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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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BLAKE LIVELY,

Plaintiff,

vs.

CASE NO. 24-CV-10049-LJL (LEAD CASE)

25-CV-449 (LJL) (MEMBER CASE)

WAYFARER STUDIOS LLC, ET AL.

Defendants.

JENNIFER ABEL,

Third-party Plaintiff,

vs.

JONESWORKS, LLC,

Third-party Defendant.

WAYFARER STUDIOS LLC, et al.

Consolidated Plaintiffs,

vs.

BLAKE LIVELY, et al.

Consolidated Defendants.

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****CONTAINING ATTORNEYS' EYES ONLY PORTIONS****

VIDEO-RECORDED DEPOSITION OF ANN FROMHOLZ

Los Angeles, California

Thursday, December 11, 2025

Stenographically Reported by: Ashley Soevyn,
CALIFORNIA CSR No. 12019

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1 BY MS. ROESER:

2 Q Have you served as an expert witness in a
3 litigation for an entertainment client before?

4 A No. Just looking to make sure. No.

5 Q The other credibility factors that you
6 mentioned. One of them was contradiction. What
7 does that mean?

8 A That means if a witness's account of an
9 incident or an incident for this example is
10 contradicted by other people's accounts or by
11 contemporaneous emails, text messages, that sort of
12 thing.

13 Q And what about motive to lie? What does
14 that mean?

15 A If the person -- I can't think of an
16 example, but it sometimes becomes apparent that
17 someone has a motive to lie about a situation.

18 Q Can you give an example of how that might
19 come about, like how you might assess that someone
20 has a motive to lie?

21 A I can't really. But you specifically
22 can't assess that a person who is what we call the
23 responding party has a motive to lie because they're
24 alleged to have done something. That can't be the
25 basis for finding they have a motive to lie. But

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1 A I believe so. Yes.

2 Q Did you review parts of the summary
3 judgment opposition related to the retaliation
4 claims?

5 A No.

6 Q Did -- are you aware that Ms. Lively
7 filed a declaration in support of her opposition for
8 summary judgment?

9 A Yes, I believe it was referred to in the
10 opposition.

11 Q Did you review that declaration?

12 A No.

13 Q Why not?

14 A Because I don't think that's relevant to
15 my opinions. My opinions are here. I was trying to
16 refresh my recollection about what the facts and
17 allegations were.

18 Q Well, part of your opinion relates to
19 Ms. Lively's allegations about conduct on the set of
20 the film and related to the film, right?

21 A At the time, yes. What Wayfarer -- what
22 the Wayfarer Defendants or Wayfarer parties could or
23 should have done at the time.

24 Q Are you aware that Ms. Lively's
25 declaration relates to conduct that occurred on set?

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1 A I have not reviewed her declaration.

2 Q Do you understand that Ms. Lively is
3 alleging that some of the retaliatory conduct she
4 experienced was part of the hostile work
5 environment?

6 A No. That's not my understanding.

7 Q It's not?

8 A I don't have that understanding except to
9 the extent that Mr. Robbins testified about a
10 conversation at a dinner with Colleen Hoover that
11 Justin Baldoni and Colleen Hoover had.

12 Q A dinner that Mr. Baldoni had with
13 Ms. Hoover in May 2024 or about there?

14 A Maybe. I don't know the date.

15 Q What do you recall about that dinner?

16 A I recall that the allegation is that
17 there was some negative talk about Ms. Lively and
18 that Mr. Robbins in his deposition said that if that
19 negative talk had gotten to others, that could be
20 considered retaliation, and he said it could be --
21 might be considered harassment.

22 Q Did you agree with that?

23 A No.

24 Q Why not?

25 A As to the retaliation, perhaps. I don't

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1 know. As to the harassment, no. There was no
2 gender based conduct. No sexual conduct. I don't
3 understand how it could possibly be considered
4 harassment.

5 Q Do you agree that retaliatory conduct can
6 contribute to a hostile work environment?

7 A A hostile work environment as legally
8 defined. So a hostile work environment as defined
9 in the context of sexual harassment does not include
10 retaliation. That's a separate claim.

11 Q So is it your opinion that retaliatory
12 conduct cannot contribute to a hostile work
13 environment?

14 MS. ZELDIN: Objection.

15 THE WITNESS: Well, you're asking me for
16 a legal opinion. Do you want me to give a legal
17 opinion?

18 BY MS. ROESER:

19 Q Yes.

20 MS. ZELDIN: Objection.

21 THE WITNESS: Okay. In my legal opinion,
22 a retaliation -- a claim for retaliation is separate
23 from a claim for harassment.

24 BY MS. ROESER:

25 Q Have you been designated to offer legal

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1 opinions in this case?

2 A No.

3 Q Turning quickly back to Exhibit C. Who
4 selected the materials for you to review?

5 A I was provided the materials by
6 Liner Freedman.

7 Q By Ms. Zeldin?

8 A By someone at her firm.

9 Q Did you ask for any specific materials?

10 A I may have asked for additional
11 deposition transcripts. I think most of them were
12 provided.

13 Q Did you ask for any materials that were
14 not provided to you?

15 A No.

16 Q So am I correct that Liner Freedman
17 selected the materials that you would review in
18 connection with this matter?

19 A No. I just said that I asked for
20 additional deposition transcripts that were not
21 initially provided to me.

22 Q The documents that were initially
23 provided to you, were they selected by
24 Liner Freedman?

25 A That's right. Oh, you know what else I

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1 asked for, I asked for video. If there were
2 particular video clips. And those were provided to
3 me.

4 Q What video clips did you ask for?

5 A I can't remember what I asked for versus
6 what I was initially provided. But I had a
7 number -- there were a number of video clips that I
8 ended up looking at.

9 Q Deposition videos or?

10 A No.

11 Q Video footage from the film?

12 A Yes.

13 Q If I use the term "the film" throughout
14 this deposition, will you understand that I'm
15 referring to the film, It Ends with Us?

16 A Yes.

17 Q Did you -- the deposition transcripts
18 that are identified in Exhibit C or in the materials
19 that Mr. Robbins reviewed, did you review those
20 depositions in full?

21 A I reviewed -- well, these four that are
22 listed under deposition transcripts and exhibits. I
23 reviewed Ann Carroll's in full. I don't have the
24 list of what was in Mr. Robbins' report. I reviewed
25 some of those in full, but I think not all of them.

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1 A Yes.

2 Q Did you review exhibits to the
3 depositions that you reviewed?

4 A Yes.

5 Q All of them?

6 A I looked at all of them, so it -- opened
7 them and looked at them. I had them all
8 electronically. I didn't review thoroughly all of
9 them, no.

10 Q And the exhibits that you did not
11 thoroughly review were not a basis for your opinion;
12 is that right?

13 A I believe that's right.

14 Q Have you interviewed anyone to form the
15 basis of your opinions in this matter?

16 A No.

17 Q Anyone that you've spoken with in
18 connection with your role as an expert in this case
19 that you have not disclosed yet?

20 A No.

21 Q Did you watch the movie It Ends with Us?

22 A I did.

23 Q Was that before or after you were
24 retained as an expert in this case?

25 A After.

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1 that's not listed but...

2 Q So not every training that you've
3 attended is listed on here?

4 A I don't know that I listed any. Maybe I
5 listed one training, but I've attended many
6 trainings.

7 Q And not every investigation you've
8 conducted is listed here?

9 A I don't think I listed any investigation
10 on here.

11 Q You are currently employed with the
12 Fromholz Firm; is that right?

13 A That's correct.

14 Q What is your role?

15 A I'm the principal.

16 Q Have you been a principal since you
17 started there in 2015?

18 A Well, I started the firm in 2015, so yes.

19 Q So you founded the firm?

20 A I did.

21 Q And what are your responsibilities as a
22 principal at the Fromholz Firm?

23 A I maintain my practice. I also run the
24 business part of the firm, and I oversee the two
25 employees we have.

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1 Q So do you -- does the firm have a total
2 of three employees, including yourself?

3 A Yes.

4 Q You conduct workplace investigations,
5 right?

6 A Among other things, yes.

7 Q What other things do you do?

8 A I counsel businesses. I counsel
9 employees. I handle some litigation.

10 Q You counsel businesses and employees with
11 respect to employment law issues?

12 A Yes.

13 Q Did you say that you -- do you represent
14 clients in litigation?

15 A Yes.

16 Q Do you represent employers or employees
17 in litigation?

18 A Employers.

19 Q Let me finish my question, please.

20 MS. ZELDIN: It sounded like she did.

21 MS. ROESER: She didn't.

22 BY MS. ROESER:

23 Q You represent employers in litigation?

24 A That's right.

25 Q What percentage of your practice is

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1 litigation-based?

2 A Right now, probably 15 percent.

3 Q And what percentage of your practice is
4 advice and counsel-based?

5 A Probably 15 percent.

6 Q What percentage of your practice is based
7 on workplace investigations?

8 A I would say 50 to 60.

9 Q And what kind of investigations do you
10 perform?

11 A Oh gosh, a wide range. Harassment -- my
12 investigations are into internal claims of
13 harassment, retaliation, bullying. I'm sometimes
14 asked to investigate complaints that really wouldn't
15 rise to the level of a violation of policy, but the
16 company wants to look into it anyway because it's
17 affecting the workplace. So there's not really a
18 way to put a name to that except maybe bad
19 management or people not getting along.

20 I've been asked to look into complaints
21 regarding misuse of company credit cards and expense
22 accounts. A whole range of -- of employment
23 law-related or workplace-related complaints.

24 Q How long have you been conducting
25 workplace investigations?

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1 A I think my first one was in about -- I
2 know which firm it was. Hold on. In about 1998.

3 Q What firm were you at when you conducted
4 your first workplace investigation?

5 A Orrick.

6 Q How many workplace investigations would
7 you estimate that you have performed since 1998 --
8 you said 1998, right?

9 A Correct. Hundreds. I can't estimate
10 beyond that, though.

11 Q More than 100?

12 A Well, more than -- probably, yes, well
13 more than 100.

14 Q More than 200?

15 A I would guess so, yes.

16 Q More than 300?

17 A I don't know that I can even guess at
18 that point.

19 Q Okay. More than 200?

20 A That's my guess, yes.

21 Q Your guess or your estimate?

22 A Estimate more than 100; guess more than
23 200.

24 Q Fair. How many investigations have you
25 conducted this year, in 2025?

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1 A Oh, I have no idea. Twenty-some maybe.
2 I don't know. It's all in -- I just don't keep the
3 track of that in my head. It's all in my -- in my
4 records.

5 Q Would you say between 10 and 20 this
6 year?

7 A I think it's probably more than 20.

8 Q Twenty to 30?

9 A That's my guess, yeah.

10 Q Is that an average number for you per
11 year, or is this year exceptionally busy or
12 exceptionally slow?

13 A I think this year is probably a little
14 lower than others. But, you know, every year is
15 different.

16 Q Are you generally hired to conduct
17 investigations by employers?

18 A I've only been engaged to conduct
19 investigations by employers, never by an employee.

20 Q And are you conducting the investigations
21 yourself, or are you overseeing others in conducting
22 them?

23 A Both.

24 Q What percentage of investigations that
25 you perform are you conducting yourself?

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1 A Probably 75.

2 Q And the remaining 25 percent, you're
3 overseeing someone else conducting the
4 investigation?

5 A So 75 or 80, and then 20 to 25. Yeah.

6 Q Do you view your investigative services
7 as providing legal services?

8 A So my engagement letter says that it is
9 legal services, but I'm not providing legal advice.

10 Q Legal services but not legal advice?

11 A Yes.

12 Q Can you explain that to me?

13 A No.

14 Q No?

15 A I can't.

16 Q Why not?

17 A Well, my understanding is that workplace
18 investigations conducted by an attorney are legal
19 services, but I don't provide legal advice.

20 Q Has your -- has your license ever lapsed?

21 A In California, no.

22 Q In any other state?

23 A Yes. In Nevada, right now, I have to
24 update my CLE, so I'm not licensed in Nevada at the
25 moment.

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1 four.

2 Q Okay. And you've testified at two
3 arbitration hearings; is that right?

4 A One of these is wrong. In the DoubleLine
5 Group case, I testified at the arbitration hearing.
6 So that was -- I need to change my little
7 spreadsheet. It's the -- and I think I misspelled
8 the person's name too. Barach & Damiani v.
9 DoubleLine.

10 Do you see that?

11 Q Uh-huh. Okay. So?

12 A Three arbitration hearings.

13 Q Three arbitration hearings?

14 A Yes.

15 Q In each of the cases in which you've been
16 an expert, have you testified about issues related
17 to workplace investigations?

18 A No.

19 Q What other issues have you testified
20 about?

21 A Other what's characterized as HR-related
22 issues. So employment law issues. I've also
23 testified -- in fact, in one case that Mr. Robbins
24 was involved in -- disability accommodations and
25 investigations. The Tyler Skaggs case has to do

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1 with a huge range of things. So a huge range of HR
2 issues. So all related to employment law.

3 Q Have you previously opined on whether a
4 workplace investigation should or should not have
5 been conducted?

6 A I think so.

7 Q How many times?

8 A I don't know.

9 Q Have you opined on whether a workplace
10 investigation should or should not have been
11 conducted in a -- in a hostile work environment or
12 retaliation case?

13 A Yes.

14 Q How many times?

15 A I don't know.

16 Q More than three?

17 A I would say no, because most of the cases
18 have to do with the -- most investigation cases have
19 to do with the sufficiency of the investigation.

20 Q As opposed to whether an investigation
21 should occur?

22 A That's correct.

23 Q When you're giving expert testimony about
24 the sufficiency of an investigation, what factors do
25 you consider?

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1 A I consider legal obligations and the
2 factors really laid -- well, are laid out in the CRD
3 guide mostly, and then rely on my experience.

4 Q Do you consider whether an investigation
5 was promptly initiated, for example?

6 MS. ZELDIN: Objection.

7 THE WITNESS: So the -- the standard is
8 that an investigation is prompt and thorough,
9 reached a reasonable good faith conclusion, and that
10 it -- that it -- sorry. The outcome is that the
11 conduct in question stopped and is not repeated. I
12 didn't say that the right way, but that's the
13 standard. So that's what I consider.

14 BY MS. ROESER:

15 Q Do you consider, in determining whether
16 an investigation is sufficient, whether witnesses
17 are interviewed?

18 A Yes, every investigation is different.
19 So yes, I look at the totality of the investigation
20 to determine whether it was sufficient.

21 Q Would you consider, for example, if a
22 complainant was interviewed or not?

23 A I would consider, based on the
24 circumstances, who was interviewed, what information
25 was looked at, et cetera.

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1 Q What documents might have been reviewed,
2 for example?

3 A Yes.

4 Q Would you also, as part of opining on
5 whether an investigation is sufficient, consider
6 whether any corrective or remedial steps were taken?

7 A Yes.

8 Q Including whether disciplinary action was
9 issued, for example?

10 A Yes, but the standard doesn't have to do
11 with disciplinary action; it has to do with
12 corrective action that makes the conduct stop. So
13 the goal is not disciplinary action. Sometimes
14 disciplinary action is appropriate to make the
15 conduct stop, but what I look at is whether the
16 conduct stopped.

17 Q Can you give me some examples of
18 corrective action that you're referring to?

19 A Well, often a conversation is enough to
20 stop the conduct. Often a conversation, you know,
21 saying "don't do that again" is enough to stop the
22 conduct.

23 Q So is it your opinion that an employer
24 can satisfy their obligation to prevent harassment
25 by simply directing a accused employee to stop what

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1 they're doing?

2 MS. ZELDIN: Objection.

3 THE WITNESS: It's my opinion that an
4 employer can stop harassment -- can -- can meet its
5 obligation by taking steps that stop the conduct.
6 So if the conduct has stopped, then the action --
7 and it hasn't repeated, then I believe the action
8 was sufficient.

9 BY MS. ROESER:

10 Q So if an employee complains that their
11 supervisor made a sexual comment about their body,
12 is it your opinion that it would be sufficient for
13 an employer to satisfy their obligation to prevent
14 harassment to direct the supervisor not to make
15 those comments anymore?

16 MS. ZELDIN: Objection.

17 THE WITNESS: I don't have enough
18 information because you have to find -- you have to
19 determine whether that happened. If we're assuming
20 that that happened, right, are we assuming that what
21 the person complained about actually did happen?

22 BY MS. ROESER:

23 Q Yeah, assume that.

24 MS. ZELDIN: Objection.

25 THE WITNESS: Okay. And if -- if there's

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1 MS. ZELDIN: Objection.

2 BY MS. ROESER:

3 Q Yes or no?

4 MS. ZELDIN: Objection.

5 THE WITNESS: If it doesn't happen again,
6 the employer has met their obligation. Is that what
7 I would advise if I were advising the employer? I'm
8 not sure.

9 BY MS. ROESER:

10 Q What would you advise if you were
11 advising an employer?

12 A I might advise them something different
13 depending on the facts.

14 Q Like what?

15 A I don't know. I don't have all the
16 facts. And I'm not here to give legal advice. That
17 would be legal advice.

18 Q Have you represented entertainment
19 industry clients in litigation before?

20 A Yes.

21 Q Who?

22 A Playboy.

23 Q Any others?

24 A I don't think so.

25 Q Have you ever represented a film studio

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1 or TV studio in litigation?

2 A No.

3 Q When did you represent Playboy?

4 A When I was at Seyfarth.

5 Q In multiple matters or in one matter?

6 A I worked on multiple matters for Playboy.

7 Q Did you represent Playboy in any
8 litigations involving claims of harassment or
9 retaliation?

10 A Yes.

11 Q When?

12 A When I was at Seyfarth.

13 Q Between 2001 and 2005?

14 A Correct.

15 Q Have you represented any entertainment
16 industry clients in litigation in the last 20 years?

17 A I'm trying to think if I did at Jackson
18 Lewis, and I can't remember. I don't believe I have
19 since having my own firm. I represented small
20 companies related to the entertainment industry, but
21 not studios.

22 Q Have you conducted investigations for
23 clients in the entertainment industry?

24 A Yes.

25 Q How many?

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1 A Probably 10, 15.

2 Q When was the last investigation you
3 conducted for a client in the entertainment
4 industry?

5 A Last year.

6 Q Who was the client?

7 A Warner Bros.

8 Q Did the Warner Bros. investigation
9 involve issues of harassment and retaliation?

10 A Yes.

11 Q Did the Warner Bros. investigation
12 involve issues of hostile work environment?

13 A Yes.

14 Q Did the Warner Bros. investigation
15 involve allegations raised with respect to a film or
16 TV set?

17 A Yes.

18 Q Can you share what film or TV set?

19 A I don't think I can.

20 Q Was it film or TV?

21 A It was television.

22 Q Did the Warner Bros. investigation
23 involve allegations raised by an actress or actor?

24 A Yes.

25 Q By an actress?

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1 A Yes.

2 Q Against who?

3 A Against the show's creator, who is also
4 an actor.

5 Q Was the accused -- did they share scenes
6 with the complainant?

7 A I think so.

8 Q In the Warner Bros. investigation, was
9 the accused -- the accused was a creator, an actor
10 in the show?

11 A That's correct.

12 Q Were they also a director?

13 A Yes.

14 Q Producer?

15 A I think so. But I don't know.

16 Q Can you summarize the substance of the
17 allegations?

18 A Gosh, I'm not sure if I can. It's
19 confidential. It was never litigation. So I'm just
20 not sure if I can talk about the allegations.

21 Q Did the investigation for Warner Bros.
22 involve issues related to the use of intimacy
23 coordinators?

24 A No.

25 Q Did the Warner Bros. investigation

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1 involve issues related to improvisation of physical
2 or sexual contact during scenes?

3 A No.

4 Q Did the Warner Bros. investigation
5 involve retaliation allegations?

6 A Yes. Yes.

7 Q Other than the Warner Bros.
8 investigation, have you conducted other
9 investigations related to film or TV sets?

10 A Yes. But I can't remember specifics.

11 Q How many?

12 A One or two.

13 Q Other than the Warner Bros.
14 investigation, have you investigated allegations
15 raised by an actress on a film or a TV set?

16 A Yes.

17 Q How many?

18 A I think those other two. The ones I
19 recall that I don't recall the specifics of had to
20 do with allegations of harassment.

21 Q Can you disclose the names of the clients
22 of those one or two other allegations?

23 A I don't remember. It was a while ago.

24 Q How long ago?

25 A Say six or seven years ago.

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1 find that the responding party has a motive to lie
2 simply because of the allegations or things related
3 to, you know, them being alleged to have done
4 something.

5 BY MS. ROESER:

6 Q It could be possible?

7 MS. ZELDIN: Objection.

8 THE WITNESS: A lot of things could be
9 possible.

10 BY MS. ROESER:

11 Q You mentioned another factor was whether
12 a witness was forthcoming or evasive. How do you
13 assess or evaluate that?

14 A If they answer questions or just decline
15 to answer questions or if they sort of answer a
16 different question. Then the one that is asked if,
17 they are being pushed for an answer and just won't
18 give an answer, or if they -- again, the flip side
19 of that is being forthcoming and answering questions
20 and, you know, giving full answers to whatever the
21 line of questioning is.

22 Q So do you agree that interviews are the
23 best way to assess credibility of witnesses?

24 MS. ZELDIN: Objection.

25 THE WITNESS: Interviews or in this case,

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1 there was sworn testimony. So evaluating the sworn
2 testimony.

3 BY MS. ROESER:

4 Q Have you ever assessed credibility by
5 just reading documents before?

6 MS. ZELDIN: Objection.

7 THE WITNESS: By reading interviews, yes.

8 BY MS. ROESER:

9 Q How often? What percentage of your
10 investigations have you assessed credibility based
11 solely on documents without interviewing any
12 witnesses?

13 MS. ZELDIN: Objection.

14 THE WITNESS: I've had investigations
15 where other people have done some of the interviews.
16 So I have reviewed the interview notes from the
17 interviews that they conducted and then reviewed the
18 interview notes from the interviews I conducted.

19 BY MS. ROESER:

20 Q Have you ever conducted an investigation
21 in which you assessed credibility without
22 interviewing anyone?

23 A Without anyone being interviewed?

24 Q Yeah.

25 A No. Well, I'm trying to think. I don't

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1 think so. But, again, here, there is sworn
2 testimony which stands in place of interviews.

3 Q Well, I want to talk about that a little
4 bit. Because do you agree that there is information
5 that you can glean from an interview with someone,
6 where you speak to them and ask them questions, that
7 you can't glean from written testimony?

8 MS. ZELDIN: Objection.

9 THE WITNESS: Well, I mean, and that's --
10 that's the difficulty of demeanor. And we're warned
11 against using demeanor as a credibility factor.

12 BY MS. ROESER:

13 Q Do you agree that there is information
14 that you can glean from an interview with someone
15 that you cannot get from written testimony?

16 MS. ZELDIN: Objection. What is written
17 testimony?

18 MS. ROESER: A deposition transcript.

19 THE WITNESS: See, I don't think so
20 because they're under oath. They don't have --
21 they're -- I think they are more truthful. People
22 are more truthful in a deposition than they are in
23 an interview with me where it's not sworn testimony.

24 BY MS. ROESER:

25 Q When you give -- when you interview a

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1 witness as part of an investigation and you're
2 assessing their credibility, do you consider the
3 emotion that they bring into the interview?

4 A No.

5 Q Never?

6 A I try not to. Because, again, that's
7 demeanor.

8 Q Do you consider how they respond to
9 questions in the moment?

10 MS. ZELDIN: Objection.

11 BY MS. ROESER:

12 Q What their facial expression looks like,
13 for example?

14 A No. See, that's demeanor. And that's
15 where we're cautioned against using things like body
16 language or expression because we're not experts in
17 that.

18 Q So why do you interview witnesses then?
19 Why don't you just have them write written
20 statements?

21 A So that I can get their responses to my
22 questions. A written statement would just be them
23 answering questions without me having the
24 opportunity to follow up or they just write their
25 version of events, not even in response to a

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1 question. I want to be able to ask questions, dig
2 down, follow up. All of which is done -- I do in
3 depositions as well.

4 Q Yeah. So you want to be able to ask
5 questions to the witness, right?

6 MS. ZELDIN: Objection.

7 THE WITNESS: And get their response and
8 follow up, yes.

9 BY MS. ROESER:

10 Q Uh-huh.

11 And you want to be able to dig down on
12 the questions, is that right, with the witness?

13 A That's right. Yeah, follow up on the
14 questions, yes.

15 Q Did you have any input into the questions
16 that were asked of Ms. Lively during her deposition?

17 A I did not.

18 Q And your review of her deposition
19 transcript was limited to the questions that she was
20 asked during that deposition, right?

21 A Yes.

22 Q And it's possible that you would have
23 asked Ms. Lively different questions than the
24 attorney who questioned her, right?

25 A It's possible I would have asked her --

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1 other people questions in different ways or
2 different questions.

3 Q You could have dug in different
4 directions, for example?

5 A Yes, but that also is true when I have
6 another investigator interviewing witnesses. I
7 might have asked questions in different ways, but I
8 then rely on their notes from their interview to
9 make the factual finding and the credibility
10 assessment. It's -- it's virtually identical.

11 Q Are you aware if Ms. Lively was asked
12 during her deposition about each of the allegations
13 that she raised in this case?

14 A I haven't committed her deposition to
15 memory, and I haven't reviewed it in full since
16 before I wrote my report, so I don't know that I
17 could tell you what was in her deposition.

18 Q You don't know?

19 A I haven't committed it to memory.

20 Q Do you know if she was asked in her
21 deposition about each incident that she believes to
22 have been inappropriate or contributed to a hostile
23 work environment on set?

24 MS. ZELDIN: Objection.

25 THE WITNESS: I'm sorry. You spoke too

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1 quickly. Can you say that again?

2 BY MS. ROESER:

3 Q Do you know if during her deposition,
4 Ms. Lively was asked about each incident she
5 believes to have been -- to have contributed to a
6 hostile work environment on set?

7 MS. ZELDIN: Same objection.

8 BY MS. ROESER:

9 Q Or in connection with the film?

10 A I don't know if she was asked that
11 question specifically, no.

12 Q You don't know if she was asked about
13 each incident that she believes contributed to the
14 hostile work environment against her?

15 A Again, I -- I don't have specific
16 recollection of every question in the deposition.

17 Q Uh-huh. Do you know if -- do you know if
18 Ms. Lively was asked in her deposition about each
19 incident that she raised to Wayfarer during the
20 production?

21 MS. ZELDIN: Objection.

22 THE WITNESS: I don't know if she was
23 asked that question specifically.

24 BY MS. ROESER:

25 Q You don't know if she was asked about

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1 each incident, right?

2 MS. ZELDIN: Objection.

3 THE WITNESS: Well, you just asked me a
4 different question.

5 BY MS. ROESER:

6 Q I asked you, do you know if Ms. Lively
7 was asked in her deposition about each incident that
8 she raised to Wayfarer during the production?

9 A Right.

10 Q You don't know?

11 A I'm not sure.

12 Q Mm-hmm. So if you don't know the answer
13 to that, how can you offer an opinion on whether
14 Wayfarer responded to her concerns appropriately?

15 MS. ZELDIN: Objection.

16 THE WITNESS: Well, there are -- there
17 are two things -- I think, there are two separate
18 issues here. One is the issue of their response or
19 investigation and whether the action they took was
20 sufficient. And the other is the question of the --
21 what an investigator might have find -- might have
22 found or would have found had they investigated.

23 BY MS. ROESER:

24 Q Sure. Let's take the first one.

25 How could you come to a conclusion about

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1 BY MS. ROESER:

2 Q Is one purpose of an investigation also
3 communicating to employees that a company takes
4 allegations of a hostile work environment or other
5 unlawful conduct seriously?

6 MS. ZELDIN: Objection.

7 THE WITNESS: I don't know that that's a
8 purpose. It could be a result of the investigation.

9 BY MS. ROESER:

10 Q And is a purpose of the investigation
11 also to determine whether allegations can be
12 substantiated?

13 MS. ZELDIN: Objection.

14 THE WITNESS: Well, that's the factual
15 finding. So the al -- the investigation finds
16 facts. So you find facts, and you make a
17 determination based on the preponderance of the
18 evidence standard whether the factual allegations
19 are substantiated. But it's all about facts. Then
20 it goes to the employer to determine what to do.

21 BY MS. ROESER:

22 Q When you conduct an investigation and you
23 interview a witness, do you give them a direction
24 that they won't be retaliated against for
25 participating in the investigation?

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1 A Yes.

2 Q Do you advise an accused employee that
3 you interview as part of an investigation that they
4 are not to retaliate against anyone involved in the
5 investigation?

6 A Yes.

7 Q Do you advise them that they are not to
8 retaliate against the person who complained about
9 their conduct?

10 A I don't specifically say that. I say,
11 you may not retaliate against anybody for their
12 participation in the investigation.

13 Q Why do you do that?

14 A Because retaliation is not permitted.

15 Q Right. So you advise interviewees they
16 are not to retaliate against anyone who participated
17 in the investigation, right?

18 A Correct.

19 Q In part, because giving that direction
20 helps prevent future retaliation?

21 MS. ZELDIN: Objection.

22 THE WITNESS: I hope it helps prevent
23 retaliation related to the investigation.

24 BY MS. ROESER:

25 Q Related to someone raising concerns, for

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1 example?

2 MS. ZELDIN: Objection.

3 THE WITNESS: Well, what I say is, you
4 may not retaliate against anyone for their
5 participation in the investigation, and you may not
6 be subjected to retaliation for your participation.
7 So that instruction is limited to the investigation.

8 BY MS. ROESER:

9 Q And you say that to prevent retaliation?

10 MS. ZELDIN: Objection.

11 THE WITNESS: Right. But my role is
12 limited to the investigation, so not more broadly.
13 But yes, to prevent retaliation or discourage
14 retaliation related to the investigation.

15 BY MS. ROESER:

16 Q I'm sorry. So are you saying that you
17 give that direction not to retaliate, and it doesn't
18 apply to the initial complaint that prompted the
19 investigation?

20 MS. ZELDIN: Objection.

21 THE WITNESS: That's not what I said.

22 BY MS. ROESER:

23 Q Okay. Can you say it again?

24 A Yes. The retaliation -- the -- the
25 scope -- my -- my instructions have to do with the

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1 investigation itself. Not more broadly. That's,
2 you know, up to the company.

3 Q But does your admonition, that there may
4 be no retaliation for participating in the
5 investigation, apply to the complaint?

6 A Mean -- meaning, you can't retaliate
7 against the person who complained?

8 Q Correct.

9 A Oh, yes.

10 Q And so one of your goals is to prevent --
11 when you conduct an investigation, one of your goals
12 is to prevent retaliation against someone who raises
13 concerns about a hostile work environment?

14 A I wouldn't say that's a goal. The goal
15 of the investigation is to find facts. But yes, a
16 part of the process is to instruct people that
17 retaliation is not permitted.

18 Q An important part of the process, right?

19 A Well, it's a part of the process that I
20 do every time.

21 Q You do it every time, right?

22 A With every witness, yes.

23 Q So it's important?

24 MS. ZELDIN: Objection.

25 THE WITNESS: Yes. There are other

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1 important parts of the process.

2 BY MS. ROESER:

3 Q And if an investigation isn't conducted,
4 presumably there's no direction that you can't
5 retaliate against the person who complained, right?

6 MS. ZELDIN: Objection.

7 THE WITNESS: There's no instruction
8 within an investigation, no. But there, I assume,
9 are policies against retaliation.

10 BY MS. ROESER:

11 Q Are you aware of Mr. Baldoni at any time
12 being advised that he cannot retaliate against
13 Ms. Lively for raising concerns?

14 A I don't know.

15 Q Are you aware of Mr. Heath being directed
16 at any time that he cannot retaliate against
17 Ms. Lively for raising concerns?

18 A I don't know.

19 Q Are you aware of Mr. Baldoni ever being
20 advised that he cannot retaliate against
21 employees -- let me strike that.

22 Are you aware of Mr. Baldoni being
23 advised that he cannot retaliate against Ms. Slate
24 for raising concerns about his behavior?

25 MS. ZELDIN: Objection.

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1 THE WITNESS: I don't know.

2 BY MS. ROESER:

3 Q When you conduct investigations into
4 harassment or hostile work environment --

5 A Hostile work environment is harassment.

6 Q Sure.

7 A Okay.

8 Q When you conduct investigations into a
9 hostile work environment, does it happen that in the
10 course of -- let me strike that.

11 In the course of your investigations into
12 hostile work environments, do you come across
13 evidence that the complainant might be subject to
14 retaliation as well?

15 A Have I, in the past, come across evidence
16 that the complainant has been subjected to
17 retaliation?

18 Q Let me ask it this way.

19 Is it something that you consider as part
20 of your investigations?

21 A If the complainant might be subjected to
22 retaliation?

23 Q Yeah.

24 A No, not unless there's an allegation of
25 retaliation, because I give an instruction, and I

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1 as evidence that they were retaliating?

2 MS. ZELDIN: Objection.

3 THE WITNESS: Well, a supervisor's
4 response to someone not saying, no, I'm not going to
5 go out with you, could be evidence of retaliation.
6 What I'm saying is, I don't believe getting huffy or
7 something like that is an adverse employment action,
8 is retaliation.

9 BY MS. ROESER:

10 Q I didn't ask you that.

11 MS. ZELDIN: Yes, you did.

12 BY MS. ROESER:

13 Q Do you agree that how a supervisor
14 responds when concerns about their behavior are
15 raised is relevant to your investigations?

16 A It can be, yes.

17 Q Uh-huh. And why is that?

18 A Well, again, as I've said, their response
19 could be evidence of retaliation, depending on what
20 the response is.

21 Q Do you think that the purpose of a
22 deposition and an investigative interview are
23 different?

24 A Well, yes and no. The purpose is to
25 gather information from the person being interviewed

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1 THE WITNESS: Sometimes.

2 BY MS. ROESER:

3 Q Generally?

4 A Well, or it settles.

5 MS. ZELDIN: 90 percent of the time. No
6 winner or loser.

7 THE WITNESS: It's an adversarial
8 proceeding.

9 BY MS. ROESER:

10 Q It's an adversarial proceeding. Is an
11 investigative interview adversarial, in your
12 opinion?

13 A It shouldn't be.

14 Q And that makes it different than a
15 deposition, right?

16 A To some degree, yes. But, again, you're
17 asking the same sorts of questions.

18 Q Can you turn back to your resume, please,
19 Exhibit A?

20 A Sure. Yup.

21 Q Under "Education," it says that you are
22 a -- you have a Association of Workplace
23 Investigators Certificate Holder?

24 A Yes.

25 Q What does that mean?

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1 A I don't know.

2 Q So you have not seen any evidence?

3 A I don't know any.

4 Q Do you know if Wayfarer advised cast and
5 crew how they could raise concerns about the
6 workplace if they had them?

7 A I don't know.

8 Q Have you seen any evidence that they did
9 that?

10 A I don't recall any.

11 Q Are you familiar with a training
12 presentation that Wayfarer allegedly provided to
13 cast and crew on the film?

14 A Familiar with it in what sense?

15 Q Have you reviewed it in this case?

16 A I think so.

17 Q Do you know if Wayfarer provided
18 anti-harassment training to cast and crew?

19 A I saw reference to it. I believe they
20 did. I don't know who attended.

21 Q Do you know if there's any record of who
22 attended?

23 A I don't know.

24 Q Is it your opinion that Wayfarer's
25 response Ms. Lively's Ms. Lively's concerns is

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1 consistent with its policy set forth in the employee
2 handbook that we just went through?

3 MS. ZELDIN: Objection.

4 THE WITNESS: It's not consistent with
5 every step. But -- hold on. There was something
6 that I saw. Give me a minute. Okay. So there were
7 a couple references here.

8 (As read):

9 "Wayfarer Studios encourages the prompt
10 reporting of complaints or concerns so
11 that rapid and corrective action can be
12 taken before relationships become
13 irreparably strained."

14 That's actually what happened here.

15 BY MS. ROESER:

16 Q You think Wayfarer took action that
17 prevented relationships from being irreparably
18 strained?

19 A Wayfarer took corrective action to ensure
20 that the conduct complained about did not recur.
21 That's what corrective action means.

22 Q The sentence that you read from?

23 A Correct.

24 Q Said "before relationships become
25 irreparably strained".

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1 Do you see that?

2 A But I was focusing on the constructive
3 action. And above, it says "Wayfarer Studios can
4 investigate and if appropriate take corrective
5 action." The key here is they took the corrective
6 action so an investigation would have been
7 superfluous.

8 Q Is it your opinion that Wayfarer
9 prevented relationships from becoming irreparably
10 strained between Mr. Baldoni and Ms. Lively?

11 A I don't know what their relationship is
12 now. I mean, they're suing each other.

13 Q So is it your opinion that Wayfarer
14 prevented the relationship between Mr. Baldoni and
15 Ms. Lively from becoming irreparably strained?

16 A I don't know what caused their
17 relationship --

18 MS. ZELDIN: Objection. Beyond the
19 scope. Read your objections at the deposition of
20 Robbins. Now she'll say, well, argumentative and
21 your tone.

22 MS. ROESER: Kim, enough. Enough.

23 MS. ZELDIN: Stop your tone.

24 MS. ROESER: My tone?

25 MS. ZELDIN: Yeah, your tone.

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1 MS. ROESER: Enough.

2 MS. ZELDIN: Enough of you.

3 MS. ROESER: I've heard that one before,
4 actually.

5 MS. ZELDIN: Uh-huh.

6 MS. ROESER: Yes, before at a deposition.

7 THE WITNESS: So do I. Because I have a
8 teenager. I recognize.

9 MS. ROESER: That is what teenagers say.
10 Yeah. Correct.

11 THE WITNESS: I'm sorry, my nose. I
12 think I'm getting a cold.

13 MS. ROESER: Do you need more tissue?

14 THE WITNESS: I don't know what it is.
15 Just my nose won't stop running.

16 BY MS. ROESER:

17 Q So I asked you if it was your opinion
18 that Wayfarer's response to Ms. Lively's concerns
19 was consistent with the policy set forth in the
20 handbook? And you said it's not consistent with
21 every step, right?

22 A Correct.

23 Q What steps is Wayfarer's response to
24 Ms. Lively's concerns inconsistent with that are set
25 forth in the handbook?

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1 A Well, they did not, as we know, go
2 through the steps of an investigation. My position,
3 my opinion is that investigation would have been
4 superfluous because they went all the way to the end
5 and took the corrective action. Made sure that the
6 conduct did not recur.

7 Q Mr. Baldoni did not raise Ms. Lively's
8 concerns to Wayfarer's HR, right?

9 A I don't believe so.

10 Q Neither did Mr. Heath?

11 A I don't believe so.

12 Q Mr. Heath testified that he did not
13 consider an investigation, right?

14 MS. ZELDIN: You didn't say test, did
15 you? You said tested, rather than testified?

16 BY MS. ROESER:

17 Q Heath testified that he did not consider
18 conducting an investigation into Ms. Lively's
19 concerns, correct?

20 A I think so. But I -- again, I didn't
21 memorize his testimony.

22 Q Is that consistent with Wayfarer's
23 policies?

24 A As I said, they didn't conduct the
25 investigation, which is laid out here, because they

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1 went to the end result immediately.

2 Q Is that a no?

3 A Well, it's an explanation.

4 Q Is it consistent with Wayfarer's
5 policies?

6 MS. ZELDIN: Objection.

7 THE WITNESS: In that they didn't go
8 through the steps of the investigation, no.

9 BY MS. ROESER:

10 Q Did you review Ms. Saks' testimony?

11 A I did.

12 Q Are you aware -- do you recall her
13 testimony that she encouraged Mr. Baldoni and
14 Mr. Heath to conduct an investigation into behaviors
15 on set?

16 A I think so. Again, I haven't committed
17 any of these to memory.

18 Q Do you recall that Ms. Saks testified
19 that in response to her recommendations, Mr. Heath
20 suggested that they would not be performing an
21 investigation because it would be better not to have
22 a written record of it. Do you recall that
23 testimony?

24 A I think that's right.

25 Q Is that consistent -- if that's true,

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1 BY MS. ROESER:

2 Q Do Wayfarer's policies say that whether
3 an investigation occurs is up to the employee?

4 MS. ZELDIN: Objection.

5 THE WITNESS: They do not.

6 BY MS. ROESER:

7 Q Can you turn to Subparagraph F, please?

8 A Uh-huh.

9 Q You write, the second sentence, "the
10 protections" -- I assume you're referring to the
11 November 9th, 2023, 17 protections?

12 A Well, right. Because it's called
13 Protections for Return to Production.

14 Q Okay. So:

15 (As read):

16 "The protections did not identify any
17 act of alleged discrimination or
18 harassment."

19 Do you see that?

20 A I do.

21 Q Is that your opinion?

22 A They don't allege any specific act. They
23 say, no more of this, no more of that.

24 Q Do you believe -- is it your opinion that
25 the 17 protections put Wayfarer on notice of

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1 allegations of harassment or potential retaliation?

2 A Yes.

3 Q Are you aware that Mr. Baldoni described
4 the 17-point list to his friends as "all
5 manipulation"?

6 A I don't believe I know that.

7 Q Do you think that's an appropriate way
8 for a chairman of a studio who is accused of
9 harassment to describe harassment complaints?

10 MS. ZELDIN: Objection. Beyond the
11 scope.

12 THE WITNESS: He's talking to his
13 friends. I don't know if it's appropriate or
14 inappropriate.

15 BY MS. ROESER:

16 Q Are you aware that after receiving 17
17 protections, Mr. Baldoni described them as "an
18 effort to gain power over him personally in the
19 studio"?

20 MS. ZELDIN: Same objection.

21 THE WITNESS: No, who did he -- who did
22 he say that to?

23 BY MS. ROESER:

24 Q Are you aware that Mr. Baldoni, after
25 receiving the protections, stated "Of course we all

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1 know what this document insinuates, that I am
2 unsafe/sexually harassing, et cetera, et cetera, et
3 cetera."

4 Did you know that?

5 A No.

6 Q Assuming those statements are true, that
7 Mr. Baldoni said those, does it change any opinion
8 that you've offered in this case?

9 A I don't know who he said them to. If he
10 said them to friends, trusted confidants and
11 friends, no.

12 Q What if he said them to the CEO of the
13 studio?

14 A If there was action taken because of
15 that, perhaps.

16 Q What if he said that to the co-chairman
17 of the studio?

18 A Again, same thing.

19 Q It would change your opinion?

20 A No, I said if there was action taken
21 based on what he said.

22 Q What kind of action?

23 A Well, if they ignored the complaints and
24 didn't agree to them -- ignored the protections and
25 didn't agree to them because he didn't like them.

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1 But the studio did agree to them.

2 Q Is it your view that Mr. Baldoni accepted
3 as true that he sexually harassed Ms. Lively or was
4 unsafe in workplace?

5 MS. ZELDIN: Objection.

6 THE WITNESS: No, that's not what I said.
7 What I said was, Wayfarer agreed to these
8 protections, and the conduct did not recur.

9 BY MS. ROESER:

10 Q So --

11 A And I don't know what the conduct was
12 because it was never specified.

13 Q It would not change any opinion you've
14 offered in this case that after receiving the 17
15 protections, Mr. Baldoni messaged the co-chairman of
16 the studio, Mr. Sarowitz, and said "it's all
17 manipulation, and we all know what this insinuates,
18 that I'm unsafe and sexually harassing. It's an
19 effort to gain power over me personally."

20 That wouldn't change your opinion at all?

21 A No, because they agreed to the
22 protections and nothing else happened.

23 Q Would it change your opinion that, after
24 receiving the protections, Mr. Baldoni messaged the
25 co-chairman of the studio and said "there's even

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1 silly things inferring Jamey was inappropriate,
2 which is silly"?

3 A No, because, again, they accepted the
4 protections and nothing else happened. Nothing
5 inappropriate has been alleged after June 1st.

6 Q Do you think it's an appropriate response
7 to the co-chairman -- by the co-chairman of a studio
8 who's been accused -- who has had allegations of
9 harassment raised against him, to describe them as
10 silly?

11 MS. ZELDIN: Objection. Beyond the scope
12 of this witness' testimony?

13 THE WITNESS: Do I think it's
14 appropriate? Probably not. Does it change my
15 opinion? No.

16 BY MS. ROESER:

17 Q That doesn't give you any concerns?

18 A It doesn't change my opinion.

19 Q That Mr. Baldoni described the 17
20 protections this way, it doesn't give you any
21 concerns?

22 A It doesn't change my opinion because the
23 studio agreed to the protections. Whatever his
24 opinion was, the studio agreed to the protections
25 and no further conduct occurred.

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1 Q Does -- does the -- that text message I
2 read to you give you the impression that Mr. Baldoni
3 took the allegations about his and Mr. Heath's
4 behavior seriously?

5 MS. ZELDIN: Objection.

6 THE WITNESS: Does the text message? No.
7 But does agreeing to the protections and no further
8 conduct occurring? Yes.

9 BY MS. ROESER:

10 Q The text message does not, though, right?

11 A Correct. But their actions, or lack of
12 actions, lack of further conduct does.

13 Q If the company conducted an investigation
14 after receiving Ms. Lively's 17 protections, and in
15 connection with that investigation, reviewed this
16 text message from Mr. Baldoni, is it your opinion
17 that would impact the credibility assessment made
18 with respect to the allegations?

19 MS. ZELDIN: Objection.

20 THE WITNESS: I don't have enough facts
21 to -- I don't know what the allegations are.

22 BY MS. ROESER:

23 Q You don't know what Ms. Lively's
24 allegations are?

25 A In the 17 -- in the 17 protections, no.

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1 Q You don't?

2 A I don't know specifically what this --
3 what the allegations were in the 17 protections. I
4 don't know what would come up in the investigation.
5 Maybe it would affect a credibility assessment;
6 maybe not. I don't know.

7 Q Is that a text message you would consider
8 in one of your investigations if it was sent by
9 someone who was accused of harassing conduct?

10 A I might.

11 Q Why?

12 A Why? Because it might be relevant.

13 Q To what?

14 A To the investigation.

15 Q What part of the investigation?

16 A I'm not sure. I don't know all the facts
17 in this -- in this hypothetical investigation.

18 Q Might it be relevant to someone's motive
19 to lie?

20 MS. ZELDIN: Objection.

21 THE WITNESS: It could be.

22 BY MS. ROESER:

23 Q Might it be relevant to credibility?

24 A Well, motive to lie is part of
25 credibility factors.

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1 Q So yes?

2 A Well, it could be relevant to one of the
3 credibility factors.

4 Q Could it be relevant to determining
5 whether the allegations could be substantiated?

6 A Well, to the extent that credibility --
7 to the extent it affected the credibility assessment
8 and credibility affects whether an allegation could
9 be substantiated, yes.

10 Q You've offered an opinion in this case
11 that even if an investigation was conducted, it
12 wouldn't have substantiated Ms. Lively's claims; is
13 that right?

14 A I believe that's right, yes.

15 Q The text message that we just went
16 through --

17 A Uh-huh.

18 Q -- does that change your opinion in any
19 way?

20 A No.

21 Q Why not?

22 A Because I looked at the -- the
23 documents -- I'm sorry, the deposition testimony
24 related to the allegations, each specific event and
25 then the -- the credibility factors around that. I

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1 don't think that that one text message would have
2 affected credibility assessments so much that it
3 would have made the witness not credible.

4 Q And what if Mr. Baldoni subsequently
5 described Ms. Lively's 17 protections as
6 manipulation again?

7 MS. ZELDIN: Objection.

8 THE WITNESS: I think it would be the
9 same as the other one. I don't think it would
10 change. It describes his same opinion. I don't
11 think it would --

12 BY MS. ROESER:

13 Q What if Mr. Baldoni or Mr. Heath said
14 that Ms. Lively manufactured any concerns she had
15 about behavior to take over the movie?

16 MS. ZELDIN: Objection.

17 BY MS. ROESER:

18 Q Would that impact your opinions?

19 A Again, it would -- it might go to motive
20 to lie. We've already talked about that with
21 respect to Mr. Baldoni. So with respect to
22 Mr. Heath, it might affect one credibility factor.

23 Q And would it affect -- and it would
24 affect the credibility factor as to both Mr. Baldoni
25 and Mr. Heath, right?

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1 A Yeah, I said that we already talked about
2 that credibility factor with respect to Mr. Baldoni.

3 Q If you can turn to paragraph G, please.
4 The first sentence, you write:

5 (As read):

6 "Lively and her counsel threatened
7 Wayfarer and Sony."

8 Do you see that?

9 A Yes.

10 Q "Threatened," was that your word?

11 A Probably.

12 Q What is the basis for your opinion that
13 Ms. Lively threatened both Wayfarer and Sony?

14 A She threatened not to come back. She
15 said, I'm not going to come back unless you accept
16 this.

17 Q Is it your opinion that an employee
18 attempting to secure a safe workplace is making a
19 threat?

20 A Well, no, that's different. That's a
21 different use of the word. Someone threatening not
22 to do something, just saying, I'm not going to do it
23 unless you do something first, it's not a threat.
24 It's not a threat of danger, not a threat of doing
25 something bad. She's just saying, I'm not going to

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1 Q In forming your second opinion, you did
2 not actually conduct an investigation, right?

3 A I did not interview people and conduct an
4 investigation in the traditional sense, no.

5 Can I put these away for now?

6 Q You can put it to the side.

7 A That's what I meant.

8 Q Yes.

9 A Away from in front of me.

10 Q Yes. You can look back to your report.

11 In all the trainings that you've received
12 in workplace investigations, have you ever been
13 trained that you can make credibility determinations
14 based on deposition transcripts?

15 A Not specifically, no. Based on
16 interviews, yes.

17 Q You can make credibility determinations
18 based on interviews?

19 A Yes. On interviews and, again, on notes
20 of interviews if those interviews were done by
21 someone else.

22 Q By someone else who is an investigator?

23 A Presumably. Someone else acting as an
24 investigator.

25 Q So you reached conclusions about what an

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1 investigation would show without performing any of
2 the traditional steps of an investigation, right?

3 A No. I -- I didn't do interviews. But I
4 did do the traditional steps of looking at relevant
5 documents and, you know, assessing the evidence. So
6 taking the deposition transcripts in the place of
7 interviews, then I did what I normally would do. So
8 I think the one step rather that I didn't do, the
9 one traditional step, is interviews.

10 Q You agree that an attorney taking a
11 deposition who is advocating for a client is in a
12 different position than an investigator who is
13 presumably neutral, right?

14 A Yes.

15 Q In your second opinion, you make factual
16 findings about what did or did not occur, correct?

17 A What I believe a preponderance of the
18 evidence shows.

19 Q And, again, the only evidence that you
20 would consider in reaching those opinions is, it's
21 either included in your report or attached as --
22 identified in Exhibit C?

23 A Yes. So either identified in Exhibit C
24 or in Mr. Robbins' report. There is no evidence in
25 my report. There's -- there's summaries and

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1 A I don't know specifically. It's laid out
2 here in the next two page -- page and a half.

3 Q The factual findings that you made with
4 respect to opinion 2?

5 A Yes.

6 Q Required you to choose which witnesses
7 you believed or not, right?

8 A Yes.

9 Q To decide who's more credible?

10 A Yes.

11 Q And with respect to this, Ms. Lively's
12 allegations, you have decided that Mr. Baldoni is
13 more credible than she is?

14 A In some cases, yes.

15 Q In what cases?

16 A Well, I mean, I can go through all of
17 them, but I think I decided he or somebody else was
18 more credible than she.

19 Q Okay. And you also made a determination
20 that Mr. Heath, in certain instances, is more
21 credible than Ms. Lively?

22 A Yes.

23 Q In any instances, with respect to your
24 second opinion, did you come to a conclusion that
25 Ms. Lively was more credible than either Mr. Baldoni

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1 almost kissing.

2 Q Did you observe in the footage Ms. Lively
3 nuzzling into Mr. Baldoni's neck?

4 A No.

5 Q Did you observe her putting her thumb on
6 his lips?

7 A No.

8 Q Did you observe Ms. Lively kissing
9 Mr. Baldoni's forehead?

10 A No.

11 Q Did you observe Ms. Lively rubbing her
12 mouth on Mr. Baldoni's neck?

13 A No.

14 Q The next sentence in this paragraph, you
15 write:

16 (As read) :

17 "Lively's allegation that she was not
18 comfortable with Baldoni kissing her is
19 undercut by the fact that Lively, on
20 multiple occasions, initiated
21 unscripted kisses with Baldoni."

22 Do you see that?

23 A Yes.

24 Q What are you referring to here?

25 A I'm referring to -- I believe the birth

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1 scene where she grabs him and kisses him. And then
2 there's a scene in the hospital where he's walking
3 in with the little girl and she runs out and gives
4 him something and kisses him so...

5 Q Let's talk about those two scenes. I
6 believe the first one you mentioned, the birth
7 scene, would that be maybe the proposal scene where
8 they're in a hospital?

9 A Maybe.

10 Q And Mr. Baldoni's character's sister is
11 giving birth?

12 A Yes.

13 Q Okay.

14 A Sorry. I'm not as familiar with the
15 movie as everybody else on this case is.

16 Q Fair enough. I'm going to call it the
17 proposal scene, if that's okay?

18 A Fair enough.

19 Q Okay. Have you reviewed the script for
20 the proposal scene?

21 A I haven't.

22 Q Okay. How do you know that the kisses
23 were unscripted?

24 A Or maybe I have. I don't know. I don't
25 know how I know that.

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1 Q Okay. Do you know -- so you don't know
2 what the script says?

3 A I don't. If I reviewed it, I don't
4 remember.

5 Q Okay. If the script --

6 A I think it says she kisses him all over
7 his face or something like that.

8 Q Right. So kisses him all over his face.
9 Assuming that's what the script says. Do you know
10 how many kisses Mr. Baldoni and Ms. Lively shared in
11 that proposal scene?

12 A I don't.

13 Q Do you think it was kisses that were not
14 all over his face?

15 A I don't remember.

16 Q Is there something specific that you
17 remember that led you to believe that she improvised
18 that?

19 A Not that I can think about right now.

20 Q Okay. Is that --

21 A That's just --

22 Q -- your opinion about the scene?

23 A I'm not sure.

24 Q Let me just finish my question.

25 Does it remain your opinion about the

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1 proposal scene that Ms. Lively performed or
2 improvised unscripted kissing?

3 A I have to go back and look at it again.

4 Q Okay. We'll ask that you do that.

5 The second scene you mentioned is a
6 hallway at the hospital. Did you review the script
7 related to that scene?

8 A My understanding is there is no script
9 for that scene. That it was an improvised scene
10 entirely.

11 Q There's no script for that scene?

12 A Well, that it was a new scene that she
13 put in. And that the kiss was not scripted.

14 Q Do you know if Mr. Baldoni and Ms. Lively
15 discussed the kiss in that hallway scene in advance?

16 A I don't.

17 Q Do you know if he consented to it?

18 A I don't.

19 Q If they discussed it and he consented to
20 it, would that change your opinion?

21 A Would it change my opinion that?

22 Q She improvised kissing?

23 A No.

24 Q Why?

25 A Because she was the one who ran up -- it

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1 was her scene. She started it. It was her idea.

2 Q I don't think I understand the
3 distinction there.

4 A My understanding is, it was an improvised
5 scene.

6 Q So your understanding is that the scene
7 was never written down?

8 A I believe that's right. I could be
9 wrong.

10 Q And assuming that's true, it was never
11 written down, if Ms. Lively, Mr. Baldoni, discussed
12 the scene in advance and said there's going to be a
13 kiss in this scene, do you still think that she
14 improvised kissing in that scene?

15 A I'm not sure.

16 Q What is your understanding of the word
17 "improvise" in connection with?

18 A Well, did it without planning. Did it
19 without.

20 Q Right. Did it without plan?

21 A Pre-planning.

22 Q So if they discussed it and planned it,
23 it wouldn't have been improvised?

24 A If they discussed it and planned it, it
25 might not have been improvised.

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1 MS. ROESER: Is this Exhibit 4?

2 THE STENOGRAPHIC REPORTER: Exhibit 4 for
3 the record.

4 (Exhibit 4 marked for identification.)

5 THE WITNESS: Thank you.

6 BY MS. ROESER:

7 Q Before we look at Exhibit 4, your
8 understanding that Ms. Lively allegedly improvised
9 kissing in that hallway scene, where did it come
10 from?

11 A I don't remember.

12 Q Did it come from anyone's deposition
13 transcript?

14 A I don't remember.

15 Q Did it potentially come from Defendant's
16 counsel?

17 A I don't remember. I don't remember where
18 it came from.

19 Q You're not aware of any evidence that
20 says that that scene was improvised or was directly
21 by Ms. Lively?

22 A I don't remember.

23 Q Are you aware of any evidence?

24 A You asking a million times is not going
25 to help me remember. I don't remember.

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1 MS. ROESER: Okay. So Exhibit 4 is
2 titled Plaintiff Blake Lively's Declaration in
3 Support of Opposition to Defendant's Motion for
4 Summary Judgment. I will represent to you that this
5 was filed with the Court. It was filed under a
6 seal, this whole transcript is confidential so we
7 don't need to worry about that.

8 MS. ZELDIN: It will be unsealed shortly.

9 BY MS. ROESER:

10 Q If you could please direct your attention
11 to page 3, paragraph 10.

12 A Okay.

13 Q She states -- actually, before you do
14 that, if you could go to the last page, please.

15 A Okay.

16 Q You see that Ms. Lively has signed this
17 declaration?

18 A Yes.

19 Q And that she's declared under penalty of
20 perjury that it's true and correct?

21 A Yes.

22 Q Okay. Turn back to paragraph 10. It
23 states:

24 (As read) :

25 "On or around May 19th, 2023, I filmed

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1 a scene in which my character, Lily
2 Bloom, visits Baldoni's character at
3 work to show that she loves him. The
4 intention was always to kiss in the
5 scene, with everyone's knowledge and
6 consent. Along with my makeup artist,
7 we planned lipstick that would not
8 transfer onto Baldoni for the kiss,
9 which we also shared with him. While
10 the scene was cut from the film, the
11 version that appears in the film was
12 one reshot to be in Ryle Kinkade's
13 apartment instead. And it, too, has a
14 kiss. As it is a pivotal moment for
15 the character's story."

16 Do you see that?

17 MS. ZELDIN: Love story. You missed a
18 word.

19 BY MS. ROESER:

20 Q For the character's love story.

21 And does that paragraph of Ms. Lively's
22 complaint change your opinion at all with respect to
23 whether she improvised kissing in the hallway scene?

24 A I'm sorry, where -- Oh, here we go.

25 Q Paragraph H.

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1 A Yup. Got it. I would have to go back
2 and see if there's competing evidence about this.
3 I'm not sure.

4 Q But you don't know of any competing
5 evidence as you sit here?

6 A I can't remember right now.

7 Q Next paragraph, I, please.

8 A Yes.

9 Q This relates to the incident in which
10 Mr. Heath entered Ms. Lively's hair and makeup
11 trailer, right?

12 A Yes.

13 Q Okay. At the end of this paragraph, you
14 write:

15 (As read) :

16 "Mr. -- he did not look at her during
17 the brief two to three-minute meeting."

18 Do you see that?

19 A Yes.

20 Q That is in reference -- it's your opinion
21 that Mr. Heath did not look at Ms. Lively while they
22 were in the trailer together?

23 A No. That was -- that was his
24 recollection. That was my recitation of what he
25 testified to.

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1 Q Why don't you read that paragraph out
2 loud?

3 A Sure.

4 (As read):

5 "Lively's allegation that he saw her
6 naked breast when he entered her
7 trailer to speak to her was
8 contradicted by the recollections of
9 her hair dresser, Ann Carole, who
10 recalled holding a cutting cape up so
11 Heath could not see Lively. And of
12 Baker, who recalled putting a towel
13 over the breast that was not
14 breastfeeding.
15 Heath's own recollection of the
16 interaction also contradicted Lively's
17 account. Heath recalled that he looked
18 away from Lively, as she requested he
19 do, and that he did not look at her
20 during the brief two to three-minute
21 meeting."

22 Q You don't cite any evidence here, right?

23 A I refer to it. I didn't cite any
24 deposition transcripts. That's correct.

25 Q In reaching this opinion, did you

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1 consider testimony from Ms. Lively, Ms. Baker, and
2 Ms. Carroll, that when Mr. Heath approached the
3 trailer, they yelled "No, no, no. Whoa, whoa, whoa"
4 or "don't come in"?

5 A Yes. I was thinking about the allegation
6 that he saw her naked breasts. Because that to me
7 is the potentially sexual conduct.

8 Q Did you -- did you consider Ms. Carroll's
9 testimony that Mr. Heath could have seen
10 Ms. Lively's naked body in the mirror?

11 MS. ZELDIN: Can you read back the
12 question, please?

13 THE STENOGRAPHIC REPORTER: Sure.

14 (Record read as follows:

15 "QUESTION: Did you consider
16 Ms. Carroll's testimony that Mr. Heath
17 could have seen Ms. Lively's naked body
18 in the mirror?")

19 THE WITNESS: I think she said she wasn't
20 sure. She described holding a cutting cape up that
21 would have covered her down to about her knees.

22 BY MS. ROESER:

23 Q If Mr. Heath could have seen Ms. Lively's
24 naked body in the mirror, would that change your
25 opinion in that paragraph?

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1 A If he did, that might change it.

2 Q If he did look at her through the mirror
3 and see her body?

4 A It might.

5 Q Did you consider Ms. Lively's testimony
6 that Mr. Heath looked straight at her?

7 A Yes, in her eyes. But I considered that
8 the cape was up so he saw her -- she said he looked
9 in her eyes, I believe.

10 Q You think Ms. Lively testified that
11 Mr. Heath looked her in the eyes?

12 A When she said he looked straight at her.

13 Q You're assuming that means that he looked
14 at her in the eyes?

15 A Yes.

16 Q Do you know that?

17 A That's what I understood it to mean.

18 Q Do you know that to be Ms. Lively's
19 testimony?

20 A I don't think she said he looked at my
21 breast. My understanding is that he looked at her
22 eyes, and the way Ms. Carroll described it, she held
23 the cape up over Ms. Lively's body so that he
24 couldn't see her.

25 Q You're aware that at the time, Ms. Lively

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1 was wearing only a thong?

2 A Yes.

3 Q Just to be clear, do you recall
4 Ms. Lively testifying that he looked her in the eyes
5 specifically?

6 A I don't have a specific recollection of
7 that.

8 Q So are you giving the opinion that
9 Mr. Heath did not look at Ms. Lively's exposed
10 breasts?

11 A That he could not see them. Because they
12 were covered by -- the view would have been covered
13 by this cutting cape and a towel, but the cutting
14 tape is bigger. They both sort of went to do
15 something at the same time.

16 Q What is the basis of your statement that
17 the meeting lasted for two to three minutes?

18 A Well, I didn't reach that conclusion.
19 That was his -- that was my summary of his
20 statement.

21 Q Got it. If you could look at
22 paragraph J, please. Can you go ahead and read that
23 for the record?

24 A Yes.

25 (As read) :

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1 "Lively's allegation that Heath showed
2 her a video of his wife giving birth is
3 contradicted not only by Heath's
4 testimony, but also and perhaps more
5 importantly, by the video itself. The
6 only video that Heath had on his phone
7 is one that depicts his wife and him in
8 a tub with their bare shoulders visible
9 and with the newborn baby on his wife's
10 chest covered in a small towel. Lively
11 said that she told him to stop the
12 video almost immediately and there is
13 no nudity in the first part of the
14 video, which is the only part she might
15 have seen."

16 Q Are you aware that there is a dispute
17 between Ms. Lively and Mr. Heath about what version
18 of the video he showed her that day?

19 A No. My understanding is there's only one
20 video on his phone.

21 Q Do you recall Mr. Heath's testimony in
22 his deposition that there were multiple different
23 versions of the birth video?

24 A Not versions but parts --

25 Q Parts?

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1 A I think that they were -- he said it was
2 a long video and there were portions.

3 Q So different parts of the birth were
4 filmed?

5 A I believe that's correct.

6 Q And do you recall Mr. Heath's testimony
7 that he had access to those different parts of the
8 birth video via DropBox or some similar platform on
9 his phone?

10 A That he had access via DropBox, but the
11 only one was on his phone.

12 Q Via DropBox which could be accessed on
13 his phone?

14 MS. ZELDIN: Objection.

15 THE WITNESS: I suppose it could be
16 accessed on his phone.

17 BY MS. ROESER:

18 Q If Mr. Heath had access to other parts of
19 the birth video, would that change your opinion on
20 what video was shown to her?

21 MS. ZELDIN: Objection.

22 THE WITNESS: I might have to look at the
23 other videos.

24 BY MS. ROESER:

25 Q Are you aware that other parts of the

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1 video have been produced in this action?

2 A I have no idea. I've only looked at one
3 video. I've watched that one video.

4 Q I will represent to you that in this
5 action, Mr. Heath has produced videos of births of
6 two of his children and that in total there are 14
7 parts.

8 MS. ZELDIN: Objection. They're not
9 parts. They are separate videos.

10 BY MS. ROESER:

11 Q Okay. There are 14 separate videos.

12 A That have been produced?

13 Q That have been produced.

14 A I see.

15 Q And many of those videos depict
16 Mr. Heath's wife fully nude, breasts exposed,
17 nipples. And a number of them include -- can we --
18 should we mark this portion of the testimony
19 Attorneys' Eyes Only?

20 MS. ZELDIN: Yes, please.

21 (AEO DESIGNATION BEGINNING OF TESTIMONY)

22 MS. ROESER: Closeups of her vagina.

23 THE WITNESS: Uh-huh.

24 BY MS. ROESER:

25 Q Before birth, during crowning, after.

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1 Knowing that those videos exist, does that change
2 your opinion with respect to Subsection I?

3 MS. ZELDIN: Objection.

4 THE WITNESS: Well, I suppose I would
5 have to try to determine which video and how much of
6 it he showed her. Because, again, she said she only
7 saw -- she stopped him immediately. So if the
8 beginning of each video is, you know, something
9 innocuous like it is in the one I saw, then it would
10 not change my opinion.

11 BY MS. ROESER:

12 Q So is it right then that to conclude --
13 to make a conclusion about whether this allegation
14 is substantiated, that Mr. Heath showed Ms. Lively a
15 video of his nude wife at the workplace, you would
16 have to first determine which of the 14 different
17 videos he showed her?

18 MS. ZELDIN: Objection.

19 THE WITNESS: I would have to determine
20 which one he showed her.

21 BY MS. ROESER:

22 Q Do you recall Ms. Lively's testimony that
23 the video she was shown was of Mr. Heath's wife
24 fully nude with her legs spread?

25 A Yes.

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1 Q You concluded here in part J --

2 A Yes.

3 Q -- no nudity. There is no nudity in the
4 first part of the video. Which is the only part she
5 might have seen; is that right?

6 A Yes.

7 Q So is it your opinion that Ms. Lively did
8 not see any nudity in the video that Mr. Heath
9 showed her?

10 A Well, the video that I reviewed.

11 Q How would Ms. Lively know that any of the
12 videos contained nudity if she hadn't seen it, what
13 Mr. Heath showed to her?

14 MS. ZELDIN: Objection.

15 THE WITNESS: I don't know.

16 BY MS. ROESER:

17 Q Did you consider that when you came to
18 your conclusion?

19 MS. ZELDIN: Objection.

20 THE WITNESS: No, because, I mean, it's
21 obvious that this is a birthing tub, and it's clear
22 that the woman -- that his wife is nude, even though
23 you can't see the nudity. And her knees are up. So
24 you can see sort of the position she was in. You
25 just can't see the nudity.

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1 BY MS. ROESER:

2 Q In the beginning of the video that you
3 saw?

4 A Right. I don't think there -- well, I
5 don't remember the end. I watched the full video
6 but...

7 Q Do you remember in the video that
8 Mrs. Heath's breasts and nipples are visible during
9 certain points?

10 A Later on in the video, yes.

11 Q In the video you saw, were Ms. Heath's
12 legs spread? Do you recall that?

13 A I think so. I think her knees were up
14 and still apart. But I could be wrong.

15 Q And to be clear, your opinion, with
16 respect to Mr. Heath showing Ms. Lively the birth
17 video might change depending on what video he showed
18 her?

19 MS. ZELDIN: Objection.

20 THE WITNESS: It might. This opinion is
21 dependent on the video that I saw.

22 BY MS. ROESER:

23 Q Okay. It's dependent on Mr. Heath
24 showing her this specific video that you saw?

25 A Yes. I can't opine as to any other

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1 video.

2 Q How did you reach the conclusion that the
3 video that Mr. Heath showed Ms. Lively was the one
4 that Mr. Heath says he showed rather than the one
5 Ms. Lively said?

6 A Because my understanding is that's the
7 only one that is on his phone. So that's the one I
8 asked to see.

9 Q You didn't ask to see any of the other
10 videos?

11 A I didn't understand -- I understood this
12 was the one accessible on his phone. So that's the
13 one I asked to see.

14 MS. ROESER: Okay. Should we take
15 another quick break?

16 MS. ZELDIN: Sure.

17 (END OF AEO DESIGNATION OF TESTIMONY)

18 THE VIDEOGRAPHER: We are going off the
19 record. The time is 3:40 p.m.

20 (Recess.)

21 THE VIDEOGRAPHER: We're back on the
22 record. The time is 3:57 p.m.

23 BY MS. ROESER:

24 Q Ms. Fromholz, are you still feeling okay
25 to continue?

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1 A I do.

2 Q And you promise to tell me if at any
3 point you don't?

4 A Absolutely.

5 Q Will you please share with me your third
6 opinion offered in this case?

7 A Yes, ma'am. I'm going to go again to the
8 summary, but I think they are the same.

9 (As read):

10 "My third opinion is that Robbins erred
11 in his conclusion that Wayfarer
12 violated entertainment industry
13 specific intimacy protocols by failing
14 to require an intimacy coordinator to
15 be present on set during phase one,
16 failing to have a signed nudity rider
17 in place in phase one, and allegedly
18 failing to have a closed set during the
19 birthing scene."

20 Q Okay. I refer to this as your third
21 opinion?

22 A Yes.

23 Q Great. Have you ever worked on a film or
24 TV studio, film or TV set?

25 A I have not.

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1 Q Have you ever -- are you familiar with
2 the role of an intimacy coordinator?

3 A I am.

4 Q What is your understanding of an intimacy
5 coordinator's role based on?

6 A My understanding is based on my review of
7 Lizzy Talbot's deposition and the SAG AFTRA, the
8 summary and the guidelines. And so my understanding
9 is that an intimacy coordinator is -- it changed.
10 So at one point, recommended and now, best efforts.
11 When there is nudity or simulated sex in a scene.
12 That before, so I guess during phase one, nudity
13 coordinator was recommended in scenes that involved
14 nudity or simulated sex as defined by the SAG-AFTRA
15 guidelines.

16 Q Have you ever worked with an intimacy
17 coordinator before?

18 A I have not.

19 Q Have you ever spoken to one?

20 A I have not.

21 Q If you could turn your attention to --
22 you're not a member of SAG, right?

23 A I am not.

24 Q Have you ever represented SAG in
25 conducting an investigation?

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1 an actor might be depicted as nude?

2 MS. ZELDIN: Objection.

3 THE WITNESS: Yes. Because it's not --
4 they're not nude. Yes. There's no such thing as
5 simulated nudity, is my understanding from Lizzy
6 Talbot.

7 BY MS. ROESER:

8 Q What is that understanding based on?

9 A Lizzy Talbot's description of the
10 definition of nudity.

11 Q Do you recall Ms. Talbot's deposition
12 testimony with respect to partial nudity?

13 A Not specifically.

14 Q Do you recall that she testified, for
15 example, that there may have been high-hip nudity in
16 the birthing scene in the film?

17 A I recall her talking about high-hip
18 nudity. Yes.

19 Q Do you recall her testimony that high-hip
20 nudity could be considered nudity that might require
21 an intimacy coordinator or a rider?

22 MS. ZELDIN: Require. Objection.

23 MS. ROESER: In which an intimacy
24 coordinator or rider would be recommended?

25 THE WITNESS: Yes.

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1 A No.

2 Q If you could please turn back to
3 Ms. Lively's declaration, which I believe is
4 Exhibit 4.

5 A Okay.

6 Q Let's turn to page 4. Sorry. Page 3,
7 paragraph 11. Again, this is Ms. Lively's sworn
8 declaration. In paragraph 11, she writes:

9 (As read):

10 "On or around May 22nd, I filmed a
11 scene in which my character gives
12 birth. The birth scene."

13 Paragraph 12 she states:

14 "Customary industry restrictions that
15 in my experience have been put in place
16 for partial or implied nudity were not
17 implemented for the birth scene. The
18 set was not closed to non-essential
19 personnel for the entirety of the
20 scene."

21 Do you see that?

22 A I do.

23 Q Is it your opinion that the set was
24 closed for the birth scene?

25 A Well, that was my opinion based on the

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1 evidence I reviewed.

2 Q Which was what?

3 A Well, I've cited Jamey Heath's testimony.
4 And then Lizzy Talbot's testimony that it didn't
5 require a closed set because it didn't involve
6 nudity.

7 Q So let's start with Mr. Heath's
8 testimony.

9 A Yes.

10 Q Did you review the call sheet for the day
11 of the birth scene?

12 A I did.

13 Q Do you recall Ms. Talbot testifying about
14 the call sheet for the day of the birth scene?

15 A Yes.

16 Q Is it your understanding that when a
17 scene is closed for intimacy purposes, that on the
18 call sheet, there is a red box next to the scene
19 that says "CLOSED" in big letters?

20 A I'm not certain.

21 Q Do you recall if the call sheet for the
22 birth scene had a red box that said "CLOSED" next to
23 the birth scene?

24 A I'm not certain.

25 Q So is your -- is your opinion that the

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1 set was closed for the birth scene based entirely on
2 Mr. Heath's deposition?

3 A I believe so.

4 Q Do you know whether Mr. Heath's testimony
5 was, with respect to the scene being closed -- the
6 set being closed generally to the public or for
7 purposes of intimacy?

8 A My understanding was that it was for
9 purposes of intimacy.

10 Q And if, in fact, his testimony was with
11 respect to the set being closed to the general
12 public, would that change your opinion whether
13 Wayfarer appropriately closed the set for the day of
14 the birth scene?

15 MS. ZELDIN: Objection.

16 THE WITNESS: I might have to go look at
17 other -- other testimony. But, again, you said the
18 word "appropriately," and I -- I believe that Lizzy
19 Talbot testified it was not required. So I don't
20 know if it was appropriate or inappropriate to close
21 the set.

22 BY MS. ROESER:

23 Q Okay. Well, so your opinion is that it
24 was closed, right?

25 A So my opinion is, as I say here, that the

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1 birthing scene -- closed set was not required
2 because it didn't involve nudity but, nonetheless,
3 it was closed.

4 Q Okay. So your opinion is that the set
5 was closed for intimacy purposes?

6 MS. ZELDIN: Objection.

7 THE WITNESS: As we discussed, based on
8 Jamey Heath's testimony.

9 BY MS. ROESER:

10 Q Okay. And viewing Ms. Lively's testimony
11 here in paragraph 12, does that change your opinion
12 with respect to whether the set was, in fact,
13 closed?

14 A Well, I think I would go back and
15 review -- this is new to me. I would go back and
16 review the testimony and other evidence to determine
17 if it was, in fact, closed. But, again, the primary
18 conclusion is that it did not -- it was not required
19 to be closed.

20 Q Your opinion that the set was closed
21 might change, though?

22 A I don't know. It depends on what I --
23 what review. I've looked at this. I need to go
24 back and look at evidence because, as I said, this
25 is new to me.

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1 Q If you go on into paragraph 12,
2 Ms. Lively's declaration, on the top of page 4, she
3 writes:

4 (As read):

5 "Monitors for the scene were also
6 active, when the standard for closed
7 sets is to restrict the feed."

8 Do you see that?

9 A I do.

10 MS. ZELDIN: Objection. Not to you, but
11 to the sentence. How does she have any foundation
12 for that statement? She doesn't.

13 MS. ROESER: Objection to your speaking
14 objection.

15 MS. ZELDIN: Well, objection to the
16 declaration you drafted for your client.

17 MS. ROESER: Kim.

18 MS. ZELDIN: What?

19 MS. ROESER: It's -- your speaking
20 objections are totally inappropriate, as is the
21 suggestion that anyone drafted this -- that I
22 drafted this for the client.

23 MS. ZELDIN: I don't know if you did or
24 Esra did or someone else did.

25 MS. ROESER: Kim.

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1 MS. ZELDIN: Stephanie.

2 MS. ROESER: You know that you're being
3 inappropriate.

4 MS. ZELDIN: Really? And you're not?

5 MS. ROESER: I'm not. Just asking
6 questions.

7 MS. ZELDIN: You're asking questions
8 and --

9 MS. ROESER: Kim, come on, do we really
10 need to do this during the last expert deposition?
11 Let's just leave it.

12 MS. ZELDIN: Go. Go.

13 THE WITNESS: Is this the last expert
14 deposition?

15 MS. ZELDIN: No.

16 MS. ROESER: No, I'm wrong. But it might
17 be our last deposition together, so...

18 MS. ZELDIN: Thank God.

19 MS. ROESER: Agreed.

20 BY MS. ROESER:

21 Q Okay. So --

22 A So where were we?

23 Q So in this declaration, Ms. Lively stated
24 that monitors were active, right?

25 A She did.

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1 Q Okay. And is your understanding of a
2 closed set for intimacy purposes is that monitors
3 should not be active for non-essential personnel?

4 A That's my understanding.

5 Q In paragraph 13, Ms. Lively writes:

6 (As read):

7 "The script of the birth scene did not
8 call for the simulation of nudity, and
9 as a result, I did not discuss or
10 consent to nudity with the film's
11 intimacy coordinator in preparation for
12 the birth scene through a nudity rider
13 or otherwise."

14 Do you see that?

15 A I do.

16 Q Did you review the script of the birth
17 scene?

18 A I believe I did.

19 Q Do you recall whether the script
20 contained any indication that the scene would
21 include nudity?

22 A I believe it did not.

23 Q In paragraph 6, Section B of your report.

24 A Going to the other document. Sorry.

25 Q That's okay. We're on page 9, B6, you

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1 Sorry. No. Under the heading "When do you use an
2 intimacy coordinator?"

3 A Okay, yes.

4 Q It says:

5 (As read):

6 "SAG-AFTRA believes that intimacy
7 coordinators should be hired in scenes
8 involving nudity or simulated sex or
9 upon request for other intimate --
10 intimate and hyper-exposed scenes."

11 Do you see that?

12 A I do.

13 Q Do you have an understanding of what a
14 "hyper-exposed scene" is?

15 A I read it, and now I can't call it to
16 mind. I apologize.

17 Q Is it your understanding, based on this
18 document, that SAG-AFTRA believes intimacy
19 coordinators should be hired, including upon request
20 for other intimate and hyper-exposed scenes, that
21 don't necessarily involve nudity or simulated sex?

22 MS. ZELDIN: Objection.

23 THE WITNESS: Yes.

24 BY MS. ROESER:

25 Q Does that change your opinion in any way?

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1 A No.

2 Q Why not?

3 A Well, because Ms. Lively did not request
4 an intimacy coordinator.

5 Q For the birth scene?

6 A That's my understanding, yes.

7 Q And your understanding is also that
8 Ms. Lively did not know that she was going to be
9 simulating any form of nudity during the birth
10 scene, correct?

11 A Well, that's what I just read a moment
12 ago, so...

13 Q And is it your view that Ms. Lively could
14 request an intimacy coordinator for a scene that she
15 didn't know would involve any form of nudity?

16 A Well, upon learning that it was, she
17 could have.

18 Q She could have in the moment when the
19 scene was being filmed?

20 A Well, it was before the scene. But yes,
21 on the day of, she could have requested it.

22 Q She could have requested an intimacy
23 coordinator to appear on set that day?

24 A She could have asked, yes.

25 Q You can just set it aside.

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1 A Yes. So there's no such thing as
2 performance of nudity, so it would be performance of
3 simulated sex and depiction of nudity.

4 Q Is there anything in either of these
5 SAG-AFTRA documents that defines what nudity is?

6 A Not in these -- well --

7 Q For purposes of --

8 A No, I believe it was Lizzy Talbot's
9 definition that I was relying on, not in these
10 documents.

11 Q So the SAG-AFTRA guidelines, these two
12 documents, for example, don't say that there's no
13 such thing as partial nudity or simulated nudity,
14 right?

15 A I believe that's right.

16 Q Have you ever drafted a nudity or
17 intimacy rider before?

18 A No.

19 Q Have you ever negotiated one?

20 A No.

21 Q What is the basis for your opinion that
22 it is not up to a studio to create a definition of
23 intimacy?

24 A That it is defined in the SAG-AFTRA
25 standards.

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1 the ability of reputational damage to damage or --
2 I'm sure I'm using different words each time --
3 derail someone's career.

4 Q Do you have specific knowledge about the
5 entertainment industry with respect to reputational
6 damage?

7 A Do I have specific knowledge? Well, I
8 have knowledge based on things I've read and things
9 that have happened to people that have been
10 publicized.

11 Q What things have you read that forms the
12 basis of this opinion?

13 A Items during, for instance, the "Me Too"
14 movement about people's careers being damaged in
15 retaliation for their actions in refusing sexual
16 advances.

17 Q Articles, for example?

18 A Yes.

19 Q What else forms the basis for your
20 knowledge with respect to entertainment industry and
21 the ability to damage or derail someone's
22 reputation?

23 A Clients I have worked with who have
24 worried about taking action and what that might do
25 to their career. And, in fact, things that have

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REPORTER'S CERTIFICATE

I, ASHLEY SOEVYN, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; at which time the witness was put under oath by me;


That the testimony of the witness, the questions propounded, and all objections and statements made at the time of the examination were recorded stenographically by me and were thereafter transcribed;

That a review of the transcript by the deponent was/ was not requested;

That the foregoing is a true and correct transcript of my shorthand notes so taken.

I further certify that I am not a relative or employee of any attorney of the parties, nor financially interested in the action.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct. Dated this 12th day of December, 2025.



ASHLEY SOEVYN

CSR No. 12019