Exhibit 33

COPY

SUPERIOR COURT OF NEW JERSEY
COUNTY OF HUDSON

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

v.

JONAH (JEWS OFFERING NEW ALTERNATIVES FOR HEALING F/K/A JEWS OFFERING NEW ALTERNATIVES TO HOMOSEXUALITY), ARTHUR GOLDBERG, ALAN DOWNING, ALAN DOWNING LIFE COACHING LLC,

FILED
APR 24 2015
PETER F. BARISO, JR., A.J.S.C.

CIVIL ACTION
STATEMENT OF REASONS
FOR THE COURT'S
APRIL 24, 2015 ORDERS

STATEMENT OF REASONS

I.

This is a case-managed consumer fraud action. The DED passed December 29, 2014. Trial is scheduled for June 1, 2015.

Defendant, Jews Offering New Alternatives for Healing ("JONAH"), is a non-profit corporation dedicated to educating the Jewish community about the social, cultural, and emotional factors that lead to same-sex attractions. JONAH uses counseling and other methods to help people rid themselves of unwanted same-sex attractions.

On November 27, 2012, plaintiffs Michael Ferguson, Benjamin Unger, Sheldon Bruck, Chaim Levin, Jo Bruck, and Bella Levin (collectively "plaintiffs"), filed an action against defendants Jews Offering New Alternatives for Healing ("JONAH") and others. It is alleged that JONAH is a nonprofit corporation dedicated to educating the Jewish community about the social, cultural, and emotional factors that lead to same-sex attractions. JONAH's clientele and counselors are not restricted to members of the Jewish faith. It is further alleged that JONAH

uses counseling and other methods to assist individuals to purge unwanted same-sex attractions. According to plaintiffs, JONAH's business practices violate the New Jersey Consumer Fraud Act ("CFA"), N.J.S.A. 56:8-1 to -20, by misrepresenting that homosexuality is a mental illness or disorder and that JONAH's therapy program is effective in changing the sexual orientation of clients.

The Complaint asserts that JONAH provided conversion therapy and counseling services purporting to change plaintiffs' sexual orientation from homosexual to heterosexual. JONAH believes that homosexuality is a "learned behavior" that can be reduced or eliminated through psychological and spiritual help. See JONAH's History, JONAH, available at http://jonahweb.org/sections.php?secId=11 (last visited January 30, 2015). In addition to offering counseling on homosexuality, JONAH's scope of services include therapy on other "sexual conflicts," such as "sexual promiscuity, pornography, sexual abuse, pedophilia or pederasty, compulsive masturbation, fetishes, transvestitism, incest, prostitution, emotional dependency, [and] sexual addictions." Ibid.

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

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

Other one-on-one activities consisted of counseling clients to spend more time at the gym and to be naked with their fathers at bathhouses. Id. at ¶ 54. Downing also instructed Unger to beat an effigy of his mother with a tennis racket while screaming, as if killing her. Id. at ¶ 59.

Another JONAH counselor advised plaintiff Sheldon Bruck ("Bruck") to wear a rubber band on his wrist and snap it each time he felt attracted to another man. Id. at ¶ 51.

Organized group activities included reenacting scenes of past abuse. For example, Downing instructed Levin to select an individual from the group to role-play his past abuser. The selected participant would repeat statements similar to those his abuser had made, such as "I won't love you anymore if you don't give me blow jobs." Ibid.

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

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

As part of its conversion therapy counseling, JONAH told plaintiffs that homosexuality is loathsome and that homosexuals are more susceptible to loneliness, suicidal thoughts, and contracting HIV/AIDS. Id. at ¶ 61.

JONAH typically charged plaintiffs $100 for each individual session, and $60 for each group session. Id. at ¶ 43. The cost of these services could and did exceed $10,000, per year depending on the individual. Id. at ¶ 11.

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

During a hearing on January 30, 2015, plaintiffs clarified their intention to prove at trial that JONAH made the following misrepresentations: (1) homosexuality is a mental illness or disorder; (2) JONAH could cure or treat that disorder; (3) JONAH could do so within some specified time period, such as two to three years, which differed from person to person; (4)

JONAH's program had specific success rates, sometimes one-third and other times two-thirds or 70-75%; (5) JONAH's program theories and techniques were scientifically based and valid; (6) JONAH's program was capable of changing people from homosexual to heterosexual; and (7) JONAH used unconscionable business practices. Plaintiffs made clear that they do not intend to prove that sexual orientation change efforts ("SOCE") in general cannot be effective. They address the practices of JONAH's program specifically, rather than the universe of all possible efforts to change sexual orientation.

By way of damages, plaintiffs seek two sources of recovery. First, they claim they are entitled to restitution of all sums paid to JONAH. Second, they claim that reparative therapy was necessary as a result of JONAH's services and that, as a result, JONAH is liable for those costs. For example, Unger became deeply depressed and suffered an impaired ability to engage in physical and emotional relationships with men because JONAH conditioned him to view such relations as unnatural. Id. at ¶ 72. Bruck experienced depression, anxiety, and suicidal thoughts because of his therapy sessions with JONAH. Id. at ¶ 95. In short, each plaintiff sought one or more professional mental counselors following his experience with JONAH. Id. at ¶¶ 73, 85, 98, 108. Consequently, plaintiffs assert that money expended for their post-JONAH therapy should be calculated as part of their ascertainable loss under the CFA.

II.

A.

Plaintiffs' Motions in Limine

Plaintiffs submit four motions in limine. Motion No. 1 asks the court to preclude any discussion of, questioning about, or implicit or explicit reference to Dr. Janja Lalich's sexual orientation at trial. Motion No. 2 asks the court to preclude defendants from question plaintiffs on sensitive personal topics, including: (1) sexual abuse as a cause of homosexuality; (2) plaintiffs' alcohol or drug use; (3) number of sexual partners; (4) current sexual practices; (5) family issues; (6) marital issues; and (7) current religious beliefs or level of religious observance. Motion No. 3 requests that Thaddeus Heffner be excluded from testifying at trial. Motion No. 4 asks the court to preclude defendants from: (1) calling more than three witnesses for the purpose of testifying as to their claimed personal experience of successful orientation change through participation in the JONAH program; and (2) calling any witness at trial whose testimony would

be offered to provide the efficacy of defendants' services but whose claimed successful change of sexual orientation predated any participation in the JONAH program.

Plaintiffs' Motion in Limine No. 1: Plaintiffs argue that the subject matter of Dr. Lalich's testimony, relating to coercive influence, is plainly independent of her sexual orientation. Drawing attention to it is intended to unfairly prejudice the jury in furtherance of JONAH's discredited theory that there is a "gay conspiracy" arrayed against them.

JONAH's Opposition: JONAH argues that the scope of cross-examination of experts is broad. Dr. Lalich's sexual orientation is relevant to the basis of her opinions regarding JONAH's religious worldview, with which she disagrees.

Plaintiffs' Motion in Limine No. 2: Plaintiffs argue that the subjects listed in Motion No. 2 lack probative value and are unduly prejudicial. For example, discussion of Mr. Levin's childhood sexual abuse as being a potential cause of his homosexuality has no probative value and should be excluded because the court has already addressed the falsehood that homosexuality is a disorder.

JONAH's Opposition: Questioning plaintiffs on certain sensitive personal topics is relevant and proper because their "unhealed wounds" may have impacted their experiences with JONAH's services. Plaintiffs' alcohol and drug use, family issues, and sexual practice may explain their alleged harm and failure to resolve their same sex attractions. For example, Mr. Levin's childhood sexual abuse and sexual addictions are relevant in determining whether his own history, rather than inadequacies of JONAH's program, were the cause of his inability to change his sexual orientation—i.e. why his life coaching sessions were more complex and his various issues more difficult to resolve. Also, Levin's sexual practices before and after JONAH, including his inability to cease engaging in risky sexual behavior, may explain his alleged harm and failure to change his sexual orientation. Plaintiffs' religious beliefs are also relevant because they may show that their abandonment of their religious beliefs changed their goals with respect to their sexual orientation change efforts.

Plaintiffs' Motion in Limine No. 3: Mr. Heffner should be precluded from testifying because his only involvement in this matter was that he served as a counselor to former plaintiff, Sheldon Bruck. Although Mr. Bruck's mother, Jo Bruck, remains a plaintiff, her claims derive entirely and exclusively from statements made by defendant Arthur Goldberg. Mr. Heffner is

merely a therapist to whom JONAH occasionally refers clients. Mr. Heffner also cannot provide testimony relevant to the question of the efficacy of JONAH's program because he admittedly has little knowledge of JONAH's specific practices.

JONAH's Opposition: JONAH argues that alleged CFA violations must be viewed in their total context. Mr. Heffner's representations should be considered in this total context. For example, Heffner had discussions with Jo and Sheldon Bruck about Mr. Bruck's proposed counseling program and had them review and sign JONAH's consent forms. His testimony can be used to impeach claims made by Sheldon Bruck in his complaint and at his deposition. Heffner also knows a great deal about PCC and has worked closely with Goldberg and Downing in staffing JIM weekends. He can testify regarding the alleged harm to Sheldon Bruck. Further, Dr. Lalich relies on Bruck's statements about alleged mistreatment by Heffner as a basis for her opinions regarding the coercive nature of JONAH's practices.

Plaintiffs' Motion in Limine No. 4: There is no need to present nine witnesses with the same testimony—such testimony is cumulative, wastes time, and should be limited. Further, testimony by multiple "success story" witnesses, all offering essentially the same testimony, attempts to suggest that JONAH's program is statistically proven even though it is not. Additionally, any success story witnesses whose claimed success predated their involvement in JONAH or JIM cannot be attributed to JONAH's program and is therefore irrelevant.

JONAH's Opposition: JONAH states that it narrowed the field of "success story" witnesses to those it plans to present at trial from over 100 individuals who volunteered to testify. Four will give live testimony and five will be presented by edited video tape. Each has a unique story to tell about their overcoming same sex attraction using various processes referenced in the Complaint. These witnesses are necessary to present a complete defense, especially as to the claims of undue influence, coercion, and unethical behavior. Further, the court's February 10, 2015 decision in the parties' summary judgment motions notes (in dicta) that the question of whether the use of customer reports, or anecdotal evidence, is a legitimate means of assessing client outcomes raises a factual dispute best suited for the jury. Nor were any plaintiffs provided statistics on SOCE success rates to induce them to use JONAH's services. Practically, calling all nine witnesses will not extend the trial beyond three weeks. Chandler Duncan's testimony is

also relevant despite the fact that he largely overcame his same sex attraction before attending PCC's JIM weekend. He will testify that he continued through his "journey out of homosexuality" even after he attended a JIM weekend and that he greatly benefited from his work with JONAH.

B.

Defendants' Motions in Limine

The JONAH defendants submit eight motions in limine. Motion No. 1 seeks to preclude questioning Mr. Wyler regarding his private sexual life. Motion No. 2 requests that plaintiffs be precluded from introducing evidence regarding Journey Beyond and JIM except concerning the specific processes which plaintiffs allege caused them harm. Motion No. 3 seeks to bar references to Arthur Goldberg's ("Goldberg") use of the title "Dr." Motion No. 4 seeks to preclude plaintiffs from impeaching Dr. Berger using emails from the National Association for Research & Therapy of Homosexuality ("NARTH") listserv. Motion No. 5 seeks to (1) exclude: (a) all communications made on the JONAH listserv; and/or (b) all communications made by defendants to third parties; or, in the alternative, (2) (a) limit useable JONAH listserv communications to communications from Goldberg and Elaine Berk to plaintiffs Unger and Levin during the time in which they participated in JONAH, and/or (b) exclude all communications made by defendants to third parties. Motion No. 6 seeks to limit plaintiffs' experts' testimony to opinions based on information known at the time of their depositions. Motion No. 7 asks that the court preclude plaintiffs from raising the issues of (1) Goldberg's criminal convictions; (2) Goldberg's expulsion from the American Psychotherapy Associations; and (3) Goldberg's disbarment. Motion No. 8 asks the court to: (1) preclude all of plaintiffs' experts from testifying as to the effectiveness of SOCE in general; (2) bar Dr. Beckstead from testifying as to the efficacy of JONAH's SOCE methods; (3) prohibit Dr. Bernstein from testifying about the efficacy of JONAH's SOCE methods; (4) preclude Dr. Lalich from testifying about the alleged harms suffered by plaintiffs; (5) bar Dr. Lalich from opining about the scientific basis of JONAH's SOCE methods; (6) bar plaintiffs' experts from testifying that JONAH's programs violated ethical guidelines or fell below a standard of care; (7) prevent plaintiffs' from testifying that homosexuality is not a mental illness.

JONAH's Motion in Limine No. 1: JONAH argues that, because Rich Wyler is only testifying in his capacity as a life coach at PCC, rather than a JONAH "success story," any questions regarding his private sexual life are irrelevant and only serve to harass him.

Plaintiffs' Opposition: Plaintiffs argue that they are entitled to test JONAH's representation to potential clients, including plaintiffs, that Mr. Wyler is a success story in urging them to attend JIM weekends. Defendants cannot use Mr. Wyler's purported success to advertise their services as effective, while simultaneously preventing plaintiffs from exposing on cross-examination at trial that the founder of PCC has not "changed." Consequently, the truth about Wyler's purported success in becoming heterosexual is squarely relevant to the central issue in this case: the efficacy of JONAH's conversion therapy program.

JONAH's Motion in Limine No. 2: Plaintiffs should be precluded from referencing Journey beyond because it is a program only offered by People Can Change ("PCC"), not by JONAH. Additionally, none of the plaintiffs attended Journey Beyond. Plaintiffs should be barred from questioning about JIM weekends because JONAH did not draft or otherwise contribute to the script of the JIM weekend and are not authors of any representations made at JIM.

Plaintiffs' Opposition: Plaintiffs argue that JONAH cannot pick and choose what the jury learns about the PCC weekends. Defendants are inextricably intertwined with Journey Beyond, which should be understood as a component of the JONAH program. Defendant Downing created Journey Beyond and regularly leads the weekends, along with Arthur Goldberg. Eight out of JONAH's nine "success story" witnesses attended and partially attribute their success to Journey Beyond, and are thus subject to cross-examination about it. Further, because Journey Beyond is a component of the program that JONAH argues plaintiffs did not complete, the jury is entitled to know the details so it has all the facts relevant to JONAH's argument that plaintiffs are themselves to blame for their lack of change. Evidence related to JIM, a centerpiece of JONAH's program often marketed by Goldberg, is also admissible. Goldberg and Downing admitted to having input into the JIM script. Nor should discussion of JIM be limited to discussion of the portions of the weekend highlighted in the Complaint. Plaintiffs are not required to provide in the Complaint an exhaustive list of every portions of JONAH's program. Further, plaintiffs attended all of JIM, not simply the portions described in the Complaint.

JONAH's Motion in Limine No. 3: JONAH argues that plaintiffs should be precluded from questioning Goldberg concerning his use of the title "Dr. Goldberg" because it is not a fraudulent misrepresentation, given that he holds a *juris doctor*, and examination concerning it is more prejudicial than probative.

Plaintiffs' Opposition: Plaintiffs argue that Mr. Goldberg uses the title "doctor" to create the false impression that he has mental health training and expertise. It is common knowledge that lawyers do generally not use the title "doctor". Goldberg's use of the title makes his statements more likely to mislead the people to whom he markets JONAH's services. In determining whether Goldberg's statements had the "capacity to mislead," the jury is entitled to know of his use of the title "doctor." It is also clear that people were misled—as evidenced by an invitation to participate in a study for *practicing clinicians* and other examples. Further, Dr. Lalich will testify that JONAH exhibits characteristics associated with groups that use coercive influence, one of which is to hold Mr. Goldberg out as a dominant leader. Any prejudice by admission of this evidence would not be undue, and would not outweigh the strong probative value of it.

JONAH's Motion in Limine No. 4: Plaintiffs should be precluded from impeaching Dr. Berger using NARTH listserv emails. JONAH argues that plaintiffs' counsel obtained access to the NARTH sponsored clinical listserv ("CLS") inappropriately. The documents were never subpoenaed and defendants were unaware of the means by which plaintiffs' counsel obtained those documents until recently. Defendants have not been able to confirm plaintiffs' assertion that the CLS was available online in September 2012. As such, plaintiffs cannot authenticate these confidential documents.

Plaintiffs' Opposition: Plaintiffs argue that the court should deny JONAH's motion to preclude examination of Dr. Berger concerning statements he made on the NARTH listserv because the communications in question were publicly available at the time plaintiffs collected them, the communications are not protected by any form of legal privilege, and the communications go to the weight of Dr. Berger's testimony. Additionally, the NARTH emails would be relevant impeachment evidence against any trial witness who participated on the NARTH listserv, including Goldberg.

JONAH's Motion in Limine No. 5: JONAH argues that the JONAH listserv was a private and confidential email list for Jewish individuals approved by members that had access to

it, were prescreened for approval, and were typically also interviewed by Goldberg. At most, only communications from Goldberg or Elaine Berk ("Berk") that were read by Levin and Unger should be admitted. JONAH argues that only the representations made to plaintiffs can be used. However, these communications cannot be used against JONAH because Goldberg made the statements in his individual capacity.

Plaintiffs' Opposition: Plaintiffs argue that defendants used the JONAH listserv to advertise their conversion therapy services and, consequently, all defendants' JONAH listserv communications are admissible for purposes of this action. JONAH's argument that the representations must be made to the "public at large" fails because the CFA holds no such requirement. Further, JONAH's argument that only the listserv communications received by Levin or Unger are admissible fails for three reasons. First, Goldberg and Berk are co-directors of JONAH, Inc. and are the only individuals who can speak on its behalf—their acts are the acts of the corporation. Second, the listserv emails can be used to impeach Berk's and Goldberg's testimony. Third, while Levin was a member of the JONAH listserv, he had access to and reviewed a full archive of earlier JONAH listserv emails. Finally, defendants emails to third parties are admissible for impeachment purposes and to establish that defendants habitually made the same misrepresentations to others in response to the same questions asked by plaintiffs.

JONAH's Motion in Limine No. 6: JONAH argues that plaintiffs' experts' testimony should be limited to information known prior to, and disclosed at, their depositions because permitting them to change their opinions based on information learned subsequent to their depositions would be unfairly prejudicial.

Plaintiffs' Opposition: Plaintiffs' experts will offer the same opinions that they presented in their written reports, and about which defendants questioned them in depositions. There is no case law to suggest that a deposition is a memory test such that if the experts did not recall a particular fact or basis for their opinion at their deposition, they could not testify about those matters at trial. The court has already determined that plaintiffs' experts opinions are sufficiently supported by facts and data. The opinions set forth in the expert reports have not changed and remain the ones they intend to offer at trial. The relief requested, limiting the facts and data and sequestering the experts from trial, is

contrary to the New Jersey Rules of Evidence, which allows experts to base their opinions on facts learned "at or before the hearing." N.J.R.E. 703.

JONAH's Motion in Limine No. 7: Arthur Goldberg's 25-year-old criminal convictions should be excluded. Additionally, disclosing his mail fraud conviction would be unduly prejudicial because although both the CFA and mail fraud involve fraud, the CFA requirement for liability includes negligent misrepresentations while mail fraud requires intent. Raising the conviction may imply to the jury that Goldberg intended to commit fraud. Additionally, plaintiffs should be precluded from raising Goldberg's expulsion from the American Psychotherapy Association. JONAH asserts that Goldberg was expelled for allegedly lying about his conviction on his application form. However, the form asked only whether he had been disciplined for any ethical violations in the past ten years. He answered no because his criminal conviction occurred prior to that.

Plaintiffs' Opposition: All of the facts relating to Goldberg's conviction are relevant and probative and should be admitted. These include: Goldberg's convictions for fraud and conspiracy, his subsequent disbarment, his concealment of his criminal history in order to obtain counseling certifications, his exit from the NARTH board and loss of the certifications after his criminal history was exposed, his inconsistent claims about whether he personally engages in counseling, and the exchange between him and Bruck concerning his criminal past. Under N.J.R.E. 609(b)(1), the court has discretion to admit Goldberg's conviction if its probative value exceeds it prejudicial effect. A factor to be considered in this determination is whether the crime involved dishonesty, lack of veracity, or fraud. Defendants also fail to address the high probative value of this evidence, as Goldberg's activities in marketing JONAH's services are highly reminiscent of his financial fraud.

JONAH's Motion in Limine No. 8: JONAH argues that all experts should be barred from testifying about the effectiveness of SOCE in general because only defendants' specific practices are at issue.

Dr. Beckstead should be precluded from testifying about JONAH's methods because his opinions are based on the premise that SOCE never works and therefore JONAH's therapy cannot work. Additionally, his theories are not generally accepted and are rejected by the American Psychological Association. Specifically: (1) he defines sexual orientation differently;

(2) he opines that homosexuality is inborn despite the fact that there is no general consensus as to the cause of homosexuality; (3) he believes homosexuality can be objectively measure; and (4) he claims that SOCE is *per se* unethical. To the extent that any of these opinions are not generally accepted within the mental health field, those opinions should be excluded. Since they are foundational to his opinions regarding the effectiveness of SOCE, they should also be excluded.

Dr. Bernstein should be precluded from testifying regarding the efficacy of JONAH's methods because she did not sufficiently review discovery material. Additionally, she has no experience with psychodrama. She does not state a factual basis or methodology for her opinions regarding JONAH's program and should thus not be allowed to testify as to them.

Dr. Lalich should be precluded from testifying as to plaintiffs' alleged harms because she has no experience with SOCE and no experience counseling or treating clients in a therapeutic setting. Thus, she is not qualified to make any diagnoses and no basis upon which to testify that plaintiffs suffered psychological or medical harm as a result of their involvement with JONAH. Dr. Lalich should also be precluded from testifying about the efficacy of JONAH's program and whether JONAH's program is scientific. She is a sociologist, not a psychologist or psychiatrist, and her expertise is only in coercive influence.

Drs. Bernstein and Beckstead should be precluded from opining on JONAH's practices because they have no basis for those opinions. Meaning, even if defendants misrepresented their practices as scientific, plaintiffs' experts' opinions concern whether the techniques are used in mainstream mental health profession, not whether they are scientific.

All of plaintiffs' experts should be precluded from testifying that JONAH's program violated ethical guidelines or violated a standard of care. This is not a professional malpractice case. Plaintiffs' experts are not in the same profession as defendant Alan Downing, and thus cannot opine as to the ethical guidelines for life coaches. Additionally, the expert opinions relate to alleged negligent practices which are not sufficient to maintain a consumer fraud claim.

Finally, plaintiffs' experts should be barred from testifying that homosexuality is not a mental illness because the court has already determined that issue as a matter of law.

Plaintiffs' Opposition: JONAH's motion in limine to bar certain expert testimony is largely a retread of its expert exclusion motion, which the court already denied in a detailed oral

opinion. JONAH has not offered any changed law or additional facts that could justify a different result on this motion.

Consistent with plaintiffs' proffer that their proof at trial will not extend to the ineffectiveness of all SOCE, plaintiffs' experts will not offer such evidence. However, there is a distinction between (1) offering testimony to prove that all SOCE is ineffective and (2) offering testimony as to aspects of SOCE generally, how those aspects relate to JONAH's program, and how they helped form the experts' opinions on JONAH's specific practices. For example, Dr. Beckstead will apply his knowledge of SOCE to the facts of this case to render his opinion as to JONAH's practices. Dr. Beckstead should be allowed to describe his background in researching SOCE so that the jury understands his field of expertise. These opinions can and will be offered without any of plaintiffs' experts testifying as to whether all forms of SOCE are ineffective. Additionally, testimony on the history and practice of SOCE is relevant to JONAH's misrepresentation that their services are scientifically based.

The court has already held, in response to JONAH's expert exclusion motion, that Drs. Beckstead, Bernstein, and Lalich may testify about the efficacy of JONAH's program. Through his significant research and clinical experience, Dr. Beckstead has developed the necessary expertise to opine that the modalities JONAH employs have no basis in scientific literature or practice and no identifiable efficacy in altering sexual orientation. The fact that he has not studied JONAH specifically is irrelevant; as JONAH does not contest that it employs such techniques. Dr. Bernstein has ample basis to testify about the purported efficacy of JONAH's practices. JONAH offers no new argument for why Dr. Bernstein should be precluded from testifying. JONAH confuses factors relevant to admissibility with factors relevant to credibility.

Dr. Lalich is qualified to testify that plaintiffs were harmed by JONAH's practices. Harm is not a medical condition with which a person can be diagnosed, and JONAH offers no explanation as to why Dr. Lalich, a social psychologist with expertise in the area of coercive practices and their effects, cannot give her expert opinion as to whether plaintiffs' descriptions of their harm are consistent with the potential negative effects associated with JONAH's practices. In doing so, she is not diagnosing plaintiffs.

Dr. Lalich is also qualified to testify as to the purported efficacy of JONAH's practices. JONAH offers no explanation as to why Dr. Lalich, a social psychologist and an expert in the area of coercive influence and its effects on participants, is not qualified to speak as to the

effectiveness of JONAH's methods. The qualifications outlined in Dr. Lalich's expert report make clear that she has an in depth knowledge of many of the treatments and practices used by JONAH and can speak to their effectiveness. JONAH cites Dr. Lalich's lack of experience with SOCE as though it has something to do with the opinions she will give, but her opinions do not require such expertise. She is amply qualified to speak as to whether certain methods used by JONAH are unscientific and ineffective, based on her years of experience and research in the areas outlined in her report.

Plaintiffs' experts are qualified to offer that JONAH's services fall below a standard of care. Evidence of the unethical and potentially dangerous nature of JONAH's practices is directly relevant to JONAH's misrepresentation that their services are scientifically based. Plaintiffs' experts will not testify as to whether defendants were negligent in providing specific treatments. Rather, evidence about the unethical nature of JONAH's practices goes to whether these practices harmed plaintiffs, whether the practices are effective, and to the credibility of witnesses claiming that JONAH's therapies are effective, harmless, and scientific. Further, JONAH's argument that none of plaintiffs' experts can testify as to the ethical standards for life coaches misses the point. JONAH has inserted itself into the business of "tinkering with the internal machinery of people's minds," and are thus held to the standard of care governing the professional mental health field.

Finally, plaintiffs' experts can testify to the scientific fact that homosexuality is not a mental disorder because this is a matter of scientific fact, not of law. The court's prior order was based on scientific facts that were established, among other things, by the reports of plaintiffs' experts. These experts must be allowed to testify as to the scientific facts that form the bases of their expert opinions because such testimony is essential in order for the jury to understand the principles that underlie each expert's testimony.

III.

These motions were the subject of extensive oral argument on April 23, 2014 and the court incorporates the colloquy and findings placed on the record.

Generally, all relevant evidence is admissible unless prohibited by some exclusionary rule. N.J.R.E. 401, 402. In determining whether evidence is relevant, the inquiry should focus on "the logical connection between the proffered evidence and a fact in issue." Furst v. Einstein Moomjy, Inc., 182 N.J. 1, 15 (2004). "Relevant evidence" means "evidence having a tendency in

reason to prove or disprove any fact of consequence to the determination of the action." N.J.R.E. 401. The test of relevancy is its probative value with respect to the points in issue. Brenman v. Demello, 191 N.J. 18, 30 (2007); Simon v. Graham Bakery, 17 N.J. 525, 530 (1955); see also State v. Medina, 201 N.J. Super. 565, 580 (App. Div. 1985) ("[T]he more attenuated and the less probative the evidence, the more appropriate it is for a judge to exclude it.").

Substantive law defines which facts are relevant. JONAH is charged with violating the New Jersey Consumer Fraud Act. To make a prima facie case under the CFA, a plaintiff must prove three elements: "1) unlawful conduct by defendant; 2) an ascertainable loss by plaintiff; and 3) a causal relationship between the unlawful conduct and the ascertainable loss." D'Agostino v. Maldonado, 216 N.J. 168, 184 (2013) (quoting Bosland v. Warnock Dodge, Inc., 197 N.J. 543, 557 (2009)). The CFA specifically provides that:

> [t]he act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice[.]
>
> [N.J.S.A. 56:8-2.]

Unlawful conduct can be established through affirmative acts or omissions of any of the violations specified under N.J.S.A. 56:8-2, irrespective of intent. Thiedemann v. Mercedes-Benz USA, LLC, 183 N.J. 234, 245 (2005); see also D'Agostino, supra, 216 N.J. at 184 (explaining that CFA "establishes a broad business ethic applied to balance the interests of the consumer public and those of the sellers" (citation and internal quotation marks omitted)). Plaintiffs contend that JONAH engaged in unconscionable practices, deception, fraud, false promises, and misrepresentations in rendering its services.

Relevance alone does not suffice to render evidence admissible, for "even if relevant, evidence nonetheless 'may be excluded if its probative value is substantially outweighed by the risk of [] undue prejudice, confusion of issues, or misleading the jury...." Brenman, supra, 191 N.J. at 30 (quoting N.J.R.E. 403). Because all unfavorable evidence is somehow prejudicial, evidence is inadmissible only when the prejudice is *undue* because its probative value "is so

significantly outweighed by [its] inherently inflammatory potential as to have a probable capacity to divert the minds of the jurors from a reasonable and fair evaluation" of the basic issues of the case. State v. Thompson, 59 N.J. 396, 421 (1971). Rule 403 also prevents parties from offering evidence whose probative value is substantially outweighed by risk of "undue delay, waste of time, or needless presentation of cumulative evidence." N.J.R.E. 403. These grounds for exclusion relate to judicial efficiency. See State v. Garfole, 756 N.J. 445, 456-57 (noting "the concern of the law for orderly and efficient administration of the jury process"). Thus, evidence is cumulative where it serves only to support a point already established by other admitted evidence. State v. Mucci, 25 N.J. 423, 433 (1957).

Although N.J.R.E. 607 permits a party to assess the credibility or bias of a witness through cross-examination, the bias to be elicited must also be relevant to a material fact at issue in the case. See N.J.R.E. 607 comment 1 (2014) ("a party may affect the credibility of a witness by direct or cross-examination upon the issues involved in the case"). In addition, a party may introduce extrinsic evidence relevant to credibility, whether or not that extrinsic evidence bears upon the subject matter of the action. State v. Martini, 131 N.J. 176, 255 (1993). Rule 607 has its limits—"the cross-examiner [does not have] a license to roam at will under the guise of impeaching the witness." State v. Pontery, 19 N.J. 457, 473 (1955) disapproved of on other grounds by In re Waiver of Death Penalty, 45 N.J. 501 (1965). Thus, courts must be wary of attempts to use credibility as a pretext for the impermissible introduction of otherwise excludible evidence. See State v. Kelly, 207 N.J. Super. 114, 119 (App. Div. 1986) (cross-examination is not [a] universal solvent for reducing everything to admissibility).

N.J.R.E. 104(a) commands that, "[w]hen the . . . admissibility of evidence . . . is in issue, that issue is to be determined by the judge. . . . [who] may hear and determine such matters out of the presence or hearing of the jury." See Kemp v. State, 174 N.J. 412, 432-33 (2002) ("The Rule 104 hearing allows the court to assess whether the expert's opinion is based on scientifically sound reasoning or unsubstantiated personal beliefs. . . . In the course of the Rule 104 hearing, an expert must be able to identify the factual basis for his conclusion, explain his methodology, and demonstrate that both the factual basis and underlying methodology are scientifically reliable."); see also Koruba v. Am. Honda Motor Co., Inc., 396 N.J. Super. 517, 523 (App. Div. 2007), certif. denied, 194 N.J. 272 (2008) (noting that trial court conducted Rule 104 hearing and determined that expert's opinion was barred as net opinion). Proofs offered at a

Rule 104 hearing need not comply with the other rules of evidence, except that N.J.R.E. 403 can be invoked and valid claims of privilege will be recognized. See State v. Dohme, 229 N.J. Super. 49, 55 (App. Div. 1988) (interpreting former rule 8(1), whose language is tracked by the present rule). Rule 104(a) determination allowing the challenged testimony to be heard by the jury does not limit the right of the opposing party to offer evidence at trial relevant to the weight or credibility of such testimony. N.J.R.E. 104(e); see State v. Falcetano, 107 N.J. Super. 383, 388 (Law Div. 1969).

IV.

A.

Plaintiffs' Motions in Limine

1.

Plaintiffs request that the court bar JONAH from any discussion of, questioning about, or reference to Dr. Janja Lalich's sexual orientation, arguing that the subject matter of her testimony is independent of her sexual orientation. Plaintiffs misinterpret, however, the scope of N.J.R.E. 607, which allows cross-examination to elicit bias relevant to a material fact at issue in the case. See N.J.R.E. 607 comment 1 (2014). Given her strong opinions, in addition to the nature of the case, the suggestion that Dr. Lalich's sexual orientation may have informed or affected her conclusions does not rise to the level of undue prejudice warranting exclusion of such questioning in its entirety. This determination, however, does not give JONAH a license to question Dr. Lalich extensively on all matters of her private life. Thus, plaintiffs' first motion in limine is denied, with the caveat that any related reference or questioning is limited to determining whether Dr. Lalich's sexual orientation may have biased her conclusions.

2.

Plaintiffs request that the court bar character attacks on plaintiffs through improper questioning on sensitive personal topics, enumerated above. The court finds the enumerated topics related to plaintiffs' personal histories are relevant, but only if they predate plaintiffs' involvement with JONAH and post-JONAH therapy because plaintiffs' personal histories provide potential alternative causes for plaintiffs' alleged harm and failure in changing their sexual orientation. Thus, unless any plaintiff is currently undergoing reparative therapy that adds to his calculation of damages, questions related to plaintiffs' current sexual practices, current

alcohol or drug use, and current marital or family issues are not relevant. The probative value of these topics is high and not substantially outweighed by a risk of undue prejudice because they relate directly to assessing the cause of plaintiffs' alleged harms. Plaintiffs seek to bar all reference to the sexual abuse suffered by plaintiff Chaim Levin. The court agrees that "sexual abuse as the *cause* of homosexuality" has no relevance to plaintiffs' proffers. The causes of homosexuality are not at issue in this case. However, this does not preclude all reference about the topic. Indeed, such questions may be relevant for the same reasons that plaintiffs' other personal history topics are relevant. Further, plaintiffs acknowledged that Mr. Levin has already disclosed his sexual abuse publicly, thus negating his claims of confidentiality and privacy.

Plaintiffs incorrectly state that their current religious beliefs have no probative value. Nor does N.J.R.E. 610, which bars evidence of a witness's religious beliefs or opinions for the purpose of impairing his or her credibility, prohibit such evidence in this case. This rule does not exclude proof of religious beliefs (or lack thereof) when offered for another purpose that is material to an issue in the action. See, e.g., In re Conroy, 98 N.J. 1321, 361-62 (1985) (admitting religious beliefs of an incompetent patient to determine the patient's prior intent to have life sustaining medical intervention). Plaintiffs' current religious beliefs are relevant in assessing whether a change of beliefs affected their sexual orientation change efforts and/or was an impetus for this CFA action.

3.

Plaintiffs' motion in limine to preclude Thaddeus Heffner from testifying is denied. Plaintiffs do not dispute that Mr. Heffner had involvement with JONAH's program beyond his counseling of Sheldon Bruck. Mr. Heffner worked closely with defendants Goldberg and Downing by staffing and co-leading JIM weekends and can thus testify regarding it. His knowledge of JIM is unique because he was a staff member, and thus, his testimony is not cumulative. Mr. Heffner's testimony would also be relevant in contradicting Mr. Bruck's testimony as a fact witness.

4.

Plaintiffs request that JONAH be limited to calling no more than three "success story" witnesses is denied. At this juncture, the court is not convinced that calling more than three success story witnesses will be cumulative, and thus, setting a bar for the number of such witnesses is not appropriate. Each witness had, according to JONAH, a "unique experience,"

with its program that will be relevant in presenting a defense to claims of undue influence, coercion, and unethical behavior. It is questionable whether the presentation of more than three witnesses is an attempt to suggest that JONAH's program is statistically proven. As noted in dicta in the courts February 10, 2015 summary judgment decision, whether customer reports are a legitimate means of assessing client outcomes is a question best suited for the jury. Further, because some of the proposed witnesses attended JONAH programs with plaintiffs, their testimony may be relevant in regard to the behavior exhibited by plaintiffs and comments may by plaintiffs during their participation in various JONAH modalities.

Plaintiffs' request that the court bar JONAH from calling any witness whose testimony would be offered to prove the efficacy of JONAH's services but whose claimed success predated their involvement in JONAH or JIM is denied. The issue in this case is whether JONAH misrepresented the effectiveness of its program. Thus, it is immaterial whether, as JONAH argues, these witnesses benefited from their participation in JONAH's program. The claims of success cannot be attributed to JONAH and are therefore irrelevant. However, the court recognizes that these witnesses may provide other relevant fact testimony about JONAH's program and modalities, which is relevant to JONAH's defense that its program is effective. Consequently, these witnesses cannot be completely barred from testifying. Chandler Duncan, whom the defendants indicated they plan to call as a "success story" witness, made clear that he was no longer attracted to men a month before he first attended a JIM weekend (his only JONAH-related experience). See Bensman Certification in Support of Plaintiffs' Motion in Limine ("Bensman Cert. 1"), Ex. 16, Duncan Tr. At 140:7-141:24. Thus, Mr. Duncan cannot attribute his participation in JONAH to his claimed success in changing his sexual orientation. However, his experience with JONAH may provide him with other relevant fact testimony about the JIM weekend, and he cannot be barred from testifying completely.

B.

JONAH'S Motions in Limine

1.

JONAH's request to preclude examination of Rich Wyler regarding his private sexual life is denied because it would prevent plaintiffs from questioning him on the subject of his purported change of sexual orientation. Mr. Wyler is the founder of PCC, the organization that sponsors JIM and Journey Beyond weekends. Plaintiffs allege he was presented as a success

story to all JONAH's clients that were urged to attend JIM weekends, which it marketed as a critical component of its conversion therapy program. Consequently, Mr. Wyler's purported success in becoming heterosexual is squarely relevant to the central issue in this case: the efficacy of JONAH's conversion therapy program. JONAH cannot use Mr. Wyler's purported success to advertise their services as effective, but then prevent plaintiffs from cross-examining him regarding his purported change in sexual orientation. The question of balancing Mr. Wyler's privacy interests against the need for some inquiry into his claimed change in sexual orientation was addressed in a May 9, 2014 hearing for plaintiffs' motion to compel Mr. Wyler to complete his deposition. The court made clear that some questioning on this subject, within reasonable limits, is appropriate. See Bensman Certification in Opposition to Defendants' Motions in Limine 1-8 ("Bensman Cert. 2"), Ex. 29, May 9, 2014 Hearing Tr. At 22:5-25. Plaintiffs may not question Mr. Wyler on all matters of his private sexual life, but questioning to test his claims cannot be excluded. The court cautions plaintiffs, however, that they must have a proffered basis for such questions before delving into Mr. Wyler's private sexual life.

2.

JONAH's motion in limine to preclude the introduction of evidence regarding Journey Beyond and JIM, other than evidence concerning the specific processes which plaintiffs allege caused them harm, is denied. The record makes clear that Journey Beyond and JIM are both properly understood as components of the JONAH program. Therefore, questioning about both are relevant to proving that JONAH's program is ineffective, even though plaintiffs did not attend Journey Beyond. Moreover, eight of JONAH's nine success story witnesses attended Journey Beyond and testified that it was a significant factor in their success. Plaintiffs cannot be barred from asking those witnesses about Journey Beyond's role in their success, especially given JONAH's contention that, because plaintiffs did not complete the full JONAH program, they are to blame for their failure in changing their sexual orientation. Questions also will not be limited to the alleged harms cited in plaintiffs' Complaint. Plaintiffs are not required to provide an exhaustive list of their alleged harm in order to state a claim. Banco Popular N. Am. V. Gandi, 184 N.J. 161, 166 (2005) ("The test for determining the adequacy of a pleading is whether a cause of action is suggested by the facts.").

3.

Evidence of Arthur Goldberg's use of the title "doctor" is admissible. Plaintiffs point to numerous instances in which Arthur Goldberg used this title. At trial, the jury will be asked to determine whether the JONAH defendants made certain misrepresentations. The CFA is violated when "an advertisement has the capacity to mislead the average consumer." Union Ink. Co., Inc. v. AT&T Corp., 352 N.J. Super. 617, 644 (App. Div. 2002). It does not matter "whether it can later be explained to the more knowledgeable, inquisitive consumer." Barry v. Arrow Pontiac, Inc., 100 N.J. 57, 69 (1985). In determining whether the statements Goldberg made had the "capacity to mislead," the jury is entitled to know if he used the title "doctor" when making them.

4.

JONAH's motion in limine to preclude examination of Dr. Berger concerning statements he made on the NARTH listserv is denied. Plaintiffs are entitled to assess, through cross-examination, a witness's credibility or bias if relevant to a material fact at issue in the case. See N.J.R.E. 607 comment 1 (2014). Extrinsic evidence relevant to credibility is also permitted, regardless of whether such evidence bears upon the subject matter of the action. Martini, supra, 131 N.J. at 255. The NARTH emails are clearly relevant and admissible to impeach Dr. Berger's credibility as an expert and can demonstrate bias against homosexual people. The NARTH emails would also be relevant impeachment evidence against any trial witness who participated on the NARTH listserv.

Plaintiffs have properly authenticated these documents. Authentication, a condition precedent to admissibility of writings, "is satisfied by evidence sufficient to support a finding that the matter is what its proponent claims." N.J.R.E. 901. "The rule does not require absolute certainty or conclusive proof. The proponent of the evidence is only required to make a *prima facie* showing of authenticity." State v. Mays, 321 N.J. Super. 619, 628 (App. Div. 1999). Direct evidence is not required; a writing may be authenticated by the presence of "sufficient circumstantial indicia of reliability." Id. at 629. The individuals involved in the discovery, archiving, and transfer of the NARTH emails prepared and signed declarations detailing this process. See Bensman Cert. 2, Ex. 66-68. In addition, Dr. Berger directly admitted in his deposition that he participated on the NARTH listserv and authenticated specific NARTH emails presented to him during his deposition. See, e.g., Bensman Cert. Ex. 70, Berger Tr. At 218:24-

219:15. No legal privilege or other protection prevents use of the NARTH emails—there is no general privilege extending to all communications between private individuals who desired that their communications be kept secret. Thus, relevant NARTH emails are admissible to impeach Dr. Berger.

5.

JONAH's request that the court exclude all communications made on the JONAH listserv, exclude all communications made by defendants to third parties, or limit useable JONAH listserv communications to those between plaintiffs and defendants is denied in its entirety. JONAH argues that the communications on the listserv are not advertisements because they were not made to induce purchase of its services and because they were not directed to the "public at large." Advertisements attempt "to induce directly or indirectly any person to enter ... into any obligation ... or to increase the consumption thereof..." D'Agostino v. Maldonado, 216 N.J. 168, 186-87 (2013). The court has already found that JONAH litserv emails from defendants can serve as the basis of a CFA claim. See Bensman Cert., Ex. 73, June 7, 2013 Hearing Tr. At 15:12-14. Plaintiffs provide several examples of communications by Goldberg and Berk that can be characterized as advertisements by a jury. JONAH's "public at large" argument also holds no weight. The CFA does not require that representations must be made to the public. CFA actions can be based on private representations made between individuals. See, e.g., Gupta v. Asha Enters., L.L.C., 422 N.J. Super. 136, 147 (App. Div. 2011) (finding actionable misrepresentation in oral representation to restaurant customers of vegetarian nature of dish). The only case JONAH cites shows that the underlying goods or services must be offered to the public, not that the representation must be made to the public. See Marascio v. Campanella, 298 N.J. Super. 491, 498 (App. Div. 1997) (finding that those who purchase services generally sold to the public at large are consumers). JONAH's emails to third parties are also admissible because they can be highly probative for impeachment of Berk and Goldberg and relevant to suggesting habit in responding to inquiries.

6.

JONAH's motion in limine seeking to limit plaintiffs' experts' testimony to opinions based on information known at the time of their depositions and sequestering them from trial is denied. The relief JONAH requests holds no support in the law. New Jersey Rule of Evidence 703 provides that "[t]he facts or data in the particular case upon which an expert bases an

opinion or inference may be those perceived by or made known to the expert *at or before the hearing*." N.J.R.E. 703 (emphasis added). The court has already determined, in denying defendants' motion to exclude plaintiffs' experts, that the expert opinions are sufficiently supported by facts and data such that they are not mere net opinions. JONAH's attempt to now re-cast many of these same arguments as "contradictions" is not availing. Furthermore, based on the plain language of Rule 703, sequestration of expert witnesses pursuant to N.J.R.E. 615, is inappropriate. See State v. Popovich, 405 N.J. Super. 324, 328 (App. Div. 2009) ("[W]e are of the view that to interpret N.J.R.E. 615 to authorize the routine sequestration of expert witnesses ... is contrary to the terms of N.J.R.E. 703, which provides that an expert may base his opinion upon 'facts or data ... perceived by or made known to the expert at or before the hearing.' By its use of the preposition "at," the rule clearly envisions an expert observing trial proceedings and then commenting upon what he has heard").

7.

JONAH's request to preclude Arthur Goldberg's criminal convictions, expulsion from the American Psychotherapy Association, and disbarment is denied. Criminal convictions more than ten years old are not per se inadmissible, but are instead admissible if the court determines that its probative value outweighs its prejudicial effect. N.J.R.E. 609(b)(1). The Rules identify four factors the court may consider in making that determination, including: (1) whether there are intervening convictions; (2) whether the conviction involved a crime of *dishonesty, lack of veracity or fraud*; (3) the remoteness of the conviction in time; and the (4) seriousness of the crime. N.J.R.E. 609(b)(2); see also State v. Sands, 76 N.J. 127, 144 (1978) holding modified by State v. Brunson, 132 N.J. 377 (1993) ("Remoteness cannot ordinarily be determined by the passage of time alone. The nature of the convictions will probably be a significant factor. Serious crimes, including those involving lack of veracity, dishonesty or fraud, should be considered as having a weightier effect...").

Goldberg's fraud and conspiracy convictions are admissible because they are highly probative to the facts in this case. Plaintiffs allege that Goldberg's fraud conviction is inextricably intertwined with his activities in marketing JONAH's services—many of his actions on behalf of JONAH are highly reminiscent of the actions leading to his conviction. JONAH does not separately address the other facts it seeks to exclude beyond identifying them as connected with Goldberg's criminal history. However, Goldberg's disbarment and expulsion

from the American Psychotherapy Association are relevant and probative. His expulsion from the American Psychotherapy Association can show that, as recently as 2009, Goldberg still exhibits examples of fraud and dishonest behavior. Courts also routinely admit evidence of disbarment as relevant to credibility. See State v. Pearson, 39 N.J. Super. 50, 60 (App. Div. 1956) ("[F]or the purpose of attacking credibility it may be shown on cross-examination that a witness is a disbarred attorney"); Fuschetti v. Bierman, 128 N.J. Super. 290, 298 (Law Div. 1974) (holding evidence of disbarment admissible against civil defendants). Goldberg was disbarred because his criminal convictions "demonstrated his participation in activities that reflected adversely on his honesty, trustworthiness, and fitness as a lawyer." Matter of Goldberg, 142 N.J. 557, 560 (1995). The Supreme Court acknowledged the sentencing judge's conclusion that "it is very clear that although the defendant has only pleaded guilty to three counts of mail fraud ... there has been a conspiracy here of considerable magnitude, which has involved a lot of money, and has deprived a lot of people..." Id. at 566. The Court emphasized that Goldberg's conduct was "knowingly and willfully dishonest." Id. Given the probative value of this evidence, the jury is entitled to consider it in determining Goldberg's credibility.

8.

JONAH's motion in limine to bar certain expert testimony is denied in its entirety. Initially, the court notes that JONAH's Motion in Limine No. 8 is essentially a rehash of arguments previously made and already rejected at the January 30, 2015 hearing on the parties' motions to exclude experts. The only nuances are the separate paragraphs in the proposed order to preclude expert testimony. JONAH once again confuses factors relevant to admissibility with factors relevant to credibility. The court incorporates all of its prior decisions regarding expert testimony.

To provide additionally clarity, the arguments advanced by JONAH to preclude plaintiffs' experts from testifying regarding the scientific fact that homosexuality is not a mental disease or disorder must be rejected because plaintiffs' must prove material misrepresentation under the CFA. The court's previous ruling that it is a consumer fraud to represent homosexuality as a mental disease or disorder was based on the scientific facts that were established, among other things, by the reports of plaintiffs' experts. To prove that JONAH misrepresented homosexuality as a mental disorder, plaintiffs' experts must testify as to the context of that scientific fact. Likewise, the arguments presented to preclude plaintiffs' experts

from testifying about SOCE in general must be rejected because plaintiffs are required to prove a material misrepresentations about the scientific basis and effectiveness of JONAH's program and methods, the nature of which is not disputed. Testimony on the history, research, and practice of SOCE is thus directly relevant to JONAH's alleged misrepresentation that its services are scientifically based and effective.

For example, Dr. Beckstead will testify that the scientific research on SOCE does not support the assertions that the particular practices JONAH employs are effective in changing a person's sexual orientation and therefore it is inaccurate to say that JONAH's program is based in science. See Bensman Cert. 2, Ex. 87, Beckstead Report, ¶¶ 53-57. Through his research and clinical experience, Dr. Beckstead has developed the necessary expertise to opine that the modalities JONAH employs, including nudity and "healthy touch" have no basis in scientific literature or practice and no identifiable efficacy in altering a person's sexual orientation. See id. ¶¶28-29. Additionally, Dr. Bernstein's extensive professional experience, her years of training in the field of mental health services, her numerous publications, and her review of the materials cited in her expert report provide her with ample basis to opine on the specific therapeutic modalities JONAH's program employs.

The qualifications outlined in Dr. Lalich's expert report show that she has an in depth knowledge of many of the treatments and practices used by JONAH in their program and can speak to the effectiveness of such practices. See Bensman Cert. 2, Ex. 45, Lalich Report at 2-4. For example, Dr. Lalich can describe the history and use of psychodrama as a therapeutic modality and can thus opine on psychodrama as practiced by JONAH. Id. at 11-13. Dr. Lalich can also testify, based on her expertise in the area of coercive influence, that the use of "healthy touch" is unethical, not effective, not accepted in mainstream therapeutic practices, and is potentially harmful to clients. Id. at 7-8. However, Dr. Lalich's testimony as it relates to harm suffered by plaintiffs will be limited—she is not permitted to provide medical diagnoses.

Additionally, to establish that JONAH's program has no scientific basis, Plaintiffs' experts must prove that JONAH's practices are outside of the mainstream standard of care for mental health therapy. Evidence of the unethical and potentially dangerous nature of JONAH's practices is directly relevant to this misrepresentation because practices that are unethical pose a high risk of harm. This evidence is not intended to demonstrate that defendants were negligent, an issue not before the court. It is intended to determine whether JONAH's practices harmed

plaintiffs, whether JONAH's practices are effective and based in science, and the credibility of witnesses claiming that JONAH's therapies and practices are effective, harmless, and scientific. JONAH's argument that its program cannot be held to the same ethical guidelines governing licensed psychologists or psychiatrists is unavailing. If, as plaintiffs allege, JONAH represented its program and modalities as scientifically based, then it has inserted itself into the mental health field. Consequently, JONAH may be held to the same standard of care and ethical guidelines governing mental health professionals.

V.

For the foregoing reasons, JONAH's Motions in Limine 1-8 are denied in their entirety, with the exception of the limitation on Dr. Lalich's reference to medical diagnoses. Plaintiffs' Motions in Limine No. 1, 3, and 4 are denied. Plaintiffs' Motion in Limine No. 2 is granted in part as to references about sexual abuse as the cause of homosexuality and personal issues arising after the completion of plaintiffs' post-JONAH reparative therapy.