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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

NEW DIRECTIONS PROGRAM, et al.,

Plaintiffs,

v.

SIERRA HEALTH AND WELLNESS
CENTERS LLC, et al.,

Defendants.

No. 2:22-cv-01090-DAD-JDP

FINAL PRETRIAL ORDER

On December 3, 2024, the court conducted a final pretrial conference in this case. Attorney Bruce Piontkowski appeared as counsel for plaintiff; attorney Jizell Lopez appeared as counsel for defendants Sierra Health and Wellness Centers LLC, Sierra Health and Wellness Group LLC, and Recovery Happens Counseling Services Inc. (collectively, “the entity defendants”); and attorney John McCardle appeared as counsel for defendant Angela Chanter. Having considered the parties’ objections to the tentative pretrial order, the court issues this final pretrial order which will govern the trial of this action.

Plaintiffs David Gust and New Directions Program bring this action against defendants Sierra Health and Wellness Centers LLC, Sierra Health and Wellness Group LLC (collectively, “the Sierra defendants”), Recovery Happens Counseling Services Inc. (“defendant RHCS”), and Angela Chanter. Plaintiffs assert claims for false advertising under the Lanham Act, 15 U.S.C.

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1 § 1125(a) against the Sierra defendants, and copyright infringement under the Copyright Act, 17
2 U.S.C. § 501, against defendants Chanter and RHCS.

3 I. JURISDICTION/VENUE

4 Jurisdiction is predicated on 28 U.S.C. § 1331. Jurisdiction is not contested.

5 Venue is proper pursuant to 28 U.S.C. §§ 1391, 1400. Venue is not contested.

6 II. JURY

7 All parties waive the right to a jury trial. (*See* Doc. No. 32 at 2.)

8 III. UNDISPUTED FACTS

9 1. Plaintiffs and the Sierra Defendants provide, among other things, drug and alcohol
10 treatment services to individuals.

11 2. Prior to 2017, Jon Daily operated defendant RHCS in the same building as
12 plaintiffs in Fair Oaks.

13 3. In 2017, Daily passed away, and his wife, defendant Chanter, took over defendant
14 RHCS and maintained the same primary business address in Fair Oaks.

15 4. After Daily passed away, defendant RHCS was acquired by the Sierra defendants
16 through an asset purchase in 2020.

17 5. Among the assets acquired were the physical location of the facility, its contents,
18 and the name Recovery Happens.

19 6. On November 17, 2020, defendant Chanter posted the following statement on
20 Facebook:

21 I am beginning a new chapter. . . We are so excited to share the news
22 that Sierra Health and Wellness, purchased Recovery Happens. Jon
23 Daily's legacy will continue as they will keep all of their intensive
24 outpatient program with the name Recovery Happens and his model
25 of care. I am honored to join Sierra Health and Wellness as their
26 senior clinical director. I will continue to hold clinical leadership
27 with Recovery Happens as well as New Start Recovery Solutions and
28 future clinical program acquisitions. Joe Henderson, CEO, has a
mission that I know Jon Daily would be proud of. For all my friends
and family, who believed I could get to the place where Recovery
Happens would be sought after as a leading program in recovery, I
am eternally grateful for your confidence and prayers. Jon.

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1 7. On or around November 17, 2020, the Sierra defendants posted the following on
2 its website, www.sierrahealthandwellnesscenter.com:

3 Jon Daily LCSW, CADAAC II founded the Recovery Happens
4 Counseling Services outpatient programs. He was passionate about
5 helping others break free from chemical dependency . . . [sic] and
6 their addiction to intoxication His [sic] dedication to this cause was
7 rooted from his own early addiction. Jon’s addiction led to time in
8 California Youth Authorities, group home placements, and
9 destructive relational patterns.

10 Jon was in recovery for over 20 years. He committed himself to
11 helping others reach the same success. Over 10 years ago he opened
12 Recovery Happens Counseling Services. It was an outpatient drug
13 and substance abuse treatment center, specializing in both adolescent
14 and adult treatment.

15 Jon’s advocacy in the Sacramento community, as well as policy
16 work, has brought him to the front lines of his work in the recovery
17 community. He was the recipient of many awards including: Harold
18 Cole Award, Miracle Award, Sacramento Valley Psychological
19 Association Community Award, The Piece of the Puzzle Award, and
20 the CCAPP VIP Award.

21 Jon Daily became an avid student of the neurobiological processes in
22 the brain associated with addiction as a result of his own recovery
23 from adolescent addiction.

24 “Addiction is a pathological relationship to *intoxication*.”

25 Based on neurobiology, this statement is a foundational tenet of Jon’s
26 addiction recovery philosophy.

27 He believed that people do not become addicted to a particular drug.
28 He believed that individuals become addicted to intoxication as a
way of dealing with life issues. If you remove the drug—the
individual who is still addicted to intoxication will find another way
to get high. For example, by using another substance or activity such
as sex or gambling.

Sierra Health and Wellness Centers and New Start Recovery
Solutions are proud and excited to be able to offer the compassionate,
insightful, and whole person outpatient addiction treatment
philosophy founded by Jon Daily.

IV. DISPUTED FACTUAL ISSUES

1. Whether defendants Sierra Health and Wellness Centers LLC and Sierra Health
and Wellness Group LLC acquired and/or implemented the treatment model of Jon Daily.

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1 2. Whether the entity defendants are an outpatient drug and alcohol treatment facility
2 duly licensed by the Department of Health Care and Services (“DHCS”).

3 3. Whether the entity defendants are required by DHCS to maintain the American
4 Society of Addiction Medicine treatment criteria, or an equivalent evidence-based standard, with
5 respect to the level of care provided to participants in their program.

6 4. Whether the entity defendants utilize an evidence-based treatment model and do
7 not, in any manner or form, utilize the so-called “Gust Model” in providing their rehabilitation
8 services.

9 5. Whether the “Gust Model” is not evidence-based, but is rather a holistic treatment
10 philosophy.

11 6. Whether the entity defendants would be required to substantially lower their
12 standard of care, thereby rendering their programs non-compliant with DHCS regulations, in
13 order to follow the “Gust Model.”

14 7. Whether Jon Daily and plaintiff Gust are not closely associated in the minds of the
15 public in Northern California.

16 8. Whether there is an expectation amongst treatment professionals that the rigorous
17 procedures described by plaintiff Gust for his model would be followed, particularly amongst the
18 Sierra defendants.

19 V. DISPUTED EVIDENTIARY ISSUES/MOTIONS IN LIMINE

20 The parties have not yet filed motions *in limine*. The court does not encourage the filing
21 of motions *in limine* unless they are addressed to issues that can realistically be resolved by the
22 court prior to trial and without reference to the other evidence which will be introduced by the
23 parties at trial. The parties do not currently anticipate filing any motions *in limine*. Any motions
24 *in limine* counsel elects to file shall be filed no later than **January 14, 2025**. Oppositions shall be
25 filed no later than **January 21, 2025** and any replies shall be filed no later than **January 24,**
26 **2025**. Upon receipt of any opposition briefs, the court will notify the parties if it will hear
27 argument on any motions *in limine* prior to the first day of trial.

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1 VI. SPECIAL FACTUAL INFORMATION

2 Not applicable.

3 VII. RELIEF SOUGHT

4 1. Plaintiffs seek injunctive relief to stop alleged false advertising and copyright
5 infringement.

6 2. Plaintiffs seek damages including lost profits and statutory damages.

7 VIII. POINTS OF LAW

8 The claims and defenses asserted in this action arise under federal law. Plaintiffs assert
9 claims for false advertising under the Lanham Act, 15 U.S.C. § 1125(a) against the Sierra
10 defendants, and copyright infringement under the Copyright Act, 17 U.S.C. § 501, against
11 defendants Chanter and RHCS.¹

12 1. The elements of, standards for, and burden of proof in a claim for false advertising
13 in violation of 15 U.S.C. § 1125(a).

14 2. The elements of, standards for, and burden of proof in a claim for copyright
15 infringement in violation of 17 U.S.C. § 501.

16 3. The elements of, standards for, and burden of proof in an affirmative defense that
17 each of plaintiffs' claims fails to state a claim upon which relief can be granted.

18 4. The elements of, standards for, and burden of proof in an affirmative defense that
19 plaintiffs' claims are barred by the applicable statute of limitations.

20 5. The elements of, standards for, and burden of proof in an affirmative defense that
21 plaintiffs by their acts and/or omissions have authorized and encouraged the acts
22 and/or omissions of defendants as described in the first amended complaint
23 ("FAC"), and have therefore waived the right to seek equitable relief and/or
24 damages as a result of said alleged acts and/or omissions, barring any recovery by
25 plaintiffs.

26 ¹ Defendant Chanter has not filed an answer to plaintiffs' first amended complaint on the docket
27 of this case. Accordingly, the court deems defendant Chanter's answer to plaintiffs' original
28 complaint to be considered defendant Chanter's answer to plaintiffs' first amended complaint, as
discussed at the pretrial conference and in the court's tentative pretrial order.

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6. The elements of, standards for, and burden of proof in an affirmative defense that plaintiffs by their acts and/or omissions induced defendants to act to their detriment thereon and are, therefore, barred by the doctrine of estoppel from asserting any claim set forth in the FAC.
7. The elements of, standards for, and burden of proof in an affirmative defense that plaintiffs have unreasonably delayed in the assertion of rights set forth in the FAC, and therefore are barred from asserting any claim set forth in the FAC by the doctrine of laches.
8. The elements of, standards for, and burden of proof in an affirmative defense that any recovery of damages by plaintiffs is barred, in whole or in part, by the applicable statutes of limitations including, without limitation, as set forth in 17 U.S.C. § 507, and as set forth in California Civil Code §§ 337–39.
9. The elements of, standards for, and burden of proof in an affirmative defense that plaintiffs’ claims are barred by the fair use doctrine set forth in 17 U.S.C § 107.
10. The elements of, standards for, and burden of proof in an affirmative defense that the acts and/or omissions of defendants as alleged in the FAC, constituted innocent non-infringing conduct, and was not a willful infringement of copyright.
11. The elements of, standards for, and burden of proof in an affirmative defense that plaintiffs have engaged in one or more acts that constitute a misuse of their copyrights including but not limited to having wrongfully attempted to extend the scope of the limited monopoly granted by the Copyright Act.
12. The elements of, standards for, and burden of proof in an affirmative defense that plaintiffs have abandoned or forfeited the copyright(s) described in the FAC.
13. The elements of, standards for, and burden of proof in an affirmative defense that plaintiffs cannot assert a copyright in some or all of the materials described in the FAC including but not limited to ideas, descriptive phrases, concepts, principles, or discoveries.

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- 1 14. The elements of, standards for, and burden of proof in an affirmative defense that
2 one or more of the plaintiffs granted a non-exclusive license to defendants and/or
3 defendants' predecessor-in-interest, Jon Daily, to use materials described in the
4 FAC.
- 5 15. The elements of, standards for, and burden of proof in an affirmative defense that
6 plaintiffs' claims are barred by the first sale doctrine as set forth under 17 U.S.C.
7 § 109.
- 8 16. The elements of, standards for, and burden of proof in an affirmative defense that
9 damages sought by plaintiffs were the result of and/or contributed to by the
10 wrongful acts and/or omissions of persons or entities other than defendants and, to
11 the extent there is a verdict in favor of either plaintiffs and against defendants, an
12 apportionment of damages according to the pro rata fault of all parties whose acts
13 and/or omissions contributed to the plaintiffs' damages, if any, should be made on
14 a comparative fault basis.
- 15 17. The elements of, standards for, and burden of proof in an affirmative defense that
16 plaintiffs fail to allege facts constituting a justiciable controversy, because
17 plaintiffs can allege and prove no actual harm caused by the conduct described in
18 the FAC, thus depriving plaintiffs of standing to sue under Article III of the United
19 States Constitution.
- 20 18. The elements of, standards for, and burden of proof in an affirmative defense that
21 plaintiffs, being of substantially equal economic strength as defendants, have by
22 their acts and/or omissions, engaged in wrongful conduct not compelled by
23 economic pressure, making them at least equally responsible for the harms set
24 forth in the FAC, if any, barring the recovery of damages or the granting of
25 equitable relief by the doctrine of unclean hands.
- 26 19. The elements of, standards for, and burden of proof in an affirmative defense that
27 plaintiffs' allegations in their FAC cannot sustain the relief requested inasmuch as

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1 plaintiffs initiated, welcomed, consented to, and/or voluntarily participated in all or
2 some of the acts alleged in the FAC.

3 20. The elements of, standards for, and burden of proof in an affirmative defense that
4 plaintiffs have failed to reasonably mitigate damages resulting from the acts and/or
5 omissions of defendants as alleged in the FAC, and that any recovery by plaintiffs
6 must be barred or reduced as a result of said failure.

7 Trial briefs addressing the points of law implicated by these remaining claims shall be
8 filed with this court no later than **7 days before trial** in accordance with Local Rule 285.

9 ANY CAUSES OF ACTION OR AFFIRMATIVE DEFENSES NOT EXPLICITLY
10 ASSERTED IN THE PRETRIAL ORDER UNDER POINTS OF LAW AT THE TIME IT
11 BECOMES FINAL ARE DISMISSED, AND DEEMED WAIVED.

12 IX. ABANDONED ISSUES

13 1. The fifteenth affirmative defense asserted by the entity defendants that the entity
14 defendants presently have insufficient knowledge or information upon which to
15 form a belief as to whether they may have additional, as yet unknown, affirmative
16 defenses.

17 X. WITNESSES

18 The parties' joint witnesses shall be those listed in **Attachment A**.

19 A. **The court does not allow undisclosed witnesses to be called for any purpose,**
20 **including impeachment or rebuttal, unless they meet the following criteria:**

21 (1) The party offering the witness demonstrates that the witness is for the
22 purpose of rebutting evidence that could not be reasonably anticipated at
23 the pretrial conference, or

24 (2) The witness was discovered after the pretrial conference and the proffering
25 party makes the showing required in paragraph B, below.

26 B. Upon the post pretrial discovery of any witness a party wishes to present at trial,
27 the party shall promptly inform the court and opposing parties of the existence of
28 the unlisted witnesses by filing a notice on the docket so the court may consider

1 whether the witnesses shall be permitted to testify at trial. The witnesses will not
2 be permitted unless:

- 3 (1) The witness could not reasonably have been discovered prior to the
4 discovery cutoff;
- 5 (2) The court and opposing parties were promptly notified upon discovery of
6 the witness;
- 7 (3) If time permitted, the party proffered the witness for deposition; and
- 8 (4) If time did not permit, a reasonable summary of the witness's testimony
9 was provided to opposing parties.

10 **XI. EXHIBITS, SCHEDULES, AND SUMMARIES**

11 Joint exhibits are listed in **Attachment B**. Plaintiffs' exhibits are listed in **Attachment C**.
12 Defendants' exhibits are listed in **Attachment D**. No exhibit shall be marked with or entered into
13 evidence under multiple exhibit numbers, and the parties are hereby directed to meet and confer
14 for the purpose of designating joint exhibits and to provide a list of joint exhibits. All exhibits
15 must be pre-marked as discussed below. At trial, joint exhibits shall be identified as JX and listed
16 numerically, e.g., JX-1, JX-2. Plaintiff's exhibits shall be listed numerically, and defendants'
17 exhibits shall be listed alphabetically.

18 The parties must prepare three (3) separate exhibit binders for use by the court at trial,
19 with a side tab identifying each exhibit in accordance with the specifications above. Each binder
20 shall have an identification label on the front and spine. The parties must exchange exhibits no
21 later than **28 days before trial**. Any objections to exhibits shall be filed no later than **14 days**
22 **before trial**. The final exhibit binders shall be delivered to the court by **the Thursday before**
23 **the trial date**. In making any objection, the party is to set forth the grounds for the objection. As
24 to each exhibit which is not objected to, no further foundation will be required for it to be
25 received into evidence, if offered.

26 **The court does not allow the use of undisclosed exhibits for any purpose, including**
27 **impeachment or rebuttal, unless they meet the following criteria:**

28 **////**

1 A. The court will not admit exhibits other than those identified on the exhibit lists
2 referenced above unless:

3 (1) The party proffering the exhibit demonstrates that the exhibit is for the
4 purpose of rebutting evidence that could not have been reasonably
5 anticipated, or

6 (2) The exhibit was discovered after the issuance of this order and the
7 proffering party makes the showing required in paragraph B, below.

8 B. Upon the discovery of exhibits after the discovery cutoff, a party shall promptly
9 inform the court and opposing parties of the existence of such exhibits by filing a
10 notice on the docket so that the court may consider their admissibility at trial. The
11 exhibits will not be received unless the proffering party demonstrates:

12 (1) The exhibits could not reasonably have been discovered earlier;

13 (2) The court and the opposing parties were promptly informed of their
14 existence;

15 (3) The proffering party forwarded a copy of the exhibits (if physically
16 possible) to the opposing party. If the exhibits may not be copied the
17 proffering party must show that it has made the exhibits reasonably
18 available for inspection by the opposing parties.

19 **XII. DISCOVERY DOCUMENTS**

20 Counsel must lodge the sealed original copy of any deposition transcript to be used at trial
21 with the Clerk of the Court no later than **14 days before trial**.

22 Plaintiffs and defendant Chanter have indicated that they do not intend to use discovery
23 documents at trial.

24 The entity defendants have indicated the intent to use the following discovery documents
25 at trial:

26 1. The transcript of the deposition of Angela Chanter.

27 2. The transcript of the deposition of Amy Bergie.

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1 XIII. FURTHER DISCOVERY OR MOTIONS

2 None. Discovery and law and motion are closed under the scheduling order issued in this
3 case.

4 XIV. STIPULATIONS

5 None.

6 XV. AMENDMENTS/DISMISSALS

7 None.

8 XVI. SETTLEMENT

9 The assigned magistrate judge, Magistrate Judge Jeremy D. Peterson, has set a settlement
10 conference for January 29, 2025 at 10:00 AM before Magistrate Judge Peterson. (Doc. No. 36.)

11 XVII. SEPARATE TRIAL OF ISSUES

12 None.

13 XVIII. IMPARTIAL EXPERTS/LIMITATION OF EXPERTS

14 None.

15 XIX. ATTORNEYS' FEES

16 The Sierra defendants will seek attorneys' fees pursuant to Local Rule 293.

17 XX. TRIAL PROTECTIVE ORDER AND REDACTION OF TRIAL EXHIBITS

18 None.

19 XXI. MISCELLANEOUS

20 None.

21 XXII. ESTIMATED TIME OF TRIAL/TRIAL DATE

22 A bench trial is scheduled for **February 4, 2025**, at 9:00 a.m. in Courtroom 4 before the
23 Honorable Dale A. Drozd. Trial is anticipated to last four (4) court days. The parties are directed
24 to Judge Drozd's Standing Order in Civil Actions, available on his webpage on the court's
25 website.

26 Counsel are directed to contact Pete Buzo, courtroom deputy, at (916) 930-4016, no later
27 than one week prior to trial to ascertain the status of the scheduled trial date.

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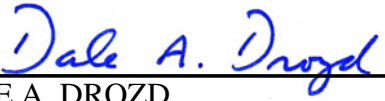
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XXIII. TRIAL BRIEFS

As noted above, trial briefs are due **7 days before trial**.

IT IS SO ORDERED.

Dated: January 3, 2025



DALE A. DROZD
UNITED STATES DISTRICT JUDGE

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ATTACHMENT A

Joint Witness List

1. David Gust, plaintiff
2. Angela Chanter, defendant
3. Shiela Walker
4. Kent Morrison
5. Dr. Claude Arnett
6. Joe Henderson
7. Amy Vergie
8. Curtis Buzanski
9. Julie Lucas, PhD
10. Jeff Henigan

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4 **ATTACHMENT B**

5 Joint Exhibit List²

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Exhibit No.	Description
JX – 1.	Copyright registration certification. Library of Congress with a US Copyright number TXu000632984 / 1994-05-12.
JX – 2.	Book – First Edition 1994 “Effective Outpatient Treatment for Adolescents: Principles, Practices and a Program Model for Working with Adolescents Experiencing Alcohol and other related problems” By Gust and Smith
JX – 3.	Book – Gust and Walker “How to Help Your Child Become Drug Free” 2006.
JX – 4.	Brochure New Directions (produced by plaintiffs)
JX – 5.	Brochure Recovery Happens Counseling Services Inc. (produced by defendants)
JX – 6.	Screen shots from Defendant Sierra Websites including: a. 2021 Sierrahealthwellnesscenters.com and Recoveryhappenscounselingservices.com and newstartrecoveryolutions.com b. 2022 Sierrahealthwellnesscenters.com and Recoveryhappenscounselingservices.com and newstartrecoveryolutions.com c. 2023 Sierrahealthwellnesscenters.com and

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² Prior to the pretrial conference, defendant Chanter had not filed a pretrial statement including a list of exhibits she intended to use at trial. At the pretrial conference held on December 3, 2024, the court instructed the parties to meet and confer to ensure that exhibits were not listed more than once. This instruction was repeated in the tentative pretrial order. (*See* Doc. No. 35 at 7.) Plaintiffs filed a purported joint exhibit list in their objections to the tentative pretrial order. (Doc. No. 37 at 3–5.) It is unclear whether defendant Chanter participated in any similar meet and confer efforts with the other parties. (*See* Doc. No. 38 at 3) (“Counsel and plaintiff and counsel for Sierra defendants met and conferred for the purposes of designating joint exhibits.”). However, defendant Chanter has not filed any objections to the tentative pretrial order. Nor has she filed any response to the objections filed by plaintiffs and the entity defendants. Accordingly, the court will designate the exhibits supplied by plaintiffs as a joint exhibit list.

1		Recoveryhappencounselingservices.com newstartrecoveryolutions.com
2		d. 2024 Sierrahealthwellnesscenters.com and
3		Recoveryhappencounselingservices.com and
4		newstartrecoveryolutions.com
5		e. Current Sierrahealthwellnesscenters.com and
6		Recoveryhappencounselingservices.com and
7		newstartrecoveryolutions.com
8	JX – 7.	Chanter Employment Agreement with Defendant Sierra
9	JX – 8.	Amendment 1 to Asset Purchase Agreement of Recovery Happens
10	JX – 9.	Asset Purchase Agreement of Recovery Happens
11	JX – 10.	Recovery Happens Counseling Services Inc. treatment documents
12	JX – 11.	Facebook – Post – November 17, 2020 Chanter posting
13	JX – 12.	Recovery Happens Counseling Services Inc. brochure “Adolescent and Young Adult Addiction”
14		
15	JX – 13.	Recovery Happens Counseling Services Inc. brochure “Outpatient Therapy”
16	JX – 14.	Recovery Happens Counseling Services Inc. Handout from web archive May 2015 “Outpatient Treatment”
17		
18	JX – 15.	Book – Jon Daily’s self-published book entitled “Adolescent and Young Adult Addiction” 2012 Published by Recovery Happens
19		
20	JX – 16.	Article – April 2015 article entitled “We need a Paradigm Shift” in <i>Counselor Magazine</i> , by Jon Daily
21		
22	JX – 17.	The “Recovery Bookstore” (www.recoverybookstore.com) DVD and booklet called “Treating Adolescents: The Addiction to Intoxication”. The presenter is Jon Daily and the publisher is identified as Wholehearted Publishing/ Recovery Bookstore.
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ATTACHMENT C
Plaintiffs' Exhibit List

1. Sierra's Responses to First Set of Requests for Admissions
2. Book – Second Edition 2006 “Effective Outpatient Treatment for Adolescents: Principles, Practices and a Program Model for Working with Adolescents Experiencing Alcohol and other related problems” By Gust and Smith
3. Recovery Happens Counseling Services Inc. Profit and Loss Statements
4. Sierra Profit and Loss Statements
5. Recovery Happens website achieves [sic] produced by Defendants
6. Recovery Happens treatment documents produced by Defendant RHCS

ATTACHMENT D

Defendants' Exhibit List

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- A. Sierra Health and Wellness Centers treatment documents and models
- B. Department of Health Care and Services license
- C. Department of Health Care and Services standard of care documentation
- D. Pertinent portions of Angela Chanter's Deposition
- E. Pertinent portions of Amy Vergie's Deposition
- F. Plaintiff David Gust's adolescent treatment documents and models
- G. Recovery Happens Policy and Procedure Manual
- H. Sierra Defendants' marketing materials
- I. Sierra Defendants' Online publications and models
- J. Documents related to acquisition of Recovery Happens Counseling Services, Inc.
- K. Screenshots of Recovery Happens Counseling Services in the web archive
- L. Jon Daily publications prior to Sierra Defendants' 2020 Asset Purchase Agreement