she was punished by being placed on an 'intense' group phone call with other members, where all of them told her in turn how badly she'd messed up."

hh. "Another time, ['Amber'] says, she was singled out again for no reason she could see, told she wasn't 'holding as much value' as other members of the group. 'It was a psychological beating,' she says bluntly. 'They would randomly pick on you.'"

Amber 'says the goal here, as always, was for the women being singled out to break down and cry. 'You'd break down in tears and cry right away

and they'd say that was so brave.' She participated in finger-pointing and punishment-administering too, she says.

'Part of it was the fear of being in the hot seat yourself,' she explains. 'It was like Stanford prison experiment. If you give people power, they start to trip on it. It was scary. You didn't know what was coming at you. These are women you're supposed to bond with. The unpredictability of that is somehow toxic.'"

- ii. "Therapy is also not encouraged, several former members say."
- jj. "The last straw ['Poppy'] said, is when International, Shana, and International's partner began pressuring her to be part of a nonprofit they hoped to launch.

At first, the stated purpose was to support artists, she says; later, it became about supporting International and his work. They learned that she had some family money, she says, and wanted her to ask her relatives for a gift of \$50,000."

- kk. "Poppy ... received significantly more pressure and guilt to stay."
- ll. "Most ironically, it seems that SSM was set up in a way that actually prevented its members from gaining the things the group was supposed to give them: confidence, clarity, mutually supportive industry friends, a leg up in their field. Many of the women in Superstar were at similar stages in the same fields—acting, yoga, the creative arts. But the women who left say they're not permitted to talk about anything but The Machine, meaning that women who could have helped each other benefit professionally weren't allowed to do so, and were instead encouraged to think of success as something held in the hands of a man who was financially interested in them feeling helpless."

mm. “[SSM is a] scheme to give Scherick the success and adulation he dreams of.

International’s dream is to be rich, have great sex, make movies, come back to Hollywood and own it,” Rose says. Even this story, she adds, will likely be taken by International as proof that Superstar Machine is developing according to his grand vision.

28. The false and defamatory statements listed in Paragraph 27, *supra*, are collectively referred to herein as the “Defamatory Statements.”

The True Facts Regarding Superstar Machine

29. The foregoing Defamatory Statements in the Article are statements of fact, are false, and have caused tremendous harm to Plaintiffs’ personal and professional reputations and businesses.

30. Mr. Scherick left a career as a writer and editor in the entertainment industry to follow his calling of helping people tap into their unrealized potential and harness those skills to lead a successful and fulfilled life. Through word-of-mouth referrals from satisfied clients, his business grew from a passion project to full-fledged business.

31. As a life coach, Mr. Scherick is not required to have certification or license from a state agency.

32. Mr. Scherick uses a professional name “International” during coaching. Mr. Scherick has not legally changed his name nor did he not adopt the professional name as part of a “Divine plan.”

33. Mr. Scherick does not have a typical client, rather, his clientele ranges from entertainment professionals to mothers to artists to lawyers. But his favorite clients are those facing adversity, whether personally or professionally. Mr. Scherick developed Superstar Machine for these clients.

34. Superstar Machine was and is a secondary project to Mr. Scherick’s one-on-one coaching. It is meant to provide his services, at a great discount, to those who cannot afford his

one-on-one rate (various fee-based memberships are offered based on the amount of participation the member wishes to have with the group), as well as to foster a group where members can support each other in their personal development without being focused on networking, career advancement, or the one-upmanship that professional networks tend to cultivate.

35. Superstar Machine thus appeals to people who would benefit from a life coach and support system, and does not target emotionally unstable or “damaged” individuals for membership, although these types of individuals could be more inclined to join the group than someone who feels stable in their situation.

36. Superstar Machine focuses on personal rather than professional development. It does not promise to make its members rich or “fix” their relationship problems. Instead, Superstar Machine’s purpose is to aid its members in realizing their individual strengths and what they need to achieve personal success.

37. It does not discriminate in its membership based on race, religion, sexual orientation, or other such categories. In particular, Superstar Machine does not exclude gay persons from membership and has members of various sexual orientations.

38. Superstar Machine purposefully maintains a low profile. It does not have public social media accounts or a public website. Mr. Scherick does not seek interviews or speaking engagements regarding Superstar Machine. Members are not gained through advertising, but instead through current and former members telling like-minded individuals about the group. Superstar Machine encourages its members to treat the group like one would an anonymous support group, such as alcoholics anonymous or overeaters anonymous, and not share intimate group details outside of the group. In doing so, Superstar Machine seeks to provide a safe, confidential space where its members can be open and honest, and eliminate any impression that it is publicly recruiting members. Nonetheless, Superstar Machine does not prohibit members from talking about the group with outside persons.

39. Some Superstar Machine members are in other support groups and may choose to tell others in those groups about Superstar Machine. Members certainly are not instructed to

attend other support groups to “recruit new people” for Superstar Machine from these groups, nor do members attend such groups for the purpose of recruitment. Indeed, there is no requirement that existing members recruit members to maintain their “status.” That said, if a person in an outside group learns of Superstar Machine, they might be encouraged to visit to see if Superstar Machine might be of interest to them.

40. Visitors are informed of Superstar Machine’s membership options and fees but Superstar Machine does not isolate visitors to try to intimidate them into signing up nor does Superstar Machine pressure members to commit to membership options beyond what they can afford.

41. Superstar Machine never asks its members for money outside of membership fees and does not pressure members to stay in the group if they decide to leave. Some members, like the woman referred to as “Poppy” in the Article, would offer to contribute money to causes that the group hoped to launch but these offers were never influenced by Mr. Scherick nor were they ever accepted by Superstar Machine. Mr. Scherick did not ask members to support his work or attempt to launch causes that were meant to financially benefit him.

42. Superstar Machine is not a cult by any stretch of the imagination. Among other things, there is no religious component to the group. It encourages its members to become stronger individuals through certain guidance and advice. It does not attempt to instill Mr. Scherick’s opinions on its members nor does it use rewards or punishments to force members to act in a certain manner. Mr. Scherick certainly is not worshipped, nor is he the focus of the group’s message. Rather, Mr. Scherick utilizes his coaching skills to help individuals confront their personal obstacles, which can range from past or current trauma, confidence issues, or relationship difficulties.

43. Former clients who have worked with Mr. Scherick as a coach for years, often take proactive roles in guiding new members and helping them understand Mr. Scherick’s coaching. Shana Kuhn-Siegel is one example.

44. Ms. Kuhn-Siegel is not a “follower” of Mr. Scherick. She initially worked with him as a coaching client, and later transitioned to becoming a coach herself and presently works with International Scherick, LLC.

45. Many of the members struggle with self-confidence issues or with realizing their untapped potential. Mr. Scherick’s coaching addresses those obstacles that prevent members from feeling personal success or contentment. For example, Mr. Scherick uses the terms “Celebrity,” “Icon,” and “Megastar” to describe his members to make them understand that they are equal to the people whom society brands with such titles, to help provide members with added confidence.

46. To address many of the relationship issues that Superstar Machine’s members have, Mr. Scherick coaches members not to let prior bad relationships prevent them from future good relationships. He encourages members to treat prospective partners as the members would want to be treated themselves and routinely states that decisions around when to engage in sex are entirely up to the individual.

47. While discussions about relationships and intimacy occur often in Superstar Machine, these conversations are generally member initiated and member driven. Mr. Scherick does not encourage members to be “subservient” to their male romantic partners or engage in specific sexual acts. Members are not required to share intimate information with the group and are encouraged to do so only if they are comfortable in the discussion.

48. If members do choose to share information with the group, they do so voluntarily. Members are not forced to participate nor are they given “manufactured” stories to recite. Although members might become emotional after sharing with the group, Superstar Machine does not purposefully try to “break” people or make them cry.

49. Superstar Machine does not hold itself out to be a professional or networking group. Instead, it encourages its members to engage in personal relationships rather than focus on networking or creating business relations with one another. That said, the group does not prohibit its members from interacting outside of group settings. Members sometimes work

together or engage in the same social activities, and reach out to other members to offer support and encouragement.

Merlan's "Investigation" of Superstar Machine

50. Plaintiffs are not public figures and therefore not required to allege or prove "actual malice." Notwithstanding, and though not a requirement, Defendants published the aforementioned false statements of fact on Jezebel.com with reckless disregard for their truth and, in some instances, with knowledge that they were false and were likely to harm Plaintiffs' personal and professional reputations and business.

51. Discovery has not yet commenced and Plaintiffs expect to obtain additional evidence through discovery regarding Defendants' intentional, wrongful conduct.

52. Merlan, a reporter with Jezebel.com since 2014, knew the types of articles that would garner attention online, and, thus, was encouraged by her supervisors, including Carmichael. An article about a life coach who formed a support group to help people address their personal issues is not a subject that tends to attract large numbers of readers. However, an article about a man who preys on emotionally fragile women to join his "cult" is almost certain to draw many more times the web audience, and corresponding advertising revenue, than the responsible and accurate article. Merlan and Carmichael chose the latter approach, which included the Defamatory Statements, and Gizmodo Media chose to publish it – even after Plaintiffs' counsel told them the Defamatory Statements were false and defamatory, and publishing them would expose Defendants to liability and damages.

Jezebel.com Encouraged the Publication of the Biased, Unsubstantiated Story

53. Prior to September 10, 2016, Jezebel.com was owned by Gawker Media LLC.

54. Historically, Jezebel.com was a women's lifestyle blog that focused on women's issues and interests. In 2014, however, Gawker Media decided that it wanted to increase Jezebel.com's website traffic to rival Gawker Media's other websites, including Gawker.com and Deadspin.com, which were in the business of publishing nude imagery, sex tapes and targeted salacious stories, which attracted both audience as well as numerous lawsuits; the *Bollea*

v. *Gawker* case being just one of many. As additional examples, *Gawker.com* published a private video of two married actors partially nude in their private hot tub, for which the actors sued *Gawker Media*. *Gawker.com* also published topless and bottomless photos of Dutchess Kate Middleton, taken by a paparazzi's telescope attached to a camera. *Deadspin.com* similarly published an uncensored photo that it claimed depicted a famous NFL quarterback's penis. *Deadspin.com* also published a link to a video of a female ESPN reporter, naked in her hotel room, taken by her stalker who tricked the hotel into giving him the room next door, and doctored the peephole in the door of her room. *Deadspin.com*'s publication of the link caused the first million people to see the stalker's video of the reporter. (The reporter later won a \$50 million jury verdict against the hotel and stalker, one week before Bollea, in a different court, won his \$140 million verdict.) *Deadspin.com*'s publication of sex tapes and nude imagery is not limited to public figures; the website habitually posts photos and video of unknown individuals (often college aged) engaged in sexual activity without making any attempt to disguise the individuals' identities.

55. Carmichael had been the Managing Editor at *Deadspin.com*, where she worked on salacious stories, and then became the Managing Editor at *Gawker.com*, where she worked on more salacious stories, including the editing and posting of the Bollea sex video, before she was promoted by *Gawker Media* in 2014 to Editor-in-Chief of *Jezebel.com*.

56. In that new role, Carmichael sought to make *Jezebel.com*'s content more salacious—to more closely resemble the content of *Gawker.com* and *Deadspin.com*. While still focusing on female readers, the articles began to focus on topics that would titillate or outrage.

57. Carmichael permitted the use of anonymous sources and did not care if the *Jezebel.com* writers or editors quoted sources who had strong biases or ulterior motives in providing information.

58. Carmichael also adopted the policy that the best way to determine the truth of a rumor was to publish the rumor as fact, and then see if it is confirmed or refuted post-publication.

59. With these policies, Carmichael worked with Jezebel.com's writers, including Merlan, to develop and publish salacious content. Carmichael was aware of the Article and the information that had been gathered for it, and did not require Merlan to speak to Superstar Machine, or obtain information from it, before publishing the Article. Indeed, the practice of rushing to publish before the subject who was being defamed could provide contrary information is one of the hallmarks of the "journalistic" practices of Gawker.com, Deadspin.com, and Carmichael.

60. Further, on information and belief, Carmichael showed Merlan a 2011, first-person account published on Hairpin.com, a publication where Carmichael had once worked, which detailed one woman's experience almost joining an unnamed "cult." Merlan, in the Article, leaps to the conclusion that the account was about Superstar Machine, and published portions of the account in the Article.

Feedback to the Story Established that the Claims Were False,

Yet Jezebel.com Did Not Retract, Revise or Follow Up

61. In the three days following the publication of the Article, numerous current and former Superstar Machine members wrote into the Comments section to the Article challenging the Article's allegations and questioning the reliance of unidentified sources with extreme biases against Superstar Machine.

- a. "I am a current member of Superstar Machine and [another group run by International Scherick, LLC] and damn proud of it! Both of these collectives have helped me invaluable and continue to change my life in the most amazing ways and the results are tangible! ... International [Mr. Scherick's professional name] is such a cool, hilarious man and a genius AND is actually the most humble person I have ever met. He has helped me so much: with the amazing relationship I am in, with all the success I am having at my job, with becoming who I really am. And he supports people to be authentic which is why I continue to stay in SSM and love it. I always hated groups

because I felt like I had to act like everyone in the group and that made me want to vom. In SSM I am supported to be original and so much of what International says I agree with 100% and resonates for me a ton. He actually lays down the truth in this crazy world we are living in. I mean look at what is happening in our country! Politics, health care etc. The world is a challenging state and things could be so much better. I am so grateful to get to participate in SSM because it helps me stay sane amidst the craziness and the drama out there and makes me feel excited to live my life, challenges and all.”

- b. “He is a visionary and has helped me be super successful in my life and in my marriage, and as a mom. The cult thing is ridiculous- last I checked cults don’t let you have outside relationships- well I can have relationships with anyone I want to (and I do); I have an amazing evolving career thanks to him; and over the years has helped me for free when I couldn’t pay. Also usually cult leaders are inappropriate with their members, well I’ve been studying with him for 8 years and never ONCE saw him be inappropriate with a woman, he is honorable and humble and a real genius.”
- c. “I never felt preyed upon. I was asked to participate in a group that was especially designed for a particular kind of support. After investigating for myself what kind of group this was, I waited for a year to join, with no pressure from the girl who introduced me to the machine (this is the same girl Ashley told you about). I actually thought SSM was bull***t and comical when I attended an event, I audibly scoffed and left with no one holding me back. Then a year later I had a traumatic experience, the event was in town a month later, I went and I was moved and I thought I should try it for a while, which I did. One of the best choices I’ve made in my life was attending that event and joining SSM.”

62. Despite Jezebel.com's Editor-in-Chief's policy of waiting until after it publishes an article to investigate its truth, Jezebel.com failed to issue a retraction, correction, apology or follow up story addressing the conflicting testimonials.

63. Instead, Merlan merely published Ms. Kuhn-Siegel's response to the Article as an "update"—at the very bottom of the 22-page Article, where the "update" was least likely to be seen, and after the Article had already been published and generated the vast majority (if not all) of the page views of the Article. Thus, the readers of the Article read it, including all of its Defamatory Statements, when it was first published, and very few of them, if any, had any reason to go back to the Article to check the bottom of its 22 pages to see if an "update" had been added at any point. Moreover, no reference to Ms. Kuhn-Siegel's response was made within the Article where it continued to state (falsely) that Superstar Machine had failed to provide a comment to the Article, thus further misleading readers to believe that Superstar Machine did not refute the Defamatory Statements.

64. When Merlan received an email from a former Superstar Machine member, offering her own positive viewpoint about the group, Merlan simply posted the email within the many other Comments, below the 22-page Article, rather than contacting the member to learn the truth and revise the Article, or otherwise revising the Article based on the statements in the email to include the alternate commentary in a conspicuous place within the Article, or re-visiting the Defamatory Statements to determine if they were false and thus warranting their removal.

65. Moreover, Jezebel.com and Merlan withheld several comments from Superstar Machine members from being generally posted in the Comments section of the Article, thus further suppressing the truth.

66. Jezebel.com has a policy regarding comments that flags comments written by unknown persons, blocking them from general view, until the comments are reviewed by an administrator. Many of Superstar Machine's supporters were not regular readers of Jezebel.com, and therefore their comments were flagged as under review and could not be seen by readers unless individual readers affirmatively allowed the "pending" comments to be shown. When this

was brought to Merlan’s attention, she claimed she was reviewing all comments to ensure that the pro-Superstar Machine comments were reviewed and made generally available, but she did not follow through, and as a result, there are pro-Superstar Machine comments that are not generally visible—and only become visible when the reader affirmatively enables the “pending” comments.

Gizmodo Media Republished the Story Upon Acquiring Gawker Media’s Assets, Even Though Gizmodo Media Had Reason to Question the Truth of the Article

67. Shortly after the March 2016, jury verdict in *Bollea v. Gawker Media, LLC et al.*, Gawker Media filed for bankruptcy.

68. UniModa, LLC, the parent company of Univision, bought many of Gawker Media’s assets, including Jezebel.com, and transferred the assets to a newly-formed company called Gizmodo Media Group, LLC.

69. UniModa bought Jezebel.com with the intent of maintaining and continuing the publication of the website. UniModa did not have a similar website within its company and believed that Jezebel.com would help it attract new viewers to UniModa’s original publications and better serve its existing female readers.

70. On August 22, 2016, Plaintiffs’ counsel sent a letter to UniModa/Gizmodo Media, before it took control of Jezebel.com, demanding that UniModa/Gizmodo Media remove each of the Defamatory Statements in the Article. Plaintiffs allowed UniModa/Gizmodo Media a reasonable amount of time to comply. However, UniModa/Gizmodo Media failed to comply with Plaintiffs’ demand, and sent Plaintiffs’ counsel a letter stating that it would not comply.

71. On or about September 10, 2016, UniModa/Gizmodo Media officially became the owner of Jezebel.com, and the new publisher of its content.

72. Despite being aware that Gawker Media had questionable, if not outright unethical “journalistic” practices, that numerous lawsuits had been brought against Gawker Media stemming from its publications, and that Carmichael, as the Managing Editor of Gawker.com, had been partially responsible for the publication of the Bollea sex tape which led

to Gawker Media's bankruptcy, and who had publicly testified at the Bollea trial that she was "comfortable" with Gawker's publication of the sex tape, and would take exactly the same action if "history were to repeat itself," and having just received Plaintiffs' letter demanding removal of the Defamatory Statements and warning of legal consequences if they were not removed, Gizmodo Media made the decision to publish the Defamatory Statements.

73. Gizmodo Media did remove other articles from various Gawker Media websites, due to fears that keeping the articles online would expose Gizmodo Media to potential liability and damages for their publication. However, the Article at issue here was one that Gizmodo Media refused to remove or alter, notwithstanding Plaintiffs' demands shortly before Gizmodo Media's acquisition of Jezebel.com.

The Article Continues To Harm Plaintiffs

74. The Defamatory Statements were tremendously harmful to Plaintiffs. As a life coach and life coaching business, statements that allege Plaintiffs are preying on women and do not provide legitimate services directly damage their professional credibility, as well as personal reputations. Statements that Mr. Scherick is providing services without a proper license or refusing to provide membership to gay individuals are defamatory *per se* by falsely alleging that he is in violation of the law, and such statements likewise have caused and are causing tremendous damage to his personal and professional reputation and business, and deter clients from utilizing his services.

75. Plaintiffs have lost ongoing and potential members, and individual life coaching clients, as a result of Defendants' publication of the Defamatory Statements in the Article. Professional relationships and potential partnerships have similarly been affected because people do not want to be affiliated with an alleged "cult."

76. Defendants published one of the most harmful and incendiary allegations that can be ever made about someone in the business of providing life coaching services: the allegation that Superstar Machine and Mr. Scherick, rather than placing their clients' interests first, have maliciously preyed on insecure women and controlled their lives:

77. Plaintiffs' only means of rebuilding their reputations is to file this lawsuit, to prove in Court the falsity of the Defamatory Statements, and seek the permanent removal of the Defamatory Statements from Jezebel.com.

78. Plaintiffs request herein all available legal and equitable remedies to the maximum extent permissible by law, including without limitation compensatory damages, punitive damages, and a permanent injunction against the defamatory statements at issue.

FIRST CAUSE OF ACTION

(Libel)

79. Plaintiffs reallege and incorporate by this reference Paragraphs 1 through 78 of this Complaint as though fully set forth therein.

80. Defendants published, caused to be published and/or maintain the defamatory statements in the Article on Jezebel.com as described in Paragraph 27 herein.

81. The Defamatory Statements in the Article were of and concerning Plaintiffs.

82. The Defamatory Statements in the Article were false.

83. Defendants failed to utilize a reasonable level of care in publishing and/or maintaining the Defamatory Statements in the Article on Jezebel.com.

84. The Defamatory Statements in the Article also constitute defamation *per se* because they harm Plaintiffs' reputation and impugn the basic integrity of Plaintiffs' business.

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

86. The Defamatory Statements in the Article have caused International Scherick LLC and Mr. Scherick damages, including harm to their reputations and business interests.

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment against Defendants as follows:

- i. An order enjoining Defendants from publishing, continuing to publish, or republishing the Defamatory Statements alleged herein in any medium;
- ii. Awarding compensatory and punitive damages in appropriate amounts to be determined at trial;
- iii. Awarding Plaintiffs the recovery of their costs associated with this action; and
- iv. For such other and further relief as the Court deems just and appropriate.

JURY TRIAL DEMAND

Plaintiffs hereby demand a jury trial.

**Dated: Beverly Hills, California
September 6, 2017**

HARDER MIRELL & ABRAMS LLP

By: 

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Attorneys for Plaintiffs

Attachment 2

Enforcement Order

UNITED STATES BANKRUPTCY COURT
 SOUTHERN DISTRICT OF NEW YORK

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

**ORDER GRANTING IN PART AND DENYING IN PART THE MOTION OF
 GIZMODO MEDIA GROUP, LLC TO ENFORCE THE SALE ORDER**

Upon the motion (the “**Motion**”) dated August 21, 2017 of Gizmodo Media Group, LLC (“**Gizmodo**”) to Enforce the Sale Order and to Bar Certain Plaintiffs from Prosecuting their State Court Actions [Dkt. No. 985]; and upon the objection to the Motion by Pregame LLC d/b/a Pregame.com and Randall James Busack, professionally known as RJ Bell dated September 15, 2017 [Dkt. No. 1006] (the “**Objection**”); and upon Gizmodo’s reply to the Objection dated September 25, 2017 [Dkt. No. 1015]; and upon the record of the hearing on the Motion held on September 28, 2017; and upon the Memorandum Decision Regarding Motion to Enforce the Sale Order of this Court dated December 17, 2017 [Dkt. No. 1063] (the “**Decision**”);² and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED that the Motion is granted to the extent of enjoining Pregame LLC d/b/a Pregame.com and Randall James Busack from asserting any claims against Gizmodo, as defined

¹ 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, Plan Administrator, 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.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Decision.

in the Decision, derived from Gawker's pre-sale publication of the Article as defined in the Decision, and is denied with respect to any independent claims that arose based upon the post-sale actions by or conduct of Gizmodo.

Dated: New York, New York
December 26, 2017

/s/ *Stuart M. Bernstein*
STUART M. BERNSTEIN
United States Bankruptcy Judge

Attachment 3

Memorandum Decision

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re: : Chapter 11
: :
GAWKER MEDIA LLC, *et al*¹ : Case No. 16-11700 (SMB)
: :
: :
Debtors. :
-----X

**MEMORANDUM DECISION REGARDING
MOTION TO ENFORCE THE SALE ORDER**

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¹ The debtors in these cases are Gawker Media LLC, Gawker Media Group, Inc. and Gawker Hungary Kft., f/k/a Kinja, Kft..

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STUART M. BERNSTEIN
United States Bankruptcy Judge:

The Debtors (collectively, “Gawker”) sold substantially all of their assets to Gizmodo Media Group LLC (“Gizmodo”) free and clear of all liens, claims, interests and encumbrances pursuant to Bankruptcy Code § 363(f). Prior to the sale, Gawker had published an article (the “Article”) on one of its websites that allegedly defamed Pregame LLC and Randall James Busack (together, the “Plaintiffs”). After the sale, the Plaintiffs brought an action in New York State Court against Gizmodo and Ryan Goldberg, the author of the Article. In response, Gizmodo filed a motion to bar the state court action on the ground that it violated the sale order described in more detail below. (*Motion of Gizmodo Media Group, LLC to Enforce the Sale Order and to Bar Certain*

² “Busack” is sometime spelled “Busak” in the pleadings.

Plaintiffs from Prosecuting Their State Court Actions, dated Aug. 21, 2017 (the “*Motion*”) (ECF Doc. # 985).³ The *Motion* is granted in part and denied in part for the reasons that follow.

BACKGROUND

The material facts are not in dispute. Prior to the petition date, Gawker operated seven distinct media brands with corresponding websites under the names Gawker, Deadspin, Lifehacker, Gizmodo, Kotaku, Jalopnik and Jezebel. (*Declaration of William D. Holden in Support of First Day Motions*, dated June 12, 2016 (“*Holden Declaration*”), 10-11 (ECF Doc. # 7).) Gawker faced a number of pre-petition lawsuits in connection with content they produced and posted on these websites. (*Holden Declaration* at ¶ 30.) After years of litigation, on June 10, 2016, Gawker Media LLC filed a voluntary chapter 11 petition in this district. Gawker Media Group, Inc. and Gawker Hungary Kft. filed chapter 11 petitions two days later.

A. The Article and the Sale

On June 13, 2016, Gawker filed a motion to sell substantially all of the Debtors’ assets free and clear of all liens, claims and encumbrances. Gizmodo won the bid,⁴ and on August 22, 2016, the Court signed an order approving the sale to Gizmodo. (*Order (I) Authorizing the Sale of Substantially All of the Debtors’ Assets Free and Clear of All Claims, Liens, Rights, Interests and Encumbrances (II) Approving and Authorizing the*

³ Goldberg also filed a motion alleging that the releases in the plan barred the claim against him, but that motion is not the subject of this decision.

⁴ The contract vendee and winning bidder was actually UniModa, LLC. I assume that Gizmodo is its affiliate and the reference to Gizmodo as the purchaser includes the reference to UniModa.

Debtors' Entry Into the Asset Purchase Agreement and (III) Authorizing the Debtors to Assume and Assign Certain Executory Contracts and Unexpired Leases, dated Aug. 22, 2016 (the "*Sale Order*") (ECF Doc. # 214).)

The *Sale Order* included provisions that shielded Gizmodo from liability for claims against Gawker. Paragraph 14 of the *Sale Order* provided in pertinent part:

Except with respect to the Assumed Liabilities, all persons and entities . . . holding Adverse Interests⁵ arising under or out of, in connection with, or in any way relating to, the Debtors, the Acquired Assets, the ownership, sale or operation of the Acquired Assets and the business prior to the Closing or the transfer of Acquired Assets to Buyer . . . are hereby forever barred . . . from asserting such Adverse Interests . . . against Buyer, its property or the Acquired Assets. Following the Closing . . . , no holder of any Adverse Interest shall interfere with Buyer's title to or use and enjoyment of the Acquired Assets based on or related to any such Adverse Interest . . . or based on any action the Debtors may take in the Cases. . . .

(*Sale Order* at ¶ 14.) Paragraph 21 further provided in pertinent part:

. . . . Effective upon the Closing, all persons and entities are forever prohibited and enjoined from commencing or continuing . . . any judicial . . . proceeding against Buyer, or its assets (including the Acquired Assets), or its successors and assigns, with respect to any (i) Adverse Interest . . . or (ii) Successor or Transferee Liability including the following actions with respect to clauses (i) and (ii): (a) commencing or continuing any action or other proceeding pending or threatened; (b) . . . (e) commencing or continuing any action, in any manner or place, that does not comply with, or is inconsistent with, the provisions of this Order or other orders of this Court, or the agreements or actions contemplated or taken in respect hereof. . . .

(*Id.* at ¶ 21.)

The *Sale Order* also contained jurisdictional provisions. The Court retained exclusive jurisdiction, *inter alia*, to "interpret, implement and enforce" the *Sale Order*

⁵ According to the Asset Purchase Agreement ("APA"), "Adverse Interests" included claims against Gawker arising before or after the commencement of the case. A copy of the APA is attached as Exhibit 1 to the *Sale Order*.

and the APA and “to adjudicate, if necessary, any and all disputes concerning or relating in any way to the Sale.” (*Sale Order* at ¶ 46.) In addition, the Court retained jurisdiction to “protect Buyer and its assets, including the Acquired Assets, against any Adverse Interests (other than Permitted Liens and Assumed Liabilities) and Successor or Transferee Liability.” (*Id.* at ¶ 47.) The sale closed on September 9, 2016.

While Gawker was proceeding with the sale process, Deadspin posted the Article on its website on June 23, 2016. (*Complaint* at ¶ 16.)⁶ Entitled “How America’s Favorite Sports Betting Expert Turned a Sucker’s Game into an Industry,” the Article explored the sports-betting industry, focusing particularly on the activities of Busack and Pregame. (*Id.* at ¶ 4.) The Article triggered an immediate response. Four days later, the Plaintiffs’ counsel sent a letter to Gawker and Goldberg demanding that they remove allegedly false statements contained in the Article, and publish a correction, apology and retraction. (*Id.* at ¶ 28.) Thereafter, on July 20, 2016, Gawker filed a *Global Notes to Schedules of Assets and Liabilities and Statement of Financial Affairs for the Debtors*, dated July 20, 2016 (the “*Global Notes*”) (ECF Doc. # 116.) The *Global Notes* included a rider, attached to Schedule E/F, that listed Busack as the holder of a contingent, unliquidated and disputed unsecured “threatened litigation claim.” (*Id.* at p. 35 of 72.)

On August 22, 2016, the same day the Court signed the *Sale Order*, the Plaintiffs sent another letter, this time to Gizmodo’s counsel demanding the removal of the Article from the website after the closing date of the sale. (*Gizmodo Motion*, Ex. A.) The

⁶ The “*Complaint*” refers to the complaint in the Civil Suit. A copy of the *Complaint* is annexed as Exhibit D to the *Motion* (ECF Doc. # 985-4.)

Plaintiffs also noted that “[w]e understand that [Gizmodo] recently agreed to purchase substantially all of the assets of Gawker, including Deadspin.com.” (*Id.* at 1.) The Plaintiffs do not dispute that they had prior notice of the proposed sale and the proposed sale order, and never objected to either.

B. The State Court Action

On June 22, 2017, the Plaintiffs filed their state court action against Gizmodo and Goldberg. The *Complaint* asserted causes of action based on the pre-sale publication of the Article sounding in (i) defamation; (ii) intentional interference with prospective economic advantage; and (iii) tortious interference with contractual relations. (*Complaint* at ¶¶ 42–64.) According to the Plaintiffs, their claims arose “out of the publication of numerous false and defamatory statements about Plaintiffs by defendant Ryan Goldberg (“Mr. Goldberg”) on Deadspin.com, which is owned and operated by Gizmodo (“GMB”).” (*Id.* at ¶ 1.) The Plaintiffs alleged that the Article, *inter alia*, falsely characterized the Plaintiffs as engaged “in deceptive and predatory business practices by profiting from customers’ betting losses, are paid by sportsbooks, and own sportsbook websites and services.” (*Id.* at ¶¶ 4 & 21.)

The *Complaint* did not mention the sale or the *Sale Order*, and the only reference to post-sale conduct concerned the failure to remove the Article. The Plaintiffs alleged that “[a]fter [Gizmodo] took over control of Deadspin.com, Plaintiffs’ counsel subsequently contacted [Gizmodo] advising it of the same. [Gizmodo], however, has failed to remove and/or retract the Story, which remains on Deadspin.com as of the date of this Complaint.” (*Id.* at ¶ 7.) Similarly, its three claims charged that the defendants

caused the Article to be “published and/or maintained” (or some variation thereof) on the Deadspin website. (*See id.* at ¶¶ 43, 46, 48, 50, 54, 55, 59, 61.)

Gizmodo filed the *Motion* on August 21, 2017, and the Plan Administrator filed a joinder. (*Joinder and Reservation of Rights by the Plan Administrator to the Motions of Ryan Goldberg and Gizmodo Media Group, LLC to Enforce the Sale Order and Confirmation Order and Bar Certain Plaintiffs From Prosecuting Their State Court Actions*, dated Sep. 5, 2017 (the “*Joinder*”) (ECF Doc. # 997).) The *Motion* asserted that the Plaintiffs’ action against Gizmodo was based on pre-sale conduct, and was barred by the terms of the *Sale Order*. The Plan Administrator argued that the *Sale Order* “was intended to protect against exactly the types of claims raised in the *Complaint* being brought months after the closing of the Sale and confirmation of the [Plan]” and urged the Court to grant the *Motion*. (*Joinder* at ¶ 15 & p. 9 (emphasis added).) The Plaintiffs responded that the Court lacked jurisdiction over the causes of action or, in the alternative, the Court must abstain from adjudicating these proceedings because they implicate state law. The Plaintiffs also argued that their state court action was based entirely on post-sale conduct, *i.e.*, that Gizmodo maintained the Article post-sale, and this conduct gave rise to a new cause of action. (*Objection of Pregame LLC and Randall James Busak to Motions of (1) Gizmodo Media Group, LLC and (2) Ryan Goldberg, Seeking to Enforce Orders of this Court Action and in Response to the Joinder of the Plan Administrator to Such Motions*, dated Sep. 15, 2017 (the “*Objection*”) (ECF Doc. # 1006.)⁷

⁷ The Society of Professional Journalists, Reporters Committee for Freedom of the Press and 19 other Media Organizations (collectively, the “*Amici*”) filed their *Motion of Proposed Amici Curiae Society of Professional Journalists, Reporters Committee for Freedom of the Press, and 19 other Media*

DISCUSSION

A. Jurisdiction and Abstention

Bankruptcy Courts have jurisdiction to interpret and enforce their own orders, *Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 151 (2009), and this jurisdiction extends to post-confirmation disputes between creditors and the purchasers of the debtor's assets where those disputes implicate the interpretation of a bankruptcy sale order. *Luan Inv. S.E. v. Franklin 145 Corp. (In re Petrie Retail, Inc.)*, 304 F.3d 223, 230 (2d Cir. 2002); *In re Gen. Growth Props., Inc.*, 460 B.R. 592, 598 (Bankr. S.D.N.Y. 2011). In addition, the Court retained jurisdiction in both the *Sale Order* and the *Confirmation Order* to interpret and enforce both orders. (*Sale Order* at ¶ 47; *Confirmation Order* at ¶ 46 (“[e]xcept as otherwise provided in any of the Plan Documents, the Court shall retain jurisdiction over the Bankruptcy Cases and all matters arising out of, or related to, the Bankruptcy Cases and the Plan, including the Retained Causes of Action.”).) Finally, the jurisdiction is core, because the sale itself was a core proceeding, 28 U.S.C. § 157(b)(2)(N), and the “[e]nforcement and interpretation of orders issued in core proceedings are also considered core proceedings within the bankruptcy court’s jurisdiction.” *HHI FormTech, LLC v. Magna Powertrain USA, Inc. (In re FormTech Indus., LLC)*, 439 B.R. 352, 357 (Bankr.D.Del.2010); accord *In re Trans World Airlines, Inc.*, 278 B.R. 42, 49 n. 16 (Bankr.D.Del.2002) (“Core proceedings under § 157(b)(2)(N) are those which arise from, concern, or have some impact on ‘orders approving the sale

Organizations for Leave to File Memorandum of Law as Amici Curiae, dated Sep. 22, 2017 (the “*Amici Brief*”) (ECF Doc. # 1010.) The *Amici* urge the Court to grant the *Motions*, but their arguments relate solely to the *Goldberg Motion*. At oral argument, I granted the *Amici*’s request for leave to file the *Amici Brief* on the record. (Transcript of 9/28/2017 Hr’g at 11:20-11:22 (ECF Case No. 16-11700 Doc. # 1032); *Order Granting Application of Society of Professional Journalists, Reporters Committee for Freedom of the Press and 19 Other Media Organizations to Shorten Notice Period With Respect to their Motion for Leave to File Memorandum of Law as Amici Curiae*, dated. Sep. 25 (ECF Doc. # 1013).)

of property'....") (emphasis in original); *see Petrie Retail*, 304 F.3d at 229-30 (concluding that a proceeding between non-debtors involving the interpretation of rights under a sale order was a core proceeding).

Although the Court has jurisdiction, the Plaintiffs ask the Court to abstain from exercising it in deference to the state court litigation. Initially, mandatory abstention does not apply to core proceedings. *See* 28 U.S.C. § 1334(c)(2) (the Court must abstain when, *inter alia*, the proceeding is "related to a case under title 11 but not arising under title 11 or arising in a case under titled 11); *In re Gen. Growth Properties, Inc.*, 460 B.R. 592, 601 (Bankr. S.D.N.Y. 2011) ("Since the State Court Action is one 'arising in' a bankruptcy case and within this Court's core jurisdiction, mandatory abstention under 28 U.S.C. § 1334(c)(2) is inapplicable on its own terms.")

This leaves permissive abstention. *See* 28 U.S.C. § 1334(c)(1). Federal courts have a "virtually unflagging obligation" to exercise the jurisdiction given to them. *Colorado River Water Conservation District v. United States*, 424 U.S. 800, 817 (1976). While permissive or discretionary abstention may nonetheless be appropriate under certain circumstances, the Plaintiffs' abstention argument, like its jurisdictional argument, is based on a misunderstanding of the issue before the Court. The Court is not ruling on the sufficiency of the Plaintiffs' defamation or other tort claims, but instead, whether the claims, as pleaded, are barred by the *Sale Order*. *See Goldman v. Picard (In re Bernard L. Madoff Inv. Secs. LLC)*, No. 12 Civ. 6109 (RJS), 2013 WL 5511027, at 86 (S.D.N.Y. Sept. 30, 2013) (Although the legal sufficiency of the Complaints is not before the Court, "whether the Complaints plead a bona fide control person claim is relevant" the "Appellants cannot . . . shield their Complaints from all

scrutiny, since the question before this Court is whether Appellants' claims, *as pleaded in the Complaints*, should be allowed to proceed despite the Injunction and automatic stay.”) (emphasis in original).

This Court is in the best position to interpret its own orders, and its interpretation is entitled to substantial deference. *Travelers*, 557 U.S. at 151 n.4; *Marshall v. Picard (In re Bernard L. Madoff Inv. Secs. LLC)*, 740 F.3d 81, 87 n. 7 (2d Cir. 2014) (“The scope of an injunction ‘turns upon the intent and effect of the bankruptcy court’s’ order, and, thus, [a] bankruptcy court’s interpretation of its own order warrants customary appellate deference.”) (quoting *Casse v. Key Bank Nat’l Ass’n (In re Casse)*, 198 F.3d 327, 333 (2d Cir.1999)). Principles of permissive abstention do not require this Court in the exercise of its discretion to foist this burden on the state court particularly where, as here, the Plaintiffs did not mention the *Sale Order* in the *Complaint* and apparently view it as immaterial to their claims. Moreover, while the Plaintiffs’ submission discusses the principles of permissive abstention, none of their authorities supports the argument that a Court should abstain from interpreting its own orders.

B. The Merits

The Plaintiffs implicitly concede that the *Sale Order* bars any claims based on pre-sale conduct. They argue that “[t]he Complaint on its face only seeks relief for post-sale conduct, and thus the Sale Order is not implicated.” (*Objection* at ¶ 59.) This argument is disingenuous. The *Complaint* opens with the proclamation that “[t]his action by plaintiffs . . . arises out of the *publication* of numerous false and defamatory statements about Plaintiffs by defendant Ryan Goldberg (“Mr. Goldberg”) on

Deadspin.com, which is owned and operated by Gizmodo [].” (*Complaint* at ¶ 1 (emphasis added).) The “publication” refers to the initial posting of the Article on June 23, 2016. (*See Complaint* at ¶ 25.) The vast majority of the allegations discuss the *publication* of the Article and the immediate aftermath and do not mention the *Sale Order*.

The *Sale Order* bars the claims arising from the pre-sale publication of the Article. Under New York’s single publication rule,⁸ “the publication of a defamatory statement in a single issue of a newspaper, or a single issue of a magazine, although such publication consists of thousands of copies widely distributed, is, in legal effect, one publication which gives rise to one cause of action and . . . the applicable Statute of Limitation runs from the date of that publication.” *Gregoire v. G. P. Putnam’s Sons*, 81 N.E.2d 45, 47 (N.Y. 1948). The same rule applies to postings on the Internet. *Firth v. State*, 775 N.E.2d 463, 465 (N.Y. 2002); *accord Nationwide Bi-Weekly Admin., Inc. v. Belo Corp.*, 512 F.3d 137, 144 (5th Cir. 2007) (“Every court to consider the issue after *Firth* has followed suit in holding that the single publication rule applies to information widely available on the Internet.”) (collecting cases). Accordingly, only one cause of action accrues on the date of the initial publication. Moreover, the plaintiff cannot plead around the one-year statute of limitations by recasting his defamation claim under a different name or theory. *See Abshier v. Sunset Recordings, Inc.*, No. 14 CIV. 3227 (CM) (SN), 2014 WL 4230124, at *9 (S.D.N.Y. Aug. 5, 2014) (“New York courts have kept a watchful eye for claims sounding in defamation that have been disguised as other

⁸ At oral argument, the Court concluded, without objection, that New York law governed. (Transcript of 9/28/2017 Hr’g at 13:20-13:24 (ECF Case No. 16-11700 Doc. # 1032).)

causes of action. . . . Anything else would allow plaintiffs to circumvent the otherwise short limitations period for defamation claims.”) Thus, the single publication rule governs all claims arising from the publication when their essence is defamation. *Goldman v. Barrett*, 15 Civ. 9223 (PGG), 2016 WL 5942529, at *10 (S.D.N.Y. Aug. 24, 2016). To avoid the prohibition imposed by the single publication rule, the pleading must allege facts that the defendant republished the defamatory material, but republication does not occur merely by maintaining the information on the website. *See Firth*, 775 N.E.2d at 466.

As the Plaintiffs implicitly concede, the *Sale Order* bars any claims against Gizmodo arising from the publication of the allegedly defamatory Article on June 23, 2016. Accordingly, the Plaintiffs are enjoined from asserting those claims in state court. Gawker also asks me to reject any post-sale claims because the *Complaint*, it says, does not allege a legally sufficient republication claim. I decline the invitation. Whether the *Complaint* alleges a legally sufficient post-sale claim against Gizmodo based on republication or some other theory is an issue best left to the state court presiding over the action.

Settle order on notice.

Dated: New York, New York
December 12, 2017

/s/ Stuart M. Bernstein
STUART M. BERNSTEIN
United States Bankruptcy Judge

Attachment 4

March 19 Letter

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March 19, 2018

BY EMAIL AND REGULAR MAIL

Charles J. Harder, Esquire
Harder LLP
132 S. Rodeo Drive, Fourth Floor
Beverly Hills, California 90212

Re: *International Scherick, LLC v. Gizmodo Media Group, LLC*,
No. 157939/2017 (Sup. Ct., N.Y. Cty.)

Dear Charles:

I write regarding the above-referenced defamation lawsuit brought by your firm on behalf of your clients International Scherick, LLC and Gregory Scherick against our clients Gizmodo Media Group, LLC (“GMG”), Anna Merlan, and Emma Carmichael.

Although the claims against all three Defendants are without merit and should be dismissed for a number of reasons, I write now specifically to request that Plaintiffs dismiss with prejudice their claims against GMG based on the December 13 and 26, 2017 rulings by the Bankruptcy Court in the Gawker Media, LLC (“Gawker Media”) bankruptcy proceedings. These rulings concerned the August 22, 2016 sale order (“Sale Order”) in the Gawker Media bankruptcy and New York State’s single-publication rule.

As you know, in the bankruptcy sale that closed on September 9, 2016, GMG acquired certain assets from Gawker Media, including the deadspin.com and jezebel.com websites. As set forth in the S.D.N.Y. Bankruptcy Court’s December 13, 2017 opinion in *In re Gawker Media*, and further memorialized in its December 26, 2017 Order, the court held that pursuant to the Sale Order and the single-publication rule, claims cannot be brought against GMG based on GMG’s not removing from a website an article that had been posted by Gawker Media prior to the sale. The court accordingly enjoined the plaintiffs in *Pregame LLC v. Gizmodo Media Group, LLC*, No. 155710/2017 (Sup.Ct. N.Y. Cty.) (“the *Pregame* Plaintiffs”), also your clients, from pursuing claims based on GMG not removing from a website an article that Gawker Media had posted on the website pre-sale.

WILLIAMS & CONNOLLY LLP

Charles J. Harder, Esquire
March 19, 2018
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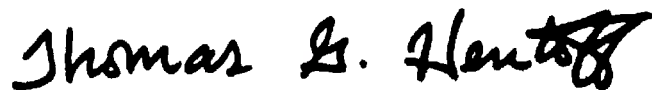
Specifically, the Bankruptcy Court held that under the single-publication rule the only cause of action for publication of an article on a website “accrues on the date of the initial publication,” which in the *Pregame* case was “the initial posting of the Article” by Gawker Media on June 23, 2016. 12/13/17 Order at 11. Because “*republication does not occur merely by maintaining the information on the website*,” the court ruled that “[a]ccordingly, the [*Pregame*] Plaintiffs are enjoined from asserting [these] claims in state court” against GMG. *Id.* at 12 (emphasis added). The court indeed rejected the *Pregame* Plaintiffs’ argument that their complaint only sought relief for post-sale conduct as “disingenuous.” *Id.* at 10.

The Bankruptcy Court’s conclusions apply with full force here. The Complaint in this case, *International Scherick*, alleges nothing more than the continued availability after September 9, 2016 of an article about your clients written by Ms. Merlan and posted by Gawker Media on jezebel.com on May 10, 2016. Accordingly, it is foreclosed completely by the Bankruptcy Court’s December 2017 Orders, which expressly enjoined the plaintiffs in that case “from asserting any claims against [GMG] . . . derived from Gawker’s pre-sale publication of the Article.” 12/26/17 Order at 1-2. Further, we are aware of no post-sale conduct by GMG that could amount to a separate republication of the article. Accordingly, in compliance with the Bankruptcy Court’s August 2016 Sale Order and its December 2017 Orders on the *Pregame* Plaintiffs’ claims, the Plaintiffs here should dismiss the *International Scherick* Complaint with prejudice as to GMG.

Indeed, since the Complaint on its face is foreclosed by the Bankruptcy Court’s rulings, Plaintiffs should not have served it on GMG in the first place as any such lawsuit was specifically prohibited and enjoined by Paragraphs 14 and 21 of the Sale Order and, pursuant to Paragraphs 46 and 47 of the Sale Order, the Bankruptcy Court retained exclusive jurisdiction to interpret the Sale Order. This means that any claims implicating the Sale Order were required to be brought before the Bankruptcy Court. *See also* 12/13/17 Order at 4-5 (quoting all four Sale Order paragraphs). By serving the state court Complaint in January 2018 in direct contravention of a Bankruptcy Court Sale Order that the Bankruptcy Court had reaffirmed just days earlier in connection with the *Pregame* Plaintiffs’ claims, Plaintiffs in this case defied the Bankruptcy Court’s authority while subjecting GMG to unwarranted expenses in defending the case.

As noted above, Plaintiffs’ claims against all three Defendants are without merit for a number of reasons. This letter is without waiver of any defenses, rights, or remedies available to our clients, all of which are expressly reserved.

Sincerely,



Thomas G. Hentoff