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August 9, 2013

VIA EMAIL AND U.S. MAIL

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Gregg D. Thomas, Esq.
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Re: Bollea v. Clem, et al.
No. 12012447-CI-011

This letter concerns Gawker Media's responses to the first set of written discovery served by Terry Gene Bollea in this action. After careful review of the written discovery responses, documents produced, and privilege log, there are several matters where Gawker Media's discovery responses were deficient. This letter constitutes an attempt to informally resolve the issues as required under the Florida Rules of Civil Procedure.

First, Gawker Media's response to Interrogatory No. 5 is deficient. Gawker Media states that it did not create the video and has no personal knowledge about its creation. However, Interrogatory 5 is not limited to first-hand knowledge. Bollea is entitled to any information Gawker Media may have as to how the video was created, even if that information came from other sources. Such information is reasonably calculated to lead to the discovery of admissible evidence.

With respect to Document Demand No. 28, Gawker Media objects to the production of cease and desist correspondence relating to intellectual property claims, on the ground that Bollea's copyright claim is not being asserted in the state court action. However, whether or not Gawker Media engaged in proper IP clearance, and its policies and practices when it receives cease and desist communications, including those relating to IP claims, are relevant to this action because Gawker Media asserted a good faith defense in its papers opposing the temporary injunction, and Gawker Media's scienter is relevant to the issue of punitive damages. If Gawker Media either did not do proper IP clearance or did not follow its ordinary customs and practices that would constitute evidence that Gawker Media did not act in good faith.



ELECTRONICALLY FILED 8/21/2013 2:39:03 PM: KEN BURKE, CLERK OF THE CIRCUIT COURT, PINELLAS COUNTY

Messrs. Berlin and Thomas

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With respect to Document Demand No. 30, Bollea is entitled to information with respect to the ownership of the entire Gawker family of companies. Gawker Media has sought to limit production to ownership information about Gawker Media, LLC. However, Bollea has asserted an alter ego claim to pierce the corporate veil, and the relationships between the various Gawker companies, and their shareholders, are thus relevant to this action. Additionally, information regarding which individuals or Gawker entities received any profits obtained from the publication of the sex tape or sex narrative is clearly discoverable, as such moneys could be recoverable in this action under any number of legal theories.

With respect to Document Demand No. 38, Gawker Media's production of revenue statistics was limited to a summary document showing the month by month revenue generated by the Gawker.com site. This hardly constitutes all documents relating to revenue, and Bollea is left with insufficient documentation to verify the amounts that appear on the document. Without waiver of Bollea's right to seek all documents in this category, Bollea requests that Gawker Media at least provide the general ledger, trial balance, or other summary accounting documents that back up the revenue numbers in page 1147 of Gawker Media's document production and establish how they were arrived at.

With respect to Document Demand Nos. 39 and 40, Gawker Media has sought to limit its production of traffic and revenue statistics to the Gawker.com website. However, this limitation is artificial. If the sex tape boosted traffic and revenue at other Gawker websites, because of links, Bollea is entitled to discover that and to assert at trial a damages theory based on that information. Thus, please produce all documents that show traffic and revenues at any Gawker Media website from January 1, 2010 to the present.

With respect to Document Demand No. 49, Gawker asserts that there are no responsive documents, but the employment agreement which starts at page 1083 states that there is an Editor Wiki that contains written standards for publishing content. The Editor Wiki has not been produced and is clearly discoverable under this document demand. Please produce the current Editor Wiki and all revisions dating back to January 1, 2012. Additionally, the document which starts at page 1081 references an employee policy handbook and professional guidelines which were received by Kate Bennert when she started her employment at Gawker Media. Please produce these documents.

With respect to Document Demand No. 50, Gawker objects to the production of content standards from other Gawker websites, but such standards are potentially relevant for several reasons—they may evidence the standards in place at Gawker.com, and they may also show that Gawker.com's standards are different and/or lower than standards that other Gawker websites adhere to.

The document which starts at page 224 contains a "memo about traffic" from Nick Denton which was redacted by Gawker Media. This redaction is not listed in the privilege log, and there is no indication given as to why it was proper to redact this document or why it is not discoverable. Please produce the full document.

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The document which starts at page 555 is also redacted as “nonresponsive”. However, no privilege is asserted and the document is therefore discoverable. Please produce the full document.

Finally, the privilege log mentions a document sent by AJ Daulerio to “legal@gawker.com” and Emma Carmichael on October 15, 2012, and claims lawyer-client privilege and work product protection. However, this does not provide sufficient information to establish that the document is privileged. Please disclose what lawyer was the recipient of this e-mail. If the e-mail was not sent to a Gawker lawyer, please produce it.

I am available to discuss these matters by phone with you at your convenience. If we are not able to reach successful resolution of them, please be advised that Bollea intends to move to compel a further response and to seek monetary sanctions against Gawker Media.

Very truly yours,



CHARLES J. HARDER OF
HARDER MIRELL & ABRAMS LLP

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)



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August 16, 2013

VIA EMAIL AND U.S. MAIL

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601 S. Boulevard
Tampa, FL 33606
Email: gthomas@tlolawfirm.com

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

Dear Counsel:

This letter concerns Gawker Media's responses to the second set of written discovery served by Terry Gene Bollea in this action. After careful review of the written discovery responses and documents produced, there are several matters where Gawker Media's discovery responses are deficient. This letter will serve as an attempt to informally resolve the issues as required under the Florida Rules of Civil Procedure.

With respect to Interrogatory 13, this interrogatory seeks to discover what persons or entities receive profits from Gawker.com content. Bollea is entitled to know this information because he has pleaded an alter ego / veil piercing claim, and also because such moneys could be recoverable on any number of legal theories. Gawker Media refers to its response to Interrogatory 12, describing the lines of business of the Gawker entities, but this is not sufficient for Bollea to trace any proceeds that came from the Sex Tape. Please confirm that Gawker Media will provide a full and complete response.

With respect to Document Demands 89 and 90, these demands seek the documents which will show the roles of the various Gawker entities within the organizational structure. This is necessary to confirm the veracity of the response to Interrogatory 12 and to determine which Gawker entities were legally responsible for the publication of the Sex Tape. Please confirm that Gawker Media will produce all of the non-privileged, responsive documents within its possession, custody or control.

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With respect to Document Demand 91, Plaintiff is entitled to know the extent to which all Gawker entities and websites profited from the publication of the Sex Tape. Their financial statements are discoverable. Please confirm that Gawker Media will produce all of the non-privileged, responsive documents within its possession, custody or control.

With respect to Document Demand 92, documents evidencing financial transactions between Gawker entities are discoverable because if any monies attributable to the Sex Tape were transferred, they may be recoverable. Further, these documents are relevant to Bollea's alter ego / veil piercing claim. Please confirm that Gawker Media will produce all of the non-privileged, responsive documents within its possession, custody or control.

With respect to Document Demand 93, Bollea is entitled to discover whether any advertising revenues that are attributable to the publication of the Sex Tape (including the 4 million+ viewers of the Sex Tape webpage), were received by **any and all** Gawker Media websites. Please confirm that Gawker Media will produce all of the non-privileged, responsive documents within its possession, custody or control.

With respect to Document Demands 94 through 99, Gawker Media has given an interrogatory response regarding the roles each Gawker entity had with respect to the posting of content on Gawker.com. Likewise, Bollea is entitled to any documents that show those roles, to verify the accuracy of the interrogatory response. Please confirm that Gawker Media will produce all of the non-privileged, responsive documents within its possession, custody or control.

With respect to Document Demands 101 through 104, Bollea is entitled to discover what monies were received by other Gawker websites during the time periods relevant to this lawsuit, in order to determine if and how much of those monies were attributable to the publication of the Sex Tape. Please confirm that Gawker Media will produce all of the non-privileged, responsive documents within its possession, custody or control.

Finally, with respect to Document Demand 105, the communications with Gawker Media's e-discovery provider will allow Bollea to verify the credibility of Gawker Media's interrogatory and document demand responses with respect to the vendor and search protocols used. Accordingly, they are discoverable. Please confirm that Gawker Media will produce all of the non-privileged, responsive documents within its possession, custody or control.

I am available to discuss these matters by phone with you at your convenience. If we are not able to reach successful resolution of them, please be advised that Bollea intends to move to compel further responses and documents, and to seek monetary sanctions against Gawker Media.

Very truly yours,



CHARLES J. HARDER OF
HARDER MIRELL & ABRAMS LLP

Messrs. Berlin and Thomas
August 16, 2013
Page 3

cc: Paul J. Safier (by email)
Alia Smith (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)
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August 16, 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,

We write regarding your letter dated August 9, 2013, concerning the responses of Gawker Media, LLC (“Gawker”) to plaintiff’s first set of written discovery requests. We agree that it makes sense to schedule a time to speak by telephone to attempt to address the issues you have raised. In order to make such a telephone call productive, we set out our initial views below. Taking each of your points in turn:

Interrogatory No. 5: Gawker has no information about the creation of the Video other than what has been publicly discussed in the media, examples of which Gawker included in its responses to Interrogatory Nos. 7 and 8. Anything Gawker may surmise from those sources would be pure speculation, which would be improper to include in sworn interrogatory responses.

Document Request No. 28: Gawker objected to producing eight years’ worth of cease and desist communications concerning (a) stories not at issue in this action, and (b) claims for intellectual property violations not asserted in this lawsuit. Plaintiff contends that he is entitled to the production of such communications because Gawker “asserted a good faith defense in its papers opposing the temporary injunction” which is relevant to his claims for punitive damages. In fact, Gawker provided the Court with the subsequent history of a case (*Toffoloni*), relied upon by plaintiff, in which the Eleventh Circuit reversed an award of punitive damages based on the publisher’s good faith belief that its publication of nude photographs of the plaintiff was newsworthy. Any reliance Gawker places on authority concerning newsworthiness has nothing to do with intellectual property claims that are not at issue here.

Document Request No. 30: In response to plaintiff’s second set of written discovery requests, served after your letter was sent, Gawker Media, LLC has (a) provided detailed

information under oath about affiliated companies, (b) confirmed under oath that Gawker Media, LLC is the only entity responsible for publishing the Gawker Story and the Excerpts, (c) stated under oath that Gawker Media LLC has not made distributions to its parent, Gawker Media Group, Inc., and (d) confirmed that Gawker Media, LLC has annual revenues of more than \$20 million, hardly the type of “shell” entity that would even arguably entitle plaintiff to pursue his veil piercing argument. In light of these sworn statements and the production of financial documents, we believe that this objection is now moot.

Document Request No. 38: Gawker has produced detailed information about monthly income for both Gawker.com and for the full company from January 2010 forward, including a balance sheet and income statement generated by its accounting software. Plaintiff’s demand that Gawker produce its general ledger, which records literally every transaction in which money flows in or out of the company, or other similar documents, is unreasonable. Indeed, courts generally hold that requests for general ledgers and the like are improper unless the case at issue involves a dispute about a financial transaction or financial mismanagement, neither of which is at issue here.

Document Requests 39 and 40: Plaintiff’s demand that Gawker produce traffic and revenue information for eight other websites not at issue in this action is unreasonable, particularly given that Gawker has also produced an income statement setting forth the company’s overall revenues for a three-and-a-half year period. Although we believe further traffic information is irrelevant, should plaintiff disagree, he and you are welcome to review publicly available traffic data with respect to Gawker’s other websites at quantcast.com (e.g., <https://www.quantcast.com/deadspin.com>, www.quantcast.com/jezebel.com, etc.).

Document Request No. 49: Please be advised that the Editor Wiki platform that you reference does not contain guidelines on “appropriate content.” Rather, it includes things like a writing style guide, a restriction on freelancing, restrictions on appearing in advertisements, and incorporating visuals into posts. Similarly, while the “professional guidelines” contained in the “employee” handbook do not address “standards for posting content on Gawker.com,” we have for the avoidance of doubt produced that page herewith, numbered “Gawker 1437.”

Document Request No. 50: Gawker continues to maintain that documents concerning other websites are not relevant to plaintiff’s claims, and that it should not be put to the burden of searching for and producing such documents, should any documents actually exist.

Document Nos. 00224 and 00555: These documents were each produced because of their passing reference to “Hulk.” They otherwise concern sites other than Gawker.com, in one (00224) addressing general editorial strategy for those other sites and in the other addressing placement of specific advertising (unrelated to the post at issue) on those other sites (00555). In both instances, the redaction of such information was both fully disclosed and entirely proper.

Charles J. Harder, Esq.

August 16, 2013

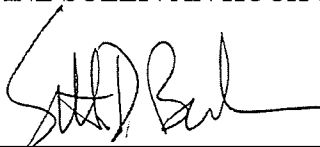
Page 3

Privilege Log: The recipients of emails addressed to legal@gawker.com on October 15, 2012, were Jesse Ma, Esq., Cameron Stracher, Esq., John Duncan, Esq. (all lawyers for Gawker) and Scott Kidder, Gawker's Vice President of Operations. As such, the email you referenced is privileged.

As I am on vacation next week, please provide me with some dates and times during the week of August 26 that you are available to discuss the foregoing. Thank you.

Sincerely,

LEVINE SULLIVAN KOCH & SCHULZ, LLP

By: 

Seth D. Berlin

cc: Other Counsel of Record

Molly Odell

From: Charles Harder
Sent: Tuesday, August 20, 2013 6:28 PM
To: Seth Berlin; gthomas@tlolawfirm.com
Cc: cramirez@BajoCuva.com; Ken Turkel (KTurkel@bajocuva.com) (KTurkel@bajocuva.com); dhouston@houstonatlaw.com; Rachel E. Fugate; Michael W. Gaines (mgaines@tampalawfirm.com); bcohen@tampalawfirm.com; Alia Smith; Paul Safier
Subject: RE: Bollea v. Clem, Gawker -- Discovery Correspondence

Dear Mr. Berlin and Mr. Thomas

On August 9, I sent you a meet and confer letter asking you to provide further responses to interrogatories and document requests. You waited eight days (August 16, at 4:50 pm EST) to respond to my letter, and the response (from Mr. Berlin) was that Gawker Media would not comply with any of my requests, and that Mr. Berlin was leaving for vacation and therefore I would have to wait for at least 10 more days to talk to anyone about the issues. We cannot afford to continue to wait to see if Gawker Media will change its mind and elect to comply with its discovery obligations. Accordingly, you left us with no reasonable alternative but to file a motion to compel (which we told you we would file). If you wish to stipulate to producing to us the information and documents requested in the motion, then we will agree to take our motion off calendar.

Sincerely,

Charles Harder

From: Seth Berlin [<mailto:SBerlin@lskslaw.com>]
Sent: Friday, August 16, 2013 1:50 PM
To: Charles Harder
Cc: cramirez@BajoCuva.com; Ken Turkel (KTurkel@bajocuva.com) (KTurkel@bajocuva.com); dhouston@houstonatlaw.com; gthomas@tlolawfirm.com; Rachel E. Fugate; Michael W. Gaines (mgaines@tampalawfirm.com); bcohen@tampalawfirm.com; Seth Berlin; Alia Smith; Paul Safier
Subject: Bollea v. Clem, Gawker -- Discovery Correspondence

Charles,

Please see the attached letter and supplemental document produced in response to your letter about Gawker's responses to plaintiff's first set of discovery responses. I received your most recent letter, concerning Gawker's responses to plaintiff's second set of discovery responses, a couple of hours ago. I am leaving my desk momentarily and will be out on vacation next week. I will endeavor to get a response to you shortly after I return.

Please also let me know some dates/times that would work for a call the week of August 26th to talk through the various issues raised by your recent letters (you might want to allow a day or two for me to respond to the most recent one). Although I will not have routine access to email while I am away, I will check it periodically, and will attempt to respond to you about a schedule for a call. It would be my hope that a telephonic discussion will help resolve or at least significantly narrow any issues. Thank you.

Regards,
Seth

Seth D. Berlin



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