

# **EXHIBIT 4**

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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THE AUTHORS GUILD, INC.,  
et al.,

Plaintiffs,

Index No.

11 Civ. 6351 (HB)

-against-

HATHITRUST, et al.,

Defendant.

- - - - -x

DEPOSITION OF JOHN W. WHITE

New York, New York

Friday, June 8, 2012

Reported by:

JEFFREY BENZ, CRR, RMR

JOB NO. 50523

June 8, 2012  
10:03 a.m.

Deposition of JOHN W. WHITE, held at the offices of Kilpatrick Townsend Stockton LLP, 1114 Avenue of the Americas, New York, New York, pursuant to Notice, before Jeffrey Benz, a Certified Realtime Reporter, Registered Merit Reporter and Notary Public of the State of New York.

A P P E A R A N C E S:

FRANKFURT KURNIT KLEIN & SELZ P.C.  
Attorneys for Plaintiffs  
488 Madison Avenue  
New York, New York 10022  
BY: JEREMY GOLDMAN, ESQ.

KILPATRICK TOWNSEND & STOCKTON LLP  
Attorneys for Defendants  
1114 Avenue of the Americas  
New York, New York 10036  
BY: ROBERT N. POTTER, ESQ.

White  
JOHN W. WHITE,  
called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:

EXAMINATION BY MR. POTTER:

Q. Good morning, Mr. White.

A. Good morning.

Q. As I told you a moment ago when we met, my name is Robert Potter. I'm an attorney at Kilpatrick Townsend, and we are representing the university defendants in the lawsuit styled as the Authors Guild and others versus HathiTrust and others.

Today, I will refer to my client, the defendant universities, either by that term or perhaps as the libraries, and if I do that, will you understand what I mean?

A. I will.

Q. Thank you.

A. May I ask a question? How do you prefer to be addressed?

Q. You can address me as Rob.

A. Okay.

Q. That will be fine.

White  
All right. I know that -- just for the record, I'll ask you to please state your full name and your home address.

A. My name is John Warren White. My home address is 60 Pound Ridge Road, that's three words, Pound Ridge Road, Cheshire, Connecticut 06410.

Q. Thank you.

Have you ever been deposed before, Mr. White?

A. No, I have not.

Q. All right. Well, then, I would like to go over just a review of the ground rules today. You understand that you're under oath?

A. I understand.

Q. You've been sworn in by the court reporter, and that the testimony you give today may be used in connection with this lawsuit?

A. I understand.

Q. Okay. Because we are -- our conversations are being transcribed, it's very important that you give me oral responses to the questions I ask, yes or no, rather than nodding or shaking your head or just saying uh-huh. Do

1 White  
 2 you understand?  
 3 A. Yes, I understand.  
 4 Q. Okay. For the same reason I ask that  
 5 we try not to talk over one another. Please let  
 6 me try to finish my question before answering,  
 7 and I'll certainly do my best to let you finish  
 8 answering before I ask my next question.  
 9 If you don't understand a question for  
 10 any reason, feel free to ask me to repeat or to  
 11 rephrase it, and I'll do my best to make it  
 12 clearer.  
 13 And we're certainly not trying to have  
 14 any kind of an endurance session so if you want  
 15 to break at any time for any reason, that's  
 16 fine, just let me know. I only ask that you  
 17 don't take a break in the middle of a pending  
 18 question.  
 19 A. I understand.  
 20 Q. Any reason that you cannot give your  
 21 most honest and truthful testimony today?  
 22 A. None whatsoever.  
 23 Q. Mr. White, what is your current  
 24 occupation?  
 25 A. I am an author and a literary agent.

1 White  
 2 Maryland, and is my client.  
 3 Q. And --  
 4 A. Author of six novels, and I represent  
 5 him for all six novels.  
 6 Q. Has he written works beyond those six  
 7 novels?  
 8 A. Yes.  
 9 Q. Other novels or what types of works  
 10 are they?  
 11 A. Unpublished plays and novellas.  
 12 Q. And why is Mr. Salamanca unable to  
 13 testify himself today?  
 14 MR. GOLDMAN: Objection to the form.  
 15 You can answer. You can answer.  
 16 A. His -- his health is precarious. And  
 17 his mental condition is such that even if he  
 18 were to be deposed at his bedside, his -- his  
 19 memory is really quite faulty.  
 20 Q. Has Mr. Salamanca given you power of  
 21 attorney in connection with any of his affairs?  
 22 MR. GOLDMAN: Objection to the form.  
 23 A. No.  
 24 Q. How long have you been agent for  
 25 Mr. Salamanca --

1 White  
 2 I'm here today in my role as literary agent.  
 3 Q. Do you have a work address separate  
 4 from your home address?  
 5 A. No.  
 6 Q. You work from your home?  
 7 A. That's correct.  
 8 Q. And you're here to testify in the  
 9 stead of J.R. Salamanca; is that correct?  
 10 A. That is correct.  
 11 MR. GOLDMAN: Objection to the form.  
 12 I think he's here as Mr. Salamanca's  
 13 literary agent. I don't know if he's here  
 14 instead of.  
 15 MR. POTTER: I'm not -- okay.  
 16 Q. And I won't expect you to answer  
 17 questions for Mr. Salamanca's personal belief  
 18 but I'll ask questions going to your personal  
 19 belief, perhaps.  
 20 A. Uh-huh.  
 21 Q. So just so the record is clear, who is  
 22 J.R. Salamanca?  
 23 A. J.R. Salamanca, whose full name is  
 24 Jack Richard Salamanca, is an American author,  
 25 now 91 years old, who lives in Potomac,

1 White  
 2 A. Excuse me, Rob, I'm not sure that I  
 3 answered that fully or correctly. Does the  
 4 power of attorney reside in a literary agent who  
 5 has an author/agent agreement to act on behalf  
 6 of his client?  
 7 Q. That's a legal question that I'm  
 8 not -- it's not appropriate for me to opine.  
 9 But I would ask, just to be clear, are you aware  
 10 of any document that's been executed between you  
 11 and Mr. Salamanca that expressly indicates that  
 12 he has given you power of attorney in connection  
 13 with any aspect of his affairs?  
 14 MR. GOLDMAN: Objection to the extent  
 15 it calls for a legal conclusion.  
 16 A. Again, I'm -- I'm ambiguous, or the  
 17 term "power of attorney" is ambiguous. Because  
 18 you asked me if it resides in. As his literary  
 19 agent, I have a signed agreement with him which  
 20 authorizes me to act in his behalf, signing  
 21 contracts and other documents for him.  
 22 So if that is a power of attorney,  
 23 then I could have it, but it would be decidedly  
 24 limited. It doesn't extend to his personal  
 25 finances, or things of that sort.

White

Q. I appreciate that clarification.

In connection with that arrangement, under which you are able to sign literary contracts on Mr. Salamanca's behalf, is there an obligation that you discuss the terms of those contracts with him first?

A. No.

Q. Okay.

A. However, my practice is such that I do.

Q. In every instance?

A. No.

Q. In what instances wouldn't you?

A. When -- when his health is such that he's -- according to his son, who lives with him, simply incapable of having a -- a coherent telephone conversation.

Q. And is his health such that there will be a period of time when he's incapable of that and then he will be capable for a while and then incapable, or has he at some period of time become incapable and it remains that way?

MR. GOLDMAN: Objection to the form of the question.

White

You can answer.

A. His mental condition varies. Some days it's better. Some days it's worse.

Q. I understand.

A. Overall it's on a declining slope.

Q. So more and more it's the case that you're signing contracts without speaking to him first about the terms; is that correct?

A. That is correct.

Q. How long have you been Mr. Salamanca's literary agent?

A. Since about 1999.

Q. And had you had any kind of relationship with him prior to that?

A. Yes, I have.

Q. And what was that? What kind of relationship was that?

A. A -- a corresponding relationship as an admirer of his literary art, as a literary critic writing about his art, and as a friend who visited him on several occasions.

Q. When did that nonprofessional relationship begin, approximately?

A. About 1969.

White

Q. So for approximately 30 years you were friends with and corresponding with Mr. Salamanca before you --

A. That's correct.

Q. -- had a professional relationship?

MR. GOLDMAN: Just wait till he's finished the question so that the court reporter can transcribe what we're saying. That's to both of you.

Q. Who -- did Mr. Salamanca have a literary -- a different literary agent prior to 1999?

A. Yes, he did.

Q. Do you know who that was?

A. I've -- I've heard the name, but I'm sorry, I'm unable to remember it at this time.

Q. How long have you been a literary agent in general?

A. In general, I began my literary agenting in 1975; however, that was just on a part-time basis. I've been a full-time literary agent since 1995.

Q. And currently how many authors do you represent as agent?

White

A. About three dozen.

Q. And is there any particular genre that you focus in, or does it more or less run the gamut, the type of writing these authors make?

A. I do not represent children's books, essays, pornography, many, many kinds of academic works. My focus is primarily on adult nonfiction of a spiritual, psychological, or religious nature, and a limited amount of fiction.

Q. And I think you mentioned that you are a writer yourself, Mr. White?

A. That's correct.

Q. And have you been published as a writer?

A. Yes, I have.

Q. How many works of yours have been published?

A. Fifteen.

Q. And what type of works are those?

A. They are books about human development, spirituality, meditation, psychic research, paranormal phenomena.

Q. Have you written about UFOs?

1 White  
 2 A. I have. Yes, I have.  
 3 Q. Do you believe that UFOs have visited  
 4 the earth?  
 5 MR. GOLDMAN: Objection to the form.  
 6 And objection. Beyond the scope. Really?  
 7 MR. POTTER: Just asking.  
 8 Q. You can answer.  
 9 A. I do, on the basis of my reason, my  
 10 research, and my personal experience.  
 11 Q. Speaking of research, when you're  
 12 writing a book, what type of research do you  
 13 typically do?  
 14 A. I perform a variety of types of  
 15 research. Much of it is simply reading in  
 16 literature. A lot of it is correspondence with  
 17 people who are actively themselves researching  
 18 or subjects of research.  
 19 I involve myself in such experiences  
 20 as are open to me in a research capacity, and  
 21 then I try to boil it down, simplify it for the  
 22 general public in a way which makes it easily  
 23 comprehensible.  
 24 Q. Do you do research through textual  
 25 sources?

1 White  
 2 certain Web sites that have databases. What --  
 3 can you think of any Web sites in particular?  
 4 A. I'm hesitating because my last book  
 5 was published 20 years ago. I have been  
 6 relatively silent since then. And when I last  
 7 wrote a book entitled "The Meeting of Science  
 8 and Spirit," there were not a lot of online  
 9 databases available to me. I'm trying to recall  
 10 any I might have gone to for that book.  
 11 Q. Let me ask you this: Those databases  
 12 you referred to, were those databases in which  
 13 the works you wish to research were collected,  
 14 or were they more of a database that directed  
 15 you to certain works that you may wish to use?  
 16 MR. GOLDMAN: Objection to the form.  
 17 A. It could have been both.  
 18 Q. Okay. You indicate that you haven't  
 19 written a book in 20 years. Is that what you  
 20 said?  
 21 A. That's correct.  
 22 MR. GOLDMAN: I think he said he  
 23 hadn't published a book in 20 years.  
 24 THE WITNESS: That's what I mean to  
 25 say. Thank you.

1 White  
 2 MR. GOLDMAN: Objection. What do you  
 3 mean by "textual"?  
 4 MR. POTTER: He mentioned a wide  
 5 variety of research involving  
 6 correspondence, involving experiential,  
 7 experiential research.  
 8 Q. I'm asking if you do research in, for  
 9 lack of a better term, the conventional looking  
 10 in books?  
 11 A. That was the meaning of the first  
 12 thing I said. I read the literature, books, and  
 13 professional journals.  
 14 Q. How do you locate the books and the  
 15 professional journals that you use in this  
 16 research?  
 17 A. Again, in a variety of ways. I might  
 18 go to the library and research through a card  
 19 catalog, go to professional -- go to Web sites,  
 20 many of them have databases. I might write to  
 21 friends and colleagues and professionals, asking  
 22 for their suggestion on material that I ought to  
 23 be familiar with before advancing my own  
 24 writing.  
 25 Q. You mentioned that you'll go to

1 White  
 2 Q. Have you written books in the last 20  
 3 years?  
 4 A. Yes, I have.  
 5 Q. And have you researched those works on  
 6 the Internet?  
 7 A. Yes, I have.  
 8 Q. And do you recall any Web sites you  
 9 might have used in connection with that  
 10 research?  
 11 MR. GOLDMAN: Objection. Only to the  
 12 extent that you haven't established --  
 13 there might be multiple works so might be  
 14 multiple databases, but you can answer.  
 15 A. There are several I use. One is  
 16 called the Patriot Post.  
 17 Q. And how does that one operate?  
 18 A. The Patriot Post sends out a daily --  
 19 how to put it, summary of events, political,  
 20 cultural, which is of concern to them, and they  
 21 also have a -- a Web site on which essays and  
 22 other writings are compiled, books, journals,  
 23 articles are recommended, that's a pretty  
 24 typical sort of Web site I might visit.  
 25 Q. Do you know -- the essays that are

1 White  
2 compiled on that Web site, for example, are  
3 those submitted by readers, by users of the Web  
4 site?

5 A. Yes, and others.

6 Q. What do you mean by "and others"?

7 A. They could be well-known figures in  
8 their field who want to publish something for  
9 the general public and do so without  
10 remuneration on that Web site.

11 Q. Switching gears a little bit, let's  
12 talk -- I would like to speak about your  
13 educational background.

14 A. Uh-huh.

15 Q. Did you go to college, Mr. White?

16 A. Yes, I did.

17 Q. And where was that?

18 A. I went to Dartmouth College, graduated  
19 in 1961 with a bachelor's degree in arts,  
20 bachelor of arts, when I was an NROTC scholar,  
21 so I also have parallel training in naval  
22 science.

23 Q. Did you get any degrees in naval  
24 science?

25 A. No, my degree was a bachelor of arts.

1 White  
2 has been your only source of income?

3 A. No, I do not mean that.

4 Q. Okay. What other sources of income --

5 MR. GOLDMAN: I don't -- are you  
6 looking for other source of income from his  
7 income -- from his employment you mean --

8 Q. Do you have other -- what other  
9 employment have you been engaged in, other than  
10 literary agenting, since 1995?

11 A. As an author I publish books and  
12 articles, for which I'm remunerated,  
13 compensated, receive royalties or fees. I also  
14 lecture and receive lecture fees.

15 Q. You indicated that as an author you've  
16 published books and articles. Were those  
17 published since 1995?

18 A. No, I have been publishing books since  
19 1972 and articles since 1969.

20 Q. And they continue to provide you  
21 ongoing remuneration?

22 MR. GOLDMAN: Objection to form. I'm  
23 sure "they" is vague, that's all.

24 Q. These articles and books that you've  
25 previously written?

1 White  
2 Q. Do you have any postgraduate  
3 education?

4 A. Yes, I did.

5 Q. What is that?

6 A. I went to Yale University for a master  
7 of arts in teaching, MAT, which I received in  
8 1969.

9 Q. Any additional education of any kind?

10 A. Yes. I spent one semester at the  
11 University of Connecticut, in Storrs,  
12 Connecticut, S-T-O-R-R-S, studying for a Ph.D.  
13 in psychology. But one winter night as I was  
14 slugging my way through a snowstorm, I asked  
15 myself, do I really need this? And the answer  
16 was no, so I -- I dropped out of the program.

17 Q. Okay. And relatively briefly I would  
18 like to run through your professional history.  
19 I know that you told me that you've been a -- it  
20 may be easier if we work backward. You said  
21 you've been a literary agent since 1995?

22 MR. GOLDMAN: Objection. He said a  
23 full-time literary agent.

24 A. That's -- the correction is correct.

25 Q. And by "full time" you mean that that

1 White  
2 A. They're part of my income, that's  
3 correct.

4 Q. So when you were referring there to  
5 since 1995, that income is that type of ongoing  
6 royalty?

7 A. Since 1995, I have been a literary  
8 agent full time, so I -- I have literary agent's  
9 fee, which I take out of the income I derive  
10 from my authors whom you get published.

11 Q. I see. I believe I misunderstood what  
12 you were saying.

13 Prior to 1995 and other than being an  
14 author yourself, what lines of work were you  
15 engaged in, if any?

16 A. Oh, I -- from 1965 to 1969, I taught  
17 English and -- at Cheshire High School, which is  
18 my home town. From 1969 to 1972, I was in the  
19 public relations department of the Connecticut  
20 telephone company. That's not the exact title.  
21 The name of it was Southern New England  
22 Telephone, but it has since become SBC Global.

23 From 19 -- sorry, from 1972 to 1974,  
24 I served as director of education for the  
25 Institute of Noetic, N-O-E-T-I-C, Sciences in

1 White  
 2 Paolo Alto, California. The institute was  
 3 founded in 1972 by Apollo 14 Astronaut Edgar  
 4 Mitchell, who was the second man on the moon,  
 5 and hired me to handle communications and  
 6 educational matters for the institute.  
 7 I left there in 1974 to become a  
 8 full-time freelance writer and continued in that  
 9 capacity until 1979, at which time I became  
 10 president of a small adult education  
 11 institution, non--- non-degreed.  
 12 And in -- in -- let's see, in 1981, I  
 13 joined the electric utility company in  
 14 Connecticut, which is called Northeast  
 15 Utilities. I served there in the public  
 16 relations department as an executive speech  
 17 writer and editor of the company quarterly  
 18 shareholder report and the employee newspaper.  
 19 I retired from there in 1995, and then became  
 20 full-time literary agent.  
 21 Pause, please. I need some water.  
 22 Q. Sure.  
 23 A. Thank you.  
 24 Q. Thank you, Mr. White. That was very  
 25 concise and succinct and comprehensive.

1 White  
 2 Q. You also mentioned that beginning in  
 3 1979, you were the president of your own -- or  
 4 of an adult education institution --  
 5 A. Right. It was not my own.  
 6 Q. -- non-degreed?  
 7 A. I'm sorry, I didn't mean to interrupt  
 8 you.  
 9 Q. I didn't mean to suggest that it was.  
 10 What was the name of that institution?  
 11 A. The Alpha Logics School.  
 12 Q. And what type of education did the  
 13 Alpha Logics School offer?  
 14 A. Primarily training in psychic  
 15 development, meditation, and related phenomena.  
 16 Q. And by "psychic development," do you  
 17 mean in the colloquial psychic powers, or just  
 18 the psyche generally?  
 19 A. Yes, psychic powers.  
 20 Q. Are you still affiliated with the  
 21 Alpha Logics School?  
 22 A. No.  
 23 Q. When did your affiliation end?  
 24 A. In 1981, formally, but I'm still  
 25 friends with the owner.

1 White  
 2 A. It sounded long-winded to me.  
 3 Q. I've heard a lot of those.  
 4 MR. GOLDMAN: This could have lasted a  
 5 lot longer.  
 6 MR. POTTER: Yeah.  
 7 Q. I appreciate that. Just a couple  
 8 follow-up questions on those. Regarding this  
 9 Institute for Noetic Sciences, what are noetic  
 10 sciences?  
 11 A. Noetic means the study of  
 12 consciousness, and it is derived from the Greek  
 13 word "nous," meaning higher mind as used by  
 14 Plato in his writings.  
 15 So it's -- put it in a different way,  
 16 Apollo 14 Astronaut Edgar Mitchell wanted to  
 17 study the human mind in the same way that the  
 18 Apollo program launched him to the moon, with  
 19 scientific rigor and comprehensiveness, and then  
 20 apply those findings to the problems of human  
 21 society and civilization.  
 22 Q. Is that institute -- does it still  
 23 exist?  
 24 A. Yes, it's now relocated in -- north of  
 25 San Francisco, in Petaluma, California.

1 White  
 2 Q. Where is that school?  
 3 A. In Bristol, Connecticut.  
 4 Q. And that's where it is today?  
 5 A. It's defunct.  
 6 Q. Mr. White, have you ever been involved  
 7 as a plaintiff or defendant in any copyright  
 8 lawsuits, other than this one?  
 9 A. No.  
 10 MR. GOLDMAN: And objection to form.  
 11 I don't think he's formally involved.  
 12 Q. And have you ever threatened anyone  
 13 with copyright litigation, either personally or  
 14 through an attorney?  
 15 A. No.  
 16 Q. And has anyone ever threatened you  
 17 personally with copyright litigation?  
 18 A. No.  
 19 Q. Have any of the authors you  
 20 represented as literary agent during your tenure  
 21 as agent been sued for copyright infringement?  
 22 A. Not that I recall.  
 23 Q. And have any of them during your  
 24 tenure as their agent sued anyone else for  
 25 copyright infringement?

1 White  
 2 A. No.  
 3 Q. Are you personally, Mr. White,  
 4 represented by any of Mr. Salamanca's attorneys  
 5 in any way in connection with this lawsuit?  
 6 A. No. Excuse me.  
 7 MR. GOLDMAN: Objection to the form.  
 8 I'm serving as Mr. White's attorney here  
 9 today, and he is here as his agent and I'm  
 10 acting as his attorney.  
 11 MR. POTTER: In connection with this  
 12 deposition?  
 13 MR. GOLDMAN: In connection with this  
 14 deposition, in connection with this  
 15 lawsuit.  
 16 MR. POTTER: You're serving as his  
 17 attorney in connection with this lawsuit?  
 18 MR. GOLDMAN: Yes.  
 19 MR. POTTER: In what manner?  
 20 MR. GOLDMAN: He's the agent of J.R.  
 21 Salamanca, and I'm acting as  
 22 Mr. Salamanca's attorney, and by extension  
 23 I'm asking -- acting as the attorney for  
 24 his agent.  
 25 Q. Have you executed any retainer

1 White  
 2 agreements with Mr. Goldman's law firm,  
 3 Mr. White?  
 4 MR. GOLDMAN: Objection to the form.  
 5 And you can address questions like that to  
 6 me. There's no formal --  
 7 MR. POTTER: You're not being deposed  
 8 today, Jerry, I'm asking Mr. White --  
 9 Q. Have you executed any formal agreement  
 10 of any kind with Mr. Goldman's law firm?  
 11 MR. GOLDMAN: You can answer that.  
 12 A. I will. If I understand it, you first  
 13 asked about compensation, I think.  
 14 Q. Strike that. Strike the earlier  
 15 question.  
 16 A. Okay. Would you repeat it, please?  
 17 Q. Have you executed any form of written  
 18 agreement with Mr. Goldman's law firm?  
 19 MR. GOLDMAN: You can answer that yes  
 20 or no.  
 21 THE WITNESS: Yes, I think. I'm  
 22 trying to recall the -- the -- the  
 23 documents I signed where I --  
 24 A. I'm sorry, I should be addressing you.  
 25 I'll say, no, I don't think I have any

1 White  
 2 written agreements that bind --  
 3 MR. GOLDMAN: Just answer yes or no.  
 4 A. No.  
 5 Q. How did Mr. Salamanca come to be a  
 6 plaintiff in this lawsuit, Mr. White?  
 7 A. I was called by the executive director  
 8 of the Authors Guild and asked if I represented  
 9 him.  
 10 Q. Approximately when was that?  
 11 A. I think it was September of 2011.  
 12 Q. And when they asked you if you  
 13 represented him, what did you say?  
 14 A. I said yes.  
 15 Q. And how did that conversation lead to  
 16 Mr. Salamanca being a plaintiff in this action?  
 17 MR. GOLDMAN: Just want to advise you  
 18 to the extent that your answer reveals any  
 19 communications that you had with counsel,  
 20 then you shouldn't reveal them. But if you  
 21 can answer without revealing any such  
 22 communications, you can answer the  
 23 question.  
 24 MR. POTTER: I'm going to object to  
 25 that. I don't know that it's going to

1 White  
 2 become a big issue today, but I'm not  
 3 accepting that there's a privilege  
 4 relationship that runs from you to your  
 5 client through his literary agent.  
 6 I'm not aware of any exception to the  
 7 privilege rules that would indicate that  
 8 any communications you've made to him that  
 9 were to be relayed to Mr. Salamanca for  
 10 which privilege hasn't been waived.  
 11 So we can explore that further if and  
 12 when it becomes specific, but for the time  
 13 being, I just want to make it clear that  
 14 I'm not accepting that position in general.  
 15 MR. GOLDMAN: Okay. I understand your  
 16 position, and we'll deal with it if it  
 17 becomes an issue.  
 18 Q. So --  
 19 MR. GOLDMAN: But let me just say, we  
 20 are taking the position that we are acting  
 21 as attorneys for Mr. White, and so  
 22 therefore, I am going to instruct him not  
 23 to answer any questions that reveal  
 24 privileged communications between the  
 25 attorneys at my firm and Mr. White. So

1 White  
 2 hopefully we can avoid those kind of  
 3 questions.  
 4 MR. POTTER: In connection with  
 5 anything? In what capacity does your firm  
 6 represent Mr. White, as a plaintiff in this  
 7 action, or as a deponent here today?  
 8 MR. GOLDMAN: We're representing him  
 9 as a deponent here today, but we also have  
 10 an attorney-client relationship with him  
 11 with respect to his agency for  
 12 Mr. Salamanca.  
 13 MR. POTTER: That's the part that I  
 14 object to.  
 15 MR. GOLDMAN: I got it. I totally --  
 16 I understand your objection.  
 17 MR. POTTER: He's not the party, so I  
 18 don't understand where that relationship  
 19 would arise.  
 20 Q. I'm sorry for the side colloquy,  
 21 Mr. White.  
 22 So you were called by the executive  
 23 director of the Authors Guild, and what were you  
 24 told?  
 25 A. I was told that there is an

1 White  
 2 organization called the HathiTrust, which  
 3 intended to digitize Jack Salamanca's novels,  
 4 novels or at least several of them and then  
 5 distribute them via library and -- university  
 6 and college libraries at no -- at no fee, with  
 7 no remuneration.  
 8 Q. Did you further investigate those  
 9 allegations?  
 10 A. Yes.  
 11 Q. In what manner?  
 12 A. I relied upon documents which were  
 13 provided to me by the Authors Guild.  
 14 Q. Other than information provided you  
 15 from the -- provided to you by the Authors  
 16 Guild, did you independently investigate the  
 17 allegations they were making yourself?  
 18 A. No, I did not.  
 19 Q. Have you ever visited the HathiTrust  
 20 Web site?  
 21 A. No, I have not.  
 22 Q. Subsequent to the conversation with  
 23 the executive director of the Authors Guild, in  
 24 which you learned -- in which they told you  
 25 that -- what you just testified to, what did you

1 White  
 2 do after that?  
 3 A. With regard to --  
 4 Q. With regard to Mr. Salamanca and those  
 5 allegations.  
 6 A. I informed my client. I was asked if  
 7 there was any objection by me to Authors Guild  
 8 contacting Jack Salamanca. I said no objection.  
 9 I informed him first. And that was it.  
 10 Q. And is it your understanding that the  
 11 Authors Guild contacted Mr. Salamanca directly  
 12 after that?  
 13 A. Did I understand that?  
 14 Q. Is that your understanding?  
 15 A. Yes.  
 16 Q. And is it your understanding that  
 17 Mr. Salamanca spoke directly with someone from  
 18 the Authors Guild?  
 19 A. No, it is not. I believe the Authors  
 20 Guild spoke with his son Richard. Jack  
 21 Salamanca at that time, which was not so long  
 22 ago, was quite deaf. He had a very difficult  
 23 time carrying on telephone conversations, even  
 24 with me. So I tended more and more to rely on  
 25 his son Richard as an intermediary, and I think

1 White  
 2 that's how the conversation went between Authors  
 3 Guild and Jack Salamanca.  
 4 Q. Subsequent to your own telephone  
 5 conversation with the Authors Guild and giving  
 6 them permission to contact Mr. Salamanca, what  
 7 was the next instance in which you spoke with  
 8 anyone about this lawsuit?  
 9 A. Shortly thereafter, and I mean by that  
 10 no more than several days, I informed Tantor  
 11 Media, an audio book company, about this because  
 12 I was in discussion with Tantor Media about --  
 13 excuse me, reprinting his works, and we were  
 14 close to wrapping up an agreement. So I told  
 15 them of this -- this development, and that was  
 16 it.  
 17 Q. And what was their reaction? What was  
 18 Tantor Media's reaction to hearing that?  
 19 A. Not much of a reaction. It didn't  
 20 seem to have direct bearing on their -- their  
 21 marketing operations.  
 22 Q. And what specifically did you  
 23 communicate to Tantor Media about that?  
 24 A. I -- I told them specifically that I  
 25 had been called by Authors Guild. I told them a

White

summary of the conversation, and then sent, I think it was a press release, which Authors Guild had sent to me, I forwarded it to Tantor, and so they were as fully informed as I thought was necessary about this development concerning an author they were about to sign.

Q. Was the arrangement with Tantor Media subsequently consummated?

A. Yes, it was.

Q. More or less in a nutshell, Mr. White, what is your understanding as to the claims at issue in this lawsuit?

A. In a nutshell, it means loss of revenue, income, royalties, licensing fees, money for my client and for me.

Q. Owing to what specifically?

A. The distribution of his works on a nonpaid basis.

Q. Is it your understanding that Mr. Salamanca's works have been distributed on a nonpaid basis by the defendants in this action?

A. Did I say have been? No. I understand they have not been distributed yet because of an injunction by the Authors Guild.

White

Q. Is it your understanding that there's an injunction in place in this lawsuit now?

MR. GOLDMAN: I just want to object. I think there's some misunderstanding of the use of the term "injunction." You're not an attorney, so --

Q. As you understand it, Mr. White, is it your understanding that there is an injunction in place in the lawsuit now?

A. In light of what Attorney Goldman has just said, I'll withdraw the word "injunction" and just say the program is on hold until resolution of the conflict is obtained.

Q. And by "program" what -- on hold, what program do you mean specifically?

A. The program to digitize Jack Salamanca's works and others that I understand the literary guild is concerned about and instruct them to the consortium of libraries who would then make them available to faculty and students.

Q. And if that program were to be put on hold permanently, to never come -- to never take form, would you then be satisfied with the

White

resolution of this case?

MR. GOLDMAN: I'm going to object to the form of that question.

You can answer, if you understand.

Q. Allow me to rephrase the question. Strike the last one.

If that program were not in place, would your concerns about Mr. Salamanca and/or you losing various forms of remuneration be mollified?

MR. GOLDMAN: And I'm going to object to the form again.

A. I can give you a tentative yes to that. But looking at what -- more broadly at what you say here, what we're describing as the program, I would add that there are aspects to it which seem very desirable.

I'm not interested in terminating the dissemination of truly definitively identified orphan works, only those works, specifically my client's works which are not orphaned.

Q. What is your understanding of the term "orphan work"?

A. It is a work no longer in copyright,

White

and for whom a rights holder cannot be located.

Q. If it's no longer in copyright, wouldn't by definition there be no rights holder?

A. There are derivatives from an original work which could still be affected. And -- I'm sorry, I can't give you --

Q. You're not a copyright lawyer, and Jeremy and I can hash it out one night over a beer.

Do you know if Mr. Salamanca is paying his own legal fees in this lawsuit?

MR. GOLDMAN: You can answer that yes or no, if you know. You can answer yes or no as to whether you know.

A. Ask the question again, please.

Q. Do you know if Mr. Salamanca is paying his own legal fees in this matter?

A. Yes, I know that he is not paying his own legal fees because there are none.

Q. Well, I know that Mr. Goldman doesn't work for free, so who is paying the legal fees in this lawsuit, if you know?

MR. GOLDMAN: I'm going to object to

1 White  
 2 that question, and you don't have to answer  
 3 it. It's outside the scope of anything.  
 4 I'm instructing him not to answer.  
 5 MR. POTTER: On what grounds?  
 6 MR. GOLDMAN: That your witness will  
 7 not answer who is paying their legal fees  
 8 so we're not going to answer who is paying  
 9 our legal fees.  
 10 MR. POTTER: I don't recall that I  
 11 made an objection as to the legal fees in  
 12 and of itself. I'm not asking about  
 13 communications.  
 14 MR. GOLDMAN: You know what? You can  
 15 answer if you know who is paying -- you can  
 16 answer yes or no if you know who is paying  
 17 any legal fees but I think he just  
 18 testified that he doesn't believe that  
 19 there are any legal fees, so.  
 20 Q. Do you have an understanding that  
 21 legal fees are being paid in this matter for the  
 22 plaintiffs?  
 23 A. No.  
 24 Q. It's your understanding that the  
 25 lawyers on the -- for the plaintiffs are working

1 White  
 2 all the legal fees for the plaintiffs in this  
 3 matter?  
 4 MR. GOLDMAN: You can answer yes or  
 5 no, if you know.  
 6 A. All the legal fees for the plaintiff,  
 7 you said?  
 8 Q. For the plaintiffs.  
 9 A. And define plaintiffs. More than my  
 10 clients?  
 11 Q. Yes.  
 12 A. I don't know.  
 13 Q. All right. And just for the record,  
 14 Mr. Salamanca (sic), for every question I ask,  
 15 if it's a yes-or-no question, you can answer yes  
 16 or no, if you know. We don't need to constantly  
 17 have that -- that prompting for you.  
 18 MR. GOLDMAN: I'm only giving that  
 19 prompting when it's in a sensitive area,  
 20 and I'm just being careful and advising him  
 21 to answer yes or no when I don't want  
 22 anything other than yes or no.  
 23 Q. I believe you testified earlier,  
 24 Mr. White, that Mr. Salamanca has published six  
 25 novels?

1 White  
 2 in a pro bono capacity?  
 3 MR. GOLDMAN: Objection to the form.  
 4 You can answer that, if you can. If  
 5 you have -- you can answer yes or no, if  
 6 you have an understanding.  
 7 A. I don't feel qualified to answer that  
 8 question.  
 9 Q. Is it your understanding that the  
 10 plaintiffs are performing their legal  
 11 services -- plaintiffs' attorneys are performing  
 12 their legal services in this matter for free?  
 13 A. Free to whom? Salamanca? Members of  
 14 the literary guild?  
 15 Q. Let's start with Mr. Salamanca.  
 16 A. So far as I know, it's free to him.  
 17 Q. Is it your understanding that other  
 18 plaintiffs are paying for the legal services?  
 19 A. It's my understanding that they are  
 20 not paying directly but through their  
 21 membership, annual membership fees. They are  
 22 supporting the Authors Guild, which is taking  
 23 this action on behalf of authors in general.  
 24 Q. So to just drill down, is it your  
 25 understanding that the Authors Guild is paying

1 White  
 2 A. That's correct.  
 3 Q. And that that is the extent of his  
 4 published written work?  
 5 A. That is correct.  
 6 MR. GOLDMAN: Rob, it sounds like  
 7 you're going on to another line of  
 8 questions. We've been going for 45  
 9 minutes. Can we just take a quick break?  
 10 MR. POTTER: By all means.  
 11 (Recess from 10:46 to 10:52.)  
 12 BY MR. POTTER:  
 13 Q. All right. So I believe when we left  
 14 off, we had begun talking again about  
 15 Mr. Salamanca's works. And at the risk of being  
 16 slightly redundant, you indicated that he has  
 17 published six novels; is that right?  
 18 A. That's correct.  
 19 Q. And that is the extent of his  
 20 published written works?  
 21 A. That's correct.  
 22 Q. Can you identify the titles of each of  
 23 those novels?  
 24 A. Yes.  
 25 Q. Please do.

1 White

2 A. First is The Lost Country, published  
3 in 1961. Followed by Lilith, 19 -- I'm sorry,  
4 correction, The Lost Country, 1958. Lilith,  
5 1961. Followed by Embarcation, 1968. I might  
6 have these dates incorrect.

7 Followed by A Sea Change, 1971.

8 Followed -- I said '71. Yes, I think so. His  
9 fifth novel was Southern Light, which dates, I  
10 believe, from 1980. His final novel was That  
11 Summer's Trance, which was 2000.

12 Q. Is Mr. Salamanca -- I assume that he's  
13 no longer writing?

14 A. That's correct.

15 Q. When you began representing  
16 Mr. Salamanca in 1999 --

17 A. Yes.

18 Q. -- how many of those six novels were  
19 in print at that time?

20 MR. GOLDMAN: I'm going to object only  
21 to the extent that the term "in print" may  
22 call for a legal conclusion.

23 A. I have no objection to -- to answering  
24 that. I understand the term "in print" to mean  
25 for sale through a -- a publisher or licensed by

1 White

2 print and then went out of print?

3 A. That's correct.

4 Q. So I think this is clear from what we  
5 just discussed, but currently the only  
6 publishers publishing any version of any of  
7 Mr. Salamanca's novels is Tantor Media?

8 A. That's correct.

9 Q. Does Mr. Salamanca own the copyright  
10 to each of those six novels?

11 A. Yes.

12 Q. How do you know?

13 A. By familiarity with copyright law and  
14 his personal affairs.

15 Q. Has he registered each of those  
16 copyrights with the U.S. government?

17 A. They were registered in his name by  
18 his publishers.

19 Q. And how do you know that?

20 A. I've been told so by him.

21 Q. Have you seen any copyright  
22 registration forms for any of his works?

23 A. No, I have not.

24 Q. Has Mr. Salamanca renewed the  
25 copyright registrations -- strike that.

1 White

2 a publisher. I think all of them were out of  
3 print at that time. Now that would be five.  
4 The sixth one was yet to be published.

5 Q. Understood.

6 And how many of those works are in  
7 print now?

8 A. Please define "in print."

9 Q. Well, I think I know where you're  
10 going. I understand that they're all subject to  
11 the Tantor license?

12 A. That's correct.

13 Q. Setting aside those agreements, which  
14 we'll discuss later, let's say this: Prior to  
15 the Tantor agreements, how many of those works  
16 were in print?

17 A. None.

18 Q. So just to be clear, between 1999,  
19 when you began representing Mr. Salamanca, and  
20 the time when the Tantor agreements were signed,  
21 the last work that he wrote in 2000 -- I'm  
22 sorry, I can't read my writing, it's called That  
23 Summer's?

24 A. Trance.

25 Q. That Summer's Trance, that went in

1 White

2 Has Mr. Salamanca renewed any  
3 copyright registrations that were initially  
4 grandparented prior to 1963?

5 MR. GOLDMAN: I'm objecting to the  
6 form.

7 You can answer.

8 A. I simply don't know.

9 Q. Does Mr. Salamanca own each of those  
10 six copyrights exclusively, wholly?

11 A. Yes.

12 MR. GOLDMAN: Objection to the form  
13 and to the extent that it calls for a legal  
14 conclusion.

15 Q. And how do you know that?

16 A. Again, it's -- my knowledge is based  
17 on -- or my answer is based on conversations  
18 with him.

19 Q. Did Mr. Salamanca ever assign any  
20 copyrights in whole or in part to his  
21 publishers?

22 A. Not to the best of my recollection.

23 MR. GOLDMAN: Let me object to the  
24 form and also object to the extent that  
25 that question calls for a legal conclusion.

1 White  
 2 A. To the -- not to the best of my  
 3 knowledge.  
 4 Q. What is the approximate average annual  
 5 revenue that Mr. Salamanca earns from the books  
 6 he has authored?  
 7 MR. GOLDMAN: Objection. Vague.  
 8 A. I have no knowledge of that.  
 9 Q. In your relationship with him as his  
 10 literary agent, are you paid on a commission  
 11 basis?  
 12 A. Yes.  
 13 Q. A commission of his earnings?  
 14 A. Yes. From -- let me clarify. From  
 15 contracts which I negotiated on his behalf.  
 16 Q. Let's -- the contracts that you  
 17 negotiated on his behalf would include the  
 18 Tantor agreements?  
 19 A. That's correct.  
 20 Q. And presumably the publication  
 21 agreement for That Summer's Trance?  
 22 A. That has been terminated.  
 23 Q. So there's no longer royalties  
 24 accruing from that?  
 25 A. That's correct.

1 White  
 2 Q. So currently is the only income that  
 3 you're aware of that Mr. Salamanca receives from  
 4 his writings pursuant to the Tantor agreements?  
 5 MR. GOLDMAN: Objection. Form and  
 6 lacks foundation.  
 7 A. That's correct.  
 8 Q. Do you have -- what is the approximate  
 9 revenues that Mr. Salamanca has earned pursuant  
 10 to the Tantor agreements?  
 11 A. I cannot give you an answer to that  
 12 because I don't have that knowledge. Several  
 13 months ago I asked Tantor for a tentative  
 14 accounting for Lilith because that was the only  
 15 one for which they had any data, and at that  
 16 point it -- I think it was maybe \$10 in  
 17 royalties.  
 18 Q. When was this?  
 19 A. March 2012.  
 20 Q. Is it correct that currently  
 21 Mr. Salamanca's works are distributed only in a  
 22 digital format?  
 23 MR. GOLDMAN: Objection. And vague  
 24 and -- the use of the term "distributed" is  
 25 a little vague.

1 White  
 2 A. Did you say visual?  
 3 Q. Digital.  
 4 A. Oh, digital. Yes.  
 5 Q. To your knowledge, are Mr. Salamanca's  
 6 works available in formats accessible to the  
 7 blind?  
 8 A. No.  
 9 Q. Are they in -- available in formats  
 10 accessible to others with print disabilities,  
 11 dyslexics, people without arms?  
 12 A. Not to my knowledge.  
 13 Q. Mr. Salamanca has alleged that the  
 14 library defendants in this lawsuit have  
 15 infringed the copyrights in his works; is that  
 16 correct?  
 17 A. That's the understanding.  
 18 MR. POTTER: Mark this as 1.  
 19 (Amended Objections and Response to the  
 20 Defendants' First Set of Interrogatories and  
 21 Requests for the Production of Documents was  
 22 marked JW Exhibit 1 for identification, as of  
 23 this date.)  
 24 Q. Mr. White, the court reporter has put  
 25 in front of you what's been marked as

1 White  
 2 Exhibit JW 1. Have you seen this document  
 3 before?  
 4 A. No, I have not.  
 5 Q. All right.  
 6 MR. GOLDMAN: Did you look at the  
 7 document? Mr. White, oh. Excuse me. I  
 8 thought you just pulled it from a printer.  
 9 A. Yes, I have. Yes, I have.  
 10 Q. And this is Mr. Salamanca's Amended  
 11 Objections and Response to the Defendants' First  
 12 Set of Interrogatories and Requests for the  
 13 Production of Documents in this action; is that  
 14 right?  
 15 A. That's right.  
 16 Q. Please turn to the last page of this  
 17 document. It's entitled verification. And it  
 18 states that you, John White, literary agent for  
 19 J.R. Salamanca, are familiar with the content  
 20 and the responses to Interrogatory Numbers 1  
 21 through 7 and that the matters therein are true  
 22 to your knowledge; is that right?  
 23 A. That is right.  
 24 Q. Why didn't Mr. Salamanca verify his  
 25 own interrogatories?

White

A. He empowered me to handle this matter for himself. He also is of infirm health, and there's no -- no guarantee that he would have been able to read and comprehend all of this.

Q. I understand.

So Mr. Salamanca has never seen these?

A. That is not correct.

Q. Is Mr. Salamanca familiar with the contents of these responses?

A. To the best of my knowledge, Authors Guild has sent -- has e-mailed PDF files of this to Richard Salamanca, the son, who has looked at them and communicated them to his father in summary fashion, however is -- is required in the relationship between father and son.

Q. And that was done after these were completed?

A. That's correct.

Q. And this is your signature at the bottom of this last page; is that right?

A. Yes, it is.

Q. And it's dated -- well, there's a blank but it's at some point in April 2012?

A. That's correct.

White

know my position on this, I -- I'm taking the position that we are -- we were acting as his attorneys.

And when he says "Authors Guild," to the extent that you're referring to an attorney, or myself, who is an attorney, then you should not reveal the contents of those communications.

If you can answer that question without revealing those communications, you may do so.

A. Would you repeat the question, please?

Q. You had indicated that the Authors Guild sent these to you?

A. That's correct.

Q. Do you recall if it was the Authors Guild or if it was one of the attorneys for the Authors Guild that sent them to you?

A. I don't -- I don't know -- know that such a distinction can be made.

Q. It's important in some contexts. I don't know that I need to press it for the time being.

MR. GOLDMAN: Well, the Authors Guild

White

Q. And you signed this under penalty of perjury, correct?

A. That's correct.

Q. Did you believe these responses to be accurate at the time that you signed the document?

A. Yes, I do.

Q. And do you believe them to be accurate as you're sitting here today?

A. Yes, I do.

Q. Did you prepare these responses, Mr. White?

A. No, I did not.

Q. Who did?

A. Authors Guild.

Q. And then they were sent to you?

A. That's correct.

Q. From the Authors Guild?

A. Yes.

Q. And when they were sent to you, what were you told?

MR. GOLDMAN: Objection. Objection. And -- I'm going to advise you again, and maybe you can -- I don't -- I don't -- you

White

is not a person, so that might be helpful. It's hard for a -- an organization to send a document to anyone. So --

MR. POTTER: Jeremy, thank you.

Q. When you received these from whomever, did you review them?

A. Yes, I did.

Q. Did you have any issue with any of the responses at all?

A. No.

Q. Did you have any -- strike that.

Why do you think that the Authors Guild would be able to provide accurate responses on behalf of Mr. Salamanca without speaking with him or you?

MR. GOLDMAN: Objection to form and lacks foundation and that also misstates testimony.

MR. POTTER: Strike that.

Q. Had you spoken with anyone concerning the preparation of these responses before they were sent to you?

A. Yes.

Q. And with whom did you speak? And I

1 White  
 2 won't ask you to reveal the substance of those  
 3 communications, just with whom did you speak?  
 4 A. The executive director of the Authors  
 5 Guild. Please --  
 6 MR. GOLDMAN: Mr. Goldman, or Jeremy.  
 7 Q. You're referring to the gentleman  
 8 sitting next to you?  
 9 MR. GOLDMAN: Oh, the executive  
 10 director is Paul Aiken.  
 11 A. Paul Aiken and with Jeremy Goldman.  
 12 Q. Simultaneously?  
 13 A. No.  
 14 Q. Did you speak separately with  
 15 Mr. Aiken?  
 16 A. Yes.  
 17 Q. And what communications did you have  
 18 with Mr. Aiken concerning these documents? What  
 19 did he tell you?  
 20 A. I want to ask my attorney.  
 21 THE WITNESS: Is that a --  
 22 MR. POTTER: Mr. Goldman will  
 23 certainly object if and when there's an  
 24 opportunity to do to.  
 25 MR. GOLDMAN: I -- are you concerned

1 White  
 2 that it would reveal privileged  
 3 communications?  
 4 THE WITNESS: Yes.  
 5 MR. GOLDMAN: So I'd like to confer  
 6 with my client to hear what he has to say,  
 7 and then be able to advise him. If it's  
 8 involving privilege, that's appropriate.  
 9 MR. POTTER: Let's try it a different  
 10 way.  
 11 Q. This conversation was with Mr. Aiken  
 12 exclusively. No one else was present?  
 13 A. That's correct.  
 14 Q. Did you have an understanding that  
 15 Mr. Aiken was communicating to you information  
 16 that he had learned from his attorneys?  
 17 A. Pardon me while I -- I ponder this.  
 18 In part.  
 19 Q. I won't ask you about that part. What  
 20 was the other part? What did he say to you  
 21 otherwise?  
 22 A. Oh. All right. I may have  
 23 misunderstood your question, or you may have  
 24 misunderstood my answer. I mean to say that the  
 25 substance of what I discussed with Paul Aiken

1 White  
 2 was partly his own original views, partly advice  
 3 from literary guild attorneys.  
 4 Q. It's that second part that I'm not  
 5 going to ask you about. I do want to ask you  
 6 about Mr. Aiken's own views. What was -- what  
 7 was it that he communicated to you in that vein?  
 8 A. He indicated extreme concern about the  
 9 HathiTrust actions violating copyright law and  
 10 affecting the income stream of authors.  
 11 Q. Anything else?  
 12 A. And an urgent need to intervene.  
 13 Q. Did he say anything specific to these  
 14 interrogatories responses?  
 15 A. No.  
 16 Q. Other than the information that you  
 17 understand to have been obtained from the  
 18 guild's attorneys, do you recall any other  
 19 substance of that conversation?  
 20 A. Yes. He told me of the name of the  
 21 HathiTrust and the relationship it has with  
 22 universities and libraries.  
 23 Q. What -- how did he describe that  
 24 relationship to you?  
 25 A. As I recall, he said, HathiTrust was a

1 White  
 2 consortium representing a number of university  
 3 and college libraries who had the intent of  
 4 providing digital copies of orphaned works to  
 5 their -- themselves, their faculty, and  
 6 students.  
 7 Q. Anything further?  
 8 A. I don't recall.  
 9 Q. Please turn to page 5 of this exhibit,  
 10 Mr. White. Mr. White, if you'll look at  
 11 Interrogatory Number 1, it asks Mr. Salamanca to  
 12 identify each work for which he is the legal or  
 13 beneficial owner of a copyright or an exclusive  
 14 right under a copyright that he claims has been  
 15 infringed by one or more of the defendants in  
 16 this lawsuit; is that correct?  
 17 A. That's correct.  
 18 Q. After certain objections, if you look  
 19 at the final paragraph on this page, it  
 20 indicates that plaintiffs' response is set forth  
 21 on Schedule A; is that right?  
 22 A. That's correct.  
 23 Q. All right. I'll would like to give  
 24 you now what's been marked as JW 2.  
 25 (Second amended version of Schedule A

1 White  
 2 was marked JW Exhibit 2 for identification,  
 3 as of this date.)  
 4 Q. Which I will represent to you is a  
 5 document that was sent to me by Mr. Goldman on  
 6 May 3, 2012, and was meant to represent an -- a  
 7 Second amended version of that Schedule A. Is  
 8 that your understanding as well?  
 9 A. That is correct.  
 10 Q. And does your signed verification,  
 11 that we looked at earlier, apply to this -- the  
 12 information on this schedule as well?  
 13 A. Yes, it does.  
 14 Q. Does this second amended version of  
 15 the schedule accurately reflect all current  
 16 information concerning each of the six works for  
 17 which Mr. Salamanca alleges his copyrights have  
 18 been infringed?  
 19 MR. GOLDMAN: I'm just going to object  
 20 to the form, and particularly the -- the  
 21 use of the term "all current information"  
 22 is a little vague.  
 23 Q. To your -- as far as you know,  
 24 Mr. White, does this document represent  
 25 information current as of May 3, 2012,

1 White  
 2 concerning all six of the works that  
 3 Mr. Salamanca claims to have been infringed in  
 4 this action?  
 5 A. Yes, as far as I know.  
 6 Q. Thank you.  
 7 And this represents each of the six  
 8 novels by Mr. Salamanca that we discussed  
 9 earlier; is that right?  
 10 A. That's correct.  
 11 Q. Turning back to the first exhibit,  
 12 please look at the bottom of page 6, where  
 13 Interrogatory Number 4 begins. This asks  
 14 Mr. Salamanca to produce for the works on  
 15 Schedule A any license or other agreement  
 16 permitting or requiring the digitization of that  
 17 work for any purpose; is that right?  
 18 A. That's right.  
 19 Q. And if you turn to the next page, to  
 20 the response, it says, sort of beginning in the  
 21 second line of that second paragraph of the  
 22 response, "Plaintiff will conduct a reasonable  
 23 search and produce any licenses or other  
 24 agreements in plaintiffs' possession, custody,  
 25 or control that expressly grant the counterparty

1 White  
 2 to the agreement the right to digitize for any  
 3 purpose."  
 4 Is that correct?  
 5 A. Yes, that's what it says.  
 6 Q. Did Mr. Salamanca conduct such a  
 7 search?  
 8 A. Not to my knowledge.  
 9 Q. Did you conduct such a search?  
 10 A. Yes, jointly, in collaboration with  
 11 Mr. Goldman.  
 12 Q. Mr. Goldman was searching  
 13 Mr. Salamanca's files?  
 14 MR. GOLDMAN: Objection to the form.  
 15 Misstates his testimony.  
 16 Q. In what manner do you mean jointly  
 17 with Mr. Goldman, without revealing the  
 18 substance of any of your communications?  
 19 A. By telephone conversations, I gave him  
 20 such knowledge as I had and he incorporated  
 21 that.  
 22 Q. And did -- did you locate any such  
 23 licenses in this search?  
 24 A. Only one, which was an -- a contract  
 25 for an Italian edition of Lilith.

1 White  
 2 Q. That was to be in a digital form?  
 3 A. No, no, not in digital form.  
 4 Q. Are the Tantor licenses the only  
 5 licenses that you're aware of that are  
 6 responsive to this interrogatory?  
 7 A. For digital form, yes.  
 8 Q. Looking now at Interrogatory 5 on that  
 9 same page, it says, "For each work identified in  
 10 response to Interrogatory Number 1," which are  
 11 the six works on amended Schedule A, "identify  
 12 any past, present, or planned efforts to enter  
 13 into any license or other agreement allowing for  
 14 digitization of the work for any purpose."  
 15 Paraphrasing it there, but is that the  
 16 essence of what the interrogatory asks?  
 17 A. Yes.  
 18 Q. And the response says, again, on that  
 19 same page, "Plaintiff will conduct a reasonable  
 20 search and produce any documents concerning any  
 21 specific past, present, or planned efforts made  
 22 by plaintiffs or made by others on behalf or  
 23 with plaintiffs' knowledge to enter into a  
 24 license or other agreement allowing for the  
 25 digitization of the work for any purpose."

1 White  
 2 Is that right?  
 3 A. That's right.  
 4 Q. And again, did Mr. Salamanca conduct  
 5 such a search?  
 6 A. Not as far as I know.  
 7 Q. And did you?  
 8 A. Let me review what I said.  
 9 Q. Sure.  
 10 (Witness reviewing document.)  
 11 A. Yes.  
 12 Q. And did you locate any such documents?  
 13 A. Only the Tantor Media.  
 14 Q. There was no other documents  
 15 concerning the efforts to enter those licenses?  
 16 A. To enter those licenses?  
 17 Q. In other words, was there  
 18 correspondence with Tantor Media surrounding  
 19 those licenses?  
 20 A. I'm sorry, Rob, I don't understand the  
 21 question.  
 22 Q. It's likely my fault, and I'll try to  
 23 make it clearer.  
 24 Did you have written communications,  
 25 whether through e-mail or otherwise, with Tantor

1 White  
 2 Media, or any representatives thereof, prior or  
 3 subsequent to the execution of those agreements?  
 4 A. Yes.  
 5 Q. And did those documents concern the  
 6 execution of those agreements -- strike that.  
 7 Did those communications concern those  
 8 agreements in any way?  
 9 A. Yes.  
 10 Q. And did some of those documents speak  
 11 to the party -- one party or the other's desire  
 12 to enter that agreement?  
 13 A. Yes.  
 14 RQ MR. POTTER: I'm going to call for  
 15 the production of those documents which  
 16 are plainly responsive to this request.  
 17 MR. GOLDMAN: Duly noted.  
 18 Q. Is there any reason that you did not  
 19 produce those communications to your attorneys?  
 20 MR. GOLDMAN: Objection to the form.  
 21 Q. Strike that.  
 22 Did you produce those materials to  
 23 your attorneys, to Mr. Goldman?  
 24 A. Yes. I --  
 25 Q. Those -- not the agreements themselves

1 White  
 2 but these communications we've just discussed?  
 3 A. Ah. I failed to make that  
 4 distinction. I provided a copy of the -- the  
 5 contract, the agreement.  
 6 Q. All right.  
 7 A. There was nothing more than e-mail  
 8 exchanges between Tantor Media and me about  
 9 negotiating the agreement.  
 10 Q. Those are the very documents that this  
 11 request was meant to ask for, and so I'm asking  
 12 now that subsequent to this deposition you  
 13 produce those to your attorneys, and that they  
 14 produce them to us.  
 15 MR. GOLDMAN: You don't need to  
 16 respond to that.  
 17 THE WITNESS: All right.  
 18 Q. Mr. White, are you currently engaged  
 19 in any efforts to secure licenses for any of  
 20 Mr. Salamanca's works in any fashion?  
 21 A. No.  
 22 Q. Please turn to page 8 of this  
 23 document, the next page. Please look at  
 24 Interrogatory Number 6 and its response.  
 25 (Witness reviewing document.)

1 White  
 2 Q. Ready?  
 3 A. I'm ready.  
 4 Q. In this response you claim that  
 5 Mr. Salamanca has suffered damages as a result  
 6 of the library's conduct in this lawsuit,  
 7 correct?  
 8 A. Correct.  
 9 Q. And do you state that these damages  
 10 are unquantifiable and irreparable, correct?  
 11 A. Correct.  
 12 Q. And you go on to state that these  
 13 damages comprise, among other things, a bulleted  
 14 list of items that follows; is that right?  
 15 A. That's right.  
 16 Q. Sitting here today, can you think of  
 17 any other damages that are not identified in  
 18 this bulleted list?  
 19 A. Would you define the term, damages?  
 20 Q. In the same manner in which you used  
 21 it in this response.  
 22 A. I want to be sure we're using the same  
 23 meanings.  
 24 No.  
 25 Q. So this list is exhaustive?

White

A. It is exhaustive of monetary or financial damages. There's also damage to his reputation as an author.

Q. How has Mr. Salamanca's reputation been damaged as a result of the defendants' conduct in this lawsuit?

A. Not to date.

Q. And what manner could it have been damaged?

A. If the -- if the digitization project went to completion, he would be possibly reported in the -- in the media, in the industry, among friends, as having been the victim of an unlawful action.

Q. And his reputation would suffer by virtue of having been a victim?

A. One could say that, his public perception.

Q. I would like to run through each of the bullet points that have been enumerated here.

A. Uh-huh.

Q. The first of the damages listed is, "Loss or potential loss of control over the

White

reproduction and distribution of plaintiffs' copyrighted works."

What do you mean -- what did you mean by that, Mr. White?

A. All rights to a work by an author are held by the author unless he disposes of them otherwise. Jack Salamanca has not done that with his works, so he therefore controls the digitization rights. The HathiTrust actions would have resulted in taking that -- in violating that right, taking control of it away from him.

Q. And to be clear, that's if the HathiTrust had made his digitized work available to anyone. If the HathiTrust has not done that, does it follow that this harm has not occurred?

A. It does follow.

Q. The next bullet point reads, "Exposure of plaintiffs' copyrighted works to virtually unlimited piracy."

What do you mean by that?

A. I mean once a digital image of a work is available on an -- on the Internet, and password to an end user, that can be copied very

White

easily and distributed widely.

Q. Would it again follow that if that has not occurred with Mr. Salamanca's works in this instance, in other words, if a digital copy has not been transmitted to someone else, that this harm, too, is purely speculative or potential?

MR. GOLDMAN: Objection to the form.

A. Yes, it follows that the harm is at that point, this point, only potential.

Q. So just looking above the bullet points, it says that, Plaintiffs' conduct has caused plaintiffs damages that are unquantifiable and irreparable, and plaintiff asserts that those damages comprise.

So sitting here today, is it your testimony that it -- it has not already caused such damages, but the conduct has the potential to were it to go forward?

MR. GOLDMAN: I'm going to object to the form of that question.

MR. POTTER: And I'm going to strike it. It's unnecessary.

Q. Let's move to the third bullet point, Mr. White. Well, actually, I'm sorry, I would

White

like to go to the second bullet point. Pursuant to the Tantor Media license, Mr. Salamanca's work should be distributed digitally, correct?

A. That's correct.

Q. Why does that not raise the specter of virtually unlimited piracy that the HathiTrust distribution of a digital copy would?

A. It does not raise a specter because Tantor Media applies security measures, excuse me, that -- specifically DRM, or digital rights management, which is intended to prevent such piracy.

Q. And on what basis is it your understanding that they apply DRM to Mr. Salamanca's work?

A. I'm not technically competent to explain when they do, but it's described as a security measure to prevent copying, unauthorized copying.

Q. In what manner did Tantor indicate to you that they were going to do that, apply DRM to Mr. Salamanca's works?

A. In writing through the contract.

Q. The contract itself states that?

1 White  
 2 A. That's correct.  
 3 Q. All right. The third bullet point of  
 4 damages in this response is, "Loss or potential  
 5 loss of revenue from sale of hard copies and  
 6 digital copies of works to libraries."  
 7 What do you mean by this?  
 8 A. If the -- the works are available  
 9 through the HathiTrust procedure, at least those  
 10 libraries would have no need to buy a commercial  
 11 edition of the works, either hard copy or  
 12 digital.  
 13 Q. And what do you mean by "the  
 14 HathiTrust procedure"?  
 15 A. Which I understand would result in the  
 16 digitization of the -- the novels, and then  
 17 distribution of them to member libraries for use  
 18 by faculty and students.  
 19 Q. And once again, if that had not  
 20 occurred, then this harm, too, remains only  
 21 potential?  
 22 A. I agree.  
 23 Q. Suppose that instead of making a copy  
 24 of Mr. Salamanca's digitized work available  
 25 through the HathiTrust, the HathiTrust -- strike

1 White  
 2 that.  
 3 The final bullet point reads, "Loss or  
 4 potential loss of revenue from licensing digital  
 5 copies of works to libraries."  
 6 And what do you mean by that?  
 7 A. Libraries, public and private, are now  
 8 increasingly purchasing digital copies which  
 9 they lend free to their members, but for which  
 10 they pay a license fee, considerably more than  
 11 just the price of buying it on -- on open  
 12 market, so that potential revenue would be lost  
 13 to my client.  
 14 Q. And as with the other three types of  
 15 damages we just discussed, this, too, remains  
 16 potential unless and until the HathiTrust  
 17 actually distributes a digital copy of  
 18 Mr. Salamanca's work?  
 19 A. That is my understanding, yes.  
 20 Q. Okay. Moving through the rest of this  
 21 response, below these bullet points, there's two  
 22 paragraphs, which I encourage you to read,  
 23 until -- so you -- to your satisfaction,  
 24 discussing Mr. Salamanca's work The Lost Country  
 25 and how this work was included as a candidate

1 White  
 2 for the defendants' orphaned works project; is  
 3 that right?  
 4 A. That's correct.  
 5 Q. And we touched on this earlier, but  
 6 once again, what's your understanding of what an  
 7 orphaned work is?  
 8 A. My understanding is that an orphaned  
 9 work is a work no longer under copyright and for  
 10 whom no rights holder can be located or  
 11 identified.  
 12 Q. Okay. Have you ever heard of the term  
 13 "orphaned work" used in connection with a work  
 14 that is in the last period of its copyright and  
 15 for which no rights holder can be found?  
 16 A. No, I have not.  
 17 Q. What is your understanding of the  
 18 defendants' orphaned works project?  
 19 A. I described it twice now. I can  
 20 repeat it, but you have my words on that.  
 21 Q. Is it your understanding that --  
 22 strike that.  
 23 Is it your understanding that the  
 24 defendants' orphaned works project constitutes  
 25 the only conduct of which plaintiffs' complained

1 White  
 2 in this case?  
 3 A. Yes.  
 4 Q. Okay. This response indicates, and  
 5 I'll quote: In or around the summer of 2011,  
 6 the same time as The Lost Country was  
 7 erroneously being listed by defendants as a,  
 8 quote, orphan candidate, plaintiffs' literary  
 9 agent was in the process of negotiating an  
 10 agreement with Tantor Media Incorporated to have  
 11 that novel and four others authored by plaintiff  
 12 digitized and released for sale as electronic  
 13 books; is that correct?  
 14 A. That's correct.  
 15 Q. And not only is that what that says  
 16 but is that factually correct?  
 17 A. That is factually correct.  
 18 Q. And then it states, "This agreement  
 19 was finalized and entered on or about  
 20 November 29, 2011."  
 21 Is that correct?  
 22 A. That's correct.  
 23 Q. In the final paragraph of this  
 24 response, which begins in the very bottom of  
 25 page 9, you indicate, "The plaintiff has not to

1 White  
 2 date been able to quantify any specific revenues  
 3 lost as a result of the defendants' infringing  
 4 conduct."  
 5 Does that remain true today?  
 6 A. Yes.  
 7 Q. And the paragraph concludes,  
 8 "Plaintiff is not aware of any documents in  
 9 plaintiffs' possession, custody, or control that  
 10 could be employed to quantify any specific  
 11 damages incurred as a result of defendants'  
 12 infringing conduct."  
 13 Does that remain true today?  
 14 A. Yes.  
 15 (Executed agreement effective September  
 16 1, 2011 was marked JW Exhibit 3 for  
 17 identification, as of this date.)  
 18 Q. All right. Placed in front of you is  
 19 what's been marked as JW 3, Mr. White. Do you  
 20 recognize this document?  
 21 A. Yes, I do.  
 22 Q. And this is an executed agreement  
 23 effective September 1, 2011 between  
 24 Mr. Salamanca, represented by the John W. White  
 25 Literary Agency, and Tantor Media Incorporated?

1 White  
 2 A. Yes.  
 3 Q. And you signed this license on  
 4 Mr. Salamanca's behalf?  
 5 A. That is correct.  
 6 Q. Did you discuss the terms of this  
 7 agreement with Mr. Salamanca before signing it?  
 8 A. Yes, I did.  
 9 Q. And did Mr. Salamanca understand the  
 10 terms of this agreement, to your -- as you could  
 11 perceive?  
 12 A. Yes, he did.  
 13 Q. And is this agreement still in effect  
 14 today?  
 15 A. Yes, it is.  
 16 Q. Turning to paragraph 19, it's called  
 17 "Modification or Amendment." And it says, "No  
 18 amendment, change, or modification of this  
 19 agreement shall be valid unless in writing  
 20 signed by the parties hereto."  
 21 Is that correct?  
 22 A. That's correct.  
 23 Q. Have there been any such written  
 24 modifications to this agreement?  
 25 A. No.

1 White  
 2 Q. In turning to paragraph 20, it's  
 3 entitled "Entire Understanding." It states  
 4 that, "This agreement and any exhibit attached  
 5 hereto constitutes the entire understanding and  
 6 agreement of the parties as to the subject  
 7 matter herein. And any and all prior  
 8 agreements, understandings, and representations  
 9 are hereby terminated and canceled in their  
 10 entirety and will have no further force and  
 11 effect."  
 12 Is that right?  
 13 A. That's right.  
 14 Q. Turning to the first page again and  
 15 looking at the first whereas clause, right below  
 16 the preamble, it states that, "The licensor,  
 17 Mr. Salamanca, owns electronic rights in the  
 18 works on Exhibit A," correct?  
 19 A. Correct.  
 20 Q. And Exhibit A lists Lilith; is that  
 21 correct?  
 22 A. That's correct.  
 23 Q. And now looking at paragraph 1 titled  
 24 "Grant of Rights," subparagraph A indicates  
 25 that, "Mr. Salamanca is granting Tantor the

1 White  
 2 right to produce, publish, promote, and sell  
 3 electronic formats of Lilith," correct?  
 4 A. Correct.  
 5 Q. And paragraph 3, next page, entitled  
 6 "Royalties," provides that, "Tantor shall pay  
 7 royalties equal to 50 percent of Tantor's net  
 8 sale receipts."  
 9 A. Correct.  
 10 Q. In your experience as literary agent,  
 11 Mr. White, is 50 percent a standard royalty for  
 12 electronic works?  
 13 A. No, it is not.  
 14 Q. Is it better or worse than the  
 15 standard?  
 16 A. Better.  
 17 Q. How much better?  
 18 A. By a hundred percent. In other words,  
 19 the industry standard is 25 percent.  
 20 Q. And you've managed to negotiate double  
 21 that for Mr. Salamanca?  
 22 A. That's correct.  
 23 Q. Looking at paragraph 4, "Original  
 24 Materials," there has been a portion that has  
 25 been struck out, correct?

1 White  
 2 A. Correct.  
 3 Q. And that portion used to read, "The  
 4 licensor shall make every reasonable effort to  
 5 promptly provide Tantor with the finished copy,  
 6 edited computer file of the works."  
 7 But now -- why was this language  
 8 struck out?  
 9 A. The language was struck out because  
 10 such file never existed. Lilith was published  
 11 in 1961, before any such digital capacity  
 12 existed, and therefore, the publisher simply  
 13 deleted this, knowing there were no such files.  
 14 Q. And is it your understanding that this  
 15 is meant to refer to works that are initially  
 16 created in the digital form?  
 17 A. Yes.  
 18 Q. And as we discussed, this agreement  
 19 applies to the work Lilith, and Lilith is one of  
 20 the works that Mr. Salamanca claims to have been  
 21 infringed by the libraries, correct?  
 22 A. Correct.  
 23 Q. And at that time that you executed  
 24 this agreement, had the libraries already  
 25 digitized the work Lilith, to your knowledge?

1 White  
 2 A. I do not know.  
 3 MR. POTTER: Make this Number 4.  
 4 (Executed agreement effective November  
 5 29, 2011 was marked JW Exhibit 4 for  
 6 identification, as of this date.)  
 7 Q. Mr. White, do you recognize the  
 8 document, please feel free to look through it,  
 9 that's been marked as Exhibit JW 4?  
 10 A. Yes, I do.  
 11 Q. And this is another executed agreement  
 12 between Mr. Salamanca, as represented by the  
 13 John W. White Literary Agency, and Tantor Media?  
 14 A. Yes.  
 15 Q. But this one is dated November 29,  
 16 2011?  
 17 A. Correct.  
 18 Q. And you, again, signed this agreement  
 19 on Mr. Salamanca's behalf?  
 20 A. Yes.  
 21 Q. Is this agreement still in effect?  
 22 A. It is still in effect.  
 23 Q. Have there been any written  
 24 modifications to this agreement?  
 25 A. No.

1 White  
 2 Q. Looking at Schedule A to this  
 3 agreement, on the last page it lists five works  
 4 by Mr. Salamanca, The Lost Country, A Sea  
 5 Change, Embarcation, Southern Light, and That  
 6 Summer's Trance; is that correct?  
 7 A. That's correct.  
 8 Q. And other than the fact that they  
 9 apply to different works and were executed on  
 10 different dates, are there any other differences  
 11 of any kind between those two licenses  
 12 agreements -- these two license agreements?  
 13 MR. GOLDMAN: Objection to form, but  
 14 you can answer.  
 15 A. I don't think so. Nothing comes to  
 16 mind.  
 17 Q. The terms are identical, as far as you  
 18 understand?  
 19 A. Yes.  
 20 Q. And the five works listed on  
 21 Schedule A to this exhibit, these are also works  
 22 that Mr. Salamanca claims have been infringed by  
 23 the libraries in this lawsuit, correct?  
 24 A. Correct.  
 25 Q. And at the time that this agreement

1 White  
 2 was executed, had each of those works been  
 3 digitized by the libraries already?  
 4 A. Again, I do not know.  
 5 Q. Please turn to paragraph 5, which  
 6 begins on the second page of the exhibit and  
 7 moves over. I would like to actually turn to  
 8 the third page of the exhibit, the third  
 9 paragraph of paragraph 5, it says, "Licensor  
 10 grants to Tantor the following promotional  
 11 rights," and of the four listed, D, the fourth  
 12 one, is, "The right to give away copies of the  
 13 electronic format of works for promotional  
 14 purposes."  
 15 Is that right?  
 16 A. That's correct.  
 17 Q. Turning to the prior page, looking at  
 18 what is 1E, although 1 begins on the page prior  
 19 to that, do you see that?  
 20 A. I see it.  
 21 Q. "Tantor shall have the right to sell  
 22 the works in electronic format in a digital  
 23 downloadable format with or without digital  
 24 rights management protection."  
 25 Earlier you testified that these works

1 White  
2 were distributed with DRM, and that it was  
3 contractually provided, correct?

4 A. That's correct.

5 Q. Does this alter your recollection of  
6 what Tantor agreed?

7 A. No. It's the -- the decision was left  
8 to Tantor, and they -- they chose to go with  
9 DRM.

10 Q. And how do you know that?

11 A. I can only take their word for it.

12 Q. Did they communicate that to you  
13 orally?

14 A. Yes.

15 Q. Were Tantor to give away copies of the  
16 electronic formats of Mr. Salamanca's work  
17 without any DRM, would that raise the specter of  
18 the four damages that we discussed earlier in  
19 your interrogatory response?

20 MR. GOLDMAN: I'm going to object to  
21 the form of that question.

22 A. Yes.

23 MR. POTTER: This might be a good time  
24 to take another break.

25 (Recess from 11:43 to 12:02.)

1 White

2 A. That's correct.

3 Q. Do you know if Mr. Salamanca has seen  
4 these responses?

5 A. I do not know specifically. They were  
6 provided by e-mail PDF files to his son Richard.  
7 Jack Salamanca is almost illiterate on e-mail  
8 and computers, so I depended upon his son to  
9 explain.

10 And I -- I did not have specific  
11 feedback saying, I read it all to my father and  
12 he understood it and agreed. I did not have  
13 that, but this was all proceeding with what I  
14 understand to be the approval and understanding  
15 of my client.

16 Q. So you never spoke with Mr. Salamanca  
17 directly about the contents of these responses?

18 A. That's correct.

19 Q. And this is your signature at the  
20 bottom of this verification?

21 A. Yes, it is.

22 Q. And it's dated April 5, 2012?

23 A. Yes, it is.

24 Q. And again, you signed this under  
25 penalty of perjury; is that right?

1 White

2 (Mr. Salamanca's Objections and  
3 Responses to Defendants' Second Set of  
4 Interrogatories and Requests for the  
5 Production of Documents was marked JW Exhibit  
6 5 for identification, as of this date.)

7 BY MR. POTTER:

8 Q. Mr. White, here is what's been marked  
9 as JW 5, which are Mr. Salamanca's Objections  
10 and Responses to Defendants' Second Set of  
11 Interrogatories and Requests for the Production  
12 of Documents. Have you seen this document  
13 before?

14 A. Yes, I have.

15 Q. Okay. And please turn to the last  
16 page, entitled "Verification," where it again  
17 states that you, John White, literary agent for  
18 J. Salamanca, are familiar with the contents of  
19 the responses to Interrogatories Number 1  
20 through 7, and that the matters therein are  
21 true, to your knowledge?

22 A. That's correct.

23 Q. And is it for the same reasons as you  
24 testified earlier that Mr. Salamanca did not  
25 verify these responses?

1 White

2 A. That is correct.

3 Q. Did you believe these responses to be  
4 accurate at the time you signed this document?

5 A. I did.

6 Q. And do you believe them to be accurate  
7 as you sit here today?

8 A. I do.

9 Q. Did you prepare these responses  
10 yourself?

11 A. No.

12 Q. Who did?

13 A. Jeremy Goldman and his firm.

14 Q. Did you review them before signing the  
15 verification?

16 A. Yes.

17 Q. Please turn to page 5. Looking at  
18 Interrogatory Number 2, it asks Mr. Salamanca  
19 for the works listed on Schedule A, which are  
20 the six novels, correct?

21 A. Correct.

22 Q. "To identify all author royalties  
23 and/or other income generated from such work  
24 from 2001 to the present." And the response  
25 indicates at the end that, "Plaintiff will

1 White  
 2 conduct a reasonable search and produce  
 3 documents, if any."  
 4 Did you conduct a reasonable search,  
 5 Mr. White?  
 6 A. Yes.  
 7 Q. And did you locate any documents  
 8 concerning royalties generated from  
 9 Mr. Salamanca's works?  
 10 A. No.  
 11 Q. And why -- did you have an  
 12 understanding -- strike that.  
 13 Is that because Tantor has not yet  
 14 issued royalty statements?  
 15 A. That's correct.  
 16 Q. Please turn to page 7 of this  
 17 document. Looking at Interrogatory Number 5,  
 18 which asks Mr. Salamanca to identify -- for each  
 19 work listed on Schedule A, to identify with  
 20 specificity any alleged harm that he has  
 21 suffered, or will suffer, arising solely by  
 22 virtue of several types of conduct or several  
 23 activities by the defendants.  
 24 And there's some terms that are used  
 25 in here, and I want to make sure we have the

1 White  
 2 same understanding of those terms. Do you have  
 3 an understanding of the term "non-consumptive  
 4 research"?  
 5 A. Yes.  
 6 Q. What is your understanding of that  
 7 term, Mr. White?  
 8 A. Research in which, for example, word  
 9 or phrases searches are done beyond a single  
 10 text, so that the researcher is not consuming  
 11 the work in the sense of reading it critically,  
 12 for whatever his or her purpose may be, but  
 13 basically it's doing a digital search.  
 14 Q. I think that we agree more or less in  
 15 our definitions. I'll use the definition that  
 16 was provided in connection with these, and tell  
 17 me if that is your understanding as well.  
 18 "Research in which a computational analysis" --  
 19 MR. GOLDMAN: Can you just slow down a  
 20 little bit?  
 21 Q. "Research in which a computational  
 22 analysis is performed on one or more written  
 23 works such that the researcher, whether working  
 24 alone or with the cooperation of others, over  
 25 one or more multiple sessions does not read or

1 White  
 2 display the content of the written works to a  
 3 degree that would allow for the recreation or  
 4 reassembly of any particular page from those  
 5 works."  
 6 A. I understand and agree.  
 7 Q. We're on the sage page, so to speak?  
 8 A. We are.  
 9 Q. And do you have an understanding as to  
 10 the meaning of the phrase "full text searching"  
 11 in this context?  
 12 A. I do.  
 13 Q. And what is your -- let's -- I'll read  
 14 you the definition, and you can tell me if you  
 15 have a different understanding. "Computer-aided  
 16 searching for specific terms or phrases within  
 17 one or more written works such that the  
 18 researcher, whether working alone or with the  
 19 cooperation of others, over one or more multiple  
 20 sessions does not read or display the content of  
 21 the written works to a degree that would allow  
 22 for the recreation or reassembly of any  
 23 particular page from those works."  
 24 A. I understand and agree.  
 25 Q. Okay. With that in mind, I would like

1 White  
 2 to turn to page 8, where the response to that  
 3 Interrogatory Number 5 includes a bulleted list,  
 4 prefaced with the phrase, "With respect to the  
 5 effect of defendants' aforementioned uses upon  
 6 the potential market for or value of the  
 7 copyrighted work, plaintiff identifies the  
 8 following."  
 9 I'd like to run through these. The  
 10 first is, "Loss or potential loss of revenue  
 11 from sale or licensing of digital copies of  
 12 plaintiffs' copyrighted works for inclusion in a  
 13 digital archive for preservation purposes."  
 14 Have you ever received any offers to  
 15 sell or license digital copies of  
 16 Mr. Salamanca's works for preservation purposes?  
 17 A. No.  
 18 Q. Have you ever solicited any such  
 19 opportunities?  
 20 A. No.  
 21 Q. Are you aware of anyone having  
 22 solicited such opportunities on Mr. Salamanca's  
 23 behalf?  
 24 A. No.  
 25 Q. Are you aware of any entities that buy

1 White  
 2 or license digital copies of written works for  
 3 the purpose of inclusion in a digital archive  
 4 for preservation?  
 5 A. Aware of any, what word did you use?  
 6 Q. Entities.  
 7 A. Indices?  
 8 Q. Entities.  
 9 A. Oh, entities. Okay. No.  
 10 Q. Are you aware of any copyrighted  
 11 holder of any kind who has sold or licensed  
 12 digital copies of their works to anyone for the  
 13 purpose of inclusion in the digital archive for  
 14 preservation purposes?  
 15 MR. GOLDMAN: Objection. Speculative.  
 16 A. No.  
 17 Q. The next bullet says, "Loss or  
 18 potential loss of revenue from sale or licensing  
 19 of digital copies of plaintiffs' copyrighted  
 20 works for use purely in connection with  
 21 non-consumptive research," as we've defined that  
 22 term before.  
 23 Have you received any offers to sell  
 24 or license copyrights of Mr. Salamanca's works  
 25 for purposes of non-consumptive research?"

1 White  
 2 A. No.  
 3 Q. Have you solicited any such  
 4 opportunities?  
 5 A. No.  
 6 Q. Are you aware of anyone soliciting  
 7 such opportunities on Mr. Salamanca's behalf?  
 8 A. No.  
 9 Q. Are you aware of any entities that buy  
 10 or license digital copies of written works for  
 11 this purpose?  
 12 A. No.  
 13 Q. And are you aware of any copyright  
 14 holder who has sold or licensed digital copies  
 15 of their works for this purpose?  
 16 A. No.  
 17 Q. Third is, "Loss or potential loss of  
 18 revenue from sale or licensing of digital copies  
 19 of plaintiffs' copyrighted works for use purely  
 20 in connection with full text searching," as  
 21 we've defined that previously.  
 22 Again, have you received any offers to  
 23 sell or license digital copies of  
 24 Mr. Salamanca's works, or any of them, for  
 25 purposes of full text searching?"

1 White  
 2 A. No.  
 3 Q. Have you ever solicited such  
 4 opportunities?  
 5 A. No.  
 6 Q. Are you aware of anyone having  
 7 solicited them on Mr. Salamanca's behalf?  
 8 A. No.  
 9 Q. Are you aware of any entities that buy  
 10 or license digital copies of written works for  
 11 this purpose?  
 12 A. No.  
 13 Q. Are you aware of any copyright holder  
 14 who has sold or licensed digital copies of any  
 15 of those works for this purpose?  
 16 A. No.  
 17 Q. Fourth bullet point reads, "Loss or  
 18 potential loss of revenue from sale or licensing  
 19 of derivative uses, including derivative uses  
 20 made possible by artificial intelligence and  
 21 other technologies, to create translations,  
 22 anthologies, abridgments, and versions suited  
 23 for new and emerging platforms and devices."  
 24 What did you mean by that?  
 25 A. New and emerging platforms and devices

1 White  
 2 is self-explanatory. The advance of technology  
 3 has opened up lots of new possibilities for an  
 4 author's work to derive revenue.  
 5 The first three bullet points which we  
 6 described are emerging as possibilities. I have  
 7 not personally explored that.  
 8 And the same would be -- that would  
 9 apply also to licensing for artificial  
 10 intelligence or other to create anthologies,  
 11 et cetera. It's emerging, it's on the horizon.  
 12 It's not something that is a major source of  
 13 revenue at this point, so far as I'm aware, but  
 14 I am aware of the possibility of it.  
 15 Q. And have you received any offers to  
 16 sell or license digital copies of  
 17 Mr. Salamanca's work for the purpose of creating  
 18 such derivative uses?  
 19 A. No.  
 20 Q. Or for the purpose of such derivative  
 21 uses?  
 22 A. No.  
 23 Q. And how does the library's conduct in  
 24 this case have any bearing on the -- that bullet  
 25 point?"

White

MR. GOLDMAN: Objection to the form.

MR. POTTER: Strike that.

Q. How does the library's conduct in this case lead to loss or potential loss of revenue in connection with the sale or licensing of derivative uses as described in that bullet point?

A. If the libraries digitize the works and made them available, as I understand they intend to, they would then be available at no charge, no fee, to any -- anyone operating in these emerging fields, and that would constitute potential loss of income to my client.

Q. Had the libraries never transmitted a digital copy of Mr. Salamanca's works to anyone, would this harm remain only potential?

MR. GOLDMAN: Objection to the form.

A. Yes.

Q. The next bullet point reads: Loss or potential loss of revenue from sale or licensing of digital copies of plaintiffs' copyrighted works due to the availability of such works for others to view, print, and download on defendants' Web sites as a result of the

White

and downloading?

A. No. He said that they had been digitized.

Q. Have you ever licensed any of -- just to be clear, have you ever licensed any of Mr. Salamanca's works to be digitalized in formats that are fully accessible to the blind?

A. No.

Q. Have you ever sought such a license?

A. No.

Q. And to your knowledge, has anyone ever sought such a license on Mr. Salamanca's behalf?

A. No.

MR. POTTER: I think I'm done. If you can give me just a couple of minutes to look at a couple of things, I'll come back and let you know for sure, but in any event, we won't go more than another five or ten.

(Recess from 12:18 to 12:21.)

MR. POTTER: While we were off record, Mr. Goldman asked if it would be all right for the court reporter to change globally any references to Phillip Aiken, at the

White

accidental or mistaken identification of such works as public domain or, quote, orphan works, end quote.

Do you have any understanding that this has occurred with Mr. Salamanca's works, in other words, that the library defendants have made them available, quote, for others to view, print, and download on defendants' Web sites?

A. I want to be sure I understand your question. Do I have any knowledge that the defendants have actually done this?

Q. Have actually made Mr. Salamanca's works available on their Web sites in digital format to be viewed, printed, and/or downloaded?

A. My understanding from literary guild is that this has occurred.

Q. From whom did you -- from whom specifically did you receive that understanding?

A. Both Phillip Aiken and Jeremy Goldman.

Q. Did you speak with them separately?

A. Yes.

Q. And Mr. Aiken told you that Mr. Salamanca's works have been made available on defendants' Web sites for viewing, printing,

White

Author's Guild, to Paul Aiken, and I have no objection to that consistent with Mr. White's representation that he meant Paul Aiken every time he said Phillip Aiken.

Is that correct?

THE WITNESS: That's correct.

MR. POTTER: And I thank you for that, and thank you for your time and candor today, Mr. White, and I have no further questions.

MR. GOLDMAN: I have a few follow-up questions.

EXAMINATION BY MR. GOLDMAN:

Q. Mr. Potter asked you earlier about communications that you had with Tantor Media regarding the HathiTrust program. Do you remember that?

A. Yes.

MR. POTTER: Objection. Mischaracterizes my questioning. It was about his licenses, not about the HathiTrust program.

MR. GOLDMAN: You asked about --

White

Q. Do you recall when Mr. Potter asked you about a reaction that the -- that Tantor Media had regarding the orphan works program?

A. Yes.

Q. And you said that they had no reaction; is that correct?

A. Correct.

Q. Did you have a concern that Tantor Media would react negatively to the orphan works project at HathiTrust?

A. Yes, on the premise that it had been able to go forward, that would have directly conflicted with Tantor Media's marketing -- my understanding, as I communicated it to Tantor, was that everything was on hold while the matter was being litigated, and so there was no concern.

Q. Mr. Potter asked you several questions about various harms that you believed resulted from what you referred to as the HathiTrust procedure. Do you remember that?

A. Yes.

Q. When you testified that way, what was your understanding -- what did you mean by

White

Q. So is the mass digitization program, in your mind, different than the orphan works project?

A. Yes.

Q. And do you perceive any harm as a result of the mass digitization program?

A. Yes.

Q. And could you, you know, summarize what you perceive as the harm from the mass digitalization program?

A. There -- there are two; one is financial, one is simply legal. That it would be a violation of the author's rights to digitize his work without permission, but then if he were to be asked for permission, he could, through me, set a licensing fee, and that would be lost also by the digitization.

MR. GOLDMAN: I have no further questions.

MR. POTTER: I just have one follow-up on that.

EXAMINATION BY MR. POTTER:

Q. I believe you just testified that Mr. Salamanca -- that one of the harms that --

White

"HathiTrust procedure" when you answered Mr. Potter's questions?

A. I was referring primarily to the orphan works part of it, not the vast digitization of other books, because that was the immediate concern for loss of revenues.

Q. Independent of the orphan works project, did you have or do you currently have any concerns about harm that was caused to Mr. Salamanca's economic interests as -- question mark?

MR. POTTER: Objection. Vague. Other than the orphan works project, anything, anywhere?

Q. Sorry. That was caused to Mr. Salamanca's economic interest as a result of defendants' conduct?

A. All right. I'm going to ask you to repeat the question.

Q. Let me repeat the question.

You mentioned that there was a -- I believe you said a mass digitization program; is that what you said?

A. Yes.

White

that as the economic harm arising from the defendants' mass digitization was that Mr. Salamanca could or has lost a licensing fee. Could you explain to me further how the defendants' mass digitization could impact Mr. Salamanca's licensing fees?

A. Certainly. My understanding is that there are two aspects to the process we're talking about today. The orphaned works is a small number of titles. The mass digitization involves millions of titles, including my authors.

Now, that should not have taken place. It was without the author's permission. And if permission had been sought just to digitize -- not to disseminate to faculty and students, just to digitize, there could be a fee involved, and that's what I was referring to.

Q. Are you aware of any copyright holder who has ever been paid a fee solely for the digitization of their work?

A. I'm not personally aware of any. I know that such talk is made in the industry.

Q. Such talk is made about copyright

1 White  
 2 holders who have obtained such fees or about the  
 3 potential for such a thing to exist?  
 4 A. In -- in a very recent issue of the  
 5 Wall Street Journal, I read an article about  
 6 comparing digital -- digitization of books with  
 7 music, as it was being conducted or -- I should  
 8 say piracy of musical works as it was being  
 9 conducted under -- by some other organization  
 10 ten or more years ago.  
 11 And I was mentally referring to the  
 12 piracy of musical works as an actual fact and  
 13 potential for that being applied to the book  
 14 market. I'm not aware of any specific licensing  
 15 for simply digitizing a book.  
 16 (Continued on following page to include  
 17 jurat.)  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

1 White  
 2 MR. POTTER: Thank you. With that, I  
 3 have no questions.  
 4 (Time noted: 12:29 p.m.)  
 5  
 6  
 7  
 8  
 9  
 10 -----  
 11 JOHN W. WHITE  
 12 Subscribed and sworn to before me  
 13 this day of 2012.  
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 25

1  
 2  
 3 CERTIFICATE  
 4  
 5 STATE OF NEW YORK )  
 6 ) Ss.:  
 7 COUNTY OF NEW YORK )  
 8 I JEFFREY BENZ, a Certified Realtime  
 9 Reporter, Registered Merit Reporter and  
 10 Notary Public within and for the State of  
 11 New York, do hereby certify:  
 12 That JOHN W. WHITE, the witness whose  
 13 examination is hereinbefore set forth, was  
 14 duly sworn by me and that this transcript  
 15 of such examination is a true record of the  
 16 testimony given by such witness.  
 17 I further certify that I am not  
 18 related to any of the parties to this  
 19 action by blood or marriage; and that I am  
 20 in no way interested in the outcome of this  
 21 matter.  
 22 IN WITNESS WHEREOF, I have hereunto  
 23 set my hand this 20th of June, 2012.  
 24 -----  
 25 JEFFREY BENZ, CRR, RMR

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