

EXHIBIT 40

to the

**GAWKER DEFENDANTS' MOTION TO COMPEL
PLAINTIFF TO PRODUCE IMPROPERLY WITHHELD DOCUMENTS**

From: [Michael Berry](#)
To: "Charles Harder"; Ryan Relyea; "kturkel@BajoCuva.com"; "Shane.Vogt@bajocuva.com"; Jennifer McGrath; "dhouston@houstonatlaw.com"
Cc: [Seth Berlin](#); [Michael Sullivan](#); [Alia Smith](#); [Paul Safier](#); "qthomas@tlolawfirm.com"; [Rachel E. Fugate](#)
Subject: RE: Bollea v. Clem, et al. - Case No. 12012447-CI-011
Date: Friday, September 18, 2015 10:20:50 AM
Attachments: [image001.jpg](#)
[image002.png](#)

Charles,

Just wanted to follow up with you about the letter we sent on August 14 and your email response that afternoon. I had understood that you would be looking into these issues and getting back to me the following week, but have heard nothing since. Please let us know what you have found concerning items 1 and 2. And, when you respond, we would greatly appreciate additional explanation on two points in your Aug. 14 response:

First, please explain how "[t]here was not a waiver of the settlement privilege" when the settlement negotiations were discussed with multiple third-parties and a draft of the settlement agreement with Mr. Clem was provided to the government. *See, e.g.*, GAWKER 87-93, 900 (documents produced by FBI, including draft settlement agreement, FBI Form 302 concerning interview with David Houston, and transcript of conversation between Mr. Houston, Mr. Bollea, and Keith Davidson). We understand that the court addressed our request for documents relating to the settlement negotiations with Mr. Clem previously, but do not recall plaintiff ever mentioning to Judge Campbell that he and his lawyer had discussed those negotiations (or the negotiations with Ms. Cole) with third parties and thus waived any privilege. If we are mistaken and plaintiff did inform the Court of this fact, please let us know specifically where in the motion papers or hearing that information was conveyed to the Court.

Second, please explain how "[t]here was no waiver of the attorney-client privilege" when, during a meeting between Mr. Houston, Mr. Bollea, and two FBI agents, Mr. Houston told the agents that he "confirms no privilege . . . even in civil suit." GAWKER-22; *see also* GAWKER-86 (FBI Form 302 for interview with Mr. Houston).

We look forward to your response by September 21.

Thanks,
Mike

Michael Berry



(215) 988-9773 | Phone

From: Charles Harder [mailto:charder@hmafirm.com]
Sent: Friday, August 14, 2015 5:26 PM
To: Ryan Relyea; 'kturkel@BajoCuva.com'; 'Shane.Vogt@bajocuva.com'; Jennifer McGrath;

'dhouston@houstonatlaw.com'

Cc: Michael Berry; Seth Berlin; Michael Sullivan; Alia Smith; Paul Safier; 'gthomas@tlolawfirm.com'; Rachel E. Fugate

Subject: RE: Bollea v. Clem, et al. - Case No. 12012447-CI-011

Mike:

This email responds to your letter of today's date. The issues below are ordered the same as in your letter.

1. I am looking into your claims and will get back to you, likely by next week. (I note that you sent your letter on a Friday afternoon.) Pending my review, we generally deny the many accusations in your letter. Having litigated with you and your clients for nearly 3 years now, your firm and your clients have very little credibility with us; much of what you both say is half-truth and spin, and often outright untrue.
2. Same
3. There was no waiver of the settlement privilege and this issue was already litigated and decided by Judge Campbell – in favor of Bollea and against Gawker Defendants. We will not be producing any such documents, as you have requested. All of your accusations are denied.
4. There was no waiver of the attorney-client privilege. We will not be producing any such documents, as you have requested. All of your accusations are denied.

I will add that, regarding #3 and #4 (and possibly also for the other issues, though I am still investigating) the communications from your law firm never seek to amaze me. We look forward to litigating these issues, if you are going to be bold enough to bring motions on them. We will seek 100% of our legal fees to oppose any such motions. You and your clients are officially on notice.

Sincerely,

Charles Harder

CHARLES J. HARDER

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From: Ryan Relyea [<mailto:RRelyea@lskslaw.com>]
Sent: Friday, August 14, 2015 1:05 PM
To: Charles Harder; 'kturkel@BajoCuva.com'; 'Shane.Vogt@bajocuva.com'; Jennifer McGrath; 'dhouston@houstonatlaw.com'
Cc: Michael Berry; Seth Berlin; Michael Sullivan; Alia Smith; Paul Safier; 'gthomas@tlolawfirm.com'; Rachel E. Fugate
Subject: Bollea v. Clem, et al. - Case No. 12012447-CI-011

See attached.

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