



1801 AVENUE OF THE STARS, SUITE 1120  
LOS ANGELES, CA 90067  
424.203.1600 • WWW.HMAFIRM.COM

August 12, 2013

**VIA EMAIL AND U.S. MAIL**

Seth D. Berlin, Esq.  
LEVINE SULLIVAN KOCH & SCHULZ, LLP  
1899 L Street, NW, Suite 200  
Washington, DC 20036  
Email: sberlin@lskslaw.com

Gregg D. Thomas, Esq.  
THOMAS & LOCICERO PL  
601 S. Boulevard  
Tampa, FL 33606  
Email: gthomas@tlolawfirm.com

**Re: Bollea v. Clem, et al.**  
No. 12012447-CI-011

Dear Messrs. Berlin and Thomas,

A number of discovery responses, discovery requests, and deposition notices served by Gawker Media have caused us and our client to be extremely concerned that Gawker Media intends to try to divert this case from the central issues (whether Gawker Media's posting the sex tape and sex narrative were tortious under Florida law, whether its actions were nonetheless protected by the First Amendment, and what were the nature and amount of Bollea's damages) to a freewheeling examination of the private lives of Terry Bollea, his wife and ex-wife, and the Clems. If broad discovery is permitted in those areas, the privacy of the parties and third parties will needlessly be invaded, and also the discovery process will take far longer and become far more costly than it needs to be in this case.

Accordingly, our client believes that the parties should be limited to pursuing discovery on the central issues in this case, and intends to move for a protective order that will govern several aspects of discovery in this case. This letter is intended as an attempt to informally resolve this matter pursuant to the Florida Rules of Civil Procedure.

**Scope of Discovery / Discovery Into the Sex Lives of Bollea, the Clems, and Third Parties**

Gawker Media has served extensive discovery seeking information about Bollea's sex life. This case concerns a recording of one specific sexual encounter. The circumstances relating to that encounter are discoverable. However, that does not justify discovery into identity

of anyone that Bollea may have had sex with, or into the details of any such encounters. Such encounters, if they took place, have no relevance to the issues in this case. Further, extensive discovery into such subject areas would not only violate the privacy rights of the parties, but also any third parties who may have engaged in sexual activity with Bollea. We do not think that the issues in this case require that anyone's sex life be put on trial.

#### Deposition of Linda Bollea

It is our understanding that Linda Bollea, Bollea's ex-wife, has no relevant information regarding this case and that she was not aware of or a participant in the sexual encounter between Bollea and Heather Clem, did not have any involvement in the recording or dissemination of the recording, and did not consent or have any authority to consent to its distribution. Gawker Media states in an interrogatory response that she has information regarding Bollea's efforts to cultivate a public persona, the extent to which Bollea's actual conduct deviated from his public persona, and public statements Bollea made about his conduct, including without limitation with respect to his marriage, alleged marital infidelities, professional life, and interactions with his family, and further states that she has information regarding damages including emotional distress.

Bollea is not on trial here, and is certainly not on trial for hypocrisy—whether or not he “lived up” to whatever public pronouncements he might have made about family life or morality simply has nothing to do with this case. This is not a case involving, for instance, unauthorized use of a celebrity's name in an advertisement, where the public's positive impression of the celebrity increases the value of the celebrity's name and likeness in that context, and thus a defendant would naturally be entitled to discovery that the celebrity's image was less positive than he or she portrays it. In contrast, where a celebrity is depicted in a secretly recorded sex tape, it scarcely matters why the celebrity is famous or whether the public has a positive, negative, or polarized view of the celebrity—people want to view the sex tape simply because the person is famous. Thus, any “hypocrisy” or alleged failure to live up to his own professed morals simply has no relevance to the injury that results from publishing a clandestine recording of Bollea's private sexual activities. Whether Bollea had sex with women other than Heather Clem has nothing to do with either whether Gawker Media's posting the sex tape and sex narrative was tortious or whether it had a First Amendment right to do so.

Finally, Linda Bollea was no longer married to Bollea at the time that the sex tape was published by Gawker Media, and has no knowledge about any claim of emotional distress.

We do not believe there is any basis for taking Linda Bollea's deposition, and will ask the Court that it not go forward.

Time Limitations on Depositions of Jennifer Bollea and Terry Bollea

Gawker Media asserts that Jennifer Bollea, Bollea's current wife, has the same categories of purportedly relevant information about the case that Linda Bollea has. Unlike Linda Bollea, Jennifer was married to Bollea at the time the sex tape came out, so she at least is likely to have relevant information about his damages. However, the remainder of the "information" that Jennifer supposedly has is not relevant to the case and is seriously invasive of Bollea's privacy—such as whether there is a gap between Bollea's public and private images, or whether he has had other extramarital affairs, etc.

Jennifer Bollea is not a party to this case and should not be unnecessarily grilled about issues of little or no relevance to the proceedings. Accordingly, we believe that her deposition should be limited to two hours, which should be plenty of time for Defendants' respective counsel to ask her about the damages issues regarding which she has relevant knowledge without subjecting her to undue embarrassment or invasions into her privacy.

Terry Bollea, of course, is the plaintiff in this case and has relevant evidence. However, given Gawker Media's statements about the breadth of the discovery that it wishes to take, Bollea is concerned that without a time limitation on his deposition, the examination will be lengthy and unfocused, invasive of his privacy, burdensome, embarrassing, and not limited to the central issues in the case. As you know, in federal courts, there is a presumptive limit of one seven hour day for depositions. Bollea believes that if the examination of him is focused to the issues actually at play, there is no reason that his deposition cannot be completed in that time period. Thus, we will ask the Court to require that his deposition be limited to one seven hour day.

If you would like to discuss any of these matters, please call me and we can attempt to informally resolve the parties' issues. If we are unable to resolve them, however, please be advised that our client intends to move for a protective order restricting discovery in the manner outlined in this letter.

Very truly yours,



CHARLES J. HARDER OF  
HARDER MIRELL & ABRAMS LLP

Messrs. Berlin and Thomas

August 12, 2013

Page 4

cc: Paul J. Safier (by email)  
Rachel E. Fugate (by email)  
Barry A. Cohen (by email)  
Michael W. Gaines (by email)  
Jeffrey I. Abrams (by email)  
David R. Houston (by email)  
Kenneth G. Turkel (by email)  
Christina K. Ramirez (by email)

August 15, 2013

**VIA ELECTRONIC MAIL**

Charles J. Harder, Esq.  
Harder Mirell & Abrams LLP  
1801 Avenue of the Stars, Suite 1120  
Los Angeles, CA 90067

**Re: *Bollea v. Clem, Gawker Media, LLC, et al.*,  
No. 12012447-CI-011**

Dear Charles:

I write in response to your August 12, 2013 letter objecting to the scope of written discovery served on June 17 and to depositions that were noticed after several weeks of coordination among counsel.

First, we respectfully disagree with your assertion that the information and documents sought by the discovery Gawker has served is not relevant or reasonably likely to lead to the discovery of admissible evidence, or that the discovery requests are otherwise somehow improper. As we have previously explained, the requested information and documents are directly relevant to a number of the issues plaintiff has placed at issue in his Amended Complaint. We understand that some of the discovery sought in good faith by the parties may involve sensitive issues for both plaintiff and defendants, and for that reason we initiated the entry of an Agreed Protective Order so that all parties could exchange such information confidentially. In that regard, we note that plaintiff's discovery to Heather Clem seeks detailed information about her sexual encounters; we would ask that you extend to us the same presumption that we are proceeding in good faith as you no doubt expect from her and her counsel.

Second, it is difficult to predict exactly how much time will be necessary to complete depositions noticed for three months from now, including because Heather Clem's counsel is also entitled to examine the witnesses. We do not think it unreasonable to have allotted (a) two days to depose plaintiff (just as plaintiff noticed two days for the deposition of Gawker's corporate designee, without objection from Gawker) or (b) a day for his wife, Jennifer Bollea,

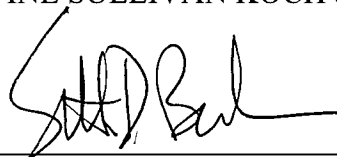
Charles J. Harder, Esq.  
August 15, 2013  
Page 2

including because she has already submitted a sworn declaration and can be expected to testify at trial. In addition, given that Linda Hogan, plaintiff's wife at the time of the events depicted in the Video, co-starred in plaintiff's reality television show dedicated to highlighting their status as a "traditional" family and subsequently wrote a book addressing in significant respects plaintiff's marital infidelities, she unquestionably possesses evidence directly relevant to this action or at a minimum information likely to lead to the discovery of such relevant evidence.

All that said, it is difficult to address the specifics of plaintiff's attempt to limit the scope of discovery without having reviewed plaintiff's responses to Gawker's written discovery requests, which are due in a few days' time. We would propose that plaintiff answer the discovery as fully as he is able, availing himself of the opportunity to provide sensitive information or documents pursuant to the confidentiality order now in place, and objecting where he and you feel it is essential. Once we have had an opportunity to see how forthcoming plaintiff has been and what additional information we might reasonably need in discovery, we would then be in a position to have an intelligent conversation with you about any objections to specific interrogatories or requests for production and, along with counsel for Ms. Clem, the likely length of depositions. If we are still unable to resolve any differences at that point, we will have something concrete to present to the Court. If for any reason you would like to discuss this in the meantime, please do not hesitate to give me a call. Thank you.

Sincerely,

LEVINE SULLIVAN KOCH & SCHULZ, LLP

By: 

Seth D. Berlin

cc: Other Counsel of Record