

2006

Jayson Orvis v. Jamis M. Johnson : Brief of Respondent

Utah Court of Appeals

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IN THE SUPREME COURT OF UTAH

JAYSON ORVIS,

Plaintiff and Respondent,

vs.

JAMIS M. JOHNSON,

Defendant and Petitioner.

)
)
)
) Supreme Court Case No.
) 20061094-SC
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ADDENDUM TO BRIEF OF RESPONDENT

ON WRIT OF CERTIORARI TO THE UTAH COURT OF APPEALS AFFIRMING
JUDGMENT BY THE THIRD JUDICIAL DISTRICT COURT, THE HONORABLE
TIMOTHY R. HANSON PRESIDING

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FILED
UTAH APPELLATE COURTS
MAY 14 2007

ADDENDUM TO BRIEF OF RESPONDENT

Tab	Record	Description
1.	N/A	Redline version of November 1, 2004 amendment to Utah Rule of Civil Procedure 56.
2.	2395-2484	Transcript of Deposition of Jamis M. Johnson in <u>United States v. Johnson</u> , Case No. 2:95-cv-838W (relevant portions submitted below as Exhibit 5 to Affidavit of Jayson Orvis, and complete transcript submitted below as Exhibit 1 to Affidavit of Jamis Johnson).
3.	2513	Assignment of Judgment from All Star Financial, LLC to Jayson Orvis (submitted below as Exhibit 17 to Affidavit of Jamis Johnson).
4.	2266-83	Affidavit of Jamis Johnson in Support of Jamis Johnson's Memorandum in Opposition to Jayson Orvis' Motion for Summary Judgment (without attached exhibits).
5.	2608-10	Corrections Supplementing Memorandum of Jamis Johnson in Opposition to Jayson Orvis' Motion For Summary Judgment, and Supplementing Affidavit of Jamis Johnson.
6.	2619-22	Minute Entry, dated 10/20/04.
7.	2630-32	Judgment, dated 11/23/04.
8.	2623-29	Findings of Fact and Conclusions of Law, dated 11/23/04.

Tab 1

1 Rule 56. Summary judgment.

2 (a) For claimant. A party seeking to recover upon a claim, counterclaim or cross-claim or to
3 obtain a declaratory judgment may, at any time after the expiration of 20 days from the
4 commencement of the action or after service of a motion for summary judgment by the adverse
5 party, ~~move with or without supporting affidavits for a summary judgment in his favor upon all~~
6 or any part thereof.

7 (b) For defending party. A party against whom a claim, counterclaim, or cross-claim is
8 asserted or a declaratory judgment is sought, may, at any time, ~~move with or without supporting~~
9 ~~affidavits for a summary judgment in his favor as to all or any part thereof.~~

10 (c) Motion and proceedings thereon. The motion, memoranda and affidavits shall be filed
11 ~~and served in accordance with CJA 4-501 Rule 7.~~ The judgment sought shall be rendered if the
12 pleadings, depositions, answers to interrogatories, and admissions on file, together with the
13 affidavits, if any, show that there is no genuine issue as to any material fact and that the moving
14 party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in
15 character, may be rendered on the issue of liability alone although there is a genuine issue as to
16 the amount of damages.

17 (d) Case not fully adjudicated on motion. If on motion under this rule judgment is not
18 rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the
19 hearing of the motion, by examining the pleadings and the evidence before it and by
20 interrogating counsel, shall if practicable ascertain what material facts exist without substantial
21 controversy and what material facts are actually and in good faith controverted. It shall
22 thereupon make an order specifying the facts that appear without substantial controversy,
23 including the extent to which the amount of damages or other relief is not in controversy, and
24 directing such further proceedings in the action as are just. Upon the trial of the action the facts
25 so specified shall be deemed established, and the trial shall be conducted accordingly.

26 (e) Form of affidavits; further testimony; defense required. Supporting and opposing
27 affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible
28 in evidence, and shall show affirmatively that the affiant is competent to testify to the matters
29 stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit
30 shall be attached thereto or served therewith. The court may permit affidavits to be supplemented
31 or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for

32 summary judgment is made and supported as provided in this rule, an adverse party may not rest
33 upon the mere allegations or denials of ~~his~~the pleadings, but ~~his~~the response, by affidavits or as
34 otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue
35 for trial. ~~If he does not so respond, summary~~ Summary judgment, if appropriate, shall be entered
36 against ~~him~~ a party failing to file such a response.

37 (f) When affidavits are unavailable. Should it appear from the affidavits of a party opposing
38 the motion that ~~he~~the party cannot for reasons stated present by affidavit facts essential to justify
39 ~~his~~the party's opposition, the court may refuse the application for judgment or may order a
40 continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had
41 or may make such other order as is just.

42 (g) Affidavits made in bad faith. ~~Should it appear to the satisfaction of the court at any time~~
43 ~~that~~If any of the affidavits presented pursuant to this rule are presented in bad faith or solely for
44 the purpose of delay, the court shall forthwith order the party ~~employing~~presenting them to pay
45 to the other party the amount of the reasonable expenses which the filing of the affidavits caused
46 ~~him to incur~~, including reasonable attorney's fees, and any offending party or attorney may be
47 adjudged guilty of contempt.

48

Tab 2

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF UTAH

-oOo-

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Case No. 2:95-cv-838W
)	
vs.)	Deposition of:
)	JAMIS M. JOHNSON
JAMIS M. JOHNSON,)	
)	
Defendant.)	

-oOo-

BE IT REMEMERED that on the 17th day of November, 1999, the deposition of **JAMIS M. JOHNSON**, produced as a witness herein at the instance of the Plaintiff, in the above-entitled action now pending in the above-named court, was taken before Jerry Martin, Registered Professional Reporter and Notary Public in and for the State of Utah, commencing at the hour of 11:00 a.m. of said day at the Federal Building, 125 South State Street, Room 2231, Salt Lake City, Utah

ORIGINAL

A P P E A R A N C E S

For the Plaintiff: JOHN S. GYGI
ATTORNEY ADVISOR
SPECIAL ASSISTANT U.S. ATTORNEY
125 South State Street
Room 2231
Salt Lake City, Utah 84138-1195

For the Defendant: JAMIS JOHNSON, ESQ.
220 South 200 East, #110
Salt Lake City, Utah 84111

Also Present: Sharlene Miller

I N D E X

Witness

JAMISON M. JOHNSON

<u>EXAMINATION BY</u>	<u>PAGE</u>
Mr. Gygi	3

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
1	Tax documents	11

1 P R O C E E D I N G S

2 JAMISON M. JOHNSON

3 was called as a witness, having been first duly sworn,
4 was examined and testified on his oath as follows:

5 EXAMINATION

6 BY MR. GYGI:

7 Q. Let me just note for the record this was
8 scheduled for 9:30. We're now starting at 11:00.

9 Mr. Johnson, will you state your full
10 name for the record.

11 A. Jamis Johnson.

12 Q. Do you have a middle name?

13 A. Melwood, M-e-l-w-o-o-d.

14 Q. what's your wife's full name?

15 A. Preliminarily, let's get a few things on
16 the record if we could. Could we get the appearances
17 of everybody? There's somebody I don't know across
18 the table.

19 Q. This is Sharlene Miller, my paralegal.

20 A. Okay. And John Gygi, the court reporter,
21 Jamison Johnson. A couple other things. It's 11:00.
22 We communicated on the telephone about 9:45, and
23 pursuant to that agreement I am here at the 11:00
24 hour, although I was late for the 9:30 hour. Okay.

25 Q. What's your wife's full name?

3

1 A. Danell, D-a-n-e-l-l, Johnson.

2 Q. Where do you currently reside?

3 A. 1408 Military Way, Salt Lake City. You
4 know, there's a couple other things I want to get on
5 the record too, John, if I may. I've looked at the
6 subpoena, and probably at the outset I should let you
7 know some of the objections that I have to the things
8 that were subpoenaed.

9 The subpoena asks me for a variety of
10 documents of the Johnsons. To my knowledge, there
11 are no documents where the Johnsons are listed
12 together, so anything that calls for documents of the
13 Johnsons, unless I can specifically determine that we
14 are jointly on a document, I would object to
15 providing that because, well, I guess I'm not the
16 custodian of them, and they don't exist. Secondly,
17 with regard to the request for the taxes of the
18 Johnsons, again we don't have joint taxes.

19 Q. Well, the definition says, "Johnsons
20 shall refer to Jamis M. Johnson and Danell Johnson
21 individually and collectively."

22 A. Okay. So in pursuance of that objection
23 I'm not the custodian of Danell Johnson's taxes.
24 Secondly, they were all subpoenaed and she provided
25 them to you at an earlier hearing. You've had them

1 before.

2 Q. Well, I don't have the 1998s.

3 A. And the 1998s aren't prepared yet.

4 Q. Actually, I don't have any executed and
5 filed copies.

6 A. You have the documents. She testified
7 those were the documents that were sent in, so you
8 have the copies, and she also testified at the time
9 under oath that she signed the ones you had and sent
10 them in.

11 Q. Well, she didn't testify that she's sent
12 them in. Nobody has been able to tell me you guys
13 have actually filed your taxes.

14 A. That's just simply not true as I look at
15 the deposition. If you think she didn't send those
16 in, then we'll get an affidavit saying that she sent
17 those in. You have the taxes. She testified she
18 signed them. If you have a question, subpoena the
19 IRS or get an affidavit from her. But you have
20 everything you've asked for. I'm not the custodian
21 of her taxes. However, I will tell you that these
22 aren't filed yet or finished.

23 Q. Whose '98s aren't filed?

24 A. Danell Johnson's '98 is not filed and
25 mine aren't filed. It's 1999. We haven't got them

1 filed yet.

2 Q. You haven't filed your tax return for the
3 fiscal year 1998?

4 A. No, but it's being worked on.

5 Q. They were due, so they're past due,
6 right?

7 A. No. I don't know if they're past due or
8 not.

9 Q. Well, everything is due by August even
10 with an extension.

11 A. I don't work for the IRS and you don't
12 work for the IRS. I have someone preparing my taxes.
13 If you want to get a legal opinion saying my '98
14 taxes are due, go ahead. I'm telling you I don't
15 believe they are due, and I've filed appropriate
16 extensions, and they're being worked on by a tax
17 preparer.

18 With regard to the other documents, you
19 know, I basically object to providing anything that
20 is in the possession of anybody else. I can't be
21 compelled to provide things for Danell Johnson.

22 Now, having objected in that fashion, I
23 will try to go ahead in good faith and answer your
24 questions.

25 Q. All right. We'll talk about some of this

1 stuff as we go along. Is that all right?

2 A. Sure.

3 Q. What's your occupation?

4 A. Lawyer/businessman.

5 Q. Are you self-employed?

6 A. Yeah.

7 Q. You don't work for anybody else?

8 A. No. I should correct that. I don't know
9 exactly what you mean. Occasionally I will be
10 employed by a corporation. I don't have anybody who
11 gives me a W-2.

12 Q. Are you hired as an attorney to do legal
13 work for anyone else?

14 A. Yeah. Recently I've been hired more and
15 more as an attorney to do legal work, yeah.

16 Q. But you're not hired as an employee of
17 the entity.

18 A. I don't think I'm listed anywhere as an
19 employee. I may have been at one time by Everett
20 James Corporation, but I don't think I am now.

21 Q. Do you have an office?

22 A. Yeah.

23 Q. Where is it located?

24 A. 220 South 200 East, #110.

25 Q. Do you rent that space?

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A. Yes.

Q. From whom?

A. William Koo.

Q. Does he own the Chancellor Building there?

A. I don't know.

Q. You just pay rent to William Koo?

A. Yeah. He's like been on the side managing the property. Whether he owns it or manages it, I don't know.

Q. How much per month?

A. One hundred seventy-five dollars.

Q. One hundred seventy-five dollars per month?

A. Mm-hmm, yes.

Q. And who pays that rent?

A. I think right now -- let's see. I have paid it. Wasatch Credit paid it for a long time. Lender's Title paid it. It was a company I owned. Wasatch Credit was a partner of mine until recently.

Q. Who pays it right now?

A. I do.

Q. Out of what account?

A. Well, I gave them cash, I think, last month, but I have an account.

1 Q. Do you have any affiliation with Wasatch
2 credit?

3 A. I did.

4 Q. Do you currently?

5 A. I am their attorney on some foreclosures,
6 and I think I represent them -- I may represent them
7 at a piece of litigation. And briefly I owned a
8 promissory note with one of the principals. I owned
9 a trust deed and note with one of the principals.

10 Q. What are the names of all your children?

11 A. I don't think that's relevant. If you
12 want to tell me how it's relevant to collection,
13 I'll --

14 Q. It's relevant to your overall financial
15 responsibilities and --

16 A. Well, I'm not going to tell you.

17 Q. Well, how many children do you have?

18 A. Five.

19 Q. Is Clark the oldest one?

20 A. I'm not going to answer any questions
21 about my children. I mean, I'll tell you what I pay
22 out for children, but I'm not going to give you --

23 Q. Does Clark live at home?

24 A. I'm not going to identify any of my
25 children. All of my children live at home currently.

1 Q. All of your children live at home.

2 A. Right.

3 Q. So you haven't filed your 1998 tax
4 returns yet?

5 A. We discussed that already. I'm not going
6 to answer it again.

7 Q. Okay. Did you bring your 1997 tax return
8 with you?

9 A. Let's see. I got some taxes. I had a
10 gal run them off. Let's see what I've got here. I
11 think I've got '96 and '97. Let's see. Let me look
12 at what I've got here. I've got some utility bills
13 and I've got some taxes. Let me see if these are
14 they. Here you go.

15 Q. Are these full copies of everything you
16 filed with the IRS and the State of Utah?

17 A. You know, I glanced through it. I saw a
18 state filing, but I'm not sure if that's for both
19 years. I did see one for both years. I didn't see
20 the worksheets, but I had a gal named Terry run them
21 off. I think it is. Let's see what's on there.

22 Well, I see here a 1040 and an
23 attachment. I see here a Schedule C and another
24 attachment, and then I see here a Utah tax return and
25 a TC-40. Let me see if I've got some more.

1 Okay. 1997 1040, and I see a 1997
2 Schedule A, and I see a 1997 Profit and Loss, and I
3 see a 19 -- well, it looks like the state tax that
4 goes with that, so it looks like I've got 1997 there.

5 MR. GYGI: Let's mark this as an exhibit.

6 **(Whereupon, Exhibit 1 was marked.)**

7 A. You asked for 1997 and 1998, so that's
8 1997. I don't have 1998.

9 Q. Let me show you what's been marked as
10 Exhibit 1. Can you identify that document?

11 A. This is a document of several pages, and
12 it's the documents I handed to you that looks like
13 1997 taxes, state and federal.

14 Q. Okay. Do you know if you ever signed
15 that tax return?

16 A. I would have. I signed the tax return
17 and sent it in.

18 Q. And it's been filed with the IRS and the
19 state?

20 A. Yes.

21 Q. Okay. On the first page it shows rental
22 real estate royalties, partnerships, S-corporations,
23 trusts, \$38,106. Can you explain what that is?

24 A. I don't recall. I can't.

25 Q. Okay. Let's look at Schedule E then. It

11

1 says --

2 A. It looks like I made about \$38,000. Is
3 that what it's saying?

4 Q. Yeah, that's what it looks like you're
5 saying, you've got \$38,000 of income.

6 A. Okay.

7 Q. And it looks like it came from D.M.
8 Johnson & Associates. Does that look right?

9 A. I don't know. I don't know if that's
10 what it looks like, so it doesn't necessarily --

11 Q. Well, let's look at Schedule E.

12 A. I can't see Schedule E, but let's look at
13 it. You know as well as I do I'm legally blind, and
14 I don't have a reader here. Let's look at it,
15 though. You want to help me find it?

16 Q. All right. It looks like Exhibit 1
17 doesn't have Schedule E taxes.

18 A. All right. So you're looking at tax
19 returns that I've given you previously; is that
20 correct?

21 Q. I'm looking at a 1997 tax return you
22 previously provided.

23 A. Okay. So you already had the document
24 that you subpoenaed from me again; is that correct?

25 Q. Yes.

1 A. So why did you subpoena it from me when
2 you already had it?

3 Q. Because nobody ever testified that this
4 was actually executed and filed, and that's why I
5 subpoenaed an executed and filed version.

6 A. Okay. It's executed and filed.

7 Q. But the copy previously provided shows
8 that you got passive income from D.M. Johnson &
9 Associates of \$16,761 and non-passive income of
10 \$22,241; is that correct?

11 A. From D.M. Johnson?

12 Q. Yes.

13 A. That actually didn't come from D.M.
14 Johnson. I don't think that's quite accurate. What
15 happened, as I understand it, in dividing up the
16 income -- D.M. Johnson is a conduit, LLC.

17 Q. Correct.

18 A. And the income I got, would have
19 received, would have been income I earned. It may
20 have been put into the D.M. Johnson or it may have
21 flowed through D.M. Johnson. It came to me
22 personally, but D.M. Johnson did not pay me -- they
23 may have paid me once, but I don't think they paid me
24 for income, so it just flowed through. It's just the
25 way the tax treatment was.

1 Q. Are you a member of D.M. Johnson &
2 Associates, LLC?

3 A. No.

4 Q. Now, your wife previously provided tax
5 returns for D.M. Johnson, LLC, and it shows you as a
6 50 percent owner.

7 A. I think what it showed -- I don't think
8 it showed me as a 50 percent owner.

9 Q. That's what the schedule K-1 shows.

10 A. What happens is they -- you would have to
11 ask my tax preparer -- they take an LLC, and if
12 you've had income they allocate that income, and you
13 pay taxes personally on whatever flows through, and
14 I'm not listed as a member of D.M. Johnson, LLC.
15 There are two other members. I have done some work
16 that I have billed D.M. Johnson for. But it's just a
17 standard LLC. It's --

18 Q. I understand how an LLC works, and I
19 understand tax returns for LLCs. For 1996 and 1997
20 the LLC shows they gave you Schedule K-1. They gave
21 you K-1 returns as a 50 percent owner, allocating
22 income and losses. Is that inaccurate?

23 A. No. They allocated the income and
24 losses, but I'm not an owner.

25 Q. But you're getting 50 percent of the

1 allocations.

2 A. I didn't get actually 50 percent of the
3 allocations. What happened was, I think, the
4 \$36,000, whatever fee you're talking about, is far
5 less than 50 percent of the allocations. I got the
6 amount that I earned as legal fees that came through
7 there.

8 Q. Well, these allocations are separate from
9 any legal fees they would have paid. Those are
10 expenses that show in their income statement.

11 A. I don't think so.

12 Q. But the K-1s are allocations of income
13 and losses. It also shows guaranteed payments to
14 you.

15 A. The money that came through to me is
16 generally money that I earned for legal work, not for
17 legal work for D.M. Johnson & Associates. They are
18 not entitled to that.

19 Q. Okay. Does D.M. Johnson --

20 A. And at the time the reason for that was,
21 as I recall, in '97 they had an account that we both
22 used, and I was able to put funds in that account,
23 and then they would cut them back out. That's the
24 only reason. I'm not a member of D.M. Johnson. If
25 you check, and I think we've covered this in prior

15

1 depositions twice -- if you look at the -- you go to
2 the Department of Commerce in the State of Utah, it
3 indicates, as you well know, that the members of D.M.
4 Johnson are two people, not me. I mean, this was a
5 tax treatment. I'm not a member of D.M. Johnson &
6 Associates.

7 Q. The state lists your wife as the only
8 member.

9 A. Actually, no. I think the state lists --

10 Q. I pulled it off this morning. It lists
11 your wife as the only member.

12 A. Are you sure it's not the only manager?

13 Q. It shows the only manager and the only
14 member.

15 A. My recollection is two members. I don't
16 know.

17 Q. In fact, the tax returns also show you as
18 the managing partner.

19 A. I haven't seen that and I haven't looked
20 at that. I'm not a managing partner, so maybe they
21 said that, but I'm not.

22 Q. Okay.

23 A. As I recall, Kim Renak and Danell Johnson
24 were members of D.M. Johnson & Associates, and that's
25 my recollection. They have been on the checking

1 account together for a long time, so I don't know. I
2 think there may have been one resolution executed by
3 both of them.

4 So if you looked at the Department of
5 Commerce, then you've looked at them more recently
6 than I. I don't think I've looked at it in a couple
7 of years. My recollection is there are two members.
8 Also, my recollection is there is an operating
9 agreement between them, but I don't know, so, you
10 know...

11 Q. Okay. Your 1997 return shows \$38,108 of
12 income.

13 A. To me, right?

14 Q. All of that except for \$2 seems to come
15 from D.M. Johnson & Associates, LLC.

16 A. Well, it just flowed through the account
17 is all. It would be for legal work I did.

18 Q. So the LLC hires you to do legal work for
19 them.

20 A. No, no, no. They have on occasion, but
21 rarely. It's for legal work I did, and 1997 we used
22 that account. Money would go in, it would be cut out
23 to me, and I have to pay taxes on it. That's the
24 only reason I can see. I can't recall because I
25 haven't looked at this for 18 months.

1 Q. Did you do legal work for the LLC?

2 A. I did legal work occasionally for the
3 LLC, but I did legal work for third parties, but that
4 money went into the D.M. Johnson account and was
5 disbursed there.

6 Q. So the third party would pay you for
7 legal services you would do, and it would go into the
8 LLC account.

9 A. Yeah. I didn't have an account at the
10 time. You were trying to grab my stuff. I mean, I
11 didn't have an account. It was just a conduit, and
12 it was -- and what I got in income reflects what I
13 earned that year. You know, there were some -- I
14 don't know, you know.

15 Q. How much income do you estimate you
16 received in 1998?

17 A. I don't know. I would imagine -- I don't
18 know. I think we discussed this before. I haven't
19 really asked the tax guy what it is, but I believe
20 it's between thirty and forty grand. Maybe it's
21 fifty grand. As you recall, I was in -- I was
22 winding down a legal practice. I didn't know exactly
23 what I was going to do. You well know the background
24 of that. There was litigation and my license was in
25 jeopardy, and I was unsure whether I would be able to

1 continue to practice, and I had some very significant
2 legal bills; also, I wasn't raising as much money for
3 loans. So my income would have been lower. It's
4 starting to pick back up again, I hope.

5 Q. Now, you're currently an active member of
6 the bar, correct?

7 A. Yes.

8 Q. So you believe you made between thirty
9 and forty thousand dollars in 1998?

10 A. I don't know. I think I said thirty,
11 forty, maybe fifty. I just simply don't have any
12 idea. You know, all that material is with the tax
13 preparer.

14 Q. Who is your tax preparer?

15 A. Triple Check.

16 Q. Triple Check is preparing your 1998 tax
17 returns?

18 A. Yeah.

19 Q. Where are they located?

20 A. I don't know. They're in the phone book.

21 Q. Is there a certain person preparing the
22 taxes for you?

23 A. There is, and I can't remember his name.
24 I've got that somewhere. It's a small outfit. Just
25 call them up.

1 Q. How much money, income, d
2 you've generated in 1999?

3 A. Well, the hearing came do
4 first half of 1999 would be quite low
5 was grinding to a halt. I thought I
6 lose my license. You know, I'm getting a lot more
7 work, I've got a lot of criminal clients, and I hope
8 I'll hit fifty grand.

9 Q. Do you know what you've made so far?

10 A. Well, no. I haven't added it up.

11 Q. Any guess?

12 A. How much have you made as of November
13 15th?

14 Q. I could make an estimate fairly close.

15 A. Well, you're salaried. I can't come up
16 with that. You didn't ask me to bring that
17 information. I don't have a guess, no. I think I
18 just told you. Hopefully I'll end up in December in
19 a blaze of glory. I'm hoping I can close a loan and
20 make some dough.

21 Q. What kind of work are you doing now?

22 A. Criminal work, a lot of criminal work.

23 Q. Criminal defense?

24 A. Yeah, mostly drug-related. I've got some
25 auto theft. I've had several good drug cases. I was

20

1 involved -- well, I didn't get involved in the
2 appeal. It seems like I've got a very active
3 criminal practice and doing some real estate
4 litigation. I'm hoping to get a personal injury case
5 that's coming to me.

6 Q. So is all the income you're generating
7 right now from legal work?

8 A. Yeah. Well, I had -- let's see. I had a
9 loan close. I'm doing some real estate. We bought
10 earlier this year, went up and bought at a tax sale
11 in Park City a couple of lots and flipped those. I'm
12 also doing some stuff for a trade organization,
13 Unlimited Business Exchange, and it's kind of their
14 attorney, and whatever comes through the door I get
15 trade credits for. I've kind of built up some trade
16 credits. It's kind of a hodgepodge but mostly
17 criminal work.

18 Then I've got this personal injury case,
19 and I've closed a few loan deals. As I've told you
20 before, you know, I try to raise money from people
21 and then take some points, hard money loans. I've
22 had a couple of those fall apart, but --
23 up. In fact, I think that if I'm lucky
24 maybe I could have as much as \$75,000
25 just haven't added it up.

1 Q. When is your tax preparer supposed to
2 have your 1998 returns done?

3 A. Well, he should have them done now. In
4 October we discussed that he was missing a couple of
5 items. I actually got those items, and I think
6 really within the next 30 days I should have them
7 done. You know, it will be for '98.

8 Q. Have you given him all the information he
9 needs to prepare them?

10 A. Yeah. Yeah, there were a couple of
11 items. He needed some from Danell and some from me.
12 I think we've got them. We're trying to get them
13 together.

14 Q. Do you still operate your law practice
15 under the assumed name of Lexington Law Firms?

16 A. I never operated my law practice under an
17 assumed name of Lexington Law Firms.

18 Q. Okay. The state records show that the
19 d.b.a. is registered to you and has been ever since
20 1994 and will be until the year 2000.

21 A. I think that's accurate. The state
22 records do show that.

23 Q. So who do you claim uses the name?

24 A. Oh, Lexington Law Firms?

25 Q. Yes.

1 A. I think we provided you a bunch of that
2 information before, and you should know that, and I'm
3 surprised you don't. But I resigned with any
4 involvement in Lexington Law Firms because of the
5 pending bar problem.

6 Q. Aren't we talking Johnson & Associates,
7 not Lexington Law Firms?

8 A. No. I resigned from anything. I have
9 practiced law under Jamis M. Johnson and Jamis M.
10 Johnson & Associates. Johnson & Associates is a
11 not-for-profit corporation, and you've been told
12 this. Nobody has shares of stock. I resigned from
13 that. Lexington Law Firm, Victor Lawrence and
14 another attorneys have taken over all of that. I've
15 indemnified them, they have indemnified me. I've
16 resigned from any relationship. Lexington Law Firm
17 was just an operating entity that was doing credit
18 repair.

19 Q. Now, Lexington Law Firms is not an
20 entity. It's an assumed name registered to you.

21 A. Actually, I think what happened -- and
22 I'll have to recall this -- but I assigned -- a
23 couple of years ago there was a corporation being set
24 up, but that was assigned -- the name was assigned
25 to -- it was going to be assigned into a corporation.

1 I don't know if we've ever registered the fact that
2 it was assigned. I was sued by the State of
3 Tennessee, you know, personally because Lexington Law
4 Firms was in my name, but since that time and with my
5 bar problem I have completely relinquished any
6 interest. They paid me a little bit, made my
7 payment, and I resigned. Now, if it's listed as an
8 assumed name by Jamis Johnson, they're going have to
9 go in and change that. But, you know, they're
10 operating now without me.

11 Q. So you don't use that name in any way.

12 A. I have actually never actively used it.
13 I registered it.

14 Q. Haven't you written checks with the name
15 on it?

16 A. There was a -- there were checks written
17 that had my signature, computer-generated signature,
18 and I was on the account. Actually, I don't think
19 I've ever signed one of those checks. It was a
20 fairly big organization. It was just a marketing
21 entity.

22 Q. Do you want me to show you all checks
23 that you've handwritten out, checks that say
24 Lexington Law Firm?

25 A. Yeah, why don't you. My recollection is

24

1 I don't think I hand wrote any of the checks.

2 Q. So you're claiming you've never signed a
3 check that says Lexington Law Firm?

4 A. No, I didn't claim that, if you want to
5 restate what I've said. Said I don't believe I've
6 done that and it was computer generated. You asked
7 me if I wanted to do see some checks, and I said yes.
8 If you do have some, let's look at them and I'll
9 decide if that's correct.

10 Q. All right. Let's look at this check. Is
11 that your signature on there?

12 A. Oh, this is a computer-generated
13 signature, or a stamp, yeah.

14 Q. So that's a stamp.

15 A. Yeah. Lexington Law Firm has had a bunch
16 of marketers, and probably as many as 20 different
17 employees, and they were just selling the product.
18 My name was on the account and I made a little bit of
19 money from them, but they probably had 20 other
20 people.

21 Q. But you're letting them use your
22 signature.

23 A. Yeah, I'm letting them use my signature.
24 For a while we had a trust account I let them use,
25 but that's been changed now. I think the other

1 attorneys that took over are doing it. But, yeah,
2 that's not my signature. That was a stamp.

3 So let me just ask you. You said you had
4 a bundle of checks that I had written out
5 individually. Do you have any other checks? Because
6 the check you showed me was definitely typed as
7 though it had been computer generated, and it had a
8 signature that was stamped. Now, are there any other
9 checks that you do possess that were hand written by
10 me, or were you inaccurate, or do you know?

11 Q. I don't know if they're handwritten or
12 not.

13 A. I just want to clarify. That was
14 generally how we operated. I'm not trying to mislead
15 you. There were a lot of people working there that
16 used my signature. Like I say, I was sued by the
17 State of Tennessee because it was a d.b.a., but the
18 largest problem was this bar issue, and I could no
19 longer stay involved.

20 Q. Is the bar finished with its review of
21 your activities? Are they perusing your license at
22 all?

23 A. Yes, they are. It's on appeal right now,
24 and I have expended a great deal of money on my
25 attorneys.

1 Q. Do you have any savings accounts?

2 A. No.

3 Q. Do you have any checking accounts?

4 A. Yes.

5 Q. Where?

6 A. Guardian -- no. It's now called

7 Community First Bank. I have a personal account

8 there.

9 Q. How much money is in that?

10 A. Today?

11 Q. Yeah.

12 A. I would guess \$500, \$750.

13 Q. Any other checking accounts?

14 A. I have no personal checking accounts. I

15 have a trust account for clients, and I think that's

16 it.

17 Q. Is the Community First Bank account in

18 your individual name?

19 A. Yes.

20 Q. Are you the only signator on it?

21 A. Yes.

22 Q. Do you have any certificates of deposit?

23 A. No. No shares of stock, no bonds.

24 Q. Any mutual funds?

25 A. No mutual funds, no pension, no IRA. I

1 had about \$75 in an IRA.

2 Q. No retirement accounts of any kind?

3 A. I have an IRA at American Pension
4 Services, and it's got between \$75 and \$200 in it.

5 Q. Do you own any motor vehicles?

6 A. I don't. I don't drive, and I don't have
7 a driver's license, and I don't own any vehicles.

8 Q. Are there any life insurance policies on
9 your life?

10 A. Yes.

11 Q. How many?

12 A. Two.

13 Q. Well, what's --

14 A. As I recall.

15 Q. What are the companies?

16 A. I don't recall. They're term insurance
17 and universal life. Both name my wife as a
18 beneficiary. My agent can probably tell you the name
19 of the companies. He changes them occasionally
20 because he gets a commission when he changes them,
21 and then there's no accrual. The universal life may
22 have some accrual, but it's only by my wife. It's a
23 \$150,000 policy. I've had it in place for, I
24 think -- well, that covers my life, but she's a
25 beneficiary. I think I paid a term, though.

28

1 Q. You have no idea who the companies are?

2 A. It was changed recently. I have to say I
3 think my wife owns the policies. In other words,
4 there's no economic buildup, if that's what you're
5 asking.

6 Q. There's no cash value?

7 A. No, no cash value. It's a term insurance
8 policy.

9 Q. When you say your wife is the owner, does
10 that mean she pays the premium?

11 A. She pays the premium of the one and she's
12 the beneficiary of it, you know, and it was with
13 Travelers, and I don't know who it is now. You could
14 probably call my insurance agent. But I can assure
15 you that I have no cash value of any insurance policy
16 that I know of, and I'm unaware of any. We've always
17 just used term insurance.

18 Q. Would it be with Allied Life Insurance?

19 A. Yeah, I've seen that with Allied. That
20 sounds familiar, yeah. Now, recently I just took a
21 physical because a guy was changing it again, and I
22 don't remember what it was. I keep wanting to say
23 Sunset or something, but I think that's the service
24 corporation that came out and gave my
25 electrocardiogram and physical.

1 Q. But there's no cash value in either
2 policy?

3 A. No, there is no cash value on any
4 insurance policy.

5 Q. Doesn't the universal life policy have
6 cash value by its nature?

7 A. You know, it may. That's owned by my
8 wife, but I would be glad to have you look at it. If
9 it does have some accrual, it might be a thousand
10 bucks. That's a good question. I could find that
11 out. I don't know if anybody would care. But again
12 it's the property of -- it's not property the SBA
13 could grab. As I recall, it's about \$150,000, you
14 know, that policy. The other one is a million bucks.
15 The term is a million bucks.

16 Q. Do you have any interest in any
17 partnerships?

18 A. No. I mean, you know, often I'll have a
19 joint endeavor with somebody, but I don't have a
20 partnership or set up a partnership or an LLC. You
21 know, if I get a deal I say, Hey, do you want to do
22 this deal together? We'll go up to summit county and
23 buy a lot.

24 Q. So a joint venture.

25 A. Yeah, you can call it that, but I don't

1 have any outgoing partnerships.

2 Q. Any interest in any limited liability/
3 companies?

4 A. No. I had an interest in an limited
5 liability company in California called Simmons
6 Shores, LLC. The property got foreclosed out from
7 underneath it. I made some money from raising loans
8 for it, but I know that no longer exists.

9 I had an interest in an outfit called
10 Western Equities, LLC, but that is no longer
11 functional. I have no interest in LLCs or
12 corporations.

13 Q. How about Summit Insured Equity Limited
14 Partnership?

15 A. I had -- that was a -- I had shares of
16 stock in Summit that I got in exchange for legal work
17 and sold them, I'm thinking, in either late 1997 or
18 '98, early '98.

19 Q. So you no longer have any interest in
20 that limited partnership.

21 A. No.

22 Q. And you received no income.

23 A. No. It was a small amount of money. I
24 got three grand from it.

25 Q. Do you own any real estate?

1 A. No. I would have to be crazy to own real
2 estate with the SBA trying to get all my real estate.
3 I've been working on this SBA loan when it was first
4 taken out, I think, in '85, and we, as you know, had
5 a lot of litigation. I don't have any real estate.

6 Q. What's your wife's occupation?

7 A. She's a mom and she does a little bit of
8 paralegal work, and she had some real estate business
9 for a while. She was working with a hospital, kind
10 of a billing situation. She wants to go back to
11 school.

12 Q. Currently is she employed by anybody?

13 A. Yeah. Well, she's not employed. She
14 doesn't get a W-2. She sits on the board of
15 Johnson & Associates.

16 Q. Does she earn any money for that?

17 A. Yeah, I think she does. I think she
18 covered all that with you. I can't recall. Yeah,
19 she was on the board of Johnson & Associates. I
20 think she's -- well, she's no longer on the board of
21 the Caldwell Memorial Hospital. That ended. She
22 wants to go back now and she wants to get a job and
23 come to work for the SBA, I think.

24 Q. Good.

25 A. You get paid so well.

1 Q. What kind of services does D.M. Johnson &
2 Associates, LLC provide?

3 A. It's been set up -- it received the
4 monies from the hospital, Caldwell Memorial Hospital,
5 and it, you know, owned some property and various
6 things. It was her little company, you know, hers
7 and Kim's, but I'm surprised that Kim is not on it.
8 If I tell them, I think they will probably go change
9 that, because Kim will be surprised she doesn't have
10 an interest in it.

11 Did you check, John, historically on the
12 D.M. Johnson & Associates?

13 Q. Yeah.

14 A. Because it's not just a new filing.
15 Okay. Maybe I'll have to amend it.

16 Q. Let's see. D.M. Johnson & Associates
17 shows \$148,000 in gross receipts and sales in 1997.
18 Do you know where that would have come from?

19 A. Drugs.

20 Q. That's your answer on the record?

21 A. Well, I'm trying to think. Probably it
22 wasn't drugs. I can't recall, but, you know, we've
23 talked about this before. Probably Caldwell Memorial
24 Hospital.

25 Q. Is that in Louisiana?

1 A. Yeah.

2 Q. What services does Danell provide there?

3 A. Well, she was a shareholder on the board.

4 Q. It was a for-profit entity?

5 A. Caldwell Memorial -- well, Management
6 Consultants of Louisiana was a for-profit entity.
7 Riverbend Hospital was a nonprofit corporation.
8 Caldwell Memorial Hospital was a full service general
9 hospital that operated for profit but was usually
10 broke.

11 Q. So your wife would get a share of income?

12 A. Yeah, she got income from that.

13 Q. And that went into the LLC.

14 A. Yeah, it went into the LLC.

15 Q. Do you know how much that would have been
16 of the \$148,000?

17 A. No. There was also some real estate
18 deals. There was some -- well, you know, whatever it
19 is would have come from some variety of sources. You
20 know, she got some from Johnson & Associates; she
21 would have gotten some from Lex; she would have
22 gotten some from Caldwell Memorial; she would have
23 gotten some from the sale of properties.

24 Q. Would this \$148,000 include legal fees
25 earned by you?

1 A. No. If you recall, I have \$38,000 -- was
2 it \$38,000, the figure?

3 Q. Yes.

4 A. Those are the legal fees earned by me.

5 Q. That the LLC distributed back out to you.

6 A. Yeah, that flowed through the LLC. Yeah.

7 Q. Let's take 1999. Let's say --

8 A. Well, I don't have any figures for 1999,
9 but let's try.

10 Q. Let's say you do legal for somebody and
11 they pay you.

12 A. Uh-huh.

13 Q. Where do you put the money?

14 A. Well, until about three or four months
15 ago I would do either of three things. I would put
16 it in -- it would go into Johnson & Associates and
17 flow through, or it would go into --

18 Q. Why do you give it to Johnson &
19 Associates?

20 A. I didn't have the account set up.

21 Q. And then it would go through -- now we
22 have the account set up, you know, my Jamis Johnson
23 account. The monies go in there. Or it would have
24 to go into a trust account until I could divide it
25 with my clients, and then at that point I would take

35

1 it out probably in a cashier's check and just
2 disburse it or cash it. That was cumbersome and hard
3 to keep track of that. Now I have Jamis M. Johnson
4 at Guardian State Bank. It's easier. Plus, you
5 know, I -- you know, when I resigned from all my
6 responsibilities and affiliations with any of this
7 stuff, with Lexington, with Johnson & Associates, a
8 couple of other things because of the bar problem,
9 Johnson & Associates was not very anxious to have me
10 be close to them. I mean, D.M. Johnson didn't want
11 me involved either. I have to account to the bar.
12 I'm under quite a bit of unscrutiny, I think
13 unjustly, from the bar.

14 I have a separate trust account. I want
15 to have a separate law account. You know, we took
16 all of these steps. For a while I was the named
17 trust account name on Johnson & Associates, a
18 nonprofit corporation. I've been removed off of all
19 of that. You know, this has been a year of
20 transition. I've resigned, you know, whatever I've
21 got to do to get my liability to the bar and
22 everything else.

23 Q. Is your wife generating income right now?

24 A. Yeah, she generates income.

25 Q. About how much?

1 A. I don't know. More than me. I think she
2 covered that with you in May. I mean, you asked her
3 all those questions.

4 Q. I don't think your wife knew many of the
5 answers to tell you the truth.

6 A. To tell you the truth, I think she did.

7 Q. She didn't even know she had an LLC.

8 A. I don't think she knows exactly what an
9 LLC is, but she certainly answered the questions
10 then, I thought. I didn't bring the transcript with
11 me, but it went on for a couple of hours. She talked
12 about her income.

13 Q. How much is she making a month now?

14 A. I don't know. Probably, I would imagine,
15 it's going to be less than it was last year. Last
16 year was a pretty good year.

17 Q. Do you know what she's doing to generate
18 income now?

19 A. Real estate deals.

20 Q. What do you mean "real estate deals"?

21 A. Well, you know, if she owns something and
22 she sells it, she makes some money. If I foreclose
23 on it for her, I get a legal fee. If I find a lender
24 who will put together a deal, I mean, she's the only
25 one with decent credit. I don't have credit. I have

1 an SBA judgment against me.

2 Q. So are you going out and finding
3 properties to buy and to put in the LLC?

4 A. I have. The Summit County property, we
5 all went out and found it. Remember I told you we
6 brought some properties at a tax sale? I did that
7 with Wasatch Credit and Danell and I, and we flipped
8 it and made some money, so that's one source of
9 money, yeah.

10 Q. So you'll go out and find a property that
11 you think is a good deal and --

12 A. She might go out and find a property too.

13 Q. She actively goes out and looks for
14 properties?

15 A. No, but I know she's actively contacted
16 because she's the only one with credit. She's the
17 only one that can borrow money.

18 Q. And then the real property is put in the
19 LLC's name?

20 A. No. I think it was put in -- I think we
21 flipped that property fast enough it didn't go into
22 anybody's name. But I think that some property is
23 put in the D.M. Johnson & Associates name. Some
24 property is put in her name individually, but that's
25 not really that common. If a loan can be generated,

1 we'll do it. Danell has a loan on our property now,
2 a substantial size.

3 Q. Does D.M. Johnson, LLC own any real
4 property right now?

5 A. Yeah. Right now D.M. Johnson has a small
6 interest in the Military Way property.

7 Q. It holds it with your wife; is that
8 correct?

9 A. Yeah, the title is in the name of Danell
10 Johnson and D.M. Johnson & Associates.

11 Q. Any other real property that the LLC
12 holds?

13 A. No. Hold on. No, no, no. We're setting
14 up a -- trying to set up a little construction
15 company where really Danell will just control and do
16 the little checks. The stucco guys got the license,
17 but Danell has got the line of credit.

18 Q. But the LLC doesn't hold title to any of
19 the properties right now. That's the question.

20 A. To real estate?

21 Q. Yes.

22 A. I just told you that there was one.

23 Q. Yeah. I said any others.

24 A. I'm trying to think. I don't think it
25 does.

1 Q. But the Military Way --

2 A. And after today I'm sure there will be
3 even fewer properties put in it. No, it doesn't have
4 any real property that I'm aware of.

5 Q. And the Military Way property doesn't
6 generate any income, does it?

7 A. It has been used to generate income, you
8 know, pull out a line of credit and use that money to
9 generate income, yeah.

10 Q. So how else is your wife generating
11 income?

12 A. Well, you subpoenaed the records from
13 Johnson & Associates. We get some money from the
14 board of Johnson & Associates. If we close a -- you
15 know, as I say, if I close a large loan and she is
16 involved with me, she'll get the money. If it's a
17 small loan that comes out in cash, I'll just take it
18 in cash.

19 Q. What do you mean if you close a loan?

20 A. You know, as I told you before, there are
21 certain hard money lenders, and I was involved in
22 raising money with hard money lenders. If somebody
23 needs \$100,000 or somebody needs a line -- especially
24 if somebody needs a line of credit, Danell can
25 qualify for it. But if somebody needs a hard money

1 loan and we can raise it, I'll go out and raise the
2 money, and we'll either split the fee or the fee will
3 go to her. You know, she'll have to be nominally
4 involved in it. She also gets income from -- as I
5 say, she gets income from Johnson & Associates. She
6 gets --

7 Q. How much does she get from Johnson &
8 Associates?

9 A. You've just subpoenaed the records, and
10 you also deposed her in May, so you should have that
11 answer. I haven't added it up. I don't know.

12 Q. She can't tell me that. I've read the
13 deposition a hundred times. She can't tell me
14 anything.

15 A. I think that's argumentative. She
16 answered your questions thoroughly and accurately.
17 You're being quite rude to her.

18 Let me add this, John. You just
19 subpoenaed every single bank statement and check from
20 Johnson & Associates. You have in this 8-inch file
21 of yours all of that information, so don't ask me
22 again. Just look it up. Look it up. It's all
23 there. She does not have a job where she's employed.
24 You've known this. You know, we make our money where
25 we can make it.

1 Q. So if Johnson & Associate pays your wife
2 money it's for her services as a trustee.

3 A. Yeah. She sits on the board. She
4 Also -- yeah, she also -- she did some other things
5 for them occasionally, but not much.

6 Also, you know, I think our income will
7 be substantially less. I think mine will be higher
8 and hers will be lower. Caldwell is gone. It's no
9 longer around, so, you know.....

10 Q. I've noticed that Lexington Law Firms
11 would pay her checks of \$465. What would that be?

12 A. That's like services.

13 Q. What kind of services?

14 A. Well, let's see. The same kind of
15 services that the 20 other people up there provide
16 generally, whatever. I know initially --

17 Q. So your wife goes into the office there
18 and does work or --

19 A. She does some work, yeah. She does some
20 minimal work. She's also on the board. She also
21 donated, you know, as she told you in her deposition,
22 early on a bunch of computers and furniture and, you
23 know, a lot of facilities to get it started. It's
24 got a combination of things there. I mean, I think
25 you know this because we've given you the checks, or

42

1 she's given you the checks or Johnson & Associate
2 have given you the checks. All of those checks have
3 been made available to you.

4 Question. Never mind. Hey, what do you
5 think the SBA would like to take to settle this? Is
6 it up to \$400,000 yet, this loan? It's over three.

7 Q. I don't know. You keep saying you'll
8 make an offer and you don't.

9 A. It's because I'm only now starting to
10 recover. We talked about my suing Kent Davis. Kent
11 Davis is around. You recall that whole argument.
12 Kent Davis was the source of this problem. I mean,
13 you have heard me say that, you know, we've got this
14 SBA loan. I demanded an accounting. He actually got
15 a TRO and prevented me from going to the business. I
16 sued them, got the IRS on them, and then the business
17 collapsed. He went bankrupt. I negotiated with the
18 SBA to try and sell the property. We actually had a
19 deal of \$60,000, a settlement from me. It didn't
20 happen.

21 They sold the property to the same guy
22 for \$60,000. They went after me for the deficiency.
23 I litigated that and I lost. Judge Winter gave me
24 about a 20-page opinion. And so by the time we're
25 all done you want \$300,000 from me, but Kent Davis,

1 who has gone bankrupt, did not name me personally in
2 the bankruptcy.

3 I talked to Kent about a year ago and
4 said, "Kent, if you help me take care of this thing,
5 I won't sue you." It's probably too late for me now.
6 We were talking in the range -- as you also recall,
7 our house was in foreclosure until recently, and we
8 were facing a variety of financial issues, and they
9 were very serious.

10 Now, I would love to come to the SBA and
11 say, Hey, why don't you give me your judgment and I
12 will pay \$5,000, \$10,000, and I will go to work
13 furiously trying to get you the money. But, as you
14 know, I owe the IRS, they say, a million bucks.
15 You've seen those tax returns. I've got a negotiated
16 settlement with them and the state.

17 In addition, there is a \$300,000 plus
18 judgment against me and a bunch of other partners on
19 a gravel pit. You know, it's prior to your in time.
20 It's docketed here. Of course, if you were able to
21 demonstrate that I owned some of these other assets,
22 they're ahead of you in time, you know, and I haven't
23 settled with them either.

24 But I would like to come to you and offer
25 you ten grand. I don't have it right now, but I

1 believe in the next six months I'm going to recover,
2 and I would love to settle with you because I know
3 this is not pleasant for you, and it's sure as heck
4 not pleasant for me. Anyway, we can, I guess,
5 discuss that later.

6 Q. Let's talk about some of your liabilities
7 here.

8 A. Okay. They're pretty impressive.

9 Q. Do you have any unsecured debt?

10 A. No, I have no personal notes. No one
11 will lend me money, and I have no secured debt. I
12 have a credit card in my own name.

13 Q. Is that the First Security Bank
14 Mastercard?

15 A. The First Security Bank Mastercard is
16 Danell's. The Capital One credit card for poor slobs
17 with bad credit is mine.

18 Q. Is there a balance on that right now?

19 A. I don't think so, but my credit limit is
20 \$300, so if there were it would not be very high.

21 Q. Okay.

22 A. I brought you some utility bills even
23 though I objected to providing them. I don't want to
24 forget to give them to you because it was just a pain
25 to find them and xerox them, so while we're doing

1 this let me hand you -- I can't see what these are.
2 You'll have to see for yourself. I'll look through
3 those if you want me to.

4 Q. I can't see which these are. You'll have
5 to --

6 A. Okay. I'll look. I don't want to forget
7 them because they're all in my wife's name. Okay.
8 Go ahead. Ask me questions.

9 Q. All right. So you don't have any secured
10 debt either?

11 A. Like, in other words, do I have a loan in
12 my name secured by real estate.

13 Q. Or --

14 A. No.

15 Q. Okay.

16 A. John, we've done this long enough. You
17 know me well enough to know that I would never do
18 that. However, the answer is no.

19 Q. What judgments do you have against you?

20 A. If I can recall them all. I don't think
21 I can give you a comprehensive list. But I've got
22 tax liens against me and tax assessments of
23 approximately a million and a half dollars from the
24 IRS and the state government. That's --

25 Q. Do you know how much the IRS has against

1 you?

2 A. I'm going to say it's between 1 and 1.5
3 million dollars. The tax liens that they filed are
4 very -- they don't reflect that. The 1.5 -- maybe
5 it's in the form of a lien. It comes up on the
6 credit. It's between 1 and 1.5.

7 Q. Do you have any proof of those liens?

8 A. No, I don't. I know there are some --
9 there's a bunch of tax liens on my credit, IRS tax
10 liens and state tax liens; however, when I look at
11 them they don't seem to reflect -- they're kind of a
12 hodgepodge of liens, if you know what I mean,
13 different years, different amounts.

14 Q. What are they for?

15 A. Taxes owing.

16 Q. Income taxes? Withholding taxes? Sales
17 taxes?

18 A. Income taxes. There's \$1.15 million. In
19 addition, there is a withholding tax outstanding bill
20 of about \$60,000 that is being paid down. It should
21 be only about \$30,000 now. In addition -- it's in my
22 name. In addition, there is a judgment by PJ's
23 Trucking against me and others, and it exceeds
24 \$300,000 now.

25 Q. They got a judgment against you

1 individually?

2 A. Yeah. Yep.

3 Q. Where was that obtained?

4 A. Utah County. It's been docketed now in
5 Salt Lake County.

6 Q. For what?

7 A. The gravel pit is just a fascinating
8 story.

9 Q. We don't need to go into that.

10 A. Are you sure you don't want to hear that?
11 It was so interesting, John.

12 Q. It was for the gravel pit.

13 A. It was for the gravel pit deal and a
14 bunch of trucks they took back. I was a signatory.
15 They got a deficiency judgment on those trucks
16 against the corporation and several individuals.

17 Q. What do you now owe the state in taxes?

18 A. Well, they say it's about \$70,000, but
19 that's extrapolated from the fed's, you know, million
20 five, so in actuality -- and I've been negotiating
21 trying to get a settlement with them somewhere in the
22 range, you know, of five to seven thousand dollars
23 because it's pretty clear that I don't owe the IRS a
24 million five. All parties acknowledge that.

25 Q. Are you making any payments to the IRS

1 right now?

2 A. No. They have subpoenaed me, and I've
3 appeared twice now before Magistrate Alba, and the
4 subpoena has been dismissed but we're going to work
5 out some sort of a settlement. That's the proposal.

6 Q. What are you trying to settle for?

7 A. If they would settle for 20 grand, I
8 would go out and kill myself just trying to put that
9 together, and they might. As you know -- I've
10 explained this before -- the taxes were based on
11 income going into a trust account, but they didn't
12 calculate income coming out of a trust account.
13 There was a title company that closed these hard
14 money lones. Someone puts a quarter of a million
15 dollars in to close a loan, I charge them 5,000 in
16 points or 10,000 in points, and the rest of the money
17 goes out to close the loan. The IRS in one maneuver
18 attributed the quarter of a million in income but
19 didn't count any outgoing. That adds up quickly. It
20 looks like I had several million and owed taxes on
21 it, but I think they would accept \$20,000 if I could
22 put it together. I have a person working on that.

23 Q. So are you paying PJ's Trucking anything?

24 A. You know, before I pay PJ's Trucking, I'm
25 so concerned about the SBA and Federal Government

1 that I would really want to pay them first, so the
2 answer is no.

3 Q. Are you paying the state at all?

4 A. No. I'm trying to settle all of these
5 for a lump sum. Really, I would like to settle with
6 you PJ's Trucking.

7 Q. Are they doing anything to try to collect
8 their judgment?

9 A. I was last supp ordered last year,
10 beginning of last year, and they docketed the
11 judgment in Utah County, but that's as far as they
12 have gone at this point.

13 Q. Have they docketed it in Salt Lake
14 County?

15 A. I meant Salt Lake County. It was
16 obtained in Utah County and docketed in Salt Lake
17 County.

18 Q. What year did they obtain the judgment?

19 A. It was obtained before yours, but I
20 better guess in '95, '94.

21 Q. Do you have any other debts or
22 liabilities?

23 A. I'm sure there are others out there.
24 I've got a couple other judgments. I've got a
25 judgment against me by a Bekk Mellon, M-e-l-l-o-n.

1 It's probably 12 years old. It was renewed. I have
2 a judgment against me by a Kathleen Thomas in the
3 mid-twenties. It too was renewed, and it's about the
4 same age. These all started out at, you know, \$2,000
5 or \$3,000 or something, but they just keep getting
6 bigger.

7 Q. Bekk Miller {sic} was it?

8 A. Yeah.

9 Q. How much is it you think you owe? Is
10 that a man or a woman?

11 A. That is a man, and I'm going to say
12 15 grand.

13 Q. And Kathleen Turner, what would you say
14 you owe her?

15 A. It's approximately twenty-five. Then,
16 you know, I have some smaller judgments out there.
17 These are ancient and they got their real estate
18 back. They were just deficiency judgments.

19 However, there are some smaller judgments
20 against me over this last year, as I thought I was
21 going to lose my license and my home was in
22 foreclosure. There are several other small
23 judgments. There's one by the Ogden Standard
24 Examiner for a foreclosure that the client did not
25 pay for. It's a cost. It's was a fairly lengthy

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1 foreclosure, and it's in the amount of \$3,000;
2 although, the client will eventually pay that because
3 I'll sue him if he doesn't.

4 Q. Was that for the advertising or for the
5 foreclosure sale that you put in the paper?

6 A. Yeah. Actually, he put it in the paper.
7 It's somebody who does loans on foreclosures, one of
8 these hard money lenders, and he was actually in
9 charge of putting the legal description together and
10 getting it to them. You know, whether I put it in or
11 not, he owes the cost, and I was unable to pay it.

12 Q. Why are you liable for it?

13 A. Well, I was the -- I don't think I should
14 be, but I was the attorney whose name was in the ad,
15 and I really didn't feel like I could resist the
16 claim because -- and they are entitled to the money.
17 So I think I'll get that settled from this guy.
18 That's just another adjustment that's in there.

19 Q. They sued you and got a judgment?

20 A. Yeah. He was a collection agency. It's
21 just a small claims court judgment that's in place
22 now. It's \$3,000.

23 Q. And you didn't defend against it?

24 A. I didn't defend against it. Actually, I
25 did. They did not appear, and it should have been

1 dismissed, but I went in and confessed judgment
2 simply because I think they should be paid, and I'll
3 turn around and get this client to pay it and get it
4 taken off. It's absolutely unquestionable that it be
5 paid.

6 In addition, my other liabilities, I have
7 my -- the bar. I have to -- the state has imposed a
8 restitution of at this point of \$28,000. Then I have
9 my attorneys I owe money to. I owe them now at least
10 twelve. I paid them nineteen so far. I owe them
11 \$12,000 more. They're handling the appeal. The
12 matter has been stayed by the judge pending a stay by
13 the Supreme Court because it's an unusual case, but I
14 have a \$29,000 restitution, and I'm going to have to
15 post a bond for that sometime in the next couple of
16 months.

17 I have a -- well, I think that's a fair
18 summary, yeah.

19 Q. Do you know what the '98 income for your
20 wife was, an estimate?

21 A. No, I don't.

22 Q. No idea at all?

23 A. I haven't thought about it. I don't
24 know. The guy is going to -- the tax preparer will
25 hack up the, you know, whatever. I just don't know

1 wnat it is going to be.

2 Q. Who is doing her tax return?

3 A. The Florez outfit. Triple Check will do
4 it as well.

5 Q. So Triple Check, that's the same of this
6 Florez Tax and Consulting?

7 A. Yeah. You know, it ought to be more than
8 mine. Well, it's kind of tilting now because I'm
9 starting to practice again. Maybe I'll do better
10 than she will.

11 Q. What do you think the monthly fuel/gas
12 expenses are for your family?

13 A. No idea.

14 Q. No estimate at all?

15 A. No.

16 Q. Who pays for it?

17 A. My wife.

18 Q. Do you know what the monthly auto
19 maintenance fees are for your family?

20 A. No. By auto maintenance you mean how
21 much does it cost to put gas in?

22 Q. No, how much does it cost to maintain
23 cars by the family.

24 A. Well, we usually let our cars fall apart
25 pretty fast, so it couldn't be too much, and they're

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1 old. I don't know. I don't know what that is. If
2 you're talking about the auto loans as opposed to
3 maintenance --

4 Q. No, I'm talking about maintenance.

5 A. I would imagine it's whatever most people
6 spend on automobile maintenance.

7 Q. Does your wife pay for that?

8 A. Yeah. She owns the cars.

9 Q. How many cars does she have?

10 A. I think we have three right now in her
11 name.

12 Q. What are they?

13 A. I think we've told you this before, but
14 let's see. I've got a -- I think it's a '94 Trooper,
15 Isuzu; '94 Accura; and a '94 Discovery Rover that is
16 about ready to be -- I'm trying to get rid of. They
17 all have liens and they're all upside down, and all
18 of the loans are in her name and she pays on them.

19 Q. What are the monthly charitable
20 contributions your family makes?

21 A. You know, whatever, 10 percent. We're
22 Mormon, so we try and pay tithing. I am not as big
23 on it as she is. Last year -- you know, we don't
24 actually pay cash. We try and give something. We
25 haven't paid much this year. I don't think we've

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1 paid our tithing this year. But she's going to have
2 to -- we'll plan to figure something out in kind, you
3 know, go out to Summit County and buy a lot and flip
4 it to the church. If you look at our charitable
5 contributions right now, she pays fast offerings at
6 about \$25 a month, and we haven't paid tithing this
7 year, but we'll have to donate something, I would
8 imagine.

9 Q. So your wife makes those payments?

10 A. I made a few last year, but she usually
11 made them.

12 Q. Does your wife usually pay the household
13 expenses?

14 A. Yeah, pretty much. I sometimes buy food,
15 and I will put gas in the cars, and I pay -- I
16 usually end up paying tuition for the kids at the U
17 or at the other schools, you know, and there's some
18 extraordinary expenses I pay, like one of the kids
19 have bought a computer. Yeah, I pitch in. As my
20 income goes up, I'm paying more and more of them.

21 Q. Do you know what the monthly payments are
22 on the cars?

23 A. You know, I don't recall, but I'm going
24 to say around \$400 to \$450 a month. We've got a guy
25 using the Rover who is kind of paying for it, but

1 that's not acceptable. We want to get rid of it

2 Q. Are there car payments on all three cars?

3 A. Yeah. I'll just represent to you my
4 understanding is that the cars are worth less than
5 the payments owed on them at this point. The Trooper
6 has another three years left to pay. I think they
7 all have another three years, four years left to pay.
8 The Ro -- Defender has probably got another four and
9 a half years. The Accura has four -- three to three
10 and a half years. As I recall, the Trooper is
11 probably worth \$13,000. We probably owe thirteen
12 something.

13 Q. Do you know what the total monthly
14 payment is for the cars?

15 A. I don't.

16 Q. And your wife pays those?

17 A. Yes. I'm going to guess about \$450 to
18 \$500, you know.

19 Q. Total for the three?

20 A. No, per car, whatever you would expect
21 for a loan of that amount. We'll probably be down to
22 two cars, I think, here shortly. Some of the kids
23 pitch in too. We've got four drivers. I'm not a
24 driver. We make the kids pay some of their money to
25 pay for it.

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1 Q. Do you have any annual dues or
2 memberships you have to pay?

3 A. Yeah. I've got bar dues, and that was a
4 killer. I've got to catch some up and I've paid
5 some.

6 Q. Is that about 350 bucks?

7 A. Well, it was late this year. It was
8 five. I didn't know if I was going to have a
9 license, so the judge stayed it. Then it was late.
10 Then I've got some bar dues in New York State that
11 are way behind. There's \$2,000 owing there, but I'm
12 trying to catch it up. And I pay every year probably
13 another \$50 in various blind organizations to keep
14 the literature coming, American Association for the
15 Blind and the Macular Degeneration Organization.

16 Q. Any club or spa memberships?

17 A. No. I was playing squash. For a blind
18 guy I'm pretty good. My peripheral vision is intact.
19 The squash court was in our building. Lexington had
20 paid like a lump for everybody to be able to go use
21 it. I think my portion was about six bucks a month.

22 Q. But right now you don't have any.

23 A. No. That takes money.

24 Q. Okay.

25 A. I don't have any.

1 Q. What's the monthly house payment?

2 A. I think it's \$3,000, I'm going say.

3 Well, no. The first mortgage is \$3,500.

4 Q. How many mortgages are on them right now?

5 A. Three on them right now.

6 Q. Do you know who those are?

7 A. You mean the lenders?

8 Q. Yeah, the lenders.

9 A. The first is Countrywide Mortgage. The
10 second is, I'm going to say, Key Bank. The third is
11 Life Bank.

12 Q. Do you know what's owed on all of those?

13 A. My wife would know better. I'm going to
14 guess about four hundred on the first, two hundred on
15 the second, and six hundred on the third.

16 Q. Somebody was willing to lend you
17 six hundred on a third on that?

18 A. My wife had pretty good credit.

19 Q. So what do you think the monthly payments
20 are?

21 A. Well, I think the payments on the first
22 would be \$3,700. The payments on the second are
23 about \$200,000. The payments on the --

24 Q. Wait a second.

25 A. I mean \$2,000.

1 Q. Two thousand bucks a month?

2 A. I'm going to guess \$2,000. And the
3 payment on the third, I think that monthly payment
4 would be around -- I'm going to say about \$5,000 a
5 month.

6 Q. Does your wife pay those?

7 A. No. I wish she could afford to pay them.

8 Q. Who pays them?

9 A. Well, actually the Wasatch Credit guy,
10 David Knudsen, is supposed to be paying them, but, as
11 you recall, we just averted a foreclosure down to the
12 last day on this house a couple of months ago.

13 Q. Is your wife signed on the loans for
14 those three?

15 A. She's signed on the third.

16 Q. She's not a signator on the first or the
17 second.

18 A. No. Of course, we discussed this before,
19 but she's not, no.

20 Q. So why does David Knudsen make the
21 payments to them?

22 A. He's supposed to. He's the one that
23 pulled out the money.

24 Q. He owns Wasatch Credit?

25 A. Yeah, he owns Wasatch Credit.

1 Q. So he got the money from these three
2 loans? He got the proceeds?

3 A. No.

4 Q. Did he get the proceeds from the third
5 loan?

6 A. No.

7 Q. Did he get the proceeds from the first
8 two loans?

9 A. No, he got the proceeds from the second
10 loan.

11 Q. He got the proceeds from the Key Bank
12 \$200,000 loan.

13 A. Yeah.

14 Q. What was done with the \$600,000 proceeds
15 from the third loan?

16 A. I think he's still got it in escrow. I
17 mean, it's never been released. It's been that way
18 for about six months, eight months.

19 Q. Waiting for what?

20 A. He's got to provide -- well, if you
21 recall, the house is in litigation. You noted the
22 house.

23 Q. No.

24 A. I thought we told you about this.
25 There's a big lawsuit involving Danell and David

1 Knudsen, this guy, and several other parties over
2 this house and some other property.

3 Q. Where is it filed?

4 A. Salt Lake.

5 Q. Third District Court?

6 A. Yeah.

7 Q. There's a lawsuit filed in Third District
8 Court naming your wife?

9 A. Right.

10 Q. Who is the plaintiff?

11 A. Bruce Giffen.

12 Q. So it's Giffen versus your wife and
13 Knudsen and --

14 A. Yeah, and a bunch of others.

15 Q. What is the lawsuit about?

16 A. Do you want the thumbnail version, or do
17 you want me to really start back a long ways?

18 Q. Just give me the quick, dirty.

19 A. Giffen claims an interest in the house.

20 Q. He had title to the house.

21 A. Yeah, and he also claims he's -- he's
22 filed a lis pendens on the house for \$200,000. In
23 addition to these loans on the house, there's a
24 Giffen lis pendens for \$200,000. He claimed an
25 interest in the house, and that is disputed by my

1 wife, and also Knudsen has -- we have a cross-claim
2 against Knudsen; we have a counterclaim against
3 Giffen. You know, if you --

4 Q. How did your wife and the LLC get title
5 from Giffen? He must have --

6 A. They didn't get it from Giffen. They got
7 it from Knudsen.

8 Q. Giffen had a title, right?

9 A. Right.

10 Q. Who did he deed title to?

11 A. He gave it -- well, I see. Okay. He
12 originally gave it to Danell. Danell gave it to
13 American -- oh, no -- Amer, Inc. Amer, Inc. conveyed
14 it to David Knudsen.

15 Q. Why did she deed it over to Amer, Inc.?

16 A. Because part of her arrangement with
17 Giffen was that he needed like a \$50,000 payment, and
18 there was an \$80,000 loan put on the house to settle
19 it. She had to go out and get Amer, Inc. -- she had
20 to get some money from Amer, Inc. to refinance these
21 amounts of money at about \$150,000. Amer, Inc.
22 wouldn't do it because the title was screwed up,
23 unless they owned the property, so she had to deed it
24 to Amer, Inc. Then Amer, Inc. deeded it to David
25 Knudsen because he was able to get a second to take

1 care of that and also pull out proceeds. Does that
2 make sense?

3 Q. And then Knudsen gave it back to your
4 wife.

5 A. And then Knudsen -- or if it was in his
6 name I forget -- deeded it to Danell. We have
7 ongoing litigation, of course. We may be
8 cross-litigants against Knudsen. Now he has deeded
9 it to Danell. Now there's a million and a half
10 dollars worth of liens on it.

11 Q. Why was the loan taken out?

12 A. Originally it was going to be used to
13 take care of Giffen, take out the second, and reduce
14 some of the first, but it hasn't been used for that.

15 Q. Where is the lawsuit, what stage of
16 litigation?

17 A. You know, we've all answered. There was
18 a motion for her attorney to counterclaim. There was
19 a motion for summary judgment from Giffen about six
20 months ago. That stopped because -- it has not gone
21 to hearing, but it's pretty apparent given he doesn't
22 have a claim. Then we also had to stop because the
23 property went into foreclose. Knudsen, Danell,
24 Giffen -- nobody made any payments on the first. It
25 went into foreclosure. We were 12 hours -- no --

1 24 hours from having the home foreclosed on, if you
2 recall, so everybody kind of stopped litigating and
3 started worrying about whether they were going to
4 lose a central asset in this deal.

5 Q. Okay.

6 A. It's a mess. But if you'll take it as a
7 settlement, maybe I ought to get my wife to give you
8 the house.

9 Q. I'll have to read the litigation papers.
10 Maybe I can. No.

11 What do you think the monthly expense is
12 for auto insurance?

13 A. You know, I don't know. It's fairly
14 expensive. We're trying to get that lowered. You
15 know, I just can't tell you. She pays that as well.
16 You know, you take three cars worth, whatever they're
17 worth, 12 to 17 grand, 15 grand, and you pay what you
18 pay. Now, we do have youth drivers, and so that
19 makes it a little more expensive. My one son owns
20 his own car, but we're helping him pay the insurance
21 on it. I couldn't tell you, but it's not
22 inexpensive.

23 Q. What insurance company do you use?

24 A. Well, we were with Farmers, and now I was
25 just looking at Gico. Our insurance agent, the one

1 who has the policies, he is giving us a new quote.
2 He's giving Danell a new quote.

3 Q. But currently you're with farmers?

4 A. Yeah.

5 Q. Is there insurance on the home?

6 A. Oh, yeah. With the first mortgage, you
7 know, Countrywide, there's a payment every month for
8 insurance.

9 Q. Who holds the insurance?

10 A. You know, that was originally gotten by
11 Bruce Giffen because he was the lender. I mean, he
12 was the -- you know, the loan was in his name, so
13 it's whoever he's gotten, and I think -- but the
14 monthly payment pays that, and there's an impound for
15 it. I have to say that may also be Travelers. That
16 was set up by him.

17 Q. It's included in your monthly house
18 payment.

19 A. Yeah. The monthly house payment on that
20 first mortgage is PITI. I have a question.

21 Q. Uh-huh.

22 A. Does the SBA buy lunch for people it's
23 deposing at lunch hour?

24 Q. No. But do you want a lunch break right
25 now?

1 A. No. I want to get this over with, but
2 I'm hungry. Let's keep going.

3 Q. I'm willing to break for some lunch.

4 A. What I prefer is you anticipate that
5 we're going to be here and get a little government
6 budget set aside to buy us some lunch, but since we
7 don't have that done, let's get done.

8 Q. This is the Federal Government you're
9 talking about here. This isn't Parsons Behle.

10 A. Gotchya.

11 Q. If we could be a little clearer on some
12 things, we wouldn't have to keep doing this.

13 A. It's my job. It's your job. My job is
14 to be less clear and your job is to be more specific.
15 I'll try to be as clear as I can.

16 You recall, John, I sent this document
17 over to you with some other documents, I'm pretty
18 sure. When my wife entered into this transaction
19 that eventually led to the litigation, I had to sign,
20 and if there were any claim that you made or anybody
21 else made that I had an interest in this house, I had
22 to renounce it as part of this closing, whatever my
23 interest was.

24 My wife is on the line for this and some
25 other money. You know, the house was being put in

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1 her name solely, but as part of that transaction I,
2 in consideration for her taking that liability on,
3 had to renounce any interest that I may have in that
4 property, and there was consideration for that, and I
5 thought you got a copy of that document. It was
6 about a year and a half old.

7 Q. No.

8 A. Otherwise I would have ended up having to
9 sign on the notes, and there was some title issues.

10 Q. I'm not interested about whether you have
11 an interest in the home.

12 A. I'm just letting you know.

13 Q. Okay. Do you have any magazine and
14 newspaper subscriptions?

15 A. Yeah.

16 Q. What are they?

17 A. News Week, church magazines, Braille
18 Newsletter. I get a Fulbright newsletter because I
19 was a Fulbright scholar and I'm very intelligent. I
20 used to get the Harvard Law and Public Policy
21 Journal, but I don't think I'm still getting it. I
22 used to get the Columbia Human Rights Law Review.

23 Q. I'm not worried about what you used to
24 get. What do you get right now?

25 A. I haven't seen one for a few months. I

1 think one of my kids is taking Sports Illustrated.
2 That's probably it. I bet we get maybe three
3 magazines regularly, News Week, a church magazine,
4 and Sports Illustrated.

5 Q. How about the Salt Lake Tribune?

6 A. We get a newspaper, the Salt Lake
7 Tribune, and that's it. We also have an AOL. We
8 subscribe to the America On Line.

9 Q. How much is that a month?

10 A. Well, I can't remember if it's 19 or 9.
11 I know we were trying to get another severer.

12 Q. I think it's \$19.95.

13 A. Yeah, but I think if you get another
14 service provider it's like nine bucks. You can stay
15 on AOL, but when you turn it on -- and we were trying
16 to get on with CISNA. It's a lot cheaper.

17 Q. But you're currently with AOL you think?

18 A. I think so, yeah.

19 Q. And your wife pays that monthly bill?

20 A. I think it comes out of her credit card.
21 For a while it came out of my son's credit card
22 because we were maxed and we had some problems.

23 Q. Do you pay anything into a retirement or
24 401-K plan?

25 A. No. I wish I could, but I don't.

1 Q. Do you pay taxes out of your income, your
2 law income?

3 A. Yeah, I pay my own taxes.

4 Q. How much is that a month?

5 A. Oh, I don't pay it monthly, but last time
6 I paid I think I put just a flat thousand dollars.
7 It's quarterly or something like that.

8 Q. So basically you do your taxes at the end
9 of the year and see what you owe?

10 A. Correct.

11 Q. Do you have cable TV?

12 A. Yeah. We just got it about four -- four
13 or five months ago.

14 Q. What do you pay for that?

15 A. We got the minimum thing. We're debating
16 whether to cut it off because we got MTV with it, and
17 that stuff is straight from hell. I think it's
18 19 bucks. We got free installation.

19 Q. You got the basic cable service?

20 A. Yeah. We have never had cable ever, and
21 we just got it, and now we're all turning into
22 perverts.

23 Q. Do you have a cellular phone?

24 A. I had one, but it's been disconnected.
25 My wife has had them off and on. I think she just

1 went out and got one. She renewed it. For \$19 you
2 can get a Sprint service, and she got the cheap --
3 she got a month's worth of time.

4 Q. So your wife has one but you don't.

5 A. I don't now, no, but I'm going to get one
6 pretty soon here.

7 Q. What would you say your yearly
8 expenditure on vacations is?

9 A. We haven't gone on vacation for quite a
10 while. Last year we drove to Las Vegas and stayed
11 with some friends. You know, a couple thousand
12 bucks. I don't know. Put that down. You know, we
13 usually go camping or we have relatives in other
14 states. We just went to Arizona, drove to Arizona
15 for a quale hunt, where all of my family has a
16 reunion for a week in the Arizona desert. We don't
17 go on expensive vacations. We've been pretty frugal
18 the last couple of years.

19 Q. So in 1998 you didn't go on any big
20 vacations?

21 A. Oh, we went to Lake Powell. Only half
22 the family went to Lake Powell. We didn't go on a
23 vacation, no.

24 Q. You didn't go to Italy?

25 A. Went to Italy, but that's not a vacation.

1 Q. What is that?

2 A. We picked my son up from a mission, my
3 wife and I.

4 Q. In 1998 you picked up your son from a
5 mission.

6 A. In 1998 and also in 1997.

7 Q. I picked up a different son.

8 A. Right.

9 Q. And then you just traveled around with
10 them a little bit?

11 A. Actually, in 1998 we went with my
12 mother -- she paid for it -- and we picked him up in
13 Rome. '97 we -- yeah, you know, we went to the
14 little towns where he had been a missionary.

15 Q. And your mother paid for it you say?

16 A. In 1998 my mom paid for it. 1997, I
17 think we paid for it or -- what happened? I know. I
18 had some Northwest Airline discount business travel
19 coupons from a guy named Frank Dunbar, and for
20 250 bucks Danell and I ended up going to Italy and
21 back. We stayed in the homes of two families, and we
22 stayed in a hostile once for three days, and it was a
23 very inexpensive trip.

24 Q. What would you say your monthly gas bill
25 is?

1 A. You mean utility?

2 Q. Yes.

3 A. I don't know, but I brought a Questar
4 bill in here. It's in Danell's name, so you know.
5 Why don't you look at these and see if you can tell
6 which one is gas.

7 Q. Okay. Do you have any phone bills with
8 you?

9 A. No, I don't have any. I don't have a
10 telephone bill and I don't have a cable TV bill.

11 Q. Whose name is the phone bill in?

12 A. The phone is in my name.

13 Q. Do you pay it?

14 A. I think it actually has been paid by D.M.
15 Johnson -- I think.

16 Q. It looks like the power bill is in
17 Danell's name. Is that correct?

18 A. I think so. The telephone has my name on
19 it. If you call information and you ask for Jamis
20 Johnson, that's who you get, and I think the bill is
21 in my name.

22 Q. It looks like the water bill is in
23 Danell's name. Right?

24 A. I would imagine so.

25 Q. Who pays the utilities at your office?

1 A. I don't pay utilities at the office.

2 Q. You just pay that \$175 monthly rent?

3 A. Yean, for my little space.

4 Q. Who pays the phone bill?

5 A. Well, I have my own phone. I have to pay

6 my phone bill.

7 Q. Does the LLC pay those bills too?

8 A. The LLC has its own space, and they have

9 their own costs. When we did the taxes last year, I

10 think that when we put the funds in and flowed them

11 through the LLC they paid some of the phone bills.

12 They paid the phone bill. But then there was a

13 period of time when Wasatch Credit -- you know, we

14 made all our phones with Wasatch Credit, and they

15 were paying one big lump. I would do a foreclosure

16 for them in exchange for services or D.M. Johnson

17 would cut them a check.

18 The phones have just changed again. I

19 pay the phone bill, you know, for my own phone bill.

20 What I have tried to do is piggyback on another

21 system because it's a little cheaper, but that's not

22 happening. We had four or five different offices in

23 this letter area. We shared various expenses and

24 each paid for our own room, and some of the guys

25 moved out and it's changing now.

1 Q. So the LLC has a room there now too?

2 A. It's got some space and it's got some
3 filing, but after Wasatch moved out we cleaned out
4 one of our rooms, so we're not paying for it. So
5 they don't have a space, but they are occupying -- I
6 mean, they in theory occupy the front area. They
7 have, quote, a space, but they're not taking up any
8 space.

9 Q. Does the LLC have an accountant, do you
10 know?

11 A. Well, just our tax guy that we used. And
12 then Kim Renak, who I thought was a member of D.M.
13 Johnson & Associates, kind of keeps for books for the
14 LLC.

15 Q. Are there actual physical books, do you
16 know?

17 A. It's not very complexed. They just use
18 the bank accounts. I think she keeps some records.

19 Q. Do they have accounting software?

20 A. I thought you subpoenaed all their
21 checks. You got every check from D.M. Johnson &
22 Associates, but it would be possible for you not to
23 have all this information. They don't have
24 accounting software to my knowledge, but you have
25 every single check.

1 Q. I have all the checks, but I don't have
2 general ledgers and I don't have journals and --

3 A. They don't keep ledgers. They don't have
4 that much activity.

5 Q. Well, they have \$150,000 a year worth.

6 A. You're right. They could be in the form
7 of two checks, though. You know, it comes in and you
8 write it out.

9 Q. Well, that's not what it is.

10 A. I don't know. You have the checks, I
11 don't. I'm not the custodian.

12 Q. What tuition do you pay?

13 A. Well, it varies. We're trying to get our
14 kids to get scholarships or loans. But I have one
15 son at the U. I had one daughter who was at the U,
16 but she's working now. She wants to earn money to go
17 study abroad. And I have another son at the
18 community college. So I pay the tuition. I paid
19 \$1,500 for the son at the U, and I think the son at
20 the community college paid this time. I think his
21 was about 800 bucks, and I think I pitched in on some
22 of that. My daughter doesn't have tuition right now.
23 She was at the U, but she's earning her own money to
24 go travel.

25 Q. So did you pay your son's U of U tuition,

1 or did your wife?

2 A. I paid it, I believe. No, I think I took
3 him -- I paid it. I can't remember if I had a
4 cashier's check and went and turned it into a
5 cashier's check to the U, or D.M. Johnson may have
6 paid it. I don't recall. One of those two things
7 happened.

8 Q. Do you have an account in your name at
9 First Security Bank?

10 A. I have a -- or had a -- I think there was
11 a Lex account that used to be in my name and a
12 Johnson & Associates account. The trust account used
13 to be in my name. They should not be in my name now,
14 but they used to be, and that's where they're using
15 the computerized checks and stamps. I do not have a
16 personal account at First Security Bank. I used to
17 have one at Zion's, but because of my financial
18 problems, a couple of bad checks that we actually
19 cleared up, they're ended.

20 Q. The Lexington Law Firm account at the
21 70th South Office, does that sound familiar?

22 A. Yeah. I just said I have -- I think a
23 Lex account had me down as the signatory on that
24 account.

25 Q. Are you a signator now on that account?

1 A. No, I shouldn't be, because I resigned
2 from -- because of liability, nobody wanted me to keep
3 doing it. When you get disbarred as an attorney,
4 they don't want you to do it.

5 Q. And you didn't bring me any records from
6 that account, correct?

7 A. I did not, and I went in -- I am actually
8 not the custodian. I resigned, as I recall, in May
9 pending their -- we were waiting for the final
10 judgment on the bar matter.

11 Q. You have possession of no --

12 A. And I don't have -- I'm not the custodian
13 of any of that stuff.

14 Q. You don't have any bank statements from
15 that account?

16 A. I didn't keep them, but I did think I
17 could justify getting them through May. They were
18 kept by a bookkeeper. I'm sorry. I thought I had
19 them through May and did not have them. The reason I
20 saw through May is that's when I was on the line.
21 That's before I resigned, although I was being phased
22 out. I would imagine I can get them. But that
23 should have been a First Security account.

24 You know, John, I have to say -- we can
25 go on the record on this. This is kind of an

1 interesting observation -- I think when you deposed
2 my wife you made some remark -- and I can't remember
3 if it was on the record or not -- that every once in
4 a while you would see Jamis Johnson in an expensive
5 suite at court and knew that he had some money. So
6 today I would like the record to show I look like a
7 slob. I would also like to go on the record saying
8 that I have not bought a new suit for at least ten
9 years, but they were expensive when I bought them.

10 Q. We're glad we got that on the record.

11 Thank you.

12 A. Okay. I am too. If I do buy a new suit,
13 I'll be sure and let the SBA know.

14 Q. So does D.M. Johnson & Associates, LLC
15 pay rent at the Chancellor Building?

16 A. They have, but they're not currently
17 paying rent.

18 Q. Are they supposed to?

19 A. No. I mean, as I say, we had kind of a
20 shared space arrangement. Wasatch Credit moved out,
21 Knudsen moved out, and we had some -- we had a back
22 office also. We completely shut all that down, and
23 I'm the only one that has a cubical now, an office
24 now. They're not charging us for the common area up
25 front, and that would be, I think, D.M. Johnson's

1 charge, but they're just giving it to us. That whole
2 basement is just basically half deserted now, so
3 they're not having to pay rent.

4 Q. So Wasatch Credit is not there?

5 A. Wasatch Credit is no longer there.

6 Q. And you're just paying the 175 bucks a
7 month?

8 A. I'm just showing up and paying it. I try
9 to keep my overhead pretty low.

10 Q. So your wife at this time is still on the
11 board of Johnson & Associates.

12 A. Yes. What was that you just turned off?

13 Q. That was just this leather chair here.

14 A. I thought maybe you turned something off.
15 I thought you had an infrared polygraph beam you were
16 beaming at me or something, some new government
17 scheme.

18 What do you think the SBA would take if I
19 came in and gave them some money?

20 Q. I don't know.

21 A. You don't you have enough information to
22 extrapolate my financial condition. Would you sell
23 me the judgment if I -- would you sell it to me if I
24 wanted to buy it?

25 Q. Well, what good would that do you?

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1 A. I could have somebody else buy it to
2 protect me, use it as a shield. Does SBA sell the
3 judgments?

4 Q. Yeah.

5 A. Maybe you guys ought to sell it to like
6 Bonneville Collections or something and let them come
7 after me. It might be economically more prudent.

8 Q. Does the LLC pay rent to Robert Woods?

9 A. No, that doesn't -- huh-uh, no. Who is
10 Robert Woods?

11 Q. I don't know. I've got a check where
12 they paid him \$375 for rent.

13 A. Were they renting a piece of equipment or
14 something?

15 Q. I don't know.

16 A. That doesn't ring a bell. It doesn't
17 jump out at me.

18 Q. There's another one in August for \$703.

19 A. To Robert Woods. Man, that's got my
20 curiosity piqued. What does it say?

21 Q. Actually, I think that's Kim Renak has
22 rented her home, probably.

23 A. Okay. That makes sense. Maybe I better
24 find out if she's taken money. That's a good
25 question. I've never noticed that.

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1 Q. Does she live at 1415 Hawk's Court?

2 A. Yes.

3 Q. Well, that's what it's for.

4 A. She's supposed to be a member of D.M.
5 John & Associates. I'm surprised her name was not on
6 that because I thought she always was.

7 Q. When you say "hard money lenders," what
8 does that mean?

9 A. Well, you know, there are individuals out
10 there who have a substantial amount of money. If
11 someone comes to you and says, Look, I can buy a
12 piece of property at a good price if I can get it
13 quickly; or, I have a looming problem that will be
14 very expensive, but I've got plenty of security, and
15 I need the money in a few days or few weeks, and for
16 whatever reason I can't borrow it from a regular bank
17 or institution either because I need the money very
18 quickly or because I don't have good credit, can you,
19 Jamis, help me line this money up? Then I say, I
20 want \$100,000. Then I'll say, Fine.

21 I'll go talk to somebody and say, Do you
22 want to do this loan? If the bar were to talk to me,
23 I'll say, Look, I'll do it for 5,000 buck. If you
24 \$100,000, you pay me \$5,000, and you have to have
25 collateral. Then I'll go see somebody who has a

1 bunch of money, say in a pension fund or something,
2 and I'll say, Do you want to loan this guy money for
3 three months or six months or a year at 15 percent
4 interest or 18 percent interest, and you can charge
5 two, three, four, five, seven points? If the guy
6 likes the loan, he'll loan this money on this
7 business deal. I will charge \$5,000 for that
8 service. If it's a quarter of a million dollars,
9 maybe I can make \$15,000. I've done loans up to a
10 million dollars.

11 Q. So the money or commission you get off of
12 that, is that funneled into the LLC?

13 A. Typically it's just been coming to me.
14 But if it involves D.M. Johnson or if my wife was
15 using a line of credit for the money, it would go to
16 them.

17 Q. I don't understand that. Why would she
18 need to use a line of credit?

19 A. Maybe she was making the loan. She just
20 qualified for a \$600,000 loan on her house.

21 Q. So you're saying your wife would be the
22 investor that you've talked to and lined up with this
23 person.

24 A. Yeah. Or if she had to sign on the line
25 for the money, sometimes the hard money lender would

1 say, Well, I'll do it if I get somebody with good
2 credit to sign on it. If Danell co-signs on the
3 loan, yeah.

4 Q. Are you saying that the LLC acts as the
5 hard money lender sometimes?

6 A. No. In that case it would be like a
7 co-signer. The hard money lender would come up with
8 the dough but might want Danell to -- who has good
9 credit to sign with this person, and if there's
10 enough fees, yeah, she can get the money. But I have
11 not done a really large hard money loan probably in
12 the last -- I don't know if I've done one this year.
13 I've been working on some.

14 Q. So you haven't done any hard money
15 lending deals this year.

16 A. I've done some small ones, and we used --

17 Q. About how many?

18 A. Well, I mean, if you look at the -- gee,
19 it's kind of hard to keep track of that. The Knudsen
20 deal where Knudsen pulled out -- well, that was last
21 year though. I just did one within the last two
22 months.

23 Q. You've done one deal in the last two
24 months.

25 A. I just did a hard money loan in the last

1 two months, yeah.

2 Q. And how much money did that generate?

3 A. That was an odd one. It probably
4 generated four grand.

5 Q. And did you get that money?

6 A. There's an increment of it for attorney's
7 fees, and I will get that money, and the hard money
8 loan will be attributed to Danell. The points on the
9 hard money loan will go to Danell because she had to
10 use a little piece of real estate. She didn't own
11 it, but she had to be willing to sign on the line,
12 and she'll get that money. But I'm also representing
13 the lender, and I'll charge them legal fees. She'll
14 make about a total of \$6,000 out of it.

15 Would you like me to put the money into
16 my account or into Danell's account? How would you
17 like me to handle that? I'm working on one I thought
18 was going to be in the \$700,000 range, but it's kind
19 of collapsed.

20 Q. Is somebody working on the LLC's 1998 tax
21 returns?

22 A. Yeah, same outfit. The reason it was
23 delayed was because it was difficult to determine
24 what portion of the interest Danell was responsible
25 for last year for three reasons there. There was

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1 extra loans. The foreclosure. Some of the interest
2 was not paid last year because we stopped making the
3 payments, and the foreclosure started, and then the
4 foreclosure was caught up. So we're trying to decide
5 how much interest is attributed to Danell last year
6 on the house payment. That's one of the reasons that
7 we're slowed down.

8 Q. So Triple Checks is doing the returns for
9 you, Danell, and the LLC.

10 A. Yeah. The LLC is just a flow-through,
11 but, yeah.

12 Q. Okay. Does your wife have title to any
13 real estate beside the home on Military Way?

14 A. No. She may have a piece of a
15 construction company here shortly that does
16 stuccoing, if you need stuccoing.

17 Q. Does she have any mutual funds?

18 A. No. She has no stock, mutual funds,
19 retirement accounts, pension.

20 Q. Just basically the motor vehicles, the
21 home, and the interest in the LLC.

22 A. Yeah. And then the Caldwell Memorial
23 Hospital, that's gone. She's got some litigation she
24 could bring.

25 Q. So the LLC is not generating anymore

1 income from Louisiana.

2 A. No.

3 Q. So the LLC's main source of income right
4 now is Danell's trusteeship in Johnson & Associates
5 and some of these hard money deals. And anything
6 else?

7 A. Lex. You mentioned \$465 payment from
8 Lex.

9 Q. Lexington Law Firm does credit repair,
10 right?

11 A. Uh-huh. Danell gets payments from Lex.
12 Then she also has -- well, if a big deal comes along
13 she gets some of that money. We sold some of that
14 real estate. We bought some lots and sold them in
15 the fall. I mean in the spring.

16 Q. The spring of 1999?

17 A. Yeah, the tax sale when we went up to
18 Summit County. I mentioned that to you. And, you
19 know, the payments on the house coming from Knudsen
20 would probably be treated as income to her to the
21 extent it pays out on that first mortgage \$3,700 a
22 month. That's about -- that comes out to be \$45,000
23 a year or something, I mean on the receipt of the
24 payments of that house.

25 Q. So is your wife in the lawsuit trying to

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1 get the \$600,000 out at get it back?

2 A. No. The lawsuit is more complex than
3 that. But she is -- yeah, she's actually -- yeah.
4 That's part of it, yeah.

5 Q. So if she prevails against Knudsen she'll
6 get the money out of the escrow?

7 A. If she prevails against Knudsen, if that
8 money is still there and Knudsen catches it up, it
9 would be used to pay off the first and the second,
10 although Giffen says he wants some of those proceeds.
11 That's another thing that's holding it up.

12 MR. GYGI: I think that's all I need for
13 now.

14 (Concluded at 1:00 p.m.)

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CERTIFICATE OF DEPONENT

STATE OF UTAH)
)
 COUNTY OF SALT LAKE)

I, JAMIS M. JOHNSON, deponent, HEREBY CERTIFY that I have read the foregoing testimony, numbered from 3 to 88, inclusive, and the same is a true and correct transcription of said testimony with the exception of the following corrections listed below giving my reasons therefor.

DATED THIS _____ DAY OF _____, 1999.

 (DEPONENT)

Page	Line	Change/Correction	Reason
11	_____	_____	_____
12	_____	_____	_____
13	_____	_____	_____
14	_____	_____	_____
15	_____	_____	_____
16	_____	_____	_____
17	_____	_____	_____
18	_____	_____	_____
19	_____	_____	_____

SUBSCRIBED AND SWORN before me this

_____ day of _____, 1999.

 (Notary Public)

My Commission expires:

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CERTIFICATE

STATE OF UTAH)
)
COUNTY OF UTAH)

THIS IS TO CERTIFY that the deposition of JAMIS M. JOHNSON was taken before me, Jerry R. Martin, a Registered Professional Reporter and Notary Public in and for the state of Utah.

That the said witness was by me, before examination, duly sworn to testify the truth, the whole truth, and nothing but the truth in said cause.

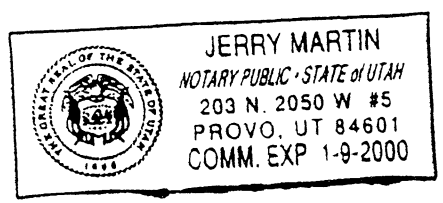
That the testimony of said witness was by me reported in stenotype, and therefore caused to be transcribed into typewriting, and that a full, true, and correct transcription of said testimony so taken and transcribed is set forth in the foregoing pages, numbered 3 to 88, inclusive, and said witness deposed and said as in the foregoing annexed deposition.

I further certify that I am not of kin or otherwise associated with any of the parties to said cause of action, and that I am not interested in the event thereof. WITNESS MY HAND AND OFFICIAL SEAL AT PROVO, UTAH, THIS 18TH DAY OF NOVEMBER, 1999.

MY COMMISSION EXPIRES:
JANUARY 9, 2000



JERRY MARTIN, RPR



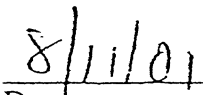
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Tab 3

Assignment of Judgment

For valuable consideration, the sufficiency and receipt of which is hereby acknowledged, All Star Financial (being the current Assignor) hereby sells, transfers, and assigns to Jayson Orvis, all of the right title and interest in that certain Judgment obtained against Jamis Johnson in the U.S. District Court of Utah in U.S. v. Jamis Johnson, civil action no. 2-95-cv-838 in the amount of \$260,000.00 with interest to accrue on any unpaid balance at the approved judgment rate. (All Star Financial had received an Assignment of Judgment from the SBA -United States prior to this Assignment.)

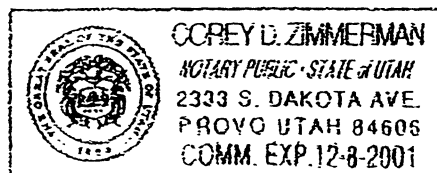

All Star Financial by Mark Kemp, Managing Member

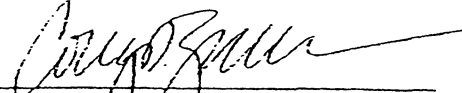

Date

Notary

State of Utah
County of Utah

On this day August 10, 2001, Mark Kemp, being duly sworn, the signer of the foregoing instrument, claiming he is the Managing Member of All Star Financial, who duly acknowledge to me that he executed the same.



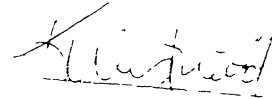

Notary Public

ORV065

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Tab 4

Joe Cartwright #7697
Attorney For Defendant
Wells Fargo Center
299 South Main Street, Suite 1700
Salt Lake City, UT 84111
Tel: 801-363-5255



IN THE THIRD JUDICIAL DISTRICT IN AND FOR SALT LAKE
COUNTY, STATE OF UTAH

JAYSON ORVIS
Plaintiff,

vs.

AMIS JOHNSON
Defendant.

AMIS JOHNSON and DaNell JOHNSON,
Third-Party Plaintiffs,

vs.

JAYSON ORVIS
Third-Party Plaintiffs.

AFFIDAVIT OF JAMIS JOHNSON IN
SUPPORT OF JAMIS JOHNSON'S
MEMORANDUM IN OPPOSITION TO
JAYSON ORVIS' MOTION FOR
SUMMARY JUDGMENT

010907449

Civil No. 012345678-

Honorable Timothy R. Hanson

(Oral Argument Requested)

Jamis Johnson being duly sworn deposes and says as follows:

1. I am the Defendant in the captioned case and I am familiar with the facts and circumstances set forth herein. I will refer to myself below in the third person for ease in relating the below described facts.

2..This case involves millions of dollars and It is estimated that Jayson Orvis is today personally taking \$500,000 to \$800,000 monthly from the credit repair ventures, one third of which belongs to the Johnsons. (Ex. 1, Vigil Deposition p70, line 6-15) (Lexington web page: lexingtonlaw.com) (Ex. 2, Deposition of Tommy Triplett p. 20, l. 9, where Orvis takes in \$153,000 in one month several years ago.)

3. Lexington Law Firms has 75,000 to 150,000 clients each paying \$35 monthly and Orvis takes the lion's portion of this money. (Ex. 1, Vigil Deposition *supra*.)

4. This case is an effort by Orvis to end the partnership of Orvis and the Johnsons and involves claims by the Johnsons of embezzlement, fraud and concealment by Orvis of profit share; establishment of secret companies to siphon profits from Johnsons, use of sham companies to hide from the U.S. Government the Orvis purchase of an SBA judgment; it involves the active complicity of a Utah attorney. The actual damages to Johnsons exceed several million dollars.

5. In or about 1994, Jamis Johnson, Jayson Orvis, and three others, John Hollingshead, Merrill Chandler, and Steve Paige, founded a consumer services enterprise to engage in the business of "credit repair".

6. DaNell Johnson, wife of Jamis Johnson, would hold the beneficial interest in this business venture, and she would receive monies derived therefrom, and would separately incur and pay the tax liability thereof. Jamis Johnson would

work with the venture representing their interest and interfacing with Orvis and the other partners.

7. This arrangement between DaNell and Jamis Johnson is evidenced by, among other things, Powers of Attorney dated in 1995 and 1996. (Ex. 3 Powers of Attorney) and is long-standing with similar arrangements between them extending back to as early as 1987. It is reflected in prior business ventures involving the Johnsons such as in the Caldwell Memorial Hospital business. (Ex. 4 Deposition of Jamis Johnson, March '98 page 20 line 3 and on.)

8. DaNell Johnson was to, and did, receive the profit share from this venture and Jamis Johnson would do much of the work (Ex. 3, Powers of Attorney), interface with the business, and would also incur significant personal liability.

9. The credit repair venture used many different business entities, two of which were Johnson and Associates, a Utah non profit corporation (sometimes referred to as "J&A") and Lexington Law Firms (sometime referred to as "Lexington").

10. Three of the founding partners would depart from the partnership for various reasons at different times. They were Chandler, Paige, and Hollingshead. Hollingshead left the partnership in approximately September of 1997.

11. Hollingshead's departure left Orvis and the Johnsons remaining in the partnership and conducting the credit repair business.

12. DaNell sat on the Board of J&A along with Orvis, Victor Lawrence, Sam Spendlove, etc. (Ex. 5. Resolutions By Unanimous Consent of The Board of Trustee of Johnson and Associates.)

13. Orvis ran the marketing of J&A and Lexington and an entity called eClient and provided the day-to-day management. Orvis controlled all money and

performed all accounting and financial controls, and interacted primarily with Jamis Johnson for the Johnsons (per the Powers of Attorney, and the practice and arrangement of the Johnsons).

14. Jamis Johnson was the signatory on all checks for Lexington and J&A. His computerized signature appeared on thousands of checks. The trade name Lexington Law Firms was held in his name.

15. By September of 1997, Jamis Johnson had incurred significant personal liability for the ventures, thus shielding DaNell Johnson and Orvis: The State of Tennessee had sued him under a federal regulation; (State of Tennessee vs. Jamis Johnson, U.S. District Court, Middle District of Tennessee, Civil No: 3-96-0344) The Utah Division of Consumer Affairs, , and The Utah State Bar were pursuing an administrative action relative to the credit repair business; and Johnson & Associates had incurred back tax liability placed in the name of Jamis Johnson though he was not on the Board of Trustees (Orvis and DaNell Johnson were on the Board).

16. Indeed, Orvis would acknowledge that he felt compelled to keep paying profit share because of the ongoing liability of Jamis Johnson. (Ex. 2, Triplett deposition. page 38 line 10-12)

17. Jamis Johnson and Orvis would engage as many as four attorneys to help with Lexington and with J&A. Jamis Johnson was originally designated as "directing attorney" for J&A and Lexington.

18. One of these attorneys hired in approximately early 1997 was Victor Lawrence. Victor Lawrence received a modest salary and free office, telephone, reception, etc.

19. Victor Lawrence also represented DaNell Johnson in significant individual business matters for example, in litigation with Bruce Giffen, as a creditor in the Utah Agrisource Bankruptcy, against First Security Bank to recover on an agriculture lien on cattle; and also Victor Lawrence represented separately Jamis Johnson in his Utah Bar matters and several other matters including briefly with the SBA.

20. DaNell Johnson profit share checks were sporadic in the credit repair ventures at first.

21. By late 1997 to early 1998, the credit repair ventures started to consistently generate revenue for profit share. Orvis provided verbal monthly accountings of revenue for eClient, Lexington and J&A which Jamis Johnson either kept in a journal or were recorded on "invoices".

22. Profit share was divided between Orvis and DaNell Johnson at a ratio where Orvis received twice what DaNell Johnson received. In other words, Orvis $2/3^{\text{rd}}$ - DaNell Johnson $1/3$ of profit share. (Ex. 6. Outline Agreement, unsigned, dated 9-23-97.) These ratios were based on Jayson's day to day management of the business affairs and marketing, and on the Johnsons' less active role after the ventures were established.

23. After Hollingshead's departure, and as the Johnsons and Orvis continued to operate the credit repair businesses, tensions arose between the parties.

24. Johnsons would later learn that Orvis, during this time, was secretly taking partnership funds and setting up separate parallel companies to conceal profits and divert profits and not truthfully disclosing profit share revenues by greatly under representing revenues to Johnsons. (Ex. 2, Deposition of Tommy Triplett p. 22, l. 23-p. 26, l. 22-p. 28, l. 25-p 39, l. 8) (See also Ex. 1, Vigil Deposition *supra*. page 49 line 5, page 53 line 10)

25. In September 15, 1997, the SBA obtained a judgment against Jamis Johnson. (Ex. 7, Order For Entry of Judgment, U.S. v. Jamis Johnson.)

26. In March of 1998, the SBA deposed Jamis Johnson in post-judgment proceedings. There Jamis Johnson explained the arrangement between DaNel Johnson and himself where they worked together and she was allocated the profit share, as evidenced, for example, by the Caldwell Memorial Hospital business.

27. In early May of 1999 at the request of Orvis and after discussion, the parties entered into various agreements:

28. First, Orvis and Jamis Johnson executed an agreement wherein Orvis would hold all of the assets of the credit repair ventures of the Johnsons and Orvis, for the economic benefit of Orvis and the Johnsons. This is referred to as the Orvis-Johnson Profit Share Agreement. (Ex. 8, Orvis-Johnson Profit Share Agreement.)

29. This Orvis-Johnson Profit Share Agreement states in relevant part as follows:

WHEREAS, Orvis and Johnson have developed over the last several years, enterprises that provide credit repair services to a nationwide clientele. Such credit repair services include, but are not limited to a range of activities, including telemarketing, internet marketing, consulting, law representation, and the enterprises have grown over the years, and have a variety of tangible and intangible assets including, without limitation, for example, equipment, computers, software, furniture, knowledge, methods, techniques in marketing, lead sources, internet operations; and

WHEREAS, the parties desire to provide for the unimpaired continuation and growth of the business to the mutual benefit of the parties; and

WHEREAS, the parties acknowledge that an agreement was put in place reciting that all assets of this enterprise are placed in the name of Jayson Orvis so as to protect these assets and provide for continued growth and mutual profitability; and

WHEREAS, the parties acknowledge that they have governed and operated these enterprises under an outline agreement and under a course of performance that they desire to continue;

1. Governance and compensation/allocation of profits shall continue in the percentages as heretofore provided under the operating arrangements and as the enterprise continues to grow, however, all monies shall be paid to Jayson Orvis or his business entity as may be established and Jayson Orvis shall provide Johnson's share or allocation to any party directed by Johnson. The intent herein being that these enterprises shall continue to grow, expand, multiply as directed by the parties under their outline agreement and course of performance to their mutual economic benefit. (Emphasis added).

30. References therein to the "course of performance" and the "percentages" are references to ratios of profit share paid to DaNell Johnson or her entities. The outline agreement refers to Ex. 6, the unsigned document that sets out the ratios of Johnson and Orvis, etc.

31. In the second of these agreements, Johnson resigned as directing attorney for Lexington and J&A, and Victor Lawrence stepped into that position. (Ex. 9, Victor Lawrence Agreement) This agreement required Lawrence to continue to use the credit repair marketing of Orvis (and Orvis had entered into the above Orvis-Johnson Profit Share Agreement holding all for the joint profit of Orvis and the Johnsons.)

32. In resigning as directing attorney, Jamis Johnson did not relinquish the partnership interest and profit share that he and DaNell Johnson held. The Orvis-Johnson Partnership Agreement (evidencing the ongoing partnership of the Johnsons and the prior course of performance) and the Victor Lawrence Agreement (where Jamis Johnson resigned as directing attorney) were executed simultaneously. Thus even though Johnson resigned as directing attorney, the partnership with Orvis was intended to continue and indeed did continue until Orvis filed this lawsuit.

33. Profit share accounting and profit share checks divided between Orvis and Johnsons continued unabated after this time, regardless of the resignation of Jamis Johnson as directing attorney.

34. In April of 1999, the SBA subpoenaed DaNell Johnson for deposition on May 18, 1999.

35. At that deposition, DaNell Johnson was represented by Victor Lawrence. At this deposition, DaNell Johnson truthfully disclosed her business relationships.

36. Victor Lawrence himself questioned DaNell Johnson thusly:

[Q= Questioning by Mr. Victor Lawrence.]

A= Answer by Danell Johnson

Q *Okay. When that business first started, it was just a handful of friends and associates"*

A *Right.*

Q *Now that has somewhat blossomed, but you don't know really what the company does now, is that correct?*

A *Yes, because it has expanded quite a bit.*

Q *In fact, aren't the funds that you received a profit share that you receive?*

A *That's what I understood it to be, yes.*

Q *Are you being paid for anything else? Do you do any type of consulting for Johnson and Associates right now?*

A *(Nodded no.)*

Q *You have to answer audibly.*

A *I'm sorry.*

Q *Do you do any consulting for Johnson and Associates?*

A *No*

Q *Do you do any consulting for Lexington Law Firm?*

A *No.*

Q *You may sit on the board and you may receive a compensation for that, but you are aware that you receive a compensation in some type of profit sharing arrangement, is that correct?*

A *That's right.*

(Ex. 10, Deposition of DaNell Johnson.)

37. Later, in this litigation against the Johnsons to deprive them of their profit share interest, Victor Lawrence would argue that the Johnson's had no profit share interest and specifically ignored DaNell Johnson's profit share interest, in direct repudiation of the sworn testimony that she gave to the SBA under his representation and counsel.

38. November 17, 1999, the SBA deposed Jamis Johnson. (Ex. 11, Jamis Johnson Deposition, November, 1999)

39. In his deposition, Jamis Johnson accurately disclosed the information requested by the SBA. The following are excerpts and references of some of the deposition:

Jamis' role at D.M. Johnson and Associates, LLC., (DaNell Johnson's LLC)

P14 lines 1-3

Q. Are you a member of D.M. Johnson & Associates, LLC?

A. No.

and further.

Ownership of Lexington dba

P22 14-25 and P23

Q. Do you still operate your law practice under the assumed name of Lexington Law Firms?

A. I never operated my practice under an assumed name of Lexington Law Firms.

Q. Okay. The state records show that the d.b.a. is registered to you and has been ever since 1994 and will be until the year 2000.

A. I think that's accurate. The state records show that.

Q. So who do you claim uses the name?

A. Oh, Lexington Law Firms?

Q. Yes.

A. I think we provided you with a bunch of that information before, and you should know that, and I'm surprised you don't. But I resigned with any involvement in Lexington Law Firms because of the pending bar problem.

Bar Status affects Jamis' operational Lexington role

P24 lines 1 – 10

A. ...I don't know if we've ever registered the fact that it was assigned [to Orvis]. I was sued by the State of Tennessee, you know, personally because Lexington Law Firms was in my name, but since that time and with my bar problem I have completely relinquished any interest. They paid me a little bit, made my payment, and I resigned. Now, if it's listed as an assumed name by Jamis Johnson, they're going to have to go in and change that. But, you know, they're operating without me.

Interests in any partnerships –

P30 lines 16-25 and P31 lines 1-24

Q. Do you have any interest in any partnerships?

A. No. I mean, you know, often I'll have a joint endeavor with somebody, but I don't have a partnership or set up a partnership or an LLC. You know, if I get a deal I say, Hey, do you want to do this deal together? We'll go up to summit county and buy a lot.

Q. So a joint venture?

A. Yeah, you can call it that, but I don't have any outgoing partnerships.

Q. Any interest in any limited liability companies?

A. No. I had an interest in an limited liability company in California called Simmons Shores, LLC. The property got foreclosed out from underneath it. I made some money from raising loans for it, but I know that no longer exists.

I had an interest in an outfit called Western Equities, LLC, but that is no longer functional. I have no interest in LLCs or corporations.

Q. How about Summit Insured Equity Limited Partnership?

A. I had—that was a—I had shares of stock in Summit that I got in exchange for legal work and sold them, I'm thinking, in either late 1997 or '98, early '98.

Q. So you now longer have any interest in that limited partnership.

A. No.

Q. And you received no income.

A. No. It was a small amount of money. I got three grand from it.

DaNell sits on the board at J&A

P32 lines 12-15

Q. Currently is she employed by anybody?

A. Yeah. Well, she's not employed. She doesn't get a W-2. She sits on the board of Johnson & Associates.

Q. Does she earn any money for that?

A. Yeah, I think she does. I think she covered all of that with you....

DaNell's Lexington compensation for board position and certain contributions

Page 42 lines 1-5 and lines 17-25(page 43 lines 1-3)

Q. So if Johnson & Associates pays your wife money it's for her services as a trustee.

A. Yeah. She sits on the board. She also—yeah, she also—she did some other things for them occasionally, but not much.

* * *

Q. So your wife goes into the office there and does work or—

A. She does some work, yeah. She does some minimal work. She's also on the board. She also donated, you know, as she told you in her deposition, early on a bunch of computers and furniture and, you know, a lot of facilities to get it started. It's got a combination of things there. I mean, I think you know this because we've given you the checks, or she's given you the checks or Johnson & Associates have given you the checks. All of those checks have been made available to you.

DaNell still on board of J & A

Page 80 lines 10-12

Q. So your wife at this time is still on the board of Johnson & Associates.

A. Yes. What was that you just turned off?

DaNell Johnson's LLC's sources of income. Lexington makes regular payments to DaNell

Page 87 lines 3-15

Q. So the LLC's main source of income right now is the DaNells trusteeship in Johnson & Associates and some of these hard money deals. And anything else?

A. Lex. You mentioned \$465 payment from Lex.

Q. Lexington Law Firm does credit repair, right?

A. Uh-huh. DaNell gets payments from Lex. Then she also has—well, if a big deal comes along she gets some of that money. We sold some of that real estate. We bought some lots and sold them in the fall. I mean in the spring.

Jamis' holdings/assets

Questions about Jamis' personal accounts and holdings (checking, etc.)

Page 24 lines 1-25

DaNell's sources of income, which are separate from Jamis'

Pages 33, 37, 38-39,40

DaNell and Jamis pay separate taxes

Page 70 lines 1-3

40. After several years of work, Johnson obtained a favorable settlement of the federal action against Lexington in Tennessee. (Ex. 12, Consent Agreement, State of Tenn. vs Jamis Johnson.) On August 28, 2000, Johnson wrote Jayson Orvis to advise him that the Tennessee case had been settled and of the steps to take to make sure there was compliance with the Tennessee Federal District Court Consent Agreement. (Ex. 13 Letter: Johnson to Orvis re. TN compliance 8-28-00;)

41. Orvis responds by letter of August 30, 2000 that includes the following statement:

Might I make as suggestion? I would suggest that we just let our foggy little business relationship continue down its foggy little course...I am committed to making a bigger pie for as long as it is feasible and that has been nothing but good for both of us.

(Ex. 13, Letter of Orvis, 8-30-01) Orvis clearly references a business relationship with Johnson.

42. The trade name, Lexington Law Firms has remained in the name of Jamis Johnson throughout this time.

42. On January 12, 2001, Johnson assigns the Trade Name to Orvis. (Ex. 14, Assignment of trade name)

43. The Assignment specifically sets out the existing and ongoing partnership. It says:

WHEREAS, the said trade name [Lexington Law Firms] is an asset actually owned jointly by Jamis M. Johnson and Jayson Orvis, and

WHEREAS, Jamis M. Johnson and Jayson own intellectual property and tangible and intangible assets for the business of credit repair and per prior agreement, this trade name is to be assigned by Jamis M. Johnson to Jayson Orvis, and

WHEREAS, Jayson Orvis has established a limited liability company called Attorneys For People, LLC., of which he is the only member in which he was to hold some of these joint assets and through which he administrates [sic] some of the credit repair business, and

WHEREAS, Jamis M. Johnson desires to assign the trade name to Jayson Orvis/Attorneys For People and it shall form and is part of these assets jointly owned by Johnson and Orvis and administrated by Orvis;

NOW, THEREFORE, based on the foregoing recitals and upon the prior agreement of the parties ... [Johnson assigns trade name to Orvis] [Emphasis added]

46. This Assignment is retrieved from Johnson's office by Tommy Triplett who signed a receipt for it, and it is accepted by Orvis who acknowledges that he accepts the Assignment in the complaint he filed.

47. The Assignment by its very terms and recitals evidences the ongoing partnership. It is unambiguous. And clearly the assignment is per the Orvis-Johnson Partnership Agreement of May 1999, and the trade name is still a joint asset.

48. In an astounding display of hubris, after the Assignment, which clearly reaffirms the existence of a partnership with the Johnsons, Orvis had his assistant, Tommy Triplett, deliver a mock agreement that is intended to mock Johnsons and to reveal to Johnsons that Orvis thinks he has successfully taken away the Johnsons' partnership interest.

49. That mock document states in various parts:

ASSIGNMENT made this day by Jayson Orvis (hereinafter referred to as "Lord") and Jamis M. Johnson (hereinafter referred to as "Peasant")

WHEREAS, Lord holds complete and sole ownership of everything Peasant wants, including all credit repair methodologies, strategies, operations, computers, [and Peasant's] career...Firstborn, ...hookers...friends...wife...

WHEREAS, Jamis M. Johnson ("Peasant") owns absolutely nothing and can do doodley squat about it...

WHEREAS, Lord delights in torturing Peasant and making him wonder every month ...[regarding profit share]...

[signature line] Jayson Orvis, Master of the Universe

(Ex. 15 Mock Assignment)

50. Johnson senses that Orvis is not truthfully accounting, and is setting up parallel and secret companies to divert profit share. This will; turn out to be correct. (Ex. 2, Triplett Deposition. See references in para. 24 of this Affidavit, *supra*. See also the deposition of Will Vigil attached as Ex. 1)

51. On August 16, 2002 Johnson sends Orvis a demand for an accounting. (Ex. 16, Demand for Accounting from Johnsn). Such will reveal that Orvis has not been honestly accounting for profit share.

52. On August 11, 2001 Orvis will purchase the SBA judgment against Johnson. (Ex. 17, Assignment of SBA judgment to Orvis by All Starr Financial, LLC.)

53. He will not reveal his identity to the SBA but rather will engage a suspended Utah LLC., All Star Financial, LLC to negotiate with the US Government to buy the SBA judgment. All Star is operated by the brother-in-law of Dion Steckling, a party to this lawsuit.

54. All Star Financial, will not disclose to the SBA that it is a Lexington affiliate that is seeking to acquire the judgment and upon information and belief, the money to acquire the judgment flowed through All Star from Orvis. All Star will get the judgment on August 10, 2001 and within 24 hours, it will be re-assigned to Orvis. (Ex. 17.)..

55. On August 30, Johnson will be summoned to the office of Dan Berman who, with Orvis present, informs Johnson that

- i. Orvis had purchased the SBA judgment against Johnson;
- ii. Orvis had sued Johnson to end the partnership,
- iii. Orvis has acquired the judgments to use to end the partnership and will satisfy the judgments if Johnson will accept a settlement and end the Partnership; and
- iv. It will cost Johnson probably \$300,000 to litigate this so settlement is advisable.

56. Johnson writes a confirmatory letter to Berman outlining the above. (Ex. 18. August 30, 2001 Letter of Jamis Johnson to Dan Berman.)

57. Johnson later learns that Victor Lawrence, former counsel to DaNell with the SBA, participated in counseling and aiding Orvis in acquiring the judgment. (Triplett Deposition page 45 lines 11-25). Victor Lawrence will further attempt to buy another action involving Johnson and former partner Hollingshead.

58. On information and belief, Victor Lawrence has received a significant increase in personal revenue once the Johnson profit share was stopped upon the filing of the Orvis lawsuit. Orvis controls Lexington Law Firm through his marketing agreement with Victor Lawrence. (Ex. 19, Orvis-Lawrence Marketing Agreement.)

59. The SBA judgment was purchased at precisely the discount that Johnson was discussing with the SBA and had discussed with Victor Lawrence. And, the fact that the SBA judgment could be obtained at a discount, was never revealed by Victor Lawrence to his client, DaNell Johnson or his former client, Jamis Johnson.

60. Currently, In this month, May of 2004, Orvis has, as the assignee of the SBA judgment, subpoena both Jamis Johnson and DaNell Johnson, in an exercise in post judgment discovery. This action is in federal court and the Johnson will seek to void the judgment in the hands of Orvis because of the duplicity discussed herein.

DATED this ____ day of May, 2004

Jamis M. Johnson

Subscribed and sworn to before me this _____ day of May, 2004

Notary Public
Residing at:

58. On information and belief, Victor Lawrence has received a significant increase in personal revenue once the Johnson profit share was stopped upon the filing of the Orvis lawsuit. Orvis controls Lexington Law Firm through his marketing agreement with Victor Lawrence. (Ex. 19, Orvis-Lawrence Marketing Agreement.)

59. The SBA judgment was purchased at precisely the discount that Johnson was discussing with the SBA and had discussed with Victor Lawrence. And, the fact that the SBA judgment could be obtained at a discount, was never revealed by Victor Lawrence to his client, DaNell Johnson or his former client, Jamis Johnson.

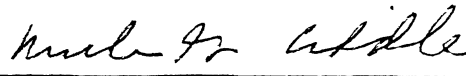
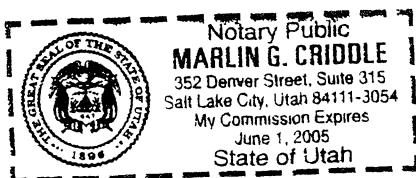
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DATED this 27 day of May, 2004



Jamis M. Johnson

Subscribed and sworn to before me this 27th day of May, 2004




Notary Public
Residing at:

CERTIFICATE OF MAILING

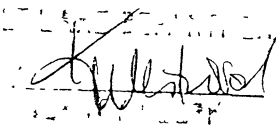
I hereby certify that on May 27, 2004, I caused a true and correct copy of the AFFIDAVIT OF JAMIS JOHNSON IN SUPPORT OF JAMIS JOHNSON'S MEMORANDUM IN OPPOSITION TO JASON ORVIS' MOTION FOR SUMMARY JUDGMENT to be mailed, postage prepaid, to the following:

Peggy A. Tomsic (3879)
BERMAN, TOMSIC & SAVAGE
50 South Main Street, Suite 1250
SLC, UT 84144
Telephone: (801) 328-2200



Tab 5

Joe Cartwright #7697
CARTWRIGHT LAW FIRM, P.C.
Wells Fargo Center
299 South Main St. Suite 1700
Salt Lake City, UT 84111
Tel. 801-363-5255

07 AUG 11 PM 1:10


IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR SALT LAKE
COUNTY

JAYSON ORVIS

Plaintiff

vs.

JAMIS JOHNSON

Defendant

)
)
)
) CORRECTIONS SUPPLEMENTING
) MEMORANDUM OF JAMIS
) JOHNSON IN OPPOSITION TO
) JAYSON ORVIS' MOTION FOR
) SUMMARY JUDGMENT, AND
) SUPPLEMENTING AFFIDAVIT OF
) JAMIS JOHNSON

) CIVIL NO. 010907449

) Honorable Timothy R. Hanson
)
)
)

Defendant, Jamis Johnson, by counsel, hereby submits his Corrections Supplementing The Memorandum of Jamis Johnson In Opposition To Jayson Orvis' Motion For Summary Judgment And Supplementing Affidavit Of Jamis Johnson, as follows:

Because of a discrepancy between the electronic and paper versions of the Tommy Triplett deposition cited by Defendant Johnson in his Opposition Memorandum to Summary Judgment, ("Johnson Memo") Defendant Johnson

hereby submits the follow changes to that Memorandum and accompanying affidavit:

Paragraph 2 of the Johnson Memo states:

2. It is estimated that Jayson Orvis is today personally taking \$500,000 to \$800,000 monthly from the credit repair ventures, one third of which belongs to the Johnsons. (Ex. 1, Vigil Deposition p. 70 line 6-15) (Lexington web page: lexingtonlaw.com) (Ex. 2, Deposition of Tommy Triplett p. 20, l. 9, where Orvis takes in \$153,000 in one month several years ago.) [Emphasis added]

The correct citation is page 22, line 14. See copy attached.

Paragraph 16 of the Johnson Memo states:

16. Indeed, Orvis would acknowledge that he felt compelled to keep paying profit share because of the ongoing liability of Jamis Johnson. (Ex. 2, Triplett deposition. page 38 line 10-12) [Emphasis Added]

The correct citation is page 38, line 10-13. See copy attached.

Paragraph 24 of the Johnson Memo states:

24. Johnsons would later learn that Orvis, during this time, was secretly taking partnership funds and setting up separate parallel companies to conceal profits and divert profits and not truthfully disclosing profit share revenues by greatly under representing revenues to Johnsons. (Ex. 2, Deposition of Tommy Triplett p. 22, l. 23 – p. 26, l. 22 – p. 28, l. 25 – p 39, l. 8) (See also Vigil Deposition Ex. 1 supra, page 49 line 5, page 53 line 10). [Emphasis Added]

The correct citation is page 25 lines 1-3; page 28, lines 2-11;. Page 31, lines 4-6; page 41, lines 16-18 See copy attached.

Paragraph 50 of the Johnson Memo states:

50. Johnson senses that Orvis is not truthfully accounting, and is setting up parallel and secret companies to divert profit share. This will; turn out to be correct. (Ex. 2, Triplett Deposition. See references in para. 24 of this Affidavit, supra. See also the deposition of Will Vigil attached as Ex. 1) [Emphasis Aded]

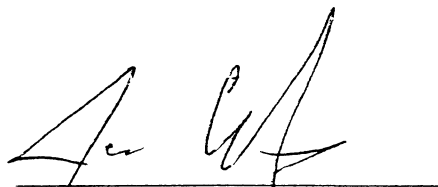
The correct citation is page 25 lines 1-3; page 28, lines 2-11;. Page 31, lines 4-6;
page 41, lines 16-18 See copy attached for prior example.

Paragraph 57 of the Johnson Memo states:

*57. Johnson later learns that Victor Lawrence, former counsel to DaNell with the SBA, participated in counseling and aiding Orvis in acquiring the judgment. **Triplett Deposition page 45 (lines 11-25).** Victor Lawrence will further attempt to buy another action involving Johnson and former partner Hollingshead. [Emphasis Added]*

The correct citation is page 45, lines 11-25. See copy attached.

Dated this 6th day of August, 2004.

A handwritten signature in black ink, appearing to read 'Joe Cartwright', written over a horizontal line.

Joe Cartwright
Attorney For Defendant

Tab 6

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

JAYSON ORVIS, : MINUTE ENTRY
Plaintiff, : CASE NO. 010907449
vs. :
JAMIS JOHNSON, :
Defendant. :

JAMIS JOHNSON and :
DaNELL JOHNSON, :
Third Party Plaintiffs, :
vs. :
JAYSON ORVIS, SAM SPENDLOVE, :
DEON STECKLING, VICTOR :
LAWRENCE, and JOHN DOES 1-15, :
Third Party Defendants. :

FILED DISTRICT COURT
Third Judicial District

OCT 20 2004

E. Guylford Thompson
SALT LAKE COUNTY
Deputy Clerk

Before the Court is the plaintiff's Motion for Summary Judgment. Following argument of counsel, the Court took the matter under advisement to further consider the arguments of the parties, particularly the arguments surrounding the issue of judicial estoppel. After taking the matter under advisement, the Court has received correspondence from both the plaintiff and the defendant, with attached case authority.

The Court, since taking this matter under advisement and receiving the supplemental materials of the parties, has revisited this matter on a number of occasions. In doing so, the Court has read the materials submitted by the parties once again, has reviewed this Court's prior rulings dealing with the question of judicial estoppel, and based upon that review, the arguments of counsel, and the persuasive law presented, the Court is satisfied that the plaintiff's Motion for Summary Judgment must be granted as prayed.

The Court continues to be fully satisfied that the doctrine of judicial estoppel applies in this circumstance. Mr. Johnson is judicially estopped from asserting that he had an interest in a partnership where he, in a separate proceeding under oath, testified that he had none. There is no question of mistake. Mr. Johnson testified as he did, so as to avoid collection efforts from the Small Business Administration. The principal of judicial estoppel prohibits Mr. Johnson from in this later action now asserting a different position.

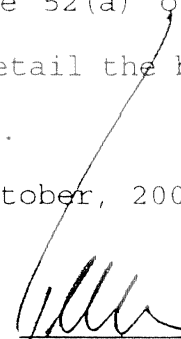
As the claims asserted by Johnson must flow from the existence of an ownership in the partnership, a position that Mr. Johnson previously denied in a separate proceeding, his claims must fail.

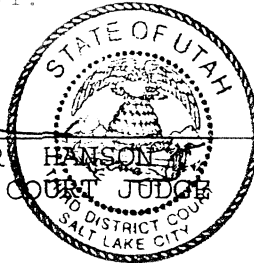
Accordingly, in accordance with the plaintiff's request, the Court will enter a declaratory Judgment indicating that Mr. Johnson

has no claim or interest in the credit repair business or any of the other enterprises in question.

Counsel for the plaintiff is to prepare an appropriate Order granting the relief requested in the Motion for Summary Judgment, and submit the same to the Court for review and signature. The Order should comply with Rule 52(a) of the Utah Rules of Civil Procedure, setting forth in detail the basis upon which this Court grants the plaintiff's Motion.

Dated this 20 day of October, 2004.


TIMOTHY R. HANSON
DISTRICT COURT JUDGE



MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Minute Entry, to the following, this 20 day of October, 2004:

Peggy A. Tomsic
Attorney for Plaintiff
50 S. Main, Suite 1250
Salt Lake City, Utah 84144

Joe Cartwright
Attorney for Defendant Jamis Johnson
299 S. Main Street, Suite 1700
Salt Lake City, Utah 84111



Tab 7

FILED DISTRICT COURT
Third Judicial District

NOV 23 2004

SALT LAKE COUNTY
By *Timothy R. Hanson*
Deputy Clerk

Peggy A. Tomsic (3879)
BERMAN, TOMSIC & SAVAGE
50 South Main Street, Suite 1250
Salt Lake City, Utah 84144
Telephone: (801) 328-2200

Attorneys for Plaintiff and Third Party
Defendant, Jayson Orvis

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

JAYSON ORVIS,)
)
Plaintiff,)
)
vs.)
)
JAMIS JOHNSON,)
)
Defendant.)
)
_____)
JAMIS JOHNSON,)
)
Third-Party Plaintiff,)
)
vs.)
)
JAYSON ORVIS, SAM SPENDLOVE,)
DEON STECKLING, VICTOR)
LAWRENCE, and JOHN DOES 1-15,)
)
Third-Party Defendants.)
_____)

~~ORVIS'S PROPOSED~~ *W*
JUDGMENT

Case No. 010907449

Honorable Timothy R. Hanson

Based on the Court's Findings of Fact, Conclusions of Law, and Minute Entry dated October 27, 2004, THE COURT HEREBY ENTERS JUDGMENT as follows:

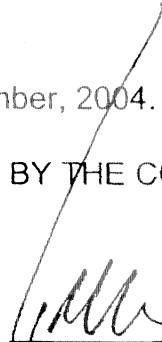
1. The Court enters judgment in favor of Plaintiff and against Defendant on Plaintiff's Declaratory Judgment Complaint and all claims asserted therein. Defendant has no right, claim or interest in any business, enterprise or entity, relating to credit repair, in which Plaintiff has any ownership interest.

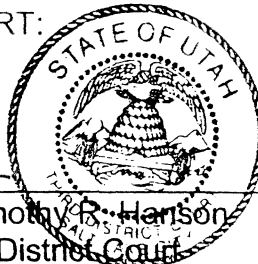
2. The Court enters judgment in favor of Plaintiff and against Defendant on Defendant's Counterclaim against Plaintiff and all claims asserted therein, and the Counterclaim is dismissed with prejudice.

3. The Court enters judgment in favor of Third Party Defendant Deon Steckling and against Defendant on Defendant's Third party Complaint against Deon Steckling and all claims asserted therein, and the Third Party Complaint is dismissed with prejudice.

DATED this 23 of November, 2004.

BY THE COURT:


Honorably Timothy F. Hanson
Third Judicial District Court
Salt Lake County, State of Utah



CERTIFICATE OF MAILING

I hereby certify that on the 29 day of ~~November~~ *October*, I caused a true and correct copy of the JUDGMENT to be mailed, postage prepaid, to the following:

Jamis M. Johnson
Johnson & Associates
352 South Denver Street
#304
Salt Lake City, UT 84111

Blake S. Atkin
Atkin & Hawkins
136 South Main Street, #610
Salt Lake City, Utah 84101
Attorney for Third Party Defendants

Allen Peterson

Tab 8

FILED DISTRICT COURT
Third Judicial District

NOV 23 2004

SALT LAKE COUNTY
By *Timothy R. Hanson*
Deputy Clerk

Peggy A. Tomsic (3879)
BERMAN, TOMSIC & SAVAGE
50 South Main Street, Suite 1250
Salt Lake City, Utah 84144
Telephone: (801) 328-2200

Attorneys for Plaintiff and Third Party
Defendant, Jayson Orvis

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

JAYSON ORVIS,

Plaintiff,

vs.

JAMIS JOHNSON,

Defendant.

~~ORVIS'S PROPOSED~~ ^{7A}
FINDINGS OF FACT AND
CONCLUSIONS OF LAW

Case No. 010907449

Honorable Timothy R. Hanson

JAMIS JOHNSON,

Third-Party Plaintiff,

vs.

JAYSON ORVIS, SAM SPENDLOVE,
DEON STECKLING, VICTOR
LAWRENCE, and JOHN DOES 1-15,

Third-Party Defendants.

FINDINGS OF FACT

1 Jayson Orvis is the Plaintiff in this Declaratory Judgment action. Orvis provides consulting to law firms or businesses providing credit repair services. These services consist of assisting in removing false or erroneous entries from the clients' credit reports. Additionally, Orvis owns and licenses software, trademarks and trade names, and other intellectual property used in the credit repair business to these law firms and businesses, through various entities which he has established. Plaintiff seeks, in this action, a judgment declaring that the Defendant has no right, claim or interest relative to any business or venture relating to the credit repair business in which Plaintiff has any ownership.

2 Defendant Johnson, the Defendant in this case, asserts that a partnership exists between him and Orvis and that he is therefore entitled to partnership proceeds from intellectual property lease payments and consulting fees paid to Orvis by various credit repair entities, including an entity called The Lexington Law Firm.

3 In addition to claiming a partnership interest in Orvis's credit repair businesses, Johnson filed a Third Party Complaint against three third-party defendants, including Deon Steckling. In Johnson's Answer and Third Party Complaint, he alleged that Steckling, as well as the other third-party defendants, conspired with Orvis to exclude Johnson from the partnership interest he allegedly had in Orvis's credit repair related businesses. Johnson charged that the third-party defendants had

interest. They paid me a little, made my payment, and I resigned. Now, it's listed as an assumed name by Jamis Johnson, they're going to have to go in and change that. But, you know, they're operating now without me.

[Deposition of Jamis Johnson, November 17, 1999, Exhibit 5 to Affidavit of Jayson Orvis, at 23:6-24:10].

6. On August 8, 2001, the SBA assigned its judgment against Johnson in the SBA case to an entity called All Star Financial, L.L.C.

7. On August 11, 2001, All Star Financial, L.L.C. assigned the judgment against Johnson in the SBA case to Orvis.

8. On March 30, 2004, Plaintiff Jayson Orvis filed a Motion for Summary Judgment arguing that the doctrine of judicial estoppel precluded Johnson from claiming a partnership interest in any credit repair business of Orvis because of Johnson's testimony under oath before the SBA. Third-party defendant Steckling joined in Orvis's Motion for Summary Judgment.

11. On August 9, 2004, the Court held a hearing on Orvis's and Steckling's Motion for Summary Judgment.

CONCLUSIONS OF LAW

Based on the foregoing findings of fact, the Court makes the following conclusions of law.

1. The principle of judicial estoppel prohibits Johnson from asserting a different position in this later action from the position to which he testified under oath in the SBA case. That is, judicial estoppel will not allow Johnson to contradict his testimony before the SBA and claim a partnership interest here. See Salt Lake City v. Silver Fork Pipeline Corp., 913 P.2d 731, 734 (Utah 1995) (the purpose of judicial estoppel is “to uphold the sanctity of oaths, thereby safeguarding the integrity of the judicial process from conduct such as knowing misrepresentations or fraud on the court.”).

2. Judicial estoppel does not require that the parties to the prior and present litigation be the same. See International Resources v. Dunfield, 599 P.2d 515, 517, n.4 (Utah 1979) (noting “a concededly overbroad statement in [the Court’s] case of Tracy Loan and Trust Co. v. Openshaw Inv. Co., et al., 102 Utah 509, 132 P.2d 388, to the effect that one would not be ‘judicially estopped’ unless the parties and the issues are the same in the instant and the prior suit. Any misstatement of the rule was corrected and superseded by our decision in Richards v. Hodson, [485 P.2d 1044 (Utah 1971)]”).

3. Even if Utah law requires that the parties to the prior and present proceedings be the same in order for judicial estoppel to apply, such is not determinative in this case because Orvis, having purchased and having been assigned the judgment owned by the SBA, is in privity with the SBA. See 47 Am. Jur. 2d Judgments § 663 (2004) (“a privy is one who, after the commencement of the action,

misappropriated the funds of the alleged partnership and had been unjustly enriched thereby.

4. Prior to Orvis's filing of the Declaratory Judgment Action, Johnson was sued by the Small Business Administration ("SBA"), and judgment was entered against him in that case on September 29, 1997. United States of America v. Jamis Johnson, 2:95-CV-838J, in the United States District Court for the Central District of Utah.

5. In post-judgment supplemental proceedings for collection purposes in the SBA case, Johnson was deposed by the SBA. In his deposition, Johnson, under oath, disavowed any interest, partnership or otherwise, in the credit repair business of Orvis. There was no question of mistake. Johnson testified as he did so as to avoid collection efforts by the SBA. Johnson testified, under oath:

Q: Do you have any interest in any partnership?

A: No.

Q: Any interest in any limited liability companies?

A: No.

[Deposition of Jamis Johnson, November 17, 1999, Exhibit 6 to Affidavit of Jayson Orvis, at 30:16-31:4].

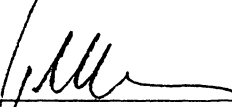
A: Lexington Law Firm, Victor Lawrence and another attorney have taken over all of that. I've indemnified them, they have indemnified me. I've resigned from any relationship. . . . Lexington Law Firm[] was in my name, but since that time and with my bar problem, I have completely relinquished any

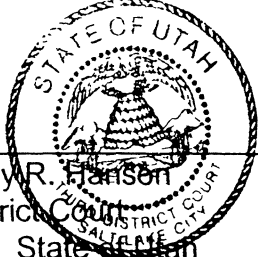
has acquired an interest in the subject matter affected by the judgment through or under one of the parties, as by . . . assignment."); Searle Brothers v. Searle, 588 P.2d 689 (1978) (The legal definition of a person in privity with another, is a person so identified in interest with another that he represents the same legal right. This includes a mutual or successive relationship to rights in property.).

Based on the foregoing, the Court grants Plaintiff's Motion for Summary Judgment and dismisses Johnson's counterclaim against Plaintiff with prejudice. The Court will enter a Declaratory Judgment that Johnson has no right, claim or interest in any business, enterprise or entity, relating to credit repair, in which Orvis has any ownership interest. The Court also grants Deon Steckling's Motion for Summary Judgment and dismisses the Third Party Complaint against him with prejudice.

DATED this 23 of November, 2004.

BY THE COURT:


Honorably Timothy R. Hanson
Third Judicial District Court
Salt Lake County, State of Utah




CERTIFICATE OF MAILING

I hereby certify that on October 29, 2004, I caused a true and correct copy of [JAYSON ORVIS'S PROPOSED] FINDINGS OF FACT AND CONCLUSIONS OF LAW to be mailed, postage prepaid, to the following:

Jamis M. Johnson
Johnson & Associates
352 South Denver Street
#304
Salt Lake City, UT 84111

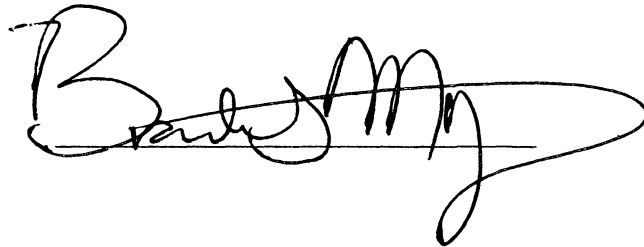
Blake S. Atkin
Atkin & Hawkins
136 South Main Street, #610
Salt Lake City, Utah 84101
Attorney for Third Party Defendants



CERTIFICATE OF SERVICE

I hereby certify that on May 14, 2007 I caused two true and correct copies of the foregoing ADDENDUM TO BRIEF OF RESPONDENT to be mailed, postage prepaid, to the following:

Jamis M. Johnson
352 Denver Street #304
Salt Lake City, Utah 84111

A handwritten signature in black ink, appearing to read "Jamis M. Johnson", written over a horizontal line. The signature is stylized and cursive.