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Michael Ferguson, Benjamin Unger, Chaim Levin, Jo Bruck, Bella 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 Coach LLC, **Defendants.**	SUPERIOR COURT OF NEW JERSEY HUDSON COUNTY: LAW DIVISION DOCKET NO.: L-5473-12 Civil Action **MEMORANDUM OF DECISION**

Argued: June 7, 2019
Decided: June 10, 2019

Bruce D. Greenberg, Esq. for plaintiffs (Lite DePalma Greenberg, LLC)

David C. Dinielli, Esq. of the California bar, admitted pro hac vice, for plaintiffs (Southern Poverty Law Center)

Lina Bensman, Esq. of the New York bar, admitted pro hac vice, for plaintiffs (Cleary Gottlieb Steen & Hamilton LLP)

Michael P. Laffey, Esq. for defendants (Messina Law P.C.)

BARISO, A.J.S.C.

This matter comes before the court on an application to enforce litigants' rights pursuant to a court ordered permanent injunction and settlement agreement.

Factual Background and Procedural History

On November 27, 2012, plaintiffs filed their complaint, alleging four counts of violation of New Jersey's Consumer Fraud Act, which protects consumers from deceptive, false, fraudulent, or unconscionable business practices. At the core of the allegations was that defendants referred plaintiffs to conversion therapy practitioners who defendants claimed, among other misrepresentations, could significantly reduce or eliminate plaintiffs' "same-sex attraction."

On June 25, 2015, after years of litigation, a New Jersey jury unanimously found that JONAH had engaged in unconscionable business practices. On December 18, 2015, the court entered its Order Granting Permanent Injunctive Relief and Awarding Attorneys' Fees. See Pl. Ex. 2.[1] Specifically, the permanent injunction ordered that:

- "JONAH, Inc. shall permanently cease any and all operations . . . ";
- "JONAH, Inc. shall permanently dissolve as a corporate entity and liquidate all its assets, tangible or intangible . . . ";
- "Defendants are permanently enjoined from engaging, whether directly or through referrals, in any therapy, counseling, treatment or activity that has the goal of 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) . . . ."

The permanent injunction also awarded Plaintiffs $3.5 million in attorneys' fees and costs (the "Fee Award"). See Pl. Ex. 2.

In addition to the permanent injunction, the parties executed a settlement agreement in December 2015, which provided, among other things, that plaintiffs would agree to accept a reduction of the Fee Award. In exchange, the parties agreed that, if defendants violate the permanent injunction or otherwise breach the settlement agreement on or before December 18 2020, plaintiffs are entitled to collect the remaining balance of the Fee Award and, if defendants refuse to pay, seek default judgment.

[1] All exhibits labelled "Pl. Ex." are attached to the Certification of Lina Bensman, dated March 27, 2019, which accompanies plaintiffs' moving papers.

On March 28, 2018, plaintiffs filed a motion to enforce litigants' rights[2], asserting that defendant JONAH had continued operation under a new acronym, JIFGA (Jewish Institute for Global Awareness). Oral argument was held on May 11, 2018, and this court found that defendants violated paragraph 3 of the permanent injunction and breached paragraph 6 of the settlement agreement. An order reflecting same was entered on May 15, 2018. Thus, pursuant to the terms of the settlement agreement, the court gave defendants one month to cure the breaches and provide plaintiffs with evidence of their cure. The court also granted discovery on the issue of whether JIFGA was the alter ego of JONAH. Defendants provided plaintiffs with voluminous records, consisting of over 70,000 documents.

By letter dated February 20, 2019, plaintiffs notified defendants of their intent to seek Breach Damages and provided a description of their good faith basis for believing defendants breached the settlement agreement, including through Uncured Breaches. Pl. Ex. 10. Pursuant to the February 20, 2019 letter and the settlement agreement, Breach Damages were due upon the expiration of thirty days, or on March 22, 2019. To date, defendants have not made a payment.

On March 27, 2019, plaintiffs filed the instant motion to enforce litigants' rights, claiming not only that defendants failed to timely cure their breaches but also made material misrepresentations. Defendants filed opposition on May 3, 2019 and plaintiffs filed a reply on May 24, 2019. This court heard oral argument on June 7, 2019.

Plaintiffs' Argument in Support

A private litigant is entitled to move to enforce an injunction against a non-compliant defendant. See In re Adoption of N.J.A.C. 5:96 & 5:97 ex. rel. N.J. Council on Affordable Hous., 221 N.J. 1, 17 (2015). Courts routinely grant Rule 1:10-3 motions to enforce their orders and

[2] Hereinafter referred to as "original motion."

judgments. See id. at 17-20; Irish Pub v. Stover, 364 N.J. Super. 351, 353-56 (App. Div. 2003). The court has broad discretion to fashion appropriate remedies to ensure compliance with its orders, including the express authority to award counsel fees to the party granted relief under the rule. R. 1:10-3; Pressler & Verniero, cmt. 4.4.5 on R. 1:10-3 (the rule recognizes that, "as a matter of fundamental fairness, a party who willfully fails to comply with an order or judgment entitling his adversary to litigant's rights is properly chargeable with his adversary's enforcement expenses").

There is clear and convincing evidence that defendants repeatedly violated the settlement agreement and permanent injunction.

A. Client 8.

On December 31, 2015 – less than two weeks after the permanent injunction went into effect – defendants received a request for a referral from parents "looking for help for our 19 year old son . . . that has SSA.[3] He is open to counseling." Pl. Ex. 11. The request was sent through a contact form available on Voices of Change, a pro-conversion therapy group that channeled submissions to defendants' email account, info@jonahweb.org. Id. In response, Berk, copying Goldberg, emailed David Pickup, the conversion therapist running Voices of Change, to request that any requests for referrals be routed away from her and Goldberg because, "Arthur and I are no longer allowed to legally offer any advice or suggestions to individuals concerning reparative therapy." Yet, several hours later, Vazzo sent an email to Goldberg stating, "Thank you for the referral. We have set up an appointment . . ." Ex. 13. The subject line to that email was the name of the parent who submitted the request to Voices of Change. Several days later, Goldberg emailed the parent, stating "It was good to speak with you last week. I am glad you followed up and made

[3] SSA is an acronym for "same-sex attraction."

an appointment with Robert [Vazzo]. Please keep me posted on how it goes." Ex. 14. At least 56 sessions followed between Vazzo and the client, with payments being funneled through JIFGA, using JONAH's payment consent form, unchanged. Ex. 15; Ex. 16. Receipts and invoices show the total payment of $8,589 for Vazzo's services, of which JIFGA retained $2,985.

Since defendants produced unredacted documents, plaintiffs confirmed that the 19-year-old client is "Client 8" of the nine identified by defendants in response to plaintiff's original motion. Thus, the evidence produced by defendants in response to plaintiff's original motion revealed: (i) Goldberg referred Client 8 to Vazzo after the settlement agreement was executed and after the permanent injunction went into effect; (ii) Goldberg knew full well that Client 8 was being treated for SSA; (iii) Client 8 continued to receive counseling from Vazzo well into 2018; and (iv) the $175 that was purportedly refunded to Client 8's parent by JIFGA in June 2018 is dwarfed by the true amounts received by JIFGA in connection with Client 8's counseling, and no refund check was written to the client at all. These discoveries are all contrary to defendants' representations to this court in 2018.

This conduct alone is an uncured and incurable breach of the settlement agreement and violation of the permanent injunction, sufficient to support all relief sought by plaintiffs.

B. Defendants Continue to Make Individual Referrals.

In addition to Client 8, Goldberg has made individual referrals for potential clients explicitly seeking conversion therapy from his desk at JIFGA's (formerly JONAH's) New Jersey office. Sometimes, as with Client 8, Goldberg directed potential clients to speak with him over the phone instead of via email. See Pl. Ex. 18-22 (emails received by and sent by Goldberg discussing options and suggestions for LGBT feelings and homosexuality – including a request for a referral to a reparative therapist). The content of the emails, alone, confirms that Goldberg

made referrals over the phone to Vazzo and Morgan. For example, in June 2017, Mr. N emailed Goldberg after they met at the JIM weekend saying that he "decided to start therapy again, and wondered if you had contact details for David Matheson?" Pl. Ex. 29. In response, Goldberg provided Matheson's email address. Id. More so, the JIFGA invoices show Morgan's and Vazzo's names, further evidencing that new clients were added and being referred over the phone by Goldberg.

In addition to following up on direct inquiries, Goldberg has proactively sought out potential clients through his continued participation in several listservs with a mental health focus. Periodically, listserv members request referrals to a counselor. On at least two occasions, Goldberg responded to these requests with contacts to conversion therapy providers. See Pl. Ex. 31, 32.

Each referral was a violation of the permanent injunction and an uncured and incurable breach of the settlement agreement. Each is an independently sufficient basis for this court to grant plaintiffs the relief they seek and together show that defendants take every opportunity to defy the jury's verdict and disregard the agreements they have made.

C. Referrals to Experiential Weekend Programs Continue.

In addition to referring potential clients to Morgan, Vazzo, and other conversion therapy providers, Goldberg continues to steer clients to People Can Change ("PCC"), a conversion therapy organization now known as "Brothers Road." In April 2017, Goldberg and Richard Wyler (founder and director of Brothers Road) discussed potential participants for an upcoming JIM weekend, which Goldberg attended as a staff member. Pl. Ex. 37. After receiving a list of registered attendees, one of whom was listed as a New Jersey resident, Goldberg asked Wyler to contact three potential participants. Later that day, Wyler emailed Goldberg to confirm that two

of the three potential participants had agreed to attend. Pl. Ex. 38. About a week later, when one of them had yet to register, Goldberg asked Wyler to continue calling him. Pl. Ex. 39. Goldberg's efforts to promote conversion-therapy-related commerce are no less tireless than before the jury announced its verdict and the settlement agreement and permanent injunction went into effect.

Moreover, through a Facebook group for JIM attendees, Goldberg was contacted by a participant seeking contact information for reparative therapy. Naturally, Goldberg referred the person to a conversion therapy provider, Dr. Uriel Meshoulam. Pl. Ex. 44.

Goldberg's participation as a staff member at JIM, where he directly provided conversion therapy to a New Jersey resident, his vigorous efforts to register participants for that weekend, and the individual referral he later provided to a JIM participant are all independent breaches of the settlement agreement and permanent injunction. Further, Goldberg has intentionally continued breaching the agreement and violating this court's order. In an email to Wyler, sent after the JIM weekend, Goldberg said he was "open to staffing any weekend" because it "felt good to be back in the saddle." Pl. Ex. 48.

D. Defendants' Global Ambitions

Goldberg's use of his New Jersey non-profit organization has extended outside the United States. In the spring of 2018, Goldberg reached out to Alan Alencar, a Brazilian leader of Joel 2:25 (conversion therapy organization modeled on JONAH). In an email, Goldberg wrote, "[a]fter the demise of JONAH, I created the Jewish Institute for Global Awareness" and offering to "be helpful down there to you." Ex. 50. When Alencar responded that Joel 2:25 was planning to work on men with SSA and start something similar to JIM, Goldberg jumped on the opportunity to discuss his experience working with "the SSA issue" and how he could help. Id. Goldberg

provided Alencar with the contact information of three conversion therapy providers and the two agreed to create a program in Brazil. Id.

Goldberg similarly urged the creation of a conversion therapy program in Europe. After returning from a conference in Slovakia, Goldberg emailed a Norwegian acquaintance in November 2017 to promote his book and JIFGA's Funding Morality website. Pl. Ex. 51. Goldberg also provided the contact information for two "counsellors for people with SSA" (Vazzo and Morgan) and added that Morgan's wife is "a counsellor and works primarily with women" and suggested that the Norwegian work with Morgan and his wife to organize such a weekend in Europe. Id.

These communications highlight the lies in Goldberg's statement to this court that JIFGA has not worked "to promote commerce in conversion therapy." Pl. Ex. 6, Goldberg Cert. ¶ 9. See also Pl. Ex. 2, ("Defendants are permanently enjoined from engaging, whether directly or through referrals, in any therapy, counseling, treatment or activity that has the goal of changing, affecting or influencing sexual orientation, "same sex attraction" or "gender wholeness," or any other equivalent term . . . or advertising, or promoting Conversion Therapy or Conversion Therapy-related commerce in or directed at New Jersey or New Jersey residents"). Because Goldberg's communications constitute "promoting Conversion Therapy or Conversion Therapy-related commerce in . . . New Jersey," Goldberg's efforts violate the settlement agreement and permanent injunction.

E. JIFGA is JONAH

Under New Jersey law, to determine whether one entity is a "mere continuation" of another, courts look to certain factors: "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," as well as if the new entity "holds itself out to the world as an effective continuation of" the previous entity. Marshak v. Treadwell, 595 F.3d 478, 490 (3d Cir. 2009) (quoting Bowen Eng'g v. Estate of Reeve, 799 F. Supp. 467, 487-88 (D.N.J. 1992)). Liability can be found if not all the factors are established.

JONAH and JIFGA have the same co-founders and co-directors (Goldberg and Berk), occupy the same office, and are reachable at the same phone number and email addresses. Arguably, they have the same name as JIFGA is a recycled acronym that JONAH once used to market itself to a wider audience. Through discovery, it was found that JIFGA plainly continues JONAH's general operations and that JIFGA picked up where JONAH left off.

Evidence obtained through discovery demonstrates that through JIFGA, Defendants continue to carry out JONAH's core functions: promoting and facilitating commerce in conversion therapy, including by making referrals to individual counselors and experiential weekends, by pocketing referral fees, by acting as a middleman between clients and counselors, and through participation in the organization and administration of Conversion Therapy program such as JIM. As counsel for Defendants put it, "getting an individual to engage in conversion therapy" was "the essence of what Mr. Goldberg was sued for" and JIFGA continues that essential task. Pl. Ex. 4. Defendants argued in opposition to the original motion that they have partially complied with the permanent injunction by formally dissolving JONAH and closing down JONAH's website. However, these actions were simply part of a smokescreen that allowed Defendants to defy the permanent injunction in other aspects and continue the essential operations of JONAH.

As long as JIFGA remains open for business, Defendants have defied this Court's order that JONAH "cease any and all operations." Pl. Ex. 2.

Fraud on the court

In addition to violating the permanent injunction and breaching the settlement agreement, defendants lied about the full extent of their improper conduct and manufactured an illusory cure of the breaches previously identified by plaintiffs in an attempt to mislead this court. This is separate and independent misconduct, constituting criminal contempt of this court and its orders.

New Jersey courts may initiate a summary contempt proceeding under R. 1:10-2 on information supplied by a litigant. Dep't of Health v. Roselle, 34 N.J. 331, 343 (1961). The purpose of such a contempt proceeding is "punitive in nature." Essex Cty. Welfare Bd. v. Perkins, 133 N.J. Super. 189, 195 (App. Div. 1975). Willful defiance of a court order that demonstrates an indifference to the court's lawful command is punishable as criminal contempt. R. 1:10-2; Roselle, 34 N.J. at 337. Making a false statement to a court, whether under oath or not, also qualifies as contempt. Kerr S.S. Co. v. Westhoff, 204 N.J. Super. 300, 309 (Law. Div. 1985), aff'd as modified, 215 N.J. Super. 301 (App. Div. 1987).

Defendants' opposition to the original motion hinged on false assertions that JIFGA did not and does not make referrals. Pl. Ex. 4. Goldberg and Morgan repeated this misrepresentation in their certifications. Pl. Ex. 6, 54. Defendants admitted that they accepted referral fees with nine referral agreements inherited from JONAH but falsely asserted to this court that this was the full extent of their misconduct. See Pl. Ex. 55, 4, 9. Further, defendants claimed that payments made in connection with any JONAH referral agreement stopped in 2017. Based on these false representations, defendants proposed to refund all payments associated with the nine clients and in June 2018, defendants represented to plaintiffs that they had made full refunds. Yet, JIFGA continues to make referrals, including to Morgan, and JIFGA continued to receive fees in connection with those referrals, through 2017 (including in connection with the nine clients whose

existence JIFGA admitted). Client 8 was referred by JIFGA, not JONAH. Pl. Ex. 13. Goldberg and JIFGA knew that the nine clients previously identified were receiving conversion therapy. See Pl. Ex. 60, 61. Vazzo and Morgan's monthly invoices to JIFGA reflect, at minimum, eleven clients beyond the nine that were disclosed. Further, it appears that defendants' purported refunds in June 2018, already deficient to the extent they were limited to only nine JIFGA clients, did not even reflect the full amounts owed.

Evidence of defendants' contempt for this court and its orders is abundant and supports the initiation of a summary contempt proceeding to determine the appropriate punishment, up to and including imprisonment.

Relief requested

Plaintiffs request the court find: (1) defendants breached the settlement agreement and that these breaches have not and cannot be cured; (2) defendants violated the permanent injunction; (3) JIFGA is a successor in interest to and mere continuation of JONAH; and (4) defendants are in default with respect to the unpaid portion of the fee award.

In light of defendants' unrelenting violations of this court's order, plaintiffs ask the court order: (1) JIFGA shall be subject to the permanent injunction in all respects; (2) the dissolution of JIFGA; (3) termination of all communication channels in JIFGA's control and use for JIFGA's operations; (4) Goldberg and Berk be enjoined from serving as directors or officers of or incorporating any tax-exempt entity incorporated in or having operations in New Jersey; (5) enter judgment in the amount of the "Breach Damages" and "Berk Damages" as defined in the settlement agreement; (6) defendants disgorge in full any money received in connection with their facilitation of conversion therapy; and (7) award counsel fees and costs to plaintiffs pursuant to Rule 1:10-3.

Plaintiffs further request that this court institute summary proceedings for criminal contempt pursuant to Rule 1:10-2 to ascertain the full extent of defendants' contempt and determine the appropriate remedy.

Defendants' Argument in Opposition

Defendants did not violate the permanent injunction by making therapy referrals

A. Some of the alleged referrals did not come from defendants

Plaintiffs allege that the defendants made a series of therapy referrals but the following were not made by defendants: I.M. was listed as a "new" client in Morgan's invoice but was not referred to Morgan by Goldberg (Goldberg Cert. ¶ 5; Morgan Cert. ¶ 1); J.H. was listed as a "new" client in Vazzo's invoice but was not referred to Vazzo by Goldberg (Goldberg Cert. ¶ 3b; Vazzo Cert. ¶ 1b); R.R. was listed as a "new" client in Vazzo's invoice but was also not referred by Goldberg (Goldberg Cert. ¶ 4; Vazzo Cert. ¶ 2). Thus, not all individuals listed in Morgan's and Vazzo's invoices were referred by defendants.

B. Some of the alleged referrals were not referrals

The following alleged referrals were not referrals at all. Mr. N. was not referred to David Matheson; the two had met each other at a 2007 JIM weekend. Mr. N. decided, on his own accord, to seek therapy from Matheson and simply asked Goldberg for Matheson's contact information. Pl. Ex. 9. Goldberg did not refer Y.S. to Joe Nicolosi. Y.S wrote a letter to Nicolosi on his own accord and merely asked Goldberg to forward the letter to Nicolosi because Y.S. did not have access to email. Pl. Ex. 30. Also, plaintiffs allege that Goldberg referred E.F. to D.S. but the emails depict a different scenario. Pl. Ex. 31. E.F. was a therapist seeking a female therapist for an unknown third party. Goldberg did not give E.F. the name of the female therapist, he gave the

name of D.S. (a male therapist) who might be able to recommend a female therapist to E.F. for the third party. These actions did not violate the permanent injunction.

Out of the 70,000 documents reviewed by plaintiffs, they cite to only six or seven emails that refer to telephone calls. Those emails are not evidence of an actual conversation but are merely invitations to speak in the future. Plaintiffs' assertion that it is "obvious" Goldberg was providing referrals on those calls is anything but obvious because for most of the emails, there is no evidence that the invitation to speak resulted in an actual conversation. Further, if a conversation occurred, there is no evidence of what was said. Indeed, only one exhibit contains evidence of an actual phone call concerning referrals for a married couple to receive couples' therapy – not to address their sexual orientation. Goldberg Cert. ¶ 7.

C. Many of the alleged referrals did not involve conversion therapy

As to many of the alleged referrals, plaintiffs failed to present evidence as to the type of therapy provided (or to be provided). Indeed, as to many of the referrals, the type of therapy is unknown. See Pl. Ex. 24, 25. Plaintiffs allege that any therapy provided by Vazzo and Morgan must necessarily have been conversion therapy but they've offered no evidence in support of that inference. Vazzo and Morgan have both submitted sworn certifications clearly stating they provide therapy modalities other than conversion therapy and that the clients referred by Goldberg did not receive conversion therapy. See Vazzo Cert. ¶¶ 4-5, dated April 27, 2018; Morgan Cert. ¶5, dated April 27, 2018. Indeed, the court noted that it cannot assume that a client of Vazzo or Morgan was being treated for "same sex issues." See Pl. Ex. 5, T24:12-16. Notably, many of the referrals evidence that the individuals did not seek conversion therapy. See Pl. Ex. 23; contra. Goldberg Cert. 7. See also, Pl. Ex. 32, 38.

D. Some of the alleged referrals predate the permanent injunction

Plaintiffs allege that M.J. was referred to Vazzo by Goldberg but Pl. Ex. 62 is clearly dated September 22, 2015. Plaintiffs also allege Goldberg referred Client 8 to Vazzo on December 31, 2015, less than two weeks after the entry of the permanent injunction on December 18, 2015. Pl. Ex. 11. However, the injunction allotted defendants 30 days to cease JONAH's operations, specifically including the "provision of referrals." Pl. Ex. 2. Since Client 8 was referred before the 30 days expired, the email referral was outside the scope of the injunction. Finally, plaintiffs allege J.H. was a new client of Vazzo in May 2016. Pl. Ex. 17. However, J.H. was referred by Goldberg to Vazzo years before the injunction.

E. The alleged referrals did not involve the State of New Jersey

The permanent injunction prohibits defendant from engaging in conversion therapy "in or directed at New Jersey or New Jersey residents", whether "directly or through referrals." Pl. Ex. 2.

Although plaintiffs allege that the referrals violated the injunction if they were sent from New Jersey to out-of-state clients and therapists, the injunction does not expressly prohibit such emails and is, at most, ambiguous at that point. For example, with respect to most, if not all, of the referrals, the client resided outside of New Jersey. There is no allegation, nor evidence, that any referral involved a New Jersey resident. Similarly, neither Vazzo nor Morgan reside in New Jersey: Vazzo lives in Nevada and Morgan lives in Texas. Vazzo Cert. ¶ 3; Morgan Cert. ¶ 3.

Further, defendants are allowed to send an email referral from New York to a therapist in California concerning a client in Delaware. Plaintiffs assert that the injunction prohibits that email if defendant sends it from his desk at his New Jersey office. However, nothing in the text of the injunction suggests a distinction of where the email was sent from – and if parties intended such a

distinction, it would have been simple enough for plaintiff's counsel to have drafted such a prohibition. The text of the permanent injunction prohibits defendants from engaging in conversion therapy "in or directed at New Jersey or New Jersey residents" whether "directly or through referrals." Pl. Ex. 2. Nothing in that text prohibits defendants from making a referral unless it concerns conversion therapy "in or directed at New Jersey or New Jersey residents."

Any ambiguity in the permanent injunction should be construed in favor of defendants. Preliminarily, plaintiffs' counsel drafted the injunction and when the meaning of a provision is ambiguous, the provision should be construed against the drafter. Roach v. BM Motoring, LLC, 228 N.J. 163, 174 (2017). Second, plaintiffs bear the burden of proof on this motion. Third, relief to litigants under this Rule is inappropriate where the injunction is "too vague." See N.J. Dep't of Health v. Roselle, 34 N.J. 331, 347 (1961). Fourth, the reach of the New Jersey Consumer Fraud Act is limited to conduct in the State of New Jersey and the injunction should be construed consistent with the statute that defendants were found to have violated.

Finally, plaintiffs have not presented evidence that the referral emails were sent from New Jersey. Even if plaintiffs' interpretation of the preliminary injunction was correct, plaintiffs would have to prove that emails in question were sent from New Jersey. Goldberg travels extensively and was not in New Jersey when many of those emails were sent. Thus, there is no such evidence that the people involved (Goldberg, the client, or the therapist) were in the State of New Jersey. Plaintiffs, therefore, failed to prove a violation of the injunction.

Goldberg did not violate the permanent injunction by participating in the JIM weekend

Goldberg did not violate the permanent injunction because the permanent injunction applies only in New Jersey and the JIM weekend took place in Pennsylvania. Plaintiffs assert that the injunction applies because one of the registered participants, "E.C." was identified in an email

as a resident in New Jersey. This argument fails. First, the email is hearsay as it is being used to prove the truth of the statements made therein. N.J.R.E. 801(c), 802; Pl. Ex. 37. Since the inadmissible email is the only evidence to prove where E.C. lived, plaintiffs failed to prove that E.C. resided in New Jersey. Also, E.C. is listed only as someone who signed up for the event but plaintiffs have not offered evidence as to whether E.C. actually attended. Further, Goldberg did not solicit E.C. to attend the event and does not know if he ever met E.C. or if E.C. was from New Jersey.

Plaintiffs' argument that Goldberg violated the injunction by indirectly soliciting S.M. to attend JIM also fails. Goldberg was not in New Jersey when he sent the email requesting S.M. be contacted and S.M. is not from New Jersey. Goldberg Cert. ¶8, 9b. Thus, Goldberg's email concerning S.M. does not violate the permanent injunction.

Goldberg's membership in a Facebook group for former JIM participants and his attendance at a JIM reunion do not violate any aspect of the permanent injunction. So, Goldberg's participation in the JIM weekend did not violate the permanent injunction.

JIFGA correctly refunded the fees it received, including from clients

During the original motion practice, this court ruled that JIFGA had the right to return referral fees as a cure to any breach or violation. In compliance with the ruling, JIFGA refunded all therapy fees that JIFGA received. On June 6, 2018, JIFGA refunded over $50,000 to nine different clients and Morgan and Vazzo. Goldberg Cert. ¶ 11.

JIFGA received a single payment of $260 from Client 8's mother on June 8, 2016. Id. ¶ 12. Of that, $85 was returned three days later and the balance of $175 was refunded on June 6, 2018. Id. Any additional fees received from Vazzo and Morgan were fully refunded, as well. Id. at ¶ 13. Thus, contrary to plaintiff's argument, JIFGA returned all money received from Client 8.

Additionally, in the original motion, plaintiffs alleged that JIFGA received referral fees – not that JONAH received fees. Thus, because plaintiffs never alleged that JONAH collected any fees, and because Goldberg did not recall that JONAH received fees in the months between the entry of the permanent injunction (Dec. 2015) and JONAH's dissolution (Aug. 2016), Goldberg instructed JIFGA's bookkeeper to review only JIFGA's records. So, when plaintiffs filed the instant motion, JIFGA reviewed JONAH's fees and discovered that JONAH had received payments in the months after the injunction was entered and before the dissolution of JONAH. Specifically, eleven clients paid a total of $14,071.00 (including $1,225 from Client 8's mother) and Morgan and Vazzo paid $822.50. Those fees were refunded on April 25, 2019 – refunds that effectuated a cure pursuant to the settlement agreement.

Since all therapy fees received by defendants after entry of the permanent injunction have been timely refunded, there is no violation of the injunction.

Plaintiffs have not proven that JIFGA is an alter ego of JONAH

Plaintiffs alleged that JIFGA is a continuation of JONAH in their original motion. Defendants opposed that argument be emphasizing that JIFGA's mission statement has nothing to do with the commercial promotion of conversion therapy. Defendants renew their defense from 2018 and add the following.

There is no doubt that JIFGA is involved in issue advocacy but it is not the same activity that JONAH was engaged in nor is it an activity prohibited to the defendants who run JIFGA. Any proof that plaintiffs may have of Goldberg violating the settlement agreement does not show that he used JIFGA as a platform. Plaintiffs failed to show that Goldberg uses a JIFGA email to make referrals or that JIFGA accepted fees after its formation.

In Marshak v. Treadwell, supra, the court, citing Bowen Eng'g, supra, stated, "liability should be imposed on a new corporation when 'the purchaser holds itself out to the world as the effective continuation of the seller.'" Marshak, 595 F.3d at 490. In no way, shape, or form has JIFGA held itself out as a continuation of JONAH: their purposes and activities are different.

Finally, as defendants stated in the original motion practice, the transfer of assets from JONAH to JIFGA was part of JONAH's dissolution plan and was disclosed to plaintiffs in August 2016 – at which point, no objection was made.

Plaintiffs have produced no evidence that Elaine Berk is in violation of the permanent injunction

Though plaintiffs include Elaine Berk as a party they seek relief from, there is little mention of her in their brief. Plaintiffs have not produced one bit of evidence to suggest that Elaine Berk engaged in providing conversion therapy or made any conversion therapy referrals. Further, plaintiffs failed to show that she was aware that Goldberg engaged in any activity that violates the injunction. There is no basis to find Berk violated the permanent injunction.

Plaintiffs are not entitled to the gargantuan award they seek

Defendants did not violate the permanent injunction. Yet, if the court finds that Goldberg violated the injunction, the draconian relief sought by plaintiffs would be inappropriate. Nothing alleged by plaintiff – even if true – would justify the staggering amount of breach damages.

Relief under Rule 1:10 is not to punish but is a coercive measure to facilitate the enforcement of a court order. P.T. v. M.S., 325 N.J. Super. 193, 220 (App. Div. 1999) (reversing relief). Breach damages clearly go beyond the scope of relief permitted under the Rule and are disproportionate to the alleged violation of the permanent injunction. Additionally, plaintiffs' arguments rest on the violations of the settlement agreement but relief under Rule 1:10 is limited to violations of a court order. Relief under the Rule is unavailable where the settlement agreement

was not incorporated into an order. Haynoski v. Haynoski, 264 N.J. Super. 408, 414 (App. Div. 1993). Further, Goldberg did not violate the injunction because he believed in good faith that his actions complied with the injunction. There is a good faith dispute concerning geographic reach of the permanent injunction that makes Rule 1:10 relief inappropriate. Roselle, supra, 34 N.J. 331. Thus, breach damages are not an appropriate means to "coerce" defendants' compliance with the permanent injunction.

Plaintiffs also seek an award of attorneys' fees but such an award is purely discretionary. R. 1:10-3. An award of attorneys' fees requires a finding of willful non-compliance. See Park 50 Group, LLC v. Weehawken Township, 2011 N.J. Tax Unpub. LEXIS 1, *5 (N.J. Tax Ct. 2011). Here, plaintiffs have not shown willful violation.

Under the circumstances above, relief sought by plaintiff should be denied.

Plaintiffs' Reply

Defendants admitted to breaching the settlement agreement and violating the permanent injunction

On May 15, 2018, this court ordered that defendant had until June 11, 2018 to cure every breach of the settlement agreement and violation of the permanent injunction, i.e. refund the money improperly collected by legacy JONAH clients and their counselors. Pl. Ex. 7 at 2. On June 7, 2018, defendants claimed they fully refunded all payments and fees. Pl. Ex. 8. However, as set forth by plaintiffs in this motion and as conceded by defendants, there were additional clients and additional amounts not refunded in June 2018. Def. Br. In Opp. ("Opp.") at 15. This fully entitles plaintiffs to their requested relief.

Defendants ask the court to excuse their failure and restart the clock from the filing of the second motion on March 27, 2019 but the court should decline to do so for the following three reasons.

First, the second motion was not the first time that plaintiffs notified defendants that they believed the 2018 refunds were incomplete. Plaintiffs' February 20, 2019 letter to defendants' counsel explicitly stated that plaintiffs found defendants purported refunds of referral fees were deficient for being limited to only nine of JIFGA's clients and for not reflecting the total amounts owed. Pl. Ex. 10. 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. Pl. Ex. 1.

Second, there is no support in the settlement agreement or law for allowing defendants to avoid breach damages despite failing to timely cure. Although a breach of contract may be excused in certain circumstances, no such circumstance is present here. See 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 Pl. Ex. 17, 26. This excuse is made implausible by the fact that JONAH's assets were being transferred to JIFGA during this eight-month period. Moreover, the amount at issue ($14,071) is a substantial portion of the $75,541 in revenue that JIFGA reported for 2016, making it more difficult to imagine how JIFGA could overlook fees totaling nearly 20 percent of its income. Pl. Ex. 63. Even if this court gave defendants the benefit of the doubt, defendants have still admitted to being grossly negligent

in calculating the original refund payments that there can be no excuse for their failure to do so correctly.

Defendants have demonstrated their contempt for this court, the jury's verdict, and the stipulated settlement agreement. The court should not overlook their conduct or excuse it, to plaintiffs' detriment.

Defendants committed the additional breached and violations revealed through discovery

A. Client 8

As set forth in the moving papers, 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 was executed and after the permanent injunction went into effect. Discovery also revealed that defendants' representations to this court about Client 8 were false.

The defendants' claim in their opposition that Client 8 was fully refunded. However, they admitted 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. Thus, defendants conceded that their attempt to timely refund fees were ineffective and their belated refund does not change the fact that they have failed to cure their breach.

The defendants also asserted that because Goldberg referred Client 8 to Vazzo on December 31, 2015, that referral was not a violation of a permanent injunction because JONAH had thirty days, or until January 17, 2016, to cease operations. However, the injunction clearly 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." Pl. Ex. 2 at ¶ 3.

Goldberg's referral of Client 8 to a counselor for 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 entitle plaintiffs to relief they seek but defendants' misstatements to this court in connection with the referral are a strong reason to institute contempt pleadings.

B. JIFGA continues to funnel (and receive) conversion therapy dollars

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 deny this allegation. Instead, they claim that "some" (but not all) of the referrals were 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 injunction. Essentially, JIFGA concedes that it made conversion therapy referrals after the permanent injunction went into effect, in connection with which money flowed through and to JIFGA. Therefore, the court has a sufficient basis to find defendants breached the settlement agreement and violated the permanent injunction, even without addressing the limited factual issues raised by defendants.

Defendants' arguments fall apart under scrutiny. First, supported only by bare assertions contained in dubious certifications, defendants argue that some of the referrals identified by plaintiffs were not even made by defendants. Yet, defendants fail to explain why JIFGA would have received or accepted a fee in connection with these clients or why the origin of the referral would not matter in light of the permanent injunction's clear bar on the promotion of "Conversion Therapy-related commerce." Pl. Ex. 2 at ¶ 3.

Second, defendants argue that some of the referrals were "not referrals at all, and therefore did not violate the permanent injunction." Opp. at 3. As is obvious from the plain language of the injunction, defendants are enjoined from a broad scope of conduct, including but not limited to conversion therapy referrals. All three examples provided by defendants violate the injunction, regardless of whether it is considered a referral. See Pl. Ex. 29 (Goldberg facilitates the provision of conversion therapy to a prospective client); Pl. Ex. 30, (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); Pl. Ex. 31 (working to help match a "girl with active SSA" to a conversion therapy provider). No matter how these actions are defined, they constitute breaches 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 already heard and rejected. Pl. Ex. 67, Trial Tr. 68:9-20. With respect to two referrals, defendants claim that the underlying documents themselves support their argument; they do not. See Pl. Ex. 32 (the potential client is described as having "issues surrounding her sexuality"); Pl. Ex. 38 (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 does predate the permanent injunction but was never identified by defendants as an improper referral. This shows there was another JONAH client that defendants never disclosed to the court despite their representation that they have identified, and would refund, all such clients. The third client seemed 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. Their actions are breaches of the settlement agreements and violations of the permanent injunction, fully entitling plaintiffs to full relief.

The permanent injunction does not have out-of-state loopholes

In 2015 the jury found that defendants violated the New Jersey Consumer Fraud Act when, among other things, Goldberg referred a Chicago resident to a conversion therapy provider in Tennessee. Now, defendants assert that the injunction resulting from that verdict would not reach that referral if it were made today.

The language of the 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 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).

Defendants argue that the 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 injunction is ambiguous on the 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).

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 reflected by defendants' own emails. For example, when asked whether they had "ever given any thought to moving [their] reparative therapy ministry across the line into Pennsylvania," 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." Pl. Ex. 68. Clearly, Goldberg understood that he could not evade the injunction by crossing state lines.

Citing no law, defendants incorrectly assert that the Consumer Fraud Act's reach is limited to conduct in New Jersey and that the injunction loses force at the New Jersey border. Opp. at 10-11. 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."). Also, 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). Further, defendants never argued in the underlying litigation that Goldberg's out-of-state conduct or out-of-state referrals were beyond the reach of the Act.

Defendants conduct falls squarely within an unambiguous prohibition in the permanent injunction, a prohibition that is within this court's equitable powers. 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.

JIFGA is a mere continuation of JONAH

Plaintiffs have set forth the many reasons why JIFGA is a mere continuation of JONAH – an additional violation and breach entitling plaintiffs to relief. Defendants only response is that JIFGA has a broad mission statement and engages in conduct not barred by the injunction, such as issue advocacy. Opp. at 17-18. Even if JIFGA conducts certain activities that JONAH did not, that is not the test to determine whether one is a continuation of the other. Instead, courts look at a number of factors and not every factor needs to be satisfied. See Marshak, supra, 595 F.3d at 490.

We know from defendants that JONAH's core activity was Goldberg's provision of referrals and the fees associated with those referrals were a source of funding for JONAH, just as they are for JIFGA. See Pl. Ex. 71, 2014 JONAH Dep. at 153:5-7; Pl. Ex. 72, 2015 Trial Tr. 117:16-20. 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?" Pl. Ex. 5, 2018 Hr'g Tr. 15:9-11. Goldberg indisputably still provides referrals, even using the same cellphone number and

email addresses. Therefore, JIFGA's activities 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 injunction and breached the settlement agreement. Opp. at 18. However, Goldberg's conduct as co-director of JIFGA is not different from his conduct as co-director of JONAH. Goldberg responded to requests for conversion therapy referrals for JONAH just as he does now for JIFGA. For JIFGA, as for JONAH, Goldberg steered clients to PCC's JIM weekends. When corresponding with prospective JONAH clients, Goldberg used the jonahhelp@aol.con email, often providing his personal phone number. Goldberg still uses the same email address, phone number, and Skype account. Pl. Ex. 73; 30; 21. 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., Pl. Ex. 51.

Pursuant to the 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.

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 their repeated false statements to this court. Documents obtained through discovery contradict defendants' representations to the court, in particular, Goldberg's certifications. To the extent any questions of fact or credibility remain open, the criminal contempt hearing will allow the court to answer them.

Plaintiffs are entitled to the relief they seek

In addition to the breach of the settlement agreement that this court already found in 2018, plaintiffs have identified numerous other breaches, uncurable and uncured. These breaches entitle plaintiffs to Breach Damages and Berk Breach Damages. Defendants, through their counsel, negotiated the terms of the settlement agreement and cannot now be heard to complain that the amount is unjustified or disproportionate. Plaintiffs request this court enter judgment in the amount of the Breach Damages and Berk Breach Damages set forth in the settlement agreement.

Defendants' numerous violations of the injunction likewise provide ample grounds for the court to enter an order enjoining defendants. Defendants' argument that the injunction is too vague to enforce is implausible on its face as the contents of the injunction were the basis of three years of litigation.

Defendants assert that Haynoski, supra, stands for the position that relief under Rule 1:10-3 is unavailable where the settlement agreement was not incorporated into an order. Haynoski, 264 N.J. Super. at 414. However, Haynoski involved a private settlement agreement to which the court was not connected in any way prior to the Rule 1:10 application. Thus, plaintiffs are entitled to Breach Damages and Berk Damages.

Plaintiffs are also entitled to an award of counsel fees and costs as the evidence shows that defendants' noncompliance with this court order was willful. Defendants clearly understood, but chose to ignore and defy, the restrictions imposed on them by this court. As a result, plaintiffs were forced to expend time and resources investigating and litigating their many violations.

Legal Standard

Rule 1:10-3. Relief to litigant

> Notwithstanding that an act or omission may also constitute a contempt of court, a litigant in any action may seek relief by application in the action. A judge shall not

be disqualified because he or she signed the order sought to be enforced. If an order entered on such an application provides for commitment, it shall specify the terms of release provided, however, that no order for commitment shall be entered to enforce a judgment or order exclusively for the payment of money, except for orders and judgments based on a claim for equitable relief including orders and judgments of the Family Part and except if a judgment creditor demonstrates to the court that the judgment debtor has assets that have been secreted or otherwise placed beyond the reach of execution. The court in its discretion may make an allowance for counsel fees to be paid by any party to the action to a party accorded relief under this rule. In family actions, the court may also grant additional remedies as provided by R. 5:3-7. An application by a litigant may be tried with a proceeding under R. 1:10-2(a) only with the consent of all parties and subject to the provisions of R. 1:10-2(c).

Rule 1:10-2. Summary contempt proceedings on order to show cause or order for arrest

> **(a)** Institution of Proceedings. Every summary proceeding to punish for contempt other than proceedings under R. 1:10-1 shall be on notice and instituted only by the court upon an order for arrest or an order to show cause specifying the acts or omissions alleged to have been contumacious. The proceedings shall be captioned "In the Matter of .....… Charged with Contempt of Court."
> **(b)** Release Pending Hearings. A person charged with contempt under R. 1:10-2 shall be released on his or her own recognizance pending the hearing unless the judge determines that bail is reasonably necessary to assure appearance. The amount and sufficiency of bail shall be reviewable by a single judge of the Appellate Division.
> **(c)** Prosecution and Trial. A proceeding under R. 1:10-2 may be prosecuted on behalf of the court only by the Attorney General, the County Prosecutor of the county or, where the court for good cause designates an attorney, then by the attorney so designated. The matter shall not be heard by the judge who instituted the prosecution if the appearance of objectivity requires trial by another judge. Unless there is a right to a trial by jury, the court in its discretion may try the matter without a jury. If there is an adjudication of contempt, the provisions of R. 1:10-1 as to stay of execution of sentence shall apply.

Marshak v. Treadwell, 595 F.3d 478, 490 (3d Cir. 2009).

Likewise, we find no clear error in the District Court's holding that DCPM and Cal-Cap were successors in interest to, or a mere continuation of, RCI. The District Court applied New Jersey law, citing Bowen Engineering v. Estate of Reeve, 799 F. Supp. 467 (D.N.J. 1992):

> In determining whether or not successor liability should be imposed, "[i]t is the duty of the court to examine the substance of the transaction to ascertain its purpose and true intent." Factors relevant to the "mere continuation" exception include 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. Also relevant is the extent to which the successor intended "to incorporate [the predecessor] into its system with as much the same structure and operation as possible." Thus the court should determine whether "the purchaser holds itself out to the world as the effective continuation of the seller." However, the proponent of successor liability need not necessarily establish all of these factors.

Bowen, 799 F. Supp. at 487-88 (internal citations omitted and alterations in original).

Legal Conclusion

1. Defendants breached the settlement agreement and violated the permanent injunction.

Initially, it is clear that defendants violated the injunction and breached the settlement agreement in respect to Client 8. The permanent injunction prohibited defendants from referring any potential client for conversion therapy as of the date of the order, December 18, 2015. Thus, on December 31, 2015, when Goldberg received a request for a referral from parents looking for a counselor to aid their son with "SSA," Goldberg was prohibited from responding to the email in any way that would be considered "engaging," "advertising," or "promoting" the use of conversion therapy. Pl. Ex. 2, Permanent Injunction ¶ 3; Pl. Ex. 11. Berk attempted to steer clear of the referral by requesting that similar emails be routed away from her and Goldberg. Yet, several hours later, Vazzo emailed Goldberg stating, "Thank you for the referral. We have set up an appointment." Pl. Ex. 13. The subject line to the email was the name of the parent who requested the therapy for her son. Id. Clearly, there was contact by phone or otherwise between Goldberg and Vazzo wherein Goldberg sent Vazzo the contact information for the parent. This is made more apparent by an email sent by Goldberg to the parent, stating, "It was good to speak with you last week. I am glad you followed up and made an appointment with Robert [Vazzo]." Pl. Ex. 14. Thus, it is evident that Goldberg referred the client to Vazzo for conversion therapy or therapy intended to affect Client 8's sexual orientation.

Not only was Goldberg violating the injunction by referring clients to Vazzo to provide conversion therapy, but he was also promoting or advocating for the therapy by directly speaking with the parent. These actions clearly violate the permanent injunction as they took place after the date the order was signed and Goldberg not only referred a client to receive conversion therapy and effectively promoted the therapy by directly contacting the parent to make an appointment with Vazzo. See Pl. Ex. 2, ¶ 3. At least 56 sessions followed between Vazzo and the client, with payments being funneled through JIFGA, using JONAH's payment consent form, unchanged. Receipts and invoices show the total payment of $8,589 for Vazzo's services, of which JIFGA retained $2,985. Through discovery responses to plaintiffs' original motion, it was confirmed that this was Client 8, whom defendants previously refunded only $175 in June 2018, in accordance with this court's order. However, that $175 previously refunded was not the total received by JIFGA through referral fees; JIFGA should have refunded $2,985 in June 2018.

The court rejects defendants' assertion that they are no longer in violation of the injunction because Client 8 was refunded in April 2019. In 2018, this court ordered that money to be refunded by June 11, 2018 and only $175 of the $2,985 was refunded. Defendants were responsible for calculating those fees accurately; they were not entitled to rely on plaintiffs' diligence in reviewing document production to calculate the money received from referral fees. Defendants' carelessness in assuring it complied with this court's order displays a lack of respect to the court. By referring Client 8 to Vazzo to receive counseling for "SSA," and by collecting referral fees from Vazzo for that referral well into 2018, defendants violated the permanent injunction and, necessarily, breached the settlement agreement, which fully incorporates the terms of the injunction. Further, by failing to fully refund Client 8 in June 2018 for the referral fees of $2,985, defendants also violated this court's May 18, 2018 order.

Although defendants' actions regarding Client 8, alone, violated the injunction and breached the settlement agreement, the court will address plaintiffs' additional points for completeness.

Plaintiffs uncovered additional emails wherein Goldberg provided referrals, either directly or indirectly, to prospective clients. For example, on May 8, 2016, Goldberg responded to an email from a listserv, with the subject "SSA therapist." Pl. Ex. 31. The person who sent the email, E.F., requested a "female therapist with experience in the field for a seminary girl with active SSA. Jerusalem area." Although E.F. sent the email to a listserv that Goldberg belongs to, and did not directly target Goldberg himself, Goldberg nonetheless replied to the email with the name of D.S., a counselor who "deal[s] with such issues" and could "probably recommend a female therapist." Id. Goldberg even copied D.S. on the email and provided the D.S.'s phone number. Id. Defendants distort this communication to assert that, because Goldberg did not give the name of a female therapist but instead gave the name of another counselor, who would assumingly then provide a referral, this does not violate the injunction. This court wholly rejects that preposterous assertion.

The injunction prohibits defendants from "engaging, whether directly or through referrals, in any therapy, counseling, treatment, or activity that has the goal of changing, affecting or influencing sexual orientation, [or] "same sex attraction . . . or advertising, or promoting Conversion Therapy . . . in or directed at New Jersey." Pl. Ex. 2. Simply because Goldberg did not directly refer a client to a counselor but instead indirectly gave a referral for therapy and counseling that "treats" same sex attraction, he still violated the injunction. The existence of a middleman does not negate Goldberg's intent to provide the female client with a female therapist in Jerusalem. His intent was to promote the therapy by connecting this girl with a conversion

therapist. Though Goldberg did not have the contact information for a female therapist, he still affirmatively responded to this listserv email and referred E.F. to D.S., a male counselor that could provide the name of a female counselor. Goldberg had every intent of helping this girl receive conversion therapy, despite the court's prohibition.

Further, plaintiffs' exhibit 11 includes monthly emails from Vazzo to JIFGA's office manager, Steven O, (usually with Goldberg as an additional recipient or c/c'd) spanning from February 2016 through May 2018. Each email contains an invoice regarding patients' payments and fees for the corresponding month. The invoice lists counseling hours for various patients along with the fees charged. The fees are broken down to how much the patient was charged, then by how the money is distributed. For each patient, Robert Vazzo gets approximately seventy percent of the fee and JONAH or JIFGA[4] gets the remaining thirty percent. Notably, some patients pay Vazzo directly and others pay JONAH or JIFGA directly. Thus, the purpose of emailing the invoices is to calculate how much JONAH/JIFGA owes Vazzo at the end of each month. See also Pl. Ex. 26.

Notably, the September 2016 invoice sent from Vazzo to Steven O and Goldberg shows five clients treated by Vazzo throughout the month, all providing a portion of the charged fee to JIFGA. One of the clients is known to the court as Client 8, as discusses above. Further, in an email dated May 12, 2017, Vazzo thanked Goldberg for referrals that were sent. Pl. Ex. 25. Vazzo continues, "Unfortunately, none of them have materialized just yet, but at least the word is out there that someone can help them." Plaintiffs advance that these referrals were for conversion therapy. This court agrees based on the language Vazzo uses in his email supporting the contention

[4] From March 2016 through May 2016, the invoices named JONAH as the recipient of the 30 percent fee. Starting in June 2016, the invoices listed JIFGA.

that there are not many people who provide the treatment these patients are seeking. Any other type of therapy would not be hard to come by as it is there are many available treating doctors and/or counselors. But, providers of conversion therapy are limited and are partially barred from practicing in New Jersey and other states.

This court also finds that JIFGA was collecting referral fees, which were disguised as monthly "donations" through PayPal to JIFGA. On March 4, 2018, shortly before plaintiffs filed the original motion, Morgan emailed JIFGA's office manager, Steven O., stating, "I haven't sent Jan or Feb donations yet because I still have not received [H.E.]'s "info" for himself and for [A.S.] Nor have I met with [I.M.] in that time." Pl. Ex. 57. H.E., A.S., and I.M. correspond to patients listen in Morgan's invoices that were sent to JIFGA. See Pl. Ex. 26. The email, denoting that Morgan was disguising referral fees as donations is corroborated by plaintiffs' exhibit 58, which is an email from PayPal to Goldberg (at the email steven@jifga.org) confirming a donation of $930 from Morgan. Vazzo was also disguising referral fees as donations to JIFGA. See Pl. Ex. 59. Vazzo was more deliberate with the purpose for the "donation." On August 7, 2018, he sent $240.00 via PayPal for "Donations for May, June and July (80 each month)." Id. These "donations" were not made by the kindness in their hearts but were conveyances of referral fees collected by the conversion therapy providers and sent to JIFGA directly. See Pl. Ex. 26; 57-59.

Notably, defendants cannot dispute that H.E. (mentioned in the email from Morgan to Steven O.) was receiving conversion therapy or at least therapy related to his sexual orientation. On November 2, 2015, Goldberg received an email explaining that there is a teleconference with a focus on same-sex attraction and will be moderated by H.E., "a fellow Jew in Toronto who has been working with Bobby Morgan (Houston) on SSA but has been sober for about 21 months so far." Pl. Ex. 60. Thus, the continued fees collected by JIFGA directly from January 2016 through

December 2017 were in exchange for the referral of H.E. for conversion therapy, as listed in the invoices sent from Morgan. See Pl. Ex. 26. Additionally, when the invoices end, the donations begin and it is clear H.E. was still seeing Morgan, and thus JIFGA was receiving referral fees, through February 2018. See Pl. Ex. 57.

Defendants' final position regarding the referrals is that some of them were made while Goldberg was not in New Jersey and those referrals made while Goldberg was outside the state are not violations to the injunction or breaches to the settlement agreement. This court rejects defendants' position in full and any assertion by defendants' that the injunction is "ambiguous" or "confusing" is negated by Goldberg's own admission that he cannot move JONAH to Pennsylvania because "the risk is high since the judgment was not only against JONAH as an entity but also us as individuals." Pl. Ex. 68. Clearly, Goldberg understood that working from Pennsylvania would not protect him from the injunction so any argument now to the contrary is moot.

Berk was also involved in referring clients, however indirectly. On July 4, 2018 – after the original motion was filed and documents provided through discovery – Berk forwarded to Goldberg a request for a reparative therapist that speaks Hungarian. Pl. Ex. 66. There was no subject for the email and Berk did not add any substance; she simply forwarded the email that was received by info@jifga.org to Goldberg at his jonahhelp@aol.com. This was the same type of activity that Berk engaged in while co-director of JONAH. As explained by Berk herself during her deposition, she would refer any request for referrals to Goldberg. See Pl. Ex. 65. It is notable that the request for a conversion therapy provider was received via a contact form submission that went directly to a JIFGA email, showing that she not only checked JIFGA's email, and was thus participating in the organization, but also actively sent referral requests to Goldberg, just as she

had while co-director of JONAH. The time Berk spent on JIFGA activities is highlighted in the organization's tax form. Pl. Ex. 63. According to JIFGA's 990EZ, Berk spent 35 hours per week on JIFGA activities. Id. at p 2. This much time spent on the organization supports plaintiffs' assertion that Berk knew that referrals were being made and even aided Goldberg in referring clients to conversion therapy providers. This court finds it highly unlikely that Berk was unaware of JIFGA's inappropriate activity despite the 35 hours spent on JIFGA – especially since exhibit 66 proves that Berk checked the JIFGA email account. See Pl. Ex. 66.

Furthermore, Goldberg's participation in the JIM weekend in and of itself violates the permanent injunction. The violation is amplified by Goldberg's knowledge that a resident of New Jersey would be in attendance. See Pl. Ex. 37.

The injunction prohibits defendants from "engaging, whether directly or through referrals, in any therapy, counseling, treatment, or activity that has the goal of 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." Pl. Ex. 2. According to Goldberg himself, in a March 12, 2018 letter to E.C., JIM weekend was "designed to assist men with unwanted homosexual feelings, behavior, or identity or for those who pornography addiction or possibly for those with heterosexual sex addiction." Pl. Ex. 35. Goldberg's participation in the JIM weekend, and his aggressive requests to encourage additional men to participate, violates the permanent injunction. The JIM weekend, as described by Goldberg and amplified by testimony during trial, is intended to affect the participants' behavior and identity, including their sexual orientation. Pursuant to the permanent injunction, Goldberg is barred from any "activity that has the goal of

changing, affecting or influencing sexual orientation" and, according to Goldberg's admission in his March 12, 2018 email, this is JIM's purpose.

Additionally, the March 12, 2018 letter sheds light on Goldberg's intent to continue promoting conversion therapy as he offered to "assist in developing such a program" that was similar to JIM. This also violates the injunction because he intends to engage in an activity (developing a program in Brazil) that has the goal of influencing sexual orientation (the mere purpose of the JIM weekends). Even though the recipient of the email lives in Brazil, and the eventual program would be administered in Brazil, Goldberg still resides in New Jersey and is bound by the injunction. Nevertheless, Goldberg's location is irrelevant because he is refrained from partaking in any activity that promotes conversion therapy, no matter where he is located. Thus, Goldberg's intentional outreach to E.C. to offer help in setting up a program similar to JIM violated the injunction.

Additionally, JIFGA runs an online "crowd funding" website, "Funding Morality." See, e.g., Pl. 3/28/18 Ex. 11.[5] The site raises money for projects like "The Legacy of Dr. Joseph Nicolosi, Sr.: Video Series," which aims to explain "strategies available to assist those living with same-sex attractions" and "the science of sexual orientation change." See id. at 4-5. JIFGA retains four percent of the money collected to fund all projects on the Funding Morality site, including the Dr. Nicolosi project and other projects that promote and/or support conversion therapy. Thus, JIFGA was participating in conversion therapy-related commerce in New Jersey, which violates the permanent injunction. Defendants are collecting money from multiple projects that have the

[5] All exhibits labeled "Pl. 3/28/18 Ex." accompany the plaintiffs' original motion, filed March 28, 2018.

goal of advertising, promoting, and legitimizing conversion therapy. As such, the Funding Morality website run by JIFGA violates the injunction.

2. JIFGA is a successor in interest to and mere continuation of JONAH.

Under New Jersey Law, courts look at certain factors to determine whether one entity is a "mere continuation" of another. Marshak, supra, 595 F.3d at 490 (upholding the District Court, which applied New Jersey law) (citing Bowen, supra, 799 F. Supp. 467)). Factors include: "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" as well as if the new entity "holds itself out to the world as an effective continuation of" the previous entity. Ibid. Liability can be found if not all factors are established. Ibid.

Initially, JONAH and JIFGA have the same co-founders and co-directors (Goldberg and Berk), occupy the same office, and are reachable at the same phone number and email addresses. Notably, JIFGA is a recycled acronym that JONAH once used. Formerly, JIFGA stood for "JONAH Institute for Gender Affirmation," which was a subsidiary of JONAH with the purpose of marketing to a wider audience. See Pl. Ex. 52, June 8, 2015 Trial Tr. 112:1-113:15. So, this organization that defendants purport to be separate and apart from JONAH actually uses the exact same acronym as a former JONAH subsidiary.

Despite defendants' assertion that JIFGA does not hold itself out to be a continuation of JONAH because their purposes and activities are different, the facts reveal a different scenario. As pointed out in plaintiffs' initial motion brief, JIFGA joined a group called the "National Task Force for Therapy Equality," which submitted a report to the Federal Trade Commission in support of conversion therapy. This report includes a contention that many conversion therapy recipients

see "a significant and meaningful shift in their sexual orientation or gender identity." See Pl. 3/28/18 Ex. 10 at 38. Even if this type of activity or association is simply advocacy and does not violate section three of the injunction, it is evidence of JIFGA continuing the purpose of JONAH because JIFGA is engaging in conversion therapy-related activities. Also, as explained above, JIFGA operates an online "crowd funding" website called "Funding Morality," that raises money for projects like "The Legacy of Dr. Joseph Nicolosi, Sr.: Video Series." See, e.g., Pl. 3/28/18 Ex. 11 at 4-5. JIFGA keeps for itself four percent of all donations that Funding Morality collects. Id. at 18 ¶ 19. Thus, JIFGA continues to support and benefit from conversion therapy-related activities, just as it did when operating as JONAH.

Defendants, when dissolving JONAH pursuant to the permanent injunction and settlement agreement, could have chosen any name for their new venture and chose a name that would use the same acronym as a former JONAH subsidiary. It is implausible that defendants were unaware of the name similarity, or that the name was unintentional, because the co-directors of JONAH created the JONAH Institute for Gender Affirmation as well as the Jewish Institute for Global Awareness (JIFGA). Thus, without defendants affirmatively holding themselves out to be a continuation of JONAH, any person that knew JIFGA to be a JONAH subsidiary may believe and act as though JIFGA is still JONAH. Defendants have not shown that they have taken any actions to dispel that belief, especially considering they still use the same phone numbers and email addresses (Goldberg sends emails from jonahhelp@aol.com). See, e.g., Pl. Ex. 31. Notably, the fact that a JIFGA email address received a request for a referral to a conversion therapy provider further emphasizes that, either JIFGA is holding itself out as an organization that provides such referrals, or that the submitter believed JIFGA to still be JONAH or the JONAH Institute for Gender Affirmation. See Pl. Ex. 66.

As this court explained above, Goldberg continues to refer clients to conversion therapy providers. Since referring clients was the main purpose of JONAH, it is necessarily true that JIFGA continues JONAH's general operations and has picked up where JONAH left off. See Pl. Ex. 4. Defendants' assertion that JIFGA has a broader purpose than JONAH, such that it partakes in issue advocacy, is not enough to dispel the notion that JIFGA is a "mere continuation" of JONAH given the other relevant factors. Even if this court found that JIFGA was not "hold[ing] itself out to the world as an effective continuation of" JONAH", plaintiffs have still met the burden of showing that JIFGA is JONAH for the purposes of finding liability because an overwhelming majority of the Marshak factors are present. See Marshak, supra, 595 F.3d at 490.

Relief Granted

A motion in aid of litigants' rights is essentially a request that the court compel compliance with a court order or to enforce the terms of a settlement agreement. See In re N.J. State Bd. Of Dentistry, 84 N.J. 582 (1980); R. 1:10-3.

Preliminarily, this court orders that JIFGA be subject to the permanent injunction in all respects and orders the dissolution of JIFGA, as it is merely a continuation of JONAH. Further, all communication channels in JIFGA's control and use for JIFGA's operations, including the email accounts and phone numbers from JONAH, must be terminated. Goldberg and Berk are also enjoined from serving as directors or officers of or incorporating any tax-exempt entity incorporated in or having operations in New Jersey. This relief is required to ensure compliance with the permanent injunction and the New Jersey Consumer Fraud Act.

Further, defendants not only violated the permanent injunction but also the settlement agreement. Thus, plaintiffs are entitled to Breach Damages as defined in paragraphs 6(a) and (b)

of the settlement agreement.[6] Defendants assert that this sum is "gargantuan" but this is the exact payment they negotiated in 2015 – a payment that could have been avoided by simply complying with the permanent injunction and settlement agreement. Thus, defense counsel's assertion that this fee is excessive is unpersuasive. In May 2018, this court found that defendants breached the permanent injunction by failing to refund referral fees to conversion therapy clients, entitling plaintiffs to breach damages. Plaintiffs' entitlement is heightened by the new discoveries of additional and continued breaches and violations. Plaintiffs put defendants on notice of these breaches via a February 20, 2019 letter. The letter highlighted good cause for demanding breach damages, which would be due within thirty days pursuant to the settlement agreement. It has been more than thirty days since plaintiffs' letter was sent to defendants but no breach damages have been paid. In June 2018, this court found defendants violated the injunction and breached the settlement agreement, and because this court now holds that defendants committed additional breaches and violations, plaintiffs are entitled to those breach damages negotiated for in the settlement agreement. See Pl. Ex. 1, para. 6(a)-(b)

Plaintiffs have also produced evidence to suggest that Elaine Berk affirmatively engaged in providing conversion therapy by assisting Goldberg in making conversion therapy referrals. Berk did email David Pickup, the conversion therapist running Voices of Change, in

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[6] Defendants are incorrect in their assertion that this court cannot enforce the settlement agreement because the order never mentions the agreement. See Haynoski, supra, 264 N.J. Super. at 414. Haynoski involved a private settlement agreement to which the court was not connected in any way prior to the Rule 1:10 application. Here, the settlement agreement was a result of litigation in front of this court. Also, the parties simultaneously collaborated in drafting both the order imposing the permanent injunction and the settlement agreement. There is no question that the settlement agreement was only enforceable if the injunction was entered; notably, the effective date of the settlement agreement was "the date on which the Court enters the Order." Pl. Ex. 1. Thus, the court has the authority to enforce this settlement agreement. See Pascarella v. Bruck, 190 N.J. Super. 118, 124-27 (App. Div. 1983).

December 2015, requesting that referrals for conversion therapy be routed away from her and Goldberg. However, she also forwarded a referral request for a conversion therapist to Goldberg in July 2018. Pl. Ex. 66. Though she did not add any content to the email, this is the same action she used to take when referrals were made to JONAH. It is also a change in behavior from December 2015, when she asked that requests for referrals not be sent to her and Goldberg.

Also, Berk has many duties as a co-director of an organization. One of those duties is to be aware of the general happenings of the organization. Though Goldberg was not frequently referring clients to conversion therapy providers, she should have been aware that JIFGA was receiving referral fees monthly from both Vazzo and Morgan. Those fees constitute large percentages of JIFGA's annual revenue. As co-director of JIFGA, which this court has found to be a mere continuation of JONAH, Berk is responsible for ensuring the permanent injunction is not violated. Additionally, as she is mentioned by name in the settlement agreement, she has a heightened responsibility to ensure compliance with both the settlement agreement and the permanent injunction. Thus, plaintiffs are entitled to Berk damages pursuant to paragraph 6(c) of the settlement agreement.

The court also grants plaintiffs' counsel's request for attorneys' fees and costs pursuant to Rule 1:10-3. The May 2018 order compelled defendants to refund any referral fees improperly collected by defendants after the December 2015 settlement agreements and court order. Defendants advised this court they succeeded in refunding such fees in June 2018 but, through discovery, plaintiffs have shown, and defendants concede, that was a misrepresentation. Thus, plaintiffs were forced to expend time, effort, and funds to discover referral fees that should have been known to defendants and to establish that JIFGA was a successor in interest to JONAH. Then, plaintiffs were forced to bring a second motion and litigate their rights in front of this court.

Due to defendants' lack of care in complying with this court's May 2018 order, and their willful disobedience to the permanent injunction and settlement agreement, the award of attorneys' costs and fees is an appropriate sanction. Plaintiffs' counsel is to submit an appropriate certification of services.

Plaintiffs' request to hold defendants in criminal contempt is denied. This court seriously questions the direct falsities outlined in Goldberg's certifications, along with his willingness to blatantly disobey the permanent injunction. However, the remedies awarded to plaintiffs will serve the dual purpose of contempt hearings: to deter and to punish. The inability for defendants to incorporate another tax-exempt entity in New Jersey will ensure that defendants no longer use a similar platform to again violate the injunction and New Jersey Consumer Fraud Act. Additionally, the monetary damages awarded to plaintiffs will deter defendants from defying this court's orders.