

**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*)  
David C. Dinielli (*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*)  
Lina Bensman (*pro hac vice*)  
One Liberty Plaza  
New York, NY 10006  
(212) 225-2000

*Attorneys for Plaintiffs*

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

**CERTIFICATION OF LINA BENSMAN  
IN SUPPORT OF PLAINTIFFS'  
MOTION TO COMPEL DEFENDANTS'  
COMPLIANCE WITH JUNE 7, 2013  
ORDER**

I, Lina Bensman, hereby certify as follows:

1. I am an associate in the law firm Cleary Gottlieb Steen & Hamilton LLP, co-counsel for Plaintiffs Michael Ferguson, Benjamin Unger, Sheldon Bruck, Chaim Levin, Jo Bruck, and Bella Levin in this action. By order of this Court, I have been admitted *pro hac vice* as one of the counsel of record for the Plaintiffs in this case. I am fully familiar with the facts and circumstances of this matter.

2. Counsel for the defendants have described their discovery procedures to Plaintiffs' counsel on several occasions. I have personal knowledge of the relevant facts and set them forth below.

3. Counsel for Plaintiffs met and conferred by telephone with counsel for Defendants on the following dates: April 12, 2013, April 26, 2013, May 8, 2013, May 24, 2013, June 13, 2013, and June 25, 2013. I participated on all of these calls, which had the purpose of addressing concerns about discovery.

4. During the April and May calls, counsel for Defendants shared information about their process of responding to Plaintiffs' discovery requests. Among other things, counsel for Defendants shared that they were relying entirely on their clients to search for, review, and redact documents without participating in or supervising that process. Neither Mr. LiMandri nor Ms. Mendoza were able to answer questions about how their clients performed searches to ensure all possible sources of documents had been adequately examined, nor did they know whether hard copy documents had been searched in addition to emails. Mr. LiMandri stated that he "assumed" his clients had provided him with every document corresponding to his instructions to give him "everything." Mr. LiMandri was not able to answer questions about how many different email addresses his clients used. Ms. Mendoza stated that Mr. Goldberg and

Mrs. Berk were unable to access emails which were more than three years old because of “computer crashes” that had somehow made them impossible to retrieve.<sup>1</sup> Counsel for Defendants repeatedly expressed that they (and their clients) were not competent in the area of e-Discovery and were not comfortable dealing with digital documents, including emails. Counsel for Defendants also repeatedly expressed that they lacked the capacity (in terms of time and staff) to review a large number of documents.

5. On the April 26, 2013 call, Mr. LiMandri informed us that a former client of the Defendants was performing all collection and review work relating to the JONAH listserv. Mr. LiMandri stated that this person was acting as a volunteer and had limited time to perform searches, represented that counsel had no capacity to take part in the search or review of listserv documents, and suggested that Plaintiffs pay for an independent consultant or firm to assist if they wanted listserv documents to be produced beyond some minimal volume that this volunteer could handle.

6. On June 13, 2013, counsel met and conferred by telephone. I participated on the call on behalf of the Plaintiffs along with my colleagues Mr. Wolfe and Mr. McCoy; Mr. LiMandri and Ms. Mendoza participated on behalf of the Defendants. Mr. Wolfe asked about the process by which Defendants were planning to comply with this Court’s June 7, 2013 Order directing them to produce certain documents from the JONAH listserv. Mr. LiMandri was not able to answer questions about how the listserv would be searched and did not appear to have gained any understanding of all of the different email addresses used by his clients, stating

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<sup>1</sup> Plaintiffs observe that the email addresses they are aware of for Mr. Goldberg and Mrs. Berk are jonahhelp@aol.com, ejsbtb@aol.com, jonahoffice@gmail.com, and info@jonah.org. Plaintiffs understand AOL and Gmail to be hosting services which maintain archived email data on their own servers. An individual’s personal “computer crash” would not, in the ordinary course, result in a loss of access to emails stored on an AOL or Gmail server.

vaguely that the searches would be performed based on “whatever goes on the listserv” and “however they used it.” Mr. LiMandri also represented that he did not have the funds or the capacity to provide e-discovery, by which we understood him to mean documents in their native form with accompanying metadata. When asked to describe the collection process, Mr. LiMandri said that he had “no idea” and did not intend to be directly involved. He said that one or two volunteers, apparently former or present JONAH clients, would perform the entirety of the collection, review, and redaction of documents without supervision by any lawyer. Mr. LiMandri said that he would make himself available to answer questions, if the volunteers had any, and would assist with redactions of content other than names, but would not otherwise participate. Mr. LiMandri also stated that, once documents were transmitted to him by the volunteers, he intended to produce them en masse without conducting any review, including any spot-checking for quality control purposes.

7. On June 25, 2013, counsel met and conferred by telephone. I participated on the call on behalf of the Plaintiffs along with my colleagues Mr. Wolfe and Mr. McCoy; Mr. LiMandri and Ms. Mendoza participated on behalf of the Defendants. In addition to the two email addresses that Defendants proposed to use as search terms to identify responsive listserv documents, Mr. Wolfe requested that Defendants search all email addresses associated with all named Defendants as well as David Matheson (a life coach associated with JONAH), and Mr. LiMandri expressed a willingness to perform such searches even if merely to confirm that there were no communications from certain email addresses which he represented had not been used on the listserv. Mr. LiMandri confirmed that Mr. Goldberg, Mrs. Berk, and possibly a member of the JONAH staff were performing the searches of the listserv and reviewing the resulting documents prior to production. Mr. Wolfe raised the issue of production in proper format, which

had been discussed on prior occasions and raised in correspondence. Ms. Mendoza stated that a member of the JONAH staff was converting the files to Word documents and that redactions were being made by deleting text from the documents. Mr. Wolfe asked whether Defendants anticipated that they would be able to meet the production deadline set forth in the June 7, 2013 Order. Mr. LiMandri stated that he had made the deadline clear to those working on the production and that he would provide ample notice if Defendants found themselves unable to meet the deadline.<sup>2</sup> Mr. Wolfe reiterated that Plaintiffs had concerns about a process in which the Defendants were personally, and without supervision or assistance of counsel, making decisions about which documents to produce and how to redact those documents. Mr. LiMandri expressed that he trusted his clients and that he had no intention of personally participating in the process. Later in the call, Ms. Mendoza and Mr. LiMandri expressed some uncertainty as to whether Mrs. Berk's email had ever been searched, even if only for correspondence with the Plaintiffs. There was some discussion of whether Defendants would be willing to use search terms to identify a set of potentially responsive documents in Mr. Goldberg and Mrs. Berk's email accounts, and Mr. LiMandri expressed a willingness to discuss whether and what Defendants would be willing to produce from those accounts after the completion of the listserv production. Mr. LiMandri also stated that a set of documents from Alan Downing's email accounts would be produced to Plaintiffs after the completion of the listserv production. After some discussion of what search terms would be used, Mr. LiMandri expressed that Defendants intended to unilaterally select a handful of terms (specifically, those leading to the smallest overall number of documents, citing Defendants' limited capacity to review and produce documents), and that if Plaintiffs desired additional terms to be used, then they would have to

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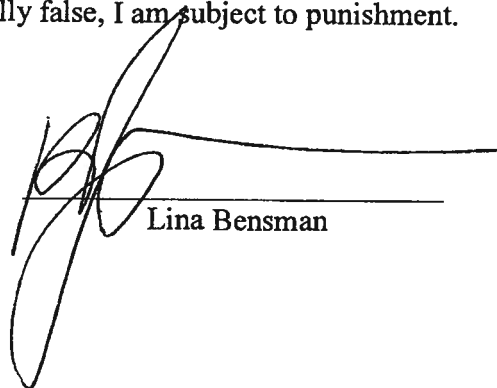
<sup>2</sup> Plaintiffs never received any notice that Defendants would not be able to meet the production deadline set forth in the June 7, 2013 Order.

pay the Defendants to hire someone with technical capacity. Mr. McCoy asked for further clarifications as to the “computer crashes” that had, according to Defendants, rendered some portion of their past emails inaccessible. Mr. LiMandri said that he would ask his clients for more information and promised to follow up.

8. On July 5 and 8, 2013, Defendants made a partial production of listserv communications to Plaintiffs. On July 10, 2013, Plaintiffs sent a letter to Defendants raising a number of concerns about this partial production, informing Defendants of Plaintiffs’ intent to move to compel their compliance with the June 7 Order, and requesting to meet and confer on these issues. Although Defendants responded in an email (where, for the first time, they expressed an “intention” to review produced documents), they did not make themselves available for a telephonic meet and confer.

I hereby 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: July 18, 2013  
New York, NY



Lina Bensman

**LITE DEPALMA GREENBERG, LLC**

Allyn Z. Lite  
Jeffrey A. Shooman  
Two Gateway Center – Suite 1201  
Newark, NJ 07102  
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SUPERIOR COURT OF NEW JERSEY  
HUDSON COUNTY, LAW DIVISION

Docket No. L-5473-12

CIVIL ACTION

**CERTIFICATION OF  
ALLYN Z. LITE AS PER R. 1:4-4(C)  
(FACSIMILE SIGNATURE)**

Allyn Z. Lite, of full age, certifies as follows:


1. I am an attorney at law of the State of New Jersey and a member of the law firm Lite DePalma Greenberg, LLC located at Two Gateway Center, Suite 1201, Newark, New Jersey. This certification is made upon personal knowledge unless otherwise specified.

2. The Certification of Lina Bensman, Esq., in Support of Plaintiff's Motion to Compel Defendants' Compliance with June 7, 2013 is being submitted with a facsimile signature. The affiant has acknowledged the genuineness of her signature and a copy with original signature affixed will be filed if requested by the court.

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: July 18, 2013

By: \_\_\_\_\_



Allyn Z. Lite  
Jeffrey A. Shooman  
**LITE DEPALMA GREENBERG, LLC**  
Two Gateway Center – Suite 1201  
Newark, NJ 07102  
Telephone: (973) 623-3000  
Facsimile: (973) 623-0858

*Attorneys for Plaintiffs*

Morris Dees (*pro hac vice*)  
David C. Dinielli (*pro hac vice*)  
Samuel E. Wolfe (*pro hac vice*)  
Alesdair H. Ittelson (*pro hac vice*)  
**SOUTHERN POVERTY LAW CENTER**  
400 Washington Ave.  
Montgomery, AL 36104  
Telephone: (334) 956-8200  
Facsimile: (334) 956-8481

*Attorneys for Plaintiffs*

James L. Bromley (*pro hac vice*)  
Scott D. McCoy (*pro hac vice*)  
Lina Bensman (*pro hac vice*)  
**CLEARY GOTTLIEB STEEN & HAMILTON**  
One Liberty Plaza  
New York, NY 10006  
Telephone: (212) 225-2000  
Facsimile: (212) 225-3999

*Attorneys for Plaintiffs*