CONFIDENTIAL

EXHIBIT B

to the

PUBLISHER DEFENDANTS' MOTION FOR CONTINUANCE

FILED UNDER SEAL

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November 24, 2014

VIA EMAIL

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

Re: *Bollea v. Clem, et al.*
No. 12012447-CI-011 (Fla. Cir. Ct.)

Dear Charles:

I write in response to your correspondence dated November 10, 2014 concerning your letters to the government about Gregg Thomas's FOIA requests and to reiterate what I said on that same topic during our phone conversation on November 13. As I made clear during our conversation, we strenuously object to your action in sending the letters to the government. That action violated both the letter and spirit of our agreed protocol and undercut the courts' orders requiring you, your client, and your co-counsel to consent to the release of the government's records and information pertaining to the criminal investigation.

In negotiating an agreed protocol for the FOIA requests, we agreed to copy you on the requests; note that plaintiff believes that records relating to the investigation are not relevant to this litigation, but that he and his counsel provided signed FOIA waivers based on a court order; allowed you to review the requests before they were submitted; and offered to include a separate letter from you reiterating plaintiff's position – even though none of this was required by the court's orders or sought in your August correspondence to Judge Case.

One week after I sent you drafts of the requests, you sent me a series of draft letters that far exceeded what we had agreed and that effectively repudiated the waivers ordered by the Florida courts. I responded to those drafts quickly, first explaining in detail the bases for our objections and then proposing revisions to move things along, offering throughout to talk about the reasons for my proposed revisions and objections to the language included in your drafts. You made clear in our one phone conversation that you did not want to discuss the specifics of the letter or my reasons for deleting specific passages. After we last exchanged drafts, I emailed you each day to ensure that plaintiff had an opportunity to include a letter with our requests, even

waiting an additional day to submit the requests. You never responded. On the day we submitted the requests, I called Sarah Luppen to ask whether you planned to send us another draft, explaining that I knew the requests were a sensitive issue to your client.

At no point did anyone from your side suggest that you planned to send separate letters to the government – not in your original correspondence to Judge Case concerning plaintiff's concerns with the process for submitting the FOIA requests, not in our extensive negotiations about the terms of the protocol, and not in our communications about your proposed drafts. Indeed, the protocol – to which you agreed on plaintiff's behalf – expressly contemplated that any such letter would be sent *with* the FOIA requests, not separately. Our agreement ensured that – just as you were able to review the requests themselves – we would be able to review plaintiff's proposed correspondence. The letters you ultimately sent far exceed what was contemplated by the protocol and were materially different than any draft you had previously shared with me.

The substance of the letters to the government is equally problematic. First, they are materially misleading. For example, *Gawker* did not make the requests; Mr. Thomas made them. And, Gawker is not seeking to obtain "more . . . content" about your client, much less to use the FOIA requests to collect "more information and content" to post, as the letter implies. Gawker's counsel is seeking information to aid in its defense of your client's $100 million lawsuit.

Moreover, contrary to the letters' suggestion that Gawker will obtain information for publication, whatever records the government provides will be designated as "attorney's eyes only." Gawker itself cannot access the records provided to its counsel until after you review them and *only* if you remove the confidentiality designation. Significantly, even Gawker's counsel will not have access to *any* video footage, let alone "sex tape footage," unless Judge Case or Judge Campbell allow it.

Your reference to Sara Sweeney's letter is similarly misleading. That letter refused to turn over certain DVDs to Mr. Bollea (whose right to own the DVDs is not clear and who has expressly sought to have the video footage destroyed), and stated that the government would hold the DVDs during the pendency of this action and pending further direction from the Florida state court. Your letter's suggestion that Ms. Sweeney's letter in any way implied that the government would not produce those DVDs in the Florida case is simply incorrect. In fact, last month when we together spoke to Ms. Sweeney's supervisor, Bob Mosakowski, although he acknowledged the decision concerning the FOIA requests would be made by someone at the Department of Justice in Washington, D.C., he said that his inclination would be to provide the video footage to Judge Case.

By suggesting that Gawker has submitted the request to obtain and possibly post scandalous material about your client, the letters have mischaracterized the nature of the requests and implicated the privacy concerns your client was ordered to waive. In addition, by exhorting the government to "take great care" in withholding and redacting records on the basis of (1) misleading information, (2) exemptions that you and your client have no standing to raise (as multiple levels of the Florida courts have already held), and (3) correspondence from a prosecutor that was sent in an entirely different context, the letters undercut the courts' orders requiring your client and his counsel to authorize the release of *all* responsive records.

Now that the letters have been sent, the harm has been done, and that bell cannot be easily unrung. As I said on the phone on November 13, I am gravely concerned that their statements and misrepresentations might provide both explicit and implicit grounds for the government to withhold the requested records, and at a minimum are likely to further delay a process that began a full year ago. The manner in which the letters were written and sent appears to have been calculated to undermine our right to take discovery explicitly authorized by the Florida courts and to undercut the effect of the court's orders requiring plaintiff and his counsel to sign legally binding documents authorizing the release of all government records.

We will seek to hold you and your client responsible for any delay in obtaining the government's records caused by your letters and any attendant delay in completing discovery and preparing for trial. And, as I explained when we talked, we reserve our right to seek other remedies from the court if the government withholds any record on any basis implicated by your letters.

Sincerely,

LEVINE SULLIVAN KOCH & SCHULZ, LLP

By: _____
Michael Berry