

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA

MAUREEN TOFFOLONI, )  
as Administratrix and Personal )  
Representative of the )  
ESTATE OF NANCY E. BENOIT, )  
 )  
Plaintiff, )

v. )

CIVIL ACTION  
FILE NO. 1:08-CV-0421-TWT

LFP PUBLISHING GROUP, LLC, )  
d/b/a Hustler Magazine, )  
MARK SAMANSKY, an Individual, )  
and other distributors and sellers of, )  
Hustler Magazine, as )  
Defendants X, Y, and Z, )  
 )  
Defendants. )

**BRIEF IN SUPPORT OF RENEWED MOTION FOR  
PARTIAL SUMMARY JUDGMENT AS TO LIABILITY**

COMES NOW, Plaintiff, Maureen Toffoloni, as Administratrix and  
Personal Representative of the Estate of Nancy E. Benoit (“Plaintiff”), through  
counsel, and files this her Brief in Support of Renewed Motion for Partial Summary  
Judgment as to Liability with this Court as follows:

### STATEMENT OF THE CASE

On October 16, 2009, Plaintiff moved for partial summary judgment as to liability, pursuant to Fed. R. Civ. P. Rule 56(d)(3). In that Motion, Plaintiff asserted that the Eleventh Circuit Court of Appeals' Opinion dated June 25, 2009 finally and absolutely established Defendant's liability in this case. *See Toffoloni v. LFP Publishing Group, LLC*, 572 F.3d 1201 (11<sup>th</sup> Cir. 2009); *rehearing and rehearing en banc denied*, 350 Fed. Appx. 435 (11<sup>th</sup> Cir. 2009); *cert denied*, 130 S. Ct. 1689, 176 L.Ed.2d 206 (2010). The Eleventh Circuit Court of Appeals held that the Defendant, LFP Publishing Group, LLC d/b/a "Hustler Magazine" ("Hustler") is liable to Plaintiff for violation of Plaintiff's decedent's right of publicity as a matter of law. *See Toffoloni, supra*.

In response to Plaintiff's Motion for Partial Summary Judgment as to Liability, Hustler did not argue that there is no cause of action for right of publicity of the nude photographs of Nancy Benoit; this issue was conclusively resolved by the Eleventh Circuit. Hustler's position was as follows: Hustler is entitled to conduct discovery in the case, to be able to ascertain "whether Plaintiff is the real-party-in-interest with legal standing to assert a posthumous claim for right of publicity on behalf of Ms. Benoit;" and whether "Ms. Benoit did not in fact sign a release or

otherwise authorize the publication of the images.” See Hustler’s Brief in Opposition to Plaintiff’s Motion for Partial Summary Judgment as to Liability dated November 5, 2009, p. 3.

Based upon Hustler’s representations, this Court denied Plaintiff’s Motion for Partial Summary Judgment as to Liability as “inappropriate at this time,” to allow discovery to occur regarding the specific and only remaining issues of standing and the possible existence of a release by Ms. Benoit. See Order dated January 13, 2010, p. 6.

Thereafter, beginning in October of 2009, the parties commenced discovery. On June 30, 2010, the parties completed discovery. See Scheduling Order dated March 31, 2010, p. 2.

It will suffice to say that, discovery having ended:

(1) It has been proven that Plaintiff is the proper party-in-interest to pursue the claims in this case and there is not, and has never been, a scintilla of evidence that Plaintiff, who is the sworn administrator and personal representative of the Estate of Nancy Elizabeth Benoit, is not the proper party-in-interest to enforce property rights belonging to the Estate;

(2) there is not, and has never been, a scintilla of evidence that Nancy Benoit, or anyone else, ever conveyed to any third person any right or interest in the images published in the March 2008 edition of *Hustler Magazine*, which Hustler admittedly published without the permission of, or compensation to, the Estate; and

(3) there is not, and has never been, a scintilla of evidence that Nancy Benoit ever authorized the publication of those images by anyone and there is certainly no evidence that Nancy Benoit conveyed such rights to Hustler for use of photos and a story line in *Hustler Magazine*.

Thus, at the conclusion of exhaustive discovery, Hustler has failed to establish any defense whatsoever to the claim asserted by Plaintiff in this case. The evidence of record irrefutably shows that there is no genuine issue as to any material fact relating to the Hustler's liability for violation of Plaintiff's right of publicity. Now that this Court has allowed the discovery as requested by Hustler regarding two specific issues, Plaintiff is entitled to partial summary judgment against Hustler as to liability as a matter of law.

#### **ARGUMENT AND CITATION OF AUTHORITY**

Attached to this Renewed Motion for Partial Summary Judgment as to liability is a certified copy of Plaintiff's Letters of Administration from the Probate

Court of Fayette County, pursuant to which Plaintiff was appointed the Administratrix and Personal Representative of the Estate of her daughter, Nancy Elizabeth Benoit. See Letters of Administration attached hereto as Exhibit A and incorporated herein by reference.

It is beyond dispute that the personal representative of a decedent's estate in Georgia is the person clothed with the duty and authority to prosecute actions for violations of property rights belonging to the estate. See O.C.G.A. § 53-7-45.

It is also beyond dispute that “the right of publicity survives the death of its owner and is inheritable and devisable.” See Toffoloni, supra, citing Martin Luther King, Jr. Center for Social Change, Inc. v. Am. Heritage Products, Inc., 250 Ga. 135, 296 S.E.2d 697, 703 (1982).

Finally, it is beyond dispute that “the appropriation of another's name and likeness ... without consent and for financial gain of the appropriators is a tort in Georgia.” Martin Luther King, Jr. Center for Social Change, Inc. v. Am. Heritage Products, Inc., 694 F.2d 674, 680 (11<sup>th</sup> Cir. 1983). See also Toffoloni, supra.

After completing the discovery efforts regarding the standing and retention of rights issues which Hustler told the Court that it needed, Hustler has been

unable to locate any evidence to raise a genuine issue as to any of the following material facts:

(1) Maureen Toffoloni is the duly appointed personal representative of the Estate of Nancy Elizabeth Benoit. See Exhibit A attached hereto.

(2) The Estate owns and controls the right of publicity with respect to the likeness of Nancy Benoit, particularly the images published by Hustler in its March 2008 edition. See Verified Complaint ¶ 27; see also *Martin Luther King, Jr. Center for Social Change, Inc.*, *supra* 250 Ga. 135, 139-140.

(3) Hustler published the images for its own financial gain, without the permission of or compensation to the Estate. See Deposition of Mark Johnson dated April 13, 2010, pp. 10-12, attached hereto as Exhibit B and incorporated herein by reference.<sup>1</sup> See also, Exhibit 1 to Mark Johnson deposition: (“Publishing the photos of Nancy Benoit was a no-brainer; We knew millions of people would want to see these pictures”)

(4) Finally, with respect to the other hypothetical issues, i.e., whether Nancy Benoit “may have signed a release or otherwise authorized the publication of

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<sup>1</sup> The Deposition of Mark Johnson has been marked “Confidential” and is being filed separately under seal pursuant to this Court’s Protective Order dated December 22, 2009.

the photographs,” or “may have licensed or otherwise transferred substantial rights to commercially exploit her name and likeness,” the answers are in the negative. There is simply no evidence that Nancy Benoit ever conveyed to anyone the right to publish the images. Instead, the totality of the evidence is that Nancy Benoit and her husband at the time, James Daus, adamantly wanted the images destroyed. Daus testified in an affidavit (attached to the Verified Complaint as Exhibit B), and in his deposition, attached hereto as Exhibit C, that he and Nancy Benoit both specifically demanded that all of the nude images of Nancy Benoit, including the videotape (from which the images were subsequently extracted 20 years later) be destroyed, within days of the video having been made by the photographer, Mark Samansky. See Deposition of James Daus dated April 2, 2010, pp. 52-53 attached hereto as Exhibit C. Mr. Daus further testified that neither he nor Nancy wanted the video published in any format. See Daus Deposition, pp. 52-53. Moreover, Hustler itself boasted in the March 2008 article accompanying the images, that Nancy had in fact requested that the images be destroyed: “While the original print negatives were destroyed at Nancy’s behest, the video from which these images were taken survived. Made public here for the very first time, they capture what was lost and what could have been.” See Exhibit D attached hereto and incorporated herein by reference.

Thus, there is no genuine issue as to any material fact, and no evidence that Nancy Benoit or anyone with her authority, ever licensed, conveyed, released, transferred or otherwise authorized the publication of the images. To the contrary, the only evidence is that Nancy Benoit and her then husband demanded that all images be destroyed, including the videotape and the images thereon, and that they tried to ensure that the images would never be used by anyone. *See* Daus Deposition, pp. 52-53.

Also attached to the Verified Complaint as Exhibit C is a copy of a letter from counsel for the Estate advising Hustler that it did not have the right to publish the images of Nancy Benoit, and that it should not do so. Hustler received this letter in mid-January, 2008. *See* Deposition of Donna Hahner dated April 13, 2010, p. 38, attached hereto as Exhibit E.<sup>2</sup>

In the face of this admonition, and without any authority from the Estate of Nancy Benoit, Hustler proceeded to publish and sell the March 2008, edition of the magazine containing the images, later claiming through one of its lawyers that it had

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<sup>2</sup> The Deposition of Donna Hahner has been marked "Confidential" and is being filed separately under seal pursuant to this Court's Protective Order dated December 22, 2009.



a First Amendment right to publish the images because they were newsworthy. *See* Hahner Deposition, Exhibit 2 (LFP 0097); *see also* Exhibit D to Verified Complaint.

As this Court knows, on June 25, 2009, the Eleventh Circuit Court of Appeals unanimously and unambiguously held that “these private, nude photographs were not incident to a newsworthy article; rather the brief biography was incident to the photographs ... these photographs were neither related in time nor concept to the current incident of public interest. **We hold that these photographs do not qualify for the newsworthiness exception to the right of publicity.**” *Toffoloni* 572 F.3d at 1213 (emphasis added).

#### CONCLUSION

Based upon the facts of record and the June 25, 2009 decision of the Eleventh Circuit Court of Appeals in this case, there is no scenario under which Hustler would **not** be liable to Plaintiff. In her original Motion and this Renewed Motion, Plaintiff has “identified grounds that show the absence of a genuine issue of material fact.” *See* Order dated January 13, 2010, p. 3. Now, the burden shifts to Hustler, who, under the law, must go beyond the pleadings, its suppositions, hypotheses, and speculations, and affirmatively show that a genuine issue of material

fact does exist. This the Defendant cannot do. Plaintiff is entitled to judgment in her favor against Hustler as to liability, as a matter of law.

Apparently, there will need to be a jury trial on damages, including Plaintiff's claims for compensatory damages, punitive damages, and expenses of litigation, under Georgia law. This is so, because Hustler has refused to discuss settlement. See email correspondence between counsel dated July 1, 2010 relating to the settlement conference required by L.R. 16.3: according to counsel, Hustler "will not make or entertain any offers of settlement at this time." See Exhibit F attached hereto.

Be that as it may, there is no reason to require the Plaintiff to prove Hustler's liability, because the evidence and the law of the case have conclusively established it.

Plaintiff respectfully requests that the Court enter judgment in her favor against Hustler as to liability, with a jury trial on Plaintiff's damages to take place at the Court's earliest convenience.

Respectfully submitted July 27, 2010.

*/s/ Richard P. Decker*

RICHARD P. DECKER  
State Bar of Georgia #215600  
F. Edwin Hallman, Jr.  
State Bar of Georgia #319800

For HALLMAN & WINGATE, LLC  
Attorneys for Plaintiff

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA

MAUREEN TOFFOLONI, )  
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MARK SAMANSKY, an Individual, )  
and other distributors and sellers of, )  
Hustler Magazine, as )  
Defendants X, Y, and Z, )  
 )  
Defendants. )

**CERTIFICATE OF SERVICE**

This is to certify that on July 27, 2010, I have electronically filed the foregoing Renewed Motion for Partial Summary Judgment as to Liability and Brief in Support thereof with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorney(s) of record:

James Clifton Rawls, Esq.

S. Derek Bauer, Esq.  
Barry J. Armstrong, Esq.  
Darrell Jay Solomon, Esq.  
Jeffrey F. Reina, Esq.  
Paul J. Cambria, Esq.

and by placing a copy of same in the United States Mail in a properly addressed envelope with adequate postage thereon to:

William M. Feigenbaum, Esq.  
Lipsitz, Green, Scime, Cambria, LLP  
42 Delaware Avenue, Suite 120  
Buffalo, NY 14202

*/s/ Richard P. Decker*

RICHARD P. DECKER  
State Bar of Georgia #215600

For HALLMAN & WINGATE, LLC  
Attorneys for Plaintiff

166 Anderson Street, S.E.  
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(404) 588-2530

STATE OF GEORGIA

COUNTY OF FAYETTE ESTATE NO. 13-8514

**LETTERS OF ADMINISTRATION**  
(Bond Waived and/or Certain Powers Granted at Time of Appointment)

By MARTHA STEPHENSON, Judge of the Probate Court of said County.

WHEREAS, NANCY ELIZABETH BENOIT died intestate (check one):

- domiciled in this County;
- not domiciled in this State, but owning property in this County;

and this Court granted an order appointing MAUREEN R. TOFFOLONI as Administrator(s) of the estate of said decedent, on condition that said Administrator(s) give oath as required by law; and the said Administrator(s) having complied with said condition; the Court hereby grants unto said Administrator(s) full power to collect the assets of said decedent, and to pay the debts of said estate, so far as such assets will extend, according to law, and then to pay over the balance, if any, to the heirs of said decedent, and to do and perform all other duties as such Administrator(s), according to the laws of this State. In addition, this Court has:

(Initial all which apply:)

- a. waived the bond of the Administrator(s) and granted to the Administrator(s) the power to serve without filing an inventory, and without filing any annual or other returns or reports to any court; but the fiduciary shall furnish to the income beneficiaries, at least annually, a statement of receipts and disbursements.
- b. granted to the Administrator(s) all of the powers contained in O.C.G.A. §53-12-232 not included in (a) above.

IN TESTIMONY WHEREOF, I have hereunto affixed my signature as Judge of the Probate Court of said County and the seal of this office this 28th day of August, 20 07.

Martha Stephenson  
Judge of the Probate Court

NOTE: The following must be signed if the judge does not sign the original of this document:

Issued by:

\_\_\_\_\_  
Clerk, Probate Court

(Seal)

(SEE INSTRUCTIONS ON REVERSE SIDE)

# **EXHIBIT B**

**Deposition of Mark Johnson  
Tuesday, April 13, 2010**

**Filed Separately Under Seal**

TOFFOLONI v. LFP PUBLISHING GROUP, LLC, ET  
AL

JAMES MICHAEL DAUS

April 2, 2010

*Prepared for you by*

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EXHIBIT     C



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1 IN THE UNITED STATES DISTRICT COURT  
 2 FOR THE NORTHERN DISTRICT OF GEORGIA  
 3 CASE NO: 1:08-cv-00421-TWT  
 4  
 5 MAUREEN TOFFOLONI,  
 6 as Administrator and Personal  
 7 Representative of the ESTATE  
 8 OF NANCY E. BENOIT,  
 9 Plaintiff,  
 10 vs.  
 11 LFP PUBLISHING GROUP, LLC,  
 12 d/b/a Hustler Magazine, et al.,  
 13 Defendant.  
 14 ----- x  
 15  
 16 VIDEOTAPED  
 17 DEPOSITION OF: JAMES MICHAEL DAUS  
 18  
 19 DATE: Friday, April 2, 2010  
 20  
 21 TIME: 9:25 a.m. To 10:38 a.m.  
 22  
 23 LOCATION: Deland Artisan Inn  
 24 215 South Woodland Boulevard  
 25 Deland, Florida 32720  
 REPORTED BY: Evelyn M. Zirbes, CSR-CA,  
 Certified Shorthand Reporter  
 and Notary Public, State of  
 Florida at Large

Page 2

1 APPEARANCES:  
 2  
 3 RICHARD P. DECKER, ESQUIRE  
 4 Hallman & Wingate, LLC  
 5 166 Anderson Street, S.E.  
 6 Suite 210  
 7 Marietta, Georgia 30060  
 8  
 9 On behalf of the Plaintiff  
 10  
 11 DARRELL J. SOLOMON, ESQUIRE  
 12 McKenna Long & Aldridge, LLP  
 13 303 Peachtree Street, N.E.  
 14 Suite 5300  
 15 Atlanta, Georgia 30308  
 16 On behalf of the Defendant  
 17  
 18 S. DEREK BAUER, ESQUIRE  
 19 McKenna Long & Aldridge, LLP  
 20 303 Peachtree Street, N.E.  
 21 Suite 5300  
 22 Atlanta, Georgia 30308  
 23  
 24 On behalf of the Defendant  
 25  
 ALSO PRESENT: Jake Vigliotti, Videographer  
 Maureen Toffoloni and Paul Toffoloni

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 19 STIPULATION  
 20  
 21  
 22 It is hereby stipulated, by and between counsel for the  
 23 respective parties and the witness, that the reading and  
 24 signing of this deposition is expressly reserved.  
 25

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1 THE VIDEOGRAPHER: The date is April 2, 2010.  
 2 This is the deposition of Jim Daus being taken in  
 3 the matter of Toffoloni versus LFP Publishing  
 4 Group, LLC. The time is 9:25 a.m. Will counsel  
 5 please introduce themselves for the record.  
 6 MR. DECKER: Richard Decker, counsel for the  
 7 plaintiff, Maureen Toffoloni as administrator of  
 8 the estate of Nancy Benoit.  
 9 MR. SOLOMON: Darrell Solomon, attorney for  
 10 the defendant, LFP Publishing Group.  
 11 MR. BAUER: Derek Bauer also for defendant.  
 12 THE VIDEOGRAPHER: Will the court reporter  
 13 please swear in the witness.  
 14 JAMES MICHAEL DAUS  
 15 having been first duly sworn to tell the truth, the whole  
 16 truth and nothing but the truth, testified as follows:  
 17 MR. DECKER: We have agreed and stipulated  
 18 that objections except as to the form of the  
 19 question and responsiveness of the answer can be  
 20 reserved until time of trial or other use of the  
 21 deposition and that will include objections as to  
 22 relevancy and materiality of any evidence or  
 23 testimony from the witness.  
 24 MR. SOLOMON: Thank you. I'd like to also  
 25 note for the record that Mr. and Mrs. Toffoloni are

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1 also present for the deposition today.  
2 DIRECT EXAMINATION  
3 BY MR. SOLOMON:  
4 Q. This is the deposition of James Daus taken  
5 pursuant to the Federal Rules of Civil Procedure and  
6 pursuant to subpoena for use in evidence and for all proper  
7 purposes including use at trial.  
8 Good morning, Mr. Daus. I'm Darrell Solomon. I  
9 represent LFP Publishing Group in this matter. Have you  
10 ever been deposed before?  
11 A. No, sir.  
12 Q. Well, I'm going to ask you a series of questions  
13 and I just ask you answer truthfully and fully to my  
14 questions. I'll ask that you please let me finish a  
15 question before you begin your answer and if I ever ask a  
16 question you don't understand, just please tell me to stop  
17 and I'll try to re-ask it in a better way.  
18 There may be times when Mr. Decker objects to my  
19 question, but go ahead and answer the question in spite of  
20 that. Mr. Daus, I'm going to hand -- well, I'd like to  
21 have this exhibit marked as exhibit 1, please.  
22 (Document marked Daus Exhibit  
23 No. 1 for identification.)  
24 MR. DECKER: Jim, you might also try to  
25 remember to answer orally rather than shaking or

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1 nodding your head and saying uh-huh or uh-uh  
2 because that might not come out clear on the  
3 record.  
4 THE WITNESS: Right.  
5 BY MR. SOLOMON:  
6 Q. Thank you. Mr. Daus, would you identify what's  
7 been marked as Exhibit 1 as the subpoena to be here as well  
8 as your acknowledgment of service of that subpoena.  
9 A. Yes.  
10 Q. And also I believe my letter to you enclosed at  
11 the end.  
12 A. Yes.  
13 Q. The subpoena commands you to bring certain  
14 documents with you here today. Did you do so?  
15 A. Yes.  
16 Q. We'll get to those in a minute. Is that --  
17 A. Yes.  
18 Q. Can I take a look at those. Can you please, let's  
19 go through these and identify what you've brought.  
20 A. Of course, a copy of the deposition and everything  
21 else is just pictures, that's all I have.  
22 Q. Okay. What is your full name, please?  
23 A. James Michael Daus.  
24 Q. And your home address?  
25 A. 1960 Hillcrest Oak Drive, Deland, Florida.

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1 Q. How long have you lived in Florida, Mr. Daus?  
2 A. 36 years.  
3 Q. Are you currently employed?  
4 A. Yes.  
5 Q. With whom are you currently employed?  
6 A. Tri-State Distributors.  
7 Q. What do they do?  
8 A. I market natural and propane gas in the southeast  
9 United States.  
10 Q. How long have you held that position?  
11 A. 12 years.  
12 MR. DECKER: Let me interject at this point.  
13 I can see one of these photographs is clearly  
14 personal and private. We would object to it being  
15 made part of a public record. If you insist on  
16 identifying this photograph and I'm sure you know  
17 the one I'm talking about, then we would ask you to  
18 file it under seal and we will move to have it  
19 excluded from the record. It has nothing to do  
20 with this case and it's personal and private. I  
21 feel sure the witness will say that it's personal  
22 and private.  
23 MR. BAUER: We'll find out what he says about  
24 it, but your point is duly noted and sensitivity  
25 and care will be taken with respect to that. We'll

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1 treat it as confidential under the protective  
2 order.  
3 MR. DECKER: At least that.  
4 MR. BAUER: It will not be filed openly.  
5 BY MR. SOLOMON:  
6 Q. What did you do before your position with  
7 Tri-State Distributors?  
8 A. I worked for Florida Public Utilities, natural gas  
9 company for 17 and a half years.  
10 Q. And before that?  
11 A. High school.  
12 Q. Are you currently married?  
13 A. Yes.  
14 Q. How long have you been married?  
15 A. Almost 21 years next month.  
16 Q. Do you have any children?  
17 A. One son, 13.  
18 Q. Can you tell me what you did to prepare for this  
19 deposition?  
20 A. Just looked through my attic and basically  
21 retrieved all the photos that I could.  
22 Q. Have you had discussions with plaintiff's counsel  
23 regarding this deposition?  
24 A. As in Mr. Decker? Yes.  
25 Q. How many times did you speak with Mr. Decker about

Page 9

1 this deposition?  
2 **A. Maybe twice very briefly.**  
3 Q. When were those conversations?  
4 **A. Last week and maybe about a month and a half**  
5 **ago.**  
6 Q. What was said?  
7 **A. Just explaining what would happen in a deposition**  
8 **because I've never been to one before.**  
9 Q. Did counsel share any documents with you in  
10 preparation for this deposition?  
11 **A. No, sir.**  
12 Q. He didn't show you any documents?  
13 **A. No.**  
14 Q. Have you had any discussions with Bill Otten  
15 regarding this deposition?  
16 **A. A few days ago I did. When I found out from**  
17 **Mr. Decker that Bill Otten was getting deposed also because**  
18 **he told me that Bill was.**  
19 Q. What was said between you and Mr. Otten?  
20 **A. We just couldn't believe that after 25, 30 years**  
21 **that something like this would happen. That was really**  
22 **about it.**  
23 Q. Have you spoken with Mr. Otten since yesterday  
24 after his deposition was yesterday?  
25 **A. No, sir.**

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1 Q. Have you spoken to the Toffolonis about this  
2 deposition?  
3 **A. No, I have not.**  
4 Q. When did you first meet Nancy Toffoloni?  
5 **A. In high school.**  
6 Q. When was the last time you did speak to Mr. and  
7 Mrs. Toffoloni?  
8 **A. At the funeral.**  
9 Q. That was the last time you saw them and also the  
10 last time you spoke with them?  
11 **A. Yes.**  
12 Q. You said you met Nancy in high school. That was  
13 in Deland?  
14 **A. Deland High School, yes.**  
15 Q. How long did the two of you date?  
16 **A. Dated about a year.**  
17 Q. So you got married and you got married following  
18 that one year?  
19 **A. That's correct.**  
20 Q. Did you have any contact with the Toffolonis in  
21 connection with your affidavit that was attached to the  
22 complaint in this matter?  
23 **A. No, I did not.**  
24 Q. While you were married to Nancy she entered  
25 several bikini contests. Is that correct?

Page 11

1 **A. That is correct.**  
2 Q. Did she also enter wet T-shirt contests?  
3 **A. Yes.**  
4 Q. How many, approximately how many bikini contests  
5 and wet T-shirt contests did she enter?  
6 **A. Total maybe 15, 18.**  
7 Q. Did you travel around with her attending those  
8 contests?  
9 **A. I was always with her, yes.**  
10 Q. Where geographically speaking where were those  
11 located?  
12 **A. All local, Daytona to Orlando.**  
13 Q. What did you do for a living at that time?  
14 **A. I was a meter reader at Florida Public**  
15 **Utilities.**  
16 Q. Did you and Nancy have any children together?  
17 **A. No, we did not.**  
18 Q. When did the relationship end? Was it 1996; is  
19 that correct?  
20 **A. No. No. 1985.**  
21 Q. My apologies.  
22 **A. '85 or '86. I'm not sure off the top of my**  
23 **head.**  
24 Q. Why did the relationship end?  
25 **A. She needed to pursue her career, follow her**

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1 **dreams.**  
2 Q. What were those dreams?  
3 **A. To become a professional wrestler.**  
4 Q. How often did you speak with Nancy after your  
5 divorce?  
6 **A. Very little. We still cared a lot about each**  
7 **other and it would be a lot easier we both decided that we**  
8 **didn't speak too often. Just a handful of times over the**  
9 **years.**  
10 Q. On the occasions you did speak were those short  
11 communications or were they long conversations?  
12 **A. Very short.**  
13 Q. Did you speak with her about her career when you  
14 did speak with her after the divorce?  
15 **A. Yes.**  
16 Q. Were they questions -- were the conversations  
17 about her career generally or were they more detailed  
18 discussions about her career and personal life?  
19 **A. Very general. She didn't want to hurt my feelings**  
20 **so she didn't give me a lot of info.**  
21 Q. Did you ever speak with her after the divorce, did  
22 you ever speak to Nancy about her employment contracts?  
23 **A. No, not at all.**  
24 Q. After the divorce did you ever speak with her  
25 about her tax returns?

Page 13

1 **A. No.**  
 2 Q. What about her other aspects of her finances?  
 3 **A. No.**  
 4 Q. After the divorce did you ever see any of her  
 5 paychecks?  
 6 **A. No.**  
 7 Q. Did you ever see any of her tax returns?  
 8 **A. No, sir.**  
 9 Q. Do you recall when the last time you spoke with  
 10 Nancy was?  
 11 **A. By e-mail right after Daniel was born.**  
 12 Q. What was the nature of that e-mail?  
 13 **A. I think it was something just about she had a son.**  
 14 **How things, times changed and things change. We never**  
 15 **wanted children and I e-mailed back that I had a son also**  
 16 **and that was it. Never heard from her again.**  
 17 Q. Going back to the bikini contests, at that time  
 18 that she was entering bikini contests and wet T-shirt  
 19 contests she was interested in becoming a model at that  
 20 time. Is that correct?  
 21 **A. Correct.**  
 22 Q. A bikini model?  
 23 **A. We were just trying to break into the business.**  
 24 **We knew she had talent. We didn't know what type of model.**  
 25 **We had no idea.**

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1 Q. At that time were you interested in her becoming a  
 2 nude model?  
 3 **A. We never really were.**  
 4 Q. When you say you never really were, can you  
 5 expound on that, please?  
 6 **A. Well, the answer would be, no, that we never,**  
 7 **never were.**  
 8 Q. You're aware how LFP came in to the possession of  
 9 the nude images of Nancy, are you not?  
 10 **A. Yes.**  
 11 Q. That was Mark Samansky?  
 12 **A. Yes.**  
 13 Q. What time of day was the Mark Samansky photo  
 14 shoot, when did that occur?  
 15 **A. Evening.**  
 16 Q. Approximately what time?  
 17 **A. Oh, my guess would be nine o'clock.**  
 18 Q. Who was Mark Samansky at that time?  
 19 **A. He was a radio DJ in Orlando.**  
 20 Q. You knew him prior to, you had heard of him and  
 21 knew of him prior to meeting him?  
 22 **A. On the radio, yes.**  
 23 Q. What kind of radio show did he have?  
 24 **A. One of those shock jock shows in the morning like**  
 25 **from 6 to 10.**

Page 15

1 Q. Nancy first came in contact with Mark Samansky  
 2 when he was emcee'ing a bikini contest she had entered. Is  
 3 that correct?  
 4 **A. That's correct.**  
 5 Q. Do you recall where that specific contest was  
 6 held?  
 7 **A. It was on Highway 50 in Bithlo. I don't remember**  
 8 **the name of the nightclub.**  
 9 Q. I'm sorry, Bithlo?  
 10 **A. Bithlo. It's west -- east of Orlando.**  
 11 Q. At the time Nancy and Mark Samansky met at the  
 12 time those photos were taken she was 21 years old?  
 13 **A. Approximately.**  
 14 Q. It was at that bikini contest that Mr. Samansky  
 15 told Nancy he could get her picture in to a gentleman's  
 16 magazine. Is that correct?  
 17 **A. A couple contests later. There was -- the contest**  
 18 **at that club was like a 4-round event and she won the first**  
 19 **couple rounds and after he got to know us a little bit then**  
 20 **he said, yes, that he can get her in to something like**  
 21 **that.**  
 22 Q. Can you describe the different times you spoke or  
 23 that Nancy and you spoke with Mr. Samansky during that  
 24 period of those 4 rounds?  
 25 **A. What would you like to know?**

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1 Q. What was said by you, what was said by  
 2 Mr. Samansky?  
 3 **A. He said that he had connections with "Penthouse"**  
 4 **and would she be interested. We declined the first couple**  
 5 **times he offered.**  
 6 Q. You eventually changed your mind?  
 7 **A. We changed our mind because we figured, well,**  
 8 **we'll take the pictures and see what happens and he always**  
 9 **said that all he can do is take some pictures. We can send**  
 10 **them in, see what they say. If they don't like them or we**  
 11 **don't want to do it, we don't have to.**  
 12 Q. Whose idea was it? Was it your idea or was it  
 13 Nancy's idea to go ahead and give it a shot to take the  
 14 nude pictures?  
 15 **A. Both. We talked about it quite a bit.**  
 16 Q. When you decided to go ahead with that, you and  
 17 Nancy decided that, what was your ultimate hope?  
 18 **A. We didn't know. We knew she had talent. We**  
 19 **didn't know what type of talent to where she would end up.**  
 20 **We didn't know where she would fit. She ended up in**  
 21 **wrestling.**  
 22 Q. One of the goals was to promote her modeling  
 23 career. Is that correct?  
 24 **A. Correct.**  
 25 Q. With the intention that she could possibly be a

Page 17

1 nude model?  
2 **A. Possibly.**  
3 Q. How much money did Nancy think she would get for  
4 having her pictures published in a gentleman's magazine?  
5 **A. Mark Samansky said \$10,000 is the normal**  
6 **centerfold. That was all per Mark Samansky.**  
7 Q. That was for a centerfold?  
8 **A. Correct.**  
9 Q. Did he give any details about what she might  
10 receive if her pictures were in a gentleman's magazine, but  
11 not a centerfold?  
12 **A. No, he did not.**  
13 Q. Can you tell me about how the photo shoot with  
14 Mark Samansky ultimately came about?  
15 **A. We went out to dinner with Mark Samansky and his**  
16 **wife in Altamonte. Ended up back at his apartment and**  
17 **drank quite a bit.**  
18 Q. And you were present during the photo shoot,  
19 during the entirety of the photo shoot at Mr. Samansky's  
20 house?  
21 **A. Yes, sir.**  
22 Q. Mark Samansky took the photos himself, correct?  
23 **A. Correct.**  
24 Q. He also shot a video while he was taking the  
25 photographs?

Page 18

1 **A. Yes, sir.**  
2 Q. During that photo shoot Nancy willingly posed for  
3 those pictures. Is that correct?  
4 **A. Correct.**  
5 Q. You began drinking at Mr. Samansky's house. Is  
6 that correct?  
7 **A. At dinner.**  
8 Q. At dinner. Do you recall whether Nancy signed a  
9 release in connection with that photo shoot?  
10 **A. Never. Never did.**  
11 Q. And did Mr. Samansky keep the video running the  
12 entire time he was photographing Nancy?  
13 **A. Yes.**  
14 Q. So that video showed her actually stripping and  
15 dancing and also posing and massaging herself with baby  
16 oil. Is that correct?  
17 **A. Correct.**  
18 Q. What was Nancy's purpose for posing for that  
19 video?  
20 **A. To send pictures in to "Penthouse" to see if she**  
21 **could possibly have a career in nude modeling.**  
22 Q. What did you -- what did Nancy think would be done  
23 with the video of her?  
24 **A. 5 minutes after we left the apartment we called**  
25 **Mark Samansky and said you need to destroy that**

Page 19

1 **immediately. As soon as we got outside we knew we made a**  
2 **mistake.**  
3 Q. You're speaking of the video?  
4 **A. Yes.**  
5 Q. Or are you speaking of the pictures?  
6 **A. Everything. No, not the pictures. The video at**  
7 **that point. The video at that point.**  
8 Q. So 5 minutes after, I'm sorry, 5 minutes after?  
9 **A. We left his apartment, his condo. We drove passed**  
10 **the Altamonte Mall, stopped at a pay phone, called him and**  
11 **said, Mark, you need to destroy that video.**  
12 Q. What did he say?  
13 **A. Oh, no problem.**  
14 Q. So he told you he would destroy the video during  
15 that phone conversation?  
16 **A. Yes.**  
17 Q. Did you ever follow up with him to make sure that  
18 he had done so?  
19 **A. The next week.**  
20 Q. How so?  
21 **A. I called him and said, Mark, I just want to make**  
22 **sure you destroyed that video and he said, yes, it's gone.**  
23 **And I said, again I was very young also. I said, what is**  
24 **your real name? Is it Samansky? Because I want to know 30**  
25 **years from now like it is now if this ever appears, who do**

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1 **I come looking for. He said my real name is Mark Stevens.**  
2 Q. And he confirmed that he had destroyed that  
3 video?  
4 **A. Yes, sir.**  
5 Q. Did you ever follow up with him again concerning  
6 the destruction of the video?  
7 **A. No, sir. Twice was it.**  
8 Q. Did you ever ask for any physical evidence that he  
9 had destroyed the video?  
10 **A. No, I did not.**  
11 Q. Did you ever ask that he return the video to  
12 you?  
13 **A. No, I did not.**  
14 Q. At the time the video was shot, did Nancy or you  
15 think that the video might be distributed for profit at  
16 some point?  
17 **A. We never thought in our wildest dreams anything**  
18 **would ever happen. It was a mistake two young people**  
19 **made.**  
20 Q. The photographs that you took were intended to go  
21 to a gentleman's magazine such as "Penthouse." What was  
22 the purpose of the video at that point?  
23 **A. I believe it was for Mark Samansky's enjoyment.**  
24 Q. Do you believe he intended to sell it?  
25 **A. Not at all.**

Page 21

1 Q. So you or Nancy never intended to sell the video  
2 to media outlets?  
3 **A. No way.**  
4 Q. Or to consumers?  
5 **A. No, sir.**  
6 Q. When did you or Nancy express to Mr. Samansky you  
7 wanted the photographs destroyed also?  
8 **A. A few weeks later after we decided that there was**  
9 **no way she was going to be a nude model.**  
10 Q. When you say a few weeks, can you give me a more  
11 specific idea what the time frame was?  
12 **A. 2 to 3 weeks. When Mark showed us the pictures**  
13 **and we could see that Nancy has talent, but she was not a**  
14 **nude model.**  
15 Q. Whose opinion was it she had talent, but was not a  
16 nude model?  
17 **A. Mine. My personal opinion and Nancy's. She knew**  
18 **the pictures weren't all that great.**  
19 Q. The reason the photos were destroyed was because  
20 she didn't think they were quality enough to advance her  
21 career as a nude model?  
22 **A. Mark Samansky also said it. Mark Samansky said**  
23 **she's a little too fat. They don't like big girls, so he**  
24 **wasn't going to send them in.**  
25 Q. Did Mark Samansky -- what did Mark Samansky say to

Page 22

1 you when you contacted him 2 or 3 weeks or a few weeks  
2 later and ask that he destroy those photos?  
3 **A. He said, oh, they're already gone. She's a little**  
4 **too heavy. She's too fat. Too much baby fat. They**  
5 **wouldn't like big girls anyway.**  
6 Q. So he said he already destroyed the photos?  
7 **A. Yes.**  
8 Q. Did he say that he had already destroyed the  
9 photos?  
10 **A. As far as I recall, yes.**  
11 Q. So you didn't have to even ask that he destroy the  
12 photos. He communicated to you that they were already  
13 destroyed?  
14 **A. I believe so, yes.**  
15 Q. Or did he just say they're not, these photos are  
16 not the type of quality that "Penthouse" is looking for,  
17 I'm not going to send them in?  
18 **A. It's very possible either way, I've got to be**  
19 **honest. It's a long time ago.**  
20 Q. Did you ever follow up with him regarding the  
21 destruction of the photos?  
22 **A. Probably after that point, 2 or 3 weeks later I've**  
23 **never spoken to Mark Samansky again.**  
24 Q. So the conversation with him in which you asked,  
25 in which you communicated to him that you weren't

Page 23

1 interested in him using those photos, that was the last  
2 time you spoke with Mark Samansky?  
3 **A. I ran in to him in Deland here 5, 7 years later**  
4 **and said hello and that was about it. I mean that was a**  
5 **brief hello.**  
6 Q. When you saw him at that point did you reference  
7 the photo shoot, Nancy's photo shoot?  
8 **A. Nothing, no.**  
9 Q. So you never demanded any proof that -- let me go  
10 back. You never asked any follow-up questions with  
11 Mr. Samansky concerning the destruction of those photos?  
12 **A. No, sir.**  
13 Q. Did you -- you never asked that he return them to  
14 you?  
15 **A. No, sir.**  
16 Q. You just took him at his word?  
17 **A. Yes, sir.**  
18 Q. Did anyone else besides you, Nancy or Mark  
19 Samansky know about that photo shoot?  
20 **A. Most likely, yeah, I told Bill Otten.**  
21 Q. Bill Otten you said knew about the photo shoot?  
22 **A. I told him, yes.**  
23 Q. Did he know about the video as well?  
24 **A. Yes.**  
25 Q. Did anyone else know about the photo shoot or the

Page 24

1 video?  
2 **A. I don't think so.**  
3 Q. The images published by LFP were extracted from  
4 that video. Is that correct?  
5 **A. Yes.**  
6 MR. DECKER: Well, I've reserved objections.  
7 That's okay. Go ahead.  
8 BY MR. SOLOMON:  
9 Q. At the time LFP obtained the images of Nancy from  
10 Mr. Samansky, LFP had no way of knowing that Mr. Samansky  
11 had represented to you or Nancy that he had destroyed the  
12 images. Is that correct?  
13 MR. DECKER: I will object to that because  
14 it's form of the question and calling for  
15 speculation.  
16 BY MR. SOLOMON:  
17 Q. You can answer.  
18 **A. One more time, please.**  
19 Q. At the time that LFP obtained the images of Nancy  
20 from Mr. Samansky, they had no way, LFP had no way of  
21 knowing Mr. Samansky had communicated to you and Nancy that  
22 he had destroyed the videotape. Is that correct?  
23 **A. That's correct.**  
24 Q. Do you have any reason to think that LFP knew that  
25 Mr. Samansky had represented to you and Nancy that he had

Page 25

1 destroyed the videotape?  
2 **A. No, they had no idea who I was.**  
3 Q. They wouldn't have known that unless Mr. Samansky  
4 volunteered that information. Is that correct?  
5 MR. DECKER: Again calls for speculation.  
6 BY MR. SOLOMON:  
7 Q. You can answer.  
8 **A. I would assume.**  
9 Q. Aside from the photos we have discussed and the  
10 video that Mr. Samansky took, that was taken at the time  
11 Nancy was posing for photographs, he also took another  
12 video of you and Nancy. Is that correct?  
13 **A. That is correct.**  
14 Q. Can you please tell me about that video?  
15 **A. It was of Nancy and I having sex.**  
16 Q. And was that filmed on the same night as the photo  
17 shoot?  
18 **A. No.**  
19 Q. When was that taken?  
20 **A. There was two photo shoots within 3 or 4-day time**  
21 **frame.**  
22 Q. I'm sorry, what --  
23 **A. 3 or 4 days.**  
24 Q. Was that filmed before or after the photo shoot?  
25 **A. It was before.**

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1 Q. Where did that take place?  
2 **A. His apartment.**  
3 Q. What was the purpose of that video?  
4 **A. Same thing. We drank too much. He took a bunch**  
5 **of pictures of her before it. The video was running the**  
6 **whole time. It was the exact same thing.**  
7 Q. Did you or Nancy have any intention of selling  
8 that video to a third party?  
9 **A. Never.**  
10 Q. Did you intend to sell it to the media?  
11 **A. Never.**  
12 Q. Did you intend to sell it to consumers?  
13 **A. Never.**  
14 Q. Did you intend to profit in any way from that  
15 video?  
16 **A. No, sir.**  
17 Q. Did you ever think that video might be valuable in  
18 the event Nancy one day became famous?  
19 **A. That's why we again called Mark and wanted him to**  
20 **destroy everything.**  
21 Q. At what point did you contact him regarding the  
22 destruction of that video?  
23 **A. The next morning.**  
24 Q. Had you returned to your home that evening after  
25 the video was shot?

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1 **A. Yes.**  
2 Q. You phoned him from your home?  
3 **A. From home.**  
4 Q. To tell him to destroy the video?  
5 **A. Yes.**  
6 Q. What did he say when you called him?  
7 **A. Oh, I already got rid of that.**  
8 Q. What did you say to that?  
9 **A. I said, you're sure. He said, yes, it's already**  
10 **gone.**  
11 Q. So he communicated to you that he had destroyed  
12 that video --  
13 **A. Yes.**  
14 Q. -- sometime between taking it the evening before  
15 and the next morning you spoke with him?  
16 **A. Correct.**  
17 Q. Did you ever follow up with him regarding the  
18 destruction of that video?  
19 **A. I believe I asked him twice.**  
20 Q. How soon after the first time did you ask him a  
21 second time?  
22 **A. Week.**  
23 Q. Did you ever ask for evidence that he had  
24 destroyed it?  
25 **A. No, I did not.**

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1 Q. Did you ever ask him to return it to you?  
2 **A. Yes, I did. He said it was destroyed. I can't**  
3 **return it.**  
4 Q. So you've made no effort since that second  
5 communication with Mark Samansky to obtain the original  
6 copy of that video?  
7 **A. No, sir.**  
8 Q. Did you contact anyone else in an effort to obtain  
9 a copy of that video besides Mark Samansky?  
10 **A. No, sir.**  
11 Q. Who else knew about that tape besides you and Mark  
12 Samansky and Nancy?  
13 **A. Maybe Bill Otten.**  
14 Q. Anyone else?  
15 **A. No, nobody. It was a mistake.**  
16 Q. So to recap, you and Nancy took part in a drunk  
17 photo shoot photographed by Mark Samansky and then he  
18 filmed a video of you having sex with Nancy. Then you  
19 asked him to destroy that video sometime after that,  
20 correct?  
21 MR. DECKER: Objection, leading.  
22 BY MR. SOLOMON:  
23 Q. You can answer.  
24 **A. That was correct.**  
25 Q. Then some weeks later you took part in a second

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1 photo shoot which was also videotaped after which time you  
2 asked Mark Samansky to destroy that video as well,  
3 correct?  
4 MR. DECKER: Again leading.  
5 THE WITNESS: It was a couple days later. The  
6 whole thing was within 3, 4 days.  
7 BY MR. SOLOMON:  
8 Q. What's the whole thing?  
9 **A. The two video shoots and everything, within 3 or 4**  
10 **days.**  
11 Q. Sometime after that second shoot you contacted  
12 Mark Samansky and told him to also destroy the photographs.  
13 Is that correct?  
14 **A. That's correct.**  
15 Q. You refer to that sex tape as a mistake,  
16 correct?  
17 **A. That's correct.**  
18 Q. You say you made the same mistake twice, though,  
19 correct? You made the mistake with the sex tape photo  
20 shoot as well as the mistake with the second photo shoot.  
21 Is that correct?  
22 **A. That is definitely correct.**  
23 Q. Jumping ahead to when you first learned that LFP  
24 was going to publish the images of Nancy, you contacted LFP  
25 to learn whether those images were extracted from the sex

Page 30

1 tape. Is that correct?  
2 **A. Correct.**  
3 Q. Who did you speak with?  
4 **A. Tyler.**  
5 Q. Would that be Tyler Downey?  
6 **A. I don't know his last name. I looked on the**  
7 **Internet and got a number for "Hustler" when I found out it**  
8 **was going to be released and called the first number I**  
9 **could.**  
10 Q. Can you tell me about the conversation you had  
11 with Tyler?  
12 **A. I told him who I was. I told the receptionist who**  
13 **I was, just my name and they knew who it was right away.**  
14 **They called me back in 30 seconds, Tyler called me back. I**  
15 **tried to get information out of him. I asked where he got**  
16 **it. He said, you know where I got it. I said, from Mark**  
17 **Samansky? He said, yes.**  
18 **I tried to get information of where Mark Samansky**  
19 **was. He wouldn't give it to me. Because I wanted to buy**  
20 **the pictures or videos or whatever they had from Mark**  
21 **Samansky myself because it wasn't published at this time.**  
22 **So I tried to get money figures out of him because I was**  
23 **willing to pay quite a bit more to get it destroyed for**  
24 **Nancy's benefit.**  
25 Q. So you offered money to "Hustler" at that point?

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1 **A. No. I tried to get information out of them**  
2 **because I knew "Hustler" wouldn't sell it to me. I was**  
3 **hoping Samansky would sell it to me. I was trying to get**  
4 **Samansky information of what they paid to Samansky. All he**  
5 **would tell me he's in Colorado someplace, that's all he**  
6 **would tell me.**  
7 Q. You also asked Tyler Downey if you were entitled  
8 to any money as a result of those images they intended to  
9 publish. Is that correct?  
10 **A. No, I did not.**  
11 Q. You specifically asked Tyler whether the images  
12 were taken from the sex video, correct?  
13 **A. I don't recall.**  
14 Q. Did Mr. or did Tyler give you an indication of  
15 what type of video those photos were extracted from?  
16 **A. He just said they're very grainy from a video, so**  
17 **I knew they were from the videos. That's all he told me.**  
18 Q. At that point did you know whether -- which video  
19 he was referring to?  
20 **A. No, I did not.**  
21 Q. At what point did you find out they were from the  
22 video of just of her and not the sex tape?  
23 **A. When Tyler overnighted me two copies of the**  
24 **magazine. It was going to be released in about 10 days or**  
25 **two weeks later.**

Page 32

1 Q. Did you contact him after receiving those  
2 magazines?  
3 **A. No, never again. There was no reason to. It was**  
4 **too late. It was already published.**  
5 Q. You offered to sell Tyler photos and videos that  
6 you have in your possession. Is that correct?  
7 **A. No. I was trying to get the amount of money he**  
8 **paid so I can hopefully buy them from Samansky.**  
9 Q. Can you describe in as much detail as possible all  
10 of your conversations with Tyler Downey?  
11 **A. That was it. It was a 5-minute conversation.**  
12 Q. Can you walk me through the entire conversation to  
13 the best of your knowledge.  
14 **A. Told him who I was. He said, I know who you are.**  
15 **I said, I hear from a source that you're publishing nude**  
16 **photos of Nancy Benoit and I'm her ex-husband and I believe**  
17 **those photos were taken when we were married. He said, why**  
18 **would you think that? I said, well, that's the only time**  
19 **she would ever take her clothes off for anybody. It was a**  
20 **mistake. And he said, well, yeah, we do have videos or we**  
21 **do have a video or we got them from a video. Something**  
22 **like that. And I said, was it from Samansky or something**  
23 **like that? He said, yeah, it was. I said, well, that's**  
24 **the only time she's ever done anything like that.**  
25 **Do you know how I can contact Samansky? He said,**



1 **why, do you want to go after him? I said, I didn't say**  
 2 **that. It went from there and I started talking about how**  
 3 **much he paid. He said, oh, I'm sure we paid quite a bit**  
 4 **for them. I said, well, I'd be willing to offer money for**  
 5 **them. He said, well, we're not interested. I said, is**  
 6 **this legal. He said, we checked with our legal department**  
 7 **and, yes, it is. And I said, we never signed anything to**  
 8 **let these pictures go or let these videos go. He said,**  
 9 **well, it doesn't matter. It's newsworthy.**  
 10 Q. Is that all you recall of those conversations?  
 11 **A. Like I said, it was only 5, 7 minutes tops. I**  
 12 **knew there was not much I could do then. Then I didn't**  
 13 **sleep for about two months.**  
 14 Q. Did you communicate to Tyler that you had  
 15 additional images in your possession of Nancy?  
 16 **A. I believe so.**  
 17 Q. What did you say exactly?  
 18 **A. I was trying to get the amount that he paid**  
 19 **Samansky, so I said, what if I had pictures. He said, oh,**  
 20 **we'd be willing to pay for them. I said, how much. He**  
 21 **said, oh, quite a few thousand dollars, but I was just**  
 22 **trying to get the information what he paid Samansky, I was**  
 23 **trying to get this whole thing wiped out. I would have**  
 24 **been willing to pay almost anything to get from it Samansky**  
 25 **than to have the Toffoloni family and Nancy go through this**

1 **on the second photo shoot, I believe. He's a rock 'n roll**  
 2 **photographer. I never heard of the man. He was there.**  
 3 **He's the one that shot the pictures.**  
 4 Q. In which photo session, the one that was connected  
 5 with the sex tape or the one connected with the video of  
 6 Nancy alone?  
 7 **A. The video of Nancy alone.**  
 8 Q. That would be the second shoot?  
 9 **A. Correct.**  
 10 Q. Chris Helton was the photographer?  
 11 **A. Yes.**  
 12 Q. Do you know how far in advance Mark Samansky set  
 13 that video shoot up with Chris Helton?  
 14 **A. Chris Hilton has nothing to do with the video.**  
 15 **That was Mark's personal camera.**  
 16 Q. The photo shoot?  
 17 **A. No, we didn't know Chris was going to be there.**  
 18 **We thought Mark was going to take the pictures and send**  
 19 **them in. We walked in and Chris was there.**  
 20 Q. Chris operated the camera while Mr. Samansky  
 21 operated the video camera?  
 22 **A. Yes.**  
 23 Q. Was anyone else present in the room?  
 24 **A. Bill Otten.**  
 25 Q. He was there for the second photo shoot?

1 **what they're going through right now.**  
 2 Q. Did you ever use the phrase mother lode to  
 3 describe the collection of images and videos you had of  
 4 Nancy?  
 5 **A. No. I've got -- that's everything -- Nancy, when**  
 6 **we got divorced Nancy took everything except a few family**  
 7 **pictures, some wrestling pictures, that's it.**  
 8 Q. Did you communicate to Tyler that you had, quote,  
 9 the mother lode, end quote?  
 10 **A. No.**  
 11 Q. Of images of Nancy?  
 12 **A. No. I said I have some pictures.**  
 13 Q. Aside from the videos, the video shoots and the  
 14 photo shoots we've discussed, were there any other video or  
 15 photo shoots with Mark Samansky involving Nancy?  
 16 **A. No.**  
 17 Q. Just the two sessions?  
 18 **A. Yes.**  
 19 Q. Each of which consisted of a photo shoot and a  
 20 video?  
 21 **A. Yes.**  
 22 Q. Were there any photo shoots or videos with any  
 23 other photographer that you know of in which Nancy posed  
 24 nude?  
 25 **A. Mark Samansky had Chris Helton as his photographer**

1 **A. Yes, we brought him with us because we were**  
 2 **afraid, we were nervous and we wanted somebody we can**  
 3 **trust.**  
 4 Q. Was anyone in the room for the first photo shoot  
 5 besides you, Nancy and --  
 6 **A. Mark and Mark's wife.**  
 7 Q. And his wife was present also?  
 8 **A. She went to bed in the middle of it. She saw most**  
 9 **of it.**  
 10 Q. What specifically did she see?  
 11 **A. Nancy rubbing the baby oil, maybe up to that**  
 12 **point.**  
 13 Q. She was present for the first or the second video  
 14 shoot referring to Mark Samansky's wife?  
 15 **A. The first. Not the second, she was not there at**  
 16 **the second.**  
 17 Q. Was she present during the sex tape portion of the  
 18 recording?  
 19 **A. No, she was not.**  
 20 Q. Before Nancy's involvement in professional  
 21 wrestling, what types of employment was she engaged in?  
 22 **A. She worked at an insurance office right across the**  
 23 **street from where we are now.**  
 24 Q. Anything else?  
 25 **A. She cleaned fish at a fish market.**

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1 Q. Here in Deland?  
2 **A. Yes. No, that was Orange City just south.**  
3 Q. What were her career aspirations at that time?  
4 **A. Nancy wanted to be a housewife. She did not want**  
5 **to work.**  
6 Q. You and Nancy were big wrestling fans at the  
7 time?  
8 **A. Correct.**  
9 Q. You often attended wrestling events?  
10 **A. Every Sunday.**  
11 Q. Can you tell me about how Nancy became involved in  
12 professional wrestling?  
13 **A. We had front row seats in Orlando and just by luck**  
14 **and Bill Otten would always sit right in front of us.**  
15 **That's where he did his filming and he was always right**  
16 **there kneeling in front of us and one time he took Nancy's**  
17 **picture by mistake and ended up in a wrestling magazine as**  
18 **a wrestler named Terry Funk was throwing Nancy's chair in**  
19 **to the ring.**  
20 **He pushed her out of the chair and threw her chair**  
21 **in to the ring and he showed us, I just want to show you**  
22 **this. It was in a Japanese wrestling magazine. My name is**  
23 **Bill. He showed us the picture of Nancy getting pushed out**  
24 **of her chair and Terry throwing the chair in to the ring.**  
25 Q. Did she receive any compensation for that

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1 photograph?  
2 **A. No.**  
3 Q. And Mr. Otten ultimately suggested to you and  
4 Nancy she pose for a series of photos for something called  
5 apartment wrestling. Is that correct?  
6 **A. I'd say a few months later after we got to know**  
7 **Bill a little bit sitting in the corner with us there all**  
8 **the time that he suggested something like that, yes.**  
9 Q. Prior to that, though, he had photographed her at  
10 a studio. Is that correct?  
11 **A. Not sure if the apartment wrestling was first or**  
12 **the studio was first, I'm not sure.**  
13 Q. Did she receive any compensation for the studio  
14 photos?  
15 **A. No, that's his trade of time. Bill actually was a**  
16 **wrestling photographer only and he just bought his studio**  
17 **equipment, all this fancy equipment that he wanted to try**  
18 **it out, so he asked Nancy and I if he gave Nancy some free**  
19 **pictures, a portfolio, if she would be interested in taking**  
20 **some pictures. It was just trading each other's time for**  
21 **time.**  
22 Q. I'd like to ask the next be marked as the next  
23 numbered exhibit, please.  
24 (Document marked Daus Exhibit  
25 No. 2 for identification.)

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1 Mr. Daus, taking a look at what's been marked as  
2 Exhibit No. 2, do you recognize those photographs as the  
3 apartment wrestling photos taken by Bill Otten?  
4 **A. That is correct.**  
5 Q. How much money did Nancy receive for those  
6 photos?  
7 **A. \$75, the only time she's ever paid while we**  
8 **were -- for anything while we were married.**  
9 Q. That money came from Bill Otten. Is that  
10 correct?  
11 **A. Yes. He said that the magazine gives him 225, I**  
12 **believe, and it was split three ways with the other young**  
13 **lady, Nancy and Bill.**  
14 Q. She wasn't compensated in any way by the magazine  
15 itself directly, was she?  
16 **A. No, sir. Bill got the check and he just gave the**  
17 **girls \$75 each.**  
18 Q. Was Florida Championship Wrestling the first  
19 wrestling entity she was affiliated with?  
20 **A. Yes.**  
21 Q. Were you married to her at that time?  
22 **A. Correct.**  
23 Q. Approximately what years was she affiliated with  
24 Florida Championship Wrestling?  
25 **A. I would say '81, '82, something like that, through**

Page 40

1 **after we're divorced.**  
2 Q. But you have no knowledge about anything after she  
3 was divorced?  
4 **A. No, sir.**  
5 Q. Was she an employee of Florida Championship  
6 Wrestling?  
7 **A. Not when we were married. The only money she ever**  
8 **received in all the things we did was that \$75 from Bill.**  
9 **We were trying to break in to the business.**  
10 Q. So at the time you were married she was never  
11 compensated even one dollar from Florida Championship  
12 Wrestling?  
13 **A. Never.**  
14 Q. She didn't have a written contract with Florida  
15 Championship Wrestling?  
16 **A. Nothing.**  
17 Q. Did she sign any endorsement agreements while you  
18 were married?  
19 **A. No.**  
20 Q. How much money did Nancy earn over the course of  
21 her entire career as a professional wrestler?  
22 **A. I have no idea.**  
23 Q. Can you tell me how much money she made in any  
24 individual year during her career?  
25 **A. No, I cannot. While we were married we never made**

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1 anything.

2 Q. Do you have any documents that would reveal that

3 information?

4 **A. No, I do not.**

5 Q. Do you have any idea how much she was compensated

6 for the use of her image over her career?

7 **A. Career, no. Again I can only tell you when we**

8 **were married.**

9 Q. Aside from Bill Otten, what other photographers

10 captured her image while she was wrestling or acting, do

11 you know?

12 **A. There's probably numerous ones because when you go**

13 **to different places there's other Bill Ottens all over the**

14 **country and that's just for the magazines and no one has**

15 **ever compensated. That's just -- it's trying to break in**

16 **to the business.**

17 Q. Aside from the apartment wrestling spread in the

18 magazine marked as Exhibit 2, do you know of any other

19 published photographs of Nancy that were published in the

20 time you were married to her?

21 **A. Many, many in wrestling magazines.**

22 Q. How much compensation did she receive for all

23 those?

24 **A. Nothing. Nothing.**

25 Q. Did she ever pose for any other apartment

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1 wrestling shoots besides what's been marked as Exhibit 2?

2 **A. No, sir.**

3 Q. Did she assign her rights, the rights to her image

4 to any photographer or videographer?

5 **A. No.**

6 Q. Do you recall whether she signed a release in

7 connection with the apartment wrestling photos with Bill

8 Otten?

9 **A. I would think so, but I'm not sure.**

10 Q. You don't know the details of that?

11 **A. No, I don't remember. But I think, I think she**

12 **had to sign something to send the pictures in. Just for**

13 **that one shoot because it is posed. It's not wrestling.**

14 Q. Do you recall a photographer named George

15 Napolitano?

16 **A. Yeah, I met him.**

17 Q. Did she pose for any shoots with Mr. Napolitano?

18 **A. No. George Napolitano would be one of the guys**

19 **like if we traveled to Atlanta or out of state, he would be**

20 **the Bill Otten in another spot.**

21 Q. The photographs he took were action shots only?

22 **A. Always.**

23 Q. Did she receive any compensation?

24 **A. No, sir.**

25 Q. Do you know whether Nancy signed any agreements

Page 43

1 with Mr. Napolitano?

2 **A. Definitely not when we were married. It's pro**

3 **sports, just like when you take your picture of the Tampa**

4 **Bay Devil Rays somebody getting a base hit, they're not**

5 **compensated for that. It's sports.**

6 Q. I'd like to mark these next --

7 MR. BAUER: No, we're not keeping these.

8 THE WITNESS: Those are all originals, of

9 course. I didn't make any copies. Whatever you

10 need.

11 MR. BAUER: Just to speed this along so we

12 don't have to keep these, do you mind if I ask him

13 a couple questions?

14 MR. DECKER: Okay. Normally only one person

15 can ask questions, that's why he's asking me if he

16 can ask you questions

17 THE WITNESS: Yes, sir.

18 DIRECT EXAMINATION

19 BY MR. BAUER:

20 Q. Mr. Daus, my name is Derek Bauer. We were

21 introduced before your deposition. I'll try to speed

22 things along here. You brought a number of photographs in

23 response to the subpoena that my client served on you and

24 we appreciate your having done so.

25 Among the photos that you brought was a manila

Page 44

1 envelope here that had an envelope inside of it with what

2 looks to be all personal, private family photos of

3 Miss Benoit and others. Is that true?

4 **A. That is true. It's Easter photos with the**

5 **Toffolonis and stuff like that, the few I had left.**

6 Q. Would it be correct none of these photos have ever

7 been submitted for publication or licensed to anyone for

8 publication for commercial use?

9 **A. That's correct.**

10 Q. You never made any effort to sell these photos to

11 anybody?

12 **A. No, I would never do anything like that.**

13 Q. You also brought with you what looks to be seven

14 double sided pages from a photo album including high

15 quality photos of Nancy. Is that correct?

16 **A. That is correct. That's every picture there, I**

17 **think every picture was probably taken by Bill Otten.**

18 Q. So these are Otten photos including the photo

19 that's on the back of one of these, the only photo among

20 these that depicts Nancy fully nude?

21 **A. That is the only surviving photo that I know from**

22 **the photo shoot with Samansky.**

23 Q. So this is one of the Samansky photos?

24 **A. Yes. The only one that was not supposedly**

25 **destroyed. Now, Nancy may have had. I believe Nancy had a**

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1 **few of those, but I'm sure they're gone**  
2 Q. So that would be a copy of one of the photos, one  
3 of the original prints from the Samansky photo shoot, from  
4 one of the Samansky photo shoots?  
5 **A. Correct.**  
6 Q. Is that the only copy?  
7 **A. Yes.**  
8 Q. Of any of those photos that you ever retained?  
9 **A. Yes.**  
10 Q. And Mr. Samansky retained all of the other  
11 copies?  
12 **A. He was supposed to destroy everything.**  
13 Q. Why was this one not destroyed?  
14 **A. I believe there was three or four that Nancy took**  
15 **and that's one that she left with me. The other two or**  
16 **three when we got divorced she took with her with her**  
17 **numerous photo albums.**  
18 Q. You don't know what happened to those photos?  
19 **A. They were all destroyed because after Nancy got**  
20 **married to Kevin Sullivan, Kevin made sure, he went to Bill**  
21 **Otten's house, he went everywhere possible. They contacted**  
22 **me. Everything else, they made sure everything was**  
23 **destroyed.**  
24 Q. Except for this photo here?  
25 **A. Nancy knew I had that and she said, don't worry**

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1 **about it.**  
2 Q. Okay. You've not made any effort to sell or  
3 license that photo to anybody else?  
4 **A. No.**  
5 Q. Made no effort to sell that to Tyler Downey or  
6 "Hustler" magazine in that conversation?  
7 **A. That's what I was referring to when I was talking**  
8 **to Tyler, but I had no intention of selling it. I was**  
9 **trying to get again the price he was paying so I could**  
10 **hopefully buy those pictures**  
11 Q. Okay.  
12 **A. Very, very few eyes have ever seen that. It's**  
13 **been up in the attic for 30 years or however long it's**  
14 **been.**  
15 MR. BAUER: Rick, we are going to insist on  
16 keeping a copy of that particular image. We can  
17 discuss with you, obviously we treat it  
18 confidential until such time as we decide whether  
19 it needs to be submitted in to evidence. That  
20 decision is not being made by any stretch.  
21 After this deposition concludes I'm going to  
22 coordinate with you on how we're going to do that.  
23 We're not going to mark it as an exhibit because I  
24 don't think it needs to be designated as an exhibit  
25 at this point. I think you've sufficiently

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1 identified it in the record and as long as we're  
2 able to maintain a copy of it, that will be fine  
3 with us.  
4 Rick, is that okay with you?  
5 MR. DECKER: Well, I'm going to resist  
6 strenuously anyone ever seeing that photograph  
7 outside this deposition room.  
8 MR. BAUER: I'm not representing to you that  
9 we have any intent to use it in evidence or not. I  
10 don't know the answer to that question right now,  
11 but I will represent to you this, that before that  
12 image is used in any way, shape or form, I will  
13 have a conversation with you to tell you exactly  
14 what the use would be and why we believe it would  
15 be necessary, give you the opportunity to object,  
16 make a record, seek a protective order, whatever  
17 you need to do to protect the Toffoloni interest in  
18 the image at that time.  
19 MR. DECKER: All right.  
20 THE WITNESS: As of these pictures and all the  
21 rest of them, I would like the Toffoloni to take a  
22 look at all my collection and if that one there, if  
23 you want that destroyed or you want that picture,  
24 you're very welcome to it. I have no problem with  
25 that. It's only one bad picture.

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1 I want you to see the rest of them, I would  
2 like to keep the rest of them, there's nothing bad  
3 there, of course. But if you want copies of  
4 anything, of course, feel free, they're yours. The  
5 family pictures, too, because a lot of them are of  
6 you guys.  
7 DIRECT EXAMINATION (RESUMED)  
8 BY MR. SOLOMON:  
9 Q. Mr. Daus, I'd like to turn now to your affidavit  
10 that was attached to the complaint. Can you tell me who  
11 first contacted you to ask if you'd be willing to provide  
12 an affidavit for the plaintiff?  
13 **A. I believe it was Mr. Decker.**  
14 Q. When was that?  
15 **A. Maybe a month or two after the photos were**  
16 **published. I guess.**  
17 Q. What was said in that conversation?  
18 **A. If I was aware of it and if I had any information**  
19 **on it.**  
20 Q. Were you offered any payment or share of the  
21 plaintiff's recovery in exchange for your affidavit?  
22 **A. No, sir.**  
23 Q. Who actually drafted the affidavit that you  
24 signed?  
25 **A. I believe I did it all myself. My wife probably**

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1 **typed it for me because she is a better typer.**  
2 THE VIDEOGRAPHER: Can we take a break. The  
3 time is 10:24 a.m. Off the record.  
4 (Recess taken.)  
5 THE VIDEOGRAPHER: The time is 10:32 a.m.  
6 Back on the record.  
7 BY MR. SOLOMON:  
8 Q. Mr. Daus, turning to your affidavit, paragraph 9  
9 you state that, quote, I know of my own knowledge that  
10 Nancy Benoit did not want to have nude or partially nude  
11 photographs of herself published at any time. I know of my  
12 own knowledge that she never gave Mr. Samansky the  
13 authority to use any photographs or videotapes of her for  
14 any purpose. Is that correct?  
15 **A. Correct.**  
16 Q. Isn't it true that your knowledge of her whether  
17 or not she posed nude extends only up until the point that  
18 you divorced Nancy?  
19 **A. Yes.**  
20 Q. Did any of the conversations you had with Nancy  
21 after your divorce concern -- Mr. Daus, would you agree  
22 there was intense media interest after the death of Nancy  
23 Benoit?  
24 **A. Yes.**  
25 Q. Did any members of the media ever contact you

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1 regarding her death?  
2 **A. I had to have my phones turned off.**  
3 Q. What media outlets contacted you?  
4 **A. Everybody.**  
5 Q. Can you be more specific, please?  
6 **A. ESPN, CNN, "Time," "Life," "People," "News**  
7 **Journal," "Orlando Sentinel," everybody.**  
8 Q. Were you ever interviewed by any of those outlets  
9 on the subject of her death?  
10 **A. Brief comment to "Daytona News Journal" because**  
11 **they caught me at a weak moment and ESPN was the only**  
12 **answers I gave to anybody.**  
13 Q. What did you speak with ESPN, I'm sorry, what did  
14 you speak about with ESPN?  
15 **A. I talked to Liz Merrill who's usually an NFL**  
16 **reporter. She ended up getting a hold of my sister first**  
17 **and talked to my sister for about an hour and a half and**  
18 **she talked us in to that if I finally did give the story,**  
19 **that everybody would leave me alone and she was correct.**  
20 **She did a very, very nice interview about Nancy's life and**  
21 **how a sweet, wonderful person Nancy was. When that was**  
22 **published I was left alone.**  
23 Q. Where was that published?  
24 **A. ESPN dot-com. I actually have a copy of it**  
25 **outside in my truck if you'd like it. I didn't bring it,**

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1 **but it's in my truck.**  
2 MR. BAUER: I think that's responsive to the  
3 subpoena. We'd like to --  
4 THE WITNESS: I didn't even think of it, yeah.  
5 It's in my truck.  
6 BY MR. SOLOMON:  
7 Q. Thank you. What specifically did you discuss with  
8 did you say a Daytona newspaper?  
9 **A. Yes.**  
10 Q. What did you discuss with that publication?  
11 **A. They had my cell phone number because I used to**  
12 **write. I wrote for the "Daytona News Journal" for 13 years**  
13 **my own column, so they had my cell phone number and they**  
14 **called me and asked me a couple quick questions. I said, I**  
15 **would prefer not to talk about it. It was a couple quick**  
16 **questions. I said it was a very horrible thing. Nancy was**  
17 **a wonderful person and that was about the comment I gave**  
18 **them. Then I couldn't answer my telephone for the next**  
19 **month because then it got out.**  
20 MR. BAUER: If you will just commit to us  
21 you'll give us a copy of that ESPN article before  
22 you leave.  
23 THE WITNESS: Yes.  
24 MR. BAUER: And we're done.  
25 MR. SOLOMON: That's all I have.

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1 CROSS EXAMINATION  
2 BY MR. DECKER:  
3 Q. I just have a couple follow-up questions,  
4 Mr. Daus. As you know I represent Nancy's estate through  
5 her mother who is here today and I have just a couple  
6 questions. During the break you had an opportunity to  
7 review the affidavit that you provided to me at the time  
8 the lawsuit was filed by Nancy's estate against "Hustler"  
9 magazine. Do you recall reviewing that?  
10 **A. Yes, sir.**  
11 Q. After you reviewed are you satisfied that  
12 everything in the affidavit is true and correct?  
13 **A. Yes, sir.**  
14 Q. And just a couple more questions, Mr. Daus. As  
15 far as you know and while you knew her did Nancy ever  
16 pursue a nude modeling career?  
17 **A. No, sir.**  
18 Q. As far as you know while you knew her did you or  
19 Nancy ever give "Hustler" or Mark Samansky permission to  
20 publish nude or other images of Nancy in any way?  
21 **A. No, and we were totally against it and after when**  
22 **we got divorced, Kevin Sullivan married Nancy and Kevin was**  
23 **so irate, upset about her ever doing any nude photo shoot**  
24 **and he wanted to make sure it would never ever appear**  
25 **anywhere.**

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1       **She called everybody she knew that could have had**  
2 **it which was Bill Otten and myself and everything else to**  
3 **make sure we had no nude photos of her whatsoever. Kevin**  
4 **Sullivan went to Bill Otten's house and they ransacked his**  
5 **house looking for every possible photo and Nancy and Kevin**  
6 **took them with them.**  
7       Q. What was the purpose for them doing that, if you  
8 know?  
9       **A. So nothing would ever get published because Nancy**  
10 **was going to be famous.**  
11       Q. When you had your conversation with this Tyler  
12 person at "Hustler" magazine prior to the publication, did  
13 you in words or substance tell him that you did not want  
14 him to publish nude photographs of Nancy?  
15       **A. I did, yes.**  
16       Q. And why did you tell him that?  
17       **A. Because she never gave permission to anybody. She**  
18 **never would have wanted it and how much it would hurt her**  
19 **family because it was no way it should ever been done and**  
20 **that was all supposed to be destroyed and we were told it**  
21 **was destroyed.**  
22       MR. DECKER: Thank you. I have nothing  
23 further.  
24       MR. SOLOMON: That's all.  
25       THE VIDEOGRAPHER: The time is 10:39 a.m. Off

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1       the record.  
2       THE REPORTER: Read or waive?  
3       MR. BAUER: Mr. Daus, you have the right to  
4 receive a copy of your transcript before it's  
5 finalized to read it, review it for errors.  
6 Whether it's transcription or substance, you may  
7 have misspoke in response to a question or may have  
8 left something out you think is important. If you  
9 have a concern that you need to review it before  
10 it's finalized, you have the right to do that;  
11 otherwise, you can waive your right to, quote, read  
12 and sign and the court reporter will just finalize  
13 the transcript, but that's your decision to make.  
14       THE WITNESS: I believe I should see it first.  
15       MR. BAUER: Read and sign.  
16       MR. DECKER: So far as the plaintiff is  
17 concerned he can read and sign before any notary  
18 public.  
19       MR. BAUER: That means when you sign it, you  
20 got to get it notarized.  
21       THE WITNESS: Yes, that's fine. I don't have  
22 a problem with that.  
23       MR. DECKER: But it doesn't have to be the  
24 court reporter.  
25       THE REPORTER: Gentlemen, the same transcript

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1       orders?  
2       MR. SOLOMON: Yes.  
3       MR. BAUER: Yes.  
4       MR. DECKER: Yes.  
5       (Whereupon, the deposition concluded at  
6 10:38 a.m.)  
7  
8       \*\*    \*\*    \*\*    \*\*  
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1       CERTIFICATE OF OATH  
2  
3       STATE OF FLORIDA )  
4       COUNTY OF ORANGE )  
5  
6       I, EVELYN M. ZIRBES, being a Notary Public, State of  
7 Florida at Large, and a Certified Shorthand Reporter, do  
8 hereby certify that JAMES MICHAEL DAUS personally appeared  
9 before me and was duly sworn.  
10  
11  
12       Witness my hand and official seal this 7th of  
13 April, 2010.  
14  
15  
16  
17       \_\_\_\_\_  
18 Evelyn M. Zirbes, C.S.R.  
19 Certified Shorthand Reporter  
20 Notary Public, State of Florida  
21  
22  
23  
24  
25



EXCLUSIVE PICS! EXCLUSIVE PICS!

# NANCY BENOIT

## ALL NATURAL!

The long-lost images of wrestler Chris Benoit's doomed wife



ON JUNE 25, 2007, THE NATION WAS HORRIFIED to learn that professional wrestler Chris Benoit and his family had been found dead in their Georgia home. Apparently, after strangling his wife, Nancy, and suffocating the couple's seven-year-old son, Daniel, the World Wrestling Entertainment (WWE) superstar hanged himself, using the cord of a weight machine. Possible explanations for the shocking murder-suicide included "roid rage"—overly aggressive behavior and loss of self-control due to steroid abuse—as well as possible mental illness and brain damage stemming from Chris Benoit's violent vocation. Nancy, a onetime "valet" (a wrestler's sexy sidekick) and manager with such monikers as Woman and Fallen Angel, was mourned and remembered as her fans tried to come to grips with the senseless tragedy.

Before becoming well-known in wrestling circles, Florida-born Nancy Toffoloni Daus had been an aspiring model. In the mid-1980s she traveled around the Sunshine State with her first husband, Jim Daus, entering various wet T-shirt and bikini contests. Along the way, Nancy caught the eye of Mark Samansky, a radio disc jockey who emceed such competitions.

"Nancy was very friendly, very confident of her sexuality," Samansky recalls. "She knew she was hot, but was not arrogant at all. I arranged for a photographer to shoot her at my house, and I videotaped the photo-shoot. She looked at it as an opportunity."

Samansky, who'd encouraged Nancy to submit the photos to *Penthouse* magazine, was reminded of the video he'd shot when watching a newscast reporting her death. Luckily for HUSTLER's readers, he was able to find the tape, which had been stashed away for some 20 years.

As it turned out, the alluring photos never made it to *Penthouse*. Soon after the modeling session, Nancy became romantically and professionally involved with wrestler Kevin Sullivan. The two became a formidable team in the increasingly popular world of wrestling, even pretending to be Satanists as a publicity stunt. Nancy divorced Daus and married Sullivan in 1985.

By the late 1990s the couple signed with the wildly successful World Champion Wrestling Federation. In a storyline contrived for the viewing audience, Sullivan and his ring rival, Chris Benoit, vied romantically for Woman, i.e., Nancy. But in a case of real life mirroring showbiz, she fell in love with Benoit. Nancy eventually divorced Sullivan and took Benoit as her third husband in 1997.

Back when Nancy was willing to show off everything for the camera, her future had yet to be written. The Nancy of yore was merely an innocent young woman seeking an opportunity to model, not a world of freakish pranks, demonic gimmicks and insidious steroids. One can only imagine what fate would have had in store had she continued her quest to become a model. While the original print negatives were destroyed at Nancy's behest, the video from which these images were taken survived. Made public here for the very first time, they capture what was lost and what could have been. 🌐

PICS! EXCLUSIVE PICS! EXCLUSIVE PICS! EXHIBIT   D



# **EXHIBIT E**

**Deposition of Donna Hahner  
Tuesday, April 13, 2010**

**Filed Separately Under Seal**

**Richard Decker**

---

**From:** Richard Decker  
**Sent:** Thursday, July 01, 2010 6:15 PM  
**To:** Bauer, Derek  
**Subject:** RE: Toffoloni: mandatory settlement conference

**The circumstances are that LFP does not intend to make or entertain an offer. If I can report that statement, then we don't need to meet in person for you to tell me that again. I want it to be clear to the Judge that it is LFP that is refusing to discuss settlement, not Mrs. Toffoloni.**

**Please advise.  
Richard Decker**

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**From:** Bauer, Derek [dbauer@mckennalong.com]  
**Sent:** Thursday, July 01, 2010 3:08 PM  
**To:** Richard Decker  
**Cc:** Rawls, Jim  
**Subject:** Toffoloni: mandatory settlement conference

Rick, the local rule requires us to conduct the post-discovery settlement conference "in person"; however, LFP reports that it does not intend to make or entertain an offer of settlement at this time. I leave it to you to decide whether you still wish to meet in person, or whether you are comfortable reporting to Judge Thrash that we conferred and determined that such a meeting was unnecessary under the circumstances.

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7/9/2010

EXHIBIT     F