Gore v Narconon Gulf Coast, Inc.
2013 NY Slip Op 32345(U)
September 27, 2013
Sup Ct, NY County
Docket Number: 59042/2012
Judge: Carol R. Edmead

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. CAROL EDMEAD Justice

PART 35

Index Number : 159042/2012
GORE, HEIDI
vs.
NARCONON GULF COAST, INC.
SEQUENCE NUMBER : 002
DISMISS ACTION

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s). _____

Answering Affidavits — Exhibits _____ No(s). _____

Replying Affidavits _____ No(s). _____

Upon the foregoing papers, it is ordered that this motion is

Motion sequence 001 is decided in accordance with the annexed Memorandum Decision. It is hereby

ORDERED that the motion by defendants Narconon Gulf Coast, Inc. and Debbie Ross to dismiss the amended complaint of the plaintiffs pursuant to CPLR 3211(a)(8) for lack of personal jurisdiction or in the alternative, for a traverse hearing on the issue of personal jurisdiction pursuant to CPLR 3211(c), is denied, without prejudice to renew at the close of discovery; and it is further

ORDERED that the parties shall appear in Part 35 for a discovery conference on November 5, 2013, 2:15 p.m. to set a discovery schedule on the issues noted herein; and it is further

ORDERED that defendants shall serve a copy of this order with notice of entry upon plaintiffs within 20 days of entry; and it is further

ORDERED that the Clerk may enter judgment accordingly.

This constitutes the decision and order of the Court.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 9.27.2013

_____, J.S.C.
HON. CAROL EDMEAD

1. CHECK ONE: ..... ☐ CASE DISPOSED ☑ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: .....MOTION IS: ☐ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ..... ☐ SETTLE ORDER ☐ SUBMIT ORDER
☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 35

----------X

HEIDI GORE and NATHANIEL S. GORE,

Plaintiffs,

- against -

Index: 159042/2012
DECISION/ORDER

NARCONON GULF COAST, INC. and
DEBBIE ROSS,

Defendants.

----------X

HON. CAROL ROBINSON EDMEAD, J.S.C.

MEMORANDUM DECISION

In this action to recover monies paid, defendants Narconon Gulf Coast, Inc. ("Narconon") and Debbie Ross ("Ross") (collectively, "defendants") move to dismiss the amended complaint of the plaintiffs Heidi Gore ("Mrs. Gore") and Nathaniel S. Gore ("Mr. Gore") (collectively, "plaintiffs"), pursuant to CPLR 3211(a)(8) for lack of personal jurisdiction or in the alternative, for a traverse hearing on the issue of personal jurisdiction pursuant to CPLR 3211(c).

Factual Background

Plaintiffs allege that on September 9, 2012, they searched the internet in order to locate a facility that could provide professional drug treatment for their relative (the "Patient") and was directed to Narconon's website. According to plaintiffs, Narconon holds itself out as a professional inpatient drug treatment facility, and maintains the website in order to attract patients and people who are seeking to place patients in facilities. The website contains a section called the "Rehab Help Form," which invites an Internet user to complete a form which asks for the Internet user's basic contact information, and permits the user to write out a detailed message which is received directly by Narconon. While the website explains Narconon's services,

treatment techniques, and philosophy, it does not disclose that Narconon has any connection to Scientology or that Narconon exposes its patients to the literature and "teachings" of Scientology.

After reviewing the website, plaintiffs spoke by telephone with spokepersons from Narconon. Based on the representations made on the telephone and on the website, Mrs. Gore agreed to escort the Patient to Narconon in Florida, where Narconon maintains its principal place of business and where Ross resides. Defendants insisted that plaintiff pay $40,000 in advance as a deposit to "save a spot" for the Patient. Plaintiffs paid the deposit by American Express and Mrs. Gore traveled to Florida to enroll the Patient there.

Soon after enrolling the Patient, plaintiffs discovered that Narconon was connected with Scientology and L. Ron Hubbard. Mr. Gore called Narconon to oppose the Patient's stay at such a facility, and spoke with Ross, who agreed to pro-rate the fee if the Patient left the program. Thus, plaintiffs arranged for the Patient to leave the program the following Sunday, November 9, 2012 and attempted to arrange for the refund. In a letter response sent to plaintiffs in New York, defendants explained that deposit and fees were "non-refundable," and that monies were spent on the Patient during the Patient's stay at the facility. This action alleging, *inter alia*, fraud, unjust enrichment, and recission ensued.

As relevant herein, plaintiffs allege that jurisdiction over the defendants exists pursuant to CPLR 302(a)(1) because defendants have transacted business in this state, and pursuant to CPLR 302(a)(3), because defendants committed a tortious act without the state causing injury to persons within this state, regularly solicit business and advertise over the Internet in this state, and expect or reasonably should expect the acts here complained of to have consequences in this state and derive substantial revenue from interstate or international commerce.

In support of dismissal,[1] defendants assert that the only allegation in the amended complaint that relates to any actions taken by defendants in New York is the claim that plaintiffs, while searching in New York, were directed to Narconon's website and spoke to a representative from Narconon. All of the allegations in the complaint involve plaintiffs' travels to Florida, and none of them involve defendants' actions in New York. Ross attests that she has only been to New York City once on vacation more than five years ago, and neither she nor Narconon has ever owned property in New York or conducted business in New York, and has never owned or been a member of a business registered in New York. Neither Ross nor Narconon actively advertise or seek clients from New York, and they only advertise on the internet. Further, Narconon's website shows that it is a small, Florida drug rehabilitation center with no contact with New York. The website's emphasis is on drug use in Florida and identifies itself as a Florida drug rehab program. Defendants argue that the mere maintenance of website is insufficient to confer jurisdiction on this Court. And, merely asserting the elements of New York's long arm statute (CPLR 302(a)) is insufficient, as no facts exist to support the statute's application to defendants herein. Alternatively, if plaintiffs raise an issue as to whether personal jurisdiction exists, a traverse hearing should be held.

In opposition, plaintiffs argue that the allegations in the amended complaint, which must be accepted as true, establish personal jurisdiction pursuant to CPLR 302(a)(1) based on defendants' maintenance of their website to which plaintiffs were directed when they searched

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[1] When defendants previously moved (Motion #001) to dismiss plaintiffs' first Complaint for lack of personal jurisdiction, plaintiffs filed their Amended Complaint. The parties then entered into a "So Ordered" stipulation agreeing to enter into a new briefing schedule when defendants remade their motion to dismiss the Amended Complaint.

the Internet, from New York "for facilities that could serve the Patient" (¶11); defendants' numerous telephone calls with plaintiffs, while plaintiffs were in New York (¶¶11-13, 19, 23, 30-32); defendants' written correspondence, sent from Florida to the plaintiffs in New York (¶37) and defendants' insistence on, and acceptance of, plaintiffs' $40,000 deposit (¶¶15,16) which was received by defendants (¶16), and paid by plaintiffs "in New York, *via* American Express, as instructed by Narconon." (¶17). Defendants' website is not merely passive, but interactively permits anyone visiting it to write a message, and provide personal contact information on a form. Further, the communication, *i.e.*, telephone calls to plaintiffs on September 7 and 8, 2012, which contained the fraudulent misrepresentations about refunding plaintiffs' deposit on a pro-rated basis, constituted the "transaction" that serves as a basis for asserting jurisdiction over defendants. Defendants' papers do not refute any of the allegations in the amended complaint or establish the absence of any purposeful communications and conduct by defendants in and directed at New York State.

Additionally, the amended complaint asserts facts to support CPLR 302(a)(3)(ii) jurisdiction over defendants. Defendants allegedly committed a tortious act outside the State, *i.e.*, fraudulent misrepresentation and omissions made in Florida over the Internet, the telephone, and in writing, on which defendants intended for plaintiffs located in New York to rely. Three of the causes of action are predicated on such representations and omissions, and each is alleged to be the "direct and proximate result" of plaintiffs' damages. Plaintiffs' allegation that they received such misrepresentations in New York show that defendants' tortious acts caused injury to the plaintiffs in New York. And, defendants allegedly expected, or reasonable should have expected, their tortious acts to have consequences in New York. Defendants allegedly "insisted"

that plaintiffs, from their New York-based bank account, send defendants a deposit of $40,000, which was "paid by the [Plaintiffs] in New York as instructed by Narconon." And, defendants allegedly derived substantial revenue from interstate and/or international commerce in that Narconon's website lists its "International" presence, calls for visitors to identify the "country" he or she is from on the help form, and has an "800" area code thereby permitting anyone in the world to contact defendants on a toll-free basis. "800" numbers generally do not operate for local tolls, thereby indicating that defendants derive substantial revenues from interstate commerce. The website also links to Narconon locations around the world. In light of defendant's conscious, voluntary and willful availment of the privilege of conducting activities in New York. the exercise of jurisdiction does not offend due process. And, defendants' motion should be denied pursuant to CPLR 3211(d) because plaintiffs made a "sufficient start" as to defendants' potential connections to New York and need to explore this issue further with discovery.

In reply, defendants argue that as explained to Mrs. Gore, Ross operates Narconon as part of a stand alone franchise, for which Ross pays a franchise fee, and merely uses program materials prepared by Narconon International as well as the Narconon International trademark. Mrs. Gore executed the admission and service agreement, student fee and activity summary, and American Express receipt and authorization form while she was in Florida.

As plaintiffs do not allege that they wrote any message or completed any information form on defendants' website, it cannot be disputed that plaintiffs only "reviewed" the website; and never had any other interaction with Narconon online. Under caselaw, hypothetical "interactivity" of a website is insufficient. And, based on the amended complaint, defendants "reviewed" the website on September 9, 2012, after they already decided to withdraw their

nephew from the program and requested a refund on September 7-8, 2012. Plaintiffs initiated the phone calls to defendants, and "paid" defendants when defendants received payment in Florida, which payment was by American Express as opposed to a "bank." The claims that defendants wrote to New York in response to plaintiffs' demand for a refund are insufficient to confer jurisdiction. Further, the website of the Narconon International is irrelevant to show that defendant Narconon, a stand alone franchisee, derives substantial revenue from interstate/international commerce. And, the record thus far disposes of any need to explore the nature of the connection between defendants and Narconon International. As there is no basis for long-arm jurisdiction, the due process analysis is moot.

Discussion

As the party seeking to assert personal jurisdiction, plaintiffs bear the ultimate burden of proof on this issue (*see Jacobs v Zurich Ins. Co.*, 53 AD2d 524, 384 NYS2d 452 [1st Dept 1976]; *Marist Coll. v Brady*, 84 AD3d 1322, 1323, 924 NYS2d 529 [2d Dept 2011]). On a motion to dismiss, however, courts do not require that a plaintiff make a *prima facie* showing of personal jurisdiction. Rather, to defeat such motion, a plaintiff must only demonstrate that facts "may exist" to exercise personal jurisdiction over the defendant (*see American BankNote Corp. v Daniele*, 45 AD3d 338, 340, 845 NYS2d 266 [1st Dept 2007]; *Ying Jun Chen v Lei Shi*,19 AD3d 407, 796 NYS2d 126 [2d Dept 2005]; CPLR § 3211[d]). And, to the extent that, in opposition to a motion to dismiss, the plaintiff seeks disclosure on the issue of personal jurisdiction pursuant to CPLR § 3211(d) "the plaintiff [. . .] only needs to set forth a sufficient start, and show that its position is not frivolous" (*Peterson v Spartan Indus.*, 33 NY2d 463, 467 [1974]; *see Shore Pharm. Providers, Inc. v Oakwood Care Ctr., Inc.*, 65 AD3d 623, 624 [2d Dept 2009]; *American*

BankNote Corp. v Daniele, 45 AD3d 338, 340, 845 NYS2d 266 [1st Dept 2007][plaintiffs' pleadings, affidavits and accompanying documentation made a "sufficient start" to warrant further discovery on the issue of personal jurisdiction]). Plaintiffs assert jurisdiction over the defendants solely pursuant to CPLR 302(a)(1) and CPLR 302(a)(3)(ii), which are discussed in turn.

As to CPLR 302(a)(1), such section provides that a court may exercise personal jurisdiction over a non-domiciliary who, in person or through an agent, "transacts any business" *within* the State, provided that the cause of action arises out of the transaction of business (*Lebel v Tello*, 272 AD2d 103, 707 NYS2d 426 [1st Dept 2000]). Thus, to determine the existence of jurisdiction under section 302(a)(1), a court must decide (1) whether the defendant "transacts any business" in New York and, if so, (2) whether this cause of action "aris[es] from" such business transaction (*see Best Van Lines, Inc. v Walker*, 490 F3d 239 [2d Cir 2007], *citing Deutsche Bank Securities, Inc. v Montana Board of Investments,* 7 NY3d 65 [2006]; *Kreutter v McFadden Oil Corp.*, 71 NY2d 460, 467, 527 NYS2d 195 [1988]).

With respect to the first part of the test, courts look to "the totality of the defendant's activities within the forum" (*Deutsche Bank,* 7 NY3d 65; *Sterling Nat'l Bank & Trust Co. of N.Y. v Fidelity Mortgage Investors*, 510 F2d 870, 873 [2d Cir1975]), to determine whether a defendant has transacted business in such a way that it constitutes "purposeful activity," defined as "some act by which the defendant purposefully avails [himself] of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws" *(McKee Electric Co. Inc. v Rauland-Borg Corp*, 20 NY2d 377, 382 [1967], *quoting Hanson v Denckla*, 357 US 235, 253 [1958]; *accord Fischbarg v Doucet*, 9 NY3d 375, 380 [2007]).

As for the second part of the test, "[a] suit will be deemed to *have arisen out* of a party's activities in New York if there is an articulable nexus, or a substantial relationship, between the claim asserted and the actions that occurred in New York" (*Deutsche Bank; Henderson v INS*, 157 F3d 106, 123 [2d Cir1998][internal quotation marks omitted]).

In analyzing personal jurisdiction in the internet context, many New York courts have adopted the sliding scale of interactivity, formulated in *Zippo Manuf. Co. v Zippo Dot Com, Inc.* (952 FSupp 1119, 1125–26 [WD Pa 1997]), according to which websites are classified as (1) interactive [a defendant provides goods and services over the internet or knowingly and repeatedly transmits computer files to customers in other states]; (2) middle ground [permits the exchange of information between users in another state and the defendant], and (3) passive [makes information available to users] (*see also Royalty Network Inc. v Dishant.com, LLC*, 638 FSupp 2d 410 [SDNY 2009]). Thus, it has been held that exercising personal jurisdiction over the owner of an internet website accessible in New York, required that the site be "highly interactive" and more than mere presence on the internet (*Citigroup Inc. v City Holding Co.*, 97 FSupp2d 549, 565 [SDNY 2000][analyzing the scale of interactivity]). On the other hand, web sites, as here, where a user can exchange information with the host computer, occupy a middle ground, and the exercise of jurisdiction in these cases is determined by examining the level of interactivity and commercial nature of the exchange of information that occurs on the Web site (*id.*; *Best Van Lines, at 251).* Where website falls somewhere in the "middle ground," the jurisdictional inquiry requires closer evaluation of its contact with New York residents (*Royalty Network Inc. v Dishant.com, LLC*, 638 FSupp 2d 410 [SDNY 2009]).

The only allegations in the amended complaint relating to any "interactive" use of the

website are that (1) the website consists of "a section called the 'Rehab Help Form,' which invites an Internet user visiting the Website to complete a form which asks for the Internet user's basic contact information, and permits the user to write out a detailed message which is received directly by Narconon"; (¶9) and (2) that "[o]n or about September 9, 2012, the Gores, searching from New York for facilities that could serve the Patient, were directed to the Website. The Gores reviewed the Website, and spoke by telephone with spokespersons from Narconon" (¶11).

There is no indication that Narconon's website, which is accessible to anyone - in New York and in the entire world - was targeted at *anyone in New York* (*see Lenahan Law Offices, LLC v Hibbs,* 2004 WL 2966926, at *6 [WDNY 2004][defendant's website permitting the defendant to answer questions posted by users had a low-level of interactivity and thus, was insufficient to support jurisdiction, absent an allegation that defendant projected himself into New York]). Notably, there are no factual allegations, either in the amended complaint or in the opposition papers and exhibits of the website, indicating that Narconon purposefully directed its website and services at New York, or purposefully and knowingly interacted with New York residents or otherwise targeted New York for business, "thus invoking the benefits and protections of [New York's] laws" (*McKee Electric Co. Inc. v Rauland-Borg Corp*, 20 NY2d 377, 382, *supra*, *quoting Hanson v Denckla*, 357 US 235). There is no indication in the record or in the amended complaint that defendants' services were offered or provided in New York, and defendants' mere telephone and written communications with plaintiff in New York about the services and alleged refund are insufficient (*Arouh v Budget Leasing, Inc.*, 63 AD3d 506, 883 NYS2d 4 [1st Dept 2009] ("negotiation of the potential purchase of an automobile [to be picked up in Texas] via email and telephone, which was initiated by plaintiff after viewing the car on

defendant's website, is insufficient to constitute the 'transaction' of business within New York"; website "which described available cars and featured a link for email contact was not a projection of defendant into the State")).

Thus, even assuming that Narconon's website was interactive and fell within the "middle ground" of interactivity, there are no alleged contacts with New York residents requiring a "closer evaluation" (*Royalty Network Inc. v Dishant.com, LLC*, 638 FSupp2d 410, *supra*). Plaintiff's reliance on the Second Department case, *Grimaldi v Guinn* (72 AD3d 37, 895 NYS2d 156 [2010]) is misplaced. The Court held that based on the "number, nature, and timing of all of the contacts involved, including the numerous telephone, fax, e-mail, and other written communications with the plaintiff in New York that [defendant] initiated subsequent to his initial involvement in the project," the New Jersey defendant "affirmatively attempted to establish a relationship with the plaintiff [in New York] whereby he would be involved in the project" of installing parts on plaintiff's car. The relationship between the plaintiff and defendant continued for more than a year, and based on the nature and quality of defendant's contacts with plaintiff, exercising personal jurisdiction over the defendant was found.

Here, the telephone call between defendants and plaintiff prior to sending the Patient to Florida, and subsequent telephone calls between them concerning the purported refund do not rise to the level of affirmative attempts to establish a relationship with the plaintiffs in New York as found in *Grimaldi v Guinn*. And, there is no indication that discovery would yield any additional information to support a finding that Narconon purposefully transacted business *via* its website with New York residents. Thus, plaintiff failed to establish personal jurisdiction over the defendants based on CPLR 302(a)(1).

As to CPLR 302(a)(3)(ii), provides for jurisdiction over a defendant who

> "3. commits a tortious act without the state causing injury to person . . . within the state, . . . if he . . . (ii) expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce; . . . .

Plaintiffs sufficiently allege that defendants committed a tortious act outside the State by making fraudulent misrepresentations in Florida and three of the causes of action are predicated on such representations. However, discovery on the issue of whether defendants' tortious acts in Florida "caus[ed] injury to person . . . within the state" is warranted.

The determination of whether a tortious act committed outside New York causes injury inside the state is governed by the "situs-of-injury" test, requiring determination of the location of the original event that caused the injury (*Magwitch, L.L.C. v Pusser's Inc.*, 84 AD3d 529, 923 NYS2d 455 [1st Dept 2011]). "In the case of fraud . . . committed in another state, the critical question is thus where the first effect of the tort was located that ultimately produced the final economic injury" (*Bank Brussels Lambert v Fiddler Gonzalez & Rodriguez*, 171 F3d 779 [2d Cir 1999] ("Although the alleged omissions in this case occurred in Puerto Rico, New York was the place where [plaintiff] first disbursed its funds . . . [and it] disbursed these funds only because it was unaware of [certain] information. . . . It was also this disbursement that was the first step in the process that generated the ultimate economic loss to [plaintiff] in New York"]). Likewise here, discovery is warranted on the issue of whether the alleged disbursement of funds in New York was "the first effect of the tort that caused the injury—or, alternatively stated, the "original event that caused the injury" (*Bank Brussels Lambert v Fiddler Gonzalez & Rodriguez*, *supra*; *citing Hargrave v Oki Nursery, Inc.*, 636 F2d 897, 900 [2d Cir 1980] ("One immediate and direct 'injury' [defendant's] alleged tortious misrepresentations caused to plaintiffs was the loss

of the money paid by them for the diseased vines. That injury was immediately felt in New York where plaintiffs were *domiciled* and doing business, *where they were located when they received the misrepresentations*, and where the vines were to be shipped.") (emphasis added) and *Marine Midland Bank v Keplinger & Assocs., Inc.*, 488 F Supp. 699, 703 [SDNY 1980] ("[S]ince all disbursements to ADDM or its creditors were made by MMB in New York, the situs of the injury was in New York."); *cf. Magwitch, L.L.C. v Pusser's Inc.*, 84 AD3d at 532 (stating that "the original event that caused the injury was not . . . the disbursement of funds from New York to purchase the note from Barclays . . . the injury was caused by misrepresentations about the transfer of assets and the transfer and diversion of funds, which occurred in the BVI and locations other than New York" and which caused "the unavailability of funds to pay plaintiff the amounts due on the note")). "Courts examining cases involving misrepresentations have, in fact, often found that the situs of injury is New York when the original reliance or other first event causing the injury occurs in New York, even if the defendant has never sent any misrepresentations into the state" (*Bank Brussels Lambert v Fiddler Gonzalez & Rodriguez, supra, citing Cleopatra Kohlique, Inc. v. New High Glass, Inc.*, 652 F.Supp. 1254, 1256 [EDNY 1987] (holding that misrepresentations made by defendant Fital in Italy, which were relied upon by a corporation in New York to buy certain mascara products, caused injury in New York)).

Further, discovery is warranted on the issue of whether defendants derived substantial revenue from interstate and/or international commerce. Defendants' submissions and the screen shots provided by *plaintiffs* in opposition to dismissal show that Narconon Gulf is a franchise of Narconon International, and is one of the several centers offering drug rehabilitation services in Florida in order to combat the prevalent use of drugs in Florida. The website notes that "1.2

Floridians each year wind up addicted to drugs and alcohol." (Emphasis added). However, the website also notes that "While many Floridians take advantage of this care close to home, *many people also come from far away* to experience this effective addiction recovery program' (emphasis added), thereby supporting plaintiffs' claim that defendants derive substantial revenue from interstate or international commerce. Discovery is also warranted on the issue of whether defendants allegedly expected, or reasonable should have expected, their tortious acts to have consequences in New York since the plaintiffs were located in New York during the telephone call that gave rise to the purported misrepresentations and omissions.

The "decision to grant jurisdictional discovery is left to the discretion of the [. . .] court, (*Royalty Network Inc. v Dishant.com, LLC*, at 425, *citing Jazini v Nissan Motor Co.*, 148 F3d 181, 186 [2d Cir1998]; *Marine Midland Bank, N.A. v Miller*, 664 F2d 899, 904 [2d Cir1981]), and to be entitled to discovery, a plaintiff must make a "threshold showing that there is some basis for the assertion of jurisdiction" *(Royalty, citing Daval Steel Prods. v M.V. Juraj Dalmatinac*, 718 FSupp 159, 162 [SDNY1989]). Here, plaintiffs made a sufficient showing to warrant further jurisdictional discovery as to the issues noted above.

Conclusion

Based on the foregoing, it is hereby

ORDERED that the motion by defendants Narconon Gulf Coast, Inc. and Debbie Ross to dismiss the amended complaint of the plaintiffs pursuant to CPLR 3211(a)(8) for lack of personal jurisdiction or in the alternative, for a traverse hearing on the issue of personal jurisdiction pursuant to CPLR 3211(c), is denied, without prejudice to renew at the close of discovery; and it is further

ORDERED that the parties shall appear in Part 35 for a discovery conference on November 5, 2013, 2:15 p.m. to set a discovery schedule on the issues noted herein; and it is further

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Dated: September 27, 2013

Hon. Carol Robinson Edmead, J.S.C.

HON. CAROL EDMEAD