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.	SUPERIOR COURT OF NEW JERSEY HUDSON COUNTY, LAW DIVISION Docket No. L-5473-12 CIVIL ACTION **MEMORANDUM OF LAW TO COMPEL DEFENDANTS' COMPLIANCE WITH JUNE 7, 2013 ORDER**

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I. PRELIMINARY STATEMENT

Defendants are in violation of this Court's June 7, 2013 Order Partially Quashing Subpoena Duces Tecum to Shamash Listserv Mailing List Manager and David Rosenthal (the "Order"). Not only have Defendants failed to produce the documents required by the Order on the timeline provided in the Order, they have also employed a process that is completely deficient and entirely reliant on the unsupervised judgments of the Defendants in this case.

The Order directed Defendants to produce communications that were made by the Defendants or by the Defendants' representatives to the JONAH listserv within 30 days of the Order, permitting redaction only of information that could identify third party listserv participants or JONAH clients. The Court has already determined that this discovery is relevant, overruling Defendants' objections to the contrary. Indeed, given Plaintiffs' allegations that Defendants made misrepresentations about the efficacy of their conversion therapy services, it is essential—the JONAH listserv (participation on which was encouraged by Defendants as an important component of their services) was a key mechanism used by Defendants to communicate about their services with current as well as prospective clients. Defendants' statements to the listserv are likely to support Plaintiffs' accounts of promises made to them about the efficacy of Defendants' services, provide information about the specific techniques employed by the Defendants, illustrate how Defendants used important language from which they now retreat (such as "change," "heal," and "disorder"), lead to potential witnesses, and demonstrate the frequency with which Defendants falsely asserted that their services had a scientific basis.

The deadline for production of the listserv communications was July 8, 2013. Defendants' counsel represented to the Court that they would be able to comply with that

deadline; however, they have failed to do so. On July 5 and July 8, Defendants produced only a fraction of the documents. This incomplete production was accompanied by a certification from Defendant Arthur Goldberg, the "Certification of Arthur Goldberg Regarding Documents Produced Pursuant to Court Order" ("Goldberg Certification," McCoy Ex. A), in which Mr. Goldberg stated that of the approximately 6,500 responsive documents identified by Defendants, only 1,038 were being produced. This admission that Defendants have not complied with the Court's Order leads to the conclusion that, given the current pace of Defendants' review and redaction of the remaining listserv documents, Defendants will not be able to complete their production of listserv communications before December. This is plainly unacceptable: not only is it in direct violation of this Court's Order, but it unfairly delays the progress of this case.

In addition to violating the Order's production deadline, the documents that were produced contain innumerable improper redactions that exceed the scope of permissible redaction delineated in the Order, which contemplated only the redaction of information that could reveal the identities of nonparty listserv participants or JONAH clients. The Goldberg Certification claims that Defendants redacted only information such as "e-mail addresses, names, ages, [and] locations." McCoy Ex. A ¶ 9. Even a cursory review of the documents reveals the falsity of that statement. Defendants have, in fact, redacted various other information, including the titles of books being recommended by Defendants, the titles of offered classes (as well as the names of the instructors and the dates on which the classes are to be held), portions of excerpted articles copied from publicly-available websites, the internet addresses of websites recommended by Defendants, and other similar material. This unrestrained approach to redaction directly violates this Court's Order.

Finally, the portion of the incomplete production that was provided was not produced in a

proper form. Listserv communications are a kind of electronically stored information ("ESI") and, under New Jersey rules, must either be produced in the form specified by the requesting party or, if the requesting party does not specify the form, in the form in which it is ordinarily maintained or in a form that is reasonably usable. R. 4:18-1(b)(2)(B). Defendants failed to produce the listserv communications in the format requested, and did not produce them in the form in which they are ordinarily maintained, nor even in a reasonably usable form. Instead, Defendants produced improperly altered documents, the individual pages of which were neither Bates-stamped nor numbered, and which contain multiple individual communications strung together. Furthermore, many of the words and phrases are interrupted by symbols and numerals that appear to be the result of some error in the conversion of the communications from their native form to the produced form, rendering the documents difficult to read and use at depositions and at trial. Production of altered, garbled documents is insufficient and does not fulfill Defendants' obligations under the Order or in discovery generally.

Plaintiffs respectfully request the Court to compel Defendants' complete production in a timely fashion and in the form requested. In the event that Defendants are unwilling or unable to comply with the Order, Plaintiffs request that the Court order the production of the complete listserv in its original electronic form to Plaintiffs, who will abide by any order of the Court to maintain the confidentiality of listserv participants.

II. PROCEDURAL HISTORY

On November 27, 2012, Plaintiffs filed their Complaint, alleging four counts for violation of New Jersey's Consumer Fraud Act ("CFA"), which protects consumers from deceptive, false, or fraudulent business practices. The Complaint alleges that Defendants falsely claimed, among other things, that their conversion therapy services could change the Plaintiffs' sexual orientation

from gay to straight. Defendants filed their Answer on February 4, 2013 and filed an Amended Answer on February 26, 2013.

Discovery has proceeded, with Plaintiffs and Defendants exchanging several sets of written discovery requests. On May 28, 2013, Defendants moved to dismiss the complaint; however, no request to stay discovery was made and discovery has not been suspended pending the resolution of the motion.

Plaintiffs served the Rosenthal Subpoena requesting communications from the JONAH listserv on April 3, 2013. Defendants moved to quash the Rosenthal Subpoena on April 11. On June 7, 2013, after briefing and oral argument, the Court partially denied the motion and ordered Defendants to produce by July 8, 2013 all communications to the listserv made by Mr. Goldberg or Mrs. Berk and dated between 2005 and 2010. Defendants failed to comply with the Court's Order, instead making an incomplete and defective production on July 5 and July 8, 2013.

III. ARGUMENT

A. Defendants Have Failed To Comply With The Order's Production Deadline

Defendants did not produce the full set of listserv communications by the deadline set in the Order, a fact that is not in dispute. The documents produced by the Defendants on July 5 and July 8, 2013 constitute (approximately) only one sixth of the total responsive material identified by Defendants. Moreover, the production contains mysterious gaps, as it consists of eleven documents that collect communications from each of the following months: January, February, July, September, November, and December of 2005; September and December of 2006; March of 2007; and February and March of 2008.[1] Defendants have not offered a rationale for this scattershot form of production and none is discernible from a review of what was produced.

[1] Needless to say, review is made difficult by the fact that the excerpts do not follow chronological order.

According to the Goldberg Certification, Defendants have identified, but failed to produce, approximately 5,500 additional responsive documents. McCoy Ex. A ¶ 11. If the Defendants were to produce the remaining listserv communications at their current pace, the listserv production would not be complete until December 2013. The Order explicitly set a 30-day production deadline. Moreover, at the June 7 case management conference, and before setting a production deadline, the Court directly asked defense counsel whether Defendants would be able to produce the listserv documents within thirty days. Defense counsel assured the Court that they would meet that deadline, but failed to do so, forcing Plaintiffs to seek relief via this motion to compel Defendants' compliance.

Not only have Defendants failed to produce all of the responsive documents that they have so far identified, but it is also far from clear that they have undertaken an adequate search and actually identified all responsive documents. Specifically, the Goldberg Certification states that Defendants used two email addresses as search terms to identify responsive documents: "jonahhelp@aol.com," associated with Mr. Goldberg, and "ejsbtb@aol.com," associated with JONAH co-founder and co-director Elaine Berk. The Goldberg Certification asserts that Mr. Goldberg and Mrs. Berk used only those two email addresses. McCoy Ex. A ¶ 7. However, Plaintiffs are aware of at least three additional email addresses associated with JONAH: jonahoffice@gmail.com, info@jonah.org, and owner-jonah@shamash.org. Despite Plaintiffs' requests that these and any other email addresses associated with the Defendants be searched, Defendants chose not to do so, nor did they search for communications made by, or on behalf of, Alan Downing (also a Defendant) or David Matheson, both of whom are (or were) providers of conversion therapy services closely associated or affiliated with JONAH whose statements would have been perceived as coming from a JONAH representative by listserv participants.

The inadequate searches performed to date are likely to result in further delay, as Plaintiffs are entitled to a complete and accurate production. See, e.g., Robinson v. City of Arkansas City, Kan., No. 10-1431-JAR-GLR, 2012 WL 603576 (D. Kan. Feb. 24, 2012) review denied, No. 10-1431-JAR, 2012 WL 1674255 (D. Kan. May 14, 2012) (ordering additional discovery where a party had made "halfhearted and ineffective efforts to search for responsive documents."); Moore v. Napolitano, 723 F. Supp. 2d 167 (D.D.C. 2010) (upholding a sanction precluding defendant from presenting certain evidence where defendant failed to conduct a reasonable search for responsive documents, despite a court order to do so, including providing "ambiguous and deficient" search instructions to employees; failing to follow up when employees failed to uncover responsive information; and failing to credibly explain defendant's search efforts).

This delay is particularly troubling because Defendants have so far refused to produce *any* emails from the email addresses used by Mr. Goldberg and Mrs. Berk apart from their direct communications with the Plaintiffs.[2] This Court's ruling on the Motion to Quash the Rosenthal Subpoena, which indicated that statements made by Defendants to third parties are relevant and therefore properly subject to discovery, is not consistent with the Defendants' refusal to produce statements about conversion therapy made by Mr. Goldberg and Ms. Berk to prospective, current, or former clients of JONAH, parents of prospective, current, or former clients, or others (such as rabbis or school administrators) to whom they market their services. Plaintiffs are entitled to discovery of communications and documents responsive to these requests, which are likely to include statements made by Defendants in which they make the very misrepresentations about their services that lie at the heart of the Complaint.

Moreover, the nature of communications made by the Defendants to private

[2] Although Defendants have expressed a willingness to produce such emails from Mr. Downing's email accounts, *none* have been produced to date.

correspondents are likely to be more candid and to differ in tone and substance from the communications made by Defendants on the listserv, which is visible to numerous anonymous and pseudonymous individuals; therefore, the production of Defendants' listserv communications are no substitute for Defendants' communications over personal email. During a telephonic meet and confer held on June 25, 2013 Defendants stated that they would only consider making any search of, and minimal production from, Mr. Goldberg and Mrs. Berk's emails after the listserv production is complete. See Bensman Certification ¶ 7. Defendants have offered no reasonable rationale for why production by Defendants of these statements must wait until completion of the listserv production. In any event, it is unclear how long that process will take, but given Defendants' document production history, the result of allowing Defendants to delay in this way would be a significant postponement of the current discovery schedule, with depositions of fact witnesses likely not taking place before the spring of 2014.

B. Defendants' Incomplete Production Violates The Order Because It Contains Improper Redactions

Even the partial document production made by Defendants is unacceptable: those listserv communications that Defendants did manage to produce on time have been improperly redacted. Defendants' redactions far exceed the scope of permissible redaction contemplated by the Order, which is directed to information that might reveal the identities of non-party list serve participants. The following examples typify Defendants' improper redactions: "I read the article below in the XXXX... TheXXXX consistently carries pro-gay articles." McCoy Ex. B; "Particular books of value: XXXXX, XXXX, XXXX, XXXX, XXXX." McCoy Ex. C; "This class will be held on XXXX... Below is a complete syllabus of the class which will run from XXXX-=20 XXXX." McCoy Ex. D. In addition, Defendants appear to have redacted within the text of what appears to be a copy-pasted press release that was publicly posted at

http://narth.com/docs/insiders.html. McCoy Ex. E. This is not the only such example. McCoy Ex. F.

The Order states that the production will be "subject to redaction of ID of third party(s)." This language is unambiguous and does not extend to the titles of books or the dates on which events were held. Defendants clearly understood that only identifying information was subject to redaction under the Order; this understanding is reflected in the Goldberg Certification, which states that Defendants "redacted identifying information about third parties, such as e-mail addresses, names, ages, locations, by replacing that information with a string of Xs." McCoy Ex. A ¶ 9. However, despite Mr. Goldberg's certification to the contrary, the production plainly contains a large number of improper redactions which hide information that is not conceivably capable of identifying third-party listserv participants.

C. Defendants' Incomplete Production Is In An Improper And Unusable Format

Under New Jersey rules, ESI must either be produced in the form requested or, if the requesting party does not specify the form, in the form in which it is ordinarily maintained or in a form that is reasonably usable. R. 4:18-1(b)(2)(B). Defendants did not produce the listserv communications in the format requested, nor in a form that complies with Rule 4-18. See Pressler & Verniero, *Current N.J. Court Rules*, Comment R. 4:18-1 (2013) (Noting that the "evident purpose" of the Rule was to "remedy the practice, either by design or otherwise, of providing documents in helter-skelter fashion.").

The Rosenthal Subpoena specified that ESI was requested to be produced in TIFF or native format with accompanying metadata, McCoy Ex. K, and Plaintiffs are therefore entitled to

a production of ESI in that format.[3] See, e.g., Lawson v. Sun Microsystems, No. 1:07-cv-0196-RLY-TAB, 2007 WL 2572170 (S.D. Ind. Sept. 4, 2007) (ordering party to produce ESI the electronic format requested).[4] Production of ESI in native or TIFF format is standard practice. See, e.g. In re Seroquel Prods. Liab. Litig., MDL 1769 (ACC), 2007 WL 219989, *4 (M.D. Fla. Jan. 26, 2007) (ordering production of documents in TIFF format with accompanying metadata). Printing electronically stored information alters the evidence and renders it significantly less usable. See, e.g., White v. Graceland Coll. Ctr. for Prof'l Dev. & Lifelong Learning Inc., 586 F. Supp. 2d 1250, 1264 (D. Kan. 2008) (finding that "conversion of the emails and attachments to PDF documents and production of the PDF documents in paper format does not comply with the option to produce them in a reasonable usable form" and directing re-production in native format with metadata); L.H. v. Schwarzenegger, No.CIVS-06-2042 LKK GGH, 2008 WL 2073958, *3 (E.D. Cal. May 14, 2008) (holding production was not reasonably usable where defendants "improperly converted [documents] from their original format which had been searchable and sortable, into PDF files which did not have these capabilities.").

Defendants have improperly altered original electronic communications by cutting and pasting them into Word documents, resulting in excerpted documents which Plaintiffs cannot be certain are complete. This cutting and pasting process (or some other technical manipulation of the original electronic communications) has caused the documents produced by Defendants to

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[3] Defendants did not object to the form of production, i.e., the ESI production specifications, requested in the subpoena, nor did they move to quash the subpoena on that basis or request that the Court modify the required form of production.

[4] Because New Jersey Rule 4:18-1 was taken from Fed. R. Civ. P. 34, cases interpreting relevant discovery obligations under that federal rule can be persuasive authority. See Pressler & Verniero, *Current N.J. Court Rules*, Comment R. 4:18-1 (2013); see also Baumann v. Marinaro, 95 N.J. 380, 390 (1984) (stating that it is "proper to draw on the experience of the federal courts... to aid in the solution of comparable problems that arise under" similar New Jersey Rules.); Petition of Hall, 147 N.J. 379, 385 (1997) (considering federal decisions addressing the scope and application of a federal rule which served as the basis for a New Jersey rule).

contain random strings of symbols and numbers that appear in the middle of words and phrases. McCoy Exs. G, H. In addition, images that were in the original documents appear only as long sections of what Defendants themselves describe, in a typed note inserted into the content of one such document, as "gibberish."[5] McCoy Ex. I; see also McCoy Ex. J. The result is a set of documents that is difficult to read, difficult to review, and difficult to use as evidence at depositions and at trial. This is unacceptable and must be corrected.

D. The Deficiencies In Defendants' Production Are The Result Of Their Improper Discovery Process

The deficiencies in Defendants' production stem from their cavalier approach to the discovery process. As described in the Goldberg Certification, Mr. Goldberg and Mrs. Berk, assisted by a "part-time JONAH consultant," are the only individuals who took any part in the collection, review, redaction, and production of the listserv communications. McCoy Ex. A ¶¶ 5, 6, 9, 11. The Goldberg Certification makes clear that Mr. Goldberg, a named Defendant, Mrs. Berk, Defendant JONAH's co-founder and co-director, and one JONAH employee have had the sole responsibility for, and control over, the process of identifying, redacting, and producing responsive documents without assistance, supervision, or review from their counsel. Id. The process described in the Goldberg Certification was also described to Plaintiffs by defense counsel during telephonic meet and confers. See Bensman Certification ¶¶ 4, 5, 6, 7. Defense counsel have repeatedly and unambiguously represented that they have had, and intend to have, no direct involvement in the collection of potentially relevant documents from Defendants' files, the review of such documents for responsiveness and privilege (we note that Defendants' claims of privilege in this case have included claims of doctor-patient and ministerial privilege), the

[5] In addition to itself constituting an improper alteration of the documents, this inserted note reflects Defendants' clear lack of effort to make proper production of the original images.

redaction of any such documents, or the delivery of such documents to the Plaintiffs, other than as a conduit. Id. At best, they have now expressed an intention to review documents once they have been produced to the Plaintiffs. There is no indication that Defendants' counsel reviewed any of the documents in the July 5 and July 8 productions. The production of documents has been improperly delegated by defense counsel to their clients, unsupervised laymen with a personal stake in the outcome of the litigation, including Mr. Goldberg, who was convicted, imprisoned, and disbarred because he committed fraud.

This inadequate discovery process has been consistently employed by Defendants, resulting in consistently inadequate responses to Plaintiffs' discovery requests. Defendants' resulting productions have been deficient in the very same respects as the incomplete and defective production made in response to the Order. Emails have been produced, not in their original form, but as hard copy files,[6] PDF files, or, in some cases (and as they were in the production responsive to the Order), after having been cut and pasted into Word documents. Inappropriate redactions are also not new, as Defendants have produced documents that were redacted without any indication of the redaction having been made, the redactions only being apparent on certain emails where portions of text remained visible.

Not only was this the case with respect to the production made on behalf of the Defendants themselves, but also with respect to the documents produced in response to the subpoena to Thaddeus Heffner, the non-party therapist of Plaintiff Sheldon Bruck. Although defense counsel informed Plaintiffs' counsel that they represent Mr. Heffner for purposes of the Heffner subpoena, they relied on Mr. Heffner to search his own email, independently select a

[6] It is improper to produce a searchable electronic document in a hard copy form not amenable to being searched. See, e.g., Covad Commc'ns Co. v. Revonet, Inc., 260 F.R.D. 5, 9 (D.D.C. 2009) (stating that it is "improper to take an electronically searchable document and either destroy or degrade the document's ability to be searched" and citing similar cases).

subset of the resulting emails for production, and withhold the rest on his unverified representation that they are privileged.[7] Such productions are not adequate, fail to comply with the Rules, and therefore are unacceptable. See, e.g., Jacobson v. Starbucks Coffee Co., No. 05-1338 JTM (KMH), 2006 WL 3146349, *7 (D. Kan. Oct. 31, 2006) (ordering additional discovery where there was a "history of incomplete and inconsistent responses to plaintiff's production requests").

A lawyer shall not "fail to make reasonably diligent efforts to comply with legally proper discovery requests." NJ R.P.C. 3.4(d). Moreover, Rule 4:18-1(b)(2) requires that discovery responses be both "complete" and "accurate." Courts have held that "when ordered by a court to produce documents, counsel are under an even higher obligation to affirmatively direct complete compliance with the order in objective good faith." Bd. of Regents of Univ. of Neb. v. BASF Corp., 4:04CV3556, 2007 U.S. Dist. LEXIS 82492, *16 (D. Neb. Nov. 5, 2007). However, defense counsel cannot possibly ensure that Defendants' discovery responses are either complete or accurate by merely assuming that Defendants, operating without the guidance, participation, or supervision of counsel, would in fact adequately respond to the Order. See Qualcomm Inc. v. Broadcomm Corp., No. 05 Civ. 1958-B, 2008 WL 66932 (S.D. Cal. Jan. 7, 2008) (criticizing attorneys for failing to perform a reasonable inquiry to determine whether their client had complied with its discovery obligations).

Issues of responsiveness, relevance, and privilege are not the appropriate domain of laymen. Moreover, Defendants have a clear personal stake in the outcome of this litigation, and it is improper for counsel to leave the decision about which documents to produce entirely to them. Yet defense counsel have relied entirely on their clients, Defendants in this litigation, to

[7] Defense counsel have repeatedly refused to create or produce a privilege log to substantiate Mr. Heffner's privilege claims.

identify responsive documents and emails and to determine which documents to produce and which to withhold. Defense counsel stated that they had not supervised this process, but that they "assumed" that all responsive and non-privileged documents had been produced because they had instructed their clients to provide "everything." See Bensman Certification ¶ 4. This is improper and unacceptable. See Wachtel v. Health Net, Inc., 239 F.R.D. 81, 92 (D.N.J. 2006) (ordering sanctions when a party "relied on the specified business people within the company to search and turn over whatever documents they thought were responsive, without verifying that the searches were sufficient"). During meet and confers, defense counsel did not appear knowledgeable about the process that their clients undertook and were unable to answer questions about which email accounts were collected from without consulting with their clients. See Bensman Certification ¶¶ 4, 6. Courts have strongly criticized counsel for failing to adequately search for responsive documents. See Wachtel, 239 F.R.D. at 91 (disapproving of the fact that "a vast quantity of highly relevant emails from Health Net employee's accounts were never searched for and never produced" and that the "process for responding to discovery requests was utterly inadequate"). Courts have also sanctioned counsel for failing to make a reasonable inquiry into the discovery process to ensure that productions are complete. See Metro. Opera Ass'n, Inc. v. Local 100, Hotel Emps. & Rest. Emps. Int'l Union, 212 F.R.D. 178, 222-23 (S.D.N.Y. 2003) adhered to on reconsideration, No. 00 CIV. 3613 (LAP), 2004 WL 1943099 (S.D.N.Y. Aug. 27, 2004) (Sanctioning counsel who "among other things... (1) never gave adequate instructions to their clients....; (3) delegated document production to a layperson...; (4) never went back to the layperson designated to assure that he had 'establish[ed] a coherent and effective system to faithfully and effectively respond to discovery requests,' National Ass'n of Radiation Survivors, 115 F.R.D. at 556; and (5) in the face of the Met's

persistent questioning and showings that the production was faulty and incomplete, ridiculed the inquiries, failed to take any action to remedy the situation or supplement the demonstrably false responses... and, instead, made repeated, baseless representations that all documents had been produced.").

When pressed by Plaintiffs' counsel, defense counsel have repeatedly asserted that they lack the time, resources, and technical skills to personally supervise or conduct the collection and review of documents. See Bensman Certification ¶¶ 4, 5, 6. Defense counsel have even repeatedly suggested that in order to receive Defendants' documents in a proper format, Plaintiffs should pay for a technically proficient consultant to prepare the production for Defendants. See Bensman Certification ¶¶ 5, 7. Ensuring the competence of Defendants' productions is not, however, Plaintiffs' responsibility, and the fact that Defendants lack necessary computer skills does not excuse them from having to make proper and reasonably usable productions of ESI. See, e.g., Green v. Blitz U.S.A., Inc., No. 2:07-CV-372 TJW, 2011 WL 806011, *6 n.5 (E.D. Tex. Mar. 1, 2011) ("That Blitz put someone in charge of its discovery who knows nothing about computers does not help Blitz's effort to show that it was reasonable in its discovery obligations."). Defendants cannot shrug off legitimate and reasonable discovery obligations merely by making excuses to Plaintiffs about the inconvenience of making proper and timely production. See, e.g. L.H. v. Schwarzenegger, No. CIVS-06-2042 LKK GGH, 2008 WL 2073958, *2 (E.D. Cal. May 14, 2008) (sanctioning defendants where "simply, unilaterally denied/delayed discovery until plaintiffs were compelled to file motions. Or, defendants and their attorneys understaffed the discovery effort to the point where non-compliance was guaranteed.").

The inability of Defendants to meet their production deadlines, make proper redactions,

or produce documents in a proper format is the unsurprising and foreseeable outcome of their deficient process. Defendants and their counsel have failed to conform their search and production to the basic requirements of the discovery rules. That the discovery process is complicated, expansive, or technically difficult does not excuse Defendants or their counsel from meeting their basic discovery obligations. No matter the size or sophistication of their business, Defendants engaged in deceptive, false, or fraudulent practices for which Plaintiffs are entitled to seek remedy under the CFA. Defendants should not be allowed to shield themselves from reasonable, Court-ordered discovery by hiding behind their or their counsel's alleged lack of resources or technical acumen.

For these reasons, Plaintiffs further request that the Court order Defendants to certify that they made appropriate and adequate efforts to search for and identify responsive communications, to set forth in their certification the process undertaken to comply with the Court's June 7 Order, and to certify that that their process of review, redaction, and production has complied with all relevant rules and obligations.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs request that the Court compel Defendants to comply with the Order and make, in a timely fashion, accurate and complete production of responsive documents in proper form and redacted only to the extent contemplated by the Order. Plaintiffs further request that Defendants certify that they made adequate efforts to search for and identify responsive communications and that their process of review, redaction, and production has complied with all relevant rules and obligations. If Defendants are unwilling or unable to promptly produce the listserv communications in the proper form and in a timely manner, then Plaintiffs request that the Court order Defendants to immediately produce the listserv in its

entirety in electronic form. Plaintiffs will abide by any order of the Court directed at maintaining the confidentiality of the identities of listserv participants.

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Respectfully submitted,

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