

# EXHIBIT C

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## Alia Smith

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**From:** Charles Harder <charder@hmafirm.com>  
**Sent:** Thursday, February 13, 2014 6:29 PM  
**To:** James Case  
**Cc:** Seth Berlin; Alia Smith; Paul Safier; Julie Ehrlich; Michael Berry; gthomas@tlolawfirm.com; Rachel E. Fugate; dhouston@houstonatlaw.com; Ken Turkel (KTurkel@bajocuva.com) (KTurkel@bajocuva.com); cramirez@BajoCuva.com; bcohen@tampalawfirm.com; Michael W. Gaines (mgaines@tampalawfirm.com)  
**Subject:** Bollea v. Clem, Gawker - Discovery & Postponement of Mr. Bollea's Deposition

Dear Judge Case (and counsel):

Thank you for your dates of availability in late February. However, the nature of the discovery in dispute makes it impossible to resolve all of the written discovery issues prior to Mr. Bollea's scheduled deposition on March 6-7. Therefore, his deposition will need to be postponed until after the many discovery issues in dispute have been resolved.

First, Gawker just served this afternoon a Petition in New York state court to compel Mr. Bollea's publicist to produce **privileged** communications with Mr. Bollea's counsel relating to this lawsuit. We will be opposing that Petition. It is unclear to us at this time when that Petition will be resolved.

Second, Gawker filed two discovery motions – yesterday and today. My office will need time to prepare opposition papers. Given that there are now three discovery motions that have been filed in only two days, in two different states, we will need an appropriate accommodation.

Third, the 3 discovery motions seek documents in the possession non-parties, including Mr. Bollea's publicist, and Mr. Bollea's telephone records in the possession of his telecommunications carriers. Thus, even if orders are entered compelling the documents at issue, it could take weeks for the responsive documents to be produced by the non-parties.

Fourth, any party that disagrees with a recommendation of the discovery magistrate has 10 days to file Exceptions and seek review by Judge Campbell. Thus, any currently pending motions will not necessarily be resolved at the time of the hearing date.

Fifth, the FBI's criminal investigation records will not be produced (if at all) until after Judge Campbell rules on our Exceptions to your recommendation. It is unclear when the Exceptions will be resolved.

Sixth, if documents are ordered produced, Mr. Bollea would need time before his scheduled deposition to look for, locate, have his counsel cull any privileged communications, and produce non-privileged documents.

(There are other discovery issues as well – this is just a short summary of a few of them.)

Mr. Bollea will not appear **twice** for deposition. Therefore, because it is impossible for the discovery issues to be resolved prior to his March 6-7 deposition, Mr. Bollea must respectfully postpone his deposition to a mutually agreeable date in the future, after these discovery disputes have been resolved.

These timing issues were not created by Mr. Bollea, but rather by Gawker. Gawker first served a Notice of Deposition of Mr. Bollea on August 7, 2013, for his deposition to occur on November 12, 2013. Shortly before the week of November 12, however, **Gawker unilaterally postponed his deposition** (and all other depositions scheduled for that week) because Gawker insisted on a particular order for the depositions, and the witnesses were not available that week in the order that Gawker insisted. In particular, Gawker insisted taking nonparty Bubba Clem before anyone else, but Mr. Clem was not available until mid-week. Gawker

refused to take anyone's deposition prior to Mr. Clem's, and thus postponed all of them to 2014. (I objected at that time to the re-scheduling of the depositions, but to no avail.)

The parties re-scheduled Mr. Bollea's deposition for March 6 and 7, 2014. **After** his deposition was re-scheduled, Gawker propounded a plethora of **new discovery** to Mr. Bollea, and waited until **last week** to send a meet and confer letter, followed immediately by two discovery motions yesterday and today, and also a Petition in New York filed this afternoon.

**The parties did not even have a meet-and-confer conference** to try to informally resolve the issues in the two motions filed yesterday and today. Gawker's attorney, Seth Berlin, sent me an email **this afternoon**, asking me when I am available for a telephonic meet-and-confer conference to discuss the issues in the motions. We will schedule a telephone call to discuss, but my associate and I cannot reasonably begin to prepare oppositions to the 3 pending discovery motions (filed yesterday and today in Florida and New York) until we have had the meet-and-confer conference to try to resolve the disputed issues.

It should be obvious to anyone that Gawker is engaged in a "scorched earth" approach to this litigation, which is improper. Gawker has **exponentially** greater financial resources than Mr. Bollea. The purpose of its discovery and motions is not to obtain legitimate discovery, but rather to overwhelm Mr. Bollea with discovery and motions. The parties already know the underlying facts, and what relevant evidence exists. Mr. Bollea was secretly taped having private, consensual sex in a private bedroom. Someone sent Gawker a 30 minute tape and it posted a 1 minute and 41 second "highlight reel" of the most graphic sex acts, showing Mr. Bollea fully naked, visibly aroused, and depicted having oral sex and sexual intercourse, with none of the footage blurred or blocked in any way. When the tape was first published, Mr. Bollea demanded that Gawker remove, telling them that it was illegally recorded and published. Gawker ignored the demands. It was not until Judge Campbell issued an injunction months later that Gawker finally removed the video from its website – after 5.35 million unique viewers had watched it.

Gawker seeks to make this litigation prohibitively expensive for Mr. Bollea, and to force him to lose this case, not on the merits, but by default. The court should reject these tactics.

Moreover, normal discovery and litigation procedures should be followed. Among others, **a meet and confer conference should precede a discovery motion**. That was not done here – Gawker rushed to file its two motions without so much as placing a single call to Mr. Bollea's counsel. Also, if the parties request and schedule a deposition, they should **take and complete** the deposition, rather than propound new discovery before the deposition and insist that the witness be deposed multiple times.

Also, in a discovery motion, the parties should not seek preclusion orders that are unwarranted and seek to **contradict reality**. Here, Gawker has **repeatedly sought** an order that seeks to preclude Mr. Bollea from presenting evidence regarding the true facts, namely, that **he did not know that he was being secretly taped having sex**, and he did not ever consent to the recording, or the distribution of the tape, or the broadcast of the tape by Gawker (or anyone else). (Just the opposite – Mr. Bollea has incurred substantial resources to have the publication of the video enjoined and removed from the Internet.) For Gawker to seek a preclusion order to try to prevent him from presenting the **true facts** of the case is improper and should be rejected.

Sincerely,

Charles Harder