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Plaintiffs,

v.

JONAH (Jews Offering New Alternatives for Healing f/k/a Jews Offering New Alternatives to Homosexuality), Arthur Goldberg, Alan Downing, Alan Downing Life Coaching LLC,

Defendants.

SUPERIOR COURT OF NEW JERSEY
HUDSON COUNTY, LAW DIVISION

Docket No. L-5473-12

CIVIL ACTION

BRIEF IN SUPPORT OF PLAINTIFFS' MOTION TO ENFORCE PERMANENT INJUNCTION AND FOR DEFAULT JUDGMENT

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PRELIMINARY STATEMENT

Through the discovery permitted by this Court, Plaintiffs have uncovered documents that prove beyond any doubt that JIFGA is a mere continuation of JONAH, and moreover confirm that Defendants have continually breached the December 2015 settlement agreement (the "Settlement Agreement") and violated this Court's December 18, 2015 *Order Granting Permanent Injunctive Relief and Awarding Attorneys' Fees* (the "Permanent Injunction"). Defendants' breaches began almost immediately after the Permanent Injunction was entered, and have persisted through the present day. Their actions are egregious and demonstrate shocking contempt for this Court and the New Jersey jury that unanimously found their conduct (which they have continued unabated) unconscionable.

PROCEDURAL HISTORY[1]

On June 25, 2015, after years of litigation, a New Jersey jury unanimously found that JONAH had engaged in unconscionable business practices; the subsequent Settlement Agreement (Ex. 1)[2] and this Court's Permanent Injunction (Ex. 2) were designed to put a stop to those practices, and an end to JONAH. Specifically, the Permanent Injunction ordered that:

- "JONAH, Inc. shall permanently cease any and all operations . . . ";[3]
- "JONAH, Inc. shall permanently dissolve as a corporate entity and liquidate all its assets, tangible or intangible . . . ";[4]
- "Defendants are permanently enjoined from engaging, whether directly or through referrals, in any therapy, counseling, treatment or activity that has the goal of changing, affecting or influencing sexual orientation, "same sex attraction" or

[1] This discussion assumes familiarity with preceding events described more fully in Plaintiffs' Original Motion. Capitalized terms used herein but not defined shall have the same meanings ascribed to them in that motion.

[2] All exhibits referenced in this brief are attached to the accompanying *Certification of Lina Bensman* ("Bensman Cert.") and identified by number with the prefix "Ex. "

[3] Ex. 2, Permanent Injunction ¶ 1.

[4] *Id.* ¶ 2.

> "gender wholeness," or any other equivalent term, whether referred to as "conversion therapy," "reparative therapy," "gender affirming processes" or any other equivalent term ("Conversion Therapy"), or advertising, or promoting Conversion Therapy or Conversion Therapy-related commerce in or directed at New Jersey or New Jersey residents (whether in person or remotely, individually or in groups, including via telephone, Skype, email, online services or any delivery medium that may be introduced in the future, and including the provision of referrals to providers, advertisers, promoters, or advocates of the same) . . . ."[5]

The Permanent Injunction also awarded Plaintiffs $3.5 million in attorneys' fees and costs (the "Fee Award").[6] *See* Ex. 2, Permanent Injunction.

In March 2018, after learning that JIFGA had been funneling money to and from Conversion Therapy providers and pocketing referral fees, Plaintiffs applied to this Court for relief, asking that the Court find that Defendants had violated the Permanent Injunction, breached the Settlement Agreement, and were in default with respect to the unpaid portion of the Fee Award (the "Original Motion"). *See* Ex. 3, Pls.' Br. Supp. Mot. Enforce Permanent Inj. In opposing that motion, Defendants admitted that JIFGA had been facilitating (and collecting) payments through agreements inherited from JONAH, but made five claims in their defense: (i) that "the actual referrals pre-dated the settlement," Ex. 4, Defs.' Opp'n Mot. Enforce Permanent Inj. at 7; *see also id.* at 2 (JIFGA "does not provide referrals."); Ex. 5, May 11, 2018 Hr'g Tr. 15, ("[T]hey weren't making any new referrals . . . [T]his all predated the [Settlement] [A]greement."); *Certification of Arthur Goldberg in Opposition to the Plaintiffs[']* Motion to *Enforce Permanent Injunction and Default Judgment* ("Goldberg Cert."), Ex. 6 ¶ 7 ("I have made no referrals to counsellors for any reason since the settlement agreement was signed."); (ii)

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[5] *Id.* ¶ 3.

[6] Following the entry of the Permanent Injunction, the Parties executed the Settlement Agreement, which provided, *inter alia*, that Plaintiffs would accept a reduced payment in respect of the Fee Award, but would be entitled to collect the entire Fee Award if, on or before December 18, 2020, Defendants violate the Permanent Injunction or otherwise breach the Settlement Agreement and either fail to cure their breach within 30 days or commit a breach that cannot be cured. Ex. 1, Settlement Agreement ¶¶ 5, 6. The Settlement Agreement also made clear that Elaine Berk, a director of JONAH (and now of JIFGA), would be bound by the terms of the Permanent Injunction. *Id.* ¶ 2.

that "none of the referral clients are receiving treatment for same sex attraction," Ex. 4, Defs.' Opp'n Mot. Enforce Permanent Inj. at 8; *see also* Ex. 6, Goldberg Cert ¶ 3 ("I did not know for certain what the clients were being treated for."); (iii) that "JIFGA stopped receiving these payments in 2017," Ex. 5, May 11, 2018 Hr'g Tr. 19; (iv) their breaches could be cured by refunding the payments JIFGA had received, assuring the Court that "we'll send back every dime to the therapists. Simple," *id.* 34, and (v) Defendants' referrals did not violate the Permanent Injunction because they were "not happening . . . in New Jersey," *id.* 17.

At a hearing on the Original Motion (the "May 2018 Hearing"), the Court explained that "JIFGA's in New Jersey" and "no matter where you send the people it's originating in New Jersey," and proceeded to find that JIFGA's receipt of payments from JONAH clients, or of referral fees from their counselors, breached the Settlement Agreement and violated the Permanent Injunction. *Id.* 16, 18, 41; May 15, 2018 *Order Granting in Part Plaintiffs' Motion to Enforce Permanent Injunction and Default Judgment* ("May 15 Order"), Ex. 7 at 2. The Court permitted Defendants thirty days to attempt to cure those breaches and authorized Plaintiffs to take discovery of Defendants on the issue of whether or not JIFGA has continued to carry on JONAH's general operations. Ex. 5, May 11, 2018 Hr'g Tr. 43; Ex. 7, May 15 Order, at 3.

In emails sent to Plaintiffs in June 2018, Defendants purported to have cured their breaches of the Settlement Agreement, asserting that "refunds have been sent to all clients of Robert Morgan and Robert Vazzo where JIFGA received the payments for those services. Additionally any referral fees received from Vazzo or Morgan have been returned to them. JIFGA has now divested itself of any and all moneys it has received in connection with any counseling services. . ." Ex. 8, June 7, 2018 Laffey email. Defendants specifically stated that "[t]here were a total of 9 clients where fees owed to Morgan and Vazzo for counselling services

were collected by JIFGA" and that "JIFGA has refunded all monies received from people receiving counselling from JONAH referred counsellors and all monies received from Counsellors for referrals made. JIFGA no longer receives or has an agreement with any counsellor to receive referral fees of any type." Ex. 9, June 14, 2018 Laffey email.

On June 15, 2018, Plaintiffs served document requests on Defendants. After meeting and conferring several times concerning those requests, Defendants produced over 70,000 documents to Plaintiffs on November 16, 2018. Within this production, Plaintiffs have identified overwhelming evidence of repeated, flagrant violations and breaches of the Settlement Agreement and Permanent Injunction by Defendants, as well as evidence that Defendants lied to the Court and to Plaintiffs about the extent of their improper activities and the effectiveness of their purported cure.

By letter dated February 20, 2019, Plaintiffs notified Defendants of their intent to seek Breach Damages and provided a description of their good faith basis for believing that Defendants had breached the Settlement Agreement, including through Uncured Breaches. Ex. 10, Feb. 20, 2019 Bensman letter. On March 22, 2019, upon the expiration of the thirty days contemplated under the Settlement agreement, the Breach Damages became due. Ex. 1, Settlement Agreement ¶ 6. However, as of the date of this filing, Defendants have not made payment. Therefore, for all of the reasons laid out in this brief Plaintiffs Michael Ferguson, Benjamin Unger, Chaim Levin and Jo Bruck now move for a default judgment and request that the Court enforce the terms of the Settlement Agreement by entering a judgment in the amount of the "Breach Damages" and "Berk Breach Damages," as defined in the Settlement Agreement, further enjoin Defendants from future improper conduct, and order full disgorgement of all moneys received in connection with their facilitation of Conversion Therapy commerce. In

addition, Plaintiffs respectfully request that the Court initiate summary proceedings to determine the proper punishment for Defendants' criminal contempt of this Court.

ARGUMENT

I. LEGAL STANDARD

A private litigant is entitled to move to enforce an injunction against a non-compliant defendant. *See In re Adoption of N.J.A.C. 5:96 & 5:97 ex. rel. N.J. Council on Affordable Hous.*, 221 N.J. 1, 17 (2015); *Asbury Park Bd. of Educ. v. New Jersey Dep't of Educ.*, 369 N.J. Super. 481, 486 (App. Div.) ("A claim that a party . . . is acting in violation of court order ordinarily should be brought before the court that issued that order . . . by a motion for relief in aid of litigants' rights under *Rule* 1:10-3."), *aff'd in relevant part*, 180 N.J. 109, *clarified by* 180 N.J. 113 (2004). Courts routinely grant *R.*1:10-3 motions to enforce their orders and injunctions. *See, e.g.*, *Adoption*, 221 N.J. at 17-20; *Irish Pub v. Stover*, 364 N.J. Super. 351, 353-56 (App. Div. 2003).

The Court has broad discretion to fashion appropriate remedies in order to ensure compliance with its orders. *See Adoption*, 221 N.J. at 17. *R.* 1:10-3 also gives the Court express authority to award counsel fees to the party awarded relief under the rule. *R.* 1:10-3; *see also* Pressler & Verniero, cmt. 4.4.5 on *R.* 1:10-3 (the rule recognizes that, "as a matter of fundamental fairness, a party who willfully fails to comply with an order or judgment entitling his adversary to litigant's rights is properly chargeable with his adversary's enforcement expenses").

II. THE EVIDENCE THAT DEFENDANTS REPEATEDLY VIOLATED THE SETTLEMENT AGREEMENT AND THE PERMANENT INJUNCTION IS CLEAR AND CONVINCING

A. Client 8

On December 31, 2015, less than two weeks after the Permanent Injunction went into effect, Defendants received a request for a referral from parents "looking for help for our 19 year old son . . . that has SSA. He is open to counseling." Ex. 11, JIFGA-00029543. That request came through a contact form available on the pro-Conversion Therapy website Voices of Change, which channeled submissions to Defendants' info@jonahweb.org email account. *Id.* In response, and copying Goldberg, Berk emailed David Pickup, the conversion therapist apparently running Voices of Change, and asked that such submissions be routed away from herself and Goldberg, writing that "Arthur and I are no longer allowed to legally offer any advice or suggestions to individuals concerning reparative therapy." *Id.*[7] Several hours later, Vazzo sent an email to Goldberg: "Thank you for the referral. We have set up an appointment for next Friday night, January 8." Ex. 13, JIFGA-00029581. The subject line of the email was the name of the parent who had submitted the request to Voices of Change. *Id.* Goldberg separately followed up with that parent several days later, writing "It was good to speak with you last week. I am glad you followed up and made an appointment with Robert [Vazzo]. Please keep me posted on how it goes." Ex. 14, JIFGA-00029725. At least fifty-six sessions with Vazzo followed, payments for which were funneled through JIFGA (which was using the JONAH payment consent form, unchanged). Ex. 15, JIFGA-00065799; Ex. 16, JIFGA-00065805.

[7] It appears that the only change made was that instead of flowing directly to Goldberg and Berk, Voices of Change contact form submissions now flow to a JIFGA employee who then forwards them to Goldberg. *See* Ex. 12, JIFGA-00040984 (so forwarding a November 2016 submission asking that they "recommend any therapists operating out of Massachusetts").

Receipts and invoices document that these payments totaled $8,589, of which JIFGA retained $2,985.[8] Payments were sometimes made by the parent, and sometimes by the client.

Because the documents produced by Defendants were not redacted, Plaintiffs were able to confirm that this nineteen-year-old client is "Client 8" of the nine identified by Defendants in response to Plaintiffs' Original Motion. Contrary to Defendants' representations to this Court, (i) Goldberg referred Client 8 to Vazzo *after* the Settlement Agreement was executed and *after* the Permanent Injunction went into effect; (ii) Goldberg knew full well that Client 8 was being treated for SSA; (iii) Client 8 continued to receive counseling from Vazzo well into 2018; and (iv) the $175 that was purportedly refunded to Client 8's parent by JIFGA in June 2018 is dwarfed by the true amounts received by JIFGA in connection with Client 8's counseling, and no refund check was written to the client at all.

Although there are numerous other breaches and violations reflected in the documents obtained by Plaintiffs, this conduct alone is both an uncured and incurable breach of the Settlement Agreement and a violation of the Permanent Injunction, and is sufficient to support all of the relief that the Plaintiffs now seek. The remainder of this brief describes the full scope of Defendants' flagrant and repeated violations, which demonstrate their contempt for this Court's orders, their total remorselessness, and the clear need for sanctions in proportion to their egregious and continuing misconduct.

[8] *See* Ex. 17 at JIFGA-00065770-71 (January 2016), JIFGA-00032705-06 (February 2016), JIFGA-00034124-25 (March 2016), JIFGA-00034889-90 (April 2016), JIFGA-00066622-23 (June 2016), JIFGA-00066871-72 (August 2016), JIFGA-00039944-45 (September 2016), JIFGA-00067093-94 (October 2016), JIFGA-00041685-86 (November 2016), JIFGA-00042786-87 (December 2016), JIFGA-00043843-44 (January 2017), JIFGA-00044864-65 (February 2017), JIFGA-00046052-53 (March 2017), JIFGA-00046875-76 (April 2017), JIFGA-00048122-23 (May 2017), JIFGA-00069063-64 (July 2017), JIFGA-00054027-28 (October 2017), JIFGA-00054680-81 (November 2017), JIFGA-00056222-23 (December 2017), JIFGA-00058720-21 (February 2018), JIFGA-00060383-84 (March 2018).

B. Defendants Continue To Make Individual Referrals

Client 8 was far from the only person referred by Goldberg to a Conversion Therapy provider. Over the last three years, from his desk at JIFGA's (formerly JONAH's) New Jersey office, Goldberg has repeatedly made individual referrals for potential clients explicitly seeking Conversion Therapy.[9]

Sometimes, as in the case of Client 8, Goldberg directed potential clients to speak to him over the phone, so that no record of the referral would be created. For example:

- In January 2016, Goldberg received an email from a man "writing to inquire about how I can attend your facility to take the homosexuality out of my life." Ex. 18, JIFGA-00030006. Goldberg asked in response, "Is there a way we can speak by phone within the next day or two?" He later wrote, "If we can speak within the next few days I may have a suggestion." *Id.*

- In March 2017, Goldberg received an email asking him to recommend an organization for parents seeking "help when they discover their child or teen has LGBT feelings." Ex. 19, JIFGA-00045371. Goldberg responded, "If you trust the people involved, they can call me for some informal suggestions. Have them call me and provide your name as a reference." *Id.*

- In July 2017, Goldberg received an email asking if he was "still able to refer me to a reparative therapist" from a correspondent who described himself as having "always struggled with unwanted SSA." Ex. 20, JIFGA-00048787. In response, Goldberg wrote, "Let's have a conversation" and provided his phone number. *Id.*

- A week later, Goldberg received an email from a different man also seeking help for "unwanted SSA." Ex. 21, JIFGA-00049029. Again, Goldberg invited him to call so that Goldberg could give him "some options." *Id.*

- In May 2018, Goldberg received an email from one of Morgan's former clients asking him to recommend "someone in Brazil that I can talk [to] about porn addiction." Ex. 22, JIFGA-00061533 (stating, in an earlier part of the email chain, that his wife accepted his "SSA" and that his "only problem" was his "feeling for men. Porn . . ."). Goldberg replied, "Give me a call at your convenience." *Id.*

[9] Indeed, Plaintiffs have not identified any email in which Goldberg refuses to provide a referral after one is requested.

It's obvious what "options" Goldberg provides on these calls. *See, e.g.*, Ex. 23, JIFGA-00050096 (August 2017 email from Goldberg to two potential clients with the subject line "Suggestions from phone call," the body of which contains the contact information for Vazzo, Morgan, and Morgan's wife). Other emails also confirm that Goldberg made referrals over the phone. For example, in April 2017, Goldberg wrote to Morgan that he "may hear from a fellow named [omitted] . . . FYI." Ex. 24, JIFGA-00046104. In his response, Morgan noted that an additional JIFGA-referred client had recently missed an appointment, and asked whether Goldberg wanted to reach out to him. *Id.* Likewise, in May 2017, Vazzo wrote to Goldberg to thank him "for the referrals that you have been sending." Ex. 25, JIFGA-00046877. That Goldberg was referring clients to Morgan and Vazzo is also confirmed by their invoices to JIFGA, on which new names periodically appear.[10]

And Goldberg has also continued to make referrals over email. For example, in June 2017, Mr. N renewed an earlier correspondence with Goldberg begun after they met at a JIM weekend, saying that he had "decided to start therapy again, and wondered if you had contact details for David Matheson?"[11] Ex. 29, JIFGA-00049368. Goldberg responded and provided Matheson's email address. *Id.* Goldberg has even served as a go-between for a "struggler" in Israel and Joe Nicolosi, a Conversion Therapy provider, whose inability to use a fax machine would otherwise have prevented him from corresponding with the struggler about such topics as

[10] For example, Vazzo's 2016 invoices reflect at least three new clients added in that year, Ex. 17 at JIFGA-00036091-92 (May 2016 (J.H. new)), JIFGA-00039944-45 (September 2016 (J. H. new)), JIFGA-00041685-86 (November 2016 (R.R. new)), and Morgan's 2016 invoices reflect at least one new client added in that year, Ex. 26 at JIFGA-00066335-36 (April 2016 (I.M. new)).

[11] Matheson was a Conversion Therapy provider who at one time was affiliated with JONAH, and was a co-creator (with Alan Downing) of the Journey Beyond experiential weekend. Ex. 27, June 11, 2015 vol. 1 Trial Tr. 176-77, 196. In January 2019, Matheson issued a statement in which he described himself as "gay" and acknowledged that the Conversion Therapy he had performed had harmed his clients. *See* Ex. 28, Once-Prominent "Conversion Therapist" Will Now "Pursue Life as a Gay Man," *NBC*, Jan. 23, 2019, https://www.nbcnews.com/feature/nbc-out/once-prominent-conversion-therapist-will-now-pursue-life-gay-man-n961766.

Nicolosi's recommendation that he "find a good Reparative Therapist in Israel. They may be intimidated to call themselves Reparative Therapists but I know that they apply my techniques because I supervise them. I would be happy to recommend a few names if you are interested." Ex. 30, JIFGA-00038324.

In addition to following up on direct inquiries, Goldberg has proactively sought out potential clients through his continued participation in several listservs with a mental health focus, including those administered by Nefesh (International Network of Orthodox Mental Health Professionals) and JNARS (Jewish Network of Addiction Recovery Support). Periodically, listerv members ask for a referral to a counselor. For example, in May 2016, a JNARS listserv participant wrote, "I'm looking for a female therapist with experience in the field for a seminary girl with active SSA." Ex. 31, JIFGA-00034987. Goldberg put her in touch with a Conversion Therapy provider. *Id.* A few days later, a Nefesh listserv participant wrote, "Seeking therapist in L.A. on behalf of a 20-year-old girl" with "issues surrounding her sexuality." Ex. 32, JIFGA-00035024. Goldberg forwarded the email to Nicolosi and suggested that he reach out directly. *Id.*

Each of these referrals was a violation of the Permanent Injunction and an uncured and incurable breach of the Settlement Agreement. Ex. 2, Permanent Injunction ¶ 3; Ex. 1, Settlement Agreement ¶ 6. Each is an independently sufficient basis for the Court to grant Plaintiffs the relief they now seek. Together, they show that Defendants have taken every opportunity to defy this Court and the jury's verdict and disregard the agreements they have made.

C. Referrals To Experiential Weekend Programs Also Continue[12]

In addition to making referrals to Morgan, Vazzo, and other Conversion Therapy providers, Goldberg continues to steer clients to People Can Change ("PCC").[13] For example, in April 2017, Goldberg and Richard Wyler corresponded about potential participants for an upcoming Pennsylvania JIM weekend (JIM 104), which Goldberg attended as a staff member. Ex. 37, JIFGA-00045862. After receiving a list of the registered participants, one of whom was identified as a resident of New Jersey, Goldberg emailed Wyler about three other potential participants, directing Wyler to "get ahold of" one in particular because he felt "confident he will register but contact needs to be made." *Id.* Later that same day, Wyler emailed Goldberg to confirm that two of the three potential participants, including the one Goldberg felt confident about, had agreed to attend. Ex. 38, JIFGA-00045870.[14] Just over a week later, when that potential participant still had not registered, Goldberg lobbied Wyler to continue calling him. Ex. 39, JIFGA-00046036. Goldberg's efforts to promote PCC's Conversion Therapy-related commerce are no less tireless than they were before the jury announced its verdict, the Settlement Agreement was executed and the Permanent Injunction went into effect.

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[12] As the Court will recall, referrals to experiential weekends were part of the overall JONAH program that was found to be an unconscionable violation of New Jersey's Consumer Fraud Act. *See* Ex. 33, April 24, 2015 Statement of Reasons at p. 20 ("The record makes clear that Journey Beyond and JIM are both properly understood as components of the JONAH program.").

[13] In recent years, like other Conversion Therapy organizations, People Can Change has rebranded itself and is now known as "Brothers Road." Ex. 34, We've Changed Our Name, *Brothers Road*, https://www.brothersroad.org/namechange. The Journey Into Manhood (JIM) weekends have not been renamed, and there has been no change in the nature of the Conversion Therapy services provided by the organization, as confirmed by a March 2018 email in which Goldberg describes JIM weekends as intended "for those desiring to transition their sexual orientation" and "designed to assist men with unwanted homosexual feelings, behavior, or identity." Ex. 35, JIFGA-00058389. For ease of reference, in this brief we continue to refer to this organization as PCC. As for why Conversion Therapy providers have been changing the terms they use, as Vazzo explained, when seeking to avoid recently-enacted laws and criticism due to changing societal norms, "[i]t's all about packaging." *See* Ex. 36, JIFGA-00046450.

[14] For the avoidance of doubt, an earlier email in this chain reflects that this man told Goldberg that "his SSA is 'under control' but he still has issues." *Id.* In that email, Goldberg coached Wyler on how best to convince the man to sign up for the JIM weekend, telling him what would be "useful to emphasize" when reaching out. *Id.*

Moreover, through his participation in PCC's programs, Goldberg encountered numerous potential clients, of whom he took full advantage. For example, after attending JIM 104, Goldberg joined a private Facebook group for participants. Ex. 40, JIFGA-00046251.[15] An in-person reunion was planned through the JIM 104 group, and Goldberg attended. *See* Ex. 43, JIFGA-00048346; Ex. 44, JIFGA-00051008 . After that reunion, in August 2017, a participant emailed Goldberg to ask for "contact info" for a Jewish group in Boston that provides "reparative" therapy. Goldberg responded with a referral to Dr. Uriel Meshoulam,[16] and offered to "suggest 1 or 2 others." Ex. 44, JIFGA-00051008.

Goldberg's participation as a staff member at JIM 104, where he directly provided Conversion Therapy to a New Jersey resident, his vigorous efforts to register participants for that weekend, and the individual referral he later provided to a JIM 104 participant are all independent breaches of the Settlement Agreement and Permanent Injunction. Ex. 2, Permanent Injunction ¶ 3; Ex. 1, Settlement Agreement ¶ 6. And Goldberg has shown no signs of slowing down. After attending JIM 104, he wrote to Wyler that he is "open to staffing any weekend," noting that it "felt so good to be back in the saddle." Ex. 48, JIFGA-00046738.

D. Defendants' Global Ambitions

Goldberg's use of his New Jersey non-profit organization to promote commerce in Conversion Therapy is not limited to individual referrals or to his collaboration with PCC. In the

[15] Goldberg is also a member of the Facebook group "JIM Alumni." Ex. 41, JIFGA-00030799. This "private, secret" group is open to JIM participants regardless of which weekend they attended, and appears to serve some of the same purposes as the JONAH listserv. Ex. 42, JIFGA-00030800. As he did before, Goldberg provides group members with advice and guidance. *See, e.g.*, Ex. 41, JIFGA-00030799 (counseling a group member on what to do about his "major charge with" (strong attraction to) another "journeyer").

[16] Dr. Meshoulam is a provider of Conversion Therapy. An article on the Joseph Nicolosi Website identifies him as a "reorientation therapist." Ex. 45, What Is Homosexuality, Reorientation Therapists Disagree, *Joseph Nicolosi*, https://www.josephnicolosi.com/collection/what-is-homosexuality-reorientation-therapists-disagree. He has served as a member of NARTH's "Scientific Advisory Committee," Ex. 46, Scientific Advisory Committee, *NARTH,* https://archive.li/heFc5, and has spoken at NARTH conferences, Ex. 47, You Are Not a Homosexual, *Joel 2:25*, https://joel225.org/you-are-not-a-homosexual.

spring of 2018, Goldberg reached out to Alan Alencar, a Brazilian leader of Joel 2:25,[17] telling him that "[a]fter the demise of JONAH, I created the Jewish Institute for Global Awareness" and offering to "be helpful down there to you." Ex. 50, JIFGA-00057444. Alencar told Goldberg that Joel 2:25 was "planning to do some solid and ongoing work to help men with SSA . . . I'm thinking of something like Journey Into ManHood." *Id.* This was music to Goldberg's ears, and he responded almost immediately: "I will be happy to talk with you and discuss my experiences over 15 years of working with the SSA issue and how I may be of help." *Id.* After a few days with no reply from Alencar, Goldberg followed up again, encouraging Alencar to get in touch with him over the phone. *Id.* Once their dialogue resumed, Goldberg made sure to tell Alencar that he knew "one or two good therapists in Brazil" and again encouraged him to take advantage of his offer of assistance. *Id.* Goldberg then provided him with contact information for three Conversion Therapy providers, explaining that the first therapist, Esly Regina de Carvalho (whom he described as "very familiar with SSA counseling"), used a roundabout description of her methods to avoid a Brazilian law prohibiting Conversion Therapy, and coaching Alencar to "speak around the issue." *Id.* Alencar agreed to work with Goldberg on "creating a program" in Brazil. *Id.* Goldberg then reached out to Carvalho over email, encouraging her to assist Alencar in creating "an experiential weekend for men in Brazil that may be comparable to weekends in the States for those desiring to transition their sexual orientation such as JIM of Brothers Road or one that we created for JONAH, all of which are designed to assist men with unwanted homosexual feelings, behavior, or identity." Ex. 35, JIFGA-00058389.

[17] Joel 2:25 is a Conversion Therapy organization modeled on JONAH and run by Jeremy Schwab (familiar to this Court as one of the purported "success story" witnesses presented by Defendants at trial). Ex. 49, June 18, 2015 Trial Tr. 24.

Goldberg also urged the creation of a similar program in Europe. Ex. 51, JIFGA-00054099. After returning from a conference in Slovakia, Goldberg emailed a Norwegian acquaintance in November 2017, to promote his book and JIFGA's Funding Morality website. *Id.* He also provided contact information for "two people in the United States who work as counsellors for people with SSA" (namely, Vazzo and Morgan), noting that "[i]t probably would be good if you and I discussed the particulars of a potential client before just giving out their contacts. That way, I could suggest which one may be more appropriate in terms of personality fit based upon your understanding of the client's issues" (and, presumably, collect a referral fee). *Id.* He then informed the Norwegian that Morgan's wife is "a counsellor and works primarily with women. She and her husband also run a weekend couples program in the USA for SSA husbands and their wives," and suggested that the Norwegian work with him to organize such a weekend in Europe. *Id.*

These communications put the lie to Goldberg's statement to this Court that JIFGA has not worked "to promote commerce in conversion therapy." Ex. 6, Goldberg Cert. ¶ 9. And because Goldberg was engaged in "promoting Conversion Therapy or Conversion Therapy-related commerce in . . . New Jersey . . . (whether in person or remotely . . . .)," Ex. 2, Permanent Injunction ¶ 3, each of his efforts is an independent violation of the Settlement Agreement and the Permanent Injunction. *Id.*; Ex. 1, Settlement Agreement ¶ 6.

E. JIFGA Is JONAH

Under New Jersey law, to determine whether one entity is a "mere continuation" of another (and bound by all injunctions applicable to that other entity), courts look to factors including "continuity of ownership; continuity of management; continuity of personnel; continuity of physical location, assets and general business operations; and cessation of the prior business shortly after the new entity is formed," as well as whether the new entity "holds itself

out to the world as the effective continuation of" the previous entity; liability can be found even if not all of the factors are established. *Marshak v. Treadwell*, 595 F.3d 478, 490 (3d Cir. 2009) (quoting *Bowen Eng'g v. Estate of Reeve*, 799 F. Supp. 467, 487-88 (D.N.J. 1992)). As discussed in Plaintiffs' Original Motion, JONAH and JIFGA have the same co-founders and co-directors (Goldberg and Berk), occupy the same office space, and are reachable at the same phone number and through the same email addresses. Ex. 3, Pls.' Br. Supp. Mot. Enforce Permanent Inj. at 4.[18] Arguably, they even have the same name, as "JIFGA" is a recycled label that JONAH once used to market itself to a wider audience. *See* Ex. 52, June 8, 2015 Vol. 1 Trial Tr. 112:1-114:7. At the May 2018 Hearing, this Court permitted Plaintiffs to take discovery to help the Court determine whether, in addition to these facts, JIFGA continues JONAH's "general operations." Ex. 5, May 11, 2018 Hr'g Tr. 38:17-39:5 (referencing the standard set forth in *Marshak v. Treadwell*, 595 F.3d at 490). For all of the reasons discussed above, it plainly does.

There can no longer be any doubt that JIFGA picked up where JONAH left off. Evidence obtained through discovery demonstrates that through JIFGA, Defendants continue to carry out JONAH's core functions: promoting and facilitating commerce in Conversion Therapy, including by making referrals to individual counselors and experiential weekends, by pocketing referral fees, by acting as a middleman between clients and counselors, and through participation in the organization and administration of Conversion Therapy programs such as JIM. As counsel for Defendants put it, "getting an individual to engage in conversion therapy" was "the essence of what Mr. Goldberg was sued for." Ex. 4, Defs.' Opp'n Mot. Enforce

[18] Defendants' continuing use of "@jonahweb.org" email addresses is an independent violation of the Permanent Injunction (Ex. 2, Permanent Injunction ¶ 1) and breach of the Settlement Agreement.

Permanent Inj. at 11. JIFGA continues that essential activity. Even Defendants' collaborators have trouble keeping JONAH and JIFGA straight. *See, e.g.*, Ex. 53, JIFGA-00032757 (March 2016 email from JIFGA's administrative assistant, who writes that "Vazzo should probably start getting used to not saying JONAH anymore" in response to one of many emails in which Vazzo uses "JONAH" and "JIFGA" interchangeably).

In responding to Plaintiffs' Original Motion, Defendants pointed to JIFGA's self-serving mission statement, as well as to additional projects that JIFGA has undertaken, to differentiate JIFGA from JONAH. Ex. 4, Defs.' Opp'n Mot. Enforce Permanent Inj. at 2-7. Defendants' use of JIFGA to continue to carry out JONAH's core activities is not negated by the fact that Defendants also use JIFGA to promote their "ideals" through various initiatives such as the "Funding Morality" project. *Id.* at 4-7. Defendants also pointed to their partial compliance with the Order, such as the formal dissolution of JONAH, and the retirement of the JONAH website. *Id.* at 2. These acts—which were part of the smokescreen that allowed the Defendants to conceal, for a time, their defiance of the Permanent Injunction—do not excuse Defendants from their obligation to fully comply with this Court's orders and with their obligations under the Settlement Agreement.

As long as JIFGA remains open for business, Defendants have defied this Court's order that JONAH "cease any and all operations." Ex. 2, Permanent Injunction ¶ 1 (defining those operations to specifically include JONAH's "provision of referrals").

III. FRAUD ON THE COURT

In addition to violating the Permanent Injunction and breaching the Settlement Agreement, Defendants have also lied about the full extent of their improper conduct and manufactured an illusory cure of the breaches previously identified by Plaintiffs in an attempt to

mislead this Court and evade the consequences of their actions. This is separate and independent misconduct by Defendants, and constitutes criminal contempt of this Court and its orders.

New Jersey courts may initiate a summary contempt proceeding under *R.* 1:10-2 on information supplied by a litigant. *Dep't of Health v. Roselle*, 34 N.J. 331, 343 (1961). The purpose of such a contempt proceeding is "punitive in nature." *Essex Cty. Welfare Bd. v. Perkins*, 133 N.J. Super. 189, 195 (App. Div. 1975). Willful defiance of a court order that demonstrates an indifference to the court's lawful command is punishable as criminal contempt. *R.* 1:10-2; *Roselle*, 34 N.J. at 337. Making a false statement to a court, whether under oath or not, also qualifies as contempt. *Kerr S.S. Co. v. Westhoff*, 204 N.J. Super. 300, 309 (Law. Div. 1985), *aff'd as modified*, 215 N.J. Super. 301 (App. Div. 1987).

Defendants' opposition to Plaintiffs' Original Motion hinged on their false assertion that JIFGA did not and does not make referrals. Ex. 4, Defs.' Opp'n Mot. Enforce Permanent Inj. at 2 ("JIFGA does not provide any of the services that JONAH performed . . . it does not provide referrals."). Goldberg personally repeated this lie in his certification. Ex. 6, Goldberg Cert. ¶ 7 ("I have made no referrals to counselors for any reason since the settlement agreement was signed"). Morgan also supported this lie in his own certification. Ex. 54, Morgan Cert. ¶ 4 (claiming that Goldberg "referred no new clients to me after June 1, 2015").

Defendants admitted that they had accepted referral fees in connection with nine referral agreements inherited from JONAH, but falsely asserted to Plaintiffs and to this Court that this was the full extent of their violative conduct. *See* Ex. 55, January 30, 2018 Laffey letter; Ex. 4, Defs.' Opp'n Mot. Enforce Permanent Inj. at 7 ("Defendants admitted to receiving referral fees that used to go to JONAH . . . the actual referrals pre-dated the settlement"); Ex. 9, June 14, 2018 Laffey email. In addition, Defendants asserted that, for these nine JONAH-referred clients,

"none . . . are receiving treatment for same sex attraction." Ex. 4, Defs.' Opp'n Mot. Enforce Permanent Inj. at 8. Goldberg likewise claimed in his certification that he "did not know for certain what the clients were being treated for." Ex. 6, Goldberg Cert. ¶ 3. Finally, Defendants also claimed that the payments made in connection with the referral agreements that JIFGA inherited from JONAH had stopped in 2017. Ex. 10, May 11, 2018 Hr'g Tr. 19:10-16. Based on these false representations, Defendants proposed to refund the payments associated with each of these nine clients, portraying this as a complete cure. In June 2018, Defendants represented to Plaintiffs that they had done so. Ex. 9, June 14, 2018 Laffey email; Ex. 56, June 15, 2018 Laffey email.

Communications obtained in discovery laid bare each of these lies. JIFGA plainly does make referrals, as described extensively above, including to Morgan. JIFGA received fees in connection with those referrals, continuing well past 2017 (including in connection with the nine clients whose existence JIFGA admitted).[19] Client 8 was referred by JIFGA, not JONAH. *See* Ex. 13, JIFGA-00029581. Goldberg and JIFGA knew full well that the nine clients they identified were receiving Conversion Therapy.[20] So were other JIFGA-referred clients, whose existence Defendants sought to conceal. Vazzo and Morgan's monthly invoices to JIFGA

[19] In addition to referral fees received in connection with Client 8, described above, documents obtained in discovery revealed that JIFGA collected referral fees in 2018 in connection with Client 4. *See* Ex. 57, JIFGA-00070185; Ex. 17 at JIFGA-00058721, JIFGA-00060384. Payments from Morgan and Vazzo continued to flow to JIFGA (documenting the referral payments being made) up through the date on which discovery was provided to Plaintiffs. *See* Ex. 58, JIFGA-00070683; Ex. 59, JIFGA-00070960.

[20] *See, e.g.*, Ex. 60, JIFGA-00027527 (email to Goldberg: "I've been in/on an SA teleconference that has a focus on SSA. The vast majority of callers have either SSA themselves or crossed over that line. You might know the moderator, a fellow Jew in Toronto who has been working with Bobby Morgan (Houston) on SSA but has been sober for about 21 months so far thank G-od: [Client 4]." Goldberg responded, "yes I know [Client 4]"); Ex. 61, JIFGA-00001720 (Oct. 2015 email chain involving Client 9, Goldberg, and Elaine Berk. Client 9's original email discussed his same-sex attractions and related issues, and asked that Goldberg forward his email to the JONAH listserv. In a response later in the chain, Berk asked whether Client 9 had "discussed some of these issues with [his] therapist." Client 9 responded, "I have a meeting with Bobby Morgan next Wednesday morning on Skype."). *Id.*

reflect, at a minimum, eleven clients beyond the nine that were disclosed;[21] the total number of other referrals made by JIFGA cannot be conclusively determined from the documents obtained by Plaintiffs. And it appears that Defendants' purported refund amounts, already deficient to the extent they were limited to only nine of JIFGA's many referred clients, did not even reflect the full amounts owed. *See* Ex. 9, June 14, 2018 Laffey email; Ex. 56, June 15, 2018 Laffey email.

The evidence of Defendants' contempt for this Court and its orders is abundant and supports the initiation of a summary contempt proceeding to determine the appropriate punishment, up to and including imprisonment.

RELIEF REQUESTED

Plaintiffs respectfully request that the Court find that Defendants have breached the Settlement Agreement, and that their breaches have not been and cannot be cured; that Defendants have violated the Permanent Injunction; that JIFGA is a successor in interest to and a mere continuation of JONAH; and that Defendants are in default with respect to the unpaid portion of the Fee Award. In light of Defendants' persistent and energetic activities in violation of this Court's orders and their agreements, Plaintiffs ask that the Court order that JIFGA shall be subject to the Permanent Injunction in all respects, the dissolution of JIFGA, the termination of all communications channels (whether phone, fax, email, social media, or otherwise) in JIFGA's control and use for JIFGA's operations; that Goldberg and Berk be enjoined from serving as directors or officers of or incorporating any tax-exempt entity incorporated in or having operations in New Jersey; enter judgment in the amount of the "Breach Damages" and "Berk Breach Damages," as defined in the Settlement Agreement; that Defendants disgorge in

[21] Vazzo's additional clients: Ex. 17 at JIFGA-00032706 (B.A.), JIFGA-00039945 (J.H.), JIFGA-00039945 (J.H.); Ex. 62 at JIFGA-00026019 (M.J.). Morgan's additional clients: Ex. 26 at JIFGA-00065749 (N.S.), JIFGA-00065749 (M.F.), JIFGA-00065749 (J.C.), JIFGA-00065749 (J.C.), JIFGA-00066859 (I.M.), JIFGA-00066976 (E.F.), JIFGA-00068559 (S.M.).

full all moneys received in connection with their facilitation of Conversion Therapy commerce; and award counsel fees and costs to Plaintiffs pursuant to *R.* 1:10-3.[22]

Plaintiffs further respectfully request that the Court institute summary proceedings for criminal contempt pursuant to *R.* 1:10-2 to ascertain the full extent of Defendants' contempt and to determine the appropriate remedy.

Dated: March 27, 2019

Respectfully submitted,

/s/ Bruce D. Greenberg

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[22] Should the Court grant this request, Plaintiffs will submit a certification setting forth their attorneys' time and expenses.