

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

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

Counter-Defendant, )

v. )

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

Counterclaimant. )

Civil Action No. 64 C 1878

The Honorable Amy J. St. Eve

**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW OF THE  
NATIONAL SPIRITUAL ASSEMBLY OF THE BAHA'IS OF THE UNITED STATES**

Pursuant to the Court's Order, National Spiritual Assembly of the Baha'is of the United States ("NSA") hereby submits the following proposed findings of fact and conclusions of law. Section I contains a list of all facts that are agreed by all parties in substance, set forth separately, followed by NSA's Proposed Findings of Fact at Section II and NSA's Proposed Conclusions of Law at Section III. Where a separately numbered paragraph indicates "[Agreed]" all statements within that paragraph are agreed to by the parties in substance.

**I. AGREED FACTS**

2. [Agreed] In the Permanent Injunction, this Court made Findings of Fact 1 – 36. *See Memo. for Rule, Ex. A*

3. [Agreed] In the Permanent Injunction, this Court made Conclusions of Law 1 – 18. *See Memo. for Rule, Ex. A*

4. [Agreed] In the Permanent Injunction, this Court barred Counter-Defendant 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" from:

[U]sing 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.

9. [Agreed] On November 3, 2006, the NSA filed a motion for a rule to show cause as to why the following alleged contemnors were not in violation of the Permanent Injunction: Franklin Schlatter, Joel B. Marangella, the Provisional National Baha’i Council (“PNBC”), the Second International Baha’i Council (“SIBC”) and the Baha’i Publishers Under the Provisions of the Covenant (“BPUPC”).

23. [Agreed] Followers of Mason Remey engaged in certain religious activities in the United States, published newsletter-circulars and ultimately became incorporated in 1964 as Counter-Defendant (“NSA-UHG”).

25. [Agreed] The NSA-UHG filed the original complaint in the case against the Counterclaimant. It claimed to be the administration representing the true Baha’i Faith, claimed it owned the Baha’i House of Worship in Wilmette, Illinois, and claimed it owned all other Baha’i funds, properties and bequests.

28. [Agreed] Mason Remey was closely involved with the litigation that led to the Permanent Injunction.

30. [Agreed] The Permanent Injunction comprehended the nature of the NSA-UHG as the coordinating body for an affiliation of individuals, groups and local spiritual assemblies with Remey at their head.

33. [Agreed] In response to requests for admissions, PNBC and Joel B. Marangella admitted that Joel B. Marangella acted in active concert and participation with the Remey Corporation [NSA-UHG], but only acting on behalf of Charles Mason Remey and at his direction.

34. [Agreed] In response to requests for admission, PNBC and Joel B. Marangella also admitted to the following: Joel B. Marangella acted in active concert and participation with

certain members of the Remy Corporation [NSA-UHG], but only acting on behalf of Charles Mason Remy and at his direction.

37. [Agreed] Mr. Marangella was appointed President of the Second International Baha'i Council by Mason Remy (this Second International Baha'i Council was not the Montana corporation in the current proceeding).

39. [Agreed] Mr. Marangella is a United States citizen and was a United States citizen prior to and at the time of the Permanent Injunction.

43. [Agreed] Mr. Marangella had notice of the Permanent Injunction and its restriction on the use of the NSA's marks.

44. [Agreed] Franklin Schlatter was an officer and was actively involved with and participating in the activities of the NSA-UHG and its legal committee prior to and at the time of the issuance of the Permanent Injunction.

45. [Agreed] In response to a request for admission Franklin Schlatter admitted that he was a founding member of the Remy Corporation [NSA-UHG].

46. [Agreed] Mr. Schlatter had actual notice of the Permanent Injunction and its restriction on the use of the NSA's marks. (*See NSA's Reply to PNBC, Ex. 3 (p. 16:3-7)*).

47. [Agreed] Mr. Schlatter served on the NSA-UHG board that voted to sue NSA in 1964.

48. [Agreed] In 1997, Joel B. Marangella appointed Mr. Schlatter "Hand of the Cause of God." As a "Hand of the Cause of God" Mr. Schlatter assists and acts on behalf of Joel B. Marangella.

49. [Agreed] In response to requests for admission, PNBC, Joel B. Marangella and Franklin Schlatter admitted that Franklin Schlatter as a Hand of the Cause of God acts on behalf of Joel B. Marangella, except only to the extent that Marangella specifically directs Schlatter to act on his behalf.

54. [Agreed] All National Bureau board members and officers were appointed by Joel B. Marangella.

55. [Agreed] At Joel B. Marangella's instructions, the National Bureau later transferred its powers to the Mother Baha'i Council. At Joel B. Marangella's instructions the Mother Baha'i Council later changed its name to PNBC.

56. [Agreed] In response to a request for admission Franklin Schlatter admitted that he was among those responsible for the formation of the Mother Baha'i Council [PNBC].

57. [Agreed] The Mother Baha'i Council was incorporated by Franklin Schlatter and others who composed the Roswell Local Council under the National Bureau's authority, at Joel B. Marangella's instruction.

58. [Agreed] Since the name change from Mother Baha'i Council to PNBC, Joel B. Marangella has appointed all of PNBC's board members.

59. [Agreed] Any decision made or action taken, relating to the activities and affairs of PNBC and its predecessor, National Bureau, have been subject in every instance to ultimate review and approval by Joel B. Marangella.

61. [Agreed] Franklin Schlatter served as PNBC's Secretary from 1978 through 2001. He also served as Secretary for the National Bureau.

62. [Agreed] Frank Schlatter's home address was also the mailing address and corporate address for the PNBC.

65. [Agreed] Two of the current nine person PNBC board, James Meyer and Marilyn Meyer, served on the NSA-UHG board, and another two current members of the PNBC council, David Maxwell and Stephen Rhodes, were followers under its jurisdiction .

66. [Agreed] Mr. Meyer was chairman of the NSA-UHG during the earlier proceedings in this litigation and at the time the Permanent Injunction issued. Mr. Meyer was on the 1964 NSA-UHG board that voted to sue NSA.

70. [Agreed] The PNBC's mailing address is the Meyers' home address. That location earlier served as the NSA-UHG's reproduction and distribution facility.

72. [Agreed] Like Mr. Schlatter, Mrs. Meyer was appointed "Hand of the Cause of God" by Mr. Marangella.

73. [Agreed] In response to requests for admission, PNBC and Joel B. Marangella admitted that Marilyn Meyer as a Hand of the Cause of God acts on behalf of Joel B. Marangella, except only to the extent that Marangella specifically directs Marilyn Meyer to act on his behalf.

77. [Agreed] Through individuals such as Mr. Marangella, Mr. Schlatter and Mr. and Mrs. Meyer, PNBC had notice of the Permanent Injunction and its restriction on the use of the

NSA's marks. In addition, the terms of the injunction were recently circulated to its membership.

80. [Agreed] Leland Jensen was a director of the NSA-UHG from April 1963 to May 1964.

82. [Agreed] Mr. Jensen was a signatory to the incorporation papers for the NSA-UHG.

91. [Agreed] Leland Jensen established the BPUPC as a publishing trust after receiving a letter from Mason Remey.

93. [Agreed] In 1991, Jensen established the Second International Baha'i Council ("SIBC").

95. [Agreed] Jensen incorporated SIBC in 1993 and appointed members to SIBC's board, earning him the name "the incorporator" by the SIBC's board members. The only SIBC board member not appointed by Leland Jensen was the President of SIBC, Pepe Remey.

98. [Agreed] Pepe Remey, Mason Remey's adopted son, was SIBC's first President in 1991.

100. [Agreed] Neal Chase, SIBC's current President, considers himself to be the heir to Mason Remey and Pepe Remey.

109. [Agreed] The status of this litigation appeared repeatedly in *Glad Tidings*, including reference to the 1966 Judgment and its terms.

## II. NSA'S PROPOSED FINDINGS OF FACT

### A. PROCEDURAL BACKGROUND

1. On June 28, 1966, this Court issued a permanent injunction ("Permanent Injunction") based on trademark infringement, unfair competition, dilution and likelihood of injury to NSA's reputation counterclaims filed by Counterclaimant National Spiritual Assembly of the Baha'is of the United States. *See The National Spiritual Assembly of the Baha'is of the United States of America Under the Guardianship, Inc. v. The National Spiritual Assembly of the Baha'is of the United States of America, Inc.*, 150 U.S.P.Q. 346 (N.D. Ill. 1966). The Permanent Injunction affirmed the validity of various marks owned by Counterclaimant, found that the public was likely to be confused, and permanently barred the counter-defendant and affiliated organizations and individuals, from infringing Counterclaimant's marks and from otherwise

competing unfairly with Counterclaimant. *See id.*; *see also Memo. for Rule, Ex. A Findings of Fact ¶¶ 19 – 20, Conclusions of Law ¶¶ 3 – 7.*

2. [Agreed] In the Permanent Injunction, this Court made Findings of Fact 1 – 36. *See Memo. for Rule, Ex. A*

3. [Agreed] In the Permanent Injunction, this Court made Conclusions of Law 1 – 18. *See Memo. for Rule, Ex. A*

4. [Agreed] In the Permanent Injunction, this Court barred Counter-Defendant 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” from:

[U]sing 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.

5. Neither Counter-Defendant (“NSA-UHG”) nor the affiliated groups or individuals challenged or appealed the granting of the Permanent Injunction.

6. After the issuance of the Permanent Injunction, on October 14, 1994, National Spiritual Assembly of the Baha’is of the United States incorporated under the laws of the State of Illinois. The corporation succeeded to all powers, rights, responsibilities, privileges, obligations, assets and liabilities of Counterclaimant. *See Decl. of Geoffrey N. Wilson, Ex. 1 to NSA Reply to SIBC and BPUPC at ¶¶ 34-36.*

7. NSA has now learned that certain organizations and individuals either identical to, or closely connected with, the parties bound by the Permanent Injunction are using NSA’s marks on the Internet, in a way that NSA alleges causes confusion to the public, damages NSA’s reputation and competes unfairly with NSA in violation of the Permanent Injunction.

8. The activities of the alleged contemnors were localized, remote and exceedingly small scale until recently when the alleged contemnors began seeking to raise their profile through the Internet. Although the Internet did not exist in 1966, the conduct of the alleged

contemnors today, closely parallels the conduct of the Counter-Defendant and its affiliated groups and individuals then.

9. [Agreed] As a result, on November 3, 2006, the NSA filed a motion for a rule to show cause as to why the following alleged contemnors were not in violation of the Permanent Injunction: Franklin Schlatter, Joel B. Marangella, the Provisional National Baha'i Council ("PNBC"), the Second International Baha'i Council ("SIBC") and the Baha'i Publishers Under the Provisions of the Covenant ("BPUPC").

10. On February 3, 2007, the Court granted the parties limited discovery into the issues raised in the contempt motion. The alleged contemnors filed response briefs, and NSA filed reply briefs.

11. On August 8, 2007, the Court ordered an evidentiary hearing pertaining to the contempt motion.

## **B. THE NSA**

12. The apex of the Baha'i Faith's spiritual and administrative order is the Universal House of Justice. The Universal House of Justice is composed of nine-members who are elected every five years. The Seat of the Universal House of Justice is on Mount Carmel in Haifa, Israel. *Decl. of Geoffrey N. Wilson, Exb 1 to Memo. for Rule ¶¶ 9 – 10.* The Universal House of Justice is the "exclusive highest authority in the Baha'i Faith throughout the world." *Memo. for Rule, Ex. A, at ¶ 8.* Organized under the authority of the Universal House of Justice, the Baha'i Faith has over 180 National Spiritual Assemblies vested with exclusive jurisdiction and authority over the Baha'i Faith in their respective countries. *Decl. of Geoffrey N. Wilson, Exb 1 to Memo. for Rule ¶¶ 12 – 13.* The Universal House of Justice is charged with exerting a positive influence on the general welfare of humankind. The Universal House of Justice also devotes significant resources to the safe-guarding of Baha'is living in predominantly Muslim countries.

13. The NSA, for many decades, has disseminated throughout the U.S. information concerning the Baha'i Faith and the many activities of the NSA. Said information has been communicated through a wide variety of means, including books, pamphlets, circulars, newsletters, motion pictures, radio, satellite radio, presentations, radio, television, the World Wide Web and podcasts. *Decl. of Geoffrey N. Wilson, Exb 1 to Memo. for Rule ¶ 16.*

14. The Universal House of Justice has authorized NSA as the sole authority of the Baha'i Faith in the United States. *Decl. of Geoffrey N. Wilson, Exb 1 to Memo. for Rule ¶ 14.*

NSA owns and is entitled to the exclusive use of the trademarks and service marks of the Baha'i Faith in the United States. *Id.* NSA is headquartered in the vicinity of the Baha'i House of Worship in Wilmette, Illinois. *Id.* NSA owns and operates the Baha'i House of Worship, an architectural landmark, one of the "Ten Wonders of Illinois" and a symbol of the Baha'i Faith in the United States and around the world.

15. The Local Spiritual Assembly is the basic unit of the Baha'i administrative order. *Decl. of Geoffrey N. Wilson, Exb 1 to Memo. for Rule ¶ 23.* In the United States, there are over 1,100 Local Spiritual Assemblies ministering to the needs of the local Baha'i communities. They are responsible to the NSA and submit reports to the NSA regarding their activities. *Decl. of Geoffrey N. Wilson, Exb 1 to Memo. for Rule ¶¶ 15, 23.*

16. The NSA has sold or distributed millions of publications concerning the Baha'i Faith and bearing the NSA's marks, including nearly 1.5 million copies of various publications from 1999 to October 2006 alone, through its distribution facilities throughout the U.S., including its affiliate the Baha'i Publishing Trust and numerous Local Spiritual Assemblies, groups and individuals affiliated with the NSA. *Decl. of Geoffrey N. Wilson, Exb 1 to Memo. for Rule ¶ 17.*

17. The NSA is represented at the United Nations by the Baha'i International Community, which represents and manages the worldwide Baha'i community's relations with the world. With offices at the United Nations in New York and Geneva, Switzerland and representations to United Nations regional commissions in several countries, the Baha'i International Community has enjoyed recognition as an international non-governmental organization at the United Nations since 1948. *Decl. of Geoffrey N. Wilson, Exb 1 to Memo. for Rule ¶ 18.*

18. The NSA is similarly well-known to the federal government of the United States through the NSA's Office of External Affairs in Washington, D.C. One of the Office of External Affairs' primary endeavors is to seek assistance from the United States regarding the persecution of Baha'is in Iran. The U.S. Congress has passed eight resolutions over the years regarding this problem. The U.S. government's attention to the concerns of the Baha'i Faith is largely a result of the NSA's efforts and the esteem in which the Baha'i Faith is held by the U.S. Congress, the State Department, the White House and prominent non-governmental organizations in Washington. *Decl. of Geoffrey N. Wilson, Exb 1 to Memo. for Rule ¶ 19.*

19. The NSA engages in collaborative projects with prominent interfaith religious groups, such as The Religion Communicators Council, Faith Communities Today, the Parliament of the World's Religions, the North American Interfaith Network, the Tripartite Forum on International Cooperation for Peace and the Committee of Religious Nongovernmental Organizations. Interfaith cooperation is important to the NSA and in keeping with the Baha'i Faith's acceptance of all the world's major religions as a part of a single, progressive process and its desire to build and foster friendship with people of all faiths. *Decl. of Geoffrey N. Wilson, Exb 1 to Memo. for Rule ¶ 22.*

20. 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. *Decl. of Geoffrey N. Wilson, Exb 1 to Memo. for Rule ¶ 24.* For ease of identification and verification, members of the Baha'i Faith in the United States are issued identification cards. *Decl. of Geoffrey N. Wilson, Exb 1 to Memo. for Rule ¶¶ 4, 25.*

21. NSA has continued to use the marks that it owned at the time of the Permanent Injunction and has maintained the federal registrations referenced in the Permanent Injunction. Said federal registrations have become incontestable. *Decl. of Geoffrey N. Wilson, Exb 1 to NSA Reply to SIBC and BPUPC at ¶ 5.*

### **C. BACKGROUND OF THE PERMANENT INJUNCTION**

22. In 1960, an American named Charles Mason Remey proclaimed unilaterally that he was the "Hereditary Guardian" of the Baha'i Faith and successor to the Guardian of the Baha'i Faith, Shoghi Effendi.

23. [Agreed] Followers of Mason Remey thereafter engaged in certain religious activities in the United States, published newsletter-circulars and ultimately became incorporated in 1964 as Counter-Defendant ("NSA-UHG").

24. The group that believed Mason Remey to be Guardian was a geographically diverse collection of individuals and small groups who accepted Mr. Remey's leadership.

25. [Agreed] The NSA-UHG filed the original complaint in the case against the Counterclaimant. It claimed to be the administration representing the true Baha'i Faith, claimed it owned the Baha'i House of Worship in Wilmette, Illinois, and claimed it owned all other Baha'i funds, properties and bequests.

26. The Counterclaimant alleged trademark infringement, unfair competition, dilution, and likelihood of injury to NSA's reputation. This Court then dismissed the original complaint, the case went forward on the counterclaims and ultimately this Court granted the Permanent Injunction to the Counterclaimant.

27. When the Permanent Injunction issued, Mason Remey was the NSA-UHG's highest authority.

28. [Agreed] Mason Remey was closely involved with the litigation that led to the Permanent Injunction.

29. The NSA-UHG had authority over all individuals resident in the United States that expressed their affiliation with Mason Remey.

30. [Agreed] The Permanent Injunction comprehended the nature of the NSA-UHG as the coordinating body for an affiliation of individuals, groups and local spiritual assemblies with Remey at their head.

31. The Permanent Injunction enjoined not just NSA-UHG but also "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." *Memo. for Rule, Ex. A., p. 24.*

#### **D. THE ALLEGED CONTEMNORS**

##### **Joel B. Marangella**

32. Joel Marangella was one of Mason Remey's principal lieutenants during this litigation, and at the time of the Permanent Injunction. He provided leadership to, and acted in active concert and participation with, the NSA-UHG and its officers, agents and members prior to and at the time of the Permanent Injunction.

33. [Agreed] In response to requests for admissions, PNBC and Joel B. Marangella admitted that Joel B. Marangella acted in active concert and participation with the Remey Corporation [NSA-UHG], but only acting on behalf of Charles Mason Remey and at his direction.

34. [Agreed] In response to requests for admission, PNBC and Joel B. Marangella also admitted to the following: Joel B. Marangella acted in active concert and participation with certain members of the Remey Corporation [NSA-UHG], but only acting on behalf of Charles Mason Remey and at his direction.

35. Mr. Marangella participated in the underlying litigation by providing direction and leadership to the NSA-UHG and its legal committee. Mr. Marangella coordinated with Franklin Schlatter and others in support of Mason Remey's claims, including the discussion of legal proceedings against NSA and its affiliated institutions. (*NSA Reply to PNBC, Ex. 6, Ex. 7 (pp. 25:14-27:14, 28:22-31:5, 32:14-37, 37:21-43)*).

36. Mason Remey repeatedly confirmed that Mr. Marangella was to handle the affairs of the Remey's following, including oversight of the NSA-UHG. (*NSA's Reply to PNBC, Ex. 10*).

37. [Agreed] Mr. Marangella was appointed President of the Second International Baha'i Council by Mason Remey (this Second International Baha'i Council was not the Montana corporation in the current proceeding).

38. Thereafter, Marangella assumed many responsibilities over the affairs of the NSA-UHG and its affiliated groups and individuals. Mason Remey personally selected Mr. Marangella to succeed him as "Guardian" during the underlying litigation and prior to the Permanent Injunction. (*NSA's Reply to PNBC, Ex. 8; Ex. 7 (pp. 21-25; 43:5-45:13); Ex. 9 (pp.7-8); see also Declaration of Joel B. Marangella at ¶ 11*).

39. [Agreed] Mr. Marangella is a United States citizen and was a United States citizen prior to and at the time of the Permanent Injunction.

40. Mr. Marangella was resident in the United States during the litigation, although he was living abroad in connection with the U.S. Army.

41. In 1969, three years after the Permanent Injunction issued, Mr. Marangella proclaimed himself the new Guardian "duly appointed" by Mason Remey. Shortly thereafter, in a letter intended for the Internal Revenue Service Mr. Marangella stated that he had assumed the responsibilities of the old leader, Mason Remey, as third Guardian of the Baha'i Faith Under the Hereditary Guardianship. (*NSA's Reply to PNBC, Ex. 16; Ex. 7 (pp.99-108)*).

42. The NSA-UHG recognized Mr. Marangella as a leader. (*NSA's Reply to PNBC, Ex. 12, Ex.7 (pp. 59-62)*). He was intimately involved in the affairs of the NSA-UHG and it provided financial support to him and his Second International Baha'i Council. (*NSA's Reply to PNBC, Ex. 13, Ex. 14 (pp. 26:5-28:14)*).

43. [Agreed] Mr. Marangella had notice of the Permanent Injunction and its restriction on the use of the NSA's marks.

**Franklin Schlatter**

44. [Agreed] Franklin Schlatter was an officer and was actively involved with and participating in the activities of the NSA-UHG and its legal committee prior to and at the time of the issuance of the Permanent Injunction.

45. [Agreed] In response to a request for admission Franklin Schlatter admitted that he was a founding member of the Remy Corporation [NSA-UHG].

46. [Agreed] Mr. Schlatter had actual notice of the Permanent Injunction and its restriction on the use of the NSA's marks. (*See NSA's Reply to PNBC, Ex. 3 (p. 16:3-7)*).

47. [Agreed] Mr. Schlatter served on the NSA-UHG board that voted to sue NSA in 1964.

48. [Agreed] In 1997, Joel B. Marangella appointed Mr. Schlatter "Hand of the Cause of God." As a "Hand of the Cause of God" Mr. Schlatter assists and acts on behalf of Joel B. Marangella.

49. [Agreed] In response to requests for admission, PNBC, Joel B. Marangella and Franklin Schlatter admitted that Franklin Schlatter as a Hand of the Cause of God acts on behalf of Joel B. Marangella, except only to the extent that Marangella specifically directs Schlatter to act on his behalf.

50. Mr. Schlatter was recently named "Secretary General" to Mr. Marangella's recently formed "Third International Baha'i Council". Mr. Schlatter is second in line to succeed Marangella as "guardian" of the PNBC. (*NSA's Reply to PNBC Ex. 28, Ex. 19 (p. 112-113); Ex. 9 (pp. 59-63)*).

**Provisional National Baha'i Council**

51. After the Permanent Injunction, the entire 1966 NSA-UHG board, including its entire legal committee, and many of the affiliated individuals under its jurisdiction organized under Joel B. Marangella's leadership. They resumed use of NSA's marks in the United States, despite having earlier received legal advice to the contrary.

52. On Joel B. Marangella's instructions, they formed the PNBC's predecessor, the National Bureau.

53. In all, approximately forty former leaders, members and followers of the NSA-UHG organized under the National Bureau. These former members had actual notice of the Permanent Injunction. (*NSA's Reply to PNBC, Ex.19 (pp. 36-38)*).

54. [Agreed] All National Bureau board members and officers were appointed by Joel B. Marangella.

55. [Agreed] At Joel B. Marangella's instructions, the National Bureau later transferred its powers to the Mother Baha'i Council. At Joel B. Marangella's instructions the Mother Baha'i Council later changed its name to PNBC.

56. [Agreed] In response to a request for admission Franklin Schlatter admitted that he was among those responsible for the formation of the Mother Baha'i Council [PNBC].

57. [Agreed] The Mother Baha'i Council was incorporated by Franklin Schlatter and others who composed the Roswell Local Council under the National Bureau's authority, at Joel B. Marangella's instruction.

58. [Agreed] Since the name change from Mother Baha'i Council to PNBC, Joel B. Marangella has appointed all of PNBC's board members.

59. [Agreed] Any decision made or action taken, relating to the activities and affairs of PNBC and its predecessor, National Bureau, have been subject in every instance to ultimate review and approval by Joel B. Marangella.

60. Presently, the PNBC is a nine member council governing a membership of about thirty-four followers, many of whom are related and living in rural New Mexico.

61. [Agreed] Franklin Schlatter served as PNBC's Secretary from 1978 through 2001. He also served as Secretary for the National Bureau.

62. [Agreed] Frank Schlatter's home address was also the mailing address and corporate address for the PNBC.

63. Mr. Schlatter regularly participates in PNBC meetings, contributes advice, and performs tasks for PNBC. *NSA's Reply to PNBC, Ex. 26; Ex. 19 (pp. 48, 94-96:7, 119:4-121:12)*.

64. Mr. Schlatter was also PNBC's Rule 30(b)(6) deposition designee in this proceeding. *(NSA's Reply to PNBC, Ex. 9 (pp. 4-6); Ex. 27)*.

65. [Agreed] Two of the current nine person PNBC board, James Meyer and Marilyn Meyer, served on the NSA-UHG board, and another two current members of the PNBC council, David Maxwell and Stephen Rhodes, were followers under its jurisdiction.

66. [Agreed] Mr. Meyer was chairman of the NSA-UHG during the earlier proceedings in this litigation and at the time the Permanent Injunction issued. Mr. Meyer was on the 1964 NSA-UHG board that voted to sue NSA.

67. Together, the Meyers helped found the group that developed into NSA-UHG, served on NSA-UHG's Legal Committee, participated in the underlying litigation, and reproduced, distributed, and contributed to materials that were subject of the injunction, such as the *Glad Tidings* newsletter. (*NSA's Reply to PNBC Ex. 33; Ex. 19 (pp. 8:4-14:7, 18:16-19:19, 30:3-31:4, 32:17-38); Ex. 14 (pp. 13-18:9, 19:14-20:25, 21:1-16)*).

68. Mr. Meyer and Mrs. Meyer had notice of the Permanent Injunction. Nevertheless, Mr. and Mrs. Meyer became leaders of PNBC's predecessor, National Bureau and the PNBC. (*NSA's Reply to PNBC Ex. 22; Ex. 9 (pp. 16:25-17:12, 33:6-34:2, 49:24-50:25, 69:14-80:6)*).

69. Mrs. Meyer is now the Secretary of PNBC and she was a member of the nine-member NSA-UHG board during the litigation and when the Permanent Injunction issued. (*NSA's Reply to PNBC Ex. 22; Ex. 9 (pp. 16:25-17:12, 33:6-34:2, 49:24-50:25, 69:14-72:2)*).

70. [Agreed] The PNBC's mailing address is the Meyers' home address. That location earlier served as the NSA-UHG's reproduction and distribution facility.

71. Public documents indicate the PNBC's corporate address is the same as the Meyers' home address.

72. [Agreed] Like Mr. Schlatter, Mrs. Meyer was appointed "Hand of the Cause of God" by Mr. Marangella.

73. [Agreed] In response to requests for admission, PNBC and Joel B. Marangella admitted that Marilyn Meyer as a Hand of the Cause of God acts on behalf of Joel B. Marangella, except only to the extent that Marangella specifically directs Marilyn Meyer to act on his behalf.

74. At least twelve current members under PNBC were leaders of the NSA-UHG or were in the membership under its auspices. *NSA's Reply to PNBC, Ex. 34; Ex. 9 (pp. 49-55)*. At least one current PNBC member, a resident in Illinois, was a member of the NSA-UHG's local spiritual assembly in Santa Fe. At least twelve individuals in Marangella's forty-person following are children or grand-children of those who were members or followers of the NSA-UHG. (*NSA's Reply to PNBC, Ex. 29; Ex. 19 (pp. 51-55); Ex. 9 (pp. 51-56)*).

75. Property and materials utilized by the NSA-UHG were later used for the benefit of the PNBC. (*NSA's Reply to PNBC*, Ex. 36; Ex. 14 (pp. 28:18-29:24); Ex. 7 (pp. 83-84)). PNBC uses essentially the same trademarks that the NSA-UHG had used. Additionally, the Remy's following was known by its members as the Orthodox Baha'i Faith, just as the PNBC is today. (*NSA's Reply to PNBC*, Ex. 14 (p. 8:13-18); Ex. 19 (p. 107); Ex. 3 (pp. 73:11-74:17); Ex. 37).

76. Furthermore, the roles of Mr. Marangella and Mr. Schlatter in PNBC are similar to their roles with the NSA-UHG. (*NSA's Reply to PNBC* Ex. 19 (p. 79); Ex. 39; Ex. 7 (pp. 108-110, 119-120)).

77. [Agreed] Through individuals such as Mr. Marangella, Mr. Schlatter and Mr. and Mrs. Meyer, PNBC had notice of the Permanent Injunction and its restriction on the use of the NSA's marks. In addition, the terms of the injunction were recently circulated to its membership.

**Second International Baha'i Council ("SIBC") and the Baha'i Publishers Under the Provisions of the Covenant ("BPUPC")**

78. SIBC and BPUPC trace their connections to the NSA-UHG and Remy's group through Leland Jensen, Pepe Remy and Mason Remy.

79. Leland Jensen was a central figure in Remy's following and served on multiple committees.

80. [Agreed] Leland Jensen was a director of the NSA-UHG from April 1963 to May 1964.

81. Leland Jensen contributed to articles in support of Mason Remy and his teachings, some of which were referenced in the Permanent Injunction.

82. [Agreed] Mr. Jensen was a signatory to the incorporation papers for the NSA-UHG.

83. Both Leland Jensen and his wife Opal were elected delegates to the NSA-UHG National Convention in the years after his term on the NSA-UHG board, including in 1966.

84. Leland Jensen was a "runner-up" in the 1966 NSA-UHG election of board members.

85. Beginning in 1961, Jensen led a group in Joplin, Missouri which was loyal to Mason Remy and ultimately the NSA-UHG. (*Memo. for Rule, Exs. O, P, and Q*). Jensen was

with that group when it later became a so-called Local Spiritual Assembly under NSA-UHG's jurisdiction by joint declaration on April 21, 1964.

86. Later, Leland Jensen was also in a group located in Missoula, Montana which was under NSA-UHG's jurisdiction and loyal to Mason Remey.

87. Leland Jensen was personally involved with the NSA-UHG and was a member of the group prior to and after the issuance of the Permanent Injunction.

88. NSA-UHG's membership and voting lists included Leland and Opal Jensen in every year of its existence.

89. A membership address verification form was submitted to the NSA-UHG by the Jensens in mid-1965. In Spring of 1966, Mr. Jensen was recommended to give the keynote speech at the NSA-UHG's annual convention.

90. Mr. Jensen had actual or constructive notice of the injunction based on his and his wife's involvement with the NSA-UHG, Remey's following and Mason Remey.

**Leland Jensen's Roles With BPUPC and SIBC**

91. [Agreed] Leland Jensen established the BPUPC as a publishing trust after receiving a letter from Mason Remey.

92. Leland Jensen established BPUPC in order to re-establish a following for Mason Remey and shortly after Jensen began serving a prison sentence.

93. [Agreed] In 1991, Jensen established the Second International Baha'i Council ("SIBC").

94. SIBC is a governing body with authority over BPUPC and individual followers.

95. [Agreed] Jensen incorporated SIBC in 1993 and appointed members to SIBC's board, earning him the name "the incorporator" by the SIBC's board members. The only SIBC board member not appointed by Leland Jensen was the President of SIBC, Pepe Remey.

96. Mr. Jensen was actively involved with SIBC. Mr. Jensen created a "liaison officer" position for SIBC, whose duty was to report SIBC's business to Mr. Jensen and, in turn, communicate Mr. Jensen's guidance to SIBC. (*NSA Reply to BPUPC and SIBC, Ex. 25 (p. 13:15-14:4, 15:9-17:17)*). No one was allowed to attend SIBC meetings unless Leland Jensen had appointed them to sit as a director.

97. Jensen had ultimate control of SIBC during his lifetime. (*NSA Reply to BPUPC Ex. 25 at 19:13-20:24; Ex. 11 (p. 4)*). SIBC still follows Jensen's guidance, posthumously, as if his statements were law (*NSA Reply to BPUPC Ex. 10 (p.11); Ex. 11 (p.4)*).

98. [Agreed] Pepe Remy, Mason Remy's adopted son, was SIBC's first President in 1991.

99. Leland Jensen identified Pepe Remy as SIBC President to maintain the "continuing guardianship" after Mason Remy passed away. (*NSA Reply to BPUPC and SIBC, Ex.25 at 13:15-14:11*).

100. [Agreed] Neal Chase, SIBC's current President, considers himself to be the heir to Mason Remy and Pepe Remy.

#### **SIBC'S and BPUPC'S Sworn Statements**

101. SIBC states that it is a successor of Mason Remy. On May 23, 2005, SIBC applied for registration of the mark UHJ (the acronym for "Universal House of Justice"). (*NSA's Reply to BPUPC and SIBC, Ex. 3 (p.1, 5); Ex. 4*). In its application, SIBC declared that it first used the mark in commerce on January 9, 1951. After NSA opposed registration of this application in the Trademark Trial and Appeal Board of the United States Patent and Trademark Office, SIBC responded by stating that its 1951 first use date is based on use of the mark by its legal predecessor, Mason Remy—the NSA-UHG's highest authority and primary leader at the time of the 1966 Judgment. (*NSA's Reply to BPUPC and SIBC, Ex. 5 (p. 8-10)*).

102. SIBC further declared that it is Mason Remy's "legal successor and heir" to all Baha'i properties "which would also include all trademarks, such as UNIVERSAL HOUSE OF JUSTICE, as well as other intellectual and material Baha'i property" and that it is the true successor to inherit the property, including intellectual property. (*NSA's Reply to BPUPC and SIBC, Ex. 5 at Decl. Ex. G ¶ 25*).

103. SIBC elaborated that when NSA disassociated from Remy, Mason Remy became the sole heir of all legal entitlements to all Baha'i property and the chain of title. (*NSA's Reply to BPUPC and SIBC, Ex. 5 at Decl. Ex. G p.9-10, 14-15*). Accordingly, "[SIBC] and its legal representatives and affiliates have used and continue to use 'Universal House of Justice'... thus showing and demonstrating common law rights in its use of 'international baha'i council', 'baha'i' and 'uhj' . . . from 1960 forward." (*NSA's Reply to BPUPC and SIBC, Ex. 5 (p. 9)*).

104. Furthermore, SIBC acknowledged that Pepe Remy, Mason Remy's adopted son, was its first President in 1991. (*NSA's Reply to BPUPC and SIBC, Ex. 5 at Decl. Ex. G ¶ 14*). According to the SIBC, when Pepe passed away, Neal Chase, SIBC's current President, ascended to that office, retaining rights to "all Baha'i properties including all rights to chain of title." (*NSA's Reply to BPUPC and SIBC, Ex. 5 at Decl. Ex. G ¶ 15*). The brief containing these admissions was filed December 16, 2006—after the Rule to Show Cause was entered and in full view of the present contempt proceeding. (*NSA's Reply to BPUPC and SIBC, Ex. 5 (p.1, 8-10, 17)*).

105. SIBC also applied to register the mark UNIVERSAL HOUSE OF JUSTICE. (*NSA's Reply to BPUPC and SIBC, Ex. 6 (p.1, 5)*). The United States Patent and Trademark Office trademark examining attorney refused registration, however, based on a likelihood of confusion with NSA's incontestable registration for THE UNIVERSAL HOUSE OF JUSTICE. (*NSA's Reply to BPUPC and SIBC, Ex. 7 (p. 1-3)*). SIBC responded to the examining attorney's refusal to register with essentially the same above-described admissions. SIBC subsequently abandoned the application. (*NSA's Reply to BPUPC and SIBC Ex. 8 (p. 2-10); Ex. 9*).

106. SIBC's President Neal Chase's attorney, in Montana state court, filed documents stating that "the original group that accepted Mason Remy as guardian and followed him, developed into what is now known as the SIBC" and "a very small minority of the original group accepted Mason Remy as guardian and that minority evolved into SIBC." (*NSA's Reply to BPUPC and SIBC Ex. 10 (p. 4); Ex. 11 (p. 7)*).

107. SIBC's publishing trust, BPUPC, also states that it is a successor to Mason Remy. BPUPC filed an application for federal registration of the mark "BAHA'IS UNDER THE PROVISIONS OF THE COVENANT" on March 8, 2005. (*NSA's Reply to BPUPC and SIBC, Ex. 12 (p. 1, 5); Ex. 13*). When NSA opposed this application, BPUPC responded that it used the applied-for mark continuously through its "legal predecessors," namely, Mason Remy and Pepe Remy, and that its president, Neal Chase, is their heir. (*NSA's Reply to BPUPC and SIBC Ex. 14 (p. 7)*).

#### **SIBC and BPUPC Have Notice of the Permanent Injunction**

108. SIBC and BPUPC had notice of the injunction because Leland and Opal Jensen had notice of the injunction. *Glad Tidings*—a newsletter published by the Remyites—was

mailed to the addresses listed on the NSA-UHG mailing lists. (*NSA's Reply to BPUPC and SIBC, Ex.15 (p.31-38, 40)*).

109. [Agreed] The status of this litigation appeared repeatedly in *Glad Tidings*, including reference to the 1966 Judgment and its terms.

110. In addition, separate announcements containing the terms of the injunction were sent to "all believers" in a letter from the NSA-UHG. (*NSA's Reply to BPUPC and SIBC, Ex. 34*).

111. Leland and Opal Jensen were on these mailing lists every year and had notice of the Judgment. Furthermore, a letter to Marilyn Meyer, dated June 7, 1967, demonstrates that the Jensens corresponded with the former NSA-UHG board members even after the injunction and resulting dissolution of the NSA-UHG. (*NSA's Reply to BPUPC and SIBC, Ex.35*). The envelope to Opal Jensen's letter demonstrates the NSA-UHG had the Jensens' correct address. *Id.*

112. Mr. Jensen had actual or constructive notice of the injunction based on his involvement with the NSA-UHG, those under its jurisdiction and Mason Remey.

113. Pepe Remey, president of the SIBC, also had notice of the Judgment as Mason Remey's adopted son and care-taker during and after the litigation.

## **E. USES OF NSA'S MARKS BY ALLEGED CONTEMNORS**

### **Joel Marangella, Frank Schlatter and PNBC**

114. Mr. Marangella owns the domain name [www.bahai-guardian.com](http://www.bahai-guardian.com) and is responsible for its content, including designations such as, "Baha'i," "Baha'i Faith," "Baha'i Faith Under the Guardianship," and "The Guardian of the Baha'i Faith." (*NSA's Reply to PNBC, Ex. 42; (Memo. for Rule, Ex. C (p. 12))*).

115. Marangella's authority over PNBC is absolute. Under his leadership the group recruits new members through the Internet and attempts to draw members away from NSA, while using NSA's marks without authorization.

116. His above-mentioned Web site links to PNBC's official Web site located at [www.rt66.com/~obfusa/council.htm](http://www.rt66.com/~obfusa/council.htm). Frank Schlatter created the [www.rt66.com/~obfusa/council.htm](http://www.rt66.com/~obfusa/council.htm) Web site, provides nearly all of its content, and receives emails at the address advertised on the Web site. (*NSA Reply to PNBC, Ex. 3 (p.19-20); Ex. 9 (p.72)*).

117. The Web site at [www.rt66.com/~obfusa/council.htm](http://www.rt66.com/~obfusa/council.htm) is entitled “Orthodox Baha’i Faith – National Baha’i Council of the United States” and it uses the designations “Baha’i Faith”, “Orthodox Baha’i”, and “Orthodox Baha’i Faith” to refer to its organization.

118. Mr. Schlatter works closely with Mr. Marangella and PNBC in connection with unauthorized uses of NSA’s marks on the Web. In 2004, PNBC also printed a book “The Dispensation of Baha’u’llah” under the mark “National Baha’i Council of the United States.” (*Reply to PNBC, Ex.50*).

119. One of the stated goals behind using Web sites that incorporate the NSA’s marks is to increase the likelihood that NSA’s enrolled members will mistakenly “stumble-upon” PNBC’s content on the Web. (*NSA Reply to PNBC, Ex. 49*). Moreover, PNBC’s unauthorized uses of NSA’s marks puts prospective new members at great risk of confusion.

120. PNBC’s use of NSA’s marks have apparently led to the confusion of an Iranian facing deportation, which may have had life-altering effects for that individual. (*NSA Reply to PNBC, Ex. 51*).

**SIBC’s and BPUPC’s Unauthorized Uses of NSA’s Marks**

121. SIBC and BPUPC have filed trademark applications in the United States Patent and Trademark Office, based on actual use, for marks confusingly similar to the NSA’s marks, namely, BAHA’IS UNDER THE PROVISIONS OF THE COVENANT (U.S. Ser. Nos. 78/583,191 & 78/881,166), UNIVERSAL HOUSE OF JUSTICE (U.S. Ser. No. 78/634,554), and UHJ (U.S. Ser. No. 78/634,558). (*Memo. for Rule, Ex. C-2*).

122. SIBC’s Web site is located at domain name [uhj.net](http://uhj.net). BPUPC’s Web site is located at [bupc.org](http://bupc.org).

123. The home page of the [uhj.net](http://uhj.net) Web site features a banner stating, “The Official Website of the Universal House of Justice.”

124. NSA owns an incontestable U.S. trademark registration for THE UNIVERSAL HOUSE OF JUSTICE, first used in connection with publications on October 12, 1964, with registration issuing on November 30, 1965.

125. Although SIBC is located in rural Montana, its [www.uhj.net](http://www.uhj.net) Web site bears an image of the Shrine of the Bab, which is located on Mount Carmel at the Baha’i World Centre in Haifa, Israel, in the vicinity of the Seat of the Universal House of Justice.

126. The SIBC Web site provides a button entitled “Contact the UHJ” which produces an email address, info@uhj.org. NSA has obtained several e-mails evidencing actual confusion caused by the SIBC’s www.uhj.net Web site. (*NSA’s Reply to BPUPC and SIBC, Ex. 28*).

127. SIBC’s Web site contains messages such as “the mouth of the Beast is the President of the United States” and “the mouth of the false prophet is the Pope.” It further states that Saddam Hussein, George W. Bush, and the Pope are “three foul spirits like frogs,” “corrupt,” and “demonic” and that Saddam Hussein, George W. Bush, and the Pope are “going to assemble the kings of the world to the great battle of Armageddon.” The article describes the United Nations as “the Seat of the Beast.” SIBC attributes such messages to “the Baha’i Faith” and the “Universal House of Justice.”

128. BPUPC’s site at bupc.org displays the prominent title, “The Baha’is Under the Provisions of the Covenant.” Immediately below this title, it states “Official Website.” *Memo. for Rule, Ex. C; NSA’s Reply to BPUPC and SIBC, Ex. 30*. Further, bupc.org links to a Web site at the nostradamusprophecy.org domain name, which, until recently, contained a prominent image of the World Trade Tower disaster and prophesizing involving Saddam Hussein and Osama bin Laden, as well as a prominent hyperlink to SIBC’s uhj.net site. *NSA’s Reply to BPUPC and SIBC, Ex. 2, ¶¶ 4-11; Ex. 31*. Articles at the site are attributed to current SIBC president Neal Chase. *NSA’s Reply to BPUPC and SIBC, Ex. 31*

129. The bupc.org web site contains a link to the “Great Pyramid” which, until recently, led the Internet user to a Web page advertising “swingers and orgies.” *NSA’s Reply to BPUPC and SIBC, Ex. 2 at ¶¶ 10-11*. While this contempt proceeding has been pending, a video of SIBC and BPUPC President Neal Chase appeared on Youtube.com advertising the uhj.net and bupc.org Web sites. *NSA’s Reply to BPUPC and SIBC, Ex. 25 (p. 106:20-107:19); Ex. 32 (p.5)*.

### III. NSA’S PROPOSED CONCLUSIONS OF LAW

#### A. The Governing Legal Principles

1. Federal Rule of Civil Procedure 65(d), which codified common-law principles regarding privity, provides: “Every order granting an injunction . . . is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.”

2. The Supreme Court has explained that this rule “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).

3. Rule 65(d) 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. Thus, an injunction against a corporation extends, inter alia, to the corporation’s officers, agents, and employees. *Reich v. Sea Sprite Boat Co.*, 50 F.3d 413, 417 (7th Cir. 1995) (“An order issued to a corporation is identical to an order issued to its officers, for incorporeal abstractions act through agents.”).

4. 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 Syst., Inc. v. DEV Indust., Inc.*, 91 F.3d 914, 919 (7th Cir. 1996). Further, the court observed that “the reach of an injunction will accord with its purpose(s), subject to the limitations of due process.” *Rockwell*, 91 F.3d at 920.

5. 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).

6. As one court aptly explained in the context of a civil contempt proceeding: “Although directed at AdCon [the enjoined party], the injunction did not necessarily lapse with the cessation of AdCon as a working business. An injunction may survive the dissolution of the corporation at which it was directed and continue to bind any successor in interest to the original defendant.” *Additive Controls & Measurement Systems, Inc. v. Flowdata, Inc.*, 154 F.3d 1345, 1351 (Fed. Cir. 1998).

7. Furthermore, 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 (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” and that a successor in interest to the subject matter of the decree will be bound under principles of privity).

8. This rule serves a salutary purpose in that it prevents an enjoined defendant 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 Co.*, 324 U.S. at 14.

9. Relevant authority demonstrates how courts have applied these principles. For example, in *ICC v. Rio Grande Growers Cooperative*, 564 F.2d 848 (9th Cir. 1977), an injunction was issued against Rio Grande, a company for which Stan Anderson was the managing agent. Mr. Anderson created a new corporation called San Joaquin Valley Growers Corporation, Inc. Mr. Anderson operated San Joaquin in much the same way that he operated Rio Grande. The district court held that both Mr. Anderson and the new 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. To the same effect, *see Additive Controls & Measurement Systems, Inc.*, 154 F.3d at 1354 (“courts 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.”); *People of State of New York 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”).

10. A federal court has jurisdiction over contemnors of its orders pursuant to FED. R. CIV. P. 65(d) if the contemnor is bound by the judgment directly or through privity. *See e.g., Chicago Tribune Co. v. U.S. Dept. of Health and Human Servs., et al.*, No. 95 C. 3917, 1999 U.S. Dist. LEXIS 6848, at \*13-14 (N.D. Ill. April 30, 1999). This Court also has jurisdiction over nonparties because Federal Rule 65(d) 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 id.*

## **B. The Alleged Contemnors Are Bound**

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

11. Joel B. Marangella’s role in the NSA-UHG and on behalf of Remy’s organization 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.”

### **Franklin Schlatter Is Bound By The Permanent Injunction**

12. Franklin Schlatter was an officer in the NSA-UHG and held multiple leadership positions in the Remy following. As such, 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 Local Spiritual Assemblies, groups, individuals, or any of them.”

### **PNBC Is Bound By The Permanent Injunction**

13. PNBC is bound by the Judgment because an injunction may bind nonparties "who are successors in interest to parties named in the injunction, with respect to the subject matter of the injunction." *Rockwell*, 91 F.3d at 920. Moreover, PNBC was formed to carry on the enjoined activity. *Panther Pumps*, 566 F.2d at 12; *see also Vacco v. Operation Rescue Nat'l*, 80 F.3d 64, 71 (2d Cir. 1996); *Chanel Indus., Inc. v. Pierre Marche, Inc.*, 199 F. Supp. 748, 75253 (E.D. Mo. 1961).

14. PNBC's affiliation with Marangella and Schlatter, who are subject to the injunction, and the fact that PNBC's Secretary and three of its other board members, and several

other followers, are subject to the injunction, leaves no doubt that PNBC is bound by the Judgment. NSA-UHG was the legal representative of its adherents regarding the matters resolved in the Judgment. *NSA's Reply to PNBC, Exhibit 41 at ¶ 6* (stating "said plaintiff corporation consists of the members of the Baha'i Faith resident within the United States of America who have expressed their belief in all the tenets of said faith, including the principle known as 'the hereditary guardianship.'"); *see also Memo. for Rule at p. 5.*

**SIBC and BPUPC Are Bound By The Permanent Injunction**

15. The SIBC and BPUPC have admitted privity by claiming to be the legal successors of Mason Remey in sworn statements in Montana state court and in submissions to the United States Patent and Trademark Office. These statements are binding as party-opponent judicial admissions. *See, e.g., U.S. v. Guyton*, 36 F.3d 655, 658 (7th Cir. 1994); *U.S. v. Hubbard*, 22 F.3d 1410, 1417 (7th Cir. 1994) (holding statements meeting the requirements for a party admission are admissible as substantive evidence for the fact stated); *City Nat'l Bank v. U.S.*, 907 F.2d 536, 544 (5th Cir. 1990) (noting courts can appropriately treat statements in briefs as binding judicial admissions of fact); *U.S. v. McGee*, 189 F.3d 626, 632 (7th Cir. 1999) (noting that the statements need not have been against the party's interest when they were made); *U.S. v. Reed*, 227 F.3d 763, 770 (7th Cir. 2000); *U.S. v. Harris*, 914 F.2d 927, 931-32 (7th Cir. 1990) (describing policy considerations relevant to attorney admissions).

16. In attempting to convince the United States Patent and Trademark Office to grant them trademark registrations, SIBC and BPUPC each filed sworn documents in the United States Patent and Trademark Office claiming first use dates that depended on their legal privity with several predecessors in interest, including Mason Remey. SIBC and BPUPC cannot expect to receive the benefits of succeeding to Mason Remey without the burdens, such as the Permanent Injunction.

17. Leland Jensen was subject to the Permanent Injunction based on his involvement and positions of leadership in the NSA-UHG. Jensen remained bound by the Permanent Injunction after the NSA-UHG dissolved. *See Walling*, 321 U.S. at 674 (stating an injunction survives the dissolution of the corporate defendants and remains enforceable against persons who are bound by the injunction).

18. NSA-UHG was the legal representative of Leland Jensen and Opal Jensen regarding the matters resolved in the Judgment. *NSA's Reply to BPUPC and SIBC, Ex. 23 at ¶ 6*

(stating “said plaintiff corporation consists of the members of the Baha’i Faith resident within the United States of America who have expressed their belief in all the tenets of said faith, including the principle known as ‘the hereditary guardianship.’”)

19. SIBC and BPUPC are bound by the Judgment because an injunction may bind nonparties “who are successors in interest to parties named in the injunction, with respect to the subject matter of the injunction.” *Rockwell*, 91 F.3d at 920. Moreover, both entities were formed to carry on the enjoined activity, namely promoting Mason Remey’s claims under NSA’s marks. *Panther Pumps*, 566 F.2d at 12; *see also Vacco*, 80 F.3d at 71 (2d Cir. 1996); *Chanel Indus.*, 199 F. Supp. at 752-53 (E.D. Mo. 1961). By stating that they succeeded in interest, by virtue of Mason Remey’s use of the marks, SIBC and BPUPC have admitted that they are successors in interest to the very subject matter of the Permanent Injunction. SIBC’s and BPUPC’s work with and legal identification with Leland Jensen, who was subject to the injunction, demonstrates that the alleged contemnors are bound by the Judgment.

### **C. Violations Of The Permanent Injunction**

20. The unauthorized use by the alleged contemnors, as outlined below, violates the terms of the Permanent Injunction and enables the contemnors to trade upon and appropriate to themselves the goodwill developed by NSA through the use of NSA’s marks, names and symbols.

21. Furthermore, the alleged contemnors’ violations are far from the “safe distance” required for past infringers. *See, e.g., World’s Finest Chocolate, Inc. v. World Candies, Inc.*, 409 F. Supp. at 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 (7th Cir. 1954) quoting *Broderick & Bascom Rope Co. v. Manoff*, 41 F. 2d 353, 354 (6th 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.”).

#### **Joel B. Marangella Violates the Permanent Injunction**

22. Joel B. Marangella is in violation of the Permanent Injunction. He owns the domain names www.bahai-guardian.com and he is responsible for its content, including

designations such as, “Baha’i”, “Baha’i Faith”, “Guardian of the Baha’i Faith” and “Baha’i Faith Under the Hereditary Guardianship.” Under his leadership, the group actively recruits new members while making unauthorized use of NSA’s marks.

**Frank Schlatter Violates the Permanent Injunction**

23. Frank Schlatter’s actions violate the terms of the Permanent Injunction. Schlatter uses the terms “Orthodox Baha’i Faith – National Baha’i Council of the United States,” “Baha’i Faith”, “Orthodox Baha’i”, and “Orthodox Baha’i Faith” on the Web site he maintains in plain violation of the terms of the Judgment. The Web site, located at [www.rt66.com/~obfusa/council.htm](http://www.rt66.com/~obfusa/council.htm), creates confusion and/or mistake as to the source or sponsorship of the material contained therein. Further, Schlatter’s use creates the erroneous impression that the Web site and the articles therein originate with NSA.

**The PNBC Violates the Permanent Injunction**

24. PNBC is in violation of the Permanent Injunction in that it uses NSA’s marks to promote its goods and services and its official Web site at [www.rt66.com/~obfusa/council.htm](http://www.rt66.com/~obfusa/council.htm), which contains many uses of the marks. Links that send the Internet user to articles authored by members of the PNBC employ NSA’s marks or marks confusingly similar to NSA’s marks in their titles such as “Baha’i Faith,” “Orthodox Baha’i,” and “Orthodox Baha’i Faith.” These designations have been chosen with the hope that NSA members mistakenly “stumble upon” the Web site and they place the otherwise uninformed Internet user at great risk of confusion. PNBC’s use of NSA’s marks has caused confusion and mistake as to the source of those services. At least one Iranian who was seeking assistance in a deportation issue was confused and misled by PNBC’s use of the Baha’i marks.

**SIBC and BPUPC Violates the Permanent Injunction**

25. SIBC’s and BPUPC’s response failed to deny NSA’s allegations regarding violations of the Judgment. Pleadings in a civil contempt proceeding must comply with FED. R. CIV. P. 8. *See Shakman v. Democratic Organization of Cook County*, 533 F.2d 344, 352 (7th Cir. 1976). Procedurally, the alleged contemnors failed to deny so the charge of violation is deemed admitted.

26. Further, the actions of SIBC and BPUPC publishing efforts violate the plain terms of the Permanent Injunction. SIBC’s Web site located at [www.uhj.net](http://www.uhj.net) features a banner highlighting NSA’s “Universal House of Justice” mark. In addition, the Web site bears an image

of the Shrine of Bab—one of the Baha’i Faith’s most sacred temples. The UNIVERSAL HOUSE OF JUSTICE and the Shrine of the Bab are “trademark representation[s] of the Baha’i House of Worship”, the unauthorized use of which is clearly prohibited in the Judgment. Accordingly, use of these marks by the SIBC and BPUPC is in blatant violation of the plain terms of the injunction. Further, messages on uhj.net concerning President Bush, the Pope, United Nations and foreign governments which SIBC attributes to “the Baha’i Faith” and the “Universal House of Justice” are damaging to NSA’s reputation and credibility. These actions further violate the injunction.

27. The content on BPUPC’s site at bupc.org is a violation of the Permanent Injunction as well. The Web site displays many unauthorized uses of NSA’s marks and links to additional Web sites that damage NSA’s reputation.

**D. The Alleged Contemnors’ Defenses Fail**

28. It is well-settled that “the terms of the judgment or of the injunction cannot be attacked in a civil contempt proceeding as they are *res judicata*.” *See World’s Finest*, 409 F. Supp. at 844 (N.D. Ill. 1976) (rejecting alleged contemnor’s trademark invalidity defense based upon clear rule barring re-litigation of merits underlying judgments); *see also Reich v. Sea Sprite Boat Co. Inc.*, 50 F.3d 413, 416 (7th Cir. 1995) (finding alleged contemnor’s defense that he deemed the Court’s order invalid to be “ludicrous.”).

29. Even as of 1948, the Supreme Court stated that it had “long ago settled” the issue that a final order becomes *res judicata* and is not subject to collateral attack in contempt proceedings. *See Maggio v. Zeitz*, 333 U.S. 56, 68-69 (1948) (“when it has become final, disobedience cannot be justified by re-trying the issues as to whether the order should have issued in the first place”).

30. This rule is unvarying. *See e.g., Federated Dept. Stores, Inc. v. Moitie*, 452 U.S. 394, 398 (1981) (reversing Court of Appeals and declining to hold that the consequences of *res judicata* as applied to a “final, unappealed judgment on the merits (would be) altered by the fact that the judgment may have been wrong or rested on a legal principle subsequently overruled in another case.”).

31. The NSA-UHG filed this case, lost it, and the decision was not appealed. Accordingly, the First Amendment-related defenses fail because a final order becomes *res*

*judicata* and is not subject to collateral attack in contempt proceedings. *See Maggio*, 333 U.S. at 68-69.

32. The fair use defense fails under principles of *res judicata* in this contempt proceeding. The alleged contemnors are using marks that are specifically referenced in the injunction and others that are within its scope. When a defendant and its privies are enjoined from using a plaintiff's trademark, they are also barred from using words in "close imitation or resemblance to the mark." *See World's Finest*, 409 F. Supp. at 845. The alleged contemnors are also not using NSA's marks in good faith, as required by the fair use defense.

33. Laches is an equitable doctrine that "will not bar injunctive relief where a defendant adopted the tradename with knowledge of a plaintiff's rights [in a tradename] . . . ." *Kraft Foods Holdings, Inc. v. Helm*, 205 F. Supp. 2d 942, 955 (N.D. Ill. 2002); *see also Bunn-O-Matic Corp. v. Bunn Coffee Service, Inc.*, 88 F. Supp. 2d 914 (C.D. Ill. 2000) (holding defendant cannot raise defenses of laches and acquiescence to challenge plaintiff's request for injunctive relief because defendant intentionally infringed plaintiff's trademarks.).

34. This Court's 1966 Judgment rendered a permanent injunction. The alleged contemnors are fully aware of the Permanent Injunction and NSA's rights. In such circumstances, equity will not come to the aid of the alleged contemnors. To the contrary, considering the alleged contemnors' willful violations their resort to equity is entirely misplaced. *Menendez v. Holt*, 128 U.S. 514, 523 (1888).

35. Moreover, laches does not apply in likelihood of confusion cases where confusion is inevitable. *See e.g., Coach House Restaurant, Inc. v. Coach and Six Restaurants, Inc.*, 934 F.2d 1551, 1564 (11th Cir. 1991). This is so because the "public interest in preventing confusion around the marketplace is paramount to any inequity caused by [unreasonable delay]." *See id.* Thus, laches will not apply where the marks are identical and the goods are essentially the same. *James Burrough Ltd. v. Sign of the Beefeater, Inc.*, 572 F.2d 574 (7th Cir. 1978) (*per curiam*).

36. Here, confusion is inevitable because the alleged contemnors are using marks identical to NSA's marks in connection with religious services and publications; therefore, the defense of laches fails.

37. The activities of the alleged contemnors were localized, remote, and exceedingly small scale, such that NSA did not have a basis for pursuing action until recently, when the alleged contemnors began seeking to raise their profile through the Internet. Once NSA became

aware of these changed circumstances, it objected. NSA's position is consistent with the theory of progressive encroachment. According to this doctrine, a trademark owner may tolerate *de minimis* infringements and still have the right to act promptly when a junior user of a mark raises the visibility of their use of the mark. *AM General Corp. v. DaimlerChrysler Corp.*, 311 F.3d 796, 823 (7th Cir. 2002).

38. The statute, 735 ILCS 5/12-108, is inapplicable in the case of a permanent trademark injunction, such as the Judgment. The unclean hands defense is unfounded, and without factual or evidentiary support and has no nexus to the issues in the proceeding. Where an unclean hands theory is only collaterally related to the trademarks at issue, the defense cannot operate to bar suit. See *R.J.Reynolds Tobacco Co. v. Premium Tobacco Stores, Inc.*, 2001 WL 747422 \* 2 (N.D. Ill. June 29, 2001) (granting motion to strike unclean hands defense). *Estate of John Lennon v. Screen Creations, Ltd.*, 939 F. Supp. 287 (S.D.N.Y. 1996) cited in support of this unclean hands defense has no bearing on the facts or law of this case.

#### IV. CONCLUSION

39. NSA is entitled to enforce the Permanent Injunction.

40. NSA is entitled to an Order finding each alleged contemnor bound by and in violation of the Permanent Injunction.

41. Effective 60 days from the date of this Court's Order, each of the alleged contemnors is required to be in compliance with the Permanent Injunction. At or before the end of the 60 day period, each contemnor is directed to file with the Court and serve upon NSA, a report in writing and under oath setting forth, in detail, the manner and form in which each alleged contemnor has complied with the Permanent Injunction.

Respectfully submitted,

NATIONAL SPIRITUAL ASSEMBLY OF THE  
BAHA'IS OF THE UNITED STATES

Dated: November 30, 2007

By: /s/ Christopher M. Dolan

Jeffery A. Handelman (#6188010)

Philip A. Jones (#6217213)

Christopher M. Dolan (#6269648)

Brinks Hofer Gilson & Lione

NBC Tower, Suite 3600  
455 N. Cityfront Plaza Drive  
Chicago, Illinois 60611-5599  
Telephone: 312-321-4200

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

**CERTIFICATE OF SERVICE**

I hereby certify that on the 30th day of November 2007, 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