

# **Exhibit 5**

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION, CIVIL PART  
HUDSON COUNTY, NEW JERSEY  
DOCKET NO. L-5473-12

MICHAEL FERGUSON, BENJAMIN )  
UNGER, CHAIN LEVIN, JO )  
BRUCK, BEJAIA LEVIN )

Plaintiffs. )

vs. )

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. )

TRANSCRIPT  
of  
MOTION

Place: Hudson County Superior Court  
Administration Building  
595 Newark Avenue  
Jersey City, N.J. 07306

Date: May 11, 2018

BEFORE:

HON. PETER F. BARISO, JR. J.S.C.

TRANSCRIPT ORDERED BY:

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1 THE COURT: -- number L-5473-12, Michael  
 2 Ferguson et al. versus JONAH, et. al., return date for  
 3 application in aid of litigant's rights and to enter an  
 4 injunction.  
 5 May I please have counsel's appearances, and  
 6 would you spell your last name for the record for us?  
 7 MR. KESSLER: Good morning, Your Honor.  
 8 Thomas Kessler, K-E-S-S-L-E-R, Cleary Gottlieb Steen &  
 9 Hamilton, on behalf of the plaintiffs.  
 10 THE COURT: Good morning.  
 11 MR. KESSLER: Good morning.  
 12 MR. DINIELLI: Good morning, Your Honor.  
 13 David Dinielli, D-I-N-I-E-L-L-I, of the Southern  
 14 Poverty Law Center on behalf of the defendants.  
 15 THE COURT: Good morning.  
 16 MR. DINIELLI: Good morning.  
 17 MR. GREENBERG: Good morning, Your Honor.  
 18 Bruce Greenberg, G-R-E-E-N-B-E-R-G, from Lite DePalma  
 19 Greenberg in Newark, also on behalf of plaintiffs.  
 20 THE COURT: Good morning.  
 21 MR. BROMLEY: Good morning, Your Honor.  
 22 James Bromley, B-R-O-M-L-E-Y, of Cleary Gottlieb Steen  
 23 & Hamilton, on behalf of the plaintiffs.  
 24 THE COURT: Good morning and welcome.  
 25 MR. LAFFEY: Michael Laffey, L-A-F-F-E-Y,

1 from the Messina Law Firm on behalf of the defendants,  
 2 Your Honor.  
 3 THE COURT: Good morning. Please be seated.  
 4 All right. So as indicated this is an application  
 5 filed by the plaintiffs in aid of litigant's rights  
 6 seeking the court to find the breach of a settlement  
 7 agreement, entering a judgement against the plaintiffs  
 8 and also entering an injunction as to, let me get the  
 9 right at -- since we're dealing with two acronyms here,  
 10 JIFGA, J-I-F-G-A, Jewish Institute for Global  
 11 Awareness.  
 12 The court has received the initial moving  
 13 papers which had a brief as well as a certification  
 14 with 15 exhibits, received opposition brief from  
 15 counsel with exhibits attached, and then received a  
 16 reply brief from plaintiffs with exhibits 16 through 56  
 17 as well as sealed exhibit number 35 and 55, un -- the  
 18 sealed unredacted exhibits 35 and 55.  
 19 Any other documents that counsel are aware  
 20 that were submitted to the court that have not listed?  
 21 MR. KESSLER: No, Your Honor. I'll just  
 22 mention briefly that one of the exhibits to the initial  
 23 (indiscernible) certification is the settlement  
 24 agreement itself and there is also a sealed unredacted  
 25 version of that document.

1 THE COURT: Yes. Okay. All right. So  
2 having reviewed all of that document, all of the  
3 documents just set forth, the court has some questions  
4 as well as issues that need to be addressed.

5 One of the first issues presented in  
6 opposition involves whether or not this application  
7 itself is in violation of the proposed settlement  
8 agreement. And that is because the settlement  
9 agreement provides that notice of a breach is to be  
10 given with a good faith belief as to why there was a  
11 breach and that the defendant has 30 days to cure the  
12 breach. There is language about an uncured breach, but  
13 even the language regarding an uncured breach seems to  
14 indicate that in the event of an uncured breach  
15 defendant shall have 30 days to pay the fee award. If  
16 defendants fail to timely make such a payment, then  
17 plaintiff shall file a motion.

18 So whether it's a curable or -- or uncured  
19 breach, don't you have to wait 30 days before you file  
20 this motion after you notify them?

21 MR. KESSLER: Your Honor, the opening motion  
22 that we filed with return date of 30 days was intended  
23 to be the notice. This is explicit from the opening  
24 motion itself. I'll direct the court to footnote 4 in  
25 which we -

1 THE COURT: Well, I know what you're arguing,  
2 but that -- I don't read the agreement that way.

3 MR. KESSLER: Your Honor --

4 THE COURT: It says if defendants fail to  
5 timely make such payment plaintiffs shall file a  
6 motion. It doesn't say you get to file the motion  
7 during that 30 days, not the way I read it anyway.

8 MR. KESSLER: Your Honor, I think that the  
9 intent --

10 THE COURT: And that's assuming it's an  
11 uncured breach. I'm giving you the benefit of the  
12 doubt right now that it's uncured. Even your language  
13 as to an uncured breach still provides a 30-day period  
14 for the defendants to do something before you can file  
15 the motion, doesn't it?

16 MR. KESSLER: Your Honor, I think that the  
17 intent of the agreement is to provide defendants 30  
18 days to cure the breach, or if it can't -- either if it  
19 can't be cured (indiscernible), then we can then seek  
20 relief from the court.

21 THE COURT: Well, then why does it say  
22 defendant shall have 30 days to pay?

23 MR. KESSLER: Because the defendants have  
24 the option -- theoretically, Your Honor, once they  
25 received our motion they could have paid the breach

1 damages.

2 THE COURT: No, no, no, no. Don't say when  
3 they received your motion. Let's talk about the  
4 language before it says filing a motion. Does it not  
5 say in the event of an uncured breach by defendants  
6 defendants shall have 30 days to pay plaintiff the fee  
7 award less that portion of the settlement sum that has  
8 been paid. If defendants fail to timely make such  
9 payment, plaintiff shall file a motion. Doesn't that  
10 provide the same 30 days as if it was a curable breach?

11 MR. KESSLER: Your Honor, I think it's  
12 important to focus on the definition of uncured breach.  
13 It -- it is either a breach that is not cured within 30  
14 days of notice --

15 THE COURT: Right.

16 MR. KESSLER: -- or a breach that cannot be  
17 cured.

18 THE COURT: I agree with you. Either way  
19 don't they have 30 days to do something?

20 MR. KESSLER: They have 30 days from the  
21 date of the uncured breach. In this case the uncured  
22 breach is the provision of the conversion therapy and  
23 the processing of the payments from the conversion  
24 therapy which has happened at various points over the  
25 last year.

1 THE COURT: Not from when you notified them  
2 that you think there's a breach? They're supposed to  
3 know there's an uncured breach and that triggers the 30  
4 days? What would be the purpose of notice?

5 MR. KESSLER: So the notice provision -

6 THE COURT: Then you're saying they wouldn't  
7 need notice.

8 MR. KESSLER: The point of the notice  
9 provision, Your Honor, is to give them a chance to cure  
10 the breach if it can be cured or to pay before the 30  
11 days. I think -

12 THE COURT: That's my point. And they're  
13 supposed to do that in 30 days before you can file a  
14 motion. You don't get to use the 30 days with the  
15 return date of the motion. I've never seen a notice  
16 provision interpreted that way when it says before a  
17 court action can be taken something has to be done in  
18 those 30 days. But you jumped the gun and filed all of  
19 this before those 30 days are up. I think that's a val  
20 -- that's a valid argument that they're making. I  
21 understand what you're saying now, we're past the 30  
22 days, they didn't pay the money, so where's the harm.  
23 The harm is I had to read all the stuff when I wasn't  
24 supposed to, cause the 30 days didn't pass yet.

25 MR. KESSLER: Well -- well, I think -

1 THE COURT: It's not real harm, though. No,  
2 but that -- I think that's a legitimate argument, not  
3 fatal, but I think that in fairness I think you were  
4 supposed to wait the 30 days.

5 MR. KESSLER: So I think there are two  
6 points. The first is that the motion is -- seeks also  
7 enforcement of the injunction and there's certainly  
8 nothing about the settlement agreement that prevents us  
9 from seeking --

10 THE COURT: Okay.

11 MR. KESSLER: the court to enforce the  
12 injunction. As Your Honor, notes irrespective --

13 THE COURT: All right. That's why I said  
14 it's not fatal, but you should have waited the 30 days.

15 MR. KESSLER: I -- I certainly understand  
16 the court's position in that respect.

17 THE COURT: All right. Let me find out from  
18 your position. I have read all of this. I think I  
19 have my own idea. But you tell me what -- what were  
20 the four operations of JONAH?

21 MR. KESSLER: Your Honor, there was  
22 testimony at trial and throughout the prosecution of  
23 the case that JONAH's core operation -- among its core  
24 operations was the matching of clients to referral  
25 therapy providers and the processing of those client's

1 payments for that therapy. The defendants did that  
2 through JONAH directly. They also applied the label,  
3 JIFGA, which prior to the permanent injunction stood  
4 for the JONAH Institute for Gender Affirmation. That's  
5 a label they applied to certain of those services.  
6 Those are the exact services that defendants have  
7 admitted that JIFGA provides today.

8 THE COURT: You're saying that the defendants  
9 admit that what JIFGA does is match clients to therapy  
10 and accept payments? I -- I didn't see that admission.  
11 Where did they admit that?

12 MR. KESSLER: No, Your Honor. JIFGA did --  
13 in -- in fairness to defendants JIFGA does not appear  
14 at least publicly to be matching new clients with new  
15 referral therapists. What they do is they process the  
16 payment of JONAH referral clients to pay for the  
17 therapy they received from their JONAH referral  
18 counselors.

19 THE COURT: Okay. And at least on what's in  
20 front of me the processing of the payments and the  
21 referrals at least at this juncture what I see in front  
22 of me is that those were all referrals that took --  
23 were made by JONAH prior to the entry of the order?

24 MR. KESSLER: So that's right with respect  
25 to the referrals. The referrals themselves according



1 to defendants appear to have been made prior to the  
2 entry of the permanent injunction. The conversion  
3 therapy sessions that these clients are receiving and  
4 the payments that relate to those sessions are being  
5 received after the injunction.

6 THE COURT: Okay. Now, one other point that  
7 was raised in your initial brief. You indicate on page  
8 6 that you learned for the first time that JONAH  
9 transferred assets directly to JIFGA on January 30,  
10 2018. However, in the opposition papers counsel has  
11 provided the certification of dissolution and an e-mail  
12 that indicate that was sent on August 30, 2016. Is it  
13 correct then that you were aware in August of 2016 that  
14 they were transferred the remaining personal property  
15 was transferred to Jewish Institute for Global  
16 Awareness in New Jersey not for profit corporation?

17 MR. KESSLER: Your Honor is clear that -- it  
18 is true that on August 30 we learned that JONAH had  
19 transferred to JIFGA "any remaining personal property"  
20 including the balance of the bank account. But we did  
21 not know and could not have known until the receipt of  
22 defendant's letter on January 30th of this year that  
23 the referral agreements that are apparently contained  
24 in that remaining personal property were going to  
25 continue to operate and that it was the intention of

1 JIFGA to continue the operations of JONAH under this  
2 those referral agreements.

3 THE COURT: All right. Well, my -- my -- the  
4 reason I'm asking you that is you make a point in the  
5 paperwork that this was a previous acronym used, JIFGA.

6 MR. KESSLER: That's correct.

7 THE COURT: When you received this  
8 dissolution did you inquire or did you object to using  
9 this name acronym?

10 MR. KESSLER: No, Your Honor. We don't in  
11 the abstract have an issue with there existing  
12 something called the Jewish Institute for Global  
13 Awareness.

14 THE COURT: Okay.

15 MR. KESSLER: It's when that organization is  
16 being used to continue to work with JONAH that their  
17 use of the same acronym for the same services that that  
18 acronym was used for before becomes problematic and  
19 violative of the injunction.

20 THE COURT: Okay. All right. Regarding the  
21 issue of the referral fees, the court has a couple of  
22 issues, and I don't know whether or not the court's  
23 going to get answers to these.

24 In reviewing the paperwork when the  
25 dissolution was done it indicates the bank account was

1 \$199.55, correct?

2 MR. LAFFEY: Yes, Your Honor.

3 THE COURT: It also talks about referral fees  
4 from the providers that were being paid, were  
5 transferred I guess what we'd call them accounts  
6 receivable, if we want to use that term, although that  
7 -- I don't know they were receivable at the time.

8 MR. LAFFEY: No, no. Wait. They were --

9 THE COURT: Not an accountant, but --

10 MR. LAFFEY: They were a -- a contractual  
11 arrangement, a contractual right.

12 THE COURT: Okay. The concern or the  
13 question I have is it appears to me when I look at the  
14 exhibits attached to the moving papers, and  
15 specifically exhibit 15, these are 1099's from the  
16 Jewish Institute for Global Awareness to both Robert  
17 Vazzo (ph.) and Robert Morgan.

18 MR. LAFFEY: Um-hum.

19 THE COURT: It appears to me that it's the  
20 Jewish Institute for Global Awareness that are making  
21 the payments to the provider, not the other way around.  
22 It's not the provider paying a referral fee to JONAH  
23 which was then assigned the Jewish Institute of Global  
24 Aware -- where's that money coming from?

25 MR. LAFFEY: So -- so -- so if you -- if

1 you'll see, judge, okay, there are -- and there are  
2 some where there's payments from those two doctors to  
3 JIFGA. So essentially there were two different  
4 arrangements. There were some arrangements where the  
5 client was paying the fee to JIFGA, okay, and they were  
6 forwarding the doctor's share to them and there others  
7 where they were paying the doctor and the doctor was  
8 then sending the share to JONAH or JIFGA.

9 THE COURT: All right. Well, if the client  
10 is paying the fee to JIFGA, then why is that not the  
11 same general operation as JONAH? I thought these were  
12 referral fees from the doctors. This appears to me to  
13 be that JIFGA is collecting money from the client.

14 MR. LAFFEY: For some of the clients, that  
15 would be correct.

16 THE COURT: Well, then why isn't that the  
17 general operation, the same general operation as JONAH?

18 MR. LAFFEY: It's a small part of what JIFGA  
19 does, okay. It was an assignment of a -- a pre-  
20 existing contractual arrangement, that's true. But  
21 they were -- they weren't making any new referrals.  
22 These people weren't going to stop going to the  
23 therapists if JIFGA got -- did -- wasn't involved. And  
24 this -- this all predated the agreement, beside the  
25 fact that they -- both the doctors and the clients live

1 in other states.

2 THE COURT: I understand that that's an  
3 essential part of your argument. The problem I have is  
4 that the agreements and the injunction talk about in  
5 New Jersey.

6 MR. LAFFEY: Um-hum.

7 THE COURT: You are in New Jersey. So you're  
8 conducting business in New Jersey. No matter where you  
9 send the people it's originating in New Jersey and if  
10 these people are paying in New Jersey, and that's what  
11 my concern now is cause I couldn't tell from the  
12 paperwork it appears that these one or more of the 16  
13 people are sending a check to JIFGA, not JONAH. Would  
14 that be accurate? We don't know the answer to that. I  
15 don't know if you know the answer to that, cause that's  
16 one of the issues that I'm grappling with. If you're  
17 not --

18 MR. LAFFEY: I -- my -- my -- my  
19 understanding is that some of the payments were  
20 funneled through JIFGA.

21 THE COURT: That's --

22 MR. LAFFEY: Not all of them, but some of  
23 them.

24 THE COURT: No, but, see, that presents an  
25 issue for me.

1 MR. LAFFEY: Okay. Well, let --

2 THE COURT: See, if it was purely a referral  
3 fee --

4 MR. LAFFEY: Um-hum.

5 THE COURT: And my understanding of the  
6 referral fee would be Peter Bariso goes to Mr. Morgan  
7 and I'm paying Mr. Morgan \$100 per visit and Mr.  
8 Morgan then is sending to JIFGA whatever, I have no  
9 idea nor do I care what the referral agreement is, but  
10 he's paying JONAH --

11 MR. LAFFEY: Um-hum.

12 THE COURT: -- because he has an agreement  
13 with JONAH for 30 percent of whatever Peter Bariso pays  
14 Mr. Morgan.

15 MR. LAFFEY: Um-hum.

16 THE COURT: If those payments now are made by  
17 Peter Bariso to JIFGA, why isn't JIFGA being the same  
18 conduit that JONAH was --

19 MR. LAFFEY: Well --

20 THE COURT: Even though the referral pre-  
21 dated the agreement it's the commerce. Isn't the money  
22 going to JIFGA the same way it went to JONAH?

23 MR. LAFFEY: I viewed -- I view, judge, that  
24 -- that business hap -- is not happening in -- in New  
25 Jersey --

1 THE COURT: How -- but how could you say  
2 that?

3 MR. LAFFEY: -- because none of the part --  
4 because none of the part --

5 THE COURT: The check's sent to New Jersey.

6 MR. LAFFEY: They --

7 THE COURT: How could you say it's not  
8 happening in New Jersey? JIFGA's in New Jersey. If I  
9 write a check to JIFGA, where am I sending it?

10 MR. LAFFEY: Well, just let me -- you know  
11 --

12 THE COURT: See, if it was a referral from  
13 another state and the doctor's sending it in, maybe I  
14 might buy that argument. I'm now learning that Peter  
15 Bariso sends the money to JIFGA.

16 MR. LAFFEY: Well, perhaps I can -- you  
17 know, short circuit that whole argument, judge, by --  
18 well, first of all, and I'm sure you -- you have some  
19 questions about this, but we deny that any of those  
20 people are getting that --

21 THE COURT: All right. Well, that's okay.  
22 You want to tell -- you want --

23 MR. LAFFEY: -- like there, but -- but -- but  
24 before we even get to that, judge --

25 THE COURT: Yes.

1 MR. LAFFEY: -- okay? If we had received  
2 the -- if it -- the notice that we -- let me --

3 THE COURT: I know what you're going to say.  
4 We'll get to that.

5 MR. LAFFEY: No, no. You -- you don't --

6 THE COURT: Go ahead. Go ahead. Go ahead.

7 MR. LAFFEY: -- (indiscernible) with all due  
8 respect, Your Honor.

9 THE COURT: No, no. Go ahead. I'm sorry.

10 MR. LAFFEY: If I had -- if I had gotten the  
11 notice, okay, my client had gotten the notice, all  
12 right, to cure the default rather than them rushing the  
13 court and issuing press releases, they would have found  
14 out that JONAH -- that JIFGA stopped receiving these  
15 payments in 2017. The default was cured before they  
16 even filed the motion.

17 THE COURT: All right. Well, let's -- let's  
18 talk about that then. If it was a default, I know  
19 you're not admitting it, if it was a default -- if it  
20 was a default --

21 MR. LAFFEY: Um-hum.

22 THE COURT: -- you say they're curable. How  
23 do we cure it today?

24 MR. LAFFEY: Well, first I would argue that  
25 it is cured because the arrangement is stopped.

1 THE COURT: Well, okay. That's one argument.  
 2 But if I don't accept that, how would we cure it today?  
 3 MR. LAFFEY: Well, if -- if, in fact, that's  
 4 not satisfactory, if -- and we -- if we had been told  
 5 that that's not satisfactory, my client would have --  
 6 after getting the notice my client would have simply  
 7 returned all those referral fees to the doctors because  
 8 it's not worth it for him to fight about it. And  
 9 we're -- they --  
 10 THE COURT: Okay. Let's -- let's go beyond  
 11 the referral fees. Let's talk about certifications.  
 12 We have all these exhibits that were provided. We all  
 13 have some recollection of a trial that took place here.  
 14 MR. LAFFEY: A vivid recollection, Your  
 15 Honor.  
 16 THE COURT: A vivid recollection. Okay.  
 17 What other therapy did young men go to JONAH for?  
 18 Cause all I heard during the trial was they went there  
 19 for some -- some type of same sex counseling. Call it  
 20 whatever we will. That's what I thought -- there was a  
 21 disagreement over terms --  
 22 MR. LAFFEY: Um-hum.  
 23 THE COURT: -- but there was never a  
 24 disagreement over what the counseling was for.  
 25 MR. LAFFEY: Well, I -- I -- because that

1 type -- the other types of counseling weren't an issue,  
 2 judge.  
 3 THE COURT: All right.  
 4 MR. LAFFEY: They -- they gave counseling  
 5 for other sexual dysfunctions. Men would come --  
 6 THE COURT: But -- but it was --  
 7 MR. LAFFEY: Men would come to them with --  
 8 with -- with other problems and they would make  
 9 referrals for those other problems. They -- many times  
 10 they happened to be gay men, but that doesn't mean that  
 11 they wanted to change their sexual orientation.  
 12 And a perfect example is that, you know, one  
 13 of the doctors says, hey, you know, two of the -- two  
 14 of these clients or three, I forget what it was, are  
 15 gay and they're happy that way and I'm not treating  
 16 them for anything to do with that.  
 17 THE COURT: I know, but my concern is that  
 18 JONAH, their own name -  
 19 MR. LAFFEY: Um-hum.  
 20 THE COURT: -- specified homosexuality.  
 21 MR. LAFFEY: Right.  
 22 THE COURT: That was what the -- the  
 23 organization was.  
 24 MR. LAFFEY: Well, for instance -  
 25 THE COURT: So I have two certifications from

1 people telling me they treated 16 individuals who were  
2 referred from JONAH and not one of them was there for  
3 some type of same sex therapy when they also say in the  
4 same certification, and perhaps it's a terminology,  
5 I'll give them that. It is a certification that they  
6 don't practice conversion therapy, but when I get the  
7 reply papers they're -- they're intimately involved  
8 with organizations that I heard throughout three weeks  
9 of trial that that's what they do.

10 MR. LAFFEY: Well, judge, first of all,  
11 Doctor Vazzo, you know, and I think it's a terminology  
12 issue with him, admits that he practices something  
13 called safety something, I forget exactly what it was,  
14 which -- which in all -- in all honesty would probably  
15 be considered conversion therapy by the defendants,  
16 okay. But he also explicitly points out that he's not  
17 providing that therapy to any of the clients on this  
18 list.

19 So at the very least there's a factual  
20 dispute, judge, as to whether or not these doctors are  
21 providing what would be termed conversion therapy.

22 THE COURT: You're -- you're correct, cause  
23 that was the next point that the court is concerned  
24 with is I'm being asked to make factual findings on  
25 paper. Is that a proper role for the court? Am I to

1 simply accept the opposition and assume that these two  
2 certifications are totally incredible? Can I do that  
3 on paper?

4 MR. KESSLER: Your Honor, we're not asking  
5 you to determine that they're incredible. In -- we  
6 agree with --

7 THE COURT: You want me to ignore them or  
8 just say that they're not accurate.

9 MR. KESSLER: Your Honor, what we're asking  
10 to do is to understand the certification from the  
11 language that they use in the context of the three-week  
12 jury trial that the court presided over and the entire  
13 factual record that exist in this case.

14 THE COURT: You want me to make factual  
15 findings of their words without them being present and  
16 without them testifying.

17 MR. KESSLER: I --

18 THE COURT: I understand what you want me to  
19 do. I'm just saying is that a role that the court  
20 should do at this juncture? I mean I agree with you.  
21 You've raised a lot of good inferences. They are  
22 intimately involved in organizations. I find it  
23 somewhat unusual that all 16 of these people were  
24 referred by JONAH and not of them was there for same  
25 sex or conversion therapy. Yes, I think that's

1 unusual, but does that mean I just reject the  
2 certification out of hand and enter an injunction  
3 disbanding this corporation? I think that's a bit  
4 extreme at this juncture.

5 MR. KESSLER: Well, again, Your Honor, I --  
6 I don't think you need to reject the certifications.

7 For example, if you look at the Morgan  
8 certification, it lists a number of presenting problems  
9 that the clients are experiencing. These are the same  
10 presenting problems or what defendants refer to as  
11 underlying issues.

12 THE COURT: I -- I agree, but aren't those  
13 the same problems that someone can have that does not  
14 have same sex issues? Am I to assume that anybody who  
15 has those problems always has the same sex issue? I  
16 don't think I can do that.

17 MR. KESSLER: I don't think it's a question  
18 of assumption. I think it's a question of whether  
19 there's a true material fact in the -- in this dispute  
20 that admitted conversion therapists providing the same  
21 therapy, the same modalities described by defendants,  
22 their witnesses, and their experts for the same  
23 underlying issues described by the defendants, their  
24 witnesses, and their experts.

25 THE COURT: But --

1 MR. KESSLER: All leads to the conclusion  
2 that what the defendants are doing is engaging in  
3 conduct that, regardless of how the therapists choose  
4 to term it is as defined by the injunction conversion  
5 therapy.

6 THE COURT: Well, but he says none of the  
7 clients that are listed below were being treated for  
8 same sex attraction or receiving conversion therapy.

9 MR. KESSLER: That's functionally  
10 indistinguishable from the testimony of dozens of  
11 success story witnesses.

12 For example, Mr. Dijocaimo (ph.) who was  
13 confronted with an exam -- a -- a page of hist  
14 treatment notes -

15 THE COURT: Yes.

16 MR. KESSLER: -- that say nothing about same  
17 sex traction and said you know that wouldn't surprise  
18 me, that's not unusual, because really the crux of the  
19 therapy was to work on the underlying issues which I  
20 knew would cause a reduction or elimination of my same  
21 sex attraction and that was -- that's the point of it.  
22 But the actual mechanics of therapy, it's working on my  
23 childhood trauma, my issues of rejection of my father,  
24 my difficulty in forming friendships, and these are the  
25 same presenting problems listed in the certification.

1 THE COURT: They are, but the difference is I  
2 -- I don't have the testimony that you're -- like you  
3 gave me the testimony of the people who testified at  
4 trial. I don't have anything from these 16 people.

5 MR. KESSLER: Your Honor, what you have is  
6 --

7 THE COURT: I have what you can say is a  
8 strong inference that some of this might have been,  
9 that JONAH, their acronym, is -- homosexuality is in  
10 their title. You're -- I do recognize that it seems a  
11 bit far-fetched that 16 people that were referred by  
12 JONAH, none of them have any treatment for same sex  
13 attraction. But I still think we're missing a link for  
14 me to actually make a finding, the finding that you  
15 want me to make, that they breached a settlement  
16 agreement.

17 MR. KESSLER: Your Honor, I don't think that  
18 -- first of all, I think that the conclusory statements  
19 in the certification's about what it means to practice  
20 conversion therapy or what the -- what the treatment is  
21 designed to do are not the actual statement. It's  
22 conclusion -- it's conclusory statements that the court  
23 doesn't need to accept as fact.

24 THE COURT: Well, but they're conclusory  
25 statements of the person who's providing the treatment.

1 I have to accept that.

2 MR. KESSLER: Well, Your Honor, I think it's  
3 functionally no different than someone saying I'm not  
4 in breach of the contract. That's a conclusory  
5 statement. There's no fact behind that.

6 THE COURT: No, but this is -- but this is a  
7 licensed clinical social worker. He's saying a little  
8 bit more than I didn't breach the agreement. He's  
9 specifying what the treatment is that he's giving. And  
10 he's specifically stating that this is not same sex  
11 attraction or conversion therapy. And he's listing  
12 what it is.

13 I -- I -- you may disagree with that. I may  
14 disagree with it if he was in front of me and he was  
15 cross-examined. But that's the link that's missing  
16 here. I don't think I can just simply say, Mr.  
17 Morgan and Mr. Vazzo, I'm not accepting your  
18 certifications. But, you know, I -- I also understand,  
19 and this is the next point, is that while I think  
20 there's a material factual dispute the question becomes  
21 what road do we go down to see whether or not there  
22 truly are material factual disputes --

23 MR. KESSLER: Well, one --

24 THE COURT: -- because certainly I don't  
25 think I have the jurisdiction. I don't even know where



1 these people are. One of them I think is Texas. Is  
2 Morgan from Tex -- I don't even know where they're  
3 from?

4 MR. LAFFEY: I think -- one is in -- from  
5 the midwest as I recall and one is --

6 THE COURT: Cause I saw something on your  
7 opposition -- is Bobby Morgan the same as Robert  
8 Morgan? Doesn't it say he's in Texas?

9 MR. KESSLER: Yes.

10 MR. LAFFEY: Yeah. One -- one is in Texas  
11 and -- and the other I think is somewhere in the  
12 midwest, Your Honor.

13 MR. KESSLER: Your Honor, my understanding  
14 is that Robert Vazzo is based in Florida.

15 MR. LAFFEY: Oh, that could be.

16 THE COURT: All right.

17 MR. KESSLER: The -- before we get to how we  
18 would proceed down that road, Your Honor, one --

19 THE COURT: No. Go ahead, go ahead.

20 MR. KESSLER: One -- I think one important  
21 point to note is that as -- as Mr. Laffey pointed out  
22 this morning, it has been defendant's contention that  
23 the -- there were in some limited instances other  
24 therapies that were provided or that's certainly the --  
25 the test -- or the statements referred today, I think

1 irrespective of whether the court is -- feels  
2 comfortable concluding that the therapy provided by the  
3 referral therapist at issue here is conversion therapy  
4 as defined by the injunction. Certainly the processing  
5 of payments and the deduction of referral fees from  
6 JONAH referral clients to JONAH referral therapists we  
7 believe violates the permanent injunction's  
8 requirements that JONAH ceased any and all operations  
9 within 30 days. So I think that's an independent basis  
10 on which the court defined if there's been a violation  
11 of (indiscernible) injunction.

12 THE COURT: Well, it -- I -- I think JONAH  
13 ceased the operations. The question is whether or not  
14 JIFGA is an alter ego of JONAH. JONAH ceased  
15 operations. I don't -- I don't think there's any  
16 dispute. They filed a certificate of dissolution.

17 MR. KESSLER: That -- that's right, Your  
18 Honor.

19 THE COURT: The question becomes -- the  
20 argument really is -- is JIFGA an alter ego of JONAH.  
21 And -- and, again, while -- while payments were made to  
22 JIFGA I think in their mission statement and what they  
23 provided in their opposition they do other things that  
24 JONAH did not do. Would that be accurate?

25 MR. KESSLER: Well, Your Honor, I think it

1 would make this point in your reply that certainly Mr.  
2 Holburg (ph.) wrote articles when he was a co-director  
3 of JONAH. Certainly he met with religious leaders and  
4 community leaders in an attempts to educate them about  
5 the issues that were important to Jonah. That same  
6 work is continuing through JIFGA.

7 But I think the -- the important point here  
8 is that JIFGA is in all material respects a  
9 continuation of JONAH. I think Marshak v. Treadwell  
10 is directly on point and refers to the ability of a  
11 court to hold a successor and be liable for the -- for  
12 its actions that violate an injunction that apply to  
13 its predecessor where there's a continuity of  
14 ownership, a continuity of management, a continuity of  
15 physical location, a continuity of customer base and --  
16 and all of those factors are -- are present here. In  
17 fact, the defendants have even gone so far as to reuse  
18 a name. There is simply no distinction between JONAH  
19 and JIFGA.

20 Mr. Laffey pointed out that this was  
21 supposedly a small part of what JIFGA does. But I'll  
22 note that the receipt of these funds from the JONAH  
23 referral therapists constitutes 95 percent of JIFGA's  
24 gross receipts in 2016. This was basically 100 percent  
25 of the money they received.

1 So I think it's difficult to suggest that  
2 JIFGA and JONAH are distinct entities that shouldn't be  
3 somehow -- that -- that JIFGA (indiscernible) be  
4 immunized from the conduct which is clearly violative  
5 of the permanent injunction.

6 THE COURT: All right. Let me ask you this.  
7 If they were notified that the -- the receipt of these  
8 referrals violated the agreement, would it not cure the  
9 breach if they refunded their referrals?

10 MR. KESSLER: It wouldn't, Your Honor. Even  
11 if we learned that what JIFGA did was accept the  
12 payments from the JONAH clients, put them in the JIFGA  
13 bank accounts, write new checks for the exact same  
14 amount deducting out a dollar for referral fee, that  
15 would nonetheless be a violation of the permanent  
16 injunction. And so a refund of the 50 percent or so  
17 that they capped in aggregate referral fees doesn't  
18 change the fact and can't take back -- back the fact  
19 that they were payment conduit for all of this therapy.  
20 So there's something -- nothing they can do to take the  
21 therapy sessions back or their role in them.

22 THE COURT: Did the agreement or the order or  
23 any exchange of information discuss at all referral  
24 fees for prior clients?

25 MR. KESSLER: Your Honor, we -- there was

1 never a suggestion at any point in the negotiation of  
2 the settlement agreement or the permanent injunction  
3 that JONAH would continue to receive referral fees from  
4 its prior clients. I think it's telling that the  
5 permanent injunction specifically contains a provision  
6 that allows Mr. Downing to continue practicing  
7 conversion therapy for a reasonable period after the  
8 entry of the permanent injunction to find suitable  
9 alternatives for those clients. We were never aware  
10 that it was the intention of the defendants, as is now  
11 clear from the outset of the entry of the permanent  
12 injunction that they would continue receiving referral  
13 fees. And there's nothing in the agreement that  
14 suggests that that was a permissible course of action.  
15 In fact, as Your Honor is aware, the permanent  
16 injunction specifically prohibits promoting conversion  
17 therapy-related commerce.

18 It's difficult to imagine what is more  
19 clearly conversion therapy-related commerce than  
20 accepting payments from conversion therapy clients and  
21 paying it to conversion therapists.

22 THE COURT: All right. Is there anything  
23 else that you want to add?

24 MR. KESSLER: Your Honor, I -- if you have  
25 no further questions I think that our -- our position

1 on this is clear, that, again, just to reiterate.

2 With respect to the certifications it -- it  
3 -- we're not asking you to reject them. We're not  
4 asking you to find them incredible. We're not asking  
5 for any kind of credibility assessment. You can accept  
6 the declarations, the facts contained in the  
7 declarations or certifications on their face and  
8 understand them through the lens of all of the  
9 testimony that has been presented in this courtroom and  
10 to Your Honor over the course of the trial -- over the  
11 course of the trial and over the course of the entire  
12 case to see that what the referral therapists are  
13 describing is the same therapy that JONAH provided to  
14 its client.

15 And so on that basis we would ask you to find  
16 that the defendants have violated the permanent  
17 injunction and also because they continue to process  
18 payments for JONAH clients, receiving therapy for --  
19 from JONAH referral counselors, something that they  
20 readily admit.

21 THE COURT: Okay.

22 MR. LAFFEY: Judge, you know, there -- there  
23 was, I don't know if it came out at trial, but there  
24 was certainly testimony during depositions and  
25 discovery that JONAH provided referrals for other

1 sexual addictions like pornography. We don't even know  
2 for a fact how many of these men are gay. Okay?

3 The -- the certifications clearly state I'm  
4 not treating any of them for their same sex attraction.  
5 And you would also have to assume that the modalities  
6 that they're using are only used for same sex  
7 attraction. And -- and there is no testimony at trial  
8 which would lead you to conclude that in effect it's  
9 just not true. These modalities are used in -- in --  
10 by many doctors for many different reasons. Okay?

11 But, once again, I think, judge, that we can  
12 shortcut this because this breach can be cured. Their  
13 -- by their definition of an uncured breach, Your  
14 Honor, would make the -- the language in the agreement  
15 a breach can be cured completely relevant because there  
16 aren't any circumstances I could imagine where a breach  
17 could be cured.

18 So, you know, the solution to this is give us  
19 a notice, okay. We've already stopped receiving the  
20 payments and we'll send back every dime to the  
21 therapists. Simple.

22 MR. KESSLER: Just very briefly, Your Honor.  
23 Briefly points one, again, Mr. Laffey's demonstration  
24 that JONAH processed payments for its clients for  
25 therapy, whatever kind of therapy they want to call it,

1 therapy for -- from JONAH referral counselors. That is  
2 the same activity that is undisputed. The  
3 certifications readily admit that the referral  
4 therapists received money directly from JIFGA on  
5 account of the therapy sessions they provide JONAH  
6 referral clients.

7 The second point is that, again, I -- for the  
8 reasons we've discussed earlier, returning the referral  
9 fees is simply not a method through which these  
10 breaches can be cured. They are by their definition  
11 uncured breaches. They are incapable of being cured.

12 And finally I'll say --

13 THE COURT: Well, why wouldn't it be cured if  
14 they returned the money? Isn't the fact that they  
15 accepted the money or that's the commerce that they  
16 made income off of Jonah's operation?

17 MR. KESSLER: What I --

18 THE COURT: Isn't that the breach?

19 MR. KESSLER: What I understand --

20 THE COURT: They did not -- in other words,  
21 the clients did not come into JIFGA and were referred  
22 to these individuals. The breach is accepting the  
23 money that was going to JONAH.

24 MR. KESSLER: Your Honor, that money is no  
25 longer in the possession of JIFGA. It's out the door.

1 The -- the portion of --

2 THE COURT: Well --

3 MR. KESSLER: -- their referral fees may  
4 well be. But if the -- the nearly \$40,000 that they  
5 have sent to the referral therapists, that's -- that's  
6 done. And, more importantly, the conver -- the therapy  
7 sessions that were -- that took place only after JIFGA  
8 facilitated these payments have also been done. And  
9 those sessions can't be undone --

10 THE COURT: Well, the sessions --

11 MR. KESSLER: -- nor can defendants  
12 involvement.

13 THE COURT: -- can't be undone. But would it  
14 have matt -- but -- but obviously the individuals  
15 wanted to keep going for the therapy. You're not --  
16 you're not asserting that JIFGA forced them to go.

17 MR. KESSLER: Certainly not. If --

18 THE COURT: So whether they paid the doctor  
19 or they paid JIFGA, they wanted the therapy I assume.  
20 I don't know. I didn't -- I have nothing before me  
21 that says they were instructed to go there by JIFGA.  
22 The question here is an exchange of money, right?

23 MR. KESSLER: That's right, Your Honor. We  
24 have no --

25 THE COURT: So if they refund the money, why

1 doesn't that cure that part of the breach, the economic  
2 portion?

3 MR. KESSLER: Well, it's important to -- to  
4 keep in mind that when they -- they talk about refer --  
5 returning the money they're referring specifically to  
6 the referral fees.

7 THE COURT: No, no. They're -- no. Well, if  
8 they are, they're wrong. Any money that was given to  
9 JIFGA by JONAH clients is the breach.

10 MR. KESSLER: That's right.

11 THE COURT: That's what has to be refunded,  
12 not just the referral fees to the doctor.

13 MR. KESSLER: Your Honor, I think when we're  
14 thinking about --

15 THE COURT: Well, I'm not -- you know what.  
16 I'm not giving advisory opinions. They have 30 days to  
17 cure the breach. I will allow you, however, because  
18 I'm not going to decide based on what's in front of me  
19 the -- one of the criteria's that's necessary. And  
20 that is whether or not they are the alter ego or  
21 conduct a business of JONAH.

22 I -- I am not comfortable making that  
23 decision on paper. So I will allow you to take post-  
24 depositions of Mr. Goldberg where you can ask Mr.  
25 Goldberg questions about where the money came from,

1 what these 16 people came to JONAH for, since he was  
2 the owner of JONAH, and you can get the information to  
3 demonstrate to the court in a subsequent application  
4 whether or not they were the alter ego of JONAH during  
5 '16 and '17.

6 MR. KESSLER: Your Honor, on the issue of --  
7 of discovery, I think Mr. Goldberg's certification is  
8 clear that he doesn't have a memory of why these  
9 individuals came to JONAH.

10 THE COURT: Well, you're going to see if he  
11 has records. And if he destroyed those records and  
12 they weren't turned over to JIFGA, as it says all  
13 personal property, that's an issue you can raise in a  
14 subsequent motion.

15 MR. KESSLER: So then just to be clear, Your  
16 Honor.

17 THE COURT: I'm not going to give advisory  
18 opinions. If you want to have an opportunity to  
19 demonstrate to the court that JIFGA meets all four  
20 criteria of the alter ego of JONAH, the one point that  
21 this court cannot and will not rule only on the papers  
22 is whether or not JIFGA is the same general operation  
23 which is the language from the case you cited, the same  
24 general operation as JONAH. If you want to try to  
25 prove that, I will allow you the opportunity to depose

1 Mr. Goldberg and request records to demonstrate to the  
2 court that in fact in 2016 and 2017 JIFGA's oper -  
3 general operations were the same as JONAH, if you want.  
4 You don't have to depose him. I'm just going to grant  
5 your motion based on what's in front of me. And I will  
6 allow 30 days to the defendant to cure the breach  
7 regarding the payments. Whether you agree that it's  
8 cured or not, that can also be a subsequent application  
9 to the court. But I'm going to give them 30 days to do  
10 what they think they can do to cure the breach. If you  
11 disagree with them -- with that, that's another  
12 application you can make.

13 MR. KESSLER: Understood, Your Honor. I -

14 THE COURT: I do feel there was a breach.  
15 That I will find. I think there's no dispute that  
16 there was a breach. I disagree that latches applies to  
17 the breach.

18 However, I do believe defendants are entitled  
19 to 30 days to cure the breach and the 30 days will run  
20 from today. They know what the breach is. They'll  
21 decide whether they want to cure it and how you want to  
22 cure it.

23 I think the breach is any money that was  
24 turned into JIFGA directly by JONAH clients, cause it  
25 appears to me, and again it's not in front of me, but

1 based on what I've seen it is JIFGA that issues the  
2 1099, not the doctors. So the implication to me is  
3 that clients pay JIFGA. JONAH clients pay JIFGA. If  
4 that is accurate, this court finds that any payments  
5 made by JONAH clients to JIFGA is a breach of the  
6 settlement agreement. And I'll afford you 30 days to  
7 cure that breach.

8 MR. LAFFEY: Can I ask a question?

9 THE COURT: Yes.

10 MR. LAFFEY: And we admit that -- that was  
11 the case for some of the payments. For other payments  
12 the referral fee that the doctor was paid and JONAH  
13 received a referral fee for some of these clients. Is  
14 the receipt -- are you finding that the receipt of that  
15 referral fee is a breach?

16 THE COURT: Yes. I think it's commerce and I  
17 think it's commerce that was generated by JONAH  
18 clients.

19 MR. LAFFEY: Thank you for that  
20 clarification.

21 THE COURT: Okay.

22 MR. KESSLER: Your Honor, finally on the  
23 issue of discovery. I just want to note for the court  
24 we're happy to -- to proceed on this basis with a  
25 request for documents and a deposition of Mr. Goldberg

1 and -- and we'll --

2 THE COURT: Limit it to the issue of whether  
3 or not JIFGA is the same general operations as JONAH.

4 MR. KESSLER: Understood. And -- and I'll  
5 just say that we may reserve for another time to come  
6 back to the court if you feel like additional discovery  
7 is necessary.

8 THE COURT: Okay. All right. So I do  
9 believe I will -- I will find that there was a breach.  
10 However, I find that the motion was premature, that  
11 under the agreement defendants should have been  
12 afforded 30 days to cure the breach. I don't find that  
13 the breach at this juncture is incurable. So I will  
14 afford defendants 30 days to cure the breach. And the  
15 breach is any money accepted by JIFGA in any way  
16 related to former clients of JONAH, whether that money  
17 came from providers, from Jim, from People Can Change,  
18 from anyone if it involves prior clients of JONAH and  
19 the money was given to JIFGA, that's the breach. I'll  
20 allow you an opportunity of 30 days to cure that breach  
21 and demonstrate to the plaintiffs that you cured the  
22 breach. If you're not satisfied that the breach was  
23 cured, at that point then you're entitled to your  
24 application. I will hold onto the documents that both  
25 sides submitted. So even though I'm telling you you'd

1 have to file a new application if you're going to refer  
2 to what has previously been filed and either side has  
3 to duplicate that. Okay?

4 MR. KESSLER: Understood. Your Honor, one  
5 just clarification. When you're referring to a breach,  
6 is it correct that the court is finding that it's a  
7 breach, both of the permanent injunction and of the  
8 settlement agreement.

9 THE COURT: Well, if it's the same language.

10 MR. KESSLER: It is.

11 THE COURT: Yes. But I'm allowing them an  
12 opportunity to cure it --

13 MR. KESSLER: Understood.

14 THE COURT: -- cause your settlement  
15 agreement gives them 30 days to cure.

16 MR. KESSLER: With respect to the settlement  
17 agree. Understood.

18 THE COURT: Yes.

19 MR. KESSLER: In regards to whether or not  
20 it meets all the criteria of an alter ego and that I  
21 should permanently enjoin JIFGA from continuing their  
22 operations I'm denying that without prejudice at this  
23 time --

24 THE COURT: Understood.

25 MR. KESSLER: -- and affording you an

1 opportunity if you wish to serve a document demand and  
2 depose Mr. Goldberg as to the issue of general  
3 operations of JONAH and general operations of JIFGA.

4 MR. KESSLER: Understood. Your Honor, we're  
5 happy to discuss with the defendants, but if -- if the  
6 court has any thoughts on timing or the sense of when  
7 Your Honor would like this discovery to be completed.

8 THE COURT: When would I like it? I wouldn't  
9 like it back at all. But it's a post-judgement  
10 application. I mean, you know, I'll -- I'll give you  
11 -- I mean I don't -- I'm not going to sit here and do a  
12 case management order. It's a post-judgement  
13 application. I think the attorneys will be reasonable.  
14 I mean I don't see why a document demand or whatever  
15 documents can't be provided within 30 days and then a  
16 deposition completed within 60. But I'm not going to  
17 put that in the order. That's just my -- I don't see  
18 why it should take longer than that.

19 MR. KESSLER: Understood. Thank you, Your  
20 Honor.

21 THE COURT: And then they have 30 days to  
22 cure the breach. They'll notify you what they've done.  
23 If you're not satisfied that it's cured, you'll take  
24 whatever action you deem appropriate. But I'm just  
25 telling you that in -- in my opinion I -- I -- I think



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it's curable. But, you know, if you're not satisfied with the actions they took and you don't believe it's cured, you'll take whatever action you deem appropriate.

MR. KESSLER: Understood. Thank you, Your Honor.

THE COURT: Okay? And I'm not going to award counsel fees at this time for the same reasons that I said. I thought that this was premature and I think that the defendants' entitled to 30 days to cure the breach. However, if after discovery you're able to prove that JIFGA is an alter -- alter ego of JONAH, we'll -- we'll address counsel fees for that part of the application at that time, if necessary.

MR. KESSLER: Understood.

THE COURT: All right? I'm looking at the proposed order here. It's kind of long. I'll tel you what. Why don't you submit an order as rather than me cross out 17 paragraphs. Submit an order, provide it to counsel first, all right. And then if you agree, which I hope you will, it's not that, then you can send it to me and I'll enter it.

MR. KESSLER: Okay. Will do.

THE COURT: All right? Okay.

MR. KESSLER: Thank you, Your Honor.

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THE COURT: Off the record.

(Off-the-Record)

CERTIFICATION

I, KAREN A. ANTERO, the assigned transcriber, do hereby certify the foregoing transcript of proceedings in the Superior Court of New Jersey on May 11, 2018, digitally recorded, index number from 10:01:47 a.m. to 10:49:53 a.m., is prepared to the best of my ability and in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings as recorded.

*Karen Antero*

May 21, 2018

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Karen A. Antero, AOC #106

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