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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

GARLAND D. MURPHY, III, M.D. and)
PHYLLIS MURPHY, Individually and)
on behalf of all others)
similarly situated,)

Plaintiffs,

) CASE NO.
) 5:17-CV-5035

VS.

GOSPEL FOR ASIA, INC., GOSPEL)
FOR ASIA-INTERNATIONAL, K.P.)
YOHANNAN, GISELA PUNNOSE, DANIEL)
PUNNOSE, DAVID CARROLL, and PAT)
EMERICK,)

Defendant.

TRANSCRIPT OF CASE MANAGEMENT HEARING
BEFORE THE HONORABLE TIMOTHY L. BROOKS

May 16, 2017; 1:36 p.m.

FAYETTEVILLE, ARKANSAS

Proceedings recorded in realtime via machine shorthand.

Dana Hayden, CCR, RMR, CRR
Federal Official Court Reporter
35 East Mountain Street
Fayetteville, Arkansas 72701

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1 THE COURT: The matter of Garland D. Murphy,
2 III and Phyllis Murphy individually and on behalf of
3 others similarly situated versus Gospel for Asia, Inc.
4 and other entities and individuals is the next matter to
5 come before the Court this afternoon. Our docket number
6 in this case is 5:17-CV-5035.

7 The matter comes before the Court today for
8 purposes of a Rule 16 initial case management
9 conference. Appearing on behalf of the plaintiffs today
10 is James Graves and Woody Bassett, also Marc Stanley and
11 Martin Woodward.

12 Appearing on behalf of the defendants
13 collectively today is Steve Shults, Harriet Miers,
14 Robert Mowrey, Paul Schuster, and Matt Davis.

15 In preparing for our hearing today, the Court
16 has reviewed the pleadings that have been filed to date,
17 as well as the parties' joint Rule 26 report. I could
18 tell that a lot of time has gone into the preparation of
19 the joint report. That is very much appreciated.

20 For my review of these materials, I understand
21 that the plaintiffs were donors to the charitable
22 organization Gospel for Asia. The Court understands
23 Gospel for Asia and some of the related entities is a
24 501(c)(3) entity. Among other things, it purports to
25 raise money for world missions; in particular in Asia,

1 and the bulk of that seems to be geared towards or
2 focused on India.

3 The various individually named defendants the
4 Court understands would be the founder of Gospel for
5 Asia, as well as certain family members that hold
6 positions of responsibility within the defendant
7 organizations, as well as perhaps some other members of
8 the board of Gospel for Asia.

9 The Court understands that the essence of the
10 allegations here are that certain aspects of the
11 defendants' fundraising activities were, in one respect
12 or another, fraudulent, which is to say that
13 representations that were made to the plaintiffs about
14 what the proceeds would be used for, according to the
15 plaintiffs, are not accurate.

16 The defendants deny those allegations and
17 contend that all of the monies raised were used
18 consistent with its mission and charitable intentions
19 and purposes.

20 A little more specifically, the causes of
21 action using these facts that has been alleged would
22 include, as I mentioned, fraud in various forms,
23 including common law fraud, including fraud via the
24 Arkansas Deceptive Trade Practices Act, and including
25 various forms of fraud as the predicate for a civil RICO

1 cause of action. There are also causes of action for
2 unjust enrichment and maybe others. That's all that I
3 can recite off the top of my head at the moment.

4 The defendants, as I said, deny that there is a
5 basis for these causes of action. They contend that the
6 complaint fails to state a claim for which relief may be
7 granted, although no such motion has yet been made.
8 They also raise a number of affirmative defenses,
9 including statute of limitations, standing, and some
10 other defenses.

11 So what I would like to accomplish today is to
12 give each side an opportunity to state any other facts
13 or defenses that they might feel are pertinent; and by
14 that, I mean pertinent to us agreeing on a discovery
15 plan today.

16 It is evident that the parties have thought
17 through the best way to litigate the case in terms of
18 how to deal with the purported class allegations. The
19 complaint does seek to, at some point, seek class
20 certification under Rule 23. The parties have somewhat
21 different ideas about the best way to reach the
22 certification phase and basically whether there is a
23 need to bifurcate merits discovery from class discovery.
24 The plaintiffs do not necessarily agree with that.

25 Overall time frames involved, however, I think

1 everyone is, generally, within speaking, are within a
2 certain range on the same page.

3 So let's begin there. I understand that
4 Mr. Stanley is going to speak on behalf of the
5 plaintiffs. Mr. Stanley, would you like to add to or
6 correct the Court, if I misspoke about your contentions,
7 and kind of lead that discussion towards why you think
8 that the discovery plan needs to be more in line with
9 what you have proposed in the report?

10 MR. STANLEY: Sure.

11 MR. SHULTS: Your Honor, may I raise one matter
12 preliminarily?

13 THE COURT: Sure.

14 MR. SHULTS: Thank you. Do I need to stand
15 over there, or may I do it from there?

16 THE COURT: Well, depends how long you're going
17 to be standing, Mr. Shults.

18 MR. SHULTS: I won't be long.

19 THE COURT: You can do it from there.

20 MR. SHULTS: The case involves potentially some
21 very sensitive and confidential information, and the
22 Court has entered a protective order that the parties
23 agreed on which provides for designating certain
24 information confidential and other information
25 attorneys' eyes only.

1 It doesn't provide that transcripts of hearings
2 like this will be confidential for a time until the
3 parties have a chance to designate whether any parts
4 should be confidential.

5 THE COURT: It does or does not?

6 MR. SHULTS: Does not.

7 THE COURT: Okay.

8 MR. SHULTS: I believe that's correct. And so
9 I was going to ask if any transcript of this hearing is
10 prepared, if it could be maintained as confidential for
11 a period of time to give the parties an opportunity to
12 designate anything confidential that needed to be.

13 THE COURT: That's fine. I think that that is
14 essentially our standard practice. I think it's like
15 seven days after the transcript has been made available
16 on the docket for either party to raise by motion or by
17 pointing to the agreement as to why it should be sealed
18 or sealed in part; and until such time as that period
19 has expired and/or the Court has resolved the issue,
20 access to that transcript remains locked from
21 nonattorneys of record.

22 That said -- and I don't know exactly what all
23 we will be getting into at different steps along the
24 way -- but this is a public courtroom. Anyone is free
25 to come in. Likewise, anyone should be free to order a

1 transcript and read a transcript if they desire to do
2 so, again, absent some compelling reason supported in
3 the law to seal the proceedings or to seal the matters
4 made known in this public proceeding.

5 MR. SHULTS: Thank your Honor. And that gets
6 to the other issue. I don't know but anything may come
7 of today that is sensitive enough to be attorneys' eyes
8 only. If it does, just so that everyone could
9 anticipate that, we may ask that the Court have a bench
10 conference effectively or something like that to
11 preserve the confidentiality of anything that's
12 particularly sensitive. I don't really anticipate that
13 but just wanted to raise the issue now.

14 THE COURT: I'm scanning the crowd. I see
15 three nonattorneys here, one of which is a party. The
16 other two I don't know for sure, but I believe they said
17 their last name was Dickinson, and I recognize that name
18 as being associated with another matter that's at the
19 Eighth Circuit.

20 I can't add two and two. I'm not going to make
21 any firm commitments there, but I surmise that they are
22 plaintiffs in a different case against the same or
23 substantially similar defendants.

24 So again, I don't know where all we're headed
25 to today, and I can't recall offhand the attorney eyes

1 only provisions of your protective order, but obviously
2 if you think we're about to run this thing into the
3 ditch, I'll look to you to jump up and let me know.

4 MR. SHULTS: Thank you, your Honor.

5 THE COURT: All right. Mr. Stanley, you may
6 proceed.

7 MR. STANLEY: Would you like me to proceed from
8 here or --

9 THE COURT: Mr. Stanley, we do these fairly
10 informally. So if you're more comfortable there at the
11 table or sitting down, that's fine. I find that some
12 lawyers can't speak unless they are standing up, in
13 which case you're free to use the podium, and using a
14 microphone I think in this large of a group would be
15 appropriate.

16 MR. STANLEY: Thank you.

17 Thank your Honor. I think the Court summarized
18 the case pretty well, and what I thought would be
19 important for today is sort of defining the different
20 approaches of the two sides in discovery and where we're
21 trying to go with the case based on the allegations.

22 From our case, it's pretty simple. It's what
23 did the defendants promise the plaintiffs. So, for
24 instance, "Will you give me a thousand dollars for a
25 Jesus Well?" "Yes, I'll give you a thousand dollars for

1 for a Jesus Well." That's the first one.

2 What did the plaintiffs give and then what did
3 the defendants do with the money? "I give you a
4 thousand dollars; show me it went to a Jesus Well." Not
5 hard to figure out. Either it did or it didn't; either
6 they can show it or they can't.

7 And then, third, we've alleged a RICO
8 conspiracy and fraud because what we allege happened is
9 that a lot of this money did not even go to the field
10 and a lot of this money went into for-profit enterprises
11 like a hospital, a chain of hospitals, chain of
12 educational facilities, a media empire, a soccer team in
13 Myanmar, a railroad plantation. For a long time, there
14 was \$287 million on deposit in banks in India; there was
15 \$130 million in deposit in Hong Kong. And so what's
16 going on there?

17 We allege a RICO conspiracy. The kingpin is
18 K.P. Yohannan, who is the chairman of Gospel for ASIA,
19 Inc., but he's also the metropolitan of Believers
20 Church, and the metropolitan is sort of like a pope
21 there.

22 The constitution's very clear -- the
23 constitution of the church -- that the metropolitan, by
24 virtue of his office, is the president and final
25 authority of the church government, including the

1 managing trustee, the president of all trusts and
2 societies of Believers Church, and the custodians of
3 Believers Church at large.

4 And it goes on and on to say he has the
5 ultimate authority of everything that goes on with the
6 church.

7 The properties are in his name, K.P. Yohannan's
8 name, a lot of the businesses and the properties there.
9 It's not just Believers Church. There's also Gospel for
10 Asia-India. There's also Bridge of Hope Trust. There
11 are a whole bunch of folks that we're just finding"
12 Gospel for Asia 75 LLC, Gospel for Asia 275 LLC, there's
13 Way of Hope LLC. We've got entities all over. It's
14 almost like the Enron transactions that we're trying to
15 unravel.

16 There's -- we've got entities in Germany that
17 formed an alliance with Canada. We've got money
18 allegedly going to Sri Lanka and other places. And so
19 what we're trying to find out is what did the plaintiffs
20 give, what was promised, what did they give and what did
21 defendants do with it. Did it line someone's pockets;
22 and if that's the case, then we want them to give it
23 back.

24 Now, you also said, you mentioned that the
25 defendants' contention was that all monies were used as

1 the donors specified. If that's the case, we lose.
2 This is an easy case. Just show us that the money that
3 came in to Gospel for Asia -- right now. I mean, they
4 can -- if that's the case, they could show us tomorrow:
5 The money that came in for Gospel for Asia was spent
6 exactly as the donors said -- "we dug this many wells,
7 we bought this many camels, we did whatever else" -- and
8 we lose.

9 It's not a hard case for that kind of discovery
10 to do it. They should have records of showing, as
11 fiduciaries of the money, what they did with the money.

12 THE COURT: Let me ask you a few questions
13 about that. First of all, I wasn't entirely clear, or
14 perhaps I just couldn't recall from reading the
15 complaint. There are certain representations that you
16 allege about the 100 percent, what you call a guarantee,
17 that all money will be sent to the field for the
18 purposes that were designated.

19 At some point along the way -- I thought in
20 2016 -- you indicated that the language on the website
21 had kind of been parsed a little bit to absorb the
22 concept that maybe it was only a 96 percent guarantee
23 because there could be situations where they had
24 received so much money for one particular goal that they
25 needed to redirect it to some other project; and in that

1 sense, they weren't necessarily completely totally
2 guaranteeing that the money would be used for the
3 purpose designated, but it would be used for some other
4 good purpose.

5 Initially I thought that that was something
6 that was changed in the wording on the website after a
7 certain point in time, but then I saw similar language
8 on what you call a receipt, or an annual contribution
9 statement or something like that, that your clients
10 received, and it had similar language in it.

11 So help me understand the 100 percent guarantee
12 and the circumstances in which there was this carveout
13 about, "Well, what we're really going to do is use our
14 best efforts to make sure that it goes to these things."

15 MR. STANLEY: So that's one of the things that
16 I believe you'll find were criticized by the ECFA and by
17 the independent charities and everybody else about. The
18 solicitations -- and 100 percent of the solicitations,
19 until this time after the ECFA decertified them, 100
20 percent of them said, "We promise you we will use it
21 exactly as you designate. The Lord's taking care of us.
22 We don't need help for administrative expenses. We
23 don't take any overhead. It goes straight to the field
24 as promised."

25 I don't recall what the Court's referring to in

1 Dr. Murphy's receipt, and maybe there was one for 2016.
2 Do we have that as an exhibit there?

3 THE COURT: This was 2012, I think.

4 MR. STANLEY: Yeah, I don't recall that exact
5 language and whether or not that put him on notice is
6 really the point that it wasn't going that way, but
7 the -- I think the jury will conclude that the vast
8 majority of representations -- and I'm talking about
9 99.999 percent -- at the time of solicitation, was that
10 "The money I'm giving goes directly to the charity I
11 promise or the cause that I promised -- I was promised
12 it would go," and that never swayed until after the ECFA
13 undesignated them.

14 Now, we're still in the early parts of
15 discovery, so I don't have the documents yet from Gospel
16 for Asia that talk about the change that they made or
17 any disclosures they made, but certainly that's an area
18 that we'll have to go through because they have an
19 affirmative defense that we somehow ratified. So that
20 is an area of discovery. We're going to have to find
21 out what were the policies and procedures and when did
22 they make these changes and did they try to sneak these
23 in on tax statements or something else. I'm unaware of
24 that.

25 THE COURT: All right. I'm looking at your

1 Exhibit 4.

2 MR. STANLEY: Exhibit 4?

3 THE COURT: Yeah.

4 MR. STANLEY: Okay.

5 THE COURT: "All contributions to Gospel for
6 Asia are income tax deductible to the extent allowed by
7 law and are made with the understanding that GFA has
8 complete discretion and control over use of all donated
9 funds."

10 MR. STANLEY: Yes, sir. In the next sentence:
11 "However, we are committed to apply your gifts according
12 to your preference." We are committed to that.

13 I mean, I think a reasonable jury would say
14 they agreed to apply that there.

15 THE COURT: So the 100 percent guarantee has a
16 little bit of an asterisk next to it?

17 MR. STANLEY: I don't think so. I think that
18 they are required under federal tax laws to have this
19 statement. I'm willing to bet they are, the first part
20 of the statement. I think that they are required to say
21 that once you give money to this charity -- I don't know
22 this for a fact, but I'll bet you that's a tax
23 statement, IRS statement, to comply with that.

24 But then when you follow with, "However, we are
25 committed to apply your gifts according to your

1 preferences."

2 And then this other next statement is a common
3 tax statement that I get on mine: "Other than reflected
4 in the statement, no goods or services, in part or in
5 whole, were provided in exchange for these gifts," and,
6 "The value of noncash donations are not included."

7 I think this is a common tax statement that's
8 required by the U.S. Government but then they added, on
9 their own, "We are committed to apply your gifts
10 according to your preferences."

11 THE COURT: All right.

12 MR. STANLEY: So I don't think that changes
13 anything, to be honest.

14 THE COURT: All right. The other question I
15 had was there are some allegations in the complaint
16 about the monies that were designated to be sent to the
17 field or that were sent to the field were -- I'm not
18 sure if the proper word's "diverted" but were channeled
19 into these for-profit businesses or institutions that
20 you've identified: The rubber plantation, the
21 for-profit school, what sounds like a for-profit
22 hospital, things of that nature.

23 Is the -- is there a specific allegation that
24 the profits that were raised by these for-profit
25 entities -- well, let me ask my question this way:

1 Where did those profits go to? Did they go back into
2 the missions in the field, or did they go somewhere
3 else, or at this point do you know?

4 MR. STANLEY: No clue. Our forensic people so
5 far tell us money's missing. I believe GFA's position,
6 as we've talked to counsel -- and I don't want to
7 misrepresent what they say -- is that, in fact, it does,
8 they say, eventually will go back into the field, but
9 nobody lined their pockets with this. That's one of the
10 big questions that we need to resolve in this case.

11 Our -- even no matter what happened, okay --
12 I'm very interested in knowing what happened. I think
13 that's really interesting to me. But if you promise
14 me -- if you ask me for money to be used for this and
15 you use it for something else, then no matter what your
16 intentions are, you didn't use it for the purposes that
17 you said you were going to use it; and when the jury
18 sees the urgent appeals that people need this money
19 right away for a well or for the child or for whatever
20 else, earthquake relief and, in fact, none of it's
21 making it -- for two, two and a half years, I think no
22 money made it to India -- that the money's not being
23 used as specified.

24 You know, the notion of, "Hey, haven't we done
25 you a favor. If we take your dollar and we invest it in

1 a for-profit and we make a dollar-fifty out of it; we're
2 doing you a favor; now we're able to use more for this
3 charity," that's not what our people signed up for.

4 Our people didn't sign up for you to take this
5 money and put it in a for-profit vehicle which, by the
6 way, you might have lost money in. Who knows, right? I
7 don't know if it's for -- I don't know if they are
8 making a profit or not, but we didn't agree to put it
9 into a business enterprise; we agreed to use it for a
10 well or a camel or a motorcycle or whatever, sponsor a
11 child, earthquake relief. Whatever we agreed to, that's
12 what we as good Christians wanted to give the money to,
13 to help for our evangelical mission.

14 Buying a hospital, buying -- even though it may
15 have done great work -- educating kids, great thing. If
16 the solicitation was "Give us money for our school," I
17 don't have a beef for that. Or give it to a hospital, a
18 for-profit hospital and someone wants to donate money to
19 it, I don't really care. But that's not what this case
20 is about. This case its about specific appeals for
21 specific causes that people gave their money to and it
22 never made it there.

23 THE COURT: All right. Thank you.

24 MR. STANLEY: And can I raise a few more
25 things?

1 THE COURT: You may.

2 MR. STANLEY: Okay. I wanted to understand how
3 the Court prefers to handle discovery sort of disputes.
4 One of the things I think we're going to come up on --
5 and we've already started these discussions a little
6 bit.

7 By the way, Mr. Mowrey and I -- and Ms. Miers
8 and I've had cases before, years ago. We get along
9 fine. They are great lawyers. We have different
10 approaches on some things.

11 They are representing Gospel for Asia, Inc. and
12 several other individuals. One of those individuals is
13 K.P. Yohannan, who happens to be the metropolitan of
14 this church and who we allege controls this business
15 empire.

16 We're getting documents so far from Gospel for
17 Asia, Inc. I think that we're going to run into a
18 problem when we say, "This property that's in your name,
19 K.P. Yohannan" -- the rubber plantation or the hospital,
20 whatever else -- "where did the money come from; show us
21 the books and all that stuff"; I anticipate we're going
22 to have problems there on whether or not that's
23 appropriate or et cetera and so we'll have to come back
24 to the Court for, I'm sure, some conferences, some
25 issues.

1 I was just going to get an idea from the Court
2 of how we're going to deal with those things.

3 THE COURT: Well, I think the first thing that
4 we need to resolve today is whether discovery is going
5 to be class only, whether it's going to be bifurcated;
6 and if it's bifurcated, how much overlap is there going
7 to be and then try to define the very fuzzy edges of
8 where the overlap between class and merits begins and
9 ends.

10 Assuming that we do not bifurcate discovery,
11 and should there be a discovery disagreement, just as a
12 general procedure, you will find in our scheduling order
13 that you're required to first meet and discuss, and that
14 can't just be perfunctory but really try to work through
15 whatever the issue is.

16 If you've made a very good faith effort to
17 amicably work it out but can't, then notify the Court
18 that you would like a telephone conference with the
19 Court prior to filing any discovery motion.

20 We will likely ask you to file some sort of
21 letter -- I mean, depending on what it is. If it's
22 super simple, we may not need that; but if we get the
23 sense that it's a little more complicated, we may have
24 you -- the parties submit a joint letter that kind of
25 outlines the issue and the parties' positions in a very

1 concise fashion.

2 And then we'll have a -- either we'll have a
3 hearing, typically by telephone, to take that up; and if
4 it is something that the Court can -- you know, it's
5 straightforward enough that the Court can kind of
6 discern what the issues are and give you guidance on how
7 to resolve that, that's what we'll do. If it's
8 something that, just out of a matter of necessity, is
9 going to require motion practice, then we will authorize
10 you to file a motion to compel.

11 All that said, I strongly encourage the
12 attorneys to work together on this. You've got a
13 confidentiality agreement in place. The parties need to
14 be thinking about proportionality and the needs of the
15 case.

16 That said -- well, discovery's pretty broad. I
17 think the current direction is the Court must look to
18 proportionality. So I think that about nine-tenths of
19 that is common sense. So I don't know how else to kind
20 of preview my thoughts and practices, but I'd rather
21 focus on doing what's productive as opposed to really
22 long discovery motions and briefs in support.

23 MR. STANLEY: And you hear those yourself; you
24 don't do a magistrate judge?

25 THE COURT: There has been occasions, I call it

1 being required to go sit next to the teacher's desk, and
2 I will get Magistrate Judge Wiedemann involved -- and
3 I've had to do this before -- and literally require the
4 attorneys to designate members to what I call executive
5 committee, and the executive committee has to meet on
6 telephone calls or in person on a regular basis and with
7 the Court in person or by phone calls on a regular basis
8 until we can resolve whatever the discovery dispute is.

9 You don't want to go sit next to the teacher's
10 desk.

11 MR. STANLEY: I've had a lot of experience with
12 that before becoming a lawyer.

13 I also admit a bit of a failure on one more
14 thing and that is the notion of bifurcation. I've been
15 doing this 25 years, class actions and, you know, I
16 understand the term "bifurcation," but rarely have I
17 ever seen it be very meaningful because it does bleed
18 over, as the Court knows.

19 In this case -- and we have to prove numerosity
20 unless they stipulate to that, which is how many class
21 members are there. How many gave donations; that's
22 easy. We have to talk about a little bit of our case,
23 sort of a prima facie, talk about being able to do some
24 discovery to prove the RICO allegations and prove where
25 the money went. Again, if they can prove that -- if

1 they can show us that the money went exactly as
2 designated, that's great.

3 I will tell you, by the way, forensically right
4 now we can show 14 percent of the money went as
5 designated, not 98, not 99, but about 14 percent. But
6 if they were at 99 percent and said, you know, "We
7 screwed up on 1 percent," probably not going to waste my
8 time on it and, you know, we've got other stuff we'd
9 like to do too.

10 But on the bifurcation, most of the stuff that
11 we're going to have to prove for trial, we're going to
12 have to for class cert, and it does bleed over. This is
13 really complex because, you know, I think the rules call
14 for maybe 10 depositions or whatever.

15 We have, just alone, 12 shell companies that
16 are taking money from Gospel for Asia and sending it to
17 either Hong Kong or -- this was in the United States,
18 all controlled by GFA, and even on their balance sheet
19 now, but they're separate companies, where these wire
20 transfers, money comes in and money goes out, ostensibly
21 so that the Indian government wouldn't understand that
22 it was all coming from Gospel for Asia. So they used
23 different names to do this so that it would be make it
24 more difficult.

25 We have at least 12 different entities in India

1 that are receiving the money that are all controlled by
2 K.P. Yohannan in other countries. We have money
3 that's -- it is really, really complex. I have charts
4 just going everywhere. So we have to kind of un- --
5 pull it apart to understand where the money went. And
6 forensically, again, it shouldn't be hard if we got all
7 the bank statements. It's a pretty -- I'm an
8 accountant -- I have a degree in accounting -- it's a
9 pretty easy thing to do is to go through and follow the
10 money, but the question is whether or not we get the
11 recipient side of it.

12 You know, I've been toying with the notion in
13 my mind. If they say, "We can't tell you where the
14 money went," I almost think we won our case, right? "We
15 took your money and we sent it; we don't know where it
16 went," you know, maybe that is good enough. I don't
17 know. I don't -- I'd rather be able to track it and see
18 where it all went; but if I gave them the money and they
19 said they were going to apply it towards this and they
20 promise 100 percent is there and they said, "We have no
21 control over it and we can't tell you because we gave it
22 to third parties who have no control over it," maybe we
23 win that way. I don't know. But --

24 THE COURT: Well, to what extent were there --
25 were any of the defendant entities regularly audited?

1 MR. STANLEY: So that's a great question. The
2 U.S. entity was audited every year -- well, the years in
3 question -- mostly by Bland Garvey and then this firm
4 out of North Carolina we just discovered, and the
5 audits -- we're trying to meet with them now to see
6 whether or not they're a possible target defendant
7 because they improperly did not handle related party
8 transactions as should be required in the audits.

9 We have a tolling agreement with Bland Garvey
10 right now. The North Carolina firm we haven't talked to
11 yet. Gospel for Asia-Canada had an audit firm; and
12 there was an audit firm in India, but it's questionable
13 whether that was even an audit. I don't know what
14 standards they applied, but they have been resoundingly
15 criticized for the work that they did.

16 THE COURT: And what sort of information is
17 required on a -- is any detail required on a 501(c)(3)
18 report?

19 MR. STANLEY: So that's a good question. I
20 can't figure out why they are not filing what's called a
21 990. Churches don't file 990s, as I understand, but
22 this really isn't a church. I'm trying to figure this
23 out in my own mind. I haven't done discovery on it.

24 They're a fundraising vehicle for a religious
25 cause, but they're not, in and of themselves, a church.

1 I don't know if they got --

2 THE COURT: One aspect is a church, is it not?

3 MR. STANLEY: I guess Catholic Charities is a
4 church, and I just don't understand whether the IRS
5 would require --

6 THE COURT: What is Believers Church?

7 MR. STANLEY: Believers Church is in India,
8 although there is a Believers Church in Texas, right?

9 MR. WOODWARD: Believers Eastern Church of
10 Wills Point.

11 MR. STANLEY: There's a Believers Eastern
12 Church of Wills Point. Believers Church is not an
13 American entity. It is an Indian entity; and even
14 though it's controlled by K. P. Yohannan as a
15 metropolitan, they don't have a duty to the Americans.
16 They do have a duty to file FC-4s and FC-6s in India
17 reflecting the receipt and use of foreign donations.
18 I'm not sure what other requirements they have in India,
19 and I'm trying to figure that out on my own also.

20 THE COURT: All right.

21 MR. STANLEY: But that's what I want to ask
22 Dr. Yohannan, "What did you do with the money and what
23 kind of books are."

24 You know, you raise a really good question
25 about something else when you mention the auditors

1 because ostensibly both the ECFA, which ostensibly
2 conducted audits and gave a Good Housekeeping seal of
3 approval -- and Bland Garvey -- in order to do that,
4 they would have had to have all the books and records
5 handed over to them. Certainly a competent CPA firm, if
6 they are doing an audit, has to test everything. So
7 there might be a way to get some stuff if they don't
8 have it. We haven't let loose on that.

9 We're planning on -- if ECFA won't cooperate, I
10 guess we have to go to the court in Virginia and get
11 authority to serve discovery.

12 THE COURT: And you've sued an entity called
13 Gospel for Asia-International. Defendants contend that
14 that is a nonexistent -- currently nonexistent entity.
15 What is your knowledge of this entity?

16 MR. STANLEY: You know, it's really befuddling
17 to us. We see correspondence and everything that shows
18 it still exists. Mr. Mowrey has represented to us it no
19 longer exists. We don't know whether it was ever
20 formally recognized by any governmental entity. It
21 appears to be a joint venture of sorts between Gospel
22 for Asia-Germany and Canada and some others.

23 MR. WOODWARD: And U.S.

24 MR. STANLEY: And U.S., but never formally
25 filed to our notice.

1 I don't know. It's one of the issues we've got
2 to handle in discovery. They had not appeared by
3 counsel, and I just don't know how to answer that.

4 THE COURT: All right. Well, I think that the
5 point of where you were going is that you contend that
6 the proceeding should not -- discovery should not be
7 bifurcated because the overlap would be -- the overlap
8 would swallow any efficiencies to be gained by
9 bifurcating?

10 MR. STANLEY: I truly can't tell the Court much
11 more than I'm going to be able to prove at trial that I
12 don't need to have a good handle on for class
13 certification at some point. I mean -- well, yeah --
14 I'm sorry, that's not true.

15 There would be some stuff that we can go ahead
16 and get more discovery on after class certification,
17 that is true. I'm not sure the areas that we need for
18 class certification will differ that dramatically.

19 May I raise one more point in that regard?

20 THE COURT: Sure.

21 MR. STANLEY: I was going to -- I told
22 Mr. Mowrey and counsel that I wanted to call an audible
23 on one thing that we put in the Schedule F, I think, on
24 class certification. We picked dates for filing a class
25 cert brief and a response in a reply. I'd like to

1 suggest that that be the final date to file a motion for
2 class cert.

3 It doesn't make sense to limit ourselves to
4 wait until December if, for instance, we can file in
5 September or in July. And then I'd like to keep the
6 same time periods 30 days later to file a response, so
7 long as it's not on a holiday -- right, Mr. Mowrey? --
8 and 30 days later to file a reply.

9 And the same thing with the designation of
10 class experts for cert; if we designate an expert, then
11 rebuttal within 30 days. So in other words, I would
12 like the final time period to file for class cert in
13 December of 2017 -- I'm sorry. January, January 19 of
14 2018, but leave to file earlier and then set up that
15 time period.

16 I think those are the main issues. I think we
17 covered pretty well. We really wanted the Court to
18 understand the breadth of this discovery. This is not
19 an easy case -- well, it could be an easy case if we
20 just got the information we needed, but it may not be an
21 easy case to get the information and find out where this
22 money's gone. There have been lots of people trying to
23 track this money for years.

24 I encourage the Court to read the ECFA letter
25 that's attached as Exhibit A, I think, to our -- Exhibit

1 1 to our complaint, and they really detail a lot of
2 these issues that we're facing.

3 THE COURT: All right. Thank you.

4 MR. STANLEY: Thank you.

5 THE COURT: All right. Mr. Mowrey, I'll give
6 you an opportunity to put into context the defendants'
7 collectively position as to these allegations; and if I
8 have misstated something, be sure and point that out to
9 me and then all that kind of geared towards why it is
10 that you contend that this would be a good case for
11 bifurcating discovery phases.

12 MR. MOWREY: Your Honor, I'll take you up on
13 sitting, if that's okay with you.

14 THE COURT: All right.

15 MR. MOWREY: I'd probably rather stand but I
16 think I will sit, if that's okay with you.

17 THE COURT: That's fine with me if Mr. Shults
18 will move because I can't see through him.

19 MR. MOWREY: So, your Honor, obviously
20 Mr. Stanley covered a lot of ground, and I don't want to
21 go point by point, but I do want to make a couple of
22 points.

23 You read the complaint, and you're shocked by
24 the complaint, but what the complaint doesn't say is
25 probably the most important fact in this case and that

1 is that -- and you heard Mr. Stanley say today, two or
2 three times, line their pockets, that sort of -- that
3 sort of wording. The ECFA, when they came in and did
4 their report, they did not say one thing about money
5 that was missing, stolen, lining pockets.

6 We have produced already --

7 THE COURT: Well, there was \$20 million that
8 they said had been misappropriated from -- that's not
9 the right word -- redirected from contributions that
10 were intended to be used on the field that the field
11 then sent to the United States to go towards the down
12 payment on this elaborate church. That's what the --

13 MR. MOWREY: Well, actually, your Honor, the
14 ECFA, on that point, what they say in their letter --

15 MR. SCHUSTER: Number 7.

16 MR. MOWREY: This is Number 7 and Number 8.
17 And there was this allegation that \$20 million had been
18 used for the campus, and what is stated in the letter
19 from the ECFA is that ECFA was informed -- this is the
20 second paragraph of Paragraph 8 -- on August 24, ECFA
21 was informed that GFA-India made a gift to GFA of
22 what -- let's call it \$20 million -- in 2013 to complete
23 GFA's new office.

24 On August 27, GFA's staff confirmed that the
25 funds relating to the donation were originally received

1 by GFA's gifts restricted for the field, and GFA
2 transferred to field partners to fulfill donor
3 restrictions.

4 The documents -- your Honor, this gets a little
5 complicated, but the documents that we have provided to
6 the plaintiffs show that the \$20 million did not come
7 from any U.S. donors. This was \$20 million that
8 GFA-India had. It was their money. It was sitting in
9 an account in Canada.

10 There were Canadian donors who had given this
11 money to GFA-India to be used in various purposes.
12 GFA-India directed that money to be given for the campus
13 and then GFA-India fulfilled requests, the specific
14 requests, from internal money in GFA-India to replenish
15 the Canadian account.

16 The bottom line here is that -- and I don't
17 know if the Court followed that, but the bottom line
18 here is that none of that \$20 million came from any U.S.
19 donors.

20 THE COURT: Well, it says in the second
21 sentence that GFA staff confirmed that the funds
22 relating to this donation were originally received by
23 GFA as gifts restricted for the field.

24 I had understood that in the nomenclature used
25 in this letter that they were drawing a distinction

1 between the entity "GFA-India" and the entity "Gospel
2 for Asia, Inc.," and my understanding of how the
3 definition was is that these were contributions to GFA,
4 Inc. that were collected, intended for donations to the
5 field and then transferred back.

6 MR. MOWREY: What the documents actually
7 show -- and we have a document; there are actually a
8 couple of them --

9 THE COURT: So the GFA staff was incorrect in
10 their understanding of what the documents show?

11 MR. MOWREY: I think -- I think it may have
12 been a misinterpretation at the time, your Honor. The
13 documents show -- I mean, again, this money -- on this
14 particular fact, I mean -- or the allegation, the
15 documents show what they show, and they show that the
16 \$20 million came from the Canadian account; and the
17 Canadian account was monies that were for GFA -- they
18 were GFA-India's money but had been originally given by
19 GFA-Canada donors -- or donors in Canada.

20 THE COURT: The GFA report's nine pages long.
21 Scattered throughout, it sounds like it is drawing
22 assumptions based on information that it has reviewed;
23 but in other places, it specifically says, "We talked to
24 staff, and GFA staff says this; GFA staff says that."

25 How would you characterize the extent to which

1 Gospel for Asia disagrees with the findings or
2 conclusions in the ECFA report? Is there any part of it
3 that you agree with; half of it's true, half of it's
4 not; or most of it's substantially true? How would you
5 characterize it?

6 MR. MOWREY: Your Honor, many of the findings
7 in the report were, in fact, what was happening. The
8 problem here was really an accounting and the standards
9 for the ECFA.

10 Again, the point here is that they don't say
11 that, well, these funds were taken and spent on boats
12 and planes and properties and all this sort of thing.
13 What they were -- I mean, the very first one here is --
14 and the first couple of points is that there were large
15 monies that were being held, and they thought that to be
16 inappropriate.

17 What's happened since is that money has been --
18 and there's reasons for that, your Honor; but what's
19 happened since, that money has been spent down and has
20 been distributed.

21 Going to the heart of their allegations, we
22 believe that we will be able to show that the monies
23 that were designated went to the particular items that
24 were specified. What was happening, your Honor, is
25 that -- just to take one example, you have a -- let's

1 say a thousand dollars is given to a Jesus Well, and
2 that thousand dollars went to GFA-India, but it may not
3 have gone to GFA-India direct. It may have gone to an
4 account in Hong Kong.

5 That money -- this was happening in the past.
6 That money was then sat there. GFA-India, from its
7 funds, used a thousand dollars of their monies to
8 fulfill the request that had been made by the -- by the
9 U.S. donor.

10 So I believe that we will be able to show that,
11 in fact, the monies that were designated went to all the
12 various things that people gave designations for. And
13 if I could skip to a -- I say "skip to." Let me address
14 a point that was discussed a lot here and that's a
15 bifurcation issue.

16 I agree with Mr. Stanley about the bifurcation
17 sort of what -- in one respect in that is what should be
18 bifurcated and what should not. Our intent here -- and
19 we've already produced approximately 25,000 documents;
20 we intend to produce more certainly in the next nine
21 days, nine or ten days.

22 Much -- many of those documents go to merits.
23 They clearly go to merits. They don't just deal with
24 class issues. I do think that there are some areas --
25 if the Court were to certify this case, which, I don't

1 think it will because I think there's too many reasons
2 as to why it shouldn't be certified. But if it were to
3 certify this case, one of the areas that clearly should
4 be bifurcated are other donors. Now, they haven't --
5 they have asked in one place for this in the case
6 management plan. It is mentioned there.

7 We've given them all the information with
8 respect to the Murphys; but when it comes to individual
9 information with respect to all these other donors, that
10 seems to me to be clearly an issue that should be put
11 off, not -- unless this case is certified.

12 With respect to most of these other areas, I'm
13 not sure that we have a disagreement. We're going to be
14 ending up producing most of the documents that they
15 want.

16 Here is the big issue, and it doesn't really
17 have to do with bifurcation, but I think that the Court
18 should give us some guidance on this today. If you look
19 at their case management plan, we could go through.
20 They have four pages, and we're going to produce most
21 all the things that they have asked for, except the
22 problem that we have, Mr. Stanley has mentioned over and
23 over how K. P. Yohannan just controls everything.

24 There are many -- there are entities in India:
25 The Believers Church, GFA-India. K. P. Yohannan is not

1 on the board of those entities. Is he the metropolitan?
2 Yes, he is the Metropolitan of Believers Church. Does
3 that mean he has access to all of their records? No, it
4 doesn't.

5 Now, Mr. Stanley doesn't believe that.
6 Mr. Stanley thinks that whatever K. P. Yohannan wants,
7 he can get; but we have no problem in producing
8 everything we can with respect to the entities that he
9 has sued. But when it comes to wholly separate entities
10 in India, that's where the rub is.

11 Now, your Honor mentioned, and one of the
12 things that we are prepared to do, they have audits
13 of -- that have been done for GFA-USA for the last --
14 well, for I don't know how long -- when they started,
15 but they have gotten them for a number of years.

16 In the last couple of years, in order for
17 GFA-USA auditors to complete their audit, they requested
18 that there be GAAP audits done of these Indian entities,
19 and we will produce those.

20 And what the plaintiffs are going to say -- I
21 mean, you heard Mr. Stanley say, "Well, they can account
22 for 18 percent of these funds." I think he knows that
23 that is incorrect. The FC-6 reports, they only report
24 monies that go into Indian accounts. They do not report
25 monies that go to GFA-India's accounts in other -- in

1 other locations. And in order for the GFA-USA to
2 complete their reports, they requested that GAAP audits
3 be done for the various entities that monies were given
4 to. And we'll provide those. And we'll provide them --
5 they were given to the U.S. auditors as we understand
6 them and so they -- it seems to me, your Honor, that
7 that should certainly be the first step in satisfying
8 the plaintiffs that these monies went to where they were
9 represented they should go.

10 What I was going to say at the outset is that
11 what is glaringly missing in this case is properties,
12 residences, planes, boats, yachts. We have provided
13 their tax returns. I can tell you that Mr. K. P.
14 Yohannan, he receives no income from his -- as I
15 understand it, he receives no income from any source in
16 India. When he's over there, he stays at a particular
17 house that's a very modest residence, he eats on the
18 campus with other people, but he receives no -- he
19 receives no income there. And there's -- this is not
20 the kind of situation I think that they would like to
21 portray that we know of -- all of us have seen -- where
22 these TV evangelists and these people come in and they
23 are out living the high life. That just is not going to
24 be the case here.

25 THE COURT: Well, Mr. Stanley has alleged to

1 the Court that there's all sorts of real estate and
2 other assets that are in Mr. Yohannan's name personally,
3 and what I hear you saying is that's just not so.

4 MR. MOWREY: That's just not true. There may
5 be, your Honor -- and we haven't actually seen any
6 documents yet with properties in his name. There may be
7 some properties where he is named as a trustee,
8 similarly to -- I don't know how it is here in
9 Fayetteville, but in Dallas, I write a check on my --
10 for my car tax to John Ames, who happens to be the
11 county commissioner. Well, that doesn't go into John
12 Ames' pocket, but that's the name that it goes to.

13 So there may be some instances where properties
14 are -- where there has to be a name associated, but
15 actually I haven't seen any of those yet, if they are
16 there. But in terms of properties that he personally
17 owns, no, I think the evidence is going to be that that
18 is just simply not the case.

19 THE COURT: What about these so-called
20 for-profit entities in India? I guess that presumes
21 that they make a profit. But if they were to make a
22 profit, where does that money go?

23 MR. MOWREY: Well, first of all, your Honor,
24 let's take the rubber plant. The rubber plant, as I
25 understand it, was purchased back in the early 2000s,

1 way before any of the allegations in this case. The
2 rubber plant is, again, as I understand it, was
3 funded -- purchased entirely with a loan in India; had
4 nothing to do with U.S. donors.

5 These entities that are, quote, for profit,
6 they use that profit for the charitable purposes. But I
7 think, your Honor, that the evidence is going to show
8 that perhaps with the exception of the hospital, where
9 people make medical -- where there may be some donations
10 to the hospital and so forth, these entities -- for
11 example, the soccer team.

12 The soccer team is -- has nothing to do with
13 GFA. Nothing to do with GFA. It's associated with a
14 particular diocese, I think, in India that's part of the
15 Believers Church. Again, Believers Church has many,
16 many churches within its umbrella, many diocese, and
17 some of those diocese have certain organizations that
18 they are connected to, but it has nothing to do with the
19 monies that are given by U.S. donors here. I think
20 that's what the evidence is going to -- is going to
21 show.

22 So this whole idea of monies are being raised
23 for children and they, in fact, don't get to children --
24 I mean, for example, your Honor, the Murphys who are
25 here today, as I understand looking at their records,

1 much of their dol- -- many of their dollars were given
2 to children, and they wrote letters to these children
3 and the children wrote them back.

4 Your Honor pointed out the language that was on
5 the donation slips, and I think the one that's attached
6 in the complaint is 2012, perhaps. But in looking at
7 the Dicksons' records -- excuse me, the Murphys'
8 records, if you look in the statement for January of
9 2008 -- which you don't have. I mean, these were
10 produced in the documents that the plaintiffs now have
11 produced by the -- by the Murphys -- it has the same
12 language. It has the same, "We'll do our best to" --

13 THE COURT: Is that an IRS-required disclaimer?

14 MR. MOWREY: Your Honor, Mr. Stanley mentioned.
15 I'm not sure that it is a required disclaimer. I think
16 certainly the fact that you didn't receive other goods
17 is a -- has to be there because if, in fact, it did
18 receive other, you know, goods, then the cost of those
19 goods has to be deducted from the contribution. So I
20 think that is a requirement.

21 But when you say that -- this statement that
22 all contributions to Gospel for Asia -- and I'm reading
23 the one here from Jan- -- for the Murphys of January
24 2008: "All contributions to Gospel for Asia are income
25 tax deductible unless otherwise indicated and are made

1 with the understanding that GFA has complete discretion
2 and control over the use of all donated funds. However,
3 we are committed to apply your gifts according to your
4 designations."

5 So it has the same -- it's Bates stamped M4,
6 yes, M4.

7 So that language has not been -- that wasn't
8 created after the ECFA came out. That language has been
9 there.

10 And one of the reasons, your Honor, we think
11 that this case can never be certified is that people
12 give for all sorts of reasons. I mean, the Murphys in
13 this case, for example, and the Dicksons, which are
14 here, are former employees. They gave some of their
15 money for that. There are people, the Murphys, who have
16 given for children and then there's others that give for
17 hospital or medical work.

18 So the reasons that people give are going to be
19 myriad, and --

20 THE COURT: I take it you would agree that no
21 one gave because they believed they were going to be
22 defrauded?

23 MR. MOWREY: Of course not, yes. I mean, of
24 course not, knowing --

25 THE COURT: Isn't that the thumbs-up or

1 thumbs-down question? I mean, people can give for lots
2 of different reasons; but if they gave and, if
3 established, if credible and established that monies
4 were not used, then what difference does it make what
5 was, you know, pulling at the heartstrings or what
6 motivated any particular donor?

7 MR. MOWREY: This is -- this is the -- in the
8 45-page complaint or whatever it is, the crux of the
9 complaint, it's on Paragraph 45 of the complaint. This
10 is the -- this is the allegation.

11 If you turn to Page 34, Paragraph 45, here's
12 what the plaintiffs have to prove in order to prevail at
13 class cert: Every single donation, the Murphys -- and
14 you can add in there and every other class member --
15 made to GFA was made only with the understanding based
16 entirely on defendants' representations that 100 percent
17 of the donation would be applied exactly as designated.
18 The defendants misdirected the Murphys' donated to GFA
19 for purposes the Murphys did not designate.

20 Here's the critical sentence: Had the Murphys
21 known defendants would not apply 100 percent of every
22 donation exactly as they designated, they would not have
23 donated to GFA.

24 Now, your Honor, in my mind it stretches the
25 imagination to believe that that allegation is true to

1 every donor. What if 90 percent went? Would some
2 people give and some people not? Of course. What if
3 80? What if 60? One person gives because they know
4 someone there at the organization; one gives because
5 they have been -- they sponsor a child who has been
6 writing them.

7 We understand that there are people that
8 make -- donors that make trips to India unannounced to
9 the GFA organization to locate their child. We
10 understand that not one person has ever said, "I
11 couldn't find my child."

12 So in order for the plaintiffs to prevail, that
13 statement that they make, the last sentence of Paragraph
14 45 has to be true for every person in the class, and I
15 think that is just beyond credibility and that's why
16 ultimately I don't think this Court will be able to --
17 just on the certification issue, much less the merits --
18 certify this case.

19 THE COURT: All right. Your answer raises
20 standing as an affirmative defense. Tell me what that's
21 about.

22 MR. MOWREY: Well, as a general proposition, if
23 you give money to your church or wherever you give it,
24 you do not have standing to sue. Once the money is
25 given -- and different states handle this in different

1 ways. Some states would say that is an issue for the
2 attorney general to take up.

3 So the general proposition is that a donor does
4 not have standing once they have given the money. Now,
5 that is the general proposition. There are certainly
6 exceptions.

7 If money has been raised -- I mean, they allege
8 fraud -- and this is an area that we will need to
9 develop in terms of just the legal portion -- but it
10 seems to me there is a difference in saying we want you
11 to give money for a specific purpose, and we get that
12 \$100 from a donor and then we put it in our pocket.
13 That is one situation, which I don't think they will be
14 able to prove.

15 The other situation is, we want \$100 for a
16 specific situation and we didn't get the \$100 to the
17 particular situation as quickly as we should; or, we got
18 it done in a manner that isn't according to what the
19 plaintiffs would like it to be done. Because, again,
20 what was done here and -- historically was that when
21 money was given here, the request was fulfilled in
22 India, with funds in India, so that when the Murphys
23 gave money to a child or when monies were given to --
24 those requests were fulfilled.

25 I mean, money is fungible, your Honor. Even if

1 the monies -- even if you could trade -- even if the
2 monies were given directly, they're going to be
3 collected in an account and money -- you know, there's
4 going to be a check written on an account.

5 I mean, it's not like the \$100 that a person
6 gives, you know, has ink on it and you can -- when it
7 leaves you and the hundred dollars ends up -- that same
8 hundred dollars ends up somewhere, where it's supposed
9 to be.

10 The important thing is that if \$100,000 was
11 raised for children that \$100,000 went to those
12 children. Seems to me that is the -- that's what the
13 donors expected, and that's what I think we'll be able
14 to prove.

15 THE COURT: So it's not Article III standing
16 that you're premising this on?

17 MR. MOWREY: No.

18 THE COURT: All right.

19 MR. MOWREY: No, it's not Article III standing,
20 your Honor.

21 THE COURT: All right. You also raise statute
22 of limitations.

23 MR. MOWREY: Right.

24 THE COURT: What is the statute of limitations
25 and what is the accrual date?

1 MR. MOWREY: I'm actually glad you raised that
2 question, your Honor, because it relates to a dispute
3 that we have with the plaintiffs with respect to
4 discovery. I think they have asked for the past ten
5 years, or something of that sort. We have offered to go
6 back to 2012. We think that four years from -- back
7 from the date the Dicksons filed their lawsuit -- the
8 Dicksons filed their lawsuit in -- I believe in February
9 of '16 and so limitations would be tolled during that
10 time.

11 So we think that four years is an appropriate
12 time to go back. RICO is four years. Of course, they
13 implicate their unjust enrichment claims, their fraud
14 claims. States -- different states have different
15 statute of limitations. So we think that four years is
16 going to catch most of the claims that they would have.

17 Now, with respect to -- they would say, "Well,
18 we didn't know about this fraud. We didn't know about
19 this." First of all, I heard Mr. Stanley just say today
20 that people have been looking at this for years; and in
21 their own complaint, they take public information to
22 prove the -- prove their case. It's on one of their
23 exhibits it goes back to -- it's Exhibit 5 in their
24 complaint.

25 If you look at their complaint, Exhibit 5, this

1 is the document that they put together from public
2 sources, I suppose, and it goes back to 2007.

3 So the point is here this was not a -- being
4 liberal to the plaintiffs. If it was a fraud, it wasn't
5 a fraud that was covered up because they've got
6 information in their own complaint that goes back to
7 2007.

8 So we think that the statute of limitations,
9 your Honor, there needs to be some reasonable time for
10 discovery and then we believe that they are not going to
11 go behind the -- be longer than the statute of
12 limitations; for example, the discovery rule is just not
13 going to apply here because of admissions they have
14 already made in their own complaint.

15 THE COURT: Did Gospel for Asia use its
16 certification by ECFA as part of its, for lack of a
17 better word, marketing or appeal to donors?

18 MR. MOWREY: Well, the ECFA, your Honor, Gospel
19 for Asia was a founding member of the ECFA. What Gospel
20 for Asia was doing in terms of a number of the points
21 that were raised by ECFA, ECFA looked at them every
22 year.

23 So it wasn't until 2015 or whenever it was that
24 they come up with this laundry list of items. Our folks
25 had many meetings with them about this, and as you can

1 see from the letter itself, many of these items they
2 have begun to change their procedures, and there's no
3 question but that ultimately the GFA would like to get
4 back in the good graces of ECFA.

5 There are -- there are many religious
6 organizations that are part -- say they are a part of
7 the ECFA, and it is clearly an important aspect to their
8 ministry, and their ministry has been hurt because they
9 are not part of the ECFA.

10 So the fact is that, as I understand it -- and
11 I think the discovery will bear out -- is that even
12 though we wanted to continue to work with ECFA, ECFA
13 wrote the letter -- and they had the right, I suppose,
14 to do that -- but again, you know, when you get behind
15 what is in the ECFA letter, it really has to do with
16 accounting and certain things that they were doing; for
17 example, holding these large amounts of money that the
18 ECFA did not like.

19 There was nothing in there about, "Well,
20 there's millions of dollars that are lining the pockets"
21 or they are just, they can't be accounted for. And
22 that's why, your Honor, we have -- we would like to
23 think that if, once we produce these GAAP audits, that
24 that will tie the -- sort of the loose ends for the
25 plaintiffs.

1 THE COURT: All right. On the concealment
2 issue, though, to the extent that Gospel for Asia was
3 using the certification symbol, kind of like somebody
4 that makes toasters might put the UL symbol on the box
5 of their toaster, when they advertise it for sale, do
6 you think that noncompliance and findings in subsequent
7 years that Gospel for Asia -- and again, I realize this
8 is one-sided, but if the idea is that they were, at the
9 same time, in effect, representing to donors that they
10 were complying with all of the provisions required by
11 the ECFA when, in fact, they weren't, is that evidence
12 of concealment that would at least warrant discovery
13 back beyond what you would contend to be a bar date set
14 by the filing of a complaint in 2016?

15 MR. MOWREY: Your Honor, ECFA looked at I don't
16 know -- I think it was an annual basis. They looked
17 regularly at GFA and had no issues with them until this
18 came up.

19 All of the facts that were -- that ECFA came up
20 with, these were not concealed by anyone. I mean, these
21 were --

22 THE COURT: So were these issues that had
23 developed within the fiscal year of the audit?

24 MR. MOWREY: Well, some of these had been going
25 on before and ECFA had not had an issue with them.

1 Again, this was not -- this was not someone coming in
2 and discovering something that was hidden from them.
3 It's just that it wasn't until this time that ECFA came
4 up with these findings.

5 Now, your Honor, this gets a little -- this
6 will be developed in discovery, and you'll hear this.
7 There has been quite a bit of turmoil within the GFA
8 organization on the, what I'll call the ecclesiastical
9 side. There are a number of disgruntled employees.
10 There were issues over governance. There is a blogger
11 that regularly blogs. I'm certain that there will be
12 something about this hearing on his blog because he
13 follows the PACER regularly in everything that comes
14 out, and there are a group of people that are -- they --
15 it's a little bit of a family feud between these
16 ex-employees and GFA.

17 This all happened around the time that the ECFA
18 issues came up. So again, the issues that are involved
19 in the ECFA letter, none of these were hidden from ECFA.
20 These were -- all these facts were available to them at
21 any -- the years before or whatever. It's just that at
22 that particular time, they decided that they would raise
23 these as issues. And I think that's what the facts are
24 going to -- our facts are going to bear out.

25 THE COURT: All right. The Dickinsons are here

1 today. I only looked at their complaint very -- on a
2 very, very cursory basis, and I understand that there
3 was a -- they were employees of some sort, and there was
4 an arbitration clause in some sort of employment
5 agreement or something like that and that there was a
6 motion to compel arbitration, and Judge Holmes denied
7 that and the Eighth Circuit accepted an interlocutory
8 appeal and stayed discovery in that case.

9 Just so I understand -- and that's all I know
10 about it. Supposing that the Eighth Circuit were to
11 affirm Judge Holmes, are the causes of action in that
12 complaint substantially similar to the allegations in
13 this complaint such that y'all would be looking to
14 consolidate these matters, or do you view -- from your
15 perspective, do you view these as two separate sets of
16 allegations?

17 MR. MOWREY: So two responses for that. First
18 of all, the allegations are substantially similar. I
19 mean, the individual facts with respect to the Murphys
20 are different than the Dicksons, the most glaring one
21 being that there is not an arbitration provision. But
22 there's also differences, I'm sure, once we get into
23 discovery as to why they each gave and why they gave
24 funds.

25 But with respect to the causes of action, they

1 are identical; and all the various color that the
2 plaintiffs put around their allegations, they are
3 identical.

4 In response to your question about would we be
5 looking to consolidate, I don't have an answer for that,
6 your Honor. I haven't thought about it really. The
7 Eighth Circuit -- I don't know if you saw this on the
8 docket -- they have accepted all the briefing is done,
9 and they -- oh, there's a reply. They've indicated it
10 will be set for oral argument. So there will be an oral
11 argument. So I assume that there will be a decision
12 sometime in the future.

13 Now, by the time that decision comes down,
14 whenever that may be, given our pretty aggressive
15 discovery schedule here, we're going to be pretty far
16 into discovery in this case.

17 THE COURT: Well, would the Dicksons be members
18 of the class that the plaintiffs are seeking to certify,
19 such that it wouldn't make a difference?

20 MR. MOWREY: They would be. They would be a
21 member. I mean, as the plaintiffs have defined their
22 class, they would be -- they would be members. Again,
23 another reason as to why a case can't be certified.

24 I mean, if you look at these ex-employees, they
25 have employment -- they have arbitration agreements.

1 THE COURT: All right. Well, that was very
2 enlightening, Mr. Mowrey. I appreciate that.

3 Mr. Stanley, we kind of need to get to dates
4 and deadlines, but I'll give you just a couple moments
5 to respond if you'd like.

6 MR. STANLEY: And I actually had what I think
7 is either a hair brain idea or a brilliant idea, one of
8 the two.

9 As I say, I've worked with Rob Mowrey before,
10 and I think he's a great lawyer. And I think that if
11 what he's saying is right, there's just an easy solution
12 to this.

13 He said that all the money was deployed as
14 specified, and what you should know -- you don't know --
15 is that they had ledger accounts. So if you gave to a
16 donkey, there's a ledger account, said "donkey"; and if
17 you gave to a Jesus Well, it went there. There are
18 hundreds of these ledger accounts with specific dollar
19 amounts per year as to what came in, okay? So this is
20 empirically very easy.

21 He said the important thing is that if 100,000
22 is raised for children, then 100,000 went to children,
23 and that's their position. And I said to the Court, and
24 I'll say it right now: If that's the case, we lose; we
25 have a terrible case.

1 It seems to me empirically if what they are
2 saying is true, why don't we have the Court appoint an
3 accountant, we'll split the cost, they give the
4 information and let the Court get an independent
5 accountant to come out and look at this and just say,
6 "Give them all the information; you have the proof that
7 the money went as raised went exactly as it said. Give
8 it to the accountant for those years."

9 The accountant says, "Judge, they're right,
10 pour the plaintiffs out," I'll offer a judgment right
11 now; and if it's wrong, then we have the independent
12 accountant that's done the look, and we save time and
13 money for both sides.

14 THE COURT: So, in effect, appoint a special
15 master --

16 MR. STANLEY: Yes, sir.

17 THE COURT: -- who would employ forensic
18 accountants and dig into this. I tell you what. I will
19 let you visit with Mr. Mowrey on your time about that.

20 MR. STANLEY: Well, and if they don't agree,
21 maybe we'll still file a motion for the appointment of a
22 special master because I think that might be the most
23 efficient way since empirically that's really the rub
24 here.

25 It's not whether someone lined their pockets or

1 he's not as bad as Tilton or he didn't have a big
2 airplane or whatever else. It's exactly what we said
3 here: If 100,000 was raised for children and it went
4 for children, great; but if it didn't, then that's what
5 our complaint is.

6 And so we're doing a -- we disagree with a lot
7 of the stuff that they said, but I don't want to go
8 piecemeal with that, but it just seems to me that that's
9 the easiest solution. Put your money where your mouth
10 is; and if it went exactly as said, just give us the
11 proof and let's let a special master figure it out.

12 THE COURT: All right. Well --

13 MR. MOWREY: Your Honor -- well --

14 THE COURT: Mr. Mowrey, you want to --

15 MR. MOWREY: I didn't want to really address
16 that, your Honor, but what I would -- could we look for
17 a minute at the case management? The case management
18 report sets forth, has four pages of items they want.
19 We have no problem in giving them most of what they
20 want.

21 The rub is -- and this is where I think we need
22 guidance from the Court. The rub is that they want --
23 they say QuickBooks backup files, complete quarterly
24 year-end financial statements, yearly tax filings and so
25 forth, and they list Believers Church, Gospel for

1 Asia-India, Last Hour Ministries.

2 These are all entities that are not defendants
3 in this case. They're Indian entities. He's going to
4 be asking for documents from those. He says K. P.
5 Yohannan can just snap his fingers and get them, and we
6 say that is not the case.

7 And Mr. Stanley and I, we do have a history.
8 We absolutely don't want to burden the Court with petty
9 disputes. We've been at this long enough for that. But
10 on this issue, we're going to have -- we have a -- we're
11 going to have a dispute about this.

12 THE COURT: Well, did funds from U.S. donors --
13 well, did Gospel for Asia send money, provide money,
14 give money to these Indian entities?

15 MR. MOWREY: Yes, and that's why we have said
16 we think that these audits that were done for the
17 American auditors should satisfy Mr. Stanley on this.
18 He's got --

19 MR. STANLEY: May I ask a question, your Honor?

20 MR. MOWREY: What he is going to -- what he's
21 saying is that, "No, we want the bank statements from
22 all these entities, we want the QuickBooks, the backup
23 files, all of their documents." And we can't -- our
24 position is we can't give those.

25 THE COURT: Well, would you --

1 MR. MOWREY: They're not under our control.

2 THE COURT: Would you produce the auditors for
3 deposition?

4 MR. MOWREY: We're certainly going to
5 produce -- we're going to produce their reports, and I'm
6 not even sure -- were these Indian auditors that did
7 them? I'm not sure they're under our control.

8 I mean, if --

9 THE COURT: I mean, the problem is in the
10 United States we have, you know, certifications for
11 public accounting and there's GAAP and so on and so
12 forth.

13 MR. MOWREY: Exactly.

14 THE COURT: Maybe you know. I don't know
15 what -- are you saying that these foreign entities were
16 audited based on GAAP?

17 MR. MOWREY: Exactly, your Honor. As I
18 understand it, in order for the new accountant -- GFA
19 had new accountants the last couple of years; and in
20 order for those accountants to give an unqualified
21 audit, they requested that there be GAAP audits done of
22 these entities that monies were given to from GFA-USA
23 and that was what was done. These were audits that were
24 done in order to satisfy the auditors here.

25 THE COURT: But isn't that kind of a whole -- I

1 mean, the -- well, I don't know what level of access
2 that the United States auditors had to the actual
3 documents by the Indian entities. So maybe it's good or
4 maybe it's bad, but it sounds kind of like a garbage
5 in/garbage out sort of deal potentially.

6 If the source of their information can't be
7 tested, perhaps they took it at face value; perhaps the
8 plaintiffs will not.

9 MR. MOWREY: Well, your Honor, I'm not saying
10 they -- I mean, the auditors, in order for them to
11 produce an audit or give an unqualified opinion, they
12 requested this; it was apparently done. I don't think
13 those auditors would put their name on the line unless
14 they thought that what was given them was sufficient,
15 unless I'm not understanding.

16 THE COURT: Well, perhaps I need to let y'all
17 visit about that because I'm not fully understanding and
18 appreciating some of the nuances here.

19 I thought you were saying that the auditors of
20 Gospel for Asia requested information in the course of
21 conducting an audit for Gospel for Asia. What I didn't
22 hear you say was that there is an audit for these Indian
23 entities.

24 MR. MOWREY: No, no, that is -- there are --
25 there is an audit for these Indian entities. That's the

1 point.

2 THE COURT: That the U.S. auditors audited the
3 Indian entities?

4 MR. MOWREY: They did not audit the entities,
5 but they requested audits by -- to be done by Indian
6 auditors according to GAAP, and they had to certify it
7 in India in order for the U.S. auditors to sign off. So
8 these were done by Indian -- yes, these were -- these
9 are Indian chartered accountants.

10 THE COURT: All right.

11 MR. STANLEY: Your Honor -- sorry.

12 THE COURT: I was going to say this is --
13 that's probably a little bit beyond the scope that I'm
14 able to absorb and make rulings on today.

15 MR. MOWREY: Yes, I understand.

16 MR. STANLEY: I do want to add one more
17 confession, since I made some earlier.

18 THE COURT: All right.

19 MR. STANLEY: When I -- I have a lead foot, but
20 when I'm driving next to a policeman, I usually try not
21 to pass the policeman. The audits that they are talking
22 about in the last two years, after they got in a fight
23 with Bland Garvey and they had to get their new
24 accountant, all of that is relatively new. So I
25 wouldn't -- I don't know if I'd put much into that, but

1 it's certainly not for the years in dispute here.

2 Regardless of that, the point that Mr. Mowrey
3 raised is interesting. If the only defendant was Gospel
4 for Asia, it might be harder for us to say, "Yeah, give
5 us these -- all these books and records."

6 So if the only hat he was wearing is "I
7 represent Gospel for Asia," it might be a tougher case
8 for us. But he represents, and they appeared without
9 qualification, for K. P. Yohannan, and we've offered
10 evidence in here -- and it's in the ECFA report and then
11 we'll offer -- we've got tons of evidence -- that the
12 property is in his name, that we say came from our
13 donations; that the entities are controlled by him.

14 Notwithstanding what Mr. Mowrey says, I've got
15 tons of evidence that he still controls these entities
16 and that he signs off on major transactions. And if he
17 has that kind of control, the rules of discovery says if
18 it's in your custody or control. And if those documents
19 are in his control, then we want them.

20 If they are not in his control, you know, we'll
21 have to take that up on -- if he swears and he sits in
22 that witness stand and swears he has no control, he may
23 be subject to perjury but we'll see what happens. I
24 can't do anything about that.

25 THE COURT: All right. Mr. Stanley also said

1 that they may not be willing, for class purposes, to
2 provide you with information and documents that is
3 donor-specific. What is your position on that?

4 MR. STANLEY: The issue is really, to prove
5 class certification, we have to prove numerosity. If
6 they'll stipulate to that, we don't need it.

7 It's commonality and typicality, if they are
8 saying it's all the same or they are saying they're
9 different, then we may need to get into it to see what
10 the donors gave.

11 I think there's a way that we can work with
12 them without getting necessarily donor specific to show
13 that donors gave to these categories that he enunciated
14 earlier. That may be a shortcut for that.

15 My goal is not to take -- my understanding is
16 there's 100,000 donors roughly per year. I don't really
17 want to talk about all -- go down and take depositions
18 and get all their stories. I'm really trying to look in
19 the aggregate to go for class certification; what's this
20 case about.

21 THE COURT: All right. Anything else?

22 MR. STANLEY: No, sir.

23 THE COURT: All right.

24 MR. MOWREY: Your Honor?

25 THE COURT: Yes, sir.

1 MR. MOWREY: Can I bring up one other point?

2 THE COURT: Sure.

3 MR. MOWREY: That has to do with search terms
4 and custodians. Yesterday we -- well, back at our
5 conference a few -- month or two ago, whenever it was,
6 when we discussed this, plaintiffs said that they were
7 not prepared at that time to give us custodians or
8 terms; they wanted to see some documents.

9 We produced some documents. Of course, they
10 got a number of documents. Yesterday we sent them a
11 letter with proposed custodians, as well as some search
12 terms and then we received back from them a list of 35
13 or so terms.

14 And also, even though they didn't give any
15 other custodians, the specific names, they said, "We
16 believe there are custodians at Believers Church and
17 GFA-India who should be included in the initial
18 custodian list."

19 So there are a couple of issues here. We
20 haven't really had a chance to examine all of their
21 search terms but, for example, we listed ten custodians,
22 or purported custodians, and we gave terms such as
23 audit, F-6, designation report, transfer within five
24 words of wire or cash transfer, that sort of thing.

25 In their thirty terms, we have things like

1 Jesus Wells, Bridge of Hope, Believers Chapel,
2 GFA-India.

3 If you'll look at the totality of their terms,
4 essentially 100 percent or near 100 percent of every
5 e-mail that all these people have written would be
6 caught in these terms, and it seems to me that the idea
7 of the terms is to try to, best you can, to narrow the
8 group of documents that have to be gone through to
9 determine what are relevant.

10 And again, I realize this is a little bit of
11 the weeds, but I wanted some -- I'm bringing this up to
12 get some guidance, if possible, because otherwise, we're
13 going to have a huge amount of documents that will be
14 captured by these searches, and a great number of them,
15 a huge number of them will have nothing at all to do
16 with the issues in this lawsuit.

17 THE COURT: All right. I think I got it.

18 Well, I have reviewed all the materials. I
19 think I have, from a high altitude anyway, understanding
20 of each side's position.

21 I think because of the nature of the
22 allegations and the causes of action being fraud of a
23 level involving diversions, alleged diversions of
24 donated money in the context of many, many entities and
25 subentities, I think that there is going to be a

1 tremendous overlap between class discovery and merits
2 discovery. And, of course, the Court's required to wade
3 into the merits to a certain extent in performing its
4 rigorous analysis at the class certification level.

5 This is one of those cases that I think that if
6 we attempted to bifurcate discovery, then defining the
7 boundaries where the overlap ends would consume much
8 more of our time fighting about it than would make any
9 efficiencies to be gained worth it. So I'm going to put
10 in place a scheduling order that envisions combined
11 class and merits discovery.

12 I am sensitive to the issue, if the concern is
13 that there's not, at the certification phase, a need to
14 identify names, the actual names of donors who may have
15 been under the impression that, you know, their names
16 would not be disclosed. And in the absence of a good
17 reason why the plaintiffs would need to know the actual
18 names, then I can certainly see why that would not be
19 appropriate at this point.

20 So what I'm going to throw out here is two
21 things. First, I'm going to give you some dates and
22 deadlines that I would propose, and if you'd kind of
23 write these down, and then if you have a major heartburn
24 about the approach or any particular deadline or time
25 frame in between these deadlines, then we can talk about

1 them, but I've got to put something on the board to
2 begin with.

3 And then I want to take up my thoughts on
4 discovery and proportionality, and I don't know that I'm
5 going to be able to resolve any of the specific things
6 that you've raised, but at least generally we can talk
7 about it.

8 So I would propose that the -- that there be a
9 deadline for plaintiffs filing of any motion for class
10 certification to be no later than January 19th of 2018.
11 Of course, "no later than" does not preclude you from
12 filing it earlier.

13 The defendants' response would be due six weeks
14 after the filing of the class certification motion, and
15 the plaintiffs would be given advance permission to file
16 a reply not later than three weeks after the filing of
17 defendants' response.

18 I would propose that we set a hearing on the
19 motion for class certification tentatively for April
20 13th of 2018, and that date, if the briefing -- that
21 date kind of contemplates that the motion for class
22 certification is filed on January 19th.

23 If it's filed substantially earlier than that,
24 then we would pull that date down and find a date closer
25 to when the briefing is completed.

1 Contemplating that the deadline or that the
2 date that the class certification motion would be filed
3 on January 19th, I set some deadlines for class
4 certification disclosures. If you're going to file
5 sooner than that, then I'll have to figure out a way to
6 articulate that, but I was going to suggest October 15th
7 of this year for plaintiffs' class certification expert
8 disclosures and that the defense provide their
9 disclosures on November 30th. That's 45 -- effectively
10 45 days later.

11 I was going to propose an overall discovery
12 deadline of November 16th of 2018, followed by a
13 dispositive motion deadline of December 7th of 2017 for
14 dispositive motions and/or, to the extent applicable,
15 motions to decertify; and then I was going to propose
16 that we set the matter for a three-week trial to begin
17 on April 15th of 2019.

18 Let me ask the plaintiffs first, Mr. Stanley,
19 your thoughts.

20 MR. STANLEY: Your Honor, that would be fine.
21 On the expert thing, that's something we can work out
22 with each other if we file early. And we may not even
23 have an expert for class cert; so that may obviate the
24 need for that, but we'll work that out with Mr. Mowrey
25 if we do that earlier. But I generally understand that

1 what the Court's saying is they should have at least 45
2 days for rebuttal expert.

3 THE COURT: Right.

4 Mr. Mowrey?

5 MR. MOWREY: Your Honor, we are fine with those
6 dates. There is one other date I wanted to bring to the
7 Court's attention that was in the case management plan
8 and that is the date by which plaintiffs are required to
9 amend their complaint.

10 Your standard order has -- states whether 90
11 days is sufficient. They have asked for 180, and we
12 think 90 is sufficient.

13 The problem with 180 is that we'll be
14 substantially into discovery, if not about the end of
15 discovery, when they could amend their complaint and so
16 it would throw the dates off that the Court has just
17 specified.

18 MR. STANLEY: Your Honor, the problem we have
19 is we don't know what we don't know; and while
20 Mr. Mowrey is correct and gave us 10,088 documents,
21 7,035 of them -- or 70 percent -- were checks and
22 deposit slips that we can do nothing with.

23 So we don't know what we don't know; and if
24 other documents come up that might better -- in
25 discovery that might better inform how we amend our

1 pleading, that's what we're really looking for.

2 I don't know how else to deal with it.

3 THE COURT: Can you live with five months?

4 MR. STANLEY: Yes, sir.

5 THE COURT: All right. So motion to amend or
6 add parties, I'll back that up a couple days and make it
7 October 13th.

8 MR. STANLEY: I assume we're saying that's
9 without leave and that later if something is discovered,
10 then we can always seek leave?

11 THE COURT: Well, actually that's not right. I
12 think you still need to seek leave.

13 MR. STANLEY: Oh, for that?

14 THE COURT: Yeah.

15 MR. STANLEY: Yes, sir.

16 THE COURT: Because you don't want to deprive
17 the defendants of the ability to object for whatever
18 reason may be germane.

19 MR. SHULTS: Your Honor, excuse me.

20 When you were talking about dates and
21 deadlines, the December 7 date after the discovery
22 cutoff, is that dispositive motions?

23 THE COURT: Dispositive motions and/or, if
24 appropriate, based on the posture of the issues at that
25 time, a motion for decertification.

1 MR. SHULTS: I think you may have said 2017,
2 but we're talking about 2018; is that correct?

3 THE COURT: If I said 2017, I was mistaken.
4 2018, yes.

5 MR. SHULTS: Thank your Honor.

6 THE COURT: All right. Let's take up some of
7 the other issues. I think that defendants had agreed,
8 or perhaps the parties had agreed to complete the
9 production of agreed -- the agreed document exchange
10 with the initial disclosures by May 25th. Are we still
11 on track for that date?

12 MR. MOWREY: Yes, your Honor.

13 THE COURT: All right. Very, very much
14 appreciate that.

15 There's also a reference to, that y'all have
16 already -- or were getting ready to set a date for an
17 early mediation. Have y'all -- is that right?

18 MR. STANLEY: No, sir. We have a mediator
19 picked out.

20 MR. MOWREY: We have a mediator picked out and
21 we've discussed mediation. That's a discussion we need
22 to have in terms of when we do that. I think the
23 thinking was, when we met, was that we do have a
24 mediation sooner rather than later.

25 THE COURT: Okay. With regard to discovery

1 limitations or restrictions, I just don't have enough --
2 of enough nuanced knowledge about the heartland of the,
3 categorically, the types of evidence that exist to give
4 y'all any specific direction.

5 Generally speaking, it would be my view that if
6 Gospel for Asia gave money, paid money, whatever the
7 proper term is, to some other entity, then -- let me put
8 it this way: If a forensic accountant would need to
9 check off an account for that money in order to see the
10 whole picture, then my view would be that is
11 discoverable, to the extent that Gospel for Asia owns or
12 controls those entities, or if any of the individual
13 defendants owns or controls those entities.

14 My understanding from looking at the -- I'm not
15 sure where I saw it, but it was quoted about
16 Mr. Yohannan, it sounds like he's kind of the hub, and
17 there's a whole bunch of spokes that go out from there.
18 But if he, in effect, has de facto ability to control
19 the finances, deposits, disbursements from these
20 entities, then I'm likely to conclude that that's fair
21 game.

22 MR. MOWREY: And, your Honor, I fully
23 appreciate that. I must say it is our position that he
24 does not, and I don't think there will be evidence that
25 he does. So that is a -- that is a major point of

1 dispute between us and the plaintiffs. The plaintiffs'
2 position is that he does, and our position is that he
3 does not. So that's clearly a --

4 THE COURT: Well, sounds like you've got to get
5 a 30(b)(6) witness or Mr. Yohannan under oath and go
6 from there.

7 MR. MOWREY: Right. I agree, your Honor.

8 THE COURT: With regard to temporal scope,
9 again, I don't really kind of have an appreciation for
10 the significance of when certain facts took place, to
11 the extent that these allegations can be called a scheme
12 to defraud, when the scheme began, when different
13 defendants began their participations. I just don't
14 have that sort of information. But for purposes of
15 discovery, the Court would not believe in a case such as
16 this that the discovery date would be coexistent with
17 the latest arguable bar date.

18 By the sake token, I don't know that going back
19 ten years is necessary. So, you know, if y'all could
20 find something that makes sense, I don't think that I'm
21 going to dictate that today because I just don't
22 understand the nuances of where we're playing here.
23 But, you know, certainly something closer to ten years
24 would be my impression today rather than four years, but
25 I'll leave that to y'all to discuss.

1 With regard to mechanical limitations on the
2 quantity of discovery, this is a case where I think that
3 an amount of interrogatories, more than 25 per side
4 would be appropriate. I don't know what other documents
5 or questions that the defendants may have for the
6 plaintiffs that have not been taken care of in initial
7 exposures, but -- I'm not going to envision how it may
8 be.

9 What I am going to do is I am going to allow 25
10 interrogatories per party, or defendant; and to the
11 extent that that is insufficient, then you can move for
12 leave to request more. And if the Court finds that
13 you've made judicious use of all 25 for each defendant,
14 then perhaps we'll authorize more, but I would ask you
15 to make good use of that. The same will apply for
16 requests for admissions.

17 As it relates to depositions, I'm going to
18 initially allow 20 nonparty depositions. So in total,
19 you will have 20 depositions, plus the named individual
20 defendants, plus 30(b)(6) depositions of each entity.
21 And to the extent that they designate more than one
22 deponent for 30(b)(6) purposes, that still counts as
23 one.

24 Then let's see where you are, and if you're
25 still plowing fertile ground, and you can establish that

1 to the Court's satisfaction, then the Court will
2 entertain more. If the Court believes that you're just
3 burdening the defendants and you're not really plowing
4 ground, you're just trying to harass or embarrass
5 people, that's different. So that will be the Court's
6 order on depositions.

7 With regard to discovery in general, if the
8 defendants perceive that there's a lack of
9 proportionality, then you need to talk to the plaintiffs
10 about that and express to them what the problems are,
11 quantify what the problems are.

12 I mean, it makes perfect sense to me that you'd
13 call up Mr. Stanley and say, "Do you realize that if we
14 put in 'Jesus' into one of our search terms, you're
15 going to basically capture 90 percent of everything that
16 we have sent or received, that doesn't make a whole lot
17 of sense to me. It's going to cause us a lot of work to
18 find all that, and it's going to cause you a bunch of
19 work that's not meaningful." That's just kind of common
20 sense.

21 So certainly anywhere where you think that,
22 even if it's discoverable, the way it's being asked for
23 is not proportional, then that's a very valid basis and
24 that's something that y'all need to use common sense.
25 There's a whole roomful of very seasoned, skilled

1 lawyers, and y'all know what makes sense and what
2 doesn't. I mean, you may have reasonable differences,
3 but I fully trust that y'all can work out something; and
4 if all else fails, you know, agree to two phases. Agree
5 to some more low-hanging fruit first.

6 You know, if you contend there's nothing there
7 in all these search terms but you can agree, then go
8 ahead and get started on the first batch. You see
9 what's there; after you see what's there, you may
10 withdraw something that's in your Phase 2 set. But use
11 common sense and if you can't, you know, agree to it,
12 then obviously get us on the phone and we will make a
13 relevance and a proportionality consideration.

14 Sometimes, Mr. Stanley, if I think it's
15 relevant but they tell me what the cost is and I just
16 think that that sounds credible and you're trying to get
17 to Nth degree and it's just kind of out of proportion
18 and you really want to do it, I may ask you to pull your
19 checkbook out and show me how much you want it and pay
20 them to produce it. So we've got a lot of different
21 tools that we can use.

22 I think that that is all the territory that I
23 wanted to cover today. I'm happy to answer any other
24 questions that you may have about our local procedures
25 or any other issues that you think are imperative to

1 take up today.

2 Mr. Stanley?

3 MR. STANLEY: No, sir.

4 THE COURT: Mr. Mowrey?

5 MR. MOWREY: No, your Honor.

6 THE COURT: All right. I want to thank all of
7 y'all for personally attending today. I think it is
8 very, very helpful in complex cases such as this to
9 actually meet in the same room and at least -- of
10 course, you guys know each other, being from Dallas, but
11 it's always nice to see the face and shake the hand of
12 some person before you start litigation in earnest. It
13 might make you not say bad words to them over the phone.
14 There's something about it being harder to cuss somebody
15 if you've shaken their hands, but sometimes.

16 MR. STANLEY: Plus, he's my neighbor. I've got
17 to be really careful.

18 THE COURT: There you have it. All right.
19 Again, and thank you to the -- Mr. Murphy for attending
20 today, and we're adjourned.

21 (Proceedings adjourned at 3:34 p.m.)

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CERTIFICATE OF OFFICIAL REPORTER

I, Dana Hayden, Federal Official Realtime Court Reporter, in and for the United States District Court for the Western District of Arkansas, do hereby certify that pursuant to Section 753, Title 28, United States Code that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 18th day of May, 2017.

Dana Hayden, CCR, RMR, CRR
Federal Official Court Reporter

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