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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

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|---|---|-----------------------|
| FELDENKRAIS GUILD OF NORTH AMERICA, an Oregon Not-For-Profit Corporation, |) | |
| |) | |
| Plaintiff, |) | Case No. 18-cv-02340- |
| |) | |
| vs. |) | |
| |) | |
| FRANK WILDMAN, an Individual and FELDENKRAIS MOVEMENT INSTITUTE, a California Not-For-Profit Corporation, |) | |
| |) | |
| Defendants. |) | |
| |) | |

1 This Court, having read and considered the Complaint on file in this action by
2 FELDENKRAIS GUILD OF NORTH AMERICA (“FGNA”), FGNA’s Application for Temporary
3 Restraining Order, Memorandum of Points and Authorities, Declaration of Nancy Haller and
4 attached exhibits filed in support thereof, for a temporary restraining order, and an order to show
5 cause why a preliminary injunction should not issue against Defendants FRANK WILDMAN and
6 FELDENKRAIS MOVEMENT INSTITUTE (“Defendants”), being fully advised in the premises,
7 and GOOD CAUSE appearing therefore, hereby finds and orders as follows, and makes the
8 following findings of fact and conclusions of law:

9 **FINDINGS OF FACT**

10 1. FGNA is a not-for-profit membership association that promotes and supports the
11 Feldenkrais Method[®] of somatic education and its practitioners. The purposes of the FGNA include,
12 without limitation, increasing public awareness of the Feldenkrais Method[®] of somatic education,
13 certifying and providing opportunities for continuing education of practitioners, and protecting the
14 quality of the Feldenkrais[®] work and research in the effectiveness of the Feldenkrais Method[®] of
15 somatic education.

16 2. FGNA and its predecessors have been using the FGNA Marks since as early as the
17 early 1970s, and first obtained trademark registrations covering any of the FGNA Marks in 1985.
18 FGNA first began certifying Feldenkrais[®] practitioners in 1989. Certified Feldenkrais[®] practitioners
19 are allowed to use its trademarks, service marks and certification marks in connection with
20 educational services relating to somatic education, among other services. FGNA and its authorized
21 licensees have continuously used the FGNA's trademarks, service marks and certification marks in
22 connection with these services for decades.

23 3. Only people personally trained by Dr. Feldenkrais, graduates of FGNA accredited
24 training programs, and others who have received authorization from FGNA are eligible to be
25 certified by, to become members of FGNA, and to use the FGNA's trademarks, service marks and
26 certification marks.

27 4. There are about 1300 current members of the FGNA, including over 1150 members
28 offering services in almost every state in the United States.

1 5. In recognition of FGNA's rights in trademarks, service marks and certification marks,
 2 the United States Patent and Trademark Office has issued to it numerous federal trademark
 3 registrations, including the following:

| Mark | Registration No. | Services | Date of Registration |
|-------------------------------------|-------------------------|---|-----------------------------|
| FELDENKRAIS | 1,374,266 | Education services – namely the teaching of individuals and groups of individuals the techniques of bringing about better maturation of the nervous system using the reversible relationship of the muscular and nervous systems to perfect strength and flexibility of its skeleton and muscles as well as to create a profound change in the self-image and the quality of self-direction. | December 3, 1985 |
| FELDENKRAIS METHOD | 1,982,044 | Educational services, namely conducting individual sessions, classes, courses, workshops, and/or seminars for teaching the techniques of bringing about better maturation of the nervous system using the reversible relationship of the muscular and nervous systems to perfect strength and flexibility of its skeleton and muscles as well as to create a profound change in the self-image and the quality of the self-direction. | June 25, 1996 |
| GUILD CERTIFIED FELDENKRAIS TEACHER | 2,187,073 | Individual sessions, classes, courses, workshops, and/or seminars for teaching the techniques of bringing about better maturation of the nervous system using the reversible relationship of the muscular and nervous systems to perfect strength and flexibility of its skeleton and muscles as well as to create a profound change in the self-image and the quality of the self-direction. | September 8, 1998 |
| AWARENESS THROUGH MOVEMENT | 1,353,317 | Educational services – namely the teaching of individuals and groups of individuals how to train their bodies to perfect all possible forms and configurations to change strengths and flexibility of the skeleton and muscles as well as to create a profound change in the self-image and the quality of | August 6, 1985 |

| Mark | Registration No. | Services | Date of Registration |
|------------------------|------------------|--|----------------------|
| | | self-direction. | |
| ATM | 4,011,600 | Educational services consisting of guided movement lessons. | August 16, 2011 |
| FUNCTIONAL INTEGRATION | 1,286,531 | Educational services – namely the teaching of individuals to lean through hands-on manipulation techniques how to non-verbally reorganize the muscular and nervous systems to allow for improved functioning thereof and to allow for perfecting strength, flexibility and ease of movement. | July 17, 1984 |
| FI | 4,184,962 | Educational services consisting of guided movement lessons. | August 7, 2012 |

6. Each of these trademark registrations are current, in force and are incontestable under 15 U.S.C. § 1065. Through the extensive and widespread use of its marks, the FGNA's trademarks, service marks, certification marks and related common law marks have acquired significant and extensive good will.

7. In addition, FGNA owns other trademarks, service marks and certification marks. For example, FGNA owns the certification mark GCFT^{CM}, an acronym for Guild Certified Feldenkrais Teacher[®]. Relevant consumers recognize the use of GCFT as certifying that the user is a qualified Feldenkrais[®] Teacher. Additionally, FGNA owns the certification mark Guild Certified Feldenkrais Practitioner^{CM} and GCFP^{CM}, its acronym. Relevant consumers recognize the use of these marks as certifying that the user is a qualified Feldenkrais[®] Practitioner. As used herein, the term "FGNA Marks" is intended to include, without limitation, all of the marks identified in ¶¶ 5 and 7.

8. Through the extensive and wide-spread use of the FGNA's marks and the maintenance of the high quality of the services offered in connection therewith, especially through practitioner certification, the FGNA's marks have acquired significant and extensive goodwill. They are distinctive as a source identifier and certification indicator in connection with the FGNA providing of services and licensing of others to use its marks in connection with the services identified in those registrations and as indicating that the user has met the FGNA's rigorous

1 requirements.

2 9. The FGNA regulates the quality of those persons holding themselves out as
3 practitioners and trainers of the Feldenkrais Method[®] of somatic education by controlling the use of
4 the marks. The FGNA has established rules for those who may use the FGNA Marks.

5 10. To be eligible to use the FGNA Marks, persons must provide verification of
6 graduation from a professional Feldenkrais Method[®] training program that has been accredited by
7 FGNA or another recognized international board under approved policies; completion of
8 a “crossover plan” approved by the North American Training Accreditation Board (an entity related
9 to FGNA that is responsible for accrediting training programs); or have been granted an exception to
10 those requirements by the FGNA Board of Directors.

11 11. Applicants must complete continuing competence requirements, including self-
12 assessment, creation of learning plan, and completion of twenty hours annually of appropriate
13 continuing education. Applicants must complete 100 hours annually of professional practice.

14 12. Applicants must agree annually to comply with the following FGNA policies:
15 “E2.3.2.1 The *Feldenkrais Method*[®] of Somatic Education Standards of Practice; E2.3.3.2 Code of
16 Professional Conduct; and E2.4.2.1-ED FGNA Service Marks, Certification Marks and
17 Trademarks.”

18 13. Finally, applicants must complete the applicable form and pay the applicable fee.

19 14. Defendant Wildman was a longtime FGNA member who was authorized to use the
20 FGNA Marks by virtue of having studied at and graduated from the 1977 San Francisco training. He
21 was certified by the FGNA as a Feldenkrais[®] practitioner who was permitted to use the FGNA
22 Marks. Every year, he has agreed to abide by the FGNA code of conduct and was obligated to abide
23 by it. Defendant Wildman was president of FGNA during 1997. He was the chair of the FGNA
24 committee that wrote the FGNA standards of practice. From 1978 through January 22, 2018,
25 Defendant Wildman was a FGNA member and from 1989 through January 22, 2018, he was
26 certified by the FGNA as a Feldenkrais[®] Practitioner who was permitted to use the FGNA marks.
27 All of the FGNA Marks at issue were in existence and in use at the time he was the President of
28 FGNA. Many of the FGNA Marks had been registered for many years before he was president of

1 FGNA. Defendant Wildman is intimately familiar with the FGNA, its procedures and rights to use
2 the valuable FGNA Marks.

3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 19. Defendant Wildman is the owner, operator, producer and manager of a website at the
15 url FeldenkraisInstitute.org. Defendant Wildman uses this website to market and promote himself
16 and Defendant Feldenkrais Movement Institute. [REDACTED]
17 [REDACTED] The
18 required changes have not been made, that website contains numerous unauthorized uses of the
19 FGNA Marks.

20 20. Defendant Wildman is the owner, operator, producer and manager of a website at the
21 url FrankWildmanMovement.org. Defendant Wildman uses this website to market and promote
22 himself. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
23 [REDACTED] That website continues to include unauthorized uses of the
24 FGNA Marks.

25 21. Defendant Wildman markets and promotes himself through various social media and
26 social networking platforms such as Facebook, YouTube, and LinkedIn. Each of Defendant
27 Wildman's pages on these social media and social networking platforms continue to contain
28 numerous unauthorized uses of the FGNA Marks.

1 22. Defendant Wildman is promoting himself at an entity called 1440 Multiversity, a
2 conference center in Scotts Valley, California, in violation of FGNA's trademark rights and in
3 violation of the Agreement. Defendant Wildman's biography for the 1440 Multiversity program
4 states that he is a "Feldenkrais Method[®] expert." Defendant Wildman's biography for the 1440
5 Multiversity program uses the Feldenkrais Method[®] trademark five times in one paragraph.

6 [REDACTED]
7 [REDACTED]
8 24. FGNA has carried out all of its obligations under the Agreement.

9 25. Both Defendants' services and FGNA's and its licensee's services are marketed and
10 promoted through the Internet, key word searching, social media and social networking platforms
11 and direct mail, and are in direct competition with each other.

12 26. FGNA has invested significant resources to advertise its and its licensee's educational
13 services offered in connection with the FGNA Marks. FGNA is the beneficiary of many third party
14 stories and articles providing significant and positive press coverage to the FGNA services resulting
15 in the development of significant goodwill for the FGNA Marks.

16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 28. Defendants' improper use of the FGNA Marks has caused, and will continue to cause,
20 damaging and actual confusion among the public as to whether Wildman is affiliated with,
21 sponsored or endorsed by FGNA. FGNA has received numerous complaints about Wildman's
22 ongoing use of the FGNA Marks, and his continuing to hold himself out as being associated with
23 FGNA. Wildman's continued use of the FGNA Marks is harming the value of the FGNA Marks.

24 [REDACTED]
25 [REDACTED]
26 29. FGNA will suffer irreparable harm, including through the injury to its reputation, if
27 Defendants are allowed to use the FGNA Marks. FGNA will lose the ability to control its reputation
28 if Defendants are allowed to offer, promote, advertise and/or conduct services the FGNA Marks.

1 This loss of control is not recompensable by monetary damages. The quality of the services offered
2 by Defendants is solely controlled by Defendants and is beyond FGNA's control. The quality of
3 those services is damaging FGNA's reputation.

4 30. Any finding of fact herein that is actually a conclusion of law shall be so considered
5 and construed.

6 **CONCLUSIONS OF LAW**

7 31. FGNA is likely to prevail on its trademark infringement claims, related state law
8 unfair competition claims, and breach of contract claims at trial.

9 32. As a result of Defendants' conduct, FGNA is likely to suffer immediate and
10 irreparable harm loss, damage, and injury, unless FGNA's Application for Relief is granted.

11 33. The balance of potential harm to Defendants of being prevented from continuing their
12 activities if a temporary restraining order is issued is far outweighed by the potential harm to FGNA,
13 its goodwill and reputation built up in and associated with the FGNA trademarks, service marks and
14 certification marks, and to its reputation if a temporary restraining order is not issued.

15 34. The public interest favors issuance of a temporary restraining order to protect
16 FGNA's interests in and to the FGNA trademarks, service marks and certification marks, and to
17 protect the public from being harmed, deceived and defrauded by Defendants' passing off of its
18 services as authorized by or certified by, endorsed, or associated with FGNA.

19 35. Any conclusion of law herein that is actually a finding of fact shall be so considered
20 and construed.

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1 **ORDER**

2 Based on the foregoing findings of fact and conclusions of law, FGNA’s Application is
3 hereby GRANTED as follows (the “Order”):

4 **I. TEMPORARY RESTRAINING ORDER**

5 **A. IT IS HEREBY ORDERED,**

6 1. That Defendants Frank Wildman and Feldenkrais Movement Institute, their owners,
7 affiliates, officers, directors, managers, agents, servants, employees, and any and all persons in
8 active concert or participation with any of them (the "Restrained Persons"), are temporarily enjoined
9 and restrained from:

10 a) Using without the authorization of FGNA, any of FGNA's trademarks, service
11 marks, certification marks, logos, and trade names, including, but not limited to, the marks
12 “FELDENKRAIS”, “FELDENKRAIS METHOD”, “FUNCTIONAL INTEGRATION”, “FI”,
13 “AWARENESS THROUGH MOVEMENT”, “ATM”, "GUILD CERTIFIED FELDENKRAIS
14 TEACHER", “GCFT” "GUILD CERTIFIED FELDENKRAIS PRACTITIONER", and "GCFP" (the
15 "FGNA Marks") or any other name, logo, or mark that includes the designation "FELDENKRAIS"
16 or that is confusingly or deceptively similar to any of the FGNA Marks, either alone or in
17 conjunction with other words or symbols, as part of any trademark, service mark, certification mark,
18 logo, trade name, corporate name, assumed name, domain name, website, email address, keywords,
19 or metatags on or in relation to any goods or services marketed, promoted, advertised, sold, offered
20 for sale or provided by the defendants, or in any other manner, including without limitation, any
21 marketing literature, printed or electronic, on websites, on social media sites or on social networking
22 sites; and

23 b) Using, authorizing, permitting, or encouraging others to use on either of
24 Defendants' behalf, the FGNA Marks in any form or manner that would tend to identify or associate
25 Defendants or their business or services with FGNA, including, without limitation, in the marketing,
26 promotion, advertising, identification, sale or offer for sale of goods or services, or in any other
27 manner.

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1 **II. ORDER TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION**
2 **SHOULD NOT ISSUE AND ORDER OF NOTICE**

3 A. Defendants are hereby **ORDERED** to show cause before this Court in Courtroom One of
4 the United States District Court for the Northern District of California at Oakland Courthouse, 1301
5 Clay Street, Oakland, CA 94612 on May 15, 2018, at 2:00 p.m. or at such other
6 time that this Court deems appropriate, why a preliminary injunction, pursuant to FRCP 65(a),
7 should not issue restraining and enjoining the Restrained Persons from engaging in any of the
8 following acts or omissions pending the final hearing and determination of this action:

9 1. That Defendants, Frank Wildman and Feldenkrais Movement Institute, their owners,
10 affiliates, officers, directors, managers, agents, servants, employees, and any and all persons in
11 active concert or participation with any of them, be preliminarily enjoined and restrained from:

12 a) Using without the authorization of FGNA, any of FGNA's trademarks, service
13 marks, certification marks, logos, and trade names, including, but not limited to, the marks
14 "FELDENKRAIS", "FELDENKRAIS METHOD", "FUNCTIONAL INTEGRATION", "FI",
15 "AWARENESS THROUGH MOVEMENT", "ATM", "GUILD CERTIFIED FELDENKRAIS
16 TEACHER", "GCFT" "GUILD CERTIFIED FELDENKRAIS PRACTITIONER", and "GCFP" (the
17 "FGNA Marks") or any other name, logo, or mark that includes the designation "FELDENKRAIS"
18 or that is confusingly or deceptively similar to any of the FGNA Marks, either alone or in
19 conjunction with other words or symbols, as part of any trademark, service mark, certification mark,
20 logo, trade name, corporate name, assumed name, domain name, website, email address, keywords,
21 or metatags on or in relation to any goods or services marketed, promoted, advertised, sold, offered
22 for sale or provided by the defendants, or in any other manner, including without limitation, any
23 marketing literature, printed or electronic, on websites, on social media sites or on social networking
24 sites; and

25 b) Using, authorizing, permitting, or encouraging others to use on either of
26 Defendants' behalf, the FGNA Marks in any form or manner that would tend to identify or associate
27 Defendants or their business or services with FGNA, including, without limitation, in the marketing,
28 promotion, advertising, identification, sale or offer for sale of goods or services, or in any other

1 manner.

2 **B. IT IS FURTHER ORDERED** that opposing papers, if any, shall be filed electronically with
3 the Court and served on FGNA's Counsel via electronic delivery on or before May 8, 2018.

4 FGNA shall file any Reply papers on or before May 11, 2018.

5 **C. IT IS FURTHER ORDERED** that Defendants are hereby given notice that failure to appear
6 at the show cause hearing scheduled in Paragraph II.A above may result in the imposition of a
7 preliminary injunction against them pursuant to FRCP 65, which may effect immediately upon the
8 expiration of this Order, and may extend throughout the length of the litigation under the terms and
9 conditions set forth in this Order.

10 **III. SECURITY BOND**

11 **A. IT IS FURTHER ORDERED** that FGNA shall place security in the amount of
12 \$ 1,000.00 with the Court, which amount is determined adequate for the payment of any
13 damages any person may be entitled to recover as a result of an improper or wrongful restraint
14 ordered hereunder.

15 **IT IS SO ORDERED.**

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