EXHIBIT 2

LSKS LEVINE SULLIVAN KOCH & SCHULZ, LLP
1899 L Street, NW
Suite 200
Washington, DC 20036
(202) 508-1100 | Phone
(202) 861-9888 | Fax

Seth D. Berlin
(202) 508-1122
sberlin@lskslaw.com

Michael Berry
(215) 988-9773
mberry@lskslaw.com

REFERENCES MATERIAL DESIGNATED BY PLAINTIFF AS CONFIDENTIAL

October 10, 2014

VIA ELECTRONIC MAIL

The Honorable James R. Case
205 Palm Island NW
Clearwater, FL 33767
jimcase@tampabay.rr.com

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

Dear Judge Case:

We write to follow up on the recent discussions with Your Honor about setting a trial date and in light of plaintiff's recent decision to file a motion asking the Court to set a trial date. As we expressed in those discussions, we believe that setting a trial schedule is properly informed by two things – first, the limitations imposed by Rule 1.440, and, second, devising a schedule that provides realistic time frames for completing the remaining fact and expert discovery and for consideration of dispositive and evidentiary motions before trial so that any trial will proceed efficiently. We believe that this is particularly important given the nature of this case and the issues involved.

To that end, in early July, we reached out to plaintiff's counsel to discuss what discovery remains to be done with the goal of moving the case forward more efficiently so that all parties can obtain the discovery they need to be trial ready. During that call, Mr. Berry explained what discovery Gawker still needed to take to be ready for trial and our thoughts on reasonable timeframes for each of the upcoming stages of the case. As you know, notwithstanding the limitations imposed by Rule 1.440, we have continued to move forward with discovery – and intend to continue to do so – even while waiting for the remaining parties to answer. As we expressed to plaintiff's counsel in July and have reiterated since then, we hope that, once the Rules allow a trial date to be set, the parties and Court can work together to establish a pretrial and trial schedule that provides realistic time frames for the orderly completion of the remaining fact discovery, expert discovery, dispositive motions, and evidentiary motions.

With that in mind, we thought that it would be helpful to share with Your Honor our understanding of what discovery remains to be done so that we all are on the same page, can move the case forward while awaiting all parties to answer, and can develop a reasonable schedule when the Rules permit.

While most of the discovery relating to plaintiff and the Gawker defendants has been completed, substantial third-party fact discovery remains. At this point, it appears that the parties intend to take the following discovery:

- Gawker has been attempting to reschedule the deposition of Heather Clem (which her counsel postponed from its scheduled date in March) and may need to subpoena Jennifer Bollea for deposition.

- Gawker intends to depose Elizabeth Traub and EJ Media, plaintiff's New York-based publicists, who are represented by Mr. Harder's firm and New York-based co-counsel. Last week, the publicists' appeal of the order granting Gawker's motion to compel was effectively resolved in Gawker's favor by the New York appellate courts. In response, the publicists produced additional documents earlier this week.

- Gawker has served document subpoenas on Cox Media (the company that previously broadcast Bubba Clem's radio show), Jules Wortman Pomeroy (the Tennessee-based publicist who worked on plaintiff's October 2012 media tour), and Ms. Pomeroy's company. Each recently responded to those subpoenas, although Cox is still in the process of compiling additional responsive records. Once those records are produced, Gawker will seek to take the deposition of at least one, and possibly two, Cox employees and/or corporate designees to follow up on issues raised by Bubba Clem in his deposition testimony. Gawker also will seek to take Ms. Pomeroy's deposition, but must wait until it can serve a subpoena on her former employer, TNA, which holds many of her records from the relevant time period. (As discussed in the next paragraph, plaintiff has objected to the TNA subpoena, and that objection is now pending before Your Honor.)

- Gawker has noticed its intent to serve document subpoenas on ten additional third-party witnesses, including plaintiff's employers, agents, and business partners (who are based in Florida, Connecticut, Tennessee, California, and New Jersey), but plaintiff has objected to certain requests in those subpoenas. Your Honor is scheduled to hear Gawker's motion to overrule plaintiff's objections on October 20, 2014. Once those objections are resolved, subpoenas are issued, and the witnesses produce documents, and depending on what information is contained in the document productions, Gawker will seek to depose at least some of these third parties.

- Gawker intends to subpoena a handful of additional third-party witnesses, including:

    - Brent Hatley, the former producer of Bubba Clem's radio show who is now based in New York, and Tom Bean, Bubba Clem's agent – both of whom were the subject of prior deposition testimony (we asked plaintiff's counsel for dates on which he is available for those depositions a couple of weeks ago, but have received no response to that request or to a follow-up inquiry);

    - Matt Loyd, whom Bubba Clem accused of stealing the tapes of plaintiff's sexual encounters with Heather Clem;

    - Keith Davidson, the California-based attorney who allegedly had copies of those tapes and whom plaintiff claims sought to extort him; and

    - David Houston and Mr. Houston's law firm in connection with documents concerning his dealings with the press, law enforcement authorities, and others about the tapes (Gawker has noticed its intent to serve such a subpoena, plaintiff served objections, the parties are in the process of meeting and conferring, and, if necessary, Gawker will file a motion to overrule plaintiff's objections).

- As you know, in November 2013, Gawker sought records authorizations in connection with a FOIA request to the Justice Department concerning the federal investigation into the sex tapes at issue in this case. The Second DCA recently denied plaintiff's writ petition challenging Your Honor's Report and Recommendation and Judge Campbell's Order requiring plaintiff and his counsel to provide the authorizations. Since then, plaintiff and Gawker have agreed on a protocol to facilitate the handling of the FOIA request. Gawker's counsel will make that request after Your Honor signs the Stipulated Report and Recommendation memorializing the protocol (we have sent a draft to plaintiff's counsel and are awaiting a response) and after plaintiff's counsel has an opportunity to review the request to ensure that it accurately represents plaintiff's position about the request. It is possible that, after Gawker receives responsive documents, it may need to depose additional witnesses with relevant information who had not been identified previously. Gawker also has informed plaintiff's counsel that, after the government produces records in response to the FOIA request, it intends to depose Mr. Houston concerning his dealings on plaintiff's behalf concerning that investigation.

- Gawker has served discovery requests on plaintiff based on his recently produced telephone records, asking him to identify the people with whom he spoke and exchanged text messages during certain key time periods and whether those communications concerned relevant topics. Depending on his responses, Gawker may seek discovery from newly identified witnesses.

- Gawker is in the process of compiling some of plaintiff's media appearances from October 2012 and might serve several subpoenas seeking copies of those appearances if they cannot otherwise be obtained. In that regard, several weeks ago, Gawker asked plaintiff to stipulate to the authenticity of certain media broadcasts for use at trial (and likely will ask him to stipulate to the authenticity of other records). Thus far, plaintiff has not responded to that request. If plaintiff declines, Gawker will need to issue subpoenas to records custodians seeking depositions or certifications of authenticity.

- Finally, once the Report and Recommendation on this issue is entered and becomes final, and the relevant records are produced, Gawker will continue plaintiff's deposition to question him about discovery that was pending at the time of his initial deposition (*i.e.*, the records plaintiff produced pertaining to the FBI investigation, any records produced by the government pursuant to the forthcoming FOIA request, plaintiff's telephone records, and new records produced by EJ Media and Elizabeth Traub).

While we will obviously defer to plaintiff and his counsel on their discovery plans, at this time we understand the following:

- Plaintiff has sought leave to serve an additional 30 interrogatories from Gawker, which Your Honor has recommended. Gawker filed exceptions to that recommendation based principally on plaintiff's failure to show good cause for needing additional interrogatories, including by submitting the proposed interrogatories so that the Court could evaluate whether they were in fact necessary. Those exceptions are pending before Judge Campbell.

- Plaintiff has issued notices of intent to serve two document subpoenas on California companies (one on Google Inc. and another on Fastly, Inc.). Gawker has served objections to these subpoenas, and the parties are in the process of meeting and conferring about them.

- In our discussions in July, plaintiff's counsel informed us that plaintiff might take as many as 6 or 7 more depositions of third parties before fact discovery ends.

While all parties have expressed their desire to proceed expeditiously through the remaining fact discovery, realistically both sides will need a reasonable time to complete this

discovery. That process is likely to take longer than in typical cases. First, if history is any guide, issues are likely to arise that require the Court's intervention. Indeed, although the parties have been working together to narrow their areas of dispute, throughout the course of this litigation, many discovery requests and proposed subpoenas have spawned motions practice, and in some instances have resulted in litigating exceptions and/or appeals, often taking many months to resolve. Litigating these motions and appeals has caused discovery to take longer than in most cases in which we have been involved. In addition, with respect to third-party discovery, once any objections lodged by a party are resolved, the third-party witnesses themselves might object or file motions for protective orders, potentially further delaying discovery.

Second, scheduling the depositions of third-party witnesses likely will be challenging. We will need to coordinate the schedules of the witnesses, the parties' attorneys, and Your Honor. The scheduling will be complicated further by the fact that a number of the witnesses reside outside Florida.

Third, some of the future discovery outlined above is contingent on other discovery being produced first, some of which is the subject of outstanding subpoenas and discovery requests, some of which is the subject of ongoing motions practice, and some of which cannot logically proceed until the parties review what information is in the records the government produces in response to the FOIA request.

After fact discovery closes, the parties will need time for expert discovery, including rebuttal designations and depositions. In discussions between counsel, plaintiff has stated that he likely will designate two damages experts, as well as a journalism expert. Depending on the nature of plaintiff's designations, Gawker likely will designate between one and three experts.

Once fact and expert discovery is completed, Gawker plans to file a summary judgment motion. Even if that motion is not granted in full, the Court's ruling may well narrow the claims that will proceed to a jury and certainly will shape the issues for trial.

If the case proceeds beyond summary judgment, the Court will need to rule on a variety of motions *in limine* submitted by both parties. Given the nature of the case, the motions *in limine* are likely to raise significant legal and evidentiary issues. Indeed, Judge Campbell already has noted that the pretrial motions are expected to raise "non-standard" issues. The rulings on those motions could greatly alter the parties' presentations to the jury. Therefore, the schedule should provide sufficient time for the Court to consider those motions and, after its rulings are issued, for the parties to prepare for trial in light of them. Although we will obviously let them speak for themselves, it is our understanding from our discussions with plaintiff's counsel that they also believe that allowing time for the parties to adjust their trial preparations based on rulings on the motions *in limine* is important given the unique nature of the anticipated motions.

Like plaintiff, Gawker is eager for this case to be resolved on the merits. While we firmly believe that plaintiff's claims are not viable as a matter of law, if his case is not dismissed,

we are eager to defend Gawker's publication as a matter of fact. But, given the procedural history of the case, much work remains to be done before trial. When the time comes to set a pretrial and trial schedule, Gawker respectfully requests that the schedule provide realistic time periods to complete the remaining discovery and for the parties to litigate the pretrial issues so that any trial can proceed efficiently.

We would be pleased to discuss this further at the conclusion of the upcoming motions hearing or, if there is insufficient time to do so then, at another time that is convenient for Your Honor.

Respectfully submitted,

LEVINE SULLIVAN KOCH & SCHULZ, LLP

By: _____
Seth D. Berlin
Michael Berry

cc: Counsel of Record (via email)