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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MAXINE L. JOHNSON-HARRIS,
Plaintiff, Docket No.
18 Civ 4517(NSR)
-against-

UNITED STATES OF AMERICA,
Defendant.

- - - - -x

300 Quarropas Street, 3rd Floor
White Plains, New York

December 19, 2019
10:00 a.m.

DEPOSITION of the PLAINTIFF MAXINE L.
JOHNSON-HARRIS, the Witness in the above-entitled
action, held at the above time and place, taken
before Joseph Danyo V, a Shorthand Reporter and
Notary Public of the State of New York, pursuant
to the Federal Rules of Civil Procedure, and
stipulations between Counsel.

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APPEARANCES:

LAW OFFICES OF MICHAEL H. JOSEPH, PLLC
Attorneys for Plaintiff
203 East Post Road
White Plains, New York 10601

BY: JOHN V. TAIT, ESQ.

U.S. ATTORNEY'S OFFICE
Attorneys for Defendant
300 Quarropas
White Plains, New York 10601

BY: CASEY LEE, ESQ.,
Assistant U.S. Attorney
* * *

1 M. JOHNSON-HARRIS

2 Q. Did Mr. Harris say anything to you
3 about today's deposition?

4 A. Just to stay calm.

5 Q. Anything else?

6 A. Answer the question.

7 Q. Anything else?

8 A. That's it.

9 Q. Okay. Did you take any notes or jot
10 anything down on paper in relation to today's
11 deposition?

12 A. No.

13 Q. Okay. Did you review any documents
14 in preparing for today's deposition?

15 A. No.

16 Q. Okay. At any time have you ever
17 taken any notes to try to refresh your
18 recollections about the events in this case?

19 A. Yes.

20 Q. Could you tell me about that?

21 MR. LEE: I just caution you. If
22 there are any communications, any letters
23 that you sent to me or my office that's
24 not what he's asking. Those are
25 privileged. Just anything else.

1 M. JOHNSON-HARRIS

2 Q. Just to be clear, also with Mr.
3 Dominick Rendina, your former attorney.

4 A. Yes.

5 MR. LEE: Yes.

6 Q. So other than that stuff, any notes
7 or anything you jotted down for yourself?

8 A. Yes.

9 Q. Okay. Can you tell me about those?

10 A. So I made a timeline of the incident.

11 Q. Okay. A timeline of events relevant
12 to this case?

13 A. Relevant to this case, yes.

14 Q. Okay. Do you have it with you today?

15 A. I don't know.

16 Q. Do you mind taking a quick look?

17 MR. TAIT: Is this something your
18 former counsel asked you to do?

19 THE WITNESS: No. I did that.

20 MR. TAIT: Okay.

21 THE WITNESS: But, no.

22 Q. Okay.

23 A. Let me see.

24 MR. TAIT: I'm going to ask her a few
25 questions here as the basis for it.

1 M. JOHNSON-HARRIS

2 MR. LEE: What?

3 MR. TAIT: I'm going to ask her a few
4 questions now to see what's the basis of
5 her making these notes.

6 MR. LEE: Okay, so is it relevant to
7 privilege?

8 MR. TAIT: Yes.

9 MR. LEE: It's a privilege issue,
10 okay, so go ahead.

11 EXAMINATION

12 BY MR. TAIT:

13 Q. Did you share this with anyone?

14 A. Yes.

15 Q. Okay. Was it your former counsel?

16 A. Yes.

17 Q. Did he ask you to do this?

18 A. No.

19 Q. Where did you get the information
20 from?

21 A. From my recollection of what took
22 place and just from my -- the librarian in me.
23 Yes.

24 MR. LEE: So counselor, I think from
25 the plaintiff's responses that it seems

1 M. JOHNSON-HARRIS

2 like that document is not privileged. Do
3 you concur or --

4 MR. TAIT: Well, let me quickly
5 review this to see if it contains any
6 privileged information.

7 MR. LEE: Sure. Let's go off the
8 record.

9 (Whereupon, a short recess was
10 taken.)

11 MR. LEE: Can we just go on the
12 record for a second.

13 Counsel, the questions that -- I mean
14 I know you want to have a discussion with
15 your client. Are these specifically
16 questions relating to whether this
17 document here is privileged?

18 MR. TAIT: Yes. It absolutely refers
19 to a Dominic Medina.

20 MR. LEE: Okay, but separately I'm
21 just wondering if these questions are
22 pertaining to your questions about
23 privilege.

24 MR. TAIT: They are.

25 MR. LEE: Okay. We can go just back

1 M. JOHNSON-HARRIS

2 off the record.

3 [Discussion held off the record.]

4 (Whereupon, a short recess was
5 taken.)

6 MR. TAIT: Back on the record.

7 So I conferred with my client, and
8 she informed me that she made this for her
9 attorney, her former attorney, Dominick
10 Rendina, and she did give it to her
11 attorney, so we're going to claim this as
12 privileged.

13 We can mark this, and I'll hold onto
14 it if you want to get a ruling. You can
15 ask her questions about the formation of
16 this four-page document.

17 MR. LEE: So you're saying that this
18 is something that -- just to be clear on
19 this, this is something that Ms.
20 Johnson-Harris had provided to Mr.
21 Rendina.

22 MR. TAIT: Yes.

23 MR. LEE: Do I have that right? Now,
24 I believe she had testified earlier that
25 this was not something that was created at

1 M. JOHNSON-HARRIS

2 the direction of an attorney, and I don't
3 think that --

4 MR. TAIT: And you can ask her why
5 this was created.

6 MR. LEE: But she's already testified
7 that she -- the basis for it, so --

8 MR. TAIT: I'm not going to testify
9 for her, but what she told me was she made
10 this for her attorney to help him to
11 assist him and she gave it to him.

12 Whether he required it or requested
13 it that isn't relevant. It's a
14 communication she made with her attorney.

15 MR. LEE: Well, our position is that
16 if she made this -- well, I'll put it this
17 way.

18 EXAMINATION

19 BY MR. LEE:

20 Q. Ms. Johnson-Harris, I believe earlier
21 you had testified that you had created this
22 document to organize your recollections about the
23 timeline of events in this case; is that correct?

24 A. That's correct.

25 Q. Okay. I believe you had also

1 M. JOHNSON-HARRIS

2 testified that you had done this voluntarily on
3 your own initiative; is that correct?

4 A. Yes.

5 Q. Okay. And this is a yes or no
6 question; so I need this to be answered only yes
7 or no.

8 Yes or no; did Mr. Rendina ever ask
9 you to provide him with a document with a
10 timeline of your events?

11 A. No.

12 MR. LEE: So counsel, based on the
13 witness' testimony, I don't see any basis
14 for pulling this as privileged.

15 It's not something that was created
16 at the direction of an attorney. It's a
17 document that she created of her -- on
18 recollections in this case, and I don't
19 think that the mere fact that she turned
20 it over to an attorney then shields it
21 under the attorney-client privilege.

22 Now, if there are certain things in
23 that document that reflect attorney
24 communications, we're certainly open to
25 discussing the propriety of redacting

1 M. JOHNSON-HARRIS

2 certain portions of the document, but a
3 wholesale withholding of the document on
4 privileged grounds, the government
5 believes is improper.

6 MR. TAIT: Counsel, you failed to ask
7 the relevant question, and while she did
8 testify that she made this as a
9 recollection of her events and that her
10 attorney did not ask her to do it, you
11 forgot to ask her why she put on paper her
12 recollections of events and what she did
13 with it and what she intended to do with
14 it.

15 You can ask her now why she bothered
16 to put down on this piece of paper her
17 recollection of events.

18 MR. LEE: Well, I don't see what the
19 relevance of it is if it's not something
20 that's done on the direction of an
21 attorney.

22 If this protects communications, this
23 was not created to be a communication to
24 the attorney based on what she has done,
25 because she did it on her own volition.

1 M. JOHNSON-HARRIS

2 MR. TAIT: Well, you can have a
3 communication with your attorney on your
4 own volition. It's still protected. The
5 protection doesn't only provide
6 protections for communications that the
7 attorney requests.

8 You can have a free and frank
9 discussion with your counsel on whether
10 they asked you to have that or not, and
11 it's still protected.

12 Now, as I already represented to you,
13 I spoke to my client, and she said she
14 made this with the intent to give it to
15 her attorney to assist her attorney.

16 Now, it's true her attorney did not
17 ask for that, but she certainly did it
18 with the intent and gave it to him.

19 That's a communication initiated by
20 her to her attorney. That's protected by
21 the attorney-client privilege. I suggest
22 we mark this. I'll hold it, and then we
23 can get a ruling on it.

24 MR. LEE: Well, let me ask a couple
25 of more questions on this front.

1 M. JOHNSON-HARRIS

2 BY MR. LEE:

3 Q. Ms. Johnson-Harris, when
4 approximately did you create this document?

5 A. I'm not sure when I created it. I'm
6 not sure when I created it.

7 Q. Did you create it before or after
8 retaining Mr. Rendina as your attorney?

9 A. After.

10 Q. How soon after, to the best of your
11 recollection?

12 A. Months. Months afterwards. Months.
13 A year or more.

14 Q. Did you send this document to Mr.
15 Rendina?

16 A. Yes.

17 Q. Okay. And how did you send it to
18 him? By what means?

19 A. I'm not sure. I'm not sure.

20 Q. Did you send it to him by e-mail?

21 A. I'm not sure. I'm not sure if I did
22 or I'm not sure.

23 Q. Do you know if you sent it to him by
24 postal mail or --

25 A. No postal mail.

1 M. JOHNSON-HARRIS

2 Q. Okay. Did you ever send it to him by
3 fax?

4 A. No.

5 Q. Did you ever have any phone call with
6 Mr. Rendina discussing or reciting the contents
7 of this --

8 MR. TAIT: I'm going to object.

9 MR. LEE: Well, yes or no. Well,
10 strike that. Let me try to ask a
11 different question here.

12 MR. TAIT: Yes.

13 Q. Did you ever discuss the contents of
14 this document here that's at issue with Mr.
15 Rendina before sending it to him?

16 A. No.

17 MR. TAIT: I'm going to object to the
18 form on that. I mean I know it's tough to
19 ask your question without knowing the
20 contents.

21 MR. LEE: But what's the objection to
22 form? Just so that we make sure --

23 MR. TAIT: The objection to form is
24 it's not clear what you're asking, what
25 you -- you asked whether my client

1 M. JOHNSON-HARRIS

2 discussed the contents of this document
3 with her attorney.

4 It's a four-page single spaced
5 document with lots of contents, so I'm not
6 sure what exactly you're asking.

7 Q. Well, did you understand my question
8 Ms. Johnson-Harris? I can ask it differently if
9 you'd like.

10 A. Ask it differently. Yes, let's ask
11 it differently for me. Ask the question.

12 Q. So currently we're talking about a
13 document that you have provided to your attorney
14 that, broadly speaking, is supposed to be a
15 timeline of the events relevant to this case; is
16 that correct?

17 A. That's correct.

18 Q. That's the document I'm referring to
19 now in my questions --

20 A. Yes.

21 Q. -- understood?

22 A. Yes.

23 Q. Okay. Did you ever discuss either
24 this particular document or the substance or
25 contents of this document with Mr. Rendina before

1 M. JOHNSON-HARRIS

2 sending it to him?

3 MR. TAIT: Objection to form.

4 Q. You can answer.

5 A. Is there such a thing as going off
6 the record right now?

7 MR. TAIT: No.

8 Q. Not right now.

9 A. I don't know how to --

10 MR. TAIT: If you don't understand
11 the question --

12 A. I don't know how to --

13 MR. TAIT: If you don't understand
14 the question --

15 A. Ask the question again. I don't
16 understand it.

17 MR. TAIT: -- for your ability to
18 answer --

19 MR. LEE: Well, okay. I can ask the
20 question again, but --

21 MR. TAIT: Yes.

22 MR. LEE: Let's keep our objections
23 --

24 MR. TAIT: Sure.

25 MR. LEE: -- short and concise here.

1 M. JOHNSON-HARRIS

2 Q. So this document that we're talking
3 about right now --

4 A. Yes.

5 Q. -- you understand which document I'm
6 referring to?

7 A. Yes.

8 Q. Okay. Did you ever talk to Mr.
9 Rendina about this document before sending it to
10 him?

11 A. No.

12 Q. Okay. Did you ever talk about the
13 contents or substance of what's in this document
14 with Mr. Rendina before sending it to him?

15 MR. TAIT: Objection to form.

16 A. No.

17 Q. Do you currently use an e-mail
18 address?

19 A. Yes.

20 Q. Did you ever use that e-mail address
21 to send e-mails to Mr. Rendina?

22 MR. TAIT: I'm sorry. Did you say
23 currently?

24 MR. LEE: Sorry. Strike that.

25 Q. Have you ever used your current

1 M. JOHNSON-HARRIS

2 e-mail address to send to or receive from Mr.
3 Rendina any e-mails?

4 A. Yes.

5 Q. Okay. And would you be able to
6 conduct a search of your e-mails to see whether
7 or not you sent this document or an electronic
8 copy of this document to Mr. Rendina?

9 A. No.

10 MR. TAIT: I'll represent it by
11 counsel that I had Mr. Rendina's files,
12 and this is in it.

13 Q. Do you recall any meeting where you
14 handed Mr. Rendina a copy of this document?

15 A. I don't recall.

16 Rul MR. LEE: Well, counsel, let's
17 mark this for a ruling, unless you have
18 any questions you want to ask the witness
19 as it pertains to the privileged nature of
20 this document.

21 MR. TAIT: No. We'll mark it for a
22 ruling.

23 MR. LEE: Yes. We'll mark it for a
24 ruling. Obviously, the government objects
25 to the privilege assertion.

1 M. JOHNSON-HARRIS

2 MR. TAIT: Are you going to mark the
3 document?

4 MR. LEE: Yes. We'll mark it as
5 Exhibit 1, a document currently being
6 claimed to be withheld as privileged.
7 We'll mark it for a ruling.

8 MR. TAIT: I'll note that I'll hold
9 onto it.

10 (Whereupon, Defendant's Exhibit 1, a
11 document claimed to be withheld as
12 privileged was hereby marked for
13 identification, as of this date.)

14 MR. LEE: I'll just note on the
15 record to wrap this up that the parties
16 have marked the -- let me start again.

17 The parties have marked for a ruling
18 a document that was provided by Ms.
19 Johnson-Harris at today's deposition,
20 which is being held onto by her counsel.

21 There is a dispute between the
22 parties as to whether this document should
23 be withheld as privileged under the
24 attorney-client privilege, and the parties
25 will address that, and each side is

1 M. JOHNSON-HARRIS

2 reserving its rights as to the proprietary
3 of withholding that document.

4 MR. TAIT: Agreed.

5 Q. Separate from the document that we've
6 just been talking about and spent a bit of time
7 on, are there any other documents that you
8 created or any notes that you took to refresh
9 your recollection about the events in this case?

10 A. No.

11 Q. Did you bring with you today any
12 documents relevant to this case other than what
13 we just talked about?

14 A. No.

15 Q. Now, aside from this lawsuit, have
16 you ever been involved in any other legal
17 proceeding or lawsuit?

18 A. No.

19 Q. So you've never been sued?

20 A. No.

21 Q. Okay. And other than this case
22 you've never sued anyone or --

23 A. No.

24 Q. Okay. Have you ever testified under
25 oath before?