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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

**REPLY IN SUPPORT OF PLAINTIFFS'  
MOTION TO ENFORCE PERMANENT  
INJUNCTION AND FOR  
DEFAULT JUDGMENT**

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## **PRELIMINARY STATEMENT**<sup>1</sup>

The Opposition does not refute any of the bases for the relief Plaintiffs sought in their Motion. The factual “issues” raised in the Opposition relate only to the degree of Defendants’ violations of this Court’s Permanent Injunction and are thus irrelevant. The fact that the violations occurred is beyond any real debate.

JIFGA is JONAH—run by the same people, from the same location, doing the same thing. Defendants do not dispute that JIFGA received 95% of its 2016 gross receipts from referral fees it earned from JONAH clients whom Defendants referred to the Referral Therapists. Nor do Defendants seriously dispute that this activity violates the Permanent Injunction. Instead, Defendants focus on irrelevant, unrelated activities and attack strawmen, attempting to persuade the Court that the Motion seeks to impinge on Defendants’ constitutional rights and that the relief Plaintiffs seek is somehow both premature and barred by laches. Most troubling, however, is that, rather than accept responsibility for their violations, or even address the merits of the Motion, Defendants once again chose to make the most private aspects of their clients’ personal lives the centerpiece of their defense. Fortunately for those clients, the Court need not accept Defendants’ invitation to reach into their counseling sessions to determine that Defendants’ actions violate the Court’s Permanent Injunction and, as a result, the Settlement Agreement.

First, the Referral Therapists’ statements that they do not “practice conversion therapy” and that their clients are not seeking “treatment for same sex attraction” are unbelievable on their face. This is especially the case when these denials are compared to the extensive record before this Court—established through eighteen contested motions and a three-week jury trial—that shows in no uncertain terms that JONAH advertised, and that its clients

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<sup>1</sup> Capitalized terms used in the Preliminary Statement have the meaning ascribed to them herein and in Plaintiffs’ Motion.

sought, services to “treat” unwanted “same-sex attraction.” This Court is fully aware that describing a client’s underlying problem as relating to “trauma” or “addiction” does nothing to change the fact that JONAH and its “therapists” purported to attempt to turn gay people straight. Suggesting otherwise is nonsense.

Second, nothing in the Opposition alters the fact that JONAH’s core operations continue through JIFGA. As a result, the Court has ample basis to find that Defendants have violated the Permanent Injunction and breached the Settlement Agreement.

### **ARGUMENT**

#### **I. THE CERTIFICATIONS REVEAL THE REFERRAL THERAPISTS’ PROVISION OF CONVERSION THERAPY TO JONAH-REFERRED CLIENTS**

Defendants’ Brief in Opposition (the “Opposition” or “Opp.”) cherry-picks two sets of statements from the certifications of JONAH referral therapists Robert Morgan and Robert Vazzo (collectively, the “Referral Therapists”), to support an incredible assertion: that none of the sixteen clients who were referred to them by JONAH are receiving Conversion Therapy.<sup>2</sup> At the outset, it simply defies reason that every single client at issue sought a referral for psychological treatment from an organization run by Arthur Goldberg and Elaine Berk, previously called “Jews Offering New Alternatives to Homosexuality,” for something *other* than unwanted same sex attraction. More importantly, the facts contained in the Certifications, when reviewed against the record established during the four-year litigation that preceded entry of the Permanent Injunction, demonstrate that the Referral Therapists are Conversion Therapy practitioners who provided Conversion Therapy to the JONAH-referred clients at issue.

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<sup>2</sup> See *Certification of Robert Morgan, in Opposition to the Plaintiffs['] Motion to Enforce Permanent Injunction and Default Judgment* ¶ 5 (the “Morgan Cert.”); *Certification of Robert L. Vazzo, in Opposition to the Plaintiffs['] Motion to Enforce Permanent Injunction and Default Judgment* ¶ 6 (the “Vazzo Cert.” and, together with the Morgan Cert., the “Certifications”).

### **A. Robert Morgan and Robert Vazzo Are Conversion Therapy Practitioners**

In their Certifications, the Referral Therapists claim that they do not practice conversion therapy. Morgan Cert. ¶ 5 (“I do not practice conversion therapy.”); Vazzo Cert. ¶ 5 (“I do not practice as a ‘conversion therapist.’”). But these statements do not, as Defendants would have the Court believe, establish that the Referral Therapists do not engage in Conversion Therapy as defined by the Permanent Injunction.<sup>3</sup> As the Court is aware, Defendants themselves consistently opposed the use of the term “conversion therapy” during the course of this litigation, yet the jury found that their activities constituted conversion therapy and it is beyond debate that their current activities constitute “Conversion Therapy” under the Court’s order.<sup>4</sup> Irrespective of how Defendants or the Referral Therapists choose to interpret the term, Conversion Therapy is expansively defined in the Permanent Injunction and extends to “any . . . activity that has the goal of changing, affecting or influencing sexual orientation, ‘same sex attraction’ or ‘gender wholeness’ or any other equivalent term,” however characterized. Ex. 2. As the extensive record in this case demonstrates, the services provided by the Referral Therapists fit squarely within this definition.

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<sup>3</sup> In fact, Mr. Vazzo expressly admits to practicing “SAFE-T” therapy. Vazzo Cert. ¶ 6. This is a distinction without a difference, as evidenced by an article Defendant Arthur Goldberg wrote, cited by Defendants in their Opposition, which explains that SAFE-T is simply another term used to describe therapy provided to “individuals struggling with unwanted sexual attractions.” See Ex. 16; Opp. at 5 (citing same). Exhibits 1 through 15 referenced in this brief are attached to the *Certification of Thomas S. Kessler*, dated March 28, 2018. Exhibits 16 through 54 referenced in this brief are attached to the accompanying *Certification of Thomas S. Kessler*. All exhibits are identified by number with the prefix “Ex.”

<sup>4</sup> Ex. 17, Trial Tr. 197:12-21, June 8, 2015 Vol. 1 (Mr. Goldberg rejecting the use of the term “conversion” as it applies to the work done by JONAH). Defense counsel also took great care to make the point during trial that Defendants chose not to use the term “conversion therapy.” See, e.g., *id.* 51:5-17 (defense counsel Mr. LiMandri cross-examining Plaintiff Benjamin Unger to establish that Defendants did not use the term “conversion therapy”); Ex. 18, Trial Tr. 100:1-4, June 16, 2015 Vol. 1 (Mr. LiMandri asking Plaintiffs’ expert Dr. A. Lee Beckstead, Ph.D., to describe his experience with conversion therapy and clarifying that “you understand my clients call it gender affirming processes or gender wholeness”). In fact, the Court may recall that defense counsel objected to the use of the term “conversion therapy program” in the proposed jury instructions. See Ex. 19, Trial Tr. 38:20-39:3, June 19, 2015 Vol. 2.

As the Court will recall, one of the central components of Defendants' Conversion Therapy program was the "Journey into Manhood" or "JiM" weekend, organized by the group People Can Change.<sup>5</sup> A main focus of the JiM weekend is to engage in "MANS work," which was defined as "a summary of the pathway OUT of homosexuality." Ex. 21 at 54. Both Mr. Morgan and Mr. Vazzo are listed in JiM follow-up materials as leaders of MANS groups that "journeyers" can attend to continue the "work" of JiM. See Ex. 22 at 4; Ex. 23. Mr. Morgan has even served on the board of People Can Change. See Ex. 24, Stailey Dep. 88:3-13.

Mr. Morgan, himself an alumnus of JiM, is described in JiM-related mailings as a member of the National Association for Research and Therapy of Homosexuality ("NARTH") and a clinician mentored by the late Dr. Joseph Nicolosi, who "specializ[ed] in gender-affirmative therapy with men who seek both freedom from unwanted same sex attraction and connection to their true heterosexual identity." Ex. 22 at 4. Mr. Morgan has also hosted JiM reunions alongside Defendant Alan Downing, where participants were trained to facilitate the "guts work" done at JiM and to discuss the "SSA Experience." Ex. 25. Finally, Mr. Morgan and his wife created "A Wife's Healing Journey," a People Can Change program specifically designed for wives of men who experience unwanted same sex attraction. Ex. 26.

For his part, Mr. Vazzo's bona fides as a practitioner of Conversion Therapy are equally clear. Mr. Vazzo is a MANS group leader, and is prominently featured as a post-JiM weekend resource on the JiM website. Ex. 23. As that biography states, Mr. Vazzo is an active member of NARTH and, like Mr. Morgan, a protégé of the late Dr. Nicolosi. *Id.*<sup>6</sup> In addition,

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<sup>5</sup> Subsequent to the trial, People Can Change rebranded itself as Brothers Road. See Ex. 20.

<sup>6</sup> See also Ex. 27 (Elaine Berk referencing client with unwanted same sex attraction receiving telephonic therapy with Mr. Vazzo, describing him as a "therapist who trained under Nicolosi.")

Mr. Vazzo is the lead plaintiff in *Vazzo v. City of Tampa*,<sup>7</sup> a federal lawsuit now-pending in the Middle District of Florida in which Mr. Vazzo seeks to enjoin a municipal ordinance banning certain conversion therapy. Ex. 28 ¶ 2. In his 2017 verified complaint, Mr. Vazzo swears that he “specializes in SOCE [sexual orientation change efforts] counseling,” and that he “constantly receives inquiries . . . concerning SOCE counseling.” *Id.* ¶¶ 66, 72.

This record makes clear that, while the Referral Therapists may choose not to refer to themselves as practitioners of “conversion therapy,” the services they offer to their clients, including those referred to them by Defendants, fall squarely within the Permanent Injunction’s definition of Conversion Therapy.

**B. The Referral Therapists Provide Conversion Therapy to the JONAH-Referred Clients**

Defendants next seize on the purported fact that none of the relevant clients are “being treated” for same sex attraction or are engaged in “SAFE-T” therapy. *See Morgan Cert.* ¶ 5; *Vazzo Cert.* ¶ 6. As an initial matter, the Certifications are conspicuously silent on whether the Referral Therapists’ JONAH-referred clients experience unwanted same sex attraction, or whether unwanted same sex attraction led them to reach out to JONAH in the first place. Indeed, the Vazzo Certification curiously volunteers that of his seven JONAH-referred clients, two are “gay men who were happy being gay,” without disclosing the orientation or attractions of the remaining five. *Vazzo Cert.* ¶ 4.

Instead, the bulk of the Certifications focuses on the purported “[p]resenting problems” or “diagnoses” of the JONAH-referred clients, along with the relevant diagnoses and “[t]herapy [u]sed.” *Morgan Cert.* ¶ 6; *Vazzo Cert.* ¶ 7. The most common issues listed are

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<sup>7</sup> No. 17-cv-02896 (M.D. Fla. filed Dec. 4, 2017).

“unresolved trauma,” “sex addiction,” “poor self-esteem,” a variety of anxiety-related disorders and “High Expressed Emotion Level Within Family.” Morgan Cert. ¶ 6; Vazzo Cert. ¶ 7.

Throughout discovery and trial, Defendants, their purported “success story” witnesses and their would-be experts all explained that unwanted same sex attraction stems from “underlying issues”—the same issues as those identified in the Certifications—and that treating those issues using the same modalities detailed in the Certifications is the primary method through which to reduce or eliminate unwanted same sex attraction. Thus, the Certifications merely describe the treatment routinely provided to JONAH clients to influence their same sex attraction, already established by the extensive record.

1. The Certifications Mirror Defendants’ Theories on the Causes of Same Sex Attraction and How to Influence It Through Therapy

Since the inception of this case, Defendants have asserted that unwanted same sex attraction is caused and/or exacerbated by “underlying issues” or traumas. *See, e.g.*, Ex. 29, Trial Tr. 73:18-74:10, June 11, 2015 vol. 1 (Elaine Berk testifying that “SSA is just a symptom of unresolved childhood pain.”); Ex. 30, Goldberg Dep. 221:17-25, Feb. 19, 2014 (listing causes of homosexuality such as “defensive attachment from the father figure in connection with the mother figure, same sex peer wounds, body image wounds, sexual abuse”); *id.* at 447:11-17 (“I believe that homosexuality is a symptom of underlying emotional issues.”).<sup>8</sup> They also believed that treatment of these “issues” was how JONAH’s clients reduced or eliminated their unwanted same sex attraction. *See, e.g., id.* (“[H]omosexuality, in our view, deals with underlying issues,

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<sup>8</sup> Defendants also stated that people with unwanted same sex attractions suffered from “co-morbidities” like sex addiction, marital distress and anxiety. *See* Ex. 31 at 29 (“The failure of Plaintiffs to resolve their SSA . . . [was] caused by Plaintiffs’ co-morbid addictions and unhealed spiritual and emotional wounds . . . .”); Ex. 32, Downing Dep. 140:14-142:25, Feb. 25, 2014 (men who have unwanted sexual attraction “will turn to different kinds of addictions”); Ex. 33, Downing Dep. 554:12-22, Feb. 26, 2014 (“Q. Can anxiety fuel same sex attraction? A. Yes, I believe so.”); Ex. 34 at 10 (“clients rarely experience incongruence between their SSA [same sex attraction] and desired life goals without some amount of co-occurring issue that also presents itself,” including anxiety, sexual trauma, or “relationship struggles”).

lack of self-esteem, lack of self-worth . . . . [Y]ou have to handle those issues before you can even actually attack the underlying issues dealing with the SSA”).<sup>9</sup>

Defendants offered for deposition sixteen purported “success story” witnesses to demonstrate the efficacy of their services. A common thread that ran through each of these witnesses’ testimony was a litany of “underlying issues” that, generally speaking, contributed to or aggravated their same sex attraction. As detailed in Appendix A to the Kessler Certification, these “issues” are the same as those that are identified as “presenting problems” in the Morgan Certification: ten identify “childhood trauma,”<sup>10</sup> eleven identify “abandonment” or “rejection” by their fathers,<sup>11</sup> ten identify “poor self-esteem” or “body shame issues,”<sup>12</sup> seven identify “marital problems” or “difficulty forming and sustaining relationships with women,”<sup>13</sup> seven identify sex or pornography addiction,<sup>14</sup> and nine identify “difficulty forming friendships,” especially with same-sex peers.<sup>15</sup>

Just like the treatment identified in the Certifications, the Conversion Therapy that Defendants’ “success story” witnesses received from their JONAH-referred counselors and

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<sup>9</sup> See also Ex. 33, Downing Dep. 376:12-377:15, Feb. 26, 2014 (claiming that resolving “body shame” in clients can “contribute to diminishing same sex attraction”); Ex. 32, Downing Dep. 180:6-181:10, Feb. 25, 2014 (claiming same regarding resolution of “body issues”); Ex. 33, Downing Dep. 448:25-449:16, Feb. 26, 2014 (claiming that self-esteem issues are a “contributing factor” to homosexuality and that addressing them could affect one’s same sex attraction).

<sup>10</sup> See, e.g., Ex. 39, Palmisano Dep. 25:21-26:3 (attributing his same sex attraction to childhood experiences of physical abuse, emotional abuse, and social isolation).

<sup>11</sup> See, e.g., Ex. 42, Bennion Dep. 24:3-9 (describing “reject[ion] by [his] father” as a cause of his same sex attraction).

<sup>12</sup> See, e.g., Ex. 43, Hennigan Dep. 116:25-118:16 (explaining that he understood, as a result of his experience with a JONAH-referral counselor, that his same sex attraction was caused in part by “[his] self-esteem” and that he was able to reduce his same sex attraction by developing “assertiveness”).

<sup>13</sup> See, e.g., Ex. 44, Smith Dep. 19:8-20:3 (describing his marriage as “completely dysfunctional”).

<sup>14</sup> See, e.g., Ex. 36, DeJiaco Dep. 11:6-10 (presented at trial on June 14, 2015) (explaining that he sought out conversion therapy because “[he] was totally unhappy” due to having become “a complete sex addict”).

<sup>15</sup> See, e.g., Ex. 37 Hoffman Dep. 59:11-60:16 (presented at trial on June 22, 2015) (explaining that he sought out JONAH because he was “very lacking within the peer world intimacy” and “had very superficial friendships with other men”).

through the JONAH program, focused on addressing these “underlying issues” in order to reduce or eliminate their same sex attraction.<sup>16</sup>

The Conversion Therapy practitioners that Defendants sought to qualify as experts on same sex attraction and its treatment espoused the same view. For example, Dr. Nicolosi, the admitted mentor of both Referral Therapists, opined that same sex attraction is “frequently caused by early childhood wounds resulting from maladaptive parental relationships, peer rejection, sexual molestation,” and can be motivated by “[a]nxieties and insecurities regarding approaching the opposite sex.” Ex. 46 at 3, 15.<sup>17</sup> Dr. Nicolosi also stated that addressing these “underlying issues” is the means by which Conversion Therapy providers try to influence a client’s same sex attraction. *Id.* at 7 (“[t]he focus of treatment is identifying and resolving [childhood] traumatic experiences” and “emotional wounds”). Similarly, Christopher Doyle stated in his excluded expert report that the treatment of unwanted same sex attraction typically focused on the treatment of “underlying issues,” the resolution of which was a common predicate to resolving unwanted same sex attraction. *See* Ex. 34 at 17 (“In their work, JONAH’s coaches and therapists employ a variety of individual therapeutic processes to *reduce and/or*

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<sup>16</sup> *See*, Ex. 36, DeJiacomo Dep. 173:9-174:10 (presented at trial on June 14, 2015) (recounting how JONAH-referral counselor attempted to influence same sex attraction by addressing the “daddy wound” caused by an absent father); *Id.* at 135:2-140:5 (Mr. DeJiacomo “not surprised” that treatment notes from a session with a JONAH-referred counselor made no mention of same sex attraction); Ex. 45, Dahlgren Dep. 59:11-23 (recounting how he felt “less same sex-attraction” as the result of learning how to “stand up and assert myself” through therapy); Ex. 37, Hoffman Dep. 149:9-21 (describing how Defendant Alan Downing used nudity exercises to treat “body issues” that were a “component of [his] same sex attraction”); Ex. 38, Mirmanas Dep. 39:6-17 (noting that JONAH-referral counselor treated his same sex attraction through treatment designed for post-traumatic stress disorder); Ex. 41, Valk Dep. 14:8-16:12 (therapy with JONAH-referral counselor was spent on addressing “anxiety” and self-esteem issues); Ex. 40, Schwab Dep. 172:10-15 (recounting how Dr. Nicolosi treated him for “trauma” related to “being picked on by the other kids” as a child); *see generally* Ex. 37, Hoffman Dep. 29:8-30:8 (presented at trial on June 21, 2015) (recounting that JiM weekends focused on addressing “wounding from the past, wounding around self-esteem, self-identity, wounding in relation to other men,” that “[JiM participants] believe played a part in [their] same sex attractions”).

<sup>17</sup> *See also* Ex. 47, Nicolosi Dep. 240:22-241:05, Nov. 17, 2014 (“I think that homosexuality is the result of early childhood traumatic experiences and, and the events that happened to you as a child . . .”).

*eliminate unwanted same-sex attractions by resolving underlying issues* that are identified to be causing homosexuality.”) (emphasis added).<sup>18</sup> The Court has heard this all before.

Lest there be any doubt, the Referral Therapists themselves have demonstrated their subscription to Defendants’ conception of same sex attraction and how to influence it. For example, in an exchange on the NARTH listserv, Mr. Vazzo opines that same sex attraction is caused by childhood trauma that results in “repetitive/compulsive” sexual behavior, stating that he “keep[s] looking for exceptions to this theory, but . . . really can’t find any.” Ex. 49. Similarly, Jeddy Stailey, a “success story” witness offered by Defendants, testified that Conversion Therapy he received from Mr. Morgan centered on childhood and marital issues and that the therapy influenced his same sex attraction—notably, “because he also did [EMDR] with [him],” a treatment Mr. Morgan admits providing to the JONAH-referred clients in his Certification. *See* Ex. 24, Stailey Dep. 144:6-146:3.

2. The Treatment Modalities Identified in the Certifications Are the Same Used by Defendants to Influence Clients’ Unwanted SSA

Finally, the “treatments” described in the Morgan Certification,<sup>19</sup> including cognitive behavioral therapy or “CBT,” eye movement desensitization and reprocessing therapy or “EMDR,” Gestalt therapy, and “accessing emotions/grief work,” are the very same modalities used in Defendants’ Conversion Therapy program to reduce or eliminate same sex attraction. *See, e.g.*, Ex. 51 (Vazzo discussing the use of EMDR to treat SSA, including showing gay pornography to clients); Ex. 32, Downing Dep. 162:19-166:10, Feb. 25, 2014 (describing the use of EMDR); *id.* at 148:9-149:5 (gestalt work and psychodrama that occurs at JiM is intended to

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<sup>18</sup> *See also* Ex. 48, Doyle Dep. 153:20-25 (“I think what the therapy is intended to do is to resolve underlying issues that may be causing someone to feel distress about some certain sexual feelings and they may be unwanted.”); *id.* at 237:20-22 (“[T]hat’s the premise of our work. We’re not treating sexual attractions. We’re treating issues underlying them.”); *id.* at 155:10-16 (treating a client’s “underlying issues” “may diminish, and in some cases, . . . may eliminate [his or her same sex attraction]”).

<sup>19</sup> The Vazzo Certification does not identify any treatments used.

address “underlying issues that may have some impact down the road on their -- how they express and perceive their sexual attractions”); Ex. 21 at 73 (describing the “grief work” that occurs at JiM); Ex. 34 at 17-18 (“Cognitive and Behavioral therapy . . . [has] been documented to help condition homosexual clients away from acting out on same-sex desires and other unwanted sexual behaviors.”); Ex. 50, Nicolosi Dep. 106:23-109:2, Oct. 30, 2014 (listing the therapies used to treat unwanted same sex attraction including cognitive behavioral therapy and EMDR therapy). In fact, Mr. Morgan used at least two of these therapies as part of the Conversion Therapy he provided to one of Defendants’ “success story” witness. *See* Ex. 24, Stailey Dep. 144:6-146:3 (Mr. Morgan used JiM processes and EMDR to treat Mr. Stailey’s unwanted same sex attraction).

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At their core, the Certifications explain that the JONAH-referred clients they treat experience the same “problems” or “diagnoses,” otherwise known as “underlying issues,” that Defendants, their witnesses and experts all have stated repeatedly cause unwanted same sex attraction and, if treated, can influence or eliminate same sex attraction. The treatment modalities described in the Certifications are the same methods shown at trial to have been used by JONAH’s referral counselors to address identical “underlying issues” and to influence their clients’ unwanted same sex attraction. Thus, regardless of Defendants’ efforts to distract with the Certifications’ wordsmithing, the Referral Therapists clearly describe the provision of Conversion Therapy, as defined in the Permanent Injunction, to JONAH-referred clients.<sup>20</sup>

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<sup>20</sup> *Cf. Gen. Elec. Co. v. Golden Rule Appliance Co.*, 161 N.Y.S.2d 268, 269-70 (N.Y. App. Div. 1957) (affirming order of civil contempt for violation of injunction not to sell certain products where defendants’ affidavits contained telling omissions and failed to conclusively deny that they made such sales); *People ex rel. Spitzer v. Hooks*, 883 N.Y.S.2d 378, 379-80 (N.Y. App. Div. 2009) (respondent barred from engaging in a certain business submitted affidavit that “failed to deny that, at the times in question, he was working for such a business”).

## II. JONAH CONTINUES TO OPERATE AS JONAH

Defendants do not contest, nor could they, that JIFGA served as the conduit for certain JONAH-referred clients to pay for the services they receive from their JONAH-referred counselors. Nor do they contest that this activity was a core JONAH practice. Instead, the Opposition goes to great lengths to list JIFGA's other supposed functions, like serving as a platform for Mr. Goldberg's articles and meetings with religious figures, arguing, without citation to a single case, that these activities foreclose a finding that JONAH continues to operate as JIFGA. Opp. at 2-7. None of these purported activities—which are indistinguishable from JONAH activities and none of which appears to contribute measurably to JIFGA's revenue—alter the fact that JONAH is continuing its core operations through JIFGA.<sup>21</sup>

JONAH was, at its heart, a referral service to connect individuals experiencing unwanted same sex attraction to Conversion Therapy practitioners. Mot. at 8-9. JONAH connected its clients with those providers and, in many cases, received payments directly from clients, deducted a referral fee and forwarded the remainder to its referral therapists. *Id.* at 9. Defendants have not contested that 95% of JIFGA's 2016 gross receipts came from continuing this exact same activity: receiving payments from JONAH-referred clients, deducting a referral fee and paying JONAH referral practitioners. Nor have Defendants disputed that JIFGA, founded eleven days after entry of the Permanent Injunction, shares JONAH's address, its telephone number, its co-directors and trustees and recycles the "JIFGA" acronym, which JONAH previously used to brand certain of its Conversion Therapy services. *Id.* at 8-10. Contrary to Defendants' assertion, these facts alone establish under New Jersey law that JIFGA is a merely an extension of JONAH. *See Marshak v. Treadwell*, 595 F.3d 478, 490 (3d Cir.

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<sup>21</sup> Although these activities are irrelevant to the Motion, it is telling that none of the articles cited in the Opposition, Opp. at 4-5, appears on JIFGA's website. *See Ex. 52.*

2009) (an entity is a “mere continuation” of another under New Jersey law if some, but not even necessarily all, of the following factors are present: “continuity of ownership; continuity of management; continuity of personnel; continuity of physical location, assets, and general business operations; and cessation of the prior business shortly after the new entity is formed”).

Moreover, although Defendants spend pages explaining that they objected to the use of the term “advocacy” in preliminary drafts of the Permanent Injunction, Opp. at 8-12, they miss the point that Plaintiffs are not seeking to hold them accountable for their advocacy.

Plaintiffs have never argued that these supposed “advocacy” activities, in and of themselves, constituted violations of the Permanent Injunction—though, to be sure, JIFGA and Arthur Goldberg’s continued service as vocal proponents of Conversion Therapy well after the jury’s verdict is highly probative of whether Defendants have impermissibly continued to engage in and promote Conversion Therapy.

Because JIFGA derived 95% of its gross receipts from JONAH’s core business, in addition to sharing JONAH’s assets, principal place of business, telephone number and key staff, the Court should find that JIFGA is, in all material respects, a continuation of JONAH’s core business and that, as a result, Defendants have failed to dissolve and cease operations as required by the Permanent Injunction.

### **III. PLAINTIFFS’ MOTION IS NEITHER UNDULY PREMATURE NOR BARRED BY LACHES**

In the final sections of their brief, Defendants advance the inconsistent arguments that Plaintiffs have both rushed to the courthouse too soon and impermissibly slow-walked their filing to this Court. Plaintiffs cannot be guilty of both, and in fact, are guilty of neither.

**A. Plaintiffs' Motion Is Timely and Complies with the Settlement Agreement**

As established in Plaintiffs' opening brief and above, it is clear that Defendants have engaged in Conversion Therapy services by continuing to serve as the conduit for referrals and referral payments. Engaging in and facilitating the referral process constitutes the ringing of the bell that is the Uncured Breach as defined in the Settlement Agreement. Ex. 3 ¶ 6(a) ("Engaging in Conversion Therapy services, including providing referrals to Conversion Therapy providers, in or directed at New Jersey or New Jersey residents is an Uncured Breach."). That bell cannot be unrung. Thus, by the terms of the Settlement Agreement, the Breach Damages have become due and the Defendants have had thirty days to pay Plaintiffs "the Fee Award . . . less that portion of the Settlement Sum . . . that has been paid." *Id.* ¶ 6(b) & n.2. There is no notice period required for an Uncured Breach. As of the date of Plaintiffs' motion and to date, Defendants have not paid to Plaintiffs the Defendants' Breach Damages.

Even if the Settlement Agreement is interpreted to require Plaintiffs to give Defendants a thirty-day notice of an Uncured Breach, Plaintiffs have provided such notice. Plaintiffs filed their motion on March 28, 2018. That motion provided "notice to the JONAH Parties" of Plaintiffs' "intent to seek the applicable Breach Damages" and explained Defendants' "good faith basis for believing that the JONAH Parties are in breach of the Settlement Agreement or Order." *Id.* ¶ 6(a). As originally noticed, Defendants had thirty days to respond to that motion and even more given the extension of time to respond and the adjournment of the hearing on the Motion at Defendants' request. This satisfies any notice requirement.<sup>22</sup>

Finally, Defendants are incorrect that notice and an opportunity to cure an "Uncured Breach" is a "condition precedent" to filing the instant motion or that the Settlement

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<sup>22</sup> Furthermore, even if the breaches identified in the Motion could have been cured as Defendants suggest, Opp. at 12-13, Defendants' failure to take any actions to do so within thirty days of receipt of the Motion would render their breaches "Uncured Breach[es]" under the terms of the Settlement Agreement. Ex. 3 ¶ 6(a).

Agreement contains a pre-suit notice requirement. Opp. at 12-13. That is not supported by the language of the Settlement Agreement and Defendants do not point to any provision that supports their position. The notice provision in the Settlement Agreement at most establishes a thirty-day opportunity to cure an alleged breach. Ex. 3 ¶ 6(a). The notice provision in Paragraph 6(a) does not restrict the time to file any motion for relief or prohibit a motion from serving as the notice as long as it provides at least thirty days' notice. The thirty-day period referenced in Paragraph 6(b) is the time Defendants have to pay Defendants' Breach Damages in the event of an Uncured Breach. It does not say that Plaintiffs may not file a motion prior to the running of that time period. Rather, it prescribes what Plaintiffs must do ("shall file a motion") should Defendants fail to timely make payment, not what they may not do during the thirty-day period. *Id.* ¶ 6(b).

**B. Plaintiffs' Motion Is Not Barred by Laches**

Finally, Defendants' assertion that Plaintiffs' request for default judgment is somehow barred by the doctrine of laches, Opp. at 13-14, is entirely without merit.

First, the doctrine of laches is simply inapplicable to Plaintiffs' claim for default judgment.<sup>23</sup> Here, Plaintiffs' claim for default judgment under the Settlement Agreement, which seeks purely legal relief, is subject to a six-year statute of limitations. N.J. Stat. § 2A:14-1 (2018). As such, Plaintiffs' claim, having been filed well within the statute of limitations, is not barred by the doctrine of laches. *See, e.g., Fox v. Millman*, 210 N.J. 401, 419-20 (2012).

Second, Defendants have not established the requisite "unexplainable and inexcusable delay" by Plaintiffs, much less identified facts that would suggest any resulting prejudice. *Id.* at 417-18 (2012) (citation omitted); *see also United States v. Koreh*, 59 F.3d 431,

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<sup>23</sup> The Opposition does not allege that the doctrine of laches is applicable to Plaintiffs' Motion. Of course, as discussed below, the doctrine would be inapplicable even if that were Defendants' contention.

445 (3d Cir. 1995). Quite to the contrary, although Plaintiffs had reason to suspect misconduct based on JIFGA's 2016 Form 990, it was Defendants' January 30 letter, Ex. 15, that first revealed Defendants' violations of the Permanent Injunction and Settlement Agreement.

Defendants allege that JONAH's notice of corporate dissolution operated as sufficient notice that Defendants had transferred JONAH's referral contracts and revenue streams to JIFGA. Opp. at 2-3. This cannot square with the notice itself, which merely describes the transfer to JIFGA of "[a]ny remaining personal property . . . including a bank account." Certification of Michael P. Laffey Esq., Ex. C. This anodyne language cannot, as Defendants now suggest, be read as a disclosure that Defendants intended that JIFGA would continue JONAH's performance under the referral agreements. Opp. at 2-3.<sup>24</sup> Nothing in the Permanent Injunction, which required that JONAH cease operating, the Settlement Agreement or New Jersey law required Plaintiffs to have divined the intent of the Defendants to continue to operate through JIFGA pursuant to the transferred referral agreements, on pain of being forever barred from raising that conduct to the Court's attention.<sup>25</sup>

*[The remainder of this page is left intentionally blank]*

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<sup>24</sup> Moreover, at the time of the negotiation of the Preliminary Injunction and Settlement Agreement, Plaintiffs and Defendants specifically discussed which of JONAH's assets might be used to satisfy an eventual money judgment. At no time did Defendants disclose that JONAH had ongoing revenue streams by virtue of its referral agreements or otherwise suggest to Plaintiffs that they intended to continue performing under those agreements.

<sup>25</sup> Defendants' also point to Plaintiffs' purported knowledge of Mr. Goldberg's May 2016 Nefesh listserv post to support their laches argument. Op. at 13. As explained above, that post does not form the basis of any relief sought in the Motion and, accordingly, cannot support Defendants' laches claim.

## CONCLUSION

For the reasons set forth herein and in the Motion, Plaintiffs respectfully request the Court enter an order granting the Motion and providing for the relief sought therein and such other relief as the Court may find appropriate.

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Respectfully submitted,

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