

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 2017-CV-210-RBJ

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

Plaintiffs,

v.

KNIGHTS OF COLUMBUS,  
THOMAS P. SMITH, JR.  
MATTHEW A. ST. JOHN,

Defendants.

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**RESPONSE TO DEFENDANT’S MOTION FOR PROTECTIVE ORDER**

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Plaintiff List Interactive, Ltd., d/b/a UKnight Interactive (“UKnight”), files this Response (“Response”) in Opposition to Defendant’s (“KC Inc.”) Motion for Protective Order (“Motion”), and in opposition thereto states as follows:

**ARGUMENT**

The parties are at odds as to whether Plaintiff should be permitted to obtain information from local councils of the Knights of Columbus concerning (1) how many members does KC Inc. count toward its membership and require each local council to make per capita payments for, compared to (2) how many individuals actually pay dues to the local councils or have otherwise earned a membership card<sup>1</sup> and therefore qualify as members. Plaintiff alleges that KC Inc. is dramatically inflating its membership numbers in order to defraud its customers, insurance ratings agencies, and UKnight, and

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<sup>1</sup> Members can earn their membership card without paying dues through disability or by being inducted as an Honorary Life Member after age 65 following 25 consecutive years of membership. See **Exhibit 2**, Constitution and Bylaws, at p. 50 § 118(e) and p. 49 § 118(c).

that it cancelled its contract with UKnight and stole its trade secrets in an attempt to cover up this fraud. Defendant says no such thing is occurring. Fortunately for the Court, there is a simple and efficient means to definitively prove or disprove Plaintiff's allegations: get these numbers. Accordingly, Plaintiff obtained the Court's permission and told opposing counsel exactly how Plaintiff intended to collect this information:

THE COURT: Okay. So you're talking about every Tom, Dick, and Harry who's affiliated with the Knights. That would be the 40 or 50 people in Bozeman, Montana that belong to the Knights of Columbus lodge and every other –

MR. VAIL: Yes. And frankly, just a spreadsheet that just lists by lodge this is the number, **these are the names, so we can contact that lodge, for example, and say are these people actually members? Do they actually pay dues, or have you been forced by headquarters to pay dues for them despite the fact that they are no longer paying dues to you?**

THE COURT: Okay. So you get this list of thousands of names. Then how are you going to find out if they – each of them pays dues?

MR. VAIL: We have numerous contacts with the individual local councils. **We would contact them and ask for -- they have what's called membership secretaries in each local council, and ask them for their internal records, are these the people you have as members, and have they, in fact, paid dues to you.**

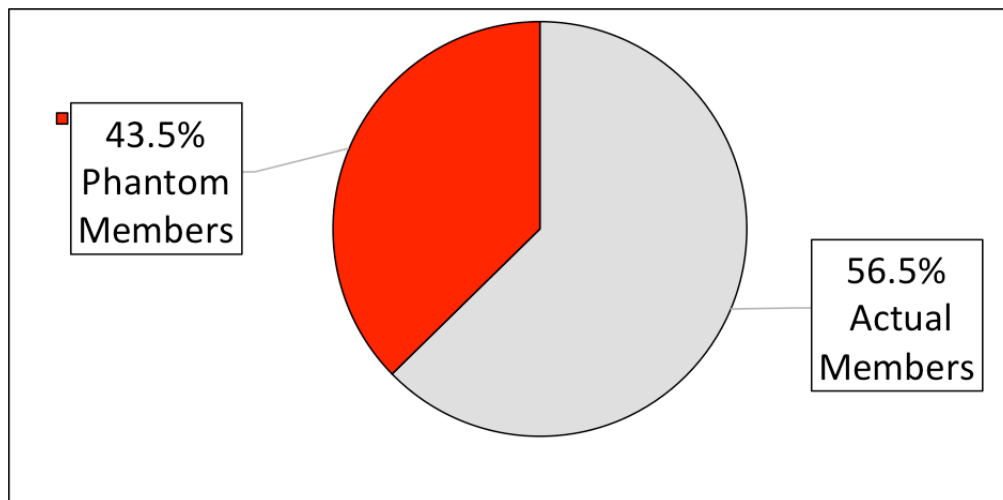
. . .

THE COURT: The Court's order is that the defendant produce to the plaintiff what he calls membership information . . . You produce it to Mr. Vail, and we'll see if Mr. Vail can do something with it or not. I'm skeptical.

But if what he says is true, and 20 to 40 percent of the members actually aren't even paying dues and are just phony names that are being kept on the system to shore up ratings . . . then he's got something, and I'll let him have at least this much of a head start to see if he can do something with it.

Transcript of September 12, 2017 Telephonic Hearing at 11:7-25, 15:10-25, *attached hereto* at **Exhibit 1** (emphasis added).

While (still) waiting on Defendant to produce its data, Plaintiff informally requested exactly this data from the approximately 1,000 local councils that are currently subscribers to the UKnight system, and with whom Plaintiff currently has an ongoing business relationship. *See Exhibit A* to Motion. The initial information received, covering several thousand members, strongly confirmed what Plaintiff has alleged. According to this objective data Defendant is, in fact, fraudulently inflating its membership numbers in excess of 43%, and that Defendant is extorting dues from local councils based on these inflated membership numbers:



**Figure 1: Chart of Phantom Member – 1037 of 2382 (43.5%) “members” from responsive councils do not pay dues, cannot participate in council meetings or events, and do not have membership cards, but local councils must still pay per capita dues on these “members” to Defendant. “Honorary Life Members” who do not pay dues (and are not required to) are counted as actual members in this graph. All supporting payment coupons as provided to Plaintiff by local councils attached as exhibits to Motion for TRO.**

Individuals who have not paid dues for more than 3 months, according to the Constitution and Bylaws of the Knights of Columbus, *ipso facto* forfeit their membership. *See Exhibit 2* at p. 69 § 168 (Constitution and Bylaws). Defendant now suggests that it’s Constitution and Bylaws, reaffirmed by it in 2016, don’t actually apply *in this case*, but

that it is free here to instead follow unspecified other “policies and procedures” on removing members. Motion at 5 n.1. What criteria *other than a Defendant’s own Constitution and Bylaws* would one use to determine who is and who is not a member in an organization? For-profit corporations have shareholders to keep their management in check. Tax-exempt entities like the Defendant, however, have no shareholders, which is why all states require such entities to have written bylaws, with which management must comply. If the KC Inc. Board of Directors wanted to open membership to all Catholics, not just “practical Catholics,” or to relax its membership requirements to remove the *ipso facto* forfeiture of membership for failure to pay dues on time, it could have done so by amending its Constitution and Bylaws. It has not done so—in fact, it amended *and* reaffirmed its current Constitution and Bylaws as recently as 2016.

Defendant must be held to its own Constitution and Bylaws, rather than be allowed to pick and choose its own governing requirements based on what best suits its current defense theory. Individual dues are due in January, so all individuals who have not paid dues as of the responses received following Plaintiff’s September 22, 2017 email are well over 3 months late (in most case unpaid for several years), and by automatic action of the Bylaws of the Order, are no longer members. Before being prohibited from doing so by Defendant, councils sent Plaintiff records showing individuals whose dues are as much as 10 years overdue, but Defendant has refused permission to remove these members. Defendant continues to count them as members in order to inflate their membership numbers.

Defendant, concerned that the data *they know will reveal their fraud* was being produced to Plaintiff by local councils, immediately cried foul and filed their Motion for

Protective Order to salvage their defense. They claimed that Plaintiff's email was deceptive, and that the information sought was confidential information belonging to the Knights of Columbus that was not subject to discovery. While neither claim is true,<sup>2</sup> Defendant's actions—and their witness tampering by ordering their local councils not to provide this information—was but an obvious smokescreen meant to obscure the damning nature of their own data. Indeed, Plaintiff requested the most objective information possible from the broadest available set of sources, knowing that it could either validate Plaintiff's or Defendant's position. The data produced so far is powerful validation of Plaintiff's allegations. One must ask, if the Defendant actually believed the objective data would support its position, *why didn't it encourage production of this data?*

In fact, the responses received by Plaintiff from local councils clearly show that they are aware of Defendant's fraud, but are being extorted by KC Inc. to go along with it or risk sanctions from their own order! For example:

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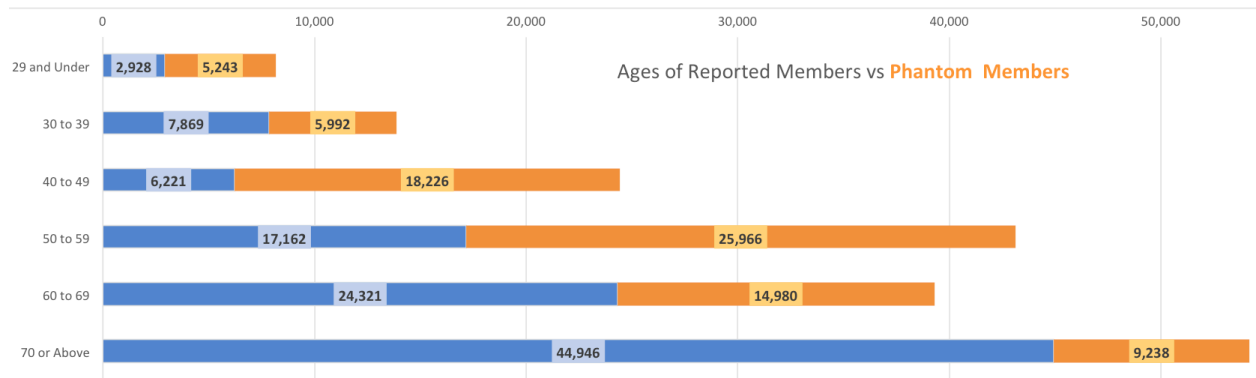
<sup>2</sup> Defendant argues Plaintiff's email, **Exhibit A** to Motion, was deceptive. The email came from mail@kofcknights.org, the exact same email address Plaintiff has used for all of its communications with local councils over the past 7+ years—Defendant has never complained before about this being deceptive, and local councils are well aware that this email comes from UKnight, not Defendant. Indeed, it was signed “Leonard Labriola, UKnight Interactive.” Also contrary to Defendant's arguments, the email requested the exact membership and dues information Plaintiff's counsel *discussed with the Court and Defendant* in the September 12<sup>th</sup> teleconference, **Exhibit 1**, accurately represented that it is “UKnight's job” to prove its claims (which Plaintiff pointed out “Supreme denies”), and states simply that “all councils are requested” to provide Plaintiff with this information, never stating that the local councils are under Court Order to do so. **Exhibit A** to Motion. Of the over 2,000 individuals who received Plaintiff's email, only one appears to have believed this was a Court Order, Motion at 7, and the other inquiries quoted by Defendant clearly show that they understand this is a voluntary request, stating “I will not comply unless I get [Defendant's] OK,” or “unless there is a Court Order.” *Id.* (emphasis added).

- 9/26/17 Email from George Lawshe, former Treasurer for two local councils: “I have received your emails concerning the members that don’t pay dues. As a Treasury for two councils for many years, I agree with you. It is a major problem that everyone ignores.” **Exhibit 3.**
- 9/26/17 Email from Georges Montillet, former Grand Knight of a local council: “I can personally testify that the Knights of Columbus membership retention strategies are unethical. We had a very serious situation where a member was dealing with mental illness. The member’s psychiatrist recommended that the member withdraw from a whole host of commitments in order to focus on wellness. The member requested verbally to be removed from membership . . . Supreme would not allow us to take any shortcuts on their long, excessively complicated set of procedures for removing members. This procedure is so long and tedious that . . . it takes several years before Supreme will allow the council to drop a member. Yes, the council is forced to pay dues for members who have withdrawn from the Knights of Columbus for as long as Supreme refuses to acknowledge that member’s withdrawal.” **Exhibit 4.**
- 9/22/17 Email from Bob Ippoliti: “There is no question in the fact that Supreme and State of Fl. are charging, and have been charging for per-capita taxes on members who have not paid dues. In my Council I have members who have never paid dues for as long as 10 years, yet we cannot suspend nor drop them for any reason.nor will they. It is totally out of context. State of Fl. and Supreme last year told me not to carry a balance due in a members account. But rather clear all account balances before the next billing cycle. I didn’t. At present this council has a balance of close to \$20,000.00 in delinquent dues amounts.” **Exhibit 5** (typographical errors preserved) (emphasis added).

These emails from council leaders make a critical point—these are not simply members that are a bit “behind on their dues,” as Defendant suggests, Motion at 5 n.1, but people the local councils are actively trying to remove because they have left the Order, and whom Defendant will not permit them to remove. *See Exhibit 4* (“the council is forced to pay dues for members who have withdrawn from the Knights of Columbus for as long as Supreme refuses to acknowledge that member’s withdrawal”).

Not only does the limited data already received validate Plaintiff’s allegations of fraudulent membership inflation, but it also shows that these “phantom members” falsely

reported by Defendant average over 11 years younger than the average age of its actual members:



**Figure 2: Age Breakdown of Actual (blue) v. Phantom Members (orange). Total bar length reflects reported members (Actual + Phantom Members). Data shows an average age of phantom members 53.55 years, compared to an average age of actual members of 64.8 years. Age data derived from membership data received from local councils that are also UKnight subscribers (where UKnight already has age data for each reported member), with percentages then extrapolated and applied to all 183,000 reported members by councils that subscribe to the UKnight system.**

There are two possible explanations for the age discrepancy in Figure 2: it is either an amazing coincidence that the phantom members happen to dramatically lower the average age of Defendant’s overall membership (and thereby improve the characteristics of its insurance risk pool), or it is evidence that Defendant is intentionally skewing its demographics by keeping younger members on the books after they stop paying dues. Perhaps unsurprisingly, in a last-ditch effort to conceal these truths, Defendant in its Motion now goes so far as to ask the Court to order Plaintiff to “destroy all copies” of this information that proves Defendant’s fraud! Motion at 12.

Next, Defendant suggests that Plaintiff, or at least the local councils that responded to Plaintiff’s email, somehow hacked into Defendant’s computer system and stole this information. *See* Motion at 6 n.2 (suggesting Stored Communications Act violation). In fact, the membership and dues information is collected and owned by the

local councils—they do report this information to Defendant, but it is not *owned* by Defendant. Even if this information were legitimately confidential and owned by Defendant, however, the solution to any privacy concerns would be to protect the information from public disclosure as confidential, not to require Plaintiff to “destroy” relevant evidence received from third-party witnesses. Motion at 12. If Defendant’s hacking claims are anything more than a red herring, then they could certainly file lawsuits for violations of the Stored Communications Act against the local council leaders that provided Plaintiff with this data. They have not, and will not, do so, because the arguments raised by Defendant are not genuine grievances, but rather a ploy to attempt to block disclosure of information that proves their own fraud.

Lastly, Defendant tries to turn this into a First Amendment issue, suggesting that membership information in an organization engaged in advocacy is specifically protected from disclosure. However, identifying the glaring discrepancies between membership numbers reported by Defendant with the number of members who actually pay individual dues in no way creates “a restraint on freedom of association.” Defendant’s argument that revealing membership in an organization involved in advocacy presents a First Amendment concern could only make sense if there was a realistic fear that members would be discriminated or retaliated against in their workplace or community by virtue of being *unmasked as members of the Knights of Columbus*, creating a chilling effect on its membership. This is not a realistic concern. Regardless, if the Court and Defendant would feel more comfortable protecting membership names and other identifiable information as “confidential” and guarded from public disclosure, Plaintiff would have no objection to that. Indeed, several weeks ago Plaintiff proposed a draft confidentiality



agreement to Defendant that would do exactly this, protecting all individually identifiable information, among other things.

From the beginning, Plaintiff's request has been clear: Plaintiff simply wants the data discussed in the Transcript of the September 12 Teleconference, **Exhibit 1**, because it proves the fraud alleged, and therefore the motive for all of Defendant's wrongful actions. Despite the creative set of pretextual arguments Defendant advances, its Motion for Protective Order amounts to nothing more than a request for the Court to help it continue to cover up its fraud. But the information sought by Plaintiff is fundamentally relevant to the instant claims, and therefore clearly discoverable. The basic purpose of discovery in civil litigation is to lay bare the facts so that the trier of fact can reach a conclusion based on all of the relevant evidence. Plaintiff simply requests that this process be allowed to play out.

WHEREFORE, Plaintiff respectfully requests this Court DENY Defendant's Motion for a Protective Order, and provide a neutrally-worded Court Order to be sent to all local councils to obtain information on membership numbers and dues status for each member reported.

Submitted 10 October 2017.

*/s/ Jeffrey S. Vail*  
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ATTORNEY FOR PLAINTIFF

## CERTIFICATE OF SERVICE

I hereby certify that on October 10, 2017, the foregoing **RESPONSE TO DEFENDANT'S MOTION FOR PROTECTIVE ORDER** was filed with the Court via the CM/ECF system and served via E-Mail all defense counsel listed with CM/ECF for this case.

*/s/ Jeffrey S. Vail*