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

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I. PRELIMINARY STATEMENT[1]

In their Opposition, Defendants have admitted that they failed to timely cure the breaches and violations already found by this Court. And Defendants have no effective response to the many additional breaches and violations identified by Plaintiffs through discovery and described in the Second Motion. Nor have Defendants been able to explain away the numerous misstatements that they made to the Court in opposing Plaintiffs' Original Motion. This Court has a plethora of evidence from which it can conclude that it is time for Defendants to pay what they owe and to suffer the consequences of their repeated and flagrant misconduct.

II. DEFENDANTS HAVE ADMITTED THEIR FAILURE TO CURE THE BREACH AND VIOLATION PREVIOUSLY FOUND BY THIS COURT

In its May 15, 2018 Order, this Court found that Defendants had violated the Permanent Injunction and breached the Settlement Agreement. Bensman Ex. 7, May 15 Order at 2.[2] The Court then ordered that Defendants had until June 11, 2018 to cure those breaches. *Id*. Specifically, after finding that JIFGA had improperly received payments from legacy JONAH clients and their counselors, the Court permitted Defendants to attempt to cure their breach by refunding that money. Bensman Ex. 5, May 11, 2018 Hr'g Tr. 41:14-24. Defendants claimed on June 7, 2018 to have fully refunded all such payments and fees. Bensman Ex. 8, June 7, 2018 Laffey email. As set forth in the Second Motion, discovery revealed that this refund was insufficient, including because JIFGA had inherited additional JONAH clients whose existence Defendants had not disclosed to the Court and whose payments had not been refunded. Second

[1] Capitalized terms used herein but not defined shall have the same meanings ascribed to them in Plaintiffs' March 28, 2018 Motion to Enforce Permanent Injunction and for Default Judgment ("Original Motion") and Plaintiffs' March 27, 2019 Motion to Enforce the Permanent Injunction (the "Second Motion").

[2] References to Bensman Exhibits 1-62 are to the Bensman Certification filed in support of the Second Motion. References to Bensman Exhibits 63-76 are to the accompanying *Certification of Lina Bensman*.

Motion at 17-18. Forced to concede that their attempted cure was incomplete and ineffective, Defendants now admit the existence of the additional clients and of additional amounts not refunded in June 2018. Defendants' Brief in Opposition ("Opp.") at 15. This fully entitles Plaintiffs to their requested relief: Defendants' breach of the Settlement Agreement was not timely cured, and Plaintiffs are therefore due the breach damages; the associated violation of the Permanent Injunction also remains.[3]

Defendants ask the Court to excuse their failure and restart the clock from the filing of the Second Motion on March 27, 2019. The Court should decline to do so, for three reasons. First, the Second Motion was not the first time Plaintiffs notified Defendants that they believed the 2018 refunds had been incomplete. Plaintiffs' February 20, 2019 letter to Defendants' counsel explicitly stated that, through review of documents enclosed with the letter, Plaintiffs had found that "Defendants' purported refunds of referral fees, already deficient to the extent they were limited to only nine of JIFGA's many referred clients, did not reflect the full amounts owed." Bensman Ex. 10, Feb. 20, 2019 Bensman letter. Defendants' belated additional refunds, which they claim were completed on April 25, 2019, postdated this letter by 64 days, more than twice the time permitted under the Settlement Agreement to effect a cure. Bensman Ex. 1,

[3] Although Defendants now argue that Plaintiffs have not sufficiently demonstrated Berk's involvement in the further improper conduct addressed through this Motion, Defendants did not make any such argument in response to the Original Motion. Regardless, Berk is a co-founder and co-director of JIFGA; a breach by JIFGA is a breach by her as well. A principal may not use the corporate form "as a shield to perpetuate injustice." *Walensky v. Jonathan Royce Int'l, Inc.*, 264 N.J. Super. 276, 282 (App. Div. 1993) (citations omitted). *See* Bensman Ex. 63, JIFGA Form 990-EZ (2016) (stating that Berk spends 35 hours per week on JIFGA); Bensman Ex. 64, Feb. 19, 2014 Goldberg Dep. at 198:10-12 ("Q. Do you always make decisions together with [Berk]? A. 99 percent of the time."); Bensman Ex. 65, Feb. 20, 2014 Berk Dep. at 84:12-20 (Q. You spoke earlier about the fact that typically you ask someone who is making an inquiry to call Arthur; is that correct? A. Right. Q. And that's a general practice? A. Yes. Q. And you do that almost every time you get an inquiry? A. Yes."); Bensman Ex. 66, JIFGA-00063172 (July 2018 email from Berk to Goldberg forwarding a request for a referral to a "reparative therapist").

Settlement Agreement ¶ 6.

Second, there is no support in the Settlement Agreement or in the law for allowing Defendants to avoid breach damages despite failing to timely cure. Although a breach of contract may be excused in certain circumstances, such as where performance is made impracticable, no such circumstance is present here. *See* Restatement (Second) of Contracts § 261; *JB Pool Mgmt., LLC v. Four Seasons at Smithville Homeowners Ass'n, Inc.*, 431 N.J. Super. 233, 246 (App. Div. 2013) (stating that performance may be excused where it "has become literally impossible, or at least inordinately more difficult, because of the occurrence of a supervening event that was not within the original contemplation of the contracting parties.").

Third, Defendants' explanation for their failure is not credible. Goldberg's assertion that he "did not recall that JONAH had received therapy fees" during an eight month period in 2016 is belied by the documentary evidence, which reflects that both Morgan and Vazzo submitted regular, monthly invoices to JIFGA's administrative assistant, often copying Goldberg. *See* Bensman Ex. 17, Vazzo Invoices; Bensman Ex. 26, Morgan Invoices. It is also entirely implausible in light of the fact that during that same period, JONAH's assets were being actively transferred to JIFGA, including the very referral agreements pursuant to which these payments were being made. *See* Bensman Ex. 55, January 30, 2018 Laffey letter. Moreover, the amount at issue—per Defendants, $14,071—is a substantial portion of the $75,541 in revenue that JIFGA reported for 2016; it strains credulity that Defendants could have overlooked fees totaling nearly 20% of their income. Bensman Ex. 63, JIFGA Form 990-EZ (2016). Even if the Court were to give Defendants the full (and undeserved) benefit of the doubt, at best, they have admitted to being so grossly negligent in calculating the original refund payments that there can be no excuse for their failure to do so correctly. Defendants have amply demonstrated their contempt for this

Court, the jury's verdict, and the agreements they entered into; the Court should not overlook their conduct or excuse it, to Plaintiffs' prejudice.

III. DEFENDANTS COMMITTED THE ADDITIONAL BREACHES AND VIOLATIONS REVEALED THROUGH DISCOVERY

A. Client 8[4]

As set forth in the Second Motion, documents obtained through discovery demonstrate that Client 8, whose parents sought counseling for him in connection with his "SSA," was referred by Goldberg to Vazzo after the Settlement Agreement had been executed and after the Permanent Injunction went into effect; discovery also revealed that Defendants' representations to the Court about Client 8 had been false. Second Motion at 6-7. This, too, is a breach of the Settlement Agreement and violation of the Permanent Injunction and independently sufficient to entitle Plaintiffs to the relief they seek through this Motion.

In their Opposition, Defendants make only two arguments with respect to Client 8. First, they argue that Client 8 was fully refunded. Opp. at 14-15. In doing so, however, they admit that of the $1,400 total refunded in connection with Client 8's counseling, only $175 was refunded in June 2018, with the bulk refunded in April 2019. *Id.* For the reasons explained in Section II above, Defendants have conceded that their attempt to timely refund fees associated with Client 8 were ineffective, and their belated further refund does not change the fact that they have failed to cure their breach.

Second, Defendants argue that because Goldberg referred Client 8 to Vazzo on December 31, 2015, that referral was not a violation of the Permanent Injunction, the first paragraph of

[4] Client 8 is identified by the initials "S.R." in the redacted versions of the publicly filed exhibits to the Bensman Certification.

which allowed JONAH thirty days (until January 17, 2016) to cease operations. Opp. at 8.[5] But the third paragraph of the Permanent Injunction states that "As of the date of this Order . . . Defendants are permanently enjoined from engaging, whether directly or through referrals, in any. . . Conversion Therapy… or promoting… Conversion Therapy-related commerce. . . including the provision of referrals." Bensman Ex. 2, Permanent Injunction ¶ 3. Goldberg's referral of Client 8 to a counselor for the treatment of his "SSA" indisputably violates that provision, which, at the time of the referral, had been in effect for more than two weeks.

Not only does the Client 8 referral fully entitle Plaintiffs to the relief they seek, but Defendants' misstatements to this Court in connection with the Client 8 referral are a strong reason to institute contempt proceedings.

B. JIFGA Continues To Funnel (And Receive) Conversion Therapy Dollars

As this Court succinctly put it at the May 11, 2018 Hearing on the Original Motion, "it's the commerce." Bensman Ex. 5, May 11, 2018 Hr'g Tr. at 17:21. The documents obtained in discovery reflect that, like JONAH before it, JIFGA acts as a financial middleman between clients and Conversion Therapy providers, then takes a cut for itself. Notably, Defendants do not actually deny that JIFGA does this. Instead, they merely claim that "some" (but not all) of the referrals were not made by them, that "some" (but not all) of the referrals should not count as true referrals, that "many" (but not all) of the referrals were not for Conversion Therapy, and that "some" (but not all) of the referrals predate the Permanent Injunction. Opp. at 2-8. In other words, they concede that they made Conversion Therapy referrals after the Permanent Injunction went into effect, in connection with which money flowed through and to JIFGA. As Defendants

[5] Notably, through this argument, Defendants have taken the position that Goldberg's referral of Client 8 to Vazzo was an action taken as part of "JONAH's operations," *see id.*, which cannot be reconciled with their argument elsewhere that other referrals made by Goldberg in the same way and to the same counselor were *not* part of JIFGA's operations. *See* Section IV below.

do not dispute that JIFGA funnels and collects money for Conversion Therapy services (and, in doing so, promotes and engages in Conversion Therapy-related commerce), the Court has a sufficient basis to find Defendants in violation of the Permanent Injunction and in breach of the Settlement Agreement, even without addressing the limited factual issues that Defendants raise.

And Defendants' arguments, such as they are, fall apart under scrutiny. First, supported solely by bare assertions contained in dubious certifications, Defendants argue that some of the referrals identified in the Second Motion were not made by Defendants. Opp. at 2-3. Defendants do not explain why JIFGA would have received or accepted a fee in connection with clients whom it had purportedly not referred to their counselors,[6] nor do they explain why the origin of the referral would matter in light of the Permanent Injunction's clear bar on the promotion of "Conversion Therapy-related commerce." Bensman Ex. 2, Permanent Injunction ¶ 3. The provision of financial services to Conversion Therapy providers indisputably violates that prohibition, and Defendants tellingly do not even attempt to argue otherwise.

Second, Defendants argue that some of the referrals identified in the Second Motion were "not referrals at all, and therefore did not violate the Permanent Injunction." Opp. at 3. As discussed, and as is obvious from its plain language, the Permanent Injunction enjoins Defendants from a broad scope of conduct, including, but very much not limited to, providing Conversion Therapy referrals. Each of the three examples presented by Defendants as purportedly appropriate plainly violates the Permanent Injunction, regardless of whether it is

[6] *See, e.g.*, Bensman Ex. 26 at JIFGA-00066335-36 (April 2016 email attaching April 2016 invoice) (Morgan writing "I owe JIFGA 75" in connection with I.M's invoice); Bensman Ex. 17 at JIFGA-00039944-45 (October 2016 email attaching September 2016 invoice) ("[J.H.] did not tell me that she had received a referral from JIFGA. Arthur made me aware of this in September."); Bensman Ex. 17, JIFGA-00044864-65 (March 2017 email attaching February 2017 invoice) (Vazzo writing JIFGA's office manager that he needs to give JIFGA an updated credit card number for R.R.).

defined as a referral. *See* Bensman Ex. 29, JIFGA-00049368 (Goldberg facilitates the provision of Conversion Therapy to a prospective client); Bensman Ex. 30, JIFGA-00038324 (Goldberg acts as an intermediary for communications between a prospective client and a distant Conversion Therapy provider who encourages the client to seek out Conversion Therapy where he lives); Bensman Ex. 31, JIFGA-00034987 (working to help match a "girl with active SSA" to a Conversion Therapy provider). Therefore, although each is reasonably understood as a referral (if, in some cases, indirect), the question of how to categorize the underlying conduct is irrelevant, as regardless of the description, it constitutes a breach of the Permanent Injunction.

Third, Defendants argue that some of the referrals did not involve Conversion Therapy. In part, they rely on certifications containing the kinds of questionable assertions that this Court has already heard and rejected. Bensman Ex. 67, June 3, 2015 Trial Tr. 68:9-20. And, with respect to two referrals, Defendants claim, incredibly, that the underlying documents themselves support their argument; they do not. *See* Bensman Ex. 32, JIFGA-00035024 (the potential client is described as having "issues surrounding her sexuality"); Bensman Ex. 38, JIFGA-00045870 (the potential client is described as having told Goldberg that "his SSA is 'under control' but he still has issues over former abuse and/or self-understanding").

Fourth, Defendants argue that three of the referrals predate the Permanent Injunction. Opp. at 8. One of these is the referral for Client 8, which was made after the Permanent Injunction took effect, as explained above. One indeed predates the Permanent Injunction, but was never offered as an example of a violation thereof; rather, it reflects the existence of an additional inherited JONAH client not disclosed to the Court despite Defendants' representation that they had identified, and would refund, all such clients. *See* Second Motion at 19. The third had appeared from the documents to be a recently referred client, but Defendants now explain

that, like the second, he was in fact originally referred by JONAH, with JIFGA merely continuing the inherited financial arrangement. Opp. at 8. This, of course, is an admission of an additional breach and violation.

In sum, Defendants' arguments are both incomplete and unavailing. JIFGA's persistence in funneling money between Conversion Therapy providers and their clients (and its acceptance of a portion of the fee) is a breach and a violation, and fully entitles Plaintiffs to full relief.[7]

C. The Permanent Injunction Doesn't Have An Out-Of-State Loophole

In 2015, a unanimous jury found that Defendants had violated the New Jersey Consumer Fraud Act and engaged in unconscionable business practices when (among other things) Goldberg referred Sheldon Bruck, then a resident of Chicago, to a Conversion Therapy provider in Tennessee. Compl., ECF No. 1, ¶¶ 22, 91. Now, Defendants take the position that the Permanent Injunction that resulted from that verdict would not reach that referral if it were made today. To restate their argument is to refute it.

"[W]here the terms of a contract are clear and unambiguous there is no room for interpretation or construction and the courts must enforce those terms as written." *Karl's Sales & Serv., Inc. v. Gimbel Bros.*, 249 N.J. Super. 487, 493 (App. Div. 1991). The language of the Permanent Injunction does not contain the geographical restriction that Defendants belatedly seek to import into it. The relevant provision states in its entirety that:

> Defendants are permanently enjoined from engaging, whether directly or through referrals, in any therapy, counseling, treatment or activity that has the goal of

[7] Importantly, Defendants' argument that Goldberg is excused from complying with the Permanent Injunction when he crosses the state border, setting aside the many problems with that argument that are set forth in this brief, is irrelevant in light of the fact that JIFGA is, of course, a New Jersey organization, and money that flows through and into its New Jersey bank accounts is squarely and indisputably within the reach of the Permanent Injunction, however that reach is defined or limited. Bensman Ex. 5, May 11, 2018 Hr'g Tr. 16:7-9 ("You are in New Jersey. So you're conducting business in New Jersey. No matter where you send the people it's originating in New Jersey.").

> changing, affecting or influencing sexual orientation, "same sex attraction" or "gender wholeness," or any other equivalent term, whether referred to as "conversion therapy," "reparative therapy," "gender affirming processes" or any other equivalent term ("Conversion Therapy"), or advertising, or promoting Conversion Therapy or Conversion Therapy-related commerce in or directed at New Jersey or New Jersey residents (whether in person or remotely, individually or in groups, including via telephone, Skype, email, online services or any delivery medium that may be introduced in the future, and including the provision of referrals to providers, advertisers, promoters, or advocates of the same).

Bensman Ex. 2, Permanent Injunction ¶ 3 (emphasis added). Defendants argue that the qualifying phrase "in or directed at New Jersey or New Jersey residents" modifies the prohibition on "engaging, whether directly or through referrals" in Conversion Therapy or, in the alternative, that the Permanent Injunction is ambiguous on this point. Opp. at 8. This is contrary to the canon of construction that qualifying phrases refer only to the last antecedent. *See State v. Gelman*, 195 N.J. 475, 484 (2008); *Alexander v. Bd. of Review*, 405 N.J. Super. 408, 417 (App. Div. 2009) (modifying phrase in statute "should be interpreted as referring only to the last antecedent phrase it can reasonably modify" absent a comma setting it off).[8] Here, the last antecedent of the modifying phrase "in or directed at New Jersey or New Jersey residents" is the phrase "promoting Conversion Therapy or Conversion Therapy-related commerce." In contrast, the phrase "engaging, whether directly or through referrals, in [Conversion Therapy]" is separated from both of these phrases by a disjunctive "or" set off by a comma. In short, the plain language of the provision reflects two key prohibitions. The first prohibits referrals for Conversion Therapy, without geographical limitation. The second prohibits the promotion of Conversion Therapy and related commerce, with reference to New Jersey.

None of this is ambiguous, as Defendants' own emails reflect. For example, in March 2016, a correspondent asked Defendants whether they had "ever given any thought to moving

[8] This canon of statutory construction is equally applicable to contract interpretation. *See, e.g.*, *Auto–Owners Ins. Co. v. Stevens & Ricci Inc.*, 835 F.3d 388, 409 (3d Cir. 2016).

[their] reparative therapy ministry across the line into Pennsylvania." *See* Bensman Ex. 68, JIFGA-00033711. Goldberg responded, copying Berk, that they had "thought of that possibility but the risk is high since the judgment was not only against JONAH as an entity but also us as individuals" and noted that the "primary prohibition" was "on referring people to counselors." *Id.*[9] Goldberg correctly appreciated that Defendants cannot evade the Permanent Injunction by crossing state lines.[10]

Citing no law, Defendants incorrectly assert that the Consumer Fraud Act's "reach . . . is limited to conduct in the State of New Jersey" and that the Permanent Injunction therefore loses force at the New Jersey border. Opp. at 10-11. But state courts have the power to reach out-of-state conduct when they have jurisdiction over the parties. *See* Restatement (Second) of Conflict of Laws § 53 ("A state has power to exercise judicial jurisdiction to order a person, who is subject to its judicial jurisdiction, to do an act, or to refrain from doing an act, in another state."); *see also Deere & Co. v. MTD Prods., Inc.*, No. 94 CIV. 2322 (DLC), 1995 WL 81299, at *4

[9] Defendants also suggest that this purported ambiguity in the Permanent Injunction—to which they consented—should be construed "against" Plaintiffs. That narrow principle of contract interpretation, usually restricted to situations when the "non-drafting party has no opportunity to negotiate the terms of a contract," has no relevance to the interpretation of a court order. *See St. George's Dragons, L.P. v. Newport Real Estate Grp., L.L.C.,* 407 N.J. Super. 464, 483 (App. Div. 2009).

[10] This early interest in staying within the bounds of the Permanent Injunction was short-lived, as reflected in the documents discussed herein and in the Second Motion, and Goldberg's profound indifference to the Permanent Injunction is perhaps best demonstrated by the fact that, despite receiving an email which unambiguously stated that a JIM weekend that Goldberg was about to staff would be attended by a resident of New Jersey, Goldberg made no effort to confirm or deny that attendee's residency and blithely participated in the weekend anyway. *See* Bensman Ex. 37, JIFGA-00045862. Defendants argue that this exhibit is inadmissible as hearsay, but it is plainly admissible for its effect on Goldberg. *See Fitzgerald v. Stanley Roberts, Inc.*, 186 N.J. 286, 317 (2006) (holding gossip admissible to establish general character of workplace). *See also State v. T.M.S.*, No. A-2411-11T2, 2014 WL 3928450, at *7 (N.J. Super. Ct. App. Div. Aug. 13, 2014) (detective's statement that he received an anonymous tip of abuse admissible to explain why he interviewed defendant's child).

(S.D.N.Y. Feb. 28, 1995) ("In cases where a nationwide injunction was issued based on both federal and state claims, the Second Circuit has also indicated that the state claims alone would sustain the injunction."). And the Consumer Fraud Act has been applied extraterritorially. *See, e.g.*, *Real v. Radir Wheels*, Inc., 198 N.J. 511, 527 (2009) (where defendant engaged in unconscionable practices, satisfied statutory definition of a "person," and sold "merchandise," to out-of-state buyer, "nothing more was needed to invoke the CFA's broad remedial purposes."); *Elias v. Ungar's Food Prod., Inc.*, 252 F.R.D. 233, 248 (D.N.J. 2008) (applying New Jersey CFA to class action including plaintiffs from states other than New Jersey). Nor did Defendants argue in the underlying litigation that Goldberg's out of state conduct (e.g., conversations he had with Plaintiffs at out of state JIM weekends) or Goldberg's out of state referrals (as in the case of Sheldon Bruck)[11] were beyond the reach of the Consumer Fraud Act.[12]

Defendants' conduct falls squarely within an unambiguous prohibition in the Permanent Injunction, a prohibition that is well within this Court's considerable equitable powers. Their belated attempt to reargue the boundaries of the Permanent Injunction is baseless and should be rejected. In any case, the Court need not determine Goldberg's location at every point in time to find that Conversion Therapy dollars moving through JIFGA's bank accounts were a continuing and brazen violation, even under Defendants' tortured reading of the relevant provision. *See* Bensman Ex. 5, May 11, 2018 Hr'g Tr. 18:7-8 ("How could you say it's not happening in New Jersey? JIFGA's in New Jersey.").

[11] *See, e.g.*, Bensman Ex. 69, FGSN00006824–25 (2009 Goldberg email arranging referral for Sheldon Bruck, then an Illinois resident).
[12] Nor did Defendants make that argument with respect to Goldberg's international referrals. *See, e.g.*, Bensman Ex. 70, JON 016295–97 (2007 Goldberg email making referral arrangements for a foreign client with a foreign counselor).

IV. JIFGA IS A MERE CONTINUATION OF JONAH

In both the Original Motion and the Second Motion, Plaintiffs set forth the many reasons why, pursuant to applicable law and under the relevant factors, JIFGA is plainly a mere continuation of JONAH, an additional violation and breach entitling Plaintiffs to relief. Defendants respond by repeating the now tired and still irrelevant point that JIFGA has a broad mission statement and engages in conduct not barred by the Permanent Injunction, such as issue advocacy. Opp. at 17-18. Even if JIFGA does some things that JONAH did not do, that is not the test; to determine whether one is the mere continuation of the other, rather than asking whether the two organizations are identical in every respect, the law looks to a number of factors. *See Marshak v. Treadwell*, 595 F.3d 478, 490 (3d Cir. 2009), Second Motion at 14-15 (addressing the *Marshak* factors). Defendants point out that one of these factors is not met because JIFGA does not hold itself out as JONAH's "effective continuation," but *Marshak* makes clear that not every factor needs to be satisfied, and the majority of the factors are satisfied here, as already explained (and unchallenged). *See Marshak*, 595 F.3d at 490.

Moreover, we know from Defendants themselves that JONAH's core activity was Goldberg's provision of referrals. *See* Bensman Ex. 71, Feb. 18, 2014 JONAH Dep. at 153:5-7 ("Q. What are the services that JONAH offers? A. Primarily referral to counselors."). And the fees associated with those referrals were a core source of funding for JONAH, just as they are for JIFGA. *See* Bensman Ex. 72, June 8, 2015 Trial Tr. 117:16-20 ("Q. One of the ways that JONAH raises money is . . . a cut of the counselor's fees, right? A. That is correct."); Bensman Ex. 71, Feb. 18, 2014 JONAH Dep. at 234:25-235:6 (explaining that JONAH collected referral fees because "we need to survive as an organization"). As this Court put it at the hearing on the Original Motion, "if the client is paying the fee to JIFGA, then why is that not the same general operation as JONAH?" Bensman Ex. 5, May 11, 2018 Hr'g Tr. 15:9-11. Goldberg indisputably

continues to provide referrals, even using the same cellphone number and email addresses as before.[13] JIFGA's activities therefore continue JONAH's core functions and mode of operation.

Defendants' only other argument is that Goldberg was freelancing when he engaged in the conduct that violated the Settlement Agreement and breached the Permanent Injunction. Opp. at 18. But Goldberg's conduct as co-director of JIFGA is not different from his conduct as co-director of JONAH—which Defendants never argued was undertaken in Goldberg's personal capacity. Goldberg responded to requests for Conversion Therapy referrals for JONAH, just as he does now for JIFGA.[14] For JIFGA, as for JONAH, Goldberg steered clients to PCC's JIM weekends.[15] When corresponding with potential JONAH clients, Goldberg used the jonahhelp@aol.com email account, often providing his personal phone number, often without making any special reference to JONAH itself, or to his position there. *See, e.g.*, Bensman Ex. 73, JON 017111–12. As before, so too now; Goldberg even uses the same email address, same phone numbers, and same Skype account. *See, e.g.*, Bensman Ex. 20, JIFGA-00048787 ("Please feel free to call me . . . on my cell"); Bensman Ex. 21, JIFGA-00049029 ("[S]kype me at

[13] Documents reflect that the info@jonahweb.org account was active at least as of May 2018, and appeared simply to forward to jonahhelp@aol.com, Goldberg's main account. *See* Bensman Ex. 74, JIFGA-00061224, Bensman Ex. 75, JIFGA-00048040. The Tawadrous declaration submitted in support of the Opposition to this motion is not to the contrary, as it concerns the separate issue of the JONAH web domain. As previously discussed, this too is an independent violation of the Permanent Injunction.

[14] *See* Bensman Ex. 64, Feb. 19, 2014 Goldberg Dep. at 201:4-9, 218:7-10 ("I refer people to counselors" . . . "Q. You said before that you primarily are the one who speaks to prospective clients by phone; is that right? A. That is correct."); Bensman Ex. 65, Feb. 20, 2014 Berk Dep. at 84:12-85:7 ("Q. You spoke earlier about the fact that typically you ask someone who is making an inquiry to call Arthur; is that correct? A. Right . . . . Q. And you do that almost every time you get an inquiry? A. Yes . . . . Q. Do you have any specific knowledge of things he says in those telephone calls? A. Yes. He recommends counselors if they are looking for a counselor.").

[15] *See* Bensman Ex. 38, JIFGA-00045870 ("I just called and spoke with him and he indicated he is planning on registering."); Bensman Ex. 76, JON 013067–69 ("Obviously I do my usual pushing to get any JONAH based client to do the program.").

jonah.institute"). And, although many of Goldberg's communications are informal and signed only with his name (as was also the case when he was acting for JONAH), some explicitly reference JIFGA and his position there. *See, e.g.*, Bensman Ex. 51, JIFGA-00054099.

Pursuant to the Permanent Injunction, JONAH's existence and operations were supposed to come to an end. But as long as JIFGA continues to exist, JONAH will never truly be gone.

V. DEFENDANTS SHOULD NOT BE ALLOWED TO GET AWAY WITH AN ATTEMPTED FRAUD ON THIS COURT

The Opposition does not address Plaintiffs' request that the Court institute criminal contempt proceedings against Defendants for their willful defiance of this Court's orders and for their repeated false statements to this Court. In addition to their many breaches of the Permanent Injunction, Defendants have attempted to mislead the Court about at least the following:

- JIFGA's continued provision of Conversion Therapy referrals, receipt of referral fees, and funneling of money between clients and counselors;
- The number of clients that JIFGA "inherited" from JONAH, the nature of the counseling that those clients were receiving, and when payments associated with those clients stopped coming in to JIFGA; and
- The completeness of Defendants' June 2018 refunds.

The documents obtained through discovery contradict Defendants' representations to this Court, and in particular, Goldberg's two false certifications. To the extent that any questions of fact or credibility remain open, the criminal contempt hearing will allow the Court to answer them.

VI. PLAINTIFFS ARE ENTITLED TO THE RELIEF THEY SEEK

In addition to the breach of the Settlement Agreement that this Court already found, and which Defendants failed to timely cure, Plaintiffs have identified numerous other breaches, uncurable and uncured, all of which entitle them to the Breach Damages and Berk Breach Damages. Defendants, represented by counsel, negotiated the terms of the Settlement Agreement, including the damages amounts (the proper context for which is the fee award to

which Plaintiffs were entitled by law after the jury verdict), and cannot now be heard to complain that the amount is unjustified or disproportionate.[16] Plaintiffs respectfully request that the Court enter judgment in the amount of the Breach Damages and Berk Breach Damages.

Defendants' numerous violations of the Permanent Injunction likewise provide ample grounds for the Court to enter an order further enjoining Defendants, as described in the proposed order submitted with the Second Motion. Defendants argue that the Permanent Injunction is too vague to enforce on the theory that Defendants could not have understood it to bar the very conduct that was front and center during three years of litigation and three weeks of trial. Not only is their argument implausible on its face, but as explained above, it is contradicted by the Permanent Injunction itself, as well as by documents obtained through discovery. Plaintiffs respectfully request that the Court grant the further injunctive relief they request.

Plaintiffs are also entitled to an award of counsel fees and costs. Defendants' sole response is to argue that Plaintiffs have failed to prove that Defendants' noncompliance with this Court's orders was willful. The evidence is to the contrary. Defendants clearly understood, but chose to ignore and defy, the restrictions imposed on them by this Court. As a result, Plaintiffs have been forced to expend time and resources investigating and litigating their many violations of this Court's Permanent Injunction.

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[16] Nor are they correct in their assertion that this Court lacks the power to order Defendants to pay the Breach Damages and Berk Breach Damages to Plaintiffs, and the case they cite for that proposition is inapposite. Opp. at 20. *See Haynoski v. Haynoski*, 264 N.J. Super. 408, 414 (App. Div. 1993) (involving an effort to enforce a private settlement agreement to which the Court was not connected in any way prior to the Rule 1:10 application); *PictureWindow Software, LLC v. Greene*, No. SOM-C-12058-04, 2006 WL1381619, at *4 (N.J. Super. Ct. Ch. Div. Apr. 28, 2006) (rejecting a similar argument that a court could not enforce a settlement agreement); *see also Halimi v. Pike Run Master Ass'n*, No. A-2621-13T3, 2015 WL 1980492, at *2 (N.J. Super. Ct. App. Div. May 5, 2015) (R. 1:10-3 applied where defendant consented to entry of an order memorializing settlement agreement).

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Respectfully submitted,
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