

IN THE CIRCUIT COURT OF THE  
TWELFTH JUDICIAL CIRCUIT IN AND  
FOR SARASOTA COUNTY, FLORIDA

CASE NO.: 2022 CA 1128 SC

JOSEPH PETITO and NICHOLE  
SCHMIDT,

Plaintiffs,

vs.

CHRISTOPHER LAUNDRIE, ROBERTA  
LAUNDRIE, and STEVEN BERTOLINO,

Defendants.

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**DEFENDANT STEVEN BERTOLINO'S NOTICE OF  
FILING AFFIDAVIT OF WAYNE POLLOCK**

**COMES NOW**, this Defendant, STEVEN BERTOLINO, through counsel, pursuant to the Florida Rules of Civil Procedure, and hereby gives notice of filing the Affidavit of Wayne Pollock in support of Defendant Steven Bertolino's Motion for Summary Judgment, filed on February 12, 2024. This Notice is given in accordance with Florida Rule of Civil Procedure 1.510(c). The Affidavit is also filed for use at trial and any other purposes as provided for by the Florida Rules of Civil Procedure.

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on February 12, 2024, the foregoing was electronically filed with the Court, which will give electronic notice to: **Patrick J. Reilly, Esquire** at [service@snyderandreilly.com](mailto:service@snyderandreilly.com), [pat@snyderandreilly.com](mailto:pat@snyderandreilly.com), [valerie@snyderandreilly.com](mailto:valerie@snyderandreilly.com) [counsel for Plaintiffs]; and **Ryan L. Gilbert, Esquire** at [ryan@ryangilbertlaw.com](mailto:ryan@ryangilbertlaw.com), [office@ryangilbertlaw.com](mailto:office@ryangilbertlaw.com) [counsel for Christopher and Roberta Landrie].

*/s/ Laura M. Kelly*

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14606/3395

IN THE CIRCUIT COURT OF THE  
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CASE NO.: 2022 CA 1128 SC

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**AFFIDAVIT OF WAYNE POLLOCK**

1. I, Wayne Pollock, am a resident of the State of Pennsylvania, over the age of eighteen (18) years and have personal knowledge of the facts set forth in this Affidavit.

2. I am an attorney licensed to practice law in Pennsylvania and New Jersey and I have been retained to serve as an expert witness in the above referenced matter.


3. In connection with same, I prepared and issued an Expert Report on January 22, 2024, which is attached as Exhibit A. My report describes the scope of my review, my qualifications and expertise, the information and authorities I reviewed and relied upon in forming my opinions, and the sum and substance of my opinions, which are expressed within a reasonable degree of probability.

4. As detailed in my report, I developed and employed a systematic, reliable, and scientific approach in my analysis, based upon my knowledge of, and experience with, public statements and the factors and considerations other attorneys can, and do, weigh when making public statements about potential, pending and current legal matters.

5. I affirm that the opinions expressed in my expert report are true and correct to the best of my knowledge, information, and belief, and are based on sound professional judgment.

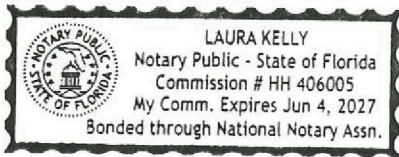
6. I can affirm that my opinions are based on sufficient data, facts, and reliable principles, and they are the result of the application of reliable methods and principles to the facts of the case.

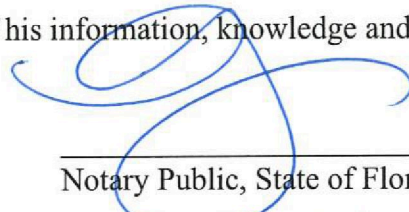
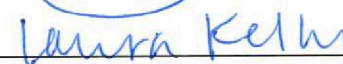
Further affiant sayeth naught.

  
\_\_\_\_\_  
WAYNE POLLOCK

**STATE OF FLORIDA  
COUNTY OF ORANGE**

Sworn to and acknowledged before me this 1st day of February, 2024, by WAYNE POLLOCK, by means of physical presence, who is known to me, and who swears or affirms that the foregoing is true and correct to the best of his information, knowledge and belief.



  
\_\_\_\_\_  
Notary Public, State of Florida  
  
\_\_\_\_\_  
(Printed Name)

My Commission Expires: 6/4/27

14606:3190

**IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT  
IN AND FOR SARASOTA COUNTY, FLORIDA**

JOSEPH PETITO and  
NICHOLE SCHMIDT,  
Plaintiffs,

CASE NO. 2022 CA 001128 SC  
DIVISION H CIRCUIT

v.

CHRISTOPHER LAUNDRIE,  
ROBERTA LAUNDRIE,  
STEVEN BERTOLINO,  
Defendants.

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**EXPERT REPORT OF WAYNE POLLOCK**

**Exhibit A**

1. I am Wayne Pollock. I am an attorney licensed to practice law in Pennsylvania (Bar no. 306881) and New Jersey (Bar no. 01036-2009). I am the founder of Copo Strategies LLC, a legal services and communications firm that helps attorneys and their clients engage the Court of Public Opinion<sup>1</sup> in connection with possible and pending legal issues and proceedings. My business address is 1650 Market Street, Suite 3600, Philadelphia, Pennsylvania 19103.

### **Assignment**

2. I was retained by Telan, Meltz, Wallace & Eide, P.A., counsel for Defendant Steven Bertolino, Esq., to review and consider the claims raised by the Plaintiffs in this lawsuit, including those concerning Mr. Bertolino's September 14, 2021, and September 19, 2021, public statements, and to opine on the reasonableness of those statements and of him making public statements generally in connection with his representation of Brian Laundrie, Roberta Laundrie, and Christopher Laundrie.
3. I am being compensated for my time in this matter at a billing rate of \$650 per hour. This compensation is not contingent upon the nature of my opinions or on the outcome of this litigation.
4. In preparing this Report, I have relied on my general knowledge, education, training, experience, and expertise. In addition, I have reviewed in whole or in part the materials listed on Appendix A hereto. Both my analysis and the factual observations I make in this Report are, subject to paragraph 5 below, based solely on the foregoing.

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<sup>1</sup> I will refer to the "Court of Public Opinion" throughout this report. My definition of the Court of Public Opinion is a group of people who are not parties to a legal matter or potential legal matter, but whose perceptions of that matter could affect (i) its resolution, and (ii) its impact on the reputation and prosperity of a participant in the matter.

5. My work on this matter is ongoing. I may review additional materials or conduct further analysis. I reserve the right to update, refine, or revise my opinions as appropriate.

### **Summary of Opinions**

6. My overall opinions are that (i) Mr. Bertolino was reasonable in making public statements in connection with his representation of, and behalf of, Brian Laundrie, Roberta Laundrie, and Christopher Laundrie, (ii) it was reasonable for Mr. Bertolino to make his September 14, 2021, statement and to use the language he used in it, (iii) it was reasonable for Mr. Bertolino to make his September 19, 2021, statement and to use the language he used in it, (iv) Mr. Bertolino's two statements were not reckless or intentionally harmful to the Plaintiffs, and (v) he met the standard of care a reasonable attorney in his position would be expected to render to his clients (*i.e.*, the Laundries).

### **Qualifications**

7. I graduated *magna cum laude* with a B.S. from the Syracuse University S.I. Newhouse School of Public Communications in May 2002. I graduated with a J.D. from Georgetown University Law Center in 2009, where I was the Senior Special Projects Editor of the *Georgetown Law Journal*.
8. From September 2002 through August 2006, I worked as a public relations practitioner at The Star Group, an advertising and public relations firm. There, on a daily basis, I was in contact with the media with the goal of securing positive publicity for my clients or rebutting negative publicity.

9. After graduating from Georgetown University Law Center, I practiced law as a litigation associate in the Philadelphia office of Dechert LLP, one of the largest and most profitable law firms in the world, from March 2010 through August 2016. While at Dechert, I was a member of several legal teams that defended high-profile clients in high-profile matters that were the subject of public and media scrutiny, including the independent directors of Lehman Brothers, the Takata Corporation (maker of recalled faulty airbags), the Estate of E. Pierce Marshall (son of J. Howard Marshall II, the former husband of Vickie Lynn Marshall, a/k/a Anna Nicole Smith), former New Jersey Governor Jon Corzine, and Mercer Human Resource Consulting (a consulting company that advised the City of Philadelphia regarding a controversial pension plan for municipal employees).
10. In September 2016, I founded Copo Strategies, LLC, so that I could combine my legal and public relations backgrounds. (“Copo” is short for “Court of Public Opinion.”) For more than seven years, I have provided legal and media counsel to attorneys and their clients, advising clients on legal strategy, media strategy, ethics compliance, and defamation avoidance in connection with their efforts to engage the Court of Public Opinion.
11. I have substantial experience advising attorneys and their clients when to, when not to, and how to publicly discuss possible or pending legal matters. I regularly advise attorneys and their clients on how to publicly communicate certain concepts and themes regarding those clients’ legal matters that position them favorably in the Court of Public Opinion.
12. As of January 22, 2024, I have assisted approximately 30 law firms and 144 clients across the U.S. with their Court of Public Opinion needs. As of January 22, 2024, I have written 13 articles about engaging the Court of Public Opinion, have been quoted in ten articles from

media outlets regarding the topic, and have presented a continuing legal education program regarding the ethics of engaging the Court of Public Opinion 14 times.<sup>2</sup>

**Opinion #1: It was reasonable for Steven Bertolino to make public statements, including to the media, regarding the search for Gabrielle Petito and Brian Laundrie.**

13. In *Gentile v. State Bar of Nevada*, 501 U.S. 1030 (1991), a U.S. Supreme Court case regarding whether a Nevada attorney’s comments to the media regarding a criminal investigation of his client ran afoul of Nevada’s ethics rule regarding trial publicity (the Supreme Court ruled they did not), Justice Anthony M. Kennedy stated:

*An attorney's duties do not begin inside the courtroom door. He or she cannot ignore the practical implications of a legal proceeding for the client. Just as an attorney may recommend a plea bargain or civil settlement to avoid the adverse consequences of a possible loss after trial, so too an attorney may take reasonable steps to defend a client's reputation and reduce the adverse consequences of indictment, especially in the face of a prosecution deemed unjust or commenced with improper motives. A defense attorney may pursue lawful strategies to obtain dismissal of an indictment or reduction of charges, including an attempt to demonstrate in the court of public opinion that the client does not deserve to be tried.*

14. What Justice Kennedy could not have anticipated 33 years ago is how the Court of Public Opinion would evolve. Given the rise of the internet and social media, news cycles are shorter. In the early 1990s, when “news” would happen regarding legal matters, it would be reported on that day hours later—normally in the evening—by local or national news television or radio programs, and the next morning by local or national newspapers. The only platforms these outlets and their reporters had through which to disseminate their reporting were the outlets themselves. Thus, the news cycle in the 1990s was measured in hours. If an attorney held a press conference at 1:00 pm, it would probably not appear on television until

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<sup>2</sup> <https://www.copostrategies.com/where-you-have-seen-us>.



5:00 pm at the earliest, and would only appear in print in the local newspaper that next morning.

15. Today, the news cycle can be measured in seconds. If an attorney held a press conference at 1:00 pm regarding a client's matter, it could be live streamed on the internet and on various social media accounts reaching viewers across the world as it happened. The reporters in attendance, or the media outlets they work for, could be posting about the substance of the press conference on social media and repeating key statements from the press conference mere seconds after the speaker said them. The full press conference would be available on a media outlet's website for future visitors to watch within seconds of the press conference wrapping up.
16. The technological advancements that allow professional media outlets and their reporters to report news as it happens also enable members of the public who are not reporters to opine on news events. This is often through social media platforms such as Facebook, YouTube, Instagram, TikTok, and X/Twitter. These platforms allow individuals to shape other individuals' perceptions of news events without an obligation to honor journalism codes of ethics, such as the Society of Professional Journalists' Code of Ethics that states, among other things, that "[e]thical journalism should be accurate and fair," and that journalists should "[t]ake responsibility for the accuracy of their work" and "verify information before releasing it."<sup>3</sup>
17. The faster news cycles of today, combined with the ability for non-reporters to say whatever they want about individuals in the news to tens, hundreds, thousands, or millions of social media followers, has upped the ante for attorneys involved in high-profile legal matters.

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<sup>3</sup> <https://www.spj.org/ethicscode.asp>.

Reporters and non-reporters alike can disseminate information about those matters outside of court—in the Court of Public Opinion—that impacts those attorneys’ ability to secure favorable results for their clients.

18. Faced with negative publicity against their clients, or an opportunity to generate negative publicity against their clients’ adversaries, attorneys may engage the Court of Public Opinion for several reasons, including:

- a. To prevent a tainted jury pool;
- b. To prevent negative publicity from impacting their ability to resolve their clients’ matters favorably;
- c. To turn up the pressure on the other side to settle the matter;
- d. To make sure their clients’ positions are accurately portrayed and represented;
- e. To find more plaintiffs or defendants that can join or be joined in the matter;
- f. To uncover information or evidence from the public; and
- g. To protect their clients from threats to their personal and professional health and well-being, including their personal and professional reputations.

19. The need for attorneys to engage the Court of Public Opinion is so fundamental to the practice of law that the American Bar Association’s Model Rules of Professional Conduct include a rule regarding the Court of Public Opinion: Rule 3.6. In addition, most states in the U.S. have adopted the ABA’s Rule 3.6 as written, or with slight modifications.

20. Rule 3.6 contemplates that there will be times when an attorney must “play defense” on behalf of their clients because they are on the receiving end of negative publicity. Rule 3.6(c) states that, notwithstanding the Rule’s prohibition against an attorney making “an extrajudicial statement that the attorney knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter,” an attorney may “make a statement that a reasonable attorney would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client.”
21. Here, there is no doubt that it was reasonable for Steven Bertolino to make public statements, including to the media, regarding the search for Gabrielle Petito and Brian Laundrie in connection with his representation of the Laundries.
22. The search for Gabby Petito and Brian Laundrie generated a massive amount of media coverage and social media interest.<sup>4</sup> Dozens of media outlets from across the U.S. and the world reported breathlessly on every perceived development in the case. Mr. Bertolino was “flooded” with media requests.<sup>5</sup> He received thousands of texts from at least 40 representatives of media organizations, including high-profile individuals like Chris Cuomo<sup>6</sup>,

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<sup>4</sup> See Joseph Petito Deposition at 16, 63 (stating that there were over two billion postings on TikTok regarding Gabrielle Petito’s disappearance/murder).

<sup>5</sup> SBP\_000668.

<sup>6</sup> SBP\_000138–169.

seeking statements and interviews.<sup>7</sup> He was even called out publicly by North Port Police Chief Todd Garrison,<sup>8</sup> which was reported on by various media outlets.

23. Richard Stafford, as the spokesperson for the Petito-Schmidt family, also experienced how much media and public interest there was in the case. He received hundreds of calls from the public,<sup>9</sup> and hundreds of media requests a day, with many reporters showing up at his office.<sup>10</sup> In addition, reporters were outside his clients' house early on in the search.<sup>11</sup>
24. Given the media coverage of the disappearance of Gabby Petito and Brian Laundrie, it would have been unreasonable—and perhaps unethical and a form of malpractice—for Mr. Bertolino to not have made public statements given the media interest and public interest in this case and the nature of the publicity concerning his clients.
25. There was mounting public pressure from the Petito and Schmidt families, law enforcement, the media, and the general public for the Laundrie family, through Mr. Bertolino, to respond publicly to news reports of developments regarding the disappearance of Gabby Petito and Brian Laundrie.
26. As was to be expected in high-profile legal matters with media savvy adversaries, media savvy opposing counsel, or media savvy advisors guiding those adversaries or opposing

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<sup>7</sup> SBP\_000060–607.

<sup>8</sup> SBP\_000055.

<sup>9</sup> Richard Stafford Deposition at 48.

<sup>10</sup> *Id.* at 53–54.

<sup>11</sup> *Id.* at 50–51.

counsel, some of this pressure came from Richard Stafford in the form of public statements, including:

- a. His September 14, 2021, statement “implo[r]ing Brian to come forward and at least tell us if we are looking in the right area”;<sup>12</sup>
- b. His September 15, 2021, statement asking the Laundries “if [they] or [their] family has any decency left, [to] please tell [the Petito and Schmidt families] where Gabby is located”;<sup>13</sup>
- c. Another September 15, 2021, statement calling Brian Laundrie’s silence “reprehensible”;<sup>14</sup>
- d. His statement in a September 16, 2021 news article stating that “[the Petito and Schmidt families] know[] that the Laundries know where their daughter is, and they will not tell them. That's infuriating.”;<sup>15</sup>
- e. A September 18, 2021, statement claiming “[Brian Laundrie] is hiding”;<sup>16</sup> and
- f. A September 22, 2021, statement “demanding” Mr. Bertolino remove Gabby Petito’s picture from “[his] Yelp[.com] page.”<sup>17</sup>

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<sup>12</sup> *Id.* at Ex. 3.

<sup>13</sup> *Id.* at Ex. 4.

<sup>14</sup> *Id.* at Ex. 5.

<sup>15</sup> *Id.* at Ex. 6.

<sup>16</sup> *Id.* at Ex. 7.

<sup>17</sup> *Id.* at Ex. 9.

27. In addition, the safety of Roberta and Christopher Laundrie was in question. People were “battering” their house down<sup>18</sup> and protesting in front of their home.<sup>19</sup>
28. If Mr. Bertolino had not made public statements in response to Mr. Stafford’s statements and calls from the media, the public, and law enforcement to speak about what his clients knew, he would have invited members of the public—including potential jurors in a criminal or civil case—and the media to speculate as to why he and his clients were staying silent. They would have speculated that silence was tantamount to an admission of Brian’s guilt, or knowledge of Roberta and Chris Laundrie of Brian’s guilt. Despite instructions from a judge to the contrary, jurors would have likely had this opinion in the back of their heads when reporting for jury duty in a criminal or civil trial regarding Brian or Roberta and Christopher Laundrie.
29. In addition, had Mr. Bertolino not made public statements on behalf of his clients, he might have violated New York Rules of Professional Conduct 1.1 (Competence) and 1.3 (Diligence). He also might have exposed himself to a claim of malpractice. The failure to engage the Court of Public Opinion on behalf of his clients and to push back against the negative publicity and public sentiment against his clients could be seen by a factfinder as falling below the standard of care expected of an attorney of similar ability and training.
30. Accordingly, it was reasonable for Mr. Bertolino to make public statements on behalf of his clients Brian, Roberta, and Chris Laundrie in connection with Gabby Petito’s and Brian’s disappearance.

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<sup>18</sup> Christopher Laundrie Deposition at 102.

<sup>19</sup> Joseph Petito Deposition at 137.

**Opinion #2: It was reasonable for Steven Bertolino to make his September 14, 2021, statement and to use the language he used in it.**

31. As I explain below, it was reasonable for Mr. Bertolino to make his September 14, 2021, statement and to use the language he used in it.
32. To determine the reasonableness of attorneys' public statements, those statements should be run through the following ten-factor test. No reasonable attorney would intentionally make a public statement that does more harm than good to their clients' legal and overall interests. If the following ten factors do not all come out in favor of the attorney making their public statement, it would be unreasonable to make that statement because it would likely do more harm than good.
33. First, will the statement comply with the trial publicity ethics rule(s) applicable to the attorney making the statement?
34. Second, will the statement comply with any applicable court rules?
35. Third, will the statement not defame a party to the litigation or a third party?
36. Fourth, will the statement not reasonably anger the presiding judge or investigators?
37. Fifth, will the statement not inadvertently divulge privileged or confidential information?
38. Sixth, will the statement not damage the client's case by suggesting they engaged in certain conduct or took certain actions that were not previously known publicly, or by otherwise providing new information, that the opposition can use to strengthen their case?

39. Seventh, is the statement intended to either (i) “turn up the heat” on the opposition or “unfriendly” third parties by increasing or creating negative publicity and negative public sentiment concerning them, or (ii) “turn down the heat” on the client on whose behalf the statement is being made by decreasing or eliminating negative publicity and negative public sentiment concerning them, and/or increasing or creating positive publicity and public sentiment concerning them. In other words, is the statement being used as a “sword,” as a “shield,” or as both?
40. The intent of turning up or down the heat is reasonable—if not necessary—in instances like the Gabby Petito-Brian Laundrie case where there is so much publicity that it would be impossible for jurors who consumed news articles about the case to have a balanced, unbiased opinion about the parties before a trial was to begin.
41. Aside from it impacting a party’s ability to appear before an impartial jury, negative publicity also affects a party’s everyday life. Depending on the intensity of media coverage and public sentiment, and the actions of the public, parties involved in high-profile legal disputes may be unable to appear in public for fear of being accosted or harmed by strangers who feel motivated to engage in such conduct based on the negative sentiment created by news reports or social media posts they’ve consumed about the party’s alleged actions or inactions.
42. Eighth, will the statement attempt to portray the client(s) in a favorable light overall, even if some segments of the population, like opposing parties or would-be opposing parties, are unhappy with the statement?



43. Ninth, will the statement avoid putting any of the parties in reasonably foreseeable danger?
44. Tenth, will the statement avoid giving rise to a reasonably foreseeable cause of action, other than defamation, against the speaker, such as tortious interference with business expectancy?
45. Based on these ten factors, Mr. Bertolino's September 14, 2021, statement was reasonable, as was the language he used in it.

*Factor 1: Compliance with ethical rules*

46. First, the September 14, 2021, statement complies with the trial publicity ethics rule applicable to Mr. Bertolino: New York Rule of Professional Conduct 3.6.
47. Rule 3.6(a) states that an attorney "who is participating in or has participated in a criminal or civil matter shall not make an extrajudicial statement that [they] know[] or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter."
48. Rule 3.6(b) provides a list of six subjects for which statements concerning them are "ordinarily . . . likely to prejudice materially an adjudicative proceeding when [they refer] to a civil matter triable to a jury, a criminal matter or any other proceeding that could result in incarceration":

- i. “(1) the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness or the expected testimony of a party or witness;
- ii. (2) in a criminal matter that could result in incarceration, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission or statement given by a defendant or suspect, or that person’s refusal or failure to make a statement;
- iii. (3) the performance or results of any examination or test, or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;
- iv. (4) any opinion as to the guilt or innocence of a defendant or suspect in a criminal matter that could result in incarceration;
- v. (5) information the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and would, if disclosed, create a substantial risk of prejudicing an impartial trial; or
- vi. (6) the fact that a defendant has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.”

49. The September 14, 2021, statement does not concern any of these six topics, and apart from that, would not have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter given its substance.

*Factor 2: Compliance with court rules*

50. Second, the September 14, 2021, statement did not run afoul of any applicable court rules because there was no pending litigation in a court regarding Gabby Petito's and Brian Laundrie's disappearance at the time Mr. Bertolino made his statement.

*Factor 3: Non-defamatory*

51. Third, the September 14, 2021, statement does not defame a party to the litigation or a third party, as Mr. Bertolino did not make an objectively false statement about any members of the Petito family, including Gabby Petito, or the family as a whole.

*Factor 4: Anger a judge or investigators*

52. Fourth, the September 14, 2021, statement could not reasonably anger a presiding judge (if there was one) or investigators given its substance.

53. At the time Mr. Bertolino made the statement, there was no presiding judge. The statement could not reasonably be seen as angering investigators, as it did not divulge non-public information about the investigation, call for the public's help in a way that could interfere with the investigation, or otherwise hamper it.

*Factor 5: Does not divulge attorney-client privileged information*

54. Fifth, the September 14, 2021, statement does not inadvertently divulge privileged or confidential information.

55. There is no suggestion by the parties that the statement divulges any communications between Mr. Bertolino and his clients that his clients did not already authorize him to make.<sup>20</sup>

*Factor 6: Does not divulge new, problematic information*

56. Sixth, the September 14, 2021, statement does not suggest the Laundries engaged in conduct or took actions that were not previously known. Nor does it provide new information that the Petito and Schmidt families could have used to strengthen their case against them.

*Factor 7: Intended to “turn down the heat” or “turn up the heat”*

57. Seventh, the September 14, 2021, statement was an attempt by Mr. Bertolino to “turn down the heat” on his clients. It is a strategically defensive statement (*i.e.*, a “shield” statement) intended to improve the tenor of the publicity regarding the Laundrie family and improve the public’s perception of them. It does not “turn up the heat” on the Schmidt and Petito families by blame shifting or by accusing them, including Gabby Petito, of wrongdoing.

58. In the statement, Mr. Bertolino positions his clients as sympathetic victims who were struggling with their own unanticipated trauma at the same time that the Schmidt and

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<sup>20</sup> See Christopher Laundrie Deposition at 97; Roberta Laundrie Deposition at 83–84.

Petito families were struggling with an unanticipated trauma. By reminding the public that that period of time was an “extremely difficult time” for both families, he was attempting to generate goodwill on his clients’ behalf and make sure the public knew his clients were suffering too.

59. When he stated that “[o]n behalf of the Laundrie family it is our hope that the search for Miss Petito is successful and that Miss Petito is re-united with her family,” Mr. Bertolino was attempting to generate positive public sentiment for his clients by appearing supportive of the Schmidt and Petito families’ efforts to find Gabby Petito. He was doing so not simply to prevent a tainted jury pool down the road, but also for his clients’ safety and well-being in the short term. His clients were the subject of protests outside their home, and there was a significant media presence at their home.<sup>21</sup> Mr. Bertolino was reasonable to draft and disseminate a statement with language like this that positioned his clients as good people who hoped the search for Gabby was successful.

60. Finally, when Mr. Bertolino stated that “[o]n the advice of counsel the Laundrie family is remaining in the background at this juncture and will have no further comment,” he was intending to preemptively and credibly explain why the Laundries will not be making future public statements. He was attempting to shield them from the negative public sentiment that could develop regarding a family when one of the members of that family is suspected of, or has, killed another person. Mr. Bertolino was “flooded” with media requests<sup>22</sup> seeking comment either from him or his clients regarding developments in the

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<sup>21</sup> Joseph Petito Deposition at 137.

<sup>22</sup> SBP\_000668.

case. He had to provide a reasonable, credible blanket response that explains why the media and public wouldn't be hearing from his clients. He did that with this language.

61. Mr. Bertolino's September 14, 2021, statement, particularly its use of the terms "our hope," "successful," and "re-united" was reasonable and not outrageous, regardless of what he, Roberta Laundrie, and Chris Laundrie knew about what happened to Gabby Petito when he made the statement.
62. If Mr. Bertolino did not know what happened to Gabby Petito when he made the statement, there could be no rational argument that his statement was unreasonable and/or outrageous. He was expressing his clients' desire for the search for Gabby Petito to be successful and for her to be found.
63. If I accept the Plaintiffs' allegations here that Mr. Bertolino, Roberta Laundrie, and Chris Laundrie knew by the time Mr. Bertolino wrote and disseminated the statement that Gabby Petito was dead, his statement is no less reasonable and does not become outrageous.
64. A reasonable attorney in Mr. Bertolino's shoes who (i) knew what happened to Gabby Petito, (ii) knew they could not disclose information covered by the attorney-client privilege, (iii) knew they could not disclose information that would negatively affect their client's legal position, and (iv) knew they had to issue a public statement on behalf of their clients to minimize negative publicity and negative public sentiment regarding their clients and to increase positive publicity and positive public sentiment regarding them, would carefully craft a statement with language that neither confirms nor denies what happened to Gabby Petito. The statement would be necessarily ambiguous, but would

communicate that ambiguity in a tasteful, subtle manner so as not to be seen by the majority of the public, either at the time the statement was made or in the future, as making a false statement, giving false hope, or otherwise acting in an outrageous manner. That's what Mr. Bertolino did here.

65. First, there can be no reasonable dispute that a search for a missing person is only “successful” if they are found alive. A reasonable person would understand “success” in this context to be when Gabby Petito is found—dead or alive.

66. Second, Mr. Bertolino did not state that it was “our hope . . . that Miss Petito is found alive,” “. . . that Miss Petito can tell her family she loves them,” “. . . that Miss Petito returns home to her family and lives the rest of her life happily,” or other similar language suggesting Gabby was alive. Instead, he used the term “re-united.” This was a reasonable, strategic decision, as it does not make a definitive statement about Gabby’s status, but is equally applicable if she is dead or alive.

67. The online Merriam-Webster dictionary defines “reunite” as “to bring together again.”<sup>23</sup> The online Cambridge Dictionary defines “reunite” as “to bring people together again.”<sup>24</sup> Neither suggests that the word only refers to when the people brought together are all alive. That’s why the term is used when describing instances when the bodies of deceased people are brought together with other deceased people or people who are alive.<sup>25</sup> Plus,

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<sup>23</sup> <https://www.merriam-webster.com/dictionary/reunite>.

<sup>24</sup> <https://dictionary.cambridge.org/dictionary/english/reunite>.

<sup>25</sup> See, e.g., *Vallow grandparents: We hope to reunite bodies of JJ, Tylee*, <https://www.newsnationnow.com/crime/lori-vallow/vallow-grandparents-we-hope-to-reunite-bodies-of-jj-tylee>; *Kansas family reunites with soldier’s remains 70 years after his passing*, <https://www.ksn.com/news/state-regional/kansas-family-reunites-with-army-cadets-remains-70-years-after-his-passing>; *Family of a fallen Belgrade soldier is reunited with his remains 67 years after his death*,

speakers of the English language often speak of taking actions regarding the deceased in the same way they talk about taking actions regarding the living, such as when Mr. Stafford noted in his September 19, 2021, statement that the work of the Grand Teton Search and Rescue Team “helped bring Gabby home to her parents.”<sup>26</sup>

68. By using language that was equally applicable to whether Gabby was dead or alive at the time Mr. Bertolino made the September 14, 2021, statement, the statement, and the language he used in it, was reasonable, even when taking the Plaintiffs’ allegations as true.

*Factor 8: Intends to portray client in a favorable light*

69. Eighth, the September 14, 2021, statement attempted to portray the Laundries in a favorable light. As I explained when discussing the seventh factor, the statement was an attempt by Mr. Bertolino to improve the tenor of the publicity regarding the Laundrie family and to improve the public’s perception of them. The statement does this by appearing supportive of the Schmidt and Petito families’ efforts to find Gabby Petito, position the Laundries as good people who hoped the search for Gabby Petito was successful, and provide a credible and preemptive explanation for why the Laundries will not be making future public statements.

70. It is important to note that in high-profile cases like this, it is difficult—if not impossible—for attorneys and their clients to issue statements that are universally well-received by the public and that cause their clients to be viewed in a favorable light in

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[https://www.montanarightnow.com/news/family-of-a-fallen-belgrade-soldier-is-reunited-with-his-remains-67-years-after-his/article\\_40c4b433-edbb-5f75-bd4b-b7262b9b0c65.html](https://www.montanarightnow.com/news/family-of-a-fallen-belgrade-soldier-is-reunited-with-his-remains-67-years-after-his/article_40c4b433-edbb-5f75-bd4b-b7262b9b0c65.html).

<sup>26</sup> Richard Stafford Deposition, Ex 8.



the eyes of every member of the public. Inevitably, there will be segments of the public that will never view a party to a legal matter or potential legal matter favorably, or even have an unbiased opinion of the parties in such a matter, regardless of the public statements a party makes or how favorably they are treated by the news media. In a situation like Gabby Petito's and Brian Laundrie's disappearance, there will always be a segment of the population that views Brian and his family with suspicion, or with conviction that he was the wrongdoer and that his parents were protecting him despite knowing he killed Gabby, no matter what they say or do. It is impossible to imagine a universe in which Mr. Bertolino makes any substantive statement designed to put his clients in a favorable light that the Schmidt and Petito families, their friends, and their supporters would find appropriate.<sup>27</sup>

71. Thus, it is unreasonable for attorneys in Mr. Bertolino's shoes to worry about how partial or prejudiced portions of the population will react to their public statements. Instead of attempting to tailor public statements to cater to their harshest critics and worrying about how those critics would react, including their adversaries in a legal matter or potential legal matter, reasonable attorneys in Mr. Bertolino's position must calibrate their public statements to appeal to the public generally when attempting to position their clients in a favorable light. The efficacy and reasonableness of their public statements should be tested by how detached members of the public interpret their statements and not how already partial or prejudiced individuals would. After all, those prejudiced individuals would be identified during *voir dire* and screened off of a jury, whereas (local) members

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<sup>27</sup> Joseph Petito referred to Mr. Bertolino's statements as "dumb-ass statements written by -- looks like they were written by a fucking crayon and a 50-year-old." Joseph Petito Deposition at 90. Mr. Petito also stated that the way the September 14, 2021, statement could have been worded differently to have not caused him to feel the way he did after reading it was for Mr. Bertolino to "not write the statement and cooperate with the police." *Id.* at 91.

of the general public would be the ones sitting in the jury box during a civil or criminal trial and asked to deliberate on the liability or guilt of Roberta and/or Christopher Laundrie.

72. Mr. Stafford endorsed this view—that attorneys making public statements on behalf of their clients should not worry about how partial or prejudiced portions of the population react to those statements—when he discussed the public statements he made on behalf of the Schmidt and Petito families. He testified that he did not consider how the Laundries would feel when they read/heard the public statements he made because he was representing his clients when he made his statements<sup>28</sup> and his need to serve their interests trumped any others.

*Factor 9: Puts parties in reasonably foreseeable danger*

73. Ninth, the September 14, 2021, statement did not put any party in danger. The statement was intended to be supportive of the Schmidt and Petito families' efforts to find Gabby Petito, position the Laundries as good people who hoped the search for Gabby Petito was successful, and provide a credible and preemptive explanation for why the Laundries will not be making future public statements. It did not demand any action on the part of certain people or suggest they were doing something wrong.

74. Compare this to Mr. Stafford's public statements, which could have put the Laundries in reasonably foreseeable danger:

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<sup>28</sup> Richard Stafford Deposition at 84–85.

- a. His September 14, 2021, statement “implor[ed] Brian to come forward and at least tell us if we are looking in the right area”,<sup>29</sup>
- b. His September 15, 2021, statement asked the Laundries “if [they] or [their] family has any decency left, [to] please tell [them] where Gabby is located”,<sup>30</sup>
- c. Another September 15, 2021, statement called Brian Laundrie’s silence “reprehensible”,<sup>31</sup>
- d. His statement in a September 16, 2021 news article that “[the Petito and Schmidt families] know[] that the Laundries know where their daughter is, and they will not tell them. That’s infuriating.”,<sup>32</sup> and
- e. A September 18, 2021, statement claimed “[Brian Laundrie] is hiding.”<sup>33</sup>

*Factor 10: Avoids giving rise to a reasonably foreseeable cause of action against the speaker other than defamation*

75. Tenth, it was not reasonably foreseeable that the September 14, 2021, statement would give rise to a cause of action against Mr. Bertolino.

76. As I noted above when discussing the seventh factor, Mr. Bertolino made a statement expressing his client’s desire for the search for Gabby Petito to be successful and for her to be found. No reasonable attorney without knowledge of what happened to Gabby

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<sup>29</sup> *Id.* at Ex. 3.

<sup>30</sup> *Id.* at Ex. 4.

<sup>31</sup> *Id.* at Ex. 5.

<sup>32</sup> *Id.* at Ex. 6.

<sup>33</sup> *Id.* at Ex. 7.

Petito would look at a draft of that statement and think they would be sued by her parents for infliction of emotional distress.

77. Even accepting the Plaintiffs' allegations as true, a reasonable attorney in Mr. Bertolino's shoes who (i) knew what happened to Gabby Petito, (ii) knew they could not disclose information covered by the attorney-client privilege, (iii) knew they could not disclose information that would negatively affect their client's legal position, and (iv) knew they had to issue a public statement on behalf of their clients to minimize negative publicity and negative public sentiment regarding their clients and to increase positive publicity and positive public sentiment regarding them, would not review a tasteful, carefully crafted statement with language that neither confirms nor denies Gabby Petito's status like the one Mr. Bertolino disseminated and think it could be the basis for a cause of action for causing emotional distress.

**Opinion #3: It was reasonable for Steven Bertolino to make his September 19, 2021, statement and to use the language he used in it.**

78. Based on the ten factors I described above, and as I explain below, it was reasonable for Mr. Bertolino to make his September 19, 2021, statement and to use the language he used in it.

*Factor 1: Compliance with ethical rules*

79. First, the September 19, 2021, statement complies with the trial publicity ethics rule applicable to Mr. Bertolino: New York Rule of Professional Conduct 3.6. The September 19, 2021, statement does not concern any of the six topics discussed in the rule that I highlighted in Paragraph 48 above, and apart from that, would not have a substantial

likelihood of materially prejudicing an adjudicative proceeding in the matter given its substance.

*Factor 2: Compliance with court rules*

80. Second, the September 19, 2021, statement did not run afoul of any applicable court rules because there was no pending litigation in a court regarding Gabby Petito's and Brian Laundrie's disappearance at the time Mr. Bertolino made the statement.

*Factor 3: Non-defamatory*

81. Third, the September 19, 2021, statement does not defame a party to the litigation or a third party, as Mr. Bertolino did not make an objectively false statement about the Petito and Schmidt families, including Gabby Petito.

*Factor 4: Anger a judge or investigators*

82. Fourth, the September 19, 2021, statement could not reasonably anger a presiding judge (if there was one) or investigators.

83. At the time Mr. Bertolino made the statement, there was no presiding judge. The statement could not reasonably be seen as angering investigators as it did not divulge non-public information about the investigation, call for the public's help in a way that could interfere with the investigation, or otherwise hamper it.

*Factor 5: Does not divulge attorney-client privileged information*

84. Fifth, the September 19, 2021, statement does not inadvertently divulge privileged or confidential information.

85. There is no suggestion by the parties that the statement divulges any communications between Mr. Bertolino and his clients that his clients did not already authorize him to make.<sup>34</sup>

*Factor 6: Does not divulge new, problematic information*

86. Sixth, the September 19, 2021, statement does not suggest that the Laundries engaged in conduct or took actions that were not previously known, nor does it provide new information that the Petito and Schmidt families could have used to strengthen their case against them.

*Factor 7: Intended to “turn down the heat” or “turn up the heat”*

87. Seventh, the September 19, 2021, statement was an attempt by Mr. Bertolino to once again “turn down the heat” on his clients. It is a strategically defensive statement (*i.e.*, a “shield” statement) intended to improve the tenor of the publicity regarding the Laundrie family and improve the public’s perception of them. It does not “turn up the heat” on the Petito and Schmidt families by blame shifting or by accusing them of wrongdoing.

88. In the statement, Mr. Bertolino positions his clients as empathetic to the tragedy the Petito and Schmidt families are dealing with in an attempt to generate positive public sentiment for his clients. Through the statement, the Laundries are expressing their condolences.

89. Even if I accept the Plaintiffs’ allegations as true that Mr. Bertolino and the Laundries knew Brian killed Gabby, the statement is not unreasonable or outrageous. Both Roberta Laundrie and Christopher Laundrie loved Gabby.<sup>35</sup> Even if they knew that their son killed

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<sup>34</sup> Christopher Laundrie Deposition at 106; Roberta Laundrie Deposition at 96.

<sup>35</sup> Christopher Laundrie Deposition at 44; Roberta Laundrie Deposition at 16.

her, that doesn't mean that they would not be heartbroken by her death or that they would not pray for her. Both Roberta and Christopher explained why they thought Gabby's death was heartbreaking.<sup>36</sup> Additionally, given the nature of Gabby and Brian's relationship, including that they had been engaged, it could have been unreasonable and outrageous for Mr. Bertolino to issue a statement on behalf of the Laundries that did not express sadness for Gabby's death.

*Factor 8: Intends to portray client in a favorable light*

90. Eighth, the September 19, 2021, statement attempted to portray the Laundries in a favorable light by being empathetic to the tragedy the Petito and Schmidt families are dealing with and by expressing their condolences. Given the public details about Gabby and Brian's relationship, the public—including potential jurors—would likely be suspicious of the Laundries and look at them in a negative light if they did not release such a statement.

*Factor 9: Puts parties in reasonably foreseeable danger*

91. Ninth, the September 19, 2021, statement did not put any party in danger.

*Factor 10: Avoids giving rise to a reasonably foreseeable cause of action against the speaker other than defamation*

92. Tenth, it was not reasonably foreseeable that the September 19, 2021, statement would give rise to a cause of action against Mr. Bertolino.

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<sup>36</sup> Christopher Laundrie Deposition at 106; Roberta Laundrie Deposition at 97.

93. Based on the situation and the nature of Roberta Laundrie’s, Christopher Laundrie’s, and Brian Laundrie’s relationships with Gabby Petito, no reasonable attorney in a similar situation—with or without knowledge of what happened to Gabby—would issue a statement on behalf of their clients that expressed their condolences and think they would be sued by Gabby’s parents for infliction of emotional distress.

### **Conclusions**

94. Based on my review of the relevant documents and my experience litigating in the Court of Public Opinion, it was reasonable for Mr. Bertolino to issue statements to the media on behalf of his clients, to issue both the September 14, 2021, and September 19, 2021, statements, and to use the language he used in them.

95. For the reasons described in Opinion #1, Opinion #2, and Opinion #3, Mr. Bertolino’s September 14, 2021, and September 19, 2021, statements were not reckless or intentionally harmful to the Plaintiffs.

96. For the reasons described in Opinion #1, Opinion #2, and Opinion #3, when he issued statements to the public, including the September 14, 2021, statement and the September 19, 2021, statement, Mr. Bertolino met the standard of care a reasonable attorney in his position would be expected to render to his clients (*i.e.*, the Laundries).

Dated: January 22, 2024



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WAYNE POLLOCK



## Appendix A

Documents Reviewed in *Petito, et al. v. Laundrie, et al.*,  
No. 2022 CA 001128 SC (Fla. 12th Cir.)

### *Court papers*

- Order denying First Amended Complaint, dated Jun. 30, 2022
- Second Amended Complaint, dated Jan. 24, 2023
- S. Bertolino Motion to Dismiss Second Amended Complaint, dated Feb. 20, 2023
- Plaintiffs' Response to S. Bertolino Motion to Dismiss Second Amended Complaint, dated May 5, 2023
- Order Denying S. Bertolino Motion to Dismiss Second Amended Complaint, dated Jun. 14, 2023
- S. Bertolino Answer and Affirmative Defenses to Second Amended Complaint, dated Jun. 26, 2023
- Third Amended Complaint, dated Nov. 30, 2023

### *Discovery materials*

- Depositions
  - Deposition of Nichole Schmidt and exhibits, dated Aug. 15, 2023
  - Deposition of Joseph Petito, dated Aug. 16, 2023
  - Deposition of Christopher Laundrie and exhibits, dated Oct. 10, 2023
  - Deposition of Roberta Laundrie and exhibits, dated Oct. 11, 2023
  - Deposition of Georgia Koutouzis and exhibit, dated Oct. 18, 2023
  - Deposition of Richard Stafford and exhibits, dated Oct. 19, 2023
  - Deposition of Tara Petito and exhibits, dated Nov. 20, 2023
  - Deposition of James Schmidt, dated Nov. 21, 2023
- Interrogatories
  - N. Schmidt Verified Supplemental Answer to S. Bertolino First Set of Interrogatories, dated Jul. 5, 2023
  - J. Petito Verified Supplemental Answers to S. Bertolino First Set of Interrogatories, dated Jul. 13, 2023
  - J. Petito [Un]Verified Answers to S. Bertolino Second Set Of Interrogatories, dated n/a
  - N. Schmidt Verified Answers to S. Bertolino Second Set Of Interrogatories, dated Dec. 27, 2023
  - J. Petito Verified Answers to S. Bertolino Second Set Of Interrogatories, dated Dec. 29, 2023

- Requests for Productions
  - J. Petito Response to Laundries' First Request to Produce, dated May 18, 2023
    - Response to Request No. 2
    - Response to Request No. 4
    - Response to Request No. 6
    - Written Responses to Laundries' Request For Production
  - N. Schmidt Response to Laundries' First Request to Produce, dated May 18, 2023
    - Response to Request No. 2
    - Response to Request No. 4
    - Response to Request No. 6
    - Response to Request No. 15
    - Written Responses to Laundries' Request For Production
  - J. Petito Response to Laundries' First Request to Produce, dated Jun. 29, 2023
    - Response to Request No. 5
    - Response to Request No. 6
    - Response to Request No. 7
    - Response to Request No. 9
    - Response to Request No. 10
    - Response to Request No. 13
    - Response to Request No. 18
    - Response to Request No. 27
    - Response to Request No. 28
    - Written Responses to Laundries' Request For Production
  - N. Schmidt Response to Laundries' First Request to Produce, dated Jun. 29, 2023
    - Response to Request No. 5
    - Response to Request No. 9
    - Response to Request No. 10
    - Response to Request No. 11
    - Response to Request No. 27
    - Written Responses to Laundries' Request For Production
  - J. Petito Supplemental Response to Laundries' First Request to Produce, dated Jul. 31, 2023
    - Response to Request No. 11
    - Written Responses to Laundries' Request For Production

- S. Bertolino Response to Plaintiffs’ First Request for Production, dated Oct. 9, 2023
  - SBP\_000001 to SBP\_000739
- S. Bertolino Supplemental Response to Plaintiffs’ First Request for Production, dated Oct. 13, 2023
  - SBP\_000740 to SBP\_000865
- Plaintiffs’ Response to S. Bertolino Second Request for Production, dated Dec. 26, 2023
  - Plaintiffs’ Documents Responsive to S. Bertolino Second Request for Production, dated Dec. 26, 2023
- Responses to Subpoenas
  - AT&T
    - AT&T Records Key
    - A. Blaunch Certificate Of Authenticity Of Domestic Records Pursuant To Federal Rules Of Evidence 902(11) And 902(13)
    - “Mobility” report for (516) 903-1787 (07/02/2021 12:00:00am to 11/23/2021 11:59:59pm)
    - “Wireless Name and Address Only” report
    - “International” report for (516) 903-1787 (07/02/2021 12:00:00am to 11/23/2021 11:59:59pm)
    - “Wireline” report for (516) 903-1787 (07/02/2021 12:00:00am to 11/23/2021 11:59:59pm)
    - Subpoena Duces Tecum Without Deposition to AT&T, dated Jan. 31, 2023
  - Trina Laughlin billing records for Joseph Petito
    - Invoices dated:
      - Jul. 26, 2023
      - Feb. 24, 2023
      - Feb. 4, 2023
      - Jan. 13, 2023
      - Dec. 16, 2022
      - Dec. 2, 2022
      - Nov. 11, 2022
      - Oct. 21, 2022
      - Sep. 30, 2022
      - Sep. 17, 2022
      - Sep. 5, 2022

- Aug. 26, 2022
  - Jul. 18, 2022
  - Jun. 17, 2022
  - Jun. 1, 2022
  - May 6, 2022
- Richard Stafford
  - 307 emails
- Other
  - Federal Bureau of Investigation Report
    - Subfile Opening Document, dated Jan. 18, 2022
    - Petito family briefing material, dated Jan. 28, 2022
    - Document with filename “Google returns 08-29-21 Roberta to Brian email”
    - Document with filename “Google returns 08-29-21 Roberta to Brian email part 2”
    - Document with filename “Yahoo returns 1973 Chevy nova pics”
    - Document with filename “Yahoo returns 1973 Chevy Nova email from roberta (1)”