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Defendant and Cross-Complainant *pro se*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
CENTRAL DISTRICT**

KENDRICK MOXON

Plaintiff,

v.

GRAHAM BERRY,

Defendants.

GRAHAM E. BERRY, an individual;

Cross-Complainant,

v.

KENDRICK L. MOXON, an individual;

Cross-Defendant.

Case No. BC429217

**DEFENDANT AND CROSS-
COMPLAINANT'S APPENDIX NO. I
OF EXHIBITS AND REQUEST FOR
JUDICIAL NOTICE FILED AS PART OF
THE UNVERIFIED ANSWER AND
VERIFIED COMPULSARY CROSS-
COMPLAINT HEREIN.**

Action filed: January 5, 2010

[Filed concurrently with: (1) Judicial Council
of California Form MC-701 (C.C.P. §391.7;
(2) Appendix No. II of Exhibits [Exhibits B-
D]; (4) Appendix No. III of Exhibits
[Exhibits E-J] ; Unverified answer and
verified cross-complaint]

EXHIBIT 12

COPY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

GRAHAM E. BERRY,)
)
Plaintiff,)
)
vs.)
)
CASE NO. BC 184355
)
CASE NO. BC 186168
)
ROBERT J. CIPRIANO, an individual,)
)
BERNARD J. LeGEROS, an individual,)
)
WILBUR J. ("BILL") LONG, an)
)
individual, and DOES 1 through)
)
200, inclusive,)
)
Defendants.)
)

GRAHAM E. BERRY,)
)
Plaintiff,)
)
vs.)
)
GLENN BARTON, an individual, the)
)
CAN Reform Group, an unincorporated)
)
association of individuals,)
)
etc., et al.,)
)
Defendants.)
)

A PORTION OF THIS TRANSCRIPT IS CONFIDENTIAL
AND IS CONTAINED IN CONFIDENTIAL BOOKLET

DEPOSITION OF GRAHAM E. BERRY

NOVEMBER 25, 1998

VOLUME 6

(Pages 1249 through 1499).

REPORTED BY:

Jan M. Rhoades
CSR No. 5705

HOMAN ASSOCIATES
CERTIFIED SHORTHAND REPORTERS
4287 JACKSON AVENUE
CULVER CITY, CALIFORNIA 90232
(310) 838-7734

14:00 1 A. I need to look at my case list. If you leave
2 a gap, I'll fill it in.

14:00 3 Q. No. Sir, is it because you've handled so
4 many pro bono cases you can't recall them?

14:00 5 A. I handle matters all the time.

14:00 6 Q. Pro bono litigation, Mr. Berry.

14:00 7 A. Matters which are about to lead to litigation
8 which I handle pro bono or are resolved by way of
9 settlement --

14:0010 Q. You're not listening to me, Mr. Berry. I'm
11 not asking you about that. I've asked you to tell me
12 when was the last time you represented somebody pro bono
13 in a litigation, not in something that could be a
14 litigation or might be a litigation but in a litigation.

14:0115 A. Or even threatened litigation.

14:0116 Q. No. In a litigation. In a lawsuit,
17 Mr. Berry.
18 When was the last time?

14:0119 A. August of this year --

14:0120 Q. Who was --

14:0121 A. -- or July.

14:0122 Q. Who was that?

14:0123 A. July, maybe.

14:0124 Q. Who was that?

14:0125 A. Michael Hurtado.

14:01 1 Q. Can you spell that, please.

14:01 2 A. H-u-r-t-a-d-o.

14:01 3 Q. So before -- Mr. Berry, I just want to

4 understand something. Twice you've told me you couldn't

5 answer without looking at your client list.

6 You just now remembered something three

7 months old; right?

14:01 8 A. Yes. It just came to my mind as I was

9 thinking through.

14:0110 Q. What was the nature of the case?

14:0111 A. Domestic restraining order.

14:0212 Q. And you represented him pro bono with no

13 expectation of being paid?

14:0214 A. Correct.

14:0215 Q. What did it involve? One court appearance?

14:0216 A. Yes.

14:0217 Q. Any other pro bono representations? Withdraw

18 that.

19 Is this chap a friend of yours?

14:0220 A. Yes.

14:0221 Q. Is he gay?

14:0222 A. Yes.

14:0223 Q. Have you ever had sex with him?

14:0224 A. Yes.

14:0225 Q. Do you expect to have sex with him again?

14:02 1 A. I don't know.

14:02 2 MR. LEWIS: Objection. Abusive and harassing.

14:02 3 BY MR. ROSEN:

14:02 4 Q. Do you get paid in something other than
5 currency for this pro bono representation?

14:02 6 A. No.

14:02 7 Q. Before this one, when was the last pro bono
8 representation that you had in litigation -- in actual
9 litigation?

14:02 10 A. I don't recall without looking at my case
11 list. I have done favors for friends like that here and
12 there; making an appearance here; making an appearance
13 there.

14:02 14 Q. I'm talking about handling a case.

14:02 15 A. The last significant litigation would have
16 been -- without me being refreshed by notes and
17 documents, would have been the Yagman case.

14:03 18 Q. That wasn't your choice, was it?

14:03 19 A. It was my choice as to whether I was willing
20 to do it or not.

14:03 21 Q. Didn't you tell us that Mr. Lewis ordered you
22 to do it?

14:03 23 A. Well, he told me: I want you to handle it.
24 If I said: I can't handle it; I have a philosophical
25 difference on this matter because I believe in

17k

1 Mr. Yagman's right to impugn the integrity of judges,
2 which was the position taken probably by 75 percent of
3 the local Bar, he probably would not have assigned me.

14:03 4 Q. Mr. Berry, you weren't asked to handle that
5 case pro bono, Mr. Lewis was asked to handle the case;
6 right?

14:03 7 A. I was asked to handle a matter which the firm
8 was handling pro bono. I did not make the distinction
9 that because the firm was handling it pro bono -- I was
10 the major counsel in the matter -- that I was not doing a
11 pro bono service.

14:04 12 Q. Try again.

13 It's amazing to me, Mr. Lewis, that you have
14 trouble from time to time understanding my questions, and
15 you don't seem to have any trouble understanding the
16 double-talk answers like your client has just given.

14:04 17 MR. LEWIS: Objection.

14:04 18 MR. ROSEN: Maybe you're just used to him.

14:04 19 MR. LEWIS: Objection. Self-serving speech.

14:04 20 BY MR. ROSEN:

14:04 21 Q. Let's try it again.

22 In the Yagman case, the, quote, "client," the
23 petitioner, was the Standing Committee of the Central
24 District; right?

14:04 25 A. Yes.

14:04 1 Q. Did that client ask you, Graham Berry, to
2 represent it pro bono?

14:04 3 A. No.

14:04 4 Q. It asked Mr. Lewis; right?

14:04 5 A. I don't know whether it asked Mr. Lewis or
6 Mr. Lewis offered at a committee meeting.

14:04 7 Q. When was the last time -- that case was in
8 1994?

14:05 9 A. '3 through '95, I think.

14:0510 Q. Between 1993 and August of this year, can you
11 think for a moment, Mr. Berry -- be a good guy about it;
12 try to help us out so we can move on -- can you think of
13 any other case in which you represented somebody pro bono
14 in litigation?

14:0515 A. I tell you, I don't have my records, and I
16 have a different --

14:0517 Q. Mr. Berry, you don't handle that many
18 litigations, as we've established. You have very few
19 cases that you've tried. So it shouldn't be so hard for
20 you to think about whether you represented somebody pro
21 bono in litigation.

14:0522 A. See, I don't consider litigation as involving
23 merely a trial.

14:0524 Q. Obviously not. So this is litigation,
25 Mr. Berry? This is a deposition.

14:05 1 A. Correct, and that's why I just said short of
2 a trial is litigation to me.

14:06 3 Q. Are you saying, as you sit here today, that
4 you cannot tell me the name of anybody else who you have
5 ever represented pro bono in litigation between 1993 and
6 August of this year?

14:06 7 A. Not an actual litigation, as you define it.
8 I am sure I may refresh my recollection before trial.

14:06 9 Q. Mr. Berry, the appearance that you made for
10 this chap --
11 I'm sorry, I didn't get his name. What is
12 it?

14:0613 A. Hurtado.

14:0614 Q. -- Hurtado, this was in August of 1998?

14:0615 A. Or September -- no, maybe it was July.

14:0616 Q. When was the last time you had sexual
17 relations with this gentleman?

14:0618 MR. LEWIS: Is there some relevance to that
19 question?

14:0620 MR. ROSEN: Yeah.

14:0621 MR. LEWIS: What is that relevance?

14:0722 MR. ROSEN: I'm not going to tell you.

14:0723 Q. Answer the question, and I'll be happy to
24 tell you.

14:0725 MR. LEWIS: I object that the question's unduly

1 intrusive into my client's privacy and abusive and
2 harassing.

14:07 3 THE WITNESS: Maybe September.

14:07 4 BY MR. ROSEN:

14:07 5 Q. Of this year?

14:07 6 A. Yes.

14:07 7 Q. Had you had sexual relations with Mr. Hurtado
8 before the representation of him?

14:07 9 A. Yes.

14:07 10 Q. Mr. Berry, is there any rule or canon of
11 ethic in California prohibiting a lawyer from having
12 sexual relations with his client?

14:07 13 A. Yes.

14:07 14 Q. Is it correct to say that you were having
15 sexual relations with Mr. Hurtado during the same period
16 of time that you were representing him?

14:07 17 A. Yes.

14:07 18 Q. Is there a provision of the canons of ethics
19 that is subject to being waived by a client?

14:07 20 A. It depends on the situation. The canons of
21 ethics is not quite so clear as you would suggest.

14:07 22 Q. Which provision on it do you have in mind
23 that it is not so clear?

14:07 24 A. The rule relates to sexual relations with
25 clients in matrimonial matters or similar matters where

1 the client develops an emotional attachment to the
2 attorney. It does not preclude sexual relations in all
3 situations between an attorney and a client.

14:08 4 Q. I think my question, Mr. Berry, was what rule
5 is it that you're referring to? Do you have a number or
6 something?

14:08 7 A. I do not have a number in front of me. .

14:08 8 Q. And you represented Mr. Hurtado in a domestic
9 relations dispute seeking an order -- in which I presume
10 someone was seeking an order of protection against him?

14:0811 A. Yes.

14:0812 Q. Was that someone his wife?

14:0813 A. No. It was his aunt.

14:0814 Q. His aunt?

14:0915 A. Yes.

14:0916 Q. And is that in the Family Court Division of

17 Los Angeles Superior Court?

14:0918 A. Municipal.

14:0919 Q. How old is Mr. Hurtado?

14:0920 A. 20, 21.

14:0921 Q. Do you know for sure?

14:0922 A. I'm not certain.

14:0923 Q. Have you ever seen anything indicating his

24 age, like a birth certificate or a driver's license?

14:0925 A. No. I've seen the court records which

1 indicate he's around 20.

14:09 2 Q. How long have you been having sex with him?

14:09 3 A. Several times. Three or four times.

14:09 4 Q. Since when?

14:09 5 A. I think last year.

14:09 6 Q. Where does he live?

14:09 7 A. Santa Monica.

14:09 8 Q. Where?

14:09 9 A. I don't have the exact address.

14:09 10 Q. Give me the approximate address.

14:09 11 A. South of the freeway.

14:09 12 Q. No. Do you know which street, Mr. Berry?

14:09 13 A. No.

14:09 14 Q. What's his first name?

14:09 15 A. Michael.

14:09 16 Q. How do you spell his last name?

14:10 17 A. H-u-r-t-a-d-o.

14:10 18 Q. This was in the Santa Monica Municipal Court,

19 this case?

- 14:10 20 A. Yes.

14:10 21 Q. What was the caption of the case?

14:10 22 A. I don't recall the plaintiff's name versus

23 Michael Hurtado.

14:10 24 Q. Do you have Mr. Hurtado's phone number?

14:10 25 A. Yes.

14:10 1 Q. Can you supply that to us, please?

14:10 2 A. Yes.

14:10 3 Q. Where does he work?

14:10 4 A. He goes to college.

14:10 5 Q. Where?

14:10 6 A. Santa Monica College.

14:10 7 Q. What year is he in?

14:10 8 A. I think he's in his junior or maybe -- maybe
9 his junior year.

14:1010 Q. And how did you meet him?

14:1011 A. I met him through friends, I believe.

14:1012 Q. Can you tell me who?

14:1013 A. I don't recall.

14:1014 Q. Think about it.

14:1015 A. I don't recall.

14:1016 Q. You met this gentleman a year ago; right?

14:1117 A. Maybe longer.

14:1118 Q. How much longer?

14:1119 A. I don't recall.

14:1120 Q. Back -- did you meet him before he was 18?

14:1121 A. No.

14:1122 Q. How do you know that if you don't have any
23 recollection, Mr. Berry?

14:1124 A. Because I know it was within the last year or
25 so, I think.

14:11 1 Q. "I know it was, I think." Okay.
2 Where is it that you think you met him?
14:11 3 A. I met him in West Hollywood somewhere.
14:11 4 Q. Where?
14:11 5 A. I don't recall.
14:11 6 Q. Did you meet him out on the street corner,
7 Mr. Berry?
14:11 8 A. I don't recall.
14:11 9 Q. You don't recall what friends it was -- what
10 friend it was who introduced you to him?
14:1111 A. No.
14:1112 Q. Mr. Berry, have you ever been sued?
14:1113 A. Yes.
14:1114 Q. How many times?
14:1115 A. Probably three or four.
14:1116 Q. When was the last time?
14:1117 A. A couple years ago.
14:1118 Q. Two years ago?
14:1119 A. Yes. Maybe three. I'm not sure.
14:1120 Q. What was the nature of the suit?
14:1221 A. Debt collection.
14:1222 Q. You owed money to somebody?
14:1223 A. To a bank.
14:1224 Q. And that's once. Let's go in reverse
25 chronological order.