Michael P. Laffey, Esq. NJ Bar No. 026761986
Messina Law Firm, P.C.
961 Holmdel Road
Holmdel, NJ 07733-2103
Tel: (732) 332-9300; Fax: (732) 332-9301

Attorneys for Defendants

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 LAW DIVISION - HUDSON COUNTY DOCKET NO. L-5473-12 Civil Action

BRIEF IN OPPOSITION TO PLAINTIFFS MOTION TO ENFORCE PERMENNAT INJUNCTION AND ENTER DEFAULT JUDGMENT.

Michael P. Laffey

On the Brief

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PRELIMINARY STATEMENT

The plaintiffs have filed a motion claiming that the Defendants have violated the settlement agreement. In support of this contention they rely on an interpretation of the agreement contrary to the intent of the parties, take actions of the Defendants out of context, and rely on assumptions that are incorrect and events they have known about for almost two years but did not object to. Further they have brought this motion without following the procedures for notice of default set in the settlement agreement. It appears that the Plaintiffs are trying to enforce an agreement that they wished they had, rather than the one they actually have.

STATEMENT OF FACTS

This matter was tried to conclusion on June 25th, 2015. The Jury found in favor of the Plaintiffs. Before the Court entered final judgment the parties began extensive negotiations that resulted in a settlement of the case. The terms of that settlement are memorialized by an order entering a permanent injunction against the Defendants that was agreed to jointly stipulated to by all the parties (exhibit A. certification of Michael P. Laffey) and a settlement agreement which references said consent order (exhibit B "certification of Michael P. Laffey" hereinafter cert. of MPL)

Plaintiffs now bring a motion alleging that the Defendant Arthur Goldberg and Elaine Berk, who was not a party to the original action but who made certain promises in the settlement agreement, have violated the terms of the settlement agreement and now seek to enforce that agreement.

Specifically plaintiffs make the following allegations:

1. That JONAH INC. continues to operate under a different name in violation of the permanent Injunction.

2. That the Defendants continue to be involved in Conversion Therapy and Conversion Therapy related Commerce.

POINT 1

THE JEWISH INSTITUTE FOR GLOBAL AWERENESS ("JIFGA") IS NOT THE ALTER EGO OF JONAH.

Plaintiffs allege that JIFGA is the alter ego of Jonah and therefore its existence is a violation of the language in the permanent injunction that requires JONAH to cease all operations. JIFGA does not provide any of the services that JONAH performed. It does not provide the "educational services" that JONAH provided and it does not provide referrals and or direct services as JONAH did. It does not operate JONAH's website and in fact the website was taken offline as required by the order. That this has been done is set forth in the certification of Anthony Tawadrous who managed the JONAH website.

The Certificate of Dissolution for JONAH is attached as (exhibit C, cert. of MPL) to the certification of Michael P. Laffey. As required by law paragraph 5 of the certificate of dissolution sets forth a plan of dissolution which states that the property of the Corporation will be transferred to JIFGA a not for profit corporation. N.J.S.A. § 15A:12-8 requires "Transfer or conveyance of all assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, … " The disposition of JONAH's assets was done as required by law and disclosed in the certificate of dissolution. It should be noted that the certificate of dissolution was sent to counsel on August 30, 2016 (ex.D, cert. of MPL) and no objection was raised to that plan of dissolution until 20 months after the fact. The fact that JIFGA has the same board members or that it offered employment to the long time employees of JONAH is immaterial as neither those

facts or the transfer of assets violate the permanent injunction or the settlement agreement. These facts are immaterial because JIFGA does not engage in the activities that JONAH engaged in nor does it engage in activity that violates any of the terms of the injunction or the settlement agreement. The primary case that Plaintiffs cite *Marshak v. Tredwell,* 593 F.3d 478, 490 (3rd Cir.) was based not only on the personnel and the location being the same but the "general operations of each business being the same". The facts show that this requirement is not present in this case.

The mission Statement of JIFGA as set forth on its, website (exhibit 4) States;

> The Jewish Institute for Global Awareness seeks to globally provide humanity with greater awareness of the existence of these universal values, principles that are dependent upon Biblical teachings. These are root ethical values that Jews, Christians and Muslims, who represent more than 50% of the world's population, can act upon within their own religious traditions. The great Eastern religions, Hinduism and Buddhism, also have, at their root, a primordial link to these core values. In fact, going back to Noah, these values are part of a legacy for all humanity to follow.
>
> The Jewish Institute for Global Awareness (JIFGA) teaches that by understanding, internalizing and following a set of Divinely-ordained moral imperatives and universal ethics known as the Seven Noahide Laws, the world can produce more just societies, which are better able to receive and retain G-d's** Presence. We seek to inspire our fellow human beings, because we are all descendants of Noah who, together with his family, is described in the Hebrew Bible as the survivor of The Flood and who thus became the ancestor of all of humanity. However, not only do we seek to inspire everyone who follows the Abrahamic religions (Jews, Christians, and Muslims) to follow these Noahide laws but also those of every race, color, or creed.
>
> Our foundation is rooted in Biblical principles and expresses a Biblical world-view. Some may refer to this code as representative of a "Judeo-Christian" worldview because it includes the moral values initially set forth in the Hebrew Bible (the Torah) and shared by the Christian traditions that historically shaped much of the western world. Given to us by G-d at the dawn of history, (as recounted in the book of Genesis and documented in the Talmud, Sanhedrin 56a-b -- the Oral Law), these seven principles, if followed, permit us to establish a harmonious world in which diverse peoples can live together peacefully.

The Mission statement attached as exhibit 5 further sets forth the purpose of JIFGA. Clearly JIFGA is not about therapy of any type and is a vehicle to promote religious values.

What exactly has JIFGA done in this area aside from creating a website to promote certain religious ideals? Arthur Goldberg using JIFGA as a platform has written profusely on issues relating to the focus of JIFGA. Below is a list of those articles and essays, with links to sites where they were published and discussed, which is illustrative of the writing he has done.

The Secularization of America's Religious Colleges and Universities - www.catholiceducation.org/en/education/other-topics/the-secularisation-of-america-s-religious-colleges-and-universities.html

Western civilization depends on parental rights. Time to restore them - www.lifesitenews.com/opinion/western-civilization-depends-on-parental-rights.-time-to-restore-them "We Must Reclaim Parental Rights as Building Blocks to a Healthy Society" (reprinted as a CNS News commentary under the title "Parental Rights Subject to Whims of the Courts, Must be Restored" at *https://www.cnsnews.com/commentary/arthur-goldberg/parental-rights-becoming-subject-whims-courts-must-be-restored*

Abortion Stops A Beating Heart: The Heartbeat Protection Act of 2017 - https://barbwire.com/2017/03/10/abortion-stops-beating-heart-protection-act-2017/

Euthanasia Activists Want to Legalize Assisted Suicide in All 50 States, We Have to Stop Them - www.lifenews.com/2017/12/20/euthanasia-activists-want-to-legalize-assisted-suicide-in-all-50-states-we-have-to-stop-them/

The Inalienable Right to Life: An Update on Assisted Suicide in the United States and Canada - www.virtueonline.org/inalienable-right-life-update-assisted-suicide-united-states-and-canada

In Canada, If Your Doctor Thinks Your Death in "Reasonably Foreseeable" He Can Euthanize You - www.lifenews.com/201709/12/in-canada-if-your-doctor-thinks-your-death-is-reasonably-foreseeable-he-can-euthanize-you/

Good essay by Arthur Goldberg on Assisted Suicide in US and Canada by Richard Myers - www.uffl.org/blog/2017/12/08/good-essay-by-arthur-goldberg-on-assisted-suicide-in-us-and-canada/

The Inalienable Right to Life: An Update on Assisted Suicide in the United States and Canada - www.lifeissues.net/writers/gold/gold_08inalienablerighttolife.html

Full copies of these articles and others listed below that Mr. Goldberg has written can be accessed on the Public Discourse website at http://www.thepublicdiscourse.com/author/arthur-goldberg

"The Inalienable Right to Life: An Update on Assisted Suicide in the United States and Canada,"

"The Urgency of Restoring the Biblical Values of America's Founders,"

"Same-Sex Attraction and Therapy: It's Time to Let People Choose"

"A Tragic Abandonment of Identity:-The Secularization of America's Religious Colleges and Universities."

Rabbi Dr. Shimon Cowen, the son of the former Governor General of Australia and leader of the Institute for Judaism and Civilization, co-authored two articles for publication with Arthur Goldberg. They are *Restoring the Political Moral Center,* http://www.thepublicdiscourse.com/2016/08/17530/ and the *Contagion of Euthanasia and the Corruption of Compassion* http://www.thepublicdiscourse.com/2017/09/19983/ .

Arthur Goldberg and Elaine Berk we met with Rabbi Yakov D. Cohen, Director of the Institute of the Noahide Code, a UN based NGO with consultative status to the United Nations whose focus is to create peaceful cooperation among people and nations. Rabbi Cohen, had both Elaine Berk and Arthur Goldberg appear on his television show to explain our particular focus on educating the public about the Noahide principles and their applicability to today's social and cultural issues.

A second group with whom JIFGA connected is Ask Noah.Org led by Rabbi Dr. Michoel Schulman. Impressed by JIFGA's research on various topics, including in particular how various world leaders have recognized the importance of the Noahide laws as a moral code for all nations, Dr. Schulman asked permission to reprint some of Mr. Goldberg's research on their website. See, e.g., https://asknoah.org/faq/have-the-noahide-laws-been-recognized-by-any-governments .

JIFGA is also working with an organization out of Texas called Netiv which does a great deal of educational video programming and will start doing projects with JIFGA when, in the near future, Rabbi Dror Moshe Cassouto joins JIFGA as its director of Religious Education.

These activities are set forth more fully in the certification of Arthur Goldberg.

In furtherance of their argument that JIFGA is the alter ego of JONAH Plaintiffs point to a website run by JIFGA called Funding Morality and particularly a project on that site called *The Legacy of Dr. Joseph Nicolosi Sr.; Video Series.*

Funding Morality.com explains what it is as follows:

> We began as a result of the denial by other "crowd funding" platforms to profile persons of faith who would not compromise their moral and biblical convictions and in turn have been persecuted by those who are intolerant of a Judeo-Christian worldview. These crowd-funding platforms (which are mostly for-profit businesses) have often denied services to individuals who have lost their jobs, been harassed or persecuted for their politically incorrect views. https://fundingmorality.com/page.php?id=who-we-are

The projects that appear on the website are created by third parties. Not by Arthur Goldberg, not by Elaine Berk and not by JIFGA. Plaintiffs conveniently ignore the other projects found on the site such as raising money for Jonathan Wedger a crusader against child sexploitation, scholarships for pro-life medical students, funding for a Political Network for Values- Youth

Program, money for the medical bills of Stephanie Packer, wife and mother of four and a former church youth counselor who was diagnosed with scleroderma in 2012, funding for a Kenyan youth center *The Life Choices program*, started by the Anglican Church and funding for Julio Severo Blogger and one of the founders of the National Pro-Life and Pro-Family Network in Brazil. (see certification of Arthur Goldberg)

The activities of JIFGA and of Funding Morality involve issue advocacy. It is clearly a different mission than the mission JONAH was engaged in and JIFGA is therefore not the alter ego of Jonah.

POINT II

DEFENDANTS ARE NOT ENGAGED IN THE PROMOTION OF CONVERSION THERAPY OR CONVERSION RELATED THERAPY

When contacted by the attorneys for the Plaintiffs regarding certain income JIFGA received despite there being no legal basis for them to request the information, defendants through counsel responded honestly and forthrightly. In that response which is attached as exhibit 15 to Plaintiffs moving papers. Defendants admitted to receiving referral fees that used to go to JONAH and while not knowing exactly what the clients were being treated for assumed it was likely that some were receiving therapy for same sex attraction. Defendants stand by the argument that to the extent any of the referrals were receiving treatment for same sex attraction receipt of the fees did not violate the injunction or the settlement agreement because the actual referrals pre-dated the settlement, the clients did not reside in New Jersey and the counsellors did not reside in NJ.

That being said the Court does not need to address that issue to decide this motion.

Upon being served with the plaintiffs motion Defendants contacted the counsellors to determine exactly what the referral clients were receiving treatment for. As it turns out none of the referral clients are receiving treatment for same sex attraction (or as Plaintiffs refer to it "conversion therapy").

Both Robert Vazzo and Robert Morgan have submitted certifications wherein they make it clear that none of those clients are (or were) being treated for same sex attraction. Further, so that there can be no doubt as to that fact, they set forth what each client was being treated for and how they were being treated. Based on their certifications it is clear that none of those referral fees were paid for people who were receiving "conversion therapy". Therefore receipt of those fees can in no way said to violate the injunction or the settlement agreement.

POINT III

TO THE EXTENT THAT THE DEFENDANTS ENGAGED IN ANY ACTIVITIES THAT ADDESSED THE SUBJECT OF SAME SEX ATTRACTION OR "CONVERSION THERAPY" THOSE ACTIVITIES WERE IN THE NATURE OF ISSUE ADVOCACY AND ARE NOT PROHIBITED BY THE INJUNCTION OR THE SETTLEMENT AGREEMENT

The settlement agreement and the permanent injunction which was entered into with the consent of the parties were the result of negotiations that took place over the course of many months. The trial ended on June 25th and the settlement was not finalized until almost 6 months later. There was correspondence between the parties and various drafts of the agreements circulated. These documents will show the Court that the certain acts of Defendants now complained of were not intended to be prohibited by the agreement.

> Evidence of the circumstances is always admissible in aid of the interpretation of an integrated agreement. This is so even when the **contract** on its face is free from ambiguity. The polestar of construction is the intention of the parties to the **contract** as revealed by the language used, taken as an entirety; and, in the quest for the intention, the situation of the parties, the attendant circumstances, and the objects they were thereby striving to attain are necessarily to be

> regarded. ***HN3***The admission of evidence of extrinsic facts is not for the purpose of changing the writing, but to secure light by which to measure its actual significance. Such evidence is adducible only for the purpose of interpreting the writing -- not for the purpose of modifying or enlarging or curtailing its terms, but to aid in determining the meaning of what has been said. So far as the evidence tends to show, not the meaning of the writing, but an intention wholly unexpressed in the writing, it is irrelevant. The judicial interpretive function is to consider what was written in the context of the circumstances under which it was written, and accord to the language a rational meaning in keeping with the expressed general purpose. *Casriel v. King*, 2 *N.J.* 45 (1949).,*Atl. N. Airlines, Inc. v. Schwimmer*, 12 N.J. 293, 301-02 (1953)

Building on this the Court in *Conway v. 287 Corp. Ctr. Assocs.*, 187 N.J. 259, 269 (2006) stated.

Within the constraints described in *Schwimmer*, the court allows a thorough examination of extrinsic evidence in the interpretation of contracts. Such evidence may "include consideration of the particular contractual provision, an overview of all the terms, the circumstances leading up to the formation of the contract, custom, usage, and the interpretation placed on the disputed provision by the parties' conduct." *Kearny PBA Local # 21 v. Town of Kearny*, 81 N.J. 208, 221, 405 A.2d 393 (1979). "Semantics cannot be allowed to twist and distort [the words'] obvious meaning in the minds of the parties." *Schwimmer*, *supra*, 12 N.J. at 307, 96 A.2d 652. Consequently, the words of the **contract** alone will not always control.

One issue that greatly concerned the Defendants was the question of issue advocacy. Attached to the certification of counsel are the emails, correspondence and marked up agreements that addressed this issue. (exhibits E through K, cert.MPL). Particularly Counsel's letters to James Bromley dated November 4 2015 and December 1, 2015 (exhibits E and F, Cert. MPL) make it clear that the Defendants would not enter into a settlement that abridged their constitutional right to engage in issue advocacy and that they would only agree to not be engaged in providing services or promoting service in a commercial setting. This is made especially clear in the letter dated December 1 2015 were it states

> As to the broadening of the prohibited activities to include "promotion or advocacy" once again this action deals with the provision of services. From the beginning of our negotiations we have discussed barring my clients from that

> activity and it appears that now that we are very close to an agreement there is an effort on behalf of the Plaintiffs to broaden the scope of the agreement. The issue of sexual orientation change is an issue of public policy that touches on issues related to religion, science and social policy. There are many national organizations that address this issue along with many other political and cultural issues and this provision would bar my clients from working with those organizations. My clients will not agree to waive their First Amendment rights such that they are barred from participating in the debate of the issues surrounding sexual orientation change.

In response to this stand as shown in the redacted version of the settlement agreement that was an attachment to Mr. Bromley's email of December 8, 2015 (Ex. G, cert. MPL) the word "advocacy" was specifically removed as a prohibited activity.

Plaintiffs now come before the Court and seek to punish the defendants for activities that they agreed would not be prohibited.

More specifically they allege that the following activities violate the party's agreement.

First they allege that Mr. Goldberg violated the agreement by promoting conversion therapy on a Nefesh listserv, a listserve used by predominantly orthodox Jewish Mental Health Professionals because in a response to a comment about JONAH by one of the users he referred them to an article written by Dr. Laura Haynes PH.D. and lead counsel in the JONAH case Charles Limandri Esq. It is alleged that this violates the injunction because that article then cites sources referenced by the Defendants proposed experts which allege that change therapy can be effective. Aside from the fact that it is based on the tenuous proposition that Mr. Goldberg cited an article which cited an article, the conversation was not only taken out of context but falls within the realm of issue advocacy. It is no secret to this court that Plaintiffs and their Counsel disagreed with many of the rulings the Court issued in connection with the case. The article is clearly aimed at those disagreements. Further as can be seen from both the comment of Dr.

Sarah Miller about the "JONAH debacle" and concerns about" religious coercion" and Mr. Goldberg's response he was clearly addressing what he felt was Dr. Miller's misconception about what JONAH did and arguing that the Courts legal rulings were incorrect. This is not the advertising or promotion of conversion therapy or conversion therapy related commerce. It is not aimed at getting an individual to engage in conversion therapy, which is the essence of what Mr. Goldberg was sued for. Mr. Goldberg's comments and his citing the article is however, firmly within the realm of issue advocacy.

Plaintiffs also point to JIFGA's becoming a member of the "National Task Force for Therapy Equality". There website is located at http://www.therapyequality.org/ .

Their home page states that" The National Task Force for Therapy Equality is a coalition of licensed psychotherapists, psychiatrists, physicians, public policy organizations, and psychotherapy clients/patients from across the United States of America. Their purpose is to secure therapy equality for clients that experience distress over unwanted same-sex attractions and identity conflicts." The website reveals that they have provided testimony at legislative hearings on conversion therapy and engaged in letter writing to legislators. They do not sell services or make referrals for "conversion therapy" They are clearly an issue advocacy organization. It should be noted that the settlement agreement prohibits the defendants from being on the Board or having a leadership position in organizations that were involved in providing or making referrals for "conversion therapy" (ex. B cert. MPL) but even as to those organizations the Defendants were explicitly not prevented from being members of such organizations.

Defendants also point to the fact that "Funding Morality" allowed an organization seeking funding for a video on the Legacy of Dr. Joseph Nicolosi Sr. (who died on March 8, 2017,

https://www.nytimes.com/2017/03/16/us/joseph-nicolosi-dead-gay-conversion-therapist.html). Once again this is not aimed at selling conversion therapy services to individuals but is issue advocacy. To argue otherwise would subject every article, book or video that defended "conversion therapy" to a claim of consumer fraud. To do that would unequivocally be a violation of the First Amendment to the Constitution. A right that the Defendants clearly had no intention of waiving.[1]

POINT IV

PLAINTIFFS MOTION IS PREMATURE AND VIOLATES THE SETTLEMENT AGREEMENT.

Paragraph 6a of the settlement agreement states:

> Plaintiffs shall provide notice to the JONAH parties of their intent to seek applicable Breach Damages, accompanied by a description of Plaintiff's good faith basis for believing the JONAH parties are in Breach of the settlement agreement or Order. If the Defendants fail to cure the Breach within 30 days of receiving notice or if the Breach cannot be cured (collectively an uncured Breach the applicable Breach Damages will become due.

The agreement then goes on to say that if the Breach cannot be cured then the Defendants have 30 days to pay the "Breach Damages" and it is only after those are unpaid that the Plaintiffs will file a motion. Defendants ignore this provision of the settlement agreement. They state that the reason that they do not have to follow the procedures set

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[1] it is just as firmly established that "every reasonable presumption should be indulged against * * * **waiver" of a constitutional right**. *Hodges v. Easton*, 106 *U.S.* 408, 412, 1 *S. Ct.*307, 27 *L. Ed.* 169 (1882). The vast majority of cases concerning waiver of constitutional rights deal with criminal proceedings wherein the courts repeatedly stress that there must be "an intentional relinquishment or abandonment of a **known** right or privilege." *Johnson v. Zerbst*, 304 *U.S.* 458, 464, 58 *S. Ct.* 1019, 1023, 82 *L. Ed.* 1461 (1938); *Brady v. United States*, 397 *U.S.* 742, 748, 90 *S. Ct.* 1463, 25 *L. Ed.* [***7] 2d 747 (1970); *Miranda v. Arizona*, 384 *U.S.* 436, 444, 86 *S. Ct.* 1602, 16 *L. Ed.* 2d 694 (1966); *United States v. Corbitt*, 541 *F.* 2d 146, 149 (3 Cir. 1976), and *State v. Green*, 129 *N.J. Super.* 157, 161 (App. Div. 1974). In *Schneckloth v. Bustamonte*, 412 *U.S.* 218, 93 *S. Ct.* 2041, 36 *L. Ed.* 2d 854 (1973)... Our Appellate Division, in *State v. Morgenstein*, 147 *N.J. Super.* 234 (App. Div. 1977) has observed that in New Jersey: *Even within the setting of a civil controversy* it must affirmatively appear that the party charged with waiver **knew** his rights and deliberately intended to relinquish them
Porter & Ripa Assocs., Inc. v. 200 Madison Ave. Real Estate Grp., 159 N.J. Super. 317, 322 (Super. Ct. 1978)

forth in the agreement is because the breach cannot be cured. They do not however state what about any of the alleged breaches is incurable. Defendants are entitled to the notices set forth in the agreement and are entitled to try and cure any alleged breaches. As the Plaintiffs have not met the condition precedent to filing this motion that is in the agreement, this motion is premature and should be dismissed by the Court or in the alternative the Court should state what it finds to be a breach of the agreement and then the Defendants should have 30 days to cure that breach.

POINT V

PLAINTIFFS RIGHT TO ALLEGE THAT CERTAIN CONDUCT OF THE DEFENDANTS IS A BREACH OF THE SETTLEMENT AGREEMENT IS BARRED BY THE DOCTRINE OF LACHES.

Plaintiffs knew in August of 2016 that the assets of JONAH had been transferred to JIFGA. Mr. Goldberg's post on the Nefesh list serve was in May of 2016. Plaintiff did not give notice to plaintiff that they considered these acts to be a breach of the agreement until they filed the current motion in March of 2018. They now claim the breaches of the agreement are incurable. While the Defendants position is that all of the complained of breaches can be cured, if in fact they cannot, it is likely because of the passage of time. For instance if the Plaintiffs had taken the position in August of 2016 that any transfer of assets to a non-profit controlled by Arthur Goldberg or that using the acronym JIFGA was a violation of the settlement agreement Defendants could have taken immediate steps to avoid that argument. Instead they are being told almost two years later that they should not have done that and that now it is too late to fix it. Further if this had been

raised at that time it also would have disposed of the issue of referral fees as those would not have been assigned to JIFGA.

The doctrine of laches as involving "inexcusable delay in asserting a right. . . " *Lavin v. Hackensack Bd. of Educ.*, 90 *N.J.* 145, 151 (1982) (quoting *Atlantic City v. Civil Serv. Comm'n*, 3 *N.J. Super.* 57, 60 (App.Div.1949)), *Urban League of Greater New Brunswick v. Carteret,* 115 N.J. 536, 554 (1989). Pomeroy defines laches as "such neglect or omission to assert a right as, taken in conjunction with the lapse of time, more or less great, and other circumstances causing prejudice to an adverse party, operates as a bar in a court of equity." 2 *Equity Jurisprudence* § 419, at 171-72 (5th ed. 1941). *Lavin v. Bd. of Educ.,* 90 N.J. 145, 151 (1982). As a result in their inexcusable delay, the Plaintiffs should be barred from claiming that a transfer of assets or the Nefesh list serve comments are a breach of the agreement. This also raises the issue of when did the Plaintiffs learn of other conduct of the Defendants that they complain of. This cannot be discerned from their brief and in light of the known delays they should be required to disclose that information and give a reason for any unreasonable delay.

CONCLUSION

For the reasons set forth herein Plaintiffs motion should be denied.

Respectfully Submitted

April 27, 2018

Michael P. Laffey
Attorney for Defendants