

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al.	)	Case No. CV-2016-09-3928
	)	
Plaintiffs,	)	
	)	KNR Defendants' Motion to Compel
vs.	)	Plaintiff Matthew Johnson to Comply
	)	with Discovery
Kisling, Nestico & Redick, LLC, et al.	)	
	)	
Defendants.	)	

Defendants Alberto Nestico, Esq., Robert Redick, Esq., and Kisling, Nestico & Redick, LLC ("KNR") hereby respectfully request this Honorable Court to compel Plaintiff Matthew Johnson to produce certain documents and otherwise comply with discovery. On July 6, 2018, the Defendants deposed Mr. Johnson, the putative Class "C" representative, to determine the factual basis of his claim. In an outright brazen disregard for the judicial system, Mr. Johnson:

- a. Either refused to answer questions, provided flippant and disrespectful answers, or – when all else failed – claimed the July 4th fireworks two days before his deposition caused him to "forget" the answers;
- b. Claimed he could have provided answers, but for purposely leaving documents and handwritten notes he reviewed to prepare for the deposition on his kitchen counter, but stated he would "study" before trial so he could tell a jury the basis;
- c. Failed to bring ANY documents responsive to the *duces tecum* because it was just a "request" (and still refuses to produce the documents nearly four months later)¹;
- d. Became hostile when asked to identify evidence supporting his claims;
- e. Testified he would not withdraw claims even if he learned the claims were false; and
- f. Called counsel for KNR a "dumb fuck" for even asking if Plaintiff would withdraw claims not supported by evidence.

¹Plaintiff testified he did not know he was allowed to bring documents to deposition. Plaintiff's counsel claimed he did not bring documents because counsel "didn't advise him to" and "a notice of deposition duces tecum ... isn't a thing under Ohio law". (Johnson dep., p. 129, ll. 5-6, 15-17). Once advised the Civil Rules allow for this vehicle of discovery, counsel then claimed the documents have "little or no relevance" and Mr. Johnson was being withdrawn as a Plaintiff. However, even if withdrawn, a counterclaim will remain, making Mr. Johnson a party and a witness.

This Motion is supported by the attached Memorandum in Support, which is incorporated herein by reference.

Respectfully submitted,

/s/ Thomas P. Mannion

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IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al.	)	Case No. CV-2016-09-3928
	)	
Plaintiffs,	)	Judge James Brogan
	)	
vs.	)	Memorandum in Support of Defendants'
	)	Motion to Compel Plaintiff Matthew
Kisling, Nestico & Redick, LLC, et al.	)	Johnson to Comply with Discovery
	)	
Defendants.	)	

I. INTRODUCTION

Plaintiff Johnson's failure to produce the documents he reviewed to prepare for his deposition essentially rendered the deposition meaningless, as he demonstrated a "lack of memory" on nearly every pertinent question relating to his claims or the basis of his claims. Moreover, Plaintiff refused to answer numerous clearly relevant questions.²

Defendants have repeatedly attempted to resolve this discovery dispute without seeking court intervention.³ However, now four months after the deposition, Plaintiffs still have not produced a single document responsive to the Notice of Deposition *Duces Tecum* and refuse to make Mr. Johnson available for his continuation deposition.

Accordingly, Defendants respectfully move this Honorable Court for an Order compelling Plaintiff Johnson to produce:

- (a) Any and all documents he reviewed in preparation for his deposition;

² Specifically, Attorney Pattakos instructed Plaintiff Johnson not to answer questions 33 times throughout the deposition. (See Johnson Dep. pp. 18-20, 53-54, 56-63, 99, 100, 109, 113, 116, 203, 204, 209, 210, 247). Defendants' reserve the right to address issues relating to the unanswered questions if they are not properly answered at Plaintiff Johnson's continuation deposition. However, these issues are not addressed within the present Motion.

³ See Exhibit A: compiled correspondence from Defendants' counsel to Plaintiff's demonstrating extensive attempts to resolve without Court intervention, which will be discussed at length within.

- (b) Any and all documents supporting Plaintiff Johnson's claim relating to the loan with Liberty Capital and the alleged "kickbacks" between Defendants and Liberty Capital;
- (c) Any and all documents Plaintiff Johnson agreed during deposition to provide to his attorney, including, but not limited to: documents relating to Defendants' alleged ownership interest in Liberty Capital (Johnson Dep., p. 77, l. 1 – p. 78, l. 10) and the notes prepared and reviewed by Plaintiff Johnson days before his deposition (*Id.* p. 72, l. 8);
- (d) Any and all documents relating to communications between Plaintiff Johnson and KNR at any time, including, but not limited to emails between Plaintiff Johnson and KNR, which Plaintiff Johnson explicitly admitted are in existence (*Id.* at p. 184, l. 23); and
- (e) all other documents responsive to the Notice of Deposition *Duces Tecum*.⁴

Defendants also request an Order compelling Plaintiffs to Produce Mr. Johnson for his continuation deposition and to answer pertinent questions, as addressed below.

II. SUMMARY OF FACTS

The Defendants have been forced to defend against Plaintiffs' fabricated claims for more than 18 months.⁵ In doing so, Defendants submitted written discovery to Plaintiff Johnson to flush out the evidence purportedly supporting the Class "C" allegations, but the answers were essentially non-responsive on these issues. Accordingly, the Defendants noticed Plaintiff Johnson's deposition, again with hopes of determining the purported factual basis for his claims. Unfortunately, neither Plaintiff Johnson nor his counsel meaningfully participated in the deposition process. In fact, Plaintiff Johnson's deposition was nothing short of preposterous, as highlighted below.

⁴ Although not addressed at length in this Motion, Defendants reserve the right to address other issues pertaining to Plaintiffs' discovery responses, including Plaintiff Johnson's responses regarding his drug use, relevant criminal history, income tax documents, and any other matter that arises over the course of discovery. The unanswered questions regarding Plaintiff Johnson's drug use are of particular relevance, as his drug usage may have had an effect on his memory.

⁵ Plaintiff Johnson was first included as a potential Plaintiff in the Motion for Leave to File Second Amended Complaint, which was filed on March 22, 2017.

A. Plaintiffs Represented to the Court the Basis for a Second Amended Complaint was “Newly Discovered Evidence” from Plaintiff Matthew Johnson

On March 22, 2017, the Plaintiffs filed a Motion for Leave to File Second Amended Complaint. (See Docket 03/22/2017). The proposed amended pleading sought to add a new class of individuals, namely Class C, based on the following representation from Plaintiffs’ counsel:

The proposed amendment is based on newly discovered evidence, including from ... Mr. Johnson, who contacted Plaintiffs’ counsel after the filing of the original complaint in this action. (*Id.* at paragraph 1).

As such, the Class C allegations contained in the Second Amended Complaint should have mirrored these alleged “newly discovered” facts. Instead, the Second Amended Complaint contained a fiction as compared to the testimony of Mr. Johnson. The scenario presented by Plaintiffs’ counsel in the amended pleadings is actually opposite the facts claimed by Mr. Johnson.

B. Plaintiff Johnson Properly Served with Notice of Deposition *Duces Tecum*

The KNR Defendants properly served a Notice of Deposition *Duces Tecum* upon Plaintiff Johnson on May 31, 2018, with the deposition originally being scheduled for July 2, 2018.⁶ (See Exhibit “C” and Docket 05/31/2018). The *Duces Tecum* requested production of the following documents:

1. All documents relating to income earned by Plaintiff from January 1, 2013 to the present, including, but not limited to, Plaintiff’s federal and state income tax forms, W-2 forms, 1099 forms, payroll forms, and payroll stubs.
2. All documents relating to communications between Plaintiff and KNR at any time.
3. All documents relating to communications between Plaintiff and Nestico at any time.

⁶Thereafter, the deposition was pushed back again, until July 6, 2018. In response, Defendants’ served an Amended Notice of Deposition *Duces Tecum* on Plaintiff Johnson on June 19, 2018. The *duces tecum* was identical to the *duces tecum* included in the May 31, 2018, Notice of Deposition.

4. All documents relating to communications between Plaintiff and Redick at any time.
5. Any and all documents you have reviewed in preparation for your deposition.

The Notice was proper under the Ohio Civil Rules of Procedure.⁷ The Plaintiffs agreed to the date and time of the deposition. And, the Plaintiffs did not object to the document request portion of the Notice of Deposition. Despite this, Plaintiffs' counsel and Plaintiff Johnson simply refused to comply.

Approximately half way through the deposition, Attorney Pattakos offered a new excuse for failure to comply with the *Duces Tecum* request:

Attorney Pattakos: I don't know why you're asking the witness about this or why you even served a notice of deposition *duces tecum*, which isn't even a thing under Ohio law. So, you know, let's move on. Please. (Johnson Dep. p. 129, ll. 17-18.)

Of course, Ohio Civil Rules 30 and 34 establish without question the validity of this common discovery tool. Even after being advised of his "misconception", however, Attorney Pattakos still refuses to comply with the *duces tecum*.

C. Plaintiff Johnson Failed to Produce even a Single Responsive Document

In blatant disregard of the properly served Deposition *Duces Tecum*, Plaintiff Johnson arrived at his deposition empty handed. Plaintiff Johnson testified:

Q: Okay. And did this document, Exhibit 1, ask you to bring anything with you today? Look at page 3.

A: Yeah.

Q: Did you bring any documents today in response to this notice?

A: No sir.

⁷Ohio Civil Rule 30(B)(4) provides a deposition *duces tecum* request is valid for a party as well as if the request is made in compliance with Civil Rule 34, which this was, having given the Plaintiff even more than the 28 days required by Ohio Civil Rule 34.

Q: Did you provide your attorney with any documents that are responsive to these requests?

A: No, sir. (Johnson Dep., p.124, l. 20-25, p.125, l. 8.)

As an example of Plaintiffs' disregard for the judicial process, he initially claimed he didn't bring any documents regarding his communications with KNR, which was requested in *Duces Tecum* request 3, because the *duces tecum* was just "a request". Plaintiff Johnson testified:

Q: What documents did you bring today relating to communications between plaintiff and KNR at any time?

A: I didn't.

Q: Is there a reason?

A: No.

Q: Didn't you think it was important to comply with the request?

A: It was a request.

Q: I'm sorry?

A: It was a request. (Johnson Dep., p. 128, ll. 10-25; p. 129, ll. 1-2).

Plaintiffs' counsel then attempted to save his client by claiming he didn't bring documents because counsel did not advise him to comply with the request:

Q: Why didn't you bring anything responsive to this request?

Mr. Pattakos: Because I didn't advise him to, Tom. Let's move on.

A: Yeah, I do what my lawyer tells me to, man. (Johnson Dep., p. 129, ll. 3-7).

D. Plaintiff Johnson's Failure to Produce Documents and Indifference to the Justice System Substantially Interfered with Defendants' Attempt to Obtain Meaningful Testimony

Plaintiff Johnson's shortcomings did not stop there, as his failure to produce the documents requested in Deposition *Duces Tecum* Request No. 5 proved to interfere with his ability to testify to a slew of critical matters. The following testimony accurately depicts Johnson's numerous shortcomings:

Q: Okay. So do you think that a class representative should be able to answer questions in front of a jury and a judge or at a deposition in order to represent the other class members?

A: If I had known I was able to bring my notes, I would be fine. (Johnson Dep. p. 133, ll. 16-22)

...

Q: The information that is written down in those documents, did you know you had forgotten that information when you left to come here today?

A: Not intentionally. I mean, my mind is drawing a blank because I'm not a very good test taker. (*Id.* at p. 135, ll. 4-8)

...

Q: Okay. By the way, what is your responsibility as a class representative as it relates to settlement? Do you know?

A: I have that answer in my notes. Does that help? (*Id.* at 160, ll. 9-13)

...

Q: Well, do you know as a class representative whether you can sue a lawyer for damages for an alleged ethical violation as opposed to actually being damages financially?

A: Like in a separate suit or?

Q: In this suit.

A: I don't know. I would have to review if that's in my notes or not. (*Id.* at 219, ll. 4-11)

...

Q: And what evidence did you have that KNR defendant knew KNR clients would be unable to repay their loans until their lawsuit resolved? Did you have any?

A: Yeah.

Q: What was it?

A: I don't remember man. Like I said, I have notes at home. (*Id.* at 242, ll. 3-10).

Markedly, without his "notes" that he reviewed in preparation of his deposition, Plaintiff Johnson even had difficulty describing the putative Class C, to which he aspires to be the class representative:

Q: In what – in your – what's your understanding of what Class C is?

A: I could have told you Tuesday when I reviewed everything. But the fireworks just blew my mind away. Sorry. (*Id.* at p. 132, ll. 17-21).

When pressed further, Plaintiff Johnson reverted from "fireworks amnesia" to simply being "too overwhelmed" by the deposition process to explain his claims. (*Id.* at p. 133, ll. 4-13). When he realized the Defendants would not allow fireworks or feigned memory problems to derail the deposition, he claimed the responsive information was contained in notes and documents that he reviewed to prepare for the deposition but then left on his counter at home. (*Id.* at p. 133, ll. 16-22). After lengthy game-playing, Plaintiff Johnson finally admitted his only claim against the KNR Defendants is an allegation that Attorney Alberto "Rob" Nestico owned Liberty Capital.⁸

In addition to the nature of the claim, Defendants' counsel attempted to elicit testimony relating to the factual basis or evidence for such claims. Rather than provide answers, however, Plaintiff Johnson resorted to berating counsel, "forgetting" the answers, providing evasive answers, or, in some instances, simply refusing to answer the question.

⁸Plaintiff Johnson testified: "The main reason that we are here is because of his ownership interest in Liberty Capital loans. Period. That's it. That's why we're here." (Johnson Dep., p. 136, ll. 3-6). Plaintiff Johnson further testified he was not complaining the loan interest was too high, but rather that the "sole owner of the loan company was an attorney [Rob Nestico]". (Johnson Dep., p. 187, ll. 23-25, p. 188, ll. 1-7).

The closest Plaintiff Johnson came to identifying a factual basis for his claim were vague references to emails of which he could not remember the content. When asked to describe the substance of the emails, Plaintiff Johnson testified: "Well, let me pull up my photographic memory." (*Id.* at p. 68, ll. 23-25.) When reminded he did not have to remember the email or other documents word for word, his typical answer was: I don't remember, it's in my notes. (See generally, Johnson Dep. pp. 69-70 and many other references.)

When Plaintiff Johnson was unable to identify **actual facts** to support his claims, Defendants inquired as to whether he would withdraw those claims he discovered were not true. Incredibly, Plaintiff Johnson refused, testifying:

Q. If you find out that your factual allegation that Mr. Nestico has a financial interest or ownership interest in Liberty Capital is in fact false, will you agree to withdraw the allegation?

A. No.

Q. Why not?

A. Because that's my answer.

Q. Even if it's not true, you'll pursue it?

A. Why not?

Q. And do you think that would be good advice for you to give to other prospective class members?

A. Absolutely. (Johnson Dep., p. 190, ll. 6-19).

Shortly thereafter, Plaintiff Johnson testified "there is evidence" of kickbacks but he does not "remember all of it." (*Id.* at p. 192, ll. 19-24). When asked his intentions in maintaining this lawsuit if he finds out no such evidence exists, Plaintiff Johnson testified:

Q: If you find - -

Mr. Pattakos: - - ridiculous. Please move on.

Q: - - out that there's no evidence to support the claim, will you withdraw it?

A: No, sir.

Q: Okay.

A: Dumb fuck.

(Johnson dep. p. 193, ll. 11-18).

In utter disbelief as to Plaintiff Johnson's testimony, Defendants' counsel continued to attempt to discover the basis for his allegations and whether he would withdraw such allegations if proven false. Plaintiff Johnson incredulously continued down the same path of obstruction:

Q. Well, if you find out there was no kickback, will you withdraw this claim?

A. No, sir.

Mr. Pattakos: We already told you we would, Tom.

Q. Why not?

A. Because.

Q. You would pursue this claim about a kickback even if there was no kickback?

A. Yeah.

(*Id.* at p. 240, ll. 17-25, p. 241, l. 1).

Plaintiff Johnson also testified he intends to pursue claims KNR made false representations regardless of the truth of his claim:

Q: Yet in paragraph 124 you're claiming in court document that this was a false representation. Do you still maintain that?

A: Yes, sir.

Q: What was false about it?

A: I don't remember.

Q: And if that statement is actually true, would you agree to withdraw that claim?

A: No.

Q: You wouldn't withdraw that one either, even if it's not true?

A: No, sir. (Johnson Dep., p. 244, ll. 12-25).

E. Plaintiff's Substantive Testimony Directly Contradicts the Class C Allegations

When Plaintiff Johnson finally provided factual testimony regarding his interactions with KNR and his loan with Liberty Capital, the testimony directly contradicted the Class C factual allegations. These contradictions are critical, especially when considering the Plaintiffs' repeated requests to amend the Complaint and repeated failures to produce evidence to support the allegations. As a reminder, Plaintiffs' counsel only obtained leave to add the Class C allegations by representing to the Court that he obtained "newly discovered" facts from Mr. Johnson. Thus, the amended pleading facts should have mirrored the facts provided by Plaintiff Johnson.⁹ To the contrary, and even giving Plaintiffs' counsel the benefit of the doubt as to his motives, no reasonable interpretation can explain the chasm of differences between the facts pleaded by Attorney Pattakos and the facts established by his own client's testimony. The facts according to Johnson vs. the facts according to Pattakos warrant comparison:

Defendants "Recommended" and "Induced" Johnson to take out a Loan

Pleadings: The Defendants "recommended" and "induced" Plaintiff Johnson to take out a \$250 loan with Liberty Capital.

Testimony: No attorney ever recommended a loan. Mr. Johnson approached KNR about a loan, not the other way around. Plaintiff testified he "may have" heard the name Preferred Capital, not Liberty Capital, by a non-lawyer when he first

⁹Pursuant to the Ohio Civil Rules, counsel is under a duty to only assert facts to which he had "knowledge, information, and belief there is good ground to support." (Emphasis added.) Civ.R. 11.

retained KNR in February, 2012. He admitted KNR assisted him obtaining an “interest free” “med pay” from the insurance carrier rather than an interest bearing loan. Then, when “med pay” was exhausted, he approached KNR staff member Jenna requesting a “financial boost”. He was told: “The only option available is for you to take out a loan against your case, but you have to pay in interest on it.. so essentially you’re paying money to borrow money. But if this need is necessary, I can definitely get you the information.” (Johnson Dep. at pp. 185-187).

In addition, when asked to identify a single recommendation from KNR to take a loan with Liberty Capital, Mr. Johnson provided a litany of evasive and contradictory answers, as contained in Attached Exhibit “D”. None of the above answers or those contained in Exhibit “D” are even close to the allegations contained in the Class C allegations.

Representation concerning “Best Source of Funding” for Johnson

Pleadings: Defendants induced Plaintiff Johnson to take out a loan with Liberty Capital by representing Liberty Capital was the “best source of loan funding” and “without disclosing that lower-cost sources of loans were available.”

Testimony: Plaintiff Johnson could not remember anyone at KNR making a statement re: “best source of loan funding.” Plaintiff Johnson testified:

Q. Did anybody at KNR tell you Liberty Capital was the best source of loan funding?

A. I don’t remember. (Johnson Dep., p. 242, l. 24 -- 253, l. 12; See also, Exhibit D).

Plaintiff Johnson’s Ability to Repay Loan before Case Settled

Pleadings: Defendants knew Plaintiff Johnson likely could not repay the loan before the case settled.

Testimony: Johnson claims he PAID THE LOAN shortly after it was taken. (Johnson Dep., p. 8, l. 6; p. 241, l. 14).

Class Members’ Ability to Repay Loan before Case Settled

Pleadings: Defendants knew class members to whom Liberty Capital loans were recommended likely could not repay the loan before the case settled.

Testimony: Plaintiff Johnson testified he had no idea about other clients’ loans. (Johnson Dep., pp. 241-242).

Concealment of Better Loan Sources

- Pleadings: Defendants concealed better loan sources from Plaintiff Johnson;
- Testimony: Plaintiff admitted HE KNEW BETTER LOAN SOURCES EXISTED. (Johnson dep., p. 276, ll. 21-25; see also, Exhibit D).

Defendants Failed to Disclose Kickbacks and/or Ownership Interest

- Pleadings: Defendants failed to disclose their kickbacks, financial interest, and/or ownership interest in Liberty Capital.
- Testimony: Plaintiff Johnson COULD NOT IDENTIFY ANY EVIDENCE of kickbacks, ownership interest, or other financial interest. (Johnson Dep., p. 238, ll. 6-24).

Settlement Memorandum

- Pleadings: Defendants' misrepresentations and concealments were material in getting clients to approve Settlement Memorandum.
- Testimony: Johnson DID NOT HAVE A SETTLEMENT MEMORANDUM with Defendants, and JOHNSON'S LOAN PAYMENTS WERE NOT DEDUCTED FROM SETTLEMENT PROCEEDS. (Johnson Dep., p. 262, ll. 4-5).

Timing of Loan Repayment

- Pleadings: Plaintiff Johnson paid his loan back with fees and accrued interest after approximately one year.
- Testimony: Plaintiff Johnson claims he started paying the loan back WITHIN ONE MONTH of obtaining the loan. At \$100 or more a month repayment on a \$250 loan, he would have repaid the loan well before one year (assuming his testimony is truthful). (Johnson Dep., p. 90, ll. 13-15).

Prohibition of Disbursement of Settlement Proceeds to Plaintiff Johnson

- Pleadings: KNR was prohibited from disbursing any proceeds to Plaintiff Johnson until his Liberty Capital loan was paid.
- Testimony: Plaintiff Johnson's case was settled by Attorney Jack Morrison, not KNR. NO PROHIBITIONS existed on Jack Morrison as it related to disbursing proceeds only after repayment of the loan. In fact, no loan payments,

principal, interest, fees, or otherwise, were deducted from Plaintiff Johnson's settlement. (Johnson Dep., p. 262, ll. 4-5).

Defendants Payment to Themselves Before Disbursing Settlement Proceeds to Johnson

Pleadings: Defendants paid themselves from KNR clients' lawsuit proceeds before ever disbursing any funds to clients, without breaching its obligations to Liberty Capital.

Testimony: Defendants were never paid any fees or expenses on Plaintiff Johnson's case. Defendants did not receive repayment for fees incurred or quantum meruit for services rendered.

Alleged False Representation

Pleadings: The loan agreement contained the following false representation by a KNR attorney: I am not endorsing or recommending this transaction.

Testimony: Plaintiff Johnson testified:

Q: Okay. If you look at page 34, paragraph 124. And in the middle of this, it says that the KNR attorney stated "I am not endorsing or recommending this transaction." Did I read that correctly?

A: Correct. (Johnson Dep., p. 242, ll. 11-16).

...

Q: So that would be referencing KNR was not endorsing or recommending this transaction, correct?

A: Yes, sir.

Q: And you initialed that knowing that, true?

A: Yes, sir.

Q: And it then goes on to say, "I have reviewed the contract and all costs and fees have been disclosed to my client." And those were disclosed to you, correct?

A: Yes, sir.

Q: "including the annualized rate of return applied to calculate the amount to be repaid by my client." That was also disclosed to you, true? It's in the document, true?

A: Yes, sir.

Q: Yet in paragraph 124 you're claiming in a court document that this was a false representation. Do you still maintain that?

A: Yes, sir.

Q: What was false about it?

A: I don't remember.

Q: You can't tell us what was false about it?

A: No, sir.

Q: And if that statement is actually true, would you agree to withdraw that claim?

A: No.

Q: You wouldn't withdraw that one either, even if it's not true?

A: No, sir. (Johnson Dep., p. 243, ll. 17-22, p. 244, ll. 12-25).

Advertisements

Pleadings: KNR's advertisements and mailers constituted "endorsing" or "recommending" loans despite the representation by a KNR attorney to the contrary.

Testimony: Plaintiff Johnson did not rely on advertisements or mailers. (Johnson Dep., p. 265, ll. 8-12).

The above comparison raises a perplexing dilemma: If the amended pleadings were based on "newly discovered evidence" from Matthew Johnson, then why is the version of facts in the amended pleadings so vastly different from the "facts" disclosed by Plaintiff Johnson? The only reasonable explanation is that Plaintiffs' counsel came up with his own version of facts by making nefarious inference upon nefarious inference from internal KNR emails, which he obtained illegally long before the amended pleadings. Attorney Pattakos came up with his own version of facts and

would not be dissuaded from putting those facts in a pleading, even when the very Plaintiff purportedly supporting those facts COMPLETELY contradicts those facts.

F. Four Months Later: Plaintiff Johnson Still Refuses to Produce the Documents

Over the course of the four-months following Plaintiff Johnson's outlandish deposition, Defendants' have attempted to resolve the aforementioned discovery issues numerous times. First, Defendants' sent numerous extensive informal correspondences to Plaintiffs' counsel, including an 11-page letter giving detailed descriptions for the basis of each request at issue. (*Id.*) After those attempts failed, Defendants served supplemental discovery requests on Plaintiff Johnson. (Exhibit A, October 5 supplemental discovery requests). Finally, on November 3, 2018, in a last ditch effort to resolve this dispute without court intervention, Defendants sent yet another extensive letter detailing the discovery issues. (*Id.*) Again, to no avail.

III. LAW AND ARGUMENT

Civ.R. 37 governs the filing of a motion to compel discovery. The Rule provides that "on notice to other parties and all affected persons, a party may move for an order compelling discovery." Civ.R. 37(A)(1). A party may move to compel a response to an interrogatory and request for documents. See Civ.R. 37(A)(3)(a)(iii) and (iv). In addition, an evasive or incomplete answer shall be treated as a failure to answer. See Civ.R. 37(A)(4). Finally, under Civ.R. 37(A)(5)(a), Defendants seek their legal fees and costs in having to file this motion.

A. No Legal Basis Exists for Plaintiffs' Failure to Produce the Requested Documents

1. Documents Reviewed in Preparation for Deposition (*Duces Tecum* Request 5)

Plaintiff Johnson admitted that he reviewed documents to prepare for deposition (Johnson Dep., p. 72, ll. 14-16); remained in possession of the documents (*Id.* at p. 72, l. 19); took notes on the documents and reviewed the notes in preparation of deposition (*Id.* at p. 71, l. 18); remained in

possession of the notes (*Id.* at p. 72, l. 1); that the notes are his “own personal notes” (*Id.* at p. 281, ll. 9-10); and that the notes were simply left on his counter (*Id.* at p. 133, ll. 24-25, p. 134, l. 1). Thereafter, Plaintiff Johnson repeatedly testified that he could not answer questions because he did not bring his notes to the deposition. (See Exhibit E, deposition excerpts of Plaintiff Johnson’s numerous references to his notes and inability to testify without them.)

A party conducting a deposition is entitled to review the materials a deponent relies on and/or uses to refresh recollection in preparation for deposition. Evid.R. 612. *See also Komorowski v. John P. Hildebrand Co., L.P.A.*, 8th Dist. Cuyahoga No. 101500, 2015-Ohio-1295, ¶26; *State v. Wayt*, 83 Ohio App. 3d 848, 857, 615 N.E.2d 1107 (1992); *Tartaglia v. A.W. Chesterton, C.P.* No. 693514, 2009 Ohio Misc. LEXIS 1154, at *10 (Nov. 13, 2009). Under Ohio law, the Plaintiffs had a duty to provide said documents in July and the duty remains four-months later.

2. Documents Regarding Alleged Kickbacks to KNR from Liberty Capital

In response to several questions posed regarding the basis of the Plaintiff’s claims that “Defendants received kickback payments for every loan transaction that Liberty Capital completed with KNR clients”, Plaintiff’s counsel advised Plaintiff Johnson not to answer. (Johnson Dep., pp. 240-252). Eventually, when asked whether he could identify a single kickback payment to KNR for any loan transaction between Liberty Capital and KNR clients, Plaintiff Johnson stated “Not right now” and that he did not know when he planned on identifying any. (*Id.* at p. 251, l. 18 – p. 252, l. 1). Pursuant to Defendants’ Requests for Production Nos. 18 and 19, Plaintiff Johnson has a duty to supplement his production regarding any evidence of kickback payments or formally advise Defendants’ that no such documents exist.

3. Documents Purporting to Show Attorney Nestico Held an Ownership Interest in Liberty Capital

Plaintiff Johnson testified he possessed evidence “on typed paper” showing Mr. Nestico had an ownership interest in Liberty Capital. (*Id.* at p. 77). He stated he would turn any such documents over to his attorney. (*Id.*) Four months and many requests later, Plaintiff Johnson has failed to produce any such evidence, in utter disregard of his ongoing duty to supplement production.

4. Other Documents Responsive to the Notice of Deposition *Duces Tecum*.

In accordance with Defendants’ Notice of Deposition *Duces Tecum* and Requests for Production, Defendants’ respectfully request that the Court compel Plaintiff Johnson to produce responsive documents with respect to all other enumerated requests.

5. Question Regarding Kickback Payments on All Liberty Loan Transactions

Mr. Johnson was asked to identify the basis for his allegation: “Defendants received kickback payments for every loan transaction with Liberty Capital with KNR clients.” After admitting he did not know the basis, he testified that he nonetheless knew the allegation was true. So, counsel inquired as to the basis (see Johnson Dep., p. 247), and Mr. Johnson was instructed not to answer:

Q: What’s it based on, then?

Mr. Pattakos: Objection. Matthew, don’t answer - -

Mr. Mannion: You can object - -

Mr. Pattakos: - - the question.

Mr. Mannion: - - for the record.

(*Id.* at p. 247, ll. 10-18).

IV. CONCLUSION

For the reasons stated, Defendants' have no choice but to seek court intervention and respectfully move this Honorable Court for an Order compelling Plaintiff Johnson to produce: (a) Any and all documents he reviewed in preparation for his deposition; (b) Any and all documents supporting Plaintiff Johnson's claim relating to the loan with Liberty Capital and the alleged "kickbacks" between Defendants and Liberty Capital; (c) Any and all documents that Plaintiff Johnson was asked to provide to his attorney subsequent to deposition, including, but not limited to: documents relating to Defendants' alleged ownership interest in Liberty Capital and the notes prepared and reviewed by Plaintiff Johnson days before his deposition; (d) Any and all documents relating to communications between Plaintiff Johnson and KNR at any time, including, but not limited to emails between Plaintiff Johnson and KNR, which Plaintiff Johnson explicitly admitted are in existence; and (e) all other documents responsive to the Notice of Deposition *Duces Tecum*. Finally, Defendants also request this Honorable Court for an Order compelling Plaintiffs to Produce Mr. Johnson for his continuation deposition and to answer pertinent questions.

Respectfully submitted,

/s/ Thomas P. Mannion

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via ordinary mail and electronic mail to Plaintiffs' counsel and Defendants' counsel on this 7th day of November, 2018.

/s/ Thomas P. Mannion

Thomas P. Mannion #0062551

From: Santos, Nellie
Sent: Friday, October 05, 2018 1:55 PM
To: 'Peter@pattakoslaw.com'
Cc: Mannion, Tom; Cosme, Betsy
Subject: Member Williams, et al. v. KNR, et al. Summit County No. CV-2016-09-3928
Attachments: Williams - KNR's Supplemental Discovery Requests to Plaintiff, Matthew Johnson (10-5-2018).docx; Williams - KNR's Supplemental Discovery Requests to Plaintiff, Matthew Johnson (10-5-2018).pdf

Follow Up Flag: Follow up
Flag Status: Completed

Good afternoon Mr. Pattakos,

Attached please find KNR's Supplemental Discovery Requests to Plaintiff, Matthew Johnson in both Word and .pdf formats, for your convenience.

As always, should you have any questions and/or concerns, please do not hesitate to contact us.

Thank you and kindest regards.



Nellie Santos

Legal Assistant to:

John R. Christie, Esq.

Thomas J. Stefanik, Esq.

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IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al.	)	Case No. CV-2016-09-3928
	)	
Plaintiffs,	)	
	)	Defendant Kisling, Nestico & Redick,
vs.	)	LLC's Supplemental Interrogatories,
	)	Request for Admissions, and Request for
Kisling, Nestico & Redick, LLC, et al.	)	Production of Documents to Plaintiff
	)	Matthew Johnson
Defendants.	)	
	)	

Pursuant to Rules 33, 34, and 36 of the Ohio Rules of Civil Procedure, Defendant Kisling, Nestico & Redick, LLC ("KNR"), submits its Supplemental Interrogatories, Request for Admissions, and Request for Production of Documents to Plaintiff Matthew Johnson, to be answered within twenty-eight (28) days of service subject to all pertinent objections to admissibility which may be interposed at trial. The Definitions and Instructions in the initial discovery requests to Plaintiff Matthew Johnson apply to these supplemental requests as well.

INTERROGATORIES

INTERROGATORY NO. 1: On July 6, 2018, Plaintiff Matthew Johnson testified as to certain alleged cash payments Mr. Johnson made to Attorney Paul Steele, which cash payments were purportedly to be used to repay Mr. Johnson's loan with Liberty Capital Funding. For each such instance in which Mr. Johnson provided cash, check, or any other form of money or payment to Paul Steele, any member of KNR, or any other individual or entity, for the repayment of Mr. Johnson's loan with Liberty Capital Funding, please provide the following: a) date of payment; b) amount of payment; c) form of payment (cash, check or otherwise); d) to whom such payment was made; e) the location where Mr. Johnson allegedly provided such payment; and f) any known witnesses to such payment.

ANSWER:

INTERROGATORY NO. 2: Please identify the amount of interest paid by Mr. Johnson as a result of his loan with Liberty Capital Funding.

ANSWER:

INTERROGATORY NO. 3: Please identify and provide contact information for all individuals (other than your son) who lived with you at any time from the time you were first represented by KNR to the present.

ANSWER:

INTERROGATORY NO. 4: If any of your Answers to any Request for Admission is anything other than an unqualified admission, please identify the basis for your denial or qualified admission.

ANSWER:

REQUEST FOR ADMISSIONS

REQUEST FOR ADMISSION NO. 1: Admit that you have no documentation regarding any payments, whether cash or otherwise, provided by Matthew Johnson to Paul Steele.

ANSWER:

REQUEST FOR ADMISSION NO. 2: Admit that you have no documentation regarding any payments, whether cash or otherwise, provided by Matthew Johnson to any attorney, employee, or representative of KNR.

ANSWER:

REQUEST FOR ADMISSION NO. 3: Admit that you are unable to identify a single "kickback" or payment made by Liberty Capital Funding to Defendant Rob Nestico.

ANSWER:

REQUEST FOR ADMISSION NO. 4: Admit that you are unable to identify a single "kickback" or payment made by Liberty Capital Funding to Defendant Robert Redick.

ANSWER:

REQUEST FOR ADMISSION NO. 5: Admit that you are unable to identify a single "kickback" or payment made by Liberty Capital Funding to any owner, partner, attorney, employee, or other representative of KNR.

ANSWER:

REQUEST FOR ADMISSION NO. 6: Admit you reviewed documents to prepare for your July 6, 2018, deposition testimony.

ANSWER:

REQUEST FOR ADMISSION NO. 7: Admit you failed to produce a single document at your July 6, 2018, deposition in response to the Notice of Deposition Duces Tecum served on you for that deposition.

ANSWER:

REQUEST FOR ADMISSION NO. 8: Admit that, as of July 6, 2018, you had provided no documents whatsoever to your attorneys in this case to support your allegations against any of the Defendants.

ANSWER:

REQUEST FOR ADMISSION NO. 9: Admit your prior use of marijuana was illegal.

ANSWER:

REQUEST FOR ADMISSION NO. 10: Admit the recreational use of marijuana was illegal at the times you used marijuana.

ANSWER:

REQUEST FOR ADMISSION NO. 11: Admit you discussed your representation by KNR, your loan with Liberty Capital Funding, and/or your claims in this case with one or more of the individuals identified in your Answer to Interrogatory No. 3 above.

ANSWER:

REQUEST FOR ADMISSION NO. 12: Admit you have no documentation of any costs or interests paid by your or on your behalf to Liberty Capital Funding.

ANSWER:

REQUEST FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 1: Please produce copies of any and all documents you reviewed and/or notes you prepared in preparation for your July 6, 2018, deposition.

ANSWER:

REQUEST FOR PRODUCTION NO. 2: Please produce the "typed paper" you referred to at pages 77-78 of your July 6, 2018, deposition testimony, relating to any of the Defendants' alleged ownership interest in Liberty Capital.

ANSWER:

REQUEST FOR PRODUCTION NO. 3: Please produce any and all documents or other items supporting your allegation that one or more the Defendants have an ownership interest in Liberty Capital.

ANSWER:

REQUEST FOR PRODUCTION NO. 4: Please produce any and all documents or other items supporting your allegation that one or more the Defendants have received "kickbacks" from Liberty Capital.

ANSWER:

REQUEST FOR PRODUCTION NO. 5: Please produce telephone records of any telephone calls between you and any owner, employee, or other representative of Liberty Capital Funding.

ANSWER:

REQUEST FOR PRODUCTION NO. 6: Please produce copies of all leases or other documents referencing any individuals who lived with you at any time from the beginning of KNR's representation of you until the present.

ANSWER:

REQUEST FOR PRODUCTION NO. 7: Please produce a copy of all emails or other communications between you and any employees, agents, attorneys, or other representatives of KNR.

ANSWER:

REQUEST FOR PRODUCTION NO. 8: Please produce copies of all emails or other correspondence between you and any owner, employee, agent, or other representative of Liberty Capital Funding.

ANSWER:

REQUEST FOR PRODUCTION NO. 9: Please produce telephone records of any telephone calls between you and any owner, employee, or other representative of Liberty Capital Funding.

ANSWER:

REQUEST FOR PRODUCTION NO. 10: Please produce copies of any and all documents or other tangible items used to answer the Interrogatories or Request for Admissions above.

ANSWER:

REQUEST FOR PRODUCTION NO. 11: Please produce copies of all documents responsive to the Notice of Deposition *Duces Tecum* served on you prior to your July 6, 2018, deposition.

ANSWER:

REQUEST FOR PRODUCTION NO. 12: Mr. Johnson testified he withdrew money from the bank to make payments to Paul Steele for repayment of Mr. Johnson's loan with Liberty Capital Funding. Please produce copies of all bank statements, ATM withdrawal receipts, or any other documents or items relating to withdraws you made from any bank or other financial institution for the repayment of your loan with Liberty Capital Funding.

ANSWER:

REQUEST FOR PRODUCTION NO. 13: Please produce the "bunch of notes" that you "wrote down based on what I read" and/or that you reviewed prior to your July 6, 2018, deposition. (You claim to have left these notes at your home and did not bring the notes to the deposition. See pages 71, 72, 133-135, 159, and multiple other pages of your deposition for reference).

ANSWER:

REQUEST FOR PRODUCTION NO. 14: Please produce copies of all documents in your possession relating to your conviction for drug trafficking and the corruption of another.

ANSWER:

Respectfully submitted,

/s/ Thomas P. Mannion

Thomas P. Mannion #0062551

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Cleveland, OH 44114

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Tom.Mannion@lewisbrisbois.com

Counsel for Defendant KNR

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via ordinary mail and electronic mail to Plaintiffs' counsel and Defendants' counsel on this 5th day of October, 2018.

/s/ Thomas P. Mannion

Thomas P. Mannion #0062551



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October 5, 2018

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**Re: Attempt to Resolve Discovery Disputes
Williams, et al. v. KNR, et al.
CV-2016-09-3928**

Dear Mr. Pattakos and Mr. Cohen:

Please provide deposition dates for the continuation depositions of Plaintiff Matthew Johnson and Plaintiff Thera Reid as soon as possible. Please also supplement Plaintiffs' document production as discussed herein.

As you know, the Defendants formally requested the production of certain documents from the Plaintiffs, both in written discovery and via *duces tecums* at their depositions. The remainder of this letter addresses certain document requests made to Plaintiff Matthew Johnson, as discussed at his deposition, along with his refusal to answer a plethora of questions. Mr. Johnson admitted he possesses multiple documents responsive to the Defendants' discovery requests. However, he failed to bring a single responsive document with him to the deposition, not even the documents he reviewed to prepare for the deposition. More troubling than the lack of production is the stated reason for non-compliance: you advised him either NOT to bring the documents or you failed to advise him of his obligation to bring the documents:

Q. Why didn't you bring anything responsive to this [Notice of *Duces Tecum*] request?

Mr. Pattakos: Because I didn't advise him to, Tom. Let's move on.

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Regardless of the reason or motivation for Plaintiff Matthew Johnson's failure to comply with these discovery requests, the Defendants are entitled to these documents. Please supplement accordingly or at least advise as to which documents you will continue to refuse to provide, so we can address those specific requests with the Court.

In addition to the failure to produce any documents whatsoever responsive to the discovery requests, Mr. Johnson also refused to answer a number of questions, on advice of counsel. We would ask you to please reconsider your position in this regard prior to the continuation depositions.

This letter is an attempt to resolve the discovery disputes discussed herein without court intervention. We look forward to your response. While we may not be able to resolve all of the below disputes, perhaps we can at least narrow the issues.

Documents Responsive to the Notice of Deposition *Duces Tecum* Served on Plaintiff Matthew Johnson

The Notice of Deposition *Duces Tecum* to Mr. Johnson was properly and timely served. (See Exhibit 1 to Mr. Johnson's deposition. Mr. Johnson's testimony and obligation to produce those documents is discussed in the table below, with citations to the appropriate page/line number for your review:

Page(s)/Line(s)	Documents Requested	Testimony / Discussion
124/20-25; 125/1-8	Any documents responsive to the Notice of Deposition <i>Duces Tecum</i> : 1. All documents relating to income earned by Plaintiff from January 1, 2013, to the present, including, but not limited to, Plaintiff's federal and state income tax forms, W-2 forms, 1099 forms, payroll forms, and payroll stubs. 2. All documents relating to communications between Plaintiff and KNR at any time. 3. All documents relating to communications between Plaintiff and Nestico at any time. 4. All documents relating to communications between Plaintiff and Redick at any time. 5. Any and all documents you have reviewed	Q. And did this document, Exhibit 1 [Notice of Deposition <i>Duces Tecum</i>], ask you to bring anything with you today? Look at page 3. A. Yeah. Q. Did you bring any documents today in response to this notice? A. No, sir. Q. Did you bring any documents at all with you today? A. No, sir. Q. Did you provide your attorney with any documents that are responsive to these requests? A. No, sir. As Mr. Johnson admitted at deposition, he did not produce a single document responsive to the Notice of Deposition <i>Duces Tecum</i> . You have an obligation to

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	in preparation for your deposition.	produce these documents (the first four of which were also requested via Request for Production of Documents). Please advise as to your current position on this issue.
16/22-25; 128/1-4	<i>Duces Tecum Request No. 1:</i> All documents relating to income earned by Plaintiff from January 1, 2013, to the present, including, but not limited to, Plaintiff's federal and state income tax forms, W-2 forms, 1099 forms, payroll forms, and payroll stubs.	Mr. Johnson did not produce income tax returns or any other documents responsive to this <i>duces tecum</i> request, on advice of counsel. In addition to being relevant on other grounds (as you have been advised multiple times during this case by Jim Popson and others), the tax returns are also relevant to Mr. Johnson's conflicting testimony as to the reason he obtained a loan from Liberty Capital and to his credibility, as Mr. Johnson testified he reported his tip income from his employment as a bouncer to the IRS as income. We would like copies of the income tax returns to verify this testimony. Based on your prior representations, it appears this issue is one for the Court to decide. We just wanted to check with you to see if you have reconsidered your position on this issue based on Mr. Johnson's testimony. Please advise.
127/15; 128/5-25; 129/1-7; 184/21-23	<i>Duces Tecum request 2:</i> All documents relating to communications between Plaintiff and KNR at any time.	Q. Have you provided your email communications with KNR to your attorney? A. I don't have any communications via email. Q. With KNR? A. Right? Q. None? A. I don't know if I emailed them. Q. None? ... Q. What documents did you bring today relating to communications between plaintiff and KNR at any time?

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		A. I didn't. Q. Is there a reason? A. No. Q. Didn't you think it was important to comply with the request? A. It was a request. Q. I'm sorry? A. It was a request. ... Q. Why didn't you bring anything responsive to this request? Mr. Pattakos: Because I didn't advise him to, Tom. Let's move on. A. Yeah, I do what my lawyer tells me to, man. ... Q. Do you know agree that you emailed with KNR? A. It looks like it. Mr. Johnson obviously has email communications with KNR and various attorneys/employees at KNR. We have no idea why you would tell him not to produce these documents, as you have failed to provide a single legal basis for objecting to this request. Do you intend to produce these documents? If not, on what basis?
71/14-25; 72/1-8; 133/223-25; 134/1-25; 135/1-25; 159/3-24; and multiple other pages.	<i>Duces Tecum</i> request 5: Any and all documents you have reviewed in preparation for your deposition.	Q. What did you review [to prepare for the deposition]? A. I reviewed a bunch of notes that I wrote down based on what I read, but – ... Q. Where are those notes? ... A. They're at my home. ... Q. I would ask that you please provide those notes to your attorney because you reviewed them to prepare for today. So

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		would you please provide them to Mr. Pattakos? Mr. Pattakos: Sure. ... Q. Did you review it on your own at home or did you only review it with your counsel? A. I reviewed it with my counsel and then I also reviewed it on my own. Q. Did you review it to prepare for today? A. Yeah. Q. Is that what you also took notes on? A. Yeah. Mr. Johnson was unable to answer numerous questions during the deposition as to his claims against the Defendants or his evidence to support those claims. He testified he reviewed documents containing the requested information on Tuesday, July 3rd, three days before the deposition. However, he claimed to have forgotten the information since his review of them several days prior, which he facetiously blamed on the Fourth of July fireworks. However, the documents were at his house when he left on the day of the deposition and zero reason exists for failure to produce these documents. Are you taking the position these are not discoverable? Please either produce the documents forthwith or provide a legal basis for the continued refusal to produce the documents so we can further evaluate the issue.
77-78	Documents relating to Defendants' alleged ownership interest in Liberty Capital.	Mr. Johnson testified this evidence exists on a "typed paper." Mr. Johnson further testified he would identify these documents and provide them to Mr. Pattakos. To this date, we have not received these documents.

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196/19-23	Telephone records.	Mr. Johnson testified he does not know whether he called Liberty Capital Funding. Thus, we would ask for copies of Mr. Johnson's telephone records for the time period in question, which was discussed in the deposition. You can certainly redact any phone numbers unrelated to KNR's representation of Mr. Johnson or his dealings with Liberty Capital.
240-252 and other areas	Documents relating to alleged "kickbacks".	Mr. Johnson initially refused to say whether he could identify even a single "kickback" as alleged in the pleadings. At page 251 when asked if he could identify any such documents, he finally admitted: "Not right now." Please consider this our request for Plaintiffs to supplement their document production and provide any such documents or other evidentiary items identifying any alleged "kickbacks".

Mr. Johnson's Refusal to Answer Questions "On Advice of Counsel"

Mr. Johnson refused to answer a number of questions on "advice of counsel", and we would ask you to please reconsider your position before Mr. Johnson's continuation deposition. Some of the questions Mr. Johnson refused to answer are discussed below:

Page(s)/Line(s)	Testimony	Discussion
53/6-25; 54/1-12	Mr. Johnson admitted he smoked marijuana in the past but stopped because a class representative should not use illegal drugs. When asked when he stopped using the illegal drug, Mr. Johnson testified as follows: Q. Is that when you stopped [smoking marijuana], when you became the class representative? A. No. Since becoming a class representative was not the time in which he stopped BUT he stopped because he knew a class representative should not use illegal drugs, the implication from Mr. Johnson's testimony is that he was using	We understand your fear of allowing Mr. Johnson to testify regarding his use of illegal drugs, criminal drug trafficking charges, and criminally corrupting others. Mr. Johnson's testimony on these issues obviously impacts both his credibility and his suitability as a class representative. However, this is essentially an "it hurts my case" objection, which is not proper. With respect to Mr. Johnson's use of illegal drugs, the issue is not whether 10% of the United States permitted use of his drug of choice, as his use of

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	illegal drugs at some point during this litigation. In an attempt to clarify, we asked when he stopped using illegal drugs, and he refused to answer the question on advice of counsel. Q. When did you stop [smoking marijuana]? Mr. Pattakos: Objection. Don't answer. ... Q. Do you refuse to answer the question? Mr. Pattakos: Yes, he does. A. Yes. Mr. Mannion (in response to Mr. Pattakos): Well, he needs to tell me that. A. My attorney told me not to answer it.	marijuana was in Ohio, where it was not legal for him to do so. Furthermore, from his testimony, it appears he was still using marijuana after becoming a class representative, which impacts his ability to serve as a class representative. Moreover, we certainly have a right to know about Mr. Johnson's marijuana usage during his representation by the Defendants, as that could impact his memory, perception, and other items of conversations and events during the pertinent time periods.
55/22-25; 56/1-25; 57/1-25; 58/1-9	Mr. Johnson admitted to being convicted of drug trafficking but refused to answer any factual questions re: the criminal activity other than the date he was arrested (August 12, 2015). Mr. Johnson testified: Q. So tell me about the trafficking charge. What happened? A. That's irrelevant to this. Mr. Pattakos: Yeah. Tom, we're not going to get into this. A. I'm not going to answer that. Mr. Pattakos: It's public record. You can have access to the public record. If you want to ask him questions about this background, then you can get an order from the Court. ... Q. And tell me the circumstances under which you were arrested. Mr. Pattakos: No. No. That's all public record. I'm going to instruct him not to answer. We're not getting into that. Mr. Mannion: Public record is not a valid reason to instruct a witness not to answer – Mr. Pattakos: Well, but given it's ... complete	You admit "it's admissible, the fact of the conviction." You then instructed Mr. Johnson not to answer any questions re: the circumstances because the incident was "public record" and because your claim that the circumstances are not admissible at trial. However, as you know, the threshold to determine whether an issue is discoverable is lower than the threshold for admissibility at trial. The circumstances surrounding Mr. Johnson's drug trafficking conduct are certainly reasonably calculated to lead to the discovery of admissible information as it relates to the claims, defenses, his credibility and his suitability as a class representative. Please reconsider your position in this regard.

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	irrelevance to this case, you can get – it's admissible, the fact of the conviction. That is it. That is simply all that is admissible in this case, Tom, the fact that he was convicted for drug trafficking. The circumstances are irrelevant. I'm objecting and I'm instructing my witness not to answer the question. If you want to try to explain to me that you have a legitimate basis for asking these abusive questions, I'm all ears, otherwise we can move on. Okay? Mr. Mannion: This has – discoverability and relevancy at trial are two different things, as you know. And we are asking him these questions because not only are they discoverable as to his own credibility, but perhaps as to his adequacy as a class representative. And there's multiple other reasons. I don't need to describe them all here. If you want to object, you object. If you want to instruct him not to answer, you instruct him not to answer. Q. So you're not going to tell me the circumstances under which you were arrested, sir? Mr. Pattakos: He is not. I'm going to instruct him not to answer. Q. You [referring to Mr. Johnson] need to tell me that. A. No, sir.	
59/5-25; 60/1-8	Q. And you knew it was not legal in Ohio at the time, correct, sir? Mr. Pattakos: Don't answer that. Move on. Q. Isn't that true, sir? Mr. Pattakos: Tom, move on. Don't answer that question, Matt. ... Q. And, sir, was Ohio one of the five states your lawyer referred to as having marijuana legalized – Mr. Pattakos: Don't answer –	Despite your gratuitous comment marijuana is "legal in, like, five states", you know it was not legal in Ohio. However, when we asked Mr. Johnson whether he knew marijuana was NOT legal in Ohio, you instructed him not to answer. Mr. Johnson's knowledge as to whether he knew he was violating the law was a proper question, and we ask you to reconsider again.

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	Q. – at the time you – Mr. Pattakos: -- the question. Q. – were trafficking? Mr. Pattakos: Don't answer the question, Matthew. Q. Do you refuse to answer? A. Yes, sir.	
60/9-25; 61/23-25; 62/1-23	Q. And was there a minor involved in this incident? Mr. Pattakos: Objection. Don't answer the question. ... Q. Who was it that you were contributing – that you were trying to influence with these drugs, if anybody? Mr. Pattakos: Objection. Don't answer the question. ... Q. Do you know, sir? Mr. Pattakos: Again objection. Don't answer the question. ... Q. Okay. Do you know why you were charged with corruption of another? Mr. Pattakos: Objection. Don't answer. I'm instructing the witness not to answer the question. Q. Do you refuse to answer that? Mr. Pattakos: Matt, just say yes and let's move on. A. Yes. Q. Okay. Do you agree you were charged with corruption of another – Mr. Pattakos: Don't answer the question. This is harassment. Q. Do you agree with that, sir, that you were charged with corrupting another— Mr. Pattakos: Matt, just keep saying – Q. – with drugs? Mr. Pattakos: --"I refuse to answer that question."	Again, while you can argue as to the admissibility at trial, these issues are certainly reasonably calculated to lead to the discovery of admissible information. Please reconsider your position in this regard.

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	A. I refuse to answer that question.	
113/6-25; 114/1-25; 115/1-25; 116/1-25	Mr. Johnson refused to identify the individuals with whom he lived, including the individuals with whom he lived at times referenced in the Complaint and various Amended Complaints. Mr. Pattakos instructed the witness not to answer the question on lack of relevance and because his client "doesn't want to bring other people's names into this."	

Documents Relating to Liberty Capital

Defendants served multiple discovery requests on Mr. Johnson relating to proof of his damages, evidence of the alleged "self-dealing" and "kickbacks" between Defendants and Liberty Capital, and other issues relating to the Putative "Class C" claims. For example, KNR's Requests for Production Nos. 18 and 19:

18. All Documents relating to Liberty Capital.
19. All Documents relating to Defendants' alleged undisclosed self-dealing and kickbacks with Liberty Capital.

Please review the table below with the above requests in mind and advise as to your current position on production of these documents.

Page(s)/Line(s)	Documents Requested	Testimony / Discussion
9/22-25; 10/1-4	Documents supporting Mr. Johnson's claim relating to the loan with Liberty Capital, as requested in multiple Requests for Production of Documents.	Mr. Johnson testified he repaid his loan by giving cash payments to Paul Steele. Further, Mr. Johnson testified he would have withdrawn money from his bank account to make those cash payments. Please produce bank documents reflecting such withdrawals.
10/17-24	Documents supporting Mr. Johnson's claim relating to the loan with Liberty Capital, as requested in multiple Requests for Production of Documents.	Mr. Johnson confirmed on deposition he is making a claim for costs and interest paid to Liberty as a result of the Defendants' alleged conduct. Mr. Johnson admitted he does not know the amount of the damages he purportedly sustained in this regard. Moreover, when asked: "How are we supposed to know how much those costs and fees were?", Mr. Johnson testified: "I don't know." Please produce any documents responsive to this request or formally

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		advise no such documents exist.
12/12-19	Documents supporting Mr. Johnson's claim relating to the loan with Liberty Capital, as requested in multiple Requests for Production of Documents.	According to his testimony, Mr. Johnson has no documentation regarding any payments he made on his loan to Liberty Capital. Significantly, he testified: Q. Do you know whether your lawyer has any such documents in his possession? A. I am actually 100 percent not sure. Please produce any documents you have in your possession on this issue.

While this document does not address all the deficiencies in Plaintiff Matthew Johnson's discovery responses, the issues raised at deposition are thoroughly addressed herein. We would ask that you please review the matters discussed above with an eye towards resolving our discovery dispute. We look forward to your response to the above, so that we can hopefully resolve most or all of these issues without court intervention. Best regards.

Sincerely,

Thomas P. Mannion

Thomas P. Mannion

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From: Mannion, Tom
Sent: Friday, October 05, 2018 2:48 PM
To: Peter Pattakos; Joshua Cohen
Subject: RE: Williams, et al. v. KNR, et al. - Case No. 2016 09 3928

Follow Up Flag: Follow up
Flag Status: Completed

When can I expect a response to Mr. Johnson's deposition production failures? I need to get a Motion to Compel filed if you are not going to provide the documents and allow the testimony. It's been 3 months and you continue to refuse to produce the documents. This isn't a situation of searching computers or tracking documents down. Mr. Johnson left the documents sitting at his house when he came to the deposition. Just copy and send them over. You've refused to even give an explanation for your instructions to him to ignore the Civil Rules.



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From: Peter Pattakos [mailto:peter@pattakoslaw.com]

Sent: Friday, October 05, 2018 2:41 PM

To: LeAnn Backer <LCBacker@cpccourt.summitoh.net>

Cc: Barb Day <bday@sutter-law.com>; James M. Popson <jpopson@sutter-law.com>; Nathan F. Studeny <nstudeny@sutter-law.com>; jcasey@dlcfirm.com; Shaun Kadir <shaunkedir@kedirlaw.com>;

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Subject: Re: Williams, et al. v. KNR, et al. - Case No. 2016 09 3928

Plaintiffs' opposition to KNR's motion to strike, just filed, is attached. Thank you.

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On Fri, Oct 5, 2018 at 2:10 PM LeAnn Backer <LCBacker@cpcourt.summitoh.net> wrote:

Thank you.

LeAnn Backer

From: Barb Day [<mailto:bday@sutter-law.com>]
Sent: Friday, October 5, 2018 2:00 PM
To: LeAnn Backer <LCBacker@cpcourt.summitoh.net>
Cc: James M. Popson <jpopson@sutter-law.com>; Nathan F. Studeny <nstudeny@sutter-law.com>;
jcasey@dlcfirm.com; peter@pattakoslaw.com; shaunkedir@kedirlaw.com; Patricia Himelrigh
<phimelrigh@cpcourt.summitoh.net>; Mannion, Tom <Tom.Mannion@lewisbrisbois.com>;
jcohen@crklaw.com; dmbest@dmbestlaw.com; EKennedy@weismanlaw.com; dgoetz@weismanlaw.com
Subject: Williams, et al. v. KNR, et al. - Case No. 2016 09 3928

Ms. Backer,

Attached please find Defendants' Motion to Strike Supplement to Plaintiffs' Motion for Leave to File Fourth Amended Complaint and a Proposed Order on Deadline for Submission of Motion to Certify Alleged Classes which have been filed with the Court today. Thank you,

Barb Day



Barb Day
Assistant to James Popson, Derek Hartman and Matthew Brady

3600 Erieview Tower
1301 E. 9th Street
Cleveland, OH 44114

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Thomas P. Mannion
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November 3, 2018

Peter Pattakos
The Pattakos Law Firm LLC
101 Ghent Road
Fairlawn, OH 44333

In re: Williams, et al. vs. KNR, et al.
Matt Johnson's discovery responses

Dear Mr. Pattakos:

Thank you for forwarding Mr. Johnson's responses to supplemental discovery. Unfortunately, the responses were wholly nonresponsive. This correspondence is an attempt to resolve this without court intervention. The issues below are relatively simple, so we ask you to please provide proper responses and to respond to the below requests.

I. Interrogatory No. 4

INTERROGATORY NO. 4: If any of your Answers to any Request for Admission is anything other than an unqualified admission, please identify the basis for your denial or qualified admission.

ANSWER: See RFA responses below.

You did NOT provide the basis of your denials to the Request for Admissions.

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2. Request for Admissions No. 3, 4, and 5

REQUEST FOR ADMISSION NO. 3: Admit that you are unable to identify a single "kickback" or payment made by Liberty Capital Funding to Defendant Rob Nestico.

ANSWER: Objection. This request calls for a legal conclusion and attorney-work product.

Subject to and without waiving this objection: Deny. Please refer to the docket in this lawsuit.

Request for Admission 4 is the same request but re: Mr. Redick; and Request for Admission 5 is the same request but re: KNR as a firm. "Refer to the docket" does not identify a single "kickback" or payment from Liberty Capital to Rob Nestico. The docket doesn't identify one. If you believe it does, then please identify the precise document, page number, and paragraph number of such document. Moreover, we asked this of Mr. Johnson, and he went around and around saying he "didn't need to" identify any single "kickback." Finally, at page 251, after 3 pages of asking questions, Mr. Johnson admitted he cannot identify a single kickback payment. This Request for Admission is to clarify the issue without having to impeach with 3 pages of deposition testimony.

Whether Mr. Johnson or any Plaintiff "needs to" identify a specific kickback payment is not the issue being argued. Whether the law requires you to identify a specific kickback vs. whether you actually can identify a kickback are two different issues. Obviously, if you had evidence of a specific kickback, you would be waving it high and often in front of the press, judges, and potential jury. So, whatever evidence it is you believe you have, we are entitled to know. If you don't have such evidence, just say: None can be identified at this time but discovery is ongoing. But a non-answer is not appropriate. I have pasted your client's testimony from pages 249-251 below to show the ridiculousness of his position. The bottom line: You are claiming Liberty Capital gave "kickbacks" to Rob Nestico. At this stage of discovery are you able to identify a kickback?

In addition, the Answer to Request for Admission No. 4 indicates "'Every time Liberty Capital wrote down amounts owed by a KNR client to resolve a case, a financial benefit accrued to the KNR Defendants.'" What do you mean by this? Does "wrote down" mean discounted? Or does it mean "discounted"? If the client pays back less to Liberty Capital, such lower payment inures to the client's benefit. Please explain what you mean by your answer.

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Q And can you identify one kickback payment?
One.

A I don't need to.

Q That's not what I asked you. I said: Can you
identify one kickback payment?

A And my answer is I don't need to.

Q That's not my question.

Can you --

MR. PATTAKOS: He's answered
your question, Tom.

A That's my answer. I'm answering your
question --

MR. PATTAKOS: Move on.

Q No, you're not.

A -- Tom.

Q No, you're not.

Can you identify --

A That's my answer to the question.

MR. PATTAKOS: Matt, why
don't --

Q Can you identify one kickback payment for any
loan transaction?

A I don't need to.

Q That's not my question.

A That's my answer.

Q Sir.

MR. PATTAKOS: Let's take a
break.

Q No.

A We don't need to take a break.

Q Can you identify --

A Let's get this over with.

Q -- a single kickback payment from Liberty
Capital to any of the RNR defendants for any
loan transaction, a single one?

A I don't need to.

Q That's not my question. Can you?

A Are we going to do this for another --

Q Well, you have to answer the question, sir.

MR. PATTAKOS: He did answer
the question, Tom.

A That's my answer.

MR. PATTAKOS: That's his
answer. If you don't like it --

Q It's a yes or no. Can you identify one?

MR. PATTAKOS: If you don't
like his answer, Tom -- you don't get to pick
his answer.

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Q You don't --

MR. PATTAKOS: Ask another --

Q -- know the law.

MR. PATTAKOS: -- question.

Q You already told me that, sir. So whether you have to or not is a different issue --

MR. PATTAKOS: Ask another --

Q -- than whether you can.

MR. PATTAKOS: Ask a new --

A I'm sorry.

MR. PATTAKOS: -- question,

Tom. You got your answer.

Q Please identify for me all kickback payments that you know about for any loan transaction that Liberty Capital completed with KNR.

A What was the question?

Q Sure.

Please identify for me any kickback payment that you are aware of for any loan transaction that Liberty Capital completed with KNR clients.

A You want me to show you?

Q I asked you to identify any. Can you?

A Not right now.

Q When do you plan on doing that?

A I don't know, sir.

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3. Request for Admissions No. 8

REQUEST FOR ADMISSION NO. 8: Admit that, as of July 6, 2018, you had provided no documents whatsoever to your attorneys in this case to support your allegations against any of the Defendants.

ANSWER: Deny. See documents referenced in the pleadings of this case, including the loan agreement with Liberty Capital.

Peter, your client admitted at deposition he did not provide you a single piece of paper or any other document in this case:

Q Have you provided your attorney any documents
in this case?

A No, sir.

We were attempting to confirm this in a simple Request for Admission. Do you maintain the Answer to Request for Admission No. 8 in light of your client's sworn testimony?

4. Requests for Production No. 1 and 13

REQUEST FOR PRODUCTION NO. 1: Please produce copies of any and all documents you reviewed and/or notes you prepared in preparation for your July 6, 2018, deposition.

ANSWER: The only documents Mr. Johnson reviewed in preparation for his deposition were his attorneys' notes that his attorney wrote for him, Mr. Johnson's notes reflecting advice from his attorney, excerpts from his engagement letter where he is advised of the duties of a class representative, and excerpts from the Third Amended Complaint and Plaintiffs' Rule 56(F) motion. All such notes and documents are either privileged or pleadings that are already in Defendants' possession.

REQUEST FOR PRODUCTION NO. 13: Please produce the "bunch of notes" that you "wrote down based on what I read" and/or that you reviewed prior to your July 6, 2018, deposition. (You claim to have left these notes at your home and did not bring the notes to the deposition. See pages 71, 72, 133-135, 159, and multiple other pages of your deposition for reference).

ANSWER: The only documents in Mr. Johnson's possession that are responsive to this request are those described in the responses to requests No. 1 and 2 above, which are either privileged, or already in Defendants' possession.

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The importance of these documents cannot be overstated. Mr. Johnson claimed he knew the answers to the questions he was asked on deposition, but he was unable to answer them because the fireworks blew his mind away, because of being overwhelmed by the deposition process, and then because he forgot the answers. BUT – he said he would be able to answer the questions if he had the documents AND HIS OWN NOTES in front of him. Among the many other times Mr. Johnson testified the answers were in his notes is the following answer:

If I had known I was able to bring my notes, I
would be fine.

Moreover, your list of documents is not exhaustive. Mr. Johnson was unable to identify all of the documents he reviewed, but he indicated they included discovery documents as well along with HIS OWN NOTES that he wrote reviewing those documents. We are entitled to those. If you believe his notes are privileged, then we ask them to be submitted to the Court for an *in camera* review.

5. Request for Production Nos. 3 and 4

REQUEST FOR PRODUCTION NO. 3: Please produce any and all documents or other items supporting your allegation that one or more the Defendants have an ownership interest in Liberty Capital.

ANSWER: All such documents in Mr. Johnson's possession have been produced in this litigation; other such documents are in Defendants' possession.

REQUEST FOR PRODUCTION NO. 4: Please produce any and all documents or other items supporting your allegation that one or more the Defendants have received "kickbacks" from Liberty Capital.

ANSWER: All such documents in Mr. Johnson's possession have been produced in this litigation; other such documents are in Defendants' possession.

Mr. Johnson has not provided his notes or the documents referenced in his deposition. Moreover, if the documents produced to us are only ones that came from you (through Horton, Petti, or otherwise), then tell us that. We want to know if Mr. Johnson himself has any such documents (other than ones you gave him).

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6. Request for Production No. 7

REQUEST FOR PRODUCTION NO. 7: Please produce a copy of all emails or other communications between you and any employees, agents, attorneys, or other representatives of KNR.

ANSWER: All such documents are in KNR's possession and have already been produced in this lawsuit.

We have a right to this information. However, if you are admitting that ALL emails and other written communications between anyone at KNR and Mr. Johnson have already been produced by KNR, then we have no issue with this answer. Please advise.

We look forward to your response:

Sincerely,

Thomas P. Mannion

Thomas P. Mannion

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Page 1

1 STATE OF OHIO,)
 COUNTY OF SUMMIT.) SS:
2
 IN THE COURT OF COMMON PLEAS
3
 MEMBER WILLIAMS, et al.,)
4)
 Plaintiffs,)
5)
 vs.) JUDGE PAUL GALLAGHER
6) CASE NO. CV-2016-09-3928
 KISLING, NESTICO &)
7 REDICK, LLC, et al.,)
)
8 Defendants.)

9
 - - - - -
10 THE VIDEOTAPED DEPOSITION OF MATTHEW W. JOHNSON
 FRIDAY, JULY 6, 2018
11 - - - - -

12
13 The videotaped deposition of MATTHEW W.
14 JOHNSON, called by the Defendants for examination
15 pursuant to the Ohio Rules of Civil Procedure,
16 taken before me, the undersigned, Sarah R. Drown,
17 Registered Professional Reporter and Notary Public
18 within and for the State of Ohio, taken at the
19 offices of Kisling, Nestico & Redick, LLC, 3412
20 West Market Street, Fairlawn, Ohio, commencing at
21 10:52 a.m., the day and date above set forth.



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1 APPEARANCES:

2

On behalf of the Plaintiff:
3 Peter Pattakos, Esq.

4

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8

On behalf of Defendant Kisling,
Nestico & Redick:

9

10

11

12

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13

- and -

14

15

16

17

18

19

20

21

22

23

24

25

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JOHNSON, MATTHEW W.
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Page 3

1 APPEARANCES CONTINUED:

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6 dmb@dmbestlaw.com

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On behalf of Defendant Robert W. Redick, Esq.:
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9

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1600 Midland Building
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11 (216) 781-1111
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12

13 ALSO PRESENT:

14

Ivan Bercian, Videographer

15

Rob A. Nestico, Esq.

16

John J. Reagan, Esq.

17

Robert Redick, Esq.

18

19

20

21

22

23

24

25

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1 own money? How did you pay it?
2 A I paid payments out of my own money.
3 Q When did those start?
4 A When did I start paying it?
5 Q Yes.
6 A Almost right away.
7 Q While you were still represented by KNR?
8 A Yes, sir.
9 Q Do you have proof of any of those payments?
10 A I tried to get proof of those payments from --
11 I think Paul Steele was my attorney. And then
12 my attorney tried to get all of the paperwork
13 when I had him take over the case.
14 Q You mean your new lawyer?
15 A Jack Morrison.
16 Q Okay. Was he able to obtain those?
17 A I don't remember. I don't have any clue.
18 Q Well, you asked your new lawyer, Mr. Morrison,
19 to obtain proof from Liberty of what payments
20 you made?
21 A Not specifically that, but all of my paperwork
22 from KNR.
23 Q Okay. Have you ever followed up to see whether
24 KNR or Mr. Morrison obtained any documentation
25 regarding your payments to Liberty Capital?

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1 Q Do you find it funny?

2 MR. PATTAKOS: He should.

3 A I don't --

4 MR. MANNION: Stop it.

5 A It's not that funny.

6 MR. PATTAKOS: I would like
7 you to stop it, Tom.

8 MR. MANNION: Peter, please.

9 I was very patient last time. I'm not going to
10 have you give speaking objections.

11 MR. PATTAKOS: I was very
12 patient last time, Tom.

13 MR. MANNION: Okay. That's
14 enough.

15 Q Go ahead.

16 You were laughing about that. Was there
17 something funny about that?

18 A It was just -- I mean --

19 MR. PATTAKOS: Don't answer
20 that question.

21 Tom, move on.

22 MR. MANNION: You're
23 instructing him not to answer why he was
24 laughing?

25 MR. PATTAKOS: Yes, I am. Go

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1 on.

2 MR. MANNION: Okay.

3 MR. PATTAKOS: Ask a question.

4 You can file a motion on that if you want.

5 MR. MANNION: We'll move on.

6 Q Have you filed -- when's the last time you
7 filed taxes?

8 A Last year.

9 Q Okay. What was your gross income?

10 A I don't remember.

11 Q You don't even have an estimate?

12 A I don't worry about that.

13 Q More than 50,000 a year?

14 A No.

15 Q More than 30,000 a year?

16 MR. PATTAKOS: His taxes are
17 not relevant to this case in any way. We are
18 not going to go down this road. I'm going to
19 instruct him not to answer any questions about
20 this. Move on.

21 Q Did you earn more than 30,000 last year?

22 MR. PATTAKOS: Take it up with
23 the Court, please, Tom. Please. Take it up
24 with the Court.

25 Q Are you refusing to answer, sir?

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1 MR. PATTAKOS: I am --
2 A I do what my lawyer --
3 MR. PATTAKOS: -- instructing
4 him not --
5 A -- tells me to.
6 MR. PATTAKOS: -- to answer,
7 Tom.
8 MR. MANNION: Stop. Stop.
9 MR. PATTAKOS: Matt, I'm
10 instructing you not to answer any of these
11 questions.
12 Move on. Let's get to the merits of this
13 case.
14 Q How much did you earn in 2016?
15 MR. PATTAKOS: Don't answer
16 the question.
17 Q How much did you earn in 2015?
18 MR. PATTAKOS: Don't answer
19 the question.
20 Q How much did you earn in 2014?
21 MR. PATTAKOS: Repeat. Repeat
22 objection.
23 Tom, move on.
24 Q On advice of counsel, you refuse to answer any
25 of those questions, sir?

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1 to answer talking about illegal drugs. It has
2 nothing to do with this case. Go ahead and
3 file a motion to compel on that, and if the
4 Court says you can ask questions about drug
5 use, then we can come back. Okay?

6 Q Do you agree as a representative of a class
7 that you should not be using illegal drugs when
8 you represent the class?

9 A I do agree with that and that's why I don't.

10 Q Okay. Is that when you stopped, when you
11 became the class representative?

12 MR. PATTAKOS: Objection.

13 A No.

14 MR. PATTAKOS: Move on. Move
15 on, Tom.

16 THE WITNESS: Well, the
17 answer's no, so it doesn't matter.

18 MR. PATTAKOS: Well, it does
19 matter.

20 Go on. This is harassment.

21 Q Do you still smoke marijuana?

22 MR. PATTAKOS: Objection.

23 A No.

24 MR. PATTAKOS: Don't answer.

25 A No.

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1		MR. PATTAKOS:	Objection.
2		Don't answer.	
3	Q	When did you stop?	
4		MR. PATTAKOS:	Objection.
5		Don't answer.	
6		Tom, move on.	
7	Q	Do you refuse to answer that question?	
8		MR. PATTAKOS:	Yes, he does.
9	A	Yes.	
10		MR. MANNION:	Well, he needs
11		to tell me that.	
12	A	My attorney told me not to answer it.	
13	Q	Okay. When you did smoke marijuana, for what	
14		purpose did you do it?	
15		MR. PATTAKOS:	Objection.
16		Don't answer. Matt, don't answer.	
17	Q	Do you refuse to --	
18		MR. PATTAKOS:	Tom --
19	Q	-- answer?	
20	A	Yes.	
21		MR. PATTAKOS:	-- move on.
22	Q	Okay. Do you have any criminal convictions	
23		involving dishonesty?	
24	A	I don't think so.	
25	Q	Okay. What about whether or not it involves	

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1 we're not going to get into this.

2 A I'm not going to answer that.

3 MR. PATTAKOS: It's public
4 record. You can have access to the public
5 record. If you want to ask him questions about
6 this background, then you can get an order from
7 the Court.

8 Q When were you arrested and for what reason?

9 MR. PATTAKOS: Go ahead. You
10 can answer that question.

11 A August 12, 2015.

12 Q And tell me the circumstances under which you
13 were arrested.

14 MR. PATTAKOS: No. No.
15 That's all public record. I'm going to
16 instruct him not to answer. We're not getting
17 into that.

18 MR. MANNION: Public record
19 is not a valid reason to instruct a witness not
20 to answer --

21 MR. PATTAKOS: Well, but given
22 its --

23 MR. MANNION: -- a question.

24 MR. PATTAKOS: -- complete
25 irrelevance to this case, you can get -- it's

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1 admissible, the fact of the conviction. That
2 is it. That is simply all that is admissible
3 in this case, Tom, the fact that he was
4 convicted for drug trafficking. The
5 circumstances are irrelevant. You don't get to
6 stand up there in court and talk about and
7 relitigate his criminal case. Are you
8 disputing that?

9 MR. MANNION: Are you done?

10 MR. PATTAKOS: I'm objecting
11 and I'm instructing my witness not to answer
12 the question. If you want to try to explain to
13 me that you have a legitimate basis for asking
14 these abusive questions, I'm all ears,
15 otherwise we can move on. Okay?

16 MR. MANNION: This has --
17 discoverability and relevancy at trial are two
18 different things, as you know. And we are
19 asking him these questions because not only are
20 they discoverable as to his own credibility,
21 but perhaps as to his adequacy as a class
22 representative.

23 And there's multiple other reasons. I
24 don't need to describe them all here. If you
25 want to object, you object. If you want to

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1 instruct him not to answer, you instruct him
2 not to answer.

3 Q So you're not going to tell me the
4 circumstances under which you were arrested,
5 sir?

6 MR. PATTAKOS: He is not. I'm
7 going to instruct him not to answer.

8 Q You need to tell me that.

9 A No, sir.

10 Q Okay. Who represented you in that criminal
11 case?

12 A Jack Morrison.

13 Q Did you eventually give a plea in that case?

14 A Yeah.

15 Q What did you plea guilty to?

16 A Or yes.

17 - - - - -

18 (Court reporter clarification.)

19 - - - - -

20 A Yes. I'm sorry.

21 What was that again?

22 Q What did you plea to, if at all, in that case?

23 A Like what did it plea down to?

24 Q Yeah.

25 A To be honest, I don't remember.

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1 Q And what drug were you --

2 A Exactly.

3 Q What drug were you trafficking?

4 A Just weed. Marijuana.

5 Q Marijuana?

6 You need to say yes.

7 A Yes.

8 Q Okay.

9 MR. PATTAKOS: It's legal in,
10 like, five states, Tom. Did you know that?

11 Q And you knew it was not legal in Ohio at the
12 time, correct, sir?

13 MR. PATTAKOS: Don't answer
14 that. Move on.

15 Q Isn't that true, sir?

16 MR. PATTAKOS: Tom, move on.
17 Don't answer that question, Matt.

18 It's irrelevant, not reasonably
19 calculated to lead to the discovery of
20 admissible evidence. It's harassment, it's
21 inappropriate, it's unprofessional. Move on.

22 Q And, sir, was Ohio one of the five states your
23 lawyer referred to as having marijuana
24 legalized --

25 MR. PATTAKOS: Don't answer --

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1 Q -- at the time you --
2 MR. PATTAKOS: -- the
3 question.
4 Q -- were trafficking?
5 MR. PATTAKOS: Don't answer
6 the question, Matthew.
7 Q Do you refuse to answer?
8 A Yes, sir.
9 Q Okay. And was there a minor involved in this
10 incident?
11 MR. PATTAKOS: Objection.
12 Don't answer the question. Same
13 objection.
14 Q Okay. Who was it that you were contributing --
15 that you were trying to influence with these
16 drugs, if anybody?
17 MR. PATTAKOS: Objection.
18 Don't answer the question.
19 Q Do you know?
20 MR. PATTAKOS: Objection.
21 Move on, Tom.
22 Q Do you know, sir?
23 MR. PATTAKOS: Again
24 objection.
25 Don't answer the question.

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1 Q Who else was with you at the time you were
2 arrested?

3 MR. PATTAKOS: Objection.
4 Move on.

5 Q Who was with you when you were arrested?

6 MR. PATTAKOS: Again I'm
7 instructing the witness not to answer the
8 question or anything along these lines of
9 questions, Tom. Cool it and get a Court order.
10 Can't wait. I can't wait to see your motion on
11 this.

12 Q Sir, who was with you at the time you were
13 arrested?

14 MR. PATTAKOS: Keep digging,
15 Tom.

16 Q Do you refuse to answer?

17 MR. PATTAKOS: Yes, he does.

18 A I was alone when I was arrested.

19 Q Okay.

20 MR. PATTAKOS: Matt, please.

21 Q You were alone when you were arrested?

22 A Yeah.

23 Q Okay. Do you know why you were charged with
24 corruption of another?

25 MR. PATTAKOS: Objection.

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1 Don't answer.

2 I'm instructing the witness not to answer
3 the question.

4 Q Do you refuse to answer that?

5 MR. PATTAKOS: Matt, just say
6 yes and let's move on.

7 A Yes.

8 Q Okay. Do you agree you were charged with
9 corruption of another --

10 MR. PATTAKOS: Objection.

11 Q -- with drugs?

12 MR. PATTAKOS: Don't answer
13 the question.

14 This is harassment.

15 Q Do you agree with that, sir, that you were
16 charged with corrupting another --

17 MR. PATTAKOS: Matt, just keep
18 saying --

19 Q -- with drugs?

20 MR. PATTAKOS: -- "I refuse to
21 answer that question."

22 A I refuse to answer that question.

23 MR. PATTAKOS: Thank you.

24 Q Okay. If you were a class member, would you
25 want to know whether the representative of your

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1 class had any drug convictions or used drugs?

2 MR. PATTAKOS: Matt, once
3 again I'm instructing you not to answer that
4 question.

5 MR. MANNION: Wait. For what
6 possible basis there?

7 MR. PATTAKOS: Because this
8 whole line of questioning is harassment. It's
9 not reasonably calculated to lead to the
10 discovery of relevant evidence. Go ahead and
11 brief it. I really -- this is completely
12 inappropriate and abusive.

13 Q What would you expect, sir, of a class
14 representative if you were a member of a class?

15 MR. PATTAKOS: Go ahead.
16 That's ...

17 A Integrity.

18 Q Okay. How do you define "integrity"?

19 A Me.

20 Q You have to give me a better description than
21 that.

22 A It's the best description I can give.

23 Q What does "integrity" mean?

24 A Me.

25 Q What is the definition of the word "integrity"

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1 A Or the fact that he's got an ownership interest
2 and he -- either that or he gets a kickback.

3 Q Okay. And so what evidence --

4 A Let's be real.

5 Q -- do you have that he has an ownership
6 interest or had an ownership interest in
7 Liberty Capital?

8 A I just told you.

9 Q The fact that KNR would recommend Liberty
10 Capital is your evidence that he --

11 A No.

12 Q -- had an --

13 A I'm saying there was --

14 Q -- ownership interest?

15 A There was emails that my attorney showed me
16 that were going back and forth in their
17 displeasure of what they felt was going on.

18 Q Okay. And you're saying you saw a specific
19 email that said Rob Nestico has an ownership or
20 financial interest in Liberty Capital?

21 A I'm not going to say it was word for word or
22 anything like that.

23 Q Well, what did these emails say?

24 A I don't know. Let me pull up my photographic
25 memory.

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1 Q Well, you're here as a class representative and
2 I'm asking what evidence that you have or
3 that --
4 A And I just --
5 Q -- you've seen --
6 A -- told you.
7 Q -- that Rob Nestico had an ownership or
8 financial interest in Liberty Capital.
9 A And I just told you.
10 Q You told me about some emails. I'm asking what
11 do they say.
12 A I don't remember word for word what they said.
13 Q Give me a generalization.
14 A That's my generalization.
15 Q A paraphrase.
16 Did they give a percentage that he owned?
17 A I'm being honest and telling you that I don't
18 remember.
19 Q Okay. What you're telling me is you don't have
20 any evidence of it. Do you, sir?
21 A No, that's not what I'm saying at all.
22 Q Okay.
23 A Don't put words --
24 Q Well, name one --
25 A Don't put words --

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1 Q -- piece of --

2 A -- in my mouth.

3 Q -- evidence you have.

4 Name one piece of evidence you have, sir.

5 You're the one making the claim, not me.

6 Name one piece of evidence.

7 Sir, you need to answer the question.

8 MR. MANNION: Would you

9 please instruct the witness to answer the

10 question.

11 MR. PATTAKOS: Matt, please

12 answer the question.

13 A I don't remember.

14 MR. PATTAKOS: Well, you've --

15 okay.

16 Q As you sit here today, you can't remember any

17 evidence showing that Rob Nestico has a

18 financial interest or ownership interest in

19 Liberty Capital at any time, true?

20 A I don't remember what I saw, so I'm not going

21 to lie and tell you otherwise.

22 Q Well, I mean you're not just going to go

23 tell --

24 A I'm not going to remember word for word. I'm

25 not going to remember the date of an email that

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1 I saw. I'm not going to remember this and that
2 and the other. So I'm going to tell you that I
3 don't remember.

4 Q Well, if you were being sued, wouldn't you want
5 the other side to tell you what their evidence
6 was?

7 A I mean, I guess.

8 Q Well, have you looked at the discovery requests
9 that KNR and the other defendants sent to you
10 asking you what that evidence was?

11 A I read through it, yes.

12 Q Okay.

13 A I didn't read through it, like, last night.

14 Q Did you review anything to prepare for this
15 deposition?

16 A Yeah.

17 Q What did you review?

18 A I reviewed a bunch of notes that I wrote down
19 based on what I read, but --

20 Q Okay.

21 A -- I'm not -- like, just like test taking,
22 I'm ...

23 Q Okay. Where are those notes?

24 A What do you mean where are they at?

25 Q Where are they?

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1 A They're at my home.

2 Q You didn't bring them here today?

3 A I'm not going to sit here with notes.

4 Q Okay. I would ask that you please provide
5 those notes to your attorney because you
6 reviewed them to prepare for today. So would
7 you please provide them to Mr. Pattakos?

8 MR. PATTAKOS: Sure.

9 Q Then he can decide whether they're produced or
10 not.

11 A Okay.

12 Q And what documents did you review to make those
13 notes?

14 A The -- I don't know what documents they were.
15 They were documents I was provided with by my
16 attorney.

17 Q Any documents that you would have reviewed to
18 prepare for this are still at your house?

19 A Yes.

20 Q An electronic version, hard copy?

21 A Paper.

22 Q Paper. Okay.

23 If you would please let your attorney
24 know which specific documents you reviewed to
25 prepare for today, and then we will deal with

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1 is --

2 Q What was --

3 A The emails are what stick out in my head.

4 Q What was the displeasure that the other KNR

5 attorneys were expressing to Mr. Nestico?

6 A That, I mean, in layman's terms it wasn't

7 right.

8 Q What wasn't right?

9 A The fact that he had an ownership interest in

10 the loan company.

11 Q You're saying you have an email where one of

12 the lawyers at KNR --

13 A I didn't say that it was an email.

14 Q Okay.

15 A Or did I say it was an email?

16 Q You did --

17 A I don't know.

18 Q -- but --

19 A I have it on the typed paper, so I don't ...

20 Q Okay.

21 A If it was an email, it was an email. I don't

22 know.

23 Q Are you saying that you saw some type of

24 documents --

25 A Document is a better word.

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1 Q -- that were generated by KNR where -- and a
2 KNR attorney told Rob Nestico I don't think
3 it's right that you recommend Liberty Capital
4 because you have a financial interest in it?
5 A I don't know if that was word for word, but it
6 sounds like a roundabout way.
7 Q Okay. And I would ask you to please identify
8 any such documents that say that and provide
9 them to your attorney, please.
10 A Okay.
11 Q What about with respect to Mr. Redick, did he
12 have an ownership or financial interest in
13 Liberty Capital, do you know?
14 A I don't think so.
15 Q What about KNR itself, did they?
16 A I don't think so.
17 Q Do you know why your claim on Liberty Capital
18 is against more defendants than just
19 Mr. Nestico? Or is it only against
20 Mr. Nestico?
21 A No, it's not just against Mr. Nestico, from my
22 understanding.
23 Q If you don't believe KNR or Mr. Redick had an
24 ownership or financial interest in Liberty
25 Capital, then why are you including them in

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1 2012 or after the time you got the loan?

2 A I would assume so.

3 Q You didn't start paying the loan before you got
4 it, did you?

5 A No.

6 Q Do you recall how long after you first got the
7 loan that you made a payment?

8 A No, sir.

9 Q It wasn't the next day, was it?

10 A No, sir.

11 Q Was it the next week?

12 A No, sir.

13 Q The next month?

14 A Yes, sir. I would assume it was in August or
15 maybe September.

16 Q And after that, would the next payment, then,
17 have been the following month?

18 A I don't remember.

19 Q Was it approximately 100 a month you were
20 paying or not quite?

21 A I don't know.

22 Q How long did these payments last?

23 A Hold on.

24 THE WITNESS: I'm getting
25 dizzy.

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1 MR. PATTAKOS: Move on. Let's

2 move on, Tom.

3 A I'm mixed in race. So that's --

4 Q I'm just asking you --

5 A I'm mixed in race. So that's irrelevant. So

6 don't bring race --

7 Q I'm asking you if you remember. Was he

8 Caucasian? Was he African American? Do you

9 know?

10 MR. PATTAKOS: Tom, what's the

11 relevance of this?

12 Q Do you know?

13 MR. PATTAKOS: I'm going to

14 instruct the witness not to answer the

15 question.

16 Tom, you can add this to your motion to

17 compel.

18 Q Do you in fact recall that you referred to the

19 driver as a nigger?

20 MR. PATTAKOS: I'm going to

21 instruct the witness not to answer the

22 question. Move on.

23 Q You did, didn't you, sir?

24 MR. PATTAKOS: Move on.

25 Matt, don't answer.

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1 Let's move on.

2 Matt, don't --

3 Q Do you recall the expletives that you used
4 against the bus company?

5 MR. PATTAKOS: Expletives that
6 he used against the party that caused him
7 damages are not relevant to this case in any
8 conceivable, legitimate way.

9 Tom, please stop harassing the witness I
10 will ask you again.

11 Matt, don't answer the question.

12 Tom, let's move on to something that is
13 remotely relevant. I know it's hard.

14 Q Do you refuse to answer those questions --

15 MR. PATTAKOS: Yes.

16 Q -- on the advice of counsel, sir?

17 MR. PATTAKOS: He does.

18 A Yes.

19 Q Okay.

20 MR. MANNION: Please stop
21 talking over us.

22 Q So do you recall what the bus company's offer
23 to you was at the time you left KNR?

24 A No.

25 Q Do you recall if there even was an offer?

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1 Q Currently does anybody else live with you?

2 MR. PATTAKOS: I'm going to
3 instruct him not to answer this. This is
4 harassment too.

5 Q Who have you talked to about this case other
6 than your lawyers?

7 Have you talked to anybody else about
8 this case?

9 A No.

10 Q Well, have you talked to any friends or
11 girlfriends?

12 A Sometimes I forget it's even going on until I
13 call him or he calls me.

14 Q Okay. Do you do anything proactively to see
15 what's going on in the case?

16 A What do you mean by "proactively"?

17 Q Do you do anything on your own initiative to
18 see what's going on in the case?

19 A Like research?

20 Q Look at the docket, anything.

21 How do you keep apprised of what's going
22 on?

23 A I have an attorney so that I don't -- I trust
24 my attorney. I don't have to worry about that
25 kind of thing. But when he presents me with

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1 A Can I ask a question, a little question?

2 MR. PATTAKOS: Go ahead and
3 answer. Matt, please just go ahead. Just
4 answer the question.

5 A April of 2014 or '15.

6 Q Okay. And when you first moved in there, was
7 it just you and your son?

8 MR. PATTAKOS: Objection. I'm
9 not asking -- he's not going to answer
10 questions about his living arrangements.

11 Q Please identify all individuals who have ever
12 lived with you --

13 MR. PATTAKOS: Yeah, no.

14 Q -- at Thayer Street other than you and your
15 son.

16 MR. PATTAKOS: Nope. Not
17 going to go there.

18 Q Who are your prior girlfriends in the last --

19 MR. PATTAKOS: Not going to go
20 there. Yeah, not going to go there, Tom.

21 A Are you serious?

22 MR. PATTAKOS: Yeah, no.

23 A Man.

24 MR. PATTAKOS: No. Matt,
25 don't answer the questions. Tom knows what

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1 A I lived with a friend.

2 MR. PATTAKOS: Tom, how is it

3 relevant? He doesn't want to bring other

4 people's names into this.

5 Q Are you not going to answer the question?

6 MR. PATTAKOS: He'll answer

7 the question. I'll instruct him to answer the

8 question if you can explain a remotely

9 conceivable basis for why it would be relevant

10 to this case.

11 Q Sir, are you going to answer the question?

12 A I lived there with my friend Dan.

13 MR. PATTAKOS: Matt, I'm --

14 A I'm not going to --

15 MR. PATTAKOS: -- instructing

16 you not --

17 Q -- give you his --

18 MR. PATTAKOS: -- to answer

19 these questions.

20 A -- full name, sir.

21 Q You refuse to?

22 MR. PATTAKOS: Yes, he does.

23 A I refuse to on the ...

24 MR. PATTAKOS: On the advice

25 of counsel.

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1

- - - - -

2 Q I'm going to show you what's been marked as
3 Exhibit 1 for identification and ask if you can
4 identify that, please.

5 Have you seen this before?

6 A Uh-huh.

7 Q I'm sorry?

8 A Uh-huh.

9 Q You need to say "yes" or --

10 A No.

11 Q -- "no," please. Okay.

12 And can you identify this for the record?
13 What is it?

14 A It's a document.

15 Q What type of document, sir?

16 A It looks like a court document.

17 Q Okay. What's the title of it?

18 A It's a -- it's a -- for the deposition for
19 Member.

20 Q Okay. And did this document, Exhibit 1, ask
21 you to bring anything with you today?

22 Look at page 3.

23 A Yeah.

24 Q Did you bring any documents today in response
25 to this notice?

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1 A No, sir.

2 Q Did you bring any documents at all with you

3 today?

4 A No, sir.

5 Q Did you provide your attorney with any

6 documents that are responsive to these

7 requests?

8 A No, sir.

9 Q Have you provided your attorney any documents

10 in this case?

11 A No, sir.

12 Q Has anybody other than Mr. Pattakos provided

13 you any documents in this case?

14 A No.

15 Q Who else other than the lawyer who you can't

16 remember who took over for your initial lawyer,

17 your initial lawyer, and the initial guy who

18 came out to your house, do you recall

19 interacting with anybody else at KNR?

20 A Through the case or in general?

21 Q Both.

22 A No.

23 Q Do you recall any of the names of anybody else

24 at KNR who you interacted with?

25 A Nope.

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1 Q Is that what you're saying?

2 A That's not what I'm saying.

3 Q Why didn't you bring anything responsive to
4 this request?

5 MR. PATTAKOS: Because I
6 didn't advise him to, Tom. Let's move on.

7 A Yeah, I do what my lawyer tells me to, man.

8 Q Do you have possession of any documents
9 relating to communications between yourself and
10 KNR?

11 MR. PATTAKOS: Tom, why don't
12 you review the docket for the pending motions.
13 We know you have a pending motion to compel.
14 We have filed a motion for protective order.
15 It's all pending. I don't know why you're
16 asking the witness about this or why you even
17 served a notice of deposition duces tecum,
18 which isn't even a thing under Ohio law. So,
19 you know, let's move on. Please.

20 Q Do you recall, sir, in discovery being asked
21 for any documents relating to communications
22 between yourself and anybody at KNR?

23 A No, I don't recall that.

24 Q Have you ever provided any documents to your
25 attorney regarding any communications between

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- 1 Q Okay. Do you know what potential class they
2 are representatives of?
- 3 A Class C.
- 4 Q No, you're Class C, right, sir?
- 5 A Yeah.
- 6 Q Okay. Do you know whether Naomi Wright, Member
7 Williams, or Thera Reid are purported
8 representatives or representatives of any other
9 classes?
- 10 A Yeah, I would assume so, but I ...
- 11 Q You don't pay attention to those?
- 12 A Yeah. I do what I'm told to, man.
- 13 Q Okay. Do you view yourself as a potential
14 member of the other classes in this case other
15 than Class C?
- 16 A No, I don't believe so.
- 17 Q In what -- in your -- what's your understanding
18 of what Class C is?
- 19 A I could have told you Tuesday when I reviewed
20 everything. But the fireworks just blew my
21 mind away. Sorry.
- 22 Q I hope we don't have a trial close to the
23 Fourth of July.
- 24 A I know.
- 25 Q Okay. So as you sit here today, can you

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1 describe for us what Class C is, who those
2 potential members are?

3 A I'm not going to lie to you.

4 Q I'm not asking you to lie. You're under oath.
5 I'm asking: What's your understanding of what
6 Class C is?

7 A I can't -- I can't -- I can't explain that to
8 you right now.

9 Q Do you think that a class representative has a
10 duty to understand what the class is?

11 A Yeah.

12 Q Is there some reason you don't?

13 A Because I'm just overwhelmed right now.

14 Q Overwhelmed with what?

15 A Just being here in general.

16 Q Okay. So do you think that a class
17 representative should be able to answer
18 questions in front of a jury and a judge or at
19 a deposition in order to represent the other
20 class members?

21 A If I had known I was able to bring my notes, I
22 would be fine.

23 Q Who told you you couldn't bring your notes?

24 A I didn't -- I didn't know. I didn't even think
25 about it. I just left them right on the

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1 A I didn't forget it. I left it there because I
2 didn't think I was allowed to have it. I
3 didn't know what the rules were.

4 Q The information that is written down in those
5 documents, did you know you had forgotten that
6 information when you left to come here today?

7 A Not intentionally. I mean, my mind is drawing
8 a blank because I'm not a very good test taker.

9 Q Okay. This isn't a test. We're asking you
10 what your allegations are against the
11 defendants and what your basis for those
12 allegations are, and you can't give us those
13 without your notes?

14 MR. PATTAKOS: Objection.

15 A I know what it is in layman's terms. All of
16 your other questions --

17 Q That's what I want to know.

18 A All your other questions --

19 Q What are layman's terms?

20 What are layman's terms of your
21 allegations against the defendants?

22 A This was discussed a long time ago.

23 Q What is your understanding in layman's terms --

24 A The --

25 Q -- of the allegations --

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1 A The --

2 Q -- against the defendants?

3 A The main reason that we are here is because of
4 his ownership interest in Liberty Capital
5 loans. Period. That's it. That's why we're
6 here.

7 Q Are you saying that if you knew that
8 Mr. Nestico or somebody at KNR had an ownership
9 interest in Liberty Capital you would not have
10 agreed to the loan?

11 A Heck no.

12 Q Okay.

13 A That would be, like, a red flag.

14 Q And you had mentioned some red flags earlier,
15 and I'm not sure you got done telling me all of
16 them.

17 What other red flags did you see when you
18 were represented by KNR?

19 A I don't know, man.

20 Q Well, you're the one who told me.

21 Do you recall any as you sit here?

22 A No, sir.

23 Q Do you recall any red flags as it related to
24 the Liberty Capital loan to you?

25 A I mean, the biggest red flag is the ownership

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1 than your name and -- well, let me ask you
2 this: What information did you provide to
3 Mr. Pattakos that is referenced in the
4 complaint, do you know? Information you
5 provided that he didn't already have.

6 A I think he already had everything he needed.

7 Q Do you happen to know where he got it?

8 A No.

9 Q Okay. By the way, what is your responsibility
10 as a class representative as it relates to
11 settlement? Do you know?

12 A I have that answer in my notes. Does that
13 help?

14 Q You do?

15 A Yeah.

16 Q Okay. That will. We'll take a look at those
17 notes and maybe come back then.

18 Why don't you turn to page 5. Well,
19 before you do, let me ask you another question.

20 Now, earlier you said you don't really
21 remember what Paul said to you, if at all,
22 regarding Liberty Capital other than pay it off
23 as quick as you can because of the interest.
24 Is that fair?

25 A Yes, sir.

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1 really.

2 Q Okay. So you're not going to come in and say
3 that Paul or anybody at KNR told you or
4 recommended that you get a loan with Liberty in
5 the first couple of months, February --

6 A I don't remember what --

7 Q -- March, April --

8 A -- company --

9 Q -- May, June 2012, true?

10 A I don't remember what company he was talking
11 about at that point.

12 Q Okay.

13 - - - - -

14 (Defendants' Exhibit 9 was marked.)

15 - - - - -

16 Q If we now look at Exhibit 9, are these another
17 set of emails between you and Jenna?

18 A It looks like it.

19 Q Earlier in this deposition, you told me you
20 don't recall any emails with anybody at KNR.

21 Do you now agree that you emailed with
22 KNR?

23 A It looks like it.

24 Q Do you know how many times you emailed with
25 KNR?

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1 A No, sir, I don't.

2 Q You knew Jenna -- excuse me.

3 You spoke with Jenna on the phone and/or
4 emailed with her a total of dozens of times,
5 fair?

6 A I don't know. I didn't count them all.

7 Q Over 10, sir, you would agree?

8 A I would have to take some time here to count
9 them.

10 Q Okay. Well, if we look at the bottom of
11 Exhibit 9, you sent an email to Jenna July 16,
12 2012, at 12:02 p.m., true? At the bottom.

13 A Yes, sir.

14 Q And can you read the subject line?

15 If you go back to the first page, please,
16 sir. The subject line of that email.

17 A "Anymore help available."

18 Q Any more help available, is that what you said?

19 A Exactly.

20 Q And by "help," what did you mean?

21 A I don't know. Six years ago.

22 Q Let's look at the email on the next page.

23 "This doesn't need to waste phone time,
24 just wondering if there was any financial boost
25 available anymore till the end."

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1 Did I read that correctly?

2 Sir?

3 A Yep.

4 Q And so when you said "any more help available,"
5 you were talking about financial help, true?

6 A I don't know. It's kind of vague.

7 Q The email you sent to her is kind of vague?

8 A It just says help.

9 Q And in the body of it, you asked for any
10 financial boost available, true?

11 A Agree.

12 Q And you indicated in there that you had missed
13 some work and so you thought you would email
14 and ask her, true?

15 A That's what it looks like.

16 Q Okay. Now if you go to the first page of that
17 Exhibit 9, please.

18 Did Jenna respond to you, from looking at
19 this exhibit?

20 A It looks like she replied at 12:12.

21 Q Within 10 minutes?

22 A Yep.

23 Q And what Jenna told you was, "The only option
24 available is for you to take out a loan against
25 your case, but you have to pay interest on

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1 it...so essentially you're paying money to
2 borrow money."

3 Is that what she told you?

4 A It sure looks like it.

5 Q "But if the need is necessary, I can definitely
6 get you the information."

7 Did I read that correctly?

8 A Sure did.

9 Q So you knew whatever loan it was that you were
10 going to take there would be interest to pay,
11 true?

12 A Yes, sir.

13 Q Now, you've told us already that the 50 percent
14 or whatever you recall the interest being was
15 exorbitant. Those are your words, something
16 similar to that?

17 A Yes.

18 Q What do you believe the interest should have
19 been?

20 A I don't know.

21 Q Okay.

22 A I'm not a financial ...

23 Q I mean what you're complaining about is that
24 the interest was too high, fair?

25 A Well, I'm not complaining that the interest is

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1 high, I'm complaining that the owner -- the
2 sole owner of the loan company was an attorney.

3 Q The sole owner of Liberty Capital was an
4 attorney?

5 A Yes, sir.

6 Q You're referring to Mr. Nestico?

7 A Yes, sir.

8 Q What if you find out that he has no ownership
9 interest in Liberty Capital? Will you withdraw
10 your claim?

11 A Isn't that why we're here?

12 Q My question to you was: If you find out he
13 has -- that Mr. Nestico has no financial
14 interest in Liberty Capital, will you withdraw
15 your claim against him?

16 A Well, since that's not the case, we don't have
17 to worry about withdrawing the claim, do we?

18 Q That wasn't the question, though, sir.

19 A That's my answer.

20 Q If you find out that Mr. Nestico has no
21 financial or ownership interest in Liberty
22 Capital and did not at the time you took the
23 loan, do you agree to withdraw the claim
24 against him?

25 A I answered your question.

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1 Liberty Capital, do you still intend on being a
2 class representative suing him claiming that he
3 does have it?

4 A Say that one more time.

5 Q Sure.

6 If you find out that your factual
7 allegation that Mr. Nestico has a financial
8 interest or ownership interest in Liberty
9 Capital is in fact false, will you agree to
10 withdraw that allegation?

11 A No.

12 Q Why not?

13 A Because that's my answer.

14 Q Even if it's not true, you'll pursue it?

15 A Why not?

16 Q Okay. And do you think that would be good
17 advice for you to give to the other prospective
18 class members?

19 A Absolutely.

20 Q Great. Okay.

21 MR. PATTAKOS: Tom, he's going
22 to rely on the advice of his attorneys and he
23 knows if we don't have evidence for the claims
24 we're not going to pursue them. Okay? If
25 you're worried about that or if you think

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1 MR. PATTAKOS: I'm not

2 testifying. Okay.

3 Q As the representative of --

4 A I've answered your question. That's the end of
5 that question.

6 MR. PATTAKOS: Go ahead, Matt.

7 Q As the representative of this purported Class
8 C, if you find there is no evidence to support
9 the claims of that class, will you agree to
10 withdraw as the representative --

11 A It's irrelevant because --

12 Q -- of that class?

13 A --- there is evidence.

14 Q That wasn't the question.

15 A That's how I'm answering your question.

16 Q You refuse to answer it?

17 A I'm not refusing to answer it. That's how I'm
18 answering it.

19 Q Okay. And what if there is no evidence?

20 You'll still proceed like you told me earlier?

21 A There is evidence.

22 Q What is it?

23 A I don't remember all of it. I told you that
24 three times now.

25 Q Okay. Well --

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1 MR. PATTAKOS: Okay. Matt --
2 Q -- but my question is --
3 MR. PATTAKOS: -- just take it
4 easy, buddy.
5 Q -- if you don't remember it and you can't point
6 to any of it here and you find out later that
7 there is no such evidence, would you agree --
8 A I don't have to know all the evidence. I'm not
9 an attorney.
10 MR. PATTAKOS: Tom, this is --
11 Q If you find --
12 MR. PATTAKOS: -- ridiculous.
13 Please move on.
14 Q -- out that there's no evidence to support the
15 claim, will you withdraw it?
16 A No, sir.
17 Q Okay.
18 A Dumb fuck.
19 MR. PATTAKOS: I'll do it for
20 him, I promise.
21 Q Now if you keep looking at Exhibit 9, please,
22 sir. In response to what Jenna told you, you
23 responded to her another 10 minutes later by
24 saying, "I'd be willing to look into it to see
25 how worth it it would be to help me get ahead."

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1 wherever you're at.

2 Q Okay. Well, you do agree that you must have
3 got this fax cover sheet, because you wrote on
4 it, right?

5 A Yeah.

6 Q Now if you turn to the second page of this, and
7 at the bottom they're called Bates stamp
8 numbers, it would be KNR01651.

9 Are you at that page?

10 A So the second page?

11 Q Yes.

12 And at the top it indicates it was your
13 name, Matthew Johnson, and by this time you
14 lived at Edwin Avenue, true?

15 A Yes, sir.

16 Q And what were the circumstances of you moving
17 out of your parents' home?

18 MR. PATTAKOS: Objection.

19 This is -- same objection as before. Let's
20 move on.

21 Q Sir, do you recall?

22 MR. PATTAKOS: I'm instructing
23 him not to answer that question.

24 Q Sir, do you recall?

25 MR. PATTAKOS: Tom, I'm

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1 instructing him not to answer the question.

2 Ask another question.

3 Q And do you recall, sir, that your father got in
4 your face and said you were a sponge and he
5 wanted you out?

6 MR. PATTAKOS: Oh, my God.

7 Q Do you recall that, sir?

8 MR. PATTAKOS: Good one, Tom.
9 The judge is going to love this.

10 Matt.

11 Q I'm asking.

12 MR. PATTAKOS: Matt.

13 Let's move on. You know what, we're
14 going --

15 Q You were --

16 MR. PATTAKOS: -- to take a
17 break.

18 Q -- having financial --

19 MR. MANNION: No. I'm in the
20 middle of a question.

21 MR. PATTAKOS: No. Tom, we're
22 going to take a break.

23 MR. MANNION: No, we're not.
24 We're in the middle --

25 MR. PATTAKOS: We're going

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1 this.

2 Q Do you remember doing that?

3 MR. PATTAKOS: We're not doing
4 this. We're not doing this.

5 Don't answer the question.

6 Q Do you remember using the word F-U-C-K or
7 something similar, whether it's F-U-C-K-E-R or
8 something similar, a little bit earlier when
9 answering questions on video?

10 A I don't know.

11 Q That's not something you would want to blurt
12 out in front of a jury, is it, to represent the
13 class?

14 A No.

15 Q I mean, that would look bad, wouldn't it?

16 A Probably.

17 Q Yeah. So if that's something you did and you
18 can't even remember it, does that raise some
19 concern in your mind as to whether --

20 MR. PATTAKOS: No, Tom, it
21 doesn't. Let's move on.

22 MR. MANNION: I wasn't asking
23 you, Peter.

24 MR. PATTAKOS: Tom, this is --

25 MR. MANNION: Stop it.

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1 MR. PATTAKOS: -- abusive.
2 MR. MANNION: Please stop.
3 MR. PATTAKOS: It is abusive.
4 It's impermissible. The judge isn't going to
5 allow it. I wish we could get on the phone
6 right now with him. Tom, move on. File a
7 motion.

8 Q It would look pretty bad, wouldn't it, sir?

9 MR. PATTAKOS: File a motion.

10 Matt, I'm going to instruct you to stop
11 answering any questions along these lines.

12 Add it to the list.

13 Q Turn if you would again to the next page.

14 Do you see on this that the amount you
15 were requesting for a loan was \$250? Do you
16 see that?

17 A Yes, sir.

18 Q And, in fact, you were going to sign this
19 document at the end. If we look all the way to
20 it says page 6 at the top but it's page 5 of
21 the document.

22 Sorry about that. Keep going.

23 I meant page 8 of the document. Page 7
24 of the loan document. Do you see where there's
25 a signature?

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1 It's still not ethically moral.

2 Q Okay.

3 A If that's the right way to say it.

4 Q Well, do you know as a class representative
5 whether you can sue a lawyer for damages for an
6 alleged ethical violation as opposed to
7 actually being damaged financially?

8 A Like in a separate suit or?

9 Q In this suit.

10 A I don't know. I would have to review if that's
11 in my notes or not.

12 MR. PATTAKOS: We already won
13 the motion to strike on this, Tom.

14 Q Okay.

15 MR. PATTAKOS: We already won
16 this legal issue.

17 MR. MANNION: Stop it.
18 Please.

19 Q If this would have been a reasonable interest
20 rate and reasonable fees, are you saying your
21 only damage would be from the ethical part of
22 it?

23 A No, I'm not saying that at all.

24 Q Okay. If this was reasonable fees and
25 reasonable interest, what would your damage be?

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1 Q And as the class representative, what were you
2 referring to when you said "kickback payment"?

3 A Like when you have a deal with a company and
4 you get, like, a kickback or a stipend or a
5 stiff -- spiff or, you know, whatever.

6 Q Okay. What evidence did you have that they
7 received such a --

8 MR. PATTAKOS: Tom.

9 Q -- kickback --

10 MR. PATTAKOS: For heaven's
11 sake, he's answered this question a hundred
12 times.

13 Q Sir.

14 A The only evidence that I've seen -- the
15 evidence that I've seen is the emails between
16 other attorneys in the law firm and Mr. Nestico
17 that were -- they were trying to show their
18 displeasure or their not agreeing to what, you
19 know, what they thought was going on or
20 whatever.

21 Q Did any of those emails indicate that any of
22 the defendants were receiving a kickback?

23 A I don't -- I don't remember. It's been I don't
24 know how long since I saw those emails.

25 Q Do you have any evidence that any actual

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1 A I know it's true because I trust my attorney,
2 his abilities to do what he has to do in this
3 case.

4 Q But you can't show me any proof of a kickback?
5 How much was it?

6 MR. PATTAKOS: Tom, let's move
7 on.

8 Q How much was the kickback?

9 A I don't know. You tell me.

10 Q What are you claiming?

11 MR. PATTAKOS: Tom, you're not
12 giving us any discovery in this case. So how
13 are we ever supposed to know?

14 MR. MANNION: Stop it.

15 Q How much are you claiming the kickback was?

16 A I don't know. You tell me.

17 Q Well, if you find out there was no kickback,
18 will you withdraw this claim?

19 A No, sir.

20 MR. PATTAKOS: We already told
21 you we would, Tom.

22 Q Why not?

23 A Because.

24 Q You would pursue this claim about a kickback
25 even if there was no kickback?

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1 A Yeah.

2 Q Okay.

3 MR. PATTAKOS: Move to strike.

4 Q If you go to page 33, paragraph 121. I'm
5 sorry, paragraph 122.

6 Can you read 122 out loud, please, for
7 the record?

8 A "The KNR Defendants knew that many KNR clients
9 would be unable to repay their Liberty Capital
10 loans until their lawsuits resolved, a process
11 that often takes years."

12 Q Now, your particular loan was paid before your
13 lawsuit resolved, correct?

14 A I'm pretty sure. I don't know.

15 Q So your situation would be different from those
16 clients you're referencing here?

17 Is that true, sir?

18 A I'm -- I don't remember.

19 Q To find out whether those KNR clients were able
20 to repay their loans before their lawsuits
21 resolved, we would have to go talk to each of
22 those clients, wouldn't we?

23 A I would assume so.

24 Q We'd have to look at each of those loan
25 agreements and repayments separately, wouldn't

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1 we?

2 A I would -- makes -- makes sense.

3 Q And what evidence did you have that KNR
4 defendants knew KNR clients would be unable to
5 repay their loans until their lawsuit resolved?
6 Did you have any?

7 A Yeah.

8 Q What was it?

9 A I don't remember, man. Like I said, I have
10 notes at home.

11 Q Okay. If you look at page 34, paragraph 124.
12 And in the middle of this, it says that the KNR
13 attorney stated "I am not endorsing or
14 recommending this transaction."

15 Did I read that correctly?

16 A Correct.

17 Q Okay. And is that the same as what occurred in
18 your case, they were not endorsing or
19 recommending the transaction, they put that in
20 the loan papers? Do you know?

21 A I don't remember.

22 Q Do you recall?

23 A I don't remember.

24 Q You're not sure?

25 A No, sir.

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1 Q Okay. If you would look back at the loan
2 agreement, Exhibit 11, please.

3 Sir, Exhibit 11. Right underneath that,
4 I believe.

5 Go to the very last page. Five lines up
6 from the bottom in the middle starting with the
7 word "While." Do you see that?

8 "While I am not."

9 A Uh-huh.

10 Q "While I am not endorsing or recommending this
11 transaction."

12 Did I read that part of the sentence
13 correctly?

14 A Yes, sir.

15 Q And it's signed by KNR, true?

16 A Yes, sir.

17 Q So that would be referencing KNR was not
18 endorsing or recommending this transaction,
19 correct?

20 A Yes, sir.

21 Q And you initialed that knowing that, true?

22 A Yes, sir.

23 Q And it then goes on to say, "I have reviewed
24 the contract and all costs and fees have been
25 disclosed to my client."

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1 And those were disclosed to you, correct?

2 A Yes, sir.

3 Q "including the annualized rate of return

4 applied to calculate the amount to be repaid by

5 my client."

6 That was also disclosed to you, true?

7 It's in the document, true?

8 A Yes, sir.

9 Q Okay. So that was disclosed to you as well,

10 correct?

11 A Yes, sir.

12 Q Yet in paragraph 124 you're claiming in a court

13 document that this was a false representation.

14 Do you still maintain that?

15 A Yes, sir.

16 Q What was false about it?

17 A I don't remember.

18 Q You can't tell us what was false about it?

19 A No, sir.

20 Q And if that statement is actually true, would

21 you agree to withdraw that claim?

22 A No.

23 Q You wouldn't withdraw that one either, even if

24 it's not true?

25 A No, sir.

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1 Q Okay. If you would turn to page 41, please.

2 For Class C there's a number of items
3 listed that apply to the class members
4 purportedly and i indicates "Defendants, as a
5 matter of KNR firm policy, recommended to their
6 clients that they obtain loans with Liberty
7 Capital."

8 Did I read that correctly?

9 A Yes, sir.

10 Q Are you aware that they have clients who have
11 testified that, in fact, rather than being
12 recommended to take loans they're advised
13 against taking loans?

14 MR. PATTAKOS: Objection.

15 A I don't know, sir.

16 Q You would have to ask each of those clients
17 separately what was recommended to them and
18 what wasn't, true?

19 A I don't know, sir.

20 Q Well, how would you find out what was
21 recommended to them?

22 A Probably have to interrogate them all day too.

23 Q And you certainly aren't claiming that the
24 potential members of Class C all had the same
25 conversations that you had with either Paul

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1 Steele or Jenna or anybody at KNR, are you?
2 A Everybody's situation's different.
3 Q Everybody's situation is different, correct,
4 sir?
5 A I think in this case there's -- like, that's
6 why there's Class C and there's different
7 classes, right?
8 Q My question to you is: Members of Class C,
9 you're not saying they all had the same
10 conversations as you had, are you?
11 A Wouldn't that be why we're all in the same
12 class?
13 Q So are you alleging that simply advising
14 clients of the potential for a loan was the
15 recommendation that KNR made to its clients?
16 A Yeah.
17 Q Just that it was available?
18 A I mean it wasn't -- nobody put a gun to my head
19 because they're not that stupid.
20 Q Do you know how the discussions went between
21 KNR and any other clients?
22 A No.
23 Q The next Roman numeral, ii, "Defendants
24 received kickback payments for every loan
25 transaction that Liberty Capital completed with

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1 KNR clients."
2 What do you base that on?
3 A I don't know.
4 MR. PATTAKOS: Excuse me.
5 Q You have no idea if it's true, do you?
6 MR. MANNION: Objection.
7 A Yeah, I do.
8 MR. PATTAKOS: Objection.
9 Tom.
10 Q What's it based on, then?
11 MR. PATTAKOS: Objection.
12 Matthew, don't answer --
13 MR. MANNION: You can
14 object --
15 MR. PATTAKOS: -- the
16 question.
17 MR. MANNION: -- for the
18 record.
19 Q What's it based on?
20 MR. PATTAKOS: What I'm
21 objecting is that you are mischaracterizing the
22 complaint which says that these are questions.
23 These are legal issues. These issues include
24 the determinations as to whether. Okay? So
25 don't tell him that this is something that he

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1 alleged.

2 Q Are you --

3 MR. PATTAKOS: This is
4 something that needs to be examined through
5 discovery in this case, that the allegations
6 that have been put forward have left these
7 inferences open. We are entitled to discovery
8 to discover them. Stop grilling him as if he's
9 saying that they exist or that it's happened.
10 Okay?

11 Q Well, you just told me that they exist.

12 A No, I didn't.

13 MR. MANNION: Can we read
14 back the last question and his answer to me,
15 please.

16 - - - - -
17 (Requested portion of the record was read.)

18 - - - - -
19 MR. MANNION: We'll have to
20 look at the video on that.

21 Q What you had just told me, sir, is you believe
22 that that's true, that they received kickback
23 payments on every loan transaction, true?

24 A Yes.

25 Q Okay. What is that based on?

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1 A Based on all of the evidence that we gathered
2 in this case.

3 Q And can you identify one kickback payment?
4 One.

5 A I don't need to.

6 Q That's not what I asked you. I said: Can you
7 identify one kickback payment?

8 A And my answer is I don't need to.

9 Q That's not my question.

10 Can you --

11 MR. PATTAKOS: He's answered
12 your question, Tom.

13 A That's my answer. I'm answering your
14 question --

15 MR. PATTAKOS: Move on.

16 Q No, you're not.

17 A -- Tom.

18 Q No, you're not.

19 Can you identify --

20 A That's my answer to the question.

21 MR. PATTAKOS: Matt, why
22 don't --

23 Q Can you identify one kickback payment for any
24 loan transaction?

25 A I don't need to.

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1 Q That's not my question.

2 A That's my answer.

3 Q Sir.

4 MR. PATTAKOS: Let's take a
5 break.

6 Q No.

7 A We don't need to take a break.

8 Q Can you identify --

9 A Let's get this over with.

10 Q -- a single kickback payment from Liberty
11 Capital to any of the KNR defendants for any
12 loan transaction, a single one?

13 A I don't need to.

14 Q That's not my question. Can you?

15 A Are we going to do this for another --

16 Q Well, you have to answer the question, sir.

17 MR. PATTAKOS: He did answer
18 the question, Tom.

19 A That's my answer.

20 MR. PATTAKOS: That's his
21 answer. If you don't like it --

22 Q It's a yes or no. Can you identify one?

23 MR. PATTAKOS: If you don't
24 like his answer, Tom -- you don't get to pick
25 his answer.

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1 Q You don't --
2 MR. PATTAKOS: Ask another --
3 Q -- know the law.
4 MR. PATTAKOS: -- question.
5 Q You already told me that, sir. So whether you
6 have to or not is a different issue --
7 MR. PATTAKOS: Ask another --
8 Q -- than whether you can.
9 MR. PATTAKOS: Ask a new --
10 A I'm sorry.
11 MR. PATTAKOS: -- question,
12 Tom. You got your answer.
13 Q Please identify for me all kickback payments
14 that you know about for any loan transaction
15 that Liberty Capital completed with KNR.
16 A What was the question?
17 Q Sure.
18 Please identify for me any kickback
19 payment that you are aware of for any loan
20 transaction that Liberty Capital completed with
21 KNR clients.
22 A You want me to show you?
23 Q I asked you to identify any. Can you?
24 A Not right now.
25 Q When do you plan on doing that?

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1 A I don't know, sir.

2 Q Okay. Go now to page 49, please, Claim 7.

3 Now, before we get into this particular
4 page, sir -- sir. Excuse me.

5 A Yeah.

6 Q Before we get into this particular page, are
7 you telling me that anybody at KNR told you
8 that the best source of loan funding was
9 Liberty Capital?

10 A Liberty Capital's the only one I ever heard of.

11 Q Did anybody from KNR tell you Liberty Capital
12 was the best source of loan funding?

13 A Liberty Capital is the only one I ever heard
14 of.

15 Q Well, what about Preferred Capital?

16 A I don't remember Preferred Capital.

17 Q Well, if Paul remembers talking to you about
18 Preferred Capital, are you disputing that?

19 A No, I'm not. I'm not confirming or denying it.
20 I'm telling you I don't remember.

21 Q Okay. So did anybody at Liberty Capital tell
22 you that the best source of loan funding -- I'm
23 sorry.

24 Did anybody at KNR tell you Liberty
25 Capital was the best source of loan funding?

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1 A I don't remember.

2 Q Okay. Is there a reason that you have this as
3 an allegation against the defendants in a
4 complaint if you don't even recall if it's
5 true?

6 Are you going to answer the question?

7 A I was reading real quick.

8 What was the question?

9 MR. MANNION: Please read
10 back the question.

11 - - - - -

12 (Requested portion of the record was read.)

13 - - - - -

14 A Yeah, because I trust my attorney.

15 Q And what evidence do you have that anybody at
16 KNR told you the best source of loan funding
17 was Liberty Capital? If you don't recall, then
18 how would your lawyer know?

19 A Well, I mean, that's what -- he's the lawyer.

20 Q Okay. But you can't recall?

21 A I don't remember everything.

22 Q Okay. It says also that the defendant induced
23 you to take out a loan with Liberty.

24 What do you mean by that?

25 A I don't know.

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1 the money coming out of settlement proceeds,
2 the money to pay back your loan never did come
3 out of settlement proceeds, did it?

4 A I never -- I never -- I never got a settlement
5 from -- because of KNR.

6 Q That wasn't my question, sir.

7 The loan that you repaid or you claim to
8 have repaid Liberty was not repaid out of
9 settlement proceeds, was it?

10 A I don't believe so.

11 Q Okay. I'm asking what statements, if any, by
12 KNR did you rely on in entering into your loan
13 with Liberty Capital?

14 A I don't know if it was a particular statement,
15 but it just -- more of like a convenience, I
16 guess, to me.

17 Q Explain what you mean.

18 A Just that it was convenient. It was there, you
19 know, why not take it.

20 Q Okay. And other than the fact that it was
21 convenient and it was there, was there any
22 other statement by anyone at KNR that you
23 relied on for entering into the loan with
24 Liberty Capital?

25 A No one -- no one particular statement.

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1 A Yes.

2 Q And they may have told you about Preferred
3 Capital too if that's how Paul remembers it,
4 true?

5 A Yeah, I just don't remember the name Preferred
6 Capital, so I -- being mentioned, but I feel
7 like I've heard of that company.

8 Q And you weren't relying on any advertisements
9 or mailers or anything like that, true?

10 A No, nothing like -- you know, nothing that
11 sticks out at you or anything, you know what I
12 mean?

13 Q Okay.

14 A Nothing like that.

15 Q And you don't know what any other potential
16 plaintiff may have relied on or not relied on
17 in entering into their loan, true?

18 A No, sir.

19 Q My statement was true?

20 A Yeah. Yeah.

21 Q Okay. So I'm just trying to find out: Are you
22 trying to claim there was something that the
23 defendants told you about Liberty Capital that
24 you relied on that you found out later wasn't
25 true?

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1 Q Okay. Did you ask any questions about it?

2 A I mean, I looked over what I was signing, but
3 now that I think about it, six years later, I
4 probably should have read it a little bit
5 better.

6 Q Okay. But what I'm asking you is: When you
7 were given the name Liberty Capital from Jenna,
8 did you think hey, why didn't they give me two
9 names, why didn't they give me three names?

10 A No, I didn't think about it at all, actually.

11 Q Did you think about wow, Paul told me Preferred
12 Capital several months ago, now they're saying
13 Liberty Capital? Did you think about that?

14 A No, because I don't remember Paul telling me
15 about Preferred Capital.

16 Q Did you ask Jenna or Paul or anyone at KNR,
17 "Hey, are there any more competitive loans out
18 there?"

19 A At that time I didn't even think to ask such a
20 thing.

21 Q Okay. Did anyone at KNR tell you that the
22 loans from Liberty Capital were the best loans
23 out there?

24 A No. They can't be the best loans.

25 Q Okay. So knowing that they can't be the best

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1 But let's just call it. We can call it a
2 day. No need to go another five minutes.

3 MR. BEST: Just so the
4 record's clear, I want this fellow's notes --

5 MR. MANNION: Yes.

6 MR. BEST: -- before we
7 reconvene the deposition he's withheld and he
8 didn't respond.

9 THE WITNESS: They're my own
10 personal notes.

11 MR. PATTAKOS: Well, I
12 don't --

13 MR. BEST: I don't care
14 what you think they are. They are court
15 documents and we're going to get them and
16 they're going to be in our possession before
17 you're sitting back in front of a court
18 reporter on video.

19 MR. PATTAKOS: We'll talk. We
20 can deal with that off the record.

21 And, you know, I just want to say that,
22 gentlemen, you've convinced me I'm going to
23 withdraw as counsel in this case, as it's
24 become clear to me over the course of this
25 deposition that I should give up my practice

**IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO**

MEMBER WILLIAMS, et al.,	)	CASE NO. CV-2016-09-3928
	)	
Plaintiffs,	)	JUDGE JAMES A. BROGAN
	)	
v.	)	
	)	
KISLING, NESTICO & REDICK, LLC, et al.,	)	<u>DEFENDANTS' AMENDED NOTICE OF</u>
	)	<u>DEPOSITION OF PLAINTIFF MATTHEW</u>
Defendants.	)	<u>JOHNSON DUCES TECUM</u>
	)	
	)	

Please take notice that, pursuant to the Ohio Rules of Civil Procedure, Defendants Kisling, Nestico & Redick, LLC, Alberto R. Nestico, and Robert Redick, by and through undersigned counsel, will take the discovery deposition of **Plaintiff Matthew Johnson**, upon oral examination, on **Friday, July 6, 2018 at 10:30 a.m.** at the offices of Kisling, Nestico & Redick, 3412 West Market St., Akron, OH 44333 (Phone: 330-869-9007), before a notary public. The deposition will be taken stenographically and by audiovisual reporting. Said deposition will continue from day to day until completed.

In addition to appearing for oral examination, it is requested that the deponent bring with him to the deposition the documents listed on Exhibit A attached hereto.

Respectfully submitted,

/s/ James M. Popson
James M. Popson (0072773)
Sutter O'Connell
1301 East 9th Street
3600 Erieview Tower
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(216) 928-2200 phone
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Counsel for Defendants
Kisling, Nestico & Redick LLC, Alberto R.
Nestico, and Robert Redick



EXHIBIT A**A. DEFINITIONS**

For the purpose of these requests, unless otherwise stated, the following terms shall have the meanings indicated:

1. "Plaintiff" or "you" or "your" means Plaintiff Matthew Johnson, as well as all of his employees, attorneys, agents, partners, members, affiliates, representatives, and all other persons acting on his behalf.
2. "KNR" means Defendant Kisling, Nestico & Redick, LLC, and all of its officers, directors, employees, agents, partners, members, shareholders, affiliates, representatives, and all other persons acting on its behalf.
3. "Nestico" means Defendant Alberto R. Nestico, a member of KNR.
4. "Redick" means Defendant Robert W. Redick.
5. "Communication" means any written or oral statement or notation of any nature, including but not limited to conversations, correspondence, dialogue, discussions, e-mails, interviews, consultations, meetings, telephone calls, letters, telecopies, telephone logs, diaries, agreements and other understandings between or among two or more persons, and all other forms of oral or written expression by which information may be conveyed.
6. "Document" or "documents" means any and all records, statements, memoranda, reports, letters, notes, messages, written communications, correspondence, emails, text messages, social media communications (e.g., Twitter and Facebook), contracts, forms, manuals, charts, graphs, data sheets, spreadsheets, bulletins, computer runs, journals, ledgers, books, bills, transcripts, checks, drafts, photographs, audio and/or video tape recordings, mechanical and/or electrical records, electronic documents, computer documents, punch cards, print-out sheets, notes, books of account, brochures, circulars, magazines, notebooks, diaries, calendars, appointment books, tables, papers, minutes of meetings of any kind, drafts of any documents, data processing disks or tapes or computer produced interpretations of the above, and any and all tangible items or written matter whatsoever of any kind or nature in Plaintiff's possession or control or within the possession and control of Plaintiff's attorney, agents, or other representative of Plaintiff and Plaintiff's attorney.
7. "Relating to" or "relate to" shall include, without limitation, embodying, pertaining to, reflecting, referring to, regarding, referencing, concerning, constituting, comprising, discussing, or having any bearing upon or logical or factual connection with the subject matter in question.

B. DOCUMENTS TO BE PRODUCED

You are requested to bring with you any and all documents in your possession or in the possession of your attorney relating to the following:

1. All documents relating to income earned by Plaintiff from January 1, 2013 to the present, including, but not limited to, Plaintiff's federal and state income tax forms, W-2 forms, 1099 forms, payroll forms, and payroll stubs.
2. All documents relating to communications between Plaintiff and KNR at any time.
3. All documents relating to communications between Plaintiff and Nestico at any time.
4. All documents relating to communications between Plaintiff and Redick at any time.
5. Any and all documents you have reviewed in preparation for your deposition.

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of June, 2018, the Amended Notice of Deposition of Plaintiff Matthew Johnson Duces Tecum was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's electronic filing system.

/s/ James M. Popson
James M. Popson (0072773)

EXHIBIT "D"**Plaintiff Johnson's Testimony Concerning "Recommendation" for Liberty Capital Loan****1. Defendants Nestico and Redick did NOT recommend a loan**

Q. And did either of those two [Rob Nestico or Rob Redick] ever tell you that you should use Liberty Capital?

A. Not personally, no. (*Id.* at p. 131, ll. 2-4).

2. Johnson's inability to remember who recommended a loan

Q. Okay. Do you recall any lawyer from KNR recommending that you use Liberty Capital or giving you advice about the loan?

A. Yes.

Q. Who?

A. I don't remember the gentleman's name, but it was not Paul Steele.

Q. Okay. But it was a lawyer?

A. I don't even know if he was actually an attorney or like a clerk or whatever they would be called. Somebody that, like, comes out right directly to you or whatever.

Q. And you're talking about the very first contact you ever had with KNR?

A. Yes, sir.

Q. Okay. Which would have been in February of 2012?

A. Yes, sir.

Q. But your loan wasn't until many months later, correct?

A. A couple months, yeah. (Johnson dep., p. 28, ll. 14-25, p. 29, ll. 1-9).

...

Q. You have no memory of any specific advice or recommendations given to you by Paul Steele?

A. Not word for word.



...

Q. No. You said you don't remember what he said word for word, so what do you remember generally?

A. Oh. About, like, the whole loan or whatever?

Q. What Paul Steele told you/

A. I don't remember Paul Steele ever telling me anything about the loan.

Q. Okay.

A. Like I said, I think it was like a clerk or something like that or - - I don't know if the guy that came to my house was even an attorney or not. I don't remember.

...

Q. Okay. He did not represent himself as an attorney, did he?

A. I don't think he did, no. (Johnson dep., p. 31, ll. 1-23).

...

Q. Well, what do you remember - - this gentleman who came out to see you, what do you remember him telling you about the loan?

A. I don't remember him telling - - what he told me about the loan. (Johnson dep., p. 33, ll. 8-12).

...

Q. Do you recall Paul Steele advising against the loan?

A. I don't remember that either.

Q. Do you remember him advising for the loan?

A. I don't remember. (Johnson dep., p. 48, ll. 1-5).

...

Q. Do you remember Paul actually recommending that you take a loan, giving you advice to take a loan?

- A. He said if I - - if I felt - - if I felt it necessary or whatever. I don't remember what my response was, probably like what the heck. You know, whatever. (Johnson dep., p. 161, ll. 1-7).

3. The Loan was "Convenient"

- Q. I'm asking what statements, if any, by KNR did you rely on in entering into your loan with Liberty Capital?
- A. I don't know if it was a particular statement, but it just - more of like a convenience, I guess, to me.
- Q. Explain what you mean.
- A. Just that it was convenient. It was there, you know, why not take it. (Johnson dep., p. 262, ll. 11-19)
- Q. Okay. And other than the fact that it was convenient and it was there, was there any other statement by anyone at KNR that you relied on for entering into the loan with Liberty Capital?
- A. Not one - not one particular statement. (Johnson dep., p. 262, ll. 20-25).
- Q. Name any statement other than hey, Liberty Capital's available. Any other statement than that? Did you rely on any other statement than that?
- A. I didn't - - I wouldn't say relied, but I - - just the statement that, you know, that you're - - I forget how it was said where you have to - - you know, it's available, but you have to pay back money with money. It just seemed like, you know, whatever, but you're not always thinking when you're going through that particular time or whatever.
- Q. Well, you're not saying that Jenna by sending that to you was trying to take advantage of you?
- A. Oh, I'm not saying that she particularly tried to. Jenna, if I remember correctly, Jenna was very nice to me.
- Q. And I think you referred to her as awesome. Right?
- A. Yeah. She's pretty cool. (Johnson dep., p. 263, ll. 1-21).
- ...
- Q. Okay. But I'm trying to find out did Paul or anybody at KNR specifically recommend hey, you should take a loan out with Liberty and here's why?

A. I wouldn't say that it was put in those particular words.

Q. How was it put?

A. I don't remember.

Q. Well, I'm trying to find out. Did you rely on anything KNR did other than giving you the name of the company that - -

A. Not particularly. (Johnson dep., p. 264, ll. 10-21).

...

Q. Okay. Did anyone at KNR tell you that the loans from Liberty Capital were the best loans out there?

A. No. They can't be the best loans.

Q. Okay. So knowing that they can't be the best loans, why did you go with them?

A. Good question.

Q. Just because it was easy?

A. Convenience, I guess. (Johnson dep., p. 276, ll. 21-25, p. 277, ll. 1-4).

4. KNR's recommendations consisted of informing Johnson of the possibility of a loan after Johnson inquired

Q. He [Paul Steele] didn't push you to take a loan, did he?

A. It wasn't forced on me, no.

Q. Are you saying that he recommended that you take a loan or just it's up to you?

A. It was a recommendation, but it was almost like it was like an option.

Q. Okay. And when you say it was a recommendation, what did he say?

A. Just, like, if I need a little bit of money or whatever to tie me over or whatever.

Q. That you could take a loan?

A. Correct. (Johnson dep., p. 161, ll. 8-19).

...

Q. And nobody pushed you into getting the loan, did they?

A. No.

Q. And, in fact, you're the one who asked Jenna about the process, true?

A. Yes, sir.

Q. And you reviewed all of the documents and signed them, correct?

A. Yes, sir. (Johnson dep., p. 220, ll. 6-14).

...

Q. Okay. So what specific recommendation, if any, did Paul give you as it relates to Liberty Capital?

A. I just told you. A \$250 loan.

Q. He said that it's available?

A. Right.

Q. Okay. And he didn't twist your arm and he didn't push you one way or another as to whether you take it or don't take it. Fair?

A. Yeah, I agree with that. (Johnson dep., p. 236, ll. 25, p. 237, ll. 1-9).

...

Q. So are you alleging that simply advising clients of the potential for a loan was the recommendation that KNR made to its clients?

A. Yeah. (Johnson dep., p. 246, ll. 13-16).

5. KNR may have mentioned other loan options to Johnson

Q. Do you remember the name Preferred Capital?

A. I've heard that name before but I don't know if it was there. (Johnson dep., p. 162, ll. 21-23).

...

Q. So you entered in - - KNR told you about the existence of Liberty, true?

A. Yes.

Q. And they may have told you about Preferred Capital too if that's how Paul remembers it, true?

A. Yeah, I just don't remember the name Preferred Capital, so I - - being mentioned, but I feel like I've heard of that company. (Johnson dep., p. 264, ll. 24-25, p. 265, ll. 1-7).

6. Johnson did not rely on any advertisements when entering into the loan

Q. And you weren't relying on any advertisements or mailers or anything like that, true?

A. No, nothing like - - you know, nothing like that sticks out at you or anything, you know what I mean? (Johnson dep., p. 265, ll. 8-12).

7. Johnson signed agreement stating that his KNR attorney did not make any recommendations

Q. Do you have any memory of anybody at KNR, whether it's a lawyer, a paralegal, or anybody else who you believe is associated with KNR, do you have any memory of anything they told you about a loan with Liberty Capital?

A. The only thing that sticks out about the loan that anybody told me was the interest rate because it was astronomical. And that's the only thing I remember. I need to pay this off as fast as possible because of the interest rate.

Q. Okay. And did they tell you that before or after you signed?

A. Before. (Johnson dep., p. 33, ll. 13-25, p. 34, l. 1).

...

Q. This isn't what they're telling you. This is you saying, "My attorney has made no recommendations." Did I read that?

A. Yeah, you read that.

Q. Okay. So this is you making representations that you then initialed and signed, correct?

A. Yes, sir.

Q. Were those representations true? Yes or no.

A. I don't really think so now that I think about it.

Q. Okay. Then tell me what recommendations they gave you.

A. I don't remember. It was six years ago. (Johnson dep., p. 227, ll. 11-24).

...

Q. "While I am not endorsing or recommending this transaction." Did I read that part of the sentence correctly?

A. Yes, sir.

Q. And it's signed by KNR, true?

A. Yes, sir.

Q. So that would be referencing KNR was not endorsing or recommending this transaction, correct?

A. Yes, sir.

Q. And you initialed that knowing that, true?

A. Yes, sir. (Johnson dep., p. 243, ll. 10-22).

...

Q. Yet in paragraph 124 you're claiming in a court document that this was a false representation. Do you still maintain that?

A. Yes, sir.

Q. What was false about it?

A. I don't remember.

Q. You can't tell us what was false about it?

A. No, sir.

Q. And if that statement is actually true, would you agree to withdraw that claim?

A. No.

Q. You wouldn't withdraw that one either, even if it's not true?

A. No, sir. (Johnson dep., p. 244, ll. 12-25).

8. Mr. Johnson does not know what, if any, "kickback" payments Defendants received in connection with the loan

Q. What kickback payment did they receive?

A. I don't know exactly what they received.

Q. Why would you say it? [in the Complaint]

A. I didn't say that.

Q. This is - -

A. This is written up and I went over it with my attorney before I - - we filed it or whatever.

Q. Well, you didn't want things that were false to be filed, did you?

A. No.

...

Q. Okay. What evidence did you have that they received such a - -

Mr. Pattakos: Tom.

Q. - - kickback - -

Mr. Pattakos: For heaven's sake, he's answered this question a hundred times.

Q. Sir.

A. The only evidence that I've seen - - the evidence that I've seen is the emails between other attorneys in the law firm and Mr. Nestico that were -

- they were trying to show their displeasure or their not agreeing to what, you know, what they thought was going on or whatever.

Q. Did any of those emails indicate that any of the defendants were receiving a kickback?

A. I don't - - I don't remember. It's been I don't know how long since I saw those emails. (Johnson dep., p. 238, ll. 6-24).

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Page 1

1 STATE OF OHIO,)
 COUNTY OF SUMMIT.) SS:
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 IN THE COURT OF COMMON PLEAS
3
 MEMBER WILLIAMS, et al.,)
4)
 Plaintiffs,)
5)
 vs.) JUDGE PAUL GALLAGHER
6) CASE NO. CV-2016-09-3928
 KISLING, NESTICO &)
7 REDICK, LLC, et al.,)
)
8 Defendants.)

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10 - - - - -
 THE VIDEOTAPED DEPOSITION OF MATTHEW W. JOHNSON
 FRIDAY, JULY 6, 2018
11 - - - - -
12

13 The videotaped deposition of MATTHEW W.
14 JOHNSON, called by the Defendants for examination
15 pursuant to the Ohio Rules of Civil Procedure,
16 taken before me, the undersigned, Sarah R. Drown,
17 Registered Professional Reporter and Notary Public
18 within and for the State of Ohio, taken at the
19 offices of Kisling, Nestico & Redick, LLC, 3412
20 West Market Street, Fairlawn, Ohio, commencing at
21 10:52 a.m., the day and date above set forth.
22

23

24

25



JOHNSON, MATTHEW W.
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Page 2

1 APPEARANCES:

2

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- and -

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JOHNSON, MATTHEW W.
07/06/2018

Page 3

1 APPEARANCES CONTINUED:

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13 ALSO PRESENT:

14

Ivan Bercian, Videographer

15

Rob A. Nestico, Esq.

16

John J. Reagan, Esq.

17

Robert Redick, Esq.

18

19

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21

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1 Q Okay. Do you know what potential class they
2 are representatives of?
3 A Class C.
4 Q No, you're Class C, right, sir?
5 A Yeah.
6 Q Okay. Do you know whether Naomi Wright, Member
7 Williams, or Thera Reid are purported
8 representatives or representatives of any other
9 classes?
10 A Yeah, I would assume so, but I ...
11 Q You don't pay attention to those?
12 A Yeah. I do what I'm told to, man.
13 Q Okay. Do you view yourself as a potential
14 member of the other classes in this case other
15 than Class C?
16 A No, I don't believe so.
17 Q In what -- in your -- what's your understanding
18 of what Class C is?
19 A I could have told you Tuesday when I reviewed
20 everything. But the fireworks just blew my
21 mind away. Sorry.
22 Q I hope we don't have a trial close to the
23 Fourth of July.
24 A I know.
25 Q Okay. So as you sit here today, can you

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1 describe for us what Class C is, who those
2 potential members are?
3 A I'm not going to lie to you.
4 Q I'm not asking you to lie. You're under oath.
5 I'm asking: What's your understanding of what
6 Class C is?
7 A I can't -- I can't -- I can't explain that to
8 you right now.
9 Q Do you think that a class representative has a
10 duty to understand what the class is?
11 A Yeah.
12 Q Is there some reason you don't?
13 A Because I'm just overwhelmed right now.
14 Q Overwhelmed with what?
15 A Just being here in general.
16 Q Okay. So do you think that a class
17 representative should be able to answer
18 questions in front of a jury and a judge or at
19 a deposition in order to represent the other
20 class members?
21 A If I had known I was able to bring my notes, I
22 would be fine.
23 Q Who told you you couldn't bring your notes?
24 A I didn't -- I didn't know. I didn't even think
25 about it. I just left them right on the

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1 counter.

2 Q Do you know whether you're allowed to bring
3 your notes up to the stand at trial?

4 A I don't know. Are you?

5 Q I'm asking you. Do you know if you are?

6 A I don't know.

7 Q Okay. Well, if you don't have your notes --

8 A I don't -- I don't usually get into these kind
9 of things, you know?

10 Q If you don't have your notes at trial, how are
11 you going to represent the class?

12 A Lots of studying.

13 Q Okay. But you didn't do the studying even
14 though you knew we were going to be asking you
15 questions about this today?

16 A I reviewed everything on Tuesday.

17 Q Did you know you forgot it already when you
18 walked in here?

19 A It was sitting on the counter when I left the
20 house, yeah, but I didn't think I was allowed
21 to bring them. Sorry.

22 Q Okay. But what I'm saying is as you left your
23 house to come here today, did you know you had
24 forgot the information you looked at several
25 days previous?

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1 A I didn't forget it. I left it there because I
2 didn't think I was allowed to have it. I
3 didn't know what the rules were.

4 Q The information that is written down in those
5 documents, did you know you had forgotten that
6 information when you left to come here today?

7 A Not intentionally. I mean, my mind is drawing
8 a blank because I'm not a very good test taker.

9 Q Okay. This isn't a test. We're asking you
10 what your allegations are against the
11 defendants and what your basis for those
12 allegations are, and you can't give us those
13 without your notes?

14 MR. PATTAKOS: Objection.

15 A I know what it is in layman's terms. All of
16 your other questions --

17 Q That's what I want to know.

18 A All your other questions --

19 Q What are layman's terms?

20 What are layman's terms of your
21 allegations against the defendants?

22 A This was discussed a long time ago.

23 Q What is your understanding in layman's terms --

24 A The --

25 Q -- of the allegations --

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1 than your name and -- well, let me ask you
2 this: What information did you provide to
3 Mr. Pattakos that is referenced in the
4 complaint, do you know? Information you
5 provided that he didn't already have.

6 A I think he already had everything he needed.

7 Q Do you happen to know where he got it?

8 A No.

9 Q Okay. By the way, what is your responsibility
10 as a class representative as it relates to
11 settlement? Do you know?

12 A I have that answer in my notes. Does that
13 help?

14 Q You do?

15 A Yeah.

16 Q Okay. That will. We'll take a look at those
17 notes and maybe come back then.

18 Why don't you turn to page 5. Well,
19 before you do, let me ask you another question.

20 Now, earlier you said you don't really
21 remember what Paul said to you, if at all,
22 regarding Liberty Capital other than pay it off
23 as quick as you can because of the interest.

24 Is that fair?

25 A Yes, sir.

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1 It's still not ethically moral.

2 Q Okay.

3 A If that's the right way to say it.

4 Q Well, do you know as a class representative
5 whether you can sue a lawyer for damages for an
6 alleged ethical violation as opposed to
7 actually being damaged financially?

8 A Like in a separate suit or?

9 Q In this suit.

10 A I don't know. I would have to review if that's
11 in my notes or not.

12 MR. PATTAKOS: We already won
13 the motion to strike on this, Tom.

14 Q Okay.

15 MR. PATTAKOS: We already won
16 this legal issue.

17 MR. MANNION: Stop it.
18 Please.

19 Q If this would have been a reasonable interest
20 rate and reasonable fees, are you saying your
21 only damage would be from the ethical part of
22 it?

23 A No, I'm not saying that at all.

24 Q Okay. If this was reasonable fees and
25 reasonable interest, what would your damage be?

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1 we?

2 A I would -- makes -- makes sense.

3 Q And what evidence did you have that KNR
4 defendants knew KNR clients would be unable to
5 repay their loans until their lawsuit resolved?
6 Did you have any?

7 A Yeah.

8 Q What was it?

9 A I don't remember, man. Like I said, I have
10 notes at home.

11 Q Okay. If you look at page 34, paragraph 124.
12 And in the middle of this, it says that the KNR
13 attorney stated "I am not endorsing or
14 recommending this transaction."

15 Did I read that correctly?

16 A Correct.

17 Q Okay. And is that the same as what occurred in
18 your case, they were not endorsing or
19 recommending the transaction, they put that in
20 the loan papers? Do you know?

21 A I don't remember.

22 Q Do you recall?

23 A I don't remember.

24 Q You're not sure?

25 A No, sir.