

Tab 12

Plaintiff's Response to Defendants Requests for Admissions

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

VALENCIA M MCCLATCHEY,)	
)	
Plaintiff,)	
)	Civil Action No 05-145J
v.)	
)	
THE ASSOCIATED PRESS,)	JURY TRIAL DEMANDED
)	
Defendant.)	
_____)	

PLAINTIFF’S RESPONSE TO DEFENDANT’S REQUESTS FOR ADMISSION

Plaintiff Valencia M McClatchey (“Ms. McClatchey”), by and through its attorneys hereby responds to Defendant The Associated Press’s (“the AP”) Requests for Admission:

1. McClatchey provided a copy of the Photograph to AP for AP to use in connection with a report AP was writing about McClatchey and the Photograph.

RESPONSE:

Denied.

2. McClatchey introduced herself to AP reporter Charles Sheehan and told him that she was the person who took the Photograph.

RESPONSE:

Admitted

3. McClatchey has distributed to third parties copies of the Photograph on which there was no copyright notice.

RESPONSE:

Denied as stated. Ms. McClatchey sent a jpeg copy of the Photograph that did not contain a copyright notice to specific organizations who received her prior permission to use the Photograph. See for example Ms. McClatchey’s deposition transcript, pages 20, 21, and 109.

4. Within weeks of its publication, McClatchey obtained copies of the AP report accompanied by the Photograph as they had been published in newspapers.

RESPONSE:

Denied.

5. McClatchey was happy with the coverage she received from the AP report.

RESPONSE:

Denied as stated. Plaintiff objects to use of the word “happy” as vague and ambiguous. Ms. McClatchey’s reaction to the AP report can be found on page 40 of her deposition transcript.

6. McClatchey did not complain to AP about its having published a copy of the Photograph with the AP report until almost two years after AP ran the Photograph.

RESPONSE:

Denied to the extent this request assumes Ms. McClatchey had knowledge of the AP's use of her Photograph prior to a copy of the Photograph appearing on the welcome screen for AOL, otherwise admitted.

7. McClatchey did not contact AP until after McClatchey observed a copy of the Photograph that appeared on the welcome screen for AOL.

RESPONSE:

Admitted.

8. McClatchey’s personal copy of the Photograph does not have a copyright notice on it.

RESPONSE:

Admitted that the personal copy of Ms. McClatchey's Photograph located in her office at her home does not have a copyright notice on it.

9. McClatchey permitted AP's photographer to take a picture of her personal copy of the Photograph

RESPONSE:

Denied.

10. When meeting with Gene Puskar at her house, McClatchey understood he was there to obtain a photograph for publication by the AP in connection with AP report about her.

RESPONSE:

Admitted that Ms. McClatchey understood Gene Puskar was there to obtain a photograph of her for publication by the AP in connection with AP report about her.

11. When meeting with Gene Puskar at her house, McClatchey understood that AP would distribute a photograph of the Photograph to its members and subscribers with the AP report about her.

RESPONSE:

Denied.

12. McClatchey observed Gene Puskar take a photograph of her Photograph

RESPONSE:

Denied.

13. McClatchey provided the Photograph to news entities other than AP for use in connection with reports about her.

RESPONSE:

Denied.

14. McClatchey permitted some news organizations to publish or broadcast the Photograph for free

RESPONSE:

Admitted.

15. McClatchey did not charge fees to use the Photograph in connection with reports that

19 McClatchey described herself as a “celebrity” in an email to friends

RESPONSE:

Denied as stated. This request for admission is irrelevant. The e-mail speaks for itself. See for example page 85 of Ms. McClatchey’s deposition testimony.

20. McClatchey sold copies of the Photograph after AP published its story about her.

RESPONSE:

Admitted.

21. After AP published the AP report, McClatchey sold or otherwise licensed rights to others to publish the Photograph

RESPONSE:

Admitted.

22. Prior to any use of the Photograph by the AP, the Photograph had been published.

RESPONSE:

Admitted

23. McClatchey sold hundreds of copies of the Photograph for \$20 each.

RESPONSE:

Admitted that a certain percentage of the Photographs sold were sold for \$20 each.

24. Before the AP published the AP report, McClatchey received up to \$500 for granting a third party permission to the Photograph.

RESPONSE:

Denied to the extent the AP is seeking an admission as to any connection between the AP report and any subsequent sales, other admitted.