LDG ATTORNEYS AT LAW
LITE DEPALMA GREENBERG, LLC
Newark • Chicago • Philadelphia

TWO GATEWAY CENTER, SUITE 1201
NEWARK, NJ 07102
TEL: 973.623.3000
FAX: 973.623.0858
www.litedepalma.com

May 26, 2015

HAND DELIVERED

Honorable Peter F. Bariso, Jr., A.J.S.C.
Superior Court of New Jersey
Hudson County Courthouse
595 Newark Avenue
Jersey City, NJ 07305

Re: **Ferguson et. al. v. JONAH et. al., Docket No. L-5473-12**
Motion to Bar Testimony of Yossi Lakier and Randy Dodge

Dear Judge Bariso,

Together with our co-counsel, this firm represents Plaintiffs in this matter. Please accept this letter brief in lieu of a more formal reply in support of Plaintiffs' motion, pursuant to New Jersey Rules of Evidence 403 and 611, that the Court exclude defense witnesses Yossi Lakier and Randy Dodge. That motion is returnable at the pretrial conference on May 29, 2015.

A Total Lack Of Surprise

Defendants admit in their Opposition that they knew as early as July 2014 that Dr. Lalich's report, which gave them notice of her testimony, included the expert opinion that Defendants' methods are coercive. See Def. Opp. at 2 ("Plaintiffs . . . produced their expert witness reports on July 11, 2014. Dr. Janja Lalich opined, among other things, that Defendants engage in unconscionable commercial practices because their practices comport with her theories of 'coercive influence' and 'bounded choice.'"). Defendants further admit that they delayed in searching for witnesses to rebut Dr. Lalich, and only began doing so after the Court ruled that Dr. Lalich could testify. Def. Opp. at 2 ("[A]fter this Court overruled Defendants' motions to preclude or limit Plaintiffs' experts' testimony, Defendants *began* searching for rebuttal witnesses . . . .") (emphasis added). Defendants fail to offer any justification for their ten month delay. Defendants' apparent decision not to plan for the possibility that they would not win their motion in limine to bar or limit Dr. Lalich's testimony does not entitle them to prejudice Plaintiffs with late-arriving surprise witnesses.[1] There is no need to wait for trial to decide this

[1] The same applies with regard to Dr. Beckstead, who Defendants suggest will also somehow be rebutted by Mr. Dodge. Def. Opp. at 5-6. Defendants knew in July 2014 that Plaintiffs would offer Dr. Beckstead as a witness and admit that they chose, for months, not to look for potential rebuttal witnesses. Def. Opp. at 2. Their delay is inexcusable, and indeed Defendants provide

issue, as Defendants suggest in their opposition, because there is no mystery—and no surprise—as to what Dr. Lalich will say. That is precisely the reason that Defendants' attempt to spring these witnesses on Plaintiffs at the last minute is improper.

These Are Not True Rebuttal Witnesses

In addition to the manifest unfairness of allowing Defendants to add two new witnesses weeks before trial, Plaintiffs respectfully request that the Court exclude both Lakier and Dodge for two reasons: (1) Defendants fail to demonstrate in what way either Lakier or Dodge could or would rebut the testimony of Plaintiffs' expert witnesses; and (2) Defendants fail to demonstrate how the testimony of Lakier and Dodge would be meaningfully different from that of numerous existing defense witnesses.

First, a fact witness cannot rebut an expert. Lakier and Dodge should be excluded as rebuttal witnesses because they simply cannot rebut the testimony of Plaintiffs' expert witnesses. Defendants suggest that Mr. Lakier and Mr. Dodge will rebut the expert witnesses by testifying "as to whether they or others experienced Defendants' program as manipulative or coercive." Def. Opp. at 4. But Defendants confuse the colloquial meaning of "coercion" with the specialized, technical meaning. When Dr. Lalich testifies that Defendants' practices utilize coercive influence, she is making an objective assessment of the facts in this case based on her expertise, research, and years of experience, all of which she is applying in rendering that expert opinion. In contrast, if Mr. Lakier and Mr. Dodge testify that they did not experience Defendants' program as coercive, they are merely relating their subjective experience, i.e., providing an additional fact of the kind that Dr. Lalich considered in forming her conclusions. Mr. Lakier and Mr. Dodge are not equipped to rebut Dr. Lalich's analysis, nor have they engaged in any analysis of that kind themselves.[2]

---

the Court with no grounds for excusing it, nor explain why Plaintiffs should be unduly prejudiced by a late-arriving witness.

[2] In this case, Mr. Lakier and Mr. Dodge are especially ill-positioned to actually rebut Dr. Lalich's expert opinions because those who are under coercive influence are often unable to fully appreciate the extent of that influence on them, as Dr. Lalich explains in her report. Indeed, an individual's claim that she or he has not been coerced is often considered unreliable. See, e.g., Kelleher v. Galindo, 350 N.J. Super. 570, 576 (Ch. Div. 2002) (noting the steps a court must take to assure that a victim of domestic violence is not being coerced before granting the victim's request to rescind a temporary restraining order); Michal Gilad, In God's Shadow: Unveiling the Hidden World of Victims of Domestic Violence in Observant Religious Communities, 11 Rutgers J.L. & Pub. Pol'y 471, 489 (2014) (describing coercion experienced by members of observant religious communities).

The cases cited by Defendants in their Opposition are not to the contrary. Three of these cases relate to proffers of expert testimony, *not* lay testimony, in rebuttal to other experts. See Weiss v. Goldfarb, 295 N.J. Super. 212 (App. Div. 1996) rev'd in part on other grounds, 154 N.J. 468 (1998); Casino Reinvestment Development Auth. v. Lustgarten, 332 N.J. Super. 472 (App. Div. 2000); State v. LaBrutto, 114 N.J. 187 (1989). Defendants cite one additional case in arguing that "actual surprise" is the "primary issue for consideration" when considering admitting a rebuttal witness. Def. Opp. at 3 (citing Mori v. Secaucus Town, 17 N.J. Tax 96 (App. Div 1997).[3] Rather than making any such holding, the Appellate Division merely ordered a trial court to reopen the record so a party could offer evidence challenging a rebuttal witness who testified without giving advanced notice. Id. at 101. In contrast, this Court has not been provided with a fait accompli requiring a curative order. Defendants simply lack authority requiring the admission of two lay witnesses identified on the eve of trial for the purpose of rebutting an expert witness and thus Mr. Dodge and Mr. Lakier should be excluded.

Second, Mr. Lakier and Mr. Dodge should also be excluded as rebuttal witnesses because Defendants fail to demonstrate how their testimony would be meaningfully different from that of Defendants' other witnesses. Eight "success story witnesses" who participated in Journey into Manhood and Journey Beyond will testify on behalf of Defendants and describe how those weekend programs were subjectively beneficial to them— just like Mr. Lakier and Mr. Dodge.[4] Defendants themselves state in their May 22, 2015 filing that the testimony of their success story witnesses will "rebut[] Plaintiffs' and their experts' assertions that . . . Defendants defraud their clients and use coercive and cult-like practices." Defendants' Response to Plaintiffs' Objections to Defendants' Proposed Trial Exhibits and Deposition Readings ("Defs.' Response") at 9. Defendants specifically highlight *twenty-one* portions of the deposition testimony of four of their success story witnesses, stating that "the[] testimony directly addresses whether [the witness'] experience with Defendants supports the coercion theory offered by Dr. Lalich." App'x B to Defs.' Response at 2, 4, 5, 8, 10-13, 17-21 (characterizing the testimony of Defendant witnesses Jonathan Hoffman, Jedekiah Stailey, Sean Hennigan, and Blake Smith). Defendants Arthur Goldberg and Alan Downing will also give testimony regarding their perception with respect to their programs and methods, as will individuals who staffed the weekends such as Thaddeus Heffner and Rich Wyler.

---

[3] In Mori, too, the surprise witness was an expert witness rebutting another expert.

[4] The fact that Defendants do not consider Mr. Lakier and Mr. Dodge to be success stories because they "now identify as gay" is not relevant to their inability to rebut an expert and does not meaningfully distinguish their testimony to the testimony already being offered by Defendants' other witnesses. Defendants simply misunderstand the nature of the coercion at issue here: participants are not coerced into becoming straight. Rather, they are coerced into complying with, and staying in, Defendants' program.

For all of these reasons, Plaintiffs request that these purportedly "rebuttal" witnesses be barred.

Respectfully submitted,

Bruce D. Greenberg

BDG:al
cc: Michael P. Laffey, Esq. (via electronic mail)
Charles S. LiMandri, Esq. (via electronic mail)