August 29, 2012

The Honorable Sandra L. Margulies
California Court of Appeals, First Appellate District, Division 1
350 McAllister St.
San Francisco, CA 94102-7421

Re: Redmond v. Gawker Media, LLC, Court of Appeal No. A132785, San Francisco City & County Superior Ct. No. CGC-11-508414

Dear Justice Margulies,

Pursuant to California Rules of Court Rule 8.1120, we request publication of the August 10, 2012 opinion in *Redmond v. Gawker Media, LLC*, First District Court of Appeal No. A132785 (the "Opinion"). We attach a copy of the Opinion in Exhibit A.

Our Interests in the Opinion

Exhibit B lists the supporters of this letter, which include bloggers, user-generated content websites and public interest groups and lawyers. We want this opinion published because we believe the Opinion greatly advances the interests of free speech. The risk of defamation liability often inhibits our willingness to publish content online, and anti-SLAPP protection assuages our concerns—when we can rely on its availability. The Opinion provides important guidance about how to make and defend our publication choices, so publishing it (thus making it citable by other courts) will help advance our blogging and other online news dissemination activities.

Neither litigant asked us to submit this request, we have not received any compensation from a litigant in connection with this request, and none of the authors or supporters have any direct interest in this lawsuit.

Reasons to Publish the Opinion

The Opinion has two especially noteworthy aspects: (1) its application of anti-SLAPP law to blogging, and (2) in the context of defamation law, its consideration of the efforts bloggers take to provide hyperlinked citations to their sources.

Blogging and Anti-SLAPP Law. Millions of Californians blog.[1] Many millions more publish content online using blog-like social networking sites, including California-based social networking sites like Facebook, Google+, LinkedIn, Twitter and others. In addition, California is the home of leading blogging service providers such as Automattic (which runs WordPress)

[1] Estimating the precise number of bloggers is tricky. One study estimated that there were over 180 million blogs worldwide at the end of 2011. *Buzz in the Blogosphere: Millions More Bloggers and Blog Readers*, NielsenWire, Mar. 8, 2012, http://blog.nielsen.com/nielsenwire/online_mobile/buzz-in-the-blogosphere-millions-more-bloggers-and-blog-readers/. A separate 2010 study estimated that nearly 30% of bloggers worldwide were American, of which 14% were in California. *Inside Blog Demographics*, Symosos, June 2010, http://www.sysomos.com/reports/bloggers/. Combining the two statistics indicates approximately 7.5M blogs are operated by Californians. Many bloggers operate more than one blog.

and Google (which runs Blogger and Blogspot). These constituents would benefit from legal clarity about the application of the anti-SLAPP law to their publication decisions.

Collectively, there is substantial and widespread interest in the application of anti-SLAPP law to bloggers. However, we believe the only published California state court opinion that addressed bloggers' eligibility for anti-SLAPP protection is *Summit Bank v. Rogers*, 206 Cal. App. 4th 669 (Cal. App. Ct. 2012).[2] We think the *Summit Bank* opinion provides limited guidance to most bloggers. That case involves a pseudonymous user's Craigslist posts in the "Rants and Raves" category, and the court felt that both the Craigslist category name and the pseudonym increased the likelihood that readers would view the posts as opinions. In contrast, the Opinion involves more typical blogging circumstances, where the author self-identified and the blog post was made in a publication whose title doesn't signal to readers that the posts were likely opinions. Due to *Summit Bank*'s narrow facts, and the lack of other analogous published opinions, the Opinion applies existing anti-SLAPP law to facts significantly different from those in other published opinions. *See* California Rules of Court ("CRC") 8.1105(c)(2).

In addition, the Opinion involves a legal issue of continuing public interest because, by definition, anti-SLAPP cases involve issues of public interest (Cal. Code Civ. Proc. §425.16(e)), and because this ruling potentially affects many California-based companies and millions of Californians who blog or otherwise publish content online. *See* CRC 8.1105(c)(6).

Hyperlinks As Citations. The Opinion also creates important new precedent on the application of defamation/anti-SLAPP law to online publications. The Opinion is the first to suggest that defamation law should consider a blogger's hyperlinked citations. As the Opinion noted, other defamation opinions have indicated that a defendant can rebut defamation liability for its characterization of the facts by exposing source materials to the reader. *See, e.g., Carr v. Warden*, 159 Cal. App. 3d 1166 (Cal. App. Ct. 1984) *and Partington v. Bugliosi*, 56 F.3d 1147, 1156-1157 (9th Cir. 1995), both cited in the Opinion. However, we are not aware of another opinion indicating that hyperlinking to source material can serve this function. Thus, the Opinion applies existing defamation and anti-SLAPP law to facts significantly different from those in other published opinions. *See* CRC 8.1105(c)(2).

We appreciate your consideration of this important matter.

Regards,

Eric Goldman Sruli Yellin

On behalf of themselves and the supporters listed in Exhibit B.

[2] *Summit Bank* is the only relevant case we found using the keyword search string "(blog blogger weblog) & anti-slapp" in Westlaw's CA-CS database. Search conducted August 26, 2012. Two other published opinions identified in this keyword search, *World Financial Group, Inc. v. HBW Ins. & Financial Services, Inc.*, 172 Cal. App. 4th 1561 (Cal. App. Ct. 2009) *and Krinsky v. Doe 6*, 159 Cal. App. 4th 1154 (Cal. App. Ct. 2008), are not on point.

Proof of Service of Process

SERVICE LIST

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San Francisco City & County Superior Ct. No. CGC-11-508414

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Exhibit A
Opinion Copy

Exhibit B
Supporters of the Publication Request[*]

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Michael Barclay
Intellectual property lawyer
Blogger at IPDuck

California Anti-SLAPP Project (CASP)

Digital Media Law Project

Charles J. Glasser, Jr.
Global Media Counsel
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Prof. Eric Goldman (author)
Santa Clara University School of Law
Blogger at the Technology & Marketing Law Blog and other blogs

Paul Alan Levy
Founder, Public Citizen's Internet Free Speech project

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[*] With respect to individual supporters, affiliations are provided for identification only.