

I. INTRODUCTION

The Permanent Injunction comprehended the nature of the National Spiritual Assembly of the Baha'is of the United States of America Under the Hereditary Guardianship, Inc. ("UHG") as the coordinating body for an affiliation of individuals, groups and local spiritual assemblies with Mason Remey at their head. *See NSA's Agreed Proposed Findings of Fact, Docket No. 88 at ¶ 30.* How to frame the injunction was very much at issue for the Court. For example, this Court found, pursuant to UHG's Articles of Incorporation, that UHG had jurisdiction and authority over the activities of UHG's members and followers, including affiliated Local Spiritual Assemblies. *See NSA 95, p. 13 at ¶ 28.* The Court also found that there were several Local Spiritual Assemblies, groups and individuals, all affiliated with UHG, that were infringing upon NSA's trademarks and causing confusion in their respective territories. *See NSA 95, pp. 14-17 at ¶¶ 29-34.* The Court concluded that UHG "has control and authority over its so-called Local Spiritual Assemblies and groups and individuals affiliated with it" and that "these Local Spiritual Assemblies and affiliated groups are acting in concert with and under the control and authority of UHG." *NSA 95, p. 23 at ¶ 17.*

Against this background, the Permanent Injunction was framed to encompass the UHG and its affiliated groups and individuals. The Permanent Injunction is essentially a contract setting forth who is bound by its restrictions. Its terms were carefully crafted to end a specific harm by enjoining an affiliation of approximately one-hundred-fifty persons, and the groups that those persons had organized, from confusing uses of NSA's trademarks. Importantly, notice of the Permanent Injunction was disseminated to the finite group of persons who appeared on the UHG membership lists through multiple notice letters and the UHG periodical newsletter entitled the "*Glad Tidings*."

II. THE ALLEGED CONTEMNORS ARE BOUND BY THE PERMANENT INJUNCTION

A. Franklin Schlatter is Bound by the Permanent Injunction

Franklin Schlatter is bound by the Permanent Injunction. The record is clear that he was a founder of UHG, an incorporator of UHG, an officer of UHG and an active member of the UHG litigation committee that handled the litigation during the 1960s and at the time of the injunction. *See NSA's Agreed Proposed Findings of Fact, Docket No. 88 at ¶¶ 44, 45; see also*

Hearing Transcript at pp. 78:11-13; 84:15-16; 100:11-102:23; NSA 49, 51, 52, 56, 57; OBF 2, pp. 3-4. There is no dispute regarding Mr. Schlatter's notice of the Permanent Injunction. *See NSA's Agreed Proposed Findings of Fact, Docket No. 88 at ¶ 46.*

B. Joel B. Marangella Is Bound By The Permanent Injunction

That Joel Marangella is subject to the Permanent Injunction is well established. In responses to requests to admit, Joel Marangella and PNBC admitted that "Joel B. Marangella acted in active concert and participation with the [UHG], but only acting on behalf of Charles Mason Remey and at his direction" and that "Joel B. Marangella acted in active concert and participation with certain members of the [UHG], but only acting on behalf of Charles Mason Remey and at his direction." *See NSA 17 at admissions 48, 49; NSA 15 at admissions 108, 109; see also NSA's Agreed Proposed Findings of Fact, Docket No. 88 at ¶¶ 33, 34.* Mason Remey had ultimate control over UHG leading up to and at the time of the Permanent Injunction. *See Hearing Transcript at p. 213:7-14; OBF-2 at Article XVI.* UHG's complaint specifically referenced Mason Remey as its highest legal authority. *NSA 12, p. 5 at ¶ 15.* Thus, Mason Remey, like UHG, was bound. Accordingly, Joel B. Marangella is bound by the Permanent Injunction, based on his roles with Mason Remey and the UHG. Mr. Marangella's notice of the Permanent Injunction is not in dispute. *See NSA's Agreed Proposed Findings of Fact, Docket No. 88 at ¶ 43.*

Joel B. Marangella's extensive involvement with Mason Remey and UHG are well documented and confirmed by sworn testimony. For example, Mr. Marangella's involvement in this litigation was summarized in NSA 55 wherein A.S. Petzoldt, Chairman of UHG's Legal Committee, applauded Mr. Marangella's "help, cooperation and guidance in handling the legal case." *NSA 55; see also Hearing Transcript at pp. 100:11-105:12.* Mr. Marangella was regularly involved with the litigation and with day-to-day management of the UHG as shown by multiple documents from the period and in deposition testimony. *See NSA 49, 51, 52, 57; Marangella Deposition, Docket No. 125, Exh. A pp. 49:25-51:4, 73:12-76:4; Exh. B NSA 73, 84.* UHG paid Mr. Marangella's expenses incurred on UHG's behalf. *J. Meyer Deposition, Docket No. 124 Exh. A 26:5-27:21, Exh. B NSA 41.*

Mr. Marangella functioned as one of Mason Remey's chief lieutenants, and Mason Remey reaffirmed Mr. Marangella's responsibilities regarding UHG on several occasions. For example, in correspondence from March and April of 1966, made of record through Mr.

Marangella's deposition, Mason Remey informed Mr. Marangella that "it is better for me to leave matters for you to decide" and "please handle the affairs of the Faith that are now in your hands . . ." *NSA 77; Marangella Deposition, Docket No. 125, Exh. A 60:6-61:2, Exh. B NSA 77.*

Mr. Marangella also participated in the harm caused by UHG and Mason Remey through his role with Mason Remey's Second International Baha'i Council. Mason Remey created the Second International Baha'i Council and named Joel B. Marangella its President. Originally formed in October of 1964, Remey's SIBC was "a body having international jurisdiction over persons throughout the world who were loyal to Charles Mason Remey." *PNBC Respondents' Agreed Proposed Findings of Fact, Docket No. 87 at ¶ 30.* Accordingly, A.S. Petzoldt, in his April 28, 1965 deposition, responded to the question "[i]s there any foreign or international authority" by stating "[t]he Guardian of the Baha'i Faith, Mason Remey" and "the Second International Baha'i Council he has appointed." *See Deposition of A.S. Petzoldt, Docket No. 122, pp. 43-44.* During the hearing, Mr. Schlatter testified that the SIBC's roles and responsibilities were accurately reflected in NSA 99, an October 1965 issue of UHG's publication *Glad Tidings*.² *Hearing Transcript at pp. 112:18-113:2.* Mr. Schlatter also confirmed that three members of Remey's SIBC, namely Clarence McClymonds, John Byers and James Barrett served as UHG officers. *Hearing Transcript at p. 112:2-17.*

C. PNBC Is Bound By The Permanent Injunction

After the Permanent Injunction was entered, people bound by its restrictions, including Joel Marangella, UHG officers and directors and UHG followers formed the National Bureau in 1970 and began using marks that were subject to the Permanent Injunction. In 1978, at Joel Marangella's instructions, National Bureau assigned and transferred its powers to another Marangella created entity called the Mother Baha'i Council. In 2000, Joel Marangella instructed the Mother Baha'i Council to change its name to Provisional National Baha'i Council. The Mother Baha'i Council and the PNBC are one and the same entity, and Joel Marangella has

² The responsibilities set forth in NSA 99 include Joel Marangella's responsibility for affairs that did not require Mason Remey's attention and Mr. Marangella's right to delegate responsibilities to other members of the SIBC. Moreover, UHG's followers were instructed to refer personal matters and questions to SIBC members. SIBC members were empowered to handle matters referred to them by UHG followers, having discretion to forward matters to Mr. Marangella, if necessary. UHG was also requested to forward reports to Mr. Marangella regarding its activities.

ultimate review and approval of PNBC's actions and decisions. As set forth at the hearing, and recounted below, these facts are the subjects of agreed facts and admissions. PNBC's status as National Bureau's legal successor, the fact that it is controlled by bound persons and its participation in enjoined activities render it bound by the Permanent Injunction.

1. PNBC's Legal Predecessor National Bureau Was Bound At Inception

In April 1970, Joel B. Marangella established an unincorporated body in New York called the National Bureau of the Orthodox Baha'i Faith. *PNBC Respondents' Agreed Proposed Findings of Fact, Docket No. 87 at ¶ 61*. National Bureau's initial members, John Byers, Madeline Byers, Grace Behrens and Joel J. Marangella were appointed by Joel B. Marangella. *See id. at ¶ 62*. Testimony at trial confirmed that John Byers had previously served as UHG Chairman, as a member of Remy's SIBC, and on the UHG litigation committee. *Hearing Transcript at p. 107:17-24*. Testimony also confirmed that Madeline Byers served as a UHG officer, that Grace Behrens was a follower of UHG, and that Joel J. Marangella is Joel B. Marangella's son. *See id. at pp. 107:7-16; 107:25-108:6*. National Bureau was bound at inception, because it was formed by, and composed of, bound persons for the purpose of engaging in the enjoined activities.³

2. National Bureau Incorporated In 1974

Joel B. Marangella relocated National Bureau to New Mexico in 1972, and it incorporated under the laws of New Mexico on April 17, 1974 as the National Bureau of the Orthodox Baha'i Faith of the United States and Canada. *PNBC Respondents' Agreed Proposed Findings of Fact, Docket No. 87 at ¶¶ 63, 67*. The members of National Bureau at the time of incorporation were James Meyer, Franklin Schlatter, Marilyn Meyer, Stephen Rhodes, Carole Schlatter, Eunice Hanawalt, George Hanawalt, Myra Keller and Chris "Kit" DeHainaut. *See OBF 15; Hearing Transcript at pp. 108:15-110:3*. Each was previously a UHG board member or a follower under UHG's jurisdiction. *See Hearing Transcript at p. 109:22-25*. Notably,

³ National Bureau was apparently formed to evade the Permanent Injunction. In NSA 88, Mr. Marangella stated that National Bureau was established in New York because Mr. Marangella believed the Permanent Injunction might not extend to his group's activities in New York. In NSA 87, Mr. Marangella assured Marilyn Meyer and James Meyer that UHG's dissolution rendered the Permanent Injunction ineffective. When asked about this interpretation at his deposition, Mr. Marangella confirmed that it was not based on legal advice. *See Marangella Deposition, Docket No. 125, Exh. A. pp. 89:20-91:1; Exh. B. NSA 87 and 88*.

James Meyer was Chairman of UHG when the Permanent Injunction issued, and by 1974, he was serving as Chairman of National Bureau. *See id at pp. 109:13-110:3*. Frank Schlatter's position as National Bureau Secretary mirrored his role as Secretary with UHG. *See OBF 15*. Every National Bureau member and officer was appointed by Joel B. Marangella. *NSA's Agreed Proposed Findings of Fact, Docket No. 88 at ¶ 54*. At the hearing, Mr. Schlatter confirmed that all nine members of the UHG 1966 board joined the National Bureau as either board members or followers.⁴ *See Hearing Transcript at pp.108:18-109:25: OBF 15*.

3. PNBC Is National Bureau's Legal Successor

In 1978, National Bureau, at Joel B. Marangella's instructions, assigned and transferred its powers to another Marangella created body called the Mother Baha'i Council. *NSA's Agreed Proposed Findings of Fact, Docket No. 88 at ¶ 55; NSA 64; Hearing Transcript at p. 111:14-23*. Agreed facts and admissions establish that the Mother Baha'i Council and Provisional National Baha'i Council are one and the same entity. *Hearing Transcript at p. 111:21-23; PNBC Respondents' Agreed Proposed Findings of Fact, Docket No. 87 at ¶ 66; NSA 16 at admission 11*. The corporate documents of PNBC state that it is the legal successor of "the National Bureau of the Orthodox Baha'i Faith of the United States and Canada."⁵ *PNBC Respondents' Agreed Proposed Findings of Fact, Docket No. 87 at ¶ 67*. In every instance, its decisions and actions are subject to the ultimate review and judgment of Joel B. Marangella.⁶

⁴ This admission, and those regarding Mr. Marangella's involvement with the UHG, are surprising when considered in the context of the PNBC Respondents' Response Brief, entered prior to this Court's grant of limited discovery. *See PNBC Memorandum in Support of Response to NSA's Motion to Show Cause, Docket No. 11, at pp. 5, 8* (stating "Marangella never directed or had anything to do with this litigation," "OBF has no ties with the Remy NSA," "OBF Respondents are complete strangers to this case.").

⁵ Of course, there are many other indicators of privity. For example, UHG used the address Box 182, Santa Fe, New Mexico for much of its business. *See OBF 4, NSA 132 (Glad Tidings masthead)*. That address later served as National Bureau's principal office. *See OBF 15 at Article III; Hearing Transcript at pp.108:18-109:11*. The Box 182 address was also used during the 1967-1969 re-organization period and Marilyn Meyer offered use of the address to Mr. Marangella as a "point of continuity." *See OBF 7; NSA 87*. In addition, it is clear that Remy's group was also known as the "Orthodox Baha'i Faith." *See NSA 28, 91, 126, 127*.

⁶ There is no doubt that Mr. Marangella's authority over PNBC is legal authority. "The National Bureau and the PNBC have been appointed by Joel B. Marangella, and Joel B. Marangella has had ultimate legal control and authority over those bodies." *See PNBC Respondents' Agreed Proposed Findings of Fact, Docket No. 87 at ¶ 73*. Moreover, "[a]ny decision made or action taken, relating to the activities and affairs of PNBC and its predecessor, National Bureau, have been subject in each and every instance to ultimate review and approval by Joel B. Marangella." *NSA's Agreed Proposed Findings of Fact, Docket*

Presently, PNBC is a nine-member board governing about thirty followers. *See NSA 27*. The nine-member board is composed of at least four individuals who served on the UHG board or were followers under its jurisdiction. *See NSA's Agreed Proposed Findings of Fact, Docket No. 88 at ¶ 65*. James Meyer serves on the PNBC board with his wife Marilyn Meyer, who is currently PNBC Secretary. The Meyers' involvement with UHG's publishing efforts and the litigation is well documented in prior filings and was supplemented by deposition and hearing testimony. *See Hearing Transcript at pp. 185:2 – 188:5; NSA 30; J. Meyer Deposition, Docket No. 124, Exh. A at 11:1-12:25, 13:4-14:18; 14:21-15:5, 15:8-16, 17:15-18:9, 21:3-16, 21:19-22:15, 23:22-24:10, Exh. B at NSA 33-38, 40, 42*.

Importantly, testimony at the hearing confirmed that the UHG, Joel Marangella and Mason Remey had received extensive advice regarding the legal effect of the Permanent Injunction. This advice included that Mason Remey's organization and UHG should "immediately" change the name of the organization and that "dissolution of the corporation would not render the injunction ineffective, instead it would subject each individual to prosecution." *NSA 58*. The legal advice also advised that "the injunction clearly states groups of individuals who were affiliated with the organization that had the confusing name could also be placed in contempt of court," and "[i]t would be best therefore for groups of the Believers to use a name that is not confusing with Wilmette." *NSA 84*. At the hearing, Mr. Schlatter confirmed that this was the legal advice provided contemporaneously with the entry of the Permanent Injunction. *See Hearing Transcript at pp. 97:16-99:18*. UHG communicated such advice to the followers on its membership lists, including that "we are permanently under the injunction that was issued against us on June 28, 1966." *See id at pp. 99:19-100:3; NSA 124*. PNBC is bound by the Permanent Injunction.

D. SIBC and BPUPC are Bound by the Permanent Injunction

BPUPC and SIBC are bound on two independent grounds. First, they are bound as successors-in-interest to Mason Remey with respect to the subject matter of the Permanent Injunction. Second, they are bound because they were created by an individual, Leland Jensen,

No. 88 at ¶ 59. Mr. Marangella confirmed as much in his deposition, stating that he has the power to disband the institutions of his group, such as PNBC, and that the membership of every institution is at his sole discretion. *Marangella Deposition, Docket No. 125, Exh. A. pp. 97:16-99:1*.

who was subject to the Permanent Injunction. Furthermore, it is undisputed that SIBC and BPUPC are engaging in activities proscribed by the Permanent Injunction.

1. SIBC and BPUPC Have Admitted Privity With Mason Remey Regarding the Subject Matter of the Permanent Injunction

As discussed above, it is beyond dispute that Mason Remey was bound by the Permanent Injunction as head of and the ultimate authority over UHG at all relevant times. Mason Remey's status as a bound party is significant because there are several admissions in the record that SIBC and BPUPC are in privity with Mason Remey, with respect to the subject matter of the Permanent Injunction. *See Hearing Transcript at pp. 250:15-252:21, 254:21-259:9, NSA 107, 110; see also Memo for Rule at pp. 12-13; Reply to BPUPC at pp. 5-7; Proposed Findings of Fact at pp. 101-107.* For example, in sworn declarations filed with the United States Patent and Trademark Office, SIBC and BPUPC sought to "tack-on" their trademark rights to those of Mason Remey by referencing their legal chain of title to the trademarks and relying upon rights inherited from Mason Remey as a predecessor-in-interest.

Neal Chase, as President of both SIBC and BPUPC, filed and signed trademark applications on behalf of SIBC and BPUPC. Several admissions in these sworn filings, signed under penalty of perjury by Neal Chase, were re-affirmed by Mr. Chase at trial. In connection with SIBC's trademark application for registration of the UHJ mark, Mr. Chase confirmed that Mason Remey is the legal representative that he referenced in various admissions, and Mr. Chase, again, adopted those admissions. *NSA 106, 107, 125; Hearing Transcript at pp. 245:21-252:14.* Similarly, Mr. Chase affirmed SIBC's admissions made in connection with its application to register the mark UNIVERSAL HOUSE OF JUSTICE. *NSA 108, 110; Hearing Transcript at pp. 252:25-259:9.* In addition, BPUPC made similar binding admissions in an application for the mark BAHA'IS UNDER THE PROVISIONS OF THE COVENANT. *NSA 113, 114, 115 at p. 7* (sworn pleading stating that BPUPC used the applied for mark continuously through its "legal predecessors," namely Mason Remey and Pepe Remey). Mr. Chase testified that he filed the application on behalf of BPUPC and said nothing to discount the admissions. *Hearing Transcript at pp. 259-260.*

On BPUPC's behalf, Neal Chase submitted a specimen of trademark use consisting of a number 9 inside a stylized circle to the United States Patent and Trademark Office. *NSA 113.* During the hearing, Mr. Schlatter identified a design of the number 9 inside a stylized circle as

Mason Remey's creation and as Mason Remey's personal trademark. *NSA 47; Hearing Transcript at pp. 105:13-106:3*. The design from BPUPC's trademark application and the design identified by Mr. Schlatter as Mason Remey's symbol are presented below.



BPUPC's Specimen of Use - NSA 113



Mason Remey's Symbol - NSA 47

When asked whether Mason Remey's design is the same design that he attached to BPUPC's trademark application, Mr. Chase responded "I'd say no . . . it's written differently . . . Mason Remey was into this special square looking number nine." *See Hearing Transcript at pp. 261:8-262:2*.

SIBC's website at www.uhj.net indicates that SIBC is the "Official" Universal House of Justice. Mr. Chase submitted a print-out from the [uhj.net](http://www.uhj.net) website, bearing this language, to the United States Patent and Trademark Office as a specimen of SIBC's trademark use. *See NSA 125*. At the hearing, Mr. Chase reaffirmed SIBC's statement that SIBC is the "official" Universal House of Justice and testified further that the Universal House of Justice located in Haifa, Israel is an "imitation." *Hearing Transcript at pp. 247:11-250:24; NSA 125*.

SIBC's and BPUPC's sworn statements described above cannot be explained away as relating to spiritual successorship or religious doctrine. SIBC and BPUPC seek valuable rights from an agency of the United States government based on their claims of privity with Mason Remey. In each case, SIBC's and BPUPC's efforts to register trademarks were frustrated by NSA's prior registrations. In order to overcome NSA's prior registrations, SIBC and BPUPC submitted sworn statements to the United States Patent and Trademark Office that their trademark rights, through Mason Remey, are superior to those of NSA. SIBC and BPUPC cannot expect to receive whatever benefits there may be in succeeding Mason Remey without accepting the burdens, such as the Permanent Injunction.

2. SIBC and BPUPC Had Notice of the Permanent Injunction

UHG provided written notice to all of the people on its mailing lists, including Leland Jensen and Opal Jensen, regarding the entry and terms of the Permanent Injunction. Notice was provided in a variety of forms, including notice letters and UHG's *Glad Tidings* publication.

At the hearing, Mr. Chase testified that he moved into Leland Jensen's residence at 328 Stephens Avenue, Missoula, Montana in the fall of 1990 and that he located issues of UHG's *Glad Tidings* publication in the home. *Hearing Transcript at pp. 286:13-289:20*. During his testimony, Mr. Chase identified NSA 82 as one of the issues he vividly remembered finding at 328 Stephens Avenue. *See id.* NSA 82 is a July 1966 issue of UHG's *Glad Tidings* containing the story "NSA Accepts Injunction Terms" that communicated the language of the Permanent Injunction verbatim. *See id.; NSA 82*. Interestingly, Mr. Chase's discovery occurred before SIBC was created by Leland Jensen with Neal Chase as a director, and well before SIBC was incorporated. *See Hearing Transcript at pp. 240:13-20*.

In addition to *Glad Tidings*, UHG also communicated the Permanent Injunction to its followers in several notice letters. *See, e.g., NSA 38, 79, 124; Hearing Transcript at pp. 99:19-100:3*. As set forth at the hearing and summarized below, Leland and Opal Jensen, of 328 Stephens Avenue, Missoula, Montana were on UHG's mailing lists and the notice letters were sent to them. *Hearing Transcript at pp. 286:18 – 289:20*. Mr. Chase's testimony regarding the issues of *Glad Tidings* found at 328 Stephens leaves no doubt that UHG's mailings reached Leland and Opal Jensen's residence. In addition, Pepe Remy, Mason Remy's adopted son and care-taker throughout the litigation, was SIBC's first President. *SIBC's & BPUPC's Proposed Findings of Fact, Docket No. 86 at ¶ 58*. There is no dispute that Pepe Remy was aware that Mason Remy's actions were cut short by the Permanent Injunction.

There is no serious doubt that BPUPC had notice of the Permanent Injunction at the time of its formation. Leland Jensen established BPUPC in 1969, after receiving a letter from Mason Remy. *NSA's Agreed Proposed Findings of Fact, Docket No. 88 at ¶ 91*. BPUPC and SIBC admit that Leland Jensen remained in contact with Mason Remy after UHG dissolved, and it is well established that Mason Remy had notice of the Permanent Injunction. *See BPUPC's and SIBC's Response to NSA's Motion for Rule to Show Cause, Docket No. 45 at p. 7*.

In addition, Marilyn Meyer testified to a letter she received from Opal and Leland Jensen, dated June 7, 1967. *NSA 31*. In the letter, Opal Jensen commented upon whether there should be

a new administration under the hereditary guardianship and references Mr. Patzer, one of the signatories of the re-organization letters that the former UHG members and followers distributed to the UHG mailing list in 1967. *NSA 31, OBF 7, OBF 9; Hearing Transcript at pp. 207:1-209:24*. This communication, indicating the Jensens' return address at 328 Stephens Avenue, Missoula, Montana, makes it clear that Opal and Leland Jensen had notice of the Permanent Injunction. *Id.* Opal Jensen was Leland Jensen's wife and resided at the same address with Leland Jensen. *Id.* Importantly, regarding BPUPC's notice of the Permanent Injunction, Opal Jensen served as BPUPC's treasurer. *NSA 136*.

Given the privity admissions described above, it is not necessary to reach the issue of whether Leland Jensen was bound by the Permanent Injunction in order to find SIBC and BPUPC bound. Nevertheless, if the Court does reach the issue of whether Leland Jensen was bound, it is clear that he was bound by the Permanent Injunction.

3. SIBC and BPUPC Were Formed by a Bound Person in Order to Engage in the Activity Proscribed by the Permanent Injunction

BPUPC and SIBC were bound at inception because they were formed and controlled by Leland Jensen, who himself was bound as an affiliated individual and a member of an affiliated group at the time the Permanent Injunction was entered. Leland Jensen was an incorporator of the UHG and served as one of its first nine board members. *NSA's Agreed Proposed Findings of Fact, Docket No. 88 at ¶¶ 80, 82; OBF-2, pp. 3-4*. The extensive responsibilities of the UHG board are set forth in UHG's by-laws. *OBF-2*. In summary, the UHG board members were charged with the staggering responsibility of creating and administering the affairs of a fledgling nationwide administrative structure to advance their beliefs and to ensure the success of Mason Remey's claims. The significance of Leland Jensen's role in establishing the UHG and guiding it through its development cannot be understated. Moreover, Leland Jensen's extensive role in the harm caused NSA by Mason Remey and UHG is well documented in NSA's pleadings. *NSA's Memorandum for Rule, Docket No. 5, at pp. 6-7, Exh. C; NSA's Reply to SIBC/BPUPC's Response, Docket No. 50, pp. 9-11, Exh. 28-32*. He was a founding member of the group and his activities in Joplin were referenced in the Permanent Injunction as infringing upon NSA's trademarks and causing confusion in that territory. *See NSA 95, ¶¶ 29-33; NSA's Memorandum for Rule, Docket No. 5, at Exh. N, O, P*.

It is undisputed that Jensen was the leader of UHG's Joplin, Missouri Local Spiritual Assembly. Similarly, there is no dispute that Leland Jensen and his wife Opal composed UHG's entire Missoula, Montana group. *See Hearing Transcript at pp. 154:24-155:6.* A.S. Petzoldt, in his April 28, 1965 deposition testified that both the Joplin, Missouri and Missoula, Montana groups were affiliated with the UHG. *See Petzoldt Deposition, Docket No. 122, pp. 38-39, 41.* Accordingly, Mr. Petzoldt's reference to Missoula, Montana as an affiliated group was a direct affirmation that Leland Jensen and Opal Jensen were affiliated individuals and members of an affiliated group. If Jensen had disassociated, as SIBC doggedly asserts, Mr. Petzoldt would not have had a Missoula group to reference in his deposition.

In addition, an abundance of documents, generated by the UHG contemporaneously with the events at issue, including membership lists, election results and correspondence logs demonstrate that Leland Jensen and Opal Jensen remained in the group and were bound by the Permanent Injunction.

a. Membership Lists

Leland Jensen and his wife Opal Jensen appeared on the UHG's membership lists throughout UHG's existence. Most importantly, they appeared on the UHG membership lists as amended through December 1964, and in 1965, and 1966. *NSA 21 and 22; Hearing Transcript at pp. 86:20-89:23.* At the hearing, Mr. Schlatter was questioned regarding the membership lists and affirmed what is reflected in the documents themselves, namely that Leland Jensen and Opal Jensen appear on those exhibits as individuals under UHG located in Montana. *Hearing Transcript at pp. 86:20-89:23.* He provided no testimony to indicate that the lists were inaccurate or that those specific entries were inaccurate.

Moreover, Mr. Schlatter testified that he updated the UHG lists and identified a November 1, 1965, letter that he directed to "believers, groups and Local Spiritual Assemblies" in order to verify mailing addresses and to update the membership lists. *NSA 116; Hearing Transcript at pp. 90:10-94:4.* Mr. Schlatter testified that the letter included a form upon which the UHG followers could indicate their current address and the names of the UHG followers in their respective communities. *See id.* Mr. Schlatter then identified such a completed form received by the UHG that indicated Opal Jensen and Leland Jensen as members of the Baha'i community of Missoula, Montana, Under the Hereditary Guardianship, as of December 5, 1965. *See id.; NSA 29.*

b. Election Reports

Mr. Schlatter testified that UHG conducted elections every year to elect the incoming UHG board members and that the elections occurred during an annual national convention. UHG's followers, resident in the United States, elected delegates, who in turn elected the UHG Board. *Hearing Transcript at p. 80:2-23*. No delegate could vote for more than nine prospective board members and the votes cast by each delegate represented that delegate's choice as to which individuals should compose the UHG. *See id. at 80:23-81:6*. There were only twenty-five delegates elected for this purpose each year. *See id. at 81:11-15*. No individual delegate could cast more than one vote for any one person. *See id. at 83:2-5*.

The National Convention lasted two or three days, during which the assembled delegates discussed matters affecting their group and faith and discussed plans and recommendations. *See id. at 82:3-20, 84:17-85:23; see also, OBF-2 at Article 15, section 8* (stating that the principal business of the annual meeting shall be consultation, plans and policies and the election of the nine members of the UHG). The UHG's by-laws indicate that all delegates must be recognized by UHG as followers and residents of the state, territory or federal district represented by them. *See OBF -2 at Article 15, section 2; Hearing Transcript at pp. 84:17-86:1*. After assembling and discussing their faith and administrative matters for two or three days, the delegates would vote for the new UHG. *See Hearing Transcript at p. 82*.

Documents generated by UHG during the years 1964-1966 show that Leland Jensen and Opal Jensen were elected delegates to UHG's National Convention in 1964-1966 and that they each received multiple votes as prospective UHG board members from the delegates in 1965 and 1966. *NSA 23, 42, 122, 132*. Moreover, Mr. Schlatter confirmed that Leland Jensen and Opal Jensen were elected as delegates in 1964, 1965 and 1966. *See Hearing Transcript at p. 94:5-24*. Seven delegates voted for Leland Jensen to be named to the UHG in the 1965 election. *NSA 122*. In that year, eight votes were enough to reach the Board. *Id.* In the same year, four delegates voted for Opal Jensen to be named to the UHG. *Id.* The Jensens were elected to the body of twenty-five delegates once again in 1966. Leland Jensen received enough votes from his fellow delegates in 1966 to be considered a "runner-up" in the 1966 UHG election. *NSA 42; Hearing Transcript at p. 95:3-18*.

In summary, documents generated by the UHG at the time indicate that in 1964, 1965, 1966 the approximately one-hundred and fifty UHG followers elected Leland Jensen and Opal

Jensen to be delegates to the National Convention. These documents, generated contemporaneously with the events, and well before this contempt proceeding, further indicate that a large percentage of the select twenty-five UHG delegates, after meeting for two or three days, voted to name Leland Jensen to the UHG board in 1965 and 1966.

c. A.S. Petzoldt's Deposition Testimony

Another piece of evidence that corroborates Leland Jensen's affiliation with UHG is the deposition of A.S. Petzoldt. A.S. Petzoldt was the Chairman of the UHG and the Chairman of UHG's Legal Committee at the time his deposition. *See Petzoldt Deposition, Docket No. 122, p.4.* Accordingly, no one had more knowledge of the UHG's structure and its involvement in the litigation than Mr. Petzoldt. During his deposition, Mr. Petzoldt was questioned regarding groups affiliated with UHG during the relevant time frame. *See id. at pp. 37-43.* In response, he identified an affiliated group located in Missoula, Montana. *See id. at pp. 38-39, 41.* UHG membership lists show that Leland Jensen and Opal Jensen were the only UHG members in that location. *NSA 21 and 22; Hearing Transcript at pp. 86:20-89:23.* Accordingly, Mr. Petzoldt's testimony corroborates all of the other evidence that Leland Jensen and Opal Jensen were affiliated with UHG.

d. Meyers' Contemporaneous Recommendation of Leland Jensen

Mr. Schlatter also testified to correspondence logs he recorded as UHG secretary in 1966. In these logs, Mr. Schlatter memorialized a March 30, 1966 communication from James and Marilyn Meyer wherein the Meyers recommended Leland Jensen to provide a Ridvan speech during UHG's annual National Convention. *NSA 117; Hearing Transcript at pp. 95:19-97:9.* At the time of this recommendation, James Meyer was the Chairman of UHG and had served as Vice-Chair for two years prior to his Chairmanship. Marilyn Meyer, his wife, was also a 1966 UHG board member. The Meyers knew Leland and Opal Jensen from the start of the hereditary guardianship organization and they were intimately involved with UHG from its inception. The Meyers' recommendation of Leland Jensen to speak at this esteemed function, during the Ridvan holy days, further corroborates Leland Jensen's affiliation with the UHG.

Mr. Schlatter later testified that Leland Jensen did not give the Ridvan speech in 1966. *Hearing Transcript at pp. 166:22-167:12.* Notably, Mr. Schlatter's testimony was that Mr. Schlatter opposed the nomination of Mr. Jensen as a Ridvan speaker – not that Mr. Jensen had disassociated and was, therefore, unavailable to provide the speech. *See id.* In fact, Mr.

Schlatter's testimony was clear that, following the Meyers' recommendation, Mr. Schlatter and other UHG board members weighed Mr. Jensen's suitability as a speaker. Obviously, had Mr. Jensen disassociated, there would be no reason to consider him as a Ridvan speaker.

III. THE ALLEGED CONTEMNORS ARE VIOLATING THE PERMANENT INJUNCTION

Each of the alleged contemnors is responsible for infringing content on websites and the record contains extensive evidence of violations by all five contemnors. *See PNBC Respondents' violations at NSA's Reply to PNBC, Docket No. 49 at pp. 9-10, Exh. 42, 45-50; Declaration of Geoffrey N. Wilson in Support of NSA's Motion for Limited Discovery, Docket No. 24, at ¶¶ 11-27, Exh. 6-9; NSA 59; see also SIBC and BPUPC violations at NSA's Memorandum For Rule, Docket No. 5 at pp. 6-7, Exh. C; NSA's Reply to SIBC & BPUPC, Docket No. 50 at pp. 9-11, Exh. 29-32; NSA 1, 3-8, 12, 106, 108, 113.*

Among other violations, PNBC violates the Permanent Injunction at its official website located at <http://www.rt66.com/~obfusa/council.htm>. *NSA 59*. This site makes prominent use of the BAHAI mark. *See id.* The site is dominated by the words "National Baha'i Council of the United States" in large block print and "Orthodox Baha'i Faith" in smaller print. *Id.* Mr. Marangella's website at www.bahai-guardian.com prominently uses the BAHAI mark including in identifiers such as "The Guardian of the Baha'i Faith"; "The Baha'i Faith Under the Guardianship"; and "Announcement from the Guardian of the Baha'i Faith." *See Declaration of Geoffrey N. Wilson in Support of NSA's Motion for Limited Discovery, Docket No. 24, at Exh. 6.*

PNBC respondents have attempted to position Mr. Schlatter as inactive regarding the Provisional National Baha'i Council's and Mr. Marangella's violations. Admissions, trial exhibits and deposition testimony, however, all demonstrate Mr. Schlatter's continued involvement with PNBC, Joel B. Marangella and violations of the Permanent Injunction. *NSA 16 at ¶¶ 13, 16-18, 33, 44; NSA 59; NSA Reply to PNBC, Docket No. 49 at exh. 3 (p. 19-21); exh. 9 (p. 72).* In fact, Mr. Schlatter founded PNBC's official website and contributes the majority of its content. *NSA Reply to PNBC, Docket No. 49 at exh. 3 (p. 19-21); exh. 9 (p. 72); NSA 59.*

SIBC's website at www.uhj.net and BPUPC's website at www.bupc.org violate the Permanent Injunction through extensive use of NSA's marks. During the hearing, when confronted with evidence of escalating and continued violations on the www.bupc.org website,

BPUPC's President, Neal Chase testified that BPUPC did not own the site. *Hearing Transcript at p. 266:18-25*. Mr. Chase, however, previously submitted a sworn affidavit in this proceeding affirming BPUPC's ownership of the website at www.bupc.org. See *SIBC/BPUPC Response to Motion for Rule to Show Cause, Docket No. 45, exh. 13 at ¶ 10*.

Mr. Chase had good reason for his *post hoc* attempt to deflect culpability from BPUPC during the hearing. The bupc.org website now includes messages and images virtually applauding the 2001 World Trade Center disaster, including a picture of the World Trade Center engulfed in smoke and flames with the caption "Prophecy Fulfilled! — *By the time you read this web-page New York City may already have been nuked!*" *NSA 131*. Moreover, the website also contains letters, bearing a "Universal House of Justice" seal, and signed "Universal House of Justice" and "Neal Chase, Guardian of the Baha'i Faith" addressed to various world leaders, such as Kofi Annan, Vladimir Putin, and Tony Blair. These letters enclosed SIBC and BPUPC's "King of Terror" publication and state, among other things, that the United Nations building in New York City is to be "nuked." *NSA 129; Hearing Transcript at pp. 271:14-272:14*.

SIBC's and BPUPC's officers and directors of have recently escalated their activities in order to drive Internet traffic to the www.uhj.net and www.bupc.org websites. For example, SIBC's Vice President, a deponent in this proceeding (*see Woods Deposition, Docket No. 123, pp. 16:22-17:7*), recently appeared in an Internet video posted on www.thekingofterror.com, which advertises SIBC's website at uhj.net and BPUPC's website at bupc.org. The video contains damaging statements about President Bush. For example, the video states that "George Bush is this great king of terror, who we were warned of by Nostradamus, and who is now dragging us into this war that is being created that will propel into the coming of World War III." It further announces the "nuclear destruction of New York City" which "will come as a retaliation for the continued, unprovoked attacks, against the Muslim people, Iran, Iraq, and the assassination of Saddam Hussein." This video, and others featuring SIBC and BPUPC President Neal Chase appearing on Youtube.com, direct Internet users to SIBC's website at uhj.net and BPUPC's website at bupc.org in order to increase Internet traffic for the alleged contemnors' websites. See, e.g., *NSA 123*.

IV. LEGAL BASIS FOR BINDING THE ALLEGED CONTEMNORS

The language of the Permanent Injunction is rooted in the key findings and conclusions of law made contemporaneous with the injunction. This Court's findings and conclusions shed

light on the purposes and scope of the Permanent Injunction. In view of those findings and conclusions and the guiding legal principles, it is readily apparent that the five alleged contemnors are bound by the Permanent Injunction.⁷

Significantly, the Seventh Circuit has observed that “the reach of an injunction will accord with its purpose(s), subject to the limitations of due process.” *Rockwell Graphic Sys. v. DEV Indus.*, 91 F.3d 914, 920 (7th Cir. 1996). Here, the Permanent Injunction was framed to prevent confusion and damage caused by Mason Remey and his followers in the United States, who numbered approximately one-hundred-fifty persons. The Permanent Injunction’s wording is in accord with this purpose, and its reach encompasses the UHG “its officers, agents, servants, employees, attorneys, and all persons that were in active concert or participation with them, including affiliated Local Spiritual Assemblies, groups, and individuals, or any of them.”

Importantly, the legal effect of an injunction does not end with the dissolution of the enjoined entity. Rather, an injunction “survives the dissolution of the corporate defendant” and remains enforceable against persons who are bound by the injunction including the corporation’s former officers, agents, employees, and those in active concert or participation with them. *Walling v. Reuter*, 321 U.S. 671, 674 (1944); *see also Reich v. Sea Sprite Boat Co.*, 50 F.3d 413, 417 (7th Cir. 1995) (holding an injunction issued to a corporation extends *inter alia*, to the corporation’s officers, agents, and employees). In *Walling*, the Supreme Court noted that, where a judgment restrains a corporation and those associated or identified with it from violations, that injunction is enforceable by contempt proceedings against the corporation, its agents and officers and those individuals associated with it in the conduct of business, as well as those to whom the business is transferred whether as a means to evade the judgment or for other reasons. *Walling*, 321 U.S. at 674.

⁷ While it is clear that NSA must demonstrate violation by clear and convincing evidence, *see, e.g., Shakman v. Democratic Organization of Cook County*, 533 F.2d 344, 351(7th Cir. 1976), NSA’s burden with respect to demonstrating privity is less clear. *See e.g., Graves v. Kemsco Group, Inc.*, 864 F.2d 754, 755 (Fed. Cir. 1988) (citing *Shakman*, 533 F.2d 344 for the proposition that in the Seventh Circuit, “[i]t is only violations of injunctive orders [which] must be proven by ‘clear and convincing’ evidence.”)). NSA submits that the burden for demonstrating privity in this proceeding should be identical to the preponderance of evidence burden for proving privity as reflected in claim preclusion cases. *See, e.g., Ezrin v. Stack*, 28 1 F. Supp.2d 67, 70 (D.D.C. 2003) (finding that the standard of proof is preponderance of the evidence). In any event, NSA’s proofs regarding privity satisfy either standard.

This is reflected in Federal Rule of Civil Procedure 65(d), which codified common-law principles regarding privity, specifically lists “officers,” “agents,” “servants,” “employees,” and “those persons in active concert or participation with them” as among those who are bound by an injunction. *See* Fed. R. Civ. Proc. 65(d). The Supreme Court has explained that Rule 65(d) “is derived from the common-law doctrine that a decree of injunction not only binds the parties defendant but also those identified with them in interest, in ‘privity’ with them, represented by them or subject to their control. “In essence it is that defendants may not nullify a decree by carrying out prohibited acts through aiders and abettors, although they were not parties to the original proceeding.” *Regal Knitwear Co. v. NLRB*, 324 U.S. 9, 14 (1945).

In turn, the Seventh Circuit has recognized that an injunction may bind nonparties who are successors in interest to parties named in an injunction as well as those who aid or abet the named parties in activities that violate the injunction. *Rockwell Graphic Sys.*, 91 F.3d at 919. Moreover, nonparties may be bound where a successor corporation is formed essentially for the purposes of carrying on the enjoined activity. *Id.* at 919-20.

A new entity that is created by one or more people who are subject to the original injunction, and that engages in enjoined conduct, is subject to contempt under Rule 65(d). *E.g.*, *Reich*, 50 F.3d at 417-18 (holding that both the owner and the new corporation were bound by the injunction entered against the old corporation that was dissolved); *Panther Pumps & Equipment Co., Inc. v. Hydrocraft, Inc.*, 566 F.2d 8, 18 (7th Cir. 1977) (noting that a person who is subject to an injunction “cannot use the corporate form to evade the prohibitions of the injunction which bound him.”). This rule serves a salutary purpose in that it prevents an enjoined party from avoiding the effect of an injunction “by carrying out prohibited acts through aiders and abettors, although they were not parties to the original proceeding.” *Regal Knitwear*, 324 U.S. at 14. For example, in *ICC v. Rio Grande Growers Cooperative*, 564 F.2d 848, 849 (9th Cir. 1977), the district court held that both Mr. Anderson and a corporation, San Joaquin, were bound by the injunction against Rio Grande and in civil contempt, even though neither was a party to the original action. The court of appeals affirmed, stating:

There is an abundance of evidence in the record which shows that Stan Anderson was an “agent” or “employee” of Rio Grande [the enjoined party] and that San Joaquin was a “successor” organization to Rio Grande. As such they were bound by the prior permanent injunction and judgment. To find otherwise on this evidence would be to allow San Joaquin and Stan Anderson to nullify the court’s decree and circumvent the

ICC's regulations by carrying out prohibited acts through successive corporations not party to the original actions. This we cannot accept.

Rio Grande, 564 F.2d at 849.

“[C]ourts have consistently held that ‘successors’ are within the scope of an injunction entered against a corporation and may be held in contempt for its violation.” *Additive Controls & Measurement Systems, Inc. v. Flowdata, Inc.*, 154 F.3d 1345, 1354 (Fed. Cir. 1998); *see also People of State of New York by Vacco v. Operation Rescue Nat’l*, 80 F.3d 64, 71 (2d Cir. 1996) (affirming holding that alleged contemnors are bound by injunction, even though they were not named in the injunction, “where similarly constituted groups of individuals move fluidly between multiple unincorporated associations that share the same basic leadership and goals.”).

This District has further noted that a successor in interest can mean a party who acquires, from an enjoined party, property which is the subject of the litigation. *Hexacomb Corp. v. GTW Enterprises*, No. 93 C 3107, 1994 U.S. Dist. LEXIS, at *10 (N.D. Ill. April 29, 1994) (citing *Panther Pumps & Equip.*, 566 F.2d at 12). A successor in interest can also be an “instrumentality through which an enjoined party seeks to evade an order, or a party who is merely the tool of the enjoined party.” *Hexacomb*, 1994 U.S. Dist. LEXIS, at *15 (citing *Regal Knitwear*, 324 U.S. at 14).

In light of the foregoing, the Permanent Injunction remains enforceable against those who are bound, including officers, those identified with the enjoined parties, entities formed by those who are bound when such entities engage in the enjoined activity, and those that claim rights as legal successors to bound parties with respect to the subject matter of the injunction.

A. Application of the Cited Legal Principles to PNBC Respondents Demonstrates That They Are Bound by the Permanent Injunction

Franklin Schlatter and Joel B. Marangella, under the facts set forth above, are bound by the Permanent Injunction enjoining UHG and “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.” *See Regal Knitwear*, 324 U.S. at 13-14.

PNBC is bound on several bases. PNBC is the legal successor to National Bureau, which was bound at its inception because National Bureau was founded and controlled by bound individuals. *Vacco*, 80 F.3d at 68, 72 (finding that the new organization which was formed by

enjoined members to continue engaging in the enjoined activity was “substantially a continuation” of the originally enjoined organization). PNBC’s continued close affiliation with bound individuals, including Franklin Schlatter, Joel B. Marangella and James and Marilyn Meyer also render it bound. Moreover, PNBC is a nonparty successor corporation that carries out the enjoined activities, and it was formed for that very purpose. *See Rockwell Graphic Sys.*, 91 F.3d at 919-20 (“[t]hese 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.”); *Panther Pumps & Equip.*, 566 F.2d at 25; *Vacco*, 80 F.3d at 68, 70-72 (finding that the new organization which was formed by enjoined members to continue engaging in the enjoined activity was bound as a successor in interest); *see also, Chanel Indus., Inc. v. Pierre Marche, Inc.*, 199 F. Supp. 748, 751-53 (E.D. Mo. 1961). Significantly, as set forth above, Joel B. Marangella has complete domination over PNBC and, legally, it is properly considered his alter ego rendering it bound with him. *See Panther Pumps & Equip.*, 566 F.2d at 25.

B. Application of the Cited Legal Principles to SIBC and BPUPC Respondents Demonstrates That They Are Bound by the Permanent Injunction

SIBC and BPUPC are bound by their admissions of privity with Mason Remy, himself a bound party. Both SIBC and BPUPC have unequivocally admitted, in sworn documents and testimony, that they are successors in interest to Mason Remy with respect to the very subject matter of the Permanent Injunction, the trademarks. Accordingly, both entities are bound through the application of legal principles set forth in this Circuit. *See, e.g. Rockwell Graphic Sys.*, 91 F.3d at 919. SIBC and BPUPC have carried on the enjoined activities and were formed for that very purpose, so it is proper that they are bound. *See id.* at 919-20.

Leland Jensen was bound by the Permanent Injunction based on his activities and affiliations with UHG. His role in founding SIBC and BPUPC, both of which were formed to subvert the proscriptions of the Permanent Injunction, rendered both SIBC and BPUPC bound at their inception. SIBC and BPUPC are parties that acquired, from an enjoined party, property which is the subject of the litigation, and they are instrumentalities through which an enjoined party sought to evade an order - mere tools of an enjoined party. *See Hexacomb*, 1994 U.S. Dist. LEXIS, at *10, 15. Both entities were formed to aid and abet Leland Jensen’s attempts to subvert the proscriptions of the Permanent Injunction. *Rockwell Graphic Sys.*, 91 F.3d at 919-20; *Panther Pumps & Equip.*, 566 F.2d at 25-26.

V. CONCLUSION

Each of the alleged contemnors is bound due to their activities and affiliations during the relevant period or because they are in privity with bound parties and their activities violate the proscriptions of the Permanent Injunction. As set forth above, the governing legal principles make it clear that federal injunctions against corporations also apply to officers, successors in interest and other affiliated persons that have notice. These principles further clarify that the Permanent Injunction did not end with the dissolution of the UHG, but rather remains enforceable. To find otherwise would render this Court's decision a nullity. As Justice Harlan observed in *Southern Pacific*:

...the very object for which civil courts have been established . . . is to secure the peace and repose of society by the settlement of matters capable of judicial determination. Its enforcement is essential to the maintenance of social order; for the aid of judicial tribunals would not be invoked for the vindication of rights of person and property if, as between parties and their privies, conclusiveness did not attend the judgments of such tribunals in respect of all matters properly put in issue, and actually determined by them.”

Southern Pac. R. Co. V. United States, 168 U.S. 1, 48-49 (1897).

Pursuant to the guiding legal principles, this Court should find each of the alleged contemnors bound by the Permanent Injunction and in violation of its terms, providing them a reasonable amount of time to comply.

Respectfully submitted,

Dated: January 22, 2008

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CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of January 2008, the foregoing document was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's CM/ECF. Parties may access the filing through the Court's system.

/s/ Christopher M. Dolan

Christopher M. Dolan