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Teresa L. Mendoza (*pro hac vice* admission pending)  
FREEDOM OF CONSCIENCE DEFENSE FUND  
P.O. Box 9520  
Rancho Santa Fe, CA 92067  
Tel: (858) 759-9948; Fax: (858) 759-9938

Attorneys for Defendants

Michael Ferguson, Benjamin Unger, Sheldon	)	SUPERIOR COURT OF NEW JERSEY
Bruck, Chaim Levin, Jo Bruck, Bella Levin,	)	LAW DIVISION - HUDSON COUNTY
	)	DOCKET NO. L-5473-12
Plaintiffs,	)	
	)	Civil Action
v.	)	
	)	<b>CERTIFICATION OF ARTHUR</b>
JONAH (Jews Offering New Alternatives for	)	<b>GOLDBERG IN SUPPORT OF HIS</b>
Healing f/k/a Jews Offering New Alternatives	)	<b>MOTION TO QUASH PLAINTIFFS'</b>
to Homosexuality), Arthur Goldberg, Alan	)	<b>SUBPOENA DUCES TECUM SERVED</b>
Downing, Alan Downing Life Coaching, LLC,	)	<b>ON DAVID ROSENTHAL AND</b>
	)	<b>SHAMASH LISTSERV MAILING LIST</b>
Defendants.	)	<b>MANAGER</b>
_____	)	

I, Arthur Goldberg, certify:

1. I am one of the Co-Founders and Co-Directors of Jews Offering New Alternatives for Healing (JONAH). This is a nonprofit organization that assists people who desire help in overcoming unwanted same-sex sexual attractions. Over its dozen years in existence, JONAH has helped hundreds of people realize their dreams of getting married and having families of their own or at least experiencing a significant lessening of their unwanted same-sex attractions.

2. JONAH has never been sued prior to this action. None of the plaintiffs complained to JONAH while they were seeking its services and all of them left JONAH's program on good terms. Nonetheless, they sued JONAH years after leaving its program and even though they never completed the program.

3. I have been named as one of the defendants in this action. As such, I have personal knowledge of the facts set forth below and could and would competently testify thereto if called upon to do so as a witness.

4. Attached to his certification as Exhibit "1" is a true and correct copy of the subpoena duces tecum (SDT) that plaintiffs served on David Rosenthal in New York for the purposes of this action.

5. Attached to this certification as Exhibit "2" is a true and correct copy of the SDT that plaintiffs served on Shamash Listserv Mailing Manager in New York for the purposes of this action.

6. Among the documents that the plaintiffs are seeking to be produced are all of the e-mails sent while Shamash Listserv provided services to JONAH during the ten year period from 2001 and 2010. This includes thousands of private e-mails by hundreds of people who are not parties to this lawsuit, including persons who were struggling to overcome unwanted same-sex attractions.

7. Attached as Exhibit "3" is a copy of the rules of the JONAH e-mail list serve which promises them privacy and anonymity due to the sensitivity of the subject matter addressed on it.

8. Every potential member of the JONAH list serve was prescreened by the Jonah list coordinators for approval and typically were also interviewed by me. Each of them was promised confidentiality as a condition of their participation in the list serve. This confidentiality is essential

because members of the list serve are generally discussing issues relating to sexual orientation which are, by their very nature, considered sensitive and private matters. The supportive and therapeutic purpose of the list serve communications would be destroyed if the confidentiality of the participants was violated.

9. Many participants specifically raised the issue of confidentiality of the listserv and would not have joined the listserv if they were not assured of absolute confidentiality.

10. Besides harming the interests of hundreds of JONAH's list serve participants, disclosure of these confidential list serve communications would directly and irreparably harm the ability of JONAH to fulfill its mission. This work cannot be done and JONAH's mission cannot be served unless we can maintain the trust and confidence of our clients and potential clients as to their most intimate and private matters.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

Dated: April 9, 2013

  
\_\_\_\_\_  
Arthur Goldberg

**Exhibit 1**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

Michael Ferguson, Benjamin Unger, Sheldon  
Bruck, Chaim Levin, Jo Bruck, Bella Levin,

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.

Docket No: L-5473-12

(From an action pending in the Superior  
Court of New Jersey, Hudson County, Law  
Division)

**SUBPOENA DUCES TECUM**

THE PEOPLE OF THE STATE OF NEW YORK

To: David Rosenthal  
45 Salem Road  
Roslyn Heights, NY 11577

WE COMMAND YOU, that all business and excuses being laid aside, to appear and attend before a person authorized to give oaths on May 1, 2013 at 10:00 a.m., at One Liberty Plaza, New York, New York, 10006, and at any recessed or adjourned date to give testimony in this action, as described in Exhibit 1.

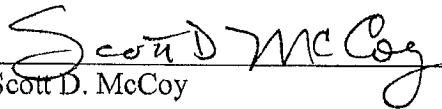
YOU ARE FURTHER COMMANDED TO bring with you and to produce at that time (and not sooner) the books, papers, documents and other tangible things identified in the attached Schedule A to Exhibit 1.

This action is pending in the Superior Court of New Jersey, Hudson County, Law Division, entitled *Ferguson, et al. v. JONAH, et al.*, Docket No. L-5473-12. The parties and their respective counsel of record in this action are identified in the attached Exhibit 2.

Failure to comply with this subpoena is punishable as a contempt of Court and shall make you liable to the person on whose behalf this subpoena was issued for a penalty not to exceed fifty dollars and all damages sustained by reason of your failure to comply.

Dated: New York, NY  
April 3, 2013

CLEARY GOTTlieb STEEN & HAMILTON LLP

By:   
Scott D. McCoy

One Liberty Plaza  
New York, NY 10006  
Telephone: (212) 225-2000  
Facsimile: (212) 225-3999  
E-mail: smccoy@cgsh.com

*Attorneys for Plaintiffs*  
*Michael Ferguson, Benjamin Unger, Sheldon Bruck,*  
*Chaim Levin, Jo Bruck, and Bella Levin*

## **Exhibit 1**

**LITE DEPALMA GREENBERG, LLC**

Allyn Z. Lite  
Jeffrey A. Shooman  
Two Gateway Center – Suite 1201  
Newark, NJ 07102  
(973) 623-3000

**SOUTHERN POVERTY LAW CENTER**

Morris Dees (*pro hac vice*)  
Christine P. Sun (*pro hac vice*)  
Samuel E. Wolfe (*pro hac vice*)  
Alesdair H. Ittelson (*pro hac vice*)  
400 Washington Ave.  
Montgomery, AL 36104  
(334) 956-8200

**CLEARY GOTTLIEB STEEN & HAMILTON LLP**

James L. Bromley (*pro hac vice*)  
Scott D. McCoy (*pro hac vice*)  
One Liberty Plaza  
New York, NY 10006  
(212) 225-2000

*Attorneys for Plaintiffs*

Michael Ferguson, Benjamin Unger, Sheldon  
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Plaintiffs,

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JONAH (Jews Offering New Alternatives for  
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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

SUBPOENA DUCES TECUM

**The State of New Jersey, to:**

**David Rosenthal  
45 Salem Road  
Roslyn Heights, NY 11577**



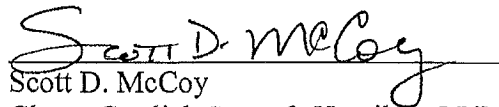
YOU ARE HEREBY COMMANDED to appear in person at One Liberty Plaza, New York, New York, 10006 on May 1, 2013 at 10:00 a.m. and there to testify as a witness in the above-captioned matter.

YOU ARE ALSO COMMANDED to bring with you and to produce at that time (and not sooner) the books, papers, documents and other tangible things identified in Schedule A attached hereto.

If you are notified that a motion to quash the subpoena has been filed, you shall not produce or release the subpoenaed evidence until ordered to do so by the court or the release is consented to by all parties to the action.

Failure to produce according to the command of this Subpoena shall subject you to such penalties as are provided by law.

Dated: April 3, 2013

A handwritten signature in cursive script that reads "Scott D. McCoy". The signature is written in black ink and is positioned above a horizontal line.

Scott D. McCoy  
Cleary Gottlieb Steen & Hamilton LLP  
Attorneys for Plaintiffs

SCHEDULE A

## DEFINITIONS

The following definitions apply to each of the requests for documents set forth herein and are deemed to be incorporated into each of these requests.

- a.     “Any and all documents” means every document within Your possession, custody or control.
  
- b.     “Communication” means all verbal and written means of transmission or exchange of information, including but not limited to statements, admissions, denials, inquiries, discussions, conversations, negotiations, agreements, contracts, understandings and meetings.
  
- c.     “Defendant” means JONAH, Inc. a/k/a JONAH (Jews Offering New Alternatives for Healing f/k/a Jews Offering New Alternatives to Homosexuality), Arthur Goldberg, Alan Downing, or Alan Downing Life Coaching LLC.
  
- d.     “Document” or “documents” means all materials, as defined in R. 4:18-1(a), including without limitation all written, recorded, printed, typed, transcribed, filmed, digitized, or graphic matter, and all other tangible things and media upon which any handwriting, typing, printing, drawing, representation, electrostatic, or other copy, sound, or video recording, magnetic, or electrical impulse, visual reproduction, or communication is recorded, reproduced, or represented. This includes books, records, correspondence, reports, memoranda, electronic mail (i.e., e-mail), instant messages, social networking site messages and communications, text messages, all other forms of electronic communication, contracts, tables, tabulations, graphs, charts, diagrams, plans, schedules, appointment books, calendars, diaries, time sheets, reports, studies, analyses, drafts, telegrams, teletype or telecopy messages, archived voicemail, files, telephone logs and messages, checks, microfilms, microfiche, pictures, photographs, printouts, pamphlets, handouts, worksheets, electronic data compilations, tapes, diskettes, floppy disks, hard disks, optical disks, backup tapes, drives, removable media, typed or handwritten notes

(including notes of sessions) minutes, or transcripts of proceedings. Documents shall include originals and all non-identical copies (whether different from the original because of notes made in or attached to such copy, or otherwise), and other data or data compilations of whatever nature stored in any medium (including those from which information can be obtained or translated if necessary into a reasonably useable form), and any preliminary versions, drafts, or revisions of any of the foregoing. This term is further intended to include any computer records reflecting earlier drafts, revisions, addenda, amendments, and the like with regard to any responsive document. If documents are produced in electronic format, please include an electronic searchable objective index for all fields.

e. "Including" means including, but not limited to.

f. "Person" means any natural person, association, business, group, organization, legal entity, government entity, or other entity.

g. "Plaintiff" means Michael Ferguson, Benjamin Unger, Sheldon Bruck, Chaim Levin, Jo Bruck, or Bella Levin.

h. "Regarding" or "Relating to" any given subject means all documents which assess, concern, constitute, contain, describe, discuss, embody, evidence, identify, record, reflect, regard, show, state, or refer or relate, directly or indirectly, in any way, to the subject matter identified.

i. "You" or "Your" as used herein means the person to whom these document requests are addressed, including any affiliates, employees, partners, representatives, or agents of the person to whom these document requests are addressed.

## INSTRUCTIONS

a. Whenever necessary to bring within the scope of this Request documents that might otherwise be construed to be outside its scope:

- i. "and" and "or" shall be construed conjunctively and disjunctively;
- ii. "all" and "each" shall be construed as "all and each;"
- iii. the use of the singular form of any word shall include the plural and vice versa;
- iv. the use of a verb in any tense shall be construed as the use of that verb in all other tenses; and
- v. the use of the feminine, masculine or neuter genders shall include all genders.

b. No paragraph herein shall be construed with reference to any other paragraph for the purpose of limitation.

c. Unless otherwise indicated, the relevant time period for purposes of these Requests is between January 1, 1998 and the date trial commences.

d. All documents shall be produced in the manner in which they are maintained in the usual course of business. A request for a document shall be deemed to include a request for any and all file folders or binders within which the document was contained, transmittal sheets, cover letters, exhibits, enclosures, or attachments to the document in addition to the document itself.

e. All documents requested herein shall be produced in their entirety, along with any attachments, drafts, and non-identical copies, including copies that differ due to handwritten notes or other notes or markings.

f. Where a requested document is in a language other than English, in whole or in part, and an English or other translation(s) exists in whole or part, produce both the original non-English document and the English translation(s).

g. Provide all Electronically Stored Information (“ESI”) in the forms and manner specified in the attached ESI Production Specifications (Schedule B).

h. In the event respondent withholds any document called for by this Request on the basis of a claim of privilege or other right of nondisclosure, respondent shall provide, not later than the date responses to these requests are due, a privilege log separately identifying: (i) each document withheld; (ii) the type of document withheld (memorandum, letter, report, e-mail, etc.); (iii) the date of its creation, (iv) its subject matter; (v) its author; (vi) all persons who drafted, sent, received or were to receive any copy or version of it; and (vii) the basis for withholding the document.

i. In the event that any document called for by this Request has been destroyed or discarded, respondent shall provide, not later than the date responses to these requests are due, a written document identifying the document so lost, discarded, or destroyed as completely as possible, providing at least the following information: (i) the type of document withheld; (ii) any addressor and addressee; (iii) any indicated or blind copy recipients; (iv) the document’s date, subject matter, number of pages, and attachments or appendices; (v) all persons to whom the document was distributed, shown or explained; (vi) the document’s date of destruction or discard, manner of destruction or discard, and reason for destruction or discard; and (vii) the persons authorizing and carrying out such destruction or discard.

j. If objection is made to any of the Requests, the response shall state whether documents are being withheld from inspection and production on the basis of such

objection, or whether inspection and production of the responsive documents will occur notwithstanding such objection.

k. If there are no documents responsive to any particular request, the response shall state so in writing.

l. This Request is continuing in nature. You are required promptly to serve supplementary responses and produce additional documents if You obtain further or different information.

## DOCUMENTS REQUESTED

- Request No. 1: The full archives of the listserv identified as jonah@listserv.shamash.org or as jonah@shamash.org.
- Request No. 2: The full archives of any other listserv created, co-created, owned, managed, or administered by or on behalf of any Defendant or by any user of an account created or co-owned by or on behalf of any Defendant.
- Request No. 3: Any and all postings made to any Shamash.org listserv by any Defendant or Plaintiff other than those covered by requests 1 and 2.
- Request No. 4: Any and all documents or communications relating to any Defendant.
- Request No. 5: Any and all communications regarding this lawsuit.
- Request No. 6: Documents sufficient to show Your hosting, document retention, and archiving policies and practices.



SCHEDULE B

## ESI Production Specifications

### 1. FILE FORMATS

- 1.1 Each document shall be provided with all of its attachments with family relationships indicated using the Beg\_Family and End\_Family metadata fields described in 2.1 below.
- 1.2 All documents shall be produced in standard single-page Group IV TIFF format, *except* that the following shall be produced in native format:
  - (a) any audio, audiovisual, video, and any other file that is unreadable or has limited accessibility in the Group IV TIFF format; and
  - (b) Microsoft Excel files and other spreadsheets to the extent such files do not require redactions.
- 1.3 The parties shall meet and confer in good faith to determine a reasonable manner for producing the relevant information to the extent a response to discovery requires production of information contained in a database or any other format not reasonably producible in TIFF or native format.
- 1.4 Documents produced in TIFF format shall be produced with Bates numbers stamped on each page. Bates numbers shall be of constant length, be sequential across a document and its attachments, be unique across the entire production, and contain no special characters except dashes.
- 1.5 Any native files that are produced shall also be produced with a one-page Bates-numbered TIFF image slip-sheet stating "Document has been produced in native format."
- 1.6 The responding party will make reasonable efforts to ensure that documents produced in TIFF format are readable. For good cause, the requesting party may request that documents originally produced in TIFF format be re-produced in native format, which request shall not unreasonably be denied. The requesting party shall identify documents for re-production by Bates number and provide an explanation of the need for native files.
- 1.7 The responding party will make reasonable efforts to process fully all documents for production. For any documents not fully processed, the responding party shall produce a TIFF image with the reason the document was not processed.
- 1.8 A Concordance-compatible image load file shall be included with each production.
- 1.9 Documents produced in the Group IV TIFF format shall be produced such that comments, notes, speaker notes, track changes, hidden rows, hidden columns, and any other hidden or invisible text are displayed.
- 1.10 Any redactions applied to documents shall contain text indicating the basis for redaction (e.g., "A/C Privilege").

## 2. METADATA

2.1 For each document, the responding party shall provide the metadata specified below, to the extent they can reasonably be extracted or otherwise provided, in a delimited text file.

Metadata Field	Description	Examples
<b>Production Metadata Fields for All Documents</b>		
Beg_Doc	Bates number for the first page of the document	[Bates Prefix]-00000001
End_Doc	Bates number for the last page of the document	[Bates Prefix]-00000010
Beg_Family	Bates number for the first page of the parent document (i.e., an email or other document containing attachments)	[Bates Prefix]-00000001
End_Family	Bates number of the last page of the last attachment to the parent document	[Bates Prefix]-00000015
Confidentiality Designation	The confidentiality designation of the document, if any	Confidential, Highly Confidential
Redaction	For documents containing redactions, the basis for such redactions	Privileged, Personal, Proprietary
Exception	For documents not processed, the reason for the document not being processed	Encrypted, Corrupted
Hash Value	The MD5 or SHA-1 hash value for the item	
Native File Link	File path to the native file on the production media if applicable (a.k.a. production file path)	Prefix001\NATIVES\000\Prefix00000001.msg
Custodian	Name of the custodian or custodians who possessed this item or exact duplicates thereof.	Jones, Barbara
Document Type	Type of item being produced	Email, Email Attachment, Electronic Document, Hardcopy Document
Device	Device from which the document was collected	Laptop hard drive, Desktop hard drive, Blackberry, shared drive, Exchange server
File Path	Original location of the file when collected from the source custodian or system	C:\My Documents\Deal Documents
<b>Additional Document Metadata Fields for Hardcopy Documents</b>		
Location	Original location of the document	Office, Home office, Secretary's office
Box	Any label on the box or filing cabinet where the document was originally located	ABC Corp. Acquisition
Folder	Any label on the folder where the document was originally located	Correspondence, Board Materials

Metadata Field	Description	Examples
<b>Additional Document Metadata Fields for Electronic Documents and Attachments</b>		
Original file name	Original name of the file when collected from the source custodian or system	example.doc, file.xls
File Type	File type or application used to create the underlying native file	Excel, Word, PowerPoint, MP3
Master Date	For email attachments, the date of the parent email	MM/DD/YYYY
Title	Title of the document	Purchase Agreement
Author	Author of the document	Barbara Jones
Creation Date	Date the item was created	MM/DD/YYYY
Modified Date	Date the item was last modified	MM/DD/YYYY
<b>Additional Document Metadata Fields for Email and Other Electronic Communications</b>		
Date Sent	Date and time the email message was sent, using a 24-hour clock, in Greenwich Mean Time (GMT)	MM/DD/YYYY HH:MM:SS
Date Received	Date and time the email message was received, using a 24-hour clock, in Greenwich Mean Time (GMT)	MM/DD/YYYY HH:MM:SS
To	Addressee(s) of the email message	Barbara Jones barbarajones@co.com
From	Name and email address of the person who sent the email message	Barbara Jones barbarajones@co.com
CC	Recipient (s) included in the "cc" line of the email message	Barbara Jones barbarajones@co.com
BCC	Recipient(s) included in the "bcc" line of the email message	Barbara Jones barbarajones@co.com
Subject	Subject line of the email message	FW: your message
Email Folder	The name of the email folder in which the email message was located	Inbox, Sent, Deal Documents

### 3. EXTRACTED TEXT

- 3.1 For each document, the responding party shall provide a text file containing the text extracted directly from the native electronic version of that document, unless the document was redacted, is an image file, is a scanned hardcopy document, or is in another format from which text cannot be reasonably extracted. In these instances, provide a text file created using optical character recognition (OCR) to the extent reasonably practicable.
- 3.2 The text file name containing the extracted or OCR text should be named with the Beg\_Doc number of the document.

4. **DEDUPLICATION**

- 4.1 A document is an exact duplicate of another document only if it and all its family members have the same MD5 or SHA-1 hash values as the other document and its family members.
- 4.2 If a document and its exact duplicates are associated with the same custodian, the responding party shall withhold the exact duplicates from production.
- 4.3 If a document and its exact duplicates are associated with different custodians, the responding party shall withhold the exact duplicates from production and provide a metadata field for the produced document indicating the custodians for whom duplicates were withheld.

**PROOF OF SERVICE**

I, \_\_\_\_\_, being over the age of 18, served the attached subpoena by delivering a copy to \_\_\_\_\_ at \_\_\_\_\_ and by handing him/her the fee of \$2.00 for one day's attendance and, if applicable, a mileage fee of \$\_\_\_\_\_, as allowed by law.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated \_\_\_\_\_

## Exhibit 2

Counsel of Record

<p>LITE DEPALMA GREENBERG, LLC Allyn Z. Lite, Esq. Jeffrey A. Shooman, Esq. Two Gateway Center – Suite 1201 Newark, NJ 07102 (973) 623-3000</p> <p>SOUTHERN POVERTY LAW CENTER Morris Dees, Esq. Christine P. Sun, Esq. Samuel E. Wolfe, Esq. Alesdair H. Ittelson, Esq. 400 Washington Ave. Montgomery, AL 36104 (334) 956-8200</p> <p>CLEARY GOTTLIEB STEEN &amp; HAMILTON LLP James L. Bromley, Esq. Scott D. McCoy, Esq. One Liberty Plaza New York, NY 10006 (212) 225-2000</p> <p><i>Attorneys for Plaintiffs</i> <i>Michael Ferguson, Benjamin Unger, Sheldon</i> <i>Bruck, Chaim Levin, Jo Bruck, and Bella Levin</i></p>	<p>MESSINA LAW FIRM P.C. Michael P. Laffey, Esq. 961 Holmdel Road Holmdel, NJ 07733-2103</p> <p>FREEDOM OF CONSCIENCE DEFENSE FUND Charles S. LiMandri, Esq. P.O. Box 9520 Rancho Santa Fe, CA 92067</p> <p><i>Attorneys for Defendants</i> <i>JONAH (Jews Offering New Alternatives for</i> <i>Healing f/k/a Jews Offering New Alternatives</i> <i>to Homosexuality), Arthur Goldberg, Alan</i> <i>Downing, and Alan Downing Life Coaching</i> <i>LLC</i></p>
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**EXHIBIT 2**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

Michael Ferguson, Benjamin Unger, Sheldon  
Bruck, Chaim Levin, Jo Bruck, Bella Levin,

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.

Docket No: L-5473-12

(From an action pending in the Superior  
Court of New Jersey, Hudson County, Law  
Division)

**SUBPOENA DUCES TECUM**

THE PEOPLE OF THE STATE OF NEW YORK

To: Shamash Listserv Mailing List Manager  
MyJewishLearning, Inc.  
377 Fifth Ave., 2nd Floor  
New York, NY 10016

WE COMMAND YOU, that all business and excuses being laid aside, to appear and attend before a person authorized to give oaths on May 1, 2013 at 10:00 a.m., at 450 Park Avenue, 28th floor, New York, New York, 10022, and at any recessed or adjourned date to give testimony in this action, as described in Exhibit 1.

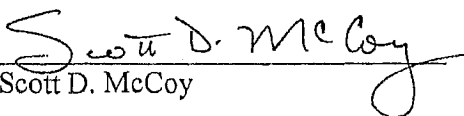
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Failure to comply with this subpoena is punishable as a contempt of Court and shall make you liable to the person on whose behalf this subpoena was issued for a penalty not to exceed fifty dollars and all damages sustained by reason of your failure to comply.

Dated: New York, NY  
March 27, 2013

CLEARY GOTTlieb STEEN & HAMILTON LLP

By:   
Scott D. McCoy

One Liberty Plaza  
New York, NY 10006  
Telephone: (212) 225-2000  
Facsimile: (212) 225-3999  
E-mail: smccoy@cgsh.com

*Attorneys for Plaintiffs*  
*Michael Ferguson, Benjamin Unger, Sheldon Bruck,*  
*Chaim Levin, Jo Bruck, and Bella Levin*

## Exhibit 1

**LITE DEPALMA GREENBERG, LLC**

Allyn Z. Lite  
Jeffrey A. Shooman  
Two Gateway Center – Suite 1201  
Newark, NJ 07102  
(973) 623-3000

**SOUTHERN POVERTY LAW CENTER**

Morris Dees (*pro hac vice*)  
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Alesdair H. Ittelson (*pro hac vice*)  
400 Washington Ave.  
Montgomery, AL 36104  
(334) 956-8200

**CLEARY GOTTlieb STEEN & HAMILTON LLP**

James L. Bromley (*pro hac vice*)  
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One Liberty Plaza  
New York, NY 10006  
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*Attorneys for Plaintiffs*

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Defendants.

SUPERIOR COURT OF NEW JERSEY  
HUDSON COUNTY, LAW DIVISION

Docket No: L-5473-12

CIVIL ACTION

SUBPOENA DUCES TECUM

**The State of New Jersey, to:**

**Shamash Listserv Mailing List Manager  
MyJewishLearning, Inc.  
377 Fifth Ave., 2nd Floor  
New York, NY 10016**

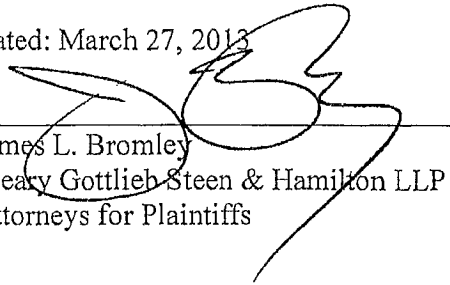
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Failure to produce according to the command of this Subpoena shall subject you to such penalties as are provided by law.

Dated: March 27, 2013



James L. Bromley  
Cleary Gottlieb Steen & Hamilton LLP  
Attorneys for Plaintiffs

SCHEDULE A

## DEFINITIONS

The following definitions apply to each of the requests for documents set forth herein and are deemed to be incorporated into each of these requests.

- a.     “Any and all documents” means every document within Your possession, custody or control.
  
- b.     “Communication” means all verbal and written means of transmission or exchange of information, including but not limited to statements, admissions, denials, inquiries, discussions, conversations, negotiations, agreements, contracts, understandings and meetings.
  
- c.     “Defendant” means JONAH, Inc. a/k/a JONAH (Jews Offering New Alternatives for Healing f/k/a Jews Offering New Alternatives to Homosexuality), Arthur Goldberg, Alan Downing, or Alan Downing Life Coaching LLC.
  
- d.     “Document” or “documents” means all materials, as defined in R. 4:18-1(a), including without limitation all written, recorded, printed, typed, transcribed, filmed, digitized, or graphic matter, and all other tangible things and media upon which any handwriting, typing, printing, drawing, representation, electrostatic, or other copy, sound, or video recording, magnetic, or electrical impulse, visual reproduction, or communication is recorded, reproduced, or represented. This includes books, records, correspondence, reports, memoranda, electronic mail (i.e., e-mail), instant messages, social networking site messages and communications, text messages, all other forms of electronic communication, contracts, tables, tabulations, graphs, charts, diagrams, plans, schedules, appointment books, calendars, diaries, time sheets, reports, studies, analyses, drafts, telegrams, teletype or telecopy messages, archived voicemail, files, telephone logs and messages, checks, microfilms, microfiche, pictures, photographs, printouts, pamphlets, handouts, worksheets, electronic data compilations, tapes, diskettes, floppy disks, hard disks, optical disks, backup tapes, drives, removable media, typed or handwritten notes



(including notes of sessions) minutes, or transcripts of proceedings. Documents shall include originals and all non-identical copies (whether different from the original because of notes made in or attached to such copy, or otherwise), and other data or data compilations of whatever nature stored in any medium (including those from which information can be obtained or translated if necessary into a reasonably useable form), and any preliminary versions, drafts, or revisions of any of the foregoing. This term is further intended to include any computer records reflecting earlier drafts, revisions, addenda, amendments, and the like with regard to any responsive document. If documents are produced in electronic format, please include an electronic searchable objective index for all fields.

e. “Including” means including, but not limited to.

f. “Person” means any natural person, association, business, group, organization, legal entity, government entity, or other entity.

g. “Plaintiff” means Michael Ferguson, Benjamin Unger, Sheldon Bruck, Chaim Levin, Jo Bruck, or Bella Levin.

h. “Regarding” or “Relating to” any given subject means all documents which assess, concern, constitute, contain, describe, discuss, embody, evidence, identify, record, reflect, regard, show, state, or refer or relate, directly or indirectly, in any way, to the subject matter identified.

i. “You” or “Your” as used herein means the person to whom these document requests are addressed, including any affiliates, employees, partners, representatives, or agents of the person to whom these document requests are addressed.

## INSTRUCTIONS

- a. Whenever necessary to bring within the scope of this Request documents that might otherwise be construed to be outside its scope:
- i. "and" and "or" shall be construed conjunctively and disjunctively;
  - ii. "all" and "each" shall be construed as "all and each;"
  - iii. the use of the singular form of any word shall include the plural and vice versa;
  - iv. the use of a verb in any tense shall be construed as the use of that verb in all other tenses; and
  - v. the use of the feminine, masculine or neuter genders shall include all genders.
- b. No paragraph herein shall be construed with reference to any other paragraph for the purpose of limitation.
- c. Unless otherwise indicated, the relevant time period for purposes of these Requests is between January 1, 1998 and the date trial commences.
- d. All documents shall be produced in the manner in which they are maintained in the usual course of business. A request for a document shall be deemed to include a request for any and all file folders or binders within which the document was contained, transmittal sheets, cover letters, exhibits, enclosures, or attachments to the document in addition to the document itself.
- e. All documents requested herein shall be produced in their entirety, along with any attachments, drafts, and non-identical copies, including copies that differ due to handwritten notes or other notes or markings.

f. Where a requested document is in a language other than English, in whole or in part, and an English or other translation(s) exists in whole or part, produce both the original non-English document and the English translation(s).

g. Provide all Electronically Stored Information ("ESI") in the forms and manner specified in the attached ESI Production Specifications (Schedule B).

h. In the event respondent withholds any document called for by this Request on the basis of a claim of privilege or other right of nondisclosure, respondent shall provide, not later than the date responses to these requests are due, a privilege log separately identifying: (i) each document withheld; (ii) the type of document withheld (memorandum, letter, report, e-mail, etc.); (iii) the date of its creation, (iv) its subject matter; (v) its author; (vi) all persons who drafted, sent, received or were to receive any copy or version of it; and (vii) the basis for withholding the document.

i. In the event that any document called for by this Request has been destroyed or discarded, respondent shall provide, not later than the date responses to these requests are due, a written document identifying the document so lost, discarded, or destroyed as completely as possible, providing at least the following information: (i) the type of document withheld; (ii) any addressor and addressee; (iii) any indicated or blind copy recipients; (iv) the document's date, subject matter, number of pages, and attachments or appendices; (v) all persons to whom the document was distributed, shown or explained; (vi) the document's date of destruction or discard, manner of destruction or discard, and reason for destruction or discard; and (vii) the persons authorizing and carrying out such destruction or discard.

j. If objection is made to any of the Requests, the response shall state whether documents are being withheld from inspection and production on the basis of such

objection, or whether inspection and production of the responsive documents will occur notwithstanding such objection.

k. If there are no documents responsive to any particular request, the response shall state so in writing.

l. This Request is continuing in nature. You are required promptly to serve supplementary responses and produce additional documents if You obtain further or different information.

## DOCUMENTS REQUESTED

- Request No. 1: The full archives of the listserv identified as jonah@listserv.shamash.org or as jonah@shamash.org.
- Request No. 2: The full archives of any other listserv created, co-created, owned, managed, or administered by or on behalf of any Defendant or by any user of an account created or co-owned by or on behalf of any Defendant.
- Request No. 3: Any and all postings made to any Shamash.org listserv by any Defendant or Plaintiff other than those covered by requests 1 and 2.
- Request No. 4: Any and all documents or communications relating to any Defendant.
- Request No. 5: Any and all communications regarding this lawsuit.
- Request No. 6: Documents sufficient to show Your hosting, document retention, and archiving policies and practices.

SCHEDULE B

## ESI Production Specifications

### 1. FILE FORMATS

- 1.1 Each document shall be provided with all of its attachments with family relationships indicated using the Beg\_Family and End\_Family metadata fields described in 2.1 below.
- 1.2 All documents shall be produced in standard single-page Group IV TIFF format, *except* that the following shall be produced in native format:
  - (a) any audio, audiovisual, video, and any other file that is unreadable or has limited accessibility in the Group IV TIFF format; and
  - (b) Microsoft Excel files and other spreadsheets to the extent such files do not require redactions.
- 1.3 The parties shall meet and confer in good faith to determine a reasonable manner for producing the relevant information to the extent a response to discovery requires production of information contained in a database or any other format not reasonably producible in TIFF or native format.
- 1.4 Documents produced in TIFF format shall be produced with Bates numbers stamped on each page. Bates numbers shall be of constant length, be sequential across a document and its attachments, be unique across the entire production, and contain no special characters except dashes.
- 1.5 Any native files that are produced shall also be produced with a one-page Bates-numbered TIFF image slip-sheet stating "Document has been produced in native format."
- 1.6 The responding party will make reasonable efforts to ensure that documents produced in TIFF format are readable. For good cause, the requesting party may request that documents originally produced in TIFF format be re-produced in native format, which request shall not unreasonably be denied. The requesting party shall identify documents for re-production by Bates number and provide an explanation of the need for native files.
- 1.7 The responding party will make reasonable efforts to process fully all documents for production. For any documents not fully processed, the responding party shall produce a TIFF image with the reason the document was not processed.
- 1.8 A Concordance-compatible image load file shall be included with each production.
- 1.9 Documents produced in the Group IV TIFF format shall be produced such that comments, notes, speaker notes, track changes, hidden rows, hidden columns, and any other hidden or invisible text are displayed.
- 1.10 Any redactions applied to documents shall contain text indicating the basis for redaction (e.g., "A/C Privilege").

## 2. METADATA

2.1 For each document, the responding party shall provide the metadata specified below, to the extent they can reasonably be extracted or otherwise provided, in a delimited text file.

Metadata Field	Description	Examples
<b>Production Metadata Fields for All Documents</b>		
Beg_Doc	Bates number for the first page of the document	[Bates Prefix]-00000001
End_Doc	Bates number for the last page of the document	[Bates Prefix]-00000010
Beg_Family	Bates number for the first page of the parent document (i.e., an email or other document containing attachments)	[Bates Prefix]-00000001
End_Family	Bates number of the last page of the last attachment to the parent document	[Bates Prefix]-00000015
Confidentiality Designation	The confidentiality designation of the document, if any	Confidential, Highly Confidential
Redaction	For documents containing redactions, the basis for such redactions	Privileged, Personal, Proprietary
Exception	For documents not processed, the reason for the document not being processed	Encrypted, Corrupted
Hash Value	The MD5 or SHA-1 hash value for the item	
Native File Link	File path to the native file on the production media if applicable (a.k.a. production file path)	Prefix001\NATIVES\000\ Prefix00000001.msg
Custodian	Name of the custodian or custodians who possessed this item or exact duplicates thereof.	Jones, Barbara
Document Type	Type of item being produced	Email, Email Attachment, Electronic Document, Hardcopy Document
Device	Device from which the document was collected	Laptop hard drive, Desktop hard drive, Blackberry, shared drive, Exchange server
File Path	Original location of the file when collected from the source custodian or system	C:\My Documents\Deal Documents
<b>Additional Document Metadata Fields for Hardcopy Documents</b>		
Location	Original location of the document	Office, Home office, Secretary's office
Box	Any label on the box or filing cabinet where the document was originally located	ABC Corp. Acquisition
Folder	Any label on the folder where the document was originally located	Correspondence, Board Materials



Metadata Field	Description	Examples
<b>Additional Document Metadata Fields for Electronic Documents and Attachments</b>		
Original file name	Original name of the file when collected from the source custodian or system	example.doc, file.xls
File Type	File type or application used to create the underlying native file	Excel, Word, PowerPoint, MP3
Master Date	For email attachments, the date of the parent email	MM/DD/YYYY
Title	Title of the document	Purchase Agreement
Author	Author of the document	Barbara Jones
Creation Date	Date the item was created	MM/DD/YYYY
Modified Date	Date the item was last modified	MM/DD/YYYY
<b>Additional Document Metadata Fields for Email and Other Electronic Communications</b>		
Date Sent	Date and time the email message was sent, using a 24-hour clock, in Greenwich Mean Time (GMT)	MM/DD/YYYY HH:MM:SS
Date Received	Date and time the email message was received, using a 24-hour clock, in Greenwich Mean Time (GMT)	MM/DD/YYYY HH:MM:SS
To	Addressee(s) of the email message	Barbara Jones barbarajones@co.com
From	Name and email address of the person who sent the email message	Barbara Jones barbarajones@co.com
CC	Recipient (s) included in the "cc" line of the email message	Barbara Jones barbarajones@co.com
BCC	Recipient(s) included in the "bcc" line of the email message	Barbara Jones barbarajones@co.com
Subject	Subject line of the email message	FW: your message
Email Folder	The name of the email folder in which the email message was located	Inbox, Sent, Deal Documents

### 3. EXTRACTED TEXT

- 3.1 For each document, the responding party shall provide a text file containing the text extracted directly from the native electronic version of that document, unless the document was redacted, is an image file, is a scanned hardcopy document, or is in another format from which text cannot be reasonably extracted. In these instances, provide a text file created using optical character recognition (OCR) to the extent reasonably practicable.
- 3.2 The text file name containing the extracted or OCR text should be named with the Beg\_Doc number of the document.

#### 4. **DEDUPLICATION**

- 4.1 A document is an exact duplicate of another document only if it and all its family members have the same MD5 or SHA-1 hash values as the other document and its family members.
- 4.2 If a document and its exact duplicates are associated with the same custodian, the responding party shall withhold the exact duplicates from production.
- 4.3 If a document and its exact duplicates are associated with different custodians, the responding party shall withhold the exact duplicates from production and provide a metadata field for the produced document indicating the custodians for whom duplicates were withheld.

**PROOF OF SERVICE**

I, \_\_\_\_\_, being over the age of 18, served the attached subpoena by delivering a copy to \_\_\_\_\_ at \_\_\_\_\_ and by handing him/her the fee of \$2.00 for one day's attendance and, if applicable, a mileage fee of \$\_\_\_\_\_, as allowed by law.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated \_\_\_\_\_

## Exhibit 2

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

**EXHIBIT 3**

Subj:	Introduction to email list
Date:	4/28/2001 1:05:42 PM Central Daylight Time
From:	AifusFS
To:	EJSBTB, Nicolo_99@yahoo.com

**Jews Offering New Alternatives to Homosexuality**

**WELCOME:** We are an E-mail support list dedicated to helping each other deal with unwanted homosexual feelings in a Torah True Way. Those of us who have a "same sex attraction disorder" (abbreviated as "SSAD" rather than "gay") have been given a unique challenge by Hashem (G-d) to find appropriate alternatives to this SSAD condition. Together we hope to explore these feelings and behaviors and begin our journeys out of homosexuality.

**SITE MEMBERSHIP:** Membership must be approved by the list moderators.

The list is designed either (a) for those who have come out of homosexuality and wish to give support to others working to control unwanted homosexual desires or (b) for those seeking to find freedom from homosexual behavior and feelings. In this context, we welcome both those who have been deeply entrenched in homosexuality, whether secretly or openly, and those who have never acted out their homosexual attractions. In addition, those who have always been heterosexual are also welcome if their motivation is to give positive support to the group and to increase their own understanding, compassion and sense of brotherhood with the strugglers.

All others, especially those hostile to our desire for change or hostile to those seeking to control their homosexual behavior will not be allowed. We seek a unity based upon the need for a Jewish alternative for those seeking freedom from homosexuality, however, this group is not against any gay organization or individuals.

**BACKGROUND:** While our focus is on issues of homosexuality, we recognize that organized Judaism has been reluctant to deal with many issues of sexual brokenness, whether the problem stems from homosexual or heterosexual issues. Our co-religionists come from all backgrounds, bringing with them any number of spiritual, psychological, and sexual problems - homosexuality included. Unfortunately, while our religious bodies are mandated to offer support and encouragement to those struggling with the variety of sexual brokenness issues in a Torah True Way, the reality is that our religious bodies provide scant encouragement for those seeking to either control or change their same sex attractions and to heal the emotional wounds causing such desires. Thus, those afflicted with same sex attractions often struggle alone, silently praying for deliverance and aching for the empathy and help they deserve.

The purpose of this E-mail list is to provide empathetic listening, compassion (without being permissive), support and resources. We must enable those struggling with same sex attractions to respond positively and constructively and to seize the new knowledge and resources available to help them transition out of homosexuality and start their journey to completeness and wholeness. They also need to know they are not alone and that others have successfully completed the journey.

Homosexuality doesn't just vanish when a person decides he or she doesn't want it. We all prefer quick fixes to our problems and many seek an instantaneous transformation out of their homosexual thoughts and behavior patterns. Those that seek such instantaneous fixes will unfortunately meet with failure and disillusionment. There is a "process of growth" which is required and our journeys into wholeness may last a lifetime. One primary reason is that homosexuality (whether it be male or lesbian oriented) is symptomatic of other deeply

ingrained and often hard to detect problems. However, as one recovered homosexual aptly put it, "Like the right light on a dashboard, it indicates that something under the hood needs to be checked."

Because there is no one reason why people may become homosexual, see a listing of the causative factors either in "Richard Cohen's Book, Coming Out Straight: Understanding and Healing Homosexuality," or the listing on the [www.peoplechange.com](http://www.peoplechange.com) web site. Likewise, because there is no one method which is effective for all people to help them heal the underlying emotional wounds causing homosexual feelings or behavior, this site will explore the diversity of healing alternatives. Some are faith based; others are therapy based. As our members explore these alternative strategies, each person can determine what may work best for him or her.

Those on the site will speak only for themselves from their own life experiences, to give and receive support, and to uncover, to face and to heal their "heterophobic" alienation from those of our own sex.

**HOW THE GROUP WORKS - BASIC RULES:** As the group is new, we will inevitably make changes to the way the group works based upon trial and error as well as our growth and experiences. Keeping this in mind, these basic guidelines will govern the group:

1. **Staying Focused:** Posts to this list should be related only to the topics and issues surrounding freedom from homosexuality. Please do not post or forward non-related posts to our list. We must keep our focus on the main issue which unites us: that is, freedom from homosexual feelings and behavior.
2. **Privacy of Posts:** The list is for members only. It is important that members feel they can express themselves safely, without fear of being exposed, and where our members can not only learn from each other but can also provide mutual support to each of us struggling with unwanted homosexuality without judgment or criticism. Those who wish to communicate privately with any other member can do so through direct E-mail to the other party.
3. **Tolerance:** Gay-bashing or the bashing of any members of our group or any other group will not be tolerated.
4. **Respect:** Please remember that the group is inclusive and is designed for all Jews, whether they be "frum" (religious) or not. Thus, it is important that each of us respect the others religious views. Out of respect to all, when you speak of your religious or spiritual experience or beliefs, please be sure to use "I" words rather than "you" words or all-inclusive language. For example, instead of "G-d commands us to"; or, "G-d wants us to"; or, "we have to"; or "G-d says"; or, "The Torah says"--it would be appreciated if you use, "I believe G-d has commanded me to"; or, "I believe G-d wants me to"; or, "I have to"; or, "I understand G-d to say"; or "I accept the Torah teaching that . . ." Also, while our frum members are encouraged to use Hebrew or Yiddish phrases, it is important that the English translation be put in parenthesis so that others less familiar with such terminology understand the meaning of a particular comment.
5. **Anonymity:** Due to the sensitivity of the issues with which we are dealing, many members will understandably be reluctant to be identified. In any event, all information shared on this list should be kept in strict confidence. Members are thus asked to respect and guard the anonymity of each member. All must feel that they can come to the group to seek help and fellowship with full assurance that their identities will not be disclosed, without their express permission, to anyone outside our group.
6. **Spokesperson:** No member is recognized as a spokesperson for the group. All members speak for themselves.