

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

1
2
3 MAUREEN TOFFOLONI, as)
Administrator and Personal)
4 Representative of the Estate)
of NANCY E. BENOIT,)
5)
Plaintiff,)
6)

-v-

7)
LFP PUBLISHING GROUP, LLC,)
8 d/b/a Hustler Magazine,)
9)
Defendant.)

CASE NO.

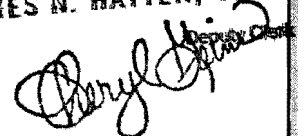
1:08-cv-00421-TWT

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AUG 15 2011

JAMES N. HATTEN, CLERK

By:



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11
12 The videotape deposition upon oral examination
13 of CHRISTOPHER LEE HELTON, a witness produced and
14 sworn before me, Maria W. Collier, RPR, CRR, Notary
15 Public in and for the County of Marion, State of
16 Indiana, taken on behalf of the Defendant at the
17 offices of Stewart Richardson & Associates, One
18 Indiana Square, Suite 2425, Indianapolis, Indiana, on
19 April 22, 2011, at 2:34 p.m., pursuant to the Federal
20 Rules of Civil Procedure.
21
22
23
24

25 TSG JOB NO. 38092

APPEARANCES

FOR THE PLAINTIFF (Via videoconference):

Richard Decker, Esq.
HALLMAN & WINGATE, LLC
166 Anderson Street
Suite 210
Marietta, GA 30060

FOR THE DEFENDANT (Via videoconference):

S. Derek Bauer, Esq.
Darrell J. Solomon, Esq.
McKENNA LONG & ALDRIDGE, LLP
303 Peachtree Street, NE
Suite 5300
Atlanta, GA 30308

ALSO PRESENT: Michael Canny, Videographer

INDEX OF EXAMINATION

	PAGE
DIRECT EXAMINATION	
By Mr. Bauer:	4
CROSS-EXAMINATION	
By Mr. Decker:	13

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THE VIDEOGRAPHER: We are going on the record, and this begins Tape No. 1 of the video deposition of Christopher Lee Helton. This is in the matter of Toffoloni v. LFP Publishing, et al. This is in the court of the U.S. District Court of the Northern District of Georgia. The cause number is 1:08-cv-00421-TWT.

This deposition is being held at Stewart Richardson court reporting agency, One Indiana Square, Suite 2425 in Indianapolis, Indiana. Today's date is April 22, 2011. It is 2:34 in the afternoon.

My name is Michael Canny. I am with TSG Reporting, Incorporated. I am the legal video specialist. The court reporter today is Maria Collier. She is also in association with TSG Reporting.

Will counsel please state their appearance for the record, and will the court reporter please swear in the witness. Thank you very much.

MR. DECKER: Richard Decker for the plaintiff, Maureen Toffoloni.

MR. BAUER: Derek Bauer for defendant LFP Publishing.

MR. SOLOMON: Darrell Solomon for defendant TSG Reporting - Worldwide 877-702-9580

LFP Publishing Group.

CHRISTOPHER LEE HELTON

having been first duly sworn to tell the truth, the whole truth, and nothing but the truth was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BAUER:

Q Mr. Helton, good afternoon. As you know, my name is Derek Bauer, and I am a lawyer for Hustler Magazine in the case involving the publication of images of Nancy Benoit. Thank you for being here today and agreeing to testify to the jury remotely by videotape.

Please go ahead and introduce yourself to the jury.

A My name is Christopher Lee Helton. I am a professional photographer.

Q And where do you presently live and work, sir?

A In Indiana at the moment. I used to reside in Orlando, Florida.

Q Could you tell the jury a little bit about your professional background.

A I've been shooting professionally since 1974. In the '80s I started shooting a lot of fashion for swimwear magazines and modeling agencies. That's

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how I ran across Sandee actually.

MR. DECKER: I don't know what he said.

THE WITNESS: Yeah. I realize what I said. It's like, wait a second, they don't care about that.

BY MR. BAUER:

Q How much would you say you've had with respect to professional experience photographing models for magazines?

A Hundreds and hundreds.

Q And in your experience, how are professional photographers generally paid for the photos they take with respect to models?

A Sometimes you get a flat fee. You give them a flat fee. Other times it's per shot. If there's a lot of shots, then it's just a bulk. They pay just a flat fee for, say, ten shots. They'll pay a flat fee as opposed to paying for every shot.

Q And what are the basic ranges of those payments, in your experience?

A Anywhere from \$50 to 200 basically.

Q And is that how you have been paid generally for your efforts to photograph models throughout your career?

A Yes.

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1 **Q Mr. Helton, are you familiar with an article and**
2 **images of Nancy Benoit that were published in the**
3 **March 2008 issue of Hustler Magazine?**

4 A Yes, I am.

5 **Q And were you present for the photo shoot described**
6 **in that article and in which the images published**
7 **with the article were recorded?**

8 A Yes, sir.

9 **Q And how was it that you came to be present at that**
10 **photo shoot?**

11 A I was talking to Mark Samansky on the phone, and he
12 said he was going to video this girl, that her and
13 her husband wanted some pictures, and would I come
14 and shoot the pictures. And I said yes.

15 **Q And who was Mark Samansky?**

16 A Mark Samansky --

17 **Q How do you know him?**

18 A Through the radio station. I was photographer for
19 WDIZ, and he was a morning personality on WDIZ.

20 **Q And Mr. Samansky recently passed; is that correct?**

21 A Yes, he did.

22 **Q Who else was present at the photo shoot?**

23 A There was another guy named Bill Otten. He is a
24 wrestler photographer.

25 **Q So Mr. Samansky, yourself, another photographer**
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1 **named Bill Otten, and obviously Nancy Benoit.**
2 **Anybody else?**

3 A Her husband. I don't remember his name.

4 **Q Were you paid for your participation in that photo**
5 **shoot?**

6 A No, I wasn't.

7 **Q And was anybody other than you taking photographs**
8 **or images during that shoot?**

9 A Mark was shooting it with video, and I was shooting
10 stills, and Bill shot a couple shots.

11 **Q How did Nancy Benoit and her then husband, whose**
12 **name, by the way, is Jim Daus, how did they behave**
13 **during the photo shoot? Did they seem reluctant?**

14 A No. They were excited about it actually. It was
15 their idea.

16 **Q Did they express any concerns or reservations to**
17 **you or anybody in your presence about participating**
18 **in the photo shoot?**

19 A No.

20 **Q At any time?**

21 A No.

22 **Q After the shoot, did you ever meet with Nancy or**
23 **her husband again?**

24 A Yes, one time. We showed them the photos.

25 **Q Please tell the jury what you can recall about that**
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1 **meeting and specifically when it occurred and who**
2 **was present.**

3 A It was about a week later, after we shot the
4 photos. And I came over to Mark's, and I showed
5 them the photos, and they loved them.

6 **Q So who all was present for that meeting?**

7 A I know Mark was. Nancy and her husband were. I
8 think that was all that was there.

9 **Q Did you retain the negatives from that photo shoot?**

10 A Yes, I did.

11 **Q And were Nancy and her husband, Jim, aware that you**
12 **had retained the negatives?**

13 A Yes.

14 **Q At any time did either of them ask you to destroy**
15 **either the images that you took or the negatives?**

16 A No.

17 **Q Do you know whether they asked Bill Otten, the**
18 **other photograph, to destroy the images he had**
19 **taken?**

20 A No, they didn't.

21 **Q Have you ever been asked by Nancy Benoit, her**
22 **mother or Jim Daus or anyone else to destroy those**
23 **images or the negatives --**

24 A No, I haven't.

25 **Q -- in your possession from that photo shoot?**

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1 A No, I haven't.

2 **Q So I understand, so Miss Toffoloni has never asked**
3 **you to destroy those images?**

4 A Never talked to her in my life. If you're talking
5 about the mother.

6 **Q Correct.**

7 A Yeah.

8 **Q The images that you took of Nancy Benoit that day**
9 **were of professional quality?**

10 A Yes.

11 **Q How would you describe the images that were**
12 **published with the Hustler article about Nancy?**

13 A The images were similar, except the quality was --
14 from my stuff was way higher than the quality they
15 had. What they had was kind of grainy. My stuff
16 wasn't grainy.

17 **Q If today --**

18 A But basically it's the same -- the shoot, from what
19 representation is in the magazine, is basically a
20 representation of what my photos would look like.

21 **Q If today you were to sell professional quality**
22 **images that you took of Nancy Benoit for**
23 **publication in a national magazine, what would you**
24 **expect to be paid for them?**

25 A Average, 75 bucks per photo.

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1 **Q For all of your photos or just one?**
 2 A Per photo.
 3 **Q Per photo?**
 4 A Yeah.
 5 **Q How about if you sold them a few months after**
 6 **Miss Benoit's murder?**
 7 A It drops down. It can be 50 bucks.
 8 **Q So the \$75 per photo would be if you sold them**
 9 **immediately after the murder, in your opinion?**
 10 A If I sold it, you know, within days after it, I
 11 might have got \$100 apiece, if I was lucky.
 12 **Q Given the substantial difference in the quality**
 13 **between the images you took and the images**
 14 **published by Hustler of Nancy Benoit, would you**
 15 **expect that the Hustler images would be valued even**
 16 **less than the professional quality images you took?**
 17 A Oh, yes. Yes, it would be, way less.
 18 **Q And based on your more than 30 years as a**
 19 **professional celebrity photographer, how much do**
 20 **celebrity photos sold to national magazines**
 21 **generally go for?**
 22 A An average is \$35 to 75.
 23 **Q Per photo?**
 24 A Right.
 25 **Q What's the most you've ever been paid for a**
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1 **celebrity photo?**
 2 A For a single photo was \$525.
 3 **Q And who was that photo of?**
 4 A That was of a girl named Sandee Rozzo that was
 5 murdered, and it was for the TV show 48 Hours. And
 6 theirs is just a flat fee. They basically pay
 7 \$500. You know, if you have a thousand pictures,
 8 it's the same thing. They just have a flat fee for
 9 anything.
 10 **Q Was Miss Rozzo a celebrity?**
 11 A Not really. She was a model but -- you know, she
 12 was in national magazines because I put her there.
 13 So she's a celebrity with her friends, but she
 14 isn't a national celebrity, per se.
 15 **Q Who would be the most famous celebrity that you've**
 16 **sold images of?**
 17 A Good question. Rolling Stones, Bon Jovi, Ozzy.
 18 Depends on what you consider big.
 19 **Q How much do those photos go for?**
 20 A But the Rolling Stones.
 21 **Q How much did your photos of the Rolling Stones go**
 22 **for?**
 23 A It was the same thing. It was basically \$50 a
 24 shot. I'm trying to remember. It might have been
 25 only 35 because a lot of times it's a lot less than
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1 people assume. And most magazines do not pay what
 2 people think they do.
 3 **Q In your experience, where on the celebrity**
 4 **spectrum, so to speak, would Nancy Benoit fall with**
 5 **respect to public interest in images of her?**
 6 A If it was on a scale of one to a hundred, one, as
 7 in not really much of a celebrity.
 8 **Q And were you surprised to learn that Hustler paid**
 9 **Mark Samansky as much as \$1,000 for the images and**
 10 **background on Nancy Benoit's career?**
 11 A Yeah. Actually it really surprised me they paid
 12 that much.
 13 **Q Does that seem high to you, given your experience?**
 14 A Yeah. I would expect for that it would have been a
 15 flat fee of probably \$400, is what I would expect
 16 to have got.
 17 **Q Mr. Helton, in your experience, have the**
 18 **celebrities whose images appear in magazines like**
 19 **People or In Touch or Entertainment Weekly been**
 20 **paid for the use of their images in those**
 21 **publications?**
 22 A No, they're not.
 23 **Q Who does get paid?**
 24 A The photographer. The person who pushes the button
 25 owns all rights to the photo.
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1 **Q And what is your understanding about why the**
 2 **pictured celebrities are not paid for the use of**
 3 **their images?**
 4 A For the simple reason the photographer owns it.
 5 When you're a celebrity, you give up your rights
 6 basically to be published. You can publish a
 7 picture of anybody basically in anything as long as
 8 it's not representing a commercial product. Say, I
 9 cannot use your picture -- take your picture and
 10 then use it in a picture next to Windex, in their
 11 ad. I cannot do that without written consent.
 12 Anything else is called editorial. You do not need
 13 written consent for editorial.
 14 **Q And that's how you have operated throughout your**
 15 **30-plus-year professional career?**
 16 A Yeah.
 17 **Q Would that be how -- your understanding of how the**
 18 **national celebrity news magazine industry operates?**
 19 A Yeah. I'm exactly sure how it operates.
 20 MR. BAUER: Thank you very much, Mr. Helton.
 21 That's all I have for now. Mr. Decker has got some
 22 questions for you.
 23 THE WITNESS: Okay.
 24 CROSS-EXAMINATION
 25 BY MR. DECKER:
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1 **Q Mr. Helton, as I said, my name is Richard Decker.**
 2 **I represent Maureen Toffoloni, who is Nancy**
 3 **Benoit's mother and the administrator of her**
 4 **estate.**

5 **You do understand that Nancy Benoit is**
 6 **deceased?**

7 A Yes, I do.

8 **Q You stated that you took some photographs of Nancy**
 9 **Benoit on the day that Mark Samansky made the video**
 10 **but that no one has ever published those**
 11 **photographs; is that correct?**

12 A Right. I've never tried to sell them.

13 **Q You've never tried to sell them, and no one has**
 14 **ever published them?**

15 A Right.

16 **Q Is that true?**

17 A Right.

18 **Q And you just testified that you still have those**
 19 **images; correct?**

20 A Good question. I am not sure. I have hundreds of
 21 thousands of images, and one of the studios I had
 22 caught on fire, so a bunch of stuff burnt. So I
 23 really don't know if I still have the negatives and
 24 stuff. I've got probably a half million photos.

25 **Q So your testimony earlier that you have the**
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1 **negatives is not exactly correct?**

2 A I didn't testify I had the negatives. I said I
 3 shot the stuff and that I retain everything. I
 4 didn't say whether it had been destroyed or not.
 5 I'm not really sure.

6 **Q So you don't know if you have them or not?**

7 A I'm not sure.

8 **Q All right.**

9 A I would --

10 **Q One thing is sure, Mr. Helton, isn't it, that you**
 11 **never obtained a release from Nancy Benoit or her**
 12 **estate to publish any images of her?**

13 A You don't need a release to publish images.

14 **Q I didn't ask you that. I asked you, did you ever**
 15 **obtain a release from Nancy Benoit or her --**

16 A No, I didn't.

17 **Q -- estate after her death?**

18 A No, I didn't.

19 **Q All right. And your testimony is that you don't**
 20 **need a release?**

21 A No, you don't.

22 **Q Let me take this opportunity on this record,**
 23 **Mr. Helton, to advise you that you do not have any**
 24 **authority to publish any images of Nancy Benoit.**
 25 **Do you understand that?**

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1 A You're wrong. Look at the copyright laws.

2 **Q But you understand my instruction?**

3 A You're wrong. I have the right to publish
 4 anything.

5 **Q Well, whether you heed my instructions or not, you**
 6 **hear me loud and clear, don't you?**

7 A Yeah.

8 **Q And let me also advise you that if you do publish**
 9 **any images of Nancy Benoit, you will be sued in a**
 10 **court of law. Do you hear that?**

11 A I hear that.

12 **Q All right. The fact of the matter is, you've never**
 13 **published any images of Nancy Benoit?**

14 A No, I haven't.

15 **Q And you do not intend to publish any images of**
 16 **Nancy Benoit?**

17 A Hadn't thought about it whatsoever.

18 **Q You had nothing to do with Hustler Magazine**
 19 **publishing images of Nancy Benoit?**

20 A No.

21 **Q You did not encourage or assist Mark Samansky in**
 22 **selling images of Nancy Benoit to Hustler Magazine?**

23 A No, I did not.

24 **Q To your knowledge, did Nancy Benoit or her estate**
 25 **ever give a release to Hustler Magazine to publish**

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1 **images of her?**

2 A Not that I know of.

3 **Q Have you ever sold any material to Hustler**
 4 **Magazine?**

5 A Not that I know of. I work through an agency in
 6 New York, so not to my knowledge.

7 **Q Have you ever done any work for Hustler Magazine in**
 8 **any capacity?**

9 A No, I haven't.

10 **Q Or any other company owned by Larry Flynt?**

11 A Not to my knowledge. I don't know what all he
 12 owns, but not to my knowledge. Through my agency
 13 in New York, I could have.

14 **Q Ever work for --**

15 A Huh?

16 **Q Ever work for any other pornographic magazine in**
 17 **any capacity?**

18 A No.

19 **Q Are you aware, Mr. Helton, that in this case the**
 20 **courts have ruled that Hustler Magazine violated**
 21 **Nancy Benoit's right of publicity in publishing**
 22 **images of her without her consent?**

23 A Yeah, I heard that. They're wrong.

24 **Q Do you have any information about the value**
 25 **realized by Hustler Magazine in publishing images**

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1 of Nancy Benoit?
 2 A Very little. It would be worth very little.
 3 **Q Do you have any information about the value**
 4 **received by Hustler Magazine in publishing the**
 5 **images of Nancy Benoit?**
 6 A No.
 7 **Q Do you have any information about how much money**
 8 **Hustler Magazine made in connection with its**
 9 **publishing images of Nancy Benoit?**
 10 A No, I don't. But it would have been very little.
 11 **Q Do you have any information concerning the**
 12 **decision-making process at Hustler Magazine**
 13 **concerning their publication of the images of Nancy**
 14 **Benoit?**
 15 A No, I do not.
 16 **Q Are you receiving any compensation for your**
 17 **testimony today?**
 18 A No, except gasoline.
 19 **Q You're receiving gasoline?**
 20 A Yeah. They're paying for my gasoline to come.
 21 **Q You got your witness fee and your mileage?**
 22 A Just mileage, I believe. I didn't pay that close
 23 attention to it. It said, Here's some money; we
 24 pay for your mileage. And that's all I paid
 25 attention to.

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1 **Q You got a check in the mail for some amount of**
 2 **money; you don't know how much it was?**
 3 A It was \$50. Actually I think it was \$58 with tax,
 4 I believe. I mean, yeah, I believe it's \$58. It's
 5 50 to \$58.
 6 **Q And that was for your gas?**
 7 A Right.
 8 **Q And did you talk to anybody associated with Hustler**
 9 **Magazine about your testimony today?**
 10 A Just the lawyers.
 11 **Q Which lawyers would that be?**
 12 A Both those gentlemen.
 13 **Q Mr. Solomon and Mr. Bauer?**
 14 A Yes, sir.
 15 **Q When did you talk to them?**
 16 A They approached me a couple months back and asked
 17 me about the situation and the photographs and the
 18 photo session.
 19 **Q Is it your testimony that Nancy Benoit did not ask**
 20 **Mark Samansky to destroy the photographs, or you**
 21 **did not hear her do that?**
 22 A No, she did not ask him.
 23 **Q You were with her every day after the photo shoot**
 24 **up until the day she was killed?**
 25 A You know, no, I wasn't. So, yes, there's a chance

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1 she could have said it to him sometime. But she
 2 didn't ask me, so I'd assume she wouldn't ask him.
 3 **Q That's an assumption by you?**
 4 A Yes, it is.
 5 MR. DECKER: All right. Nothing further.
 6 MR. BAUER: Thank you, Mr. Helton. That's it.
 7 THE WITNESS: My pleasure, gentlemen. You all
 8 have a good day, I hope.
 9 THE VIDEOGRAPHER: This is the conclusion of
 10 Christopher Lee Helton's deposition. We are going
 11 off the record at 2:54. Thank you guys very much.
 12 THE REPORTER: Mr. Bauer, do you have a
 13 standing order with TSG?
 14 MR. BAUER: Yes, we do. And we'll need the
 15 transcript and video as soon as possible.
 16 MR. DECKER: I'll take a regular Minu-Script
 17 copy, but I don't need it expedited, and no video.
 18 (The deposition concluded at 2:54 p.m.)
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1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE NORTHERN DISTRICT OF GEORGIA
 3 MAUREEN TOFFOLONI, as)
 4 Administrator and Personal)
 5 Representative of the Estate)
 6 of NANCY E. BENOIT,)
 7)
 8 Plaintiff,)
 9)
 10 -v-) CASE NO.
 11) 1:08-cv-00421-TWT
 12 LFP PUBLISHING GROUP, LLC,)
 13 d/b/a Hustler Magazine,)
 14)
 15 Defendant.)
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 25

1, CHRISTOPHER LEE HELTON, state that I have read the foregoing transcript of the testimony given by me at my deposition on April 22, 2011, and that said transcript constitutes a true and correct record of the testimony given by me at said deposition except as I have so indicated on the errata sheets provided herein.

CHRISTOPHER LEE HELTON

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1 STATE OF INDIANA
2 COUNTY OF MARION

3
4 I, Maria W. Collier, a Notary Public in and
5 for said county and state, do hereby certify that the
6 deponent herein was by me first duly sworn to tell the
7 truth, the whole truth, and nothing but the truth in
8 the aforementioned matter;

9 That the foregoing deposition was taken on
10 behalf of the Defendant; that said deposition was
11 taken at the time and place heretofore mentioned
12 between 2:34 p.m. and 2:54 p.m.;

13 That said deposition was taken down in
14 stenograph notes and afterwards reduced to typewriting
15 under my direction; and that the typewritten
16 transcript is a true record of the testimony given by
17 said deponent;

18 And thereafter presented to said witness for
19 signature; that this certificate does not purport to
20 acknowledge or verify the signature hereto of the
21 deponent.

22 I do further certify that I am a disinterested
23 person in this cause of action; that I am not a
24 relative of the attorneys for any of the parties.

25 IN WITNESS WHEREOF, I have hereunto set my
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1 hand and affixed my notarial seal this 25th day of
2 April, 2011.

3
4
5
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8 _____
9 Maria W. Collier, Notary Public

10 My commission expires:
11 January 13, 2017

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1 NAME OF CASE:
2 DATE OF DEPOSITION:
3 NAME OF WITNESS:

4 Reason Codes:

- 5 1. To clarify the record.
- 6 2. To conform to the facts.
- 7 3. To correct transcription errors.

8 Page _____ Line _____ Reason _____
9 From _____ to _____
10 Page _____ Line _____ Reason _____
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25

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A	association (1) 3:16 assume (2) 12:1 20:2 assumption (1) 20:3 Atlanta (1) 2:11 attention (2) 18:23,25 attorneys (1) 22:24 authority (1) 15:24 average (2) 9:25 10:22 aware (2) 8:11 17:19	B	back (1) 19:16 background (2) 4:22 12:10 based (1) 10:18 basic (1) 5:19 basically (7) 5:21 9:18,19 11:6,23 13:6,7 Bauer (12) 2:8,20 3:23,23 4:7,9 5:6 13:20 19:13 20:6,12,14 begins (1) 3:2 behalf (2) 1:16 22:10 behave (1) 7:12 believe (3) 18:22 19:4,4 Benoit (27) 1:4 4:11 6:2 7:1,11 8:21 9:8,22 10:14 12:4 14:5,9 15:11 15:15,24 16:9,13,16 16:19,22,24 18:1,5 18:9,14 19:19 21:4 Benoit's (4) 10:6 12:10 14:3 17:21 big (1) 11:18 Bill (4) 6:23 7:1,10 8:17 bit (1) 4:21	Bon (1) 11:17 bucks (2) 9:25 10:7 bulk (1) 5:16 bunch (1) 14:22 burnt (1) 14:22 button (1) 12:24	C	called (1) 13:12 Canny (2) 2:14 3:13 capacity (2) 17:8,17 care (1) 5:4 career (3) 5:24 12:10 13:15 case (5) 1:6 4:10 17:19 21:6 24:1 caught (1) 14:22 cause (2) 3:6 22:23 celebrities (2) 12:18 13:2 celebrity (11) 10:19,20 11:1,10,13 11:14,15 12:3,7 13:5,18 certificate (1) 22:19 certify (2) 22:5,22 chance (1) 19:25 check (1) 19:1 Christopher (7) 1:13 3:3 4:2,16 20:10 21:12,19 Civil (1) 1:20 clarify (1) 24:5 clear (1) 16:6 close (1) 18:22 Codes (1) 24:4	Collier (4) 1:14 3:16 22:4 23:8 come (2) 6:13 18:20 commercial (1) 13:8 commission (1) 23:10 company (1) 17:10 compensation (1) 18:16 concerning (2) 18:11,13 concerns (1) 7:16 concluded (1) 20:18 conclusion (1) 20:9 conform (1) 24:6 connection (1) 18:8 consent (3) 13:11,13 17:22 consider (1) 11:18 constitutes (1) 21:13 copy (1) 20:17 copyright (1) 16:1 correct (7) 6:20 9:6 14:11,19 15:1 21:13 24:7 counsel (1) 3:18 county (3) 1:15 22:2,5 couple (2) 7:10 19:16 court (8) 1:1 3:5,5,9,15,19 16:10 21:1 courts (1) 17:20 CROSS-EXAMIN... 2:21 13:24 CRR (1) 1:14	Daus (2) 7:12 8:22 day (6) 9:8 14:9 19:23,24 20:8 23:1 days (1) 10:10 death (1) 15:17 deceased (1) 14:6 decision-making (1) 18:12 Decker (10) 2:4,22 3:21,21 5:2 13:21,25 14:1 20:5 20:16 defendant (7) 1:9,16 2:7 3:23,25 21:9 22:10 Depends (1) 11:18 deponent (3) 22:6,17,21 deposition (11) 1:12 3:2,8 20:10,18 21:13,14 22:9,10,13 24:2 Derek (3) 2:8 3:23 4:9 describe (1) 9:11 described (1) 6:5 destroy (5) 8:14,18,22 9:3 19:20 destroyed (1) 15:4 difference (1) 10:12 DIRECT (2) 2:19 4:6 direction (1) 22:15 disinterested (1) 22:22 District (6) 1:1,1 3:5,6 21:1,1 drops (1) 10:7 duly (2) 4:3 22:6 d/b/a (2) 1:8 21:8
		D	Darrell (2) 2:9 3:25 date (2) 3:11 24:2	E	E (2) 1:4 21:4			

earlier (1) 14:25	5:14,15,17,18 11:6,8 12:15 18:21	half (1) 14:24	15:13,24 16:9,13,15 16:19,22 17:1,22,25 18:5,9,13	19:25
editorial (2) 13:12,13	fire (1) 14:22	HALLMAN (1) 2:4	immediately (1) 10:9	knowledge (4) 16:24 17:6,11,12
efforts (1) 5:23	first (2) 4:3 22:6	hand (1) 23:1	Incorporated (1) 3:14	L
either (2) 8:14,15	flat (7) 5:14,14,17,17 11:6,8 12:15	hear (4) 16:6,10,11 19:21	INDEX (1) 2:17	Larry (1) 17:10
encourage (1) 16:21	Florida (1) 4:20	heard (1) 17:23	Indiana (7) 1:16,18,18 3:9,10 4:19 22:1	law (1) 16:10
Entertainment (1) 12:19	Flynt (1) 17:10	heed (1) 16:5	Indianapolis (2) 1:18 3:10	laws (1) 16:1
errata (1) 21:14	follows (1) 4:5	held (1) 3:8	indicated (1) 21:14	lawyer (1) 4:9
errors (1) 24:7	foregoing (2) 21:12 22:9	Helton (15) 1:13 3:3 4:2,8,16 6:1 12:17 13:20 14:1 15:10,23 17:19 20:6 21:12,19	industry (1) 13:18	lawyers (2) 19:10,11
Esq (3) 2:4,8,9	friends (1) 11:13	Hereto's (1) 20:10	information (4) 17:24 18:3,7,11	learn (1) 12:8
estate (6) 1:4 14:4 15:12,17 16:24 21:4	further (2) 20:5 22:22	hereto (1) 22:20	instruction (1) 16:2	Lee (7) 1:13 3:3 4:2,16 20:10 21:12,19
et (1) 3:4	G	heretofore (1) 22:11	instructions (1) 16:5	legal (1) 3:14
exactly (2) 13:19 15:1	GA (2) 2:6,11	hereunto (1) 22:25	intend (1) 16:15	LFP (5) 1:7 3:4,23 4:1 21:7
examination (4) 1:12 2:17,19 4:6	gas (1) 19:6	high (1) 12:13	interest (1) 12:5	life (1) 9:4
examined (1) 4:4	gasoline (3) 18:18,19,20	higher (1) 9:14	introduce (1) 4:14	Line (8) 24:8,10,12,14,16,18 24:20,22
excited (1) 7:14	generally (3) 5:12,22 10:21	hope (1) 20:8	involving (1) 4:10	little (4) 4:21 18:2,2,10
expect (4) 9:24 10:15 12:14,15	gentlemen (2) 19:12 20:7	Hours (1) 11:5	issue (1) 6:3	live (1) 4:18
expedited (1) 20:17	Georgia (3) 1:1 3:6 21:1	Huh (1) 17:15	J	LLC (3) 1:7 2:4 21:7
experience (6) 5:8,11,20 12:3,13,17	girl (2) 6:12 11:4	hundred (1) 12:6	J (1) 2:9	LLP (1) 2:9
expires (1) 23:10	give (3) 5:14 13:5 16:25	hundreds (3) 5:10,10 14:20	January (1) 23:10	long (2) 2:9 13:7
express (1) 7:16	given (5) 10:12 12:13 21:12,14 22:16	husband (6) 6:13 7:3,11,23 8:7,11	Jim (3) 7:12 8:11,22	look (2) 9:20 16:1
F	go (4) 4:14 10:21 11:19,21	Hustler (19) 1:8 4:9 6:3 9:12 10:14 10:15 12:8 16:18,22 16:25 17:3,7,20,25 18:4,8,12 19:8 21:8	JOB (1) 1:25	lot (4) 4:24 5:15 11:25,25
fact (1) 16:12	going (3) 3:1 6:12 20:10	I	Jovi (1) 11:17	loud (1) 16:6
facts (1) 24:6	good (4) 4:8 11:17 14:20 20:8	idea (1) 7:15	jury (4) 4:12,15,21 7:25	loved (1) 8:5
fall (1) 12:4	grainy (2) 9:15,16	images (38) 4:11 6:2,6 7:8 8:15,18 8:23 9:3,8,11,13,22 10:13,13,15,16 11:16 12:5,9,18,20 13:3 14:19,21 15:12	K	lucky (1) 10:11
familiar (1) 6:1	Group (3) 1:7 4:1 21:7	K	killed (1) 19:24	M
famous (1) 11:15	guy (1) 6:23	idea (1) 7:15	kind (1) 9:15	magazine (19) 1:8 4:10 6:3 9:19,23 13:18 16:18,22,25 17:4,7,16,20,25 18:4,8,12 19:9 21:8
fashion (1) 4:24	guys (1) 20:11	idea (1) 7:15	know (15) 4:8 5:2 6:17 8:7,17 10:10 11:7,11 14:23 15:6 17:2,5,11 19:2	magazines (6) 4:25 5:9 10:20 11:12
Federal (1) 1:19	H	idea (1) 7:15		
fee (8)				

12:1,18 mail (1) 19:1 March (1) 6:3 Maria (4) 1:14 3:15 22:4 23:8 Marietta (1) 2:6 Marion (2) 1:15 22:2 Mark (9) 6:11,15,16 7:9 8:7 12:9 14:9 16:21 19:20 Mark's (1) 8:4 material (1) 17:3 matter (3) 3:3 16:12 22:8 Maureen (4) 1:3 3:22 14:2 21:3 McKENNA (1) 2:9 mean (1) 19:4 meet (1) 7:22 meeting (2) 8:1,6 mentioned (1) 22:11 Michael (2) 2:14 3:13 mileage (3) 18:21,22,24 million (1) 14:24 Minu-Script (1) 20:16 model (1) 11:11 modeling (1) 4:25 models (3) 5:8,13,23 moment (1) 4:19 money (3) 18:7,23 19:2 months (2) 10:5 19:16 morning (1) 6:19 mother (3) 8:22 9:5 14:3 murder (2)	10:6,9 murdered (1) 11:5 <hr/> N <hr/> name (8) 3:13 4:8,16 7:3,12 14:1 24:1,3 named (3) 6:23 7:1 11:4 Nancy (34) 1:4 4:11 6:2 7:1,11,22 8:7,11,21 9:8,12,22 10:14 12:4,10 14:2 14:5,8 15:11,15,24 16:9,13,16,19,22,24 17:21 18:1,5,9,13 19:19 21:4 national (5) 9:23 10:20 11:12,14 13:18 NE (1) 2:10 need (5) 13:12 15:13,20 20:14 20:17 negatives (7) 8:9,12,15,23 14:23 15:1,2 never (6) 9:2,4 14:12,13 15:11 16:12 New (2) 17:6,13 news (1) 13:18 Northern (3) 1:1 3:6 21:1 notarial (1) 23:1 Notary (3) 1:14 22:4 23:8 notes (1) 22:14 number (1) 3:6 <hr/> O <hr/> obtain (1) 15:15 obtained (1) 15:11 obviously (1) 7:1 occurred (1) 8:1 offices (1) 1:17	Oh (1) 10:17 Okay (1) 13:23 operated (1) 13:14 operates (2) 13:18,19 opinion (1) 10:9 opportunity (1) 15:22 opposed (1) 5:18 oral (1) 1:12 order (1) 20:13 Orlando (1) 4:20 Otten (3) 6:23 7:1 8:17 owned (1) 17:10 owns (3) 12:25 13:4 17:12 Ozzy (1) 11:17 <hr/> P <hr/> Page (9) 2:18 24:8,10,12,14,16 24:18,20,22 paid (11) 5:12,22 7:4 9:24 10:25 12:8,11,20,23 13:2 18:24 participating (1) 7:17 participation (1) 7:4 parties (1) 22:24 passed (1) 6:20 pay (6) 5:16,17 11:6 12:1 18:22,24 paying (2) 5:18 18:20 payments (1) 5:19 Peachtree (1) 2:10 people (3) 12:1,2,19 person (2) 12:24 22:23	Personal (2) 1:3 21:3 personality (1) 6:19 phone (1) 6:11 photo (19) 6:5,10,22 7:4,13,18 8:9,25 9:25 10:2,3,8 10:23 11:1,2,3 12:25 19:18,23 photograph (2) 5:23 8:18 photographer (7) 4:17 6:18,24,25 10:19 12:24 13:4 photographers (1) 5:12 photographing (1) 5:8 photographs (5) 7:7 14:8,11 19:17,20 photos (10) 5:12 7:24 8:4,5 9:20 10:1,20 11:19,21 14:24 picture (4) 13:7,9,10 pictured (1) 13:2 pictures (3) 6:13,14 11:7 place (1) 22:11 plaintiff (4) 1:5 2:3 3:21 21:5 please (4) 3:18,19 4:14 7:25 pleasure (1) 20:7 pornographic (1) 17:16 possession (1) 8:25 possible (1) 20:15 presence (1) 7:17 present (6) 2:14 6:5,9,22 8:2,6 presented (1) 22:18 presently (1) 4:18 probably (2) 12:15 14:24 Procedure (1) 1:20	process (1) 18:12 produced (1) 1:13 product (1) 13:8 professional (9) 4:17,22 5:8,11 9:9,21 10:16,19 13:15 professionally (1) 4:23 provided (1) 21:14 public (4) 1:15 12:5 22:4 23:8 publication (3) 4:10 9:23 18:13 publications (1) 12:21 publicity (1) 17:21 publish (8) 13:6 15:12,13,24 16:3 16:8,15,25 published (8) 6:2,6 9:12 10:14 13:6 14:10,14 16:13 publishing (10) 1:7 3:4,24 4:1 16:19 17:21,25 18:4,9 21:7 purport (1) 22:19 pursuant (1) 1:19 pushes (1) 12:24 put (1) 11:12 p.m (4) 1:19 20:18 22:12,12 <hr/> Q <hr/> quality (6) 9:9,13,14,21 10:12,16 question (2) 11:17 14:20 questions (1) 13:22 <hr/> R <hr/> radio (1) 6:18 ran (1) 5:1 ranges (1) 5:19 read (1)
---	---	--	---	---

21:12	Richard (3) 2:4 3:21 14:1	show (1) 11:5	stuff (5) 9:14,15 14:22,24 15:3	11:7
realize (1) 5:3	Richardson (2) 1:17 3:9	showed (2) 7:24 8:4	substantial (1) 10:12	thousands (1) 14:21
realized (1) 17:25	right (11) 10:24 14:12,15,17	signature (2) 22:19,20	sued (1) 16:9	time (4) 7:20,24 8:14 22:11
really (5) 11:11 12:7,11 14:23	15:8,19 16:3,12	similar (1) 9:13	Suite (4) 1:18 2:5,10 3:10	times (2) 5:15 11:25
15:5	17:21 19:7 20:5	simple (1) 13:4	sure (5) 13:19 14:20 15:5,7,10	today (6) 3:15 4:12 9:17,21
reason (10) 13:4 24:4,8,10,12,14	rights (2) 12:25 13:5	single (1) 11:2	surprised (2) 12:8,11	18:17 19:9
24:16,18,20,22	Rolling (3) 11:17,20,21	sir (3) 4:18 6:8 19:14	swear (1) 3:20	Today's (1) 3:11
recall (1) 7:25	Rozzo (2) 11:4,10	situation (1) 19:17	swimwear (1) 4:25	Toffoloni (6) 1:3 3:4,22 9:2 14:2
received (1) 18:4	RPR (1) 1:14	sold (6) 10:5,8,10,20 11:16	sworn (3) 1:14 4:3 22:6	21:3
receiving (2) 18:16,19	ruled (1) 17:20	17:3		Touch (1) 12:19
record (7) 3:1,19 15:22 20:11	Rules (1) 1:20	Solomon (4) 2:9 3:25,25 19:13	T	transcript (4) 20:15 21:12,13 22:16
21:13 22:16 24:5		soon (1) 20:15	take (4) 5:13 13:9 15:22 20:16	transcription (1) 24:7
recorded (1) 6:7	S	speak (1) 12:4	taken (5) 1:16 8:19 22:9,11,13	tried (2) 14:12,13
reduced (1) 22:14	S (1) 2:8	specialist (1) 3:15	talk (2) 19:8,15	true (3) 14:16 21:13 22:16
regular (1) 20:16	Samansky (9) 6:11,15,16,20,25 12:9	specifically (1) 8:1	talked (1) 9:4	truth (6) 4:3,4,4 22:7,7,7
relative (1) 22:24	14:9 16:21 19:20	spectrum (1) 12:4	talking (2) 6:11 9:4	trying (1) 11:24
release (5) 15:11,13,15,20 16:25	Sandee (2) 5:1 11:4	Square (2) 1:18 3:10	Tape (1) 3:2	TSG (4) 1:25 3:13,16 20:13
reluctant (1) 7:13	scale (1) 12:6	standing (1) 20:13	tax (1) 19:3	TV (1) 11:5
remember (2) 7:3 11:24	se (1) 11:14	started (1) 4:24	tell (4) 4:3,21 7:25 22:6	typewriting (1) 22:14
remotely (1) 4:12	seal (1) 23:1	state (5) 1:15 3:18 21:12 22:1	ten (1) 5:17	typewritten (1) 22:15
reporter (3) 3:15,19 20:12	second (1) 5:4	22:5	testified (2) 4:5 14:18	
reporting (3) 3:9,14,17	sell (3) 9:21 14:12,13	stated (1) 14:8	testify (2) 4:12 15:2	U
represent (1) 14:2	selling (1) 16:22	STATES (2) 1:1 21:1	testimony (8) 14:25 15:19 18:17	understand (4) 9:2 14:5 15:25 16:2
representation (2) 9:19,20	session (1) 19:18	station (1) 6:18	19:9,19 21:12,14	understanding (2) 13:1,17
Representative (2) 1:4 21:4	set (1) 22:25	stenograph (1) 22:14	22:16	UNITED (2) 1:1 21:1
representing (1) 13:8	sheets (1) 21:14	Stewart (2) 1:17 3:8	Thank (5) 3:20 4:11 13:20 20:6	use (4) 12:20 13:2,9,10
reservations (1) 7:16	shoot (13) 6:5,10,14,22 7:5,8,13	stills (1) 7:10	20:11	U.S (1) 3:5
reside (1) 4:19	7:18,22 8:9,25 9:18	Stones (3) 11:17,20,21	theirs (1) 11:6	
respect (3) 5:7,13 12:5	19:23	Street (2) 2:5,10	thing (3) 11:8,23 15:10	V
retain (2) 8:9 15:3	shooting (4) 4:23,24 7:9,9	studios (1) 14:21	think (3) 8:8 12:2 19:3	v (3) 1:6 3:4 21:6
retained (1) 8:12	shot (6) 5:15,18 7:10 8:3		thought (1) 16:17	value (2) 17:24 18:3
	11:24 15:3		thousand (1) 16:17	valued (1) 10:15
	shots (3) 5:16,17 7:10			verify (1)

<p>22:20 video (7) 3:2,14 6:12 7:9 14:9 20:15,17 videoconference (2) 2:3,7 Videographer (3) 2:14 3:1 20:9 videotape (2) 1:12 4:13 violated (1) 17:20</p> <hr/> <p style="text-align: center;">W</p> <p>W (3) 1:14 22:4 23:8 wait (1) 5:4 wanted (1) 6:13 wasn't (3) 7:6 9:16 19:25 way (3) 7:12 9:14 10:17 WDIZ (2) 6:19,19 week (1) 8:3 Weekly (1) 12:19 we'll (1) 20:14 whatsoever (1) 16:17 WHEREOF (1) 22:25 Windex (1) 13:10 WINGATE (1) 2:4 witness (9) 1:13 3:20 5:3 13:23 18:21 20:7 22:18,25 24:3 work (5) 4:18 17:5,7,14,16 worth (1) 18:2 wouldn't (1) 20:2 wrestler (1) 6:24 written (2) 13:11,13 wrong (3) 16:1,3 17:23</p> <hr/> <p style="text-align: center;">Y</p>	<p>yeah (11) 5:3 9:7 10:4 12:11,14 13:16,19 16:7 17:23 18:20 19:4 years (1) 10:18 York (2) 17:6,13</p> <hr/> <p style="text-align: center;">\$</p> <p>\$1,000 (1) 12:9 \$100 (1) 10:11 \$35 (1) 10:22 \$400 (1) 12:15 \$50 (3) 5:21 11:23 19:3 \$500 (1) 11:7 \$525 (1) 11:2 \$58 (3) 19:3,4,5 \$75 (1) 10:8</p> <hr/> <p style="text-align: center;">1</p> <p>1 (2) 3:2 24:5 1:08-cv-00421-TW... 1:7 3:7 21:7 13 (2) 2:22 23:10 166 (1) 2:5 1974 (1) 4:23</p> <hr/> <p style="text-align: center;">2</p> <p>2 (1) 24:6 2:34 (3) 1:19 3:11 22:12 2:54 (3) 20:11,18 22:12 200 (1) 5:21 2008 (1) 6:3 2011 (4) 1:19 3:11 21:13 23:2 2017 (1) 23:10 210 (1) 2:5</p>	<p>22 (3) 1:19 3:11 21:13 2425 (2) 1:18 3:10 25th (1) 23:1</p> <hr/> <p style="text-align: center;">3</p> <p>3 (1) 24:7 30 (1) 10:18 30-plus-year (1) 13:15 30060 (1) 2:6 303 (1) 2:10 30308 (1) 2:11 35 (1) 11:25 38092 (1) 1:25</p> <hr/> <p style="text-align: center;">4</p> <p>4 (1) 2:20 48 (1) 11:5</p> <hr/> <p style="text-align: center;">5</p> <p>50 (2) 10:7 19:5 5300 (1) 2:10</p> <hr/> <p style="text-align: center;">7</p> <p>75 (2) 9:25 10:22</p> <hr/> <p style="text-align: center;">8</p> <p>80s (1) 4:24</p>
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