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1 (Continuation of day's proceedings from
2 Volume 1)

3 MR. LI MANDRI: Your Honor, I believe it's a
4 certification from another case, and it was a different
5 issue that was being raised in that case, as to whether
6 he was a professional licensed counselor, which he
7 represented, correctly represented he was not. I mean,
8 this gets confusing at this point. It had to do with,
9 as I recall, whether he qualified for potential
10 insurance coverage at that time, which he could not do
11 under a homeowner's policy if he was -- had a
12 professional license and was providing these services.

13 So it was a different issue and it's
14 confusing to the jury to be given a certification from
15 that other case without them knowing the legal issues
16 that were involved and why not being a professional
17 licensed counselor in that case was something that
18 could have provided them under coverage under his
19 homeowner's policy, where you only get coverage for
20 volunteer nonprofit work.

21 So it was a different issue and they're not
22 inconsistent, but they're being presented in a way to
23 make it look like they're directly inconsistent. And I
24 believe that that is misleading. And I don't think
25 that that was shown to the jury. I believe it was

1 discussed.

2 Was it shown? I don't know.

3 MS. BENSMAN: It was shown.

4 MR. LI MANDRI: All right. But that's the
5 background. And, obviously, we couldn't get into the
6 insurance coverage issues before the jury.

7 MS. BENSMAN: Your Honor, it's not obvious to
8 me why Mr. LiMandri couldn't have clarified that in his
9 cross --

10 THE COURT: Yeah, but you know what?

11 MS. BENSMAN: -- or why he can't clarify it
12 in closing.

13 THE COURT: I'm not -- they don't need the
14 certification. I'm not going to allow the
15 certification because the issue of counseling, we've
16 heard different testimony of what people do and whether
17 it's actually counseling, therapy, life coaching. I
18 don't know all of the answers to those, as I've said,
19 after three and a half weeks. I don't think it's
20 necessary to present this.

21 The point being made with the other documents
22 are that he lied on an application to the organization,
23 and the organization withdrew his certification. We
24 don't need to complicate it with this. This will not
25 go into evidence.

1 MS. BENSMAN: Your Honor, I understand. But
2 just for the record, the additional significance of P-
3 424 is that he then again lied to that same association
4 --

5 THE COURT: Well --

6 MS. BENSMAN: -- by representing that he, in
7 fact, did provide counseling.

8 THE COURT: I'm not -- it's not -- first of
9 all, the caption is totally different.

10 MS. BENSMAN: Understood, Your Honor.

11 THE COURT: And I'm not going to get into
12 what the definition of counseling is.

13 MS. BENSMAN: Understood. Thank you.

14 THE COURT: So I think we have enough. I
15 think there's enough evidence to make the point that
16 wants to be made, which is through the whole train here
17 is what happened with the organization and why his
18 certification was pulled.

19 MS. BENSMAN: Thank you, Your Honor.

20 THE COURT: And then the last one is to use
21 D-257 in closing. All right. Let me go to D-257.

22 MR. LI MANDRI: That is a graphic, Your
23 Honor. It was --

24 THE COURT: Well, let me take a look at it.

25 MR. LI MANDRI: -- constructed and produced,

1 I think, over six months ago. It was used with motion
2 practice. And it's only a summary of testimony,
3 something I could presumably draw on the board in front
4 of the jury. It simply reflects what we understand the
5 evidence has already shown, the total time that various
6 plaintiffs stayed in the program, with breaks. So it's
7 only illustrative. I don't want it to be admitted into
8 evidence.

9 I only asked counsel if they had any
10 objection to my using it as a graphic during closing
11 argument. And so I showed them for purposes. So when
12 they saw it, they would have an opportunity in advance
13 to know that I wanted to use it for closing. But not
14 seeking to admit it into evidence. Again, it's only
15 for illustrative purposes. I didn't use it during the
16 examination of the witnesses. I didn't feel I needed
17 to. It's something -- as I indicated, I felt I could
18 probably draw a picture of, but it would take a lot
19 more time.

20 THE COURT: All right. So you have here
21 initial counseling, the life coaching, regular
22 counseling and life coaching. (The Court reading to
23 self)

24 Just help me understand this.

25 MR. LI MANDRI: Yes, Your Honor.,

1 THE COURT: Introduction to the program is
2 green. What does that mean? For instance, Ferguson,
3 you have green by number one and then seven. What --

4 MR. LI MANDRI: The time that's usually spent
5 when a client comes in going through the preliminary
6 evaluation process and introducing him to the program
7 before they actually start the actual work. And I
8 think we had testimony from Mr. Heffner, for example,
9 that Mr. Bruck was still in more or less the evaluation
10 phase, initial phase of, you know, introduction of the
11 program without really starting the work in full
12 earnest.

13 THE COURT: But no, no. In Ferguson, you
14 have green by number one, which is introduction to the
15 program. And I guess you have -- meant to be absences
16 --

17 MR. LI MANDRI: Correct.

18 THE COURT: And then you have this big thing
19 by number seven for green. I don't know what --

20 MR. LI MANDRI: So there was a total of eight
21 weeks where he was getting into the program, basically,
22 with a three-week gap. And when you have a gap like
23 that, you kind of have to start over.

24 THE COURT: If you want to do a chart that
25 just shows the number of visits they have, I don't have

1 a problem with that. But I don't -- this graphic here
2 with the different colored symbols and the different
3 breakdowns, I don't quite understand it.

4 I also don't -- some of the terminology
5 you're using, I'm not sure has ever been discussed. I
6 don't know what post-counseling means. I don't
7 remember anybody talking about post-counseling during
8 the trial.

9 MR. LI MANDRI: Okay. We'll look at
10 potentially --

11 THE COURT: I mean, if -- listen, I don't
12 have a problem if you wanted to do a chart just saying,
13 these are the number of times Mr. Bruck came to
14 whatever he did, number of visits, the number of
15 visits, that's done commonly in charts. But I don't
16 understand your key. And I don't understand the
17 breakdown.

18 You also have here, and this is something I'm
19 not aware of, you have here that JONAH-referred client
20 the average progress time line. Where is that taken
21 from?

22 MR. LI MANDRI: Well, we've heard two to four
23 years, you know.

24 THE COURT: Well, I know we've heard two to
25 four years. But two to four years is 700-and-some days

1 versus 1,400. My math isn't as good as the attorneys
2 who were asking the questions. But I know its
3 certainly around fourteen, 1,500.

4 MR. LI MANDRI: These are weeks.

5 THE COURT: Well, how do you do that, though?
6 That's -- I mean, if you want to do a chart and you
7 want to say, you've heard testimony, ladies and
8 gentlemen, that the average time period is two to four
9 years, okay. But I don't understand all the colors and
10 all the variations. Because I don't think there's been
11 an adequate foundation to do all of that. This is a
12 little bit more than a chart that summarizes the number
13 of visits.

14 MR. LI MANDRI: Understood.

15 THE COURT: I mean, if you want to say, you
16 know, Plaintiff A, six counseling sessions, one JIM
17 weekend, quit or whatever the -- I'm not saying that
18 that's what the testimony was. But if you wanted to do
19 that. But I have a problem with the color coded. Now
20 you're getting a little beyond just a summary that you
21 want to use in summation. So I think you're going to
22 have to refine this.

23 MR. LI MANDRI: Okay. We'll look at that,
24 Your Honor. Thank you.

25 THE COURT: Okay. I don't have a problem

1 with attorneys using exhibits in openings and closings,
2 but that's a little -- that's a little too extreme.
3 That's almost where you would require expert testimony
4 to talk about some of the things that are in your key.
5 Because, as I said, I don't recall anybody talking
6 about something they labeled post-counseling.

7 MR. LI MANDRI: Right. The only other thing
8 that defense had was a handful of exhibits we used
9 today, which I think are the ones --

10 MS. BENSMAN: If you would turn to the last
11 page, they're listed.

12 THE COURT: Okay. So this is -- so 289. So
13 let's see 289.

14 MR. LI MANDRI: It's the sample JIM form and
15 what's on the form that goes to JIM participants. And
16 my understanding, the witness said that the -- Mr.
17 Wyler said that the plaintiffs would have signed it.

18 THE COURT: Do we have any that are signed?
19 We don't have any signed by the plaintiff?

20 MS. BENSMAN: Your Honor, there are some JIM
21 documents that are signed by the plaintiffs. I don't
22 know offhand what those exhibit numbers are. This is
23 not one of them. This was not signed by any plaintiff.
24 And I don't believe that there's evidence in the case
25 that any plaintiff saw this exact form or document.

1 MR. LI MANDRI: Well, Mr. Wyler testified
2 that this is what is sent to people. If they want to
3 argue that the plaintiffs never saw it, that's fine.
4 But this is the information that he says is given to
5 participants.

6 THE COURT: Yeah, but that -- but, Counsel,
7 the problem is how do we know how they answered the
8 questions?

9 MR. LI MANDRI: Well --

10 THE COURT: Shouldn't they have -- shouldn't
11 they have the form that the plaintiffs filled out?

12 MR. LI MANDRI: Well, then why don't we just
13 use the standard form, the first two pages? That's all
14 I asked him about.

15 THE COURT: Just the first two pages?

16 MR. LI MANDRI: Right.

17 THE COURT: I don't have a problem with the
18 first two pages because there was testimony about that
19 and the plaintiffs talked about signing JIM forms.
20 We're not going to attach anything else.

21 MR. LI MANDRI: No.

22 MS. BENSMAN: Your Honor --

23 THE COURT: Just the first two pages.

24 MR. LI MANDRI: That's all I ask.

25 MR. BROMLEY: -- if I may? If you could look

1 at the date on the first page of this document? I
2 don't think that there's testimony in the record that
3 this exact form --

4 THE COURT: Oh, this is 2003?

5 MS. BENSMAN: Yes. Remained unchanged over
6 the five years.

7 THE COURT: No. That we don't have, Counsel.
8 I thought this was when they went.

9 MR. LI MANDRI: Well --

10 THE COURT: This is 2003.

11 MR. LI MANDRI: There's no testimony that the
12 form did change.

13 THE COURT: Well, I --

14 MR. LI MANDRI: He said this is a form that
15 would be used. And I went by that. I had no reason to
16 believe --

17 THE COURT: Why don't we have a form from
18 when they went? I don't understand. Wasn't there
19 something that they were shown? Didn't you show the
20 plaintiffs forms that they signed?

21 MR. LI MANDRI: I did. And I could look.
22 But I only used this for illustration --

23 THE COURT: I know. But this says 2003.

24 MR. LI MANDRI: Well, who's to say that they
25 would -- needed to change it?

1 THE COURT: That's the problem. I have
2 nobody who says that it's the same form that the
3 plaintiffs would have signed.

4 MR. LI MANDRI: Mr. Wyler did.

5 THE COURT: No, he didn't. He -- I don't
6 recall him saying -- he didn't even know when the
7 plaintiffs went.

8 MR. LI MANDRI: He said this is the standard
9 form that --

10 THE COURT: Well, I know he said that. But
11 it's 2003. Weren't they shown forms to sign during
12 their testimony? Don't you have D exhibits that have
13 the forms that they signed?

14 MR. LI MANDRI: I will look for that. But
15 that was not the purpose I showed it to -- I showed it
16 to him.

17 THE COURT: Well, I know, but I don't -- I'm
18 not satisfied that there was enough to say that the
19 form in 2003 is the same one that was used whenever
20 they went. I don't even -- I thought they said it was,
21 like, 2008 and 2009. So let's see. I thought there
22 were exhibits that they were shown.

23 MR. LI MANDRI: We'll check. There may --

24 THE COURT: All right.

25 MR. LI MANDRI: There may well be. That I

1 only used it to get him to say what it is they -- the
2 information the convey to participants. It was only
3 used for that purpose.

4 THE COURT: Okay. All right. Let's see if
5 we have them. But his was already shown to the jury,
6 by the way.

7 MR. LI MANDRI: It's my understanding --

8 THE COURT: They saw them. They read some of
9 these paragraphs. Okay.

10 MS. BENSMAN: Your Honor, with respect to
11 Defendants' 241. I think maybe -- we didn't have a
12 chance to discuss this. I suspect they may not object
13 to just using J-28. This is --

14 THE COURT: It's the same document?

15 MS. BENSMAN: The same document. It's
16 already in evidence. And it will be reflected on the
17 chart.

18 MR. LI MANDRI: No problem.

19 MS. BENSMAN: Okay.

20 THE COURT: All right. Let me just show you
21 what I have as J-28 so we're all on the same page.

22 All right. J-28 is the PCC guidelines for
23 healthy holding? Is that --

24 MS. BENSMAN: Yes, Your Honor.

25 THE COURT: Is that what you wanted --

1 MR. LI MANDRI: Yes, Your Honor.

2 THE COURT: All right. So then that --
3 that's fine.

4 MS. BENSMAN: And if I may interrupt for one
5 second. I should have raised this earlier, but the
6 parties jointly propose the following to be entered
7 into the record as a reference to be marked Joint 83.
8 This identifies documents that are duplicates where
9 there's a D number and a P number or a D number, a P
10 number, a J number for the same document. And also
11 where D or P numbers were used to refer to specific
12 pages within Alan Downing's counseling notes, which
13 have now been entered into the evidence as one compiled
14 exhibit. So that if the jurors, for example, wrote
15 down a number and they want to find it, they'll be able
16 to use this as a reference and to ensure there is a
17 clear record.

18 THE COURT: Okay.

19 MS. BENSMAN: And so this, for examples,
20 reflects that Joint 28 is the same document as D-241.
21 So if a juror today wrote down the number D-241 and
22 would like to find it again, they can use this
23 reference to identify Joint 28.

24 MR. LI MANDRI: We have no objection. So
25 it's just a key as I understand it.

1 MS. BENSMAN: That's exactly right.

2 THE COURT: That's what I'm looking at. The
3 only think I -- okay. So up on top, to clear up
4 confusion, okay, D-7 is the same -- all right. Okay.
5 So this will go in as Joint Exhibit 83?

6 MS. BENSMAN: Yes, Your Honor.

7 THE COURT: Okay.

8 (J-83, List of duplicate exhibits, admitted
9 in evidence)

10 THE COURT: So the next one here is 285.

11 MS. BENSMAN: Yes.

12 MR. LI MANDRI: Yes, Your Honor. It was used
13 today with Mr. Wyler, the code of ethics for the PCC
14 event and staff that I asked him about.

15 THE COURT: Well, this doesn't have to be
16 signed by the defendants, does it?

17 MR. LI MANDRI: No.

18 THE COURT: This is for staff.

19 MR. LI MANDRI: Right.

20 THE COURT: I'll allow it.

21 MR. LI MANDRI: Thank you, Your Honor.

22 THE COURT: This was testified to as what the
23 code of ethics is for the staff. There was also
24 testimony about code of ethics by the staff members. I
25 understand that technically, it's not signed by the

1 defendant or any of the staff witnesses in the case.
2 However, while it was not precisely testified to, I'm
3 going to accept Mr. Wyler's testimony that this is part
4 of the JIM weekend, that this is the code of ethics for
5 a PCC event. And I'm going to allow it in as a
6 document regularly kept in the course of business for a
7 staff member to sign.

8 MS. BENSMAN: Understood. Thank you, Your
9 Honor.

10 (D-285, JIM Code of Ethics, admitted in
11 evidence)

12 THE COURT: 258.

13 MS. BENSMAN: Yes, Your Honor.

14 MR. LI MANDRI: And 242. They're both
15 documents I used with Mr. Wyler. They're posted on the
16 PCC website. Numerous JONAH documents refer people to
17 the PCC website. And these are both specific issues
18 that have come up repeatedly in the case about the
19 issue of shame and what is meant by change. And Mr.
20 Wyler testified about these, and these are documents
21 plaintiffs would have been directed to or were directed
22 to in emails.

23 THE COURT: This is on the PCC website?

24 MR. LI MANDRI: Right.

25 MS. BENSMAN: Your Honor, these documents are

1 hearsay. They are advertising. D-258 is at least just
2 hearsay and advertising. D-242 is also confusing.

3 PCC's definition of change is not at issue.
4 They're not a defendant in this case. And there's been
5 no direct evidence that any plaintiff in this case
6 actually saw this portion of PCC's website.

7 MR. LI MANDRI: Regardless, as the Court well
8 knows, the plaintiffs have been prone to combining PCC
9 and JONAH as if they're joined at the hip whenever it
10 suits them, and then when it doesn't, to point out that
11 they're separate organizations. And they just can't
12 have it both ways.

13 There's been more testimony about PCC than
14 about JONAH in this trial. And inasmuch as JONAH
15 refers clients to the PCC website, I believe this
16 information is pertinent and is reflective of the
17 witnesses' testimony.

18 MS. BENSMAN: Your Honor, the fact that the
19 Journey Into Manhood weekend is used as part of JONAH's
20 program doesn't mean that representations made in
21 advertisements that appear on PCC's large website
22 should automatically be imputed to the defendants. And
23 we believe that it is confusing to enter a document
24 into evidence that's about a central issue in this
25 case, when there is no evidence that any plaintiff

1 actually saw it.

2 MR. LI MANDRI: They're calling it
3 advertising, but it's simply part of the website. And
4 the plaintiffs had no problem going through other PCC
5 documents in minute detail, including the PCC script.
6 And this adds information as to how that script is
7 supposed to be interpreted and applied.

8 So, again, we feel that in context and the
9 CFA is supposed to be interpreted in the full context,
10 these documents are more probative than prejudicial.

11 MS. BENSMAN: Your Honor, the obvious
12 difference is that the plaintiffs actually attended
13 Journey Into Manhood and, therefore, we were exposed to
14 the statements and activities described in the Journey
15 Into Manhood script. Again, there's simply no evidence
16 that any plaintiff ever saw this specific page on PCC's
17 website.

18 MR. LI MANDRI: There is no evidence they
19 ever saw any page in the script. But this is as much
20 significant in terms of how the script --

21 THE COURT: Well, what does it -- but let me
22 ask you. What is the relevance of how PCC defines
23 change?

24 MR. LI MANDRI: They define change in the way
25 that JONAH defines change.

1 THE COURT: Well, how are you making that
2 analogy? Because I haven't seen anything evidential in
3 the case like this from JONAH, how they describe
4 change. If this was from JONAH, I may be partial to
5 your argument. But what difference does it make how
6 PCC defines change? They're not being sued for
7 misrepresentations.

8 MR. LI MANDRI: I understand.

9 THE COURT: The only reason they're in the
10 case is because plaintiffs argue that the JIM weekend
11 is a component of the JONAH program.

12 So I'm going to sustain the objection to 242.

13 Let me just take a look at 258.

14 I'm not going to allow this either because of
15 the comments and the definitions of same sex attraction
16 and about surrendering. It's the same thing. People
17 Can Change are not being sued for their
18 representations. So both of these, I'll sustain the
19 objection to the hearsay.

20 And then --

21 MS. BENSMAN: Your Honor, Defendants' 290 is
22 a JIM letter that's actually to Benjamin Unger, as you
23 can see on the first it where it says, "Dear Benjamin."
24 And it's a document that contains instructions on how
25 to prepare for the JIM weekend and what to bring.

1 THE COURT: What's the objection to that?

2 MR. LI MANDRI: That's it's a different
3 document, though. It doesn't have that information.
4 We're moving it into evidence? I'm not sure.

5 MS. BENSMAN: This was shown to Mr. Wyler and
6 we would move that it be admitted into evidence.

7 THE COURT: This is Journey Into Manhood's
8 letter, September 5, 2007, sent directly to Mr. Unger?

9 MS. BENSMAN: That's right.

10 THE COURT: It's hearsay, Your Honor.

11 I'll withdraw the objection. I don't see a
12 problem with it.

13 THE COURT: All right. Okay.

14 (D-290, JIM 9/5/07 letter to Unger, admitted
15 in evidence)

16 THE COURT: 436, that was --

17 MR. LI MANDRI: I don't believe the defense
18 has those. I'm sorry.

19 THE COURT: That was something today, right?

20 MR. MC COY: Yes, Your Honor.

21 THE COURT: What was that?

22 MS. BENSMAN: This is the 2013 tax form. Let
23 me hand up a copy.

24 MR. LI MANDRI: Yeah, I --

25 THE COURT: No. We're not -- I'm not going

1 to allow the tax forms. We don't need the -- I think
2 the point was made and the jury saw that. I don't
3 think it's appropriate to introduce tax forms.

4 MS. BENSMAN: Understood, Your Honor.

5 THE COURT: And what's 37?

6 MS. BENSMAN: This is an email from Rich
7 Wyler to Michael Ferguson that was shown to Mr. Wyler
8 today.

9 MR. LI MANDRI: I believe it's hearsay and
10 irrelevant. I don't know what the purpose of this
11 document is. It doesn't seem to bear on any issues in
12 this case.

13 MS. BENSMAN: Your Honor, one second. I'm
14 sorry. I may have handed you the wrong document. I
15 apologize.

16 THE COURT: I hope so. Because I agree with
17 -- I don't understand what this -- I don't even recall
18 him being -- I don't even recall Mr. Wyler seeing this.

19 MR. LI MANDRI: I don't either. I don't --

20 THE COURT: Or being -- or being questioned
21 on that.

22 MS. BENSMAN: I apologize. I grabbed the
23 wrong document. That's my mistake.

24 THE COURT: All right. Okay.

25 MS. BENSMAN: Your Honor, if I may, I could

1 show it on the screen while we're trying to find the
2 physical copy.

3 THE COURT: All right. Go ahead. Oh, this
4 is the board meetings --

5 MS. BENSMAN: Yes.

6 THE COURT: -- and the notes about Mr. Alan
7 Downing.

8 MS. BENSMAN: Yes. I apologize for the
9 confusion.

10 THE COURT: Okay.

11 MR. LI MANDRI: And I object. It's hearsay
12 of a nonparty. And --

13 THE COURT: No, Mr. Downing is a party. And
14 these are records and he identified them as corporate
15 minutes. So I'll allow it. He identified them as
16 business records. These are -- he identified them as
17 minutes of a corporate meeting. I think they are
18 business records and I think it's an exception to the
19 hearsay rule. Plus, it is about a party. It's Mr.
20 Downing.

21 MR. LI MANDRI: Well, we don't even know who
22 made the comments.

23 THE COURT: Well, I don't think we have to
24 know. I think the jury heard his testimony and they'll
25 see what's in the minutes. They heard it. I'll allow

1 the minutes.

2 (P-437, 12/14/06 PCC Board minutes, admitted
3 in evidence)

4 MS. BENSMAN: Thank you, Your Honor. There's
5 nothing else on my list with respect to the exhibits.
6 I would just ask that the parties be given an
7 opportunity to review the final binder before it goes
8 to the jury, especially because there have been
9 revisions and changes and redactions.

10 THE COURT: Okay.

11 MS. BENSMAN: And we want to be sure that the
12 record is correct.

13 THE COURT: All right. Well, why don't we
14 give what you just gave --

15 MS. BENSMAN: And I do now have a copy of P-
16 437 that is correct that I can hand you.

17 THE COURT: So my court clerk will need the
18 unredacted version of P-20 and P-33.

19 MS. BENSMAN: Yes.

20 THE COURT: Oh, you do have it. All right.
21 So P-20 and P-33 will be admitted.

22 MR. MC COY: They're right here, Your Honor.

23 THE COURT: She -- no, Cathy has them.

24 We'll mark these P-20 and P-33.

25 And P -- you said you wanted the

1 certifications go to as a whole package, so P-67 and P-
2 68 are in evidence.

3 424.

4 And then that takes care of the evidence.

5 MS. BENSMAN: As well as, Your Honor,
6 Defendants' 285 on the back page.

7 THE COURT: Oh, the back page. I'm sorry.

8 MS. BENSMAN: Defendants' 290. And
9 Plaintiffs' 437.

10 In addition, there's the list on the second
11 page of the documents to which the parties agree. And
12 I have a copy that I can provide to the clerk.

13 THE COURT: Okay. So then tomorrow, if you
14 want, at 8:30, you can go through the evidence.

15 MS. BENSMAN: At 8:30 tomorrow, Your Honor?

16 THE COURT: Yeah. Or we can do it during the
17 lunch break tomorrow. Because I'm sure the summations
18 will take up the morning, so --

19 MS. BENSMAN: We'll do it at 8:30. Thank you
20 very much.

21 THE COURT: All right. Okay. The verdict
22 sheet has been agreed upon. Is that correct, Counsel?
23 The verdict sheet that was sent out last night.

24 MR. LI MANDRI: Yes, Your Honor.

25 THE COURT: I'm going to --

1 MR. MC COY: Yes, Your Honor.

2 THE COURT: I'm just going to change the
3 format. If you saw, I think I gave you a sample of how
4 I do it. It's going to be -- when I say the format,
5 they're not going to get a cover page like you have.
6 It's just going to have the name fo the case, verdict
7 sheet. I'm going to have the font probably made a
8 little larger. I'll show it to you so you have that.

9 All right. Before we get to jury
10 instructions, you had indicated about motions?

11 MR. DINIELLI: Yes, Your Honor. Now that the
12 defendants have rested and evidence, I believe, is
13 closed, the plaintiffs Benji Unger, Chaim Levin, Bella
14 Levin, and Michael Ferguson all move for judgment
15 against Arthur Goldberg, JONAH, Alan Downing, and Alan
16 Downing, L.L.C.

17 In addition, Jo Bruck moves for judgment
18 against Arthur Goldberg and JONAH. She doesn't have a
19 claim against Alan Downing or Alan Downing, L.L.C.

20 On the motion, as pursuant to New Jersey
21 Court Rule forty-forty-one, Your Honor, it's our
22 contention that the plaintiffs have demonstrated that
23 the defendants made --

24 THE COURT: Wait. What court rule?

25 MR. DINIELLI: 4:40-1.

1 THE COURT: Go ahead.

2 MR. DINIELLI: The defendants have made one
3 or more of the following misrepresentations:

4 That homosexuality is a mental disease or
5 disorder or the equivalent thereof;

6 That they represented specific success rates
7 without an adequate basis;

8 That they represented that program could
9 change clients from gay to straight within a set time
10 frame;

11 That the program was based on science;

12 That the program used effective techniques to
13 heal homosexuality;

14 And that the program actually could change
15 clients from gay to straight.

16 Moreover, we contend that the plaintiffs
17 collectively and individually have demonstrated that
18 the JONAH program taken as a whole is an un -- I'm
19 sorry, unconscionable business practice and that it
20 targets a vulnerable population by telling people that
21 they are sick so that JONAH then could sell them a fake
22 cure that actually makes things worse.

23 Your Honor, our contention is that no
24 reasonable juror could find that the defendants did not
25 make these misrepresentations as alleged. We also

1 contend that no reasonable juror could conclude
2 anything other than that the plaintiffs purchased
3 services as a result of those misrepresentations. And
4 in connection with Mr. Unger, that he sought post-JONAH
5 services as a result of those misrepresentations and
6 unconscionable business practices.

7 And specifically with respect to the
8 allegation that the defendants misrepresented
9 homosexuality as a disease or disorder, we contend that
10 no reasonable juror could conclude that each time the
11 defendant said this, that those defendants said that it
12 was a disorder from a religious perspective, which I
13 believe now is the language that is going into the real
14 form.

15 And, finally, Your Honor, we would contend
16 that no reasonable juror could conclude that the JONAH
17 program constitutes an honest business model or that
18 the model or the performance of it were anything other
19 than unconscionable.

20 We understand that the Court has the ability
21 to defer this until after the jury verdict, but we make
22 the motion now and we believe it should be granted.

23 THE COURT: Counsel.

24 MR. LI MANDRI: We believe that the
25 defendants have no burden of proof here. Of course,

1 they don't. And that the plaintiffs have not met their
2 burden of proof as to any of those claims, nor do we
3 believe that they can meet that burden of proof, and
4 that no reasonable jury can find for the plaintiffs as
5 a matter of law, and pursuant to the same New Jersey
6 Court Rule 40-40-1 (sic), we would ask for judgment in
7 favor of the defendants. But we'd happy to defer it
8 until after the Court hears closing argument.

9 THE COURT: The Court does not need to hear
10 closing argument. The standard that a court must apply
11 regarding a motion such as made by both parties is the
12 same as a motion for an involuntary dismissal under
13 Rule 4:37-2(b), namely, that this Court is required to
14 accept as true all the evidence which supports the
15 position of the party defending against the motion, and
16 must accord that party the benefit of all legitimate
17 inferences which can be deduced therefrom. "Thus, if
18 reasonable minds can differ, the motion must be
19 denied."

20 And the case that is generally cited is
21 Dolson v. Anastasia, 55 N.J. 2 (Sup. Ct. 1969).

22 Both parties have essentially asked this
23 Court to make a determination that no reasonable juror
24 could differ on the findings with regard to the
25 contentions that are made by the plaintiff.

1 With regard to the plaintiffs' application
2 for an involuntary dismissal. The Court is mindful
3 that what the contentions were made by the party and
4 what legal rulings were previously made by this Court.
5 This Court, again, however, must apply a standard not
6 the way the Court would look at the evidence, but I
7 have to accept as true all the evidence which supports
8 the position of the party opposing the motion.

9 And in this case, the Court finds that the
10 jury has some evidence which supports the position that
11 the defendants have advocated regarding their
12 representations, as well as the issue of the success
13 or, i.e., statistics.

14 While the Court will not substitute its view
15 for that of the jury, the Court does believe that there
16 is or has been -- if the jury accepts some of the
17 testimony that has been provided on behalf of the
18 defendants, I disagree that a reasonable juror could
19 not accept the defendants' position. It's not a
20 question of whether the Court accepts the defendants'
21 position or whether counsel accepts the position. It's
22 a question of could all inferences in favor of the
23 party opposing the motion be accepted by the jury.

24 And the Court finds that in this matter,
25 there is some evidence that the jury could use, both by

1 direct testimony and also by circumstantial evidence,
2 in terms of the defendants' position.

3 So for those reasons, plaintiff's application
4 will be denied.

5 Same holds true for the defendants' motion
6 seeking a dismissal of the complaint. Clearly, the
7 Court finds that there is sufficient evidence that has
8 been presented by the jury that if the jury accepts the
9 position taken by the plaintiffs as well as the
10 plaintiffs' experts, the jury can infer that the
11 defendants did, in fact, represent homosexuality as a
12 mental disease or mental disorder. The jury could
13 also, in fact, find that they engaged in unconscionable
14 commercial practices.

15 And since I again have to accept as true all
16 evidence which supports the positions of the party, in
17 this case, the plaintiffs, for the like reasons, the
18 Court will deny defendants' application to dismiss the
19 complaint.

20 Okay. Lastly are the jury instructions.

21 MR. MC COY: Yes, Your Honor. We have, I
22 think, the last set that we sent you. There were three
23 issues that remain outstanding. The parties have, I
24 think, agreed to resolve all of them.

25 And so we will be taking out the two lines

1 that remain in the proximate cause section.

2 THE COURT: Okay.

3 MR. MC COY: We will be leaving the
4 statistics description as with no examples.

5 THE COURT: Okay.

6 MR. MC COY: And the parties have agreed to
7 allow all seven jurors to deliberate.

8 THE COURT: All right. So if you make those
9 changes and --

10 MR. MC COY: I'll make them and send --

11 THE COURT: -- submit that. And I'll
12 reformat that so I can -- I'll have that and you'll
13 have a copy tomorrow.

14 MR. MC COY: Right. I'll send it to you in a
15 Word form tonight.

16 THE COURT: All right. And counsel.

17 MR. MC COY: Yes, of course, I'll cc counsel.

18 THE COURT: All right. Anything else?

19 MR. LI MANDRI: No.

20 MR. DINIELLI: No, Your Honor.

21 MR. LI MANDRI: You want us here at 8:30 for
22 the exhibits and --

23 THE COURT: Well, I mean, yeah. I mean --
24 because you could start to at least look at them. Or,
25 as I said, you could also do it -- I mean, I think the

1 list is there. But if you want to do it ahead of time
2 just so you know what there is when you're closing.

3 MR. LI MANDRI: Will do. Thank you, Your
4 Honor.

5 THE COURT: Maybe what I -- I'm just
6 wondering. I should have told them 9:30. Well, I
7 guess it -- no, I don't think it matters. If we're not
8 -- it's really just a matter of looking at what's going
9 to actually go in to the jury. We know what is in
10 evidence, so --

11 MS. BENSMAN: Yes, Your Honor. It's just
12 quality control --

13 THE COURT: Yeah.

14 MS. BENSMAN: -- to make sure that the
15 changes came in as they should have.

16 THE COURT: So what we don't finish before
17 nine, we'll do at -- we can do --

18 MR. LI MANDRI: Right.

19 THE COURT: -- at the lunch hour or whatever.

20 MR. LI MANDRI: Thank you.

21 THE COURT: And as I said, my game plan is
22 based upon approximations as probably we'll start with
23 your summation, Mr. LiMandri. And then we'll take our
24 morning break. See where we are. And then do the
25 plaintiffs' summation. And then probably take the

1 lunch break. Because I think it's going to be too much
2 to do all at one time. And then you come back from
3 lunch and charge them. And then they'll, you know,
4 start their deliberations. If that makes sense.

5 But, again, we'll gauge it by time.

6 MR. LI MANDRI: Thank you, Your Honor.

7 THE COURT: But that's what I anticipate
8 we'll do. What we will not do is break up somebody's
9 summation.

10 So we'll see when Mr. LiMandri's finished
11 where we are and how we're going to proceed. So that
12 if depending on what happens, we'll make that call.
13 But generally, that's what I -- the way I'm looking at
14 it and based on your approximations, probably we'll do
15 the first closing. We'll take our break so they can
16 stretch, get coffee or whatever. Then do a second
17 summation. And then let them have lunch. Okay?

18 MR. LI MANDRI: Yes, Your Honor.

19 THE COURT: Obviously, you know, you'll have
20 your own particular styles. But one thing I will tell
21 you, at least as far as our case law in New Jersey.
22 You know, if you want to object to a summation, it's
23 always better to make the objection at the time as
24 opposed to waiting to the end. And if you take a look
25 at some of our cases, the difficulty is if it's

1 something that can be corrected with an instruction
2 from me, the difficulty is if you wait to the end, and
3 then you want me to correct something, now you run the
4 risk of highlighting something when I make the
5 corrective instruction.

6 So and I'm not looking for objections. This
7 is not an invitation. I'm just simply suggesting that
8 I know, it is still -- I still hear this from attorneys
9 that their position is they don't want to interrupt an
10 opposing counsel's closing argument. That's fine if
11 that's your strategy or if that's how you feel. But I
12 just caution you to familiarize yourself with our cases
13 that talk about that.

14 Because one of the problems is, you know, the
15 timing of the objection makes a difference as to
16 whether I can give a curative instruction of whether
17 you even want me to give a curative instruction,
18 perhaps an hour after the comment was made.

19 Everyone has been professional. I think
20 everyone knows the ruling. So I'm not really
21 anticipating any problems. I'm just saying that for
22 your familiarity to know what our cases say about that.

23 MR. LI MANDRI: Your Honor, I'm assuming if a
24 document has gone into evidence without redactions that
25 any part of the document that's in evidence can be

1 commented on even if it --

2 THE COURT: Yes. Yes. Okay. All right.
3 Then I think --

4 MS. BENSMAN: Your Honor, I'm sorry. I just
5 thought about one clarifying question. If a document
6 is admitted into evidence, and we'd like to show a
7 portion of that document on a slide, perhaps next to a
8 portion of another document also in evidence, is that
9 the kind of thing that we need to preview or get
10 approval to do, if there's no other text on the slide?

11 THE COURT: I don't have a problem if it's in
12 evidence. If it's a document that's in evidence, you
13 certainly have the right to comment on it and show it
14 to the jury. Because there can't be an objection to an
15 evidentiary document. Because --

16 MS. BENSMAN: Understood.

17 THE COURT: -- they're going to see it in
18 their room. But it's the exhibits or charts or
19 whatever that you intend to use, I think, should be
20 reviewed with your adversary before time so you don't
21 run the risk of an objection in the middle of it.

22 MS. BENSMAN: Understood. And demonstratives
23 that were previously shown to the jury, either in
24 opening or during trial, we assume are also okay to
25 show during closing.

1 THE COURT: If they've been shown to the jury
2 -- you mean like what -- for the opening?

3 MS. BENSMAN: For example.

4 THE COURT: Yes.

5 MS. BENSMAN: Thank you.

6 MR. LI MANDRI: I'm assuming likewise, Your
7 Honor, if a document like a learned treatise was read,
8 it's not in evidence as an exhibit, but it was read to
9 the jury, and I assume that portion is --

10 THE COURT: Yeah. You can say, you may
11 recall, so-and-so testified and this was read to you
12 from --

13 MR. LI MANDRI: Right.

14 THE COURT: Just make sure that, you know,
15 that we're accurate on what it is. Okay?

16 MR. LI MANDRI: Yes, Your Honor.

17 THE COURT: All right. Hopefully, it will be
18 a little cooler tomorrow. And I'll see everybody in
19 the morning.

20 ALL COUNSEL: Thank you, Your Honor.

21 THE COURT: Thank you. Have a pleasant
22 evening.

23 (Proceedings adjourned to 6/24/15 at 8:30
24 a.m.)
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5 CERTIFICATION
6

7 I, Patrice Mezzacapo, the assigned transcriber, do
8 hereby certify that the foregoing transcript of
9 proceedings in the Hudson County Superior Court, Law
10 Division on June 23, 2015 on CD No. 6/23/15, Index Nos.
11 2:23:36 to 3:06:00 is prepared in full compliance with
12 the current Transcript Format for Judicial Proceedings
13 and is a true and accurate compressed transcript of the
14 proceedings as recorded.
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16
17
18

19 _____
20 Patrice Mezzacapo, AD/T #214
21 METRO TRANSCRIPTS, L.L.C.

22 Date:
23
24
25