

**COLE SCHOTZ P.C.**

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### *Proposed Counsel for Debtor and Debtor-in-Possession*

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

	-X	
	:	
In re:	:	Chapter 11
	:	
NICHOLAS G. A. DENTON,	:	Case No. 16-12239 (SMB)
	:	
Debtor. <sup>1</sup>	:	
	:	
	-X	

**DEBTOR'S MOTION FOR ORDER PURSUANT TO SECTIONS 105(a) AND 363 OF  
THE BANKRUPTCY CODE APPROVING HIS ENTRY INTO NON-COMPETITION  
AND NON-SOLICIATION AGREEMENT WITH UNIMODA LLC**

Nicholas Denton, the debtor and debtor-in-possession in the above-captioned chapter 11 case (the “**Debtor**”), by and through his undersigned proposed counsel, hereby files this motion (the “**Motion**”) for entry of an order pursuant to sections 105(a) and 363(b) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”) authorizing and approving the Debtor’s entry into a certain Non-Competition and Non-Solicitation Agreement (the “**Non-Compete Agreement**”) with UniModa LLC (“**UniModa**”), a copy of which is attached as **Exhibit A**.<sup>2</sup> In support of the Motion, the Debtor respectfully represents as follows:

<sup>1</sup> The last four digits of the Debtor's social security number are 1234.

<sup>2</sup> For the reasons set forth in the *Debtor's Ex Parte Motion for Order Authorizing the Debtor to Redact and File Under Seal Certain Confidential Portions of Non-Competition and Non-Solicitation Agreement with UniModa LLC* (the “**Sealing Motion**”) that is being filed contemporaneously herewith, portions of the Non-Compete

## **JURISDICTION AND VENUE**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are sections 105(a) and 363(b) of the Bankruptcy Code and Bankruptcy Rules 2002 and 6004.

## **BACKGROUND**

### **A. The Bankruptcy Proceedings**

3. On August 1, 2016 (the “**Petition Date**”), the Debtor filed a petition for relief under chapter 11 of the Bankruptcy Code (the “**Chapter 11 Case**”). A summary of the Debtor’s assets and liabilities, and the circumstances leading to the filing of the Chapter 11 Case, is set forth in the Declaration of Nicholas G.A. Denton Pursuant to Local Bankruptcy Rule 1007-2 [Docket No. 11] (the “**First Day Declaration**”).

4. The Debtor continues to manage his assets and affairs as a debtor- in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

5. To date, no creditors’ committee has been appointed in the Chapter 11 Case by the Office of the United States Trustee for the Southern District of New York (the “**U.S. Trustee**”). No trustee or examiner has been appointed in the Chapter 11 Case.

6. The Debtor is the founder and CEO of Gawker Media Group, Inc. (“**GMGI**”) and Gawker Media, LLC (“**Gawker Media**”), an online media company. GMGI is the parent company of Gawker Media and Kinja, Kft, a Hungarian corporation (“**Kinja**” and

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(continued) Agreement relating to the Carve-Out (defined below) include confidential, commercial information and have been redacted.

together with Gawker Media and GMGI, the “**Company**”). The Debtor owns approximately 30% of the equity of GMGI.

7. As disclosed in the First Day Declaration, the Debtor was forced to commence the Chapter 11 Case, and the Company also was forced to commence chapter 11 cases pending before this Court, as a result of a judgment in excess of \$100 million (the “**Bollea Judgment**”) that was issued against the Debtor, Gawker Media, and A.J. Daulerio (the “**Bollea Litigation Defendants**”) in the action entitled, *Bollea v. Gawker Meida, LLC, et al.*, No. 12012447-CI-011 (Fla. 6<sup>th</sup> Jud. Cir. Pinellas Cty.) (the “**Bollea Litigation**”). The Bollea Litigation Defendants intend to prosecute an appeal of the Bollea Judgment (the “**Appeal**”).

**B. The Company’s Bankruptcy Proceedings and the Sale of Substantially All Its Assets to UniModa**

8. On June 10, 2016, Gawker Media commenced a chapter 11 case, and on June 12, 2016, GMGI and Kinja each commenced a chapter 11 case in this Court (the “**Gawker Cases**”). The Gawker Cases are being jointly administered.

9. Prior to commencing the Gawker Cases, the Company entered into a stalking horse purchase agreement for the sale of all or substantially all its assets for approximately \$90 million, subject to higher and better offers. On June 13, 2016, the Company filed a motion seeking, among other things, authorization and approval of bidding procedures and the sale of substantially all the Company’s assets (the “**Sale**”) to the stalking horse bidder or the bidder who submits the highest or otherwise best offer for the Company’s assets at an auction [Gawker Docket No. 21]<sup>3</sup> (the “**Gawker Sale Motion**”). On July 8, 2016, this Court entered an Order [Gawker Docket No. 82], among other things, approving bidding procedures and scheduling an auction (the “**Auction**”) for the sale of the Company’s assets.

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<sup>3</sup> References to the “Gawker Docket” refer to the docket in the lead Gawker case, Case No. 16-11700.

10. The Company conducted the Auction on August 16, 2016. At the conclusion of the Auction, the Company designated the bid of UniModa, a wholly owned subsidiary of Univision Communications Inc., for approximately \$135 million as the highest and best bid. (*See Notice of Successful Bidder for Sale of Substantially All the Debtor's Assets*, Gawker Docket No. 182). In connection with UniModa's successful bid, the Company and UniModa agreed on the terms of a certain Asset Purchase Agreement dated as of August 17, 2016 (the "**UniModa APA**"), a copy of which is attached as Exhibit A to the *Notice of Filing of Asset Purchase Agreement Between the Debtors and the Successful Bidder for Sale of Substantially All of the Debtors' Assets*, Gawker Docket No. 192. At a hearing held on August 18, 2016, this Court approved the Sale to UniModa pursuant to the UniModa APA.

11. The UniModa APA contemplates that the closing of the Sale (the "**Closing Date**") will occur as early as September 9, 2016. (*See Successful Bid APA*, § 2.8).

### **C. The Non-Compete Agreement**

12. In connection with the parties' negotiations of the terms of the UniModa APA, UniModa requested that the Debtor agree to certain restrictive covenants as a material inducement to UniModa to consummate the transactions contemplated by the Successful Bid APA. (*See Non-Compete Agreement*, second Whereas clause). The Company's delivery of a Non-Competition and Non-Solicitation Agreement (as defined in the UniModa APA) executed by the Debtor was made an express condition to UniModa's obligation to close on the Sale. (*See UniModa APA*, § 7.1(f)).

13. After good faith and arm's-length negotiations, the Debtor and UniModa entered into the Non-Compete Agreement attached as **Exhibit A**. Among other material terms, subject to certain exceptions set forth in Sections 2.1 and 2.2 of the Non-Compete Agreement

(the “**Restrictive Covenants**”), the Debtor has agreed not to, directly or indirectly, associate with any business enterprise that engages in the Business (as defined in the UniModa APA) in the United States, Puerto Rico or Hungary, without UniModa’s prior written consent. (*See Non-Compete Agreement*, § 2.1). Further, subject to certain exceptions, the Debtor has agreed, among other things, not to hire or solicit any employee or contractor of UniModa or encourage any such employee or contractor to terminate his or her employment or relationship with UniModa, the Company, or any of their respective subsidiaries, in each case without UniModa’s prior written consent. (*See Non-Compete Agreement*, § 2.2). The Debtor’s compliance with the Restrictive Covenants is to commence on the Closing Date and end on the date that is twenty-four (24) months thereafter (the “**Restricted Period**”). (*See Non-Compete Agreement*, § 1.1).<sup>4</sup>

14. Among other material terms, in consideration for the Debtor’s compliance with the Restrictive Covenants during the Restricted Period, UniModa has agreed to compensate the Debtor in the amount of \$16,666 per month for each month of the Restricted Period.

#### **RELIEF REQUESTED**

15. By the Motion, the Debtor seeks entry of an order pursuant to sections 105(a) and 363(b) of the Bankruptcy Code authorizing and approving the Debtor’s entry into the Non-Compete Agreement with UniModa LLC.

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<sup>4</sup> UniModa has agreed to carve out certain potential or contemplated future business ventures of the Debtor from the scope of the Restrictive Covenants (the “**Carve-Out**”). (*See Non-Compete Agreement*, § 2.1). As explained in the Sealing Motion that is being filed contemporaneously herewith, the nature and description of the Debtor’s potential or contemplated future business ventures is highly confidential, commercial information and, therefore, not disclosed herein.

### **BASIS FOR RELIEF**

#### **A. The Debtor's Entry Into the Non-Compete Agreement is Based on His Sound Business Judgment and Should be Approved**

16. Section 363(b)(1) of the Bankruptcy Code provides that “[t]he [debtor-in-possession], after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate . . . .” 11 U.S.C. § 363(b)(1). Although section 363 of the Bankruptcy Code does not specify a standard for determining when it is appropriate for a court to authorize the use, sale or lease of property of the estate outside the ordinary course of business, courts in the Second Circuit and others have required that it be based on the trustee’s sound business judgment. *See Official Comm. of Unsecured Creditors of LTV Aerospace and Defense Co. v. The LTV Corp. (In re Chateaugay Corp.)*, 973 F.2d 141, 143 (2d Cir. 1992); *Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983). “Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986).

17. While the Debtor’s entry into the Non-Compete Agreement with UniModa arguably is an “ordinary course” transaction and not a “use” of estate property within the express meaning of section 363(b), the Debtor seeks Court approval of the Non-Compete Agreement out of an abundance of caution and in the interest of transparency into his affairs.<sup>5</sup> Here, the Debtor’s entry into the Non-Compete Agreement is supported by his sound business judgment. The Debtor’s entry into the Non-Compete Agreement is a condition of the closing on the

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<sup>5</sup> As an alternative ground for entry of an order approving his entry into the Non-Compete Agreement, the Debtor relies on section 105(a) which permits this Court to issues orders “necessary or appropriate to carry out the provisions” of the Bankruptcy Code.

Company's transaction with UniModa, and the Debtor believes consummating the sale to UniModa, which preserves the Company's going concern value and monetizes his interest in the Company following a competitive bidding process, is in the best interests of his and the Company's estates.

18. Moreover, effective as of the Closing Date of the Sale, the Debtor's employment with the Company will be terminated. Entry into the Non-Compete Agreement will allow the Debtor to generate a steady income for the twenty-four (24) months following the Closing Date. In addition, given the negotiated Carve-Out, the Debtor will not be foreclosed from pursuing certain business ventures from which he may be able to generate additional income.

**B. The Debtor Has Provided Adequate and Proper Notice of the Motion Under the Circumstances**

19. The notice and hearing requirements contained in section 363(b)(1) of the Bankruptcy Code are satisfied if appropriate notice and an opportunity for a hearing are given in light of the particular circumstances. *See* 11 U.S.C. § 102(1)(A) (defining "after notice and a hearing" to mean such notice and an opportunity for hearing "as is appropriate in the particular circumstances"). Bankruptcy Rule 6004 provides that notice of a proposed use, sale, or lease of property not in the ordinary course of business must be given pursuant to Bankruptcy Rule 2002(a)(2), (c)(1), (i), and (k), which requires, in pertinent part, that twenty-one (21) days' notice of the proposed use, sale, or lease of property outside the ordinary course of business be provided by mail to the U.S. Trustee, "the debtor, the trustee, all creditors" and any committee appointed under section 1102 of the Bankruptcy Code. Fed. R. Bankr. P. 2002(a)(2) and 2002(k).

20. The Debtor respectfully submits that ample cause exists here to grant the relief requested. As stated above, it is anticipated that the the Closing Date on the Sale will

occur as early as September 9, 2016, and the Company's delivery of the Non-Compete Agreement executed by the Debtor is an express condition to UniModa's obligation to close. The Court's approval of the relief requested herein in advance of the anticipated Closing Date will facilitate the anticipated closing of the Sale.

**NO PRIOR REQUEST**

21. No previous request for the relief sought herein has been made to this or any other court.

**NOTICE**

22. Notice of the Motion will be given to: (i) the U.S. Trustee, (ii) the holders of the twenty (20) largest unsecured claims against the Debtor, (iii) the Debtor's secured creditor, (iv) any party that has filed a notice of appearance in this case; and (v) any such other party entitled to notice pursuant Bankruptcy Rule 2002 and Local Bankruptcy Rule 9013-1(b). The Debtor respectfully submits that, under the circumstances, no other or further notice is required.



**CONCLUSION**

WHEREFORE, for all the foregoing reasons, the Debtor respectfully requests that the Court enter an order, substantially in the form attached hereto, granting the relief requested in the Motion and such other relief as the Court deems just and proper under the circumstances.

Dated: New York, New York  
August 19, 2016

COLE SCHOTZ P.C.

/s/ Ilana Volkov  
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– and –

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*Proposed Counsel for Debtor and  
Debtor-in-Possession*

**EXHIBIT A**

**Non-Compete Agreement**

## **NON-COMPETITION and NON-SOLICITATION AGREEMENT**

This Non-Competition and Non-Solicitation Agreement (the “Agreement”) is made and entered into as of August 17, 2016, by and between UniModa LLC, a Delaware limited liability company (“Buyer”), and Nick Denton (“Stockholder”).

### **RECITALS**

WHEREAS, Stockholder is an equity holder of Gawker Media Group, Inc., a Cayman Island exempted company (“Holdco”);

WHEREAS, pursuant to, and subject to the terms and conditions of, the Asset Purchase Agreement (the “Purchase Agreement”, it being understood that capitalized terms used but not defined herein shall have the meanings assigned to them in such Purchase Agreement), dated as of the date hereof by and among Holdco, Gawker Media, LLC, a Delaware limited liability corporation (“GM LLC”), Kinja Kft., a Hungarian corporation (“Kinja” and together with Holdco and GM LLC, “Sellers”), and Buyer, Buyer will acquire the Acquired Assets; and

WHEREAS, in connection with finalizing the terms of the Purchase Agreement and subsequent to the time that the Sellers had committed substantial effort and expense towards achieving the transactions described in the Asset Purchase Agreement, Buyer requested that Stockholder agree to certain restrictive covenants, in each case, on the terms set out herein, which agreement by Stockholder constitutes a material inducement to Buyer to acquire the Acquired Assets and consummate the other transactions contemplated by the Purchase Agreement, and in consideration of the remuneration to be paid hereunder, Stockholder is entering into this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements hereinafter set forth, the parties hereto agree as follows:

### **AGREEMENT**

#### **1. Compensation; Status**

**1.1.** For a period beginning on the Closing Date and ending on the date that is twenty-four (24) months thereafter, unless otherwise mutually agreed in writing between the parties hereto (the applicable period being referred to herein as the “Restricted Period”). During the Restricted Period, Stockholder shall receive monthly fees in the amount of sixteen thousand six hundred and sixty six dollars (\$16,666) in consideration for the Stockholder’s continued compliance with Sections 2.1 and 2.2 below. Notwithstanding anything herein to the contrary, this Agreement shall terminate immediately upon termination of the Purchase Agreement in accordance with its terms and without any of the transactions thereunder being consummated.

**1.2.** Stockholder shall not be an employee of Buyer or any of its Affiliates or otherwise render services to Buyer, Buyer may not, at any time, act as a representative for or

on behalf of Buyer for any purpose or transaction, and may not bind or otherwise obligate Buyer in any manner whatsoever, and the payments of the above-referenced compensation shall not be subject to withholding. Stockholder agrees that during the Restricted Period, Stockholder shall not be eligible to participate in any of the employee benefit plans or arrangements of Buyer or any of its Affiliates.

## **2. Non-Competition and Non-Solicitation Covenants**

**2.1.** Stockholder covenants and agrees that from the date hereof and continuing through the end of the Restricted Period, Stockholder will not directly or indirectly (without the prior written consent of Buyer) associate (including as a director, officer, employee, partner, consultant, agent or advisor) with any business enterprise that engages in the Business in the United States, Puerto Rico or Hungary. Notwithstanding the foregoing, this Section 2.1 shall not apply to any business activities [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**2.2.** Stockholder covenants and agrees that from the date hereof and continuing through the end of the Restricted Period, Stockholder shall not, and shall not permit its Affiliates to, directly or indirectly, hire or solicit any employee or contractor of Buyer (a "Non-Solicitation Employee"), or encourage any Non-Solicitation Employee to terminate his or her employment or relationship with Buyer, any Seller or any of their respective Subsidiaries, in each case without the prior written consent of Buyer; provided, that none of the following shall be deemed a violation hereof: (i) general employment advertising or a general offer of employment to the public, in each case, carried on or made in good faith that is not targeted at any Non-Solicitation Employee and the hiring of any such employee as a result thereof, (ii) the use of a search firm or employment agency that is not targeted at any Non-Solicitation Employee and the hiring of any such employee as a result of such use or (iii) the employment of any Non-Solicitation Employee who, at such time, has not been for a period of at least six (6) months an employee of Buyer, the Company or any of their respective Subsidiaries and with respect to whom Stockholder is not otherwise in breach of this Section 2.2. Notwithstanding the foregoing, at any time, Stockholder and Buyer may mutually agree to allow Stockholder to solicit for employment or employ any Non-Solicitation Employee.

**2.3.** Stockholder acknowledges that a breach or threatened breach by Stockholder of any of the covenants set forth in Sections 2.1 and 2.2 cannot be reasonably or adequately

compensated in damages in an action at Law, and that Buyer will be entitled to, among other remedies and without posting any bond or other undertaking, such injunctive relief, which may include: (x) restraining Stockholder from engaging in any action that would constitute or cause a breach or violation of this Agreement, (y) obtaining specific performance to compel Stockholder to perform its obligations and covenants hereunder, and (z) obtaining damages available either at Law or in equity. Nothing herein contained shall be construed as prohibiting any party from pursuing any other remedy available to it for such breach or threatened breach. Stockholder shall not take any position inconsistent with the foregoing in any Proceeding.

**3. Entire Agreement.** This Agreement is the product of the parties hereto, and constitutes the complete agreement and understanding between such parties pertaining to the subject matter hereof and thereof. Any and all other written or oral agreements existing between the parties hereto regarding such transactions are expressly canceled. Any term of this Agreement may be amended or waived with the written consent of Stockholder and Buyer or their respective successors and assigns. Any amendment or waiver effected in accordance with this section shall be binding upon the parties and their respective successors and assigns.

**4. Successors and Assigns.** The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of Buyer or any of its Affiliates. Stockholder shall not assign this Agreement without the written consent of Buyer. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

**5. Governing Law.** This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of New York, without giving effect to principles of conflicts of law.

**6. Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

*[Signature Page Follows]*

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed and delivered by its duly authorized officer as of the date first above written.

**“BUYER”**

**UNIMODA, LLC**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**“STOCKHOLDER”**

\_\_\_\_\_

Name: Nick Denton

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

-----X  
In re:

NICHOLAS G. A. DENTON,

Debtor.<sup>1</sup>  
-----X

:  
: Chapter 11  
:

: Case No. 16-12239 (SMB)  
:  
:  
:

**ORDER PURSUANT TO SECTIONS 105(a) AND 363(b) OF THE BANKRUPTCY  
CODE AUTHORIZING THE DEBTOR TO ENTER INTO NON-COMPETITION  
AGREEMENT AND NON-SOLICITATION AGREEMENT WITH UNIMODA LLC**

Upon the motion (the “**Motion**”)<sup>2</sup> of the debtor and debtor-in-possession in the above-captioned chapter 11 case for entry of an order pursuant to sections 105(a) and 363(b) of the Bankruptcy Code authorizing and approving the Debtor’s entry into the Non-Compete Agreement with UniModa LLC; and the Court finding that: (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and (c) due and sufficient notice of the Motion has been given under the particular circumstances and that no other or further notice need be provided; and the Court having determined that the relief requested in the Motion represents a reasonable and sound exercise of the Debtor’s sound business judgment consistent with his fiduciary duties and in the best interests of the Debtor and his estate and creditors; and after due deliberation thereon and good and sufficient cause appearing therefor, it is hereby

**ORDERED, ADJUDGED AND DECREED that:**

1. The Motion is GRANTED as set forth herein.

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<sup>1</sup> The last four digits of the Debtor’s social security number are 1234.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

2. Pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, the Debtor is authorized to enter into the Non-Compete Agreement with UniModa LLC and the form of the Non-Compete Agreement is approved.

3. Notwithstanding any provision in the Bankruptcy Rules to the contrary, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

4. The Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and interpretation of this Order.

Dated: August \_\_\_, 2016  
New York, New York

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The Honorable Stuart M. Bernstein  
United States Bankruptcy Judge