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April 27, 2015

HAND DELIVERED

Honorable Peter F. Bariso, Jr., A.J.S.C.
Superior Court of New Jersey
Hudson County Courthouse
595 Newark Avenue
Jersey City, NJ 07305

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

Dear Judge Bariso:

In connection with the above matter, enclosed is Plaintiffs' Trial Memorandum and Appendix A.

Thank you very much for your consideration.

Respectfully submitted,

Bruce D. Greenberg

BDG:al

Enclosure

cc: Michael P. Laffey, Esq. (via electronic and regular mail) (w/enc.)
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Michael Ferguson, Benjamin Unger, Chaim
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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' TRIAL MEMORANDUM

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Pursuant to the Court's letter dated September 18, 2014, and the deadlines set forth in the February 27, 2015 Amended Case Management Order, Plaintiffs respectfully submit their trial memorandum.

I. EACH LEGAL THEORY ON WHICH PLAINTIFFS SEEK TO PREDICATE A RECOVERY

This litigation concerns straightforward misrepresentation and unconscionable practice claims under the New Jersey Consumer Fraud Act (the "CFA" or "Act"), N.J.S.A. 56:8-1, *et seq.*¹ Specifically, each Plaintiff asserts claims for violation of N.J.S.A. 56:8-2, which declares as an "unlawful practice" any "act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation . . . in connection with the sale or advertisement of any merchandise." *Id.* Merchandise, as defined in the CFA, includes "any . . . services or anything offered, directly or indirectly to the public for sale." N.J.S.A. 56:8-1(c). Defendants' conversion therapy program and the services provided in connection therewith constitute merchandise for purposes of the statute. The CFA extends to

¹ 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 (2002) (quoting *Cox v. Sears Roebuck & Co.*, 138 N.J. 2, 14 (1994)). 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 v. Maldonado*, 216 N.J. 168, 183-84 (2013) (quoting *Weinberg*, 173 N.J. at 249). The New Jersey Supreme Court has noted that "[t]he Consumer Fraud Act affords broad protections to New Jersey consumers" and that "the history of the Act demonstrates a strong and consistent pattern of expanding the rights of consumers and protecting them from a wide variety of marketplace tactics and practices deemed to be unconscionable." *Bosland v. Warnock Dodge, Inc.*, 197 N.J. 543, 547 (2009); *see also Gennari v. Weichert Co. Realtors*, 148 N.J. 582, 604 (1997) ("The history of [the CFA] is one of constant expansion of consumer protection."). The CFA was intended to give New Jersey "one of the strongest consumer protection laws in the nation." *Belmont Condo. Assoc., Inc. v. Geibel*, A-2584-10T3, 2013 WL 3387636, at *10 (N.J. Super. Ct. App. Div. July 9, 2013) (internal quotation omitted). "Courts have emphasized that like most remedial legislation, the [CFA] should be construed liberally in favor of consumers." *Cox*, 138 N.J. at 15-16.

“subsequent performance” by “remote suppliers.” See N.J.S.A. 56:8-2; Perth Amboy Iron Works, Inc. v. Am. Home Assurance Co., 226 N.J. Super. 200, 209-11 (App. Div. 1988), aff’d, 118 N.J. 249 (1990). The CFA grants a private right of action to “[a]ny person who suffers any ascertainable loss of moneys or property” as a result of practices made unlawful by the Act. N.J.S.A. 56:8-19.

A claim under the CFA requires the proof of three elements: (1) unlawful conduct by defendant; (2) an ascertainable loss by plaintiff; and (3) a causal relationship between the unlawful conduct and the ascertainable loss. D’Agostino v. Maldonado, 216 N.J. 168, 184 (2013); see also Bosland v. Warnock Dodge, Inc., 197 N.J. 543, 557 (2009).

The claims arise from Defendants’ affirmative acts (e.g., unconscionable commercial practices, deception, fraud, false pretenses, false promises, or misrepresentations). Under the CFA, unlike common law fraud, Defendants’ intent is irrelevant. See Gennari v. Weichert Co. Realtors, 148 N.J. 582, 605 (1997) (“an intent to deceive is not a prerequisite to the imposition of liability. . . . One who makes an affirmative misrepresentation is liable even in the absence of knowledge of the falsity of the misrepresentation, negligence, or the intent to deceive.”); see also Thiedemann v. Mercedes-Benz USA, LLC, 183 N.J. 234, 245 (2005). “Thus, the Act is designed to protect the public even when a merchant acts in good faith.” Cox v. Sears Roebuck & Co., 138 N.J. 2, 16 (1994); see also D’Agostino, 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)). The CFA does not require that Plaintiffs demonstrate that they relied on the misrepresentation. See Gennari, 148 N.J. at 606 (noting that the CFA “does not require proof of reliance”); Kleinman v. Merck & Co., 417

N.J. Super. 166, 182 (Law. Div. 2009). Moreover, “[a] practice can be unlawful even if no person was in fact misled or deceived thereby.” Cox, 138 N.J. at 17.

The CFA is violated when “an advertisement has the capacity to mislead the average consumer.” Union Ink Co., Inc. v. AT&T Corp., 352 N.J. Super. 617, 644 (App. Div. 2002). The inquiry focuses on the average consumer, not on “whether it can later be explained to the more knowledgeable, inquisitive consumer.” Barry v. Arrow Pontiac, Inc., 100 N.J. 57, 69 (1985). For this analysis, the statements must be “[v]iewed as a whole and taken in context.” Lingar v. Live-In Companions, Inc., 300 N.J. Super. 22, 29 (App. Div. 1997). Even statements that are literally true can give rise to CFA liability if they are capable of misleading the average consumer. Miller v. Am. Family Publishers, 284 N.J. Super. 67, 85 (Ch. Div. 1995).

It is misleading to advertise services using common words and phrases in uncommon, undisclosed, and counterintuitive ways. It is a CFA violation for a merchant to advertise that it can change sexual orientation from gay to “straight” in marketing a program if that merchant’s definition of changing from gay to “straight” does not match any reasonable understanding of those words. See Onyx Acceptance Corp. v. Trump Hotel & Casino Resorts, Inc., No. L-811-02, 2008 WL 649024, at *12 (N.J. Super. Ct. App. Div. Mar. 12, 2008) (finding that a defendant’s advertisement of guaranteed room availability to be a CFA violation where the defendant’s definition of “guaranteed” “defie[d] any commonsense understanding of the term,” and noting that “[u]nder the CFA, it is the customer’s reasonable expectations that control, not the seller’s unreasonable definitions of commonplace terms”); Smajlaj v. Campbell Soup Co., 782 F. Supp. 2d 84, 98 (D. N.J. 2011) (use of even a literally true statement is a CFA violation when used in a way that would mislead a reasonable consumer); Suarez v. E. Int’l Coll., 428 N.J. Super. 10, 32 (App. Div. 2012) (same); Vagias v. Woodmont Props., L.L.C., 384 N.J. Super. 129, 134 (App.

Div. 2006) (same). Plaintiffs maintain that it is a misrepresentation in violation of the CFA to market and sell conversion therapy services by using the phrase “change from gay to straight” with an undisclosed meaning that includes mere change of label, or the mere suspension of same-sex sexual activity while continuing to experience homosexual desire.

The Court has already held as a matter of law that “[i]t is a misrepresentation in violation of the CFA, in advertising or selling conversion therapy services, to describe homosexuality, not as being a normal variation of human sexuality, but as being a mental illness, disease, disorder, or equivalent thereof.” Order, dated Feb. 10, 2015. The Court has further held as a matter of law that “[i]t is a misrepresentation in violation of the CFA, in advertising or selling conversion therapy services, to include specific ‘success’ statistics when there is no factual basis for calculating such statistics, e.g., when client outcomes are not tracked and no records of client outcomes are maintained.” Id.

Furthermore, taken as a whole, JONAH’s conversion therapy services and program constitute an unconscionable business practice in violation of the CFA. N.J.S.A. 56:8-2 (imposing liability for any “unconscionable commercial practice”).² The CFA is a “flexible and adaptable” statute designed to “combat newly packaged forms of fraud and to be equal to the latest machinations exploiting the vulnerable and unsophisticated customer.” Gonzalez v. Wilshire Credit Corp., 207 N.J. 557, 584 (2011) (holding that lenders “cannot prey on the unsophisticated, those with no bargaining power, those bowed down by a foreclosure judgment

² While “[t]here is no precise formulation for an ‘unconscionable’ act that satisfies the statutory standard for an unlawful practice,” D’Agostino, 216 N.J. at 184, the CFA is meant to protect consumers from a “wide variety of marketplace tactics and practices deemed to be unconscionable,” Bosland, 197 N.J. at 547; see also Assocs. Home Equity Servs., Inc. v. Troup, 343 N.J. Super. 254, 278 (App. Div. 2001) (“The word ‘unconscionable’ must be interpreted liberally so as to effectuate the public purpose of the CFA.”).

and desperate to keep their homes under seemingly any circumstances”); see also Lemelledo v. Beneficial Mgmt., 150 N.J. 255 (1997).

For example, predatory lending is an unconscionable commercial practice that violates the CFA. See generally Gonzalez, 207 N.J. 557. It is characterized by “a mismatch between the needs and capacity of the borrower . . . there is little likelihood that the borrower has the capability to repay the loan.” Assocs. Home Equity Servs., Inc. v. Troup, 343 N.J. Super. 254, 267 (App. Div. 2001). Predatory lenders typically take unfair advantage of their clients’ lack of sophistication and tend to target low-income and minority borrowers.³ “The need for application of the [standard of conduct contemplated by the unconscionability clause . . . good faith, honesty in fact and observance of fair dealing] is most acute when the professional seller is seeking the trade of those most subject to exploitation—the uneducated, the inexperienced and the people of low incomes.” Kugler v. Romain, 58 N.J. 522, 544 (1971).

Courts have found a violation of the CFA where “the price for the [good] was unconscionable in relation to defendant’s cost and the value to the consumers and was therefore a fraud within the contemplation of N.J.S.A. 56:8-2.” Kugler, 58 N.J. at 547;⁴ see also In re Fleet, 95 B.R. 319, 336 (E.D. Pa. 1989) (finding a business practice unconscionable under New Jersey law when the “consumers who turned to [defendant] for help were financially troubled and distraught. Some were unemployed or disabled. . . [defendant], through its marketing scheme, represented that it could provide help to these consumers, help which [defendant] could not and did not provide.”).

³ See Predatory Lending – What Consumers Should Know, New Jersey Department of Banking and Insurance (2006), http://www.state.nj.us/dobi/division_consumers/finance/predatory.html.

⁴ Notably, “Kugler clearly does not require that an unconscionable business practices claim be accompanied by allegations of having been actually misled or deceived” Katz v. Live Nation, Inc., CIV.A. 09-3740 MLC, 2010 WL 3522792, at *5 (D.N.J. Sept. 2, 2010).

Defendants' commercial practices mirror those that characterize predatory lending. Defendants target prospective clients who are in distress, sheltered, and not sophisticated enough to properly evaluate the claims Defendants make or the services they offer, and then sell them unproven services rejected by mainstream professionals in the field to treat or cure a disorder that does not exist, at an unjustifiable price. Hence, Defendants are engaged in an unconscionable commercial practice that violates the CFA.

"A private party seeking to recover must demonstrate that he or she has suffered an 'ascertainable loss.'" Bosland, 197 N.J. at 555 (citing Meshinsky v. Nichols Yacht Sales, Inc., 110 N.J. 464, 472-73 (1988)). "In cases involving . . . misrepresentation, either out-of-pocket loss or a demonstration of loss in value will suffice to meet the ascertainable loss hurdle and will set the stage for establishing the measure of damages." Thiedemann, 183 N.J. at 248. Even "[a]n estimate of damages, calculated within a reasonable degree of certainty will suffice to demonstrate an ascertainable loss." Ferguson v. JONAH, No. HUD-L-5473-12, 2014 N.J. Super. Unpub. LEXIS 1334, at *15 (Law Div. June 6, 2014); Cox, 138 N.J. at 22. In addition, this Court has already held, consistent with Cox, 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.⁵ Ferguson, 2014 N.J. Super. Unpub. LEXIS 1334, at *15 ("Accordingly, the cost of reparative therapy caused by the alleged CFA violations may properly constitute an ascertainable loss under the CFA.").

With respect to the "causal relationship" element, the CFA, unlike common law fraud, does not require proof of reliance. Instead, all that is required is "proof of a causal nexus

⁵ This type of ascertainable loss will only be sought for Benjamin Unger. The ascertainable loss suffered by the remaining Plaintiffs is the out-of-pocket cost of, and in connection with, JONAH's conversion therapy services.

between [the unlawful conduct] and the loss.” Gennari, 148 N.J. at 607-08; see also Varacallo v. Mass. Mut. Life Ins. Co., 332 N.J. Super. 31, 48-49 (App. Div. 2002) (“the Act requires only a causal nexus between the ‘method, act, or practice declared unlawful’ and the consumer’s ‘ascertainable loss.’ N.J.S.A. 56:8-19. The Supreme Court has taken pains to point out that this element is a significant distinction from the requirement of reliance in a common law fraud claim.”). For purposes of the CFA, the “causal nexus” referred to in Gennari and Varacallo is one of proximate cause.⁶ “Plaintiffs are required to prove only that defendant’s conduct was a cause of damages. They need not prove that [defendants’] conduct was the sole cause of loss.” Varacallo, 332 N.J. Super. at 48 (citing Gennari, 148 N.J. at 608.). “[O]nce a plaintiff has established a significant relationship between the defendant’s unlawful practices and the plaintiff’s ascertainable losses it becomes the defendant’s responsibility to isolate particular losses which do not have the required causal connection.” Roberts v. Cowgill, 316 N.J. Super. 33, 44 (App. Div. 1998) (citing Cox, 138 N.J. at 21-24).

Neither the form of Plaintiffs’ out-of-pocket loss (whether it be the fees paid to Defendants for their services or fees paid for legitimate therapy to repair the damage done by those services) nor the causal nexus between Defendants’ unlawful conduct and their ascertainable loss need be proven by expert testimony. As to the former, determining the amounts paid by Plaintiffs for and in connection with Defendants’ services is not beyond the ken of the average juror. N.J.R.E. 702. Plaintiffs are not aware of any New Jersey precedent holding that expert testimony is required to prove the amount of out-of-pocket ascertainable losses. Cf. Cox, 138 N.J. at 22; Roberts, 316 N.J. Super. at 41-44 (discussing Cox); Thiedemann, 183 N.J. at

⁶ This is confirmed by the New Jersey Model Civil Jury Charges, in which the CFA model charges cross-reference the proximate cause model charges. See Model Charge 4.43 (cross-referencing Model Charge 6.10).

244, 249, 250; Romano v. Galaxy Toyota, 399 N.J. Super. 470, 479 (App. Div. 2008) (“Plaintiffs must suffer ‘an objectively ascertainable loss or damage,’ which could be measured by ‘expert proof of diminution of value’ of the plaintiffs’ property or ‘out of pocket expenses causally connected with the claimed defect perpetuated by the defendant.”) (quoting Thiedemann, 183 N.J. at 244)); Kleinman, 417 N.J. Super. at 182 (“A loss can be demonstrated by expert proof of a loss in value or “out of pocket expenses.”). There is no need for an expert to opine as to Benjamin Unger’s out-of-pocket costs to repair the damage done to him by JONAH’s conversion therapy services.

This Court has already indicated that it does not think that expert testimony is required to establish the “causal relationship.” At the September 9, 2014 hearing on Defendants’ third motion for partial summary judgment, the Court indicated that “I do not believe that the second element, [] that we discussed, the causal relationship, [] between the unlawful conduct and the ascertainable loss requires expert testimony.” Sept. 9, 2014 Hearing Tr. at 50; see also id. at 28-29, 50-51. Plaintiffs have found no case requiring expert testimony to establish the causal relationship element of a CFA claim.⁷ Instead, Cox, the case upon which Mr. Unger’s ability to recover his out-of-pocket reparative costs is premised, demonstrates that expert testimony is not required to prove the causal relationship element because there the plaintiff was able to prove and recover his costs of repair without expert testimony on the causal nexus. Cox, 138 N.J. at 22. The same is true here for Mr. Unger. The jury does not need the assistance of an expert to understand the testimony from Mr. Unger (or the confirming documentary evidence of medical

⁷ And the Court noted that Defendants were not able to provide the Court with such authority in support of their motion for partial summary judgment on this point. See Sept. 9, 2014 Hearing Tr. at 50-51 (“And, certainly, I don’t believe a case was provided to the Court that satisfies the Court that expert testimony is definitely necessary for that causal relationship.”).

billing records) that he sought out, received, and paid for legitimate therapy to repair the damage he suffered as a result of the Defendants' program.⁸ N.J.R.E. 703.

The CFA provides that "in any action [by a private plaintiff] the court shall, in addition to any other appropriate legal or equitable relief, award threefold the damages sustained by any person in interest." N.J.S.A. 56:8-19. Even if Plaintiffs were unable to prove ascertainable loss at trial, they would still be entitled to seek equitable relief (including injunctive relief) and attorneys' fees. See Weinberg v. Sprint, 173 N.J. 233 (2002) (holding that it is not only the 'plaintiff who successfully *proves* ascertainable loss [who] may have access to the [CFA's] remedies of equitable relief and attorneys' fees.'") (emphasis in original).

In addition to recovering for their "ascertainable loss" and "damages sustained" (which are required to be trebled) and attorneys' fees, Plaintiffs also seek declaratory and injunctive relief for Defendants' violations of the CFA. Injunctions are a form of equitable relief available to private parties under the CFA: "Read sensibly, the [CFA] allows a private cause of action to proceed for all available remedies, including an injunction, whenever a consumer can plead a claim of ascertainable loss that can survive a motion for summary judgment." Weinberg, 173 N.J. at 253.⁹ The Supreme Court of New Jersey has described consumers who bring private actions under the Consumer Fraud Act as "private attorneys general," Lemelledo, 150 N.J. at 268, and courts have held that "a private action may seek to remedy a Consumer Fraud Act violation not only as it affects the named plaintiff but also other consumers." Laufer v. U.S. Life Ins. Co. in City of New York, 385 N.J. Super. 172, 185 (App. Div. 2006) (citing Lemelledo).

⁸ In Cox, the plaintiff had not yet incurred the repair costs but was still found to have proven ascertainable loss. Here, Mr. Unger has incurred the repair costs and through his testimony, the testimony of Dr. Phillipson, and documentary evidence, Mr. Unger can establish the exact amount of the reparative costs he incurred.

⁹ Here, Plaintiffs' claims have survived five dispositive motions.

“The treble damages and injunctive remedies described in N.J.S.A. 56:8-19 are not mutually exclusive; injunctive relief can be combined with an award of treble damages in an appropriate case.” D’Agostino, 216 N.J. at 185; see also Laufer, 385 N.J. Super. at 185 (“Thus, by the express terms of this section, a private plaintiff who establishes a violation of the Consumer Fraud Act may obtain not only monetary relief, including treble damages and attorneys’ fees, but also ‘equitable relief.’”).

Finally, Plaintiffs are requesting, based upon the facts ultimately proven at trial, that the Court declare that Defendants violated the CFA, relief that is specifically authorized by the Uniform Declaratory Judgment Act (“UDJA”). N.J.S.A. 2A:16-53 (available where a person’s “rights, status or other legal relations are affected by a statute”). The UDJA provides that “[a]ll courts of record in this state shall, within their respective jurisdictions, have power to declare rights, status and other legal relations, whether or not further relief is or could be claimed.” N.J.S.A. 2A:16-52; see also R. 4:42-3 (“A judgment for declaratory relief, if appropriate, is not precluded by the existence of another appropriate remedy.”).

In sum, each Plaintiff will prove that Defendants Arthur Goldberg, JONAH, Inc. (through Mr. Goldberg and its co-director Elaine Berk), and/or Alan Downing (directly or through Alan Downing Life Coaching LLC) made misrepresentations to them which caused them to suffer an ascertainable loss in violation of the CFA. In addition, each Plaintiff will prove at trial that each Defendant is engaged in unconscionable commercial practices under the CFA. Defendants’ violations of the CFA entitle each Plaintiff to receive damages in the amount of their ascertainable loss and damages sustained, trebled. In addition, Plaintiffs will be entitled to an award of their attorneys’ fees incurred in bringing their claims when they prove Defendants’ unlawful conduct under the CFA (regardless of whether they prove they suffered an

ascertainable loss—which they have). Plaintiffs will also be entitled to declaratory and injunctive relief.¹⁰

II. FACTUAL PREDICATE FOR EACH CAUSE OF ACTION/LEGAL THEORY OF RECOVERY ADVANCED AGAINST EACH OF THE DEFENDANTS

As explained above, each Plaintiff asserts one cause of action against at least one Defendant for violation of the CFA based on multiple affirmative acts, including misrepresentations and unconscionable business practices, which constitute violations of the CFA. Defendants' violations of the CFA include misrepresentations that led Plaintiffs to purchase Defendants' conversion therapy services and to continue their participation in Defendants' conversion therapy program. In addition, the totality of Defendants' marketing, sale, and subsequent performance of their services constitutes an unconscionable commercial practice in violation of the CFA. Specific examples of misrepresentations and unconscionable business practices are set forth in detail below.

A. Defendants Misrepresented Homosexuality As Being A Mental Disorder Or Equivalent Thereof

In the advertisement, sale, and subsequent performance of their conversion therapy services, Defendants misrepresented homosexuality as being a mental disease or disorder (or equivalent thereof). Defendants made such misrepresentations both explicitly and implicitly over an extended period of time. Even in those instances when Defendants did not use the words “mental,” “disease,” or “disorder,” they described homosexuality in a manner that consistently conveyed the same message through analogies, suggestion, and implication. Defendants did so in order to induce consumers to purchase (and continue purchasing) Defendants' conversion therapy services, which would purportedly treat or cure their “disordered” homosexuality (as

¹⁰ Declaratory and injunctive relief are remedies to be determined by the Court and not the jury, but would be based on facts established at trial.

discussed further below). Testimony, documents, and other evidence presented at trial will prove the following:

- Defendants consistently told Plaintiffs that all people are born heterosexual, that there is no such thing as homosexuality, and that emotional wounds can cause some people to experience what Defendants term same sex attraction (“SSA”), which can be reduced or eliminated once those wounds are healed. Defendants also consistently told Plaintiffs that SSA was caused by a deficit in what Defendants termed gender wholeness. Defendants have variously described homosexuality as a mental illness, disease, sickness, disorder, the result of being deficient in manhood and gender identity and not a whole person, a psychological problem, unnatural, a life damaging disorder, and a treatable same-sex attraction disorder, among other things. Defendants have equated homosexuality to other disorders, including eating disorders and alcoholism.
- Mr. Goldberg told Bella Levin that being gay was a sickness that Defendants’ program was going to cure.
- Defendants told Chaim Levin that being gay was a mental illness, disease, sickness, and disorder. Mr. Downing specifically told Mr. Levin that healing emotional wounds would cause him to change from gay to straight, with the clear inference that homosexuality was a disorder resulting from psychological harm.
- Mr. Downing told Michael Ferguson that being gay was the result of deficiency in his manhood and gender identity and that he was not a whole person. At the Journey Into Manhood (“JIM”) weekend that he attended, Mr. Ferguson was told that being gay was the result of a deficit in his gender identity which, if repaired, would change his attractions away from his own gender. Mr. Goldberg told Mr. Ferguson that homosexuality is actually same sex attraction and can be healed.
- Mr. Goldberg told Jo Bruck that being gay is a psychological problem that can be overcome and that being gay is caused by something going wrong during a child’s development.
- Mr. Goldberg told Sheldon Bruck that being gay was a disorder and that being gay was something that is fixable.
- JONAH told Mr. Unger that being gay was a disorder and unnatural. Mr. Downing, during individual therapy sessions, told Mr. Unger that being gay is a mental disorder and that healing emotional wounds would cure his SSA.
- Mr. Goldberg misrepresents homosexuality as disordered in his book, Light in the Closet, which he advertised to prospective and current clients, including Plaintiffs. For example, he writes that “the cyclical pattern of infatuation and disillusionment described above is found in both male and female homosexuals, and meets the

definition of neurosis.”¹¹ Mr. Goldberg also refers to those who are gay as “wounded or ill,” and says that homosexuality is caused by “wounds and debilities” and problems with gender identity. He then contends that problems with gender identity (a purported cause of homosexuality) can also lead to other forms of sexual brokenness, such as “Opposite Sex Attachment Disorder,” equating homosexuality with other disorders.

- Mr. Levin and Mr. Unger joined and participated on the JONAH listserv.
 - The evidence will show that every new member of the JONAH listserv was provided with a document which sets forth the rules of the listserv. The document provided to listserv members states, “Those of us who have a ‘same sex attraction disorder’ (abbreviated as “SSAD” rather than “gay”) have been given a unique challenge by Hashem (G-d) to find appropriate alternatives to this SSAD condition.”
 - Documentary evidence will show that Defendants misrepresented homosexuality as disordered, aberrant, unnatural, and an abnormal psychological condition in emails Defendants sent to the JONAH listserv, including by equating homosexuality to mental illnesses such as anorexia as well as by directly describing homosexuality as a “treatable... disorder.”
- Plaintiffs will show that their recollections of Defendants’ oral misrepresentations to them are corroborated by numerous documents in which Defendants make those very same misrepresentations to other prospective and current clients. These documents will prove that Defendants habitually and as their standard practice made certain specific misrepresentations to prospective and current clients, consistent with the misrepresentations made to Plaintiffs in person and on telephone calls.

The evidence will further show that when Defendants misrepresented homosexuality as being a disorder, they neither stated nor suggested that they were solely addressing religious questions, speaking from a religious perspective, or that the treatment they offered was of a religious nature. Instead, the evidence will show that Defendants’ misrepresentations directly and indirectly addressed scientific, medical, and psychological subject matter and that, when

¹¹ Neurosis, Merriam-Webster (last visited Apr. 27, 2015), <http://www.merriam-webster.com/dictionary/neurosis> (“a mental and emotional disorder that affects only part of the personality . . . and is accompanied by various physical, physiological, and mental disturbances (as visceral symptoms, anxieties, or phobias)”).

they did address religious subjects, did so explicitly and separately from their scientific and secular discussions.

B. Defendants Misrepresented That Their Conversion Therapy Services And Program Could “Treat” Or “Cure” Homosexuality

To induce the initial purchase of conversion therapy services and to induce continued participation in the JONAH program, Defendants represented their services and conversion therapy program as being capable of curing or treating the “disorder” of homosexuality.

Testimony, documents, and other evidence presented at trial will prove that Defendants made the following claims about their conversion therapy services and program:

- That JONAH has “treated” or “cured” hundreds of men who have changed from gay to straight as a result of JONAH’s conversion therapy services. This includes Defendants’ repeated misrepresentation that their services heal the emotional “wounds” that cause homosexual desire.
- That “thousands” of men have changed from gay to straight through their participation in the JONAH program, which includes services provided by others, including People Can Change (“PCC”).
- That success in changing from gay to straight was dependent on the client’s level of effort and participation in all aspects of the JONAH program, including participation in PCC-sponsored experiential weekends.
- That the JONAH program, or JONAH’s direct conversion therapy services, are led, staffed, and/or provided by “success stories” who themselves have changed from gay to straight.
- Plaintiffs will show that their recollections of Defendants’ oral misrepresentations to them are corroborated by numerous documents in which Defendants make those very same misrepresentations to other prospective and current clients. These documents will prove that Defendants habitually and as their standard practice made certain specific misrepresentations to prospective and current clients, consistent with the misrepresentations made to Plaintiffs in person and on telephone calls.

C. Defendants Misrepresented Their Conversion Therapy Services And Program As Having Specific Success Rates In Treating Or Curing Homosexuality

Testimony, documents, and other evidence presented at trial will prove that Defendants solicited clients by misrepresenting that their conversion therapy services and program had specific success rates. The proof will show that Defendants have used various purported success rates in marketing their conversion therapy services and program, including one-third, two-thirds, and 70-75% for purported success and one-third and nine out of ten for purported benefit. The proof will further show that Defendants have no basis whatsoever for those success rates or, indeed, for any success rate, because they have never made any effort to track client outcomes and indeed keep no client records. Plaintiffs' experts will testify that Defendants' claim that success rates associated with other therapies, or with therapy generally, are not a reliable indicator of the success rate of Defendants' particular program; Plaintiffs' experts will also testify that Defendants' claim that their program is effective for one-third of all participants because *all* therapy is effective for one-third of all participants is not accurate because there is no valid basis to assert that all therapy has that, or any, efficacy rate.

Plaintiffs will show that their recollections of Defendants' oral misrepresentations to them are corroborated by numerous documents in which Defendants make those very same misrepresentations to other prospective and current clients. These documents will prove that Defendants habitually and as their standard practice made certain specific misrepresentations to prospective and current clients, consistent with the misrepresentations made to Plaintiffs in person and on telephone calls.

D. Defendants Misrepresented That They Can Treat Or Cure Homosexuality Within A Specific Time Frame

Testimony, documents, and other evidence presented at trial will prove that, in soliciting clients and in inducing current clients to purchase their conversion therapy services and continue on in their program, Defendants falsely claimed that the “change” they promised would occur within some specified timeframe, for example between three and five years. The proof will further show that Defendants have no basis whatsoever for those statements because, as stated above, they have never made any effort to track client outcomes and indeed keep no client records. Specifically, evidence and testimony will prove the following:

- Mr. Goldberg told Mrs. Levin that participation in the JONAH program would change her son from gay to straight within a few years.
- Mr. Goldberg told Mr. Unger that the program typically requires one to four years to complete.

Plaintiffs will show that their recollections of Defendants’ oral misrepresentations to them are corroborated by numerous documents in which Defendants make those very same misrepresentations to other prospective and current clients. These documents will prove that Defendants habitually and as their standard practice made certain specific misrepresentations to prospective and current clients, consistent with the misrepresentations made to Plaintiffs in person and on telephone calls.

E. Defendants Misrepresented That Their Conversion Therapy Services, Program, And Supporting Theories And Techniques Were Scientifically Based And Scientifically Valid

Testimony, documents, and other evidence presented at trial will prove that, in soliciting clients and in inducing current clients to continue purchasing their services and participating in their program, Defendants misrepresented their conversion therapy services and program as

scientifically based and scientifically valid. See, e.g., Am. Answer ¶ 70 (“Defendants ... admit that their methods are scientifically based.”).

The evidence at trial, including the testimony of Plaintiffs’ experts, will show that, in fact, Defendants’ theories are not generally accepted in the scientific and professional community but rather are discredited and universally rejected; that Defendants’ techniques are not scientifically proven to be effective but rather are fringe practices not used by ethical professionals (and indeed that certain of Defendants’ practices are prohibited by the licensing authorities that oversee mental health service providers); finally, that as a whole, Defendants’ services and program are fundamentally unscientific insofar as they are comprised of practices that have no basis in valid research and are premised on outdated theories no longer accepted by the scientific community.

Plaintiffs will show that their recollections of Defendants’ oral misrepresentations to them are corroborated by numerous documents in which Defendants make those very same misrepresentations to other prospective and current clients. These documents will prove that Defendants habitually and as their standard practice made certain specific misrepresentations to prospective and current clients, consistent with the misrepresentations made to Plaintiffs in person and on telephone calls.

F. Defendants Misrepresented That They And Their Conversion Therapy Services And Program Are Capable Of Changing People From Gay To Straight

Testimony, documents, and other evidence presented at trial will prove that Defendants specifically misrepresented their program as capable of changing clients from gay to straight. Plaintiffs will testify that they understood the purported change from gay to straight, as indeed the average consumer would, to mean they would no longer experience homosexual desire (i.e., no longer be gay), but instead would experience heterosexual desire (i.e., be straight). The

evidence will show that Defendants did not disclose to Plaintiffs that the promised change from gay to straight could consist of merely a change of label, or a change in behavior, or a change in how Plaintiffs felt about their homosexual desire, including through a suppression or repression of that still present homosexual desire.

Plaintiffs will testify, and the evidence will show, that Defendants' program did not change them from gay to straight. Plaintiffs' experts will testify that JONAH's conversion therapy services and program are incapable of changing an individual's sexual orientation from homosexual to heterosexual. The evidence at trial, including the expert testimony, will show that the (undisputed) techniques used by Defendants are ineffective and potentially dangerous—including that such techniques cannot "heal" any emotional "wounds," even if doing so were a way to effect sexual orientation change.

Plaintiffs will show that their recollections of Defendants' oral misrepresentations to them are corroborated by numerous documents in which Defendants make those very same misrepresentations to other prospective and current clients. These documents will prove that Defendants habitually, and as their standard practice, made certain specific misrepresentations to prospective and current clients, consistent with the misrepresentations made to Plaintiffs in person and on telephone calls.

G. Defendants' Conversion Therapy Services And Program, As A Whole, Is An Unconscionable Commercial Practice

Testimony, documents, and other evidence presented at trial will prove that Defendants' conversion therapy services and program are an unconscionable commercial practice which preys upon unsophisticated, at-risk gay men who often come from sheltered religious backgrounds. In advertising and selling its services, JONAH exploits the desperation of

vulnerable people on whom it foists unnecessary treatments devoid of value. The evidence will show the following:

- JONAH markets its conversion therapy services and program to the Jewish community and specifically focuses on those persons and organizations most likely to be especially religious, including rabbis. JONAH also targets persons and organizations connected with children, including schools. This effort is successful: JONAH receives inquiries from prospective clients who are deeply religious, and it receives inquiries from, and on behalf of, children.¹²
- JONAH's services are inherently oriented towards persons experiencing distress about their sexual orientation. As Plaintiffs' expert Dr. Lee Beckstead will testify, non-heterosexual individuals experience minority stress (a hostile and stressful social environment created by stigma, prejudice, and discrimination) that increases mental health risk and makes them especially vulnerable.
- JONAH, whose prospective clients are already experiencing a heightened level of distress, specifically targets those within that group who are most likely to be experiencing intense religious, social, familial, and psychological pressure, as well as those who are most likely to be the least sophisticated, least educated, and least experienced with the generally accepted scientific understanding of the natural variations of human sexuality. This is corroborated by the desperation apparent in the communications that JONAH receives from prospective and current clients. JONAH's clients and prospective client pool are unquestionably, by JONAH's design, the "bowed down" and "desperate" whom the CFA is designed to protect. See Gonzalez, 207 N.J. at 582-84. Plaintiffs will testify at trial that this is precisely the situation they found themselves in when they first came into contact with Defendants.
- Plaintiffs' expert Dr. Janja Lalich also will testify that Defendants' program is characterized by the use of coercive influence over a vulnerable population.
- Plaintiffs' experts will testify that Defendants' program is ineffective, dangerous, and lacking in value. They will also testify as to the available legitimate alternatives.

H. Plaintiffs Incurred Ascertainable Loss As A Consequence Of Defendants' Misrepresentations

Testimony, documents, and other evidence presented at trial will prove that Mr. Levin, Mrs. Levin, Mrs. Bruck and Mr. Ferguson all suffered a monetary, out-of-pocket ascertainable loss when they paid for Defendants' conversion therapy services, including the costs of

¹² At the time they initially contacted JONAH, Mr. Levin and Mr. Bruck were minors.

individual therapy sessions with Mr. Downing, the cost of JONAH's group therapy sessions, and the cost of registration fees and other incidental expenses associated with attending experiential weekends such as JIM. In addition, the evidence at trial will prove that Mr. Unger suffered monetary, out-of-pocket ascertainable loss when he paid for legitimate mental health therapy that he sought out after he left Defendants' conversion therapy program because of the emotional hard that Defendants' program had caused him. Plaintiffs will testify, and the evidence will show, that each Plaintiff suffered their ascertainable losses as a result of Defendants' misrepresentations and unconscionable commercial practices and that Defendants' unlawful conduct was a cause of the damages they suffered.

III. WITNESSES INTENDED TO BE CALLED ON PLAINTIFFS' CASE IN CHIEF

The descriptions below are not exhaustive. For example, in addition to the specific facts listed, each Plaintiff will also explain his or her background and describe the events leading up to his or her first contact with Defendants. Each witness will provide the full context surrounding each listed fact. In addition, the descriptions below are not direct quotations and are not intended to suggest that any witness will testify using the specific words used; rather, they are summaries intended to serve as brief but informative statements of the anticipated testimony of each witness.

A. Jo Bruck

Jo Bruck is the mother of non-party witness Sheldon Bruck. Mrs. Bruck came across the JONAH website and looked at various pages on that site. She contacted JONAH by phone and spoke to Mr. Goldberg. Mrs. Bruck and Mr. Goldberg spoke by phone on at least two occasions and communicated over email.

Mr. Goldberg told Mrs. Bruck that he was a professional in the field of conversion therapy. Mr. Goldberg told Mrs. Bruck that homosexuality is psychological and that there is no such thing as being gay but rather the feelings are properly understood as SSA. Mr. Goldberg

told Mrs. Bruck that homosexuality is essentially a disorder and is caused by developmental occurrences such as being too close to one's mother and too distant from one's father. Mr. Goldberg told Mrs. Bruck that JONAH's program could fix her son and heal his SSA, and that clients who put in the effort were successful. Mr. Goldberg told Mrs. Bruck that JONAH's program had helped numerous individuals heal and eliminate their SSA. Mr. Goldberg told Mrs. Bruck that it was good that her son (who was seventeen at the time), had come to their program at such a young age, as there was less psychological damage to reverse. Mrs. Bruck understood from her conversations with Mr. Goldberg that, through the JONAH program, Mr. Bruck would be able to change from gay to straight.

Mrs. Bruck will testify that after speaking with Mr. Goldberg, she spoke with Mr. Bruck about the JONAH program and offered to pay for sessions with a JONAH counselor. Mr. Bruck subsequently reached out to Mr. Goldberg who referred him to Thaddeus Heffner. Mr. Goldberg recommended to Mrs. Bruck that her son travel to New Jersey to see a counselor at the JONAH offices. Mr. Goldberg also said that Mr. Bruck should engage in remote counseling with Mr. Heffner. Mrs. Bruck and her husband paid for these counseling sessions. Mrs. Bruck will also describe subsequent calls and emails that she received from Mr. Goldberg after her son decided to quit the program, including attempts to encourage Mr. Bruck to return to the program and to solicit financial donations from her.

B. Sheldon Bruck

Sheldon Bruck is the son of Plaintiff Jo Bruck. He came across the JONAH website and looked at various pages on that site, as well as various linked materials. He reached out to JONAH through email and subsequently communicated over email with both Mr. Goldberg and Mrs. Berk. He spoke with Mr. Goldberg by phone on several occasions. Mr. Goldberg told Mr. Bruck to read his book, Light in the Closet, and Mr. Bruck purchased and read it. Mr. Goldberg

told Mr. Bruck to attend JONAH weekend retreats and to travel to New Jersey to meet in person with JONAH counselors. Mr. Goldberg told Mr. Bruck that there was no such thing as being gay because homosexual desire, which Mr. Goldberg called SSA, was essentially a disorder that developed as a consequence of emotional trauma. Mr. Goldberg told Mr. Bruck that the length of time required to cure SSA differed depending on the effort put in by the client. Mr. Goldberg told Mr. Bruck that he had helped thousands to eliminate SSA and that the JONAH counselors had overcome SSA themselves. Mr. Goldberg told Mr. Bruck that gay people do not live happy lives. Mr. Bruck understood from his conversations with Mr. Goldberg that, through the JONAH program, he would change from gay to straight. Mr. Bruck also understood from his conversations with Mr. Goldberg that Mr. Goldberg was an Orthodox Jew.

Mr. Bruck will testify that Mr. Goldberg referred him to Mr. Heffner, a counselor, and that he engaged in remote counseling with Mr. Heffner for a short time. Mr. Bruck's parents paid Mr. Heffner for these counseling sessions. Mr. Bruck will explain his reasons for terminating counseling with Mr. Heffner, including that the counseling was not effective, and describe his subsequent research into JONAH and conversion therapy, as well as a later series of communications with Mr. Goldberg.

C. Michael Ferguson

Michael Ferguson is a former client of JONAH. Mr. Ferguson attended a JIM weekend, where he met Mr. Goldberg. In a private conversation with Mr. Goldberg during the JIM weekend, Mr. Goldberg told Mr. Ferguson to purchase and read his book, Light in the Closet, and told Mr. Ferguson that SSA was both treatable and curable. Mr. Goldberg offered Mr. Ferguson several statistics concerning the success rates of JONAH's therapy program, which he indicated could completely eliminate clients' SSA. Mr. Ferguson will describe the various treatments that he participated in or witnessed during the JIM weekend.

Mr. Ferguson was introduced to Mr. Downing through a PCC conference call after his JIM weekend, where Mr. Downing was presented as a therapist able to provide follow-up counseling. He paid for individual therapy from Mr. Downing over the course of approximately eight months, during which time Mr. Downing communicated that homosexuality was a state of incomplete sexual development which he could remediate through therapy aimed at resolving past emotional wounds incurred in childhood.

During these sessions, among other things, Mr. Downing urged Mr. Ferguson to distance himself from his mother and channel anger towards his parents for contributing to the development of his SSA. Mr. Downing instructed Mr. Ferguson to remove his clothing in front of Mr. Downing in an attempt to “overcome body shame.” Mr. Downing pressured Mr. Ferguson when he refused to completely disrobe during therapy. These therapy sessions caused Mr. Ferguson significant distress and seriously damaged his relationship with his family. Mr. Ferguson’s homosexual desires did not decrease as a result of his participation in the JONAH program.

Mr. Ferguson will also describe his relationship with Jonathan Hoffman, from the time he met Mr. Hoffman at a JIM weekend through present, and to his relationship with several other individuals involved with JONAH and PCC weekends, including but not limited to Rich Wyler, Pret Dahlgren, and Jeff Bennion.

D. Bella Levin

Bella Levin is the mother of Chaim Levin. She had a telephone conversation with Mr. Goldberg in which he made various misrepresentations to her, including that her son’s homosexuality was a sickness or illness that could be cured by JONAH’s program, that JONAH’s program was clinically proven to be effective, and that if her son participated in JONAH’s program, he would change from gay to straight within a few years. Because of Mr.

Goldberg's misrepresentations, Mrs. Levin paid most of the cost of her son's participation in Defendants' program.

E. Chaim Levin

Chaim Levin is the son of Bella Levin. He is a former client of JONAH. After visiting the JONAH website, he contacted JONAH by email, then met with Mr. Goldberg at JONAH's office in Jersey City, New Jersey. During that meeting, Mr. Goldberg told Mr. Levin that he should attend the JIM weekend, that what he was experiencing was SSA, and that JONAH's services could change him from gay to straight. During his time participating in the JONAH program, Mr. Levin had numerous conversations with Mr. Goldberg in person, over email, and by phone, and will describe the various misrepresentations (consistent with those listed above) that Mr. Goldberg made to him in those conversations. Mr. Levin will also describe Mr. Goldberg's attempts to involve him in fundraising and client solicitation.

Mr. Levin attended JIM, where he met Mr. Downing for the first time. Mr. Levin will describe the various activities that took place at the JIM weekend, including one in which he was encouraged to recreate the scene of his childhood sexual abuse and a holding exercise in which Mr. Downing touched Mr. Levin. Mr. Levin will also describe his experience at a non-JIM experiential weekend where he participated in a nudity exercise with Mr. Downing.

After attending the JIM weekend, Mr. Levin became a client of Mr. Downing and received individual counseling from him in person at JONAH's offices. During their individual counseling sessions, Mr. Downing made numerous misrepresentations about homosexuality (including that it is a mental disease or disorder). Among other treatments, Mr. Downing subjected Mr. Unger to an individual sessions involving nudity. Mr. Levin also participated in JONAH group therapy sessions led by Mr. Downing and will describe those sessions, as well as his experiences with certain of the other participants.

Mr. Levin also participated in JONAH's listserv. As a participant, he read emails authored by Mrs. Berk, including posts in which she reiterated that homosexuality is a disease or disorder that can be cured by JONAH's science-based program. He also saw emails written by Mrs. Berk in which she stated that being gay would lead to misery, depression, and loneliness. Mr. Levin accessed the JONAH listserv archives on multiple occasions and reviewed emails authored by Mrs. Berk and by Mr. Goldberg which contained various misrepresentations like those listed above.

Mr. Levin paid for a number of individual and group counseling sessions and incurred other incidental costs associated with his attending JIM weekends. He incurred these costs as a result of Defendants' misrepresentations and unconscionable commercial practices. Mr. Levin's homosexual desires did not decrease as a result of his participation in the JONAH program. Instead, he experienced increased depression and anxiety.

F. Benjamin Unger

Benjamin Unger is a former client of JONAH. He spoke with Mr. Goldberg on numerous occasions, both in person and over the phone, including as his first contact with Defendants. Mr. Goldberg allowed Mr. Unger to initially believe that he was a rabbi. Mr. Goldberg told Mr. Unger that homosexuality is a disorder (caused by wounds) that can be cured, that all people are born straight but that some people suffer traumas that cause them to experience SSA, that JONAH had a program to address SSA that is based in science and supported by valid studies, and that JONAH's program eliminates SSA for one-third of its clients, substantially reduces it for another third of its clients, and does not work for the bottom third of its clients because they did not work hard enough or complete the program. Mr. Goldberg told Mr. Unger that the program typically requires one to four years to complete and that it had helped hundreds go from gay to straight. Mr. Goldberg advertised his book to Mr.

Unger and directed Mr. Unger to review materials posted to the JONAH website as well as other conversion therapy books. Mr. Goldberg arranged for Mr. Unger to speak to Mr. Hoffman to hear about the success Mr. Hoffman had experienced in the JONAH program.

Through Mr. Goldberg, Mr. Unger became a client of Mr. Downing, with sessions taking place both by phone and in person at JONAH's offices. Mr. Goldberg told Mr. Unger that Mr. Downing was an expert who had personally overcome SSA. During their individual counseling sessions, Mr. Downing made numerous misrepresentations about homosexuality (including that it is a mental disease or disorder) and emphasized that the way to heal the wounds that purportedly caused homosexuality was to explore and confront Mr. Unger's attractions to men. Among other treatments, Mr. Downing subjected Mr. Unger to an individual session involving nudity.

Mr. Downing also urged Mr. Unger to distance himself from his mother, and to attend JONAH-sponsored group therapy sessions and a JIM weekend, all of which Mr. Unger did. Through his participation in JONAH group therapy and JIM, Mr. Unger was subjected to (or witnessed) exercises involving what Defendants term "anger transference," nudity, holding, and inappropriate touch between Mr. Downing and the clients.

Mr. Unger also participated in JONAH's listserv. As a participant, he read emails authored by Mrs. Berk, including posts in which she reiterated that homosexuality is a disease or disorder that can be cured by JONAH's science-based program. He also saw emails written by Mrs. Berk in which she stated that being gay would lead to misery, depression, and loneliness.

Mr. Unger's homosexual desires did not decrease as a result of his receipt of JONAH services and his participation in the JONAH program. Instead, he experienced increased depression and anxiety. After leaving JONAH, in order to address his increased emotional

distress, he sought counseling from Dr. Steven Phillipson, a licensed psychologist. Mr. Unger paid for this post-JONAH therapy himself.

G. Dr. Steven Phillipson

Dr. Phillipson a licensed clinical psychologist and the Clinical Director of the Center for Cognitive-Behavioral Psychotherapy in New York, New York. On or about May 2, 2008, after he left JONAH's conversion therapy program, Mr. Unger sought out and received counseling services at the Center for Cognitive-Behavior Psychotherapy to repair the psychological harm he experienced as a result of JONAH's conversion therapy services.

In lieu of Dr. Phillipson testifying live at trial, the parties have agreed that the following stipulated facts can be admitted into evidence and read to the jury:

As the billing records reflect, Dr. Phillipson met with Mr. Unger for a total of 63 sessions. Dr. Phillipson has notes of only one of these sessions, specifically, the session that took place on May 8, 2010. Dr. Phillipson estimates that half of his sessions with Mr. Unger involved discussion of JONAH-related material, and that such discussion took up 70% of each such session. As the billing records also reflect, Mr. Unger paid Dr. Phillipson \$250 per session, for a total cost of \$15,750. The proportion of that total corresponding to Dr. Phillipson's estimate is \$5,512.50.

If Dr. Phillipson testifies live at trial, his testimony will be consistent with that stipulation.

Dr. Phillipson may also provide his opinion as to whether Mr. Unger was harmed by Mr. Downing and by his participation in the JONAH program.

H. Dr. Lee Beckstead

Dr. Beckstead will describe his training and experience in his area of expertise. Dr. Beckstead will offer the expert opinions set forth in his expert report and testified to at his deposition. Dr. Beckstead may offer additional opinions if new relevant documents are produced that had not been provided to Plaintiffs prior to his deposition, or if new relevant evidence not previously available to Plaintiffs is introduced at trial.

I. Dr. Carol Bernstein

Dr. Bernstein will describe her training and experience in her area of expertise. Dr. Bernstein will offer the expert opinions set forth in her expert report and testified to at her deposition. Dr. Bernstein may offer additional opinions if new relevant documents are produced that had not been provided to Plaintiffs prior to her deposition, or if new relevant evidence not previously available to Plaintiffs is introduced at trial.

J. Dr. Janja Lalich

Dr. Lalich will describe her training and experience in her area of expertise. Dr. Lalich will offer the expert opinions set forth in her expert report and testified to at her deposition. Dr. Lalich may offer additional opinions if new relevant documents are produced that had not been provided to Plaintiffs prior to her deposition, or if new relevant evidence not previously available to Plaintiffs is introduced at trial.

K. Hostile Witnesses

Plaintiffs also intend to call Mrs. Berk, Mr. Downing, Mr. Goldberg, and Mr. Wyler in their case in chief.

IV. READINGS FROM DEPOSITIONS TO BE OFFERED ON PLAINTIFFS' CASE IN CHIEF

Plaintiffs intend to call all of the witnesses identified above to testify live in their case in chief. Plaintiffs do not intend to offer any direct testimony in their case in chief via deposition transcript or video. Plaintiffs reserve the right to offer into evidence, for purposes of impeachment, portions of Defendants' and/or Mrs. Berk's deposition testimony, whether via deposition transcript or video.

V. DOCUMENTARY EVIDENCE INTENDED TO BE OFFERED AT TRIAL ON PLAINTIFFS' CASE IN CHIEF

The documentary, audio, and video evidence that Plaintiffs may introduce in their case in chief is listed in Appendix A attached hereto. Plaintiffs have attempted to be as comprehensive as possible in compiling the information listed in Appendix A. However, Plaintiffs reserve the right to supplement this list in light of Defendants' disclosure of evidence in Defendants' Trial Memorandum and to react to new information adduced at trial.

VI. ANTICIPATED EVIDENCE PROBLEMS WITH REGARD TO THE INTRODUCTION OF EVIDENCE ON PLAINTIFFS' CASE IN CHIEF

A. Dr. Phillipson's Billing Records

If Dr. Phillipson does not testify live, there will be no witness who can personally authenticate Dr. Phillipson's billing records reflecting Mr. Unger's payments for therapy. In that situation, Plaintiffs would propose to authenticate that document through an affidavit signed by Dr. Phillipson attesting to their authenticity and completeness. Plaintiffs further note that the billing records fall within the commercial records exception to the hearsay rule. N.J.R.E. 803(c)(6).

B. Dr. Phillipson's Testimony As To Mr. Unger

If Dr. Phillipson testifies live, his testimony may include his opinion that Mr. Unger was harmed by Mr. Downing and the JONAH program. This is permissible despite the fact that Dr. Phillipson was not identified by Plaintiffs as one of their expert witnesses and has provided no expert report. When treating physicians are called to testify about their observations, diagnosis and treatment of an injured or ailing plaintiff, they are not testifying as expert witnesses, even though they may possess the requisite qualifications. This is so even when they are asked for their opinions concerning the cause of the plaintiff's condition. Stigliano v. Connaught Labs., Inc., 140 N.J. 305, 313-14 (1995).

C. Inadmissible Materials Relied Upon By Experts

Certain materials considered or relied upon by Plaintiffs' experts are inadmissible, including because they are hearsay. This is appropriate per New Jersey Rule of Evidence 703 as long as the information is of the type ordinarily relied upon by experts in the field. Testimony concerning such materials is permissible as long as it does not become a vehicle for the introduction of otherwise inadmissible evidence. State v. Vandeweaqhe, 351 N.J. Super. 467, 481-83 (App. Div. 2002). In making that determination, courts consider whether experts in the same field typically rely on that type of information, the problems created by an over-reliance on hearsay evidence, and the potential for undue prejudice. Richard Biunno, New Jersey Rules of Evidence 689 (2005). Needless to say, lay witnesses cannot introduce hearsay in their testimony, as they are not permitted to usurp the function of expert opinions or cross into the realm of expert testimony. N.J.R.E. 701.

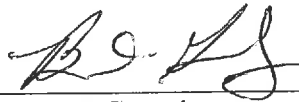
D. Jonah Listserv Communications

Plaintiffs intend to introduce various JONAH listserv communications into evidence at trial. During discovery, the Court ordered that JONAH produce communications from the JONAH listserv but limited the production to only statements made by "defendants and/or defendants' representatives." Order, dated June 7, 2013. The Court ordered that portions of the JONAH listserv communications by third parties be excluded and/or third party identifiers redacted. Id. Therefore, the only JONAH listserv communications listed on Plaintiffs trial exhibit list are Defendants' own statements. Pursuant to New Jersey Rule of Evidence 803(b)(1) the JONAH listserv communications are excluded from the hearsay rule because they are statements by a party-opponent. In addition, the JONAH listserv is one of the services offered by JONAH as a part of its conversion therapy program. As such, the communications on the listserv are excluded from the hearsay rule pursuant to the business records exception. N.J.R.E.

803(c)(6). While it is possible there could be hearsay within hearsay objections pursuant to Rule 805 based on some statements in certain JONAH listserv documents, such issues can be dealt with on a case-by-case basis at trial.

Dated: April 27, 2015.

Respectfully submitted,



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