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15 Attorneys for Plaintiff FELDENKRAIS GUILD OF NORTH AMERICA

16 UNITED STATES DISTRICT COURT  
 17 NORTHERN DISTRICT OF CALIFORNIA  
 18 OAKLAND DIVISION

19 FELDENKRAIS GUILD OF NORTH )  
 20 AMERICA, an Oregon Not-For-Profit )  
 21 Corporation, )  
 22 Plaintiff, )  
 23 vs. )  
 24 FRANK WILDMAN, an Individual, and )  
 25 FELDENKRAIS MOVEMENT INSTITUTE, a )  
 26 California Not-For-Profit Corporation, )  
 27 Defendants. )

Case No. 4:18-cv-02340-YGR

**STIPULATED FINAL JUDGMENT AND  
~~PROPOSED~~ CONSENT ORDER**

1 Plaintiff Feldenkrais Guild of North America (“FGNA”) filed its complaint alleging  
2 trademark infringement and breach of contract, as well as its *ex parte* motion for a temporary  
3 restraining order and order to show cause for a preliminary injunction against defendants Frank  
4 Wildman (“Wildman”) and Feldenkrais Movement Institute (“FMI”). Wildman and FMI are  
5 collectively referred to herein as “defendants.” (Dkt. Nos. 1, 19.) On May 1, 2018, the Court granted  
6 the temporary restraining order and issued its Order to Show Cause Why A Preliminary Injunction  
7 Should Not Issue. (Dkt. No. 26.) The parties filed their response and reply (Dkt. Nos. 33 and 34),  
8 and the matter came on for hearing on May 15, 2018. On May 21, 2018, defendants filed their  
9 answer and counterclaim. (Dkt. No. 37). On May 23, 2018, the Court granted the Motion for  
10 Preliminary Injunction. (Dkt. No. 38.)

11 The parties have resolved their dispute and entered into a written Settlement Agreement. As  
12 part of the resolution of their dispute, the parties have stipulated to request that the Court enter this  
13 Final Judgment and Consent Order and to retain jurisdiction for purposes of enforcing the Settlement  
14 Agreement and this Final Judgment and Consent Order.

15 The Court, having read and considered the papers and pleadings on file, the evidence  
16 submitted in support and in opposition, and the arguments of the parties, the parties’ stipulation to  
17 the Final Judgment and Consent Order and for the reasons stated herein, **GRANTS** and enters the  
18 Stipulated Final Judgment and Consent Order.

19 **I. SUMMARY OF FACTS**

20 FGNA is a not-for-profit membership association that promotes and supports the Feldenkrais  
21 Method<sup>®</sup> of somatic education and its practitioners. (Declaration of Nancy Haller, ¶ 3) (Dkt. No. 19-  
22 1). The purposes of the FGNA include increasing public awareness of the Feldenkrais Method<sup>®</sup> of  
23 somatic education, certifying and providing opportunities for continuing education of practitioners,  
24 and protecting the quality of the Feldenkrais<sup>®</sup> work and research in the effectiveness of the  
25 Feldenkrais Method<sup>®</sup> of somatic education. (*Id.*) FGNA first began certifying Feldenkrais<sup>®</sup>  
26 practitioners in 1989. There are about 1300 current members of the FGNA, including over 1150  
27 members offering services throughout the United States. (*Id.* ¶ 6.)  
28

1           **A. FGNA’s Trademarks, Service Marks, and Certification Marks**

2           FGNA has been using certain trademarks since as early as the early 1970s, and first obtained  
3 trademark registrations covering certain marks in 1985. (*Id.* ¶ 4.) The United States Patent and  
4 Trademark Office have issued numerous federal trademark registrations to FGNA, set forth as  
5 follows:

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7 <b>Mark</b>	8 <b>Registration No.</b>	9 <b>Date of Registration</b>
10           Feldenkrais	1,374,266	December 3, 1985
11           Feldenkrais Method	1,982,044	June 25, 1996
12           Guild Certified Feldenkrais Teacher	2,187,073	September 8, 1998
13           Awareness Through Movement	1,353,317	August 6, 1985
14           ATM	4,011,600	August 16, 2011
15           Functional Integration	1,286,531	July 17, 1984
16           FI	4,184,962	August 7, 2012

17           In addition, FGNA owns other trademarks, service marks, and certification marks. (Haller  
18 Decl. ¶10.) For example, FGNA owns the certification mark GCFT<sup>CM</sup>, an acronym for Guild  
19 Certified Feldenkrais Teacher<sup>®</sup>, the certification mark Certified Feldenkrais Trainer<sup>CM</sup> and its  
20 acronym CFT<sup>CM</sup>, as well as the certification mark Guild Certified Feldenkrais Practitioner<sup>CM</sup> and its  
21 acronym GCFP<sup>CM</sup>. Relevant consumers recognize the use of these marks as certifying that the user is  
22 a qualified Feldenkrais<sup>®</sup> Practitioner or Teacher. (*Id.* ¶ 10.) All of the foregoing marks are  
23 collectively referred to herein as the “FGNA Marks.”

24           FGNA regulates the quality of those persons holding themselves out as practitioners and  
25 trainers of the Feldenkrais Method<sup>®</sup> of somatic education by controlling the use of the marks. The  
26 FGNA has established rules for those who may use the FGNA Marks. (*Id.* ¶¶ 12-16; Exh. D FGNA  
27 Policy E2.4.2.1 FGNA Service Marks, Certification Marks and Trademarks, hereinafter “FGNA  
28 Marks Policy”). Guild Certified Feldenkrais Practitioners, FGNA Professional Members, and  
authorized trainees are granted licenses to use certain of the FGNA Marks, subject to enumerated

1 conditions in the FGNA Marks Policy. (*Id.* ¶ 5.) To be eligible to use the FGNA Marks, persons  
2 must provide verification of graduation from a professional Feldenkrais Method® training program  
3 that has been accredited by FGNA or another recognized international board under approved  
4 policies; completion of a “crossover plan” approved by the North American Training Accreditation  
5 Board (an entity related to FGNA that is responsible for accrediting training programs); or have been  
6 granted an exception to those requirements by the FGNA Board of Directors. (*Id.* ¶ 13.) Members  
7 must complete: (i) continuing competence requirements, including self-assessment, creation of  
8 learning plan; (ii) twenty hours of appropriate continuing education annually; and (iii) 100 hours of  
9 professional practice annually. Members also must agree to comply with FGNA policies.<sup>1</sup> (*Id.* ¶¶ 14-  
10 15.) Finally, new members must complete the applicable form and pay the applicable fee. (*Id.* ¶ 16.)

11 Certified Feldenkrais® Practitioners are allowed to use its trademarks, service marks and  
12 certification marks in connection with educational services relating to somatic education, among  
13 other services. (*Id.* ¶ 4.) FGNA and its authorized licensees have continuously used the FGNA’s  
14 trademarks, service marks and certification marks in connection with these services for several  
15 decades. (*Id.*) Only people personally trained by Dr. Feldenkrais, graduates of FGNA-accredited  
16 training programs, and others who have received authorization from FGNA are eligible to be  
17 certified by, to become members of FGNA, and to use the FGNA’s trademarks, service marks and  
18 certification marks. (*Id.* ¶ 5.)

19 **B. Conduct of Wildman and Feldenkrais Movement Institute**

20 From 1978 to January 22, 2018, defendant Wildman was a FGNA member. He was certified  
21 by FGNA as a Feldenkrais® Practitioner and was authorized to use the FGNA Marks. He agreed and  
22 was obligated to abide by the FGNA code of conduct. Wildman was president of FGNA during  
23 1997, and was the chair of the FGNA committee that wrote the FGNA standards of practice. (*Id.* ¶  
24 17.)

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27 <sup>1</sup> See Haller Decl. Exh. D (“E2.3.2.1 The Feldenkrais Method® of Somatic Education  
28 Standards of Practice; E2.3.3.2 Code of Professional Conduct; and E2.4.2.1-ED FGNA Service  
Marks, Certification Marks and Trademarks.”)

1 Wildman’s relationship with the FGNA ended on January 22, 2018, when the FGNA and  
2 Wildman entered into a confidential agreement<sup>2</sup> amidst allegations of Wildman’s misconduct.  
3 (Haller Decl., Exh. E, “the Agreement.”) Under the four-page Agreement, Wildman acknowledged  
4 that he is no longer a FGNA member, a FGNA Certified Feldenkrais<sup>®</sup> Practitioner, nor a FGNA  
5 Certified Feldenkrais<sup>®</sup> Trainer. (*Id.* §§ 2-4.) Wildman agreed not to teach or practice the  
6 Feldenkrais<sup>®</sup> Method. (*Id.* § 8.) As of the effective date of the Agreement, Wildman agreed to  
7 “refrain from using any FGNA trademarks, service mark, or certification marks.” (*Id.* § 5.) He  
8 agreed to “not represent himself or hold himself out as being certified, licensed, accredited by, or  
9 otherwise associated with, the FGNA, the Feldenkrais<sup>®</sup> Method, or any FGNA trademark, service  
10 mark, or certification mark.” (*Id.*) The Agreement requires that Wildman refrain from all use of the  
11 FGNA Marks. (*Id.*) Under the Agreement, Wildman had until March 22, 2018, to make the changes  
12 required. (Haller Decl. ¶ 26.) By his own admission, Wildman failed to complete the changes.  
13 (Declaration of Frank Wildman, Dkt. No. 33-3, at ¶13.) This action ensued.

## 14 **II. APPLICABLE STANDARD**

15 The standards for granting permanent injunction relief are the same as those for granting  
16 preliminary injunction relief and the Court previously found that FGNA met the standards for  
17 receiving preliminary injunctive relief. (Dkt. No. 38). The plaintiff must show: (1) that it has  
18 suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are  
19 inadequate [\*\*18] to compensate for that injury; (3) that, considering the balance of hardships  
20 between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest  
21 would not be disserved by a permanent injunction. *See Facebook, Inc. v Power Ventures, Inc.*, citing  
22 *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 390, 126 S. Ct. 1837, 164 L. Ed. 2d 641 (2006).  
23 *See also, Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *American Trucking*  
24 *Associations, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1054 (9th Cir. 2009).

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28 <sup>2</sup> The parties have agreed to waive the confidentiality provision of the Agreement.

1 **III. DISCUSSION AND FINDINGS**

2 **A. Breach of Contract**

3 As to the breach of contract claims, Wildman concedes that he failed to make all the changes  
4 required under the Agreement. (Oppo. at 1:3-4; 4:4-6; Wildman Decl. ¶ 13.) By the time of the  
5 application for the temporary restraining order, Wildman and his assistant were only able to remove  
6 or revise 70% of the items identified by FGNA’s counsel as being in violation of the Agreement.  
7 (Wildman Decl. ¶ 13.)

8 Wildman owns, operates, produces, and manages a website at the url  
9 FeldenkraisInstitute.org, and is responsible for all content on the website. (Haller Decl. ¶ 26.)  
10 Wildman uses this website to market and promote himself and FMI. The required changes to his  
11 website at FeldenkraisInstitute.org have not been made and it continues to contain numerous  
12 unauthorized uses of the FGNA Marks. Wildman is also the owner, operator, producer and manager  
13 of a website at the url “FrankWildmanMovement.com,” which he uses to market and promote  
14 himself and his business. Wildman has made some required changes to his website at  
15 FrankWildmanMovement.com, but not all, such that the website continues to include unauthorized  
16 uses of the FGNA Marks. (*Id.* ¶ 27.) Wildman also markets and promotes himself through various  
17 social media and social networking platforms such as Facebook, YouTube, and LinkedIn.

18 Each of Wildman’s pages on these social media and social networking platforms continue to  
19 contain numerous unauthorized uses of the FGNA Marks. (*Id.* ¶ 28.)<sup>3</sup> In addition, Wildman has  
20 failed to remove FGNA Marks from his biography for purposes of promotion of himself and his  
21 business. For instance, Wildman’s biography for a 1440 Multiversity program states that he is a  
22 “Feldenkrais Method® expert,” and uses the Feldenkrais Method® trademark five times in one  
23 paragraph. By his continued use of the FGNA Marks, Wildman is in violation of the parties’  
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25 \_\_\_\_\_  
26 <sup>3</sup> The evidence is sufficient to establish that Wildman breached the contract by continuing to  
27 use the marks, including: Wildman’s own concession of continued unauthorized use; and the  
28 declaration of Nancy Haller, which represented based on personal knowledge that as of the date of  
the declaration, the enumerated unauthorized uses continued on the social media and social  
networking platforms used by Wildman. (Haller Decl. ¶¶ 1, 28.)

1 Agreement.<sup>4</sup>

2 The Agreement precludes Wildman from “teaching or engaging in the professional practice  
3 of the Feldenkrais® Method.” It does not prohibit Wildman from teaching or engaging in any  
4 professional practice so long as he does not represent that practice to be “the Feldenkrais® Method.”

5 Thus, the Court concludes that plaintiff prevails on the merits of its breach of contract claim.

6 **B. Trademark Infringement**

7 In addition, the Court finds that defendants are infringing on plaintiff’s trademark rights.  
8 Based upon the record before the Court, defendants’ continued use of the FGNA Marks constitutes  
9 trademark infringement. To succeed on its claim of trademark infringement, FGNA must  
10 demonstrate: (1) ownership of a valid and protectable trademark; and (2) defendants’ use of the mark  
11 is likely to cause consumer confusion, thereby infringing on the plaintiff’s rights. *Aurora World,*  
12 *Inc. v. Ty Inc.*, 719 F.Supp.2d 1115, 1141 (C.D. Cal. 2009) (quoting *Dep’t of Parks & Rec. v. Bazaar*  
13 *Del Mundo Inc.*, 448 F.3d 1118, 1124 (9th Cir. 2006)). When, as here, two marks are identical and  
14 used for the same goods, courts have found that the likelihood of confusion is overwhelming, even if  
15 no other factors favor a finding of confusion. *Brookfield Communs., Inc. v. W. Coast Ent’t. Corp.*,  
16 174 F.3d 1036, 1056 (9th Cir 1999); *see also Lindy Pen Co. v. Bic Pen Corp.*, 796 F.2d 254, 256-57  
17 (9th Cir. 1986) (reversing district court’s finding of no likelihood of confusion given “the  
18 overwhelming likelihood of confusion resulting from the direct competition of pens with virtually  
19 identical marks”).<sup>5</sup> Further, use of the same marketing channels “increase[s] the likelihood of  
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21 <sup>4</sup> Whether or not FMI is a party to the Agreement, or is an alter ego of Wildman, FMI is  
22 responsible for its acts of infringement. Use of the FGNA Marks without authorization, in a manner  
23 that is likely to cause consumer confusion, results in trademark infringement. FMI derived its rights  
24 to use the FGNA Marks solely from Wildman. When Wildman was authorized to use the FGNA  
25 Marks, that license also was applicable to FMI. Consequently, when Wildman gave up his license to  
26 use the FGNA Marks, FMI could no longer use the FGNA Marks based upon Wildman’s  
27 membership. FMI did not have a license or other right to use the FGNA Marks independent of  
28 Wildman’s rights to use them under the FGNA Service Marks Policy.

<sup>5</sup> The Ninth Circuit has developed an eight-factor test to guide the determination of a  
likelihood of confusion. *AMF, Inc. v. Sleekcraft Boats*, 599 F.2d 341, 348-49 (9th Cir. 1979)  
 (“*Sleekcraft*”). “The *Sleekcraft* factors are intended as an adaptable proxy for consumer confusion,  
not a rote checklist.” *Network Automation, Inc. v. Advanced Sys. Concepts, Inc.*, 638 3d 1137, 1145  
(9th Cir. 2011) (citations omitted). Given that the marks at issue here are identical and are being



1 confusion.” *Nutri/System, Inc. v. Con-Stan Indus., Inc.*, 809 F.2d 601, 606 (9th Cir. 1987) (citing  
2 *Sleekcraft*, 599 F.2d at 353).

3 The facts of ownership here are not contested. FGNA asserts, and defendants do not dispute,  
4 that each of its registrations for trademarks are current, presumed valid, in force, and incontestable  
5 under 15 U.S.C. section 1065. All of the FGNA Marks at issue were in existence and in use at the  
6 time Wildman was the president of FGNA, and many had been in use or registered many years  
7 before he was president. Similarly undisputed is FGNA’s contention that all of its claimed marks,  
8 whether trademarks, service marks, certification marks or related common law marks, regardless of  
9 registration, have acquired significant good will through the extensive and widespread use. They are  
10 distinctive as a source identifier and certification indicator in connection with the FGNA providing  
11 of services and licensing of others to use its marks in connection with the services identified in those  
12 registrations and as indicating that the user has met the FGNA’s rigorous requirements. FGNA has  
13 invested significant resources to advertise its and its licensee’s educational services offered in  
14 connection with the FGNA Marks. FGNA is the beneficiary of many third party stories and articles  
15 providing significant and positive press coverage to the FGNA services resulting in the development  
16 of significant goodwill for the FGNA Marks.

17 The facts regarding confusion are likewise not in contention. Defendants’ services are nearly  
18 identical to those of FGNA’s and its licensees, and both are marketed and promoted through the  
19 Internet, key word searching, social media and social networking platforms and direct mail. The  
20 record before the Court indicates that defendants are using marks identical to the FGNA Marks to  
21 promote services that are the same services FGNA promotes, licenses, or certifies. (Haller Dec. ¶  
22 33.) Consequently, the parties are in direct competition with each other.

23 Any argument that defendants are not liable for trademark infringement because they are  
24 simply making “fair use” of the trademarks in their webpages and other marketing materials is  
25 incorrect. A nominative fair use is one that “does not attempt to capitalize on consumer confusion or  
26 to appropriate the cachet of one product for a different one . . . [but instead is a use] where the only  
27  
28 used for nearly identical services, and that defendants do no contest the *Sleekcraft* factors in  
opposition, the Court does not analyze the showing on each factor in reaching the decision herein.



1 word reasonably available to describe a particular thing is pressed into service.” *New Kids on the*  
2 *Block v. News Am. Pub., Inc.*, 971 F.2d 302, 308 (9th Cir. 1992). The nominative fair use standard  
3 bars liability for an unauthorized use of a trademark where: (1) the product or service is not be  
4 readily identifiable without use of mark; (2) only so much of the mark is used as is reasonably  
5 necessary to identify the product or service; and (3) the user does nothing that would, in conjunction  
6 with the mark, suggest sponsorship or endorsement by the trademark holder. *Id.* All three elements  
7 must be met for the defense to apply. *See, e.g. Brother Records, Inc. v. Jardine*, 318 F.3d 900, 908  
8 (9th Cir. 2003) overruled on other grounds in *Toyota Motor Sales, U.S.A. v. Tabari*, 610 F.3d 1171  
9 (9th Cir. 2010). Wildman can identify and describe his services without making use of the FGNA  
10 Marks and has done so in identifying his services as “Frank Wildman Movement” and “Change  
11 Your Age Method.” Thus, there are other ways to describe the public-domain body movement and  
12 principles than the use of the term “Feldenkrais.”

13 The Court therefore finds the plaintiff has established that defendants’ continued use of the  
14 FGNA Marks constitutes infringement upon FGNA’s rights in the FGNA Marks.

15 **C. Irreparable Harm**

16 To establish a right to a permanent injunction, a plaintiff must demonstrate irreparable injury.  
17 *eBay*, 542 U.S. at \_\_; *Flexible Lifeline Sys. v. Precision Lift Inc.*, 654 F.3d 989, 998 (9th Cir. 2011);  
18 *Herb Reed Enterprises, LLC v. Fla. Entm’t Mgmt., Inc.*, 736 F.3d 1239, 1249-50 (9th Cir. 2013).  
19 Evidence of lost business or business opportunities, as well as damage to goodwill, will satisfy the  
20 requirement to show irreparable harm. *See, e.g., Stuhlberg Int’l Sales Co., Inc. v. John D. Brush and*  
21 *Co.*, 240 F.3d 832, 841 (9th Cir. 2001) (“[e]vidence of threatened loss of prospective customers or  
22 goodwill certainly supports a finding of the possibility of irreparable harm”); *Herb Reed Enterprises,*  
23 *LLC v. Fla. Entm’t Mgmt., Inc.*, 736 F.3d 1239, 1250 (9th Cir. 2013) (“Evidence of loss of control  
24 over business reputation and damage to goodwill could constitute irreparable harm.”). “A district  
25 court has considerable discretion in fashioning suitable relief and defining the terms of an  
26 injunction.” *Lamb-Weston, Inc. v. McCain Foods, Ltd.*, 941 F.2d 970, 974 (9th Cir. 1991).  
27 “Injunctive relief, however, must be tailored to remedy the specific harm alleged.” *Id.*

28 The Court finds that, as a result of defendants’ conduct, FGNA is suffering immediate and

1 irreparable harm loss, damage, and injury, unless FGNA’s request for injunctive relief is granted.  
2 Defendants’ unauthorized use of the FGNA Marks prevents FGNA from controlling the quality of  
3 the services associated with its marks. FGNA has received numerous complaints about Wildman’s  
4 ongoing use of the FGNA Marks, and his continuing to hold himself out as being associated with  
5 FGNA. (Haller Decl. ¶ 36.) Wildman’s continued use of the FGNA Marks is likely to result in harm,  
6 loss of the value associated with the FGNA Marks and reputational harm, as well as loss of goodwill  
7 with respect to FGNA’s members. These losses are not readily compensable by an award of  
8 monetary damages. Further, under the Agreement, Wildman acknowledged that any breach would  
9 cause FGNA irreparable injury and that damages would be an inadequate remedy in the event of  
10 such breach, such that injunctive relief would be permissible for a breach or threatened breach by  
11 Wildman. (Haller Decl., Exh. E § 19.) This factor favors injunctive relief.

12 **D. Balance of Equities**

13 In determining the balance of equities, courts look to “the degree of harm that will be  
14 suffered by the plaintiff or the defendant if the injunction is improperly granted or denied.” *Scotts*  
15 *Co. v. United Indus. Corp.*, 315 F.3d 264, 284 (9th Cir. 2002); *accord Winter*, 555 U.S. at 24 (2008).  
16 The balance of potential harm to defendants of being enjoined from use of the FGNA Marks is far  
17 outweighed by the potential harm to FGNA, its goodwill, and reputation associated with the FGNA  
18 Marks if a permanent injunction order is not issued. Defendants concede that Wildman did not  
19 comply with the terms of the Agreement timely. Wildman concedes that he did not take down  
20 webpages that he knew were in clear violation of the Agreement, but instead continued piecemeal  
21 efforts to edit the material well past the deadline, never taking down pages with potential violations  
22 until the temporary restraining order herein issued. (Wildman Decl. ¶¶ 10-13.) Wildman represents  
23 that the process of removing even those uses he acknowledges are in violation of the Agreement is  
24 “time-consuming” and requires review of “hundreds of pages.” (*Id.* ¶ 11.) In view of the hundreds of  
25 potential violations and improper uses of the FGNA Marks, the equities favor a permanent  
26 injunction, even if it requires Wildman to take down defendants’ websites entirely for a period of  
27 time.

28 The balance of harms favors granting permanent injunctive relief.

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**E. Public Interest**

“The public interest inquiry primarily addresses [the] impact on non-parties rather than parties.” *Sammartano v. First Judicial District Court*, 303 F.3d 959, 974 (9th Cir. 2002). The public interest will be served by the issuance of a temporary restraining order and preliminary and permanent injunction, as the public has a strong interest in being free from confusion caused by the unauthorized use of trademarks. *See Brookfield Communs.*, 174 F.3d at 1066 (“preliminary injunctive relief is appropriate. . . to promote the public interest in protecting trademarks generally”); *Wetzel’s Pretzels, LLC v. Johnson*, 797 F. Supp. 2d 1020, 1029 (C.D. Cal. 2011) (“public has a strong interest in being free from the confusion caused by unauthorized use”); *Morrocanoil, Inc. v. Moroccan Gold, LLC*, 590 F. Supp. 2d 1271, 1281 (C.D. Cal. 2008) (holding the public has a “right not to be deceived or confused”). The public has a right to choose services knowing that they are not being misled as to whether those services are offered by parties authorized by FGNA to hold themselves out as being associated with the FGNA. The public interest favors issuance of a permanent injunction to protect the public from being harmed or deceived by defendants representing their services as authorized by, certified by, endorsed by, or associated with FGNA.

**F. Settlement**

The parties have advised the Court that they have resolved their dispute and entered into a written Settlement Agreement that supersedes the January 22, 2018 Agreement referred to herein. As part of their resolution, the parties have stipulated to the entry of this Final Judgment and Consent Order. In addition, the parties advise further the Court the following:

Over the past four years, defendants have conducted a certain Feldenkrais® training program in the state of Oregon, referred to as the Eugene Training. Wildman was the educational director of the Eugene Training, and has resigned that role. The Eugene Training is almost concluded, but there are two more billing cycles to complete. In the Settlement Agreement, the parties’ stipulated that defendants shall be permitted to use the name “Feldenkrais Movement Institute” solely for purposes of sending out two (2) billings for the Eugene Training and to receive funds at a PayPal account that uses the name “Feldenkrais Movement Institute.” This is reflected in the proposed order below.

1 **IV. CONCLUSION**

2 Based upon the foregoing, the Stipulated Final Judgment and Consent Order is **GRANTED**.  
3 The Court **ORDERS** as follows:

4 (a) Defendants Frank Wildman and Feldenkrais Movement Institute, their owners,  
5 affiliates, officers, directors, managers, agents, servants, employees, and any and all persons in  
6 active concert or participation with any of them (collectively “Enjoined Persons”), **SHALL NOT**  
7 use, without FGNA’s prior authorization, the FGNA’s Marks or any other name, logo, or mark that  
8 includes the designation “Feldenkrais” or that is confusingly or deceptively similar to any of the  
9 FGNA Marks, either alone or in conjunction with other words or symbols, as part of any trademark,  
10 service mark, certification mark, logo, trade name, corporate name, assumed name, domain name,  
11 website, email address, keywords, or metatags on or in relation to any goods or services marketed,  
12 promoted, advertised, sold, offered for sale or consignment or provided by the defendants, directly or  
13 indirectly, or in any other manner, including without limitation, any marketing literature, printed or  
14 electronic, on websites, on social media sites or on social networking sites.

15 For purposes of clarification, this Order prohibits and enjoins:

- 16 (1) any Enjoined Person’s use of the word “Feldenkrais” in any form other than  
17 as part of the phrase “Dr. Moshe Feldenkrais” in any marketing literature,  
18 printed or electronic, or in any online medium including social media, social  
19 networking sites, and any other website or application; and  
20 (2) use of the word “Feldenkrais” in the website url or email address for any  
21 Enjoined Person; and  
22 (3) use of the word “Feldenkrais” as part of the organizational name of  
23 defendant Feldenkrais Movement Institute.

24 (b) Defendants Frank Wildman and Feldenkrais Movement Institute, their owners,  
25 affiliates, officers, directors, managers, agents, servants, employees, and any and all persons in  
26 active concert or participation with any of them (collectively “Enjoined Persons”), **SHALL NOT**  
27 use, authorize, permit, or encourage others to use on either defendants’ behalf, without the prior  
28 authorization of FGNA, the FGNA Marks in any form or manner that would tend to associate

1 defendants, or their business or services, with FGNA, including, without limitation, in the marketing,  
2 promotion, advertising, identification, sale, or offer for sale of goods or services, or in any other  
3 manner.

4 (c) Notwithstanding the foregoing, the Enjoined Persons are permitted to send out two  
5 electronic mailings under the name Feldenkrais Movement Institute to send invoices and to receive  
6 and collect payment for the “Eugene Training.” These electronic mailings are to be made in June  
7 and July, 2018. If not paid, some of those invoices may need to be and can be rebilled up to and until  
8 September 21, 2018, which is the final day of the training program. The PayPal account that  
9 currently uses the name Feldenkrais Movement Institute shall have its name changed to remove  
10 Feldenkrais therefrom after the Eugene Training billing is concluded, but no later than October 1,  
11 2018.

12 (d) The injunctive orders set forth in (a) through (c) above shall remain in force and  
13 effect until defendant Frank Wildman regains his FGNA Feldenkrais Practitioner certification or  
14 Feldenkrais Trainer certification.

15 (e) The Court retains jurisdiction to enforce the terms of the parties’ Settlement  
16 Agreement and the terms of this Stipulated Final Judgment and Consent Order. The terms of this  
17 Stipulated Final Judgment and Consent Order may be enforced by a motion for contempt. If the  
18 Court grants such a motion, defendants may be ordered to pay FGNA’s costs, reasonable attorneys’  
19 and experts’ fees

20 (f) The Clerk is ordered to release to FGNA all security FGNA has placed with the  
21 Court.

22 (g) Subject to the foregoing, the complaint and counterclaim are hereby dismissed.

23 Dated August 1, 2018

HINSHAW & CULBERTSON LLP

24  
25 By: /s/ Travis Wall

26 TRAVIS WALL  
27 MARK K. SURI *Pro Hac Vice*

28 Attorneys for Plaintiff FELDENKRAIS  
GUILD OF NORTH AMERICA

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LAW OFFICE OF LAWRENCE G. TOWNSEND, ESQ.

By: /s/ Lawrence G. Townsend

LAWRENCE G. TOWNSEND

Attorneys for Defendants FRANK WILDMAN and  
FELDENKRAIS MOVEMENT INSTITUTE

**FILER'S ATTESTATION**

I, Travis Wall, am the ECF user whose identification and password are being used to file this [Proposed] STIPULATED FINAL JUDGEMENT AND CONSENT ORDER. In compliance with Local Rules, I hereby attest that all party signatories hereto concur in this filing.

/s/Travis Wall  
TRAVIS WALL

1 **~~PROPOSED~~ CONSENT ORDER**

2 Based the Stipulated Final Judgment and Consent Order is GRANTED. The Court ORDERS  
3 as follows:

4 (a) Defendants Frank Wildman and Feldenkrais Movement Institute, their owners,  
5 affiliates, officers, directors, managers, agents, servants, employees, and any and all persons in  
6 active concert or participation with any of them (collectively “Enjoined Persons”), SHALL NOT  
7 use, without FGNA’s prior authorization, the FGNA’s Marks or any other name, logo, or mark that  
8 includes the designation “Feldenkrais” or that is confusingly or deceptively similar to any of the  
9 FGNA Marks, either alone or in conjunction with other words or symbols, as part of any trademark,  
10 service mark, certification mark, logo, trade name, corporate name, assumed name, domain name,  
11 website, email address, keywords, or metatags on or in relation to any goods or services marketed,  
12 promoted, advertised, sold, offered for sale or consignment or provided by the defendants, directly or  
13 indirectly, or in any other manner, including without limitation, any marketing literature, printed or  
14 electronic, on websites, on social media sites or on social networking sites.

15 For purposes of clarification, this Order prohibits and enjoins:

16 (1) any Enjoined Person’s use of the word “Feldenkrais” in any form other than as part of  
17 the phrase “Dr. Moshe Feldenkrais” in any marketing literature, printed or electronic, or in any  
18 online medium including social media, social networking sites, and any other website or application;  
19 and

20 (2) use of the word “Feldenkrais” in the website url or email address for any Enjoined  
21 Person; and

22 (3) use of the word “Feldenkrais” as part of the organizational name of defendant  
23 Feldenkrais Movement Institute.

24 (b) Defendants Frank Wildman and Feldenkrais Movement Institute, their owners,  
25 affiliates, officers, directors, managers, agents, servants, employees, and any and all persons in  
26 active concert or participation with any of them (collectively “Enjoined Persons”), SHALL NOT  
27 use, authorize, permit, or encourage others to use on either defendants’ behalf, without the prior  
28 authorization of FGNA, the FGNA Marks in any form or manner that would tend to associate



1 defendants, or their business or services, with FGNA, including, without limitation, in the marketing,  
2 promotion, advertising, identification, sale, or offer for sale of goods or services, or in any other  
3 manner.

4 (c) Notwithstanding the foregoing, the Enjoined Persons are permitted to send out two  
5 electronic mailings under the name Feldenkrais Movement Institute to send invoices and to receive  
6 and collect payment for the “Eugene Training.” These electronic mailings are to be made in June  
7 and July, 2018. If not paid, some of those invoices may need to be and can be rebilled up to and until  
8 September 21, 2018, which is the final day of the training program. The PayPal account that  
9 currently uses the name Feldenkrais Movement Institute shall have its name changed to remove  
10 Feldenkrais therefrom after the Eugene Training billing is concluded, but no later than October 1,  
11 2018.

12 (d) The injunctive orders set forth in (a) through (c) above shall remain in force and  
13 effect until defendant Frank Wildman regains his FGNA Feldenkrais Practitioner certification or  
14 Feldenkrais Trainer certification.

15 (e) The Court retains jurisdiction to enforce the terms of the parties’ Settlement  
16 Agreement and the terms of this Stipulated Final Judgment and Consent Order. The terms of this  
17 Stipulated Final Judgment and Consent Order may be enforced by a motion for contempt. If the  
18 Court grants such a motion, defendants may be ordered to pay FGNA’s costs, reasonable attorneys’  
19 and experts’ fees.

20 (f) All security bonds placed by FGNA in this matter shall be released to FGNA. (See  
21 Dkt. Nos. 31, 39.)

22 (g) Subject to the foregoing, the complaint and counterclaim are hereby DISMISSED.

23 **IT IS SO ORDERED.**

24 Dated August 6, 2018

25  
26   
27 YVONNE GONZALEZ ROGERS  
28 UNITED STATES DISTRICT COURT JUDGE