

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

VALENCIA M. MCCLATCHEY,

Plaintiff,

v.

THE ASSOCIATED PRESS,

Defendant.

Civil Action No. 05-145J

SUPPLEMENTAL DECLARATION OF ROBERT PENCHINA

ROBERT PENCHINA, pursuant to 28 U.S.C. § 1746, states:

1. I am a partner in Levine Sullivan Koch & Schulz, L.L.P. and represent The Associated Press (“AP”) in the above-captioned matter.
2. The excerpts from deposition transcripts, and the exhibits appended thereto, that are included in the Appendix to Defendant’s Response to Plaintiff’s Statement of Undisputed Material Facts are true and correct copies of those pages of the transcripts and exhibits referenced in Defendant’s Response to Plaintiff’s Statement of Undisputed Material Facts that were not included in the Appendix to the AP’s Statement of Undisputed Material Facts or the Appendix submitted by Plaintiff with her Statement of Undisputed Facts.
3. Attached as Exhibit A hereto is a true and correct copy of a letter, which Plaintiff produced in this action on or about December 1, 2005, from Eric Lieberman, Associate Counsel of the Washington Post to Douglas M. Hall, dated December 15, 2005, which Plaintiff advised me was sent in response to a subpoena Plaintiff served on the Washington Post.

4. Attached as Exhibit B hereto is a true and correct copy of a document bearing production number MC 00045, which Plaintiff produced in this action on or around November 15, 2005.

5. Attached as Exhibit C hereto is a true and correct copy of a document bearing production number MC 00066, which Plaintiff produced in this action on or around November 15, 2005.

6. Attached as Exhibit D hereto is a true and correct copy of a document bearing production number MC 00068, which Plaintiff produced in this action on or around November 15, 2005.

7. Attached as Exhibit E hereto is a true and correct copy of a document bearing production number MC 00088, which Plaintiff produced in this action on or around November 15, 2005.

8. Attached as Exhibit F hereto are true and correct copies of documents bearing production numbers MC 00116-19 and MC 00121-22, which Plaintiff produced in this action on or around November 15, 2005.

9. Attached as Exhibit G hereto is a true and correct copy of a document bearing production number MC 00141, which Plaintiff produced in this action on or around November 15, 2005.

10. Attached as Exhibit H hereto is a true and correct copy of a document bearing production number MC 00228, which Plaintiff produced in this action on or around November 15, 2005.

11. Attached as Exhibit I hereto are true and correct copies of documents bearing production numbers MC 00237 and MC 00255, which Plaintiff produced in this action on or around November 15, 2005.

12. Attached as Exhibit J hereto is a true and correct copy of a document bearing production numbers MC 00257-58, which Plaintiff produced in this action on or around November 15, 2005.

13. Attached as Exhibit K hereto is a true and correct copy of a document bearing production numbers MC 00270-73, which Plaintiff produced in this action on or around November 15, 2005.

14. Attached as Exhibit L hereto are true and correct copies of two pages that were part of Defendant's Exhibit 29 at the Deposition of Valencia M. McClatchey conducted on March 14, 2006. True and correct copies of the documents that comprise Exhibit L also were produced by AP, bearing production numbers A0529-30, in response to requests for production served by counsel for Plaintiff in this action. Exhibit L contains "screen captures" which I personally made on March 11, 2006 from a video entitled "Windsor Park Stories, Shanksville Episodes" which I accessed on the Internet. During her deposition, Ms. McClatchey confirmed that the printer shown in Exhibit L, which is depicted printing a copy of Ms. McClatchey's photo without any copyright notice or title, is her printer. (McClatchey Dep. 105).

15. Attached as Exhibit M hereto is a true and correct copy of a document bearing production numbers A0537, which AP produced in response to requests for production served by counsel for Plaintiff Valencia M. McClatchey ("Plaintiff") in this action. Exhibit M contains a screen capture which I personally (i) made on March 11, 2006 from a video entitled "Windsor Park Stories, Shanksville Episodes," which I accessed on the Internet, and (ii) enlarged on March

11, 2006. Exhibit M shows a scene from the "Windsor Park Stories, Shanksville Episodes" which displayed a copy of Ms. McClatchey's photo on which no copyright notice or title was present. The document that comprises Exhibit M is also part of Defendant's Exhibit 29 at the Deposition of Valencia M. McClatchey conducted on March 14, 2006 in un-enlarged form, and also was produced by AP, bearing production number A0530, in response to requests for production served by counsel for Plaintiff.

16. Attached as Exhibit N hereto is a true and correct copy of a document bearing production numbers MC 00303-06, which Plaintiff produced in this action on or around November 17, 2005.

17. Attached as Exhibit O hereto is a true and correct copy of a document bearing production number MC 00038, which Plaintiff produced in this action on or around November 15, 2005.

18. Attached as Exhibit P hereto is a true and correct copy of a document bearing production numbers AP 00002-A through -D, which AP produced in response to requests for production served by counsel for Plaintiff in this action. This document is a letter from David G. Oberdick, Ms. McClatchey's attorney at the time, to Jim Bramson, counsel to AOL, dated October 21, 2003, as well as the documents enclosed with the letter.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated: New York, New York
June 29, 2006

/s/ Robert Penchina

Robert Penchina