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The true names and capacities whether individual, corporate, associate or

otherwise, of defendants DOES 1 through 50 inclusive, are unknown to plaintiffs at this time. Accordingly, plaintiffs sue the aforementioned defendants by such fictitious names, and will request leave of court to amend this complaint to show the true names and capacities when the same have been ascertained.

- 5. Plaintiffs are informed and believe and herein allege that each of the defendants designated herein as a DOE are responsible in some manner for the events and happenings herein referred to and which proximately caused damages to plaintiffs, as hereinafter alleged.
- 6. On May 6, 2008, plaintiff Robert Megargel and Narconon entered into a written agreement styled as an Admission Agreement executed by the parties on May 6, 2008 (appended hereto as Exhibit A). The purpose of the agreement was for Narconon to provide drug rehabilitation to plaintiff Nicholas Megargel in consideration for plaintiff Robert Megargel to pay \$29,000.00, which was tendered in full to Narconon.
- 7. Plaintiff Nicholas Megargel's substance addiction developed in part during the time he was engaged in a personal relationship with one Barbara Meyer. Plaintiffs are informed and believe and herein allege that Barbara Meyer and/or someone acting on her behalf also entered into a written agreement with defendant Narconon for the purpose of obtaining drug rehabilitation.
- 8. It was represented to and understood by plaintiff Robert Megargel that plaintiff Nicholas Megargel would be admitted and housed in the Narconon facility at Fort Collins, Colorado; while Barbara Meyer would be admitted and housed at a separate Narconon facility in another state due to the nature of their personal relationship and their joint development of a substance-abuse condition, in accordance with the standard of care applicable to a drug-treatment and remediation center.
- 9. On or about May 5, 2008, plaintiff Nicholas Megargel entered the Narconon facility located at 1225 Redwood Street in Fort Collins, Colorado. On about the same date, Barbara Meyer also entered the Narconon facility located at 1225 Redwood Street in Fort Collins, Colorado.

10. Plaintiff Nicholas Megargel's institutionalization lasted eight days, and he was discharged from the Narconon facility at Fort Collins, Colorado on or about May 13, 2008.

FIRST CAUSE OF ACTION

Negligence

(As Against All Defendants by Plaintiffs)

- 11. Plaintiffs hereby incorporate all previous paragraphs of this complaint as though fully set forth herein.
- 12. On or about May 5, 2008, plaintiff Nicholas Megargel was admitted to a Narconon treatment facility in Colorado. The purpose of his admission into the Narconon facility was to obtain drug rehabilitation from defendant. It was expected that Narconon would comply with the standard of care of a drug-rehabilitation facility, and admit and house plaintiff Nicholas Megargel to the Narconon facility at Fort Collins, Colorado; and admit and house Barbara Meyer at a separate Narconon facility in another state due to the nature of their personal relationship and the joint development of a substance-abuse condition.
- 13. Narconon failed to abide by the applicable standard of care, and admitted and concurrently housed both plaintiff Nicholas Megargel and Barbara Meyer in the same Narconon facility at Fort Collins, Colorado.
- 14. Defendants owed plaintiffs a duty of care while plaintiff Nicholas Megargel was a resident at the Narconon drug-rehabilitation facility while both were being treated and rehabilitated for a substance-abuse condition.
- 15. Defendants breached their duty of care owed to plaintiffs by permitting plaintiff Nicholas Megargel and Barbara Meyer to occupy concurrently the same Narconon drug-rehabilitation facility at Fort Collins, Colorado.
- 16. As a proximate and legal result of defendants' negligent acts and omissions, plaintiffs have been damaged in an amount that exceeds \$25,000.00, to be determined at trial according to proof.

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SECOND CAUSE OF ACTION

Breach of Contract

(As Against All Defendants by Plaintiff Robert Megargel)

- 17. Plaintiffs hereby incorporate all previous paragraphs of this complaint as though fully set forth herein.
- 18. On May 6, 2008, plaintiff Robert Megargel and Narconon entered into a written agreement. The purpose of the agreement was for Narconon to provide drug rehabilitation to plaintiff Nicholas Megargel. It was implied in the contract and assumed by plaintiffs that defendants would provide drug-rehabilitation services and housing to plaintiff Nicholas Megargel commensurate with the standard of care applicable to drug-rehabilitation institutions.
- 19. As set forth above, defendants and each of them failed to abide by the standard of care, and admitted and concurrently housed both plaintiff and Barbara Meyer in the same Narconon facility at Fort Collins, Colorado, despite the fact they had jointly developed their drug addiction as a result of a personal relationship, and despite the fact that defendants represented that plaintiff Nicholas Megargel would be admitted and housed at a Narconon facility geographically separate from the facility where Barbara Meyer was admitted and housed.
- 20. Plaintiff Robert Megargel has performed all of his obligations under the written contract, except those that have been prevented by defendants from being performed.
- 21. Defendants and each of them breached their implied, oral and/or written duties and obligations they were required to perform; and therefore caused harm and damages to plaintiff Robert Megargel in an amount to be determined at trial according to proof.

THIRD CAUSE OF ACTION

Rescission Based on Failure of Consideration

(As Against All Defendants by Plaintiff Robert Megargel)

- 22. Plaintiffs hereby incorporate all previous paragraphs of this complaint as though fully set forth herein.
- 23. As set forth above, plaintiff Robert Megargel and Narconon entered into a written agreement on May 6, 2008. The purpose of the agreement was for Narconon to provide drug

rehabilitation to plaintiff Nicholas Megargel at a cost to plaintiff Robert Megargel of \$29,000.00. Implied in the contract was an obligation that plaintiff Nicholas Megargel and Barbara Meyer, whose drug-abuse habits were jointly developed as a result of a personal relationship, would not be admitted to and housed concurrently at the same Narconon drug-rehabilitation facility in Fort Collins. Colorado.

- 24. The consideration received from defendants failed in whole or in part through the fault of the party against whom plaintiff Robert Megargel rescinds because the consideration namely admitting and housing plaintiff Nicholas Megargel and Barbara Meyer in separate Narconon drug-rehabilitation facilities in different states did not take place. On the contrary, plaintiff Nicholas Megargel and Barbara Meyer shared the Narconon facility, in violation of the standard of care applicable to a drug-rehabilitation institution.
- 25. The joint admission and concurrent housing of plaintiff Nicholas Megargel and Barbara Meyer in the same Narconon facility by defendants and each of them frustrated the whole purpose of the written contract.
- 26. Because plaintiff Robert Megargel's performance was conditioned on defendants' housing plaintiff Nicholas Megargel and Barbara Meyer in separate facilities located in different states, plaintiff Robert Megargel is entitled to rescind the contract based on defendants' failure of consideration.
- 27. Through the filing of this lawsuit, plaintiff Robert Megargel hereby provides to defendants notice of rescission of the written contract.

FOURTH CAUSE OF ACTION

Restitution

(As Against All Defendants by Plaintiff Robert Megargel)

- 28. Plaintiffs hereby incorporate all previous paragraphs of this complaint as though fully set forth herein.
- 29. Defendants received \$29,000.00 from plaintiff Robert Megargel, pursuant to the written contract. Plaintiff Robert Megargel, however, through this complaint has provided notice of rescission of the contract.

- 30. As a result of failure of consideration, defendants unjustly retained the benefit of \$29,000.00 at the expense of plaintiff Robert Megargel, and have been unjustly enriched.
- 31. As a direct and proximate result of defendants' breach or non-performance of the contract, plaintiff Robert Megargel has been damaged, and is entitled to restitution from the defaulting party in an amount that will make said plaintiff whole, to be determined according to proof at trial.

FIFTH CAUSE OF ACTION

Quantum Meruit

(As Against All Defendants by Plaintiff Robert Megargel)

- 32. Plaintiffs hereby incorporate all previous paragraphs of this complaint as though fully set forth herein.
- 33. From approximately May 5, 2008 through May 13, 2008, plaintiff Nicholas Megargel was institutionalized at a Narconon facility located at 1225 Redwood Street in Fort Collins, Colorado.
- 34. The written contract between plaintiff Robert Megargel and defendant Narconon contemplated plaintiff Nicholas Megargel's institutionalization at the Narconon facility in Fort Collins, Colorado to be several months. Plaintiff Nicholas Megargel, however, was institutionalized at the Narconon facility for eight days.
- 35. If it is determined that defendants were entitled to payment of the reasonable value of the services for the eight days of plaintiff Nicholas Megargel's institutionalization at the Narconon facility, it should be based on *quantum meruit*, multiplying the ratio of the actual days of institutionalization to the total contemplated days of institutionalization by the total consideration of \$29,000.00.

SIXTH CAUSE OF ACTION

Declaratory Relief

(As Against All Defendants by Plaintiffs)

36. Plaintiffs hereby incorporate all previous paragraphs of this complaint as though fully set forth herein.

- 37. An actual controversy has arisen and now exists between plaintiffs and defendants and each of them concerning their respective rights and duties with regard to the written contract at issue and the terms contained therein. Plaintiffs further contend that defendants' breach of the written contract discharges plaintiff Robert Megargel from his payment obligation.
- 38. Plaintiffs allege, on information and belief, that defendants contend that plaintiff Robert Megargel has no right to rescind the subject contract, and it was not breached because of failure of consideration.
- 39. The interests of the parties are adverse, plaintiffs have a legally protectable interest in the controversy, and the issues are ripe for judicial determination.
- 40. Accordingly, plaintiff Robert Megargel desires a judicial determination of his rights and duties under the subject contract; specifically that he is entitled to rescission of the subject contract and restitution of \$29,000.00; or alternatively entitled to restitution subtracting any amount due to defendants based on *quantum meruit*.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray for judgment against defendants and each of them as follows:

- 1. General and special damages as to the first cause of action for negligence according to proof and interest, including prejudgment interest in an amount within the jurisdiction of the court.
- Compensatory damages as to the second cause of action for breach of contract according to proof and interest, including prejudgment interest in an amount within the jurisdiction of the court.
 - 3. Rescission of the subject contract as to the third cause of action.
- 4. Restitution of \$29,000.00 paid by plaintiff Robert Megargel to Narconon as to the fourth cause of action according to proof and interest, including prejudgment interest in an amount within the jurisdiction of the court; or alternatively restitution of \$29,000.00 subtracting any amount due to defendants based on *quantum meruit* as to the fifth cause of action.
 - 5. A judicial determination and declaratory judgment as to the sixth cause of action

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that the written contract at bench is rescinded due to failure of consideration, and that plaintiff Robert Megargel is entitled to restitution of \$29,000.00 from defendants; or alternatively restitution of \$29,000.00 subtracting any amount due to defendants based on quantum meruit.

- 6. For cost of suit incurred herein.
- 7. For such other and further relief as the court deems proper and appropriate by the court.

DATED: May 15, 2009

WALSH & FURCOLO LLP

By:

James T. Derfler, Esq. Attorneys for Plaintiffs

ROBERT K. MEGARGEL and NICHOLAS

MEGARGEL