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*Attorneys for Plaintiffs*

Michael Ferguson, Benjamin Unger, 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

**NOTICE OF PLAINTIFFS' MOTION  
TO EXCLUDE YOSSI LAKIER AND  
RANDY DODGE**

To: Michael P. Laffey, Esq.  
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961 Holmdel Road  
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Charles S. LiMandri, Esq.  
Teresa L. Mendoza, Esq.  
Freedom of Conscience  
Defense Fund  
P.O. Box 9520  
Rancho Santa Fe, CA 92067

PLEASE TAKE NOTICE that Plaintiffs shall apply to the Honorable Peter F. Bariso, A.J.S.C. at the Superior Court of New Jersey located at 595 Newark Avenue, Jersey City on Friday, May 29, 2015 at 10:00 a.m. for an order excluding Yossi Lakier and Randy Dodge.


A proposed form of Order is attached. In support of this motion, Plaintiffs will rely upon the brief submitted herewith.

ORAL ARGUMENT: Plaintiffs waive oral argument.

DISCOVERY END DATE: The discovery end date was December 29, 2014.

Dated: May 6, 2015

**LITE DEPALMA GREENBERG, LLC**



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*Attorneys for Plaintiffs*

**CERTIFICATION OF SERVICE**

On May 6, 2015, the original and two copies of the following documents were hand delivered to: Clerk, Superior Court of New Jersey, Hudson County Law Division, 595 Newark Avenue, Jersey City, NJ 07305

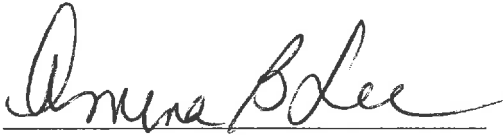
- Plaintiffs' Notices of Motion to Exclude Yossi Lakier and Randy Dodge;
- Letter brief and
- Proposed form of Order

and were served via electronic and regular mail upon:

Michael P. Laffey, Esq.  
Messina Law Firm, P.C.  
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Holmdel, New Jersey 07733

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*Attorneys for Defendants*

  
Amina B. Lee



May 6, 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. Through this letter brief, we respectfully request, pursuant to New Jersey Rules of Evidence 403 and 611, that the Court exclude defense witnesses Yossi Lakier and Randy Dodge, who were identified to the Plaintiffs for the first time on May 4, 2015. Because the issues are straightforward, Plaintiffs waive oral argument on this motion.

In Defendants' Trial Memorandum, dated May 1, 2015, Defendants listed as an anticipated evidentiary issue their plan to call certain unidentified former clients as "rebuttal witnesses" to Dr. Lalich. D. Trial Mem. at 52. Upon receipt of Defendants' Trial Memorandum, Plaintiffs immediately requested that Defendants identify those witnesses. On May 4, 2015, Defendants complied, naming Mr. Lakier and Mr. Dodge in a Supplemental Summary of Witness Testimony filed with the Court that same day. Supp. at 4-5. Defendants' Supplemental Summary states that the testimony of these witnesses will rebut Dr. Lalich's opinion that Defendants engage in coercive practices. Id. at 4.

The standard for the use of rebuttal evidence is clear under New Jersey law. "Rebuttal evidence is permissible when necessary because of new subjects introduced on direct or cross-examination." State v. Cook, 330 N.J. Super. 395, 418 (App. Div. 2000). A trial court has considerable discretion in determining whether to permit rebuttal testimony. State v. James, 144 N.J. 538, 552-53 (1996). The court's determination will not be overturned absent a "gross abuse" of discretion. State v. Provoid, 110 N.J. Super. 547, 557 (App. Div. 1970).



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Dr. Lalich's anticipated trial testimony contains nothing new. Her expert opinions were fully disclosed to Defendants through her July 11, 2014 expert report. As of that date, Defendants knew that Dr. Lalich's expert opinions included the opinion that Defendants' program makes use of coercive influence.<sup>1</sup> Now, *ten months* later, with less than a month remaining before trial, it is too late for Defendants to name for the first time two additional witnesses, whose existence they have never previously disclosed, on the basis that these witnesses will rebut Dr. Lalich's expert opinion. Defendants have had nearly a year to prepare their strategy with respect to Dr. Lalich. It would be unfair, and unduly prejudicial, to allow them to subject Plaintiffs to surprise, last-minute witnesses at this late date. Contrast State v. Sturdivant, 31 N.J. 165, 178 (1959) (approving of rebuttal testimony that "was necessitated by [trial testimony] which the State could not reasonably be required to anticipate and to disprove in advance").

Moreover, Defendants' description of the testimony these witnesses will offer demonstrates that their testimony 1) would not actually be a rebuttal to the expert opinions offered by Dr. Lalich, and 2) would be cumulative of testimony already offered by Defendants' nine success story witnesses.

*First*, a fact witness who testifies that the JONAH program does not use coercive influence would be improperly crossing into the realm of expert testimony. Fundamentally, because lay witnesses cannot give opinions that require specialized knowledge, a fact witness cannot rebut Dr. Lalich's expert opinion. Rule 701. Dr. Lalich is offering the expert opinion, based on her research, scholarship, and professional experience, that certain of Defendants' practices are coercive. This is not the same thing as lay testimony relating the subjective feeling that the practices are coercive. Rather than offering a true rebuttal, Defendants are merely attempting to confuse the jury because the same word ("coercive") would be used in a technical, expert sense by Dr. Lalich, yet in a colloquial, subjective sense by the fact witnesses.<sup>2</sup> Defendants' description of the testimony these witnesses would offer confirms this. The description does not state that they would deny the existence of the specific practices (the nature

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<sup>1</sup> Further, Dr. Lalich was deposed on August 7, 2014, at which time Defendants had a full and fair opportunity to explore all aspects of her expert opinions. We also note that, per the November 8, 2013 Case Management Order, the discovery end date for this matter was December 29, 2014. Defendants' tardy disclosure of these additional witnesses is therefore in violation of that deadline. Finally, Defendants did not make any attempt to amend their interrogatory responses to include these witnesses, in violation of Rule 4:17-7.

<sup>2</sup> This is especially dangerous here because, as Dr. Lalich will explain, people who are subjected to coercive influence often are not aware that they are being manipulated or that their choices are being bounded.



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of which Defendants have never disputed), but rather that the witnesses would testify that “none of the Defendants’ practices are coercive.” Supp. at 5. This should not be allowed.

In addition, Defendants’ descriptions of the anticipated testimony of Mr. Lakier and Mr. Dodge include much that is well beyond Dr. Lalich’s testimony; for example, Mr. Lakier will apparently testify that “all people, particularly Orthodox Jews, should be permitted to pursue SOCE.” Supp. at 4. Such testimony does not “rebut” Dr. Lalich’s expert opinions in any fashion and is entirely improper.

*Second*, these witnesses do not add anything to the testimony that Defendants’ nine success story witnesses will offer (not to mention the Defendants themselves, as well as Elaine Berk, Rich Wyler, and Thaddeus Heffner). Although Defendants’ descriptions of their witnesses’ testimony are extremely limited (see D. Trial Mem. at 47-50), it is plain that these witnesses have experience with JIM, the various specific practices at issues, and the individual Defendants themselves. Presumably, Defendants’ existing witnesses are not going to say that the JONAH program is coercive. These witnesses are capable of fully describing the various relevant practices and relating their (apparently positive) experiences at JIM and in counseling. Mr. Lakier and Mr. Dodge cannot add anything new or different to that testimony.

On the eve of trial, and notwithstanding their existing nine “success story” witnesses, Defendants now seek to increase their roster of witnesses by mischaracterizing Mr. Lakier and Mr. Dodge, who are clearly mere fact witnesses, as “rebuttal witnesses” to expert testimony. This is improper and should not be permitted. The testimony of Dr. Lalich that these witnesses would purportedly rebut is nearly a year old. And Defendants’ own descriptions of this “rebuttal” testimony demonstrate that these witnesses cannot, and do not, actually rebut her expert opinions. Accordingly, Plaintiffs request that the Court exclude Mr. Lakier and Mr. Dodge from testifying at trial.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "B.D. Greenberg".

Bruce D. Greenberg

BDG:al

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

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Defendants.

SUPERIOR COURT OF NEW JERSEY  
HUDSON COUNTY, LAW DIVISION

Docket No. L-5473-12

CIVIL ACTION

**[PROPOSED] ORDER GRANTING  
PLAINTIFFS' MOTION TO EXCLUDE  
YOSSI LAKIER AND RANDY DODGE**

This matter having been opened to the Court by Bruce D. Greenberg, Esq., of Lite DePalma Greenberg, LLC, attorneys for plaintiffs Michael Ferguson, Benjamin Unger, Chaim Levin, Bella Levin, and Jo Bruck, on motion returnable May 29, 2015 for an order excluding Yossi Lakier and Randy Dodge.

The Court having considered the motion and good cause appearing;

On this \_\_\_\_ day of \_\_\_\_\_ 20 \_\_, It is ORDERED that:

Yossi Lakier is excluded from testifying.

FURTHER ORDERED that

Randy Dodge is excluded from testifying.

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Honorable Peter F. Bariso, Jr., A.J.S.C.

\_\_\_ opposed

\_\_\_ unopposed