HONORABLE BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DINAH CANADA, MARIE JOHNSON-PEREDO and ROBERT HEWSON on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

MERACORD, LLC; LINDA REMSBERG and CHARLES REMSBERG, individually and on behalf of the marital community; LLOYD E. WARD and AMANDA GLEN WARD, individually and on behalf of the marital community; LLOYD WARD, P.C.; LLOYD WARD & ASSOCIATES, P.C.; THE LLOYD WARD GROUP, P.C. (D/B/A LLOYD WARD GROUP II); WARD HOLDINGS, INC.; and SETTLEMENT COMPLIANCE COMMISSION, INC.,

Defendants.

No. 12-cv-05657-BHS

RULE 26(f) REPORT

On November 7, 2012, the parties held their Rule 26(f) conference through their counsel: C. Allen Garrett Jr., of Kilpatrick Townsend & Stockton LLP, on behalf of Defendants Meracord LLC, Linda Remsberg, and Charles Remsberg (collectively, the "Meracord Defendants"); Thomas E. Loeser, of Hagens Berman Sobol Shapiro LLP, and Stuart Paynter, of The Paynter Law Firm PLLC, on behalf of Plaintiffs; and Jeffrey A.O. Freimund, of Freimund Jackson Tardif

& Benedict Garratt, PLLC, on behalf of Lloyd E. Ward, Amanda Glen Ward, Lloyd Ward, P.C., Lloyd Ward & Associates, P.C., The Lloyd Ward Group, P.C., Ward Holdings, Inc., and Settlement Compliance Commission, Inc. (collectively, the "Ward Defendants"). As a result of the conference, the parties jointly submit the following report discussing the matters set forth in the Court's July 26, 2012, Minute Order and those topics set forth in Rule 26(f)(3):

1. Statement of the nature and complexity of the case

A. Plaintiff's Position

Meracord (formerly NoteWorld, LLC) is the hub of a criminal enterprise which preys on unsuspecting and vulnerable consumers who seek only to resolve their personal debt crisis and get back on their financial feet. Meracord engages and relies upon a network of "front-end" debt settlement companies ("Front DSCs") that it utilizes to recruit customers; among those Front DSCs are the various entities controlled by the Lloyd Ward Defendants (hereinafter "Lloyd Ward & Associates" or "LWA"). The Front DSCs offer to act as intermediaries between distressed and distraught debtors and their creditors, using inflated claims and misrepresentations about their services to sign up customers, and charging exorbitant and abusive fees once the mark is on the hook. The Front DSCs require customers to set up an escrow account into which the customer makes a monthly deposit, generally via an automatic electronic funds transfer. These accounts are administered by Meracord, which is a "back-end" debt settlement company. In theory, once a sufficient balance accumulates in the escrow account, the Front DSCs will approach creditors and utilize the accumulated balance to settle outstanding debts for a lump sum in return for fees that are strictly regulated by law. The reality, however, is very different.

Meracord represents to consumers that it is independent and unaffiliated with the Front DSCs and that consumers will at all times have control over their money. These statements are false. In fact, Meracord is deeply intertwined with and actively conspires with the Front DSCs. Indeed, Meracord actually disburses the abusive fees to the Front DSCs and for most of the Front DSCs, Meracord provides the software through which consumers view their account balances

and "approve or decline" the settlement agreements with their creditors. This software in many cases represents the bulk of the "services" that the Front DSC actually provides.

Contrary to Meracord's assurances, it does not act as an independent fiduciary. Instead, together with its network of Front DSCs, it loots customers' escrow accounts by withdrawing exorbitant and abusive fees pursuant to debt settlement contracts that are wholly fraudulent and known to Meracord to be so. Moreover, the contracts, as well as the fees charged by both Meracord and the Front DSCs, are illegal under Washington State laws regulating the debt settlement industry. In many cases, as a result of the exorbitant fees charged, it is impossible for the consumer to ever accumulate sufficient funds for his or her debts to be settled as promised.

If consumers discover the fraud and attempt to retrieve the illegally extracted fees, they often find that the Front DSC is nothing more than a shell entity with no real address and no discernible ownership structure. Even if the Front DSC exists, however, the company often refuses to return any of the customers' fees, falsely claiming – as Lloyd Ward & Associates did in Plaintiff Johnson-Peredo's case – to have "earned" the fees. Meracord, for its part, stonewalls customers and refuses to refund illegal fees, hiding behind false claims that it "only" provides "payment processing" services; that it is "not a debt settlement company"; and that it is wholly "independent" from the vanishing Front DSCs.

Meracord's claim that it is not a debt settlement or "debt adjusting" company is particularly outrageous, since it clearly met the statutory definition for such companies during the relevant time period. Moreover, the online account management tool that Meracord provides for customers specifically has a section entitled "Settlements," where customers can "get more details about [pending settlement agreements] and … approve or decline the proposed agreement[s]."

Attorney-run Front DSCs have a special role in the Meracord Enterprise. By marketing themselves as law firms, they are perceived by consumers as more trustworthy. Attorney Front DSCs like Lloyd Ward & Associates use this false perception in their recruitment efforts.

Lloyd Ward & Associates is one of the Front DSCs that actively and knowingly perpetuates the scheme by which Meracord and its Front DSCs defraud consumers. LWA – along with a byzantine web of related corporate entities – is controlled by Defendant Lloyd Ward, an attorney licensed in Texas and Arkansas. According to its website, LWA is a law firm established in 1992 and located in Dallas, Texas. In addition to other practice areas, the firm publicizes a Debt Settlement practice and touts its "relationships with creditors" who "realize that we are working as diligently as they are to negotiate a debt settlement and remove it from their books."

LWA's website falsely advertises that its debt negotiation service is "guaranteed in writing to work or your fees will be returned!" As Plaintiff Marie Johnson-Peredo's experience illustrates, however, LWA's advertised "guarantee" is just another part of the scheme to sign consumers up for worthless debt settlement "services."

Marie was approached by a LWA representative after seeking help online for the $35,000 credit card debt she had accumulated with Discover Bank over five years of helping to support her family. The LWA representative emphasized her status as a "professional debt arbitrator," and promised that LWA could settle Marie's debts for approximately 40% of the total amount owed. LWA instructed Marie to change her contact information with Discover to LWA's address and phone number, and to stop making payments to Discover, and instead begin making payments into her new Meracord escrow account. LWA led Marie to believe that the law firm would be "stepping into her shoes" with respect to her Discover accounts, and would henceforth handle all interactions with the creditor. But when, approximately 14 months later, Marie was sued by Discover on the accounts, LWA refused to do anything to assist her. Moreover, the firm refused to return the over $3,500 in illegal "fees" that Meracord had disbursed to LWA from Marie's escrow account. LWA claims it had "earned" the fees, despite refusing to provide Marie with any proof that it had in fact done *anything* to settle her debts.

Plaintiffs bring this action pursuant to the Racketeering Influenced and Corrupt Organizations Act ("RICO") and Washington state law to remedy Defendants' illegal conduct. Plaintiffs bring this action on behalf of themselves and a Class consisting of all persons in the United States who established an account with Meracord LLC (or any subsidiary thereof) from which Meracord processed any payments related to any debt settlement program.

Defendants acted – and continue to act – in concert with each other and other Front DSCs to perpetuate an unfair, deceptive, and fraudulent business scheme injurious to consumers and violative of RICO, Washington's debt adjusting statute, WASH. REV. CODE § 18.28, and the Washington Consumer Protection Act, WASH. REV. CODE § 19.86.

Defendants' attempts to compel arbitration of the claims in this case are ill-founded. This Court has once already rejected Meracord's contention that it can compel arbitration based upon dubious arbitration clauses in the Front DSC's "agreements." Its appeal of this Court's ruling in that regard is fully briefed before the Ninth Circuit Court of Appeals. Meracord's own "Terms & Conditions" document actually requires Plaintiffs to pursue this lawsuit in court in Washington, which is exactly what they have done. The Ward Defendants' attempt to compel arbitration is as dubious as is its "contract." As outlined in the Amended Complaint, the Ward Defendants' arbitration clause is not enforceable.

B. Meracord Defendants' Position

Plaintiffs assert various claims against the Meracord Defendants arising out of their decision to hire debt settlement companies ("DSCs") to assist them in settling their consumer debt. Plaintiffs' claims arise out of and relate to the debt settlement services they hired the DSCs to provide, or are derivative of their contractual relationships with the DSCs. Plaintiffs' attempt to proceed against the Meracord Defendants on these claims rests on vague allegations of collusion between Meracord, LLC ("Meracord") and the DSCs. Plaintiffs ultimately seek to hold the Meracord Defendants liable for the alleged conduct of the DSCs, seeking to recover from the Meracord Defendants the fees they paid to the DSCs pursuant to their DSC Contracts,

rather than limiting their claims to the nominal fees paid to Meracord under their "Sign-Up Agreement" with Meracord. Plaintiffs make no claim that Meracord negligently performed its payment processing services in connection with Plaintiffs' debt settlement efforts.

Plaintiffs' DSC Contracts contain unambiguous, broadly-worded arbitration agreements. Specifically, Plaintiff Canada's DSC Contract requires arbitration of "any controversy, claim or dispute between the parties arising out of or relating to this Agreement;" Plaintiff Johnson-Peredo's DSC Contract requires arbitration of "all disputes arising under or related to this agreement;" and Plaintiff Hewson's DSC Contract requires arbitration of "any litigation arising out of or relating to this Agreement." Furthermore, the arbitration agreements in the DSC Contracts of Plaintiff Canada and Plaintiff Johnson-Peredo both state that such arbitration will be conducted according to the rules of the American Arbitration Association ("AAA"), which commit "arbitrability" disputes to the jurisdiction of the arbitrator. Pursuant to these arbitration agreements, the Meracord Defendants have moved (a) to stay this litigation and compel arbitration of Plaintiffs' claims, or to dismiss those claims pursuant to Fed. R. Civ. P. 12(b)(1) or 12(b)(3), or alternatively (b) to stay this litigation pending resolution of (i) the arbitration between Plaintiff Johnson-Peredo and the Ward Defendants (as requested in the Ward Defendants' Motion to Dismiss), and (ii) the pending appeal in *Rajagopalan v. NoteWorld LLC*, No. 12-35205 (9th Cir.), which involves an arbitration agreement substantially similar to the arbitration agreements signed by Plaintiffs Canada and Hewson, as well as similar legal issues.[1]

The Meracord Defendants contend that all discovery, other than initial disclosures, should be stayed until after resolution of its pending motion to stay litigation and compel

[1] Meracord was formerly known as NoteWorld LLC. The lawsuit in *Rajagopalan*, which is being litigated between Plaintiffs' counsel and Meracord, asserts essentially the same allegations against Meracord as Plaintiffs assert against the Meracord Defendants in this action. This Court denied Meracord's motion to compel arbitration in that case, on the ground that the arbitration agreement in the plaintiff's DSC Contract is substantively unconscionable and that Meracord could not invoke the arbitration agreement as a nonsignatory to the DSC Contract. As the arbitration agreement in *Rajagapolan* is virtually identical to the arbitration agreements in the DSC Contracts of Plaintiffs Canada and Hewson, the decision in *Rajagapolan* should be highly relevant in determining the similar issues presented by their claims.

If the Ward Defendants' Motion to Dismiss is granted with respect to the claims of Plaintiff Johnson-Peredo, that arbitration should result in a binding determination of her claims.

arbitration, to avoid the parties incurring significant discovery expenses that may be rendered unnecessary should the Meracord Defendants prevail on their motion to stay litigation and compel arbitration.

If arbitration is not compelled or a stay is not granted, the Meracord Defendants intend to move to dismiss Plaintiffs' claims for, *inter alia*, failure to state a claim, and to seek a stay of discovery pending resolution of that motion to dismiss. In the event that motion to dismiss also is denied, proceedings in this putative nationwide class action likely will be complex. A significant threshold discovery issue will be whether discovery should be bifurcated between class certification and merits issues.

C. Ward Defendants' Position

Plaintiffs allege the Ward Defendants are one of scores of "DSCs" who allegedly have conspired with the Meracord defendants to assist plaintiffs in settling their debts. Plaintiffs ultimately seek to hold the Ward Defendants liable for all fees paid by a putative nationwide class, including fees paid to the Meracord Defendants, other DSCs, and other entities.

The only plaintiff who contracted with one of the Ward Defendants is Marie Johnson-Peredo. She is a resident of Pennsylvania and concedes the Ward Defendants are all located in Texas. The contract contains an arbitration clause requiring that any disputes arising under the contract are subject to binding arbitration. The contract also provides that venue for arbitration shall be in Dallas County, Texas.

The Ward Defendants have moved to dismiss plaintiffs' amended complaint on the grounds that this Court lacks personal jurisdiction over the Ward Defendants, lacks subject matter jurisdiction due to the arbitration clause, and venue does not lie in Washington.

The Ward Defendants agree with the Meracord defendants that all discovery, other than initial disclosures, should be stayed until after resolution of the Ward Defendants' pending motion to dismiss and the Meracord defendants' pending motion to stay litigation and compel arbitration, to avoid the parties incurring significant discovery expenses that may be rendered

unnecessary should the Ward Defendants prevail on their motion to dismiss and/or the Meracord Defendants prevail on their motion to stay litigation and compel arbitration.

If these pending motions are denied, the Ward Defendants intend to move to dismiss plaintiffs' claims for, *inter alia*, failure to state a claim, and to seek a stay of discovery pending resolution of that motion to dismiss. In the event that motion to dismiss also is denied, proceedings in this putative nationwide class action likely will be complex. The Ward Defendants concur with the Meracord Defendants that a significant threshold discovery issue will be whether discovery should be bifurcated between class certification and merits issues.

2. Results of the Rule 26(f) Conference not provided under Topic 6.

A. Issues Concerning Electronically Stored Information (ESI)

Plaintiff's Position: In the Rule 26(f) Conference, Plaintiffs discussed the preliminary steps of (1) preservation of relevant ESI; and (2) design of an appropriate search protocol and selection of search terms. Defendants have indicated that they intend to seek a stay of discovery. Whether or not such a stay is granted, Plaintiffs believe that preliminary work concerning an ESI search protocol can be undertaken now. Plaintiffs propose an ESI search protocol be designed as follows: Defendants will provide Plaintiffs with information concerning the scope of ESI to be searched, including the approximate number of ESI documents and the identification of repositories. With that information, Plaintiffs will provide to Defendants the random sample size necessary for a 95% confidence band random sample of documents. Defendants will extract the random sample of documents and review the sample for privilege only and will produce all documents in the sample so that both sides can use the sample to evaluate the effectiveness of the search protocol (including being able to ascertain and determine the cause of false positives).

Defendants will provide Plaintiffs with its list of search terms and/or Boolean search strings. Based on review of the random sample discussed above, Plaintiffs will suggest additional terms and/or search strings to be applied. The resulting search protocol will be applied to the random sample of documents and the results analyzed. Based on the tested effectiveness of the

search in discovering responsive documents, the search protocol will be further revised cooperatively as necessary. The goal of the iterative search design process is to create a search that will reasonably identify all responsive documents while minimizing the number of non-responsive documents incorrectly identified by the search protocol. Once the parties' iterative process has resulted in a mutually acceptable search protocol, it will be applied to the entire body of searchable ESI.

Plaintiffs request that all ESI documents (including emails) be produced in native format. Defendants acknowledge that if they choose instead to make .tiff images of its emails and produce those in Bates-stamped form with meta-data, they do so by their own choice and at their own expense.

Meracord Defendants' Position: With respect to ESI, the Meracord Defendants anticipate that there will be significant time and expenses associated with the design and implementation of an ESI search and production protocol. The Meracord Defendants contend that all discovery other than initial disclosures, including ESI discovery, should be stayed until after resolution of their pending motion to stay litigation and compel arbitration, to avoid the parties incurring significant discovery expenses that may be rendered unnecessary should the Meracord Defendants prevail on their motion to stay litigation and compel arbitration.

Ward Defendants' Position: The Ward Defendants share the Meracord Defendants' position on this issue as set forth immediately above, and add reference to the Ward Defendants' pending motion to dismiss plaintiffs' amended complaint and, in the event that motion is denied, the Ward Defendants' anticipated motion to dismiss for failure to state a claim.

B. Issues Concerning Claims of Privilege and Protection of Documents

The parties do not presently anticipate any unusual issues concerning claims of privilege. Subject to the Meracord Defendants' and Ward Defendants' previously-stated objection to proceeding with discovery other than initial disclosures at this time, the parties will timely produce privilege logs recording any documents and communications responsive to discovery

requests which are withheld based on a claim of privilege. The parties will cooperate in the drafting and submission of a proposed protective order should Defendants assert that discovery calls for confidential and/or sensitive documents.

C. Additional Orders Under Rule 26(c) or Rule 16(b) and (c)

As stated above, the Meracord Defendants and Ward Defendants contend that all discovery other than initial disclosures should be stayed until after resolution of pending motions to stay litigation and compel arbitration, to avoid incurrence of significant discovery expenses that may be rendered unnecessary should the Meracord Defendants prevail on their motion to stay litigation and compel arbitration and/or the Ward Defendants prevail on their motion to dismiss. If Plaintiffs insist on moving forward with discovery, the Meracord Defendants and Ward Defendants anticipate the need for an additional Order staying such discovery.

3. Proposed Deadline for Joining Additional Parties

The parties propose that the deadline for joining additional parties be set for the same date as the close of fact discovery.

4. Statement of ADR Method

Should Defendants' attempts to compel this case into arbitration fail, the parties propose that ADR be handled through mediation.

Meracord Defendants' Position: Meracord will require, as a condition to proceeding with mediation, a written agreement from Plaintiffs not to disclose in any case any statements made by Meracord (a) in connection with the parties' prior mediation in the related case of *Rajagopalan v. NoteWorld LLC*, No. C11-5574 (W.D. Wash.), Appeal No. 12-35205 (9th Cir.); or (b) in connection with any future mediation in either this case or in the *Rajagopalan* case. Meracord does not agree with Plaintiffs' assertions that they have not revealed confidential mediation disclosures and vigorously disputes Plaintiffs' characterizations of the proceedings before the Ninth Circuit and the Order entered by the Ninth Circuit, which *sua sponte* struck the

filing of Plaintiffs that revealed Meracord's confidential mediation disclosure. The Ninth Circuit's Order was filed in this Court as docket number 55.

Plaintiffs' Position: Plaintiffs have never breached any confidentiality provision associated with prior mediation attempts and have no intention of doing so in the future. Meracord's assertions to the contrary stem from a routine response to a motion to extend time that Plaintiff *Rajagopalan* filed in the Ninth Circuit and which Meracord believes somehow disclosed confidential information. Meracord went so far as to file a motion in the Ninth Circuit Court of Appeals asking the Court to bar Plaintiff from disclosing confidential mediation information. The Ninth Circuit denied Meracord's motion without prejudice to Meracord's ability to renew the motion if a future filing actually disclosed confidential information. Notably, the Ninth Circuit did not even request a response from Plaintiff before denying Meracord's meritless motion.

5. Timing of ADR

Plaintiffs' Position: Plaintiffs are willing to engage in ADR at any time provided such ADR contemplates a class-wide settlement of the case. Plaintiffs do not believe that the case can be fairly settled on an individual basis and thus believes that ADR may not be useful until Plaintiffs' contemplated motion for class certification has been decided. Defendants' statement below that they are amenable to ADR prior to class certification rings hollow. Plaintiffs already engaged Meracord Defendants in one such early mediation, which was not successful.

Defendants' Position: The Meracord Defendants and Ward Defendants are amenable to ADR prior to class certification being decided. As stated above, Meracord will require, as a condition to proceeding with mediation, a written agreement from Plaintiffs not to disclose in any case any statement made by Meracord in connection with the parties' prior mediation or in connection with any future mediation.

6. Proposed Discovery Plan

(a) The Rule 26(f) conference took place on November 7, 2012. Initial disclosures were served, by stipulation, on November 12, 2012.

(b) Subjects of Discovery and whether it should be phased.

Plaintiff's Position:

Plaintiffs currently believe that discovery on the following topics will be necessary:

1. Agreements and understandings between Meracord and the Debt Settlement Companies (DSCs) with which it conducts business throughout the United States, including Ward Defendants.
2. Communications between Meracord and the DSCs with which its conducts business throughout the United States, including Ward Defendants.
3. Defendants' policies and procedures with respect to their provision of services in the debt settlement industry.
4. Defendants' internal and external communications concerning their policies and procedures with respect to their provisions of services in the debt settlement industry.
5. Documents or communications regarding Defendants' training of employees with respect to their provisions of services in the debt settlement industry.
6. Scripts, manuals, handbooks and other reference material and guidance utilized by Defendants' employees with respect to their provisions of services in the debt settlement industry.
7. Meracord's use and communications through the Internet concerning itself and the DSCs with which it conducts business in the United States, including Ward Defendants, as well as Ward Defendants' use and communications through the Internet concerning its provision of services in the debt settlement industry.
8. The number and locations of persons on whose behalf Meracord has established and/or maintained accounts in connection with its provision of services in the debt settlement industry.
9. The number and locations of persons who have signed up for Ward Defendants' debt settlement "services."
10. Fees deducted for Meracord's benefit and for the benefit of third parties from accounts maintained by Meracord in connection with its provisions of services in the debt settlement industry, including fees deducted for the benefit of Ward Defendants.
11. Local, State and federal investigations into Defendants' practices with respect to their provisions of services in the debt settlement industry.
12. Lawsuits, claims and complaints against Defendants' with respect to their provisions of services in the debt settlement industry.

13. Meracord's knowledge of investigations, lawsuits, claims and complaints against DSCs with which Meracord conducts business throughout the United States, including against Ward Defendants; and Ward Defendants' knowledge of investigations, lawsuits, claims and complaints against other DSCs with which Ward Defendants have had contact, including a DSC known as The Debt Answer, whose client "portfolio" was purchased by Ward Defendants in 2011.
14. Defendants' agreements and relationships with banking institutions.
15. Defendants' participation in debt settlement industry conferences or tradeshows.
16. Defendants' policies and procedures with respect to document retention and the steps taken to preserve documents since the inception of the first action making allegations similar to those made in this action.

The parties discussed that, generally, discovery may be recovered from (1) hardcopy and centralized files; and (2) electronically stored information ("ESI"). Defendants object to the start of discovery and take the position that all discovery, including searches of hardcopy files and ESI discovery, should be stayed until after resolution of (1) "The Meracord Defendants' Motion (a) to Stay Litigation and Compel Arbitration; (b) to Dismiss Without Prejudice; or (c) to Stay Litigation Pending Resolution of Related Arbitration and Appeal"; and (2) the "Ward Defendants' Motion to Dismiss Amended Complaint."

Plaintiffs do not believe that an indefinite stay of discovery is appropriate in this case, nor do they believe that there is any benefit to limiting discovery further, or to focusing it upon a narrower set of issues. Plaintiffs believe that there is no appreciable distinction, in this case, between "merits" and "class" discovery, and believe it would be inefficient to attempt a bifurcation of discovery. In order to avoid repeat interventions by the Court resolving disputes between the parties as to what constitutes "class" vs. "merits" discovery, and because the facts in this case do not lend themselves to such a distinction, Plaintiffs recommend that discovery proceed on the matters listed above. Defendants' contention that discovery can be bifurcated between "merits" and "class" discovery ignores recent appellate and Supreme Court cases requiring rigorous analysis of Rule 23 requirements and, where necessary, evaluation of the merits of Plaintiffs' claims.

Meracord Defendants' Position:

The Meracord Defendants believe all discovery other than initial disclosures should be stayed pending resolution of their motion to stay litigation and compel arbitration. If that motion is granted, the issue of discovery will be for the arbitrator, and the claims will be limited to the named Plaintiffs' individual claim. Proceeding with discovery prior to resolution of the Meracord Defendants' motion to stay litigation and compel arbitration would conflict with the Federal Arbitration Act and potentially would waste the resources of the parties and the Court.

Assuming the Meracord Defendants' motion to stay litigation and compel arbitration is denied, the Meracord Defendants intend to move to dismiss Plaintiffs' claims for, *inter alia*, failure to state a claim upon which relief can be granted pursuant to Fed. R. Civ. P. 12(b)(6). The Meracord Defendants anticipate moving to stay discovery pending resolution of this motion as well. Proceeding with discovery relative to claims that subsequently are dismissed would waste the resources of the parties and the Court.

Assuming these threshold motion(s) are denied or that discovery is not stayed, the Meracord Defendants believe discovery should be limited to class certification issues. Plaintiffs have proposed engaging in massive "merits" discovery on behalf of a putative nationwide class that the Meracord Defendants believe is unlikely to be certified. Although Plaintiffs assert there is no meaningful distinction between class certification and merits discovery in this action, both courts and the Advisory Committee's Notes to Fed. R. Civ. P. 23 differentiate between discovery pertaining to the class certification criteria and discovery pertaining to the merits of the parties' dispute. Although aspects of some of Plaintiffs' proposed topics may relate to class certification issues, the vast majority likely will relate only to the merits.

Ward Defendants' Position:

The Ward Defendants concur with the Meracord Defendants' position as set forth above.

(c) Changes to Discovery Limitations.

Subject to Defendants' previously-stated objection to proceeding with any discovery at this time, the parties do not presently anticipate the need for changes to the discovery limitations. Should the need for a change become apparent, the parties will attempt to reach an agreement in that regard absent the need for Court intervention.

(d) Discovery will be managed to minimize expense by seeking to resolve any disputes informally, prior to submitting such matters to the Court. Subject to the Meracord Defendants' and Ward Defendants' previously-stated objection to proceeding with any discovery at this time, the parties will seek to find mutually agreeable dates and locations for depositions so as to minimize the parties' travel expenses and, where possible, will use remote video, telephonic and other means to minimize costs and expenses.

(e) The parties do not currently anticipate any other discovery orders that should be entered by the Court.

7. Date by Which Remainder of Discovery Can Be Completed

Defendants' Position: As stated above, the Meracord Defendants and Ward Defendants believe that all discovery other than initial disclosures should be stayed pending the resolution of the Meracord Defendants' motion to stay litigation and compel arbitration and the Ward Defendants' motion to dismiss and have informed Plaintiffs that they do not intend to begin any discovery until after their pending motions to dismiss or stay have been decided and, if necessary, anticipated motions to dismiss for failure to state a claim have been decided.

Plaintiffs' Position: In part in light of the failure of Meracord Defendants' motion to compel arbitration in the related *Rajagopalan v. NoteWorld LLC* litigation and Meracord's own Terms & Conditions document, which precludes arbitration, Plaintiffs believe that discovery should commence promptly and propose the case schedule set forth at the end of this report.

8. Whether Case Should Be Bifurcated

The parties do not presently see the need for a bifurcation of liability from damages. The parties may revisit this issue following the Court's Order on Plaintiffs' anticipated motion for class certification.

9. Whether Pretrial Statements and Pretrial Order Should be Dispensed

The parties believe that neither the pretrial statements nor the pretrial order should be dispensed with in whole or in part.

10. Any Other Suggestions for Shortening or Simplifying the Case

The parties presently have no other suggestions for shortening or simplifying the case.

11. The Date the Case Could be Ready for Trial

The parties believe that this is a complex case.

Plaintiffs' Position: Given the time needed for fact and expert discovery, class certification and dispositive motions, Plaintiffs believe the case will be ready for trial in February 2014.

Defendants' Position: The Meracord Defendants and Ward Defendants believe the matters should be resolved in individual arbitrations. Such arbitrations can be completed within months. In the event Plaintiffs' claims are not resolved in individual arbitrations or otherwise dismissed, the Meracord Defendants and Ward Defendants believe the case will be ready for trial in or after February 2014.

12. Whether the Trial Should be Jury or Non-Jury

Trial will be by jury.

13. The Total Number of Trial Days Required

Plaintiffs believe trial will take approximately 8-10 court days. In the event Plaintiffs' claims are not resolved in individual arbitrations, the Meracord Defendants and Ward Defendants believe trial will take approximately 13-15 court days.

14. The Dates on Which Trial Counsel May Have Complications

Plaintiffs' counsel presently have no known complications with respect to setting a trial date. The Meracord Defendants' counsel presently have no known complications with respect to setting a trial date. The Ward Defendants' counsel currently has no known complications with respect to setting a trial date in or after February 2014.

15. Service Issues

Service on Defendants has been completed.

16. The parties do not consent to assignment of the case to a magistrate judge.

17. The case should not be considered for designation to Vancouver, Washington.

Discovery Schedule

Plaintiffs' Position: Should the Court deny Meracord's motion for an indefinite stay of all discovery, Plaintiffs propose the following Discovery Schedule. In the event discovery is postponed, Plaintiffs request that each of the dates below be postponed and extended for the duration of any stay that is ordered by the Court:

Parties exchange initial discovery requests:	January 18, 2013
Defendants begin ESI discovery:	February 15, 2013
Plaintiffs' motion for class certification:	June 13, 2013
Defendant's opposition to cert motion:	July 8, 2013
Plaintiff's Reply to cert motion:	August 2, 2013
Close of fact discovery:	September 13, 2013
Exchange of expert reports:	October 4, 2013
Exchange of rebuttal expert reports:	October 25, 2013
Dispositive motions:	November 28, 2013
Trial	February, 2014

Meracord Defendants' Position: The Meracord Defendants believe that all discovery (other than initial disclosures), pretrial obligations, and trial-related deadlines should be stayed pending resolution of their motion to stay litigation and compel arbitration. The Meracord Defendants also presently intend to move to dismiss Plaintiffs' claims for, *inter alia*, failure to state a claim, and to move to continue the stay of discovery, in the event their motion to stay

litigation and compel arbitration is denied. The Meracord Defendants also believe that, if and when discovery proceeds, discovery should be bifurcated between class certification and merits issues. In light of the significant threshold issues relative to proceedings in this matter, if discovery is not stayed, the Meracord Defendants believe the Court should hold a status conference to address the parties' initial disagreements relative to the proper scope of discovery and to determine a logical and orderly sequence for the progression of this matter.

Ward Defendants' Position: The Ward Defendants concur with the Meracord defendants' position as set forth above.

Dated this 20th day of November, 2012

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CERTIFICATE OF SERVICE

On November 20, 2012, I caused to be electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following attorneys of record:

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