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Attorneys for Defendants

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
LAW DIVISION - HUDSON COUNTY
DOCKET NO. L-5473-12

Civil Action

**DEFENDANTS' RESPONSE TO
PLAINTIFFS' STATEMENT OF
UNDISPUTED MATERIAL FACTS**

On the Brief
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Pursuant to Local Rule of Court 4:46-2(b), Defendants hereby submit the following response to “Plaintiffs’ Statement of Undisputed Material Facts In Support of Plaintiffs’ Motion for Partial Summary Judgment.”¹

1. The State of New Jersey enacted A3371, prohibiting the provision of conversion therapy to minors by certain licensed professionals, on August 19, 2013. *See* Bensman Cert., Ex. 1, N.J.S.A. 45:1-54-55.

RESPONSE: Disputed. It is admitted that the State of New Jersey enacted Assembly Bill No. A3371 on August 19, 2013. It is admitted that Assembly Bill No. A3371 reads as follows:

a. A person who is licensed to provide professional counseling under Title 45 of the Revised Statutes, including, but not limited to, a psychiatrist, licensed practicing psychologist, certified social worker, licensed clinical social worker, licensed social worker, licensed marriage and family therapist, certified psychoanalyst, or a person who performs counseling as part of the person's professional training for any of these professions, shall not engage in sexual orientation change efforts with a person under 18 years of age.

b. As used in this section, "sexual orientation change efforts" means the practice of seeking to change a person's sexual orientation, including, but not limited to, efforts to change behaviors, gender identity, or gender expressions, or to reduce or eliminate sexual or romantic attractions or feelings toward a person of the same gender; except that sexual orientation change efforts shall not include counseling for a person seeking to transition from one gender to another, or counseling that:

(1) provides acceptance, support, and understanding of a person or facilitates a person's coping, social support, and identity exploration and development, including sexual orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices; and

¹ For purposes of this Response, Defendants will cite to exhibits attached to Defendants’ Opposition to Plaintiffs’ Motion for Partial Summary Judgment as “Ex.”, exhibits attached to Defendants’ Cross Motion for Summary Judgment as “MSJ Ex.,” and exhibits attached to Defendants’ Motion to Exclude Plaintiffs’ Expert as “Expert Ex.”. All exhibits cited as “Ex.” are attached to the accompanying Jonna Certification.

(2) does not seek to change sexual orientation.

N.J. Stat. § 45:1-55. Defendants’ dispute that they engage in “conversion therapy.” Defendants’ engage in “gender-affirming processes.”²

2. The American Medical Association officially affirms that homosexuality is not a mental illness or disorder. *See* Bensman Cert., Ex. 2, Am. Med. Ass’n, *Policy Regarding Sexual Orientation, H-160.991 Health Care Needs of the Homosexual Population*, 3, <http://www.ama-assn.org/ama/pub/about-ama/our-people/member-groups-sections/glb-t-advisory-committee/ama-policy-regarding-sexual-orientation.page?> (last visited November 19, 2014).

RESPONSE: Disputed. To the degree that “officially affirms” refers to the AMA’s asserted opinions, the use of the term “officially affirms” is undisputed. To the degree that the term “officially affirms” refers to the AMA’s ability to determine or confirm the veracity of the proposition, it is disputed.³ Further, the cited page does not state that the AMA does not view homosexuality as a mental illness or disorder. The cited page merely states “Our AMA . . . opposes, the use of ‘reparative’ or ‘conversion’ therapy that is based upon the assumption that homosexuality per se is a mental disorder.”⁴

² MSJ Ex. 12, Elaine Silodor Berk & Arthur A. Goldberg, *JONAH’s Psycho-Educational Model for Healing*, JONAH, <http://www.jonahweb.org/sections.php?secId=121> (last visited October 21, 2014).

³ *See* Bensman Cert., Ex. 2, Am. Med. Ass’n, *Policy Regarding Sexual Orientation, H-160.991 Health Care Needs of the Homosexual Population*, 3, <http://www.ama-assn.org/ama/pub/about-ama/our-people/member-groups-sections/glb-t-advisory-committee/ama-policy-regarding-sexual-orientation.page?> (last visited November 19, 2014) (describing merely “policies”).

⁴ *See* Bensman Cert., Ex. 2, Am. Med. Ass’n, *Policy Regarding Sexual Orientation, H-160.991 Health Care Needs of the Homosexual Population*, 3, <http://www.ama-assn.org/ama/pub/about-ama/our-people/member-groups-sections/glb-t-advisory-committee/ama-policy-regarding-sexual-orientation.page?> (last visited November 19, 2014).

3. The American Academy of Pediatrics officially affirms that homosexuality is not a mental illness or disorder. *See* Bensman Cert., Ex. 3, Barbara L. Frankowski et al., *Sexual Orientation and Adolescents*, 113, Pediatrics 1827, 1827-28 (2004).

RESPONSE: Disputed. To the degree that “officially affirms” refers to the American Academy of Pediatrics’ asserted opinions, the use of the term “officially affirms” is undisputed. To the degree that the term “officially affirms” refers to the American Academy of Pediatrics’ ability determine or confirm the veracity of the proposition, it is disputed.⁵ Further, the cited page does not state that the American Academy of Pediatrics does not view homosexuality as a mental illness or disorder. The cited page merely notes, without explicitly endorsing, that “[i]n 1973, the American Psychiatric Association reclassified homosexuality as a sexual orientation or expression and not a mental disorder.”⁶

4. The American Psychiatric Association declassified homosexuality as a mental disorder in 1973 by removing homosexuality from the Diagnostic and Statistical Manual of Mental Disorders (DSM). *See* Bensman Cert., Ex. 6, Am. Psychiatric Ass’n, *Homosexuality and Sexual Orientation Disturbance: Proposed Change in DSM-II, 6th Printing, page 44* (1973).

RESPONSE: Disputed. To the degree that the term “declassified” refers to the American Psychiatric Association’s prerogative to place its opinion into practice by not referring to homosexuality as a mental disorder in its published materials, the use of the term is not disputed. To the degree that the term “declassified” refers to a potential ability

⁵ Ex. 9, Dale O’Leary, Dean Byrd, Richard Fitzgibbons, *The Non-Factsheet* (detailing the scientific errors of organizations which are members of the “Just the Facts” coalition).

⁶ *See* Bensman Cert., Ex. 3, Barbara L. Frankowski et al., *Sexual Orientation and Adolescents*, 113, Pediatrics 1827, 1827-28 (2004).

of the APA to objectively determine the universe of mental disorders, it is disputed.⁷ To the degree that the above statement refers to the proposition that homosexuality is not a mental disorder, it is disputed.⁸ To the degree that the above statement refers to the proposition that the universe of mental disorders is included in the DSM, it is disputed.⁹ To the degree that the above statement refers to the proposition that the APA’s inclusion or removal of mental disorders from the DSM is based upon purely scientific and not political motivations, it is disputed.¹⁰ To the degree that the above statement refers to the proposition that the quoted text is objectively veracious it is disputed.¹¹

5. The American Psychological Association in its statement *Appropriate Affirmative Response to Sexual Orientation Distress and Change Efforts*, dated Aug. 5, 2009 noted the “longstanding consensus of the behavioral and social science and the health and mental health professions is that homosexuality per se is a normal and positive variation of human sexual orientation.” See Bensman Cert., Ex. 11, Am. Psychological Ass’n, *Appropriate Affirmative Response to Sexual Orientation Distress and Change Efforts* (2009).

⁷ Ex. 1, Jerome C. Wakefield, *The Concept of Mental Disorder: On the Boundary Between Biological Facts and Social Values*, March 1992, *American Psychologist* (noting the lack of any consensus on the definition of “mental disorder”).

⁸ MSJ Ex. 52, Expert Report of Dr. Joseph Nicolosi (homosexuality is a mental disorder).

⁹ MSJ Ex. 45, *The ICD-10 Classification of Mental and Behavioral Disorders*, World Health Organization, F66-F66.8 (maintaining that ego-dystonic homosexuality, or unwanted same-sex attraction, is a mental disorder).

¹⁰ Expert Ex. 18, Ronald Bayer, *Homosexuality and American Psychiatry: The Politics of Diagnosis*, 1987, Princeton University Press, pp.3-4; see also Ex. T, A. Dean Byrd, Shirley E. Cox, Jeffrey W. Robinson, *The Innate-Immutable Argument Finds No Basis in Science, In Their Own Words: Gay Activists Speak About Science, Morality, Philosophy*, NARTH, pp.2-3 (quoting Simon Levay, *Queer Science*, 1996, MIT Press) (“Gay activism was clearly the force that propelled the APA to declassify homosexuality”).

¹¹ MSJ Ex. 52, Expert Report of Dr. Joseph Nicolosi (homosexuality is a mental disorder).

RESPONSE: Disputed. To the degree that the term “noted” means “stated that,” it is undisputed. To the degree that the term “noted” refers to the proposition that the quoted material concerning “consensus” has veracity, it is disputed.¹² To the degree that the term “noted” refers to the proposition that the quoted material concerning whether “homosexuality per se is a normal and positive variation of human sexual orientation” has veracity, it is disputed.¹³

6. The Royal College of Psychiatrists officially affirms that homosexuality is not a mental illness or disorder. *See* Bensman Cert., Ex. 7, Royal Coll. of Psychiatrists, *Royal College of Psychiatrists statement on sexual orientation* (2014).

RESPONSE: Disputed. To the degree that “officially affirms” refers to the Royal College of Psychiatrists’ asserted opinions, the use of the term “officially affirms” is

¹² MSJ Ex. 82, NARTH, *NARTH SOCE Statement*, (Jan. 25, 2012) <http://www.narth.com/#!about1/c1wab> (last visited October 21, 2014) (stating that many individuals who pursue SOCE will be able to achieve meaningful, and satisfying shifts in their sexual attractions, fantasy, and arousal); MSJ Ex. 83, PATH, *Is change possible?*, <http://www.pathinfo.org/is-change-possible.html> (last visited October 21, 2014) (offering evidence of profound change in sexual identity, behavior, interests and desires); MSJ Ex. 84, Maricela P. Moffitt, *CMA Protests California Bill*, Catholic Medical Association (May 7, 2012) http://cathmed.org/issues_resources/publications/press_releases/cma_protests_california_bill/ (last visited September 29, 2014) (press release reporting letter sent to California Senate criticizing proposed ban on SOCE for minors); MSJ Ex. 85, House of Representatives, *Homosexuality Ethics Statement*, Christian Medical and Dental Associations (June 11, 2003) <http://cmda.org/library/doclib/homosexuality.pdf> (discussing importance of encouraging and supporting individuals in all of their attempts to cease engaging in homosexual behavior); MSJ Ex. 86, American College of Pediatricians, *Empowering Parents of Gender Discordant and Same-Sex Attracted Children*, (April 2008), <http://www.acped.org/the-college-speaks/position-statements/parenting-issues/empowering-parents-of-gender-discordant-and-same-sex-attacted-children> (last visited September 29, 2014) (discussing importance of sexual abstinence in same-sex attracted adolescents to increase likelihood of disappearance of same-sex attractions); MSJ Ex. 87, Tim Clinton, *A Response to California Senate Bill 1172*, American Association of Christian Counselors (Dec. 3, 2012), <http://www.aacc.net/2012/12/03/a-response-to-california-senate-bill-1172/> (discussing how California’s proposed ban on SOCE for minors violates the religious rights of minors and their parents).

¹³ MSJ Ex. 52, Expert Report of Dr. Joseph Nicolosi (homosexuality is a mental disorder).

undisputed. To the degree that the term “officially affirms” refers to the Royal College of Psychiatrists’ ability to objectively determine or confirm the veracity of the proposition, it is disputed.¹⁴

7. The American Counseling Association officially affirms that homosexuality is not a mental illness or disorder. *See* Bensman Cert., Ex. 4, A Resolution of the Governing Counsel of the Am. Counseling Ass’n, recorded in *ACA Governing Council Meeting Minutes, March 26-27, 1998*, 15 (1998).

RESPONSE: Disputed. To the degree that “officially affirms” refers to the American Counseling Association’s asserted opinions, the use of the term “officially affirms” is undisputed. To the degree that the term “officially affirms” refers to the American Counseling Association’s ability to determine or confirm the veracity of the proposition, it is disputed.¹⁵

8. The National Association of Social Workers concurs with the leading professional associations’ findings that homosexuality is not a mental illness or disorder. *See* Bensman Cert., Ex. 5, Nat’l Ass’n of Social Workers, Catherine Crisp & Yolanda Padilla, *Lesbian, Gay and Bisexual Issues* (2005).

RESPONSE: Disputed. To the degree that the term “concurs” refers to the National Association of Social Workers’ right to assert its opinions, the use of the term is undisputed. To the degree that the term “concurs” refers to the National Association of Social Workers’ ability to determine or confirm the veracity of the proposition, the above

¹⁴ *See* Bensman Cert., Ex. 7, Royal Coll. of Psychiatrists, *Royal College of Psychiatrists statement on sexual orientation* (2014) (describing itself as a “position statement”).

¹⁵ *See* Bensman Cert., Ex. 4, A Resolution of the Governing Counsel of the Am. Counseling Ass’n, recorded in *ACA Governing Council Meeting Minutes, March 26-27, 1998*, 15 (1998) (merely affirming “principles”).

statement is disputed.¹⁶ To the degree that the term “leading” refers to only those professional associations which agree that homosexuality is not a mental illness or disorder, it is undisputed. To the degree that the term “leading” includes all prominent, legitimate or otherwise respectable professional associations, the above statement is disputed.¹⁷ To the degree that the above statement refers to the proposition that leading professional associations’ can objectively determine or confirm whether homosexuality is a mental illness or disorder, it is disputed.¹⁸ Further, the cited page does not state that the American Academy of Pediatrics views homosexuality as not a mental illness or disorder. The cited page merely notes, without explicitly endorsing, that “[u]ntil 1973, homosexuality was

¹⁶ See Bensman Cert., Ex. 5, Nat’l Ass’n of Social Workers, Catherine Crisp & Yolanda Padilla, *Lesbian, Gay and Bisexual Issues* (2005) (describing itself merely as a “policy statement”).

¹⁷ See MSJ Ex. 82, NARTH, *NARTH SOCE Statement*, (Jan. 25, 2012) <http://www.narth.com/#!about1/c1wab> (last visited October 21, 2014) (stating that many individuals who pursue SOCE will be able to achieve meaningful, and satisfying shifts in their sexual attractions, fantasy, and arousal); MSJ Ex. 83, PATH, *Is change possible?*, <http://www.pathinfo.org/is-change-possible.html> (last visited October 21, 2014) (offering evidence of profound change in sexual identity, behavior, interests and desires); MSJ Ex. 84, Maricela P. Moffitt, *CMA Protests California Bill*, Catholic Medical Association (May 7, 2012) http://cathmed.org/issues_resources/publications/press_releases/cma_protests_california_bill/ (last visited September 29, 2014) (press release reporting letter sent to California Senate criticizing proposed ban on SOCE for minors); MSJ Ex. 85, House of Representatives, *Homosexuality Ethics Statement*, Christian Medical and Dental Associations (June 11, 2003) <http://cmda.org/library/doclib/homosexuality.pdf> (discussing importance of encouraging and supporting individuals in all of their attempts to cease engaging in homosexual behavior); MSJ Ex. 86, American College of Pediatricians, *Empowering Parents of Gender Discordant and Same-Sex Attracted Children*, (April 2008), <http://www.acped.org/the-college-speaks/position-statements/parenting-issues/empowering-parents-of-gender-discordant-and-same-sex-attacted-children> (last visited September 29, 2014) (discussing importance of sexual abstinence in same-sex attracted adolescents to increase likelihood of disappearance of same-sex attractions); MSJ Ex. 87, Tim Clinton, *A Response to California Senate Bill 1172*, American Association of Christian Counselors (Dec. 3, 2012), <http://www.aacc.net/2012/12/03/a-response-to-california-senate-bill-1172/> (discussing how California’s proposed ban on SOCE for minors violates the religious rights of minors and their parents).

¹⁸ Ex. 9, Dale O’Leary, Dean Byrd, Richard Fitzgibbons, *The Non-Factsheet* (detailing the scientific errors of organizations which are members of the “Just the Facts” coalition).

defined as mental illness by the American Psychiatric Association’s (APA) Diagnostic and Statistical manual (DSM) (APA, 1952)” and “In 1973, the American Psychiatric Association removed homosexuality from its list of mental disorders.”¹⁹ To the degree that the above statement refers to the proposition that the “leading professional associations’ findings that homosexuality is not a mental illness or disorder” is objectively veracious it is disputed.²⁰

9. The “Just the Facts” Coalition published a booklet stating that “the idea that homosexuality is a mental disorder or that the emergence of same-sex attraction and orientation among some adolescents is in any way abnormal or mentally unhealthy has no support among any mainstream health and mental health professional organizations . . . [Prominent professional organizations] representing more than 480,000 mental health professionals, have all taken the position that homosexuality is not a mental disorder and thus is not something that needs to or can be ‘cured.’” *See* Bensman Cert., Ex. 10, Just the Facts about Sexual Orientation and Youth, Am. Psychological Ass’n, <http://www.apa.org/pi/lgbt/resources/just-the-facts.aspx> (last visited Nov. 19, 2014).

RESPONSE: Disputed. To the degree the term “prominent” solely refers to the proposition that those organizations (The American Academy of Pediatrics, the American Counseling Association, the American Psychiatric Association, the American Psychological Association, the American School Counselor Association, the National Association of School Psychologists, and the National Association of Social Workers) contain a large number of members, the term is not disputed. To the degree the term “prominent” refers

¹⁹ *See* Bensman Cert., Ex. 5, Nat’l Ass’n of Social Workers, Catherine Crisp & Yolanda Padilla, *Lesbian, Gay and Bisexual Issues* (2005).

²⁰ MSJ Ex. 52, Expert Report of Dr. Joseph Nicolosi (homosexuality is a mental disorder).

to the proposition that those organizations' determinations are definitive, it is disputed.²¹ To the degree that the above statement refers to the proposition that the quoted text is objectively veracious it is disputed.²² To the degree that the above statement presents the proposition of the quoted text "the idea that homosexuality is a mental disorder or that the emergence of same-sex attraction and orientation among some adolescents is in any way abnormal or mentally unhealthy" as objectively true, it is disputed.²³ To the degree that the above statement presents the proposition of the quoted text "the idea that homosexuality is a mental disorder . . . has no support among any mainstream health and mental health professional organizations" as objectively true, it is disputed.²⁴

10. JONAH uses the word "change" in advertising its conversion therapy services to consumers. *See, e.g.*, Bensman Cert., Ex. 24 JON018938 ("going from gay to straight is very possible").

RESPONSE: Disputed. Defendants' dispute that they engage in "conversion therapy" – Defendants' engage in "gender-affirming processes."²⁵ Defendants admit that Defendants use the word "change" to mean "make different" by: (1) diminishing same-sex attraction; (2) increasing opposite-sex attraction; (3) changing one's identification with

²¹ Ex. 9, Dale O'Leary, Dean Byrd, Richard Fitzgibbons, *The Non-Factsheet* (detailing the scientific errors of organizations which are members of the "Just the Facts" coalition).

²² MSJ Ex. 52, Expert Report of Dr. Joseph Nicolosi (homosexuality is a mental disorder).

²³ MSJ Ex. 52, Expert Report of Dr. Joseph Nicolosi (homosexuality is a mental disorder).

²⁴ MSJ Ex. 87, Tim Clinton, *A Response to California Senate Bill 1172*, American Association of Christian Counselors (Dec. 3, 2012), <http://www.aacc.net/2012/12/03/a-response-to-california-senate-bill-1172/> (prominent AACC organization discussing how California's proposed ban on SOCE for minors violates the religious rights of minors and their parents).

²⁵ MSJ Ex. 12, Elaine Silodor Berk & Arthur A. Goldberg, *JONAH's Psycho-Educational Model for Healing*, JONAH, <http://www.jonahweb.org/sections.php?secId=121> (last visited October 21, 2014).

political labels such as “gay” or “straight;” or (4) no longer needing to compulsively seek out homosexual sex, which is the kind of potential change which Defendants actually offer.²⁶ Defendants admit that Defendants use a widely held definition of “change in sexual orientation” in the mental health field.²⁷ Defendants admit that Defendants disclosed to Plaintiffs how the definition of “change in sexual orientation” might be different than pure “change.”²⁸

²⁶ Ex. 13, Deposition of Arthur Goldberg, February 19, 2014, 369:6-21 (homosexuality can be associated with addictions), 397:5-398:4 (using the language “journey out of homosexuality”, “growing out of homosexuality” and “overcoming homosexuality”), 398:5-9 (“gay” and “straight” are political terms), 399:20-400:5 (“Q. . . . is there ever an end to the process of journeying out of homosexuality? Are you ever done? A. Yes. Q. When you are done, what does that mean? What has happened? What are you like? A. He or she is at peace with the fact, with their sexual attractions and finds them primarily heterosexual in nature or not erotically same sex in nature.”); Ex. 14, Berk Dep., 280:15-20 (using the terms “reduce same sex attraction” and “increase opposite sex attraction”).

²⁷ See also Ex. 24, Judd Marmor, *Homosexual Behavior: A Modern Reappraisal*, 1980, Basic Books, Inc., p.347 (“In those patients who are motivated to change their sexual orientation, it is important to clarify what is meant as ‘cure’ or change. In an individual who has the ability to react erotically to both men and women, the patient is helped to clarify his fear of women. He then may become increasingly potent and satisfied in this type of relationship and may be urged to curtail his relationships with men, ‘Cure’ does not necessarily mean the ability to lose the desire or the ability to react erotically to same-sex partners, but means the ability to derive sufficient satisfaction from heterosexuality that the patient does not overtly practice homosexuality. In addition ‘cure’ means to be aware of the nonsexual motivations that trigger homosexual yearnings, so that when they arise, they can be analyzed and are of short duration.”).

²⁸ See, e.g., MSJ Ex. 34, Jonah Institute of Gender Affirmation Consent to Treat and Financial Agreement with signatures of Sheldon Bruck and Jo Bruck; MSJ Ex. 35, Alan Downing Life Coaching Client Service Agreement with signature of Chaim Levin; MSJ Ex. 37, Alan Downing Life coaching Client Service Agreement with signature of Benjamin Unger; Ex. 13, Deposition of Arthur Goldberg, February 19, 2014, 223:4-12 (“Q. How do you typically respond to the question is change possible? A. I say yes, it is possible if somebody is involved and does the work. That there are no guarantees that it can happen, but the fact that people have the ability to change, that they have the capacity to change if they do the work, if they are consistent at it, that kind of thing.”), 399:20-400:5 (“Q. . . . is there ever an end to the process of journeying out of homosexuality? Are you ever done? A. Yes. Q. When you are done, what does that mean? What has happened? What are you like? A. He or she is at peace with the fact, with their sexual attractions and finds them primarily heterosexual in nature or not erotically same sex in nature.”); Ex. 15, People Can Change, *What We Mean By “Change”*, <http://peoplecanchange.com/change/whatwemean.php> (“Some skeptics erroneously assume that

11. JONAH works with clients and counselors of all faiths, including atheists. *See, e.g.,* Bensman Cert., Ex. 28, JONAH, Inc. Tr. at 222:17-224:25.

RESPONSE: Undisputed. Defendants admit that “The Jewish law, the Halachah . . . mandates that every Jew helps heal another person who comes to them for help, if he has the knowledge and means to help heal him.”²⁹ “Whenever a person can save another person’s life, but he fails to do so, he transgresses a negative commandment, as Leviticus 19:16 states: ‘Do not stand idly by while your brother’s blood is at stake.’”³⁰ Defendants admit that they are bound by the Halachah, and believe that it requires them to offer assistance to all who come to them for help.³¹

by change we always mean (or should mean) a 180 degree shift from 100% homosexual to 100% heterosexual in all behaviors, interests, attractions and thoughts, forever after. Anything less than that, some critics argue, isn’t real change. Some look for evidence of ‘only’ a 170 degree shift or ‘only’ a 90 degree shift, and cry ‘failure!’ The truth is that any degree of change toward greater peace, satisfaction and fulfillment, and less shame, depression and darkness, is change well worth pursuing.”); Ex. 16, People Can Change, *It’s Not About Shame*, <http://peoplecanchange.com/change/notshame.php> (“The truth is: you are good and valuable just as you are, today, unchanged . . . and even if you never change . . . – Pursuit of change isn’t about becoming valuable as a person. You already are. – Pursuit of change is about surrendering all that is negative about same-sex attractions: the lust, obsession, buried emotional pain, the secrecy, loneliness and conflict . . . while embracing all that is positive: the drive to heal past hurts, to love and be love [sic], to accept and be accepted, to embrace masculinity fully and completely, to connect and belong. – Pursuit of change is about aligning our values, beliefs, identity, true needs, and behavior . . . and for many of us, aligning our lives with God’s will for us individually, as we perceive it.”).

²⁹ Defendants’ MSJ, Footnote 218 (citing MSJ Ex. 118, Leviticus 19:11-16; MSJ Ex. 119, Sanhedrin 73a).

³⁰ *Id.* citing MSJ Ex. 120, Rotseah uShmirat Nefesh (codification of oral Torah) 1:14.

³¹ Ex. 36, Deposition of Arthur Goldberg as the Corporate Representative of JONAH, February 18, 2014, 222:17-224:25 (JONAH works with clients and counselors regardless of religion, including atheists).

12. JONAH's services are secular in nature. *See, e.g.*, Bensman Cert., Ex. 28, JONAH, Inc. Tr. at 222:14-16.

RESPONSE: Disputed. To the degree that the above statement means that Defendants' services are not religious in nature, it is disputed.³² To the degree that the above statement means that JONAH is not a religious organization, it is disputed.³³ To the degree that the above statement means that JONAH is not engaging in religious expression, it is disputed.³⁴ To the degree that the above statement means that the counseling offered by JONAH's affiliated counselors does not require religion to be effective, it is not disputed.³⁵

13. The JONAH Institute Consent to Treat and Financial Agreement says, "[t]here is no guarantee of successful change, although most clients do experience benefit from the process." *See, e.g.*, Bensman Cert., Ex. 34, JONAH-Bruck Agreement at 4.

RESPONSE: Undisputed.

³² *See* MSJ Ex. 9, *JONAH'S History*, <https://www.jonahweb.org/sections.php?secId=11> (last visited September 11, 2014) ("JONAH believes . . .").

³³ *See* MSJ Ex. 9, *JONAH'S History*, <https://www.jonahweb.org/sections.php?secId=11> (last visited September 11, 2014) ("Jews . . .").

³⁴ MSJ Ex. 5, JONAH Certificate of Incorporation, August 12, 1999; MSJ Ex. 8, Deposition of Arthur Goldberg in his personal capacity, February 19, 2014, 451:13-453:18 (religious belief aids in SOCE); MSJ Ex. 44, *JONAH'S History*, <https://www.jonahweb.org/sections.php?secId=11> (last visited September 11, 2014); MSJ Ex. 7, Deposition of Arthur Goldberg as corporate representative of JONAH, February 18, 2014, 28:20-29:11 (JONAH's trustees have included Jewish Rabbis); MSJ Ex. 7, Deposition of Arthur Goldberg as corporate representative of JONAH, February 18, 2014, 49:13-50:9 (JONAH holds regular shabbatons); MSJ Ex. 122, Letter from Rabbi Shmuel Kamenetsky, March 15, 2000, available at <https://www.jonahweb.org/sections.php?secId=89> (JONAH website including religious material).

³⁵ MSJ Ex. 12, Elaine Silodor Berk & Arthur A. Goldberg, JONAH's Psycho-Educational Model for Healing, JONAH, <http://www.jonahweb.org/sections.php?secId=121> (last visited October 21, 2014) ("JONAH works closely with other religious and secular groups which share our viewpoint that same sex attraction (SSA) is treatable").

14. Alan Downing's Life Coaching Client Service Agreement says "you need to be aware that results cannot be guaranteed." *See, e.g.*, Bensman Cert., Ex. 35, Downing Agreement at 1.

RESPONSE: Undisputed.

15. Defendants do not maintain licenses as therapists, psychologists, psychiatrists, social workers, or other licensed professionals. *See, e.g.*, Bensman Cert., Ex. 25, Goldberg Tr. at 38:14-16; Ex. 33, Downing Tr. at 567:21-568:10.

RESPONSE: Disputed. To the degree that the above statement refers to the proposition that neither Defendant Goldberg, Defendant Downing or Defendant JONAH hold professional mental health licenses, it is undisputed. To the degree that the above statement refers to the proposition that Mr. Heffner does not hold a professional mental health license, for whose actions Plaintiffs seek to hold Defendants vicariously liable, it is disputed.

MESSINA LAW FIRM, P.C.

Dated: December 19, 2014

By: _____
Michael P. Laffey, Esq.
Attorneys for Defendants