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August 26, 2014

Via Hand Delivery

Clerk, Superior Court of New Jersey
Hudson County Law Division
595 Newark Avenue
Jersey City, New Jersey 07306

Re: *Michael Ferguson, et al. v. JONAH, Arthur Goldberg, Alan Downing, Alan Downing Life Coaching, LLC*
Docket No.: HUD-L-5473-12

Dear Sir/Madam:

Enclosed for filing is an original and one copy of:

- Plaintiffs' Opposition to Defendants' Motion for Partial Summary Judgment as to Plaintiffs' Chaim Levin, Sheldon Bruck, and Benjamin Unger for Lack of Standing;
- Certification of Lina Bensman in Opposition to Defendants' Motion for Partial Summary Judgment as to Plaintiffs' Chaim Levin, Sheldon Bruck, and Benjamin Unger for Lack of Standing;
- Certification of Chaim Levin;
- Certification of Benjamin Unger;
- Certification of Bruce D. Greenberg pursuant to R. 1:4-4(c); and
- Certificate of Service.

Kindly file the original and return a filed stamped copy to our office in the envelope provided. Please charge the filing fee to our firm's Superior Court account #37115.

Thank you for your attention to this matter.

Very truly yours,



Bruce D. Greenberg

BDG:cd

Enclosures

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Plaintiffs,

v.

JONAH (Jews Offering New Alternatives for
Healing f/k/a Jews Offering New Alternatives
to Homosexuality), Arthur Goldberg, Alan
Downing, Alan Downing Life Coaching LLC,

Defendants.

SUPERIOR COURT OF NEW JERSEY
HUDSON COUNTY, LAW DIVISION

Docket No: L-5473-12

CIVIL ACTION

**PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION FOR
PARTIAL SUMMARY JUDGMENT AS
TO PLAINTIFFS CHAIM LEVIN,
SHELDON BRUCK, AND BENJAMIN
UNGER FOR LACK OF STANDING**

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I. INTRODUCTION

Defendants' third motion for partial summary judgment ("Motion") erroneously asserts that Plaintiffs Benjamin Unger, Chaim Levin, and Sheldon Bruck lack standing to bring claims under the New Jersey Consumer Fraud Act ("CFA") because they bore no ascertainable loss. However, Defendants fail to demonstrate the absence of a genuine issue of fact as to ascertainable loss for each plaintiff, which is fatal to their Motion. Such a genuine issue of fact exists for each plaintiff subject to the Motion:

- Mr. Unger suffered a monetary ascertainable loss when he paid for post-JONAH mental health therapy to repair damage caused by Defendants' conversion therapy services;
- Mr. Levin suffered a monetary ascertainable loss when he paid for a portion of Defendants' conversion therapy services as well as a portion of his post-JONAH mental health therapy to repair damage caused by Defendants' conversion therapy services; and
- Mr. Bruck suffered an ascertainable loss of a chance to become heterosexual, a chance that Defendants falsely promised.

Defendants have invented several "undisputed facts" in support of their Motion and omitted record evidence that clearly demonstrates that what Defendants now present to the Court as undisputed facts are actually in dispute, contradicted by undisputed evidence, or immaterial. Defendants' claim that it is an "undisputed fact" that Mr. Levin paid for none of Defendants' conversion therapy services is contradicted by Mr. Levin's testimony at his deposition that he had paid for part of Defendants' services. Defendants chose to omit this inconvenient portion of Mr. Levin's deposition from their presentation to the Court in support of the Motion. Similarly,

Defendants' claim that it is an "undisputed fact" that Mr. Unger did not pay for any of his post-JONAH counseling is simply not established in his deposition or elsewhere in the record because Defendants chose not to ask Mr. Unger who paid for those services. If they had asked, Mr. Unger would have testified that he paid for his post-JONAH therapy, as he has now certified. In addition, Defendants have simply ignored and failed to mention to the Court that Plaintiffs did produce medical and billing records for post-JONAH therapy for Plaintiffs. Furthermore, despite Plaintiffs having identified post-JONAH therapists as potential fact witnesses, Defendants chose not to depose any of them.

Defendants' central "undisputed facts" with respect to Messrs. Unger and Levin are plainly contradicted by record evidence such that there is a genuine issue of material fact that prevents summary judgment in Defendants' favor. With respect to Mr. Bruck, the only undisputed fact presented is immaterial to the ascertainable loss he suffered as a consumer of Defendants' ineffective conversion therapy services. For Mr. Bruck, a genuine issue of fact exists because he suffered the ascertainable loss of a chance to become heterosexual, as falsely promised by Defendants. When the facts that exist in the record with respect to each of these Plaintiffs' ascertainable loss are viewed in the light most favorable to Plaintiffs, as they must be on a motion for summary judgment, Defendants' Motion should be denied.

II. STATEMENT OF FACTS

A. Benjamin Unger

Upon terminating his conversion therapy with Defendants, Mr. Unger engaged in therapy to repair the damage done to him by Defendants' conversion therapy services ("post-JONAH therapy"). Cert. of Benjamin Unger in Opp'n to Mot. for Partial Summ. J. ("Unger Cert."), dated August 25, 2014 at ¶ 3. Dr. Steven Phillipson and Dr. Jordan Levy provided Mr. Unger's post-JONAH therapy. *Id.* at ¶ 4. Mr. Unger paid for nearly all of his post-JONAH therapy, which

lasted from May 2, 2008 through April 13, 2014 and cost Mr. Unger nearly \$17,950. *Id.* at ¶ 6; Cert. of Lina Bensman in Opp'n to Mot. for Partial Summ. J. ("Bensman Cert."), dated August 26, 2014, Ex. A, Unger Tr. at 235:10–236:10 (Mr. Unger testified in deposition that he paid "[i]n the thousands" of dollars for post-JONAH therapy to repair damage resulting from Defendants' conversion therapy services); Bensman Cert., Ex. B, Medical and Billing Records of Benjamin Unger.

B. Chaim Levin

Mr. Levin paid at least \$200 for Defendants' conversion therapy services. Bensman Cert., Ex. C, Levin Tr. at 10:20–11:2 (Mr. Levin's deposition testimony that he paid for some of Defendants' conversion therapy services); 814:14–815:20 (same); Cert. of Chaim Levin in Opp'n to Mot. for Partial Summ. J. ("Levin Cert."), dated August 25, 2014 at ¶ 3. Mr. Levin's mother, Bella Levin, would not have been aware that he paid for some of Defendants' conversion therapy services because he did not discuss it with her at the time or thereafter. Levin Cert. at ¶ 7.

Mr. Levin paid other out-of-pocket expenses associated with and resulting from Defendants' conversion therapy services, including weekly transportation costs by car or public transport from his home in Brooklyn, New York, to JONAH's location in Jersey City, New Jersey, for individual and group conversion therapy services. *Id.* at ¶ 8. Mr. Levin also paid transportation expenses for gas and food in order to attend two Journey Into Manhood ("JIM") weekends, which were a part of Defendants' conversion therapy program, in June 2007 in New Hope, Pennsylvania, and in October 2007 in Charlottesville, Virginia. *Id.* at ¶¶ 9–10. He further paid for and brought kosher meals to the second JIM weekend. *Id.* at ¶ 11.

After terminating his conversion therapy with Defendants, Mr. Levin received therapy to repair damage done to him by Defendants' conversion therapy services. *Id.* at ¶ 12. Ms. Charna Shapiro provided such post-JONAH therapy. *Id.* at ¶ 13. Counseling with Ms. Shapiro continued for at least two years after October 2008 and included at least 30 sessions. *Id.* at ¶ 14. Although Mr. Levin's parents paid for most sessions with her, Mr. Levin paid for at least five sessions. *Id.* at ¶ 15. Ms. Shapiro usually charged \$100 per session. *Id.* Mr. Levin's parents did not consistently support him financially during the course of his conversion therapy with Defendants. Bensman Cert., Ex. C at 331:6–17.

C. Sheldon Bruck

Mr. Bruck entered Defendants' conversion therapy program as a minor with the consent and financial support of his parents. Bensman Cert., Ex. D, Bruck Tr. at 31:19–22; 21:3–19. While he did not pay for Defendants' conversion therapy services, he was a consumer of those services as their direct recipient. *E.g., id.* at 58:17–59:12. Mr. Bruck became a consumer of Defendants' conversion therapy services based on Mr. Goldberg's misrepresentations, including that Defendants' program would change his sexual orientation from gay to straight. *E.g., id.* at 34:8–35:10; 36:10–20; 41:14–42:19; 211:12–17; 212:4–13; Bensman Cert., Ex. F at 6, August 20, 2013 Wolfe Letter. But Mr. Bruck received a service that is incapable of producing such a result. *E.g.,* Bensman Cert., Ex. D at 208:14–209:5.

D. Post-JONAH Counseling Records and Witnesses

Plaintiffs disclosed the identities of Plaintiffs' post-JONAH therapists as potential fact witnesses and produced documents obtained from them. Bensman Cert. at ¶¶ 6–9. Plaintiffs also executed medical information releases for any therapist requested by Defendants so that Defendants could seek additional documents directly from Plaintiffs' post-JONAH therapists.

Id. at ¶ 8. Defendants opted not to depose any of Plaintiffs’ post-JONAH therapists before the April 18, 2014 deadline for completion of fact depositions. *Id.* at ¶ 9.

III. ARGUMENT

A. Legal Standards for Summary Judgment.

1. General Standard for Summary Judgment.

Summary judgment may be granted only when “the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law.” R. 4:46-2(c). A motion judge determines whether there is a “genuine issue for trial” – but does not “weigh the evidence” to determine “the truth of the matter.” *Brill v. Guardian Life Ins. Co. of Am.*, 142 N.J. 520, 540 (1995) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986)). Similarly, the jury, not the judge, determines the credibility of witnesses. *Id.*

A genuine issue for trial exists such that summary judgment must be denied when the evidence, viewed in a light most favorable to the non-movant, “presents a sufficient disagreement to require submission to a jury.” *Brill*, 142 N.J. at 533 (quoting *Anderson*, 477 U.S. at 251–52). Here, far from record facts conclusively establishing an utter lack of ascertainable loss, substantial evidence exists that Messrs. Unger, Levin, and Bruck suffered ascertainable losses. Accordingly, there exists a genuine issue for trial, and summary judgment is not appropriate.

2. Summary Judgment Standard for Ascertainable Loss.

To survive summary judgment on the issue of ascertainable loss, a plaintiff must do no more than “produce evidence from which a factfinder could find or infer that the plaintiff

suffered an actual loss.” *Thiedemann v. Mercedes-Benz USA, LLC*, 183 N.J. 234, 248 (2005). Contrary to Defendants’ assertions in their Motion, Plaintiffs are not required to prove ascertainable loss or damages at the summary judgment stage, but instead must simply present sufficient evidence of loss to “get to the factfinder.” *Id.* To do that, a plaintiff’s loss “must be presented with some certainty demonstrating that it is capable of calculation, although it need not be demonstrated in all its particularity to avoid summary judgment.” *Id.* A *de minimis* loss is sufficient. *See, e.g., Bosland v. Warnock Dodge, Inc.*, 197 N.J. 543, 559 (2009) (where the ascertainable loss consisted of an alleged \$20 overcharge for a vehicle registration fee). Even a disputed ascertainable loss is “sufficient to send the matter to the factfinder.” *Thiedemann*, 183 N.J. at 247. “The certainty implicit in the concept of an ‘ascertainable’ loss is that it is quantifiable or measureable,” or “real and demonstrable,” as opposed to “hypothetical or illusory.” *Id.* at 248, 255. Thus, if some degree of qualifying ascertainable loss is evidenced, summary judgment is improper.

Ascertainable losses in this case manifest in several forms including:

- the monetary loss of amounts paid for and in relation to Defendants’ conversion therapy services;
- the monetary loss of amounts paid for legitimate therapy to repair damage caused by Defendants; and
- the ascertainable loss of a chance to become heterosexual that Defendants falsely represented as the result of their conversion therapy services.

The first form is perhaps most common, the second was the subject of Defendants’ second motion for partial summary judgment that this Court previously addressed, and the last form of ascertainable loss, although applicable to all three plaintiffs subject to Defendants’ Motion, is discussed below in connection with Mr. Bruck.

B. Benjamin Unger Has Presented Sufficient Evidence of Ascertainable Loss to Avoid Summary Judgment.

This Court has held, consistent with *Cox v. Sears Roebuck & Co.*, 138 N.J. 2 (1994), that Plaintiffs' out-of-pocket costs associated with reparative treatment and counseling following Plaintiffs' receipt of services from JONAH constitute an ascertainable loss cognizable under the CFA. *Ferguson v. JONAH*, No. HUD-L-5473-12, 2014 N.J. Super. Unpub. LEXIS 1334, at 15 (Law Div. June 6, 2014) ("Accordingly, the cost of reparative therapy caused by the alleged CFA violations may properly constitute an ascertainable loss under the CFA."). Record evidence demonstrates that Mr. Unger has suffered such an ascertainable loss. Bensman Cert., Ex. A at 235:10–236:10; *see also* Unger Cert. at ¶¶ 3–6. Accordingly, Defendants' Motion for Partial Summary Judgment against Mr. Unger should be denied.

Defendants offer three purportedly undisputed material facts with respect to Mr. Unger's ascertainable loss: 1) Mr. Unger does not know how much money was spent on post-JONAH therapy; 2) Mr. Unger's parents paid for his post-JONAH therapy; and 3) Mr. Unger's parents chose not to be plaintiffs in this lawsuit. Defs.' Statement of Undisputed Material Facts in Supp. of Mot. for Partial Summ. J. against Chaim Levin, Sheldon Bruck, and Benjamin Unger for Lack of Standing ("Defs.' SUMF"), dated August 5, 2014 at ¶¶ 5–7. The first two are not undisputed and the third, while undisputed, is not material or relevant.

With respect to the first purportedly undisputed material fact, that Mr. Unger does not know how much was paid for post-JONAH therapy, Defs.' SUMF at ¶ 5, Mr. Unger's deposition testimony directly contradicts the asserted "undisputed fact" and is sufficient to demonstrate a genuine issue of fact for trial:

Q: . . . Do you have any idea what your claim is for expenses paid for professional treatment to address harm that you believe resulted from my clients' therapy?

A: You're – I'm sorry, are you asking me what my claim is, how much?

Q: Yeah, do you know?

A: I don't know the exact amount.¹

Q: Do you have idea of the range of numbers or anything?

A: In the thousands.

Q: Okay. This is for therapists you've seen after you've left JONAH?

A: Yes.

Q: Okay. Do you believe you would have seen any of those therapists even if you had never been to JONAH?

A: No.

Bensman Cert., Ex. A at 235:10–236:10.

Furthermore, Defendants completely ignore Plaintiffs' disclosure of the identity of Mr. Unger's post-JONAH therapists as potential trial witnesses and production of medical and billing records for Mr. Unger's counseling with those therapists that evidence amounts paid for that therapy.² *See id.*, Exs. E, B. Those records reflect that Mr. Unger received and paid for post-JONAH mental health treatments and negate Defendants' purportedly undisputed fact.

¹ In the Statement of Relevant Facts section of their brief, Defendants omit the full discussion of this subject, choosing to quote Mr. Unger's testimony only to this point. Defs.' Br. at 5.

² Contrary to Defendants' assertion that "Plaintiffs did not produce documents proving money damages paid to third parties requested in document production and did not provide an amount of total damages as requested in interrogatories," Defs.' Br. at 6, Plaintiffs disclosed the identities of Plaintiffs' post-JONAH therapists and produced documents Plaintiffs obtained from them. Bensman Cert. at ¶¶ 6–9. Plaintiffs also executed any medical information releases requested by Defendants so that Defendants could seek additional documents directly from Plaintiffs' post-JONAH therapists. *Id.* at ¶ 8. Defendants opted not to depose any of Plaintiffs'

With respect to the second purportedly undisputed material fact, that Mr. Unger's parents paid for his post-JONAH therapy, Defs.' SUMF at ¶ 6, the *only* evidence Defendants offer in support is the following testimony from Mr. Unger's deposition:

Q: Okay. Inasmuch as your parents paid for the services, do you have any why idea why they're not parties to the lawsuits like two of the plaintiffs' other mothers are?

A. I do not know.

Bensman Cert., Ex. A at 122:8–13.³ Defendants' reliance on their counsel's question that concerns amounts paid for Defendants' conversion therapy services rather than post-JONAH therapy to establish that it is beyond dispute that Mr. Unger's parents paid for his post-JONAH mental health treatments is totally misplaced. Defendants did not ask Mr. Unger in this question, nor anywhere else in his deposition, who paid for Mr. Unger's post-JONAH therapy. If Defendants had asked, Mr. Unger would have testified that he paid for nearly all his post-JONAH therapy himself, which he did. Unger Cert. at ¶ 5.

Based on the foregoing, Plaintiffs have produced ample "evidence from which a factfinder could find or infer that the plaintiff suffered an actual loss." *Thiedemann*, 183 N.J. at 248. That loss is also "quantifiable or measurable" as shown by the evidence produced in this case. *See Ferguson*, 2014 N.J. Super. Unpub. LEXIS 1334, at 16 ("subsequent treatment costs are quantifiable – based on the amount expended on professional health services"). Meanwhile, Defendants have presented *no* evidence demonstrating that Mr. Unger did not suffer an ascertainable loss, let alone evidence "so one-sided that [the moving] party must prevail as a

post-JONAH therapists before the April 18, 2014 deadline for completion of fact depositions. *Id.* at ¶ 9.

³ Defendants also assert that it is an undisputed material fact that "Benjamin Unger's parents chose not to be plaintiffs to this lawsuit." Defs.' SUMF at ¶ 7. This fact, while undisputed, is neither material nor relevant to Mr. Unger's ascertainable loss.

matter of law.” *Brill*, 142 N.J. at 533 (quoting *Anderson*, 477 U.S. at 252). Therefore, Defendants’ Motion for Partial Summary Judgment should be denied as to Mr. Unger.⁴

C. Chaim Levin Has Presented Sufficient Evidence of Ascertainable Loss to Avoid Summary Judgment.

Defendants incorrectly assert that Mr. Levin cannot demonstrate that he suffered an ascertainable loss, and therefore lacks standing under the CFA, because his parents paid for Defendants’ services and post-JONAH therapy. Defs.’ Br. at 1, 2, 8–9, 10–12. Defendants continue to assert and rely upon purportedly undisputed facts that are contradicted by record evidence. The record contains evidence from which a factfinder can find that Mr. Levin suffered an actual out-of-pocket monetary loss in the form of the cost of Defendants’ services and post-JONAH therapy.

Defendants offer three purportedly undisputed material facts with respect to Mr. Levin’s ascertainable loss: 1) Mr. Levin did not pay for Defendants’ services with his own money; 2) Mr. Levin does not know how much money his parents spent for his post-JONAH therapy; and 3) Mr. Levin’s mother and co-plaintiff, Bella Levin, paid for his post-JONAH therapy. Defs.’ SUMF at ¶¶ 1–3.

Defendants’ contention that it is undisputed that “Chaim Levin did not pay for Defendants’ services with his own money” is false. Defendants completely ignore Mr. Levin’s

⁴ Defendants’ reliance on *Barrows v. Chase Manhattan Mortg. Corp.*, 465 F. Supp. 2d 347 (D.N.J. 2006), is unavailing. That case is distinguishable from the instant case because each Plaintiff in this case has sustained an ascertainable loss, unlike the plaintiff in *Barrows*, who in fact never did suffer an ascertainable loss of attorneys’ fees and costs to resolve a foreclosure action as she alleged she might hypothetically have to pay. *Id.* at 361 (“Now, however, that the foreclosure action has been resolved without her having to pay any attorneys’ fees and costs, her claim went from hypothetical to nonexistent.”). Here, Plaintiffs’ claims for ascertainable loss have never been hypothetical, but instead, real and demonstrable, and evidence exists to show that those claims of ascertainable loss are *bona fide*.

testimony on the first day and within the first few minutes of his deposition that he paid for some of Defendants' services himself:

Q. As I understand it, that you did not personally pay with your own funds. It was paid by one or both of your parents?

A. **There were some that I paid for –**

Q. Oh, okay.

A. – as well.

Bensman Cert., Ex. C at 10:20–11:2 (emphasis added). At that time, Mr. Levin could not recall the exact amount that he paid out of his own pocket, but he was able to confirm that the document produced by Defendants detailing \$1,825 in payments to Defendants for their services appeared to be correct. Bensman Cert., Ex. C at 11:3–15; 9:23–10:19. Defendants' counsel revisited this issue two months later on the third day of Mr. Levin's deposition. Mr. Levin again testified that he paid for some of Defendants' services in addition to the payments made by his parents. Bensman Cert., Ex. C at 814:14–815:20.

Since the time of his deposition, Mr. Levin has reviewed additional billing documents produced by Defendant Downing, but not shown to him during his deposition, including a chart of payments indicating two cash payments to Mr. Downing and a copy of a bounced check drawn on Mr. Levin's account made payable to Mr. Downing. See Levin Cert. at ¶¶ 3, 6; Bensman Cert., Exs. J, K. Mr. Levin can now say with certainty that he paid at least \$200 for Defendants' conversion therapy services, including two cash payments of \$100 each that were recorded by Mr. Downing on June 15, 2007 and June 21, 2007. Levin Cert. at ¶ 3. Mr. Levin held several jobs during the period of time he received Defendants' conversion therapy services, and his parents sometimes resisted or declined to pay such costs, necessitating his direct payment

for them instead.⁵ *Id.* at ¶¶ 4, 5. In addition to direct costs for Defendants' conversion therapy services, Mr. Levin paid other related costs that are detailed in his certification. *Id.* at ¶¶ 8–11.

Defendants rely upon testimony from Mr. Levin's mother and co-plaintiff, Bella Levin, as their only support for their contention that it is undisputed that Mr. Levin "did not pay for Defendants' services with his own money." Defs.' SUMF at ¶ 1. Although Mrs. Levin testified that Mr. Levin did not pay for any of Defendants' services with his own money, she simply had not known that Mr. Levin had in fact paid for certain of Defendants' services, because this was not something that Mr. Levin had discussed with her at the time or prior to her deposition. Levin Cert. at ¶ 7. On this Motion for Partial Summary Judgment, the facts must be viewed in the light most favorable to Plaintiffs. Accordingly, Mr. Levin's and his mother's testimony should be interpreted as showing that as far as they both know, Mr. Levin did pay cash for at least some of Defendants' services. Moreover, at best, even if a conflict were to be found between Mr. Levin's and his mother's testimony, there exists a genuine issue as to a material fact that may be decided only by the factfinder, who will have to determine which of the two witnesses to credit. *See D'Amato by McPherson v. D'Amato*, 305 N.J. Super. 109 (App. Div. 1997) (where a summary judgment movant's moving papers create a dispute of material fact, the motion fails).

Defendants' assertion that it is an undisputed fact that "Bella Levin paid for Chaim Levin's medical treatments to repair the alleged damage caused by Defendants," Defs.' SUMF at ¶ 3, is similarly unavailing. While Plaintiffs do not dispute that Mrs. Levin paid for some of Mr.

⁵ This is consistent with Mr. Levin's testimony on the second day of his deposition: "Q. Were your parents not supporting you financially at this time with your work with JONAH? A. It was on and off. Q. Had you asked them to help you financially continue with the program? A. Yes. Q. And what did they say? A. It was -- like I said, it was on and off. Sometimes they were okay with it, sometimes they weren't and they wouldn't want to pay for it." Bensman Cert. Ex. C at 331:6–17.

Levin's post-JONAH therapy,⁶ it is disputed that no one else, in particular Mr. Levin himself, ever paid any of the costs of Mr. Levin's post-JONAH therapy. Levin Cert. at ¶¶ 3–7.

The only evidence Defendants offer in support of this purportedly undisputed fact is the following testimony from Mrs. Levin at her deposition:

Q. Did you ever pay for Chaim to see any other therapist, psychologists, or psychiatrists?

A. Yes.

Q. And was this before he attended JONAH or after?

A. After. The – Charana [*sic*] was before and after.

Bensman Cert., Ex. I, B. Levin Tr. at 69:20–70:12. Notably, Defendants did not ask Mrs. Levin if *only* she had paid for Mr. Levin to see post-JONAH mental health professionals. Rather, Defendants asked her if she had *ever* paid, and she testified that she had. That she paid for some post-JONAH therapy is not in dispute, but the testimony relied upon by Defendants does not support the assertion that Mr. Levin did not pay for *any* of his post-JONAH therapy himself, which he did. *See* Bensman Cert., Ex. C at 814:14–815:17 (testifying that both he and his parents paid for post-JONAH medical expenses); Levin Cert. at ¶ 15. For the period after he received Defendants' conversion therapy services, Mr. Levin continued counseling with his therapist Charna Shapiro for at least 30 sessions, at least five of which he paid for himself, totaling at least \$500. *Id.*

Finally, with respect to Mr. Levin, Defendants contend that it is an undisputed material fact that “Chaim Levin does not know how much money his parents spent on medical treatments attributable to repairing alleged damage caused by Defendants.” Defs.' SUMF at ¶ 2.

⁶ To the extent that this fact is undisputed, Plaintiff Bella Levin has demonstrated a *bona fide* claim for ascertainable loss.

Regardless of whether this is an undisputed fact, it is not a material fact to the question of whether Mr. Levin paid for some post-JONAH therapy. What matters is that Mr. Levin paid for some of the cost of his post-JONAH therapy in the amount of at least \$500. Levin Cert. at ¶ 15. That Mr. Levin could not identify at his deposition the exact amount of those costs or provide an estimate of what he paid compared to what his parents paid is of no consequence. Defendants never asked Mr. Levin for the minimum amount that Mr. Levin is certain that he paid for post-JONAH therapy, which, upon reflection, Mr. Levin now recalls as at least \$500 of those expenses with Ms. Shapiro. *Id.*

Based on the foregoing, Plaintiffs have produced “evidence from which a factfinder could find or infer that [Mr. Levin] suffered an actual loss,” *Thiedemann*, 183 N.J. at 248, and that there is a genuine issue or material fact making summary judgment inappropriate as to Mr. Levin. Accordingly, Defendants’ Motion for Partial Summary Judgment should also be denied as to Mr. Levin.

D. Sheldon Bruck Suffered Ascertainable Loss.

While it is undisputed that Sheldon Bruck’s parents paid the out-of-pocket costs for the services he received from Defendants as well as for his post-JONAH therapy, that fact is not determinative on the question of Mr. Bruck’s own ascertainable loss under the CFA and standing as a private plaintiff.⁷

Mr. Bruck entered Defendants’ conversion therapy program as a minor with the consent and financial support of his parents. While he did not pay for Defendants’ conversion therapy services, he was a direct consumer of those services and a recipient of misrepresentations about

⁷ To the extent that this fact is undisputed, Plaintiff Jo Bruck has demonstrated a *bona fide* claim for ascertainable loss.

those services. *Ferguson*, 2014 N.J. Super. Unpub. LEXIS 1334, at 14 (“Just as the purchaser of a home is a consumer of a product, the recipient of conversion therapy is a consumer of services.”). Mr. Bruck became a consumer of Defendants’ conversion therapy services to change his sexual orientation based on Defendants’ misrepresentations, including that Defendants’ program would cure his homosexuality. But those representations are less than what Mr. Bruck received. He did not receive services that change sexual orientation from gay to straight. As such, Mr. Bruck experienced an ascertainable loss when he as a “consumer receive[d] less than what was promised.”⁸ See *Thiedemann*, 183 N.J. at 244 (quoting *Union Ink Co., Inc. v. AT&T Corp.*, 352 N.J. Super. 617, 646 (App. Div. 2002), *cert. denied*, 174 N.J. 547 (2002)).

Miller v. Am. Family Publishers, 284 N.J. Super. 67, 87–91 (Ch. Div. 1995) is analogous to the instant case and supports the conclusion that Mr. Bruck has suffered ascertainable loss. There, plaintiffs were four individuals who entered defendant’s sweepstakes. Two of the plaintiffs simultaneously ordered magazines from defendant, while two others did not. *Id.* at 72. In *Miller*, the court denied the defendant’s motion for summary judgment against all plaintiffs, including the two who had not suffered an out-of-pocket loss. *Id.* at 72, 87–90. The defendant had created the false impression that the purchase of magazines would increase the chance of winning the sweepstakes, and the non-existence of that higher chance at winning was an ascertainable loss sufficient to give standing to each of the *Miller* plaintiffs. The ascertainable loss amounted to “receiv[ing] something less than, and different from, what they reasonably expected in view of defendants’ presentations. That is all that is required to establish ‘ascertainable loss,’ and it is sufficient to withstand defendant’s motion for summary judgment.”

⁸ Mr. Bruck was not the only one to experience this non-monetary loss. All Plaintiffs in this case, regardless of whether they also suffered a monetary loss, experienced this form of non-monetary loss.

Id. at 90–91. The same is true of Mr. Bruck. While he did not suffer an out-of-pocket loss as his mother did, he still experienced an ascertainable loss because he “received something less than, and different from, what [he] reasonably expected in view of defendant’s presentations.” *See id.* Mr. Bruck reasonably expected that Defendants’ conversion therapy would give him a chance at curing his homosexuality, an expectation – grounded in Defendants’ representations – that was not true.

Defendants’ reliance on *Levy v. Edmund Buick-Pontiac, Ltd.*, 270 N.J. Super. 563 (Law Div. 1993), is misplaced. In *Levy*, plaintiff was an assignee of the consumer who had interacted with the defendant even though the plaintiff had never had any contact or interaction with the defendant as a consumer. *Id.* at 564. The *Levy* court held that even though the assignment to the plaintiff was valid, the plaintiff lacked standing under the CFA because “he did not suffer any ascertainable loss as a result of defendant’s conduct.” *Id.* at 567. Instead, the court held that the assignor who had dealt directly with the defendant and had received the product (in that case a car) directly from the defendant had suffered the ascertainable loss. *Id.* In reaching its decision, the *Levy* court noted that “[t]he intent of the remedial statute should be liberally interpreted in order to effectuate the intent of the statute, but that intent was to protect consumers; in this instance, plaintiff-assignee was not a consumer vis-à-vis defendant.” *Id.* at 568.

In the instant case, unlike in *Levy*, Mr. Bruck was a consumer vis-à-vis Defendants. Defendants made misrepresentations to him and he directly received Defendants’ conversion therapy services. He experienced the actual loss as a consumer who received less than what was represented. Mr. Bruck is not asserting a claim as an assignee of his parents but rather as a direct consumer himself and was not “a step removed from the product or services rendered.” *Ferguson*, 2014 N.J. Super. Unpub. LEXIS 1334, at 14 (distinguishing *Gupta v. Asha*

Enterprises LLC, 422 N.J. Super. 136 (App. Div. 2011), and *Billings v. Am. Express Co.*, No. 10-3487, 2011 U.S. Dist. LEXIS 132185 (D.N.J. Nov. 16, 2011), from the instant case).

That Mr. Bruck's ascertainable loss was not an out-of-pocket monetary loss, but rather a non-monetary loss, does not render it a non-economic damage, or hypothetical, or illusory. *Miller*, 284 N.J. Super. at 89; *Cox*, 138 N.J. at 22–23. Mr. Bruck's ascertainable loss was an actual loss, and it is real and demonstrable, *see Thiedemann*, 183 N.J. at 255, *i.e.*, he received a service that Defendants represented was effective in turning clients from gay to straight but which in fact was not. The question of whether Mr. Bruck has sustained any damages as a result of his ascertainable loss is a different question altogether from the question of whether he suffered non-monetary ascertainable loss, and it is one for the factfinder at trial. *Ferguson*, 2014 N.J. Super. Unpub. LEXIS 1334, at 15 (noting that under *D'Agostino v. Maldonado*, 216 N.J. 168, 192 (2013), “ascertainable loss” and ‘damages sustained’ have separate functions under the CFA.”). Even if the factfinder were to find, for whatever reason, that Mr. Bruck suffered no damages subject to trebling, if he establishes a CFA violation, he may still have access to the CFA's remedies of equitable relief and attorneys' fees. *Weinberg v. Sprint Corp.*, 173 N.J. 233, 251 (2002); *Thiedemann*, 183 N.J. at 247. In any event, Mr. Bruck's non-monetary loss can be objectively quantified, as could any service marketed to produce a result that in reality had no such value. *See Miller*, 284 N.J. Super. at 87–90 (difference of defendant's false representation about increased chance of winning sweepstakes compared with the reality of no increased chance is sufficiently quantifiable as ascertainable loss against summary judgment); *cf. Scafidi v. Seiler*, 119 N.J. 93, 111–13 (1990) (defendant subject to jury determination of lost chance damages due to medical malpractice).

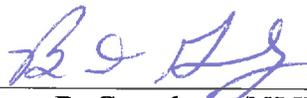
Mr. Bruck was 17 years old when Defendants held out the promise of curing his homosexuality. Although Mr. Bruck was unable to pay without his parents' support, he nonetheless experienced an ascertainable loss of receiving less than what Defendants offered and Defendants' Motion should also be denied as to Mr. Bruck. *See Bosland*, 197 N.J. at 555–56 (observing that the CFA should be construed broadly to effectuate its remedial purposes of protecting consumers from fraudulent and unscrupulous business practices).

IV. CONCLUSION

For the foregoing reasons, Plaintiffs Benjamin Unger, Chaim Levin, and Sheldon Bruck have presented *bona fide* claims of ascertainable loss and have standing as private plaintiffs under the CFA. Accordingly, Defendants' Motion for Partial Summary Judgment should be denied in its entirety.

Dated: August 26, 2014

Respectfully submitted,



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Jeffrey A. Shooman (NJ ID#: 041512006)
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Two Gateway Center – Suite 1201
Newark, NJ 07102

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Attorneys for Plaintiffs

Michael Ferguson, Benjamin Unger, Sheldon
Bruck, Chaim Levin, Jo Bruck, Bella Levin,

Plaintiffs,

v.

JONAH (Jews Offering New Alternatives for
Healing f/k/a Jews Offering New Alternatives
to Homosexuality), Arthur Goldberg, Alan
Downing, Alan Downing Life Coaching LLC,

Defendants.

SUPERIOR COURT OF NEW JERSEY
HUDSON COUNTY, LAW DIVISION

Docket No. L-5473-12

CIVIL ACTION

**CERTIFICATION OF LINA BENSMAN
IN OPPOSITION TO DEFENDANTS'
MOTION FOR PARTIAL SUMMARY
JUDGMENT AS TO PLAINTIFFS
CHAIM LEVIN, SHELDON BRUCK,
AND BENJAMIN UNGER FOR LACK
OF STANDING**

I, Lina Bensman, an attorney duly admitted to practice in the courts of the State of New York, under penalties of perjury, affirm:

1. I am an associate at Cleary Gottlieb Steen & Hamilton LLP and represent the Plaintiffs in the above-captioned matter.

2. A true and correct copy of transcript pages 122 and 235-26, excerpted from the deposition of Benjamin Unger, is attached as **Exhibit A**.

3. A true and correct copy of a document produced in discovery with the Bates number FGSN00009270, reflecting medical and billing records for Benjamin Unger, is attached as **Exhibit B**.

4. A true and correct copy of transcript pages 9-12, 331, and 814-815, excerpted from the deposition of Chaim Levin, is attached as **Exhibit C**.

5. A true and correct copy of transcript pages 21, 31-36, 41-43, 58-59, and 208-212, excerpted from the deposition of Sheldon Bruck, is attached as **Exhibit D**.

6. True and correct copies of pages excerpted from Messrs. Unger, Levin, and Bruck's Responses and Objections to Defendants' Interrogatories, all dated May 6, 2013, are attached as **Exhibit E**.

7. Plaintiffs produced medical records obtained from their post-JONAH therapists on August 20, 2013 (FGSN00009123-314). A true and correct copy of the cover letter conveying those documents is attached as **Exhibit F**. Additional medical records were produced to Defendants on October 3, 2013 (FGSN00009315), January 28, 2014 (FGSN00009318), January 30, 2014 (FGSN00009319), and February 7, 2014 (FGSN00009326).

8. At Defendants' request, Chaim Levin, Benjamin Unger, and Michael Ferguson executed medical information release forms allowing Defendants to seek information

directly from Plaintiffs' post-JONAH therapists. The releases for Mr. Unger and Mr. Ferguson were provided to Defendants on September 18, 2013. The releases for Mr. Ferguson were provided to Defendants on September 26, 2013.

9. Plaintiffs disclosed that their post-JONAH therapists were potential fact witnesses. A true and correct copy of a communication dated February 13, 2014 conveying that information is attached as **Exhibit G**. Defendants elected not to depose any of Plaintiffs' post-JONAH therapists.

10. A true and correct copy of the unpublished opinion *Ferguson v. JONAH*, No. L-5473-12, 2014 N.J. Super. Unpub. LEXIS 1334 (Law Div. Jun. 6, 2014) is attached as **Exhibit H**.

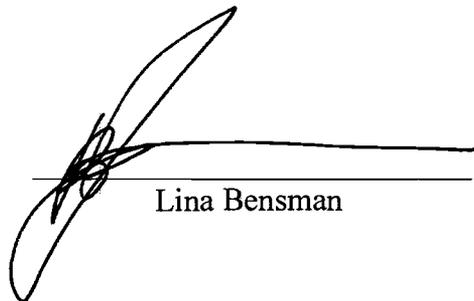
11. A true and correct copy of transcript pages 69-70, excerpted from the deposition of Bella Levin, is attached as **Exhibit I**.

12. A true and correct copy of a document produced in discovery with the Bates number JON000595, reflecting cash payments from Chaim Levin to JONAH is attached as **Exhibit J**.

13. A true and correct copy of a document produced in discovery with the Bates number JON000615, reflecting an overdrawn check dated July 4, 2008 from Chaim Levin to Alan Downing in the amount of \$100 is attached as **Exhibit K**.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: August 25, 2014
New York, NY



Lina Bensman

Exhibit A

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: HUDSON COUNTY
-----x

MICHAEL FERGUSON, BENJAMIN UNGER, SHELDON
BRUCK, CHAIM LEVIN, JO BRUCK, BELLA LEVIN,

Plaintiffs,

v. L-5473-12

JONAH (JEWS OFFERING NEW ALTERNATIVES FOR
HEALING f/k/a JEWS OFFERING NEW ALTERNATIVES
TO HOMOSEXUALITY), ARTHUR GOLDBERG, ALAN
DOWNING LIFE COACHING, LLC,

Defendants.

-----x
January 30, 2014
9:41 a.m.

Video deposition of BENJAMIN UNGER,
taken by defendants, pursuant to notice, at
the offices of Cleary Gottlieb Steen &
Hamilton, New York, NY 10006, before Sharon
Lengel, a Registered Professional Reporter
and Notary Public of the State of New
York.

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Q. How about your mother? Does she know about the lawsuit?

A. Yes.

Q. How does she feel about it?

A. She is, I think, very supportive of it.

Q. Okay. Inasmuch as your parents paid for the services, do you have any why idea why they're not parties to the lawsuits like two of the plaintiffs' other mothers are?

A. I do not know.

Q. Okay. Do you know if they were -- did you ask them to be parties to the -- either of them to be a party in the lawsuit?

A. I spoke to them. My father likes to remain indifferent. In general, he's not a person that likes to get involved in any type of argument. My mother actually regrets not being a part of it now. I don't know why she chose not to do it.

Q. Are either of your parents practicing Jews at this time?

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questions about the complaint, and then if you don't mind, we'll take our final break and then come back and finish up if that's satisfactory for everyone.

In the plaintiff's complaint in Paragraph 11, it states that "Plaintiffs relied on defendants' misrepresentation paying for their services."

We already covered that. Then it says, "Misrepresentations caused plaintiffs to suffer depression, emotional harm, and they are unable to change their sexual orientation and they subsequently addressed it by seeking and paying for professional treatment."

Do you have any idea what your claim is for expenses paid for professional treatment to address harm that you believe resulted from my clients' therapy?

A. You're -- I'm sorry, are you asking me what my claim is, how much?

Q. Yeah, do you know?

A. I don't know the exact amount.

Q. Do you have idea of the range of

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numbers or anything?

A. In the thousands.

Q. Okay. This is for therapists you've seen after you've left JONAH?

A. Yes.

Q. Okay. Do you believe you would have seen any of those therapists even if you had never been to JONAH?

A. No.

Q. So you don't think you would have needed some help with OCD or anxiety if you had never gone to JONAH?

A. I would have not needed that help, no.

Q. Do you know if there was any issues of anxiety in your family, any history of that?

A. My mother has some anxiety.

Q. Does she have some OCD issues?

A. She does.

Q. Okay. Paragraph 61 says, "Defendants repeatedly misrepresented being gay as loathsome, and the gay people are more likely to be pedophiles, drug abusers,

Exhibit B

Center for Cognitive-Behavioral Psychotherapy

137 E 36th Street, Suite 4
New York, NY 10016
Phone: (212) 686-6886 Fax: (212) 686-0943
E-Mail: center686@gmail.com
Web: www.cognitivebehavioralcenter.com

Receipt

Therapist: Steven Phillipson, Ph.D.
NYS License: 018256
Tax ID: 155385284
Date: 4/18/13

Patient: Benjamin Unger
Diagnosis (DSM-IV): 300.3

Date	CPT Code	Fee
5/2/08	90801	\$250.00
5/8/08	90806	\$250.00
5/16/08	90806	\$250.00
5/23/08	90806	\$250.00
5/30/08	90806	\$250.00
6/6/08	90806	\$250.00
6/13/08	90806	\$250.00
6/20/08	90806	\$250.00
6/27/08	90806	\$250.00
6/30/08	90806	\$250.00
7/4/08	90806	\$250.00
7/11/08	90806	\$250.00
7/24/08	90806	\$250.00
8/1/08	90806	\$250.00
1/3/10	90801	\$250.00
2/17/11	90806	\$250.00

Total: \$4,000.00
Total Paid: \$4,000.00
Balance Due: \$0.00



Steven Phillipson, Ph.D.
Psychologist

Center for Cognitive-Behavioral Psychotherapy

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Receipt

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NYS License: 018256
Tax ID: 155385284
Date: 4/18/13

Patient: Benjamin Unger
Diagnosis (DSM-IV): 300.3

Date	CPT Code	Fee
3/2/11	90806	\$250.00
3/9/11	90806	\$250.00
3/16/11	90806	\$250.00
3/24/11	90806	\$250.00
3/31/11	90806	\$250.00
4/7/11	90806	\$250.00
4/14/11	90806	\$250.00
4/28/11	90806	\$250.00
5/5/11	90806	\$250.00
5/12/11	90806	\$250.00
5/19/11	90806	\$250.00
5/26/11	90806	\$250.00
6/2/11	90806	\$250.00
6/15/11	90806	\$250.00
6/22/11	90806	\$250.00
6/29/11	90806	\$250.00

Total: \$4,000.00
Total Paid: \$4,000.00
Balance Due: \$0.00



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Patient: Benjamin Unger
Diagnosis (DSM-IV): 300.3

Date	CPT Code	Fee
7/6/11	90806	\$250.00
7/13/11	90806	\$250.00
7/20/11	90806	\$250.00
7/27/11	90806	\$250.00
8/3/11	90806	\$250.00
8/10/11	90806	\$250.00
8/17/11	90806	\$250.00
8/31/11	90806	\$250.00
9/8/11	90806	\$250.00
9/13/11	90806	\$250.00
9/21/11	90806	\$250.00
9/28/11	90806	\$250.00
10/5/11	90806	\$250.00
10/12/11	90806	\$250.00
10/19/11	90806	\$250.00
10/26/11	90806	\$250.00

Total: \$4,000.00
Total Paid: \$4,000.00
Balance Due: \$0.00



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Tax ID: 155385284
Date: 4/18/13

Patient: Benjamin Unger
Diagnosis (DSM-IV): 300.3

Date	CPT Code	Fee
11/2/11	90806	\$250.00
11/9/11	90806	\$250.00
11/16/11	90806	\$250.00
11/23/11	90806	\$250.00
11/30/11	90806	\$250.00
12/7/11	90806	\$250.00
12/14/11	90806	\$250.00
12/21/11	90806	\$250.00
1/4/12	90806	\$250.00
1/11/12	90806	\$250.00
1/19/12	90806	\$250.00
1/26/12	90806	\$250.00
2/2/12	90806	\$250.00
2/16/12	90806	\$250.00
3/1/12	90806	\$250.00

Total: \$3,750.00
Total Paid: \$3,750.00
Balance Due: \$0.00



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Psychotherapy

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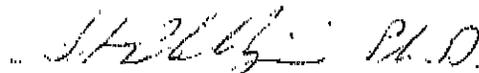
Receipt

Therapist: Steven Phillipson, Ph.D.
NYS License: 018256
Tax ID: 155385284
Date: 3/20/13

Patient: Benjamin Unger
Diagnosis (DSM-IV): 300.3

Date	CPT Code	Fee
11/9/12	90806	\$100.00
11/16/12	90806	\$100.00
11/23/12	90806	\$100.00
11/19/12	90806	\$100.00
12/6/12	90806	\$100.00
12/14/12	90806	\$100.00
12/21/12	90806	\$100.00
12/28/12	90806	\$100.00
1/4/13	90834	\$100.00
1/11/13	90834	\$100.00
1/18/13	90834	\$100.00
1/25/13	90834	\$100.00
2/1/13	90834	\$100.00
2/8/13	90834	\$100.00
2/15/13	90834	\$100.00

Total: \$1,500.00
Total Paid: \$1,500.00
Balance Due: \$0.00



Steven Phillipson, Ph.D.
Psychologist

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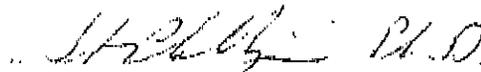
Receipt

Therapist: Steven Phillipson, Ph.D.
NYS License: 018256
Tax ID: 155385284
Date: 3/20/13

Patient: Benjamin Unger
Diagnosis (DSM-IV): 300.3

Date	CPT Code	Fee
2/22/13	90834	\$100.00
3/1/13	90834	\$100.00
3/8/13	90834	\$100.00
3/15/13	90834	\$100.00
3/22/13	90834	\$100.00
4/5/13	90834	\$100.00
4/12/13	90834	\$100.00

Total: \$700.00
Total Paid: \$700.00
Balance Due: \$0.00



Steven Phillipson, Ph.D.
Psychologist

Exhibit C

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: HUDSON COUNTY
-----x

MICHAEL FERGUSON, BENJAMIN UNGER, SHELDON
BRUCK, CHAIM LEVIN, JO BRUCK, BELLA LEVIN,

Plaintiffs,

v. L-5473-12

JONAH (JEWS OFFERING NEW ALTERNATIVES FOR
HEALING f/k/a JEWS OFFERING NEW ALTERNATIVES
TO HOMOSEXUALITY), ARTHUR GOLDBERG, ALAN
DOWNING LIFE COACHING, LLC,

Defendants.

-----x
January 29, 2014
1:45 p.m.

Video deposition of CHAIM LEVIN, taken
by defendants, pursuant to notice, at the
offices of Cleary Gottlieb Steen & Hamilton,
New York, NY 10006, before Sharon Lengel, a
Registered Professional Reporter and Notary
Public of the State of New York.

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information, you should do your best to estimate. Fair enough?

A. Yes.

Q. Okay, great. And that'll oftentimes come up, like you'll say, "I don't know when it was," but you might be to tell us a year, a time of year, okay?

All right. Is there any reason why you can't give your best testimony today?

A. No.

Q. Okay. You're not taking any type of medication that could affect your ability to recollect or relate information?

A. No.

Q. Okay, super. Why don't we go ahead and begin, and as with the other depositions, we'll primarily try to focus on particular exhibits in the notebooks we've prepared to help us get through this process more efficiently and expeditiously.

So why don't you open up to the first exhibit. And as in the other depositions, we'll start with what we believe is the

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2 itemization of the expenses that you or
3 someone on your behalf paid to my client
4 for services rendered on particular dates.

5 You may not remember specific
6 dates, but I'll ask you if that generally
7 looks like -- if you can give an answer --
8 the total amount that was paid, I think as
9 reflected here is \$1,825 with a balance
10 that was unpaid of \$275. Does that sound
11 right to you? Are you capable of giving me
12 any information on that?

13 A. This -- this seems about right.
14 I actually believe the balance of it was
15 \$300.

16 Q. Okay.

17 A. Not \$275.

18 Q. Thank you for that. I appreciate
19 it.

20 As I understand it, that you did
21 not personally pay with your own funds. It
22 was paid by one or both of your parents?

23 A. There were some that I paid
24 for --

25 Q. Oh, okay.

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A. -- as well.

Q. Any way you can estimate for us approximately the total dollar amount that you would have paid out of your own pocket or resources for services by one of my clients?

A. I cannot.

Q. Okay. Again, this we're getting in the range of estimating. For example, the total amount paid, we believe, is close to \$1,825. Would it be fair to say that you paid less than half that amount out of your own funds?

A. I honestly don't recall.

Q. Okay. That's a fair answer.

Those funds that were not paid by you out of your own funds, did you know which -- or was it both of your parents -- would have paid those or if it was a joint account? Maybe you can -- I don't know if you know that information.

A. Is that a question?

Q. It meant -- is intended to be.

Do you know if your mother, father, or both

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paid?

A. They used to give me checks;
sometimes my mom, sometimes my dad.

Q. Okay.

A. I don't know --

Q. Do you know if they had a joint
account?

A. They did.

Q. Okay, that's fine. Thank you.

Let's move on to the next Exhibit
No. 2 in the exhibit book. And correct me
if I'm wrong, but my understanding is the
email at the bottom of the page, dated
4/15/2007, would that be your initial
contact with my clients through their
website?

MR. McCOY: Just -- just real
quick. Whenever you begin to look at a
document, if you need to take time to
look at it, familiarize yourself with
it, do that, and then we'll have the
question.

MR. LiMANDRI: That's fine.

MR. McCOY: As long as you are

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Q. Okay. Let's keep reading.
Exhibit 42. These are e-mails from
November 21, 2008. Here's an e-mail from
Alan on top.

Were your parents not supporting
you financially at this time with your work
with JONAH?

A. It was on and off.

Q. Had you asked them to help you
financially continue with the program?

A. Yes.

Q. And what did they say?

A. It was -- like I said, it was on
and off. Sometimes they were okay with it,
sometimes they weren't and they wouldn't
want to pay for it.

Q. Let's go to Exhibit 43.

MR. McCOY: Why don't we take
lunch after this.

MR. LiMANDRI: How about after
44?

MR. McCOY: Okay. That's fine.

MR. LiMANDRI: Thank you.

Q. On Alan Downing's e-mail,

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a few minutes and talk?

MR. LiMANDRI: Yeah, just give me a couple of minutes.

THE VIDEOGRAPHER: The time is 4:02. We're off the record.

(Recess)

THE VIDEOGRAPHER: The time is 4:12 p.m. We're back on the record.

EXAMINATION CONTINUED

BY MR. LiMANDRI:

Q. Mr. Levin, just finishing up with just a couple of more issues.

I asked previously if you were able to calculate the amount you paid for medical expenses. You indicated that you can't.

Is there any way you're aware of that you can figure that out, looking at checkbook registers or anything? Is there any way to actually figure out the amount you paid for any treatment for JONAH or any medical expenses you would attribute to any harm allegedly caused by JONAH?

A. I don't --

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2 MR. McCOY: I mean, objection to
3 the extent it calls for a legal
4 conclusion, but if you're talking
5 mechanically --

6 Q. Just mechanically --

7 MR. McCOY: Yeah.

8 Q. -- is there any way -- you know,
9 you can't tell me today -- but before
10 trial, you're going to be able to go back
11 and figure that out somehow?

12 A. I hope so.

13 Q. But you don't know?

14 A. I don't know --

15 Q. Okay.

16 A. -- because some of it came from
17 my parents.

18 Q. Right. You don't know
19 percentages roughly, even?

20 A. No.

21 Q. Okay. And then you mentioned
22 this Jeremy Roberts, who told you he went
23 through the nudity exercise with
24 Mr. Downing and told you he was asked to
25 look at and masturbate towards straight

Exhibit D

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - HUDSON COUNTY
DOCKET NO. L-5473-12

-----x

Michael Ferguson, Benjamin Unger, Sheldon
Bruck, Chaim Levin, Jo Bruck, Bella Levin,

Plaintiffs,

v.

Jonah (Jews Offering New Alternatives for
Healing f/k/a Jews Offering New Alternatives
to Homosexuality) Arthur Goldberg, Alan
Downing, Alan Downing Life Coaching, LLC,

Defendants.

-----x

January 28, 2014
9:30 a.m.

Video deposition of SHELDON T. BRUCK,
taken by defendants, pursuant to agreement, at
the offices of Cleary Gottlieb Steen & Hamilton,
One Liberty Plaza, New York, NY 10006, before
Joseph B. Pirozzi, a Registered Professional
Reporter and Notary Public of the State of New
York.

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A. Yes.

Q. Do you recall what your father's response was with respect to this letter you sent, we've marked as Exhibit 3?

A. Yes, I -- after I gave him the letter, I went to my bedroom, he called me back down to his office and gave me a big hug and was crying and told me he loves me no matter what and whatever I want to do, he'll support me 100 percent.

Q. Okay. And did you talk with him as well about the possibility of attempting the services of JONAH?

A. Yes.

Q. And what was his response in that regard?

A. He told me that whatever I choose to do, he'll support me 100 percent.

Q. Okay. Now, in both Exhibit 2 letter and Exhibit 3 letter, the one to your mother and the one to your father, it mentions that you started at some point having thoughts of suicide.

A. Uh-huh.

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that it says, Shalom, Elaine. So I stand corrected. I'm sorry.

Q. Take a look at Exhibit 4 and apparently it is an e-mail from Elaine Berk. So we'll probably need to correct your prior testimony. It looks like you did receive an e-mail from Ms. Berk, is that correct?

A. Yes.

Q. All right. Now, it looks like that e-mail was in response to your leaving a message with JONAH, presumably, through the Internet, if I'm looking at the bottom of the page and that looks like it is some type of e-mail contact.

Is that your understanding?

A. Yes.

Q. And your initial contact, then, on the JONAH website or through the JONAH website would have been, "I am 17 and struggling as a gay teenager. I really want to change and I try to make the inappropriate gay thoughts I have disappear but, it's hard. I really want to marry a

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girl who I'll love and have children with her. I need help."

Okay. So you're requesting JONAH's help at this time because you wanted to eventually get married to a girl and have your own children?

A. Yes.

Q. And then that was September 16th at 12:50 and then you received this response, it looks like the same day from Elaine Berk.

Did you read it at that time?

A. Yes.

Q. Okay. What did you do after you got this e-mail from Elaine Berk?

A. I don't recall.

Q. Do you know if you shared it with either of your parents?

A. I think I spoke with my mother about it.

Q. So as far as you know, Exhibit 4 is the first contact, would it be the first contact, as far as you know, either you or your mother had with JONAH?

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MR. DINIELLI: Calls for speculation.

Q. Do you know if your mother ever contacted anybody from JONAH first?

MR. DINIELLI: Same objection.

Q. I'm asking you if you know.

A. No.

Q. Okay, let's go to Exhibit 5, please. Okay, Exhibit 5 is an e-mail from Arthur Goldberg dated October 6 and it says, "Just checking in on how you are doing since our conversation. Best, Arthur."

And then it has attached the initial e-mail contact from you that is at the bottom of Exhibit 4.

So apparently you first spoke to Arthur Goldberg between September 16, 2009 and October 6, 2009.

Would that be a safe assumption, looking at this?

A. Yes.

Q. All right. And is that the conversation that you mentioned earlier?

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Your first contact with Arthur Goldberg when he told you about the program would have been between these two dates, September 16 and October 6?

A. Yes.

Q. Correct? Okay.

Can we try to be -- you told me generally what was spoken of at that time. Can you try to be as specific as possible as to things Arthur Goldberg told you in that initial phone call?

A. Yes.

Q. Okay, go ahead.

A. I spoke with him and he was really upbeat and friendly and told me about his program and how society has a mixed view on what gay is and that it is something that doesn't exist and that it is called SSA which is same-sex attraction which is developmental and there are factors in your life, including being rejected by your male peers, your mother being too overbearing and your father being distant and, among other factors, that

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could cause you to have these same-sex attractions. And that their program will help fix it and change these same-sex attractions.

Q. Did he say there's no such thing as gay people or did he say that, in his opinion, people are not born gay?

A. He said there's no such thing as gay.

Q. Okay. What did you understand that to mean?

A. That it was a misunderstanding in the community because that's what I was told.

Q. Okay. Did he explain that further?

A. I don't know what you mean by that.

Q. Okay. Did he talk about the gay agenda issues at all?

A. I don't recall.

Q. Did he say that, in his view, people are not born gay?

A. What?

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Q. In Ms. Berk's e-mail to you, Exhibit 4, the first sentence is, "The main idea for you to understand about your same-sex attractions (SSA) is that you were not born gay -- no one is born gay."

Is that something that Arthur Goldberg told you as well?

A. Yes.

Q. Okay. Now, did he talk about the JONAH program enabling people to heal wounds that they may have suffered growing up? Did he use the word heal or did he use the word fix?

A. Fix.

Q. What did you understand that to mean?

A. That it was something that I must have developed growing up and that it's something that is fixable.

Q. Okay. And he mentioned that often times men who identify as gay were distant from their father, that was one of the things?

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A. Those weren't my words.

Q. But is that something that you were asking for?

A. Yes, I was asking to go into the JONAH services and he recommended a counselor.

Q. Did you indicate that you wanted to increase your sense of self-worth, self-confidence and self-esteem?

A. No.

Q. Okay, let's go to Exhibit 7, please.

Before we do that. You know, in your conversations with Arthur Goldberg by phone, we had the two conversations, did he ever use words promise or guarantee in the conversation with you?

A. No.

Q. Okay. Did Arthur Goldberg ever said that we have 100 percent success rate or words to that effect?

A. He told me that as long as I put in the work and make the effort, that I will change.

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Q. Okay. By changing, he didn't say, did he, that you would be free of all same-sex attraction, did he?

A. He told me that I would change.

Q. Okay. By change, you understand that you could potentially, what he was telling you, have a lessening of same-sex attraction and a development of attraction for women, did he express it to you that way?

MR. DINIELLI: Objection. Vague and compound.

Q. No?

A. No.

Q. Okay. What did you understand by change to mean?

A. Change, as in, I would go from gay to straight.

Q. Okay. Did you understand that there would not be a continuum, that some people are not necessarily 100 percent free of same-sex attraction but they switch from being predominantly attracted to men to being predominantly attracted to women?

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Did you understand that change could mean something like that?

MR. DINIELLI: Same objections.

A. He told me that as long as I put in the work and the effort, that I will change.

Q. Okay. Did you guys discuss time periods at all as to how long it might take for this change to take effect if you put in the effort?

A. No.

Q. Okay. He didn't tell you that would happen in a matter of days or weeks, did he?

A. No.

Q. Did you have any understanding in your own mind as to how long it my take this change to occur based upon that initial discussion with Arthur Goldberg?

A. No. He told me it's different for each person.

Q. Okay. He told you the amount of time is different for each person?

A. Yes.

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Q. Okay.

A. But he told me, as long as I put in the work, that I will change.

Q. Okay. And by putting in the work, you knew that could be different for how long it would take for each person?

A. Yes.

Q. All right. And Elaine Berk didn't give you any guarantees before you started with Thaddeus Heffner, did she?

A. No.

Q. And Thaddeus Heffner himself didn't give you any guarantees at any time, did he?

A. No.

Q. Okay. Let's look at Exhibit 11. It is a document entitled Your Personal Goals and Motivations and it is seven pages.

Does this document contain your handwriting?

A. Yes.

Q. It is not dated. Do you know if you filled it out before your first session

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with Thaddeus Heffner?

A. This was one of the forms that he sent.

Q. Okay. And do you know if you filled it out and sent it in before your first session?

A. Yes.

Q. Okay. Now, in response to the first question, "What is motivating you to seek counseling at this time," you wrote, "Not wanting to be gay."

Was that something that you felt personally or did you feel someone was pressuring you to say that?

A. No, I felt myself, because pressure from within the community.

Q. You're saying pressure within the Jewish community?

A. Um-hmm.

Q. Is that a yes?

A. Yes.

Q. All right.

A. Sorry.

Q. You didn't actually put into

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sham that would not change your sexual orientation from gay to straight as represented by the defendants.

When you would --

MR. DINIELLI: Mr. LiMandri, I'm sorry, I think you misread the request.

Q. Request for admission number 26?

MR. DINIELLI: Yes, I think you just misread a word. So perhaps you want to ask the question again.

Q. I might have. I don't know.

You voluntarily -- the question -- reading the request, you voluntarily withdrew from defendants' program before you completed it. And then the response is, plaintiffs admit that they voluntarily withdrew once they recognized defendants' purported program was an ineffective sham that would not change their sexual orientation from gay to straight as represented by defendants.

Okay, my question is, having heard that read twice, when you left the defendants' program, did you think it was a

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sham at that time?

A. JONAH's program specifically?

Q. Correct.

A. Yes.

Q. You actually thought it was a sham after the four sessions?

A. Yeah. Because just because I stuck with Thaddeus Heffner, it's definitely a reflection of the organization itself.

Q. Is that -- you thought it was a sham because he raised his voice you thought in the one conversation?

MR. DINIELLI: Misrepresents testimony.

A. It was for just the way he would talk to me and I just didn't believe in a lot of his stuff.

Q. Did you feel you gave the program enough of an opportunity to work for you before you withdrew from it?

A. An opportunity enough to work for me?

Q. Right.

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A. No.

Q. Go to page 4, request for admission number 30. It says you did not adopt a gay identity until you left defendants' program.

When did you actually come out as gay to your family and friends? Was it after you left the program?

A. Well, my family knew. I'm saying my parents knew. When I left JONAH and didn't do NARTH is when I told my sisters, I told my younger brother afterwards and then I told my friends. And then -- it's not like I was holding a sign running around people just, you know.

Q. Have they all been accepting?

A. Yes, I haven't lost one friend or family member.

Q. And then let's finish up with Exhibit 32 and then we can maybe take a short break and finish up the deposition.

Is that fine?

MR. DINIELLI: That's fine, thank you.

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Q. Let's go to page 6, please, of Exhibit 32, further response to interrogatory number 3.

It says, the further response says, "Paragraph 38 identifies certain of defendants' misrepresentations, including," I'll take these in order, number 1, "that gay sexual orientation is a mental disorder and gay people must change to straight in order to lead happy and satisfying lives."

Did either Arthur Goldberg or Thaddeus Heffner tell you that gay sexual orientation is a mental disorder and gay people must change to straight in order to lead satisfying and happy lives?

A. Yes, both of them did.

Q. Okay. Did Arthur Goldberg tell you that in your first or second telephone conversation?

A. My first telephone call.

Q. And when did Thaddeus Heffner tell you that?

A. In my telephone call with him.

Q. The one we've been talking about

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where he raised his voice?

A. Yes.

Q. Number 2, "that homosexuality is alterable and defendants are able to successfully change clients' sexual orientation from gay to heterosexual."

I think we've already covered that, is that right, did Arthur Goldberg or Thaddeus Heffner tell you that?

A. Tell me that?

Q. Homosexuality is alterable?

A. Yes.

Q. Let's look at number 3.

Did Arthur Goldberg tell you that when conversion therapy does not produce the promised results, the clients themselves are to blame for not sufficiently investing in and surrendering to defendants' services?

A. Yes, I was told that by Thaddeus.

Q. Okay, did Arthur Goldberg tell you that?

A. No.

Q. And when did Thaddeus Heffner

Exhibit E

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Plaintiffs,

v.

JONAH (Jews Offering New Alternatives for
Healing f/k/a Jews Offering New Alternatives
to Homosexuality), Arthur Goldberg, Alan
Downing, Alan Downing Life Coaching LLC,

Defendants.

SUPERIOR COURT OF NEW JERSEY
HUDSON COUNTY, LAW DIVISION

Docket No: L-5473-12

CIVIL ACTION

**PLAINTIFF BENJAMIN UNGER'S RESPONSES AND OBJECTIONS TO
DEFENDANTS' INTERROGATORIES**

Interrogatory No. 8: Please describe all causes of emotional distress in Your life at the time that You first sought to participate in the Defendants' Program.

Response to Interrogatory No. 8:

This question is improper. In addition to its General Objections, Plaintiff objects to this Interrogatory to the extent it is compound, ambiguous, overly burdensome, designed to embarrass the Plaintiff, and not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 9: Please describe all causes of any emotional distress in Your life since discontinuing participation in the Defendants' Program.

Response to Interrogatory No. 9:

This question is improper. In addition to its General Objections, Plaintiff objects to this Interrogatory to the extent it is compound, ambiguous, overly burdensome, designed to embarrass the Plaintiff, and not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 10: Please Identify any mental health care practitioner that You have ever seen for any psychological or emotional condition, including any psychological evaluations.

Response to Interrogatory No. 10:

This question is improper. In addition to its General Objections, Plaintiff objects to this Interrogatory to the extent it is not reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, Plaintiff identifies the following providers of mental health services: Steven Phillipson; Jordan Levy; James Lewis.

Interrogatory No. 11: Please Identify all physicians, psychiatrists, psychologists, counselors, and other persons from whom You requested or received treatment or other assistance with respect to any injury or damage alleged in the Complaint.

Response to Interrogatory No. 11:

This question is improper. In addition to its General Objections, Plaintiff objects to this Interrogatory to the extent it is vague and unduly burdensome; or asks for information not under Plaintiff's control. Subject to these objections, Plaintiffs will collect and produce documents responsive to this Interrogatory. Plaintiff identifies the following providers of mental health services: Steven Phillipson; Jordan Levy.

Interrogatory No. 12: With respect to each individual identified in Your answer to Interrogatory No. 11, please set forth the dates on which You requested or received treatment or other assistance and a complete description of the nature of the treatment or assistance requested or received.

Response to Interrogatory No. 12:

This question is improper. In addition to its General Objections, Plaintiff objects to this Interrogatory to the extent it asks for information not under Plaintiff's control; or is vague and unduly burdensome. Subject to these objections, Plaintiffs will collect and produce documents responsive to this Interrogatory.

Interrogatory No. 13: Please provide the case number, court location, and nature any litigation in which in which You claimed that You suffered any psychological or emotional injuries.

Response to Interrogatory No. 13:

This question is improper. In addition to its General Objections, Plaintiff objects to the Interrogatory on the grounds that it is overbroad, unduly burdensome, and that such documents are neither relevant to any claim or defense in this action nor reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to this Request to the extent that it requests information protected by the attorney-client privilege and/or work product

CERTIFICATION

Benjamin Unger affirms that he has read the foregoing Responses and Objections and that, to the best of his personal knowledge, or information and belief, they are true and correct.

Dated: May 6, 2013


Benjamin Unger

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Plaintiffs,

v.

JONAH (Jews Offering New Alternatives for
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Downing, Alan Downing Life Coaching LLC,

Defendants.

SUPERIOR COURT OF NEW JERSEY
HUDSON COUNTY, LAW DIVISION

Docket No: L-5473-12

CIVIL ACTION

**PLAINTIFF CHAIM LEVIN'S RESPONSES AND OBJECTIONS TO
DEFENDANTS' INTERROGATORIES**

Interrogatory No. 8: Please describe all causes of emotional distress in Your life at the time that You first sought to participate in the Defendants' Program.

Response to Interrogatory No. 8:

This question is improper. In addition to its General Objections, Plaintiff objects to this Interrogatory to the extent it is compound, ambiguous, overly burdensome, designed to embarrass the Plaintiff, and not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 9: Please describe all causes of any emotional distress in Your life since discontinuing participation in the Defendants' Program.

Response to Interrogatory No. 9:

This question is improper. In addition to its General Objections, Plaintiff objects to this Interrogatory to the extent it is compound, ambiguous, overly burdensome, designed to embarrass the Plaintiff, and not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 10: Please Identify any mental health care practitioner that You have ever seen for any psychological or emotional condition, including any psychological evaluations.

Response to Interrogatory No. 10:

This question is improper. In addition to its General Objections, Plaintiff objects to this Interrogatory to the extent it is not reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, Plaintiff identifies the following providers of mental health services: Dr. David Matalon; Charna Shapiro; Dr. Martin Drooker; Barry Horowitz; Zehava Sellinger; Carol Wohlman.

Interrogatory No. 11: Please Identify all physicians, psychiatrists, psychologists, counselors, and other persons from whom You requested or received treatment or

other assistance with respect to any injury or damage alleged in the Complaint.

Response to Interrogatory No. 11:

This question is improper. In addition to its General Objections, Plaintiff objects to this Interrogatory to the extent it is vague and unduly burdensome; or asks for information not under Plaintiff's control. Subject to these objections, Plaintiffs will collect and produce documents responsive to this Interrogatory. Plaintiff identifies the following providers of mental health services: Dr. David Matalon; Charna Shapiro; Dr. Martin Drooker; Barry Horowitz; Zehava Sellinger; Carol Wohlman.

Interrogatory No. 12: With respect to each individual identified in Your answer to Interrogatory No. 11, please set forth the dates on which You requested or received treatment or other assistance and a complete description of the nature of the treatment or assistance requested or received.

Response to Interrogatory No. 12:

This question is improper. In addition to its General Objections, Plaintiff objects to this Interrogatory to the extent it asks for information not under Plaintiff's control; or is vague and unduly burdensome. Subject to these objections, Plaintiffs will collect and produce documents responsive to this Interrogatory.

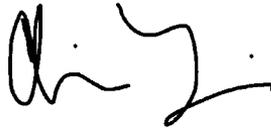
Interrogatory No. 13: Please provide the case number, court location, and nature any litigation in which in which You claimed that You suffered any psychological or emotional injuries.

Response to Interrogatory No. 13:

This question is improper. In addition to its General Objections, Plaintiff objects to the Interrogatory on the grounds that it is overbroad, unduly burdensome, and that such documents are neither relevant to any claim or defense in this action nor reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to this Request to the

CERTIFICATION

Chaim Levin affirms that he has read the foregoing Responses and Objections and that, to the best of his personal knowledge, or information and belief, they are true and correct.

A handwritten signature in black ink, appearing to read 'Chaim Levin', positioned above a horizontal line.

Dated: May 6, 2013

Chaim Levin

LITE DEPALMA GREENBERG, LLC

Allyn Z. Lite
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Two Gateway Center – Suite 1201
Newark, NJ 07102
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(212) 225-2000

Attorneys for Plaintiffs

Michael Ferguson, Benjamin Unger, Sheldon
Bruck, Chaim Levin, Jo Bruck, Bella Levin,

Plaintiffs,

v.

JONAH (Jews Offering New Alternatives for
Healing f/k/a Jews Offering New Alternatives
to Homosexuality), Arthur Goldberg, Alan
Downing, Alan Downing Life Coaching LLC,

Defendants.

SUPERIOR COURT OF NEW JERSEY
HUDSON COUNTY, LAW DIVISION

Docket No: L-5473-12

CIVIL ACTION

**PLAINTIFF MICHAEL FERGUSON'S RESPONSES AND OBJECTIONS TO
DEFENDANTS' INTERROGATORIES**

Interrogatory No. 8: Please describe all causes of emotional distress in Your life at the time that You first sought to participate in the Defendants' Program.

Response to Interrogatory No. 8:

This question is improper. In addition to its General Objections, Plaintiff objects to this Interrogatory to the extent it is compound, ambiguous, overly burdensome, designed to embarrass the Plaintiff, and not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 9: Please describe all causes of any emotional distress in Your life since discontinuing participation in the Defendants' Program.

Response to Interrogatory No. 9:

This question is improper. In addition to its General Objections, Plaintiff objects to this Interrogatory to the extent it is compound, ambiguous, overly burdensome, designed to embarrass the Plaintiff, and not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 10: Please Identify any mental health care practitioner that You have ever seen for any psychological or emotional condition, including any psychological evaluations.

Response to Interrogatory No. 10:

This question is improper. In addition to its General Objections, Plaintiff objects to this Interrogatory to the extent it is not reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, Plaintiff identifies the following providers of mental health services: Dr. Lee Beckstead; Dr. Christine Saunders-Fields; Michael Buxton; Kim Nixon.

Interrogatory No. 11: Please Identify all physicians, psychiatrists, psychologists, counselors, and other persons from whom You requested or received treatment or other assistance with respect to any injury or damage alleged in the Complaint.

Response to Interrogatory No. 11:

This question is improper. In addition to its General Objections, Plaintiff objects to this Interrogatory to the extent it is vague and unduly burdensome; or asks for information not under Plaintiff's control. Subject to these objections, Plaintiffs will collect and produce documents responsive to this Interrogatory. Plaintiff identifies the following providers of mental health services: Dr. Lee Beckstead; William Draney.

Interrogatory No. 12: With respect to each individual identified in Your answer to Interrogatory No. 11, please set forth the dates on which You requested or received treatment or other assistance and a complete description of the nature of the treatment or assistance requested or received.

Response to Interrogatory No. 12:

This question is improper. In addition to its General Objections, Plaintiff objects to this Interrogatory to the extent it asks for information not under Plaintiff's control; or is vague and unduly burdensome. Subject to these objections, Plaintiffs will collect and produce documents responsive to this Interrogatory.

Interrogatory No. 13: Please provide the case number, court location, and nature any litigation in which in which You claimed that You suffered any psychological or emotional injuries.

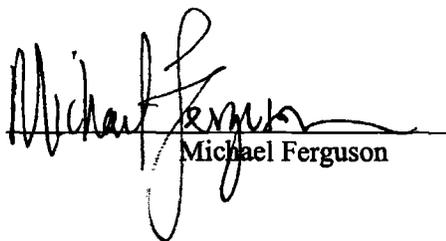
Response to Interrogatory No. 13:

This question is improper. In addition to its General Objections, Plaintiff objects to the Interrogatory on the grounds that it is overbroad, unduly burdensome, and that such documents are neither relevant to any claim or defense in this action nor reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to this Request to the extent that it requests information protected by the attorney-client privilege and/or work product

CERTIFICATION

Michael Ferguson affirms that he has read the foregoing Responses and Objections and that, to the best of his personal knowledge, or information and belief, they are true and correct.

Dated: May 6, 2013


Michael Ferguson

LITE DEPALMA GREENBERG, LLC

Allyn Z. Lite
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One Liberty Plaza
New York, NY 10006
(212) 225-2000

Attorneys for Plaintiffs

Michael Ferguson, Benjamin Unger, Sheldon
Bruck, Chaim Levin, Jo Bruck, Bella Levin,

Plaintiffs,

v.

JONAH (Jews Offering New Alternatives for
Healing f/k/a Jews Offering New Alternatives
to Homosexuality), Arthur Goldberg, Alan
Downing, Alan Downing Life Coaching LLC,

Defendants.

SUPERIOR COURT OF NEW JERSEY
HUDSON COUNTY, LAW DIVISION

Docket No: L-5473-12

CIVIL ACTION

**PLAINTIFF SHELDON BRUCK'S RESPONSES AND OBJECTIONS TO
DEFENDANTS' INTERROGATORIES**

Interrogatory No. 8: Please describe all causes of emotional distress in Your life at the time that You first sought to participate in the Defendants' Program.

Response to Interrogatory No. 8:

This question is improper. In addition to its General Objections, Plaintiff objects to this Interrogatory to the extent it is compound, ambiguous, overly burdensome, designed to embarrass the Plaintiff, and not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 9: Please describe all causes of any emotional distress in Your life since discontinuing participation in the Defendants' Program.

Response to Interrogatory No. 9:

This question is improper. In addition to its General Objections, Plaintiff objects to this Interrogatory to the extent it is compound, ambiguous, overly burdensome, designed to embarrass the Plaintiff, and not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 10: Please Identify any mental health care practitioner that You have ever seen for any psychological or emotional condition, including any psychological evaluations.

Response to Interrogatory No. 10:

This question is improper. In addition to its General Objections, Plaintiff objects to this Interrogatory to the extent it is not reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, Plaintiff identifies the following providers of mental health services: Dr. David Hirsch; David Rakofsky.

Interrogatory No. 11: Please Identify all physicians, psychiatrists, psychologists, counselors, and other persons from whom You requested or received treatment or other assistance with respect to any injury or damage alleged in the Complaint.

Response to Interrogatory No. 11:

This question is improper. In addition to its General Objections, Plaintiff objects to this Interrogatory to the extent it is vague and unduly burdensome; or asks for information not under Plaintiff's control. Subject to these objections, Plaintiffs will collect and produce documents responsive to this Interrogatory. Plaintiff identifies the following providers of mental health services: Dr. David Hirsch.

Interrogatory No. 12: With respect to each individual identified in Your answer to Interrogatory No. 11, please set forth the dates on which You requested or received treatment or other assistance and a complete description of the nature of the treatment or assistance requested or received.

Response to Interrogatory No. 12:

This question is improper. In addition to its General Objections, Plaintiff objects to this Interrogatory to the extent it asks for information not under Plaintiff's control; or is vague and unduly burdensome. Subject to these objections, Plaintiffs will collect and produce documents responsive to this Interrogatory.

Interrogatory No. 13: Please provide the case number, court location, and nature any litigation in which in which You claimed that You suffered any psychological or emotional injuries.

Response to Interrogatory No. 13:

This question is improper. In addition to its General Objections, Plaintiff objects to the Interrogatory on the grounds that it is overbroad, unduly burdensome, and that such documents are neither relevant to any claim or defense in this action nor reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to this Request to the extent that it requests information protected by the attorney-client privilege and/or work product

CERTIFICATION

Sheldon Bruck affirms that he has read the foregoing Responses and Objections and that, to the best of his personal knowledge, or information and belief, they are true and correct.

Dated: May 6, 2013



Sheldon Bruck

Exhibit F

August 20, 2013

Fighting Hate
Teaching Tolerance
Seeking Justice

Southern Poverty Law Center
400 Washington Avenue
Montgomery, AL 36104
334.956.8200
www.splcenter.org

VIA E-MAIL & FEDERAL EXPRESS

Charles S. LiMandri
Teresa Mendoza
Freedom of Conscience Defense Fund
P.O. Box 9520
Rancho Santa Fe, CA 92067

Michael P. Laffey
Messina Law Firm P.C.
961 Holmdel Road
Holmdel, NJ 07733-2103

Re: Ferguson v. JONAH, Docket No. L-5473-12

Dear Counsel:

In further reply to your May 30, 2013 letters, and relating to our subsequent communications, below are supplemental responses to certain of Defendants' Interrogatories, Requests for Admissions, and Requests for Production. In the interest of time and efficiency, these are presented in consolidated letter form. Please let us know by August 30, 2013 if you require a different format. We reaffirm without restating all objections indicated in Plaintiffs' original responses, notwithstanding the following supplemental responses, while recognizing ongoing discovery obligations by all parties. Discovery is ongoing and Plaintiffs reserve the right to supplement their responses as additional facts are disclosed.

Interrogatory No. 1: Please state whether Your response to each of the Requests for Admission served with these Interrogatories is an unqualified admission. If not, for each response that is not an unqualified admission:

- a. State the number[s] of the request;
 - (1) Set forth all facts supporting Your response[s];
 - (2) Identify all Persons who have knowledge of facts;
 - (3) Identify all Documents supporting Your response[s].

Response to Interrogatory No. 1:

Relating to **Request for Admission 7** ("No Defendant promised You that You would be 'changed from gay to straight'"), Goldberg made specific claims to Levin, Bella Levin,

Unger, and Bruck about the efficacy of Defendants' program in changing sexual orientation from gay to straight, particularly near the commencement of Levin's, Unger's, and Bruck's participation in Defendants' program, as further alleged in the Complaint that includes the relevant time periods of their participation in Defendants' program. The premise of Plaintiffs' participation in Defendants' program was orientation change. Relevant information and documents are within Defendants' possession, including documents that await production to Plaintiffs. Also see the response to Interrogatory No. 3 below.

Relating to **Request for Admission 16** ("None of the Defendants ever touched You inappropriately at any time"), Downing inappropriately touched Levin, Ferguson, and Unger in private and group sessions within the time frames listed in the Complaint, including incidents indicated in response to Interrogatory No. 2 below.

Relating to **Request for Admission 17** ("None of the Defendants ever allowed any other person to touch You inappropriately in their presence"), Defendant Downing organized, or was an organizer present at, sessions involving what Defendants call "healthy touch" both at JONAH group sessions and at sessions during People Can Change weekends attended by Levin, Ferguson, and Unger. Information and documents relating to so-called "healthy touch" are in Defendants' possession, including several within document productions, and further information is included below relating to Interrogatory No. 2.

Relating to **Request for Admission 18** ("None of the Defendants ever instructed You to beat an effigy of any person with a tennis racket"), see the response to Interrogatory No. 2 below.

Relating to **Request for Admission 21** ("None of the Defendants ever subjected You to degrading or humiliating treatment as part of the Program"), see the Complaint as well as documents in Defendants' possession, including documents that await production to Plaintiffs and responses to these Interrogatories, among other sources available to Defendants.

Relating to **Request for Admission 37** ("Many persons claim to be sexually attracted to both men and women"), information about bisexuality is equally accessible by Defendants and is within the public domain.

Relating to **Requests for Admission 52 and 55** ("You were not injured by any treatment, techniques, or practices provided to You by the Defendants"; "You were not injured by any representations made to You by any of the Defendants"), see the Complaint, especially with respect to ascertainable loss. Relevant documents include those in Defendants' possession, public statements, medical records now produced to Defendants, and expert testimony relating to the harms of conversion therapy that will follow the close of fact discovery.

Relating to **Request for Admission 54** ("None of the Defendants misrepresented any material fact to You regarding their professional services"), see the response to Interrogatory No. 3 relating to several examples as well as the Complaint and documents in Defendants' possession including documents that await production to Plaintiffs.

Interrogatory No. 2: With respect to the factual allegations in paragraph 9, 51 and 55 of plaintiffs' Complaint, please set forth with specificity:

- a. which of the Defendants instructed You to do each act alleged;
- b. when the alleged instruction was given;
- c. where You were when the instruction was given;
- d. who was present when the instruction was given.

Further Response to Interrogatory No. 2:

The **first point of paragraph 9** of the Complaint refers to instructions to "remove all clothing during both individual and group therapy sessions including an instruction to Levin to hold his penis in front of Defendant Downing."

As stated in the Complaint and described elsewhere in publicly available statements, Downing gave that instruction to Levin in a private session in Downing's office in Jersey City during what was Levin's final individual session with Downing, in or around October 2008. Mr. Downing has as much information about this incident as Levin.

Paragraph 46 of the Complaint describes a group incident which occurred during a weekend sponsored by People Can Change and led by Downing in 2007 in Virginia. As an organizer, Defendant Downing, who was present, would have better access to the names of others who were present.

Downing pressed Unger and Ferguson to undress in front of him on other occasions in private sessions within the periods of treatment specified in the Complaint. Both declined to remove all of their clothing for Downing, but proceeded to remove some articles of clothing at Downing's prompting.

Defendants are in possession of additional documents relating to nudity in their programing, including at People Can Change, which Defendants presented as a core component of their program.

The **second point of paragraph 9** of the Complaint refers to instructions to "cuddle and intimately hold others of the same-sex including between young clients and older counselors." Defendant Downing organized or was an organizer present at multiple sessions involving so-called "healthy touch" at both JONAH group sessions and sessions during People Can Change weekends recommended by JONAH, which were attended by Levin, Ferguson, and Unger. Documents relating to "healthy touch" are in Defendants' possession, including documents that await production to Plaintiffs. Representative incidents include:

- JONAH group sessions involving cradling and intimate touching among participants led by Downing. Unger, Ferguson, and Levin experienced such sessions led by Downing in Jersey City.

- Downing touched Unger's bare shoulder from behind in a closed door session at JONAH's Jersey City location after coaxing Unger to undress before him.
- Downing intimately hugged clients including Levin, Unger, and Ferguson on numerous occasions, both privately and in the presence of others. His embraces of significantly younger clients were prolonged and all encompassing.
- Downing claimed that he had "golden father energy" and that, through his interactions with clients, including through physical contact, he could help heal their wounds from deficient fathering (which Defendants misrepresented was a cause of Plaintiffs' attraction to men).
- Levin, the youngest participant at a JONAH-recommended People Can Change retreat in Pennsylvania in summer 2007 that Levin attended as part of Defendants' program, resisted engaging in intimate holding and expressed discomfort as a known survivor of sex abuse. But Downing insisted on sitting close beside Levin with his arm around Levin's shoulder.
- It was common for Levin, Unger, and Ferguson to observe counselors, often older, pairing up for "healthy touch" with younger clients at evening sessions at People Can Change weekends supervised by Downing, Goldberg, and other counselors associated with Defendants such as David Matheson.
- At a People Can Change weekend led by Downing in Virginia in 2007, Unger was coaxed into participating in a holding and cuddling session with a People Can Change counselor. The weekend, touted as a core component of Defendants' program, characteristically included heavy touching such as intimate hugging and holding hands.

The **third point of paragraph 9** of the Complaint refers to instructions to "violently beat an effigy of the client's mother with a tennis racket." Such incidents included a group session at JONAH's offices in Jersey City where Downing pressed Unger into violently beating an effigy of his mother, as described in the Complaint.

Levin witnessed several similar sessions, both at JONAH group sessions led by Downing, and at People Can Change weekend retreats usually led by Downing, who also was a chief designer of the activities.

Downing directed Ferguson to participate in similar exercises, such as being tied to an effigy of his mother with the goal of trying to physically break free of it in the presence of a group of men during summer 2008.

Levin endured a similar scenario at a People Can Change weekend in summer 2007 in Pennsylvania, where he was physically bound and subjected to taunts as though from his mother of, for example, "I love you, I love you..." to which Levin's response was supposed to be to forcefully break free, as though in doing so he would shed attractions to men through a

process of severing relations with his mother. Jonathan Hoffman was present among others at that weekend, one largely led and designed by Downing.

The **fourth point of paragraph 9** of the Complaint refers to instructions to “go to the gym more as well as bath houses in order to be nude with father figures.” Defendant Downing gave that instruction to Unger during private sessions, including in the fall of 2008, and further details are contained in documents in Defendants’ possession and known by Downing, who gave the instructions. Downing similarly indulged in conversations in private sessions with Ferguson about nudity in the presence of other men, encouraging Ferguson to seize opportunities to be fully naked with other men, such as during a camping trip with classmates in the summer of 2008. Downing represented that nudity with other men would assist Ferguson in becoming heterosexual.

The **last point of paragraph 9** of the Complaint refers to instructions to “be subjected to ridicule as ‘faggots’ and ‘homos’ in mock locker room/gym class scenarios.” Related incidents include one during Ferguson’s People Can Change retreat in spring 2008 in Pennsylvania, with Downing present, in which participants were blindfolded, as described in the Complaint. Unger and Levin endured similar scenarios at People Can Change weekend retreats at which Downing was either present or was an organizer of the programing. Downing would have better access than Plaintiffs to the names of others who participated at each retreat.

Paragraph 51 of the Complaint relates to Downing’s instruction to Levin to direct his peers to recreate scenes of sex abuse from his childhood. That occurred during Levin’s JONAH-recommended People Can Change weekend in summer 2007 in Pennsylvania. Downing led the scenario, and Josh Hoffman, among others, was present. Hoffman played the role of Levin’s abuser.

Paragraph 55 of the Complaint relates to the orange/testicles exercise. That occurred during Ferguson’s People Can Change weekend in Pennsylvania in spring 2008, which was largely designed and overseen by Downing. The exercise was attended by various other participants of the retreat, including several camp counselors. A version of the exercise is also described in documents within Defendants’ possession.

Unger similarly participated in the orange/testicles exercise at People Can Change, with Downing present, in Virginia in 2007.

- Interrogatory No. 3: With respect to the factual allegations in paragraph 38 of plaintiffs’ Complaint, please set forth with regard to each alleged representation or statement:
- a. which of the Defendants made said representations or statements;
 - b. the dates on which said representation or statements were made;
 - c. where You were when the representation or statement was made;
 - d. who was present when the representation or statement was made;

- e. if any statement or representation was reduced to writing, attach a copy to Your responses to these interrogatories.

Further Response to Interrogatory No. 3:

Paragraph 38 identifies certain of Defendants' misrepresentations, including "1) that gay sexual orientation is a mental disorder and gay people must change to straight in order to lead satisfying and happy lives; 2) that homosexuality is alterable and Defendants are able to successfully change clients' sexual orientation from gay to heterosexual; and 3) that when conversion therapy does not produce the promised results, the clients themselves are to blame for not sufficiently investing in and surrendering to Defendants' services."

Goldberg made such misrepresentations (consistent with the first two allegations) at minimum to Levin, Bella Levin, Unger, and Bruck in individual conversations at or near the commencement of their engagement of Defendants' conversion therapy, the timing of which is indicated in the Complaint. Similar statements are included in documents within Defendants' possession, and appear in the Complaint.

The second misrepresentation listed was the basis for Plaintiffs' engagement with Defendants' services and permeated their entire experience. Documents reflecting statements consistent with the second misrepresentation listed are also within Defendants' possession, including documents that await production to Plaintiffs.

Downing and Goldberg made statements consistent with the third misrepresentation listed at minimum to Levin and Unger including after they had expressed doubts about Defendants' program. Additional statements consistent with the third misrepresentation listed are contained within documents in Defendants' possession.

Thaddeus Heffner also made statements to Bruck consistent with the third misrepresentation listed during the course of his treatment and on the occasion of Bruck's disengagement from Defendants' program.

Interrogatory No. 4: Please set forth all facts supporting Your contention that the Defendants' Program caused You any injury or damage.

Further Response to Interrogatory No. 4:

The essential allegations of ascertainable loss are specified in the Complaint. Defendants have produced billing records for Plaintiffs, and Plaintiffs' supplemental document production includes all billing records mental health practitioners have provided to Plaintiffs to date. Plaintiffs have produced what records are currently in their custody and control, and will supplement discovery with additional materials, if any should be obtained. Expert testimony concerning harms of conversion therapy is premature at this stage.

Interrogatory No. 5: Please set forth all facts supporting Your contention that any representation or statement by any of the Defendants caused You any injury or damage.

Response to Interrogatory No. 5:

See response to Interrogatory No. 4.

Interrogatory No. 8: Please describe all causes of emotional distress in Your life at the time that You first sought to participate in the Defendants' Program.

Response to Interrogatory No. 8:

Causes of emotional distress of comparable magnitude include issues relating to these topics:

- Levin: family relations, homosexuality, employment, and child sex abuse.
- Ferguson: family relations, homosexuality, school.
- Bruck: family relations, homosexuality, social interactions.
- Unger: family relations, homosexuality.

Interrogatory No. 9: Please describe all causes of any emotional distress in Your life since discontinuing participation in the Defendants' Program.

Response to Interrogatory No. 9:

Each Plaintiff continued to experience emotional distress related to the topics listed in response to Interrogatory No. 8, compounded by emotional distress resulting from having undergone Defendants' conversion therapy. Relatedly, Levin experienced distress concerning relationships with other men; Ferguson experienced distress with respect to his faith tradition; and Unger experienced social anxiety.

Interrogatory No. 19: Please describe any Communications You have had with anyone affiliated with Jewish Queer Youth ("JQY") concerning this lawsuit or Defendants' Program.

Response to Interrogatory No. 19:

Communications responsive to Defendants' corresponding document request are contained in Plaintiffs' document productions. Bruck and Levin, who have participated with JQY, and Levin, who has communicated on occasion with Besen, have not maintained logs or otherwise memorialized their oral conversations over the years or the content of those conversations, and thus point Defendants to their written correspondence.

Interrogatory No. 20: Please describe the substance of any communication You have had with Wayne Besen or anyone acting in concert with him (other than Your present attorneys) concerning this lawsuit or Mr. Besen's self-described plan to put the so-called "Ex-Gay" industry "out of business."

Response to Interrogatory No. 20:

See response to Interrogatory No. 19.

Interrogatory No. 22: Please set forth the date on which You first communicated with any of the attorneys who are representing the plaintiffs in this case, and Identify the attorney whom with each such Communications took place.

Response to Interrogatory No. 22:

To the best of each Plaintiffs' current recollection, the dates of initial communications with SPLC attorneys or their staff relating to possible legal action were on or around the following dates:

- Chaim Levin, by late 2011.
- Benjamin Unger, by late 2011 or early 2012.
- Michael Ferguson, by early 2012.
- Sheldon Bruck, by summer 2012.
- Jo Bruck, by summer 2012.
- Bella Levin, by summer 2012.

Interrogatory No. 25: Please describe what You have been doing with Your life since terminating Your involvement in the Defendants' Program. (Provide work history, school history, social history, volunteer history, and recreational history in response to this interrogatory).

Response to Interrogatory No. 25:

Reflecting your narrowed request under this interrogatory, below are major features:

- Ferguson studies bioengineering, functional imaging in Utah and is a co-founder of a small company.
- Levin is a writer and blogger and works for a small media company.
- Unger directs a school.
- Bruck is a professional makeup artist.

Interrogatory No. 26: Please list by title, author, publisher, date of publication, and/or citation any article, book, study, report, film, or other material that You contend conclusively proves that sexual orientation is fixed and immutable.

Response to Interrogatory No. 26:

We refer you to our reply brief to your motion to dismiss and related papers on this topic and note that discovery requests are to the Plaintiffs themselves and such questions and related research, to the extent they are relevant to any claim, are equally accessible to Defendants from the public domain and will be the topic of expert testimony in due course.

Interrogatory No. 35: Please state whether any films or photographs were taken by You or on Your behalf of any Person, scene, object or matter connected with this litigation. If so:

- a. Please set forth the subject matter of each film or photograph;
- b. Please Identify the Person who:
 - i. took each film or photograph;
 - ii. has custody of each film or photograph.

Response to Interrogatory No. 35:

Defendants agreed to limit the scope of this request to any photos or videos related to the Defendants or their program. A diligent search has not produced any such unproduced items to date.

Interrogatory No. 37: If any parties or witnesses You propose to produce at the trial were ever convicted of a crime, state the names of the Person, the nature of the crime, date and court in which judgment for conviction was entered.

Response to Interrogatory No. 37:

Plaintiffs are unaware of any such convictions and are cognizant of their duty to supplement discovery responses should that change.

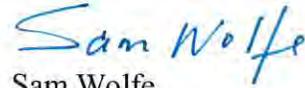
As for **Requests for Production Nos. 3-6 and Interrogatory Nos. 6 and 12**, we are providing all treatment and billing records that we have succeeded in obtaining to date from the mental health providers who have treated Unger, Levin, Bruck, and Ferguson. As such, Plaintiffs are producing all documents now within their possession and control relating to these requests and have made a good faith effort to obtain all additional records yet in existence from providers.

With respect to **Request for Production No. 7**, we confirm that there are no lawsuits involving the Plaintiffs other than Levin's action concerning his abuse as a child about which we have produced publicly filed documents furnished to Levin by his attorneys in that case.

Charles S. LiMandri,
Michael P. Laffey, p. 10

These documents are being sent to you on the enclosed encrypted CD. They are Bates-stamped FGSN00009123 through FGSN00009314. The password for the CD is being sent to you in an email.

Sincerely,



Sam Wolfe

cc: Morris Dees
James L. Bromley
Allyn Z. Lite

Exhibit G

Bensman, Lina

From: Sam Wolfe <sam.wolfe@splcenter.org>
Sent: Thursday, February 13, 2014 11:18 AM
To: Paul Jonna; Charles Limandri; Bromley, James L.; David Dinielli; Bruce D. Greenberg (BGreenberg@litedepalma.com); McCoy, Scott; Bensman, Lina; Kessler, Thomas; Alesdair Ittelson
Cc: Teresa Mendoza; mlaffey@messinalawfirm.com; John Salem; Kathy Denworth
Subject: RE: Ferguson v. JONAH - fact witness depositions
Categories: FVJ

Good morning, Paul.

At this late hour we must finally resolve where the depositions occurring in a few days will take place. Red Bank, NJ is unacceptable for reasons that should be obvious including that it appears to be more than a two hour trip by public transport for our clients in NYC whereas from Jersey City to Cleary's offices is around 20 minutes without transfer. Also the Red Bank space is not adequate for double tracked depositions as are likely on 2/19 and 2/28 and also do not seem to have private side rooms for confidential communications. The very best compromise that we see is to utilize a space available only for two days in Jersey City for Ms. Berk's depositions on 2/20 and 21 and hold the remainder of the depositions at Cleary's offices. Please confirm this plan by 2 PT/5 ET today.

Can you also confirm today that Mr. Wyler is still appearing for his deposition on 2/19, as agreed long ago, specifically without need for a subpoena?

As for Leslie Unger, none of the reasons presented warrant his deposition. There is no dispute that he paid for Benjy's sessions with JONAH, as Benjy confirmed. A correction about his mistake regarding sex abuse could likely be obtained by simple certification, although it is of no consequence. We are not relying on Leslie Unger's testimony, nor have we alleged, that there were any guarantees to him relating to his son's counseling, so that also is not a disputed issue. Although we've asked the question several times, there remains no valid reason warranting non-party parent depositions and such depositions would amount to undue harassment.

It is premature for Plaintiffs to be able to definitively say which of the post-JONAH counselors of our clients will be called as trial witnesses at this point. We do not control them, but will endeavor to facilitate depositions absent subpoenas, to the extent they are willing. Several may require Defendants' payment for their time being deposed.

If your trial-preservation questioning is approximately 30 minutes for each deponent, it seems likely that we could complete more than one in a day, but perhaps the best approach in the case that you are also utilizing the deposition to preserve trial testimony is to provide a full day for each deponent.

Thank you for rounding up availability dates for your other witnesses.

Sam

From: Paul Jonna [mailto:PJonna@limandri.com]
Sent: Wednesday, February 12, 2014 5:01 PM
To: Sam Wolfe; Charles Limandri; Bromley, James L.; David Dinielli; Bruce D. Greenberg (BGreenberg@litedepalma.com); McCoy, Scott; Bensman, Lina; Kessler, Thomas; Alesdair Ittelson
Cc: Teresa Mendoza; mlaffey@messinalawfirm.com; John Salem; Kathy Denworth
Subject: RE: Ferguson v. JONAH - fact witness depositions

Sam:

I understand Pirozzi is working with Lina to locate another suitable conference room. Hopefully that issue has been resolved or will be soon.

March 28 works for Mr. Ferguson's deposition and March 26 works for Bella and Chaim Levin's depositions. We anticipate being able to complete Bella and Chaim Levin's depositions in one day.

We will provide you with dates for the remaining witnesses' depositions in their homes states and will circle back as soon as we can.

Regarding Leslie Unger, Benjamin Unger testified at his deposition that his father paid for Alan Downing's services. Moreover, when confronted with a document from Leslie Unger to Alan Downing stating that Benjamin Unger was molested as a child, Benjamin Unger testified that his father was mistaken. Finally, documents produced in this case show that Leslie Unger, who paid for the coaching, was aware that the Defendants made no guarantees. These facts plainly demonstrate why Leslie Unger's testimony is relevant and, in fact, critical to our defense of Benjamin Unger's claims. Please immediately confirm whether you will reconsider your position. If not, we will proceed to subpoena Mr. Unger and potentially other non-party parents of the Plaintiffs. Please be advised that, based on the above, we will move for sanctions if Plaintiffs move for a protective order.

As previously mentioned, Defendants will not further reduce their witness list at this time. Again, we request that you let us know which of Plaintiffs' mental health providers Plaintiffs plan to call as witnesses at trial. Please also provide us with dates for those witnesses' depositions and confirm that you will be producing them without the need for subpoenas.

Again, given that our witnesses are willing to appear for trial, we have no need to depose them. However, we will take the opportunity to preserve their potential trial testimony if the Plaintiffs depose them. We anticipate that our questioning will last between 30 minutes to one hour, per witness. In light of that, and given that we need to start scheduling these witnesses' depositions, please let us know whether you think you can complete those depositions in half a day. If not, we will have to schedule one deposition per day. Regarding the depositions of Messrs. DeJiacomo and Mirmanas, we doubt that they will last more than one day. However, if they do, we are fine with double-tracking Mr. Mirmanas' deposition with Mr. Heffner's.

Regards,

Paul

Paul M. Jonna, Esq.
Freedom of Conscience Defense Fund
P.O. Box 9520

Rancho Santa Fe, CA 92067
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From: Sam Wolfe [<mailto:sam.wolfe@splcenter.org>]
Sent: Wednesday, February 12, 2014 9:39 AM
To: Paul Jonna; Charles Limandri; Bromley, James L.; David Dinielli; Bruce D. Greenberg (BGreenberg@litedepalma.com); McCoy, Scott; Bensman, Lina; Kessler, Thomas; Alesdair Ittelson
Cc: Teresa Mendoza; mlaffey@messinialawfirm.com; John Salem; Kathy Denworth
Subject: RE: Ferguson v. JONAH - fact witness depositions

Dear Paul,

Below, please find our responses to the items on your list in corresponding number order.

1. We appreciate your prompt production of PCC documents.
2. As stated in the response to Kathy's email, the proposed location is not reasonably convenient for Plaintiffs.
3. Michael Ferguson is available on March 28.
4. Bella and Chaim Levin are available on March 26. Please let us know whether you anticipate being able to complete both depositions in one day.
5. We understand that no Utah depositions have been confirmed.
6. We are willing to agree to a location in Jersey City for the depositions of Messrs. DeJiaco and Mirmanas, but we cannot agree to the location proposed in Kathy's email because the location is not reasonably convenient for Plaintiffs.
7. We are willing to travel to each witness in their home state.
8. It is not clear to us what "relevant evidence" you believe Mr. Unger may possess. To the extent that he exchanged emails with Mr. Downing, those documents speak for themselves. If you insist on taking Mr. Unger's deposition, we will move for a protective order from the Court. The effort and expense involved in such a deposition is entirely unjustified, and its patent lack of relevance renders it harassing and improper.
9. As previously discussed, we are willing to significantly reduce our list if Defendants are willing to further reduce their list of witnesses, which remains excessively long.
10. We appreciate your prompt production of additional witness listserv communications.

Separately, we had understood from Mr. LiMandri's February 6 email that Defendants were no longer interested in deposing the out of state witnesses. If that has now changed, then we may not be able to complete those depositions in half a day. This may require us to move Mr. Mirmanas' deposition to February 28 if Mr. DeJiaco's deposition extends beyond the currently planned 1:30 p.m. start time

for Mr. Mirmanas. We are happy to double-track Mr. Mirmanas' deposition with Mr. Heffner's deposition, should that become necessary.

Sam

From: Paul Jonna [<mailto:PJonna@limandri.com>]

Sent: Tuesday, February 11, 2014 6:49 PM

To: Sam Wolfe; Charles Limandri; Bromley, James L.; David Dinielli; Bruce D. Greenberg (BGreenberg@litedepalma.com); McCoy, Scott; Bensman, Lina; Kessler, Thomas; Alesdair Ittelson

Cc: Teresa Mendoza; mlaffey@messinalawfirm.com; John Salem; Kathy Denworth

Subject: RE: Ferguson v. JONAH - fact witness depositions

Sam:

I write in response to your email below and Lina's email of yesterday's date, and to address a few additional outstanding matters:

1. Defendants have produced certain PCC documents and will be producing the balance this week. The only JIM documents we are not producing consist entirely of names and contact information of third parties.
2. Kathy responded to your email yesterday and provided you with the location for the next round of depositions.
3. Jonathan and Talia Hoffman are available on March 27 and 28. What day is Mr. Ferguson available?
4. Please let us know if we can continue Chaim Levin's deposition on either February 21 or February 26. Alternatively, let us know if Chaim and Bella Levin are both available on March 26.
5. There are no Utah depositions confirmed yet.
6. Regarding the depositions of Messrs. DeJiaco and Mirmanas, those witnesses are voluntarily traveling to New Jersey for their depositions, not New York. It is improper for Plaintiffs to notice those witnesses depositions outside of New Jersey. Those depositions will take place at the same conference room Kathy identified yesterday.
7. Regarding the balance of Defendants' fact witnesses, please let us know if you would prefer to (a) take the depositions in two central locations (New Jersey and Utah) or (b) if you would prefer to travel to the witnesses' various home states. If you prefer option (a), we will accommodate you provided that you agree to split the witnesses' travel costs (we will also split court reporter costs). Otherwise, we can proceed with option (b) and we will make the witnesses available in their respective home states. Please note that, for any witnesses you depose, we will also take the opportunity to preserve their potential trial testimony.
8. Please provide us with dates for Leslie Unger's deposition. We suggest either February 21 or 26 (depending on Chaim Levin's availability).
9. Please let us know which of Plaintiffs' mental health providers Plaintiffs plan to call as witnesses at trial. In addition, please give us dates for those witnesses' depositions and confirm that you will be producing them without the need for subpoenas.
10. We will be producing additional witness listserv communications this week. We did not locate any additional emails between Defendants and our witnesses.

Regards,

Paul

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From: Sam Wolfe [<mailto:sam.wolfe@splcenter.org>]

Sent: Monday, February 10, 2014 2:35 PM

To: Charles Limandri; Paul Jonna; Bromley, James L.; David Dinielli; Bruce D. Greenberg (BGreenberg@litedepalma.com); McCoy, Scott; Bensman, Lina; Kessler, Thomas; Alesdair Ittelson

Cc: Teresa Mendoza; mlaffey@messinlawfirm.com; John Salem; Kathy Denworth

Subject: RE: Ferguson v. JONAH - fact witness depositions

Dear Counsel:

We request your attention to the following matters:

1. As you are aware, all parties have now executed the People Can Change Confidentiality Stipulation, and the motion for protective order relating to PCC documents has been withdrawn. There is therefore no longer any reason for Defendants to withhold responsive documents subject to production on the basis of confidentiality claims asserted by PCC. We note that such documents were subject to the Court's November 8 Order denying Defendants' motion for protective order and granting Plaintiffs' motion to compel responses to discovery requests, specifically all documents "relating to the experiential weekend programs promoted and facilitated by Defendants, including JIM, in their original form and without improper redactions." Please produce all such documents without further delay.
2. We need to agree upon a suitable location for the next round of depositions, beginning in less than a week, so that we can arrange for the court reporter and videographer, etc. Note that it appears likely that on 2/19, Mr. Goldberg's deposition will continue concurrently with Mr. Wyler's, adding another dimension to space requirements. Cleary's offices continue to appear to us to be the best option. Can you please let us know by tomorrow whether you are willing to hold the depositions there?
3. It appears that we can offer Mr. Ferguson in NYC the same week as Mr. Hoffman. What days is Mr. Hoffman available the week of the 25th?
4. We propose that Bella Levin's deposition take place on March 26th, which could potentially double-track one of the other depositions that week.
5. Are the Utah depositions of Mr. Bennion and Mr. Dahlgren confirmed for SLC during the week of March 17? What days are they available?
6. We are available to take the depositions of the remainder of your fact witnesses (apart from Mr. Besen and Mr. Harari) during the first three weeks of March. We can potentially double-track some of the depositions. We rely on your assistance in scheduling them. Can you let us know a proposed schedule of their availability by the end of this week so that we can make any

final adjustments and then finalize travel and other arrangements? If it is helpful to discuss this by phone, we can certainly set up a call.

Thank you,

Sam

Sam Wolfe | Senior Staff Attorney
LGBTQ Rights Project
Southern Poverty Law Center
400 Washington Avenue
Montgomery, AL 36104
*Admitted in Alabama & New York

Exhibit H



MICHAEL FERGUSON, BENJAMIN UNGER, SHELDON BRUCK, CHAIM LEVIN, JO BRUCK, BELLA LEVIN, Plaintiffs, v. JONAH (JEWS OFFERING NEW ALTERNATIVES FOR HEALING F/K/A JEWS OFFERING NEW ALTERNATIVES TO HOMOSEXUALITY), ARTHUR GOLDBERG, ALAN DOWNING, ALAN DOWNING LIFE COACHING LLC, Defendants.

DOCKET NO. HUD-L-5473-12

SUPERIOR COURT OF NEW JERSEY, LAW DIVISION, HUDSON COUNTY

2014 N.J. Super. Unpub. LEXIS 1334

June 6, 2014, Date of Motion

June 6, 2014, Decided

NOTICE: NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS.

PLEASE CONSULT NEW JERSEY *RULE 1:36-3* FOR CITATION OF UNPUBLISHED OPINIONS.

COUNSEL: [*1] Bruce D. Greenberg for plaintiffs (Lite DePalma Greenberg, LLC).

David C. Dinielli (pro hac vice), Samuel Wolfe (pro hac vice) for plaintiffs (Southern Poverty Law Center).

Lina Bensman (pro hac vice) for plaintiffs (Cleary Gottlieb Steen & Hamilton LLP).

Michael P. Laffey for defendants (Messina Law Firm).

Charles S. LiMandri (pro hac vice) for defendants (Freedom of Conscience Defense Fund).

JUDGES: BARISO, A.J.S.C.

OPINION BY: BARISO

OPINION

Civil Action

BARISO, A.J.S.C.

Introduction

On November 27, 2012, plaintiffs Michael Ferguson, Benjamin Unger, Sheldon Bruck, Chaim Levin, Jo Bruck, and Bella Levin ("Plaintiffs") filed an action against defendants Jews Offering New Alternatives for Healing ("JONAH") and others. JONAH is a nonprofit corporation dedicated to educating the Jewish community about the social, cultural, and emotional factors that lead to same-sex attractions. JONAH uses counseling and other methods to assist individuals to purge unwanted same-sex attractions. Plaintiffs allege that JONAH's business practices violate the New Jersey Consumer Fraud Act ("CFA"), *N.J.S.A. 56:8-1 to -20*.

Plaintiffs' CFA claim is based on two separate forms of ascertainable loss. The first is money spent on JONAH's services. The second is money spent [*2] on reparative therapy necessitated by JONAH's services. JONAH has moved for partial summary judgment, asserting that the second category of loss is not recoverable under the CFA.

Statement of Facts and Relevant Procedural History

JONAH provided conversion therapy and counseling

services purporting to change Plaintiffs' sexual orientation from homosexual to heterosexual. JONAH claims that their services are clinical in nature and based on scientific techniques proven to prevent or cure homosexuality. See *JONAH's History*, JONAH, available at https://www.jonahweb.org/sections.php?se_cId=11 (last visited June 2, 2014). In addition to offering counseling on homosexuality, JONAH's scope of services include therapy on other "sexual conflicts," such as "sexual promiscuity, pornography, sexual abuse, pedophilia or pederasty, compulsive masturbation, fetishes, transvestitism, incest, prostitution, emotional dependency, [and] sexual addictions." *Ibid.*

According to Plaintiffs, JONAH's conversion therapy required them to engage in various individual and group activities. For instance, during a private session, defendant Alan Downing ("Downing"), a JONAH-affiliated counselor, instructed plaintiff Chaim Levin ("Levin") "to say one negative thing [*3] about himself, remove an article of clothing, then repeat the process." Compl. ¶ 45. Levin submitted to Downing's instructions until he was naked, when Downing directed Levin "to touch his penis and then his buttocks." *Ibid.*

Plaintiff Benjamin Unger ("Unger") and plaintiff Michael Ferguson ("Ferguson") engaged in similar disrobing activities with Downing. Downing instructed Unger to remove his shirt in front of a mirror and requested that he "continue," but Unger refused. *Ibid.* In addition, Unger participated in a group exercise in which Downing instructed him and other young men to remove their clothing and stand in a circle naked, with Downing also nude. *Id.* ¶ 46. As with Unger, Downing instructed Ferguson to undress in front of a mirror and "repeatedly urged [him] to remove additional clothing," but Ferguson refused. *Ibid.*

Other one-on-one activities consisted of counseling clients to spend more time at the gym and to be naked with their fathers at bathhouses. *Id.* ¶ 54. Downing also instructed Unger to beat an effigy of his mother with a tennis racket while screaming, as if killing her. *Id.* ¶ 59. Another JONAH counselor advised plaintiff Sheldon Bruck ("Bruck") to wear a rubber band [*4] on his wrist and snap it each time he felt attracted to another man. *Id.* ¶ 51.

Organized group activities included reenacting scenes of past abuse. For example, Downing instructed Levin to select an individual from the group to role-play

his past abuser. The selected participant would repeat statements similar to those his abuser had made, such as "I won't love you anymore if you don't give me blow jobs." *Ibid.*

Another group exercise required participants to hold hands to create a human chain, with one individual standing behind the chain clutching two oranges representing testicles. *Id.* ¶ 55. Participants took turns standing on the other side of the human chain while being taunted with homophobic slurs. *Ibid.* Many purportedly expressed anger and struggled to break through the human chain to seize the two oranges. *Ibid.*

A different group exercise entailed blindfolding participants while counselors dribbled basketballs and made anti-gay slurs. *Ibid.* Downing also conducted group cuddling sessions with counselors and their younger clients in an effort to reduce or eliminate same-sex attraction. *Id.* ¶ 60.

As part of its conversion therapy counseling, JONAH advised Plaintiffs that being homosexual [*5] is loathsome and that homosexuals are more susceptible to loneliness, suicidal thoughts, and contracting HIV/AIDS. *Id.* ¶ 61.

JONAH typically charged Plaintiffs \$100 for each individual session, and \$60 for each group session. *Id.* ¶ 43. The cost of these services can exceed \$10,000, per year depending on the individual. *Id.* ¶ 11.

Plaintiffs allege that JONAH engaged in "unconscionable commercial practice, deception, fraud, false pretense, false promise, and misrepresentation[]" by claiming that homosexuality is a mental disorder and, in the face of empirical evidence to the contrary, that same-sex attractions can be reduced or eliminated through therapy. *Id.* ¶¶ 38-40. Additionally, Plaintiffs contend that JONAH advised them that if conversion therapy did not produce the promised results, the blame rested solely with the clients. *Id.* ¶¶ 38, 42.

Plaintiffs maintain that conversion therapy has been discredited and rejected by mainstream health organizations. *Id.* ¶ 5. They cite to the American Psychiatric Association for the proposition that "the potential risks of [conversion] therapy are great, including depression, anxiety and self-destructive behavior, since therapist alignment with societal [*6] prejudices against homosexuality may reinforce

self-hatred already experienced by the patient." *Ibid.* (quoting *Therapies Focused on Attempts to Change Sexual Orientation (Reparative or Conversion Therapies): COPP Position Statement*, AM. PSYCHIATRIC ASS'N, available at http://www.psychiatry.org/File%20Library/Advocacy%20and%20Newsroom/Position%20Statements/ps2000_ReparativeTherapy.pdf).

Plaintiffs claim that reparative therapy was necessary as a result of JONAH's services. For example, Unger became deeply depressed and suffered an impaired ability to engage in physical and emotional relationships with men because JONAH conditioned him to view such relations as unnatural. *Id.* ¶ 72. Bruck experienced depression, anxiety, and suicidal thoughts because of his therapy sessions with JONAH. *Id.* ¶ 95. In short, each Plaintiff sought one or more professional mental counselors following his experience with JONAH. *Id.* ¶¶ 73, 85, 98, 108. Consequently, Plaintiffs submit that money expended for their post-JONAH therapy should be calculated as ascertainable loss under the CFA.

On March 26, 2014, JONAH moved for partial summary judgment, arguing that money expended to treat mental or emotional damages does not constitute an ascertainable loss under the CFA. Following oral arguments on the motion on May 9, 2014, the [*7] parties were asked to brief whether *D'Agostino v. Maldonado*, 216 N.J. 168, 78 A.3d 527 (2013), permits recovery for post-JONAH therapy as "damages sustained," even if it does not constitute "ascertainable loss" under the CFA as JONAH argues.

Discussion

I.

Rule 4:46-2(c) provides that a court shall render summary judgment only when "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." To determine whether there is a genuine issue as to a material fact, the court views the facts in the light most favorable to the nonmoving party. *Brill v. Guardian Life Ins. Co. of Am.*, 142 N.J. 520, 523, 666 A.2d 146 (1995); see also *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986).

Generally, summary judgment is inappropriate before the completion of discovery, and a litigant should have the opportunity for full exposure of its case. See *Velantzas v. Colgate-Palmolive Co.*, 109 N.J. 189, 193, 536 A.2d 237 (1988); *Mohamed v. Iglesia Evangelica Oasis De Salvacion*, 424 N.J. Super. 489, 498, 38 A.3d 669 (App. Div. 2012). However, summary judgment may be granted if further discovery will not alter the result. *Minoia v. Kushner*, 365 N.J. Super. 304, 307, 839 A.2d 90 (App. Div.), certif. denied, 180 N.J. 354, 851 A.2d 648 (2004).

The party presenting a summary judgment motion must provide a statement of material facts containing citations to the record. Specifically,

[t]he statement of material facts shall set forth in separately numbered paragraphs a concise statement of [*8] each material fact as to which the movant contends there is no genuine issue together with a citation to the portion of the motion record establishing the fact or demonstrating that it is uncontroverted. The citation shall identify the document and shall specify the pages and paragraphs or lines thereof or the specific portions of exhibits relied on.

[R. 4:46-2(a).]

If the nonmoving party does not admit or deny each statement, the moving party's facts are deemed admitted for the purposes of the motion, as set forth in *Rule 4:46-2(b)*.

As a procedural matter, JONAH failed to submit a statement of material facts as plainly required by *Rule 4:46-2(a)*.

Acknowledging that deficiency, JONAH concedes "that perhaps the motion should have been designated a motion for partial dismissal" under *Rule 4:6-2(e)*, given that it is moving to strike a particular claim based solely on the allegations of Plaintiffs' Complaint. Drb3. Notwithstanding these deficiencies, and because JONAH ultimately submitted a statement of material facts with its reply brief in an effort to cure its error, the substance of JONAH's motion will be addressed.

II.

The CFA was enacted in 1960 "to combat the increasingly widespread practice of defrauding the consumer." *Weinberg v. Sprint Corp.*, 173 N.J. 233, 247, 801 A.2d 281 (2002) (quoting *Cox v. Sears Roebuck & Co.*, 138 N.J. 2, 14, 647 A.2d 454 (1994)). Originally, [*9] the power to enforce the CFA was vested exclusively with the Attorney General but, in a 1971 amendment, the Legislature supplemented the statute with a private cause of action. *See Id. at 248; D'Agostino v. Maldonado*, 216 N.J. 168, 183, 78 A.3d 527 (2013).

The private cause of action operates to "(1) compensate the victim for his or her actual loss; (2) punish the wrongdoer through the award of treble damages; and (3) attract competent counsel to counteract the 'community scourge' of fraud by providing an incentive for an attorney to take a case involving a minor loss to the individual." *D'Agostino, supra*, 216 N.J. at 183-84 (quoting *Weinberg, supra*, 173 N.J. at 249). The CFA specifically provides that

[t]he act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice[.]

[N.J.S.A. 56:8-2.]

Merchandise, as defined under the CFA, includes "any . . . services [*10] or anything offered, directly or indirectly to the public for sale." *N.J.S.A. 56:8-1(c)*.

The CFA requires the proof of three elements: an unlawful conduct by defendant; an ascertainable loss by plaintiff; and a causal relationship between the unlawful conduct and the ascertainable loss. *D'Agostino, supra*, 216 N.J. at 184. Unlawful conduct can be established through affirmative acts or omissions of any of the violations specified under *N.J.S.A. 56:8-2*, irrespective of

intent. *Thiedemann v. Mercedes-Benz USA, LLC*, 183 N.J. 234, 245, 872 A.2d 783 (2005); *see also D'Agostino, supra*, 216 N.J. at 184 (explaining that CFA "establishes a broad business ethic applied to balance the interests of the consumer public and those of the sellers" (citation and internal quotation marks omitted)).

Plaintiffs contend that JONAH engaged in unconscionable practices, deception, fraud, false promises, and misrepresentations in rendering its services. Insofar as this motion is concerned, JONAH does not contest any alleged unlawful conduct cited by Plaintiffs. Rather, the threshold issue is whether Plaintiffs' subsequent treatment costs constitute an "ascertainable loss" under the CFA.

The definition of ascertainable loss and what constitutes ascertainable loss has been subject to considerable litigation and debate. The Supreme Court of New Jersey has recognized that "[t]here is little that [*11] illuminates the precise meaning that the Legislature intended in respect of the term 'ascertainable loss' in our statute." *Thiedemann, supra*, 183 N.J. at 248; *see also D'Agostino, supra*, 216 N.J. at 190 ("Notwithstanding the importance of ascertainable loss, we find sparse guidance in the statutory text."). It is incumbent on a private plaintiff to present sufficient credible evidence from which a factfinder can find or infer that the plaintiff suffered an actual loss. *Ibid.* That said, the element of ascertainable loss under the CFA must be "quantifiable or measurable." *D'Agostino, supra*, 216 N.J. at 185 (citation and quotation marks omitted). "To raise a genuine dispute about such a fact, the plaintiff must proffer evidence of loss that is not hypothetical or illusory." *Thiedemann, supra*, 183 N.J. at 248.

This is not to say, however, that an ascertainable loss need be "demonstrated in all its particularity to avoid summary judgment." *Ibid.* Nor is ascertainable loss exclusively limited to an "out-of-pocket loss to the plaintiff." *Ibid.* "An estimate of damages, calculated within a reasonable degree of certainty will suffice to demonstrate an ascertainable loss." *Id. at 249* (citation and internal quotation marks omitted).

JONAH characterizes Plaintiffs' subsequent treatment costs as damages arising out of emotional distress. It [*12] therefore concludes that those damages are non-economic and, thus, not recoverable as ascertainable loss. JONAH relies on *Gupta v. Asha Enterprises LLC*, 422 N.J. Super. 136, 27 A.3d 953 (*App.*

Div. 2011), and to *Billings v. American Express Company*, 2011 U.S. Dist. LEXIS 132185 (D.N.J. Nov. 16, 2011), in support of its conclusion.¹

1 *Billings* is an unpublished decision. *Rule 1:36-3* provides that "[n]o unpublished opinion shall constitute precedent or be binding upon any court" and that "no unpublished opinion shall be cited by any court." To the extent any reference is made to *Billings*, it is for illustrative purposes only, and not as precedent, either binding or persuasive.

In *Gupta, supra*, the plaintiffs were Hindu vegetarians who filed a CFA claim against a restaurant after it had inadvertently served them meat-filled samosas. 422 N.J. Super. at 141-42. The plaintiffs claimed their ascertainable loss was the cost of a trip to India "to undergo a purification ritual" along the Ganges River following their consumption of the samosas. *Id. at 149*. The Appellate Division rejected their claim for damages because "the cost of cure for an alleged spiritual injury . . . cannot be categorized as either a loss of money or property," particularly since the restaurant furnished an order of conforming samosas to the plaintiffs free of cost. *Ibid.* Hence, no "underlying loss of property" was demonstrated. *Ibid.*

Relying on *Gupta* [*13], the United States District Court for the District of New Jersey likewise held in *Billings*. There, the plaintiff filed a CFA claim against American Express Co. ("AMEX") alleging that it misrepresented the status of his Credit Line Account. *Billings, supra*, 2011 U.S. Dist. LEXIS 132185 at *26-27. The plaintiff sought to make a purchase with his AMEX credit card but his card was declined because AMEX had suspended his charging privileges. *Id. at *1-2*. According to the plaintiff, he placed numerous calls to AMEX customer service representatives and requested to speak with a supervisor, but two of the customer service representatives with whom he spoke terminated his call and failed to investigate the status of his account. *Id. at *2-3*. The plaintiff asserted that this conduct and alleged misrepresentation caused him to suffer emotional distress, which required psychiatric therapy and prescription medication. *Id. at *27-28*. The court dismissed his claim for failing to assert an ascertainable loss, reasoning that consequential damages arising out of emotional distress and mental anguish are non-economic losses not recoverable under the CFA. *Id. at *28*.

In contrast, Plaintiffs assert that their claims for post-JONAH treatment costs are supported by *Cox v. Sears Roebuck & Co.*, 138 N.J. 2, 647 A.2d 454 (1994). The plaintiff in *Cox* contracted with Sears to renovate his kitchen and to install new appliances. 138 N.J. at 7-8. After performance was complete, the plaintiff filed a CFA claim against Sears because the renovations were substandard and failed to comply with home-repair regulations. *Id. at 8*. Sears counterclaimed for the contract price. *Ibid.* The Supreme Court of New Jersey determined that the plaintiff had proffered sufficient evidence to establish an ascertainable loss based on the poor workmanship of Sears, and held that the proper measure of damages is "the cost of repair" as decided by the jury. *Id. at 22-23*. It held further that the plaintiff could recover the cost of repair as an ascertainable loss, regardless of whether he failed to pay Sears the contract price or failed to repair the damaged kitchen. *Id. at 23-24*.

Plaintiffs similarly contend that reparative treatment and counseling following their receipt of services from JONAH should constitute an ascertainable loss cognizable under the CFA. Their reasoning is based on *Cox's* holding. [*14]

This Court agrees. It concludes that a categorical denial for recovery of Plaintiffs' post-JONAH treatment costs is inappropriate. *Gupta* and *Billings* are distinguishable because the alleged unlawful conduct in respect of the "merchandise" offered in those cases were unrelated to mental or emotional counseling. This distinction also renders irrelevant the other cases cited in JONAH's motion; the emotional distress alleged by plaintiffs in each of these cases was a step removed from the product or services rendered. *See Gennari v. Weichert Co. Realtors*, 148 N.J. 582, 611, 691 A.2d 350 (1997) (holding emotional damages arising out of purchase of a defective home are not recoverable under CFA); *Cole v. Laughrey Funeral Home*, 376 N.J. Super. 135, 144-45, 869 A.2d 457 (App. Div. 2005) (treating emotional injuries arising from misrepresentations by a funeral home to be non-economic).

Without addressing the veracity or science of conversation therapy, the nature of the services JONAH offered was premised on designating homosexuality, and other sexual conflicts, as a mental disorder, and the underlying transaction in this case involved reducing or eliminating same-sex attractions through emotional and mental health counseling. Just as the purchaser of a home

is a consumer of a product, the recipient of conversion therapy is a consumer of services. Because, [*15] assuming the facts in the light most favorable to Plaintiffs, JONAH's conversion therapy damaged the individuals it was meant "to cure," any subsequent costs of repairing Plaintiffs' mental or emotional health are the direct and proximate result of JONAH's actions and, hence, should be borne by JONAH, provided of course that Plaintiffs tender evidence both competent and sufficient to establish such damages. "[T]he existence of ascertainable loss resulting from a defendant's CFA violation should be determined on the basis of the plaintiff's position following the defendant's unlawful commercial practice." *D'Agostino, supra*, 216 N.J. at 197. Accordingly, the cost of reparative therapy caused by the alleged CFA violations may properly constitute an ascertainable loss under the CFA.

Even if the cost for reparative therapy does not constitute an element of ascertainable loss, that does not end the inquiry; whether the cost of reparative therapy can be calculated as "damages sustained" for purposes of the remedy imposed under the CFA remains. *D'Agostino* is instructive: it reiterated that "ascertainable loss" and "damages sustained" have separate functions under the CFA. 216 N.J. at 192.

Ascertainable loss is a prerequisite to determining damages sustained [*16] under the CFA. "There is no calculation of 'damages sustained' unless the ascertainable loss requirement is first satisfied." *Ibid.* (quoting *Thiedemann, supra*, 183 N.J. at 247). In respect of whether non-economic damages can be recoverable under "damages sustained," *Gennari, supra*, explains that

[o]ne reading of the Act is that a party who suffers any ascertainable loss has standing to sue and can recover three times "any and all damages sustained." The alternative, and we believe more appropriate, interpretation is that "damages" are limited to "ascertainable loss." At common-law an injured party could recover only for the injuries sustained. Absent a clear expression of legislative intent changing the common

law rule, we are reluctant to read the Act to encompass non-economic losses.

[148 N.J. at 613.]

To conclude on the basis of this proposition that Plaintiff's post-JONAH treatment costs are not recoverable under damages sustained necessarily presumes that such costs are non-economic in nature. Because subsequent treatment costs are quantifiable -- based on the amount expended on professional health services -- even if these costs do not qualify as a CFA ascertainable loss, they constitute "damages sustained" for remedy purposes under the CFA.

Furthermore, [*17] neither *Gennari* nor *D'Agostino* firmly repudiates calculating treble damages using other factors in conjunction with ascertainable loss. "The treble damages remedy is mandatory under N.J.S.A. 56:8-19 if a consumer-fraud plaintiff proves both an unlawful practice under the Act and an ascertainable loss." *D'Agostino, supra*, 216 N.J. at 185 (citation and internal quotation marks omitted). *D'Agostino* held that the "CFA contemplates that courts will fashion individualized relief appropriate to the specific case, combining legal and equitable remedies in some settings." *Ibid.* As a result, in addition to damages sustained, there was no error by the trial court in incorporating other factors such as "the impact of the court's equitable remedy on the parties' positions" in calculating treble damages under the CFA. *Id.* at 198.

Accordingly, even accepting as true that post-JONAH treatment costs are purely non-economic, ascertainable loss -- although a condition precedent to a valid CFA claim -- is not the exclusive measure for fashioning a proper remedy under the CFA. *D'Agostino* declined to adopt such "an inflexible rule," *Id.* at 199, and this Court must do likewise.

Conclusion

For the foregoing reasons, defendant JONAH's motion for partial summary judgment is DENIED. [*18] An appropriate order will follow.

Exhibit I

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: HUDSON COUNTY
-----x

MICHAEL FERGUSON, BENJAMIN UNGER, SHELDON
BRUCK, CHAIM LEVIN, JO BRUCK, BELLA LEVIN,

Plaintiffs,

v. L-5473-12

JONAH (JEWS OFFERING NEW ALTERNATIVES FOR
HEALING f/k/a JEWS OFFERING NEW ALTERNATIVES
TO HOMOSEXUALITY), ARTHUR GOLDBERG, ALAN
DOWNING LIFE COACHING, LLC,

Defendants.

-----x
April 4, 2014
10:30 a.m.

Video deposition of BELLA LEVIN, taken
by defendants, pursuant to notice, at the
offices of Cleary Gottlieb Steen & Hamilton,
New York, NY 10006, before Sharon Lengel, a
Registered Professional Reporter and Notary
Public of the State of New York.

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Q. So what was inappropriate about the touching?

A. Because I don't think anyone should be touched.

Q. Anywhere?

A. Yeah.

Q. So if I were to touch someone on the shoulder, that would be inappropriate?

MR. McCOY: Objection; incomplete hypothetical. Go ahead.

A. Not during therapy, no.

Q. Okay. During the short break we just had, did you discuss your testimony with anyone?

A. No.

Q. Is there anything else about your testimony you want to correct at this time?

A. No.

Q. Did you ever pay for Chaim to see any other therapists, psychologists, or psychiatrists?

A. Yes.

Q. Do you recall what they were?

A. There was someone named Charana.

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I forgot her last name. There was someone -- my memory is not always that well -- a man. That was the last -- there was, like, psychiatrist and another guy, two men. The psychiatrist gave him the medication, and the man was a therapist for molestation.

Q. And was this before he attended JONAH or after?

A. After. The -- Charana was before and after.

Q. Do you have any complaints about the services either one of those professionals provided to your son?

A. No.

Q. And why -- what was your understanding of why your son needed to see those professionals?

A. He needed help.

Q. As a result of what?

A. The molestation.

Q. You're referring to the molestation by his cousin?

A. Yes.

Exhibit J

NAME	Date	Credit	Debit	Description	Check #	Date	Deposited	Money Owed	Owed to:
	1 6/8		-100	line addn					
	2 6/15		-100	"					
	3 6/15	800		payment	1829	6/15		20	Jonah
	4 "	100		"	CASH			20	Jonah
	5 6/21	100		payment					
	6 6/21		-100	line addn	CASH			80	Jonah
	7								
	8								
	9								
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Exhibit K

031000053
07/11/2008
001024

This is a LEGAL COPY of your check. You can use it the same way you would use the original check.

RETURN REASON-A
Not Sufficient Funds

[031000053] 07/08/2008

000002600777459

CHAIM LEVIN
420 CROWN ST.
BROOKLYN, NY 11225-3005

101
1-32/210 NY
14740

07/04/08

Alan Downing \$ 100.00

Bank of America

ACH RT 021000322

483015143579 0101 0000010000

4:021000322: 483015143579 0101 0000010000

ACCOUNT NUMBER: 105270

Dear Member:

This letter is to notify you that a check in the amount of \$100.00 that was deposited through ATM on 7/8/08 is being returned for "Not Sufficient Funds"

Due to non-payment by the bank on which the funds are being drawn, we have adjusted your account. Please adjust your balances accordingly.

If you have any questions regarding this matter, please feel free to contact the MAC Department at (215) 396-6451 and someone will be happy to assist you.

Sincerely,

Pat McGugan
Plastic Card Department

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Bruce D. Greenberg
Jeffrey A. Shooman
Two Gateway Center – Suite 1201
Newark, NJ 07102
(973) 623-3000

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New York, NY 10006
(212) 225-2000

Attorneys for Plaintiffs

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Bruck, Chaim Levin, Jo Bruck, Bella Levin,

Plaintiffs,

v.

JONAH (Jews Offering New Alternatives for
Healing f/k/a Jews Offering New Alternatives
to Homosexuality), Arthur Goldberg, Alan
Downing, Alan Downing Life Coaching LLC,

Defendants.

SUPERIOR COURT OF NEW JERSEY
HUDSON COUNTY, LAW DIVISION

Docket No. L-5473-12

CIVIL ACTION

CERTIFICATION OF CHAIM LEVIN

I, Chaim Levin, hereby certify as follows:

1. I am a plaintiff in the above-captioned matter.
2. I began receiving conversion therapy services from the Defendants in or around April 2007 and ended in or around October 2008.
3. Having now carefully reviewed the payment records produced from Defendant Alan Downing's files, I am certain that I paid at least \$200 for the Defendants' conversion therapy services including two cash payments of \$100 each that were recorded by Mr. Downing on June 15, 2007 and June 21, 2007. Mr. Downing's record is attached as Exhibit J to the Certification of Lina Bensman in Opposition to Defendants' Motion for Partial Summary Judgment for Lack of Standing ("Bensman Cert."), dated August 25, 2014.
4. I held several jobs during the period of time I received Defendants' conversion therapy services.
5. My parents sometimes resisted or declined to pay the costs of Defendants' conversion therapy services.
6. A bounced check paid to Mr. Downing on July 4, 2008 further demonstrates that my parents did not always pay for Defendants' conversion therapy services. A copy of the check is attached as Exhibit K to the Bensman Certification.
7. My mother, Bella Levin, would not have been aware that I paid for some of Defendants' conversion therapy services because I did not tell her about those payments when they were made or afterward.
8. I paid other out-of-pocket expenses associated with and resulting from Defendants' conversion therapy services, including weekly transportation costs by car or public

transport from my home in Brooklyn, New York to JONAH's location in Jersey City, New Jersey for individual and group conversion therapy services.

9. I also paid transportation expenses for gas and food in order to attend two Journey Into Manhood ("JIM") weekends in June 2007 in New Hope, Pennsylvania and in October 2007 in Charlottesville, Virginia.

10. It is approximately 74 miles from my home to New Hope, Pennsylvania and 292 miles from my home to Charlottesville, Virginia. Estimating \$3.00 a gallon for gas¹ and 25 miles-per-gallon for a total of 732 miles (both round trips), I paid approximately \$87.84 in gas when I drove my car to attend those weekend retreats that were recommended by Defendants as an integral part of their conversion therapy program.

11. I paid for and brought kosher meals to the second JIM weekend.

12. After terminating conversion therapy with the Defendants, I received therapy to repair damage done to me by Defendants' conversion therapy services.

13. Ms. Charna Shapiro provided such post-JONAH therapy.

14. My counseling with Ms. Shapiro continued for at least two years after October 2008 and included at least 30 sessions.

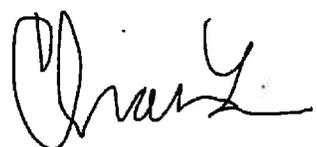
15. Although my parents paid for most sessions with her, I paid for at least five sessions. Ms. Shapiro usually charged \$100 per session.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

August 25, 2014

¹ Gas prices for the New York area averaged \$3.232 in June 2007 and \$2.984 in October 2007. U.S. ENERGY INFORMATION ADMINISTRATION, www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=EMM_EPM0_PTE_SNY_DPG&f=M (last visited Aug. 22, 2014).

Brooklyn, New York

A handwritten signature in black ink, appearing to read "Chaim L.", written in a cursive style.

Chaim Levin

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Plaintiffs,

v.

JONAH (Jews Offering New Alternatives for
Healing f/k/a Jews Offering New Alternatives
to Homosexuality), Arthur Goldberg, Alan
Downing, Alan Downing Life Coaching LLC,

Defendants.

**SUPERIOR COURT OF NEW JERSEY
HUDSON COUNTY, LAW DIVISION**

Docket No. L-5473-12

CIVIL ACTION

**CERTIFICATION OF
BENJAMIN UNGER**

I, Benjamin Unger, hereby certify as follows:

1. I am a plaintiff in the above-captioned matter.
2. I began receiving conversion therapy services from the Defendants in or around April 2007 and ended in or around May 2008.
3. Upon terminating conversion therapy services with Defendants, I received therapy to repair the damage done to me by Defendants' conversion therapy services.
4. Dr. Steven Phillipson and Dr. Jordan Levy provided my post-JONAH therapy.
5. I paid for nearly all of my post-JONAH therapy. I normally paid by cash or credit/debit card.
6. My bills for that therapy from May 2, 2008 through April 13, 2014 amount to \$17,950. The billing records are attached as Exhibit B to the Certification by Lina Bensman in Opposition to Defendants' Motion for Partial Summary Judgment for Lack of Standing.
7. I continue to pay for post-JONAH therapy, some of which relates to addressing damage resulting from the Defendants' conversion therapy services.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

August 25, 2014
New York, NY


Benjamin Unger

LITE DEPALMA GREENBERG, LLC
Bruce D. Greenberg (NJ ID #: 014951982)
Jeffrey A. Shooman (NJ ID#: 041512006)
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SUPERIOR COURT OF NEW JERSEY
HUDSON COUNTY, LAW DIVISION

Docket No. L-5473-12

CIVIL ACTION

**CERTIFICATION OF
BRUCE D. GREENBERG
PURSUANT TO R. 1:4-4(c)**

I, Bruce D. Greenberg, hereby certify as follows:

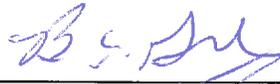
1. I am an attorney at law of the State of New Jersey, and a partner with the law firm of Lite DePalma Greenberg, LLC, attorneys for plaintiffs in this matter. I make this certification pursuant to R. 1:4-4(c).

2. Plaintiffs Benjamin Unger and Chaim Levin both acknowledge the genuineness of their signatures on their certifications in opposition to the Defendants' Motion for Partial Summary Judgment as to Plaintiffs Chaim Levin, Sheldon Bruck, and Benjamin Unger for Lack of Standing in the above-captioned matter.

3. If requested by the Court or a party, I will file certifications with original signatures.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

LITE DEPALMA GREENBERG, LLC



Bruce D. Greenberg (NJ ID #: 014951982)
Jeffrey A. Shooman (NJ ID#: 041512006)
Two Gateway Center – Suite 1201
Newark, NJ 07102

Dated: August 26, 2014

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Michael Ferguson, Benjamin Unger, Sheldon
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Defendants.

SUPERIOR COURT OF NEW JERSEY
HUDSON COUNTY, LAW DIVISION

Docket No. L-5473-12

CIVIL ACTION

CERTIFICATION OF SERVICE

Carla DaSilva, of full age, hereby certifies:

1. I am a legal assistant with the law firm of Lite DePalma Greenberg, LLC,
attorneys for plaintiffs in this matter.

2. On August 26, 2014, the original and one copy of the following documents were hand delivered to: Clerk, Superior Court of New Jersey, Hudson County Law Division, 595 Newark Avenue, Jersey City, NJ 07305 and one copy to the Hon. Peter F. Bariso, Jr., A.J.S.C. Superior Court of New Jersey, Hudson County Law Division, 595 Newark Avenue, Jersey City, NJ 07305

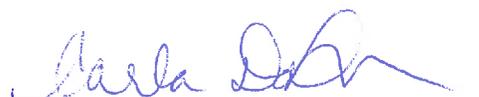
- Plaintiffs' Opposition to Defendants' Motion for Partial Summary Judgment as to Plaintiffs' Chaim Levin, Sheldon Bruck, and Benjamin Unger for Lack of Standing;
- Certification of Lina Bensman in Opposition to Defendants' Motion for Partial Summary Judgment as to Plaintiffs' Chaim Levin, Sheldon Bruck, and Benjamin Unger for Lack of Standing;
- Certification of Chaim Levin;
- Certification of Benjamin Unger;
- Certification of Bruce D. Greenberg pursuant to R. 1:4-4(c)

and were served via email and regular mail upon:

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Attorneys for People Can Change


Carla DaSilva