

BEFORE THE UNITED STATES FEDERAL TRADE COMMISSION

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HUMAN RIGHTS CAMPAIGN,  
NATIONAL CENTER FOR LESBIAN RIGHTS,  
AND THE SOUTHERN POVERTY LAW CENTER  
  
Petitioners,

PEOPLE CAN CHANGE, INC.  
  
Proposed Respondent.

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COMPLAINT FOR ACTION TO STOP  
FALSE, DECEPTIVE ADVERTISING AND OTHER BUSINESS PRACTICES

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## I. INTRODUCTION

The Human Rights Campaign, the National Center for Lesbian Rights, and the Southern Poverty Law Center respectfully request that the Federal Trade Commission (“FTC” or “the Commission”) investigate and put an end to the unfair, deceptive, and fraudulent business practices of the corporate entity People Can Change, Inc. (“PCC”), pursuant to the FTC’s mission to protect consumers from such egregious practices, in violation of Section 5 of the Federal Trade Commission Act. We request that the Commission take enforcement action to stop PCC’s deceptive advertising, marketing, and other business practices in all forms, including through its website, brochures, videos, social media, emails, or other advertisements or promotional materials.

### A. Overview of People Can Change and Its Unfair, Deceptive, and Fraudulent Practices

PCC offers, markets, sells, and performs services that purport to change a person’s sexual orientation or gender identity, commonly referred to as “conversion therapy.”<sup>1</sup> The practice is based on the false premise that being lesbian, gay, bisexual, or transgender (“LGBT”) is a mental illness or disorder caused by a developmental deficiency, trauma, and/or unmet emotional needs. Proponents of conversion therapy, including PCC, assert that addressing those underlying issues will heal the disorder and cause the person to no longer be LGBT. However, there is **no competent and reliable scientific evidence** supporting claims that PCC’s methods can change an individual’s sexual orientation; in contrast, **there is substantial competent and reliable scientific evidence** that conversion therapy, including the methods employed by PCC, is ineffective and can and often does result in significant health and safety risks to consumers of those services, as

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<sup>1</sup> Conversion therapy is sometimes also referred to as “reparative,” “reorientation,” or “ex-gay” therapy.

well as economic losses – exactly the types of injuries that are at the heart of the FTC’s mission to protect consumers from harm.

PCC’s mission is to assist individuals “transition away from unwanted homosexuality.”<sup>2</sup> The services PCC offers include group coaching, webinars, and “experiential healing weekend” programs. The fees charged range from \$75 per month for four weekly 80-minute sessions of telephonic group coaching, to \$875 for a “Journey Beyond” 4-day, 4-night program. Additionally, PCC refers customers to both licensed therapists and counselors and unlicensed counselors and life coaches, including founder Richard Wyler’s personal counseling organization, Higher Path Life Coaching Services, where Wyler, an unlicensed life coach, charges customers \$75 per hour. Additional details regarding the advertisement, sale, and performance of these services are provided herein.

**B. Given the Substantial Scientific Evidence Discrediting Conversion Therapy, the Federal Executive Branch, Members of Congress, and State Governments Support Efforts to Halt the Unfair, Deceptive, and Fraudulent Practice of Conversion Therapy**

Despite the abundance of evidence from mainstream medical and mental health professional organizations, including the American Psychiatric Association, American Psychological Association, American Psychoanalytic Association, American Medical Association, American Academy of Pediatrics, and Pan American Health Organization,<sup>3</sup> that

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<sup>2</sup> *Mission & Vision*, PEOPLE CAN CHANGE, <http://www.peoplecanchange.com/about/mission.php> (last visited Feb. 18, 2016).

<sup>3</sup> See Am. Psychiatric Ass’n, *Position Statement on Therapies Focused on Attempts to Change Sexual Orientation (Reparative or Conversion Therapies)* (2000), available at [http://www.psychiatry.org/File%20Library/Advocacy%20and%20Newsroom/Position%20Statements/ps2000\\_ReparativeTherapy.pdf](http://www.psychiatry.org/File%20Library/Advocacy%20and%20Newsroom/Position%20Statements/ps2000_ReparativeTherapy.pdf); Am. Psychological Ass’n, *Resolution on Appropriate Affirmative Responses to Sexual Orientation Distress and Change Efforts* (2009), available at <http://www.apa.org/about/policy/sexual-orientation.pdf>; Am. Psychoanalytic Ass’n, *Position Statement on Attempts to Change Sexual Orientation, Gender Identity, or Gender Expression* (2012), available at <http://www.apsa.org/content/2012-position-statement-attempts-change-sexual-orientation-gender-identity-or-gender>; Am. Medical A’ssn, *H-160.991 Health Care Needs of the Homosexual Population*, available at <http://www.ama-assn.org/ama/pub/about-ama/our-people/member-groups-sections/glb-t-advisory-committee/ama-policy-regarding-sexual-orientation.page?>; Am. Academy of Pediatrics, *Homosexuality and Adolescence*, 92 *Pediatrics* 631 (1993), available at <http://pediatrics.aappublications.org/content/92/4/631.full.pdf>; Pan Am. Health Org.: Regional Office of

conversion therapy is not effective in changing sexual orientation or gender identity and potentially harmful, providers of conversion therapy—like PCC and the network of individuals to which it refers clients—continue to mislead and pose serious health and safety risks to consumers, including in some cases the risk of death by suicide. Even the United Nations Committee Against Torture and Human Rights Council have urged an end to these practices.<sup>4</sup>

Federal authorities at the highest levels of government, including the White House and Surgeon General, support the end of conversion therapy, citing substantial credible scientific evidence for their positions. The White House recently issued a statement recognizing the complete lack of scientific support for conversion therapy and the substantial evidence showing that it poses risks of serious harms, indicating that “As part of our dedication to protecting America’s youth, this Administration supports efforts to ban the use of conversion therapy for minors.”<sup>5</sup> Similarly, the Department of Health and Human Services (“HHS”) has voiced support for the end of conversion therapy. In an October 2015 report called “Ending Conversion Therapy: Supporting and Affirming LGBTQ Youth,” the Substance Abuse and Mental Health Services Administration (“SAMHSA”), a branch of HHS, called for federal regulatory action as one of the potential future efforts for ending conversion therapy for minors.<sup>6</sup> Among its key findings and expert consensus statements, the report states that “Interventions aimed at a fixed

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the World Health Org., “*Cures*” for an Illness That Does Not Exist: Purported Therapies Aimed at Changing Sexual Orientation Lack Medical Justification and are Ethically Unacceptable (2012), available at [http://www.paho.org/hq/index.php?option=com\\_docman&task=doc\\_view&gid=17703](http://www.paho.org/hq/index.php?option=com_docman&task=doc_view&gid=17703).

<sup>4</sup> United Nations, Human Rights Council, *Discrimination and violence against individuals based on their sexual orientation and gender identity* (May 4, 2015), available at [http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwjrwPL-54zLAhUP-GMKHekgDGsQFgggMAA&url=http%3A%2F%2Fwww.ohchr.org%2FEN%2FHRCBodies%2FHRC%2FRegularSessions%2FSession29%2FDocuments%2FA\\_HRC\\_29\\_23\\_en.doc&usg=AFQjCNHLuRX5P3DD4cs6e9aZ4g6y8418vQ&sig2=-LS5Jl9jUuNW7 0dmJPmBsA](http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwjrwPL-54zLAhUP-GMKHekgDGsQFgggMAA&url=http%3A%2F%2Fwww.ohchr.org%2FEN%2FHRCBodies%2FHRC%2FRegularSessions%2FSession29%2FDocuments%2FA_HRC_29_23_en.doc&usg=AFQjCNHLuRX5P3DD4cs6e9aZ4g6y8418vQ&sig2=-LS5Jl9jUuNW7 0dmJPmBsA).

<sup>5</sup> Valerie Jarrett, Official White House Response to Your Petition on Conversion Therapy (Apr. 2015), attached hereto as Exhibit A, also available at <https://petitions.whitehouse.gov/response/response-your-petition-conversion-therapy>.

<sup>6</sup> US Dep’t of Health and Human Services, Substance Abuse and Mental Health Services Adm’n, *Ending Conversion Therapy: Support and Affirming LGBTQ Youth* 4 (Oct. 2015) (hereinafter “SAMHSA Report”), attached hereto as Exhibit B, also available at <http://store.samhsa.gov/shin/content//SMA15-4928/SMA15-4928.pdf>.

outcome, such as gender conformity or heterosexual orientation, including those aimed at changing gender identity, gender expression, and sexual orientation are coercive, can be harmful, and should not be part of behavioral health treatment.”<sup>7</sup>

Additionally, on February 10, 2016, Senators Patty Murray of Washington and Cory Booker of New Jersey, along with Representatives Jackie Speier and Ted Lieu of California, sent a letter to the Federal Trade Commission expressing their concern over the continued practice of conversion therapy and asking that the FTC “take all actions possible to stop the unfair, deceptive, and fraudulent practice of conversion therapy under the authority provided your agency in the *Federal Trade Commission Act*.”<sup>8</sup> The congressional representatives noted that the practice “has been widely discredited by nearly all major American medical, psychiatric, psychological, professional counseling, educational, and social organizations,” and cited the American Psychological Association’s conclusion that “efforts to change sexual orientation are unlikely to be successful and involve some risk of harm.”<sup>9</sup>

Efforts have also been made by many states to eliminate the practice of conversion therapy. Thus far, four states and the District of Columbia have enacted laws protecting minors from conversion therapy by licensed mental health providers.<sup>10</sup> Similar legislation has been

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<sup>7</sup> *Id.* at 1.

<sup>8</sup> Letter from Senators Patty Murray and Cory Booker and Members of Congress Jackie Speier and Ted W. Lieu to Chairwoman Edith Ramirez, FTC (Feb. 10, 2016), attached hereto as Exhibit C, also *available at* [http://www.murray.senate.gov/public/\\_cache/files/539a3579-7ddb-4dfd-bdb7-e90a7deebce5/final---murray-booker-letter-to-ftc-on-conversion-thearapy-02.10.2016.pdf](http://www.murray.senate.gov/public/_cache/files/539a3579-7ddb-4dfd-bdb7-e90a7deebce5/final---murray-booker-letter-to-ftc-on-conversion-thearapy-02.10.2016.pdf).

<sup>9</sup> *Id.*, citing Am. Psychological Ass’n, *Report of the American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation* at v (2009), attached hereto as Exhibit D (hereinafter APA Task Force Report) also *available at* <https://www.apa.org/pi/lgbt/resources/therapeutic-response.pdf>.

<sup>10</sup> California, District of Columbia, Illinois, New Jersey, and Oregon. State legislation to ban conversion therapy has been introduced in more than twenty other states, including Arizona, California Colorado, Connecticut, Florida, Georgia, Hawai’i, Illinois, Iowa, Massachusetts, Minnesota, New Hampshire, New Jersey, Nevada, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Texas, Vermont, Virginia, Washington, and West Virginia. For statute and bill information for each state, see *Active Laws & Legislation: The Details*, NATIONAL CENTER FOR LESBIAN RIGHTS, <http://www.nclrights.org/bornperfect-laws-legislation-by-state/>. See also Margaret Hartman, *Where the States Stand in the Fight to Ban Gay Conversion Therapy*, NYMAG.COM (Apr. 9, 2015), *available at* <http://nymag.com/daily/intelligencer/2015/04/where-the-states-stand-on-gay-conversion-therapy.html>.

introduced in more than twenty other states.<sup>11</sup> Additionally, Governor Andrew Cuomo has proposed regulations in New York to curtail conversion therapy through executive action.<sup>12</sup> Courts are also enforcing “little FTC Act” state consumer protection laws against the deceptive and fraudulent conduct of providers that offer services similar to those offered by PCC. In fact, Richard Wyler, the founder of PCC, was called as a defense witness in one such lawsuit. In June 2015, in the matter of *Ferguson v. JONAH*,<sup>13</sup> five plaintiffs won a consumer fraud lawsuit against Jews Offering New Alternatives for Healing (“JONAH”) and affiliated parties offering conversion therapy services. Richard Wyler was a witness because three of the plaintiffs were referred to PCC by JONAH representatives. However, because PCC was not a named defendant in the lawsuit, the court order enjoining the *JONAH* defendants from providing conversion therapy services does not apply to PCC, which continues to engage in the very same practices found to be fraudulent and deceptive by the court in the *JONAH* case.<sup>14</sup>

In the *JONAH* trial, the jury found that the named defendants “engaged in unconscionable commercial practices” in connection with the advertisement, sale, and subsequent performance of their conversion therapy program, including their referrals to PCC; however, PCC continues to advertise and operate in substantially the same manner it did before the *JONAH* verdict, including the use of survey results found unreliable and misleading by the court and the

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<sup>11</sup> California, District of Columbia, Illinois, New Jersey, and Oregon. State legislation to ban conversion therapy has been introduced in more than twenty other states, including Arizona, California Colorado, Connecticut, Florida, Georgia, Hawai’i, Illinois, Iowa, Massachusetts, Minnesota, New Hampshire, New Jersey, Nevada, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Texas, Vermont, Virginia, Washington, and West Virginia. For statute and bill information for each state, see *Active Laws & Legislation: The Details*, NATIONAL CENTER FOR LESBIAN RIGHTS, <http://www.nclrights.org/bornperfect-laws-legislation-by-state/>. See also Margaret Hartman, *Where the States Stand in the Fight to Ban Gay Conversion Therapy*, NYMAG.COM (Apr. 9, 2015), available at <http://nymag.com/daily/intelligencer/2015/04/where-the-states-stand-on-gay-conversion-therapy.html>.

<sup>12</sup> See Press Release, *Governor Cuomo Announces Executive Actions Banning Coverage of Conversion Therapy* (Feb. 6, 2016), available at <https://www.governor.ny.gov/news/governor-cuomo-announces-executive-actions-banning-coverage-conversion-therapy>.

<sup>13</sup> *Ferguson v. JONAH*, No. L-5473-12 (N.J. Super. Ct. Law Div. 2015).

<sup>14</sup> See Order Granting Permanent Injunctive Relief and Awarding Attorneys Fees, *Ferguson v. JONAH*, No. L-5473-12 (N.J. Super. Ct. Law Div. Dec. 18, 2015), attached hereto as Exhibit E.

pervasive use of material misrepresentations and omissions in PCC’s advertising, marketing, and promotion of its services.<sup>15</sup> This complaint asks this agency to investigate PCC for engaging in the same conduct found to be fraudulent in the *JONAH* trial, as well as additional conduct identified by the evidence provided herein, under Section 5 of the FTC Act.

PCC represents that its services are effective in changing a person’s sexual orientation and its marketing claims are designed to take advantage of clients, especially young adults, who may be depressed or in conflict with their families due to societal or familial bias against LGBT people. These vulnerable consumers are materially harmed by spending money on ineffective services, and many suffer additional significant psychological damage. For these reasons, the Human Rights Campaign, the National Center for Lesbian Rights, and the Southern Poverty Law Center respectfully request that the FTC promptly take enforcement action against PCC pursuant to its mission to protect consumers from these types of harm under Section 5 of the FTC Act.

## **II. THE PARTIES**

### **A. Human Rights Campaign**

Petitioner Human Rights Campaign (“HRC”) is a national, non-profit civil rights organization working to achieve lesbian, gay, bisexual, and transgender equality, including advocating for the cessation of conversion therapy. Headquartered in Washington, D.C., HRC has over 1.5 million members and supporters nationwide.

### **B. National Center for Lesbian Rights**

Petitioner National Center for Lesbian Rights (“NCLR”) is a national, non-profit, public-interest law firm that advocates for equitable public policies affecting LGBT legal issues. The

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<sup>15</sup> Transcript of Trial at 51-52, *Ferguson v. JONAH*, No. L-5473-12 (N.J. Super. Ct. Law Div. June 23, 2015). A selection of relevant *JONAH* trial transcripts are attached hereto as Exhibit F; *see also infra*, Section III.B.3. As detailed in the trial, some of PCC’s methods include intimate holding between counselor and participant, nudity, and yelling homophobic insults. *See* *Journey Into Manhood* script, attached hereto as Exhibit G; testimony of Jonathan Hoffman, Exhibit J.

organization is headquartered in San Francisco, California. In June 2014, NCLR launched the BornPerfect Campaign to protect LGBT children and young people from conversion therapy through legislation, litigation, administrative advocacy, and public education.<sup>16</sup>

### **C. Southern Poverty Law Center**

Petitioner Southern Poverty Law Center (“SPLC”) is a non-profit organization founded in 1971, and headquartered in Montgomery, Alabama. SPLC works to make this nation’s constitutional ideals a reality for everyone. SPLC’s LGBT Rights Project is dedicated to fighting discrimination against the LGBT community in all its forms, and defending the rights of LGBT people and their families. SPLC recently represented plaintiffs in *Ferguson v. JONAH*, a successful consumer fraud action filed in New Jersey state court against conversion therapy practitioners.<sup>17</sup>

### **D. People Can Change, Inc.**

Proposed Respondent People Can Change, Inc. was founded by Richard Wyler in 2000 and incorporated as a Virginia non-profit corporation in 2002. The PCC website states that Wyler is a certified life coach,<sup>18</sup> and that he “personally experienced enormous transformation from unwanted homosexual attractions.”<sup>19</sup> PCC markets and sells conversion therapy services including weekend programs and telephonic group therapy sessions. The weekend programs include Journey Into Manhood (JiM),<sup>20</sup> co-founded by Wyler and David Matheson, a Clinical

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<sup>16</sup> See *Our Work - #BornPerfect*, NATIONAL CENTER FOR LESBIAN RIGHTS, <http://www.nclrights.org/our-work/bornperfect/>.

<sup>17</sup> See *Our Issues, LGBT Rights, Conversion Therapy*, SOUTHERN POVERTY LAW CENTER, <https://www.splcenter.org/issues/lgbt-rights/conversion-therapy>.

<sup>18</sup> *Find a Counselor/Coach*, PEOPLE CAN CHANGE, <http://www.peoplecanchange.com/support/counselor.php> (last visited on Feb. 19, 2016).

<sup>19</sup> *Founding & Growth*, PEOPLE CAN CHANGE, <http://www.peoplecanchange.com/about/founding.php> (last visited on Feb. 19, 2016).

<sup>20</sup> *Journey Into Manhood*, PEOPLE CAN CHANGE, <http://www.peoplecanchange.com/jim/> (last visited Feb. 18, 2016).

Mental Health Counselor;<sup>21</sup> *Journey Continues*,<sup>22</sup> a follow-up to *Journey Into Manhood*; and *Journey Beyond*,<sup>23</sup> co-created by David Matheson and Alan Downing, a certified life coach.<sup>24</sup> PCC also offers a weekend retreat called *A Wife's Healing Journey*, that is "designed especially for wives of men who struggle with sex addiction (SA) and/or same-sex attraction (SSA)."<sup>25</sup> In January 2016, the company launched a multi-week webinar program called "Another Way Out," for "men who are serious about exploring how to diminish their unwanted same-sex attractions or otherwise resolve them in ways that are in keeping with their morals, values, faith and life goals."<sup>26</sup>

PCC advertises, markets, and sells through the company's website ([www.peoplecanchange.com](http://www.peoplecanchange.com)); emails to prospective customers and referring professionals; in brochures and other written products, some of which are downloadable from the website; in testimonial and marketing videos available on the website or on YouTube; through other social media including Facebook and Twitter; and through press releases and interviews with the general media.

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<sup>21</sup> *About the Co-Creators*, PEOPLE CAN CHANGE, <http://www.peoplecanchange.com/jim/thepeople.php#creators>, (last visited Feb. 18, 2016).

<sup>22</sup> *Journey Continues*, PEOPLE CAN CHANGE, <http://www.peoplecanchange.com/jim/jc.php> (last visited Feb. 18, 2016).

<sup>23</sup> *Journey Beyond*, PEOPLE CAN CHANGE, <http://www.peoplecanchange.com/jim/jb.php> (last visited Feb. 18, 2016).

<sup>24</sup> *Find a Counselor/Coach*, PEOPLE CAN CHANGE, <http://www.peoplecanchange.com/support/counselor.php> (last visited on Feb. 18, 2016). Mr. Downing and his personal counseling organization were named defendants in the *JONAH* case, and can no longer promote conversion therapy service "in or directed at New Jersey or New Jersey residents" pursuant to the court order. See Order Granting Permanent Injunctive Relief and Awarding Attorneys' Fees at 3, *supra* note 13.

<sup>25</sup> *A Wife's Healing Journey*, PEOPLE CAN CHANGE, <http://www.peoplecanchange.com/wives/index.php> (last visited Feb. 18, 2016).

<sup>26</sup> *PCC Webinars and Coaching Groups*, PEOPLE CAN CHANGE, <http://www.peoplecanchange.com/support/webinar.php#wayout> (last visited Feb. 18, 2016).

### **III. PCC’S ADVERTISING, MARKETING, AND OTHER BUSINESS PRACTICES VIOLATE SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT**

#### **A. Applicable Law**

Section 5 of the Federal Trade Commission Act (“FTC Act”) prohibits unfair and deceptive acts and practices.<sup>27</sup> To determine whether business practices are deceptive, the FTC considers three elements.<sup>28</sup> First, it considers whether there has been a representation, omission, or practice that is likely to mislead the consumer. Second, it examines the practice from the perspective of a consumer acting reasonably in the circumstances. Third, it asks whether the representation, omission, or practice is a “material” one. Neither an intent to deceive nor actual consumer harm is required to find an act deceptive under the FTC Act.<sup>29</sup> The analysis focuses on the risk of consumer harm.

Both express misrepresentations and implied misrepresentations are violations of the FTC Act. If a claim is likely to be misleading without qualifying information, the qualifying information must be disclosed in a “clear and conspicuous” manner. Clear and conspicuous disclosure is required because the FTC focuses on the overall net impression of an advertisement, and if a disclosure is not seen or comprehended, it will not change the net impression consumers take from the advertisement. A disclosure can qualify or limit a claim to avoid a misleading impression; it cannot, however, cure a false claim.<sup>30</sup>

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<sup>27</sup> 15 U.S.C. § 45.

<sup>28</sup> FTC Policy Statement on Deception (1983), appended to *Cliffdale Associates, Inc.*, 103 F.T.C. 110, 174 (1984), available at <http://www.ftc.gov/bcp/policystmt/ad-decept.htm>.

<sup>29</sup> See *FTC v. Verity International, Ltd.*, 443 F.3d 48, 63 (2d Cir. 2006).

<sup>30</sup> See FTC, *.com Disclosures: How to Make Effective Disclosures in Digital Advertising* 5 (2013), available at <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-revises-online-advertising-disclosure-guidelines/130312dotcomdisclosures.pdf> (“[A disclosure] cannot cure a false claim. If a disclosure provides information that contradicts a material claim, the disclosure will not be sufficient to prevent the ad from being deceptive.”). To the extent that advertisements for conversion therapy could be said to make “health-related efficacy claims” a more precise level of substantiation is required. Health-related efficacy claims are divided into two categories: establishment claims, those that specifically represented the level of support the advertiser has for the product (“doctors recommend” or “studies show”), and non-establishment claims, those generally make claims about a products attributes, performance, or efficacy. For establishment claims, the advertiser must have the amount

The FTC has also issued rules for specific areas relating to deceptive acts or practices, such as the use of testimonials in advertising.<sup>31</sup>

**B. PCC's Marketing and Advertising Practices are False and Misleading, and Contain Material Omissions**

**1. PCC Implicitly and Explicitly Claims Being LGBT or Having Same-Sex Attractions is Abnormal or a Disorder in Marketing Conversion Therapy**

The nation's leading health and mental health authorities recognize being LGBT and having same-sex attractions as normal variants of human sexuality and gender. Based on the scientific evidence, the American Psychiatric Association removed homosexuality from its Diagnostic and Statistical Manual of Mental Disorders in 1973 where it had previously been listed as a "sociopathic personality disturbance." The American Psychological Association showed its full support of this move in 1975 stating "homosexuality per se implies no impairment in judgment, reliability or general social and vocational capabilities... (and mental health professionals should) take the lead in removing the stigma of mental illness long associated with homosexual orientation."<sup>32</sup> Based on these studied opinions as well as those of many other respected medical associations, the court in *Ferguson v. JONAH* barred several of the defendants' experts from providing expert testimony that same-sex attraction is a "disorder or

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of substantiation indicated in the claim; for non-establishment claims, the amount of substantiation depends on a variety of factors. These factors include "(1) the product involved; (2) the type of claim; (3) the benefits of a truthful claim; (4) the ease of developing substantiation for the claim; (5) the consequences of a false claim; and (6) the amount of substantiation experts in the field would agree is reasonable." See *In re Daniel Chapter One*, Docket No. 9329 at 100-101 (Apr. 20, 2009) (Initial decision), available at <https://www.ftc.gov/enforcement/cases-proceedings/082-3085/daniel-chapter-one-james-feijo-individuallyofficer-Daniel>.

<sup>31</sup> FTC, *Guides Concerning the Use of Endorsements and Testimonials in Advertising*, 16 CFR Part 255, available at <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-publishes-final-guides-governing-endorsements-testimonials/091005revisedendorsementguides.pdf>.

<sup>32</sup> See Am. Psychological Ass'n, *Being Gay is Just as Healthy as Being Straight* (May 28, 2003), <http://www.apa.org/research/action/gay.aspx>. For additional support from major health organizations see *#BornPerfect: Toolkit, Resources & Statements*, NATIONAL CENTER FOR LESBIAN RIGHTS, <http://www.nclrights.org/bornperfect-Toolkit-resources-statement/>, or *Policy and Position Statements on Conversion Therapy*, HUMAN RIGHTS CAMPAIGN, <http://www.hrc.org/resources/policy-and-position-statements-on-conversion-therapy>.

abnormal” because that conclusion goes against the “overwhelming weight of scientific authority.”<sup>33</sup>

Despite all scientific evidence to the contrary, providers of conversion therapy, including PCC, continue to mislead consumers into believing that being LGBT is a disorder, developmental deficiency, or the result of emotional trauma that can be cured or healed. PCC’s website states, “homosexuality is not a single problem or conflict, but a group of problems that together produce homosexual attractions.”<sup>34</sup> On its webpage “Root Causes, Homosexual Consequences,” PCC identifies several “causes” of homosexuality, such as relationship problems with a parent or sexual abuse. PCC seeks to support these false claims by providing self-reported survey evidence of PCC clients.<sup>35</sup>

In the Expert Report of Dr. A. Lee Beckstead, Ph.D., submitted as part of the *JONAH* trial (hereinafter “Beckstead Expert Report”), Dr. Beckstead states the “illness/deficit model for homosexuality, which underlies the [practitioners’] assumptions, is unsupported, and indeed contradicted, by science and has been rejected by all but a fringe minority in the mental health professions. In fact, results from a variety of studies have conclusively invalidated the belief that family dynamics, gender identity, or trauma causes a homosexual orientation.”<sup>36</sup>

## **2. “People Can Change” Expressly Claims its Services can “Absolutely” Change a Consumer’s Sexual Orientation**

There is no competent and reliable scientific evidence that conversion therapy can alter an individual’s sexual orientation or gender identity. In 2009, the American Psychological

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<sup>33</sup> *Ferguson v. JONAH*, L-5473-12, at 19 (N.J. Super. Ct. Law Div. Feb. 5, 2015) (in response to plaintiffs’ motion to bar defendants’ experts’ testimony), attached hereto as Exhibit H.

<sup>34</sup> *Our Solution: A M.A.N.S. Journey*, PEOPLE CAN CHANGE, <http://www.peoplecanchange.com/change/mans.php> (last visited Feb. 18, 2016).

<sup>35</sup> *Root Causes, Homosexual Consequences*, PEOPLE CAN CHANGE, <http://www.peoplecanchange.com/change/causes.php> (last visited Feb. 18, 2016).

<sup>36</sup> Expert Report of Dr. A. Lee Beckstead, Ph.D. at 7 (internal citations omitted) (hereinafter “Beckstead Expert Report”), attached hereto as Exhibit I.

Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation (the “APA Task Force”) conducted a systematic review<sup>37</sup> evaluating all relevant “peer-reviewed empirical research on treatment outcomes” regarding sexual orientation change efforts (“SOCE”). The APA Task Force issued a report concluding that “claims that recent SOCE is effective are not supported” and that “it is unlikely that individuals will be able to reduce same sex attractions or increase other-sex sexual attractions through SOCE.”<sup>38</sup> Instead, the APA Task Force found that sexual orientation change efforts can pose critical health risks to lesbian, gay, and bisexual people, including “loss of sexual feeling, depression, suicidality and anxiety.”<sup>39</sup>

The October 2015 SAMHSA report indicated that “conversion therapy—efforts to change an individual’s sexual orientation, gender identity, or gender expression—is a practice that is not supported by credible evidence and has been disavowed by behavioral health experts and associations.”<sup>40</sup> The SAMHSA report noted that, “Given the lack of evidence of efficacy and the potential risk of serious harm, every major medical, psychiatric, psychological, and professional mental health organization, including the American Psychological Association, the American Psychiatric Association, the National Association for Social Work, the Pan American Health Organization, and the American Academy of Child and Adolescent Psychiatry, has taken measures to end conversion therapy efforts to change sexual orientation.”<sup>41</sup>

Despite this fact, PCC conveys—not only through its name, “People Can Change”—but also through its website content, downloadable materials, videos, and other promotional materials—that its services can change a person’s sexual orientation. PCC’s motto “Men who

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<sup>37</sup> APA Task Force Report, *supra* note 9, at 26, fn. 24 (“A systematic review starts with a clear question to be answered, strives to locate all relevant research, has clear inclusion and exclusion criteria, and carefully assesses study quality and synthesizes study results.”).

<sup>38</sup> *Id.* at 3.

<sup>39</sup> *Id.*

<sup>40</sup> SAMHSA Report, *supra* note 6, at 1.

<sup>41</sup> *Id.* at 24.

have resolved unwanted same-sex attractions supporting others seeking similar change” can be found throughout their webpage<sup>42</sup> and social media.<sup>43</sup> The slogan conveys to consumers that PCC’s services can assist individuals in resolving their unwanted same-sex attraction by changing their sexual orientation or gender identity.<sup>44</sup>

**a) False, Misleading, and Deceptive Claims on PCC’s Website**

Content on PCC’s website explicitly states that PCC can help a consumer change his sexual orientation. On the “Is Change Really Possible?” page, the company rhetorically asks “Is Change Really Possible? Absolutely!”<sup>45</sup> PCC then states:

Anecdotal evidence that change is possible is abundant. First-person testimonials abound on the Internet, at recovery conferences and in reparative literatures... But the evidence is even much more than anecdotal. In more than 50 years of research, including 48 studies we will reference here, there are data and published accounts documenting easily more than 3,000 cases of change from homosexual to heterosexual attracting, identity and functioning.<sup>46</sup>

On PCC’s “We Found Another Way Out” web page, PCC says “those of us who have resolved past homosexual conflicts” have “discovered that we could address the root causes of the conflict - which wasn’t really about sex at all. Rather the longing for male love was, for us at

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<sup>42</sup> See, e.g., *Mission & Vision*, PEOPLE CAN CHANGE, <http://www.peoplecanchange.com/about/mission.php> (last visited Feb. 18, 2016); *We Found Another Way Out*, PEOPLE CAN CHANGE, [www.peoplecanchange.com/change/wayout.php](http://www.peoplecanchange.com/change/wayout.php) (last visited Feb. 18, 2016); and *Our Stories of Change*, PEOPLE CAN CHANGE, <http://www.peoplecanchange.com/stories/index.php> (last visited on Feb. 18, 2016).

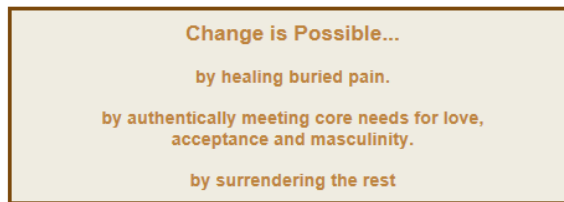
<sup>43</sup> E.g., PeopleCanChange.com (@PeopleCanChang1), Twitter, <https://twitter.com/PeopleCanChang1> (last visited on Feb. 19, 2016).

<sup>44</sup> PCC watered down the motto on the website’s home page in October 2014 to say “Men who have resolved, diminished or made peace with their unwanted same-sex attractions supporting others who seek similar change.” However, this change does little to counteract the implication of the claims on the website that PCC’s services can change an individual’s sexual orientation, especially where the original motto is still located throughout the website.

<sup>45</sup> *Is Change Really Possible?*, PEOPLE CAN CHANGE, <http://www.peoplecanchange.com/change/possible.php> (last visited on Feb. 18, 2016).

<sup>46</sup> *Id.*

least, really a deep, unmet need from childhood and youth....”<sup>47</sup> In boxed text the company states:<sup>48</sup>



PCC then indicates: “Make no mistake - this is difficult, sometimes painful work. But ultimately it brought us great joy, much more so than we had ever been able to find in a gay life, identity or gay relationships. In fact, we found it led us to the goal we were really seeking all along.”<sup>49</sup>

PCC’s misleading advertisements are likewise found on its webpages addressing its Journey Into Manhood (“JiM”) weekend retreat, “a 48-hour immersion in intensive emotional-healing work, designed specifically for men who are self-motivated and serious about resolving unwanted homosexual attractions.”<sup>50</sup> On the “Journey Into Manhood – Does it Work” web page, PCC states that JiM has “had a powerful, life-changing effect on hundreds and hundreds of men since 2002,” and that as shown in “follow-up surveys of men who took the JiM weekend between 6 months and 6 years earlier, about 75% report a decrease in homosexual feelings and behaviors.”<sup>51</sup>

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<sup>47</sup> *We Found Another Way Out*, PEOPLE CAN CHANGE, <http://www.peoplecanchange.com/change/wayout.php> (last visited Feb. 18, 2016).

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *What it IS*, PEOPLE CAN CHANGE, <http://www.peoplecanchange.com/jim/index.php> (last visited on Feb. 19, 2016).

<sup>51</sup> *Does it Work?*, PEOPLE CAN CHANGE, <http://www.peoplecanchange.com/jim/doesitwork.php> (last visited on Feb. 18, 2016). For additional information on PCC’s surveys see Section III.B.3.b.

Moreover, PCC does not provide any disclosure of the potentially serious negative health and safety consequences associated with the therapy on its website or in other promotional materials, which is a significant and material omission, discussed in more detail herein.

**b) False, Misleading, and Deceptive Claims in PCC's Written Promotional Materials**

PCC's written advertisement and promotional materials, some of which are downloadable from the website, contain the same false, misleading, and deceptive information regarding the ability of conversion therapy and PCC's services to change an individual's sexual orientation. A JiM brochure, for example, indicates participants are taught to "uncover the core needs that often underlie unwanted same-sex attractions and other unresolved issues around men and masculinity," and that "[i]n following up with past participants over the years, we've consistently found that a significant number: ...Report a decrease in the homosexual feelings and behaviors."<sup>52</sup> Another version of the JiM brochure states "In follow-up surveys of men who took the JiM weekend between 6 months and 6 years earlier, about 75% report a decrease in homosexual feelings and behaviors....More than half report an increase in heterosexual attractions." That version of the brochure also contains several testimonials stating that the JiM weekend is "an essential part of helping men with unwanted same-sex attraction to access their true heterosexual nature" and "a very professionally run, safe weekend that is based on proven techniques."<sup>53</sup>

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<sup>52</sup> People Can Change, Inc., *People Can Change, Journey Into Manhood* [Brochure] (retrieved from PEOPLE CAN CHANGE website on Feb. 18, 2016). PCC brochures attached hereto as Exhibit J.

<sup>53</sup> People Can Change, Inc., *People Can Change, Journey Into Manhood* [Brochure] (retrieved from INTERNET ARCHIVE WAYBACK MACHINE (Feb. 18, 2016), <https://web.archive.org/web/20151002043121/http://www.peoplecanchange.com/jim/brochure.pdf>). PCC brochures attached hereto as Exhibit J.

**c) False, Misleading, and Deceptive Claims in PCC's Video Advertisements**

Video advertisements contain similar false, misleading, and deceptive statements. In a video posted on YouTube by Richard Wyler in June 2013, for example, David Matheson, co-founder of the Journey Into Manhood weekends, indicates that the weekend retreat “[h]elps men grow. And when men grow, many men as they mature, as they deepen their masculinity, they find that their feelings of sexual attraction to other men diminish a great deal. And yes, absolutely it does work. Does it work for every man? Nothing works for every man.”<sup>54</sup> In a video slideshow presentation posted on the PCC home page and on YouTube by People Can Change, entitled “What Really Happens at Journey Into Manhood?” (referred to hereafter as the PCC Home Page Presentation), the slides state “What We Know[:] We know change in sexual attractions is possible ... at least to some degree ... at least for some people. How We Know It[:] We know it because we’ve lived it.”<sup>55</sup>

**d) False, Misleading, and Deceptive Claims in PCC's Testimonials**

Additionally, the website and PCC videos are filled with testimonials, both of past participants and of purported experts. These videos and written success stories violate regulations promulgated by the Federal Trade Commission in its “Guides Concerning the Use of Endorsements and Testimonials in Advertising.”<sup>56</sup> With regard to consumer endorsements, Section 255.2 provides:

An advertisement containing an endorsement relating the experience of one or more consumers on a central or key attribute of the product or service also will

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<sup>54</sup> Richard Wyler, *Journey Into Manhood Weekend by People Can Change*, YouTube (June 1, 2013), <https://www.youtube.com/watch?v=9MDIpEakQ3M>, attached hereto as Exhibit K.

<sup>55</sup> People Can Change, *What Really Happens at Journey Into Manhood?*, YouTube (Jan. 15, 2016), <https://www.youtube.com/watch?v=eKQDq66QQBY> (hereinafter “PCC Presentation”), attached hereto as Exhibit L.

<sup>56</sup> 16 CFR Part 255, available at <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-publishes-final-guides-governing-endorsements-testimonials/091005revisedendorsementguides.pdf>.

likely be interpreted as representing that the endorser's experience is representative of what consumers will generally achieve with the advertised product or service in actual, albeit variable, conditions of use. Therefore, an advertiser should possess and rely upon adequate substantiation for this representation. If the advertiser does not have substantiation that the endorser's experience is representative of what consumers will generally achieve, the advertisement should clearly and conspicuously disclose the generally expected performance in the depicted circumstances, and the advertiser must possess and rely on adequate substantiation for that representation.<sup>57</sup>

Despite the medical and scientific consensus that conversion therapy is not effective in changing a person's sexual orientation, PCC's testimonials suggest otherwise. In the PCC Home Page Presentation, one former JiM participant indicates "My original goal was: I don't want to be same-sex attracted any more. I want to be opposite-sex attracted. And I did achieve that goal."<sup>58</sup> Another former JiM participant indicates that "I have experienced a great deal of increase in my opposite-sex attraction and a great deal of decrease in my same-sex attraction."<sup>59</sup>

Similar to PCC's survey of past participants addressed below, these self-reported accounts of change must be viewed skeptically. As explained in Dr. Beckstead's Expert Report, "SOCE providers, with their investment in a heterosexual outcome, create a situation where their clients are set up to lie to them if they do not experience this change. Then, SOCE providers use such reports of change to promote their interventions. Those who do not report change are dismissed, for example, by the claim that they did not work hard enough."<sup>60</sup>

Testimonials provided by Wyler and Matheson, who hold themselves out as a certified life coach and a Clinical Mental Health Counselor respectively, qualify as expert endorsements and are subject to Section 255.3 of the FTC Enforcement Guides. This section provides that, for an expert:

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<sup>57</sup> *Id.* at 255.2(b).

<sup>58</sup> PCC Presentation, *supra* note 54, at 7:10.

<sup>59</sup> *Id.* at 7:35.

<sup>60</sup> Beckstead Expert Report, *supra* note 35, at 14.

the endorsement must be supported by an actual exercise of that expertise in evaluating product features or characteristics with respect to which he or she is expert and which are relevant to an ordinary consumer's use of or experience with the product and are available to the ordinary consumer. This evaluation must have included an examination or testing of the product at least as extensive as someone with the same degree of expertise would normally need to conduct in order to support the conclusions presented in the endorsement.

However, both Wyler and Matheson ignore the consensus within the scientific, medical, and mental health communities that contradict their own personal view. As noted above, on the

Journey Into Manhood Weekend video, Matheson emphatically states "Does it work?

Absolutely!", and Wyler indicates that PCC is "men who have been on the journey themselves out of homosexuality, and are further along, helping men that are newer to the journey to share with them what worked for us..."

PCC's "Questions & Answers" landing page states that the basis of many expert opinions discounting the efficacy of conversion therapy is political correctness:

By the way, you should be aware that, out of 'political correctness' and acquiescence to pro-gay activists, the American Psychological Association and other major professional psychological associations strongly discourage any kind of therapy other than 'gay affirmative' therapy designed to remove guilt and shame about being gay or having sex with men. But progressive therapists -- especially those who do not belong to gay-affirming professional groups -- still invite the client to determine the course of his own therapy and will support him in healing his same-sex gender pain in healthy, heterosexual ways rather than medicating it homosexually.

### **3. PCC Success Rate Claims Are Misleading and Deceptive**

#### **a) *PCC Deceptively Advertises High Levels of Change for JiM Participants***

In 2007, PCC conducted a survey of certain past participants who had completed PCC's Journey Into Manhood weekend between 6 months and 6 years before the survey. PCC touts the results of this survey in several places on its website and in other promotional materials. For

example, on the “Does it Work” link on the Journey Into Manhood webpage,<sup>61</sup> PCC claims its follow-up survey shows that about 75% of past JiM participants “report a decrease in homosexual feelings and behaviors” and “more than half report an increase in heterosexual attractions.”

**Does it Work?**

Journey Into Manhood has had a powerful, life-changing effect on hundreds and hundreds of men since 2002.

Nevertheless, it is ultimately up to you to determine how dramatically "JiM" will affect your life over time.

Journey Into Manhood equips you with new understanding, the opportunity for emotional breakthroughs, new friends, and meaningful support. But you must follow through to truly make it a turning point in your life.

In follow-up surveys of men who took the JiM weekend between 6 months and 6 years earlier, about 75% report a decrease in homosexual feelings and behaviors. Also:

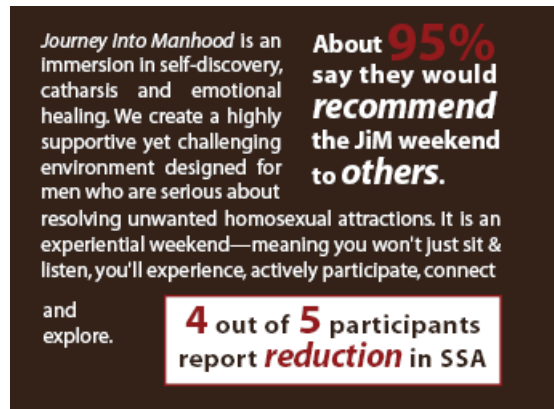
- About 90% of men who responded to the survey are less distressed over their same-sex attractions now.
- More than half report an increase in heterosexual attractions.
- Two-thirds of married men say their marriages have improved since "JiM."
- In addition, a large majority report feeling more masculine, more confident and powerful. They have more and better male friendships. They feel better about themselves and have more peace in their lives.
- About 95% say they would recommend the Journey Into Manhood weekend to others.

Until at least July 31, 2015, the JiM Landing Page indicated that “4 out of 5 participants report reduction in [same-sex attraction],”<sup>62</sup> and recent PCC brochures make similar claims.<sup>63</sup>

<sup>61</sup> *Does it Work?*, PEOPLE CAN CHANGE, <http://www.peoplecanchange.com/jim/doesitwork.php> (last visited on Feb. 18, 2016).

<sup>62</sup> People Can Change, Inc., *People Can Change, Journey Into Manhood* [Brochure] (retrieved from INTERNET ARCHIVE WAYBACK MACHINE (Oct. 2, 2015), <https://web.archive.org/web/20151002043121/http://www.peoplecanchange.com/jim/brochure.pdf>. PCC brochures are attached hereto as Exhibit J.

<sup>63</sup> People Can Change, Inc., *People Can Change, Journey Into Manhood* [Brochure] (retrieved from PEOPLE CAN CHANGE website on Feb. 18, 2016). PCC brochures are attached hereto as Exhibit J.



These same results are repeated on PCC's Facebook page<sup>64</sup> and the first post of PCC's blog.<sup>65</sup>

Further, on previous versions of PCC's website, these same claims were highlighted on the PCC home page.<sup>66</sup>

Marketing emails sent to potential clients and referring professionals also reference these statistics. A 2008 email sent from Richard Wyler that served as an exhibit in the *JONAH* case indicated that “[i]n a survey of 200-plus past participants, between 6 months and 6 years after they experienced the Journey Into Manhood: ... 48% agreed: ‘I am more attracted to women now.’”<sup>67</sup> An undated form email, also an exhibit from the *JONAH* trial, solicits referrals to an upcoming JiM retreat and attaches a PCC press release stating in the headline that “4 out of 5 Past Participants Report Diminished Homosexual Attraction” and proclaims that JiM “is **proving to have a significant long-term impact** on men seeking to overcome unwanted same-sex attractions.”<sup>68</sup>

<sup>64</sup> People Can Change, *About*, Facebook (Feb. 18, 2016), [https://www.facebook.com/peoplecanchangeunwantedssa/info/?tab=page\\_info](https://www.facebook.com/peoplecanchangeunwantedssa/info/?tab=page_info).

<sup>65</sup> Richard Wyler, *An Accidental Founder, Step by Step*, PEOPLE CAN CHANGE BLOG (Apr. 13, 2009), <http://people-can-change.blogspot.com/2009/04/accidental-founder-building-step-by.html>.

<sup>66</sup> INTERNET ARCHIVE WAYBACK MACHINE (Sept. 25, 2010), <https://web.archive.org/web/20100925234423/http://www.peoplecanchange.com/>, attached hereto as Exhibit M.

<sup>67</sup> See Email, Exhibit N.

<sup>68</sup> Form email from Richard Wyler attaching a press release from PCC, Exhibit O (emphasis added).

**b)      *PCC's Self- Promoting Survey Cannot Substantiate its Claims of High Success Rates***

The 2007 survey conducted by PCC has no scientific validity and cannot substantiate its success rate claims, as evidenced by the fact that the *JONAH* court excluded the survey data from evidence at trial. By Mr. Wyler's own admission, the surveys had no scientific basis and employed no specific methodology.<sup>69</sup> The court found that the survey results **"lack[] any support for showing success rates," and that "the categories are misleading and confusing"**<sup>70</sup> and refused to allow the survey results to be shown to the jury.<sup>71</sup> Indeed, the statistics suffer from a number of fatal flaws that make them false, deceptive and misleading for purposes of the FTC's enforcement of Section 5 against PCC.

First, the survey suffers from self-selection bias and is not representative of all past participants. Although there were 615 past participants that met the selection criteria of having participated in a JiM weekend between 6 months and 6 years prior to the date the survey was distributed, the survey results consisted of responses from only 224 such participants.<sup>72</sup> Of the past participants not included in the survey results, 118 had either requested that PCC not contact them or PCC did not have a valid email address to which it could send the survey questionnaire. Of the 497 past participants that actually received the survey, only 45% responded, further skewing the survey.

Second, as noted in the *JONAH* trial testimony, PCC used a variety of non-defined terms in the survey that could be interpreted differently by different recipients. For example, the

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<sup>69</sup> Transcript of Trial at 19-20, *Ferguson v. JONAH*, No. L-5473-12 (N.J. Super. Ct. Law Div. June 23, 2015), a selection of relevant *JONAH* trial transcripts are attached hereto as Exhibit F.

<sup>70</sup> *Id.* at 51.

<sup>71</sup> *Id.* at 51-52. *See also* Expert Report of Dr. Carol Bernstein, M.D., submitted as part of the *JONAH* trial (hereinafter "Bernstein Expert Report"), at 4 ("Surveys, such as those conducted by People Can Change, are not studies. Nor should a list of asserted outcomes for a hand-selected group of clients be defined as a study. Such materials do not provide scientific support for Defendants' claims."), attached hereto as Exhibit P.

<sup>72</sup> People Can Change, *Survey of Journey Into Manhood Participants 2002-2006*, attached hereto as Exhibit Q, *also available at* <http://www.peoplecanchange.com/jim/2007survey.pdf>.

survey requested that participants identify their level of same-sex attraction as “significant,” “moderate” or “slight,” but provided no definition of what those terms might mean. Nor did the survey define what was meant by “increases in heterosexual attractions.” These terms can have different meanings for different individuals.

A third flaw in the survey is that the compiled responses are “self-reported”—the subject of the questionnaire is reporting on his own feelings and behavior. As noted by the APA Task Force, self-report studies tend to overestimate results for a variety of reasons. Subjects will “report change under circumstances in which they have been led to expect that change will occur, even if no change actually does occur” and “will seek to justify the time and effort that they have made in treatment to reduce any dissonance they may feel at experiencing no or less change than they had expected by overestimating the effectiveness of the treatment....”<sup>73</sup>

Fourth, even if one assumed that some survey results were accurate, there is no proof that the results were caused by PCC or JiM. Even PCC recognizes this limitation, indicating in fine print hidden at the bottom of a survey results summary accessible from the JiM webpage: “Note: Reported changes are since JIM, but not necessarily a result of JIM.” This disclaimer is not conspicuous, and is not provided on any other webpage or promotional materials citing the survey results.<sup>74</sup>

#### **4. PCC Claims its Services are Based in Scientifically Effective Methods**

Throughout PCC’s website and promotional materials, PCC implicitly and explicitly claims that its services work because they are based on science.

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<sup>73</sup> APA Task Force Report, *supra* note 9, at 29.

<sup>74</sup> Even if PCC included this disclosure in all its promotional materials, the disclosure would not be enough to overcome the other faults of the study or the fraudulent impression of the promotional materials that JiM can cause a change from homosexual to heterosexual. See Federal Trade Commission, *.com Disclosures: How to Make Effective Disclosures in Digital Advertising* 5 (2013), available at <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-revises-online-advertising-disclosure-guidelines/130312dotcomdisclosures.pdf> (“[A disclosure] cannot cure a false claim. If a disclosure provides information that contradicts a material claim, the disclosure will not be sufficient to prevent the ad from being deceptive.”).

**a)      *PCC Creators’ Titles and Scientific/Medical Training Imply Practices are Based in Science***

PCC’s website and promotional materials highlight that Richard Wyler, PCC’s founder, is a “certified life coach” and that the PCC program, and in particular its JiM weekend, was co-created by David Matheson. David Matheson is described on the website as a “licensed professional therapist,”<sup>75</sup> a “Licensed Professional Counselor in private practice,”<sup>76</sup> a “Clinical Mental Health Counselor in private practice,”<sup>77</sup> a “clinical director at the Center for Gender Wholeness,”<sup>78</sup> and a “therapist specializing in ‘gender affirming therapy.’”<sup>79</sup>

A more detailed biography for Matheson can be found at the Center for Gender Wholeness website, which is linked to from the PCC website. There Matheson describes himself as an “author and psychotherapist” with a “Masters of Science degree in Counseling and Guidance from Brigham Young University in 1996” who “for many years, [] has written, lectured, taught workshops, and given commentary on radio and television advocating for the wellbeing of those with distress over their sexual orientation.”<sup>80</sup>

These professional and medical titles combined with the PCC website’s proclamation that “[b]oth men had personally experienced significant change from unwanted homosexuality earlier

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<sup>75</sup> Richard Wyler, *An Accidental Founder, Step by Step*, PEOPLE CAN CHANGE BLOG (Apr. 13, 2009), <http://people-can-change.blogspot.com/2009/04/accidental-founder-building-step-by.html>.

<sup>76</sup> People Can Change, Inc., *People Can Change, Journey Into Manhood* [Brochure] (retrieved from PEOPLE CAN CHANGE website on Feb. 18, 2016). PCC brochures are attached hereto as Exhibit J.

<sup>77</sup> *Our Stories of Change: David Matheson – Breaking Free*, PEOPLE CAN CHANGE, <http://www.peoplecanchange.com/stories/david.php> (last visited on Feb. 18, 2016).

<sup>78</sup> *About the Co-Creators*, PEOPLE CAN CHANGE, <http://www.peoplecanchange.com/jim/thepeople.php> (last visited on Feb. 18, 2016).

<sup>79</sup> *Founding & Growth*, PEOPLE CAN CHANGE, <http://www.peoplecanchange.com/about/founding.php> (last visited on Feb. 18, 2016).

<sup>80</sup> *About the Author*, CENTER FOR GENDER WHOLENESS, <http://genderwholeness.com/becomingwhole/about-us/> (last visited on Feb. 18, 2016).

in their lives”<sup>81</sup> represent to the average consumer that the techniques used by PCC are based on the creators’ previous scientific and mental health training, especially that of Matheson.

The PCC program’s basis in scientific and mental health principles is also implied in the website’s description of JiM’s creation:

Therapist David Matheson immediately saw the vision of what Journey Into Manhood could become, and passionately began working with me to further develop the **psychological theory and processes** of the weekend so that it would have an even greater impact on future participants and to enable us to replicate it over and over. Without David’s **expertise** and passion, and his joining me as co-creator and co-developer of Journey Into Manhood, I probably would have burned out quickly, and “JiM” would likely not have as powerful an impact nor be as safe a place for men to do deep emotional healing work.<sup>82</sup>

PCC also emphasizes on its website and in its promotional materials that therapists refer clients to PCC and the JiM weekend. For example, PCC has advertised a “Virtual Open House” through its Twitter account that features “[a] therapist who has referred clients.”<sup>83</sup> These statements imply to a reasonable consumer that mental health professionals recommend PCC’s services to their clients because they are scientifically sound.

**b) *PCC’s Website Explicitly States that Being LGBT and Having Same-Sex Attraction Can be Overcome***

In a downloadable pamphlet, MANS: Four Principles of Growth (“MANS”), which can be accessed from PCC’s home page,<sup>84</sup> David Matheson writes:

We live in a lawful universe. Everything around us on this planet and everything we observe out in the cosmos works according to laws. And these laws are very strict. Think about the law of gravity. ... Natural laws cannot be cheated.

...

The same is true in the process of overcoming unwanted same-sex attraction. We

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<sup>81</sup> *About the Co-Creators*, PEOPLE CAN CHANGE, <http://www.peoplecanchange.com/jim/thepeople.php> (last visited on Feb. 18, 2016).

<sup>82</sup> Richard Wyler, *An Accidental Founder, Step by Step*, PEOPLE CAN CHANGE BLOG (Apr. 13, 2009), <http://people-can-change.blogspot.com/2009/04/accidental-founder-building-step-by.html> (emphasis added).

<sup>83</sup> PeopleCanChange.com (@PeopleCanChang1), Twitter (Mar. 25, 2015, 10:24 am), <https://twitter.com/PeopleCanChang1/status/448510653444001792?lang=en>, attached hereto as Exhibit R.

<sup>84</sup> Matheson, David, M.S., CMHC, *MANS: Four Principles of Growth* (2013), attached hereto as Exhibit S, also available at <http://www.peoplecanchange.com/jim/4principles.pdf>.

have to follow all of the pertinent principles. If we fail to do so, gravity wins. The laws that seem to govern growth out of same-sex attraction can be grouped into four essential principles...

Matheson then describes each of the four principles: Masculinity, Authenticity, Need Fulfillment, and Surrender. PCC incorporates this false, deceptive and misleading allusion to scientific natural laws for conversion therapy into its program by stating that the MANS framework is “integral” to PCC’s services, especially the JiM weekend.<sup>85</sup>

Moreover, in the implementation of these “natural laws,” PCC uses methods that have been discredited by the mainstream medical community. The Expert Report of Dr. Janja A. Lalich, Ph.D. (hereinafter “Lalich Expert Report”), submitted as part of the *JONAH* trial, addresses many of the techniques and activities of PCC’s JiM weekend in detail, such as “healthy touch” and psychodrama (known as “Guts Work” within PCC), and states “the techniques [] are listed by mental health experts near the top of the 2006 Delphi Poll of discredited treatments.”<sup>86</sup>

**c) *PCC Lists Supposedly Scientific Studies on Its Website as Proof that “Heterosexual Orientation Shift” is Possible***

**(1) *New Directions Change Project***

To demonstrate scientific support for conversion therapy, PCC’s “Is Change Really Possible?” webpage is devoted to seemingly scientific studies purporting to show that sexual

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<sup>85</sup> See, e.g., *Our Solution: A M.A.N.S. Journey*, PEOPLE CAN CHANGE, <http://www.peoplecanchange.com/change/mans.php> (last visited on Feb. 18, 2016) (“The M.A.N.S. framework and acronym were developed by David Matheson. The M.A.N.S. principles are integral to the Journey Into Manhood program, co-created by David Matheson and Richard Wyler for People Can Change.”).

<sup>86</sup> Lalich Expert Report at 27, attached hereto as Exhibit T. Detailed descriptions of the discredited techniques are located on pages 7-19 of the report. See also Beckstead Expert Report, *supra* note 35, at 6 (“SOCE-focused psychodynamic, behavioral, and religious strategies, which have been rejected by mainstream mental health organizations, are still being used by a small minority of practitioners to try and change a homosexual sexual orientation and foster heterosexuality.”). At the *JONAH* trial, the script for the JiM weekend was introduced as an exhibit. This script details the bizarre processes and techniques employed by PCC, including so-called “healthy touch” in which PCC staff members would engage in prolonged cuddling sessions with JiM participants. See *supra* note 14. In addition, one of the witnesses for the defendants testified at length about the processes and practices used by PCC at its Journey Beyond weekend. The testimony referenced processes in which the PCC staff and the Journey Beyond participants are naked. See *supra* note 14.

orientation can be changed.<sup>87</sup> PCC states that “[i]n more than 50 years of research, including 48 studies we will reference here, there are data and published accounts documenting easily more than 3,000 cases of change from homosexual to heterosexual attraction, identity and functioning.”<sup>88</sup> However, the “studies” cited on this webpage are not scientifically valid or reliable, and in some instances the cited studies have been entirely retracted by their authors.<sup>89</sup>

The first summary of studies PCC references is the “Homosexuality and the Possibility of Change Project” (“Change Project”), a research project by former conversion therapy proponent New Direction Ministries. PCC states that the Change Project “collected and critiqued 31 clinical research studies, individual case studies and surveys on homosexuality and the possibility of change published in books or academic journals between 1952 and 2003.”<sup>90</sup> While PCC summarizes the results as “at least 418 cases in the published psychological literature of heterosexual orientation shift,” these “shifts” are not based on the original study results but rather on the post-hoc assignment of values<sup>91</sup> by the Change Project team based on “reported changes, and supporting evidence for changes, in behavior, attractions, fantasy and self-identification by the subjects of the various studies and surveys.”<sup>92</sup>

PCC never describes the limitations of the Change Project research or the studies on which the project relied. The first such limitation is that the majority of studies examined by the Change Project lack the rigor required in the scientific community to provide meaningful results.

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<sup>87</sup> *Is Change Really Possible?*, PEOPLE CAN CHANGE, <http://www.peoplecanchange.com/change/possible.php> (last visited on Feb. 18, 2016).

<sup>88</sup> *Id.*

<sup>89</sup> These same flawed studies are cited to in other PCC promotional materials as well, including on the PCC blog. See, e.g., Richard Wyler, *The Big Lie: “No Evidence of Change,”* PEOPLE CAN CHANGE BLOG (Apr. 25, 2009, 9:56 am), <http://people-can-change.blogspot.com/2009/04/big-lie-no-evidence-of-change.html>.

<sup>90</sup> *Is Change Really Possible?*, PEOPLE CAN CHANGE, <http://www.peoplecanchange.com/change/possible.php> (last visited on Feb. 18, 2016).

<sup>91</sup> The Change Project assigned “the subjects approximate before-and-after Kinsey sexual orientation scores of from 0 (exclusively heterosexual) to 6 (exclusively homosexual).” *Is Change Really Possible?*, PEOPLE CAN CHANGE, <http://www.peoplecanchange.com/change/possible.php> (last visited on Feb. 18, 2016).

<sup>92</sup> *Id.*

Because of this, only six of the 31 studies evaluated in the Change Project were included in the APA Task Force’s 2009 systematic review of conversion therapy studies.<sup>93</sup> Further, even the six included in the APA Task Force Report are fraught with limitations. The APA Task Force noted that “the low quality of the research on SOCE is such that claims regarding its effectiveness and widespread applicability must be viewed skeptically”<sup>94</sup> and that “due to weaknesses in the scientific validity of research on SOCE, the empirical research does not provide a sound basis for making compelling causal claims.”<sup>95</sup>

Second, the “change” criteria used by New Direction measure changes in a person’s self-reported behavior identity; they do not measure changes in sexual orientation. As described in the APA Task Force Report, scientific research has found that sexual orientation should be distinguished from how a person reports their behavior or identity when assessing sexual orientation change efforts.<sup>96</sup> According to the APA Task Force Report and current scientific research, sexual orientation is “tied to physiological drives and biological systems that are beyond conscious choice,” which is distinct from “beliefs about sexual orientation, self-report of identity or group affiliation, self-report of behavior, and self-labeling.”<sup>97</sup>

Studies or surveys that address how a person reports their own behaviors or identity while undergoing conversion therapy are much more likely to report positive results because they consist of self-reports of change. As described by the APA Task Force Report, self-reports of change are exaggerated for a variety of reasons including impression management, change

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<sup>93</sup> Compare APA Task Force Report Appendix B, *supra* note 9, with <http://www.peoplecanchange.com/change/possible.php>.

<sup>94</sup> APA Task Force Report, *supra* note 9, at 27.

<sup>95</sup> *Id.* at 28.

<sup>96</sup> APA Task Force Report, *supra* note 9, at 30.

<sup>97</sup> *Id.* at 31.

expectancy, and effort justification.<sup>98</sup> The APA Task Force emphasized this point at the beginning of their chapter on outcomes and then multiple times throughout the report:

...nonexperimental studies often find positive effects that do not hold up under the rigor of experimentation. The literature on SOCE is generally consistent with this point. In other words, the least rigorous studies in this body of research generally provide a more positive assessment of efficacy than do studies that meet even the most minimal standards of scientific rigor.<sup>99</sup>

Third, in addition to not qualifying to be included in the APA Task Force Report, some of the studies included in the Change Project were not even designed to measure sexual orientation shifts, and may not have even been focused on the patients themselves. For example, one study accounting for over half of the 418 “successful” cases is actually titled “Attitudes and Experiences of Psychoanalysts in Analyzing Homosexual Patients.”<sup>100</sup> The study was focused on the psychoanalysts, not on the patients or the patients’ outcomes, and the claim of 276 patients experiencing change would have come from the providers’ recall of patient outcomes. As mentioned above, self-reports of change are unreliable. This study appears to actually have two levels of self-reporting and the potential for bias: (1) the patients in reporting change levels to their psychoanalysts and (2) the psychoanalysts in reporting their success rates to the study facilitator.

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<sup>98</sup> APA Task Force Report, *supra* note 9, at 29. The issue of self reporting was also addressed in detail in the Lalich Expert Report. For example, Dr. Lalich explains “Social psychological data clearly show that once a person makes a commitment in front of others about a position or belief, it is more likely that he will cling to that position (Cialdini, 1984). This can be exacerbated when money has been spent, when family and friends have been told about the program, and/or when a great deal of energy called for by the counselors and their treatment programs has already been invested by the client. Participants tend to be less prone to admit to the counselor, to others, or to themselves that they still have problems, that they feel uncomfortable about some of the practices, or that they feel disappointed that the counselor’s promise to “fix” the client has not been met.” Lalich Expert Report, *supra* note 85, at 26.

<sup>99</sup> *Id.* at 35.

<sup>100</sup> Houston MacIntosh, *Attitudes and Experiences of Psychoanalysts*, Journal of the American Psychoanalyst Ass’n 42 (4), 1183-1207 (1994).

Fourth, many early studies on sexual orientation change focused on patients subjected to horrendous aversion techniques used around the 1950s and 60s, such as shock therapy.<sup>101</sup> PCC's reliance on such studies is misleading, since PCC employs "gender affirmative" therapy focused on bringing gender expression into conformity with sex assigned at birth rather than pure aversive conditioning.<sup>102</sup>

Fifth, PCC summarizes the Change Project results by stating "it is striking that these 31 studies, conducted over 50-some years, consistently show at least some evidence for sexual orientation shift, every time."<sup>103</sup> However, this is an overstatement of even this misleading assessment of previous studies since even in the chart created by PCC, four of the studies do not list that any subjects showed evidence of change.<sup>104</sup>

It is also quite notable that New Directions no longer has any reference to the Change Project on its website. Instead it has an apology letter to "Ex-Gay Survivors" who have experienced harm as a result of sexual orientation change efforts:

I want to acknowledge and express great sorrow that people were profoundly hurt by ex-gay paradigms. The harmful ramifications are immense. This causes me deep grief and motivates me to be very clear that New Direction does not promote or in any way support ex-gay efforts. We lament that despite the closure of Exodus International in 2013, there are still ministries that perpetuate ex-gay messages. At New Direction, we are part of the movement within the Christian community that fully affirms our LGBTQ+ siblings.<sup>105</sup>

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<sup>101</sup> See e.g., W. Freeman & R.G. Meyer, *A behavioral alteration of sexual preferences in the human male*, 6 BEHAVIOR THERAPY 206-212 (1975), which PCC lists as having nine individuals experiencing heterosexual shifts. <http://www.peoplecanchange.com/change/possible.php>. The APA Task Force Report notes that this study involved "aversion shock therapy." See APA Task Force Report, *supra* note 9, at 128.

<sup>102</sup> "Gender Affirmative" Therapy Can Help!, PEOPLE CAN CHANGE, <http://www.peoplecanchange.com/articles/gathertherapy.php> (last visited on Feb. 18, 2016) ("And we certainly never received electric shocks, as some claim!").

<sup>103</sup> *Is Change Really Possible?*, PEOPLE CAN CHANGE, <http://www.peoplecanchange.com/change/possible.php> (last visited on Feb. 18, 2016).

<sup>104</sup> *Id.*

<sup>105</sup> Wendy Gritter, *A Letter to Ex-Gay Survivors*, NEW DIRECTION MINISTRIES OF CANADA <http://www.newdirection.ca/a-letter-to-ex-gay-survivors/> (last visited Feb. 18, 2016).

## (2) *Other Studies Cited by PCC*

On the same page, PCC also identifies 13 additional studies from the book “Homosexuality: The Use of Scientific Research in the Church’s Moral Debate.” These surveys have many of the same problems as New Direction’s Change Project: only two of the 13 had sufficient scientific rigor to be included in the APA Task Force’s systematic review and some of the studies involved aversion techniques not employed by PCC.<sup>106</sup>

PCC also quotes an article by Dr. Warren Throckmorton: “My literature review contradicts the policies of major mental health organizations because it suggests that sexual orientation, once thought to be an unchanging sexual trait, is actually quite flexible for many people, changing as a result of therapy for some, ministry for others and spontaneously for still others.”<sup>107</sup> Dr. Throckmorton’s article summarized 11 studies regarding sexual orientation changes. However, Dr. Throckmorton later learned that in one of the studies he had relied upon, the Pattison & Pattison study (the “Pattison Study”), two of the participants that claimed to have changed from homosexual to heterosexual had not actually changed at all. One participant later stated, “We professed that we had been healed—past tense—because it was part of the theology to claim your healing in order to bring it about.”<sup>108</sup> After receiving this information, Dr. Throckmorton disclaimed the original study and his own article and criticized NARTH and other

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<sup>106</sup> See, e.g., MacCulloch & Feldman, *Aversion therapy in management of 43 homosexuals*, 2 BRITISH MED. JOURNAL 594-7 (1967) (use of shock therapy).

<sup>107</sup> *Is Change Really Possible?*, PEOPLE CAN CHANGE, <http://www.peoplecanchange.com/change/possible.php> (last visited on Feb. 18, 2016), citing Warren Throckmorton, *Initial empirical and clinical findings concerning the change process for ex-gays*, 33 PROFESSIONAL PSYCHOLOGY: RESEARCH AND PRACTICE 242-248 (2002).

<sup>108</sup> Warren Throckmorton, *Participant Discredits the Original Ex-Gay Study*, RELIGION DISPATCHES (No. 10, 2011), <http://religiondispatches.org/participant-discredits-the-original-ex-gay-study/>.

sexual orientation change groups for continuing to rely on them.<sup>109</sup> The Pattison Study is also one of the 31 studies used by the Change Project to show evidence of change.<sup>110</sup>

PCC's citation to a 2001 study by Dr. Robert Spitzer is also misleading, as PCC makes no mention of Dr. Spitzer's 2012 retraction of this study.<sup>111</sup> As the basis for his study, Dr. Spitzer had detailed conversations with 200 individuals who had attempted to change their sexual orientation in some manner.<sup>112</sup> Dr. Spitzer's study did not go through the peer-review process before its original publication and critiques of the study blasted its nonscientific approach.<sup>113</sup> In his 2012 retraction, Dr. Spitzer admitted that the study had bothered him for many years and that the "critiques are largely correct."<sup>114</sup> He followed this retraction with an apology letter in April 2012 stating that the study could not be used to prove anything because there was no way to verify if people were telling the truth: "the simple fact is that there was no way to determine if the subject's accounts of change were valid."<sup>115</sup>

## **5. PCC Fails to Disclose Well-Documented Health and Safety Risks Associated with Conversion Therapy**

While no credible evidence exists demonstrating that conversion therapy can change a person's sexual orientation or gender identity, there are well-documented reports of the harm that can result from conversion therapy. The American Psychiatric Association has warned that the "potential risks of reparative therapy are great, including depression, anxiety and self-destructive

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<sup>109</sup> Warren Throckmorton, *First study to refer to ex-gays discredited*, PATHEOS (Nov. 11, 2011), <http://www.patheos.com/blogs/warrenthrockmorton/2011/11/11/first-study-to-refer-to-ex-gays-discredited/>.

<sup>110</sup> *Is Change Really Possible?*, PEOPLE CAN CHANGE, <http://www.peoplecanchange.com/change/possible.php> (last visited on Feb. 18, 2016).

<sup>111</sup> *Id.*

<sup>112</sup> Benedict Cary, *Psychiatry Giant Sorry for Backing Gay 'Cure'*, THE NEW YORK TIMES (May 18, 2012), [http://www.nytimes.com/2012/05/19/health/dr-robert-l-spitzer-noted-psychiatrist-apologizes-for-study-on-gay-cure.html?\\_r=0](http://www.nytimes.com/2012/05/19/health/dr-robert-l-spitzer-noted-psychiatrist-apologizes-for-study-on-gay-cure.html?_r=0).

<sup>113</sup> *Id.*

<sup>114</sup> Gabriel Arana, *My So-Called Ex-Gay Life*, THE AMERICAN PROSPECT (Apr. 11, 2012), <http://prospect.org/article/my-so-called-ex-gay-life>.

<sup>115</sup> John Becker, *EXCLUSIVE: Dr. Robert Spitzer Apologizes to Gay Community for Infamous 'Ex-Gay' Study*, TRUTH WINS OUT (Apr. 25, 2012), <http://www.truthwinsout.org/news/2012/04/24542/>.

behavior....”<sup>116</sup> Expert testimony in the *JONAH* trial details a litany of negative effects that can result from conversion therapy. As indicated by A. Lee Beckstead, a licensed psychologist who was a member of the APA Task Force:

Many SOCE consumers, like the Plaintiffs, eventually report feeling worse and more dysfunctional than when they entered treatment. These reports depict how the hopes they had early in treatment turned “sour.” These SOCE consumers defined what they experience as harmful as (a) being misinformed about realistic outcomes; (b) being misled with unsubstantiated theories and treatments, including mischaracterizations of same-sex attractions, gender, and identity; (c) blaming parents for their homosexuality; (d) being blamed for not changing and not trying hard enough, and thus internalizing treatment failure; (e) being reinforced that living as an LGB person is destructive and must be avoided, and therefore not having any other choices; (f) being restricted from accurate information, active coping skills, and exploration of options; and (g) feeling pressured to be “one way or another” and reject and suppress core aspects of self.<sup>117</sup>

The APA Task Force Report listed over 20 harms associated with conversion therapy, including depression, shame, social withdrawal, substance abuse, decreased self-esteem and authenticity to others, increased self-hatred, problems in sexual and emotional intimacy, sexual dysfunction, high-risk sexual behaviors, and suicidality.<sup>118</sup> The Family Acceptance Project additionally reports that family rejection, which it studied conversion therapy as a part of, makes youth “8.4 times more likely to report having attempted suicide, 5.9 times more likely to report high levels of depression, 3.4 times more likely to use illegal drugs, and 3.4 times more likely to report having engaged in unprotected sexual intercourse.”<sup>119</sup>

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<sup>116</sup> Am. Psychiatric Ass’n, *Therapies Focused on Attempts to Change Sexual Orientation (Reparative or Conversion Therapies): COPP Position Statement* (May 2000), [http://media.mlive.com/news/detroit\\_impact/other/APA\\_position\\_conversion%20therapy.pdf](http://media.mlive.com/news/detroit_impact/other/APA_position_conversion%20therapy.pdf).

<sup>117</sup> Beckstead Expert Report, *supra* note 35, at 16.

<sup>118</sup> APA Task Force Report, *supra* note 9, at 41-43.

<sup>119</sup> Family Acceptance Project, *Family Rejection of Lesbian, Gay and Bisexual Adolescents & Negative Health Outcomes*, January 1, 2009, available at <http://familyproject.sfsu.edu/news-announce/family-rejection-lesbian-gay-and-bisexual-adolescents-negative-health-outcomes>

Further, it was the suicide of Leelah Alcorn, a 17-year-old transgender youth subjected to conversion therapy, that sparked the White House’s petition to ban conversion therapy.<sup>120</sup> And in the *JONAH* case, two of the plaintiffs subjected to conversion therapy testified about the psychological damage they suffered. One plaintiff indicated that conversion therapy resulted in “deepening depression and anxiety leading to suicidal ideation and feelings of hopelessness;”<sup>121</sup> another described conversion therapy as “psychological abuse,” and that by the time he terminated his sessions, “he was deeply depressed and []commenced taking antidepressant medications.”<sup>122</sup>

Despite substantial documentation of the health and safety risk posed by conversion therapy, PCC makes absolutely no reference to these risks on its website and other marketing materials. The failure to provide such a disclosure is a material omission by PCC.

### **C. PCC’s Claims are Reasonably Relied Upon by Consumers**

Under the Policy Statement on Deception, the FTC examines the practice from the perspective of a consumer acting reasonably under the circumstances. If the representation is directed to a particular group, the FTC examines reasonableness from the perspective of that group. To determine whether the consumer’s conclusions were reasonable, the Commission will examine the “entire advertisement, transaction, or course of dealing” to find the net impression that the advertisement gives. Additionally, the Commission will presume that the consumer’s interpretation was reasonable if the consumer draws the conclusion that the advertiser intends to convey.

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<sup>120</sup> Jonathan Capehart, *Obama comes out against ‘conversion therapy’ to support ‘Leelah’s Law,’* Washington Post (Apr. 10, 2015), available at <https://www.washingtonpost.com/blogs/post-partisan/wp/2015/04/10/obama-comes-out-against-conversion-therapy-to-support-leelahs-law/>.

<sup>121</sup> Complaint and Jury Demand at 21, *Ferguson v. JONAH*, No. L-5473-12 (N.J. Super. Ct. Law Div. Nov. 27, 2012) attached hereto as Exhibit U.

<sup>122</sup> *Id.* at 20.

The consumers that PCC advertisements are intended to attract are more vulnerable than the average consumer. PCC advertisements are targeted to vulnerable young adults and their families, like the plaintiffs in the *JONAH* trial. Potential clients may be depressed or in conflict with their families due to societal or familial bias against LGBT people. The misrepresentations in the advertisements take advantage of the vulnerability of this class of consumers.

Additionally, the advertisements are designed to keep these consumers continuously engaged in conversion therapy programs through counseling and webinars, as well as through references to specific therapists (including the founder of PCC), some of which may provide conversion therapy services for one the most vulnerable populations—children. The false and misleading marketing and promotion of conversion therapy on PCC’s website has far-reaching implications for those who are researching the potential benefits and risks associated with the therapy, including the provision of such services for children.

#### **D. PCC’s Claims are Material**

Under the FTC Policy Statement on Deception, a material misrepresentation is one that is likely to affect a consumer’s choice or conduct regarding a product. The FTC presumes certain categories of claims and omission to be material: (1) express claims; (2) omitted information the customer needs to evaluate the product or service or related claim; (3) where there is evidence that the seller intended to make an implied claim; and (4) where significant health and safety risk are involved.<sup>123</sup> PCC’s misrepresentations are material under all of these tests and are likely to cause injury to consumers.

As shown above, PCC’s marketing materials expressly and implicitly claim that PCC will help change an individual’s sexual orientation or gender identity, and that its services are

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<sup>123</sup> *Id.*

effective and supported by scientific evidence. Consumers would likely not seek PCC's services if they did not believe these claims. Claims such as these are presumed material.

PCC's marketing claims are also material because they omit important health and safety information that consumers need to evaluate PCC's services. As noted above, there is no credible evidence to suggest that conversion therapy can change an individual's sexual orientation or gender identity. On the other hand, there is substantial evidence that it can adversely affect individuals, including by causing an increased risk of depression and suicide.<sup>124</sup>

Both the SAMHSA report and the APA Task Force Report provide guidance on the appropriate therapeutic response for individuals experiencing unwanted same-sex attractions or gender nonconformity, and in both cases the reports emphasize that conversion therapy is not effective and should not be used.<sup>125</sup> As noted by Dr. Bernstein as part of the *JONAH* trial, "The consequences of ineffective, invalid, and inappropriate treatment for patients of mental health service providers are just as serious as they would be for patients suffering from any other medical condition. Potential harm to the patient can include, but is not limited to, depression, anxiety, and self-destructive behavior, even suicide."<sup>126</sup>

Further, similar to the FTC's *Daniel Chapter One* (finding false and deceptive health claims related to advertiser's herbal formulations and shark cartilage) and *Travel King* cases (finding false and deceptive health claims related to advertiser's "psychic" treatment for cancer and other disorders), PCC's marketing materials induce customers to purchase ineffective conversion therapy services that have the potential to cause harm at the expense of likely

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<sup>124</sup> See Section III.B.5.

<sup>125</sup> See SAMHSA Report, *supra* note 6, at 3; APA Task Force Report, *supra* note 9, at 54; see also Beckstead Expert Report, *supra* note 35, at 19.

<sup>126</sup> Bernstein Expert Report, *supra* note 70, at 5.

forgoing alternative, legitimate therapeutic services.<sup>127</sup> Because there is no competent and reliable evidence to indicate that conversion therapy has any beneficial medical effects—and because the evidence in fact shows that conversion therapy is ineffective and potentially harmful—additional substantiation is needed for advertising claims because it is inducing consumers to forego an effective treatment in favor of an ineffective treatment, which can be “injurious to a patient's health.”<sup>128</sup>

#### IV. CONCLUSION

Despite the fact that being LGBT is widely recognized in the scientific, medical, and mental health communities as a normal variant of human sexuality and that “efforts to change an individual’s sexual orientation, gender identity, or gender expression... [are] not supported by credible evidence,”<sup>129</sup> PCC’s website, other advertisements, and business practices in accepting money for conversion therapy services are based on false, misleading and deceptive claims that LGBT sexuality and gender identity are deficiencies or disorders that PCC can cure through proven, scientifically-based psychological processes and methods. Applying each of the FTC’s three factors, it is clear that PCC, through its advertisements, has made material representations and omissions that are likely to mislead consumers acting reasonably in the circumstances to their detriment. Therefore, we request that the Commission take enforcement action to stop PCC’s deceptive advertising, marketing and other business practices in all its forms, and take steps to investigate all practitioners making similar claims.

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<sup>127</sup> See *In re Travel King, Inc.*, et al., 86 F.T.C. 715, 764 (1975) (the defendant’s promotional materials “had the tendency and capacity to inflict great injury and suffering on persons afflicted with serious, incurable or terminal illnesses and diseases, to prey upon and to exploit them, and to cause them, and in some cases their spouses, children or relatives, to undertake long journeys at great cost, hardship and inconvenience, and to forego medical treatment with the potential result of worsening their condition and hastening or causing their death.”); *In re Daniel Chapter One*, FTC No. 082-3085 at 103 (Jan. 25, 2010) (requiring additional substantiation for the defendant’s claims because “foregoing a proven cancer treatment in favor of an ineffective treatment would be injurious to a patient’s health.”).

<sup>128</sup> *Daniel Chapter One* at 103.

<sup>129</sup> SAMHSA Report, *supra* note 6, at 1.