

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 17-cv-00210-RBJ

LIST INTERACTIVE, LTD. D/B/A UKNIGHT INTERACTIVE,
LEONARD S. LABRIOLA,

Plaintiffs,

v.

KNIGHTS OF COLUMBUS,

Defendant.

DEFENDANT'S MOTION FOR PROTECTIVE ORDER

Defendant Knights of Columbus (the "Order"), by Lewis Roca Rothgerber Christie LLP and pursuant to Fed. R. Civ. P. 26(c)(1), submits this motion for protective order due to Plaintiffs' unlawful intrusion into and misappropriation of the Order's membership information.

I. Reason for This Motion

On Friday, September 22, 2017, purporting to act under the authority of this Court, Plaintiffs sent an email to the Order's local councils (Exhibit A hereto) directing them to retrieve private membership information from the Order's computer systems and transfer it to UKnight via a newly created UKnight website with the name "courtdata." This was never the order of the Court, it is unlawful, and it must be stopped.

II. Certificate of Conferral Pursuant to Fed. R. Civ . P. 26(c)(1)

On Monday, September 25, 2017, the Order’s counsel spoke by telephone with Plaintiffs’ counsel and in good faith conferred with him in an effort to resolve this matter without court action. That effort was unsuccessful, making this motion necessary.

III. Background

A. The Court’s Discovery Order

On September 12, 2017, the Court held a telephonic discovery conference for the purpose of determining whether the stay of RICO discovery ordered at the scheduling conference should continue. (The transcript of that conference [ECF No. 72] is attached as Exhibit B.) Plaintiffs argued that, even though the Court dismissed their RICO claim, they should be allowed discovery of the Order’s “membership information” as relevant to the Order’s motive in allegedly breaching an oral contract and misappropriating trade secrets.

The Court pressed Plaintiffs’ counsel to specify what membership information he was seeking. He responded that “it’s just the individuals – the number of individuals and their names.” (Transcript at 10:21-24; *see also id.* at 11:11-12 (“just a spreadsheet that just lists by lodge this is the number, these are the names”).) After further discussion, the Court ordered “that the defendant produce to the plaintiff what he calls membership information, meaning the members of the local councils, a spreadsheet, a list . . . as it exists as of this date.” (*Id.* at 15:10-16.)

B. Email from Plaintiffs’ Counsel on Wednesday, September 20

Immediately after the discovery conference, Plaintiffs’ counsel telephoned the undersigned and said he would send an email stating what he believed the Order should produce

in response to the Court's order. He did so on Wednesday, September 20. His email (attached as Exhibit C) sought far more than what the Court ordered. It requested "every member name, council number, member number, state, phone number, and all 'billing' fields that can be selected for each member," as well as the "Council Statement Summary and Payment Coupon' for 2017 . . . with each field in .csv format" for every subordinate council in the United States and Canada.

C. Plaintiffs' Email to Local Councils on Friday, September 22

Shortly after midnight on Friday, September 22, 2017, Plaintiffs sent the following mass email, titled "Important Request for Council Information" (*see* Ex. A), to hundreds of the Order's local councils ("Mass Email"):

Dear Worthy Grand Knights and Financial Secretaries,

As you may know, UKnight Interactive and Supreme have a disagreement that is being resolved by the Federal District Court of Colorado: 17-CV-210-RBJ (D. Colo.) A major part of this disagreement is caused by UKnight's claim – a claim that Supreme denies – that Supreme requires councils to pay per capita assessments on members who have not paid dues to their local councils, members that local councils cannot remove from their per capita payment requirements.

This is extremely important to all councils, those who subscribe to UKnight and those who do not. The judge in our case has ordered Supreme to provide certain membership and dues information, and it is UKnight's job to use this information to illustrate the reality and impact of this problem. To meet this requirement, all councils are requested to provide the following information as soon as possible.

› Your July 1, 2017 Knights of Columbus Council Statement and Payment Coupon in PDF or JPG format. An example is attached.

› The number of 2017 Membership Cards issued by your council as of July 1, 2017. This should match the number of members whose 2017 dues were deposited in your bank as of July 1, 2017. It is important to be exact as these numbers may be randomly verified.

› The amount of your Council’s annual dues, your past due members and the amount owed by each.

To help Councils comply with this request, UKnight has created a secure system to make it quick and easy for you to provide your information. Please **CLICK HERE** to log into this system using your council number, your name, your phone number, the office you hold and your member number. Entries will not be accepted without your matching payment coupon from Supreme, so please have it on hand. This specifically designed system makes compliance with this request easier and more efficient for you, and the information easier to use.

Your input is very important, and we thank you for helping us work through this problem. If you have any questions or experience any difficulty, please call 720-288-8891.

Thank you.

UKnight Interactive

Leonard Labriola
UKnight Interactive
gcc@uknight.org

At the top of the following page of this motion is a screenshot of the login page of the UKnight website, <<https://kofcknights.org/courtdata/>>, created to “help Councils comply with this request.”

Four aspects of the Mass Email are particularly disturbing. *First*, the email comes from <mail@KofCKnights.org>. This is not, however, a Knights of Columbus email address or domain. Plaintiffs and their business associates registered the domain <kofcknights.org> to trade off the Order’s protected marks and goodwill, and confuse and deceive local councils into believing Plaintiffs are affiliated with the Order. (*See* Counterclaim [ECF No. 57] ¶¶ 57-85.)

Second, the Mass Email says the reason Plaintiffs want the data is because of “UKnight’s claim . . . that Supreme requires councils to pay per capita assessments on members who have not paid dues to their local councils,” and “it is UKnight’s job to use this information to illustrate

PLEASE LOG IN

Please enter the information below and click the "CONTINUE" button.

* indicates required entry

* Council Number:

* Membership Number:

* First Name:

* Last Name:

* Phone: -- (Area Code - Prefix - Number)

* Officer Title:

CONTINUE

the reality and impact of this problem.” (Ex. A.) But Plaintiffs have no such “claim” in this case. And Plaintiffs’ counsel said no such thing at the September 12 discovery conference. He instead offered a desire to prove “motive” as the reason for wanting the Order’s membership information in this contract case.¹

Third (and most disturbingly), the wording of the Mass Email is calculated to deceive local councils into believing this Court ordered *them* to turn over membership data to Plaintiffs. The Mass Email falsely states that the Court “has ordered Supreme to provide certain

¹ In Plaintiffs’ continuing effort to scandalize the Knights of Columbus and tortiously interfere with its relationship with members, the Mass Email also falsely suggests that the Order is hiding information about past-due members. It is not. Like any membership organization, including bar associations, the Order at any given time has a subset of members who are behind on their dues. The Order has policies and procedures that are well-known to every Grand Knight and Financial Secretary of every local council for encouraging dues payments, dealing sensitively with members in financial difficulty or in distress, and working to retain members.

membership *and dues* information”; implies the Court gave Plaintiffs a “*job* to use this information”; and then states, “To meet this requirement, all councils are requested to provide the following information as soon as possible.” (*Id.* (emphases added).) There is an upload link “[t]o help Councils comply with this request” and to “mak[e] compliance with this request easier and more efficient.” (*Id.*) The link itself is deceptively titled <<https://kofcknights.org/courtdata/>>.

Finally, the Mass Email encourages local councils to access the Order’s information systems, extract certain membership data, and turn it over to Plaintiffs. These are unauthorized intrusions into the Order’s confidential information systems, are plain violations of Knights of Columbus policy (discussed below), and may violate numerous state and federal laws.²

² *E.g.*: Trade secrets: C.R.S. § 7-74-102 (prohibiting acquisition of a trade secret by “improper means,” and prohibiting disclosure or use of a trade secret by a person (i) who used improper means to acquire it or (ii) who knew the trade secret was “acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use”); Conn. Gen. Stat. § 35-51 (same); 18 U.S.C. § 1836 (Defend Trade Secret Act, similar prohibitions). Data privacy: Conn. Gen. Stat. § 38a-988 (prohibiting “[a]n insurance institution” from “disclos[ing] any personal or privileged information concerning an individual collected or received in connection with an insurance transaction” except in defined circumstances such as with “written authorization of the individual”). Computer Fraud and Abuse Act: 18 U.S.C. § 1030(a)(4) (“Whoever . . . knowingly and with intent to defraud, accesses a protected computer without authorization, or exceeds authorized access, and by means of such conduct furthers the intended fraud and obtains anything of value . . . shall be punished . . .”). Stored Communications Act: 18 U.S.C. § 2701(a) (prohibiting “intentionally access[ing] without authorization” and “intentionally exceed[ing] an authorization to access” any “facility through which an electronic communication service is provided” and “thereby obtain[ing], alter[ing], or prevent[ing] authorized access to a wire or electronic communication while it is in electronic storage in such system”). Consumer protections: C.R.S. § 6-1-105 (prohibiting, among other things, “false representation as to the source, sponsorship, approval, or certification of . . . services,” “false representation as to affiliation, connection, or association with or certification by another,” and “false representation as to the characteristics . . . [or] uses . . . of . . . services . . . or a false representation as to the sponsorship, approval, status, affiliation, or connection of a person therewith”).

The Mass Email immediately sowed widespread confusion among local councils throughout the United States and Canada. Beginning early Friday morning, the Order has been inundated with urgent emails and phone calls about the Mass Email and supposed order of this Court. As of this filing, comments and questions have poured in from officers and members in North America, including Florida, Georgia, Illinois, Kansas, Mississippi, Missouri, Nevada, New Jersey, New Mexico, Oklahoma, Pennsylvania, Tennessee, Texas, Utah, Virginia, and Wisconsin in the United States, as well as Ontario and Saskatchewan in Canada. Many who contacted the Order plainly were misled into believing local councils were subject to a discovery order from this Court; others were confused about the source of the communication:

- “Assuming this is a nationwide order we will need to prepare instructions to the DDs [District Deputies] to handle these litigation requests. . . . How do you wish us to proceed on this matter especially compliance with the Court’s Discovery Order.”
- “If i read this correctly they are asking for all councils to provide the following information. If I reply with what they are asking am i disobeying any secrecy code i took as a Financial Secretary to keep our councils files secret to anyone not a member of our council? Also i did not receive a court order asking our Council to give up any information. Have you? Whats the deal?” (*Typographical errors preserved.*)
- “I am uncomfortable providing this to U-Knight unless Supreme tells us to or unless there is a Court order.”
- “Who is this coming from - Supreme or U-Knight Interactive?”
- “U Knight is requesting information as if it’s mandatory for the councils to do so.”
- “[I]s this a sanctioned request by our Supreme Council? I will not comply until I get your OK.”

The avalanche of telephone and email inquiries received by the Order compelled it to respond to its members and to act to protect its membership information from Plaintiffs' misappropriation. Late Friday afternoon, the Order sent this email (attached as Exhibit D):

This morning many of our Knights of Columbus Councils, Grand Knights and Financial Secretaries received an email sent from the address, "mail@kofcknights.org," and signed "Leonard Labriola, UKnight Interactive." That email contained misleading and false information, and that has caused substantial confusion and concern among our councils. In response to the numerous inquiries we have received, this office is writing you to clarify the misconceptions created by this email.

UKnight is a company that provides website and interactive services to a number of Knights of Columbus councils and agents. Its leader is Leonard Labriola. After Mr. Labriola and UKnight were unsuccessful in seeking to persuade the Knights of Columbus to endorse it as a "designated vendor" for the entire Order, they filed suit against the Order in January 2017. The Order has denied each of the claims alleged in their lawsuit, and it is vigorously defending the case. The federal court in Denver has already dismissed some of UKnight's claims.

Even though the email was sent from "mail@kofcknights.org," this is not a Knights of Columbus address. That email is not from the Knights of Columbus.

The email also misstates what the court ordered and implies that it gave UKnight a "job" to collect membership information from you and that your council is under a "requirement" to provide information to UKnight. This is false. Do not comply with this request. It was not made or authorized by the Knights of Columbus, and it is not an order of the court.

Knights of Columbus membership information is confidential. Financial Secretaries see and affirm the following statement every time they seek access to this information:

By clicking 'I Agree' I certify that I am a member in good standing with the Knights of Columbus and will not copy, merge, disseminate, distribute, transmit or make available the enclosed reports to anyone not involved with the Knights of Columbus or to anyone for non-Knights of Columbus-related business and I will take the appropriate measures to protect the information. These materials are solely intended for the use of Knights of Columbus officers in the conduct of Knights of Columbus business.

Unauthorized distribution or reproduction for non-Knights of Columbus business is strictly prohibited.

If you have any questions or information about this matter, please contact inquiries@kofc.org.

This email immediately made its way to Plaintiffs' counsel, who immediately responded with an email to the undersigned (attached as Exhibit E) alleging "witness tampering." His email also boasted that much damage had already been done: "many councils have submitted information to UKnight as requested," and "numbers are still coming in."

Plaintiffs' strategy is plain: get some kind of order from this Court ever-so-tenuously connected to their contract and business tort claims, misrepresent the Court's order in a mass communication as "requir[ing]" local councils to "comply" with Plaintiffs' unauthorized data requests, and then use that data for improper purposes unconnected to their actual claims in this case.

D. Plaintiffs' Unauthorized Access of the Order's Member Database

The Order is very concerned that Plaintiffs may have breached the Order's data security and accessed its member database without authorization.

Attached to the September 20 email from Plaintiffs' counsel (Ex. C) was a screenshot of the Order's Member Management/Member Billing database ("Member Database"). This is the Order's own database containing information about its members, including names, phone numbers, residential and business addresses, email addresses, membership status, disability

status,³ and dues balances. This information is personally identifiable, private and sensitive, and protected by numerous federal and state laws. Due to the sensitivity of this information and related legal protections, the Order carefully restricts access to the Member Database to certain individuals within the Order, and limits how the information can be used. At the local council level, access is restricted to the council's Grand Knight (the president) and Financial Secretary (the clerk of the membership roster).

The screenshot attached to the September 20 email (and reproduced in Exhibit C) indicates Plaintiffs may have obtained access to the Member Database and to private personal information of members. Indeed, Plaintiffs' counsel stated in his email, "*I've done some testing, and the .csv files that result should be very manageable.*" (Ex. C (emphasis added).)

Neither Plaintiffs nor their counsel is authorized to access the Order's Member Database. It appears they gained improper access, perhaps through a Grand Knight or Financial Secretary of a local council. No Grand Knight or Financial Secretary has authority to grant such access, and they are strictly prohibited from doing so by Knights of Columbus policies that safeguard the Order's information systems as well as the personal and financial information of members, including (1) the "Acceptable Use Policy" (copy attached as Exhibit F),⁴ (2) the "Officers' Desk

³ Under § 118(e) of the Order's Laws, dues are waived for "[a]ny member who is disabled by bodily injuries or disease and is thereby prevented from engaging in any occupation or employment."

⁴ See in particular section 4.2 (prohibiting attempts to hack or gain unauthorized access to the Order's information systems), section 4.6 (prohibiting use of the Order's information systems for advertisements, solicitations, promotions, or "any other unauthorized use"), and section 6.0 (prohibiting "unauthorized access to Knights of Columbus Information Resources," "unauthorized disclosure of Personal Information of individuals," "using codes, accessing files, or retrieval of any stored communication, unless prior authorization is received," and use of the

Reference” (pertinent provisions attached as Exhibit G),⁵ and (3) the Order’s “Guide to Information Security” (attached as Exhibit H).⁶ In addition, whenever an authorized user accesses or retrieves membership information through the Order’s secure web portal, he is specifically advised, “These materials are solely for the use of Knights of Columbus officers and members in conducting Knights of Columbus business. Distribution or reproduction for non-Knights of Columbus business is strictly prohibited.” As noted in the Order’s corrective email on Friday (Ex. D), the user is also required to affirm, when accessing or downloading the membership roster, that he will not “copy, merge, disseminate, distribute, transmit or make available the enclosed [membership] reports to anyone not involved with the Knights of Columbus or to anyone for non-Knights of Columbus-related business,” and “will take the appropriate measures to protect the information.”

With these latest tactics, Plaintiffs have gone beyond histrionic pleadings and contrived conspiracy theories. They now may have breached the Order’s information systems and

Order’s information systems for “illegal, fraudulent or unethical conduct”). The Acceptable Use Policy also contains a “Written Information Security Policy” (section 4.14) with specific protections for “Personal Information” contained in the Order’s information systems.

⁵ The Officers’ Desk Reference requires local councils and their officers to “safeguard their membership information and financial information, taking reasonable measures to ensure that such information is not improperly disclosed or misused.” It also prohibits publication or disclosure of membership and financial information “in hard copy or electronic/digital format (email, website, social media), unless required for ordinary fraternal business, and only the minimum amount of information should ever be disclosed.” If “personally identifiable information needs to be transmitted or distributed electronically, the information should be encrypted.”

⁶ The Guide provides that “[a]ll client information available over the Internet is privileged and confidential, and can not be shared with anyone not authorized to view,” and that “[a]ll Knights of Columbus agents, members and employees are expected to respect the confidentiality of private and proprietary information.”

unlawfully acquired private membership data. And they have tricked local councils and officers into assisting them by misrepresenting a discovery order of this Court.

IV. Relief Sought

The Court should enter a protective order requiring Plaintiffs to cease representing themselves as acting under the Court's authority, and to cease receiving membership information or data provided as a result of the Mass Email. Additionally, Plaintiffs should be ordered to disclose all information and data obtained in connection with the Mass Email (or any other unauthorized means), to destroy all copies thereof in any form, and to certify to the Order and the Court that they have done so.

Also, in light of the facts and circumstances recited above, the Order urges reconsideration of the Court's discovery order of September 12. Plaintiffs obtained that order under the pretense of relevance. But as the Mass Email makes clear, Plaintiffs intend to use such discovery for improper purposes unconnected to their contract and business tort claims, including tortiously interfering with the Order's relationships with members. Moreover, the Court did not have the benefit of briefing and argument on the substantial privacy and First Amendment interests at stake when a religiously based fraternal benefit society like the Knights of Columbus is ordered to turn over its membership list – interests that are only heightened by Plaintiffs' latest hostile actions. *See NAACP v. Alabama*, 357 U.S. 449, 462 (1958) (“It is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute . . . a restraint on freedom of association”); *In re First Nat'l Bank, Englewood, Colo.*, 701 F.2d 115, 118-19 (10th Cir. 1983) (reversing enforcement order and remanding “for an evidentiary hearing to consider petitioners' First Amendment claims” due to the “[t]he

chilling effect of a summons served by an IRS agent to obtain membership records”); *Andersen v. United States*, 298 F.3d 804, 810 (9th Cir. 2002) (“Membership lists have a long and unique history in our constitutional jurisprudence The concern for the protection of the right of free association, and the ability to maintain one’s privacy in that association, is especially present in political, economic, and religious organizations”).

DATED: September 25, 2017.

Respectfully submitted,

s/ Edward A. Gleason _____

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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of September 2017, a copy of the foregoing was filed with the Clerk of the Court using the CM/ECF System, which will send notification to the following:

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s/ Arlene Martinez
Arlene Martinez