

**Kathryn Sims**

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**From:** Bauer, Derek [dbauer@mckennalong.com]  
**Sent:** Friday, January 14, 2011 1:32 PM  
**To:** Richard Decker  
**Cc:** Rawls, Jim; Solomon, Darrell  
**Subject:** RE: Toffoloni v LFP

I don't think there is any way to evaluate, for admissibility purposes, the relevancy of testimony before it is taken. But, at the very least I expect to cover with the witnesses the subject matters reflected in their affidavits submitted with LFP's summary judgment papers, and although I have not spoken to any of the witnesses about the subject matters to be covered in their depositions, I would expect their testimony to be consistent with that provided by each in his affidavit.

We will try to schedule the depositions beginning after 2/7.

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**From:** Richard Decker [mailto:RDecker@hallmanwingate.com]  
**Sent:** Friday, January 14, 2011 12:58 PM  
**To:** Bauer, Derek  
**Subject:** RE: Toffoloni v LFP

**Yes we are on the March 14 calendar.  
If you ask me when I am available, the answer is 2/7/11 forward.  
In the meantime, please tell me exactly what it is you intend to ask these witnesses, and what you anticipate they will say. Only then can I (and the Judge) know if their testimony will be relevant, given the issues left for trial.**

**Richard Decker**

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**From:** Bauer, Derek [dbauer@mckennalong.com]  
**Sent:** Friday, January 14, 2011 11:18 AM  
**To:** Richard Decker  
**Cc:** Kathryn Sims; Rawls, Jim; Solomon, Darrell  
**Subject:** RE: Toffoloni v LFP

Have we been put on a March trial calendar? I have not seen anything from Ms. Sewell to that effect. In any event, there is no reason we should have to confine the scheduling window for these depositions to the few weeks before trial, and put our ability to accomplish them at risk or in conflict with trial prep. We will go ahead and begin trying to schedule them at times convenient for the witnesses and us, and if you will send me 4 or 5 days on which you have afternoon availability over the next 6 weeks we will do our best to accommodate your schedule, too. You can take the issue up with Judge Thrash whenever you wish.

Derek

**Derek Bauer | Partner**

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**From:** Richard Decker [mailto:RDecker@hallmanwingate.com]  
**Sent:** Thursday, January 13, 2011 7:30 PM  
**To:** Bauer, Derek  
**Cc:** Kathryn Sims  
**Subject:** RE: Toffoloni v LFP

**Derek;**

**Thanks for the email. I'm here in the ice with everyone else.**

**I still object to the listed depositions; none of the persons, in my view, can speak to the value of the Nancy Benoit images to Hustler Magazine on behalf of LFP. By definition, these are not discovery or expert depositions. So, I suppose we need to have the matter taken up by Judge Thrash. I had hoped we could do it at the pre-trial conference on 2/23/11. You would still have more than three weeks to get it done if the Judge does not agree with me.**

**I would still like to do it by videoconference if I lose the issue, but I cannot agree that the depositions could possibly be relevant to the issue on trial.**

**Richard Decker**

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**From:** Bauer, Derek [dbauer@mckennalong.com]  
**Sent:** Thursday, January 13, 2011 2:24 PM  
**To:** Richard Decker  
**Cc:** Rawls, Jim; Solomon, Darrell  
**Subject:** Toffoloni v LFP

Rick, hope you are thawing out or, better yet, riding out the ice at your island home. As you know, LFP intends to take 3 witness depositions for use at trial (Downey, Helton and Samansky), and Ms. Toffoloni stated her objections to these depositions in her portion of the pre-trial order. In an effort to avoid litigating over the objections, we are willing to take these depositions by videoconference from our offices at a time mutually convenient for you and me, such that you and I could be together in one conference room for the questioning with the witness (and a court reporter) appearing remotely on video.

Please let me know if Ms. Toffoloni will waive her objections to the depositions on these terms and, if so, some dates you are available for the depositions, each of which should take less than an hour. If not, and Ms. Toffoloni intends to stand on her objections, please confirm that fact so that we may ask Judge Thrash to take them up at his earliest convenience.

Regards,

Derek

**Derek Bauer | Partner**

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