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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

OBJECTION OF TERRY G. BOLLEA, CHARLES J. HARDER, ESQ., AND HARDER, MIRELL & ABRAMS LLP TO PLAN ADMINISTRATOR'S PROPOSED ORDER PURSUANT TO RULE 2004 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AUTHORIZING THE PLAN ADMINSITRATOR TO CONDUCT DISCOVERY CONCERNING POTENTIAL CAUSES OF ACTION AND TO ESTABLISH DISCOVERY RESPONSE AND DISPUTE PROCEDURES

Terry G. Bollea, Charles J. Harder, Esq., and Harder, Mirell & Abrams LLP (collectively, the "Objecting Parties") jointly object to the Plan Administrator's Proposed Order [Dkt. No. 1042] (attached hereto as Exhibit 1) relating to the Court's *Corrected Memorandum Decision*

Granting In Part and Denying In Part Plan Administrator's Motion for Leave to Conduct a Rule 2004 Examination [Dkt. No. 936] (the "Opinion") (attached hereto as Exhibit 2) and respectfully request that, if the Court does not grant reargument as requested in the *Thiel Parties' (1) Objection to Plan Administrator's Proposed Order Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure Authorizing the Plan Administrator to Conduct Discovery Concerning Potential Causes of Action and to Establish Discovery Response and Dispute Procedures, and (2) Motion for Reargument* filed contemporaneously with this objection (the "Thiel Objection and Motion for Reargument"), the Court adopt the Objecting Parties' Counter-Proposed Form of Order (attached hereto as Exhibit 3).[1] As discussed below, the Counter-Proposed Form of Order more accurately reflects the Opinion and record before the Court.

COMPARISON OF PLAN ADMINISTRATOR'S PROPOSED ORDER AND COUNTER-PROPOSED FORM OF ORDER

A. <u>Setting Forth the "Specific Limitations"</u>: Counter-Proposed Form of Order Paragraph 1 and Plan Administrator's Proposed Order Paragraphs 2 and 5.

1. In the Conclusion section of its Opinion, the Court included two paragraphs. The second paragraph directed the parties to "meet and confer with a view to submitting an order setting forth the Plan Administrator's requests and the specific limitations on those requests." Opinion at 16-17. Those specific limitations were detailed in the first paragraph of the Order's Conclusion, which explains that pursuant to Debtors' settlements with Bollea, Ayyadurai, and Terrill, the "Plan Administrator cannot obtain discovery from Thiel, Harder or anyone else regarding Bollea, Ayyadurai or Terrill." *Id.* at 16. The only exception is that the Plan Administrator may take discovery from Ayyadurai or Terrill "limited to 'litigation financing agreement(s) relating to the Lawsuit or claims in the lawsuit, and any non-privileged retainer

[1] A blackline reflecting the differences between the Counter-Proposed Form of Order and the Plan Administrator's Proposed Order is attached hereto as Exhibit 4.

agreements with Charles J. Harder, Esq. or the law firm of Harder, Mirell & Abrams LLP relating to the Lawsuit or claims in the Lawsuit.'" *Id.* The Opinion also accurately notes that the "Plan Administrator is no longer seeking discovery from Ayyadurai or Terrill through the *Rule 2004 Motion*, and there does not appear to be much left that is discoverable." *Id.* (emphasis in original).

2. Consistent with the Opinion, the Counter-Proposed Form of Order sets forth in its Paragraph 1 the specific limitations that the Court identified and expressly incorporates these limitations within the defined scope of the Rule 2004 Examination Topics (which is the same in both proposed orders) so that there is no confusion about the permissible scope of the examination. In defining the limitations, the Counter-Proposed Form of Order tracks the language used by the Court in explaining the "substantial limitations" on the Plan Administrator's requests (with only non-substantive differences).[2]

3. For its part, the Plan Administrator's Proposed Order sets out a scope of Rule 2004 Examination Topics in its Paragraph 2 without any reference to the specific limitations identified by the Court. Instead, Paragraph 5 of the Plan Administrator's Proposed Order sets forth proposed limitations by quoting (incorrectly) the Debtors' settlement agreements with Bollea, Ayyadurai, and Terrill. In doing so, the Plan Administrator's Proposed Order incorporates approximately ten defined terms from those settlements, adds four additional defined terms, and also introduces another term ("Lawsuit") that is not defined anywhere. *See* Ex. 1 ¶ 5. It also carves out solely for the Plan Administrator a unilateral right to "disput[e] the scope, meaning or interpretation of the" limitations on discovery in Debtors' settlement agreement with Bollea. *Id.*

[2] *Compare* Ex. 3 ¶ 1("The Plan Administrator may not obtain discovery from anyone regarding Bollea, Ayyadurai or Terrill.") *with* Opinion at 16 ("the Plan Administrator cannot obtain discovery from Thiel, Harder or anyone else regarding Bollea, Ayyadurai or Terrill").

4. The Plan Administrator's Proposed Order goes both too little and too far. The parties fully briefed the scope of the settlements' limitations on discovery, and the Court heard substantial argument on these issues. Indeed, at the April 25, 2017 hearing on the Rule 2004 Motion, counsel for the Plan Administrator acknowledged that "the settlements clearly provide that we cannot ask for the documents about the [sic] Bollea or the Bollea settlement. They also clearly limit that we cannot ask about documents, other than one separate class, with respect to Ayyadurai and Terrill. We are clearly limited by that." April 25, 2017 Transcript of Hearing re: Rule 2004 Motion at 8:23-9:6 [Dkt. No. 891] ("2004 Motion Hearing Transcript"); *accord id.* at 27:8-25 (further acknowledging limitations imposed by settlement). The Court similarly acknowledged that the Plan Administrator "can't get any discovery about [Bollea] from Harder or anybody else," *id.* at 14:25-15:4, and that "as I read the Bollea settlement, he can't ask any questions or get any discovery relating to the financing of the Bollea lawsuit." *Id.* at 16:14-16. The Opinion reflected the resolution of those issues when it specified the substantial limitations on discovery imposed by Debtors' settlements with Bollea, Ayyudarai and Terrill (and those limitations are substantively tracked in the Counter-Proposed Form of Order). *See* Opinion at 16. In short, there is no reason to open the door to revisiting the fully-litigated issue of the meaning of the settlement provisions, much less to give the Plan Administrator a unilateral right to contest the scope of the Bollea settlement provision.

B. <u>Subjects of the Examination</u>: Counter-Proposed Form of Order Paragraph 3 and Plan Administrator's Proposed Order Paragraph 4.

5. Paragraph 4 of the Plan Administrator's Proposed Order would improperly allow the Plan Administrator to issue subpoenas to unnamed "affiliates" of Peter Thiel, Thiel Capital LLC, Charles J. Harder, Esq., and Harder, Mirell & Abrams LLP. The Rule 2004 Motion did not refer to "affiliates," and the Court did not find cause for such discovery. *See* Ex. 1 ¶ 4. Indeed,

the penultimate paragraph of the Opinion specifically provides that the Plan Administrator may "examine Thiel and Harder," terms that were defined earlier in the Opinion to mean only Peter Thiel and Thiel Capital LLC, and Charles J. Harder, Esq. and Harder, Mirell & Abrams LLP, respectively. Opinion at 2, 16. Accordingly, the Counter-Proposed Form of Order limits the parties that may be subpoenaed to those mentioned in the Rule 2004 Motion and the Opinion: Peter Thiel, Thiel Capital LLC, Charles J. Harder, Esq. and Harder, Mirell & Abrams LLP. *See* Ex. 3 ¶ 3.

C. <u>Discovery from Ayyadurai and Terrill</u>: Counter-Proposed Form of Order Paragraph 2 and Plan Administrator's Proposed Order Paragraph 3.

6. As the Court correctly notes in the Opinion, the Plan Administrator is no longer seeking discovery from Ayyadurai or Terrill through this motion. As there is no independent basis for the Plan Administrator to seek discovery from Ayyadurai or Terrill at this time, Paragraph 2 of the Counter-Proposed Form of Order provides that the Plan Administrator shall not seek discovery from them without further order of the Court. *See* Ex. 3 ¶ 2. The Plan Administrator rejected that language and instead included a vague statement in Paragraph 3 of his Proposed Order that the Plan Administrator shall not seek discovery from Ayyadurai or Terrill "pursuant to the Motion." *See* Ex. 1 ¶ 3. Only after the Plan Administrator insisted on that language did the Objecting Parties discover what the Plan Administrator intended, *i.e.* he incorrectly believes that the Ayyadurai and Terrill settlement agreements give the Plan Administrator an independent right to obtain the litigation financing agreements and non-privileged retainer agreements that are carved out from the otherwise complete bar on obtaining any documents about Ayyadurai and Terrill. In addition, the Plan Administrator has threatened to bring a motion to enforce that purported right and to seek fees and costs for bringing the motion. The Plan Administrator never made this argument in his written submissions or at the

hearing, and it is inconsistent with the plain language of the settlement agreements. The Court should therefore reject the Plan Administrator's vague phraseology and novel interpretation of the Debtors' settlement agreements with Ayyadurai and Terrill.

D. Identification of Claim: Counter-Proposed Form of Order Paragraph 1 and Plan Administrator's Proposed Order Paragraph 2.

7. At oral argument, the Plan Administrator's counsel explained that the only discovery sought was "with respect to the cause of prima facie tort" and in particular whether Mr. Thiel's actions were "motivated solely by malice" in that context. *See* Rule 2004 Motion Hearing Tr. at 5:23-25, 7:14-22. Any order permitting discovery should therefore be limited specifically to that cause of action. The Plan Administrator's Proposed Order fails to adequately limit discovery to that claim while the Counter-Proposed Form of Order does so in its Paragraph 1.

E. Potential Undue Burden of a Privilege Log: Counter-Proposed Form of Order Paragraph 7 and Plan Administrator's Proposed Order Paragraph 9.

8. The Plan Administrator insists in Paragraph 9 of his Proposed Order that, under any and all circumstances, the subpoenaed parties must provide a privilege log of all documents withheld on the basis of privilege. *See* Ex. 1 ¶ 9. Charles J. Harder is an attorney and Harder, Mirell & Abrams LLP is a law firm; accordingly, the vast majority of documents in their possession are subject to privilege (whether attorney-client privilege, work-product privilege or both). In addition, the scope of the Rule 2004 examination necessarily relates to potential litigation of claims, so it is possible that Peter Thiel and Thiel Capital LLC may have a substantial number of privileged documents as well. Federal Rule of Civil Procedure 45(c)(1), which is incorporated by Federal Rule of Bankruptcy Procedure 9016, protects subpoena recipients from undue burden and expense. The Counter-Proposed Form of Order permits the subpoenaed parties to meet and confer with the Plan Administrator on the practicality of

providing a privilege log rather than imposing on them an obligation to provide a privilege log no matter how many privileged documents might be responsive to the Plan Administrator's subpoenas. *See* Ex. 3 ¶ 7. Indeed, in an unrelated matter, the Plan Administrator has not provided a privilege log in connection with the discovery now taking place in connection with Ryan Goldberg's motion to enforce an injunction provision in the Plan.[3] This same practice should apply, and the subpoenaed parties should have the opportunity to meet and confer on whether a privilege log is appropriate in responding to the Plan Administrator's subpoenas.

JOINDER IN THIEL OBJECTION AND MOTION FOR REARGUMENT

9. Charles J. Harder, Esq., and Harder, Mirell & Abrams LLP respectfully join in the Thiel Objection and Motion for Reargument and, due to the confidential nature of the sale issues addressed in the objection, Mr. Bollea respectfully requests that the Court hold an argument in chambers or a closed courtroom so that he can more fully explain why he concurs with the requests made in the Thiel Objection and Motion for Reargument.

[3] *See Motion of Ryan Goldberg (I) to Enforce Order Confirming Amended Joint Chapter 11 Plan of Liquidation and (II) to Bar and Enjoin Creditors From Prosecuting Their State Court Action* [Dkt. No. 981].

CONCLUSION

10. The Objecting Parties agree with the Thiel Objection and Motion for Reargument. However, if the Court enters an order granting in part the Rule 2004 Motion, the Counter-Proposed Form of Order accurately reflects the Opinion without placing undue burden on the parties. Should the Court enter either form of order, the Objecting Parties respectfully request that the Counter-Proposed Form of Order be entered.

Date: November 22, 2017
New York, New York

Respectfully submitted

/s/Daniel H. Tabak

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EXHIBIT 1

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

ORDER PURSUANT TO RULE 2004 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AUTHORIZING THE PLAN ADMINISTRATOR TO CONDUCT DISCOVERY CONCERNING POTENTIAL CAUSES OF ACTION AND TO ESTABLISH DISCOVERY RESPONSE AND DISPUTE PROCEDURES

Upon consideration 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 "Motion");[2] and objections to the Motion filed by (i) Peter Thiel and Thiel Capital, LLC, (ii) Terry Bollea, and (iii) Charles Harder and Harder, Mirell & Abrams LLP (collectively, the "Objections"); and the Settlement Agreement between Debtors and Terry Bollea attached as Exhibit C to the Notice of Filing of Revised Plan Supplement Pursuant to the Debtors' Amended Joint Chapter 11 Plan of Liquidation for Gawker Media Group, Inc., Gawker Media LLC, and Gawker Hungary Kft. [Docket No. 590] (the "Bollea Settlement Agreement"), the Settlement Agreement between Debtors and Shiva Ayyadurai attached as Exhibit D to the Notice of Filing of Plan Supplement Pursuant to the Debtors' Amended Joint Chapter 11 Plan of

[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 defined herein shall have the meanings ascribed to them in the Motion.

Liquidation for Gawker Media Group, Inc., Gawker Media LLC, and Gawker Hungary Kft. [Docket No. 516] (the "Ayyadurai Settlement Agreement"), and the Settlement Agreement between Debtors and Ashley Terrill attached as Exhibit E to the Notice of Filing of Plan Supplement Pursuant to the Debtors' Amended Joint Chapter 11 Plan of Liquidation for Gawker Media Group, Inc., Gawker Media LLC, and Gawker Hungary Kft. [Docket No. 516] (the "Terrill Settlement Agreement" and together with the Bollea Settlement Agreement and the Ayyadurai Settlement Agreement, the "Settlement Agreements"); and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this proceeding being a core proceeding pursuant to 28 U.S.C. § 157(b); and due and adequate notice of the Motion having been given, and no other or further notice need be given; and after due deliberation and hearing thereon, and sufficient cause appearing therefore, as further indicated and for the reasons stated in the Court's *Memorandum Decision Granting in Part and Denying in Part Plan Administrator's Motion for Leave to Conduct a Rule 2004 Examination* [Docket No. 934] (the "Opinion"), it is hereby **ORDERED** that:

1. The Motion is GRANTED IN PART AND DENIED IN PART.

2. The Plan Administrator is hereby authorized pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure to conduct an examination of Peter Thiel, Thiel Capital LLC, Charles J. Harder, Esq., and Harder, Mirrell & Abrams LLP concerning potential causes of action, including, without limitation, for *prima facie* tort under New York law, against Mr. Thiel and/or other parties (the "Rule 2004 Examination Topics"). Notwithstanding the foregoing, nothing herein shall constitute a determination in respect of or related to the merits of any such claim or cause of action, including without limitation a determination that the Court has constitutional or

subject matter jurisdiction to adjudicate the same or the governing body of law that may apply to the same.

3. Nothing in this order shall authorize the Plan Administrator to conduct discovery that is prohibited by the Settlement Agreements. The Plan Administrator shall not seek any discovery from Shiva Ayyadurai ("Ayyadurai") or Ashley Terrill ("Terrill") pursuant to the Motion.

4. The Plan Administrator is hereby authorized, pursuant to Rule 9016 of the Federal Rules of Bankruptcy Procedure, to (a) issue subpoenas for the production of documents to Peter Thiel, Thiel Capital LLC and any of their respective affiliates including requests for the production of documents in connection with the Rule 2004 Examination Topics and (b) issue subpoenas for the production of documents to Charles J. Harder, Esq., Harder, Mirrell & Abrams LLP and any of their respective affiliates including requests for production of documents in connection with the Rule 2004 Examination Topics. The foregoing authorization to issue subpoenas is without prejudice to the rights of the subpoena recipients to object to the requests set forth therein on any applicable grounds and of Ayyadurai, Terrill and Terry Bollea ("Bollea", and together with Ayyadurai and Terrill, the "Settlement Parties") to object to the requests set forth therein on the grounds that the requests are prohibited by the Settlement Agreements, such rights being expressly preserved.

5. Nothing in this Order shall permit the Plan Administrator to issue subpoenas to the Settlement Parties for the production of documents on the Rule 2004 Examination Topics, nor permit the Plan Administrator to (a) take discovery about Bollea, including, without limitation, discovery concerning the Rule 2004 Examination Topics, 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 (the "Bollea Carve-Out"),[3] (b) take discovery regarding Ayyadurai, including, without limitation, discovery concerning the Rule 2004 Examination Topics, litigation funding or finance, the Ayyadurai Action, the Gawker BK Action, the Denton BK Action, and any and all related proceedings (the "Ayyadurai Carve-Out"),[4] or (c) take discovery regarding Terrill, including, without limitation, discovery concerning the Rule 2004 Examination Topics, litigation funding or finance, the Terrill Action, the Gawker BK Action, the Denton BK Action, and any and all related proceedings (the "Terrill Carve-Out" and together with the Bollea Carve-Out and the Ayyadurai Carve-Out, the "Carve-Outs").[5] Notwithstanding the foregoing, nothing in this Order, including, without limitation, the Carve-Outs, precludes the Plan Administrator from (a) seeking from Terrill and Ayyadurai, pursuant to the Settlement Agreements or by further motion, any litigation financing agreement(s) relating to the applicable Lawsuit or claims in such Lawsuit, and any non-privileged retainer agreements with Charles J. Harder, Esq. or the law firm of Harder Mirell & Abrams LLP relating to the applicable Lawsuit or claims in such Lawsuit or (b) disputing the scope, meaning or interpretation of the Bollea Carve-Out.

6. The portion of the Motion requesting discovery related to Scott Sonnenblick's efforts to acquire or facilitate the acquisition of Debtor Gawker Media Group, Inc. is denied without prejudice.

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[3] Capitalized terms used in this paragraph 5(a) but not defined herein shall have the meanings ascribed to them in the Bollea Settlement Agreement.

[4] Capitalized terms used in this paragraph 5(b) but not defined herein shall have the meanings ascribed to them in the Ayyadurai Settlement Agreement.

[5] Capitalized terms used in this paragraph 5(c) but not defined herein shall have the meanings ascribed to them in the Terrill Settlement Agreement.

7. The Plan Administrator's rights to take depositions in connection with the Rule 2004 Examination Topics upon further motion and further order of the Court and the rights of all parties in interest in connection with any such request are reserved.

8. The Plan Administrator and the parties receiving Rule 2004 Subpoenas shall negotiate in good faith to reach agreement on the form of a mutually acceptable confidentiality protective order. In the event that agreement cannot be reached, the parties may submit their respective proposed forms of confidentiality protective order to the Court. Pending Court approval of such an order, subpoena recipients may produce documents to the Plan Administrator's counsel on a confidential attorneys-eyes-only basis, and such documents shall not be further disclosed.

9. All parties that receive a Rule 2004 Subpoena for the production of documents shall (i) serve on the Plan Administrator within 14 days of service of the Rule 2004 Subpoena any written objections to the requests for production of documents, (ii) complete production of all documents not subject to applicable privileges or objections within 60 days of service of the Rule 2004 Subpoena, and (iii) serve on the Plan Administrator a privilege log in accordance with Rule 45(e)(2)(A) of the Federal Rules of Civil Procedure and Rule 7034-1 of the Local Bankruptcy Rules of the Southern District of New York within 75 days of service of the Rule 2004 Subpoena. Relief from the foregoing deadlines may be sought for cause.

10. All parties that receive a Rule 2004 Subpoena shall, prior to conducting an electronic search utilizing search terms, meet and confer with the Plan Administrator to attempt to agree on appropriate search terms.

11. The Plan Administrator shall provide contemporaneous notice of the Rule 2004 Subpoenas to counsel to the Settlement Parties. The Settlement Parties shall be permitted to object to discovery on the grounds that it violates the Settlement Agreements.

12. Each party that serves objections to a Rule 2004 Subpoena for the production of documents shall, within seven (7) business days of service of such objections, meet and confer with the Plan Administrator to attempt to resolve the objections to production of documents.

13. Parties seeking the Court's assistance in resolving a dispute concerning a Rule 2004 Subpoena shall proceed in accordance with Local Bankruptcy Rule 7007-1 and the Court's chambers procedures. All parties to such a dispute, including all parties whose rights may be affected by the discovery dispute, shall be permitted to participate in any communications with the Court and the Court's chambers regarding such disputes, including scheduling requests.

14. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: November __, 2017
New York, NY

THE HONORABLE STUART M. BERNSTEIN
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 2

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

CORRECTED MEMORANDUM DECISION GRANTING IN PART AND DENYING IN PART PLAN ADMINISTRATOR'S MOTION FOR LEAVE TO CONDUCT A RULE 2004 EXAMINATION

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[1] The debtors in these cases (the "Debtors"), together with the last four digits of each Debtor's taxpayer identification number, are: Gawker Media LLC (0492); Gawker Media Group, Inc. (3231); and Gawker Hungary Kft. (f/k/a Kinja Kft.) (5056).

--and--

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STUART M. BERNSTEIN
United States Bankruptcy Judge:

William D. Holden, as administrator (the "Plan Administrator") of the confirmed and effective *Amended Joint Chapter 11 Plan of Liquidation for Gawker Media Group Inc., Gawker Media LLC, and Gawker Hungary KFT.*, dated December 11, 2016 (the "*Plan*")[2] seeks to obtain discovery under Federal Rule of Bankruptcy Procedure 2004 ("Rule 2004") from Peter Thiel, Thiel Capital LLC (together with Peter Thiel, "Thiel"), Harder Mirell & Abrams LLP (the "Harder Firm"), and Charles J. Harder, Esq. (together with the Harder Firm, "Harder") to determine whether he should commence any litigation against Thiel and/or related parties, including an action for *prima facie* tort under New York Law (the "Potential Causes of Action").[3] The Potential Causes of Action

[2] The confirmed *Plan* is attached as Exhibit 1 to this Court's *Findings Of Fact, Conclusions Of Law, And Order Confirming Amended Joint Chapter 11 Plan Of Liquidation For Gawker Media Group, Inc., Gawker Media LLC, And Gawker Hungary KFT*, dated Dec. 22, 2016 (the "*Confirmation Order*") (ECF Doc. # 638). Unless otherwise noted, all ECF document numbers refer to case no. 16-11700.

[3] *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*

arise primarily out of Thiel's financial support for prepetition litigation against the Debtors. (*See Rule 2004 Motion* at ¶ 18.) Thiel, Harder and Terry Gene Bollea ("Bollea") object to the proposed Rule 2004 discovery.[4]

The Court grants in part and denies in part the *Rule 2004 Motion* to the extent and for the reasons explained below.

BACKGROUND[5]

A. Pre-Bankruptcy Litigation

As of petition date, the Debtor Gawker Media LLC ("Gawker") operated seven distinct media brands with corresponding websites covering news and commentary on a variety of topics, including current events, pop culture, technology and sports. (*Holden Declaration* at ¶ 10-11). Also prior to the petition date, the subjects of several articles published on Gawker's websites filed lawsuits (the "Prepetition Lawsuits") against Gawker and others sounding in defamation and/or similar torts based on the contents

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Discovery Response and Dispute Procedures, dated Apr. 24, 2017 (the "*Reply*"), at ¶¶ 3-4 (ECF Doc. # 883); *see also 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*, dated Oct. 22, 2016 (the "*Rule 2004 Motion*"), at 1-2 (summarizing scope and purpose of Rule 2004 examination as originally requested) (ECF Doc. # 341).

[4] *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*, dated Apr. 18, 2017 (the "*Harder Objection*") (ECF Doc. # 869); *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*, dated Apr. 18, 2017 (the "*Thiel Objection*") (ECF Doc. # 870); *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*, dated Apr. 18, 2017 (the "*Bollea Objection*," and together with the *Harder Objection* and the *Thiel Objection*, the "*Objections*") (ECF Doc. # 871).

[5] . "*Holden Declaration*" refers to the *Declaration of William D. Holden in Support of First Day Motions*, dated June 12, 2016. (ECF Doc. # 7.)

of the articles and other materials published by Gawker and/or available on Gawker's websites. (*Id.* at ¶ 30.)

One such litigation, *Bollea v. Gawker Media LLC, et al.*, No. 12012447-CI-011 (Fla. 6th Jud. Cir. Pinellas Cty.) ("Bollea Litigation"), brought by Bollea (the professional wrestler also known as Hulk Hogan) ultimately drove the Debtors into bankruptcy. Bollea's claims centered on the publication of a video depicting Bollea engaged in a sexual act. In March of 2016, the jury in the Bollea Litigation found Gawker liable for $115 million in compensatory damages and $15 million in punitive damages. (*Holden Declaration* at ¶ 37). After Gawker unsuccessfully sought relief from the judgment and a stay of enforcement, (*see id.*), it filed a chapter 11 petition on June 10, 2016, and Gawker Hungary Kft. and Gawker Media Group, Inc. filed chapter 11 petitions two days later.

The Bollea Litigation was not the only pre-petition lawsuit that Gawker faced. Others included *Ashley Terrill v. Gawker Media LLC, et al.*, No. 16-CV-00411 (S.D.N.Y.) ("Terrill Litigation"), *Ayyadurai v. Gawker Media LLC*, et al., No. 16-CV-10853 (D. Mass.) ("Ayyadurai Litigation") and *Huon v. Denton, et al.*, No. 11-cv-03054 (N.D. Ill.) ("Huon Litigation"). The Terrill Litigation involved the publication of allegations regarding the investigation by plaintiff Ashley Terrill into a former executive of a dating smartphone application company. The Ayyadurai Litigation arose from Gawker's publication of three articles regarding the claims by plaintiff Shiva Ayyadurai that he invented email. Finally, the Huon Litigation related to an article about plaintiff Meanith Huon and third-party comments posted on one of Gawker's websites. (*Holden Declaration* at ¶ 30.)

The alleged common thread in the Prepetition Lawsuits is Harder and Thiel. Harder represented the plaintiffs in the Bollea Litigation, the Terrill Litigation, and the Ayyadurai Litigation. (*Rule 2004 Motion* at ¶ 6; *see also Harder Objection* at ¶ 1 (acknowledging that the plaintiffs in these actions are Harder clients).) In addition, Huon informed the Court that he had received legal advice and/or information from Harder, and Harder reimbursed certain of his costs. (*Letter from Meanith Huon, Esq. to the Court*, dated Dec. 12, 2016, and annexed emails (ECF Doc. # 582); *see also Amended Declaration of D. Ross Martin 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*, dated Oct. 11, 2016 (the "*Martin Declaration*") at ¶ 8 and Ex. F (attaching *Forbes* article describing Huon's representation).) Thiel has acknowledged that he financed the Bollea Litigation, (*Rule 2004 Motion* at ¶¶ 2-5; *see also Martin Declaration* at ¶¶ 3, 4, 6 and Exs. A, B, D (media reports of Thiel's funding of the Bollea Litigation) *and Rule 2004 Reply* at ¶ 14 and Ex. A (excerpting and attaching transcript of interview in which Thiel acknowledges funding litigation against Gawker)), and the Plan Administrator speculates based on press reports that he funded the other Prepetition Lawsuits in which Harder participated as part of "a coordinated campaign against the Debtors." (*Rule 2004 Motion* at ¶ 6.)

B. The Bankruptcy Case and the *Rule 2004 Motion*

During the chapter 11 cases, the Debtors sold all of their assets through a Bankruptcy Code § 363 sale (the "Sale") to UniModa, LLC on August 22, 2016. (*Order (I) Authorizing the Sale of Substantially All of the Debtors' Assets Free and Clear of All*

Claims, Liens, Rights, Interests and Encumbrances, (II) Approving and Authorizing the Debtors' Entry into the Asset Purchase Agreement and (III) Authorizing the Debtors to Assume and Assign Certain Executory Contracts and Unexpired Leases, dated Aug. 22, 2016 ("*Sale Order*") (ECF Doc. # 214).) The Sale closed on September 9, 2016. (*Notice of Sale Closing*, dated Sep. 12, 2016 (ECF Doc. # 258).)

After completing the asset sale, the Debtors filed the *Rule 2004 Motion* on October 11, 2016. By this time, they had turned their focus to "formulat[ing] and seek[ing] confirmation of a plan of reorganization." (*Rule 2004 Motion* at ¶ 17.) The Debtors initially sought discovery in three areas: (1) "[w]hether votes to accept any plan of reorganization should be designated . . . under section 1126(e);" (2) "[t]he formulation of amended plans . . . taking into account the economic incentives arising from any of Thiel's litigation financing and/or control that Mr. Thiel may have over . . . creditor claims;" and (3) "[w]hether the Debtors should commence causes of action, arising from intent to destroy the Debtors' business, including for *prima facie* tort . . . against Mr. Thiel." (*Id.* at pp. 1-2.) The Debtors did not prosecute the *Rule 2004 Motion*, and instead, agreed with Thiel, Harder and Bollea to adjourn the motion several times to facilitate a global resolution. (*Reply* at ¶ 2 n.4.)

While the *Rule 2004 Motion* was pending, the Debtors confirmed their joint *Plan*. The *Plan* contemplated future litigation and the distribution of litigation proceeds. It created a "Gawker Media Contingent Proceeds Creditor Account" as a "separate, segregated bank account to be established on the Effective Date and administered by the Plan Administrator, into which 45.0% of the Gawker Media Contingent Proceeds will be deposited for the benefit of the holders of Claims against

Gawker Media." (*Plan* at 7.) The "Gawker Media Contingent Proceeds" included "any recoveries from the Retained Causes of Action" net of set offs and expenses, (*id.*), and the "Retained Causes of Action" referred to "Claims and/or Causes of Action against third-parties that are not released under the Plan or any Order of the Bankruptcy Court and are retained and prosecuted by the Debtors on behalf of the Debtors' estates, as identified in the Plan Supplement." (*Id.* at 12.) The "Retained Causes of Action" listed in the Plan Supplement included "Causes of Action against Peter Thiel and any other Entity that result from the investigation that is the subject of the [*Rule 2004 Motion*] unless expressly waived or settled." (*Notice of Filing of Plan Supplement Pursuant to the Debtors' Amended Joint Chapter 11 Plan of Liquidation for Gawker Media Group, Inc., Gawker Media LLC, and Gawker Hungary Kft.*, dated Nov. 30, 2016 ("*Plan Supplement*"), Ex. B, at 2 (ECF Doc. # 516).) The *Plan* designated Holden to serve as the Plan Administrator, (*Plan Administrator Agreement* at § 1(a) (*Plan*, Ex. A), and authorized him to prosecute the "Retained Causes of Action." (*Id.* at § 1(b)(ii).)

The Debtors reached a number of settlement agreements with plaintiffs in the Prepetition Lawsuits, including with Bollea, Terrill and Ayyadurai, which were incorporated into the *Plan* and the *Confirmation Order*. (*Confirmation Order* at ¶¶ 37-45; *Plan* § 4.01(c)-(d).) Under the Bollea settlement, Bollea was entitled to a cash payment of $31 million, (*Plan Supplement*, Ex. C, at ¶ 4, pp. 6-7), and the right to participate in the "Gawker Media Contingent Proceeds Creditor Account" against which he was deemed to have an allowed claim of $84 million. (*Id.*, Ex. C, at ¶ 8, p. 9.) The Bollea settlement also placed a significant limitation on the discovery sought through the *Rule 2004 Motion*. It suspended the *Rule 2004 Motion* through at least the

Effective Date of the *Plan*, and thereafter, if

> the Gawker Debtors pursue the 2004 Motion, the Gawker 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.

(*Id.*, Ex. C, at ¶ 18, p. 13.)

Ayyadurai and Terrill did not receive an interest in the "Gawker Media Contingent Proceeds Creditor Account" under their settlements, but both settlements included identical limitations on discovery, suspending it until the Effective Date and providing that after the Effective Date:

> The Gawker Entities shall not seek from [Ayyadurai/Terrill] or any third party any discovery regarding [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 [Ayyadurai/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 relating to the Lawsuit or claims in the Lawsuit.

(*Plan Supplement*, Ex. D, at ¶ 9, p. 4; Ex. E, at ¶ 10, ECF p. 61 of 66.)

The Debtors have narrowed the scope of the *Rule 2004 Motion* in light of the confirmation of the *Plan* and the consummation of the settlements. The proposed discovery requests are limited to documents and communications regarding two topics: (i) Thiel's relationship with Harder and causes of action against the Debtors, and (ii) Scott Sonnenblick's efforts to acquire or facilitate the acquisition of Debtor Gawker Media Group, Inc. (*Reply* at ¶ 18.)

According to the Debtors, they need the limited discovery to decide whether to pursue or settle the Debtors' claims against Thiel. (*Id.* at ¶ 4.) It is undisputed that Thiel funded the Bollea Litigation, they have reason to believe based on press reports and other documentation and information that he funded other litigation, and the threat of further litigation depressed the purchase price for their assets and the proceeds they ultimately received from the Sale. (*Id.*) The Debtors suggest that the Potential Causes of Action could yield "millions if not tens of millions of dollars in recovery," and the potential benefits of the proposed Rule 2004 examination therefore outweigh any hardships. (*Id.*)

B. The Objections

The main thrust of the objections is that the Plan Administrator cannot assert a viable claim for *prima facie* tort against Thiel, either because Florida law, which may govern, does not recognize *prima facie* tort, or if New York law governs, the Plan Administrator cannot demonstrate malice as required by New York law. (*See Harder Objection* at ¶¶ 15-21; *Thiel Objection* ¶¶ 13-16; *Bollea Objection* at ¶ 41.) In addition, Thiel argues that the requests are not proportional. (*Thiel Objection* at ¶ 19.) The *Plan* pays all creditors in full, the discovery is unrelated to creditor recoveries and would not provide any potential benefits. (*Id.*) Thiel also argues that if the *Rule 2004 Motion* is granted, the discovery procedures the Debtors and Plan Administrator have proposed should not be "preapprov[ed]" as they impose an expedited time frame and are therefore unduly burdensome. (*Id.* at ¶ 20.)

Harder argues that the Debtors must meet a heightened burden in seeking discovery from Harder and have not met that burden. (*Harder Objection* at ¶ 22.)

Harder was opposing "litigation counsel" vis-à-vis the Debtors, and as such, discovery can only be ordered after this Court "consider[s] 'the need to depose the lawyer, the lawyer's role in connection with the matter on which discovery is sought and in relation to the pending litigation, the risk of encountering privilege and work-product issues, and the extent of discovery already conducted.'" (*Id.* (quoting *In re Subpoena Issued to Dennis Friedman*, 350 F.3d 65, 71-72 (2d Cir. 2003).) The requested Rule 2004 discovery threatens attorney-client privilege and work product and impinges Harder's clients' rights. (*Id.* at ¶¶ 22-23.) Therefore, even if the Court grants the *Rule 2004 Motion*, it should not allow the Plan Administrator to take discovery directly from Harder. (*Id.* at ¶ 23.) Harder also emphasizes the limitations placed on discovery, and if the Debtors were to seek discovery from Terrill and/or Ayyadurai, the information the Debtors seek to obtain from their retainer agreements is "inherently privileged." (*Id.* at ¶¶ 27-31 (citation omitted).) Finally, Harder contends that the Plan Administrator is circumventing the "pending proceeding" rule (even though there is no pending proceeding) to pressure Thiel. (*See id.* at ¶¶ 24-26.)

Bollea also invokes the limitations on discovery in the settlement agreements, and further contends that they preclude the Plan Administrator from determining whether he can assert a *prima facie* tort claim as the Debtors released Harder from any claims and agreed to cooperate and act in good faith in granting Thiel a release. (*Bollea Objection* at ¶ 47.) In addition, the limitations on discovery in the settlement agreements prevent the Debtors from bringing a *prima facie* tort claim against Thiel. The Debtors have conceded that without the information they seek to obtain they lack a reasonable basis to believe they can prove such a claim. Accordingly, they cannot

comply with Federal Bankruptcy Rule 9011(b), "[s]o there is no point to providing [the] debtors with the . . . discovery they can still obtain because they will be unable to plead [that claim]." (*Id.* at ¶ 46.)

DISCUSSION

A. Applicable Law

Rule 2004 provides in relevant part that the Court may authorize the examination of any entity relating "to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate." FED. R. BANKR. P. 2004(b). In chapter 11 cases, the examination may extend to matters relating "to the operation of any business and the desirability of its continuance, the source of any money or property acquired or to be acquired by the debtor for purposes of consummating a plan and the consideration given or offered therefor, and any other matter relevant to the case or to the formulation of a plan." *Id.* The party seeking Rule 2004 discovery has the burden to show good cause for the examination it seeks, and relief lies within the sound discretion of the Bankruptcy Court. *Picard v. Marshall* (*In re Bernard L. Madoff Inv. Secs. LLC*), Adv. Pro. No. 08-01789, 2014 WL 5486279, at *2 (Bankr. S.D.N.Y. Oct. 30, 2014); *see In re Bd. of Dirs. of Hopewell Int'l Ins. Ltd.*, 258 B.R. 580, 587 (Bankr. S.D.N.Y. 2001) (Rule 2004 gives the Court "significant" discretion).

Relevance alone is not sufficient to justify a Rule 2004 request. *In re Drexel Burnham Lambert Grp., Inc.*, 123 B.R. 702, 712 (Bankr. S.D.N.Y. 1991). A party seeking to conduct a Rule 2004 examination must also show good cause, such as 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 Metiom, Inc.*, 318 B.R. 263, 268 (S.D.N.Y. 2004) (quoting *In re Dinubilo*, 177 B.R. 932, 943 (E.D. Cal. 1993)); *accord In re AOG Entm't, Inc.*, 558 B.R. 98, 109 (Bankr. S.D.N.Y. 2016); *Drexel Burnham*, 123 B.R. at 712, and the Court must "balance the competing interests of the parties, weighing the relevance of and necessity of the information sought by examination." *Drexel Burnham*, 123 B.R. at 712; *accord In re Coffee Cupboard, Inc.*, 128 B.R. 509, 514 (Bankr. E.D.N.Y. 1991); *see In re SunEdison, Inc.*, 562 B.R. 243, (Bankr. S.D.N.Y. 2017) ("The spirit of proportionality is consistent with the historic concerns regarding the burden on the producing party and is relevant to the determination of cause.")

B. The Thiel-Related Discovery

The Plan Administrator seeks to conduct pre-litigation discovery in order to determine whether potential causes of action exist and, if they do, whether to prosecute them. Under the *Plan*, the proceeds of litigation against Thiel will be paid to the creditors and the *Rule 2004 Motion* "fits squarely within the purpose of Rule 2004, as [the Litigation Trustee] seeks to examine third parties for the purpose of 'discovering assets, examining transactions, and determining whether wrongdoing has occurred" on behalf of the Debtors' estate.'" *In re Millennium Lab Holdings II, LLC*, 562 B.R. 614, 627 (Bankr. D. Del. 2016) (citation omitted). Thiel argues that the Debtors have paid 100% to creditors, and *Rule 2004 Motion* is unrelated to any creditor recoveries, (*Thiel Objection* at ¶ 19), but this ignores Bollea's $84 million allowed claim payable from the "Gawker Media Contingent Proceeds Creditor Account" which will be funded by any

recoveries in a lawsuit against Thiel. Hence, the Debtors have established cause for the Thiel-related discovery.

The objections to the Thiel-related discovery lack merit except to the extent they invoke the limitations on discovery contained in the settlement agreements with Bollea, Ayyadurai and Terrill. Initially, the challenges based on the lack of a viable *prima facie* tort claim are premature. A Rule 2004 request does not require a court to determine whether a pleading that has not been filed and may never be filed states a claim that will survive a motion to dismiss. *See Millennium Lab Holdings*, 562 B.R. at 624-25 (A court is not required to "speculate over possible causes of action that may be pursued after the [Rule 2004] investigation is complete.") Moreover, the *Bollea Objection* argument that the Plan Administrator's current lack of a reasonable basis to bring the Potential Causes of Action demonstrates a lack of cause for a Rule 2004 examination, (*Bollea Objection* at ¶ 46), makes no sense. The purpose of Rule 2004 is to allow the debtor to acquire information it lacks. The lack of information is the reason for granting Rule 2004 discovery, not for denying it.[6]

Harder's argument that the *Rule 2004 Motion* should be denied because Mr. Harder is an attorney, (*Harder Objection* at ¶ 22), is based on an overly broad reading of *In re Subpoena Issued to Dennis Friedman*, 350 F.3d 65 (2d Cir. 2003). In *Friedman,* a liquidation trustee sued former members of a bankrupt corporation's board of directors alleging, among other things, that the directors had breached their fiduciary duties in

[6] Bollea is not a target of the Rule 2004 discovery and is the primary beneficiary of any recovery from Thiel. While he has the right to assert the limitations on discovery under the Bollea settlement, the reason for his challenge to the merits of possible claims is a mystery.

approving a certain merger transaction. *Id.* at 66. Some of the defendants argued that they had satisfied their fiduciary duties based their attorney's advice. *Id.* The liquidation trustee sought to depose the attorney (Friedman), but the District Court quashed the deposition subpoena relying on the rule set forth in *Shelton v. American Motors Corp.,* 805 F.2d 1323 (8th Cir.1986), that plaintiff-appellant must exhaust all practical alternative means of obtaining the information sought from Friedman before it would consider allowing the proposed deposition, and ordered plaintiff-appellant to proceed first by written interrogatories. *Friedman*, 350 F.2d at 67-68.

The Second Circuit dismissed the appeal as moot, *id.* at 72, but nonetheless issued a written opinion. Rejecting the "rigid *Shelton* rule, the Court stated that Rule 26 of the Federal Rule of Civil Procedure required a "flexible approach to lawyer depositions," and accordingly, where a proposed deponent is a lawyer, the judicial officer overseeing discovery should "take[] into consideration all of the relevant facts and circumstances" to determine the propriety of the deposition. *Id.* at 71-72. "Such considerations may include the need to depose the lawyer, the lawyer's role in connection with the matter on which discovery is sought and in relation to the pending litigation, the risk of encountering privilege and work-product issues, and the extent of discovery already conducted." *Id.* at 72. Importantly, "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." *Id.*

The concerns that informed the *Friedman* decision are not present here. The Plan Administrator hypothesizes that Thiel and Harder entered into a conspiracy to destroy Gawker's business. Harder did not represent Thiel; he represented Bollea,

Ayyadurai and Terrill. Hence, he is a fact witness whose communications with Thiel do not implicate the concerns that attend the attorney-client privilege. Furthermore, a Rule 2004 examination should not be denied merely because it may touch on privileged matters. *See In re M4 Enters., Inc.*, 190 B.R. 471, 476 (Bankr. N.D. Ga. 1995) (acknowledging that certain matters within the scope of proposed examination of Trustee were "undoubtedly" privileged and directing Trustee to submit to examination and assert "any meritorious privileges" with respect to "each individual question."). Should the responses to the Plan Administrators' discovery requests implicate a privilege or seek discovery precluded by the settlement agreements, the Court can address those issues as it would in any other litigation. Finally, there is no pending proceeding in which the Debtors can take discovery, and they are not required to forego Rule 2004 discovery simply because they may file an action in the future.

C. The Sonnenblick-Related Discovery

With respect to the proposed investigation of Sonnenblick, the Debtors' papers only state that an "unidentified Silicon Valley billionaire" – presumably Thiel in the Debtors' and Plan Administrator's minds – hired Sonnenblick "in an attempt to purchase Gawker Media in January 2016." (*Rule 2004 Motion* at ¶ 25 n. 5.) The *Reply* repeats the discovery request but does not otherwise refer to Sonnenblick. Sonnenblick was not a bidder at the auction for the Debtors' assets, and the Debtors sold their assets after adequate marketing, (*Sale Order* at ¶ H), at a fair and reasonable price, (*id.*), that was not controlled by an agreement among bidders, (*id.* at ¶ K), to a good faith purchaser who did not engage in any collusive conduct. (*Id.*)

This record is insufficient to establish cause. Thiel's connection is speculative, and the Plan Administrator has failed to show that it needs this information or will suffer hardship or injustice if he does not get it. Accordingly, this branch of the *Rule 2004 Motion* is denied without prejudice.

D. Conclusion

Although the Plan Administrator has shown good cause for the Thiel-related discovery, and is entitled to examine Thiel and Harder with respect to Thiel's relationship with Harder and potential causes of action, the settlements impose substantial limitations on his ability to do so. It appears that the Plan Administrator cannot obtain any discovery from Thiel, Harder or anyone else regarding Bollea, Ayyadurai or Terrill except for discovery from Ayyadurai and Terrill limited to "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 relating to the Lawsuit or claims in the Lawsuit." The Plan Administrator is no longer seeking discovery from Ayyadurai or Terrill through the *Rule 2004 Motion*, and there does not appear to be much left that is discoverable.

Rather than parse the initial list of requests in light of these limitations, the Court directs the parties to meet and confer with a view to submitting an order setting forth

the Plan Administrator's requests and the specific limitations on those requests. If the parties cannot agree, they may settle proposed orders and counter orders on notice.

Dated: New York, New York
June 28, 2017

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

EXHIBIT 3

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

ORDER PURSUANT TO RULE 2004 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AUTHORIZING THE PLAN ADMINISTRATOR TO CONDUCT DISCOVERY CONCERNING POTENTIAL CAUSES OF ACTION AND TO ESTABLISH DISCOVERY RESPONSE AND DISPUTE PROCEDURES

Upon consideration 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 "Motion");[2] and objections to the Motion filed by (i) Peter Thiel and Thiel Capital, LLC, (ii) Terry Bollea, and (iii) Charles Harder and Harder, Mirell & Abrams LLP (collectively, the "Objections"); and the Settlement Agreement between Debtors and Terry Bollea attached as Exhibit C to the Notice of Filing of Revised Plan Supplement Pursuant to the Debtors' Amended Joint Chapter 11 Plan of Liquidation for Gawker Media Group, Inc., Gawker Media LLC, and Gawker Hungary Kft. [Docket No. 590] (the "Bollea Settlement Agreement"), the Settlement Agreement between Debtors and Shiva Ayyadurai attached as Exhibit D to the Notice of Filing of Plan Supplement Pursuant to the Debtors' Amended Joint Chapter 11 Plan of

[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 defined herein shall have the meanings ascribed to them in the Motion.

Liquidation for Gawker Media Group, Inc., Gawker Media LLC, and Gawker Hungary Kft. [Docket No. 516] (the "Ayyadurai Settlement Agreement"), and the Settlement Agreement between Debtors and Ashley Terrill attached as Exhibit E to the Notice of Filing of Plan Supplement Pursuant to the Debtors' Amended Joint Chapter 11 Plan of Liquidation for Gawker Media Group, Inc., Gawker Media LLC, and Gawker Hungary Kft. [Docket No. 516] (the "Terrill Settlement Agreement" and together with the Bollea Settlement Agreement and the Ayyadurai Settlement Agreement, the "Settlement Agreements"); and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this proceeding being a core proceeding pursuant to 28 U.S.C. § 157(b); and due and adequate notice of the Motion having been given, and no other or further notice need be given; and after due deliberation and hearing thereon, and sufficient cause appearing therefore, as further indicated and for the reasons stated in the Court's *Corrected Memorandum Decision Granting in Part and Denying in Part Plan Administrator's Motion for Leave to Conduct a Rule 2004 Examination* [Docket No. 936] (the "Opinion"), it is hereby **ORDERED** that:

1. The Plan Administrator is hereby authorized pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure to conduct an examination of Peter Thiel, Thiel Capital LLC, Charles J. Harder, Esq., and Harder, Mirell & Abrams LLP concerning a potential causes of action for *prima facie* tort under New York law against Mr. Thiel and/or other parties except that the Plan Administrator may not obtain any discovery from anyone regarding Terry Bollea ("Bollea"), Shiva Ayyadurai ("Ayyadurai"), and Ashley Terrill ("Terrill", and together with Bollea and Ayyadurai the "Settlement Parties") (the "Rule 2004 Examination Topics"). Notwithstanding the foregoing, nothing herein shall constitute a determination in respect of or related to the merits of any such claim or cause of action, including without limitation a

determination that the Court has constitutional or subject matter jurisdiction to adjudicate the same or the governing body of law that may apply to the same.

2. Nothing in this order shall authorize the Plan Administrator to conduct discovery that is prohibited by the Settlement Agreements. The Plan Administrator shall not seek any discovery from Ayyadurai or Terrill without obtaining a further order of the Court.

3. The Plan Administrator is hereby authorized, pursuant to Rule 9016 of the Federal Rules of Bankruptcy Procedure, to (a) issue subpoenas for the production of documents to Peter Thiel and Thiel Capital LLC for the production of documents in connection with the Rule 2004 Examination Topics and (b) issue subpoenas for the production of documents to Charles J. Harder, Esq. and Harder, Mirell & Abrams LLP for production of documents in connection with the Rule 2004 Examination Topics. The foregoing authorization to issue subpoenas is without prejudice to the rights of the subpoena recipients to object to the requests set forth therein on any applicable grounds and of Bollea, Ayyadurai, and Terrill to object to the requests set forth therein on the grounds that the requests are prohibited by the Settlement Agreements, such rights being expressly preserved.

4. The portion of the Motion requesting discovery related to Scott Sonnenblick's efforts to acquire or facilitate the acquisition of Debtor Gawker Media Group, Inc. is denied without prejudice.

5. The Plan Administrator's rights to take depositions in connection with the Rule 2004 Examination Topics upon further motion and further order of the Court and the rights of all parties in interest in connection with any such request are reserved.

6. The Plan Administrator and the parties receiving Rule 2004 Subpoenas shall negotiate in good faith to reach agreement on the form of a mutually acceptable confidentiality

protective order. In the event that agreement cannot be reached, the parties may submit their respective proposed forms of confidentiality protective order to the Court. Pending Court approval of such an order, subpoena recipients may produce documents to the Plan Administrator's counsel on a confidential attorneys-eyes-only basis, and such documents shall not be further disclosed.

7. All parties that receive a Rule 2004 Subpoena for the production of documents shall (i) serve on the Plan Administrator within 14 days of service of the Rule 2004 Subpoena any written objections to the requests for production of documents, (ii) complete production of all documents not subject to applicable privileges or objections within 60 days of service of the Rule 2004 Subpoena, and (iii) either serve on the Plan Administrator a privilege log in accordance with Rule 45(e)(2)(A) of the Federal Rules of Civil Procedure and Rule 7034-1 of the Local Bankruptcy Rules of the Southern District of New York or meet and confer with the Plan Administrator on the practicality of providing a privilege log within 75 days of service of the Rule 2004 Subpoena.

8. All parties that receive a Rule 2004 Subpoena shall, prior to conducting an electronic search utilizing search terms, meet and confer with the Plan Administrator to attempt to agree on appropriate search terms.

9. The Plan Administrator shall provide contemporaneous notice of the Rule 2004 Subpoenas to the Settlement Parties and/or counsel, as applicable. The Settlement Parties shall be permitted to object to discovery on the grounds that it violates the Settlement Agreements.

10. Each party that serves objections to a Rule 2004 Subpoena for the production of documents shall, within seven (7) business days of service of such objections, meet and confer with the Plan Administrator to attempt to resolve the objections to production of documents.

11. Parties seeking the Court's assistance in resolving a dispute concerning a Rule 2004 Subpoena shall proceed in accordance with Local Bankruptcy Rule 7007-1 and the Court's chambers procedures. All parties to such a dispute, including all parties whose rights may be affected by the discovery dispute, shall be permitted to participate in any communications with the Court and the Court's chambers regarding such disputes, including scheduling requests.

12. Relief from any of the requirements of this Order may be sought for cause.

13. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: November __, 2017
New York, NY

THE HONORABLE STUART M. BERNSTEIN
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 4

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

ORDER PURSUANT TO RULE 2004 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AUTHORIZING THE PLAN ADMINISTRATOR TO CONDUCT DISCOVERY CONCERNING POTENTIAL CAUSES OF ACTION AND TO ESTABLISH DISCOVERY RESPONSE AND DISPUTE PROCEDURES

Upon consideration 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 "Motion");[2] and objections to the Motion filed by (i) Peter Thiel and Thiel Capital, LLC, (ii) Terry Bollea, and (iii) Charles Harder and Harder, Mirell & Abrams LLP (collectively, the "Objections"); and the Settlement Agreement between Debtors and Terry Bollea attached as Exhibit C to the Notice of Filing of Revised Plan Supplement Pursuant to the Debtors' Amended Joint Chapter 11 Plan of Liquidation for Gawker Media Group, Inc., Gawker Media LLC, and Gawker Hungary Kft. [Docket No. 590] (the "Bollea Settlement Agreement"), the Settlement Agreement between Debtors and Shiva Ayyadurai attached as Exhibit D to the Notice of Filing of Plan Supplement Pursuant to the Debtors' Amended Joint Chapter 11 Plan of

[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 defined herein shall have the meanings ascribed to them in the Motion.

Liquidation for Gawker Media Group, Inc., Gawker Media LLC, and Gawker Hungary Kft. [Docket No. 516] (the "Ayyadurai Settlement Agreement"), and the Settlement Agreement between Debtors and Ashley Terrill attached as Exhibit E to the Notice of Filing of Plan Supplement Pursuant to the Debtors' Amended Joint Chapter 11 Plan of Liquidation for Gawker Media Group, Inc., Gawker Media LLC, and Gawker Hungary Kft. [Docket No. 516] (the "Terrill Settlement Agreement" and together with the Bollea Settlement Agreement and the Ayyadurai Settlement Agreement, the "Settlement Agreements"); and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this proceeding being a core proceeding pursuant to 28 U.S.C. § 157(b); and due and adequate notice of the Motion having been given, and no other or further notice need be given; and after due deliberation and hearing thereon, and sufficient cause appearing therefore, as further indicated and for the reasons stated in the Court's *Corrected Memorandum Decision Granting in Part and Denying in Part Plan Administrator's Motion for Leave to Conduct a Rule 2004 Examination* [Docket No. ~~934~~936] (the "Opinion"), it is hereby **ORDERED** that:

~~1. The Motion is GRANTED IN PART AND DENIED IN PART.~~

1. The Plan Administrator is hereby authorized pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure to conduct an examination of Peter Thiel, Thiel Capital LLC, Charles J. Harder, Esq., and Harder, ~~Mirrell~~Mirell & Abrams LLP concerning a potential causes of action~~, including, without limitation,~~ for *prima facie* tort under New York law~~,~~ against Mr. Thiel and/or other parties except that the Plan Administrator may not obtain any discovery from anyone regarding Terry Bollea ("Bollea"), Shiva Ayyadurai ("Ayyadurai"), and Ashley Terrill ("Terrill", and together with Bollea and Ayyadurai the "Settlement Parties") (the "Rule 2004 Examination Topics"). Notwithstanding the foregoing, nothing herein shall constitute a

determination in respect of or related to the merits of any such claim or cause of action, including without limitation a determination that the Court has constitutional or subject matter jurisdiction to adjudicate the same or the governing body of law that may apply to the same.

2. Nothing in this order shall authorize the Plan Administrator to conduct discovery that is prohibited by the Settlement Agreements. The Plan Administrator shall not seek any discovery from ~~Shiva~~ Ayyadurai ~~("Ayyadurai")~~ or ~~Ashley~~ Terrill ~~("Terrill") pursuant to~~without obtaining a further order of the ~~Motion~~Court.

3. The Plan Administrator is hereby authorized, pursuant to Rule 9016 of the Federal Rules of Bankruptcy Procedure, to (a) issue subpoenas for the production of documents to Peter Thiel~~,~~ and Thiel Capital LLC ~~and any of their respective affiliates including requests~~ for the production of documents in connection with the Rule 2004 Examination Topics and (b) issue subpoenas for the production of documents to Charles J. Harder, Esq~~., ~~. and Harder, ~~Mirrell~~Mirell & Abrams LLP ~~and any of their respective affiliates including requests~~ for production of documents in connection with the Rule 2004 Examination Topics. The foregoing authorization to issue subpoenas is without prejudice to the rights of the subpoena recipients to object to the requests set forth therein on any applicable grounds and of Bollea, Ayyadurai, and Terrill ~~and Terry Bollea ("Bollea", and together with Ayyadurai and Terrill, the "Settlement Parties")~~ to object to the requests set forth therein on the grounds that the requests are prohibited by the Settlement Agreements, such rights being expressly preserved.

~~4. Nothing in this Order shall permit the Plan Administrator to issue subpoenas to the Settlement Parties for the production of documents on the Rule 2004 Examination Topics, nor permit the Plan Administrator to (a) take discovery about Bollea, including, without limitation, discovery concerning the Rule 2004 Examination Topics, 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 (the "Bollea Carve-Out"),[3] (b) take discovery regarding Ayyadurai, including, without limitation, discovery concerning the Rule 2004 Examination Topics, litigation funding or finance, the Ayyadurai Action, the Gawker BK Action, the Denton BK Action, and any and all related proceedings (the "Ayyadurai Carve-Out"),[4] or (c) take discovery regarding Terrill, including, without limitation, discovery concerning the Rule 2004 Examination Topics, litigation funding or finance, the Terrill Action, the Gawker BK Action, the Denton BK Action, and any and all related proceedings (the "Terrill Carve-Out" and together with the Bollea Carve-Out and the Ayyadurai Carve-Out, the "Carve-Outs").[5] Notwithstanding the foregoing, nothing in this Order, including, without limitation, the Carve-Outs, precludes the Plan Administrator from (a) seeking from Terrill and Ayyadurai, pursuant to the Settlement Agreements or by further motion, any litigation financing agreement(s) relating to the applicable Lawsuit or claims in such Lawsuit, and any non-privileged retainer agreements with Charles J. Harder, Esq. or the law firm of Harder Mirell & Abrams LLP relating to the applicable Lawsuit or claims in such Lawsuit or (b) disputing the scope, meaning or interpretation of the Bollea Carve-Out.~~

~~5.~~4. The portion of the Motion requesting discovery related to Scott Sonnenblick's efforts to acquire or facilitate the acquisition of Debtor Gawker Media Group, Inc. is denied without prejudice.

~~[3] Capitalized terms used in this paragraph 5(a) but not defined herein shall have the meanings ascribed to them in the Bollea Settlement Agreement.~~

~~[4] Capitalized terms used in this paragraph 5(b) but not defined herein shall have the meanings ascribed to them in the Ayyadurai Settlement Agreement.~~

~~[5] Capitalized terms used in this paragraph 5(c) but not defined herein shall have the meanings ascribed to them in the Terrill Settlement Agreement.~~

~~6.~~5. The Plan Administrator's rights to take depositions in connection with the Rule 2004 Examination Topics upon further motion and further order of the Court and the rights of all parties in interest in connection with any such request are reserved.

~~7.~~6. The Plan Administrator and the parties receiving Rule 2004 Subpoenas shall negotiate in good faith to reach agreement on the form of a mutually acceptable confidentiality protective order. In the event that agreement cannot be reached, the parties may submit their respective proposed forms of confidentiality protective order to the Court. Pending Court approval of such an order, subpoena recipients may produce documents to the Plan Administrator's counsel on a confidential attorneys-eyes-only basis, and such documents shall not be further disclosed.

~~8.~~7. All parties that receive a Rule 2004 Subpoena for the production of documents shall (i) serve on the Plan Administrator within 14 days of service of the Rule 2004 Subpoena any written objections to the requests for production of documents, (ii) complete production of all documents not subject to applicable privileges or objections within 60 days of service of the Rule 2004 Subpoena, and (iii) either serve on the Plan Administrator a privilege log in accordance with Rule 45(e)(2)(A) of the Federal Rules of Civil Procedure and Rule 7034-1 of the Local Bankruptcy Rules of the Southern District of New York or meet and confer with the Plan Administrator on the practicality of providing a privilege log within 75 days of service of the Rule 2004 Subpoena. ~~Relief from the foregoing deadlines may be sought for cause.~~

~~9.~~8. All parties that receive a Rule 2004 Subpoena shall, prior to conducting an electronic search utilizing search terms, meet and confer with the Plan Administrator to attempt to agree on appropriate search terms.

~~10.~~9. The Plan Administrator shall provide contemporaneous notice of the Rule 2004 Subpoenas to ~~counsel to~~ the Settlement Parties~~.~~ and/or counsel, as applicable. The Settlement Parties shall be permitted to object to discovery on the grounds that it violates the Settlement Agreements.

~~11.~~10. Each party that serves objections to a Rule 2004 Subpoena for the production of documents shall, within seven (7) business days of service of such objections, meet and confer with the Plan Administrator to attempt to resolve the objections to production of documents.

~~12.~~11. Parties seeking the Court's assistance in resolving a dispute concerning a Rule 2004 Subpoena shall proceed in accordance with Local Bankruptcy Rule 7007-1 and the Court's chambers procedures. All parties to such a dispute, including all parties whose rights may be affected by the discovery dispute, shall be permitted to participate in any communications with the Court and the Court's chambers regarding such disputes, including scheduling requests.

12. Relief from any of the requirements of this Order may be sought for cause.

13. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: November __, 2017
New York, NY

THE HONORABLE STUART M. BERNSTEIN
UNITED STATES BANKRUPTCY JUDGE