

Deposition of
ANTONIO DEANO ASSUNTO

Wednesday, September 24, 2014

**ANTONIO D. ASSUNTO as ADMINISTRATOR
OF THE ESTATE OF FRANK J. ASSUNTO**

versus

**JOHN SHOUP, TELERECORD TELEVISION
PRODUCTIONS, LTD., T.L.P. OF
NEW ORLEANS, INC., ET AL**

Condensed Transcript including
Keyword Index

Janice S. Joyner, CCR
CURE, KNAAK & BELL, INC.
Certified Court Reporters
615 Baronne Street, #205
New Orleans, LA 70113
(504) 524-2224

1 CIVIL DISTRICT COURT
2 PARISH OF ORLEANS
3 STATE OF LOUISIANA
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8 ANTONIO D. ASSUNTO as *
9 ADMINISTRATOR OF THE * CASE NO. 2000-9440
10 ESTATE OF FRANK J. *
11 ASSUNTO * DIVISION "F"
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COMPLIMENTARY

Deposition of ANTONIO DEANO ASSUNTO,
commencing at 9:50 a.m., on Wednesday, September
24, 2014, in the offices of GALANTE & BIVALACQUA,
LLC, Attorneys-at-Law, 650 Poydras Street, Suite
2615, New Orleans, Louisiana 70130.

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1 APPEARANCES: 5
2 Representing the Plaintiff:
3
4 GALANTE & BIVALACQUA, LLC
5 Attorneys-at-Law
6 650 Poydras Street
7 Suite 2615
8 New Orleans, Louisiana 70130
9 BY: SCOTT M. GALANTE
10
11 Representing the Defendants:
12
13 ARNALL GOLDEN GREGORY, LLP
14 Attorneys-at-Law
15 171 17th Street, Northwest
16 Suite 2100
17 Atlanta, Georgia 30363
18 BY: STEPHEN M. DORVEE
19
20 -And-
21
22 PROVOSTY & GANKENDORFF, LLC
23 Attorneys-at-Law
24 650 Poydras Street
25 Suite 2700
New Orleans, Louisiana 70130
BY: EDGAR D. GANKENDORFF
26
27 Reported by: Janice Smith Joyner
28 Certified Court Reporter
29 State of Louisiana

1 STIPULATION 6
2
3 It is stipulated and agreed, by and
4 between Counsel, that the deposition of ANTONIO
5 DEANO ASSUNTO is being taken, under the Louisiana
6 Code of Civil Procedure, in accordance with the
7 Code.
8
9 The formalities of sealing and
10 certification are hereby waived. The witness
11 reserves the right to read and sign the
12 deposition. The party responsible for service of
13 the discovery material shall retain the original.
14
15 All objections are to be made in
16 accordance with the Louisiana Code of Civil
17 Procedure.
18
19 * * * * *
20
21 Janice Smith Joyner, Certified Court
22 Reporter, in and for the State of Louisiana,
23 officiated in administering the oath to the
24 witness.
25

1 ANTONIO DEANO ASSUNTO, 1041 Aris 7
2 Avenue, Metairie, Louisiana 70005, after having
3 been first duly sworn, testified on his oath as
4 follows:
5 EXAMINATION BY MR. DORVEE:
6 Q. Good morning, Mr. Assunto. I'm Steve
7 Dorvee, and I represent the defendants in this
8 case. And with me is my counsel, Edgar
9 Gankendorff.
10 MR. DORVEE:
11 Mr. Gankendorff, do you want to make
12 an appearance on the record?
13 MR. GANKENDORFF:
14 Yes. Edgar Gankendorff, for the
15 defendants.
16 EXAMINATION BY MR. DORVEE:
17 Q. And you're accompanied by your attorney,
18 Mr. Galante, correct?
19 A. That's correct.
20 Q. Okay. You have been deposed before; and,
21 actually, you have been deposed before by me, so
22 we're not going to spend a lot of time on ground
23 rules. Just remember, if you don't understand a
24 question that I ask, please ask me to clarify it
25 so that we can communicate, okay?

1 A. No problem. 8
2 Q. I will ask you a question today which
3 will make absolutely no sense to either you or me,
4 so --
5 A. I've been there before, yes. Not a
6 problem.
7 Q. Okay. And please state your full name
8 and address for the record.
9 A. My full name is Antonio Deano Assunto.
10 My home address is 1041 Aris Avenue, Metairie,
11 Louisiana 70005.
12 Q. And how have you been employed since
13 October of 2011?
14 A. Self-employed, printer sales. I've been
15 doing it for 30 years.
16 Q. Okay. You own your own business; is that
17 right?
18 A. That's correct.
19 Q. Okay. Do you have any other sources of
20 income besides that business?
21 A. Personally, no.
22 Q. Now, you recall that there was an earlier
23 lawsuit between you and Mr. Shoup, correct?
24 A. Yes.
25 Q. Okay. And that case was resolved by a

1 settlement agreement, right? 9
2 A. That is correct.
3 Q. And did you review that settlement
4 agreement?
5 A. Yes.
6 Q. And --
7 MR. GALANTE:
8 Object to the form.
9 THE WITNESS:
10 Pardon me?
11 MR. GALANTE:
12 I'm just putting an objection to the
13 form.
14 EXAMINATION BY MR. DORVEE:
15 Q. I'm going to show you --
16 MR. GALANTE:
17 Meaning to the form of the question,
18 objection.
19 EXAMINATION BY MR. DORVEE:
20 Q. I'm going to show you a document I've
21 labeled as Exhibit 1. I gave you two copies. Is
22 that the settlement agreement that you signed?
23 A. Yes, it is.
24 Q. And --
25 MR. GALANTE:

1 I just want to, real quick, before 10
2 we move on: There's provision in here
3 that requires confidentiality. There's
4 no seal order and no confidentiality
5 order in the case. If you are attaching
6 this, I need your explicit waiver of
7 confidentiality on behalf of your client,
8 Mr. Shoup.
9 MR. DORVEE:
10 You have it.
11 MR. GALANTE:
12 Okay.
13 MR. DORVEE:
14 Do you mind if I get that back from
15 you? For some reason, I came with --
16 A. Do you want mine?
17 EXAMINATION BY MR. DORVEE:
18 Q. No, no. You need to look at it.
19 A. I have got my -- I have a copy right
20 here.
21 Q. Oh, you do?
22 A. Oh yeah. I had brought my own.
23 Q. Okay. Great.
24 MR. GALANTE:
25 I will hand him this copy just after

1 I make sure. This isn't the final one. 11
2 I'm going to object.
3 MR. DORVEE:
4 You signed it, correct?
5 MR. GALANTE:
6 Okay, yes. Off the record for a
7 brief second.
8 (There was an off-the-record discussion.)
9 EXAMINATION BY MR. DORVEE:
10 Q. And in this settlement agreement, it
11 refers to the Assunto Legacy, and I'm not asking
12 you to interpret legal documents.
13 A. Thank you.
14 Q. Tell me what you view the Assunto Legacy
15 to be.
16 MR. GALANTE:
17 Object to the form.
18 A. well, it's the legacy of my father and my
19 uncle that started in 1947 and ended in 1974.
20 EXAMINATION BY MR. DORVEE:
21 Q. And what is important about it?
22 A. Their historical significance and what
23 they contributed to music.
24 Q. Okay. And is it your contention that the
25 use of the Assunto name enhances the value of

1 services provided by Mr. Shoup's band, the Duke 12
2 of Dixieland?
3 A. I'm not quite sure I understand what you
4 are trying to say.
5 Q. why do you care whether the Shoups use
6 the name "Assunto" or not?
7 MR. GALANTE:
8 I object to the form.
9 A. why do I object to it?
10 EXAMINATION BY MR. DORVEE:
11 Q. Yes.
12 A. Because he has no right to use my
13 family's legacy to profit by it and to also
14 misrepresent the legacy of my family by not -- by
15 stating that it extended past the death of my
16 father in February of 1974.
17 Q. Okay. How has he profited by that?
18 A. You might have to ask him that. I
19 wouldn't know how he has profited, but I know he
20 has.
21 Q. How so? What do you know?
22 A. well, because he continues to do it even
23 though he said he wouldn't.
24 Q. Okay. And how has he profited by that?
25 A. You know, I would not know. I'm not

1 privy to his books. 13
2 Q. Here's my question. How does the fact
3 that somebody who died in 1974 have any effect on
4 the recordings today, according to your
5 understanding?
6 MR. GALANTE:
7 I'm going to object to the form.
8 MR. DORVEE:
9 It's not objectionable. Quit doing
10 that.
11 MR. GALANTE:
12 Let's go off the record here a
13 minute.
14 (There was an off-the-record discussion.)
15 MR. GALANTE:
16 I object to the form of that
17 question.
18 A. Okay. Could you repeat? I'll try to
19 give you the best answer I possibly can.
20 MR. DORVEE:
21 Could you read what I had back?
22 I've got to rephrase it.
23
24 EXAMINATION BY MR. DORVEE:
25 Q. Tell me how a band of a bunch of people

1 who died in 1974 have any effect on marketing 14
2 records today?
3 A. Well, because jazz is an art form down
4 here in New Orleans, and people come from all
5 around the world to see that art form and to
6 relive those days. And to relive those days, when
7 you have a band that is historically significant
8 and accomplished very many things that ended in
9 1974 -- tourists from all around the world come to
10 New Orleans to relive those days and to celebrate
11 those days, and anybody using that legacy would
12 profit by it.
13 Q. Okay. Is it your contention that the
14 Assunto name is well known?
15 A. Yes, it is.
16 Q. What do you have to support that? What
17 facts do you have to support that?
18 A. Well, number one is obviously your client
19 uses it enough that it's pretty well known.
20 Q. Anything else?
21 A. Oh, there's a lot of other things, I'm
22 sure, but I'd have to think a little bit more
23 about that.
24 MR. GALANTE:
25 Object to the form.

1 EXAMINATION BY MR. DORVEE: 15
2 Q. I'm just asking you what you know at this
3 time. This is not a memory test.
4 A. Well, I mean a lot of people contact me
5 saying thanks for putting up the website because
6 it brings back great memories of their lives.
7 Q. Okay. Anything else?
8 A. At this moment, no.
9 Q. We'll get into this in greater detail,
10 but, approximately, if you can give me an idea, in
11 the last year -- Strike that. Let me start over,
12 because I want to set a foundation to make sure
13 we're on the same page. You or the Assunto estate
14 sells recordings, correct, or licenses others to
15 sell recordings of the Assunto --
16 A. At this time, nobody has the right to
17 sell any recordings of my father's music --
18 Q. Okay.
19 A. -- or a licensing right to do so either.
20 Q. Okay. Thank you. So as far as the
21 Assunto estate goes, you're not marketing your
22 family's music?
23 A. That is correct.
24 Q. Okay. But you're receiving royalties for
25 albums that have already been sold; is that right?

1 A. That's the only form of income, or 16
2 royalty statements, correct. No, there's nothing
3 being marketed by the Assunto family under any
4 label that is licensed and legal that we have
5 given permission to.
6 Q. Okay. We will get into this a little bit
7 later, but I have seen a label - I think it's in
8 England - called Jazzman --
9 A. I'm not familiar --
10 Q. -- that is marketing rereleases.
11 A. I'm not familiar with that and have no
12 association whatsoever.
13 Q. So you have not -- Strike that, I didn't
14 mean to walk -- I apologize.
15 A. Oh, I understand.
16 Q. First of all, I'm going to trail off
17 every now and then, and try to make me finish my
18 question. And I talked over you, I'm sorry.
19 A. And I'll try not to do that to you.
20 Q. Okay. So the Jazzman -- whatever Jazzman
21 is doing is unauthorized?
22 A. Correct.
23 Q. Okay. So at this point, no one is
24 selling or marketing your music?
25 A. Not with our permission, no.

1 MR. GALANTE: 17
2 Object to the form.
3 EXAMINATION BY MR. DORVEE:
4 Q. Not with your permission; thank you for
5 the clarification. I'm trying to remember his
6 name. I've got it. Lieberman. The guy who was
7 the expert witness in the previous case, Shelly --
8 A. Shelly Liebowitz.
9 Q. Yes. Are you doing anything with Shelly
10 Liebowitz these days?
11 A. Not currently. There was a five-year
12 agreement for him to release some music, but he
13 started marketing some, didn't sell any, and that
14 five-year agreement has now been -- is over.
15 Q. Okay. Tell me --
16 A. And we received no money whatsoever.
17 Q. And when you say he sold nothing, what do
18 you mean?
19 A. Well, that's what he told me. That's why
20 we never got any money for it.
21 Q. Okay. So he sold nothing and --
22 A. But that was done through SRI Records.
23 That's the only one - that was over five years ago
24 - that we had an agreement with.
25 Q. Okay. Right, okay. So SRI Records,

1 that's his record label? 18
2 A. I guess it is, yeah. I mean that's the
3 way I know him.
4 Q. Okay. Now, according to your
5 understanding of this agreement that I've handed
6 you as Exhibit 1 - and feel free to look at it,
7 and I can direct you to specific pages - but if
8 Mr. Shoup violates a term of this agreement by
9 referring to the Assunto Legacy or if somebody --
10 Strike that. Let me just say: If Mr. Shoup
11 violates the settlement agreement by referring to
12 the Assunto Legacy, what are you supposed to do?
13 MR. GALANTE:
14 Object to the form.
15 A. Contact my lawyer.
16 EXAMINATION BY MR. DORVEE:
17 Q. Okay. Is it your understanding that your
18 lawyer has to send a letter to Mr. Shoup to notify
19 him of the breach?
20 A. I would assume so. I'm not really clear.
21 MR. GALANTE:
22 Object to the form.
23 EXAMINATION BY MR. DORVEE:
24 Q. Let me ask another question. Is there
25 any reason why you couldn't send a notice to

1 Mr. Shoup, -- 19
2 MR. GALANTE:
3 Object to the form.
4 EXAMINATION BY MR. DORVEE:
5 Q. -- according to your understanding of the
6 agreement?
7 MR. GALANTE:
8 Object to the form of the question;
9 object to the extent it seeks to invade
10 the attorney-client privilege.
11 MR. DORVEE:
12 Good point.
13 EXAMINATION BY MR. DORVEE:
14 Q. I'm not asking for any conversations with
15 your lawyer. I'm just saying according to your
16 understanding, could you have sent a notice on
17 your own? And don't tell me anything your
18 attorney has told you.
19 MR. GALANTE:
20 Same series of objections. It
21 involves legal advices in regards to the
22 legal document that you're holding. So I
23 would object and instruct him not to
24 answer that question.
25 MR. DORVEE:

1 Could you read the question back? 20
2
3 EXAMINATION BY MR. DORVEE:
4 Q. So let me rephrase. Have you ever sent a
5 notice to Mr. Shoup yourself as opposed to through
6 an attorney?
7 A. No.
8 Q. Okay.
9 A. I have never had contact with him
10 directly.
11 Q. Okay. And we'll get into this later, but
12 your attorneys have sent a couple of notices,
13 right?
14 A. I'm sure over the years, yes, quite a
15 few.
16 Q. Now, there have been times when you have
17 found a violation, or what you felt was a
18 violation, of the settlement agreement, and you
19 have sent out e-mails saying "Let There Be No
20 Confusion," correct?
21 A. Correct.
22 Q. And why do you do that?
23 A. It says it in the document that I sent.
24 It says "Don't Be Confused." It basically tells
25 people there are two different bands that were

1 called the Dukes of Dixieland. One ended in 1974.²¹
2 Q. And what gives you the right to do that,
3 as opposed to providing notice under the
4 settlement agreement, according to your
5 understanding?
6 MR. GALANTE:
7 Object to the form.
8 A. What gives me the right to do that?
9 EXAMINATION BY MR. DORVEE:
10 Q. Yes. I mean my understanding of the
11 settlement agreement is it provides that if
12 there's a violation, you send a notice, and we get
13 15 days to cure it. Do you understand that to be
14 the case?
15 MR. GALANTE:
16 Again, I am going to object to the
17 form to the extent it calls for a legal
18 conclusion and to the extent it's a
19 purposeful invasion of the attorney-
20 client privilege.
21 EXAMINATION BY MR. DORVEE:
22 Q. Okay. Go ahead.
23 A. Could you restate it again?
24 (Court reporter reads back pending question.)
25 A. Yes, and many occasions your client has

1 been sent letters to stop doing certain things,²²
2 and it didn't do it.
3 EXAMINATION BY MR. DORVEE:
4 Q. We'll get into that later. There has
5 been more than one occasion where you have deemed
6 there was a violation and you have sent an e-mail
7 saying "Let There Be No Confusion" as opposed to
8 sending a notice, correct?
9 A. After I see a violation, yes.
10 MR. GALANTE:
11 Object to the form.
12 EXAMINATION BY MR. DORVEE:
13 Q. And have you sent such notices to booking
14 agents?
15 A. If they included the Assunto Legacy and
16 your client did not appropriately, as he is
17 supposed to, take that legacy off of their
18 websites, yes.
19 Q. Okay. And so you don't know whether
20 Mr. Shoup knew that that reference was on those
21 websites, do you?
22 A. He's in full control of his own business.
23 He should know. He's responsible for it.
24 Q. So if some booking agent puts something
25 on that website, he's supposed to know about it?

1 A. I would assume he does, because he's also²³
2 updated those websites with other information. So
3 he also has the ability to stop it. He's updated
4 it.
5 Q. Which websites?
6 A. You would have to look at our evidence
7 that we've got, and you'd have to talk to my
8 attorney about that.
9 Q. No, no, I'm sorry, when you are saying
10 "those websites," do you mean his website? Do you
11 mean --
12 A. Both. His website too.
13 Q. And also the booking agent?
14 A. Correct, both or all. And that's -- I'm
15 sure my lawyer has given you that information.
16 Q. Okay. Are you familiar with the domain
17 name www.thedukesofdixieland.com?
18 A. Thedukesofdixieland.com? Yes.
19 Q. And who operates the website that's at
20 that address?
21 A. Mike Marois.
22 Q. Who is he?
23 A. He is my first cousin.
24 Q. And what is your involvement with the
25 website?

1 A. I just provided originally -- It hasn't²⁴
2 been updated in years. I only provide him
3 information and pictures, historical pictures.
4 Q. Why hasn't it been updated in years?
5 A. Because the Dukes of Dixieland are dead.
6 There's nothing to really update except for
7 statements here and there.
8 Q. Okay. Do you review the website from
9 time to time?
10 A. No. There's nothing to review. It's the
11 same information.
12 Q. Okay. I'm not going to bother with this
13 exhibit, then. I got all excited, and didn't need
14 it. No use in clogging up the record.
15 Okay. Now, as you know, there's a link
16 from thedukesofdixieland.com website to a website
17 therealdukesofdixieland, right?
18 A. That's been brought to my attention, yes.
19 Q. And when was that brought to your
20 attention?
21 A. Oh, I can't even remember, but as of
22 late, the review of that website was just
23 recently.
24 Q. Okay. And it's still linked, correct?
25 A. Correct.

1 Q. Why? 25
2 A. Well, because my cousin put it up there.
3 Q. Did you tell him to take it down?
4 A. No.
5 Q. Why not?
6 A. Because there's no reason to take it
7 down. It's a cel -- That website, therealdukes,
8 he put up there as a celebration of a one-time
9 occurrence that he performed with his grandfather
10 very many years earlier.
11 Q. All right. Explain to me when you say "a
12 celebration."
13 A. What do you mean?
14 Q. Using it to celebrate one event.
15 A. Oh. That was a celebration Mike Marois
16 had with his grandfather in 1984.
17 Q. Well, your website wasn't even up in
18 1984, right?
19 A. Oh no, not at all. I don't think there
20 were very many websites.
21 Q. And you are aware that the Real Dukes
22 website offers a band to play, you know, that you
23 can hire a band to play?
24 MR. GALANTE:
25 Object to the form.

1 A. No, I'm not aware of that. 26
2 EXAMINATION BY MR. DORVEE:
3 Q. You are not aware of that?
4 A. No, because I never looked at their
5 website. I never saw it until just recently.
6 Q. Okay. According to your understanding of
7 the settlement agreement, is marketing a band
8 allowed by the settlement agreement?
9 MR. GALANTE:
10 Object to the form. Object to the
11 extent it seeks to purposefully invade
12 the attorney-client privilege.
13 THE WITNESS:
14 Does that mean I get to answer?
15 EXAMINATION BY MR. DORVEE:
16 Q. You get to answer. Just don't tell me
17 what your attorney told you.
18 MR. GALANTE:
19 Yes, you can.
20 EXAMINATION BY MR. DORVEE:
21 Q. I'm asking according to your
22 understanding, not what your attorney --
23 A. There's a band being booked on that
24 website; is that what you are asking me?
25 Q. Offered to be booked.

1 A. I wouldn't know. I didn't create the 27
2 website, and I have only just recently seen it.
3 Q. Well, it's linked, right?
4 A. Yeah, it's linked, right. From what I
5 understand, yes, it is.
6 Q. Okay. Let me ask you a question about --
7 Let's go back to your "Let There Be No Confusion"
8 statements. How do you find out -- How do you
9 learn of -- Strike that. Let me start over so I
10 don't have to strike the form.
11 Do you search the web for uses of the
12 term "Dukes of Dixieland" on a regular basis?
13 A. Not regularly, no, but I've done it in
14 the past, yes.
15 Q. How often do you do it?
16 A. Whenever I feel like it. There's no
17 schedule.
18 Q. Can you give me an estimate of times per
19 year? Is it like 20 times? Five times?
20 A. Well, I would say since the case ended,
21 probably more than before it ended.
22 Q. Okay. Can you give me a number or just
23 an approximation? I'm not asking you to guess.
24 I'm just trying to get an idea. Once a year?
25 Once a month?

1 MR. GALANTE: 28
2 I'm going to object to the form, and
3 I'm going to instruct the client not to
4 guess.
5 EXAMINATION BY MR. DORVEE:
6 Q. Right, don't guess. Just give me your
7 best approximation.
8 A. But that would be a guess.
9 MR. GALANTE:
10 And he already answered the
11 question. He doesn't have anything but a
12 guess.
13 EXAMINATION BY MR. DORVEE:
14 Q. All right. So you have no idea of the
15 frequency?
16 A. None whatsoever. Otherwise, I would be
17 guessing, and I don't like to guess things.
18 Q. Well, what do you search the web for?
19 When you do your search, what do you do? What
20 sort of search term do you use?
21 A. Well, most of the time, a lot of things
22 just pop up.
23 Q. How? Do you have some sort of watch?
24 A. Yeah. You just go to YouTube or
25 something like that. I also watch videos other

1 people have posted, and then I see things. 29
2 Q. Do you use the term "Dukes of Dixieland"
3 when you do the search?
4 A. That's kind of a vague question. I mean
5 if I'm going to research Dukes of Dixieland, what
6 else would I put?
7 Q. I don't know. That's what I'm asking
8 you.
9 A. I mean I've already answered that. I
10 can't -- I mean if I'm looking up Dukes of
11 Dixieland, I'm going to type "Dukes of Dixieland."
12 If I'm looking up Stephen Dorvee, I'd type in
13 "Stephen Dorvee."
14 Q. Okay. My question is: Why in your
15 searches using the term Dukes of Dixieland didn't
16 you come across your cousin's website promoting a
17 band?
18 MR. GALANTE:
19 I object to the form.
20 A. And if it showed up, it didn't really
21 matter to me.
22 EXAMINATION BY MR. DORVEE:
23 Q. Because?
24 A. Because I knew that he had put a site up
25 way back when, but I never had nothing to do with

1 it. So I mean I looked at it one time just 30
2 recently, and then I would have no reason to look
3 at it again, because from my understanding from
4 him after speaking to him about this situation, he
5 says it's been dormant for almost nine years.
6 It's not an active site or band.
7 Q. Are you aware that he renewed the
8 registration of the website in July of this year?
9 A. Oh no, I don't know he did, but I'm sure
10 if he did it, he did it for his own reasons.
11 Maybe he just wants to keep that domain name. A
12 lot of people do that.
13 Q. Have you removed the link from your
14 website to his website?
15 A. I don't remove links. I don't do
16 websites.
17 Q. Have you asked him to do so?
18 A. No.
19 Q. Why not?
20 A. He doesn't need to. I think I answered
21 that a few minutes ago. I --
22 Q. So you don't view marketing a band from
23 linking to your website is a violation of the
24 settlement agreement; is that right?
25 MR. GALANTE:

1 I'm going to object to the form to 31
2 the extent it calls for a legal
3 conclusion and it misstates prior
4 testimony, and I'm going to instruct him
5 not to answer that question and interpret
6 the settlement agreement.
7 MR. DORVEE:
8 I'm not asking --
9 EXAMINATION BY MR. DORVEE:
10 Q. Just tell me if you think it violates the
11 settlement agreement, based upon your
12 understanding.
13 MR. GALANTE:
14 I think I just instructed him not to
15 answer.
16 MR. DORVEE:
17 And I think that was improper.
18 MR. GALANTE:
19 Then call the judge.
20 MR. DORVEE:
21 All right. We'll do that.
22 MR. GALANTE:
23 But you might want to get Dino down
24 here. You are asking him to interpret a
25 legal document, which is highly improper.

1 MR. DORVEE: 32
2 That he signed. And I'm not asking
3 him to interpret it. I'm asking what his
4 understanding was. I'm not asking for a
5 legal conclusion. That's an absolutely
6 proper question.
7 MR. GALANTE:
8 No. You said is your understanding
9 as to whether or not it violates the
10 settlement agreement --
11 MR. DORVEE:
12 Correct, what is his understanding.
13 MR. GALANTE:
14 You're asking him to admit whether
15 or not a website that he doesn't control
16 violates the settlement agreement.
17 MR. DORVEE:
18 I'm asking him yes or no --
19 MR. GALANTE:
20 Take the word "violate" out. It's
21 very simple.
22 MR. DORVEE:
23 Okay.
24 MR. GALANTE:
25 I'm not going to let my client admit

1 or deny on the record his interpretation³³
2 of a document -- of another person's
3 website, as to whether or not it violates
4 an agreement that we're here to litigate
5 about.
6 EXAMINATION BY MR. DORVEE:
7 Q. Okay. Is it your understanding that the
8 Assunto -- that you were not to operate a band?
9 A. I don't operate a band.
10 Q. And no one affiliated with the Assunto
11 Legacy is to operate a band, correct?
12 MR. GALANTE:
13 Object to the form.
14 A. He's not part of the Assunto Legacy.
15 EXAMINATION BY MR. DORVEE:
16 Q. Why not?
17 A. Because he's not party to the lawsuit.
18 Q. Oh, okay. All right. And you view the
19 fact that your website links to his is not
20 marketing the band; it's just a link?
21 A. He does not have a band.
22 Q. But you wouldn't know that from looking
23 at his website, would you?
24 A. You can interpret it the way you want,
25 but his website has been dormant for over nine

1 years. I'm sure your research, if you did, you³⁴
2 know that already.
3 Q. I'm going to show you what we have marked
4 as Defendants Exhibit 2. Now, this is a printout
5 of pages from the Dukes of Dixieland website, the
6 Assuntos' Real Dukes of Dixieland website, right?
7 A. Correct.
8 MR. GALANTE:
9 Hold on one second. Review the
10 entire document, and go through
11 everything, please, page by page.
12 EXAMINATION BY MR. DORVEE:
13 Q. I will represent to you that as far as I
14 know, it's complete. If it's not, I'm just asking
15 you about what's in --
16 MR. GALANTE:
17 I want to make sure that you go
18 through that document and look at every
19 page and make sure that every bit of that
20 is content from your site.
21 MR. DORVEE:
22 And that's a good idea.
23 A. Yes, it looks like that's it.
24 EXAMINATION BY MR. DORVEE:
25 Q. Okay, thank you.

1 A. Do you need this back? 35
2 Q. No, you can keep it. I'm going to ask
3 you questions about it, so you can keep it.
4 A. Oh, okay. Well -- okay.
5 Q. Whose idea was it to start this website?
6 A. Mine.
7 Q. And when did you start it?
8 A. From my knowledge - it's been so long -
9 it has to be 1998, 1999 maybe. I mean I may be
10 off but around that time.
11 Q. Let me --
12 A. Let's put it this way. It's well before
13 or right around the time that we filed the lawsuit
14 against your client originally.
15 Q. That was going to be my next question.
16 Let me just see -- I'm going to show you this
17 document. I prefer not to mark it, because it's
18 going to be --
19 MR. GALANTE:
20 Let's just be clear and mark
21 everything that he's shown in the
22 deposition.
23 MR. DORVEE:
24 Okay. I just wanted to refresh his
25 recollection, but we will mark that as

1 Exhibit 3. 36
2 MR. GALANTE:
3 Didn't you answer on the record
4 1999?
5 THE WITNESS:
6 Yes, I think it was '99. I may be
7 wrong; like I said, it's been so long
8 ago.
9 EXAMINATION BY MR. DORVEE:
10 Q. This says 12/11/99. Does that refresh
11 your recollection?
12 A. Creation Mon -- Yes, December 10th, 1999.
13 So I was right. My memory is pretty good.
14 Q. So that was the date that you created the
15 website, and you don't recall whether it was
16 before or after you sued?
17 A. It may be right around the same time.
18 Q. Did you put up the website because you
19 were getting ready to sue?
20 A. No, not at all.
21 Q. Okay. I note on the first -- Looking
22 back at Exhibit 2, I note that the heading is "The
23 Assuntos' Real Dukes of Dixieland," right?
24 A. Pardon me?
25 Q. The heading of -- This title on this page

1 is "The Assuntos' Real Dukes of Dixieland"? 37
2 A. That's correct.
3 Q. Why is the "Assunto" name in there?
4 A. Because it was Frank and Freddie who
5 founded the band. They were called Assuntos.
6 Q. Okay. Is the name "Assunto" important,
7 or is the name "Real Dukes of Dixieland"
8 important?
9 MR. GALANTE:
10 Object to the form.
11 A. It's just a title for a website so people
12 will understand who they're looking at.
13 EXAMINATION BY MR. DORVEE:
14 Q. Okay. And my question is, next: The web
15 address is www.thedukesofdixieland.com.
16 A. Right.
17 Q. Why did you pick that domain name?
18 A. Because they were the Dukes of Dixieland.
19 Q. Okay.
20 A. That was the name of the official
21 original band.
22 Q. Okay. And did you try to get
23 dukesofdixieland.com?
24 A. I didn't start -- I mean I don't do
25 websites, and my cousin did that, and I told him

1 to register it in the name The Dukes of Dixieland, 38
2 because that was their name.
3 Q. Why didn't you use the name Assunto there
4 if the Assunto Legacy is so important?
5 MR. GALANTE:
6 Object to the form.
7 A. Historically speaking, anybody who knew
8 the Dukes of Dixieland knew it was the Assuntos.
9 So I didn't have to register it with the Assunto
10 name entitled -- in the description of the name
11 thedukesofdixieland.com.
12 EXAMINATION BY MR. DORVEE:
13 Q. Okay. Flip over to the next page. It
14 says, "Like the Original Dukes on Facebook." Do
15 you see that reference and this --
16 A. Yes.
17 Q. -- "Follow@OriginalDukes"?
18 A. Yes.
19 Q. Why did you use the term "Original
20 Dukes"?
21 A. Because it fit my purpose at the time.
22 Q. How so?
23 A. Because they are the original Dukes.
24 Q. Okay. All right. Do me a favor.
25 A. What page are you on?

1 Q. Well, let me just ask you a question not 39
2 relating to this specific exhibit.
3 A. Oh.
4 Q. Following the execution of the settlement
5 agreement, did you, either on your own or, I
6 guess, by instructing Mike Marois -- How do you
7 pronounce it?
8 A. Marois, M-A-R-O-I-S.
9 Q. I know how to spell it. I just don't
10 know how to pronounce it.
11 A. That's okay. He's French.
12 Q. Following the settlement agreement, did
13 either you or Mike Marois on your behalf make any
14 changes to "The Dukes of Dixieland" website?
15 A. Oh, I'm sure we did, but I'd have -- I
16 mean if it was, it very minor. It may have added
17 the "Don't Be Confusion," because we did not want
18 to imply any association to Shoup's Dukes, which I
19 think is part of the settlement.
20 Q. Okay. And take a look back at Exhibit 1.
21 A. (Complies.)
22 Q. Which is the settlement agreement,
23 correct?
24 A. Yes, it is.
25 Q. Take a look at Section 4.4. It says,

1 "web Sites. Mr. Assunto shall remove all 40
2 references to Mr. Shoup and the Shoup Dukes from
3 his web site. Likewise, Mr. Shoup shall remove
4 all references to the Assunto family and the
5 Assunto Dukes from his web site. However, either
6 party may refer to the fact that a case was
7 brought" and it gives the number "and that the
8 case has been settled." Do you see that?
9 A. Yes.
10 Q. Now, look back at the exhibit I just gave
11 you.
12 A. This?
13 Q. Yes.
14 A. Exhibit 2?
15 Q. Exhibit 2 or --
16 A. That's the website.
17 Q. I'm sorry. Flip, if you would, to page
18 281.
19 A. Okay.
20 Q. okay.
21 A. I'm familiar with it. You can go ahead.
22 Q. I'm talking about Act IV.
23 A. Okay.
24 Q. And after the settlement was reached, you
25 revised that, correct, to reference the

1 settlement? 41
2 A. Yes.
3 Q. And you didn't just say that the lawsuit
4 involved had been settled, did you?
5 A. Well, it just gives the -- Let me make
6 sure I answer that correctly.
7 Yeah, it just gives background -- It
8 disseminates that there was a lawsuit.
9 Q. It does more than that, doesn't it?
10 A. No, it doesn't.
11 Q. You don't think so?
12 A. No. It makes clear that there was a --
13 that there was a settlement and that, uhm -- that
14 there's no affiliation and we're not implying in
15 any way, shape, or form, according to the
16 settlement, that we are affiliated whatsoever to
17 Shoup's Dukes.
18 Q. Okay. All right. Now, if you would, go
19 to page 312, --
20 A. Yes.
21 Q. -- the page that says "Real Dukes of
22 Dixieland Stuff!" And it says "Re-release of
23 Original Dukes of Dixieland Material." Do you see
24 that?
25 A. I see the page. What's your question?

1 Q. Okay. My question is: "For the past 42
2 several years an unscrupulous businessman has been
3 reissuing this original material under some bogus
4 offshore record labels."
5 A. Correct.
6 Q. Who are you referring to?
7 A. That goes back to what you asked me very
8 early in this deposition. You said about some
9 English UK group, those people that are out of the
10 country. There's numerous of them, many of them,
11 that I don't know who they are, so I cannot
12 specifically say which unscrupulous person is
13 doing it, but there are many of them out there
14 doing it, and it still can be found on the web,
15 which is some of the information you brought up
16 earlier.
17 Q. Okay. So this is not referring to
18 Mr. Shoup?
19 A. If it doesn't say Mr. Shoup, you can only
20 speculate that and assume that -- you're making
21 assumptions there.
22 Q. I don't want to make assumptions. What
23 I'm asking you --
24 A. If I knew it was Mr. Shoup, I'd be more
25 than proud to say it was him, but I'm not saying

1 it was him. 43
2 Q. Okay. So that's my question. So that is
3 not referring to Mr. Shoup?
4 A. Nope.
5 Q. Okay. Take a look at the last page of
6 this exhibit.
7 A. Yes. You can ask me the question. I'm
8 pretty familiar with it.
9 Q. Okay. All right. Take a look at the
10 last two paragraphs there, and my question -- You
11 say we hope you are not confused and so forth, and
12 let us know if you are confused.
13 A. Correct.
14 Q. Have you ever received any e-mails from
15 anyone saying they have been misled?
16 A. Well, not since I've posted this, no, but
17 during the case, many.
18 Q. But since the case was settled, you have
19 not received any e-mails from people saying they
20 were confused; is that correct?
21 A. Not that I know of.
22 Q. Okay. Have you received any --
23 A. Which I really think lends to the
24 credence of the fact that I think the "Don't Be
25 Confused" statement that I put out there does

1 clarify it so that people are not confused, and 44
2 think it helps both parties that way.
3 Q. Okay. And take a look back at the
4 settlement agreement, Exhibit --
5 A. 1.
6 Q. -- 1. Okay. Take a look at paragraph
7 4.6 on page 4.
8 MR. DORVEE:
9 Scott, I have got another one.
10 MR. GALANTE:
11 No, this is fine. This is easier.
12 MR. DORVEE:
13 Okay.
14 A. Okay.
15 EXAMINATION BY MR. DORVEE:
16 Q. Okay. It says, "In the event that
17 customer confusion arises from the parties'
18 simultaneous use of the term 'Dukes of Dixieland,'
19 then the parties agree to work together, in good
20 faith, to eliminate the confusion." Do you see
21 that?
22 A. Yes.
23 Q. Have you ever worked in good faith with
24 Mr. Shoup to eliminate confusion?
25 MR. GALANTE:

1 Object to the form of the question.⁴⁵
2 A. Why should I?
3 EXAMINATION BY MR. DORVEE:
4 Q. Well, because that's what it says in the
5 settlement agreement.
6 A. But there's never been --
7 MR. GALANTE:
8 Objection to the form of the
9 question.
10 A. But there's never been somebody came to
11 me and said, "You are confusing me," or, "I'm
12 confused." The statement that "Don't Be Confused"
13 on the website has been very accurate and to the
14 point.
15 EXAMINATION BY MR. DORVEE:
16 Q. What, according to your understanding,
17 what gives you the right to send out unilateral
18 notices to people saying "Do Not Be Confused"?
19 A. I don't send out unilateral --
20 MR. GALANTE:
21 Object to the form of the question.
22 EXAMINATION BY MR. DORVEE:
23 Q. You don't send them out with Mr. Shoup's
24 cooperation, do you?
25 A. I don't need his cooperation.

1 Q. Well, you don't send them notices of the⁴⁶
2 breach, do you?
3 MR. GALANTE:
4 Object to the form.
5 A. We have sent many notices of the breach.
6 EXAMINATION BY MR. DORVEE:
7 Q. This is my question.
8 A. We've sent many notices of breach.
9 Q. But you have not -- There have been many
10 times when you have sent out your "Let There Be No
11 Confusion" statement when you have not informed
12 Mr. Shoup of the incident involved with the same,
13 right?
14 MR. GALANTE:
15 Object to the form of the question.
16 A. I guess you can say yes.
17 EXAMINATION BY MR. DORVEE:
18 Q. Okay. So isn't it true that you send
19 that out to try to interfere with Mr. Shoup's
20 business?
21 A. Not at all. I think section 4.1 of our
22 settlement, it says I am not to imply any
23 connection. When I see people try to connect the
24 two, I'm just stating the fact that there is no
25 connection.

1 Q. Isn't it your understanding you are⁴⁷
2 supposed to notify Mr. Shoup and give him time to
3 change it?
4 A. We've done that in the past, and he puts
5 it back on.
6 Q. That wasn't my question.
7 A. That's my answer.
8 Q. Okay. So --
9 A. In other words, to working with your
10 client in good faith obviously has not worked in
11 the past.
12 MR. GALANTE:
13 I'm going to object to the form, and
14 can we go off the record here for a brief
15 second?
16 (There was an off-the-record discussion.)
17 EXAMINATION BY MR. DORVEE:
18 Q. My last line of questioning about the "Do
19 Not Be Confused": You send those to third
20 parties, not to Mr. Shoup?
21 A. That's correct.
22 Q. So a third party will reference the
23 Assunto Dukes, and you will send them a thing
24 saying "Do Not Be Confused"?
25 A. Correct. And the reason for that is,

1 like I said, I believe 4.1 of the settlement says⁴⁸
2 we're not to imply. Well, if I let somebody go on
3 a third-party site or statement that causes a
4 confusion, I'm doing -- abiding by the settlement.
5 Q. You're supposed to send Mr. Shoup a
6 notice, aren't you? There's nothing in here that
7 says you can just send out a notice, is there?
8 A. It doesn't say I can't either.
9 MR. GALANTE:
10 Object to the form.
11 EXAMINATION BY MR. DORVEE:
12 Q. It doesn't say you can't? Why do you
13 think we entered into a settlement agreement?
14 MR. GALANTE:
15 Steve, keep your voice down, please.
16 EXAMINATION BY MR. DORVEE:
17 Q. Why do you think we entered into a
18 settlement agreement? To avoid exactly what
19 you're doing, right?
20 A. No.
21 MR. GALANTE:
22 Object to the form.
23 A. Not at all.
24 EXAMINATION BY MR. DORVEE:
25 Q. So we weren't trying to avoid confusion,

1 right? 49
2 A. That's -- I'm trying to avoid confusion.
3 Q. Right. And we weren't -- And the way we
4 were trying to do that is the parties work
5 together to create (sic) confusion, right?
6 A. All right, I will state it one more time.
7 I have tried to work with your client, and my
8 lawyers have sent letters out to your client, and
9 it seems like he doesn't cooperate whatsoever. So
10 do you think I really believe that he's going to
11 go to a third party that he's going to say he has
12 no control over and state the records factual and
13 do not confuse people? I don't think so. It
14 doesn't fit his narrative.
15 Q. Okay. Isn't it true that there have been
16 two times when Mr. Shoup has informed you of
17 third-party uses and has taken steps to correct
18 them before you even knew about them --
19 A. No, I can't -- I don't know what you're
20 talking about.
21 Q. -- and fit your narrative?
22 A. I don't -- I said I can't -- I don't know
23 what you're talking about. Be more specific.
24 MR. GALANTE:
25 Steve, if you can't be civil, I'll

1 be happy to get the judge on the phone 50
2 and ask him to tell you to, okay? Are we
3 clear?
4 MR. DORVEE:
5 I'm being civil.
6 MR. GALANTE:
7 You are not. You're raising your
8 voice, and you're being sarcastic.
9 There's no need for it. He's answering
10 your questions. He's doing so the way
11 he's required to under the code. You can
12 start to act civilly toward my client or
13 we'll get the judge on the phone.
14 There's no need for this.
15 MR. DORVEE:
16 We can get him on the phone and talk
17 about some discovery objections too.
18 MR. GALANTE:
19 Feel free. There's no discovery
20 rule pending, and there's 10.1 conference
21 pending.
22 MR. DORVEE:
23 We're going to have a conference
24 about that.
25 MR. GALANTE:

1 Look, is this a place for a 51
2 discovery dispute?
3 MR. DORVEE:
4 No. Let's go ahead.
5 MR. GALANTE:
6 You know what, we're going to go off
7 the record.
8 (There was an off-the-record discussion.)
9 MR. GALANTE:
10 Considering the tone and tenor of
11 Mr. Dorvee's questioning, my previous
12 agreement to allow this to proceed
13 without Mr. Gankendorff in the room as
14 his pro hoc sponsoring counsel is being
15 rescinded, and I'm going to refuse to
16 continue this deposition in violation of
17 that rule unless Mr. Gankendorff is here.
18 We can go back off the record.
19 (There was an off-the-record discussion.)
20 MR. GALANTE:
21 Would you note the record of Mr.
22 Gankendorff's appearance, or
23 re-appearance?
24 (Edgar Gankendorff is present.)
25 MR. DORVEE:

1 Can we go back on the record? 52
2 MR. GALANTE:
3 Yes. And on the record, I will not
4 tolerate that tone of voice, the
5 intimidating demeanor, or the sarcastic
6 responses to his answers anymore. I will
7 call an end to this deposition
8 immediately. Are we clear?
9 MR. DORVEE:
10 We're clear.
11 MR. GALANTE:
12 Thank you.
13 MR. DORVEE:
14 Let me further state that while I do
15 not agree with your characterization, to
16 the extent that I offended anyone, I
17 apologize.
18 MR. GALANTE:
19 You started this deposition off
20 telling me to stop making objections to
21 the form on very objectionable questions,
22 and it's gone downhill since then.
23 MR. DORVEE:
24 Okay. Anything else?
25 MR. GALANTE:

1 Thank you. 53
2 EXAMINATION BY MR. DORVEE:
3 Q. Now, I just wanted to -- I believe I'm
4 going to have to give you back Exhibit 1 so you
5 have it in your stack.
6 A. I have this one, which is the same thing.
7 I will keep the one with the sticker on it. It
8 looks prettier.
9 Q. Thank you. Now, if you will take a look
10 back at the website for now, Exhibit 2, take a
11 look at the page labeled Shoup-317 on the bottom.
12 A. Yes.
13 Q. Are you okay?
14 A. It's just cold in here.
15 (There was an off-the-record discussion.)
16 EXAMINATION BY MR. DORVEE:
17 Q. If you need to take a break, we can take
18 one.
19 A. Oh no. I'm good to go.
20 Q. Okay. You see page 317?
21 A. Yes, I do.
22 Q. It just lists a bunch of contributors,
23 right, website contributors?
24 A. Oh yes.
25 Q. And you are the first person. What did

1 you contribute? 54
2 A. The pictures that were there, the
3 history, along with some of these other people
4 that are on that list, and the videos that were on
5 there of the Original Dukes, of the Assunto Dukes.
6 Q. Okay. And Harry Porter, who is he?
7 A. Uhm, who is Harry? Oh Jesus. Oh, he's
8 just a fan.
9 Q. What did he contribute? Do you know?
10 A. Some of the history.
11 Q. Okay. A. G. Parr, who is he or she?
12 A. A. G., it's a he. He is -- Some of the
13 pictures, he gave me. But he's dead now, so --
14 Q. Okay. Jim Beebe, who is he?
15 A. He was an old musician that knew my
16 father.
17 Q. And what did he contribute?
18 A. The same thing, just some pictures.
19 Q. Okay. And Jack and Nan Thomas, who were
20 they?
21 A. They were friends of my father. They
22 were fans.
23 Q. What did they contribute?
24 A. A few pictures.
25 Q. Don Gumpert, the same --

1 A. Well, he was a fellow musician. 55
2 Q. Of your father?
3 A. Yeah, not -- He didn't play with the
4 Dukes, but he was just a fellow musician.
5 Q. And what did he contribute?
6 A. The same thing, some pictures.
7 Q. And Joe Re --
8 A. -- Restarski. He was just a fan, and he
9 helped with some of the history.
10 Q. All right. Just to go back: we talked
11 about the title "The Assuntos' Real Dukes of
12 Dixieland." who came up with that title?
13 A. Oh, I did. I was really going to use
14 maybe The Assuntos' Original, Authentic, Genuine,
15 but Real just sounded best, and we've been using
16 it for over 15 years.
17 Q. And you decided to caption it The Real
18 Dukes of Dixieland?
19 A. I mean you just answered that.
20 Q. Okay, good. And Mr. Marois --
21 A. Marois.
22 Q. -- did he design the site?
23 A. Yes.
24 Q. Who wrote the Dukes' history?
25 A. It's a collaboration of a bunch of

1 people. I just listed some of them to you. 56
2 Q. Okay. Did you write it? I mean did you
3 compile it all in writing?
4 A. No. I mean, basically, just, it was
5 pieced together.
6 Q. Okay. Who pieced it together?
7 A. I probably did that, because I wanted to
8 lead it in chronological order.
9 Q. Who wrote the contents on the "Hearing is
10 Believing" page?
11 A. Oh, I did that.
12 Q. Who put together the discography?
13 A. Boy, that's -- that's -- That was part of
14 everybody that -- on the contributors who did
15 that, like Joe Restarski and the likes, and then
16 my cousin compiled it because he's the webmaster.
17 Q. Okay. Now, on this, under Web Changes,
18 the Dukes news page, it says that the last update
19 to the site took place on December 20th, 2003.
20 That's not right, correct?
21 A. Oh, I wouldn't know because I hadn't
22 updated -- I have not provided anything new except
23 for the "Don't Be Confused" after the case.
24 Q. Right. So it at least was updated to
25 that extent?

1 A. That would be the only thing that was 57
2 updated, that's correct.
3 Q. Okay. After the settlement agreement was
4 reached, did you check over this website to make
5 sure that you were in compliance with the
6 settlement agreement? And by compliance I mean
7 according to your understanding.
8 A. If I'm not mistaken, if I remember
9 correctly, which I'm pretty good in that part of
10 it, your client did that. He sent a whole list of
11 things that he didn't like on it, and we took care
12 of it.
13 MR. GALANTE:
14 I am going to object to the form to
15 the extent that it calls for a legal
16 conclusion.
17 EXAMINATION BY MR. DORVEE:
18 Q. Back to the remainder of the content on
19 the website: Who wrote the paragraph under
20 "Rerelease of the Original Dukes of Dixieland
21 Material" that we previously discussed?
22 A. You will have to show me which page it
23 was at.
24 Q. On 312, I think.
25 A. Oh, I think between my cousin, Mike, and

1 I, we may have pieced that together, but you asked 58
2 me about that a few minutes ago.
3 Q. Okay, I'm done. Okay. Take a look, if
4 you would, at page 317.
5 A. 317?
6 Q. Yes, Shoup-317.
7 A. Yeah, I've got it.
8 Q. Okay. And whose telephone number is
9 listed there?
10 A. That's Mike Marois, the webmaster.
11 Q. Okay. And --
12 A. That's his address also.
13 Q. Okay. And who receives e-mails at the
14 address of sendinfo@thedukesofdixieland.com?
15 A. Mike Marois does.
16 Q. Okay. Mainman@thedukesofdixieland.com?
17 A. Mike Marois does.
18 Q. You don't receive that?
19 A. No.
20 Q. Don't you refer to yourself as the "Main
21 Man"?
22 A. No. Never have.
23 Q. Deanassunto@thedukesofdixieland.com?
24 A. That's the only name I use, is my own.
25 Q. Okay. How often do you check that

1 mailbox? 59
2 A. I don't have to check it. It just comes
3 in. It just automatically pops up.
4 Q. And Mike Marois@thedukesofdixieland.com,
5 that's your cousin, right?
6 A. Correct. That would be my father's
7 nephew and my grandfather's grandson.
8 Q. Okay, got it.
9 A. Okay.
10 Q. Were these e-mail addresses used at the
11 time the website was established?
12 A. From the very start, and I think you and
13 your client knew that in the first case.
14 Q. Okay. Let's take a look -- Okay, take a
15 look at page 318. It says "Hot Links - Some of
16 our Favorite Places." Do you see that?
17 A. Yes, I do.
18 Q. And what's the first one that's listed?
19 A. "The Real Dukes."
20 Q. And you clicked on that to see what it
21 links to?
22 A. Well, that's the one that goes to Mike's
23 celebration, as it states. It says "A Dixieland
24 tribute to the legacy of the Assunto family."
25 That was his sharing of that one-time event That's

1 been dormant for over nine years. 60
2 Q. Okay. Do you know if people visit that
3 website?
4 A. I have no control over that website, so I
5 have no idea; and I don't look at it, as I told
6 you that before.
7 Q. So Mike Marois put that link there; is
8 that right?
9 A. Correct. He -- well, as a matter of
10 fact, he put a lot of these other links that you
11 see up there. I didn't know that he did that
12 either. He has no -- It doesn't have a purpose
13 for me, but he did it anyway.
14 Q. Okay. How many times have you clicked on
15 that link?
16 A. You asked me this earlier. I told you I
17 barely -- I looked at it one time, and that was
18 it.
19 Q. Okay. One time for --
20 A. And that I revisited it after I was --
21 Correct. Remember, I told you that earlier.
22 Q. You did, thank you. I'm going to show
23 you a document I've labeled as Exhibit No. 4.
24 Have you seen that before?
25 A. Yeah, when I -- yeah, when you --

1 MR. GALANTE: 61
2 Before we get started, please go
3 through every page of the exhibit and
4 make sure that you are familiar with all
5 the content.
6 It's a document that's multipage,
7 and I'm just instructing him to review
8 the entire document before agreeing that
9 he has seen it.
10 A. Okay. What's your question?
11 EXAMINATION BY MR. DORVEE:
12 Q. Okay. You have taken a look at it. I've
13 got several questions.
14 A. Okay.
15 Q. When you looked at The Real Dukes
16 website, is this what you saw?
17 A. Yeah, I saw the thing right there.
18 Q. Okay. And did you go through the
19 website?
20 A. Not all the way, no. I just kind of
21 browsed through the bios of the members, and that
22 was it.
23 Q. Take a look at "The Real Dukes Mission
24 Statement," page 323.
25 A. Okay.

1 Q. Now, just, you may not know the answer to 62
2 this question, so let me preface that, but you
3 told me earlier this is a tribute to one
4 performance. This appears to offer live music
5 performances?
6 A. I don't see it like that, but that's, you
7 know --
8 Q. Okay. Does this --
9 A. That's an interpretation.
10 Q. I'm sorry to interrupt you. Does this
11 statement agree with your understanding of what
12 the website is all about, this website?
13 A. It's kind of ambiguous question. I mean
14 it just says this is just about the history of --
15 MR. GALANTE:
16 Object to the form.
17 A. -- the jazz family through the
18 performance of the Original Dukes material. The
19 Original Dukes are dead, so there's no performing
20 after that. I mean I don't understand the
21 question.
22 EXAMINATION BY MR. DORVEE:
23 Q. Let me show you -- Take a look, if you
24 would, at page 326.
25 A. Okay.

1 Q. Okay. This talks about the personnel. 63
2 Do you see that?
3 A. Yes.
4 Q. It's got Mike Marois?
5 A. Marois.
6 Q. That's your cousin, right?
7 A. Correct.
8 Q. Who is Angela Assunto-Soulas?
9 A. She is the daughter of Betty Assunto, who
10 is Freddie's widow. Freddie Assunto was her
11 father.
12 Q. Okay. Has she been at some of the
13 hearings in this case?
14 A. No.
15 Q. Then you have other band members, right?
16 A. Correct.
17 Q. And isn't it true that this website is
18 offering a band to be booked?
19 A. Not that I know of.
20 MR. GALANTE:
21 Object to the form.
22 EXAMINATION BY MR. DORVEE:
23 Q. You just don't know?
24 MR. GALANTE:
25 This has been asked and answered.

1 A. I think I told you earlier that this 64
2 website, from my understanding, has been dormant
3 for nine years, so I would imagine if you think
4 he's booking a live band on a dormant website, I
5 think you're mistaken.
6 MR. GALANTE:
7 And I'm going to object to you
8 continuing to ask that question five
9 different ways.
10 EXAMINATION BY MR. DORVEE:
11 Q. Take a look at page 321, the first page,
12 okay. There it says 4,837 visitors have stopped
13 by that site.
14 A. I see that.
15 Q. Do you have any idea over what time
16 period that was?
17 A. No, because I don't go to the site. I
18 told you I only saw the site one time and then
19 revisited it recently.
20 Q. Okay. So 4,837 people visited a website
21 that promotes a band that doesn't exist?
22 MR. GALANTE:
23 Object to the form of the question.
24 A. He's not promoting a band. I told you
25 that already, because the website has been dormant

1 for nine years. 65
2 EXAMINATION BY MR. DORVEE:
3 Q. Well, people still visit it, right?
4 A. Well, they should be able to, yeah, just
5 to celebrate the one-time event.
6 Q. Yes, but here's my question. If I'm
7 looking for -- Let's say I want to book the Dukes
8 of Dixieland and I go to this website and nobody
9 responds to my e-mail, do you think that would
10 cost me sales?
11 MR. GALANTE:
12 Object to the form of the question,
13 and instruct the client not to speculate
14 on whether or not this has any basis in
15 fact.
16 A. If you are looking for the Dukes of
17 Dixieland, you wouldn't go to this website,
18 because this says "The Real Dukes." It doesn't
19 say "The Real Dukes of Dixieland" or "The Dukes of
20 Dixieland Band."
21 EXAMINATION BY MR. DORVEE:
22 Q. It doesn't? Okay.
23 MR. GALANTE:
24 what exhibit number is that, Steve?
25 THE WITNESS:

1 It's 4. 66
2 EXAMINATION BY MR. DORVEE:
3 Q. Sorry about that.
4 A. Oh, I'm going to give you the copies of
5 this.
6 MR. GALANTE:
7 They're going to go to the court
8 reporter.
9 EXAMINATION BY MR. DORVEE:
10 Q. Take a look at page 343. It's "The Real
11 Dukes Guest Book Entries," and you posted that
12 comment, right?
13 A. If it says Deano Assunto, it's me.
14 Q. Okay. And that was on February 3rd,
15 2006?
16 A. Correct.
17 Q. So we know you visited the site at least
18 that day?
19 A. Right.
20 Q. And then did you visit it any other times
21 between then and --
22 A. I don't recall.
23 MR. DORVEE:
24 Okay. Let's take about a five-
25 minute break. Is that okay?

1 MR. GALANTE: 67
2 Fine by me.
3 (Brief Recess)
4 EXAMINATION BY MR. DORVEE:
5 Q. I'm going to show you exhibit labeled
6 Exhibit No. 5. This is "The Original Dukes of
7 Dixieland - About" Facebook page. Do you see
8 that?
9 A. Uh-huh (affirmative reply).
10 Q. Are you familiar with that?
11 A. Yes.
12 Q. When was your Facebook account created?
13 Do you know?
14 A. Oh boy. It would have to be after the
15 end of the case, which would have to be late 2011,
16 early 2012 probably.
17 Q. Okay. And why did you create this page?
18 well, let me rephrase. Did you create
19 this page?
20 A. Oh yes. I created this thing completely.
21 Q. Okay. Why did you do that?
22 A. Because it's more interactive. The
23 website can't be updated because there's really
24 nothing to update, but I can share things like
25 videos and pictures there anytime I wish.

1 Q. Okay. And that's all I have on that. 68
2 I'm going to show you a document I'm going to
3 label Deposition Exhibit No. 6. I'm sorry, let
4 me --
5 MR. GALANTE:
6 If you can, just let me see it real
7 quick before you hand it to him.
8 MR. DORVEE:
9 All right.
10 EXAMINATION BY MR. DORVEE:
11 Q. Are you familiar with this? Have you
12 seen this article before?
13 A. Oh yes, I have.
14 Q. So you recognize it?
15 A. Oh yes, I have, and I do, yes.
16 Q. Okay. And this refers to -- well, this
17 is inaccurate, correct?
18 A. Pardon me?
19 Q. This is inaccurate, the statements in
20 this?
21 A. Oh yes. They -- They used my family in
22 this too.
23 Q. Okay. Did you ever send any notice to
24 Mr. Shoup about this?
25 A. Pertaining to the release of the Oak

1 Ridge Boys CD? 69
2 Q. No, about this specific article.
3 A. I don't know if it was about this
4 specific, but there's an overall where they refer
5 to my family; and yes, they were notified.
6 Q. By whom?
7 A. By, I think it was Robert LeBlanc.
8 Q. About this particular --
9 A. I don't know if it's this particular one,
10 because I can't state for sure on that, but it had
11 something to do with the appearance of your client
12 and his band and the Oak Ridge Boys CD.
13 Q. Okay. And it's not a very good copy, if
14 you can look over at the comments page.
15 A. Oh, I know what the comment page is.
16 Q. All right. And that was one of your "Let
17 There Be No Confusion" postings, right?
18 A. That's correct. As I said earlier to
19 you, a third-party person I can go to and let them
20 know "Don't Be Confused," because according to the
21 settlement, I'm not -- that implied that there
22 should be no implying that the Assunto Dukes are
23 in any way connected to Shoup's Dukes.
24 Q. Okay. And you posted this comment --
25 A. Yes.

1 Q. -- after the settlement agreement was 70
2 finalized, correct?
3 A. Correct.
4 Q. Okay. I would like to now show you a
5 document labeled as Exhibit 7. The first page is
6 redacted because it was attached to an e-mail
7 addressed to me.
8 MR. GALANTE:
9 Can we go off the record for a
10 minute?
11 MR. DORVEE:
12 Yes.
13 (There was an off-the-record discussion.)
14 MR. GALANTE:
15 I just asked Mr. Dorvee in their
16 collection of documents that were
17 produced, for instance, the exhibit that
18 he's attaching right now, the beginning
19 portion of many of the electronic mails
20 have a redacted portion, and he's going
21 to confirm on the record that those are
22 all e-mail messages from his client to
23 him, which would be attorney-client
24 communication; and, therefore, with that
25 agreement on the record that that's what

1 they are, we will waive the need for a 71
2 privilege log regarding these redactions.
3 MR. DORVEE:
4 Just a minor clarification: That is
5 e-mails from him to me or vice versa. It
6 may be a chain of e-mails.
7 MR. GALANTE:
8 Sure. Sure. That is fair.
9 MR. DORVEE:
10 But it's correspondence between --
11 MR. GALANTE:
12 It's correspondence between counsel.
13 I'm just trying to make it more efficient
14 so you won't have to do a privilege log.
15 MR. DORVEE:
16 Okay.
17 EXAMINATION BY MR. DORVEE:
18 Q. Take a look at this. Do you see that
19 post?
20 A. Yes, I see it.
21 Q. Okay. And that's on -- You posted this
22 on the Dukes of Dixieland Facebook wall, correct?
23 A. On my Dukes of Dixieland.
24 Q. No, on the Shoup's Dukes of Dixieland.
25 A. I can't say that I remember doing that,

1 no. I don't know why I would put something about 72
2 my father's dressed -- I know that I have that
3 statement -- Most of that statement is coming from
4 my Facebook page where I have a picture of my
5 father and my uncle dressed very nicely.
6 Q. So you just don't recall --
7 A. No. I don't know if somebody copied,
8 pasted it onto there or did something. There
9 would be no reason for me to put my father and a
10 picture saying how well they dressed, dressed to
11 impress, anywhere.
12 Q. I'm sorry?
13 A. That was -- came from my Facebook page
14 that somebody may have copied and pasted.
15 Q. Onto the Dukes page?
16 A. Yes, because I know there's no reason for
17 me to do that, because in other words, on my
18 Facebook page, there's a picture of my father and
19 my uncle in a nice set of -- in nice outfits.
20 Q. Okay. Now, this says "Deano Assunto -
21 Dukes of Dixieland."
22 A. Oh, I see that.
23 Q. Are you denying that you did that?
24 A. I don't recall doing that, I'm saying.
25 Q. Okay. Have you ever posted, to your

1 recollection, have you ever posted anything on the 73
2 Facebook page for the, we'll call them the Shoup
3 Dukes of Dixieland?
4 A. I don't recall doing it directly to the
5 site, because I don't think you can unless you
6 like them and you are friends with them, and I'm
7 no friends with them.
8 THE WITNESS:
9 I just didn't know if he had
10 numbered this one. Did you have numbers
11 on this one?
12 MR. GALANTE:
13 No.
14 THE WITNESS:
15 You had No. 6 here.
16 MR. DORVEE:
17 Yes, I did. I'm sorry.
18 MR. GALANTE:
19 He numbered the second page.
20 MR. DORVEE:
21 I numbered the second page, I'm
22 sorry.
23 A. Okay. No problem. I'm sorry.
24 EXAMINATION BY MR. DORVEE:
25 Q. Don't be sorry. I screwed it up. I'm

1 going to show you a document I've labeled as 74
2 Exhibit 8. Do you recall that?
3 A. Yes, I do.
4 Q. Okay. And take a look at the third page
5 of this exhibit, which is Shoup-239.
6 A. Uh-huh (affirmative reply).
7 Q. And there you posted a comment that
8 begins "Let There Be No Confusion"?
9 A. That's the standard one that's been
10 posted, correct.
11 Q. Okay. And at the time you posted this,
12 did you think that Mr. Shoup had deliberately
13 included the Assunto name in there, or did you
14 just think that there --
15 A. Again, when it comes to third-party
16 people, I have every right to let them know when I
17 see confusion. That is abiding by the settlement,
18 to make sure that nobody or myself implies any
19 connection whatsoever to the Shoup Dukes. I mean
20 I'll repeat that each time you ask me this
21 question, if you'd like, because it's the third or
22 fourth time you've asked the same question on a
23 third-party posting.
24 Q. Okay. And in there you refer to the
25 litigation, right?

1 A. Yes. It's the standard one that's been 75
2 done before, yes. It's the same one that's on my
3 website.
4 Q. All right. Can you tell me of any
5 instances -- And let me qualify this. Okay. Let
6 me start over. Are you aware of any instances
7 where, when Mr. Shoup was notified in writing of a
8 problem, he did not correct the problem? And just
9 to qualify that: I'm not saying that the problem
10 may have recurred, but fixed it and then it
11 happened again; I'm not asking about that. Do you
12 understand my question?
13 A. Yes, I do.
14 Q. Okay.
15 MR. GALANTE:
16 I'll object to the form of the
17 question.
18 EXAMINATION BY MR. DORVEE:
19 Q. Were there any instances when you
20 informed Mr. Shoup in writing of a violation of
21 the settlement agreement that he did not make the
22 appropriate corrections?
23 A. I'm sure there was more than one, but the
24 one that stands out in my mind, yes, that he has
25 done that.

1 Q. Okay. What is the one that stands out in 76
2 your mind?
3 A. I think there's two or maybe three online
4 booking agencies or promotion companies. I think
5 one of them is called Ted Kurland and the other
6 one is Grabow.biz. From the day one after the
7 settlement, he never corrected anything, but yet
8 they've updated their site to promote his band,
9 still using the Assunto Legacy, along with video
10 of my father's band performing on the Ed Sullivan
11 show, still to this day. But from that first day,
12 he never took care of that even though in writing
13 he said -- obviously, there was correspondence in
14 that behalf.
15 Q. Okay. Let me ask you a question. Let's
16 go off topic with this train of questioning for a
17 minute. How - and I'm not asking you for a number
18 - but monetarily how has Mr. Shoup's conduct since
19 the settlement agreement damaged you?
20 A. Well, number one, it takes a lot of time
21 out of my day. Being self-employed, I'm using my
22 own money for my own business. Because I'm not
23 attending my business the way I should be, number
24 one. Number two, I had to hire counsel again.
25 That's two ways right there. And since I don't

1 have an active band, that doesn't really matter.⁷⁷
2 Q. What do you mean?
3 A. Well, you asked me earlier do I have any
4 other source of income. No. My business is my
5 sole source. If I'm not attending my business
6 because I have to chase your client around and try
7 to make sure everything -- my legacy of my family
8 is not being misrepresented again, then that's
9 what's costing me.
10 Q. Okay. Let's take those, what I'll call
11 your personal time and so forth, let's set those
12 aside, okay? Has the Assunto estate been damaged
13 in terms of dollars? Like, have you lost sales,
14 whatever?
15 A. Well, I already told you earlier: Again,
16 we don't sell any records, and we don't have a
17 band. The legacy of our family is for the
18 historical purposes. That was the original case
19 -- That's why the original case was brought to
20 begin with, was the misrepresentation of the
21 heritage and legacy of our family. But, of
22 course, we found out later that your client was
23 profiting by such.
24 Q. How so?
25 A. You'd have to ask him that; otherwise, he

1 wouldn't be using our legacy still. It's just ⁷⁸
2 common sense.
3 Q. So you are assuming that he's profiting
4 by the use of --
5 A. I'm not assuming anything. Why would you
6 keep using something you said you wouldn't use if
7 it wasn't for profit? It's common sense.
8 Q. Okay, good point. Aside from that, do
9 you have any other --
10 A. I don't know how many times you can say
11 "aside from that," but those are my answers.
12 Q. Okay. Let's take a look at Exhibit No.
13 9. Do you see that?
14 A. Which part of that do you mean?
15 Q. Are you familiar with it?
16 A. Well, I saw it in some of the stuff that
17 I just saw the other day that y'all just sent, I
18 think, was supposed to be earlier, or sooner, but
19 we got it late, I think.
20 Q. Let's go to the second page. There's a
21 comment about the Dukes not being the Real Dukes.
22 who is "optiguy"?
23 A. I have no idea.
24 Q. So there's no affiliation with you?
25 A. I don't know. I mean he's not a friend

79
1 or an acquaintance, no.
2 Q. Okay. So you had nothing to do with
3 that?
4 A. No, by no means.
5 Q. Just to cover the bases, and if you have
6 answered this, I'm sorry: You are saying you have
7 no idea who "optiguy" is?
8 A. Not under the name "optiguy," no.
9 Q. Okay. Do you know a gentleman named Tom
10 Coleman (phonetic)?
11 A. He's been in contact with me.
12 Q. Okay. Who is he?
13 A. I have no idea. He's just a fan that
14 contacted me out of the clear blue.
15 Q. So he's not a family member?
16 A. Oh no. He's no friend, no acquaintance,
17 never met him, don't know what he looks like, no.
18 Q. Do you know where he lives?
19 A. Have no idea.
20 Q. And he's not affiliated with your cousin
21 either?
22 A. Not that I know of, no.
23 Q. Exhibit 10 is going to be a quick
24 question. You took a look at that "Dukes of
25 Dixieland - Get Hip to Oz" video, right?

80
1 A. Yes.
2 Q. And then you put a comment in, "Really...
3 WWOZ?" Do you see that?
4 A. Yes.
5 Q. What was that all about?
6 A. Oh, I have no idea.
7 Q. Why did you send that to --
8 A. I was probably being funny because I know
9 some of the DJs over there.
10 Q. Oh, okay. What sort of radio station is
11 WWOZ?
12 A. It's a local jazz station that does
13 traditional jazz and, oh, different music venues,
14 I should say. It's a very good station.
15 Q. Okay. Let me hand you -- This is Exhibit
16 11, and I think that may be one. No, I gave you
17 two copies.
18 A. Okay.
19 Q. Okay. Did you post that?
20 A. Yes.
21 Q. Okay. It's "Do You Know What It Means by
22 The Real Dukes of Dixieland," right?
23 A. Correct. It's just a video with a
24 slideshow, just to celebrate.
25 Q. Why didn't you call it "The Dukes of

1 Dixieland"? Didn't you tell me that's what the⁸¹
2 band's name was?
3 A. Because I describe them differently all
4 the time. You might find Original Dukes. You
5 might find Assuntos' Dukes. I celebrate them in
6 different, various formats and forms. That's why
7 I don't just want to be restricted to saying one
8 word.
9 Q. Good news. Your last answer just --
10 A. Pardon me?
11 Q. Good news. Your last answer just wiped
12 out questions to about six exhibits, so --
13 A. Oh, shucks.
14 Q. I will show you Exhibit No. 12, and this
15 is just real quick. Is that a posting that you
16 did?
17 A. Yes. It's on my Facebook page. Yes.
18 Actually, it should be my Facebook page. It could
19 be YouTube.
20 Q. This is on YouTube?
21 A. What happens is, I put it on YouTube.
22 Then I put -- change it over and put it on
23 Facebook to celebrate and show.
24 Q. Okay. I'll show you Exhibit 13. Do you
25 recognize that?

1 A. Yeah. It's just another little tune I⁸²
2 put on there of my family's band, right.
3 Q. I'm not --
4 A. Oh yeah.
5 Q. I just want to make sure that that's
6 something that you posted.
7 A. Oh yeah.
8 Q. It wasn't something that somebody else
9 did in your name there?
10 A. No.
11 Q. All right. Let's take a look now at
12 Exhibit No. 16.
13 A. 16? What happened to 14?
14 Q. Oh, I'm sorry.
15 A. You'll mess up my whole system over here.
16 Q. Sorry. I don't want to do that.
17 Let's do 14.
18 A. There you go.
19 Q. I'm showing you a document labeled as
20 Exhibit 14, which is an article from *Offbeat*
21 *Magazine*. Have you seen that before?
22 A. Oh, yes, I have.
23 Q. Okay. Let me show you another exhibit,
24 15.
25 MR. GALANTE:

1 Do me a favor. On 14, go through⁸³
2 and ensure that you've seen the entire
3 document.
4 THE WITNESS:
5 Yeah, I know.
6 MR. GALANTE:
7 In fairness, just to make it easy
8 and clear: You are showing him things
9 and asking him if he has seen it. Would
10 you point out whether or not you are
11 including the comments that are at the
12 end of the web prints, just for clarity
13 sake?
14 THE WITNESS:
15 Yeah. I know --
16 MR. GALANTE:
17 You are asking if he's seen the
18 article, but there's comments in this web
19 print that he may or may not have seen.
20 THE WITNESS:
21 Yes. And you really can't read it
22 because the copy machine needs help, but
23 I'm familiar with it.
24 MR. GALANTE:
25 I just want to make sure that we're

1 clear about the testimony on the record⁸⁴
2 as to what he has and hasn't seen.
3 EXAMINATION BY MR. DORVEE:
4 Q. You saw the *Offbeat* article?
5 A. Correct, I had, yes.
6 Q. How about the comments?
7 A. Yes, I did.
8 Q. Okay. And you read the article, right?
9 A. Yeah, I did.
10 Q. Okay. Who is Grayce?
11 A. That's my wife.
12 Q. And did she post a comment?
13 A. Yeah.
14 Q. Correct?
15 A. Yeah.
16 Q. And did she post that comment on your
17 behalf?
18 A. What do you mean by "on my behalf"?
19 Q. Did you ask her to do it?
20 A. No. You don't know my wife.
21 MR. GALANTE:
22 Off the record.
23 (There was an off-the-record discussion.)
24 EXAMINATION BY MR. DORVEE:
25 Q. Do you know Brett Milano?

1 A. Brett Milano? 85
2 Q. The person who wrote this article in
3 Exhibit 14.
4 A. Oh, Brett Milano? No, I have no idea who
5 he is.
6 Q. Did you tell Mr. Shoup about this
7 article?
8 A. What do you mean by tell him?
9 Q. Did you, like, send him a notice and tell
10 him this article had been written?
11 A. Well, he would already know it. He was
12 quoted in here.
13 Q. Well, he's quoted. Do you know if he
14 knew the contents of the article?
15 A. Well, I mean he did the interview, so how
16 would I know -- I mean he would know what the
17 article is about. I mean I would assume, just
18 assume, that if somebody does an interview, they'd
19 read the article.
20 Q. Is there anything in here that's
21 inaccurate? Do you recall?
22 A. I think I would let my lawyer answer
23 that. I mean, Jesus, I mean he --
24 THE WITNESS:
25 Should I get into detail? I mean I

1 think it's a little ambiguous if I start 86
2 nit-picking everything he said.
3 MR. GALANTE:
4 Yes. I mean are you asking him to
5 go through the entire article and --
6 A. That's a legal -- I mean that's for my
7 lawyer to bring up.
8 MR. DORVEE:
9 No, no.
10 MR. GALANTE:
11 If you want to ask him any specific
12 statements, whether or not they're
13 accurate, I think that's a productive way
14 to do it, but to ask him to go through
15 the entire article --
16 MR. DORVEE:
17 Here's my problem. I don't see
18 anything in here that is inaccurate.
19 THE WITNESS:
20 Oh really? Well, then --
21 MR. GALANTE:
22 Well, that's --
23 A. I think we can sit here for the next hour
24 and discuss that. I'm not going to do that. I
25 think it's up to my lawyer, with evidence and

1 things he's going to state later on, that's going 87
2 to answer your question. I can state this, that
3 the whole way through the whole article, he
4 contributes or attributes himself as being part of
5 and associated to the legacy of the Assunto
6 family, which, according to the settlement, he's
7 not supposed to do.
8 EXAMINATION BY MR. DORVEE:
9 Q. Okay.
10 A. So I'm not going to nit-pick each one
11 right now in a deposition. I think that's up to
12 my lawyer to deal with later.
13 Q. You just told me that he was creating an
14 affiliation, that Mr. Shoup somehow created an
15 affiliation, between the Assuntos and his band?
16 A. Historically, yes.
17 Q. Okay. Take a look at the last sentence
18 on the first page. The first page.
19 A. Of the article itself?
20 Q. Yes, the first page of the article. The
21 last sentence, "Because of a legal arrangement
22 between Shoup and the Assunto family, there is no
23 formal connection between the two incarnations,
24 hence the group's current celebration of its 40th
25 anniversary."

1 A. And what are you -- 88
2 Q. That's accurate?
3 A. You are asking me a question? In other
4 words --
5 Q. That specifically says there's no
6 affiliation, doesn't it?
7 MR. GALANTE:
8 Just answer the question he's
9 asking.
10 A. That's what he says here. Those are his
11 -- That's what he says, correct. That's his
12 statement.
13 EXAMINATION BY MR. DORVEE:
14 Q. Do you know if that's his statement, or
15 is that --
16 A. Well, let's put it this way. I didn't
17 write the article, didn't do the interview. It's
18 a -- I think that will be addressed later, though.
19 MR. GALANTE:
20 And I'm going to object to this line
21 of questioning to the extent it's seeking
22 to define the motivations of a third-
23 party author. I mean it's just rank
24 speculation with regards to the content
25 and motivation.

1 MR. DORVEE: 89
2 You're right.
3 EXAMINATION BY MR. DORVEE:
4 Q. And I'm sorry, I didn't -- To the extent
5 I was asking you to tell me what the author --
6 A. Yeah, like I said, but --
7 Q. That was an accurate statement, that
8 there's no affiliation between the two groups --
9 A. Oh, that's true, and that's --
10 Q. And that's in the article?
11 A. That's correct.
12 Q. Yet you are still saying that he claimed
13 an affiliation?
14 A. In quotes by your client, yes, and they
15 can be found in that article.
16 Q. Okay. Are you familiar with somebody who
17 posts under the name or the -- I guess, the name
18 casca-longinus?
19 MR. GALANTE:
20 Object to the form of the question.
21 A. I have no idea.
22 MR. GALANTE:
23 I can explain that to you, if you'd
24 like.
25 MR. DORVEE:

1 Go ahead. 90
2 MR. GALANTE:
3 The Internet is a wide and vast
4 place. Can you tell him where --
5 MR. DORVEE:
6 Sure. I was just trying to get away
7 from that, but I'll show him.
8 MR. GALANTE:
9 If you want me -- Just show him the
10 document, and are you familiar with
11 anybody that posts on this website by
12 that name?
13 MR. DORVEE:
14 I just was trying to avoid the --
15 MR. GALANTE:
16 It's so hard with the Internet
17 sites.
18 A. Oh, you went to 16. You should be on 15.
19 EXAMINATION BY MR. DORVEE:
20 Q. Dammit. Didn't I give you 15?
21 A. No. This is 14, and this is 13.
22 MR. GALANTE:
23 15.
24 A. Oh, wait. You slid 15 in on me, and we
25 never talked about 15. Damn, I'm sorry. I must

1 be getting hungry. So we never talked about 15⁹¹
2 yet.
3 MR. GANKENDORFF:
4 But that was the question about
5 Grayce, right?
6 THE WITNESS:
7 No. That was --
8 EXAMINATION BY MR. DORVEE:
9 Q. Yes. Grayce Assunto -- Exhibit 15,
10 Grayce Assunto posted a comment?
11 A. Yes. That's my wife, correct, because
12 it's also on No. 15 -- I mean 14. The comments
13 are on here. That's why I misunderstood.
14 Q. Okay. No problem. All right.
15 A. Now we can go to 16.
16 Q. There we go. Okay. This is a document
17 from the Internet, "Discogs Forum - The Dukes of
18 Dixieland." Discogs Forum, what is that? Do you
19 know?
20 A. I have no idea. That's new to me. I
21 didn't see this until the documents that you
22 provided. That's the first time I've ever saw it.
23 Q. Okay. So do you have any idea who
24 "casca-longinus" is?
25 A. No. That's what I'm saying; I have no

1 idea. 92
2 Q. Okay.
3 MR. GALANTE:
4 Can I just confirm for the record,
5 because at the bottom of the page the URL
6 has been cut off on my copy, that this
7 comes from a URL that's known as
8 www.discogs.com/forum.com -- excuse me,
9 /thread, and then there's a random series
10 of numbers? Is that correct?
11 MR. DORVEE:
12 Yes.
13 MR. GALANTE:
14 Just for clarity sake.
15 EXAMINATION BY MR. DORVEE:
16 Q. Okay. Let's take a look now at Exhibit
17 17. Okay. This is a series of e-mails. First of
18 all, what is Ruth Eckerd Hall?
19 A. From what I understand, it's a venue your
20 client performs at.
21 Q. Where? Do you know?
22 A. I really don't -- Oh. Well, it says in
23 here Florida.
24 Q. Okay.
25 A. So I'm just going to assume it's Florida.

1 I mean I may be wrong on that, but your client ⁹³
2 would know that better than me.
3 Q. Okay. Let's take a look, if we can, at
4 the last page of this. Do you see that?
5 A. Yes.
6 Q. And you sent this "Let There Be No
7 Confusion" statement --
8 A. Correct.
9 Q. -- to Ruth Eckerd Hall, correct?
10 A. Correct.
11 Q. Did you see something that referenced the
12 Assuntos?
13 A. I must have. That's the only reason I
14 would have sent it.
15 Q. Do you recall what it was?
16 A. No, I can't recall what it was, but I
17 never send it without having a reason to, which
18 would be a, like I said before, a third-party
19 person using the legacy or connecting the two, and
20 I'm making sure, according to the settlement, 4.1,
21 not to have any -- imply any connection to Shoup's
22 Dukes; and vice versa, he shouldn't imply.
23 Q. Okay. So you don't recall if there was a
24 reference to the Assuntos' Dukes, but there must
25 have been?

1 A. Oh, it must have been, because I don't do ⁹⁴
2 it just randomly. There's just no reason. I
3 don't go out to every venue around America and
4 send that thing out. That would be redundantly
5 stupid.
6 Q. Okay. Now, just, it was a venue, and you
7 don't have a band, right?
8 A. I've already answered this.
9 Q. Right, but you don't have a band?
10 A. Correct. I've never had a band.
11 Q. So how could there be confusion if you're
12 not booking a band? I mean how would Ruth Eckerd
13 Hall be confused?
14 A. If they reference my Assunto Legacy -- If
15 they reference anything before 1974, I believe
16 '74, if they use the word Assunto or if they say
17 anything from the 1940s as has been done in other
18 stuff, they're referencing the Assunto Legacy.
19 Q. And does that create confusion, or is
20 that just referencing the legacy?
21 A. Creates confusion.
22 Q. Okay. It creates confusion -- But it
23 doesn't create confusion regarding a band, because
24 you don't have one, right?
25 A. Correct. It creates confusion of the

1 legacy of my family, that people think it's still ⁹⁵
2 going on, and they're not. They died in 1974.
3 Q. Are you telling me you think people
4 actually think that the band is still alive?
5 A. Well, they think my father is still
6 alive, because if they knew the true history, they
7 would know he died in 1974.
8 Q. Who is Meridith Hankenson? Do you know?
9 A. You'd have to ask your client that. I
10 think that's one of his people.
11 Q. Okay. So you don't know who that is?
12 A. No. I've never met her; don't know her.
13 Q. Are you familiar with Acts, Inc.?
14 A. Only from your client's website.
15 Q. What is Acts, Inc., according to your
16 understanding, based upon just what you do know?
17 A. Oh, it's a booking agency that your
18 client uses.
19 Q. Okay. How about Marilyn Rosen, do you
20 know who that is?
21 A. I have no idea.
22 Q. Okay. So you are not familiar with
23 Marilyn Rosen Presents?
24 A. Not whatsoever.
25 Q. So you've never -- Have you ever spoken

1 with Ms. Hankenson? ⁹⁶
2 A. No.
3 Q. Have you ever spoken with -- so I guess
4 if you don't know who Ms. Rosen is, you have never
5 spoken with her?
6 A. No, neither one.
7 Q. Do you know who Paul Bongiorno is?
8 A. Paul Bongiorno?
9 Q. B-O-N-G --
10 A. In relationship to who? I mean that's
11 just a name to me. I don't --
12 Q. Okay. I believe he runs a company known
13 as or called StarBox Booking.
14 A. I would have no idea. I don't book a
15 band, so if he's a booking agency, I have no
16 contact or knowledge of the person.
17 Q. Okay. So to the best of your knowledge,
18 you've never had any contact with Mr. Bongiorno?
19 A. Oh, I'd guaranty you I never have.
20 Q. Okay. You've never spoken with Meredith
21 Hankenson. Let me ask you about Craig Hankenson.
22 Do you know him?
23 A. No, not at all.
24 Q. Have you ever had any contact with him?
25 A. Never have.

1 Q. Siegel Artist Management, are you 97
2 familiar with that company?
3 A. I've heard of them.
4 Q. Do you know if they worked with the Dukes
5 of Dixieland, Shoup's Dukes?
6 A. Well, you'd have to ask your client that.
7 I mean I can't say that I --
8 Q. I'm just asking you if you know.
9 A. In the past, I think there was the
10 connection. I'm not sure if they still do. I
11 don't know that --
12 Q. Fair enough. Have you ever spoken with
13 anyone from Siegel Artist Management?
14 A. Never spoke to any management company
15 whatsoever directly or indirectly.
16 Q. Let me ask you, and I think you have just
17 kind of answered that question, but I haven't said
18 "Have you ever spoken to," though, with each of
19 these booking agencies. Would your answer be the
20 same if I said have you had any contact with them?
21 A. Well, if you mean contact by my "Don't Be
22 Confused" statement, if you want to say that is
23 contact, I would say maybe I did send them that,
24 because after the settlement, like I said, your
25 client never went to them and made them take their

1 reference to my family off their site. 98
2 Q. So you may have sent that --
3 A. I may have said only the "Don't Be
4 Confused," but never contacted them or anything
5 like that.
6 Q. Never had any interaction with them?
7 A. Never whatsoever. None whatsoever, and
8 with any of them.
9 Q. Okay. How about Grabow?
10 A. I said "any of them."
11 Q. Any of them, okay. So Grabow is another
12 booking agency, and you've never had any contact
13 with them except perhaps to send the --
14 A. Correct. And, obviously, if I sent it,
15 like I said before, if I sent the "Don't Be
16 Confused," it's because they made reference to my
17 family and the legacy of the Assunto Dukes.
18 Q. Do you recall watching the Dukes of
19 Dixieland set up for a concert on or about April
20 11th of this year where you were taking pictures?
21 A. Oh, that would be the French Quarter
22 Fest.
23 Q. Yes.
24 A. Yes. Well, I was there -- I wasn't there
25 for the Dukes. I was there all day long. I got

1 there early to see, I think it was Tim Laughlin⁹⁹
2 was playing with Connie Jones and the All Stars.
3 Q. You went by the Dukes stage and took
4 pictures, correct?
5 A. I was there taking pictures all day out
6 at the Quarter. I take pictures all the time.
7 Q. Do you remember what you were wearing?
8 A. I was wearing a shirt and a pair of pants
9 and shoes.
10 Q. Okay. It was a T-shirt that --
11 A. It was a T-shirt celebrating my family's
12 legacy, correct.
13 Q. What did it say?
14 A. It specifically says "The Assuntos' Real
15 Dukes 1947 to 1974," and it's got a little
16 silhouette of my father and my uncle and my
17 grandfather. A very high quality shirt too.
18 Q. Was there -- Let me ask you: You said
19 you were taking pictures all during the day.
20 A. Yeah.
21 Q. Why did you take pictures of the Dukes
22 stage?
23 A. Because I have a friend that lives in
24 Salina, Kansas, named Gene Hayden, who is a
25 photographer. He's an older fellow, and he was

1 forced to move out of state because of health 100
2 reasons, to be with his children. And he's a
3 photographer, a jazz photographer. So he asked me
4 to go and take as many pictures of all the bands
5 so that I could send it to him because he likes to
6 frame them and put them up. He's got hundreds and
7 hundreds of pictures. So I was doing my friend,
8 Gene, a favor.
9 Q. And did you send him those photos?
10 A. No. As a matter of fact, I haven't
11 compiled them all, because I think I have got,
12 like, two years' worth to send him, but he's been
13 in a rehabilitation for his diabetes and hasn't
14 been home for the last six months.
15 Q. Did you speak to anyone while you were
16 there, at the Dukes stage? I mean anybody
17 affiliated with the Dukes.
18 A. That are related to the Dukes? Well, I
19 responded to your client when he came and charged
20 at me and yelled at me and told me to leave.
21 Q. Okay. What did he say?
22 A. Let me see. I want to make sure I get it
23 right. I was standing with my friend minding my
24 business when your client approached --
25 aggressively approached me, yelled my name, got in

1 my face and told me, "Deano, you need to leave.¹⁰¹
2 don't want you here. You don't belong here."
3 Q. Okay.
4 A. And now here we are at a free festival
5 minding my own business. And when I responded to
6 him, "Are you talking to me? Did you say my
7 name," he repeated himself with more aggression,
8 telling me to leave Jackson Square, where I had
9 every right to be, and he tried to publicly
10 intimidate me and bully me.
11 Q. And what happened?
12 A. All -- My response was like anybody's
13 response. I defended myself verbally.
14 Q. Okay. What did you say?
15 A. Well, let me see. I looked at him, and I
16 stepped back for a second. And I looked at him,
17 and I said, "I'm an Assunto." I said, "I'm an
18 Assunto, and I belong here, you fucking
19 carpetbagger." But I didn't yell it; I just made
20 sure that he heard me. Excuse my language.
21 Q. What did you mean when you said "f-ing
22 carpetbagger"?
23 A. Well, I probably shouldn't use the word
24 "F." That was kind of rude; you know what I'm
25 saying? I really do apologize for that, but in

1 the heat of the moment, being aggressively¹⁰²
2 attacked like that in public, nonprovoked, as I
3 was --
4 Q. Let me rephrase the question. You are
5 right. What did you mean by "carpetbagger"?
6 A. Well, if you look up the definition of a
7 carpetbagger, it states it.
8 Q. I mean what did you mean when you said
9 it?
10 A. Just what the definition says.
11 Q. Flees from the North and came south?
12 A. That came south and took advantage of the
13 southerners. My father was born here in the
14 south, and my family, and I was too.
15 Q. All right. This is going a little
16 quicker than I thought. Okay. We've already
17 discussed Jazzman Records.
18 A. Yes.
19 Q. And you're not familiar with them
20 whatsoever?
21 A. None whatsoever. The only one, like I
22 said before, is SRI Records, with Shelly
23 Liebowitz. That's the only one that we had a deal
24 with on releasing any of the original family
25 Assunto Dukes of Dixieland music.

1 Q. Okay. And my recollection is that your¹⁰³
2 testimony was - and if I'm wrong, correct me -
3 that the agreement with Mr. Liebowitz is no longer
4 in force and he didn't sell anything?
5 A. Correct. According to him, he didn't
6 sell anything. Now, you know, I have my own
7 feeling about that.
8 Q. What is your feeling?
9 A. My feeling is he's a liar.
10 Q. Okay. Very quickly.
11 MR. GALANTE:
12 Let's take a quick break.
13 MR. DORVEE:
14 Let me go ahead and give you that
15 and give him a copy so you can look at
16 it.
17 (Brief Recess)
18 MR. DORVEE:
19 Just to bring you up to speed:
20 During the break, I labeled another
21 exhibit as 19 and gave that to him as
22 well. I'm going to ask him about both of
23 them together.
24 MR. GALANTE:
25 Okay. This is 19? My second page

1 is blank.¹⁰⁴
2 THE WITNESS:
3 Yes. So is -- 18 is blank also.
4 MR. DORVEE:
5 Yes.
6 THE WITNESS:
7 It's just the second feed of the
8 document.
9 EXAMINATION BY MR. DORVEE:
10 Q. It's just page 2 of 2. Okay. Take a
11 look at Exhibits 18 and 19.
12 A. I know which ones they are, okay.
13 Q. These relate to *Do You Know What It Means*
14 *to Miss New Orleans*, which was released in 2014,
15 and *The Fabulous Sound of Dukes of Dixieland:*
16 *Four Original Stereo Albums*. Do you see that?
17 A. Yes, I see it.
18 Q. And these are supposedly marketed by
19 Jazzman Records?
20 A. Correct.
21 Q. And just so we're clear: These are
22 recordings of the Assunto Dukes music that had
23 been -- that are being sold without authorization?
24 A. Let's put it this way. The covers look
25 like that. I don't know what's actually on these

1 CDs, because I don't have copies of these. Do you
2 understand what I'm trying to say?
3 Q. Yes.
4 A. Because in the past somebody we know has
5 put other pictures on my dad's music, and vice
6 versa. So for me to say what's on these CDs
7 audiowise is my father's music, I can't vouch for
8 that, but the pictures are from the original
9 albums from Audio Fidelity.
10 Q. Okay. Well, let me ask you a question.
11 *Do You Know What It Means to Miss New Orleans*, was
12 that an album your father --
13 A. No. No. That's actually a song. So
14 whosoever doing this is just taking the title of a
15 song and putting it as the title of the album.
16 And again, I have no affiliation and don't know
17 who they are.
18 Q. So you have no affiliation with Jazzman?
19 A. None whatsoever. We'll go back to SRI
20 Records, Shelly Liebowitz, and that was it; and
21 our contract is over.
22 Q. Okay. Just to close the loop: --
23 A. That's not a problem.
24 Q. -- so you have no affiliation with
25 Jazzman?

1 A. None whatsoever. 106
2 Q. Do you know, did Audio Fidelity have the
3 right to those songs?
4 A. No. As far as I know -- Actually, by
5 now, I think the Assunto family has the rights to
6 rerelease those musics because of the contracts
7 that we have, that I have. But that doesn't
8 concern John Shoup. Those are pre-'74
9 recordings --
10 Q. I don't want to get into --
11 A. You know, because, I mean -- Let me ask
12 you a question, if it's okay.
13 MR. GALANTE:
14 No, you're not going to ask him a
15 question. Just answer the questions.
16 THE WITNESS:
17 Sorry.
18 MR. GALANTE:
19 No problem.
20 EXAMINATION BY MR. DORVEE:
21 Q. I don't want to get into a lengthy
22 discussion of confidential business dealings.
23 That's not my intent. Plus, we don't have the
24 time. So it's your understanding that with regard
25 to the Assunto Dukes recordings and the copyrights

1 and all the rights on those recordings, that the 107
2 estate, the family, if you will, has rights in all
3 of those; is that correct?
4 A. I would assume so, yes.
5 Q. And that's based upon what?
6 A. Well, that's going to be -- It would be
7 kind of detailed, but that's -- that's irrelevant
8 to what we're talking about, because if I'm not
9 mistaken, the settlement flat out says that John
10 Shoup would quitclaim any pre-'74 Dukes recordings
11 that he thinks he had any rights to, to the
12 Assunto family anyway.
13 Q. No. I'm not asking --
14 A. So I don't really think --
15 Q. You had to have some sort of contractual
16 relationship with Audio Fidelity, so you got the
17 rights back?
18 A. I'm in touch with Sid Frey's daughter,
19 Andrea, and she and I spoke.
20 Q. And who is Sid Frey?
21 A. Sid Frey was the owner of Audio Fidelity,
22 and then he sold it over to Herman Gimble.
23 Q. Okay. Okay. So it's your understanding
24 you own all the rights, and you never authorized
25 Jazzman Records to do anything?

1 A. Correct. 108
2 Q. Okay. Have you taken any action against
3 Jazzman?
4 A. No.
5 Q. Why not?
6 A. I'm just now finding out. This is 2012,
7 and in 2014 it's talking about the songs came --
8 come out. There have been people bootlegging my
9 family's music for years. I mean your client did
10 it at one time.
11 Q. Okay. Let me show you --
12 A. No. 20?
13 Q. -- No. 20. Thank you, Mr. Assunto.
14 A. You're welcome.
15 Q. This is www.allmusic.com. It's the album
16 *Dixie on Parade*, with a release date of March 1st
17 of 2000. Is that a recording done by your family?
18 A. Well, it's the same answer I gave you
19 before. It's a picture that's been -- of my
20 family's band that looks like it's superimposed on
21 a street corner of what would be Bourbon -- the
22 French Quarter here, but if it's anything, it's a
23 rerelease of their original music, if it's the
24 same music that the cover looks like, in other
25 words.

1 Q. Okay. And was *Dixie on Parade* an 109
2 album --
3 A. No.
4 Q. -- cut by your family?
5 A. No, nope, nope, nope, not at all, but I
6 can -- you know, to promote -- to look at the
7 picture, I'm going to assume, since it's men and
8 they have striped suits, that's from the Audio
9 Fidelity recording sessions. They had 12 albums
10 on those releases. So where this collaboration of
11 songs came from would probably be from the Audio
12 Fidelity sessions.
13 Q. Okay. So you have no idea who released
14 this?
15 A. Not at all.
16 Q. I'll show you Exhibit 21.
17 A. Oh, that's the last one, because I didn't
18 know if you saw this. 21.
19 Q. Pardon me?
20 A. I was laughing because I thought you were
21 going to look over here and see if it was 20,
22 which number to put on it, and I was going to put
23 my finger over it.
24 Q. Don't do that. We'll be here all day.
25 All right. This is an iTunes preview

1 that talks about the Dukes of Dixieland? 110
2 A. Correct.
3 Q. Have you ever seen that before?
4 A. No, I can't say I have, but if you look
5 at all the pictures of the albums, they've got --
6 you have got Shoup's Dukes albums mixed in with
7 the Assunto albums, it looks like.
8 Q. Right.
9 A. And some of them are the original album
10 covers of the -- of our family recording. I can't
11 speak for Shoup's, but I know what his look like.
12 Q. Right. Have you ever seen this before?
13 A. No. I said no, I've never seen this
14 before. I may have -- Let's put it this way.
15 Going through the web - and you asked me do I ever
16 search - I may have come across and did "Look at
17 this crap." But I mean the web is so full of
18 stuff, it's all over the place.
19 Q. And you didn't do anything to -- You
20 didn't send anything to iTunes about this, did
21 you?
22 A. No. I wouldn't even know who iTunes is,
23 but, I mean, you know, like I said --
24 Q. I think it's Apple iTunes, isn't it?
25 A. I have no idea. I don't do iTunes. I

1 don't have iPads. I don't do any of that stuff, 111
2 sorry.
3 Q. You and my brother would get along.
4 A. I still have a flip phone, okay, so --
5 MR. DORVEE:
6 Off the record.
7 (There was an off-the-record discussion.)
8 EXAMINATION BY MR. DORVEE:
9 Q. Do you know, has iTunes sold any of your
10 family's music?
11 A. I really don't know. Uhm, to be honest
12 with you, I'm dumb on that question, because, you
13 know, I don't have no idea. I have no contact
14 with anybody from Sony, iTunes, or anybody like
15 that, or Apple or whoever it may be. I have no
16 idea.
17 MR. GALANTE:
18 I'm going to object to the form of
19 that question.
20 EXAMINATION BY MR. DORVEE:
21 Q. Just so we're clear: You don't have any
22 idea whether you are owed any money by iTunes?
23 A. Well, if iTunes -- I don't know how it
24 works. In other words, does iTunes call me up and
25 say, "We sold two of your songs, and here's your

1 money"? I don't understand how that process 112
2 works.
3 Q. Now, you have indicated that you haven't
4 sold any albums --
5 A. Albums or CDs, no.
6 Q. -- since the settlement; is that right?
7 A. I've never --
8 MR. GALANTE:
9 Object to the form of the question.
10 A. Since the time of my father's death, I
11 personally, and this is Frank's family, Assunto
12 family, has not directly sold a thing. If there
13 would have been anything that would have been sold
14 via for the Assunto family, it would have been
15 through SRI Records only. Everything else is no,
16 none whatsoever. You can't go to a store and buy
17 a CD where the money goes directly to us as a
18 royalty.
19 EXAMINATION BY MR. DORVEE:
20 Q. It goes through SRI Records?
21 A. Well, I wouldn't know if it -- If there
22 was an SRI release and they bought it, it would go
23 to SRI Records.
24 Q. Now you have managed to confuse me, which
25 is not a hard thing to do.

1 MR. GALANTE: 113
2 In fairness, Steve, I think you have
3 asked it so many times, he keeps trying
4 to explain his answer.
5 A. And I keep trying to articulate it better
6 for you so that way you will --
7 EXAMINATION BY MR. DORVEE:
8 Q. And I'm not trying to restate it.
9 A. I know that.
10 Q. I obviously don't understand what you are
11 telling me.
12 MR. GALANTE:
13 Is there any chance you would let me
14 ask him three or four questions?
15 MR. DORVEE:
16 No, let's not do that. You can do
17 it afterward.
18 EXAMINATION BY MR. DORVEE:
19 Q. How do the Assuntos get money off of the
20 -- How does the estate get it? They receive
21 royalties, right?
22 A. The only royalties that we get --
23 MR. GALANTE:
24 Object to the form of the question.
25 A. -- through anything is through a place

1 called the SoundExchange, and from what I 114
2 understand, they collect it from various Sirius
3 radios and wireless communications. Who they get
4 it from, how it's done is well beyond my pay
5 grade.
6 EXAMINATION BY MR. DORVEE:
7 Q. Okay. So according to your
8 understanding, the only source of revenue would be
9 payments from SoundExchange?
10 A. Correct.
11 Q. And not from the sales of any albums?
12 A. Well, they don't sell albums anymore.
13 Q. CDs. You know what I'm --
14 A. Yes. I have not received any - let me
15 see here - any royalties for any sales of any
16 CDs --
17 Q. Okay. Now --
18 A. -- since the case has ended.
19 Q. Right. Now, with regard to -- Now, I
20 know there's a dispute about who's getting
21 royalties in this case; you know, is Shoup getting
22 royalties for you or are you getting royalties for
23 him.
24 A. Correct. Correct.
25 Q. Now, you have gotten royalties that were

1 intended for the Shoup's, correct? 115
2 A. I found that out as of late, yes.
3 Q. Okay. Do you have any idea how much --
4 what that number is?
5 A. No, because the way the system works is
6 it's so hard for them to determine whose is what
7 and what's what. From my understanding, it was
8 not that much, but what I consider not that much
9 is maybe not what somebody else would consider not
10 that much, but there is a policy at the
11 SoundExchange to correct that issue.
12 Q. Sure.
13 MR. GALANTE:
14 I think, in fairness, we turned over
15 what we had from the SoundExchange, and
16 it was in the \$300 range.
17 MR. DORVEE:
18 Okay.
19 THE WITNESS:
20 From the time of the settlement.
21 MR. GALANTE:
22 Yes. And since then I don't think
23 that they have disbursed any royalties --
24 A. No. I called them up since there was a
25 dispute, and I spoke with, her name is Alli

1 Lieberman, I believe her name is, and I said since 116
2 there's a dispute - obviously there's a contention
3 of who gets what, what's what, whose albums are
4 what, and whose is this - she said -- I told her
5 to freeze it all, don't do anything, nobody gets
6 nothing.
7 MR. GALANTE:
8 Yes. We, in fact, tried to return
9 the money. I tried to return the money
10 on his behalf, and they wouldn't take it.
11 A. Right. Well, they have a policy that
12 they can take the future royalties of sales or
13 distributions that would be paid back to the
14 opposite party, such as your client, in order to
15 rectify the situation. And it all came about
16 because originally he never separated the two
17 entities; and that was done back in the 1980s and
18 '90s and stuff like that, which I had no control
19 over.
20 EXAMINATION BY MR. DORVEE:
21 Q. Right. Okay. And do you have any idea,
22 on the flip side of that, how much you are owed --
23 if Mr. Shoup's collected royalties that belong to
24 you; and if so, how much?
25 A. You mean since the settlement?

1 Q. Yes. 117
2 A. I wouldn't know if he's collected -- I
3 don't think he's collected anything. I don't
4 know. I wouldn't know. You would have to ask
5 your client that. But I do know the SoundExchange
6 has files on all the stuff that they have sent to
7 the estate, and it doesn't come to me -- it won't
8 come to me directly, but it goes to the estate of
9 Frank Assunto.
10 MR. DORVEE:
11 Would you read that answer back?
12 (Court reporter reads back answer.)
13 (Lunch Break)
14 EXAMINATION BY MR. DORVEE:
15 Q. Exhibit 22.
16 A. 22.
17 Q. Have you seen that before?
18 A. Let's look --
19 Q. Read through it.
20 A. Yes, read through it. I know I've seen
21 it.
22 Okay, I am up to date on it.
23 Q. Okay. Have you seen this before?
24 A. Yes.
25 Q. Your attorney has provided you with a

1 copy of this? 118
2 A. Yes.
3 Q. Okay. And there are various numbered
4 paragraphs about things.
5 A. Correct.
6 Q. Just, you can read them into the record.
7 Let's just put the paragraph -- the first one:
8 Did you make any change as a result of that
9 request?
10 A. On the website?
11 Q. Or anywhere.
12 A. Yes, I -- Yes, I took care of that.
13 Q. What did you do?
14 A. I took off the TM, the trademark, because
15 at the time the website was up and running, we had
16 a trademark, and so when you asked me to take it
17 off, I -- I didn't do it; Mike Marois took it off.
18 Q. Okay. No. 2, did you do anything with
19 regard to paragraph 2?
20 A. Probably not, because we can describe our
21 band as the Real Dukes of Dixieland.
22 Q. Okay. Paragraph 3, did you make any
23 changes?
24 A. None whatsoever. Didn't need to.
25 Q. Why?

1 A. Because we don't feel we have to. 119
2 Q. Okay. It mentions, "In addition" -- This
3 is paragraph 4. Let me not bother to read it.
4 Just take a look at paragraph 4. Did you make any
5 changes as a result of that request?
6 A. Yes, we did. And I can't tell you
7 exactly what they were, but I can tell you that
8 they were changed because Rick Stanley and Bill
9 Ross and Robert LeBlanc, the lawyer at the time
10 that was dealing with me, made sure everything was
11 done accordingly on all issues here. In other
12 words, we met them all to the satisfaction that we
13 felt -- to where we are today on that same
14 website.
15 Q. Okay. Paragraph 5, did you make any
16 changes as a result of that request?
17 A. Yes, it was taken care of.
18 Q. Okay. How about no. 6, did you make any
19 changes?
20 A. Yes, we took that off. We took care of
21 6.
22 Q. What does it say?
23 A. It says, "The reference to 'unscrupulous
24 actions' is particularly galling." so we took the
25 words "unscrupulous actions" off, but the "Let

1 There Be No Confusion" stays, because again -- 120
2 excuse me, because again, it does go back to not
3 implying any connection to the Shoup's Dukes.
4 Q. Okay. No. 7, did you make any changes in
5 response to that request?
6 A. The message board, we didn't make any
7 changes to it, except we eliminated it totally
8 because there were inappropriate people putting
9 things on there, and we didn't think it was right
10 to have it on there. And we didn't want to make
11 it a rebuttal forum, so we eliminated the message
12 board completely. So yes.
13 Q. When you say people were putting things
14 on it that weren't appropriate, what do you mean?
15 A. There were just a couple of people that
16 -- with alias names were posting certain things,
17 and we weren't going to go into a "he said," "she
18 said" thing, so we eliminated it.
19 Q. What --
20 A. Well, it's been so long ago -- Well, it's
21 been so long ago, I don't know specifically what
22 it was. I just remember telling Mike, "Just get
23 rid of the damn thing, so that way there will be
24 no, you know, crossovers."
25 Q. Okay. No. 8, "Mr. Assunto has posted the

1 no 'Let There Be No Confusion' statement on social¹²¹
2 media at least twice. This needs to stop
3 immediately," did you do anything about that, no.
4 8?
5 A. Well, I may have at the time, yeah.
6 Probably at this time I may have done that; I mean
7 not posted it anymore until it started coming up
8 later in time, as we've discussed earlier in this
9 deposition, on third-party people.
10 Q. Okay. No. 9, did you make any changes
11 with regard to that request?
12 A. Oh, yeah, I'm pretty sure, because I know
13 we took -- As I said before, I took care of
14 everything that we set up -- thought was
15 appropriate through Robert LeBlanc and Rick
16 Stanley at Bill Ross' firm.
17 Q. Okay. Last but not least, is that
18 correct, that the Satchmo CD that you were selling
19 was using Shoup's artwork?
20 A. That whole statement is erroneous. Like
21 I said before, we have never sold any CDs. The
22 only CDs that were sold with the Satchmo CD was
23 done by your client, where he put his damn picture
24 on my father's music and sold that, and those were
25 outtake unreleased recordings. We never sold a

1 single Satchmo recording whatsoever. ¹²²
2 Q. So just so I'm clear: At the time of
3 this - let's just restrict it to the time of
4 this -
5 A. This moment, correct.
6 Q. - you were not selling the Satchmo CD?
7 A. Not whatsoever, no.
8 Q. So anybody that was selling the Satchmo
9 CD was without your authorization?
10 A. Correct. Correct. Now, I don't know if
11 your client went back to selling them just trying
12 to make it sound like I'm doing it, but, no, we
13 never sold any CD with Satchmo, or any CDs
14 whatsoever.
15 Q. Okay. All right. This is an e-mail --
16 I'm going to be totally upfront about this. This
17 is an e-mail we found yesterday. Now, you should
18 have it, because it would be in your file, but I'm
19 not going -- Except for the "Lauren Gregory" at
20 the top, this is something new.
21 MR. GALANTE:
22 Yes. Let's go off the record here
23 for a second.
24 (There was an off-the-record discussion.)
25 EXAMINATION BY MR. DORVEE:

1 Q. I'm going to show you -- ¹²³
2 A. Is this what you just handed him?
3 Q. I believe so, yes. Were you ever
4 provided a copy of this e-mail?
5 A. No. I've -- This is new to me. As far
6 as I'm looking at it, this page, the front page,
7 is not -- does not ring a bell.
8 Q. Okay. Take a look, if you would, at the
9 message board.
10 A. Oh. Now, I'm familiar with that, yes.
11 Q. Gerald French's Facebook page.
12 A. Yes, I'm familiar with that.
13 Q. Okay. Who is Gerald French?
14 A. He is the nephew of Bob French. Bob
15 French and the French family started the Original
16 Jazz -- Original Tuxedo Jazz Band here in New
17 Orleans back in the, shoot, my -- I would almost
18 be a liar if I could tell you when. It had to be
19 maybe the '30s or the '40s at least. So they're
20 the oldest continuing Dixieland jazz band playing
21 in the city.
22 Q. I'm sorry?
23 A. Original Dixieland jazz band that's
24 continuous --
25 Q. What's the name of that?

1 A. The Original -- ¹²⁴
2 Q. Oh, it's called the Original --
3 A. Yeah, the Original Tuxedo Jazz Band. And
4 Gerald French, the nephew of Bob -- Bob used to
5 run it. Bob was the drummer. Bob died about two
6 years ago. Gerald is a drummer also, so Gerald
7 kept the legacy of his family going forward with
8 the music and the name of the band that their
9 family created.
10 Q. Does he play music himself?
11 A. Yes. I just said he plays drums.
12 Q. So he plays drums in a band, then, and
13 continues playing his family's music?
14 A. His family's music and his family's
15 namesake that they created.
16 Q. I got it, okay. And when he's referring
17 to the, "I am at lost for words when the oldest
18 active jazz band in the world is not playing jazz
19 fest," is he referring to the --
20 A. To his own band. As the oldest band, he
21 was -- This whole thread was about him being upset
22 that they were not invited to play the Jazz Fest
23 that year as the continuously oldest jazz band
24 playing -- performing.
25 Q. Flip over, if you would, to this post.

1 Did you make that post, "That ain't right...but¹²⁵
2 they'll let the FAKE/Fraudulent Dukes of Dixieland
3 play"?
4 A. Oh yes, I did that, but I forgot -- But I
5 really should have, you know, said a little bit
6 more about it, but, yes, I made that post.
7 Q. Okay. And you made that post after the
8 date of the settlement agreement, right?
9 A. Yeah, just, if you tell me that. Let's
10 see, what's the date of this post? Where do you
11 find the date of the post?
12 Q. I'm not sure I do. This is something I
13 sent --
14 A. I know, but you are telling me the day
15 after the settlement, I posted something.
16 Q. Maybe we can put this in perspective. Do
17 you remember when this controversy arose with, did
18 you say the Black Tux?
19 A. No, the Original Tuxedo Jazz Band.
20 Q. Did that controversy occur after the
21 settlement?
22 A. You see, you -- Depends on what year he's
23 describing this. Do you see what I'm saying? In
24 other words, it could have been the year before.
25 The Jazz Fest is usually, if I'm not mistaken, in

1 May. So it would have -- this would have been¹²⁶
2 posted in March or April because I think that's
3 when the lineup comes out. I'm not really sure
4 when the lineup comes out for the Jazz Fest.
5 Q. Actually, let me help you out. Sorry to
6 interrupt you.
7 A. That's all right.
8 Q. Flip over to the last page of this
9 exhibit.
10 A. Okay.
11 Q. You were asked to make an apology?
12 A. Yeah. I was told that I shouldn't say
13 fake or fraudulent. So that may have been after
14 the settlement.
15 Q. Okay. And you were told --
16 A. Yes. I was told by Bill Ross or Robert,
17 or whatever, that I should make an apology on that
18 post, and which I did. I made an appropriate
19 apology, because I must have misspoke.
20 Q. So that's what you consider to be an
21 apology?
22 A. Oh, yeah. Actually, I say "I'm sorry"
23 twice, and I put in parentheses twice "Sorry."
24 Q. Okay.
25 A. It does prove one thing.

1 Q. You mean in quotes? ¹²⁷
2 A. In quotes. It does prove one thing: I
3 am human, and because he -- there's a reason. Let
4 me say one thing about that. Shoup's band says
5 that they're the oldest continuous playing jazz
6 band in the city. I didn't put that in here,
7 which I should have done. Then maybe you would
8 understand why I was kind of upset that really the
9 oldest jazz band was not invited, but Shoup's band
10 goes and tells everybody they're the oldest
11 playing continuously jazz band in this city. And
12 he can only do that if he adds my legacy, which
13 would then be a breach; and he still does that to
14 this day.
15 Q. So the Black Tux --
16 A. Not. It's the Original Tuxedo.
17 Q. Sorry.
18 A. That's okay.
19 Q. The Original Tuxedo, they have been
20 around 102 years?
21 A. Well, I can't verify that. I mean I
22 don't know the family that well.
23 Q. I mean let me ask you this. Were they in
24 operation the entire time, or did they start up
25 again?

1 A. You would have to ask the French family ¹²⁸
2 that.
3 Q. So it could be that --
4 A. They have a book. You can go buy the
5 book.
6 Q. So if Mr. Shoup's band has been in
7 operation 40 years, he might be the oldest
8 continuingly operating band?
9 A. No.
10 Q. No?
11 A. No, no way.
12 Q. Okay. Because of?
13 A. Because there's other bands around the
14 city that have been for more than 40 years.
15 MR. GALANTE:
16 Before we move on, in regards to
17 that exhibit, because you had put on the
18 record that you-guys had just found that:
19 We discussed off the record an agreement
20 that the correspondence, electronic and
21 otherwise, that were exchanged between
22 counsel during and since the settlement
23 that's subject to the litigation are not
24 necessary to have been responded in
25 discovery with and that we've agreed

1 that, with notice, you know, we'll allow¹²⁹
2 one another to use them, whether or not
3 they were part of a discovery production,
4 just for efficiency sake. Do you agree
5 that's what we discussed?
6 MR. DORVEE:
7 Yes.
8 MR. GALANTE:
9 Okay. Just making it clear so
10 there's not that dangling participle of
11 you saying that we just found this this
12 morning, so it doesn't look like I was
13 necessarily waiving notice on documents
14 at all.
15 EXAMINATION BY MR. DORVEE:
16 Q. Let me shift gears for a second, because
17 I found the exhibit I was looking for earlier.
18 Let me go ahead and mark this as Exhibit 24. This
19 was in your production, and my question to you is
20 simple: what is this?
21 A. This is all the list of songs, title
22 songs, that the SoundExchange pays royalties
23 for --
24 Q. Okay.
25 A. -- for wireless communications like

1 Sirius and Pandora and things like that. ¹³⁰
2 Q. And does this show -- Strike that. Where
3 did you get this?
4 A. From the SoundExchange.
5 Q. Okay. And they sent it to you why?
6 A. Because they notified me that some of
7 John Shoup's music may have been intertwined in
8 the Assunto Estate account, and they wanted me to
9 verify a list of CD titles that your client
10 provided to them to make sure that we can separate
11 the two entities.
12 Q. Okay. And so SoundExchange sent you
13 this?
14 A. Correct.
15 Q. And were you able to separate it out?
16 A. Well, I didn't have to at first. I mean
17 all I had to do was agree with the list or verify
18 the list that John Shoup did.
19 Q. Did you --
20 A. I did. I verified it. I got together
21 with Scott over it. We looked at it and contacted
22 the SoundExchange, and I told the girl - her name
23 is Alli Lieberman, I think it is - and I told her,
24 yes, I agree that's those recordings are Shoup's,
25 please let your policy be enacted to repay him any

1 royalties that we do off of our future royalties,¹³¹
2 because that's the way their policy works. And
3 then your client revised the list, and that's why
4 she sent me this whole detailed list, because he
5 then included all of my family's music into the
6 royalties that he wanted to obtain. And that's
7 why I shut it down and I told her don't pay
8 anybody anything.
9 Q. When you say he revised the list and then
10 said he was claiming all of your family's music,
11 can you give me some examples of what he claimed?
12 A. Well, if you go to the easiest page where
13 you can read -- Go to the last page, no. 74.
14 Q. Hang on one second. Okay.
15 A. And I'll go -- If you go down to where -
16 let me see - from the right side, one, three, two,
17 four, the fifth column from the right side, the
18 column in between where it says "Paid to Antonio
19 D. Assunto" and the column to the right of that,
20 the record -- those are record labels.
21 Q. Right.
22 A. I mean he listed all these labels as his
23 music, and I'll just give you the ones right off
24 the top that are definitely not his: Audio
25 Fidelity, Audio Fidelity, Audio Fidelity, Curb

1 Records, Columbia Records, Audio Fidelity. The¹³²
2 other releases of those musics are from record
3 labels -- I don't know who they are, but they do
4 reissue my father's music on different labels that
5 we don't know about, because they don't ask us
6 what labels. I mean certain labels just say have
7 them play this music and put it on this thing, and
8 they do it.
9 But those Audio Fidelity and Columbia
10 Records are exclusively recordings of my father's,
11 and that's just one example of hundreds that your
12 client tried to redirect.
13 Q. Let me show you a letter that we'll label
14 as Exhibit 25, which is an April 2nd, 2012 letter
15 from Robert LeBlanc to me. It was actually
16 produced by y'all. Have you seen that before?
17 A. Yes, I have.
18 Q. Okay. Make sure it's a complete copy.
19 A. Okay.
20 Q. All right. Let's just run through this
21 real quick. I'm going to just go through each one
22 of these paragraphs and ask you if Mr. Shoup made
23 the change, according to your understanding. No.
24 I, you make a reference to 51 years. Well, let's
25 do this to make it quicker. No, no, just go --

1 A. No. 1, let's put it this way: A lot of 133
2 the stuff on his website was taken care of
3 initially and then within months later it would
4 pop back up. It's almost like a shell game, where
5 you took it off and it was off for a couple of
6 months and then certain things would show back up.
7 which ones have shown back up since according to
8 this letter, I can't verify at the moment.
9 Q. Do you know if -- And I think your
10 attorney, Mr. Galante, sent me a letter saying
11 that some of the stuff has shown back up.
12 A. Correct.
13 Q. And then it was removed, correct?
14 A. No.
15 Q. It wasn't?
16 A. No, there's still stuff up there. And if
17 you go to the last page -- well, actually, because
18 you were asking me earlier about things that were
19 never taken care of: The top line says "...client
20 contact Grabow and instruct that all of its
21 booking materials should be modified." Never did
22 it.
23 Q. Do you know if Grabow even still
24 represents him?
25 A. You would have to ask your client, but I

1 know it's on the Internet. 134
2 Q. Okay. Let me just do this. Look through
3 this and tell me which things he did not -- have
4 not been completed.
5 A. Well, like I told you before, I'd have to
6 compare it to what evidence Mr. Galante has
7 provided already that we're disputing it's back up
8 there, you see.
9 Q. I want to know your understanding. Let
10 me make it easy for you. I'm not asking you if it
11 remains correct for now -- correct at the time.
12 whether it came back or not, we can talk about
13 later. Does that make sense?
14 MR. GALANTE:
15 To the extent you can answer that;
16 otherwise, I object to the form.
17 A. I just -- It would be too hard. I mean I
18 can answer to certain things I know for a fact. I
19 can't answer to one article that was dated back
20 from whatever date that he took off and may have
21 put back on right now, because I really can't say
22 he -- I mean I know he took it off at first -- not
23 at first, after a couple of months of us pleading
24 with him to do it. Then it started showing up six
25 or eight months later. Which ones they are showed

1 up, that's -- we've got that in our discovery of 135
2 whatnot.
3 As far as me saying what I do know he's
4 expanded on?
5 EXAMINATION BY MR. DORVEE:
6 Q. Or what he has not complied with, however
7 you want to --
8 A. All right. No. 12.
9 Q. Okay. This is the WWL live broadcast?
10 A. Yes. That was when they were promoting
11 their Oak Ridge Boys CD.
12 Q. Right. And the request was, "Your client
13 should remind his band members to refrain from
14 making any such references to the Assunto Legacy
15 in the future."
16 A. Right.
17 Q. Did they do that?
18 A. No.
19 Q. Do they still make reference to the
20 Assunto Legacy?
21 A. Well, that video has been posted in
22 various spots, and even can be found on YouTube.
23 Q. Posted by Mr. Shoup?
24 A. You would have to ask your client that,
25 but he's the only one that had access to it.

1 Q. Okay. So there was a video -- wait a 136
2 minute. This appears to be a live radio
3 broadcast.
4 A. No. It was a WWL-TV show, morning show.
5 Q. Okay.
6 A. That was the one that you called up
7 Robert LeBlanc and apologized for that show being
8 -- because you said Shoup had contacted you right
9 away and said you knew that Deano was going to be
10 upset, and you told Robert that your client said
11 he wouldn't do it again and told the band. And
12 within weeks it showed up on his Facebook -- I
13 mean his website and other various places.
14 Q. The video showed up on his website?
15 A. Yes. And it still can be found in
16 certain places.
17 Q. And does the video show Mr. Clark
18 referring to the Assunto Dukes?
19 A. Yes.
20 Q. As far as reminding the band, as far as
21 you know, he did? I mean not --
22 A. I can't --
23 Q. Aside from the video.
24 MR. GALANTE:
25 Object to the form of the question.

1 EXAMINATION BY MR. DORVEE: 137
2 Q. Strike that. Let's leave the video out
3 of it, okay? I'm not asking you about the video.
4 Are you aware of any performances the Dukes have
5 made since the date of this letter where they have
6 referred to the Assunto Legacy?
7 A. I don't go to their performances, except
8 that one French Quarter Fest.
9 Q. So the answer would be you are not aware
10 of any?
11 A. I'm not aware of any because I don't
12 know. Not to say they don't do it.
13 Q. Right. Did you see this letter?
14 A. Yes, I do.
15 Q. Okay. This is a response -- This says,
16 "We will ask Grabow to revise its description."
17 Do you see "Grabow Entertainment?"
18 A. Yes, I see that. That's no, whatever,
19 14.
20 Q. Do you know if Mr. Shoup did or didn't?
21 A. Well, I don't know what Mr. Shoup's
22 actions are, so I can't speak for that, but I know
23 that Grabow has never taken it off.
24 Q. Okay. Have you seen that letter before?
25 A. Yes, I have.

1 Q. And I just really want to address your 138
2 attention to -- well, let me ask you the first
3 question. In this letter it says, "Moreover, the
4 entire point of the lawsuit, according to Mr.
5 Assunto, was to protect and recognize the Assunto
6 Legacy. Therefore, he should want to emphasize
7 the term Assunto rather than real..." why don't
8 you use "Assunto" all the time if you are
9 concerned about the legacy?
10 MR. GALANTE:
11 Object to the form of the question,
12 to predicating it on a letter that you
13 wrote.
14 You can answer the question.
15 A. Well, because I refer to them in
16 different ways all the time. Anybody that knows
17 anything about the Dukes of Dixieland from the day
18 knows that the Assuntos were the Dukes, so they
19 don't have to be announced as the Assunto Dukes.
20 EXAMINATION BY MR. DORVEE:
21 Q. So if that's the case, then, if the Dukes
22 are advertising something, then folks know that
23 they're not the Assunto Dukes, right?
24 A. I wouldn't say that.
25 Q. Well, you just told me --

1 A. Not with your client's actions when he 139
2 reaches back to the '40s and the '50s and the '60s
3 and he uses those terms to describe his band.
4 Then it caused the confusion. He has caused that
5 confusion. So for me to say the Real Dukes, the
6 Assunto Dukes, the Genuine Dukes, or the Authentic
7 Dukes, any way I want to describe it -- and if I'm
8 not mistaken, during the settlement, this came up,
9 and I wouldn't stipulate to using anything that
10 was going to restrict the adjective that I wanted
11 to use to describe the Assuntos Real Dukes of
12 Dixieland.
13 Q. All right. What was date of that?
14 A. 27 -- Oh, this was April 25th, 2012.
15 28.
16 Q. You knew I was going to look at that.
17 A. Yes, sir, I sure did.
18 Q. Have you ever seen that letter before?
19 A. Yeah, I've seen this before.
20 Q. Okay. And did you take any action in
21 response to this letter?
22 A. Could you be more specific? I mean I can
23 go overview of -- I could answer you like anything
24 that I was ever asked to do, I did.
25 Q. Okay. But you didn't stop doing the "Let

1 There Be No Confusion"?" 140
2 A. Well, no. I didn't believe I have to,
3 and I still don't believe I have to. So I did
4 everything that I was required to do.
5 Q. Okay. Okay. Now, in the second
6 paragraph of this letter, it says that, "Despite
7 the non-disparagement clause in the settlement
8 agreement, he," meaning you, "has made statements
9 like 'others stepped in to profit and mislead the
10 public' and then refers the reader to the lawsuit
11 filed." Did you do that?
12 A. I'm not sure where it came from, but if I
13 did -- "Others stepped in...public." Yeah,
14 there's been a lot of misleading to the public.
15 MR. GALANTE:
16 Again, I'm going to object to the
17 form, to the extent it's predicated on a
18 letter that you wrote.
19 EXAMINATION BY MR. DORVEE:
20 Q. Right, I understand, and I'm not asking
21 you --
22 A. Well, I mean this is a statement that
23 could and should have -- in other words, I just --
24 to give a relevant answer, I really can't.
25 Q. So you don't recall whether or not you

1 said, "Others have stepped in to profit and
2 mislead the public" and then referred to the
3 lawsuit involving Mr. Shoup? You don't know
4 whether you did that or not?
5 A. Oh, I'm sure if I ever refer to the
6 lawsuit, which I have every right to do, I've
7 done.
8 Q. So you basically said somebody stepped in
9 to mislead the public and then referred them to
10 the lawsuit?
11 A. No, I wouldn't say it like that. No, I
12 didn't say it like that. I wouldn't say it. I
13 think you are mis -- you are misstating it.
14 Q. Okay. How did I misstate it?
15 A. I don't know. It just doesn't sound --
16 It doesn't sound like that's what I was doing.
17 Q. Weren't you trying to identify Mr. Shoup
18 as the person who stepped in to profit --
19 A. If I wanted to --
20 Q. -- and mislead the public?
21 A. If I wanted to identify Mr. Shoup, I
22 would do it directly. Many people have stepped in
23 and misused and profited. All those CDs you
24 showed me earlier I told you that are being
25 released by people that are not paying us, those

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1 are people stepping in to mislead and profit.
2 MR. GALANTE:
3 Steve, honestly, I think he
4 testified directly about a quote from
5 that much earlier in the deposition, as
6 to who he was talking about, and we are
7 rehashing the same areas through these
8 letters over again.
9 EXAMINATION BY MR. DORVEE:
10 Q. Exhibit No. 29. I'm not going to show
11 you the list that's responsive. This is a letter
12 that I sent to Mr. Galante after he sent me a
13 letter alleging various breaches. Take a look at
14 this. In this letter, I indicate that you -- I
15 thought you reviewed the website and were
16 satisfied with it. This is after the initial
17 round of correspondence about violations. Let me
18 ask you this.
19 MR. GALANTE:
20 I object to the form of the
21 question.
22 MR. DORVEE:
23 Yes, that was a bad question.
24 MR. GALANTE:
25 Particularly because you are

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1 misrepresenting facts, as there were a
2 ton.
3 EXAMINATION BY MR. DORVEE:
4 Q. Right, let me just -- I don't even need
5 to refer to the letter. You sent a notice --
6 MR. GALANTE:
7 Just real quick as an aside: Is
8 there any need for us to pay obscene
9 amounts of money to attach letters that
10 we've already agreed are --
11 MR. DORVEE:
12 I'm happy not attaching any of them.
13 MR. GALANTE:
14 Yes. I think that at the end we
15 should come up with an agreement. We're
16 getting to a book here, and not that I
17 don't want madam court reporter to make
18 money on the transcript, but what I'm
19 looking at here, you're talking about,
20 even if it's a dollar a page, adding
21 hundreds of dollars to this transcript.
22 MR. DORVEE:
23 I'm happy to, if it's agreeable with
24 you, I will retain the original exhibits
25 and send you a copy; and then you can

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1 retain your original exhibits --
2 MR. GALANTE:
3 I am not going to fight over what we
4 referred to.
5 EXAMINATION BY MR. DORVEE:
6 Q. You asked that various information be
7 deleted from the Dukes of Dixieland website. Do
8 you remember that?
9 A. Yes, I recall that.
10 Q. And after that exchange of
11 correspondence, you reviewed the Dukes of
12 Dixieland website, didn't you?
13 A. Correct.
14 Q. And you didn't find anything wrong,
15 correct?
16 A. Correct.
17 Q. Okay. And then you looked again and
18 found some of the material had been put back up?
19 A. Correct.
20 Q. And Mr. Galante sent a letter to me
21 telling me that, right?
22 A. I -- I guess so.
23 Q. Do you recall that somebody conveyed to
24 me that this stuff had been put back on?
25 A. I guess it would be Mr. Galante, correct.

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1 Q. Okay. And after Mr. Galante notified me,¹⁴⁵
2 was that material removed from the website?
3 A. No.
4 Q. It was not?
5 A. No.
6 Q. It's still on there?
7 A. Yes. Wait, you say "still on there." At
8 this moment, it could have been changed. Your
9 client changes his website, plays the shell game,
10 off and on. So some things might be there. Some
11 things may be shifted. Some things -- He gets a
12 new look, changes certain things, but there's
13 going to still be reference to my family on his
14 website.
15 Q. Okay. So there were no corrections made
16 after Mr. Galante -- as indicated in his letter?
17 A. Correct. I wouldn't say no. He may have
18 changed things. You would have to go back and
19 check his website. He changed it all the time.
20 So there may have been changes, and he may say, "I
21 made changes," but those changes didn't indicate a
22 complete withdrawal of all Assunto material.
23 MR. GALANTE:
24 And to be candid, just to shed some
25 light on it: We've proposed to you a

1 myriad of dated web printouts of a ¹⁴⁶
2 variety of what we believe to be
3 violating postings on his website, and to
4 the extent he can testify what he
5 currently knows, that's one thing. We
6 reserve our right to offer into evidence
7 and have him authenticate those printouts
8 as to the time periods that they were
9 printed and the content of them.
10 EXAMINATION BY MR. DORVEE:
11 Q. You indicate -- Also in this letter, I
12 indicate that you were complaining about sites of
13 other promoters and asked Mr. Galante to provide
14 me with the names of the other promoters. Do you
15 know if that was ever done?
16 A. Did Mr. Galante provide it to you?
17 Q. Did you provide them, or do you know if
18 anybody provided them to me?
19 A. I don't understand the question. I mean
20 I have already told you that the booking agencies,
21 the promotion companies that he has online - I
22 gave you two examples - have never, since day one,
23 ever taken their information of my family off.
24 They have changed their sites. They have expanded
25 on using the Assunto Legacy. Shoup has never made

1 them take it off. So as of this moment right now,¹⁴⁷
2 they are still there.
3 Q. Okay. In this paragraph, I'm not asking
4 you that. I say you indicate - Mr. Galante
5 indicates - in his letter that sites of other
6 promoters are in complete violation of the
7 settlement agreement, and I say, "We do not see
8 how a promoter that is not a party to the
9 agreement can be in breach. Nevertheless, we have
10 no interest in any confusion, so any specifics
11 that you can pass along in regard to that would be
12 helpful so we can take action to see that the
13 necessary corrections are made by them as well."
14 My question is: Are you aware of any
15 further correspondence where the names of those
16 promoters were provided?
17 A. Well, it's the same promoters.
18 Q. I didn't ask you that. I asked for the
19 names of the promoters. Did anyone provide that
20 to me so we could take action?
21 MR. GALANTE:
22 Object to the form of the question.
23 He answered that just now.
24 MR. DORVEE:
25 No, he didn't.

1 A. He answered that in some of this other ¹⁴⁸
2 information back here. Back on page -- Let me see
3 here. I'll go back to this one. On Exhibit No.
4 25, if I'm not mistaken, I already answered those
5 questions. The same people are still booking and
6 still advertizing the Dukes of Dixieland connect
7 it to my family. They have even made it and
8 propounded the problem by -- Now, providing you
9 another list -- Why provide you another list? You
10 already have the list.
11 EXAMINATION BY MR. DORVEE:
12 Q. I never was given a list.
13 A. Then you wouldn't have --
14 MR. GALANTE:
15 I want to object to the form of the
16 question.
17 EXAMINATION BY MR. DORVEE:
18 Q. Well, let me ask you: Did you ever give
19 me a list?
20 A. I've already answered the question.
21 Q. You did give me a list or not?
22 A. I've already answered the question. You
23 are aware of the list. How many times do you have
24 to be aware? You answered to the same question
25 already in a letter back in 2012, and I'm telling

1 you now at this moment those same people are still¹⁴⁹
2 doing the same thing. Do you want me to write it
3 on a piece of paper and hand it to you right now
4 again? Is that providing the list? You already
5 responded to the list.
6 Q. So your answer is: You did not provide
7 any information in response to this letter?
8 MR. GALANTE:
9 I object to the form of the
10 question, and he's answered the question.
11 MR. DORVEE:
12 No, he hasn't.
13 EXAMINATION BY MR. DORVEE:
14 Q. And I'm just asking in response to this
15 letter. That's all I'm asking, not if you've ever
16 provided me a list.
17 A. I've not answering the same question
18 again. You've got my answer.
19 Q. It's not the same question.
20 A. Yes, it is. It's the same question. You
21 already have --
22 Q. So the answer is no?
23 A. So in other words, you're telling me that
24 you didn't know it was a list before so you --
25 MR. GALANTE:

1 Just answer him yes or no if you¹⁵⁰
2 sent any further correspondence.
3 A. I don't know if I have or not; we've sent
4 so much. We have sent so much, I have no idea.
5 EXAMINATION BY MR. DORVEE:
6 Q. That's all I need. Thank you.
7 MR. DORVEE:
8 Let's take about a five-minute
9 break, and then we will press on here.
10 (Brief Recess)
11 EXAMINATION BY MR. DORVEE:
12 Q. Let's take a look at Exhibit 35 (sic).
13 MR. GALANTE:
14 Look throughout the entire exhibit.
15 MR. DORVEE:
16 Well, this is not -- I'm not sure he
17 would.
18 EXAMINATION BY MR. DORVEE:
19 Q. Do you recognize this?
20 MR. GALANTE:
21 Do not answer that question.
22 He has just handed us a stack of
23 discovery Bates numbered 131 pages,
24 asking if he recognizes it. I'm
25 instructing my client not to answer that

1 question until he has reviewed every¹⁵¹
2 page.
3 A. I don't know if I have time to review
4 every page.
5 EXAMINATION BY MR. DORVEE:
6 Q. Let me just state this is a copy of the
7 Dukes of Dixieland website, not your website.
8 MR. GALANTE:
9 But if you're asking him whether he
10 can verify whether or not he has seen it,
11 he has to go through 131 pages. I mean
12 it is what it is.
13 So start with the first page and go
14 through every page.
15 EXAMINATION BY MR. DORVEE:
16 Q. Let me stop real quick. To be efficient,
17 if it's okay with Mr. Galante, as you go through,
18 if you see something you view as being a violation
19 of the settlement agreement, stop and tell me what
20 it is.
21 A. Okay.
22 Q. Is that okay?
23 A. Yes. Go to page 354 and 355 and, I
24 guess, and 356, and it's the *Offbeat* article. I
25 consider that whole article to be in breach. Is

1 that what you want me to do?¹⁵²
2 MR. GALANTE:
3 That's fine.
4 EXAMINATION BY MR. DORVEE:
5 Q. That's perfect.
6 MR. GALANTE:
7 I would like to note, for the
8 record, this exhibit was printed a little
9 over ten days ago by Dino.
10 THE WITNESS:
11 Oh, I see that, huh? so this
12 doesn't go back?
13 MR. GALANTE:
14 On the day it was produced for
15 discovery.
16 A. Like I said before, in other words, your
17 client changes his website freely. so this might
18 not represent six months ago or two months ago,
19 even. Is that -- because that's what I'm
20 guessing. That's just me stating that.
21 EXAMINATION BY MR. DORVEE:
22 Q. We provided it in discovery pretty much
23 because I was going to ask you about it.
24 A. Okay. Go to page 59.
25 Q. Okay.

1 A. At the very top, he mentions my family. 153
2 He's not supposed to have any whatso -- anything
3 whatsoever of the Assunto brothers because he
4 creates a confusion by doing that. That's part of
5 the settlement.
6 Q. This was a reprint of it, okay.
7 MR. GALANTE:
8 Do you really want him to go through
9 130 pages of a website you printed up?
10 MR. DORVEE:
11 Yes. I will narrow it down.
12 A. Okay. And also --
13 MR. GALANTE:
14 And I am going to object to this on
15 the grounds of relevance. I mean this is
16 a website that's changed since the
17 litigation was filed, and you just
18 produced it ten days ago.
19 MR. DORVEE:
20 Okay, let me say this. You have not
21 produced to me any websites, and you are
22 saying the website has changed.
23 MR. GALANTE:
24 We produced you a myriad of
25 printouts for websites.

1 MR. DORVEE: 154
2 You didn't produce to me dated,
3 like, you know, our website --
4 MR. GALANTE:
5 Sure, we did.
6 MR. DORVEE:
7 -- dated -- the full website.
8 MR. GALANTE:
9 The full website? No. Printouts of
10 all the -- How do you produce a full
11 website?
12 MR. DORVEE:
13 All I'm trying to do is narrow down
14 where he contends we're still in breach,
15 to be honest with you, so we can fix it.
16 MR. GALANTE:
17 All right. I'm just going to
18 reserve an objection to this being an
19 incomplete identity, considering he's
20 being pressed to identify areas of breach
21 in a document that he's being shown and
22 he doesn't have adequate time to review.
23 I object to the extent you don't
24 have a transcript for the video that's
25 depicted on page 371. I object to the

1 extent we don't have a transcript of the 155
2 video on page 356. I object to the
3 extent that page 418 is illegible. I
4 object to the extent page 419 is
5 illegible. I object to the extent the
6 text on pages 427 and 428 is illegible,
7 same with 430.
8 MR. DORVEE:
9 Off the record.
10 (There was an off-the-record discussion.)
11 MR. GALANTE:
12 Object to the extent page 437 is
13 illegible. I mean there's a lot -- Just
14 so it's clear: There's a lot of printing
15 over pictures on this that were printed
16 out. It's like it was somebody just
17 clicked the print button while they were
18 on the web page. I object to the extent
19 page 445 is illegible, 446, 447, 448,
20 449, 450, 451 although it doesn't look
21 like there's much there, 452, 454 -- 453
22 and 454, I'm sorry, 455 -- excuse me, 457
23 and 458, 459, 461, 462 although part of
24 it is legible. It's hard for me to
25 dissect what's legible and what's not.

1 THE WITNESS: 156
2 Can I ask Amy a question?
3 MR. GALANTE:
4 No, not while there's a question on
5 the table. You have to finish this.
6 MR. DORVEE:
7 Who is Amy?
8 MR. GALANTE:
9 Amy, the paralegal who assisted in
10 collecting the documents, I assume.
11 THE WITNESS:
12 Because one of them crosses with
13 what she showed me is one that they just
14 sent, and I think it's the same one. And
15 I can read the other one, and I can't
16 read this one.
17 MR. GALANTE:
18 But you're answering questions about
19 what you are looking at right now. I'm
20 making --
21 THE WITNESS:
22 So if I suspect --
23 MR. GALANTE:
24 I suspect the lion's share of this
25 document is illegible, and I am going to

1 object. So what you can read, testify ¹⁵⁷
2 about. What you can't read, you can't
3 testify about it.
4 THE WITNESS:
5 All right. Never mind. But if I
6 can read it but you can't, then I can't
7 testify?
8 EXAMINATION BY MR. DORVEE:
9 Q. No, you can read it.
10 A. No, I already know what it looks like,
11 but that's okay.
12 Q. I mean if you can understand what it
13 says, go ahead and tell me if there's a breach.
14 If there's not, don't worry about it.
15 A. I didn't say there wasn't. It's just not
16 legible. But if you can provide it later
17 legible --
18 Q. Okay.
19 MR. GALANTE:
20 Yes. I mean pretty much every page
21 after 459 --
22 THE WITNESS:
23 Yeah, you can't read it.
24 MR. GALANTE:
25 -- is illegible.

1 EXAMINATION BY MR. DORVEE: ¹⁵⁸
2 Q. I can read that. Can't you? I mean it's
3 small print, but --
4 A. You can read that?
5 Q. Yes, but go ahead. I mean if you can't
6 read it, you can't read it. I'm not arguing.
7 A. I'm a printer by trade, and I'm going to
8 tell you this is a one-point type.
9 Q. Okay.
10 A. How about this. Let's just go to page
11 458.
12 Q. Okay.
13 A. While not very legible, it does say,
14 "1949, the Assunto" something or another "trumpet
15 player Frank and trombone Freddie founded," and
16 then I can't read the rest of that. So it's made
17 reference to the Assunto family.
18 Q. It's in Turkish.
19 A. Well, I don't care what it says.
20 Q. No. I mean --
21 A. That's maybe why it's not legible, right?
22 I can see "1949," and I can see "Assunto," and I
23 can see "Frank," and I can see "Freddie,"
24 "trombone." That's one of the ones that you can't
25 even read, but -- so the other ones probably have

1 reference to -- I mean this is almost half-point ¹⁵⁹
2 type right here.
3 MR. GALANTE:
4 And I would just like the record to
5 reflect that every time there's a
6 reference to the Assunto family in the
7 1940s having an organization, et cetera,
8 my client has been very consistent in
9 answering he believes it breaches the
10 settlement agreement.
11 A. All right, 462, this is very illegible.
12 First sentence, "The Dukes of Dixieland is a
13 multitalented" something or another "New Orleans
14 style jazz that was founded in 1949." The rest is
15 -- I can't read it, but I know that right there is
16 the breach, and there may be more there. Page
17 468, under the picture, while I can't read it
18 totally, but I can see "1949 by the Assunto
19 brothers," the first sentence.
20 EXAMINATION BY MR. DORVEE:
21 Q. Got it.
22 A. Page 471, the first sentence again seems
23 like it's a recurring thing here. It's the same
24 statement. This one I can read very well, "The
25 Dukes of Dixieland were founded in 1949 by the

1 Assunto Brothers trumpet player Frankie and ¹⁶⁰
2 trombonist Freddie. From the beginning, the group
3 captured the sound of New Orleans." And they also
4 list in the same thing they're playing around the
5 world with the likes of Sarah Vaughan. Well, I
6 know Shoup's Dukes never played with Sarah
7 Vaughan. And even further on it talks about the
8 stereo recordings to the early 50s. That's
9 attributable to the legacy of the Assunto family
10 and their accomplishments. That whole article is
11 basically about the Assuntos.
12 Page 473, second paragraph, "The Dukes of
13 Dixieland were founded in 1949 by the Assunto
14 Brothers." Frank and Freddie are still listed
15 here.
16 MR. GALANTE:
17 You have incredible eyesight.
18 THE WITNESS:
19 Well, I'm a lot younger than you.
20 (There was an off-the-record discussion.)
21 EXAMINATION BY MR. DORVEE:
22 Q. Is that it as far as you --
23 A. As far as I can see, that's it. Not to
24 say I didn't miss anything.
25 Q. Fine. Thank you. I know that was long,

1 but that's helpful. 161
2 A. No. That's all right.
3 MR. GALANTE:
4 Obviously, to the extent that he was
5 able to identify things, he's standing by
6 his testimony, but I object to the extent
7 of his ability to review that much for
8 the purposes of that --
9 A. Do you have a number for this?
10 MR. GALANTE:
11 -- it's untenable.
12 MR. GANKENDORFF:
13 Well, you called it 35.
14 EXAMINATION BY MR. DORVEE:
15 Q. That's wrong, it's 30. My apologies.
16 A. 30.
17 Q. Thank you. Thank you for catching that.
18 MR. DORVEE:
19 I'm going to ask a couple of
20 questions about allegations in the
21 complaint. I'm not going to go into
22 legalese. Do you want me to show him a
23 copy?
24 MR. GALANTE:
25 Yes, you are welcome to. I don't

1 think there's much of an allegation in 162
2 the complaint, but go ahead.
3 EXAMINATION BY MR. DORVEE:
4 Q. Let's mark this 31. This is a copy of
5 the complaint in the case. Flip over to page 3 of
6 6.
7 A. This is all your complaint against me?
8 Q. No, your complaint against us, against
9 Shoup.
10 A. Which page, now, sir?
11 Q. Page 3 of 6, and specifically I'm asking
12 you about paragraph 10.
13 A. I'm not -- You'll have to explain this in
14 people talk.
15 Q. Okay. What I understand is - and I
16 believe you talked about it a little bit ago -
17 you're contending that Mr. Shoup breaches the
18 settlement agreement by referring to the Assuntos
19 whenever he's trying to promote a new album. Is
20 that what you're contending?
21 A. Not whenever, but as of late, yeah.
22 Q. Okay. Tell me, as of late what do you
23 mean? What did he do?
24 A. Well, the first one, off the top of my
25 head, would be the Oak Ridge Boys and when he was

1 on television, Kevin Clark, WWL-TV morning show 163
2 stated that the band --
3 Q. You said Kevin Clark?
4 A. Kevin Clark. He is the leader of the
5 band, I think, the trumpet player, and that was
6 the same morning that Shoup called you saying that
7 he knew I'd be mad that Kevin Clark stated the
8 band started back in 1949 and that John Shoup took
9 the band over in 1974.
10 Q. All right.
11 A. That's all for the sale -- the purpose of
12 what I consider unjust enrichment by trying to
13 promote the sale of the CD attaching the Assunto
14 Legacy to that promotion; and it's done on more
15 than one occasion with that same CD.
16 Q. Okay. Tell me the other occasions, as
17 best as you can recall.
18 A. Well, in some of the evidence down here,
19 the exhibits down here, when you said, "Oh, did
20 you see this," and it was about the Oak Ridge -- I
21 said, "Yes, it's the Oak Ridge Boys CD release,"
22 and I referred back to the WWL thing; and then you
23 asked me why did I put "Don't Be Confused," and I
24 said that's why.
25 Q. Okay. Aside from the WWL --

1 A. WWL-TV. 164
2 Q. Okay. Aside from that incident, that
3 occurrence, have there been any other instances
4 where you contend that Mr. Shoup used the Assunto
5 Legacy to promote a release of music and video?
6 A. Well, everything he does to promote the
7 band is to promote the band for profit, no matter
8 what he does. So if you want to put it in real
9 time, you can just refer back to the *Offbeat*
10 article. He's promoting his band either for live
11 performances or for recordings or anything else by
12 attaching the Assunto Legacy to that, and to
13 continue promotion, therefore, well, obviously, he
14 gains unjust enrichment by using our legacy,
15 again, to either promote himself in words and/or
16 on TV.
17 Q. Okay. Now, take a look, if you would, at
18 paragraph -- page 4 of 6, and it's the "Negligent,
19 Intentional, and Fraudulent Misrepresentations."
20 Okay. Aside from what we've already talked about
21 as being breaches of the settlement agreement, is
22 there anything else he has done you consider -- is
23 that what you consider to be fraudulent, those
24 breaches?
25 A. Well, I mean fraudulent could be also

1 saying that he got permission to use the name ¹⁶⁵
2 Betty Owens, which -- Betty Assunto, I should say,
3 which is Freddie's wife. That's a fraudulent
4 statement.
5 Q. Okay. Has he made that since the
6 settlement agreement?
7 A. Yeah.
8 Q. Okay, that was fraudulent, okay.
9 Anything else?
10 A. I mean that's one of the major ones, but
11 whenever he talks about my family, such as saying
12 he knew my father, that's fraudulent. He never
13 knew my father.
14 Q. How do you know that?
15 A. Because I knew my father very well.
16 Q. So you think that his --
17 A. He may have run across my father. I mean
18 I am sitting right here with this man right here.
19 I can't say I know Dino, but I've sat in the room
20 with him.
21 Q. Anything else that you think is
22 fraudulent?
23 A. Every time he mentions any connection to
24 my family, it's fraudulent. That was the whole
25 purpose of the settlement.

1 Q. Good. All right. I hate to beat a dead ¹⁶⁶
2 horse, but take a look at Exhibit A.
3 A. I don't need to look at it. I know what
4 it is.
5 Q. Okay. Now, take a look at it. Just
6 humor me. Now, this list, is this list royalties
7 that you think you are owed?
8 A. Pardon me?
9 Q. What does this list show?
10 A. Well, this is obviously one part of the
11 spreadsheet from SoundExchange that shows a bunch
12 of different things here and different record
13 labels. Some of them I can't account for, but
14 two-thirds of them I can account for, and two-
15 thirds of these are our recordings of the Assunto
16 family Dukes.
17 Q. Okay. Okay. "Plaintiff seeks a
18 determination of the ownership of royalties." In
19 the complaint, you say you want a determination as
20 to the royalties related to these songs?
21 A. Well, this is a partial list of them.
22 Q. That was my question. Is this the
23 complete list, or is this partial?
24 A. No, this is just a partial list.
25 Q. Okay. And it's true that, for example,

1 in the first line -- Let's take the second line, ¹⁶⁷
2 "New Orleans Dukes of Dixieland, Paid to Antonio
3 D. Assunto, Projazz." That's not your label,
4 right?
5 A. No, I don't know whose label. They have
6 got a lot of offshoot labels, and I can give you
7 an example. If you go down that same list and you
8 see where it says "Collectibles," one on top of
9 the other?
10 Q. Yes.
11 A. That is a Sony release. Sony has a
12 Collectibles release series. And I know that
13 that's the Assunto family's, because it says comes
14 from the SoundExchange album called *The Dukes of*
15 *Dixieland: Strutting at the World's Fair*. Well,
16 my father recorded a live album at the World's
17 Fair, and so I know that that's their music, and I
18 have the physical CD.
19 Q. I'm not arguing with you about that.
20 A. I know that.
21 Q. But you would agree with me that there
22 are -- that if Mr. Shoup says Projazz is his
23 label, then the royalties that were paid to you
24 should be paid to him, right?
25 A. Well, let's put it this way. He would

1 have to show me the proof by letting me listen ¹⁶⁸
2 it, because that's the only way. A lot of these
3 songs are duplicate songs. In other words, I can
4 look at one of the songs on here, and it might be
5 his and it might be ours, still on a Projazz
6 label, because some of these albums and CDs are
7 put up in collection sets, and when people don't
8 know the difference between the Real Dukes and
9 Shoup's Dukes, they just grab all the Dukes
10 material, pick out what songs they want, and mesh
11 them together and put them out on one CD, and it
12 could be Projazz.
13 Q. Okay. So we can resolve this issue, what
14 would you need to know?
15 A. Well, I think, if I'm not mistaken, we've
16 already provided -- I think Scott has it in the
17 files. What I did was I took the -- I blew up the
18 entire spreadsheet that was sent to me by the
19 SoundExchange, and I categorized or catalogued
20 each one with an S or an A, each song or each
21 title that I thought and felt and know that I
22 determined, which should be done without a
23 problem. Two-thirds of them were one way. Some
24 go the other way. Then there were some that I put
25 "I don't know" or I put a question mark on. Those

1 would be the final ones that we would have to sit¹⁶⁹
2 down and say, "This one is yours. This one is
3 mine. This one is yours. This one is mine."
4 MR. GALANTE:
5 And just so we're clear as far as my
6 activity in this goes: We designated
7 what we believed that he owned and what
8 he knew he didn't and what was in
9 question and gave them to SoundExchange,
10 and SoundExchange told me directly that
11 Mr. Shoup's response was, "I own it all."
12 And that's where we are.
13 A. And that was after I had already agreed
14 to Mr. Shoup's initial list of his songs -- I mean
15 his title, which I said I wasn't ever going to
16 argue with. What's his is his. I have never had
17 that problem, but when he turned around and
18 revised the list and said they're all his, that's
19 when I said, "Stop all royalties. No payments
20 anymore."
21 MR. GALANTE:
22 And we should depose the
23 SoundExchange contact for those facts.
24 EXAMINATION BY MR. DORVEE:
25 Q. Here's my question for you on that. So

1 we have got a list of Shoup, Assunto, and don't¹⁷⁰
2 know. With regard to the don't knows, are you
3 saying you would actually need to listen to the
4 track?
5 A. Yes, and I'll tell you why. There was
6 one particular CD that was put out, and I had
7 actually the opportunity to listen to it on the
8 Internet. They gave sometimes little clips for
9 some of these things. And it was called *Digital*
10 *Dixieland*, was the name of it, and it was my
11 father singing "Basin Street Blues." Because I
12 know my dad's voice, I know who it is.
13 The next song I played, I said, "That's
14 not my family." That's not the Dukes of
15 Dixieland. I know my dad's music. That's not
16 them. So I'm sitting there thinking, okay, now we
17 have a real problem because now we have to dissect
18 each one of these labels that we're not clear on
19 to figure out which song is whose.
20 It's going to be a lengthy process, and
21 I'm going to be honest - I spoke to Scott before
22 about this - I don't trust John Shoup to be
23 honest. So that's why I want to be able to sit
24 and listen and have him provide what he thinks is
25 his; otherwise, I think they're mine.

1 MR. GALANTE: 171
2 In regards to the dec action, I
3 would advise my compliant to cooperate in
4 mutually identifying which ones of those
5 recordings are beyond a doubt owned by
6 each party. Then to the extent there's
7 any single track or album that can't be
8 decided, we can put it to the court.
9 MR. DORVEE:
10 Or if there's eight of them, we can
11 give four to each.
12 MR. GALANTE:
13 Yes. The question is, is there a
14 way to resolve the dec action over the
15 royalties that my client would cooperate
16 with, and I would recommend that he do
17 that. I mean I would object to him
18 articulating how that would be done
19 sitting here in a deposition.
20 MR. DORVEE:
21 No, no, I'm not --
22 MR. GALANTE:
23 I was just giving an overview. I
24 don't mean this to be a speaking
25 objection. I am just putting on the

1 record that we would be willing to do 172
2 that.
3 MR. DORVEE:
4 Sure, and that's fine. And the real
5 reason I was asking those questions is so
6 I can find the way you would suggest that
7 we do so we can get the updated exhibit.
8 EXAMINATION BY MR. DORVEE:
9 Q. Let me show you interrogatory answers
10 labeled as Exhibit 32. Take a look at
11 interrogatory no. 2. I'm not going to ask you to
12 read it.
13 A. That's page 4?
14 Q. That's correct. It says, "Please state
15 the name, address, and telephone number of each
16 individual that is likely to have discoverable
17 information," et cetera, et cetera, et cetera.
18 That means information about the case. You listed
19 yourself and Mike Marois. What information does
20 he have?
21 A. The only information that he would have,
22 since he's the webmaster and he was the one who
23 put the Real Dukes and he did it without my
24 knowledge and putting my name -- attaching my name
25 to it, I told him he may have to testify to say

1 that "Deano did not know that I put his name on¹⁷³
2 that website," because I had no idea that my name
3 was on it until it was brought to my attention at
4 the status hearing in front of the judge, if I'm
5 not mistaken, that came up. And then Scott got
6 back to me, and I said, "what the hell?" And
7 that's when I contacted Mike, and that's when I
8 looked at that website for, I think, the second
9 time, like I told you earlier.

10 Q. Okay. There's a sentence in here that
11 says, "Plaintiff has made every effort to inform
12 the parties of the nature of their claims and the
13 basis upon which their claims are made," and then
14 it says, "Plaintiff provided a narrative of the
15 facts which caused their damages in their
16 petition, which was properly served on the
17 parties." Okay. My question to you is: Aside
18 from the petition that was filed in this case and
19 aside from the letters from your attorney to me,
20 are you aware of any other written notices that
21 were provided to Mr. Shoup alleging a breach of
22 the settlement agreement?

23 A. Now, you asked me that earlier. You
24 asked me if I ever contacted Shoup directly, and I
25 said no. I said no, I have never contacted John

1 Shoup directly. 174

2 Q. Okay. So this is a little bit broader
3 question, and it's just to make sure we're clear.

4 MR. GALANTE:

5 And before you do this, I need to
6 put one objection on the record. When
7 this lawsuit was filed, we filed it very
8 specifically, avoiding an articulate
9 rendition of the facts associated with
10 the nature of the breaches, and I
11 discussed with Dino Gankendorff why we
12 did that, to avoid a breach of the
13 settlement agreement by filing something
14 in the record without being clear on
15 those issues. At the beginning of the
16 discussion, there was a request that I
17 rearticulate the position with specific
18 allegations. Later upon discussion,
19 particularly when we were discussing the
20 motion to transfer and consolidate, I
21 think Dino and I agreed that it was
22 unnecessary that I articulate more
23 specific facts in regards to the breaches
24 and that we would just proceed. Dino, do
25 you remember those discussions that way?

1 MR. DORVEE: 175

2 The petition, okay. Without getting
3 into an argument: You didn't answer it
4 in the interrogatories either. So why --
5 I mean that's why I'm asking.

6 MR. GALANTE:

7 Well, I don't understand. What we
8 didn't answer --

9 MR. DORVEE:

10 All you said was, "Plaintiff has
11 made every effort to inform the parties
12 of the nature of their claims and the
13 basis upon which their claims are made.
14 Plaintiff provided a narrative of the
15 facts which caused their damages in their
16 petition." However detailed or not
17 detailed they were, there is no
18 articulation of notice. This is the
19 statement throughout, and all my question
20 is -- I'm trying to not move to compel.
21 I want to make sure there's no other --

22 MR. GALANTE:

23 And all I'm doing is characterizing
24 -- we did answer the interrogatory, but
25 I'm just making sure that we characterize

1 -- I don't want the record to reflect 176
2 that somehow there was inadequate notice
3 in the petition for damages, because
4 there was a specific discussion counsel
5 and I had. Do you not agree?

6 MR. GANKENDORFF:

7 Right, yes.

8 MR. GALANTE:

9 That's all I want to make clear,
10 because it sounded like you are making a
11 reference to the petition being, on its
12 face, inadequate for notice.

13 MR. DORVEE:

14 No, no.

15 MR. GALANTE:

16 And I wanted to make sure that that
17 was a discussion that we had. When
18 you're getting the interrogatories, if
19 you have got a problem with my responses,
20 let's do it through rule 10.1.

21 MR. DORVEE:

22 No, no. Here's the --

23 MR. GALANTE:

24 But I think it's inappropriate to be
25 characterizing things as if we didn't

1 answer them before you have even sat down¹⁷⁷
2 with me and had a discussion under the
3 local discovery rules that require a 10.1
4 conference.
5 EXAMINATION BY MR. DORVEE:
6 Q. Here's what I'm trying to do. It was a
7 simple question. I'm trying to avoid any sort of
8 discovery conference by asking you - and I think
9 you have answered it, and I wanted to be sure -
10 aside from the letters from your counsel, you are
11 not aware of any other notice provided to Mr.
12 Shoup of breach, correct?
13 A. For the third time: Correct.
14 Q. Thank you, okay. All right. Aside from
15 -- Turn over to interrogatory no. 12 and the
16 response to interrogatory no. 12.
17 A. Okay. No. 12, okay.
18 Q. Okay. I just asked you to identify and
19 describe all instances in which plaintiff or any
20 member of the Assunto Legacy has mentioned or
21 referenced John Shoup of the Dukes of Dixieland in
22 any medium or form of communication, and nothing
23 is listed; and I'm not complaining about that.
24 Here is my question: Aside from the "Let There Be
25 No Confusion" statements that you've made and

1 aside from the other information we've discussed¹⁷⁸
2 today, are you aware of any other instances where
3 you have referred to John Shoup or the Shoup Dukes
4 of Dixieland?
5 A. What do you mean by "referred to" them?
6 Like, if I have talked to somebody like a friend
7 or something?
8 Q. Yes.
9 A. I may have referred to them, you know,
10 saying I'm suing them or something. I don't know.
11 I mean that's a stup -- I mean I'm not saying it's
12 a stupid question, but, you know --
13 Q. No. It probably was.
14 A. I don't mean to insult you. I'm not
15 trying to insult you at all, but I just -- you
16 know, the only thing I do is the "Don't Be
17 Confused" when I see a third party that I know is
18 never going to give a retraction and it's never
19 going to be straightened out.
20 Q. All right. Now, we were talking about
21 WWL earlier.
22 A. Pardon me?
23 Q. We were talking about WWL earlier, in
24 other words, the TV station.
25 A. Yes.

1 Q. Did you call them? 179
2 A. No.
3 Q. You did not place a call to them
4 complaining about the broadcast?
5 A. No. All I did was call up Bill Ross'
6 office and spoke with Robert LeBlanc, and he told
7 me you had already called.
8 Q. Okay. When you were at the Jazz Fest
9 this year - we talked about that - you were not
10 wearing a T-shirt that said "Not The Real Dukes,"
11 right?
12 A. Jazz Fest? You mean French Quarter Fest?
13 Q. Yes. Sorry about that.
14 A. Was I doing what, now?
15 Q. What did the T-shirt say on it?
16 A. I already said that once. It said "The
17 Assuntos' Real Dukes of Dixieland 1947 to 1974."
18 Q. No. There was an incident at some point
19 - it may have been before the settlement -
20 whenever you and your friends came to a concert
21 wearing a shirt that said "Not the Real Dukes"?
22 A. No. I would never have -- There has only
23 been one set of shirts that were donated to the
24 family many years ago, and that's the ones we
25 wear.

1 Q. Okay. By whom? Who donated them? 180
2 A. My friend, John Restarski, the one who
3 helped with the website that's on the contributor
4 list, who is a fan.
5 MR. DORVEE:
6 All right. We're done.
7 MR. GALANTE:
8 All right.
9 (Conclusion of deposition at 1:59 p.m.)
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WITNESS' ATTESTATION

181

I have read or have had the foregoing testimony read to me, pursuant to Rule 30(e) of the Federal Rules of Civil Procedure and/or Article 1445 of the Louisiana Code of Civil Procedure, and hereby attest that, to the best of my ability and understanding, it is a true and correct transcription of my testimony, with the exception of any attached corrections or changes, complete with reasons for changes, on the Witness' Amendment pages;

I have in no way altered the printed transcript pages containing testimony herein, tampered with the seal on the last numbered page herein, or tampered with the security strip on the binder hereof. The integrity of this certified transcript has been maintained in the identical form as it was received by me, with the exception of any changes on the witness' Amendment pages.

Date

ANTONIO DEANO ASSUNTO

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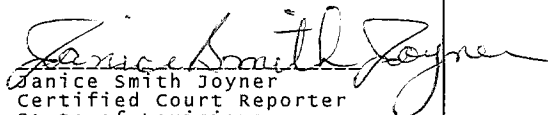
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I, Janice Smith Joyner, Certified Court Reporter in and for the State of Louisiana, as the officer before whom this testimony was taken, do hereby certify that ANTONIO DEANO ASSUNTO, to whom oath was administered, after having been duly sworn by me upon authority of R.S. 37:2554, did testify as hereinbefore set forth in the foregoing 180 pages;

That this testimony was reported by me in the stenotype reporting method, was prepared and transcribed by me or under my personal direction and supervision, and is a true and correct transcript to the best of my ability and understanding;

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That I am not related to counsel or to the parties herein, nor am I otherwise interested in the outcome of this matter.


Janice Smith Joyner
Certified Court Reporter
State of Louisiana
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