

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

BENJAMIN BURGESS, RHONDA)	
BURGESS, HEIDI HOWARD, JOYCE)	
MARTIN, BETH KARAMPELAS,)	CIVIL ACTION
TERRI DACY, and MICHAEL DACY,)	
individually and on behalf of all others)	FILE NO. 1:13-cv-02217
similarly situated,)	
)	
Plaintiffs,)	
)	
v.)	
)	
RELIGIOUS TECHNOLOGY)	
CENTER, INC., ASSOCIATION FOR)	
BETTER LIVING AND EDUCATION)	
INTERNATIONAL, NARCONON)	
INTERNATIONAL, and NARCONON)	
OF GEORGIA, INC.,)	
)	
Defendants.)	

JOINT PRELIMINARY REPORT AND DISCOVERY PLAN

1. Description of Case:

(a) Describe briefly the nature of this action.

Plaintiffs have filed a putative class action alleging that Defendants fraudulently induced putative class members to pay for individuals to enroll at a drug rehabilitation facility run by Defendant Narconon of Georgia, Inc. (“NNGA”) in Norcross, Georgia. Plaintiffs also allege that Defendants breached contracts with each putative class member,

violated the Georgia RICO statute, and are liable for unjust enrichment, detrimental reliance, and negligence *per se* in connection with Plaintiffs' payments to NNGA. Plaintiffs seek to certify this action as a class action under Federal Rule of Civil Procedure 23 on behalf of a class of "all individuals who have paid money to one or more of the Defendants to procure drug or alcohol rehabilitation services at NNGA for themselves or others, and to cover costs associated with books, housing, and other related or ancillary goods and services." Defendants deny any liability to Plaintiffs or members of a putative class and deny that they are entitled to the requested relief. Further, Defendants deny that this action may be maintained as a class action and contend that certification under Rule 23 is not proper.

(b) *Summarize, in the space provided below, the facts of this case. The summary should not be argumentative nor recite evidence.*

Plaintiffs: Plaintiffs Benjamin Burgess, Rhonda Burgess, Heidi Howard, Joyce Martin, Beth Karampelas, Terri Dacy, and Michael Dacy, filed their Complaint individually and on behalf of the class of others similarly situated, against Defendants Religious Technology Center, Inc. ("RTC"), Association for Better Living and Education International ("ABLE"), Narconon International ("NN International"), and NNGA. Plaintiffs and the proposed class members paid money to one or more of the Defendants to enroll in the Narconon program at NNGA and to cover costs associated with books,

housing, and related goods and services. The Narconon program was established in 1966 as a drug and alcohol rehabilitation program based on the writings of L. Ron Hubbard, a science-fiction writer and the founder of the Church of Scientology.

Defendant International owns, licenses, operates, and otherwise directs drug and alcohol rehabilitation services at Narconon centers, including NNGA. Defendant NN International, in turn, is controlled by Defendant ABLE, an umbrella group that oversees the drug and alcohol rehabilitation, education, and criminal-justice activities of the Church of Scientology. Finally, Defendants ABLE, International, and NNGA are controlled by Defendant RTC, which oversees Church of Scientology activities and serves as the final arbiter and enforcer of orthodoxy for all Scientology-related activities and organizations. Plaintiffs have alleged that Defendants NN International, ABLE, and RTC exercise control over Defendant NNGA to the extent that they should be held liable for NNGA's actions under agency, alter ego, and/or vicarious liability.

Plaintiffs have asserted claims sounding in fraud, contract, quasi-contract, and negligence, as well as Georgia's RICO statute, based on Defendants' deceptive techniques in their dealings with drug and alcohol addicts and their families and false and misleading claims made through Defendants' websites, marketing materials, advertising, and personnel.

Defendants: Plaintiffs are individuals who paid for others to receive drug rehabilitation treatment at NNGA. Defendant Religious Technology Center (“RTC”) owns trademarks associated with the religious services and materials of the Scientology religion. RTC does not own or license any trademarks associated with Narconon. RTC does not control ABLE, NN International, or NNGA. ABLE owns and licenses various secular trademarks and service marks connected to the teachings and technology of L. Ron Hubbard, including the mark “Narconon” and allows parties to sublicense the use of the marks to other organizations in the field of drug rehabilitation and education. ABLE does not control NN International or NNGA. NN International has been licensed by ABLE to sublicense the use of marks, like “Narconon,” to other Narconon organizations. NN International licenses the Narconon marks to independent Narconon drug rehabilitation facilities throughout the world, including the NNGA facility in Norcross, Georgia. NN International does not control NNGA.

Defendants maintain that neither ABLE, NN International, nor RTC should be held liable for NNGA’s actions under agency, alter ego and/or vicarious liability. Defendants further maintain that punitive damages and attorney’s fees are unjustified and deny that a class action under Rule 23 can be maintained.

(c) The legal issues to be tried are as follows:

Plaintiffs:

- 1) As to all Defendants, the jury must determine liability, causation, and damages – including compensatory and punitive damages – as it pertains to the Class, for claims of fraudulent misrepresentation, breach of contract, unjust enrichment, detrimental reliance, negligence *per se*, and violations of Georgia’s RICO statute.
- 2) As to Defendants International, ABLE, and RTC, the jury must determine whether Defendants are liable to the Class for Defendant NNGA’s acts and/or omissions, due their control over the time, manner, and method of NNGA’s daily operations and under the theories of agency, alter ego, and/or vicarious liability.

Defendants:

- 1) Prerequisites for class certification, including whether Plaintiffs can satisfy the requirements of Federal Rule of Civil Procedure 23;
- 2) Whether Defendants fraudulently induced Plaintiffs and putative class members to enter contracts;
- 3) Whether Defendants breached any contracts with Plaintiffs;
- 4) Whether Defendants violated the Georgia RICO statute;

- 5) Whether Defendants were unjustly enriched at the expense of Plaintiffs;
- 6) Whether NNGA was negligent *per se* in its dealings with Plaintiffs and putative class members;
- 7) Whether this Court has jurisdiction over RTC;
- 8) The amount (if any) of Plaintiffs' damages;
- 9) Whether Plaintiffs are entitled to recover punitive damages;
- 10) Whether Plaintiffs are entitled to recover attorney's fees;
- 11) Any defenses offered by any Defendant, including but not limited to:
 - a) No act, omission, or wrongful conduct on the part of Defendants caused or contributed to any alleged injuries to Plaintiffs or putative class members;
 - b) There is no proximate cause between any injury allegedly suffered by Plaintiffs or putative class members and any act or omission on the part of Defendants;
 - c) Defendants' activities were at all times conducted in substantial compliance with all applicable law, regulations, permits, and licenses; and
 - d) NN International, ABLE, and RTC were not parties to any contracts with Plaintiffs or putative class members.

(d) The cases listed below (include both style and action number) are:

(1) Pending Related Cases:

None

(2) Previously Adjudicated Related Cases:

None

2. This case is complex because it possesses one or more of the features listed below

_____ *(1) Unusually large number of parties*

_____ *(2) Unusually large number of claims or defenses*

_____ *(3) Factual issues are exceptionally complex*

_____ *(4) Greater than normal volume of evidence*

X_____ *(5) Extended discovery period is needed*

_____ *(6) Problems locating or preserving evidence*

X_____ *(7) Pending parallel investigations or action by government*

_____ *(8) Multiple use of experts*

_____ *(9) Need for discovery outside United States boundaries*

_____ *(10) Existence of highly technical issues and proof*

_____ *(11) Unusually complex discovery of electronically stored information*

3. Counsel:

The following individually-named attorneys are hereby designated as lead counsel for the parties:

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For Defendant RTC:

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For Defendants ABLE and NN International:

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For Defendant NNGA:

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4. Jurisdiction:

Is there any question regarding this Court's jurisdiction?

 X Yes No

Defendant RTC has moved to dismiss this case on the ground that the Court lacks personal jurisdiction over it. A statement explaining the jurisdictional objection is attached hereto.

5. Parties to This Action:

(a) The following persons are necessary parties who have not been joined:

Plaintiffs: None.

Defendants: Defendant NNGA contends that the individual NNGA students on whose behalf Plaintiffs alleged to have made payments are necessary parties on some or all of the counts, who have not been joined.

(b) The following persons are improperly joined as parties:

Plaintiffs: None.

Defendants: Defendant RTC contends that it is improperly joined, which Plaintiffs dispute, for the reasons summarized in response to paragraph 4.

(c) The names of the following parties are either inaccurately stated or necessary portions of their names are omitted:

Plaintiffs: None known at this time.

Defendants: Defendants state that Plaintiffs and their respective claims are improperly joined together in this action under Fed. R. Civ. P. 20 and that certification of a class under Fed. R. Civ. P. 23 to collectively litigate Plaintiffs' claims and the claims of the class they purport to represent is improper.

(d) The parties shall have a continuing duty to inform the Court of any contentions regarding unnamed parties necessary to this action or any contentions regarding misjoinder of parties or errors in the statement of a party's name.

6. Amendments to the Pleadings:

Amended and supplemental pleadings must be filed in accordance with the time limitations and other provisions of Fed.R.Civ.P. 15. Further instructions regarding amendments are contained in LR 15.

(a) List separately any amendments to the pleadings that the parties anticipate will be necessary:

Plaintiffs: Defendants NNGA, International, and ABLE have filed motions to dismiss Plaintiffs' Complaint for failure to state a claim. In their responses to those motions, Plaintiffs requested the opportunity to amend the pleadings pursuant to Fed.R.Civ.P. 15(a). As such, Plaintiffs anticipate filing an Amended Complaint, should the Court deem it necessary. Plaintiffs also anticipate amending the description of the class following class discovery.

Defendants: None

(b) Amendments to the pleadings submitted LATER THAN THIRTY DAYS after the Joint Preliminary Report and Discovery Plan is filed, or should have been filed, will not be accepted for filing, unless otherwise permitted by law.

7. Filing Times For Motions:

All motions should be filed as soon as possible. The local rules set specific filing limits for some motions. These times are restated below. All other motions must be filed WITHIN THIRTY DAYS after the beginning of discovery, unless the filing party has obtained prior permission of the court to file later. Local Rule 7.1A(2).

(a) Motions to Compel: before the close of discovery or within the extension period allowed in some instances. Local Rule 37.1.

(b) Summary Judgment Motions: within thirty days after the close of discovery, unless otherwise permitted by court order. Local Rule 56.1.

(c) Other Limited Motions: Refer to Local Rules 7.2A; 7.2B, and 7.2E, respectively, regarding filing limitations for motions pending on removal, emergency motions, and motions for reconsideration.

(d) Motions Objecting to Expert Testimony: Daubert motions with regard to expert testimony no later than the date that the proposed pretrial order is submitted. Refer to Local Rule 7.2F.

As explained in Parts 10 and 11, *infra*, the parties propose entry of an order phasing class and merits discovery. Accordingly, to the extent the local rules include specific filing deadlines for motions that are inconsistent with the bifurcation of class and merits discovery, the parties request that the Court enter subsequent orders specifying deadlines for filing of motions consistent with phasing of class and merits discovery.

Plaintiffs: Plaintiffs also anticipate filing a motion seeking the preservation of evidence seized by the State of Georgia, Office of Insurance and Safety Fire Commissioner, Fraud Unit, in connection with its ongoing investigation of Narconon of Georgia.

8. Initial Disclosures:

The parties are required to serve initial disclosures in accordance with Fed.R.Civ.P. 26.

Plaintiffs: Information about other potential Class members, *i.e.*, individuals who have paid money to one or more of the Defendants to procure rehabilitation services at NNGA, is currently within the exclusive control of the Defendants, as Defendants have access to the relevant financial records and contracts. As such, Plaintiffs request the disclosure of this information through initial disclosures, or amendments thereto, as soon as practicable.

9. Request for Scheduling Conference:

Does any party request a scheduling conference with the Court? If so, please state the issues which could be addressed and the position of each party.

No.

10. Discovery Period:

The discovery period commences thirty days after the appearance of the first defendant by answer to the complaint. As stated in LR 26.2A, responses to initiated discovery must be completed before expiration of the assigned discovery period.

Cases in this Court are assigned to one of the following three discovery tracks: (a) zero month discovery period, (b) four months discovery period, and (c) eight months discovery period. A chart showing the assignment of cases to a discovery track by filing category is contained in Appendix F. The track to which a particular case is assigned is also stamped on the complaint and service copies of the complaint at the time of filing.

Please state below the subjects on which discovery may be needed:

The parties propose that discovery should be in phases, with discovery on issues regarding class certification to be completed first followed by a class certification determination and/or the determination of other motions as may be appropriate based upon such discovery. After the Court rules on class certification, merits discovery shall commence.

Within the class discovery phase, discovery will be needed regarding the appropriateness of class certification in this action in whole or in part and, specifically, the criteria for certification under Fed. R. Civ. P. 23. Discovery will also be needed regarding the appropriateness and/or form of class treatment of claims asserted against Defendants; such discovery may also address issues regarding the appropriateness of the joinder of one or all of the defendants or plaintiffs in this action.

After a decision has been made by the Court regarding class certification, the parties will meet and confer to address the scope of merits discovery, as the scope of such discovery will depend upon whether a class has been certified and, if so, the nature and definition of that class.

If the parties anticipate that additional time beyond that allowed by the assigned discovery track will be needed to complete discovery or that discovery should be

conducted in phases or be limited to or focused upon particular issues, please state those reasons in detail below:

Discovery begins in this lawsuit one month after Defendants file Answers to Plaintiffs' Complaint. LR 26.2. Additional time beyond that allowed by the assigned discovery track will be needed to complete discovery because this case is a putative class action. In a putative class action, discovery is most efficiently and effectively conducted in two phases – class and merits discovery. The parties therefore propose that discovery proceed as follows:

Event	Timeframe
Class Discovery	Class specific fact discovery shall commence 30 days after the first Answer is filed by any of the Defendants and shall continue for a period of 120 days. Class specific expert discovery shall commence at the end of class fact discovery period and shall continue for a period of 90 days, with disclosures and depositions to take place in accordance with the schedule in Part 11, <i>infra</i> .
Motion for Class Certification	Shall be filed with the Court on or before the date 30 days after the end of the class expert discovery period.
Defendants' responses to the Motion for Class Certification	Shall be filed with the Court on or before the date 30 days after Plaintiffs file their Motion for Class Certification.
Plaintiffs' Class Certification reply	Shall be filed with the Court on or before the date 14 days after Defendants file their responses to Plaintiffs' Motion for Class

	Certification.
Merits Discovery	Following the Court's ruling on class certification, the parties shall meet and confer, and submit a proposed discovery plan to the Court for approval regarding merits discovery

11. Discovery Limitation and Discovery of Electronically Stored Information:

(a) What changes should be made in the limitations on discovery imposed under the Federal Rules of Civil Procedure or Local Rules of this Court, and what other limitations should be imposed?

Category	Change
Class Discovery	Class specific fact discovery shall commence 30 days after the first Answer is filed by any of the Defendants and shall continue for a period of 120 days. Class specific expert discovery shall commence at the end of class fact discovery period and shall continue for a period of 90 days, with disclosures and depositions to take place in accordance with the schedule described below.
Class Experts (Plaintiffs)	Plaintiffs shall designate their class experts and provide class expert reports within two weeks after the end of class fact discovery period. Plaintiffs' class experts must be made available to Defendants for deposition within 30 days of their designation.
Class Experts (Defendants)	Defendants shall designate their class experts and provide class expert reports

	<p>within two weeks after Defendants have completed the depositions of Plaintiffs' class experts. Defendants' class experts must be made available to Plaintiffs for deposition within 30 days of their designation.</p>
Absent Class Member Communications	<p>In accordance with Local Rule 23.1(C), the parties will meet and confer regarding the form of a consent order addressing communications with putative class members and will submit, by August 6, 2013, a joint statement to the Court of their collective or individual views as to whether an order should be entered limiting communications.</p>
Interrogatories	<p>During class discovery, each party may propound a maximum of 25 interrogatories to any other party, in accordance with Rule 33 of the Federal Rules of Civil Procedure. Following the Court's ruling on class certification, the parties shall meet and confer regarding the need, if any, for additional interrogatories during merits discovery.</p>
Depositions	<p>During class discovery, each side is limited to 10 depositions of parties and employees of parties. Each side may take a maximum of twenty (20) depositions of non-parties, not including experts, without leave of court. Each deposition shall be conducted in accordance with Rule 30 of the Federal Rules of Civil Procedure. Following the Court's ruling on class certification, the parties shall meet and confer regarding the need, if any, for additional depositions during merits discovery.</p>

Requests for Production of Documents	During class discovery, each party may serve upon any other party requests for production of documents as provided by Rule 34 of the Federal Rules of Civil Procedure. Following the Court's ruling on class certification, the parties shall meet and confer regarding the need, if any, for additional requests for the production of documents during merits discovery.
Requests for Admission	Each party may propound requests for admission to any other party in accordance with Rule 36 of the Federal Rules of Civil Procedure at any time during discovery.
Discovery Disputes	Class discovery disputes that cannot be resolved through informal means shall be handled in accordance with Rule 37 of the Federal Rules of Civil Procedure and LR 37.1. Motions to compel must be filed within the time remaining prior to the close of class discovery or, if longer, within ten (10) days after service of the disclosure or discovery response upon which the objection is based.
Merits Discovery	Following the Court's ruling on class certification, the parties shall meet and confer and submit a proposed discovery plan for merits discovery for approval to the Court.

(b) Is any party seeking discovery of electronically stored information?

 X Yes No

If "yes,"

(1) The parties have discussed the sources and scope of the production of electronically stored information and have agreed to limit the scope of production (e.g., accessibility, search terms, date limitations, or key witnesses) as follows:

The Parties have discussed electronic discovery and are working through the details.

(2) The parties have discussed the format for the production of electronically stored information (e.g., Tagged Image File Format (TIFF or .TIF files), Portable Document Format (PDF), or native), method of production (e.g., paper or disk), and the inclusion or exclusion and use of metadata, and have agreed as follows:

The Parties have discussed electronic discovery and are working through the details.

In the absence of agreement on issues regarding discovery of electronically stored information, the parties shall request a scheduling conference in paragraph 9 hereof.

12. Other Orders:

What other orders do the parties think that the Court should enter under Rule 26(c) or under Rule 16(b) and (c)?

None

13. Settlement Potential:

(a) Lead counsel for the parties certify by their signatures below that they conducted a Rule 26(f) conference that was held on July 25, 2013, and that they participated in settlement discussions. Other persons who participated in the settlement discussions are listed according to party.

For plaintiff: Lead counsel (signature):

/s/ Rebecca C. Franklin
Rebecca C. Franklin
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Other participants:

For defendant: Lead counsel (signature):

For Defendant RTC:

/s/ John H. Fleming
John H. Fleming
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For Defendants ABLE and NN International:

/s/ Cari K. Dawson
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For Defendant NNGA:

/s/ Edward H. Lindsey, Jr.
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Other participants:

(b) All parties were promptly informed of all offers of settlement and following discussion by all counsel, it appears that there is now:

(_____) A possibility of settlement before discovery.

(_____) A possibility of settlement after discovery.

(_____) A possibility of settlement, but a conference with the judge is needed.

(x) No possibility of settlement.

(c) Counsel (_____) do or (x) do not intend to hold additional settlement conferences among themselves prior to the close of discovery. The proposed date of the next settlement conference is _____, 20____.

(d) The following specific problems have created a hindrance to settlement of this case.

14. Trial by Magistrate Judge:

Note: Trial before a Magistrate Judge will be by jury trial if a party is otherwise entitled to a jury trial.

(a) The parties (_____) do consent to having this case tried before a magistrate judge of this Court. A completed Consent to Jurisdiction by a United States Magistrate Judge form has been submitted to the clerk of court this _____ day _____, of 20____.

(b) The parties (X) do not consent to having this case tried before a magistrate judge of this Court.

STATEMENT REGARDING
RTC'S OBJECTION TO JURISDICTION

Defendant Religious Technology Center, Inc. ("RTC") has filed a Motion to Dismiss for Lack of Personal Jurisdiction (Dkt. 7) and supporting declaration. RTC contends that RTC conducts no business and has no physical presence in Georgia and, contrary to the allegations of the Complaint, that RTC does not own or control any of the other Defendants in this case and does not own any of the intellectual property associated with the Narconon program. RTC contends that it lacks the minimum contacts with Georgia constitutionally required for the exercise of personal jurisdiction over it. *Diamond Crystal Brands, Inc. v. Food Movers Int'l, Inc.*, 593 F.3d 1249 (11th Cir. 2010).

Plaintiffs have responded in opposition to RTC's Motion to Dismiss (Dkt. 19), contending that, despite the formal separation between RTC and the other Defendants, RTC in fact controls the other Defendants and so is subject to the jurisdiction in this Court on account of the acts of its agents in Georgia. Plaintiffs attach numerous exhibits to their Response in Opposition. Plaintiffs ask in the alternative, should the Court determine that the jurisdictional issue is unresolved by the parties' briefing and supporting evidence, that the Court permit jurisdictional discovery.

RTC anticipates filing a reply in support of its Motion.

/s/ Jeffrey R. Harris

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SCHEDULING ORDER

Upon review of the information contained in the Joint Preliminary Report and Discovery Plan form completed and filed by the parties, the Court orders that the time limits for adding parties, amending the pleadings, filing motions, completing discovery, and discussing settlement are as set out in the Federal Rules of Civil Procedure and the Local Rules of this Court, except as herein modified:

IT IS SO ORDERED, this _____ day of _____,
20____.

UNITED STATES DISTRICT JUDGE