

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CIVIL PART
HUDSON COUNTY
DOCKET NO. HUD-L-5473-12
APP. DIV. NO. _____

_____	:	
MICHAEL FERGUSON, et al.,	:	TRANSCRIPT
	:	
Plaintiffs,	:	
vs.	:	OF
	:	
JONAH, ARTHUR GOLDBERG, ALAN	:	TRIAL
DOWNING and ALAN DOWNING LIFE	:	
COACHING, L.L.C.,	:	
	:	
Defendants.	:	
_____	:	

Place: Hudson County Superior Court
Administration Building
595 Newark Avenue
Jersey City, N.J. 07306

Date: June 25, 2015

B E F O R E:

HONORABLE PETER F. BARISO, JR., A.J.S.C. and a Jury.

TRANSCRIPT ORDERED BY:

JODI ERICKSON, ESQ.,
(Cleary, Gottlieb, Steen & Hamilton, L.L.P.)

Audio Recorded by: A. Crespo



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Colloquy

(Jury not present in court)

THE COURT: All right. We're on the record in Ferguson v. JONAH. May I -- Docket No. L-5473-12. May I have counsels' appearances, please?

MR. GREENBERG: Good morning, your Honor. Bruce Greenberg, G-r-e-e-n-b-e-r-g, from Lite, DePalma, Greenberg in Newark, on behalf of the plaintiffs.

THE COURT: Good morning.

MS. BENSMAN: Good morning, your Honor. Lina Bensman, B-e-n-s-m-a-n, of Cleary, Gottlieb, Steen & Hamilton, on behalf of the plaintiffs.

THE COURT: Good morning.

Mr. BROMLEY: Good morning, your Honor. James Bromley, B-r-o-m-l-e-y, of Cleary, Gottlieb, Steen & Hamilton, on behalf of the plaintiffs.

THE COURT: Good morning.

MR. DINIELLI: Good morning, your Honor. David Dinielli, D-I-n-I-e-l-l-I, Southern Poverty Law Center, on behalf of the plaintiffs.

THE COURT: Good morning.

MR. KESSLER: Good morning, your Honor. Thomas Kessler, K-e-s-s-l-e-r, Cleary, Gottlieb, for the plaintiffs.

THE COURT: Good morning.

MR. LI MANDRI: Good morning, your Honor.

1 Charles Li Mandri, L-I--a-n-d-r-I, of the Freedom of
2 Conscience Defense Fund, on behalf of the defendants.

3 THE COURT: Good morning.

4 MR. JONNA: Good morning, your Honor. Paul
5 Jonna, J-o-n-n-a, with the Freedom of Conscience
6 Defense Fund, on behalf of the defendants.

7 THE COURT: Good morning.

8 MR. LAFFEY: Good morning, your Honor.
9 Michael Laffey, L-a-f-f-e-y, from the Messina Law Firm,
10 on behalf of the defendants.

11 THE COURT: Good morning. Please be seated.
12 All right. What's up?

13 MR. LI MANDRI: In going through the final
14 view of the exhibit notebooks, your Honor, before they
15 go to the jury room after instructions are read, we
16 noticed that, with respect to Plaintiff's Exhibit 126,
17 which we understood was simply the two records of Dr.
18 Phillipson, included with those under the same exhibit
19 numbers are the multipage records, typed records of Dr.
20 Levy, who is another practitioner in Dr. Phillipson's
21 office. But those records were never displayed to the
22 jury. Apparently, a question or two may have been
23 asked of Dr. Berger about the records, but they were
24 not shown. And our objection is that it's not relevant
25 because Mr. Unger is not seeking any compensation for

1 the visits to Dr. Levy. They're not part of the 63
2 visits to Dr. Phillipson.

3 And, two, it is confusing because, in
4 grouping them together, it almost makes it look like
5 there are more records for those 63 visits than just
6 the notes of Dr. Phillipson.

7 So we feel it's not appropriate for those
8 records to be grouped together.

9 THE COURT: I don't recall any testimony from
10 Dr. Phillipson about these records.

11 MS. BENSMAN: Your Honor, the Plaintiff's 126
12 is Benjamin Unger's complete file from the Center for
13 Cognitive Behavioral Psychotherapy, where he was first
14 treated by Dr. Phillipson and then by Dr. Levy. We
15 understood from your previous rulings that somebody's
16 medical records should be -- should be submitted as one
17 whole. And we --

18 THE COURT: Well, if they --

19 MS. BENSMAN: -- don't believe that there's
20 --

21 THE COURT: If they were authenticated. Were
22 these authenticated? Did counsel stipulate to the
23 authentication of these records?

24 Did you stipulate to the authentication of
25 these records?

1 MR. LI MANDRI: I believe we have basically a
2 standing understanding we were not going to be raising
3 an authentication objection. So that's not the purpose
4 of my objection.

5 The purpose of my objection is, in this case,
6 it's confusing because there are two different
7 practitioners, and there's a specific claim for
8 compensation based upon the records of one
9 practitioner. And to mix them together -- even if
10 they're the same office, they're two different doctors.

11 THE COURT: Is the charges related to Levy's
12 treatment or is it 250 charges -- I thought his
13 testimony was just for Dr. Phillipson.

14 MR. LI MANDRI: It is.

15 MS. BENSMAN: The charges are not related to
16 Dr. Levy's treatments. But the records are not
17 confusing because Dr. Levy's records are signed with
18 the name Jordan Levy every single time. And, again, as
19 before, this is just the complete set of Mr. Unger's
20 medical records, and it is subject to the parties'
21 authenticity stipulation.

22 THE COURT: Well, what is the purpose of
23 giving them Dr. Levy's records? They were not
24 commented on by anybody other than Dr. Berger saying he
25 looked at them.

1 MS. BENSMAN: Yes, your Honor, and they
2 impeached Dr. Berger's testimony.

3 THE COURT: Well, I didn't hear them used for
4 impeachment when he was on the stand.

5 MS. BENSMAN: We questioned him about
6 statements that were made in those records, at a time
7 when they had already been admitted into evidence. And
8 counsel had never raised this objection before.

9 THE COURT: Oh, they were admitted before
10 that?

11 MS. BENSMAN: That's right.

12 MR. LI MANDRI: Well, we understood, and we
13 only saw Dr. Phillipson's records. In going through
14 the exhibit notebooks, we noticed that they had
15 attached Dr. Levy's records. We had not seen it in
16 that form before. Obviously, as the Court knows, there
17 was over 700 exhibits, so --

18 MS. BENSMAN: Your Honor, Plaintiff's 126 was
19 produced in this form months ago. Or perhaps weeks ago
20 would be more accurate. But, nevertheless, the
21 defendants have had this exhibit in this form for a
22 very long time.

23 MR. LI MANDRI: Regardless, they're not
24 relevant, and they're confusing.

25 THE COURT: Well, they may be relevant. And

1 that's the problem in the a sense that Dr. Berger said
2 he reviewed the records, and did not see any reference
3 to JONAH, or any reason that any of this was related to
4 JONAH.

5 But the problem is Dr. Levy's treatment is
6 not related to JONAH. So it doesn't matter what's in
7 his records.

8 MS. BENSMAN: We're not seeking compensation
9 for --

10 THE COURT: I know, but then why --

11 MS. BENSMAN: -- Mr. Unger's treatment with
12 Dr. Levy, but --

13 THE COURT: Why are we putting them in?

14 MS. BENSMAN: Because they're part of the
15 complete medical records, that we wanted to consistent
16 with your prior ruling about Mr. Downing's treatment
17 notes. And, also, because they're relevant to impeach
18 Dr. Berger.

19 And, frankly, your Honor, we believe Dr.
20 Berger's testimony is very important. And so it is
21 highly probative on the question of whether he is
22 correct when he says that no plaintiff was harmed by
23 anything that happened to them at JONAH, that these
24 records be in evidence if the jury wants to look at the
25 exhibit that we used to question him, on that.

1 MR. LI MANDRI: Your Honor, if that's to be
2 used for impeachment, my recollection is those records
3 were referenced in Dr. Berger's report. So it's not as
4 if he didn't see them, as well as my belief is the
5 specific notation was, if my memory serves me
6 correctly. But the point is, having them go into the
7 jury room is confusing on the issue of damages because
8 they're mixed in with Dr. Phillipson's records. And a
9 very important issue for the defense is that there is
10 insufficient documentation in Dr. Phillipson's records
11 for the purposes of compensation.

12 Now if they had shown them to the jury,
13 that's one thing, but merely asking a question about --
14 we asked questions about lots of records, we wanted to
15 get into evidence and could not because they were not
16 shown to the jury. And I don't think an exception
17 should be made here either.

18 MS. BENSMAN: Your Honor, I believe if you
19 look at the document, you will see that it is plainly
20 not confusing. Because Dr. Phillipson's notes look
21 extremely different from Dr. Levy's. Which, again, are
22 consistently signed with his name.

23 MR. LI MANDRI: I'm not disputing that the
24 records look different --

25 THE COURT: All right. Let me -- let me get

1 the pad.

2 MR. LI MANDRI: My -- but my point was,
3 having them go to the jury, they might be confused that
4 those may somehow constitute some of the visits for
5 which Mr. Unger's seeking compensation.

6 THE COURT: I asked twice to go over the
7 records that were going into evidence, make sure you
8 agree on them, they were put in binders, and now ten
9 minutes after I'm supposed to charge the jury, this
10 gets raised.

11 MR. LI MANDRI: Well, this could wait until
12 after charge, your Honor.

13 THE COURT: How could it wait until after the
14 charge? What if I have to now include something in the
15 charge? If I'm letting documents in only as to
16 impeachment, they have to be told that. They can't
17 just assume they can use it for any reason. And that's
18 my problem. I don't know why none of this came out
19 before.

20 MR. LI MANDRI: It's just we had many
21 impeachment documents we didn't include, and we didn't
22 think that this would be an issue.

23 THE COURT: Well, apparently it is now. This
24 is what, 126?

25 MS. BENSMAN: Plaintiff's 126, your Honor.

1 THE COURT: It is confusing. Because I don't
2 understand how a claim could be made for Phillipson's
3 charges and not for Levy's if it's at the same place.
4 It is confusing, and I don't understand that. How
5 could you make a claim from the same place, but for
6 only one doctor and not the other? Does that make any
7 sense to the jury? It makes no sense to me. Why isn't
8 there a claim for Dr. Levy's charges?

9 MS. BENSMAN: Your Honor, Dr. Levy's charges
10 were further forward in time, more distant, and we felt
11 more remote.

12 THE COURT: Well, then they're not relevant.

13 MS. BENSMAN: They are relevant to Dr.
14 Berger's testimony. Because it's -- specifically, it's
15 not just that Dr. Berger said none of the plaintiff's
16 were harmed. He said he saw absolutely nothing in any
17 of the records --

18 THE COURT: And he was cross --

19 MS. BENSMAN: -- that could even suggest
20 harm.

21 THE COURT: -- examined on it.

22 MS. BENSMAN: Exactly. On this document.
23 And if the jury wants to refer back to the document he
24 was asked about, they should have it.

25 THE COURT: I don't think he was cross-

1 examined on these documents. He was cross-examined on
2 his own note that listed JONAH.

3 MS. BENSMAN: No, your Honor. We specifically
4 asked him about portions of Dr. Levy's records and
5 asked, did you see this in the notes. And he either
6 admitted that he didn't remember or admitted that he
7 saw it and, therefore, the inference is --

8 THE COURT: Where is JONAH mentioned --

9 MS. BENSMAN: -- chose to disregard it.

10 THE COURT: -- in Levy's notes?

11 MS. BENSMAN: I'm just scrolling to that
12 page.

13 THE COURT: Well, so am I, and I haven't seen
14 it in one of them, yet.

15 MS. BENSMAN: So these notes are in reverse
16 chronological order. So, your Honor, if you would go
17 to the very last page of the exhibit. The first of the
18 two notes that's on the last page, which has the Bates
19 number FGSN9286, contains the language, "Client
20 received" --

21 THE COURT: "He's seen Dr. Phillipson
22 approximately one year ago," so this is a year gap?

23 MS. BENSMAN: That's right, your Honor.

24 THE COURT: No. I'm not giving the jury
25 these records. There should have been somebody here to

1 testify about them. Those are definitely confusing.

2 I think counsel's correct. He made the
3 mistake of agreeing to them going in. That's not the
4 same as Downing's complete records. This is a year
5 later. No one's explained to this jury why there was a
6 gap of one year in treatment. No one has testified
7 that Levy's treatment was related to this. So how do I
8 let all of these records in? Counsel made a mistake.
9 I agree with you, he consented to authentication, and
10 I agree that he allowed them to go into evidence.

11 But I find, as a matter of law, forgetting
12 about counsel's agreements, I'm not going to have
13 reversible error on something I can correct. I'm --

14 MS. BENSMAN: Understood, your Honor.

15 THE COURT: -- not letting those records go
16 to the jury.

17 MR. LI MANDRI: Thank you, your Honor. I
18 appreciate it.

19 THE COURT: You'll have to play with the
20 binders yourselves when I bring them out here.

21 MR. LI MANDRI: Sure.

22 THE COURT: Just tell the jury that I
23 apologize, there's going to be another five-minute
24 delay. Tell them I had to do a conference call.

25 (Indiscernible).

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

2 THE COURT: Figure out what needs to be
3 (indiscernible).

4 MR. LI MANDRI: Yes, Your Honor.

5 Okay. We're finished, Your Honor. Thank
6 you.

7 THE COURT: Oh, off the record. I'm sorry.

8 (Off the record. Back on the record)

9 (Jury present in court)

10 THE COURT: All right. All seven jurors are
11 present and accounted for.

12 And, ladies and gentlemen, again, thank you
13 very much for your promptness. And my sincere
14 apologies for the delay. I had an 8:30 conference
15 that, unfortunately, I was told was going to be 15 to
16 20 minutes. It was a little bit longer. So I
17 apologize for the brief delay.

18 All right. We have now reached that portion
19 of the trial where it is my function and duty to
20 explain to you, hopefully in understandable language,
21 the principle of law governing this case.

22 You are required to accept my instruction as
23 the law. You should consider these instructions as a
24 whole, and do not pick out any particular instruction
25 and place undue emphasis upon it. Any ideas you have

1 of what the law is or what the law should be or any
2 statements by the attorneys as to what the law may be
3 must be disregarded by you if they are in conflict with
4 my charge.

5 In a trial such as this, the function of the
6 Court is to instruct the jury with respect to the
7 principles of law governing this case. And you, the
8 jury, are required to accept and be controlled by the
9 law as I now state it to you.

10 On the other hand, however, you are the sole
11 judges of the facts of this case. You alone have the
12 responsibility of deciding the factual issues in this
13 case. It is your recollection and evaluation of the
14 evidence that controls.

15 You alone decide the weight of the testimony.
16 You alone decide the inferences to be drawn from the
17 testimony. You alone decide the credibility of the
18 witnesses. And you alone must make the ultimate
19 conclusions necessary based upon all of the facts of
20 the case.

21 The lawyers are here as advocates for their
22 clients. In their opening statements and in their
23 summations, they have given you their views of the
24 evidence and their arguments in favor of their clients'
25 position. While you may consider their comments,

1 nothing that the attorneys say is evidence and their
2 comments are not binding upon you.

3 Even though it is proper for me to comment on
4 the evidence or parts of the evidence during these
5 instructions to you, I am going to try to avoid doing
6 that now, except if necessary for the purpose of
7 illustration or example.

8 However, you should understand that if I have
9 already in any way commented on the evidence during the
10 course of the trial, or I should do so now, any such
11 comments by me as to the facts or evidence are not
12 binding on you in any sense. Because it is your
13 exclusive function, not mine, to decide and determine
14 the actual facts of the case.

15 Also, understand that even if I did or were
16 to comment on the facts or evidence, the best I could
17 do would be to relate my recollection of the testimony
18 or evidence. And then my recollection should only be
19 accepted by you if it coincides with your own
20 individual and collective recollection. Otherwise,
21 even my recollection of the testimony or evidence
22 should be disregarded and you should then rely on your
23 own remembrance of the testimony and the evidence.

24 Now during the trial, certain motions and/or
25 objections have been made by counsel. I have ruled on

1 these motions and/or objections, and you are bound by
2 the rulings I made and the instructions I gave, if any.
3 And if I excluded evidence or told you to disregard
4 something, then that particular item of offered proof
5 must not play any part in your deliberations.

6 However, the actions taken by me with regard
7 to these motions or objections should not be taken by
8 you in any way as an indication of how I feel this case
9 should be decided. As I indicated to you at the
10 beginning of the trial, I care absolutely nothing about
11 how this case is decided by you except that it be
12 decided by you fairly and impartially, only in
13 accordance with the evidence I have permitted to be
14 presented to you, and in accordance with these
15 instructions as to the applicable law.

16 Also, I specifically instruct you that the
17 fact that I may have seen fit in some instances to
18 direct questions to certain of the witnesses in the
19 case must not influence you in any way in your
20 deliberations. The fact that I may have seen fit to
21 direct such questions does not indicate any opinion of
22 mine one way or the other as to the testimony given by
23 such witnesses.

24 Understand clearly that the credit and belief
25 to be given to the testimony of each witness must be

1 determined by you and you alone.

2 I apologize. I talked a lot at the
3 conference, so I my have to drink a lot of water.

4 Finally, any remarks by me to counsel or by
5 counsel to me or any remarks between counsel
6 themselves, those remarks are not evidence and should
7 not affect or play any part in your deliberations.

8 Now the evidence in this case consists of the
9 testimony that you have heard from the witnesses, both
10 those who took the witness stand and any -- and any
11 videotaped deposition; the exhibits that have been
12 marked into evidence; the deposition testimony that was
13 played in this case or read into the record; the
14 stipulations that were placed on the record.

15 As you recall, the stipulation are facts that
16 the parties agree are true. Therefore, you can accept
17 all stipulations that you've heard in this case as true
18 in your deliberations.

19 Any testimony that I have stricken from the
20 record is not evidence and should not be considered by
21 you in your deliberations. This means that even though
22 you may remember the testimony, you are not to use it
23 in your discussions or deliberations.

24 Further, if I gave a limiting instruction as
25 to how to use certain evidence, that evidence must be

1 considered by you for that purpose only. You cannot
2 use it for any other purpose.

3 Specifically, you have heard evidence that
4 Defendant Arthur Goldberg has previously been convicted
5 of fraud. This evidence may only be used in
6 determining the credibility or believability of his
7 testimony. You may not conclude that he violated the
8 Consumer Fraud Act in this case or that he is more
9 likely to have violated the Consumer Fraud Act simply
10 because he committed fraud on another occasion.

11 A jury has the right to consider whether a
12 person who has previously failed to comply with
13 society's rules as demonstrated through a criminal
14 conviction would be more likely to ignore the oath
15 requiring truthfulness on the witness stand than a
16 person who has never been convicted of a crime.

17 You may consider in determining this issue
18 the nature and degree of the prior conviction and when
19 it occurred.

20 Our law permits a conviction to be received
21 in evidence only for the purpose of affecting the
22 credibility of the defendant and for no other purpose.
23 You are not, however, obligated to change your opinion
24 as to the credibility of the defendant simply because
25 of his prior fraud conviction. You may consider such

1 evidence along with the other factors I will discuss
2 later in determining the credibility of Arthur
3 Goldberg.

4 Now as it pertains to this particular case,
5 the plaintiffs contend that the defendants violated the
6 New Jersey Consumer Fraud Act in two ways:

7 First, by making misrepresentations in
8 connection with the sale, advertisement, or subsequent
9 performance of the JONAH program, which includes all
10 the representations and services and activities
11 provided or recommended by the defendants that
12 plaintiffs sometimes have called conversion therapy,
13 and defendants sometimes have called gender affirming
14 processes, or reparative therapy;

15 And, second, by engaging in unconscionable
16 commercial practices in connection with the sale,
17 advertisement, or subsequent performance of the JONAH
18 program.

19 Specifically, plaintiffs contend that the
20 defendants made the following misrepresentations:

21 One, the defendants misrepresented and
22 falsely described homosexuality not as being normal,
23 but as being a mental illness, disease, disorder, or
24 equivalent thereof;

25 Two, the defendants misrepresented that the

1 JONAH program is capable of effectively healing or
2 treating the mental illness, disease, disorder, or
3 equivalent thereof, of homosexuality;

4 The defendants misrepresented that the JONAH
5 program is scientifically based;

6 The defendants misrepresented the JONAH
7 program by using specific success statistics in
8 advertising or selling the JONAH program when there is
9 no factual basis for calculating such statistics;

10 The defendants misrepresented that the JONAH
11 program would change a person from gay to straight
12 within some specified time frame, for example, between
13 two and five years;

14 And, six, the defendants misrepresented that
15 JONAH's program is capable of changing clients from gay
16 to straight, and that clients would no longer
17 experience homosexual desire, no longer be gay, but
18 instead would experience heterosexual desire, be
19 straight.

20 Second, defendants contend that the --
21 second, the plaintiffs contend that the defendants
22 violated the New Jersey Consumer Fraud Act because the
23 JONAH program is an unconscionable commercial practice.

24 Plaintiffs contend that the defendants'
25 conduct in advertising, selling, or performing the

1 JONAH program is basically unfair or unjust, and
2 materially depart from standards of good faith, honesty
3 in fact, and fair dealing in the public marketplace,
4 and that the defendants were dishonest in making
5 factual statements, and did not deal fairly with the
6 plaintiffs.

7 Plaintiffs contend that the defendants'
8 unconscionable commercial practice harmed the
9 plaintiffs.

10 Plaintiffs further contend that as a result
11 of the defendants' misrepresentations, they purchased
12 and participated in the JONAH program.

13 Plaintiffs also contend that as a result of
14 the defendants' misrepresentations or unconscionable
15 commercial practice, Plaintiffs Bella Levin, Chaim
16 Levin, Jo Bruck, and Michael Ferguson suffered an
17 ascertainable loss in the form of the amount of money
18 they paid for the JONAH program.

19 And Plaintiff Benjamin Unger suffered an
20 ascertainable loss in the form of the amount of money
21 he paid for treatment and counseling to address the
22 harm caused by the JONAH program after he received
23 services from the defendant -- defendants.

24 The defendants contend that they made no --
25 excuse me. The defendants contend that they made no

1 misrepresentations or engaged in any unconscionable
2 commercial practices.

3 With respect to the alleged representation of
4 homosexuality as a disorder, but no other alleged
5 misrepresentation, defendants contend that each time
6 they referred to homosexuality as a disorder, they
7 described homosexuality as disordered from a religious
8 perspective, and not as a mental illness, disease,
9 disorder, or equivalent thereof.

10 The burden of proof in this case is on the
11 plaintiffs to establish their claim by a preponderance
12 of the evidence. In other words, if a person makes an
13 allegation, that person must prove the allegation.

14 The person making the claim also has the
15 burden of proof with proximate causation between the
16 misrepresentation or unconscionable commercial practice
17 if found by the jury, and the harm complained of for
18 which damages are sought.

19 Now in this action, the plaintiffs have the
20 burden of establishing by a preponderance of the
21 evidence all the facts -- all of the facts necessary to
22 prove that the defendants made any of the alleged
23 misrepresentation of fact, or engaged in unconscionable
24 commercial practices in advertising, selling, or
25 performing the JONAH program; that as a result of

1 defendants' misrepresentations or unconscionable
2 commercial practice, plaintiffs purchased and
3 participated in the JONAH program.

4 Plaintiffs also have the burden of showing
5 that for Plaintiffs Bella Levin, Chaim Levin, Jo Bruck,
6 and Michael Ferguson, they suffered an ascertainable
7 loss in the form of the amount of money they paid for
8 the JONAH program, and for Benjamin -- and for
9 Plaintiff Benjamin Unger, he suffered an ascertainable
10 loss in the form of the amount of money he paid for
11 treatment and counseling to address the harm caused by
12 the JONAH program after he received services from the
13 defendants.

14 So that you better understand what I have
15 just told you, let me define or explain some of the
16 terms or legal principles which I have just instructed
17 you must be applied in your deliberations and in
18 reaching your ultimate verdict.

19 Proof very simply is all of the evidence
20 before you, the jury, regardless of which party
21 presented it, which is relevant to the facts that are
22 in dispute, and which tends to prove the existence or
23 nonexistence of such facts.

24 Burden of proof. That's the obligation of a
25 party to come forward with sufficient facts so as to

1 prove the claim or claims being made by what we call
2 the greater weight or preponderance of the believable
3 or credible evidence. To put it simply, I mean that in
4 order to prevail or win the case on a particular issue
5 in dispute, you must determine whether or not the
6 plaintiff, who has made the claim of wrongdoing against
7 the defendant, has tipped the balance of proof in his
8 or her favor.

9 So what do I mean by tipping the balance, by
10 proving the claim by the preponderance or greater
11 weight of the believable or credible evidence?

12 You're all familiar with our scales of
13 justice, Lady Liberty, my little bookend here, how
14 she's blindfolded and she holds the scales.

15 The scale start off equally, okay? That's
16 how this case starts. You come in and the scales are
17 equal.

18 You now have to determine the credible
19 evidence. What I want you to visualize as a metaphor,
20 is you go in the jury room and you become a big
21 strainer. And you strain everything you've heard in
22 this case. All the evidence that I described to you
23 before goes through this metaphorical strainer. And
24 what comes out is what you believe is the credible,
25 believable evidence.

1 circumstantial evidence. If a witness testified that
2 he or she observed snow falling last night, which would
3 be highly unusual this time of the year, but that would
4 be an example of direct evidence, okay? On the other
5 hand, if the witness testified that there was no snow
6 on the ground upon going to sleep and that when he or
7 she arose in the morning, the ground was snow covered,
8 you could infer from these facts that it snowed last
9 night. That would be an example of circumstantial
10 evidence.

11 You may consider both direct and
12 circumstantial evidence in deciding this case. The law
13 permits you to give equal weight to both, but it is for
14 you to decide how much weight to give to any evidence.

15 In this case, you have seen and heard certain
16 evidence in the form of written and oral
17 representations by the defendants to persons other than
18 the plaintiff in this lawsuit. If the plaintiffs did
19 not see or hear such representations, those
20 representations in and of themselves cannot be the
21 basis for a Consumer Fraud Act violation.

22 However, that evidence is an example of
23 circumstantial evidence that you may consider in
24 determining whether you believe the direct testimony
25 given by witnesses about what representations were made

1 by the defendants, and in assessing the credibility or
2 believability of the witnesses in this case.

3 When deciding this case, you are permitted to
4 draw inferences from the evidence. Inferences are
5 deductions or logical conclusions drawn from the
6 evidence. Use logic, your collective common knowledge,
7 and your common sense when determining what inferences
8 can be made from the evidence.

9 In deciding the facts of this case, you will
10 have to decide which witnesses to believe and which
11 witnesses not to believe. You may believe everything a
12 witness says or only part of it or none of it.

13 Believable or credible evidence means
14 evidence which in the light of reason and common sense
15 is worthy of your belief. In order to be worthy of
16 belief, I would suggest to you that you should require
17 that testimony not only be given by a credible witness,
18 but also that what the credible witness has to say be
19 credible in and of itself.

20 Credible evidence is such that in the light
21 of the common experience of men and women such as
22 yourself, it can be approved as probable in the
23 circumstances of the case as to what actually did or
24 did not occur.

25 Now credibility. How do you determine

1 credibility?

2 Again with due respect to your own common
3 sense and experience, I would suggest that in
4 determining the weight of the credible or believable
5 testimony, you should take into consideration matters
6 relating to the credibility of the various witnesses.

7 In deciding what to believe, here are some
8 factors you may want to consider:

9 One, does the witness have an interest in the
10 outcome of this case;

11 Two, how good and accurate is the witness's
12 recollection;

13 Three, the witness's ability to know what he
14 or she was talking about;

15 Four, was there any bias or prejudice of any
16 witness who has testified;

17 Five, were there any contradictions or
18 changes in the witness's testimony; did the witness say
19 one thing at one time and something different at some
20 other time; if so, you may consider whether or not the
21 discrepancy involves a matter of importance or whether
22 it results from an innocent mistake or willful lie;

23 Six, you may consider the demeanor of the
24 witness; by that, I mean the way the witness acted, the
25 way the witness talked, or the way the witness reacted

1 to certain questions;

2 Seven, use your common sense when evaluating
3 the testimony of a witness; if a witness told you
4 something that did not make sense, you have the right
5 to reject that testimony; on the other hand if what the
6 witness said seemed reasonable and logical, you have a
7 right to accept that testimony;

8 Eight, is the witness's testimony reasonable
9 when considered in light of the other evidence that you
10 believe.

11 Although not all inclusive, these are the
12 kinds of considerations that I suggest are open to you
13 in making your determination as to how much weight or
14 credence or belief you're going to give to the
15 testimony of any witness who has testified before you.

16 Now expert testimony. You have heard
17 testimony from a witnesses who were called as experts.
18 Generally, witnesses can testify only about the facts
19 and are not permitted to give opinions. However, an
20 exception to this rule exists in the case of an expert
21 witness.

22 An expert witness may give an opinion on a
23 matter in which the witness has some special knowledge,
24 education, skill, experience, or training.

25 Now in this case, you heard from Dr. Carol

1 Bernstein, an expert in psychiatry; Dr. Janja Lalich,
2 and expert in sociology and social psychology; Dr. Lee
3 Beckstead, an expert in the field of psychology with an
4 emphasis in sexual orientation; and Dr. Joseph Berger,
5 an expert in psychiatry.

6 Any expert -- an expert witness may be able
7 to assist you in understanding the evidence in this
8 case or in performing your duties as a fact finder.
9 But I want to emphasize to you that the determination
10 of the facts in this case rests solely with you as
11 jurors.

12 In examining each expert's opinion, you may
13 consider the person's reasons for testifying, if any.
14 You may also consider the qualifications of the
15 individuals and the believability of the expert,
16 including all the considerations that generally apply
17 when you are deciding whether or not to believe a
18 witness's testimony.

19 The weight of the expert's opinion depends on
20 the facts on which the expert bases his opinion. You
21 as jurors must also decide whether the facts relied
22 upon by the expert actually exist.

23 Finally, you are not bound by the testimony
24 of an expert. You may give it whatever weight you deem
25 is appropriate. You may accept or reject all or part

1 of an expert's opinion.

2 It is for you the jury to resolve any
3 conflict -- any conflicts in the testimony of the
4 experts using the same guidelines in determining
5 credibility that I mentioned earlier.

6 The amount of the expert's fee is a matter
7 that you may consider as possibly affecting the
8 believability of an expert. However, there is nothing
9 improper in the expert witness being paid a reasonable
10 fee for his or her work and for his or her time in
11 attending court.

12 If you want to stretch a little bit, you can.

13 Okay. Let's talk a little bit about the
14 Consumer Fraud Act.

15 Many of us have heard the Latin phrase caveat
16 emptor, let the buyer beware. That statement allows
17 little relief to a customer. That statement does not
18 reflect the current law in New Jersey.

19 Here, we have a more ethical approach in
20 business dealings with one another. Therefore, each of
21 us may rely on representations made by another in a
22 business transaction. This approach is reflected in a
23 statute, New Jersey's Consumer Fraud Act.

24 The Consumer Fraud Act makes any
25 unconscionable commercial practice, deception, fraud,

1 false pretense, false promise, or misrepresentation
2 unlawful. These are considered affirmative acts and
3 are the acts at issue in this trial.

4 An affirmative act is something done
5 voluntarily by a person. The act may be physical, but
6 also may be any steps taken voluntarily by a person to
7 advance a plan or design or to accomplish a purpose.

8 Here, the plaintiffs claim that JONAH, Arthur
9 Goldberg, and Alan Downing, the defendants, committed a
10 consumer fraud either when they made misrepresentations
11 or when they engaged in unconscionable commercial
12 practices in the advertisement, sale, and performance
13 of the JONAH program to the plaintiffs.

14 The Consumer Fraud Act says that anyone who
15 makes any unconscionable commercial practice,
16 deception, fraud, false pretense, false promise, or
17 misrepresentation commits a consumer fraud.

18 Now what are affirmative acts? Specifically,
19 the defendants allegedly used, by means of an
20 affirmative act, an unconscionable commercial or
21 misrepresentation in connection with the advertising,
22 sale, or provision of the JONAH program.

23 An unconscionable commercial practice is an
24 activity which is basically unfair or unjust which
25 materially departs from standards of good faith,

1 honesty in fact, and fair dealing in the public
2 marketplace.

3 To be unconscionable, there must be factual
4 dishonesty and a lack of fair dealing.

5 A misrepresentation is an untrue statement
6 made about a fact which is important or significant to
7 the sale, advertisement, and is communicated to another
8 person to create the possibility that other person will
9 be misled. A misrepresentation is a statement made to
10 deceive or mislead.

11 A sale includes a transfer of ownership;
12 rental; distribution; offer to sell, rent, or
13 distribute; and attempt to sell, rent or distribute,
14 either directly or indirectly.

15 An advertisement is a notice designed to
16 attract public attention. Modes of communication
17 include the attempt, directly or indirectly, by
18 publication -- excuse me -- dissemination,
19 solicitation, endorsement, circulation or in any way to
20 induce any person to enter or not enter into an
21 obligation, acquire any title or interest in any
22 merchandise, increase the consumption of any
23 merchandise or make any loan.

24 It is not necessary for liability under the
25 Act that a person actually be misled or deceived by

1 another's conduct. It is not necessary for any of the
2 plaintiffs to show that any of the defendants intended
3 that their conduct could -- should deceive.

4 What is important is that the affirmative
5 act, that is the misrepresentation or unconscionable
6 practice, must have had the potential to mislead or
7 deceive when it was performed. The capacity to mislead
8 is the prime ingredient of the alleged affirmative
9 consumer fraud here of advertising, selling, and
10 performing the JONAH program by misrepresenting and
11 falsely describing homosexuality, not as being normal,
12 but as being a mental illness, disease, disorder, or
13 equivalent thereof;

14 Misrepresenting that the JONAH program is
15 capable of effectively healing or treating the mental
16 illness, disease, disorder, or equivalent thereof, of
17 homosexuality;

18 Misrepresenting that the JONAH program is
19 scientifically based;

20 Misrepresenting the JONAH program by using
21 specific success statistics in advertising or selling
22 the JONAH program when there is no factual basis for
23 calculating such statistics;

24 Misrepresenting that the JONAH program would
25 change a person from gay to straight within some

1 specified time frame, for example, between two and five
2 years;

3 And misrepresenting that the JONAH program is
4 capable of changing clients from gay to straight.

5 Intent is not an essential element. Consumer
6 fraud consisting of an affirmative act does not require
7 a showing of intent to mislead, simply, the -- simply
8 the potential or capability to mislead or deceive.

9 Disease or disorder. In an earlier phase of
10 this trial before you became jurors, I determined that
11 it is a misrepresentation in violation of the Consumer
12 Fraud Act in advertising or selling the JONAH program
13 to describe homosexuality not as being normal, but as
14 being a mental illness, disease, disorder, or
15 equivalent thereof.

16 What that means is if you determine that the
17 plaintiffs have demonstrated that any of the defendants
18 said that homosexuality was a mental illness, disease,
19 disorder, or something equivalent when advertising,
20 selling, or providing the JONAH program to the
21 plaintiffs, then you must find that the defendants have
22 violated the Consumer Fraud Act.

23 This does not mean that the defendants must
24 have used the precise words mental disease or mental
25 illness or mental disorder in describing homosexuality.

1 Rather, if you find that the plaintiffs have shown by a
2 preponderance of the evidence that the defendants
3 described homosexuality even as something equivalent to
4 a mental illness, disease, or disorder, then you must
5 find that the defendants have violated the Consumer
6 Fraud Act.

7 On the other hand, with respect to the
8 alleged misrepresentation of homosexuality as a
9 disorder, if you find that every time the defendants
10 described homosexuality as a disorder, they described
11 homosexuality as disordered from a religious
12 perspective and not as a mental illness, disease,
13 disorder or equivalent thereof, then the defendants did
14 not violate the Consumer Fraud Act with respect to this
15 alleged misrepresentation.

16 In an earlier phase of this trial before you
17 became jurors, I determined that it is a
18 misrepresentation in violation of the Consumer Fraud
19 Act in advertising or selling the JONAH program to
20 include specific statistics when there is no factual
21 basis for calculating such statistics. What this means
22 is if you -- if you determine that the plaintiffs have
23 demonstrated by a preponderance of the evidence that
24 any of the defendants told the plaintiffs that the
25 JONAH program has a specific success rate, and if you

1 determine that the plaintiffs have demonstrated by the
2 preponderance of the evidence that the defendants had
3 no factual basis for calculating such statistics, then
4 you must find that the defendants have violated the
5 Consumer Fraud Act.

6 In addition, the price defendants charged is
7 only one factor in your consideration. For example, if
8 you find that the services sold have little or no value
9 to the plaintiffs for the purpose for which they were
10 persuaded to buy the services, and which it appeared
11 those services would serve, the price paid by the
12 plaintiffs becomes one factor relevant to weighing the
13 wrong which the statute seeks to prevent and
14 which it prohibits.

15 A consumer who has been victimized by a
16 practice which the Consumer Fraud Act is designed to
17 remedy is not required to seek a refund from the
18 offending merchant as a prerequisite to filing a
19 lawsuit under the Consumer Fraud Act. The defendants
20 can be found to violate the Consumer Fraud Act
21 regardless of whether the plaintiffs requested a
22 refund.

23 Furthermore, a provision of a contract or
24 agreement in and of itself cannot relieve the
25 defendants of liability or limit the plaintiffs'

1 potential damages under the Consumer Fraud Act.

2 The Consumer Fraud Act encourages private
3 citizens to bring lawsuits against perpetrators of
4 consumer fraud. As a result, consistent with what I
5 had previously instructed you with respect to assessing
6 credibility, evidence regarding the motives of the
7 plaintiffs in bringing this case may only be considered
8 in making your determination as to how much weight or
9 credence or belief you are going to give to their
10 testimony.

11 Using those definitions outlined earlier, you
12 must decide whether the plaintiffs have shown or proven
13 to you that the defendants used a misrepresentation or
14 unconscionable commercial practice in connection with
15 the advertisement, sale, or performance of the JONAH
16 program.

17 If the plaintiffs have shown that those acts
18 took place and that they were misrepresentations or
19 unconscionable commercial practices, you must find that
20 the defendants violated the Consumer Fraud Act and next
21 decide whether that conduct brought about damage to the
22 plaintiffs, and if so, how much.

23 So let's talk about proximate cause. If you
24 find that the plaintiffs violated the Consumer Fraud
25 Act (sic), you must find that the defendants' violation

1 was a proximate cause --

2 MR. LI MANDRI: Your Honor, I think you
3 misspoke. You -- did you say if you find that the
4 plaintiffs violated --

5 THE COURT: No. No, I see here. No. Did I
6 say plaintiffs? I apologize. Let me start again.

7 If you find that the defendants violated the
8 Consumer Fraud Act, you must find that the defendants'
9 violation was a proximate cause of the plaintiffs'
10 damages before you can find that the defendants were
11 responsible for the plaintiffs' ascertainable loss in
12 the form of the amount of money they paid for the JONAH
13 program, or with respect to Plaintiff Benjy Unger,
14 money he paid for treatment and counseling to address
15 the harm caused by the JONAH program after the
16 plaintiffs received services from the defendants.

17 It is the duty of the plaintiffs to establish
18 by the preponderance of the evidence that the
19 defendants' actions were a proximate cause of the
20 ascertainable loss alleged to have resulted from the
21 defendants' misrepresentations and/or unconscionable
22 commercial practices in violation of the Consumer Fraud
23 Act.

24 The basic question for you to resolve is
25 whether the plaintiffs' injuries are so connected with

1 the actions of the defendants that you decide it is
2 reasonable in accordance with the instructions I will
3 now give you that the defendants should be held
4 responsible for those ascertainable losses.

5 Now I will instruct you on the law governing
6 damages in the event you decide the liability issue in
7 favor of plaintiffs.

8 The fact that I instruct you on damages
9 should not be considered as suggesting any view of mine
10 about which party is entitled to prevail in this case.
11 Instructions on damages are given for your guidance in
12 the event you find that the plaintiffs are entitled to
13 a verdict. I am required to provide instructions on
14 damages in all cases where a trial includes a claim for
15 damages.

16 Now the plaintiffs have the burden of
17 establishing by a preponderance of the evidence each
18 item of damages that he or she seeks or claims. The
19 plaintiff must also prove that the damages were the
20 natural and probable consequences of the defendants'
21 misrepresentations or unconscionable commercial
22 practices. The misrepresentations or unconscionable
23 commercial practices must have been a proximate cause
24 of the damages. Damages may not be based on conjecture
25 or speculation.

1 The plaintiffs claim that they lost money as
2 a result of the defendants' conduct. If you decide
3 from the evidence in this case that JONAH, Arthur
4 Goldberg, or Alan Downing violated the Consumer Fraud
5 Act, you have decided that they have committed an
6 unlawful practice. If so, the plaintiffs are allowed
7 to receive an award of money for their loss proximately
8 caused by the defendants.

9 To establish damages or ascertainable loss,
10 as they are referred to under our Consumer Fraud Act,
11 the plaintiffs must prove by a preponderance of the
12 evidence that they suffered an actual ascertainable
13 loss of money or property. Oral testimony can be
14 sufficient to establish such an ascertainable loss.

15 Now the ascertainable loss must be
16 quantifiable or measurable, not hypothetical or
17 illusory. And estimate of damages calculated within a
18 reasonable degree of certainty will suffice to
19 demonstrate an ascertainable loss.

20 Ascertainable loss does not include non-
21 economic damages for pain and suffering or emotional
22 distress, and such damages are not recoverable in an
23 action brought under the Consumer Fraud Act.

24 With respect to the claim by Plaintiff Benjy
25 Unger, ascertainable loss may include the cost of

1 mental health treatment received to repair harm done by
2 the JONAH program.

3 If you find that the Consumer Fraud Act was
4 violated and you award damages, the law requires me to
5 triple whatever amount of damages you award. The
6 tripling of your award is meant to punish the
7 defendants for committing fraud.

8 In addition, if you find that the defendants
9 have violated the Consumer Fraud Act, the law also
10 requires me to compel defendants to pay whatever
11 reasonable attorney fees the plaintiffs have incurred
12 in this case. I will determine at a later time what
13 that amount of attorney fees will be.

14 These are functions which the Court, not the
15 jury, will perform.

16 Now your oath as jurors require you to decide
17 this case fairly and impartially, without sympathy,
18 passion, bias or prejudice. You are to decide this
19 case solely upon the evidence that you find believable
20 and in accordance with the rules of law that I give
21 you.

22 Sympathy is an emotion which is normal for
23 human beings. No one can be critical of you for
24 feeling degree of sympathy -- for feeling some degree
25 of sympathy in this matter. However, that sympathy

1 must play no part in your thinking and in the decision
2 you reach in the jury room.

3 Similarly, your decision must not be based
4 upon bias or prejudice which you might have developed
5 during the trial for or against any party.

6 Your duty is to decide this case impartially
7 and a decision based on sympathy, passion, bias or
8 prejudice would violate that duty and violate the oath
9 you took when you sat as jurors in this case.

10 You are not advocates for either party. You
11 are judges of the facts. Your sole interest is to
12 determine the truth from the evidence in the case. It
13 is your duty as jurors to consult with one another and
14 to deliberate with a view to reaching an agreement, if
15 you can do so without compromising your own individual
16 judgment. Each of you must decide the case for
17 yourself, but do so only after an impartial
18 consideration of the evidence with the other jurors.

19 Now the verdict. The good news for you in
20 this case is that the attorneys have agreed to allow
21 all seven of you to deliberate. So we will not be
22 picking an alternate.

23 Since this is a civil case, and they're
24 allowing all seven of you to deliberate any verdict of
25 6-1 or 7-0 is a legal verdict. Therefore, it is not

1 necessary that all seven jurors agree on each question.
2 An agreement of any six jurors is sufficient.

3 All seven jurors must deliberate fully and
4 fairly on each and every question, and all seven jurors
5 must determine and vote upon each question. It is not
6 necessary that the same six jurors agree upon the
7 answers to all the questions. Whenever at least six
8 jurors have agreed to any answer, that question has
9 been decided, and you may move on to consider the
10 remaining questions in the case if it is appropriate to
11 do so.

12 All seven jurors must participate fully in
13 deliberating on the remaining questions. A juror who
14 has been outvoted on any question shall continue to
15 deliberate with the other jurors fairly, impartially,
16 honestly, and conscientiously to decide the remaining
17 questions. Each juror must consider each question with
18 an open mind.

19 When at least six of you have agreed upon a
20 verdict, knock on the jury room door. And knock loudly
21 because, unfortunately, I didn't design this. You're
22 behind two doors. Indicate to the attendant, my
23 officer, that you have reached a verdict and say
24 nothing more. The officer will escort you back to the
25 jury box so that the Court may receive your verdict.

1 All right. Now I have prepared a jury
2 verdict sheet which I believe should make your task
3 simpler. My officer is going to be giving each of you
4 a copy. I will be sending that sheet with you to the
5 jury room. The sheet has questions that you must
6 consider and answer within the framework of the
7 instructions I have given you. Now we're gong to go
8 over these questions together, okay? So this is your
9 verdict sheet. You will take one of these into the
10 jury room with you.

11 "Question No. 1. Did Plaintiff Benjy Unger
12 prove by a preponderance of the credible evidence that
13 any of the following defendants made any
14 misrepresentations in connection with the
15 advertisement, sale, or subsequent performance of the
16 JONAH program?"

17 And you will see we've listed all three
18 defendants under there, and you will have to answer yes
19 or no to each defendant. So Arthur Goldberg -- excuse
20 me, Arthur Goldberg, you will say yes or no, and you
21 will write your vote. Remember, your vote has to be
22 either 7-0 or 6-1.

23 Same with JONAH, Inc. You will answer that
24 question yes or no. You will write your vote. Your
25 vote must be 7-0 or 6-1. If it's not 7-0 or 6-1, you

1 have not answered the question.

2 Same with Alan Downing, okay?

3 Then you will proceed, as it tells you, to
4 Question 2.

5 "Question 2. Did Plaintiff Benjy Unger prove
6 by a preponderance of the credible evidence that any of
7 the following defendants engaged in unconscionable
8 commercial practices?"

9 All three defendants are listed. You will
10 again answer each one yes or no, and you will write
11 your vote. Your vote for each one has to be 7-0 or 6-
12 1.

13 Then you will see what the instructions say
14 after Question 2. If six or more of you answered yes
15 to either or both Question 1 or 2 for any of the
16 defendants, then you will proceed to Question 3. If
17 six or more of you did not answer yes to either or both
18 Question 1 or 2 for any defendant, that means if you've
19 answered no three times for 1, and no three times for
20 2, then you have found that Benjy Unger did not prove
21 by a preponderance of the credible evidence that any of
22 the defendants violated the Consumer Fraud Act and you
23 can skip Questions 3 or 4 -- 3 and 4 and proceed to 5.

24 If, however, any of those six questions under
25 1 and 2, any of those six individuals, if you answered

1 yes to any of those, then you must answer Question No.
2 3.

3 And Question No. 3 says, "If you answered yes
4 to Question 1 and/or 2, do you find by a preponderance
5 of the credible evidence that defendants'
6 misrepresentations or unconscionable commercial
7 practices were a proximate cause of the ascertainable
8 loss suffered by Plaintiff Benjy Unger?"

9 Again, you will answer yes or no, and you
10 will write your vote. Your vote must be 7-0 or 6-1.

11 If you answered yes, you will go -- if six or
12 more of you answered yes to Question 3, you will
13 proceed to Question 4. If six or more of you answered
14 no -- I didn't tell you that here -- six or more of you
15 answered no, then you're not going to Question No. 4,
16 okay? We should have typed that in there, we did not.

17 If you answer yes, you will go to Question 4,
18 "What is the total amount of ascertainable loss
19 suffered by Plaintiff Benjy Unger?" And you will write
20 in the amount if you get to that question. And, again,
21 the vote, 7-0, 6-1.

22 That resolves all the questions regarding
23 Plaintiff Benjy Unger.

24 Next, you will go Question 5. Very similar
25 approach that we did with Mr. Unger. "Did Plaintiff

1 Chaim Levin prove by a preponderance of the credible
2 evidence that any of the following defendants made any
3 misrepresentations in connection with the
4 advertisement, sale, or subsequent performance of the
5 JONAH program?"

6 All three defendants are listed. You will
7 answer yes or no to each defendant, and you will write
8 the vote for each defendant, 7-0 or 6-1.

9 Then you will proceed to Question 6, which
10 talks about the unconscionable commercial practices.
11 Same pattern. I'm not going to read all of this to you
12 because I think you're getting the gist of this.

13 You will answer yes or no to the three
14 defendants, and you will write your vote.

15 This is the same explanation now. After
16 Question 6, If six or more of you answered yes to any
17 defendant, to either 5 or 6 or both for any of them,
18 then you will proceed to Question 7. If six or more of
19 you did not answer yes -- in other words, if you have
20 under Question 5 no to all three defendants, and under
21 Question 6 no to all three defendants, then you have
22 found that the plaintiffs have not proven an
23 unconscionable commercial practice, and you will skip 7
24 and 8.

25 If there is an answer yes to Question 5

1 and/or 6, then you will answer Question 7, which now
2 addresses the proximate cause.

3 If you answer no, you will go to Question 9.
4 If you answer yes, you will proceed to Question 8.

5 And then you will put in the total amount of
6 ascertainable loss suffered by Chaim Levin, and again,
7 you will write your vote. And your vote must be 7-0 or
8 6-1.

9 And then we broke it down the same way for
10 Plaintiff Michael Ferguson in Question No. 9, has he
11 proven by a preponderance of the credible evidence that
12 any of the following defendants made any
13 misrepresentations in connection with the
14 advertisement, sale, or subsequent performance. All
15 three defendants are listed. You must answer yes or no
16 as to each defendant. And, again, you must write your
17 vote. Your vote must be 7-0 or 6-1.

18 And you will proceed to Question 10. This
19 deals with the unconscionable commercial practice.
20 Again, you must answer yes or not to each defendant,
21 and you must write the vote. The vote must be 7-0 or
22 6-1 as to each one there.

23 Again, if six or more of you answered yes to
24 either Question 9 or 10 for any defendant, you will
25 proceed to Question 11. If six or more of you did not

1 answer yes to either both Question 9 -- to either/or
2 both Question 9 or 10 for any defendant, then you have
3 found that Plaintiff Michael Ferguson has not proven by
4 a preponderance of the evidence that the defendants
5 violated the Consumer Fraud, and you can skip 11 and
6 12.

7 11 and 12, again, is the same pattern as the
8 others. Did Mr. Ferguson prove proximate cause? You
9 will answer yes or no. The vote 7-0 or 6-1. And if
10 you answer yes to 11, you will proceed to 12, and you
11 will calculate the amount of ascertainable loss. And
12 you will write your vote 7-0 or 6-1.

13 Then you will go to 13. This is now Bella
14 Levin is the plaintiff. Same questions as to Bella
15 Levin. All three defendants are listed as to whether
16 she's proved by a preponderance of the credible
17 evidence that any of the following defendants made any
18 misrepresentations. Again, for each defendant, you
19 must answer yes or no, and you must write your vote and
20 your vote has to be 7-0 or 6-1.

21 Then you will go to Question 14, which is the
22 unconscionable commercial practice. All three
23 defendants, you must answer yes or no as to each one,
24 and your vote 7-0, 6-1.

25 If six or more of you answered yes to either

1 or both Question 13 or 14 for any defendant, you will
2 then proceed to Question 15. If six or more of you did
3 not answer yes to either or both Question 13 or 14 for
4 any defendant, then you have found that that plaintiff
5 Bella Levin has not proven by a preponderance of the
6 credible evidence that any of the defendants violated
7 Consumer Fraud and you can skip 15 and 16 and go to 17.

8 If you answered yes to one of the defendants
9 in either of those questions or both, you will then go
10 to Question 15, which asks you whether or not the
11 violation was a proximate cause, whether the
12 misrepresentations or the unconscionable commercial
13 practice. You answer yes, you will proceed to Question
14 16; no, then you will proceed to Question 17. Because
15 you don't have the calculate the damages.

16 If you do, then you will write the total
17 amount of the ascertainable loss, and your vote, again,
18 7-0, 6-1.

19 And then, finally, the last plaintiff,
20 Plaintiff Jo Bruck under Question 17. Same question,
21 did she prove by a preponderance of the credible
22 evidence that any of the defendants made
23 misrepresentations in connection with the
24 advertisement, sale, or subsequent performance. All
25 three -- in this case, I apologize. Two defendants are

1 listed because those were the only ones she testified
2 about, Arthur Goldberg and JONAH. You will answer yes
3 or no. Your vote for each question has to be 7-0 or 6-
4 1.

5 Question 18, again, you have to answer
6 because you have to determine whether or not Jo Bruck
7 proved by a preponderance of the credible evidence that
8 any of the following defendants engaged in
9 unconscionable commercial practice. As to those two
10 defendants listed, you must answer yes or no. Your
11 vote must be on each question 7-0 or 6-1.

12 Same instruction follows. If you answered
13 yes to either or both Question 17 or 18 for any
14 defendant, you will proceed to 19. If you answer no to
15 both 17 and 18 to all defendants, then you have found
16 that the plaintiff Jo Bruck has not proven by a
17 preponderance of the credible evidence that any of the
18 defendants violated the Consumer Fraud Act and you can
19 skip 19 and 20, and cease your deliberations.

20 If, however, you answered yes to either
21 Question 18 or 19 as to any defendant, then you must
22 answer Question 19, which is the proximate cause
23 question. And you must answer that yes or no. And
24 your vote is 7-0, 6-1.

25 If you answer yes, you will then answer

1 Question 20, and you will calculate the total amount of
2 ascertainable loss suffered by Jo Bruck, and your vote
3 will be 7-0, 6-1.

4 And at that point, you have finished your
5 deliberations, okay?

6 Do you have any questions about the verdict
7 sheet or are we good?

8 I see everybody saying yes. Okay.

9 Now if during your deliberations you wish to
10 communicate with the Court, or you would like me to
11 repeat any part of the jury instruction -- which, by
12 the way, I'm going to give you a copy of the
13 instructions to take into the jury room, but that
14 doesn't mean you can't ask me to repeat them.

15 Please write your request or question and
16 give the note to my officer. I will respond as quickly
17 as I can by bringing you in the courtroom and putting
18 your question or whatever you ask on the record.

19 I should caution you, however, at no point
20 until you reach your final verdict should you indicate
21 to my officer or anyone else what your vote has been on
22 the question before you. That is a matter that only
23 members of the jury should know until you have reached
24 a final verdict.

25 If you would just pass all the verdict sheets

1 to Juror No. 1. And my officer will collect them.

2 Thank you, Officer. Thank you.

3 All right. Let me take this opportunity to
4 thank you for your service on this jury.

5 Actually, before I get to that, we left one
6 important matter out. It's customary that Juror No. 1,
7 you become the foreperson of the jury. It will be your
8 responsibility to make sure that your fellow jurors
9 deliberate appropriately and in accordance with my
10 instruction.

11 You will also be required to fill out the
12 jury verdict sheet. And you'll get one verdict sheet.
13 And you will fill it out.

14 If there are any questions or anything that
15 you want to bring to the Court's attention as a jury,
16 it will come from the foreperson, okay?

17 And if I can't read your writing, then print.
18 You decide whether you want to write or print, okay?

19 THE JURY FOREPERSON: All right.

20 THE COURT: All right. Now everyone here
21 realizes that this case has interfered with your daily
22 lives and probably caused you some inconvenience.
23 However, as I said to your earlier and I say it when I
24 greet jurors, our judicial system could not function
25 without people like you willing to serve on juries. It

1 is a job that has to be done in order that people can
2 resolve their differences by a jury trial. Everyone
3 here, and I speak for the Court and the parties, we are
4 extremely grateful for the time that you have spent
5 here.

6 So now, ladies and gentlemen, we have reached
7 that point where I can tell you that you can now
8 retreat, if you want to call it that, to your jury
9 room. And you may now discuss the case. Okay. So
10 you'll go into your jury room. I will put all the
11 evidence together for you after I review it with the
12 attorneys. And you will -- my officer will bring in
13 the evidence, and will bring you a verdict sheet,
14 pencil, and a pad, okay?

15 Just wait one second.

16 Could I see counsel at sidebar?

17 (Off-the-record discussion at sidebar)

18 THE COURT: Okay? All right. Thank you,
19 ladies and gentlemen.

20 (Jury not present in court)

21 THE COURT: All right. Off the --

22 (Off the record. Back on the record)

23 (Jury not present in court)

24 THE CLERK: Back on the record.

25 THE COURT: All right. Counsel, I want to

1 make sure now the two binders have been reviewed by
2 both sides.

3 MS. BENSMAN: Yes, Your Honor.

4 THE COURT: The evidence is these two
5 binders, and the Joint Exhibit 50.

6 MS. BENSMAN: Yes, Your Honor.

7 MR. JONNA: Yes, Your Honor.

8 THE COURT: That's it.

9 MS. BENSMAN: Yes, Your Honor.

10 THE COURT: And I'm giving them a pad, the
11 jury instructions, the jury verdict sheet, and their
12 notes, okay? All right.

13 (Off the record. Back on the record)

14 (Jury not present in court)

15 THE COURT: We are back on the record in L-
16 5473-12, Ferguson v. JONAH, et al.

17 I understand, Officer, we have a verdict?

18 THE COURT OFFICER: Yes, Your Honor.

19 THE COURT: All right. Could you bring the
20 jurors out, please?

21 THE COURT OFFICER: Yes, sir.

22 (Jury present in court)

23 THE COURT: All right. All seven jurors are
24 present and accounted for.

25 Have you reached a verdict, Mr. Foreperson?

1 THE JURY FOREPERSON: Yes, we have, Your
2 Honor.

3 THE COURT: All right. Would you just give
4 the sheet to the officer, please? I just want to
5 review it first.

6 Thank you, Officer.

7 Please give that back to Juror No. 1.

8 All right. Mr. Foreperson, with regard to
9 Question No. 1, Did Plaintiff Benjy Unger prove by a
10 preponderance of the credible evidence that any of the
11 following defendants made any misrepresentations in
12 connection with the advertisement, sale, or subsequent
13 performance of the JONAH program?

14 With regard to Arthur Goldberg, how was that
15 answered?

16 THE JURY FOREPERSON: Yes.

17 THE COURT: And what was the vote?

18 THE JURY FOREPERSON: 7-0.

19 THE COURT: With regard to JONAH, Inc., how
20 was that answered?

21 THE JURY FOREPERSON: Yes. 7-0.

22 THE COURT: And Alan Downing?

23 THE JURY FOREPERSON: Yes. 7-0.

24 THE COURT: Question 2, Did Plaintiff Benjy
25 Unger prove by a preponderance of the credible evidence

1 that any of the following defendants engaged in
2 unconscionable commercial practices?

3 With regard to Arthur Goldberg, how did the
4 jury answer Question 2?

5 THE JURY FOREPERSON: Yes. Yes. 7-0.

6 THE COURT: With regard to JONAH, Inc.?

7 THE JURY FOREPERSON: Yes. 7-0.

8 THE COURT: And with regard to Alan Downing?

9 THE JURY FOREPERSON: Yes. 7-0.

10 THE COURT: Question 3. If you answered yes
11 to Questions 1 and/or 2, do you find by a preponderance
12 of the credible evidence that defendants'
13 misrepresentations or unconscionable commercial
14 practices were a proximate cause of the ascertainable
15 loss suffered by Plaintiff Benjy Unger? How did you
16 answer that?

17 THE JURY FOREPERSON: Yes. 7-0.

18 THE COURT: What is the total amount --
19 Question 4, What is the total amount of ascertainable
20 loss suffered by Plaintiff Benjy Unger?

21 THE JURY FOREPERSON: 17,950, 7-0.

22 THE COURT: Okay. Question 5, Did plaintiff
23 Chaim Levin prove by a preponderance of the credible
24 evidence that any of the following defendants made any
25 misrepresentations in connection with the

1 advertisement, sale, or subsequent performance of the
2 JONAH program?

3 How did the jury answer that question as to
4 Arthur Goldberg?

5 THE JURY FOREPERSON: Yes. Yes. 7-0.

6 THE COURT: As to JONAH, Inc.?

7 THE JURY FOREPERSON: Yes. 7-0.

8 THE COURT: And as to Alan Downing?

9 THE JURY FOREPERSON: Yes. 7-0.

10 THE COURT: Did Plaintiff Chaim Levin prove
11 by a preponderance of the credible evidence that any of
12 the following defendants engaged in unconscionable
13 commercial practices? How did the jury answer that as
14 to Arthur Goldberg?

15 THE JURY FOREPERSON: Yes. 7-0.

16 THE COURT: As to JONAH, Inc.?

17 THE JURY FOREPERSON: Yes. 7-0.

18 THE COURT: As to Alan Downing?

19 THE JURY FOREPERSON: Yes. 7-0.

20 THE COURT: Question 7. If you answered yes
21 to Question 5 and/or 6, do you find by a preponderance
22 of the credible evidence that defendants'
23 misrepresentations or unconscionable commercial
24 practices were a proximate cause of the ascertainable
25 loss suffered by Plaintiff Chaim Levin. How did the

1 jury --
2 THE JURY FOREPERSON: Yes.
3 THE COURT: -- answer that? Yes?
4 THE JURY FOREPERSON: Yes. 7-0.
5 THE COURT: What is the total amount of
6 ascertainable loss suffered by Plaintiff Chaim Levin?
7 THE JURY FOREPERSON: 650, 7-0.
8 THE COURT: Question 9, Did Michael Ferguson
9 prove by a preponderance of the credible evidence that
10 any of the following defendants made any
11 misrepresentations in connection with the
12 advertisement, sale, or subsequent performance of the
13 JONAH program?
14 How did the jury answer that question as to
15 Arthur Goldberg?
16 THE JURY FOREPERSON: No. 7-0.
17 THE COURT: As to JONAH, Inc.?
18 THE JURY FOREPERSON: No. 7-0.
19 THE COURT: And as to Alan Downing?
20 THE JURY FOREPERSON: Yes. 7-0.
21 THE COURT: Question 10, Did Michael Ferguson
22 prove by a preponderance of the credible evidence that
23 any of the following defendants engaged in
24 unconscionable commercial practices? As to Alan
25 Goldberg (sic)?

1 THE JURY FOREPERSON: No, 7-0.
2 THE COURT: JONAH, Inc.?
3 THE JURY FOREPERSON: No, 7-0.
4 THE COURT: Alan Downing?
5 THE JURY FOREPERSON: Yes, 7-0.
6 THE COURT: If you answered yes to either
7 Question 9 and/or 10, did you find by a preponderance
8 of the credible evidence that defendants'
9 misrepresentations or unconscionable commercial
10 practices were a proximate cause of the ascertainable
11 loss suffered by Michael Ferguson?
12 THE JURY FOREPERSON: Yes, 7-0.
13 THE COURT: What is the total amount of
14 ascertainable loss suffered by Plaintiff Michael
15 Ferguson?
16 THE JURY FOREPERSON: 1,050, 7-0.
17 THE COURT: One-oh-five-oh?
18 THE JURY FOREPERSON: Yes.
19 THE COURT: 7-0?
20 THE JURY FOREPERSON: Yes.
21 THE COURT: 13, Did Plaintiff Bella Levin
22 prove by a preponderance of the credible evidence that
23 any of the following defendants made any
24 misrepresentations in connection with the
25 advertisement, sale, or subsequent performance of the

1 JONAH program?
2 Arthur Goldberg?
3 THE JURY FOREPERSON: Yes, 7-0.
4 THE COURT: JONAH, Inc.?
5 THE JURY FOREPERSON: Yes, 7-0.
6 THE COURT: Alan Downing?
7 THE JURY FOREPERSON: No, 7-0.
8 THE COURT: Question 14, Did Plaintiff Bella
9 Levin prove by a preponderance of the credible evidence
10 that any of the following defendants engaged in
11 unconscionable commercial practices?
12 Arthur Goldberg?
13 THE JURY FOREPERSON: Yes, 7-0.
14 THE COURT: JONAH, Inc.?
15 THE JURY FOREPERSON: Yes, 7-0.
16 THE COURT: Alan Downing?
17 THE JURY FOREPERSON: No, 7-0.
18 THE COURT: If you answered yes or either
19 Question 13 and/or 14, do you find by a preponderance
20 of the credible evidence that defendants'
21 misrepresentations or unconscionable commercial
22 practices were a proximate cause of the ascertainable
23 loss suffered by Plaintiff Bella Levin?
24 THE JURY FOREPERSON: Yes, 7-0.
25 THE COURT: Question 16, What is the total

1 amount of ascertainable loss suffered by Plaintiff
2 Bella Levin?
3 THE JURY FOREPERSON: 4,000, 7-0.
4 THE COURT: Four thousand seven hundred
5 dollars or four thousand even?
6 THE JURY FOREPERSON: Four thousand even.
7 THE COURT: Okay. And the vote was 7-0?
8 THE JURY FOREPERSON: Yes.
9 THE COURT: Question 17, Did Plaintiff Jo
10 Bruck prove by a preponderance of the credible evidence
11 that any of the following defendants made
12 misrepresentations in connection with the
13 advertisement, sale, or subsequent performance of the
14 JONAH program?
15 As to Arthur Goldberg?
16 THE JURY FOREPERSON: Yes, 7-0.
17 THE COURT: As to JONAH, Inc.?
18 THE JURY FOREPERSON: Yes, 7-0.
19 THE COURT: Question 18, Did Plaintiff Jo
20 Bruck prove by a preponderance of the credible evidence
21 that any of the following defendants engaged in
22 unconscionable commercial practices?
23 As to Arthur Goldberg?
24 THE JURY FOREPERSON: Yes, 7-0.
25 THE COURT: As to JONAH, Inc.?

1 THE JURY FOREPERSON: Yes, 7-0.

2 THE COURT: Question 19, since you answered
3 yes to Question 17 and 18, do you find by a
4 preponderance of the credible evidence that defendants'
5 misrepresentations or unconscionable commercial
6 practices were a proximate cause of the ascertainable
7 loss suffered by Plaintiff Jo Bruck?

8 THE JURY FOREPERSON: Yes, 7-0.

9 THE COURT: And then Question 20, What is the
10 total amount of ascertainable loss suffered by
11 Plaintiff Jo Bruck?

12 THE JURY FOREPERSON: \$500, 7-0.

13 THE COURT: All right. Thank you very much,
14 Juror No. 1.

15 Officer, could you just get the verdict
16 sheet?

17 We will mark that as Exhibit C-1, Court 1.
18 You can give that to Angelica.

19 (C-1, Jury verdict sheet, marked for
20 identification)

21 THE COURT: Does counsel want the jurors
22 polled?

23 MR. LI MANDRI: Yes, Your Honor.

24 THE COURT: Okay. With regard to Question 1,
25 I'm going just say the question, I'm not going to

1 repeat the whole question. I'm just going to ask you
2 how did you vote. With regard to Question 1, about
3 Plaintiff Benjamin Unger, how did you vote as to Arthur
4 Goldberg?

5 (The Court polled the jury and the verdict
6 was 7-0)

7 THE COURT: As to JONAH, Inc.

8 (The Court polled the jury and the verdict
9 was 7-0)

10 THE COURT: As to Alan Downing.

11 (The Court polled the jury and the verdict
12 was 7-0)

13 THE COURT: Okay. With regard to Question 2
14 about unconscionable commercial practices. How did you
15 vote with regard to Arthur Goldberg?

16 (The Court polled the jury and the verdict
17 was 7-0)

18 THE COURT: With regard to JONAH, Inc.

19 (The Court polled the jury and the verdict
20 was 7-0)

21 THE COURT: With regard to Alan Downing.

22 (The Court polled the jury and the verdict
23 was 7-0)

24 THE COURT: Okay. Question 3, whether they
25 were a proximate cause with regard to Benjamin Unger.

1 With regard to Question 3, did the plaintiff
2 prove by a preponderance of the credible evidence that
3 defendants' misrepresentations were a proximate cause,
4 how did you answer that, yes or no, with regard to
5 Benjamin Unger?

6 (The Court polled the jury and the verdict
7 was 7-0)

8 THE COURT: And the total amount of
9 ascertainable loss suffered by the plaintiff is listed
10 as \$17,950. How did you vote on that?

11 (The Court polled the jury and the verdict
12 was 7-0)

13 THE COURT: Okay. Now with --

14 MR. LI MANDRI: We don't require reading the
15 rest, Your Honor.

16 THE COURT: You're satisfied?

17 MR. LI MANDRI: Yes.

18 THE COURT: Okay. All right.

19 Okay. Ladies and gentlemen, thank you very,
20 very much for the time and effort that you put into
21 this case. I have your letters. Angelica has your
22 letters.

23 Officer, would you just give the letters to
24 the jurors?

25 Just check and make sure that the dates are

1 right. We didn't seal the letters yet. We want to
2 make sure that we don't shortchange you. So if you
3 would just pass those around and make sure that the
4 dates in there are correct before you leave.

5 We have the right number of days on there?
6 We're good?

7 All right. Thank you all very, very much on
8 behalf of the parties, the system, and everyone else.
9 Extraordinary efforts, and I thank you for sitting as
10 the judges of the facts in this case.

11 If I can impose upon Juror No. 4. Before you
12 leave, if you could write the name of your deli down on
13 the pad in the back. We'll check out your food.

14 Thank you all very, very much, ladies and
15 gentlemen. I'm going to have to put something on the
16 record, but you're excused and your services have been
17 completed. You can leave the -- you can keep your
18 badge, but you can just leave the holders in the jury
19 room.

20 Thank you very, very much for your
21 extraordinary efforts, patience, and following my
22 instructions. Thank you. Enjoy the rest of the week
23 and the weekend.

24 (Jury excused)

25 THE COURT: All right. Please be seated. We

1 have a statement of verdict that we generally enter on
2 the case. It's not going to be obviously the final
3 judgment. It's just going to be a statement of verdict
4 because, obviously, the verdict will have to be molded
5 to treble damages, and they'll have to be a submission,
6 a certification regarding counsel fees on notice.

7 And so what we'll do, Angelica, we can just
8 do the statement of verdict for what the amounts are
9 here. And then the record will reflect that that's not
10 the final judgment, it's just a statement of verdict,
11 okay?

12 And we can give both of you a copy of that
13 for now. Thank you all very much for your
14 extraordinary efforts.

15 MR. LI MANDRI: Your Honor, if I could point
16 out with response to Question No. 4?

17 THE COURT: Yes?

18 MR. LI MANDRI: The plaintiffs did not seek
19 17,000. They sought, like, 5,000 something. That was
20 not even an issue. And that's -- I only mention it
21 because it's the largest amount and it's to be trebled.
22 But they only asked for a percentage of Dr.
23 Phillipson's treatment. And it appears the jury
24 awarded the full 17,000 for 63 visits, which was not
25 part of the stipulated amount. We had a stipulation as

1 to the amount. So I thought the jury understood there
2 was a stipulated amount.

3 THE COURT: I did not know there was a
4 stipulated amount. If the --

5 MR. LI MANDRI: Well, they only asked for a
6 certain amount. That was --

7 THE COURT: Well, the expert testified what
8 he believed the percentages was that were related to
9 JONAH.

10 MR. LI MANDRI: And it was 5,000 something --

11 THE COURT: Yes, but was that stipulated to?

12 MR. LI MANDRI: -- the stipulated amount. We
13 have --

14 THE COURT: Because if it wasn't stipulated
15 to --

16 MR. LI MANDRI: Yes, we have --

17 THE COURT: -- the jury's certainly free to
18 accept or reject an expert's testimony.

19 MR. LI MANDRI: We have a written stipulation
20 and --

21 THE COURT: Well, if you have a written
22 stipulation, then it will be submitted when we enter
23 the order for judgment.

24 Is there a written stipulation to the amount
25 of damages?

1 MR. DINIELLI: Your Honor, we had entered one
2 and that was withdrawn when we heard that it was going
3 to be challenged, and the doctor came and testified
4 live instead.

5 MR. LI MANDRI: But not as to the amount.
6 And the Court said he will only testify to what's in
7 the stipulation. We didn't challenge the amount
8 because it was only to be --

9 THE COURT: Well, I don't know --

10 MR. LI MANDRI: It was only causation.

11 THE COURT: I don't know what's in the
12 written stipulation.

13 MR. LI MANDRI: Okay. Well, I don't have it
14 with me. But it --

15 THE COURT: All right. Well, then I'm not
16 entering a judgment right now. I just said all I'm
17 doing is doing a statement of verdict for what is
18 listed on the jury sheet.

19 MR. LI MANDRI: All right.

20 THE COURT: This is subject to an order for
21 judgment because we have to mold the amounts, it has to
22 be tripled, and there has to be counsel fees. So I'm
23 not entering judgment, a final judgment today.

24 MR. LI MANDRI: Understood.

25 THE COURT: If there was a written

1 stipulation, and the amount is included, then that's
2 the amount that will be included for Sheldon Bruck.

3 MR. LI MANDRI: For Benjamin Unger, Your
4 Honor.

5 MR. DINIELLI: Your Honor, it was Benjy
6 Unger, Your Honor.

7 THE COURT: For Benjy Unger? I'm sorry.
8 Benjy Unger. Okay?

9 All right. Thank you all very much.

10 I'm going to return -- please be seated.
11 This is yours, so I don't need --

12 (Off the record. Back on the record)

13 THE COURT: -- evidence, whatever is P, D,
14 and J, the Court will not hold on to the --

15 (Proceedings concluded)

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CERTIFICATION

1
2
3 I, Patrice Mezzacapo, the assigned transcriber, do
4 hereby certify that the foregoing transcript of
5 proceedings in the Hudson County Superior Court, Law
6 Division on June 25, 2015 on CD No. 6/25/15, Index Nos.
7 8:58:58 to 9:10:45, 9:17:16 to 10:20:45, 10:21:41 to
8 10:22:05, 1:50:47 to 2:09:29 is prepared in full
9 compliance with the current Transcript Format for
10 Judicial Proceedings and is a true and accurate
11 compressed transcript of the proceedings as recorded.
12
13
14
15

16 Patrice Mezzacapo, AD/T #214
17 METRO TRANSCRIPTS, L.L.C.
18

19 Date:
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