

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**THE NATIONAL SPIRITUAL ASSEMBLY )  
OF THE BAHÁ'IS OF THE UNITED STATES )  
OF AMERICA UNDER THE HEREDITARY )  
GUARDIANSHIP, INC., )**

**Counter-Defendant,** )

v. )

**NATIONAL SPIRITUAL ASSEMBLY )  
OF THE BAHÁ'IS OF THE UNITED STATES )  
OF AMERICA, INC., )**

**Counterclaimant.** )

**Civil Action No. 64 C 1878**

**The Honorable J. Austin**

**MEMORANDUM IN SUPPORT OF THE NSA'S MOTION FOR RULE  
TO SHOW CAUSE WHY THE REMEYITES SHOULD NOT BE  
HELD IN CONTEMPT**

This memorandum is submitted in support of the National Spiritual Assembly of the Baha'is of the United States' ("NSA's") Motion For Rule To Show Cause why the alleged contemnors Franklin D. Schlatter, Joel B. Marangella, The Provisional National Baha'i Council (and d/b/a entities), the Second International Baha'i Council (d/b/a Baha'is Under the Provisions of the Covenant) and Baha'i Publishers Under the Provisions of the Covenant (hereinafter collectively referred to as "Remeyites") should not be held in civil contempt for their violations of the Judgment entered by this Court on June 28, 1966 ("Judgment").

**I. INTRODUCTION**

The Remeyites are violating the Judgment through publishing efforts on a number of Web sites. The Web sites utilize the NSA's trademarks and other indicia of the Baha'i Faith without the NSA's authorization and the NSA is suffering irreparable harm as a result. The Web publications contain messages that are deceptive, misleading, and damaging to the NSA's reputation and credibility. For example, certain of the Remeyites' publications characterize George W. Bush and the Pope as "corrupt," the nations of England, France, Russia and the

United States as “the four beast nations” and the United Nations as “the Seat of the Beast.” Moreover, certain of the Remeyites’ publications glamorize Osama bin Laden. The Remeyites’ statements are completely contrary to the NSA’s nonpolitical character as well as its close relationships with the United Nations, the government of the United States of America, its acceptance of other faiths, and its involvement with interfaith groups and initiatives.

Just as this Court previously concluded, “[t]he NSA has no control over the actions or doctrines of the [Remeyites], which may promulgate new and extreme religious doctrines which would, if attributed to the NSA, severely damage the NSA and the Baha’i Faith in their spiritual progress.” *See* Exhibit A, Conclusions of Law at ¶ 11.

As the Court determined in the underlying case, no question of religious liberty is involved. *See* Exhibit A, Conclusions of Law at ¶ 13. The Remeyites have the right to organize and worship according to their dictates, but they have no right to utilize names and marks that allow them to appropriate the good will earned by the NSA and to subject the general public to confusion, deception and mistake. *See* Exhibit A, Conclusions of Law at ¶ 13.

The NSA does not seek an award of monetary damages. Rather, the NSA seeks an order finding each alleged contemnor bound by the Judgment and finding each alleged contemnor in violation of the Judgment.

## II. STATEMENT OF FACTS<sup>1</sup>

### A. Administrative Structure of the Baha’i Faith

A brief summary of the administrative structure of the Baha’i Faith is in order. The apex of the Baha’i Faith’s spiritual and administrative order is the Universal House of Justice. The Universal House of Justice is a nine-member body whose members are elected every five years. The Seat of the Universal House of Justice is on Mount Carmel in Haifa, Israel. *See* Exhibit B at ¶ 9-10.

At the national level, there are over 180 National Spiritual Assemblies which are vested with exclusive jurisdiction and authority over the Baha’i Faith in their respective countries. *See id.* at ¶ 12-13. The National Spiritual Assembly of the Baha’is of the United States (“NSA”), headquartered in the vicinity of the Baha’i House of Worship in Wilmette, Illinois, is authorized by the Universal House of Justice as the sole authority of the Baha’i Faith in the United States.

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<sup>1</sup> The NSA’s evidence in support of the present motion includes two declarations and their accompanying exhibits, submitted herewith, and referred to as Exhibit B and Exhibit C, respectively.

The NSA owns and is entitled to the exclusive use of the trademarks and service marks of the Baha'i Faith in the United States. *See id.* at ¶ 14.

At the local level, the Local Spiritual Assembly is the basic unit of the Baha'i administrative order. *See id.* at ¶ 23. Each Local Spiritual Assembly is subject to the decisions of the NSA in the country in which the Local Spiritual Assembly is organized. *See id.* In the United States, there are over 1,100 Local Spiritual Assemblies that minister to the needs the local Baha'i community. *See id.* at ¶¶ 15, 23. The Local Spiritual Assemblies in the United States are responsible to the NSA and submit reports to the NSA regarding their activities. *See id.* at ¶ 23.

The Baha'i Faith maintains membership rolls that list members by name. To become a member of the Baha'i Faith in the United States, a person signs a declaration card and, subject to the approval of the NSA, is added to the membership roll maintained at the NSA and Local Spiritual Assembly offices. *See Exhibit B* at ¶ 24. For ease of identification and verification, members of the Baha'i Faith in the United States are issued identification cards. *See id.* at ¶¶ 4, 25. Additional relevant information regarding the administrative structure and activities of the NSA and the Baha'i Faith is provided at Exhibit B.

#### **B. Background of the Judgment**

In 1960, an American named Charles Mason Remey ("Remey"), proclaimed unilaterally that he was "Hereditary Guardian" of the Baha'i Faith and successor to the Guardian of the Baha'i Faith, a Persian named Shoghi Effendi. *See Exhibit A, Findings of Fact* at ¶ 21. Remey's followers ("Remey group") thereafter engaged in certain religious activities in the United States to support his claim. *See Exhibit A, Findings of Fact* at ¶¶ 21-34. The Remey group was an affiliated network of geographically diverse individuals and small groups who accepted Mason Remey's leadership and his claim to be the Guardian of the Baha'i Faith. The Remey group was composed of both former members of the Baha'i Faith and persons who had never been members of the Baha'i Faith. At Remey's direction, the Remey group formed, incorporated and elected leadership to a national entity, The National Spiritual Assembly of the Baha'is of the United States of America Under the Hereditary Guardianship, Inc., ("Remey Corporation"), to coordinate their activities in the United States and to directly oppose the NSA.

## 1. The Judgment

The action underlying the present motion originally began in 1964 when the Remy Corporation filed a complaint against the NSA. In its complaint, in the action 64 C 1878 (filed November 5, 1964) and a second complaint in the action 65 C 1647 (filed October 5, 1965), the Remy group claimed to be the true Baha'i Faith and claimed entitlement to the Baha'i House of Worship in Wilmette, Illinois and to all other Baha'i funds and properties. *See Exhibit A, Findings of Fact at ¶ 35.* The Remy group claimed that the NSA was a trespasser, asked the Court to enjoin the NSA's possession of the House of Worship and to order delivery of possession to the Remy Corporation. *See id.* The complaint also sought \$100,000 in costs and attorney's fees. *See id.* The Remy group contended that there can only be one properly constituted and authorized Baha'i Faith. *See Exhibit A, Findings of Fact at ¶ 35.*

On December 23, 1964, the NSA opposed the Remy Corporation's claims and filed counterclaims for unfair competition, trademark infringement, dilution of the distinctive quality of the NSA's trademarks and trade names, and likelihood of injury to the business reputation of the NSA. The Remy Corporation's complaint, as amended, and its second complaint were both dismissed, on March 23, 1965 and March 8, 1966, respectively. The dismissals were not appealed.

On June 28, 1966, this Court found in favor of the NSA on its counterclaims and issued its Judgment that:

The National Spiritual Assembly of the Baha'is of the United States of America Under the Hereditary Guardianship, Inc., its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, including affiliated Local Spiritual Assemblies, groups, and individuals, or any of them, be and they are hereby enjoined from using in their activities the designations "National Spiritual Assembly of the Baha'is of the United States of America Under the Hereditary Guardianship, Inc.," "Baha'i News Bureau," "Baha'i Round Robin," "Baha'i," trademark representations of the Baha'i House of Worship, the Arabic design "The Greatest Name and any other designation which by colorable imitation or otherwise is likely to be mistaken for or confused with the counterclaimant's name or marks as indicated above or is likely to create the erroneous impression that counter-defendant's religious activities, publications or doctrines originate with counterclaimant, and from otherwise competing unfairly with counterclaimant or infringing counterclaimant's rights.

*See Exhibit A at pages 24-25.*

The injunction comprehended the nature of the Remy Corporation as the coordinating body for an affiliation of individuals and local assemblies, with Remy at their head, who were in active concert to oppose and supplant the NSA.<sup>2</sup>

**2. The Remy Corporation Was Under the Control and Direction of Mason Remy and Had Authority Over All Individuals Affiliated With Mason Remy**

Deposition testimony and other exhibits of record in the underlying case indicated that Mason Remy was the “highest authority” in the administrative order of the Remy group and that the Remy Corporation had authority over all individuals that expressed their affiliation with Mason Remy. *See* Exhibit D, Deposition of A. S. Petzoldt at 126:1-5 and 137-138. The Remy Corporation’s by-laws specified that it was to have exclusive jurisdiction and authority over all the activities and affairs of the Baha’is of the United States and was charged with, among other things, the recognition of local assemblies and scrutiny of membership rolls, including the final decision regarding qualifications for an individual or group’s membership. *See* Exhibit A, Findings of Fact at ¶ 28; *see also* Exhibit E at Article VIII. The Remy Corporation’s by-laws also reflect Remy’s role at the apex of the organization.<sup>3</sup> Mason Remy was closely involved with the litigation. *See e.g.* Exhibit F (Affidavit of Donald S. Frey).

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<sup>2</sup> According to the Court’s Findings of Fact and Conclusions of Law, prior to formation of the Remy Corporation, several assemblies existed and were active on behalf of the group that ultimately incorporated. *See* Exhibit A, Findings of Fact at ¶ 28. Moreover, in rendering injunctive relief, the Court found that the local groups and individuals were affiliated with and under the control and jurisdiction of the Remy Corporation. *See* Exhibit A, Findings of Fact at ¶ 30. The Court continued, in its Conclusions of Law, to hold that “[t]he New Mexico group has control and authority over its so-called Local Spiritual Assemblies and groups and individuals affiliated with it. These Local Spiritual Assemblies and affiliated groups are acting in concert with and under the control and authority of the New Mexico group in connection with religious activities, including advertising and publications.” *See* Exhibit A, Conclusions of Law at ¶ 17.

<sup>3</sup> Among the Remy Corporation’s stated purposes was to administer the affairs of the Baha’i Faith as amplified and applied by Shogi Effendi’s “successor” Mason Remy for the Baha’is in the United States. *See* Exhibit E at Article II. Other purposes included, “all and whatsoever the several purposes and objects set forth in the written utterances of . . . Mason Remy, under which certain jurisdiction, powers and rights are granted to National Spiritual Assemblies.” *See* Exhibit E at Article II (c). The by-laws further specified that any rules, regulations or by-laws promulgated by the Remy Corporation must be consistent with the explicit instructions given to it by Mason Remy and that the general powers and duties of local assemblies “shall be as set forth in the writings of . . . Mason Remy.” *See* Exhibit E at Article IV and Article XIV, Section 2.

The Remeyites named in the present Motion for a Rule to Show Cause are bound by the Judgment and they have begun violating its terms through publishing efforts on the World Wide Web.

**C. The Remeyites Are Violating the Injunction**

The Remeyites are violating the Judgment through Web publications that utilize marks that are colorable imitations of, or are otherwise likely to be confused with, the NSA's marks. The Remeyites' Web publications are likely to create the false impression that the Remeyites' unrelated activities, publications or doctrines originate with the NSA.

The Remeyites' Web sites bear designations such as, National Baha'i Council of the United States, Provisional National Baha'i Council of the United States, the Mother Baha'i Council, the Orthodox Baha'i Faith, Baha'i Faith Under the Guardianship, Baha'i Faith, True Baha'i, Second International Baha'i Council, Baha'is Under the Provisions of the Covenant, IBC/UHJ, UHJ, Baha'i Faith – Universal House of Justice and Official Web Site of the Universal House of Justice at domain names such as truebahai.com, orthodoxbahai.com, bahai-guardian.com, bahai-faith.net, bupc.org, bahauallah.net and uhj.net, among others. Representative examples of the Remeyites' World Wide Web publications are attached at the Declaration of Christopher M. Dolan at Exhibit C.

Some of the Remeyites also are using the NSA's marks and indicia of the Baha'i Faith in connection with messages that are damaging to the NSA's reputation and credibility, including criticisms of entities such as the United Nations, President George W. Bush and the Holy Roman Catholic Church, as, among other things, "demonic." *See* Exhibit C at ¶ 18.

The Remeyites also are using the World Wide Web to argue, again, that the true Baha'i Faith of necessity must have a Guardian as its leader, and that Mason Remey was the Guardian. They dwell on Mason Remey's failed attempt to commandeer the Baha'i Faith, while sowing confusion about the Baha'i Faith by, among other things, referring to its administration as diabolical and satanic. In addition to arguing that Mason Remey should have been recognized as the leader of the Baha'i Faith, the Remeyites advertise certain of their number as successors to Remey as Guardians of the Baha'i Faith. The Baha'i Faith has not been led by a single person since the death of Shoghi Effendi in 1957. Instead, the Baha'i Faith has been led by the Universal House of Justice since 1963. Accordingly, the Remeyites' statements are likely to confuse the public in violation of the Judgment.

The Remeyites have recently applied for federal registration of several marks bearing confusing similarity to the NSA's marks. See Exhibit C at ¶ 20. This provocative assertion of exclusive rights in marks such as UNIVERSAL HOUSE OF JUSTICE and BAHA'IS UNDER THE PROVISIONS OF THE COVENANT is in violation of the Judgment.

The Remeyites' Web publishing efforts and other actions are in violation of the plain terms of the Judgment. Moreover, the "safe distance" rule applies in contempt proceedings. *World's Finest Chocolate, Inc. v. World Candies, Inc.*, 409 F. Supp. 840, 844 (N.D. Ill. 1976) (finding contempt because it is "well established that the protection of a trademark requires that a party once convicted of infringement or unfair competition should keep a safe distance from the margin line between compliance with the order and a violation."). See also *Independent Nail & Packing v. Stronghold Screw Prods. Inc.*, 215 F.2d 434, 437 (7<sup>th</sup> Cir. 1954) quoting *Broderick & Bascom Rope Co. v. Manoff*, 41 F.2d 353, 354 (6<sup>th</sup> Cir. 1930) ("The due protection of trademark and similar rights requires that a competitive business, once convicted of unfair competition in a given particular, should thereafter be required to keep a safe distance."); *Transgo, Inc. v. Ajac Transmission Parts Corp.*, 211 U.S.P.Q. 25 (C.D. Cal. 1981), *aff'd*, 768 F.2d 1001 (9<sup>th</sup> Cir. 1985) (finding contempt and stating that "[o]ne under an injunction must do more than see how close he can come with safety to that which he has been enjoined from doing"); *Oral-B Labs., Inc. v. Mi-Lor Corp.*, 810 F.2d 20 (2d Cir. 1987) (finding contempt where redesign was still "confusingly similar [to] or colorably imitating" plaintiff's design and stating "it was [the enjoined party's] duty to keep a safe distance from the line drawn by the district court's injunction.").

### III. ARGUMENT

#### A. The Remeyites Are Bound By the Judgment

The Web publishing efforts complained of herein are directed and conducted by individuals and entities that are bound by the Judgment. The leadership of the Remey group, and the Remey Corporation itself, included individuals named Franklin D. Schlatter, Joel B. Marangella and Leland Jensen. Mr. Schlatter and Mr. Marangella are bound by the Judgment, as was Mr. Jensen during his lifetime, under its plain terms enjoining the Remey Corporation and "its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, including affiliated Local Spiritual Assemblies, groups, individuals, or any of them." The contemptuous acts complained of herein are the result of these three

prominent members of the Remey group, and their organizations, successors and Remey's successors. Nonparties, named as alleged contemnors herein, are bound by the Judgment on the basis of privity.

Personal jurisdiction exists over nonparty Remeyites because, among other reasons, this Court has jurisdiction pursuant to FED. R. CIV. P. 65, which embodies the common law principle that courts have "the inherent authority and jurisdiction to enforce [their] judgments which cannot be negated or circumvented by nonparties who are outside the forum state." *See e.g. Chicago Tribune Co. v. U.S. Dept. of Health and Human Services, et al.* No. 95 C 3917, 1999 U.S. Dist. Lexis 6848 \*13-14 (N.D. Ill. April 30, 1999). Moreover, a property owner sustains injury to intellectual property rights in the place where the property owner resides. *See Indianapolis Colts, Inc. v. Metro Baltimore Football Club, L.P.*, 34 F.3d 410, 411 (7<sup>th</sup> Cir. 1994).

Each of the alleged contemnors has actual or constructive knowledge of the injunction. *Hexacomb Corp., v. GTW Enterprises, Inc.*, No. 93 C 3107, 1994 U.S. Dist. LEXIS 5673 at \* 12 (N.D. Ill. Apr. 29, 1994) ("any knowledge of the injunction no matter how acquired will suffice to put the [defendant] on notice of the prohibitions contained in the injunction.") (citing to *Panther Pumps & Equip. Co. v. Hydrocraft, Inc.*, 566 F.2d 8, 12 (7<sup>th</sup> Cir. 1977)).

#### **B. The Remeyites Are Bound By the Judgment Under the Relevant Legal Standards**

FED. R. CIV. P. 65 "is based on the common law doctrine that injunctions bind a party and anyone identified to be 'in privity' with the party or under their control." *Chicago Tribune Co.*, 1999 U.S. Dist. LEXIS 6848, at \*9-10 citing *Waffenschmidt v. Mackay*, 763 F.2d 711, 717 (5<sup>th</sup> Cir. 1985) (quoting *Regal Knitwear v. NLRB*, 324 U.S. 9, 12 (1945)). Whether privity exists is a case specific inquiry and those with a sufficiently close identity of interests are deemed to be in privity. *See id.* A company's officers, agents and successors, even if not personally party to a case are privies and all that is necessary to bind such persons is to notify them of the injunction. *See Le Tourneau Co. of Georgia v. NLRB*, 150 F.2d 1012 (5<sup>th</sup> Cir.), rev'd on other grounds, 324 U.S. 793, 65 S. Ct. 982, 89 L. Ed. 1372 (1945).

"The scope of an injunction has no rigid perimeter . . . [and] a nonparty's actions may render it susceptible to the injunction's effect." *See Rockwell Graphic Sys., Inc. v. DEV Indus., Inc.*, 91 F.3d 914, 920 (7<sup>th</sup> Cir. 1996). Accordingly, the reach of an injunction will accord with



its purpose(s), subject to due process.<sup>4</sup> The purpose of the injunction in the underlying case was to bring a halt to the unfair competition, trademark infringement, dilution and likelihood of injury to the NSA's business reputation caused by those subscribing to Mason Remey's "hereditary guardianship" principle and his claim to leadership of the Baha'i Faith.

An injunction may bind nonparties who are successors in interest to parties named in the injunction. *See Rockwell Graphic Sys., Inc. v. DEV Indus., Inc.*, 91 F.3d 914, 920 (7th Cir. 1996). Moreover, those that are "otherwise without an injunction's coverage may subject themselves to its proscriptions should they aid or abet the named parties in a concerted attempt to subvert those proscriptions." *See id.* "These rules may also apply in somewhat hybrid fashion in a case where a successor corporation is formed essentially for the purpose of carrying on the enjoined activity." *See id.* (citing to *Panther Pumps*, 566 F.2d at 25 wherein a former officer and employee was not named in the patent-based injunction levied against Hydrocraft, Inc. but was, nevertheless, in contempt for directing the manufacture and sale of the same patented product at another company).

Moreover, under the federal law of *res judicata* a nonparty can be bound by a judgment if its interests are so closely aligned to a party's interests such that the party is the nonparty's virtual representative. *Chicago Tribune Co.*, 1999 U.S. Dist. LEXIS 6848, at \*10 (citing to *Tice v. American Airlines, Inc.*, 162 F.3d 966, 970 (7<sup>th</sup> Cir. 1999)). This identity of interests is ascertained by analyzing the functional relationship between the party and the nonparty, typically focusing upon control and shared legal interests. *See id.*

Many courts have held former employees of an enjoined company to be in contempt when they subsequently conduct the prohibited activity with a new company. *See Hexacomb*, 1994 U.S. Dist. LEXIS 5673 at \*16 (finding privity and contempt where an enjoined individual enabled several other individuals, who were former employees of the enjoined corporation, and a corporation to commit enjoined activity). *See also Chanel Indus., Inc. v. Pierre Marche, Inc.*, 199 F. Supp. 748, 752-53 (E.D. Mo. 1961) (finding privity and contempt of a trademark

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<sup>4</sup> Due Process concerns are not implicated in the present case. The nature of the original tort that led to the Judgment is not relevant to the due process inquiry. *See e.g. Panther Pumps*, 566 F.2d at 12. The charges brought by the present motion are that the Remeyites are bound by the Judgment directly, or because they are in privity with the named parties, and that they have violated the terms of the Judgment. The Remeyites are entitled to defend themselves against these charges and to have their day in Court on these issues.

injunction judgment, where a former employee of the enjoined company helped a new company to infringe the same marks).

Nonparty successor organizations will not be permitted to nullify a Court's decree. *See e.g., I.C.C. v. Rio Grande Growers Co-op*, 564 F.2d 848, 849 (9th Cir. 1977) (finding successor organization in contempt and stating that to find otherwise would allow nullification of the decree "through successive corporations not party to the original action."). Even nonparties sharing only a contractual relationship with a party can be in privity where they act under the control or for the benefit of the named party. *See Chicago Tribune Co.*, 1999 U.S. Dist. LEXIS 6848 \*13-14.

An injunction that is enforceable by contempt proceedings against the corporation, its agents and officers survives the dissolution of the corporate defendant. *See Rockwell*, 91 F.3d at 920 (Eschbach, J. concurring). *See also Walling v. Reuter*, 321 U.S. 671, 674 (1944). Accordingly, the fact that the Remy Corporation no longer exists provides "no quarter" for the Remyites. *See id.*

#### **1. Frank Schlatter Is Bound By the Judgment**

Alleged contemnor Frank Schlatter served as an officer in the Remy Corporation and held multiple leadership positions in the Remy group and Corporation. *See Exhibit G*. He held leadership positions throughout the litigation. Frank Schlatter also helped to incorporate the Remy Corporation. *See Exhibit H*. Mr. Schlatter had notice of the injunction due to his involvement in the legal proceeding, and because the text of the injunction was communicated to him by letter at least once in the 1960's. *See Exhibit I*. Mr. Schlatter was expelled from the Baha'i Faith prior to the underlying litigation. Mr. Schlatter is bound by the injunction under its plain terms binding "its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, including affiliated Local Spiritual Assemblies, groups, individuals, or any of them." *See Exhibit A* at pages 24-25.

#### **2. Joel B. Marangella Is Bound By the Judgment**

Alleged contemnor Joel B. Marangella was identified as a primary supporter of Mason Remy as early as 1960. *See Exhibit J*. He was considered by some to be a driving force behind Remy's claim and was expelled from the Baha'i Faith in August of 1960. As Mr. Remy continued to press his claim, Mr. Marangella composed and contributed to several articles in support of Mr. Remy. *See Exhibit K*. In 1962, operating at Mr. Remy's behest, Joel

Marangella with his attorney attempted to convince the Israeli government to recognize Mason Remey as the Guardian of the Baha'i Faith. *See* Exhibit L.

In September of 1964, Remey named Joel Marangella President of the "second International Baha'i Council" ("SIBC") to assist Remey in planning and administrative matters. Although Remey remained the apex of his organization, Joel Marangella thereafter assumed many responsibilities over the affairs of the Remey group. *See* Exhibit G.

Joel Marangella was actively involved in the litigation. *See* Exhibit I. Mr. Marangella ultimately claimed to be Mason Remey's successor to the Guardianship, as the "Third Guardian" of the Baha'i Faith. Marangella's role in the Remey Corporation and on behalf of the Remey group renders him bound by the injunction under its plain terms enjoining "its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, including affiliated Local Spiritual Assemblies, groups, individuals, or any of them." *See* Exhibit A at pages 24-25.

### **3. Marangella's and Schlatter's Organizations Are Bound By the Judgment**

Mr. Schlatter and Mr. Marangella control what they have dubbed the Orthodox Baha'i Faith, The Provisional National Baha'i Council of the United States<sup>5</sup>, The National Baha'i Council of the United States and the Mother Baha'i Council, all of which are allied with Mr. Marangella and consider Mr. Marangella to be Mason Remey's successor. These organizations are bound by the Judgment. *See Rockwell*, 91 F.3d 914 (7th Cir. 1996); *Tice*, 162 F.3d 966, 970; *Hexacomb*, 1994 U.S. Dist. LEXIS 5673 at \*16; *Chanel*, 199 F. Supp. 748, 752-53; *I.C.C.*, 564 F.2d 848, 849 (9th Cir. 1977). These entities have notice of the Judgment based, at a minimum, on the notice provided their leadership.

### **4. Leland Jensen Was Bound By the Judgment During His Lifetime**

Leland Jensen was a central figure in the Remey group. Jensen was elected to the Remey Corporation's executive board and to other leadership positions and was a principal decision-maker, recruiter and teacher for the Remey groups. *See* Exhibit N. He also led a so-called Local Spiritual Assembly in Joplin, Missouri, that was loyal to Mason Remey and the Remey

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<sup>5</sup> New Mexico Secretary of State records indicate that Marilyn Meyer is the registered agent and Secretary for The Provisional National Baha'i Council of the United States. Much like Mr. Schlatter, Ms. Meyer was very active in the Remey Corporation. *See* Exhibit M.

Corporation. *See* Exhibits O, P and Q. Leland Jensen was a director and signatory to the incorporation papers for the Remy Corporation. *See* Exhibit H. Leland Jensen was removed from the Baha'i Faith well prior to the underlying litigation.

The injunction bound the Remy Corporation's "officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, including affiliated Local Spiritual Assemblies, groups, individuals, or any of them." Leland Jensen had actual or constructive notice of the injunction based, at a minimum, on his involvement with the Remy Corporation, the Remy group and Mason Remy. Leland Jensen was subject to the Judgment during his lifetime.

**5. Leland Jensen's Baha'is Under the Provisions of the Covenant, the Second International Baha'i Council and Any Affiliated Groups Are Bound By the Judgment**

Despite personal struggles, such as his imprisonment in the Montana State Penitentiary for lewd and lascivious conduct, Leland Jensen remained loyal to Mason Remy and Remy's claim to leadership of the Baha'i Faith decades after the Judgment and after Mason Remy's death. Leland Jensen established what he dubbed the Baha'is Under the Provisions of the Covenant ("BUPC") and its governing entity which he dubbed the Second International Baha'i Council ("SIBC") during his lifetime.<sup>6</sup> *See* Exhibit R. The SIBC and the BUPC have carried on after Mr. Jensen's death and now maintain a network of Web sites in violation of the Judgment. The SIBC, the BUPC and any affiliated groups such as Baha'i Publishers Under the Provisions of the Covenant are bound by the Judgment on the basis of privity.

According to sworn statements by its leadership, the SIBC and BUPC developed directly from the small percentage of [former] Baha'is that accepted Mason Remy as Guardian and the group believes Mason Remy was the Guardian of the Baha'i Faith. *See* Exhibit S. Moreover, these documents state that Leland Jensen formed the BUPC and its governing body the SIBC in order to re-establish the Covenant that the Baha'i Faith had broken when it ignored Mason Remy's claims. *See id.* Montana state court filings reveal that all members of the BUPC must sign a statement declaring their belief that the true Second International Baha'i Council has a Guardian as its leader. *See* Exhibit T. The current leadership of the BUPC and SIBC formally

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<sup>6</sup> The name Second International Baha'i Council is identical to the name of Mason Remy's council in the 1960s. *See* Exhibit G (Glad Tidings, October 1965).

declared allegiance to Mason Remey. *See* Exhibit U. Further, one of its leaders is advertising himself as Mason Remey's successor to the position of Guardian and as the true and legitimate head of the Baha'i Faith. *See* Exhibit V. The SIBC and BUPC's leadership has repeatedly declared the SIBC and BUPC to be successors-in-interest to Mason Remey in sworn documents and elsewhere. Notably, the SIBC recently filed federal trademark applications to register marks that are confusingly similar to the NSA's marks. In the applications, and in subsequent sworn submissions to the U.S. Patent and Trademark Office, the SIBC claims to be a successor-in-interest to Mason Remey. *See* Exhibit W.

In sum, the SIBC, BUPC and the affiliated groups named herein have notice of the Judgment and they are bound by the Judgment. *See Rockwell*, 91 F.3d at 920; *Tice*, 162 F.3d at 970; *Hexacomb*, 1994 U.S. Dist. LEXIS 5673 at \*16; *Chanel*, 199 F. Supp. at 752-53; *I.C.C.*, 564 F.2d at 849.

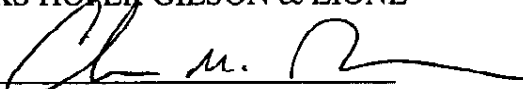
#### IV. CONCLUSION

The purpose of civil contempt is to compel obedience to the mandates of the Court. To allow the Remeyites to flaunt the injunction "is to make the decree futile and to disparage the power of the [C]ourt to give relief." *Broderick & Bascom Rope Co. v. Manoff*, 41 F.2d 353, 354 (6<sup>th</sup> Cir. 1930) (finding enjoined defendant in contempt because newly adopted mark resembled plaintiff's mark).

For all the foregoing reasons, the NSA respectfully requests that this Court issue a Rule to Show Cause why the Remeyites should not be held in contempt for their violations of this Court's Judgment. The NSA does not seek an award of monetary damages. Rather, the NSA requests an order finding each alleged contemnor bound by the Judgment and finding each alleged contemnor in violation of the injunction. A proposed Order to Show Cause and a proposed Order Holding the Remeyites in Civil Contempt are attached hereto as Exhibit X.

Dated: November 3, 2004

BRINKS HOFER GILSON & LIONE

By:   
Jeffrey A. Handelman (#6188010)  
Christopher M. Dolan (#6269648)

BRINKS HOFER GILSON & LIONE  
455 N. Cityfront Plaza Drive  
NBC Tower, Suite 3600  
Chicago, Illinois 60611  
(312) 321-4200 Telephone  
(312) 321-4299 Facsimile

Attorneys for the National Spiritual Assembly of  
the Baha'is of the United States