

Exhibit C

ELECTRONICALLY FILED 2/13/2014 11:23:55 AM: KEN BURKE, CLERK OF THE CIRCUIT COURT, PINELLAS COUNTY

February 5, 2014

VIA ELECTRONIC MAIL

Charles J. Harder, Esq.
Harder Mirell & Abrams LLP
1925 Century Park East, Suite 800
Los Angeles, CA 90067

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

Dear Charles:

We write for the purposes of conferring with you about several topics. We are also available to discuss them by telephone if you would like. Because a number of them relate to the depositions noticed for the week of March 3, 2014, we respectfully request that you respond promptly.

A. Plaintiff's Obligation to Provide Supplemental Discovery Following the October 29, 2013 Hearing: At the October 29, 2013 hearing, Judge Campbell overruled plaintiff's objections with respect to interrogatories and document requests seeking discovery about sexual encounters between plaintiff and Heather Clem. Although the parties submitted two different orders, both versions reflected this ruling, including the proposed order submitted unilaterally on plaintiff's behalf. Since then we have repeatedly requested, including most recently in our letters dated December 12, 2013 and January 6, 2014, that plaintiff provide supplemental responses, as ordered.

As indicated previously, this includes the following discovery requests: Gawker Interrog. No. 9 (requesting specified information concerning "all times you had sexual relations with Heather Clem"); Gawker Interrog. No. 10 (requesting specified information for "all times you discussed having sexual relations with Heather Clem with . . . [Bubba] Clem"); Gawker Interrog. Nos. 15-17 (requesting specified information concerning the number of times in the Clems' home and bedroom); RFP Nos. 8-9 (documents related to *all* sexual encounters between plaintiff and Heather Clem); RFP No. 11 (documents related to *all* communications with Bubba Clem about *all* sexual encounters between plaintiff and Heather Clem); Gawker Interrog. Nos. 4-5 & RFP Nos. 8-9 (requesting specific information and documents concerning recordings of plaintiff having sexual relations, which must be answered in connection with any recordings of plaintiff and Heather Clem).

Charles J. Harder, Esq.
February 5, 2014
Page 2

Although it has been more than three months since Judge Campbell's ruling and nine months since these requests were initially served, plaintiff has not provided the requested information and documents. By contrast, Gawker has produced documents in response to Judge Campbell's oral ruling at a subsequent hearing on November 25 even in the absence of written order (the absence of which, as discussed below, also results from inexplicable delays on plaintiff's part).

B. Plaintiff's Insufficient Responses to the Discovery Requests Served on December 19, 2013: More than six weeks ago, Gawker and A.J. Daulerio served plaintiff with a few additional interrogatories and requests for production, seeking information and documents concerning (1) his media appearances at which he discussed the "Video and/or the Gawker Story" (RFP No. 51), (2) his communications with law enforcement about the allegedly illegal recording(s) of his sexual encounter(s) with Heather Clem (RFP No. 52 and Daulerio Interrog. No. 9), (3) photographs published in April 2012 of a sexual encounter between plaintiff and Heather Clem (RFP No. 53), and (4) telephone records from 2012 (RFP No. 54 and Daulerio Interrog. No. 10). Plaintiff's responses to each of these requests, both individually and taken together, are entirely deficient.

First, plaintiff has produced *no* information or documents concerning his media appearances. It is inconceivable that plaintiff has no information or documents (no email, no calendar entries, no texts, no talking points, no logistics sheets, no notes, etc.) about the many times he appeared on TV and on the radio discussing the Gawker Story and accompanying video excerpts as well as his relationship with the Clems – including, just by way of example, on *The Howard Stern Show*, the *Today* show, *TMZ Live*, *Piers Morgan Live*, and in an interview in *USA Today*. Such information or documents are not privileged and, in any event, no such documents were identified on a privilege log. Please provide the requested discovery immediately.

Second, despite a report that plaintiff's "lawyer says he has contacted the FBI to track down the sex tape leaker . . . and bring that person to justice" and that plaintiff "plans to meet with FBI agents on Monday" (*see* <http://www.tMZ.com/2012/10/14/hulk-hogan-sex-tape-fbi/>), and despite last week's decision by Judge Case concerning FBI records (not limited to plaintiff's communications with the Bureau), plaintiff has produced *no* documents and has provided *no* substantive interrogatory response to the requests for information about his communications with "any law enforcement person or agency concerning any recording of you having sexual relations with Heather Clem." *See also* BOLLEA 664 (settlement agreement with Bubba Clem expressly contemplating law enforcement investigation). Such information or documents are not privileged and, again, in any event, no such documents were identified on a privilege log. Please provide the requested discovery immediately.

Third, although plaintiff *has* produced documents regarding take-down notices he sent to other websites, plaintiff has offered no explanation as to why such records were not produced in connection with Gawker's initial requests served nine months ago, particularly given that

Charles J. Harder, Esq.
February 5, 2014
Page 3

plaintiff produced other, similar take-down requests at BOLLEA 517-642. Please advise why such documents were withheld for more than five months.

Finally, plaintiff has refused to provide any information whatsoever regarding his phone records from 2012 – the time period during which the video(s) of plaintiff and Heather Clem were circulating, as well as during which plaintiff contends he was in regular contact with Bubba Clem, then had a falling out, and then had a rapprochement. Before addressing the discovery requests themselves, we note that plaintiff’s refusal here is especially egregious given his repeated delays in responding to these requests. Specifically, even though we agreed to a two-week extension expressly conditioned on plaintiff’s production of his telephone records and account information earlier so that we could follow up as needed prior to the upcoming depositions, plaintiff twice sought additional time to provide those documents and information, only then to advise that he was simply going to rely on his earlier-served objections and would not be producing any records or information at all. We object to plaintiff’s transparent effort to run out the clock on our ability to gather relevant information prior to the depositions, and reserve the right to recall plaintiff and the other witnesses as needed to ask about such information and documents.

Turning to the substance of the discovery requests seeking telephone records and related account information, plaintiff’s refusal to provide the requested discovery has no basis in law. He has asserted objections based on privilege, burden and privacy. But he has not produced any privilege log establishing how any of the information could possibly be privileged. (And, despite his objection, it is hard to imagine how, for example, the names of telephone service providers or his account information, requested in Daulerio Interrogatory No. 10, could possibly be privileged.) He has not explained how producing just 12 months of phone records could be burdensome. And to the extent that any privacy interests may be implicated, those can easily be addressed if needed by designating the interrogatory response and responsive documents “CONFIDENTIAL” under the protective order already in place in this case. Obviously, information about who plaintiff spoke to (and texted with) during the period around when the images from the sex tape(s) first appeared online and around when Gawker posted the story at issue here is of central relevance. Please provide the requested discovery immediately.

C. Plaintiff’s Delays in Finalizing Proposed Orders from the November 25, 2013, and January 17, 2014 Hearings: After the November 25, 2013 hearing, Mr. Turkel submitted to us a draft proposed order, and we responded three business days later. We then did not receive a revised proposed order until January 16, 2014, some *six weeks* later. We again responded within three business days. Now, more than two weeks later, we have heard nothing further.

Plaintiff’s conduct with respect to the proposed orders from the January 17, 2014 hearing has been similarly dilatory. We circulated proposed orders three business days after the hearing. Counsel for Bubba Clem responded promptly, and we were able to resolve our minor issues

Charles J. Harder, Esq.
February 5, 2014
Page 4

within a day or two. Nearly two weeks later, we have received no comment from you, and there is no reason to delay the entry of these orders.

Even though a written order has not yet been entered, we expect that plaintiff will comply with his obligation to produce tomorrow to Judge Case, for his review, any recordings in plaintiff's possession, custody and control involving plaintiff and Heather Clem, as required by Judge Campbell on January 17. In that regard, we note that plaintiff's settlement with Mr. Clem expressly required him to turn over to plaintiff any such tapes, and thus they should be within plaintiff's possession, custody or control.

Plaintiff's discovery failures – specifically, his three-month-long failure to produce discovery owed as a result of the October 29, 2013 hearing and his substantially inadequate responses to the discovery requests served in December – are severely prejudicing our ability to conduct a thorough deposition of the plaintiff, as well as the Clems. We therefore expressly reserve their right to hold open the depositions as necessary.

Should you wish to do so, we are available to discuss these matters. Otherwise, we will have no choice but to file a motion to compel and, with respect to the October 29 order, for sanctions, as well as for attorneys' fees and costs. We will ask that Judge Case hear the motion on an expedited basis, as his schedule will allow, so that these issues can, if at all possible, be addressed prior to the depositions.

Thank you.

Sincerely,

LEVINE SULLIVAN KOCH & SCHULZ, LLP

By: 

Seth D. Berlin
Alia L. Smith

cc: Other counsel of record