

Exhibit 9

(Defendants' Trial Exhibit D-749)

DRAFT

11/02/2012

The following is a draft transcript of a consensual recording of a telephone call on November 2, 2012 between Dave Houston and Keith Davidson.

This draft transcript, in its current form, is for the sole purpose of review by the prosecuting attorneys and should not be construed as a final verbatim transcript. Further review may be necessary for trial purposes.

(ID 3)

3

DRAFT

DH: Dave Houston

KD: Keith Davidson

Typing Key:

AV: Automated Voice

Auto: Automated Message

UI: Unintelligible

IA: Inaudible

PH: Phonetic

///: Speaking simultaneously

11/02/2012) (00:40:59)

KD: Hello

DH: Hello. Is this KEITH?

KD: Yes.

DH: KEITH, DAVE HOUSTON.

KD: Hi DAVE. How you doing?

DH: I'm doing fine. How about yourself? A little tired but other than that everything seems to be normal.

KD: Good.

DH: How's things on a, on your end?

KD: It's all good out here.

DH: Okay, good. Hey um quick question for you, um, I had obviously a meeting with TERRY um she had some other things we had to do, we've been trying to get a lid on some of this but ah I, you know, from the standpoint of what I'm dealing with um I'm really at that point where I've gotta, you know, get things wrapped up. I mean he's getting pretty impatient with me. Obviously this last delay was more my fault than anything but hopefully today we can do that and ah you know

KD: Three.

DH: Three.

KD: Three separate DVDs.

4:24
DH: Here's a question that TERRY did have for me and I, I need to ask you this. Is there any interest in splitting them up? In other words the way he kind of looked at the sex tape concerning HEATHER CLEM that has obviously already aired as far as the GAWKER, TMC, DIRTY, all those other people out there that claim to have seen it. Ah the other two apparently have been pretty much kept in the dark. Is there a way to deal on the other two and the other one we don't particularly care about um what's your status on that?

KD: I mean I, I don't know I guess it would all depend on, on the funds.

DH: Right. Okay.

KD: I mean I think, I think we, you, you and I have an understanding that um um hold on I'm just trying to look at my notes on the, the one that, that discusses, there's one that's more inflammatory than the others and then that carries the lion share of the value.

5:01

DH: Right, what's, well I, I mean what, you know TERRY had asked me this last night and frankly I didn't have an answer for him and it seems obvious to me but I'll ask you the same question. What if he doesn't buy them? What, what does your client do with them?

KD: I have no position on that.

DH: I mean have they spoken to you about it?

KD: No.

DH: In other words it's like any other case and I'm sure you've done this way more than I have but I'm trying to give him reasons as to what dollar amount I believe it's worth and why he should do it. In other words.

KD: Mm hm.

DH: What is he getting for his money and if, if I'm going back to him saying well I don't know what's gonna happen TERRY if you don't do it then that leaves a big hole in this thing for me and that's why I asked you.

KD: Yeah um well you know I take no position on that. I, I need to leave that in your hands. I wish I could give you more but um I'm not in a position to do that.

time I just presumed that was something that had been authenticated in some way. But in reality it's your guy telling you hey it's got BUBBA's handwriting on it.

KD: Yes.

DH: Okay. Alright um when, when we come to a final on this, what's your concept on how we get this done as far as the final money number, how do we get this accomplished?

KD: Alright so let's presume that we agree on a final money number which I believe that we can do um (clears throat) we'll enter into a settlement agreement. I have some more settlement agreements that I can propose um which will um bind out parties into a confidential settlement agreement. There can be (clears throat) an initial payment of, of funds up front. We can spread some payments out over time um and all the other provisions that I've mentioned that would to the extent possible assure your client of um of finality.

DH: Who has the um tapes, the DVDs in the interim?

KD: The client.

DH: So the client is to hold the tapes until they're completely paid for?

KD: Oh no, no, we'll turn that over.

DH: Oh alright.

KD: So I, upon, upon execution of the settlement agreement.

DH: Alright so.

KD: (UI)

DH: And, and we're talking about spreading out payments. Let's, let's, if we could, go to again I'm jumping around a little bit but I think we need to solve one problem first.

KD: Mm hm.

DH: If I'm at two fifty and you're at four hundred um what are we truly looking at KEITH?

KD: (Pause) Three fifty.

DH: Alright what if I came back to you and said three hundred? And don't say three twenty five cause then I've got to say three twelve so how about three hundred?

KD: Alright we'll do three hundred.

DH: Alright we've got a number and I've got authority to accept that. Now if we can look at that three hundred let's talk about how we're gonna do payments. I appreciate the idea of spreading the payment out because ah you know I don't know whether you've ever been through a horrible divorce but as you might imagine.

KD: Mm hm.

DH: That can put you in a position of not being necessarily ah cash rich so understanding that how much flexibility do we have on payments with your client?

KD: Say fifty percent down.

DH: Right.

KD: Um at execution um twenty five percent in nine months.

DH: Okay.

KD: And twenty five percent in sixteen months.

DH: Sixteen months from the nine or sixteen months from date of execution.

KD: Sixteen months from date of execution.

DH: Okay, hang on I'm trying to write this as we talk. Um the obvious is TERRY wants to see them.

KD: Mm hm.

DH: Um he wants to be able to himself authenticate that it is him and I think as we spoke the last time if it was your guy that turned that snippet over to GAWKER um then that in turn gives us some idea of at least the auth, the, the legitimacy of one of them and um that's true, correct? I didn't assume that?

KD: What's, what's true?

DH: That the footage GAWKER is running came from your client?

KD: Ah the, the footage that my client has is the same footage that GAWKER has.

DH: Right but it well now you're opening that door again KEITH. (Chuckles) If somebody else has that footage and gave it to GAWKER then I should be talking