IN THE SUPREME COURT OF THE STATE OF NEVADA

HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. dba CHOICE HOME WARRANTY, a Nevada corporation,

Appellant,

VS.

STATE OF NEVADA, DEPARTMENT OF BUSINESS AND INDUSTRY-DIVISION OF INSURANCE, a Nevada administrative agency,

Respondent.

Supreme Court No. 80218

First Judicial District Court 12 2020 05:55 p.m. Case No. 17 OC 0026 Pig 12 2020 05:55 p.m. Elizabeth A. Brown Clerk of Supreme Court

Appeal from First Judicial District Court, State of Nevada, County of Clark The Honorable James. T. Russell, District Judge

APPELLANT'S APPENDIX VOLUME VIII OF XIV (AA001359 – AA001559)

Constance L. Akridge, Esq.
Nevada Bar No. 3353
Sydney R. Gambee, Esq.
Nevada Bar No. 14201
Brittany L. Walker, Esq.
Nevada Bar No. 14641
Holland & Hart LLP
9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134
Tel: (702) 669-4600
Fax: (702) 669-4650
clakridge@hollandhart.com
srgambee@hollandhart.com
blwalker@hollandhart.com

Attorneys for Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty, a Nevada corporation

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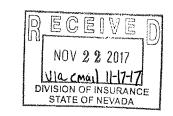
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on September 14, 2017 (Cause No. 17.0050)			AA001270
Transcript of Hearing Proceedings on	08/06/18	IX	AA001708 -
August 6, 2018 (Case No. 17 OC 00269 1B)			AA001731
Transcript of Hearing Proceedings on November	11/07/19	XIII	AA002384 -
7, 2019 (Case No. 17 OC 00269 1B)			AA002455
Updated Hearing Exhibits and Updated Witness	09/08/17	IV	AA000518 -
List by Division (Cause No. 17.0050)			AA000521
(Exhibits 41-42 excluded from appendix as			
irrelevant to this appeal)			



KIRK B.	LE	NHARI	D,	ESQ.,	Nevada	Bar No.	1437
klenhard	ab	hfs.com					
TRAVIS	F	CHANC	Ήr	ESO	Nevad	a Rar No	13800

tchance@bhfs.com

BROWNSTEIN HYATT FARBER SCHRECK, LLP 100 North City Parkway, Suite 1600

Las Vegas, NV 89106-4614 Telephone: 702.382.2101 Facsimile: 702.382.8135

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LORI GRIFA, ESQ., NJ Bar No. 011551989

lgrifa@archerlaw.com

ARCHER & GREINER, P.C. 21 Main Street, Suite 353 Hackensack, NJ 07601

Telephone: 201.342.6000 Facsimile: 201.342.6611

Attorneys for Respondent

STATE OF NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY **DIVISION OF INSURANCE**

IN THE MATTER OF:

HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. dba CHOICE HOME WARRANTY,

CAUSE NO.: 17.0050

HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. d/b/a CHOICE HOME WARRANTY'S CLOSING ARGUMENT

Respondent.

Respondent HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. d/b/a Choice Home Warranty ("HWAN"), by and through its attorneys of record Kirk B. Lenhard, Esq. and Travis F. Chance, Esq., of the law firm of Brownstein Hyatt Farber Schreck, LLP, and Lori Grifa, Esq., of the law firm of Archer & Greiner, P.C., hereby submits the instant Closing Argument pursuant to the Order entered October 13, 2017. This Closing Argument is made and based upon the pleadings and papers on file herein, the following arguments, and any oral arguments of counsel that this tribunal shall choose to consider.

I. THE DIVISION HAS DENIED HWAN DUE PROCESS

Although it is accepted that "proceedings before administrative agencies may be subject to more relaxed procedural and evidentiary rules, due process guarantees of fundamental fairness still apply." Dutchess Bus. Servs., Inc. v. Nev. State Bd. of Pharmacy, 124 Nev. 701, 714, 191 P.3d 1159, 1168 (2008). Taken as a whole, the Division's conduct from the filing of the

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Complaint through the filing of its post-hearing brief on October 30, 2017 has denied HWAN its right to due process in two discrete ways. First, HWAN was denied due process when the Division unilaterally deemed HWAN's Certificate of Registration ("COR") non-renewed, and that HWAN was operating without a license, after the filing of the Complaint but before the hearing of this matter. Second, HWAN has been denied due process in defending against the Division's allegations, as the Division's theory for revocation has consistently changed since the Complaint was filed. Revoking HWAN's license based upon the Division's new allegations would be unconstitutional.

A. HWAN has received no notice of the facts underlying the Division's position that it did not appropriately renew its COR for 2017.

HWAN has a right to due process in this proceeding. The Nevada Supreme Court has held that due process mandates that "[a]dministrative bodies must follow their established procedural guidelines." *Dutchess, supra*, 124 Nev. at 711, 191 P.3d at 1166. Additionally, the Division must give notice to HWAN of "the issues on which decision will turn and...the factual material on which the agency relies for decision so that [it] may rebut it." *Id.* (internal citations omitted). NRS 679B.320(1) requires a notice of hearing (i.e., a complaint) to "specify the matters to be considered thereat." Further, NRS 679B.320(2) states that "[i]f any person is entitled to a hearing by any provision of this Code before any proposed action is taken, the notice of the hearing...[must] stat[e] the basis of the proposed action."

On November 8, 2016, HWAN submitted its annual Renewal Application for the 2016-2017 year (the "2017 Renewal"). Apparently, the Division considered the information provided to be incomplete, unbeknownst to HWAN. On July 21, 2017, the Division, through Mary Strong, sent an e-mail notification to HWAN in which she informed HWAN only that it had not timely renewed its COR for 2017⁴ and requested that it turn over a list of all service contracts. That same day, Rajat Jain instructed Ms. Strong to list HWAN as "inactive" on the Division's

¹ HWAN is entitled to a hearing prior to revocation of its COR pursuant to NRS 690C.325(1).

² Ex. DD.

³ See Hr'g Tr., Day 1 at 106:24-107:4.

⁴ HWAN's 2017 Renewal application was submitted and stamped received on November 8, 2016. See Ex. DD.

⁵ See Ex. II.

website. 4 Yet, the Amended Complaint alleges only the following: 7

- A. Violation of NRS 686A.310(1)(b) by failing to promptly and reasonably respond to claims made under HWAN's service contracts;
- B. Violation of NRS 679B.125(2) by conducting its business in an unsuitable manner, based upon consumer complaints, alleged news articles, and decisions of agencies and courts in other states;
- C. Violation of NRS 686A.170 by engaging in unfair and deceptive trade practices based upon administrative and court decisions from other states;
- D. Violation of NRS 686A.070 by submitting knowingly false statements that no new officers of HWAN were fined in HWAN's 2011, 2012, 2014, and 2015 renewal applications; and
- E. Violation of NRS 690C.320 by failing to make available for inspection HWAN's records related to its offered service contracts.

Notably, none of these allegations relate to HWAN failing to timely provide all information. This is unsurprising, as Ms. Strong's July 21, 2017 e-mail was the very first time that HWAN was notified of a non-renewal. In fact, the Division cashed HWAN's renewal fee check sent with the 2017 Renewal and has never returned that amount to HWAN. Moreover, HWAN has never been notified that the Division considered the information it provided was incomplete. In other words, neither the Complaint nor the Amended Complaint complies with the Division's governing statutes because they fail to specify that one aspect of the hearing would be HWAN's failure to renew. Cf. NRS 679B.320(1)-(2). In that same vein, they fail to afford HWAN appropriate constitutional notice of the charges against it and the factual basis for the same. See Dutchess, supra. The Division never sought to amend the Amended Complaint or to conform the Amended Complaint to its proofs at the hearing of this matter. Thus, an adverse finding against HWAN based on an alleged failure to renew its COR would violate due process and, as a result, would be unconstitutional.

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⁶ See Hr'g Tr., Day 1 at 248:14-22; Ex. O.

⁷ These alleged violations substantively mirror those in the original Complaint.

⁸ Hr'g Tr., Day 1 at 107:12-16.

⁹ NRS 690C.325(1) prohibits the Commissioner from refusing to renew a COR without a properly noticed hearing.

B. HWAN never received proper notice of the Division's argument that CHW Group, Inc. is one and the same with HWAN.

At the hearing of this matter, the Division's Section Chief for Property and Casualty, Rajat Jain, testified that "[i]t was identified that Choice and HWAN were one and the same entity." The Division's subsequent Post-Hearing Brief filed on October 30, 2017 also alleges that HWAN and CHW Group, Inc. ("CHW") are the same entity, that "HWAN has delegated to an unlicensed entity all of its functions for which the law requires a certificate of registration," and that CHW created the corporate fiction of HWAN to avoid its own licensing in this State. The Division alleges these facts to support a finding of unsuitability and deceptive trade practices.

HWAN, however, was never given proper notice of these facts and that they formed the basis for the Division's request for revocation of HWAN's COR. The first day of the hearing of this matter – during Mr. Jain's testimony cited above – was the very first time that HWAN was placed on notice of the Division's contention that HWAN and CHW were one and the same. The Division's two Complaints in this matter, filed on May 9 and September 5, 2017, set forth numerous allegations, but nowhere allege that HWAN and CHW are the same. Additionally, the Division's Pre-Hearing Statement argues only that the numerous alleged violations are attributable to "CHW," which the Statement itself defines as "Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty," but fails to argue that HWAN and CHW are one and the same. Similarly, neither of the Complaints nor the Division's Pre-Hearing Statement argue that CHW has utilized HWAN to avoid the licensing requirements for a service contract provider in Nevada.

The Division apparently contends that HWAN did have notice of the foregoing arguments. ¹³ The Division bases this on HWAN's Motion for Subpoenas filed on July 17, 2017, ¹⁴ in which HWAN noted – in a footnote – that "HWAN is not Choice Home Warranty" and that the

¹⁰ Hr'g Tr., Day 1 at 117:12-13, 118:1-2.

¹¹ Division's Post Hr'g Br. at 4:5-8, 6-7.

¹² Id. at 7:21-22.

¹³ See Division's Opp. to Resp't Mot. to Strike Portions of the Division's Post-Hearing Brief at 3-4.

¹⁴ Id.

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Complaint "consistently and repeatedly comingles the identity of the two companies in an inappropriate way."15 The Division also contends that HWAN had notice because in its Pre-Hearing Statement, HWAN noted that "[t]he Division's entire case related to fines in other states rests upon the false premise that HWAN was the legal entity that was subject to those fines."16 Simply put, however, the Division is incorrect. "The crucial element [of proper notice] is adequate opportunity to prepare." Nev. State Appren. Council v. Joint Appren. Training Comm. for the Electrical Industry, 94 Nev. 763, 765, 587 P.2d 1315, 1316-1317 (1978). The fact that HWAN noted the inarticulate commingling of HWAN with CHW in the Complaint does not, in and of itself, show that HWAN had an adequate opportunity to prepare a defense to the allegation that HWAN and CHW are the same entity and that CHW has utilized HWAN as a fiction.

Even a detailed reading of the Complaints in this matter shows that the allegations are lodged against "CHW," which term is itself defined as "Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty." This definition of the Complaints' usage of "CHW" is a far cry from giving even reasonable notice that the Division was proceeding against HWAN on the basis that it is the same entity as CHW, or that CHW utilizes HWAN as a fiction. HWAN's notations in its Motion for Subpoenas and its Pre-Hearing Statement are nothing more than an acknowledgement of that definition and its intentional tendency to muddy the waters. And, it certainly does not show any notice of the argument that CHW has utilized HWAN as a fiction to avoid its own licensing.

The notion that proper notice was provided here is belied by the very case cited by the Division in its Opposition to HWAN's Motion to Strike. In Nev. State Appren. Council, the Supreme Court found that a letter from a terminated apprentice to the Nevada State Apprenticeship Council ("NSAC") styled as an "appeal" from an Apprenticeship Committee's termination was sufficient notice to satisfy due process. 94 Nev. at 765-766, 587 P.3d at 1317. However, that decision was made in the context of the NSAC's own rules, which required only that "[t]he complaint of any person shall be stated with sufficient particularity to enable the

¹⁵ Id. at 3:20-21.

¹⁶ Id. at3:22-4:2.

¹⁷ Am. Compl. at 2:8-9.

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respondent to prepare a defense thereto." Id. at 765, 587 P.2d at 1316. This differs from NRS 679B.320(1) and NRS 679B.320(2), which require, generally, that the matters to be considered at the hearing be specified in the Complaint. Additionally, the letter itself noted it was an "appeal" from the decision to terminate, giving the Committee sufficient notice to prepare a defense to that termination. Id. Here, however, not only did the Division fail to "specify the matters to be considered" at the hearing related to HWAN and CHW being one and the same and HWAN being a fiction, as required by NRS 679B.320(1), it also failed to give proper notice that the decision would turn on those same issues and of the "factual material" the Division would rely upon to prove them. Dutchess, supra. Thus, revocation of HWAN's COR based upon a finding that CHW and HWAN are one and the same and/or that CHW created the "fiction" of HWAN to avoid licensing would deprive HWAN of due process. 18

Notwithstanding the foregoing, the Division also failed to show, by a preponderance of the evidence, that HWAN and CHW are one and the same. Mr. Jain testified that he had not reviewed the separate corporate filings of the two entities, which were admitted into evidence. 19 It was merely his "professional opinion" that the entities are the same. ²⁰ Furthermore, the Division's own witnesses admitted they had never heard of the concept of piercing the corporate veil and had never engaged in the exercise of doing so.²¹ The Division also failed to put forth any evidence that CHW utilizes HWAN to avoid licensing requirements. In essence, the Division argues that CHW, through Victor Hakim and Victor Mandalawi, conspired to avoid the licensing requirements for a Nevada service contract provider. Such a claim would require a showing that Victor Hakim and Victor Mandalawi, "by some concerted action, intend[ed] to accomplish an unlawful objective for the purpose of harming another, and damage results from the act or acts." Hilton Hotels v. Butch Lewis Productions, 109 Nev. 1043, 1048, 862 P.2d 1207, 1210 (1993) (internal citations omitted).

However, Victor Hakim testified that in states that require service contract providers to be

¹⁸ HWAN also refers to and incorporates by reference the arguments set forth in its Post-Hearing Brief, to the extent they are also informative of these issues.

¹⁹ Hr'g Tr., Day 1 at 118:12-15, 119:4-8.

²⁰ Id. at 118:8.

²¹ See Hr'g Tr., Day 2 at 6-14.

registered, such as Nevada, CHW merely acts as an independent contract administrator on behalf of Home Warranty Administrator entities.²² He further testified that it was his belief that under NRS 690C.120(2), service contract administrators need not be registered.²³ Accordingly, CHW was affirmatively identified as HWAN's contract administrator²⁴ in a contract approved by the Division on August 26, 2011.²⁵ In addition to these points, testimony was received that Victor Mandalawi is the sole shareholder and officer of HWAN.²⁶ On the other hand, testimony was also received that, while Victor Mandalawi is a shareholder in CHW, Victor Hakim is the majority shareholder and chief executive officer.²⁷ Thus, contrary to showing any intent to accomplish an unlawful objective, this evidence shows a desire to comply with Nevada law. The Division wholly failed to prove, by a preponderance of the evidence, that HWAN is a fiction, allowing CHW to avoid licensing obligations. Thus, an order should be entered in favor of HWAN on this point, finding that HWAN and CHW are separate entities and that CHW has not used HWAN to avoid its own licensing.

II. EQUITABLE ESTOPPEL PRECLUDES THE DIVISION'S ARGUMENTS FOR REVOCATION ON THE BASIS THAT: (A) HWAN AND CHW ARE THE SAME; AND THAT (B) CHW UTILIZES HWAN TO AVOID ITS OWN LICENSING

A. The Division requested and approved HWAN's fictitious name filing and is precluded from arguing that CHW and HWAN are one entity based upon the same.

In addition to the foregoing, the Division is equitably estopped from attempting to treat HWAN and CHW as one and the same, solely based upon HWAN's fictitious name. "[E]quitable estoppel operates to prevent the assertion of legal rights that in equity and good conscience should be unavailable because of a party's conduct." *United Brotherhood v. Dahnke*, 102 Nev. 20, 22, 714 P.2d 177, 178-79 (1986). It requires an element of justifiable reliance by the party invoking the doctrine. *Merrill v. DeMott*, 113 Nev. 1390, 1396, 951 P.2d 1040, 1043 (1997). Moreover,

²² Hr'g Tr., Day 3 at 72:10-18.

[&]quot; *Id.* at 70:15-21

²⁴ HWAN is not CHW's only contract administration relationship. It provides this same service for another wholly unrelated entity, TMI Solutions, in approximately 12-15 states. *See id.* at 72:24-73:9

²⁵ See Ex. GG.

²⁶ Hr'g Tr., Day 2 at 131; 134-135.

²⁷ Id. at 235:13-236:4; Hr'g Tr., Day 3 at 96:20-22.

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Nevada courts have applied estoppel against state agencies where specific representations were made and were detrimentally relied upon. See, e.g., Southern Nev. Mem. Hospital v. State, 101 Nev. 387, 393 705 P.2d 139, 143 (1985) (applying equitable estoppel to prevent the state from revoking letters of approval for construction of two hospitals because the hospitals justifiably relied upon them). Here, Mr. Jain testified that, during the Division's investigation of HWAN beginning in

2013, the Division knew that CHW and HWAN were selling contracts in the State of Nevada.²⁸ The Division also knew at that time that CHW was not licensed in Nevada²⁹ and that HWAN was using an approved contract that contains Choice Home Warranty on it. 30 As a result, the Division was prepared to initiate a cease and desist action.³¹ Instead, the Division began negotiating with Mr. Mandalawi and ultimately, the parties agreed that HWAN would register and utilize the fictitious name "Choice Home Warranty." Ignoring its active participation in the aforesaid resolution, the Division made the conclusion and now argues here that, as of the filing of the fictitious name registrations in 2014, HWAN and CHW were one and the same entity.³³ Yet, in exchange for HWAN's use of the fictitious name, the Division released the legal right to initiate an adversarial action based upon the notion that HWAN and CHW are the same entity. The Division plainly authorized³⁴ and urged the fictitious name filing and HWAN justifiably relied upon this directive. Derrick Dennis' July 8, 2014 Memorandum to the Commissioner could not be clearer in this regard.³⁵ In acceding to the Division's request, HWAN detrimentally relied upon that representation by filing for and utilizing the trade name "Choice Home Warranty." Because of this, the Division must be equitably estopped from now attempting to assert any violations based upon HWAN and CHW being one and the same. This includes any attempts to attribute the conduct of CHW to HWAN as a basis for the violations set forth in the Amended Complaint.

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³⁰ Id. at 115:11-15. See also Ex. GG. 31 Hr'g Tr., Day 1 at 117:4-6.

²⁸ Hr'g Tr., Day 1 at 115:16-18.

32 Id. at 117:15-18. 27

33 Id. at 117:12-13.

²⁹ Id. at 116:12-16.

34 See Ex. Q; Hr'g Tr., Day 1 at 22:8-17. 35 Ex. Q. See also Hr'g Tr., Day 1 at 22:8-17.

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B. The Division knew of and approved the relationship between HWAN and CHW and is precluded from arguing that HWAN has delegated authority for activities which require licensing under Nevada law.

In addition to the foregoing, the Division is also estopped from espousing yet another of its apparent theories. In its Post-Hearing Briefing, the Division contends that HWAN has delegated its duties as a licensed service contract provider to CHW, namely the negotiating, selling, and signing of service contracts with Nevada consumers. For this conduct, the Division assigns fault to HWAN and argues for revocation of HWAN's COR. Yet, the Division must be equitably estopped from making this argument. As is set forth above, equitable estoppel applies to state agencies where those agencies make specific factual representations detrimentally relied upon by the party invoking estoppel. *Southern Nev. Mem. Hosp.*, *supra.* The Division made express representations to HWAN relative to the latter's relationship with CHW upon which HWAN relied in conducting its operations.

Specifically, in 2011 the Division itself approved the service contract form used by HWAN for Nevada consumers. Mr. Jain testified at the hearing that the Division reviewed and approved that contract. ³⁸ Further, that contract contains the words "Approved" in the left margin. ³⁹ It also specifically states that "[t]his Agreement is administered by Choice Home Warranty." ⁴⁰ In other words, the Division knew of and expressly approved CHW's role as HWAN's contracts administrator, including the full scope of the services provided by CHW under its Independent Service Provider Contract with HWAN. ⁴¹ HWAN relied upon that representation to mean that its arrangement with CHW was in compliance with Nevada law and in continuing its operations over the years. The Division's attempt to now reverse course when it explicitly approved of the HWAN-CHW relationship, and the scope thereof, would be inequitable. The Division must be estopped from arguing for revocation based upon HWAN's

³⁶ Division's Post-Hr'g Br. at 6:14-24.

^{25 37} Id. It must also be noted that this factual allegation was never made in either of the Complaints and, for the reasons set forth in Part I, supra, revocation of HWAN's COR on that basis would violate due process.

³⁸ Hr'g Tr., Day 1 at 73:1-19 (referencing Division Exhibit 35).

³⁹ Ex. EE at 2.

⁴⁰ *Id.* at 3.

⁴¹ This notion is borne out by Mr. Jain's testimony that at least as early as 2013, the Division determined that CHW "[was] doing business, including selling of contracts under Choice [sic] name, in the state of Nevada." Hr'g Tr., Day 1 at 114:20-115:18.

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alleged delegation of responsibility for conduct that requires a COR under Nevada law.

III. INSUFFICIENT EVIDENCE WAS ADDUCED OF KNOWINGLY FALSE **STATEMENTS IN HWAN'S 2011, 2012, 2014 AND 2015 RENEWALS**

Omission of CHW's fines cannot be the basis for knowingly false statements by HWAN.

The Division alleges that HWAN violated NRS 686A.070 by submitting knowingly false statements that no new officers of HWAN had been fined in HWAN's 2011, 2012, 2014, and 2015 license renewal applications. The Division based the alleged violations for the 2011 and 2012 applications, respectively, on a 2010 California Insurance Commissioner fine and a 2011 Oklahoma Insurance Commissioner fine. However, the Division's own witnesses testified that those fines were entered against CHW - not HWAN, or even Victor Mandalawi individually. 42 Although the Division would have been well within its rights to require disclosure of any fines against HWAN's administrator, or any of HWAN's individual officers, it declined to specifically do so in any of the above renewals. Its renewal documents simply never asked.

Similarly, the Division based the alleged violations for the 2014 and 2015 renewals, respectively, on a 2014 Oklahoma Insurance Commissioner fine and a 2015 New Jersey Consent Judgment. Yet again, the Division's own witnesses testified that those fines were entered against CHW, rather than HWAN. 43 Admittedly, HWAN had assumed the use of the fictitious name "Choice Home Warranty" but it does not follow therefrom that HWAN was the entity subject to those fines. 44 Further, although the 2015 New Jersey Consent Judgment involved Victor Mandalawi, individually, the 2015 renewal application only required such disclosure if Mr. Mandalawi were a new officer. 45 The Division could have expressly asked whether existing officers had been fined since the prior renewal but it opted not to do so. The Division wholly failed to provide any proof that HWAN was the entity that was fined and therefore failed to prove

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⁴² Hr'g Tr., Day 1 at 205:8-19; 208:19-209:13; 211:9-14; 241:4-8. Hr'g Tr., Day 2 at 64:6-8.

⁴³ Hr'g Tr., Day 1 at 208:11-24; 240:23-241:3. Hr'g Tr., Day 2 at 11:1-19; 63:5-10; 66:12-14. HWAN also made 25 numerous legal arguments on this issue in its Pre-Hearing Statement that remain true, which it incorporates by reference herein. 26

⁴⁴ See generally HWAN's Post- Hr'g Br.

⁴⁵ See Ex. 12 at 2. Notably, Question 4 on the 2015 renewal application references Question 1, which itself merely asks about aliases. It is Ouestion 2 that asks about any changes in officers, so, even assuming that Question 4 intends to cross-reference Question 2, it was answered truthfully because there have never been changes in HWAN's officers. See Hr'g Tr., Day 2 at 134:6-135:10.

its allegations of knowingly false statements on HWAN's 2011, 2012, 2014, and 2015 renewals.

B. It is legally and factually impossible for HWAN to have made the alleged false misrepresentations for the 2011, 2012, and 2014 renewals.

The Division alleges that HWAN made false misrepresentations on the 2011, 2012, and 2014 renewals, based upon a failure to report the 2011 California fine and the 2011 and 2014 Oklahoma fines. However, even a straightforward reading of the renewal questions at issue shows that HWAN in fact answered them truthfully. Specifically, Question 1 asks whether there have been any changes in officers since the last application. Question 4(d) then asks whether the applicant or any officers listed in Question 1 have been fined by any state authority since the last application. HWAN answered those questions truthfully because there had been no changes to HWAN's officers in any of those years⁴⁶ and because the corporate entity HWAN had, and has, never been cited, as set forth in the previous section.⁴⁷

The Division attempted to cure the ambiguities in its forms by having its witnesses testify that the fines set forth above should have been disclosed simply because HWAN used the fictitious name "Choice Home Warranty." However, the proof admitted at the hearing showed unequivocally that the fictitious name was filed and used as of July 14, 2014⁴⁹ – at the Division's request⁵⁰ – and, therefore, was not even in existence at the time of the California and Oklahoma fines. And, as is set forth in HWAN's Post-Hearing Brief, HWAN is not one and the same with that fictitious name filing. Thus, as shown by the evidence, the Division's argument is legally and factually impossible.

C. The Division's witnesses acknowledged the 2015 renewal form is ambiguous.

The 2015 renewal application is fatally ambiguous. Question 4(d) of that renewal asks if the applicant or the officers listed in Question 1 have been fined by another state agency since the

⁴⁶ Hr'g Tr., Day 2 at 134:6-135:10.

⁴⁷ See Part III.A, supra.

⁴⁸ Hr'g Tr., Day 2 at 67:1-6.

⁴⁹ See Ex. T at 53.

⁵⁰ Hr'g Tr., Day 1 at 213:2-13; Ex. Q.

⁵¹ See Ex. 1 at 4 (showing the California fine issued on July 23, 2010); Ex. 3 at 8 (showing the Oklahoma fines issued on July 15, 2011 and February 7, 2014).

under which HWAN conducts business. ⁵³ Hence, HWAN appropriately answered "no" to Question 4(d). Moreover, even if Question 4(d) can be read to actually be cross-referencing Question 2 (which it does not), HWAN *still* answered the question truthfully because, again, Question 2 simply asks about *new* corporate officers⁵⁴ - a change inapplicable to HWAN. ⁵⁵ Likely recognizing this fatal deficiency in its proofs, the Division made a last-ditch effort to prove a false answer by eliciting testimony from Mary Strong, <u>for the first time at the hearing</u>, that in fact the applicant in those three renewals was not only HWAN but also Victor Mandalawi ⁵⁶ - that "together they are the applicant." This conclusion was made and based only upon the fact that Mr. Mandalawi is the sole stockholder and sole officer of HWAN. ⁵⁸

prior application. 52 Yet, Question 1 on that same application merely asks for a list of any aliases

However, such an argument is untenable for two reasons. First, NRS 690C.160(1)(a) indicates that only a *provider* must submit an application to the Division. The Division's witnesses – including Ms. Strong – all agreed that HWAN was itself the provider.⁵⁹ Second, a long-established principle of corporate law belies this argument, to wit: "a corporation possesses a legal entity **apart from the people who compose it**." *Nev. Tax Comm'n v. Hicks*, 73 Nev. 115, 129-130, 310 P.2d 852, 859 (1957), *superseded by statute on other grounds by* Nev. Rev. Stat. 463.315(11)(d), *as recognized in M & R Inv. Co. v. Nev. Gaming Comm'n*, 93 Nev. 35, 35, 559 P.2d 829, 830 (1977) (emphasis added). Not only is the Division's position against the foregoing principle, it offered contradictory testimony on this position at the hearing. Specifically, Tim Ghan testified that Mr. Manadalawi was the "applicant" before he later testified that HWAN was the provider on the 2015 renewal, which was signed by Mr. Mandalawi "on behalf of the corporation." ⁶⁰ Similarly, Derrick Dennis ultimately testified that he did not consider Mr.

6 hr'g Tr., Day 2 at 134:6-135:10. Hr'g Tr., Day 1 at 262:11-13.

⁵² Ex. 12 at 2. ⁵³ *Id.* at 1.

27 | 57 Id. at 239:13.

⁵⁸ Id. at 267:8-14.

⁵⁹ *Id.* at 215:5-6; 239:22-240:2.

⁶⁰ Hr'g Tr., Day 2 at 16: 12-15; 73:6-12.

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Mandalawi to be an individual applicant on the 2015 renewal. This nearly incomprehensible testimony, particularly in light of the underlying law to be applied here, undercuts the eleventhhour effort to argue that both HWAN and Mr. Mandalawi were the applicant for the 2015 renewal. The 2015 renewal questions at issue are ambiguous and, in any event, HWAN answered them truthfully.

The testimony of Mr. Ghan further drives this point home. He noted that he was part of the group that prepared the language for use in the 2015 renewal. ⁶² Unsurprisingly, Mr. Ghan stated that "I understood the intent of it." This is expected, but also informs what the Division expects of its applicants: clairvoyance. No reasonable person completing the renewals at issue in this matter would have discerned that the forms mandated a disclosure; indeed, they would answer the operative questions identically to HWAN. There are no guidelines or specific instructions for completing the renewals or documents that indicate exactly what information the Division seeks to obtain. Moreover, the Division itself has implicitly acknowledged the ambiguous nature of the 2014 and 2015 renewals because it amended the renewal application on August 3, 2017.64 Specifically, in the amended renewal, Question 5(d), which asks about any intervening state agency fines, cross-references Questions 1 and 2, the latter of which asks about any changes in officers. 65 This amendment was clearly an effort to cure the ambiguous nature of the renewal application – an ambiguity for which the Division now seeks to penalize HWAN. This attempt must be denied, as the Division failed to meet its burden of proof to support it.

D. The testimony of Victor Mandalawi shows a lack of fraudulent intent.

In order to succeed on its claims of fraudulent misrepresentation related to the renewal applications, the Division must prove, by a preponderance of the evidence, that the questions at issue were answered in a "knowingly" false manner. See NRS 686A.070 (making clear that false entries must be made knowingly). In contrast to the contradictory testimony of Division

⁶¹ Hr'g Tr., Day 1 at 215:18-23.

⁶² Hr'g Tr., Day 2 at 70:24-71:1.

⁶³ Id. at 69:21.

⁶⁴ Ex. GG.

⁶⁵ Compare Ex. GG, with Ex. FF. Still, the most recent version of the renewal application is ambiguous in that it continues to cross-reference Question 1, which asks about fictitious names.

witnesses, the testimony of Victor Mandalawi was consistently credible and showed the lack of any fraudulent intent. At the hearing, Mr. Mandalawi read through the questions on the 2011, 2012, 2013, 2014, and 2015 renewals. ⁶⁶ He consistently and confidently testified that he answered all questions on those applications truthfully and accurately. ⁶⁷

In order for the Division to prevail, this tribunal would have to find that the very individual who conceptualized, funded, and organized HWAN, ⁶⁸ and who now actively supervises the operation of that entity, knew that the entity was in fact <u>unreal</u> at the time he answered the operative questions on the renewal forms. The Division also would have to prove that his answers were intended to deceive the Division. To reach such a conclusion would require analytical gymnastics of an Olympic caliber, because there is no such proof to support it in the record. Moreover, the timing undermines this argument and any conclusion in its favor. HWAN was conceptualized and organized in 2010, years before CHW had any "wrongdoing" that might be necessary to report to the Division. Ignoring the reality that HWAN is real in every sense of the word, there was simply no need for a fictional entity to shield against discovery of events that had not even happened.

Finally, Mr. Mandalawi's lack of fraudulent intent – indeed, his credibility – is borne out by the Division's own evidence. Specifically, the Division introduced an application submitted by Home Warranty Administrator of SC, Inc. to the South Carolina Department of Insurance on or around March 7, 2011,⁶⁹ which included a supplemental disclosure from Mr. Mandalawi,⁷⁰ in an ill-fated attempt to show that he intentionally failed to disclose the same to the Division.⁷¹ South Carolina's questions, however, are notably much clearer and straightforward and specifically

^{23 | 66} Hr'g Tr., Day 2 at 160-170; 183-185; 200-203; 204-213. 67 Id. at 160:14-18; 161:24-162:2; 167:12-14; 170:20-22; 185:16-24; 203:8-10; 207:16-18; 212:24-213:1.

⁶⁸ Hr'g Tr., Day 2 at 132:25-135:10

⁶⁹ Ex. 41.

⁷⁰ The Division also admitted as evidence a final order of the Insurance Commissioner of the State of Washington, dated January 27, 2010, against, *inter alia*, CHW Group, Inc. and Victor Mandalawi. Ex. 8. However, that Order was never listed in the Complaint or Amended Complaint as a basis for revocation – or even mentioned at all – and so cannot be considered as a basis for revocation of HWAN's COR in this matter under the arguments set forth in Section I, *supra*. In addition, the Division knew about this action at least as early as 2013. Hr'g Tr., Day 1 at 115:2-5. This knowledge negates the falsity required to find a violation of NRS 686A.070. See, e.g., United States ex rel. Durcholz v. FKW Inc., 189 F.3d 542, 545 (7th Cir. 1999).

⁷¹ Hr'g Tr., Day 2 at 247-255.

identified the information sought, unlike Nevada's 2014 and 2015 renewals. ⁷² Given his willingness to make full disclosures to South Carolina, it stands to reason that Mr. Mandalawi was attempting to answer the questions posed by the Division truthfully at all times. In the absence of proof of fraudulent intent, the Division's claims of fraudulent misrepresentation must necessarily fail.

IV. THE DIVISION FAILED TO PROVE THAT HWAN IMPROPERLY HANDLES CLAIMS OR ENGAGES IN UNSUITABLE BUSINESS PRACTICES

The Division's Amended Complaint also alleges that HWAN has violated NRS 686A.310(1)(b) by failing to promptly and reasonably respond to and/or investigate claims made by HWAN's customers. The Amended Complaint also claims that HWAN conducts its business in an unsuitable manner and engages in deceptive practices in violation of NRS 679B.125(2) and NRS 686A.170, respectively. Establishing "unsuitable manner" requires proof of an intentional and frequent business practice that causes injury to the general public. *See* NAC 679B.0385. Yet again, the Division wholly failed to produce sufficient proof of this charge.

Mr. Jain proffered just four complaints against HWAN as proof of its unsuitability.⁷³ He also testified that the Division considered media reports, Ripoff reports, and a "checkBCA.org" report on Choice Home Warranty.⁷⁴ On cross, Mr. Jain admitted he either did not know whether the complaints were resolved to the consumers' satisfaction or if, in fact, they had been resolved.⁷⁵ He further had no knowledge of the website cited by the Division and therefore could not vouch for the basis of the content therein.⁷⁶ Mr. Jain admitted that he made no efforts to verify the accuracy of the proffered media reports and so could not vouch for their accuracy,⁷⁷ while also admitting that none of them arose from HWAN's Nevada contracts or dealt with Nevada consumers.⁷⁸

⁷² Compare Ex. 41 at 15-16, with Exs. 5, 7.

⁷³ Hr'g Tr., Day 1 at 50-52. See also Exs. 11, 24, 38.

⁷⁴ Hr'g Tr., Day 1 at 95:10-15.

⁷⁵ *Id.* 98:14:21; 101:16-19.

⁷⁶ Id. at 103:25-104:9.

⁷⁷ Id. at 96:14, 22; 97:3-12.

⁷⁸ See Exs. 19, 19(A), 20, 20(A), 39, 39(A), 40, 40(A).

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The Division's additional testimony undermined its own "theory." Mr. Ghan testified that, generally, the Division did nothing to independently verify the accuracy of media reports used in the investigation.⁷⁹ He also admitted that they all related to *CHW – not HWAN*. Once more, the Division ignores the separate corporate identities and seeks to revoke HWAN's COR due to the conduct of another corporation in another state. Such facts must be disregarded, as they are irrelevant and immaterial to the claims at issue. See NRS 233B.123(1).

Mr. Jain also made the baseless claim that HWAN "by far[] had the highest number of complaints from among the 170-plus service contract providers" in Nevada. 80 Yet, neither Mr. Jain nor any other witness offered any comparatives from which a conclusion as to the accuracy of this statement could be drawn. For example, the average number of complaints for Nevada service contract providers, or the lowest number, could have been, but was not, provided. No guidelines for appropriate conduct were offered by any Division witness; undoubtedly if such existed, the Division's witnesses would have referred to them. In fact, the Division's own witness, Kim Kuhlman, contradicted Mr. Jain's unfounded assertion when she testified that she "get[s] so many complaints [against service contract providers] that [she] honestly could not tell you" how many she gets in a given week. 81 Moreover, HWAN was never notified of its alleged complaint rate being "too high" until after the original Complaint was filed in this matter. 82

In contrast to the Division's evidence, HWAN presented credible, irrefutable evidence that it timely, properly, and consistently responds to and resolves consumer complaints. 83 Specifically, HWAN admitted into evidence a reliable, mathematical analysis that showed that, on average, HWAN's approval rate of claims made under its service contracts since 2011 is approximately 87.83%. 84 Additionally, since it began operating in 2011, HWAN has only received a total of 71 complaints, in spite of the fact that it has processed over 69,849 claims - a

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⁷⁹ Hr'g Tr., Day 2 at 47-52.

⁸⁰ Hr'g Tr., Day 1 at 78:1-4.

⁸¹ Id. at 153:3-154:16.

⁸² Hr'g Tr., Day 2 at 219:6-14.

⁸³ In startling contrast to the Division's unverified news reports and unsubstantiated internet blog posts, the uncontroverted testimony revealed that CHW that has paid more than \$100 Million in coverage and handled more than 1.3 Million claims on behalf of its contract partners, including HWAN. Hr'g Tr., Day 3 at 74:9-17. It would be hard, if not impossible, to classify HWAN's operations in Nevada as unsuitable on that track record.

⁸⁴ Ex. K. See also Hr'g Tr., Day 2 at 276:12-23.

complaint to claims ratio of .102%!⁸⁵ As to the three⁸⁶ consumer complaints noted by Mr. Jain, Marla Ramirez, Chief Operating Officer of CHW Group, Inc., testified that the claims made by those complainants were properly denied under the terms of their contracts. 87 Nevertheless, HWAN still offered and approved an accommodation to each of them. 88 Ms. Ramirez further testified that the goal is to assign a technician to a claim within two business days and that dispatch times average four hours.⁸⁹ In further support of its business practices, HWAN offered 6,000 positive customer testimonials, many from Nevada clients, and all generated in 2017.90

HWAN demonstrated that the alleged number of consumer complaints set forth in the Amended Complaint was inaccurate. Mr. Mandalawi noted that the Division's own records show that out of an alleged "more than 80 consumer complaints," there were actually only 63 unique complaints when accounting for duplicates. 92 Further, all but two of those complaints had been resolved and listed as closed by the Division on the date this matter was initiated.⁹³ The Division offered proof of only three of those consumer complaints, proof that was itself insufficient to show improper handling or unsuitable business practices for the reasons set forth above. The Division entirely failed to provide any substantiating information related to the remaining 60 unique consumer complaints whatsoever. The record remains totally silent on those complaints. Drawing a negative inference from that lack of evidence is improper. See NRS 679B.360(3)(a) (requiring findings of fact to be based upon evidence adduced at the hearing). Based upon the foregoing, it is clear that the Division failed to prove that HWAN has violated NRS 686A.310(1)(b). For the same reasons, the Division has failed to show that HWAN conducts business in an unsuitable manner in violation of NRS 679B.125(2), or engages in deceptive trade

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⁸⁷ Hr'g Tr., Day 2 at 284:25-285:5; 287:20-22; 293:6-7.

88 *Id.* at 285:4-5; 288:8-9; 293:1-5.

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⁸⁶ One of the four complaints proffered by Mr. Jain was initiated by one of HWAN's vendors, over which Mr. Jain claims the Division has jurisdiction. Hr'g Tr., Day 1 at 104:23-105:13. However, contrary to Mr. Jain's assertion,

vendor complaints are outside of the Division's jurisdiction and are a matter for the courts to resolve. Cf. NRS

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85 Ex. K.

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⁸⁹ Id. at 292:22-292:7. 90 See Ex. M at 407, 422, 431, 537, 585, 677, 704, 742, 761. ⁹¹ Am. Compl. at 5:22-23.

⁹² Hr'g Tr., Day 2 at 222:6-9.

⁹³ Id. at 222:10-16.

practices in violation of NRS 686A.170.

V. THE DIVISION PRESENTED NO PROOF WHATSOEVER OF A FAILURE TO RESPOND TO A REQUEST FOR INFORMATION

Lastly, the Division alleged in its Amended Complaint that HWAN violated NRS 690C.320(2) by failing to respond to an inquiry for information as to how many open contracts and claims HWAN has in Nevada. This allegation is based upon an e-mail sent from Mary Strong to HWAN, dated February 1, 2017. However, at the hearing, the Division wholly abandoned this claim and presented no proof of the same. While there was proof that the request was made, there is no proof to show that the request for information was ever even received. And, in fact, the information sought in the February 1, 2017 e-mail was provided in a voluntary and reciprocal exchange of information between counsel for the parties and, thus, there was no violation.

Since it could not prove the alleged claim, the Division changed its "theory" of non-compliance at the hearing. In support of its "theory", the Division elicited testimony from Ms. Strong in an effort to establish that the Division could only obtain the information from HWAN pursuant to a subpoena, implying that HWAN violated its obligations under NRS 690C.320(2)(b).⁹⁷ This allegation is absurd for two reasons: first, it ignores the voluntary and reciprocal exchange of information between counsel; and second, as subpoenas have been provided for by the Commissioner since 1972, timely compliance with the same as a matter of pre-hearing discovery cannot be used as the basis of a statutory violation.⁹⁸

An email dated July 17, 2017⁹⁹ is proof that Ms. Strong was intentionally and directly communicating with Mr. Mandalawi, at the direction of Rajat Jain, demanding information from him, all the while knowing that there was a contested hearing scheduled and Mr. Mandalawi and HWAN were represented by counsel.¹⁰⁰ Her e-mail request was followed by a subpoena, dated

⁹⁴ Am. Compl. at 6:1-5.

⁹⁵ See Ex. L.

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⁹⁷ Hr'g Tr., Day 2 at 230:20; 231:24.

⁹⁸ See NRS 679B.340(1); NAC 679B.280(2).

⁹ Ex. 33

Hr'g Tr., Day 2 at 234:4-21. Ms. Strong's email was served a week before the original pre-hearing disclosure

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July 26, 2017, specifically requesting bank records for HWAN's Nevada reserve account. HWAN made timely compliance. 101 The Division's end-run efforts to obtain discovery, after filing an adversarial proceeding, on the eve of the contested hearing, and without notice to counsel, is far more noteworthy than HWAN's timely response to the same. On the facts, the Division did not meet its burden of proof to show that HWAN failed to respond to a request for information and revocation of HWAN's COR on this basis is impermissible.

VI. CONCLUSION

The foregoing makes one thing crystal clear: litigating adverse to the Division in this matter has been a moving target. The Division's theory of liability has evolved over time, without a concurrent amendment to its pleadings to give even a scintilla of notice as to the factual basis for the violations charged. Notwithstanding the constitutional issues associated with revocation of HWAN's COR for uncharged facts and allegations, the Division did not meet its burden of proof at the hearing. In essence, the Division seeks to penalize HWAN for the use of a fictitious name that the Division itself requested and for HWAN's inability to know the unknowable: the actual intent underlying the questions set forth on the renewal applications. There is no evidence to support the Division's allegations of wrongdoing in this matter and HWAN respectfully requests that an order be entered in its favor on all violations in the Amended Complaint.

DATED this 17th day of November, 2017.

BROWNSTEIN HYATT PARBER SCHRECK, LLP

KIRK B. LENHARD, ESQ., Nevada Bar No. 1437 klenhard@bhfs.com

TRAVIS F. CHANCE, ESQ., Nevada Bar No. 13800

tchance@bhfs.com

LORI GŘIFA, ESQ., NJ Bar No. 011551989

lgrifa@archerlaw.com

Attorneys for Respondent

deadline of July 24, 2017. This is proof that her efforts were designed to bolster the Division's hearing evidence and were not part of an investigative effort within the contemplation of NRS 690C.320(2).

¹⁰¹ The Division complained that the account numbers were redacted from the responsive documents, but the subpoena was silent as to a request for the account numbers. Moreover, the hearing evidence showed that the redactions were made by the bank and not by any HWAN witness in an effort to shield the information contained therein. See H'rg Tr., Day 1 at 83:20-24. The trial testimony also affirmatively established that the HWAN reserve account was established exclusively for its Nevada operations, See H'rg Tr., Day 2 at 263:21-264:1,

CERTIFICATE OF SERVICE

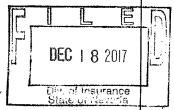
I hereby certify that I am an employee of Brownstein Hyatt Farber Schreck, LLP, and that on the 17th day of November, 2017, I caused a true and correct copy of the foregoing HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. d/b/a CHOICE HOME WARRANTY'S CLOSING ARGUMENT to be served, U.S. Mail, postage prepaid, and via electronic mail, to the following:

ALEXIA M. EMMERMANN, ESQ. Hearing Officer
Department of Business and Industry
Division of Insurance
1818 East College Parkway, Suite 103
Carson City, NV 89706
Email: yrenta@doi.nv.gov

ADAM PAUL LAXALT, ESQ. ATTORNEY GENERAL RICHARD YIEN, Deputy Attorney General Nevada Attorney General's Office 100 North Carson Street Carson City, NV 89701-4717 Email: ryien@ag.nv.gov

an employee of Brownstein Hyatt Varber Schreck, LLP

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STATE OF NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY DIVISION OF INSURANCE

IN THE MATTER OF

CAUSE NO. 17.0050

HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. dba CHOICE HOME WARRANTY,

Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER OF HEARING OFFICER, AND FINAL ORDER OF THE COMMISSIONER¹

This matter is before the Nevada Division of Insurance ("Division") on an Order to Show Cause issued by the Commissioner of Insurance ("Commissioner") on May 11, 2017, against Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty. The Commissioner, as head of the Division, is charged with regulating the business of insurance in Nevada. NRS 232.820, -.825.2; NRS 679B.120. The Division alleges that Respondent violated various provisions of the Nevada Revised Statutes ("NRS") title 57 ("Insurance Code") and of insurance regulations found under the Nevada Administrative Code ("NAC"). A hearing was scheduled for August 1, 2017, and continued to September 12, 2017. A prehearing conference was held on September 8, 2017, at the office of the Division in Carson City. The hearing was held on September 12, 13, and 14, 2017, at the office of the Division in Carson City. At the close of the hearing, the Parties were ordered to file briefs on a legal issue due on October 30, 2017, and written closing arguments due on November 15, 2017. On November 7, 2017, Respondent filed a motion to strike portions of the Division's brief. The motion was denied, but the Parties were granted five extra pages for their written closing arguments to address any issues from the briefs, and the due date for the written closings was extended to November 17, 2017.

See NRS 679B.360.2—3 (explaining that "the Commissioner shall make an order on hearing covering matters involved in such hearing" and enumerating what is required in the order); NRS 679B.330.1 (authorizing the Commissioner to appoint a person as a hearing officer for a hearing); and NAC 679B.411 ("The hearing officer shall file a copy of his or her order with the Division" and "[i]f

I. FINDINGS OF FACT²

A. HWAN Applications

- 1. CHW Group, Inc. ("CHW Group") was incorporated in the State of New Jersey in May 2009. Victor Mandalawi ("Mandalawi") and Victor Hakim ("Hakim") set up the company to provide service contracts. Both Hakim and Mandalawi are officers for CHW Group: Hakim is the chief executive officer and Mandalawi is the president. The company operates under the name "Choice Home Warranty," which is registered as a fictitious name in New Jersey. CHW Group uses the brand Choice Home Warranty, to include the website www.ChoiceHomeWarranty.com. CHW Group owns the website, through which all service contracts are sold and administered. Hakim has final say or approval on all content on the website. CHW Group's employees handle sales, marketing, claims, finance. CHW Group's sales, marketing, and finance occur at its office located at 1090 King Georges Post Road in Edison, New Jersey; CHW Group's operations, or claims handling, occurs at 2 Executive Drive in Somerset, New Jersey. CHW Group is not registered to do business in Nevada. (Ex. A; Test. Mandalawi; Test. Hakim; Test. Ramirez.)
- 2. Under the name Choice Home Warranty, CHW Group sold service contracts online, so sales reached consumers nationally, and consumers were purchasing the service contract in states where CHW Group was not licensed. Mandalawi and Hakim were not aware that other states required a license in order to sell this type of product. Choice Home Warranty was named in administrative actions in different states. As a result, Mandalawi created the Home Warranty Administrators name for states that require licensure. Home Warranty Administrator of Nevada, Inc. ("HWAN") was incorporated in Nevada on July 23, 2010. Mandalawi is the only employee for each of the Home Warranty Administrators companies. HWAN's address is 90 Washington Valley Road in Bedminster, New Jersey. (Test. Mandalawi.)
 - 3. On or about July 29, 2010, Mandalawi signed a service contract provider application on

the hearing officer is not the Commissioner, the Commissioner will indicate on the order his or her concurrence or disagreement with the order of the hearing officer").

The hearing transcripts are distinguished by day, not volume number or consecutively numbered pages. Accordingly, the transcripts are distinguished in the citations as "Tr.1" for the hearing transcript

behalf of Home Warranty Administrator of Nevada, Inc., which was received by the Division on or about September 2, 2010. (Ex. 22; Ex. P.) Mandalawi is noted on the application as president of HWAN. (Ex. 22; Ex. P at 12–14; Ex. C; Test. Mandalawi.)

- 4. On July 29, 2010, HWAN entered into an independent service provider agreement ("Agreement") with CHW Group. Through the Agreement, CHW Group handles sales, marketing, operations (claims), and advertising for HWAN service contracts, while HWAN handles regulatory compliance. CHW Group maintains the service contracts sold to Nevada consumers. According to the Agreement, CHW Group is responsible for providing the following services:
 - Communicating with potential clients (the "Clients") seeking Warranties and negotiating the signing of contracts, the form of which shall be previously approved by HWA[N], between Clients and HWA[N].
 - Collecting any and all amounts paid by the Clients for the Warranties and distributing same to HW[AN] pursuant to the terms of Article 2 hereof;
 - Keeping records of all Warranties
 - Providing customer service to Clients; and
 - Inspecting any claims made by Clients regarding goods under a Warranty and, if possible, repairing same or causing same to be replaced.
- (Ex. E.) CHW Group sells service contracts on behalf of HWAN per the Agreement. When CHW Group sells a contract, CHW Group collects the payment from the consumer, and that money is eventually paid to HWAN. (Test. Mandalawi; Test. Hakim.)
- 5. According to the 2010 application, an administrator was not designated to be responsible for the administration of Nevada contracts. (Ex. 22; Ex. P at 1.)
- 6. According to the application's Section II, neither the applicant nor any of the officers listed in Section I had ever been refused a license or registration or had an existing license suspended or revoked by any state, nor had the applicant or any of the officers listed in Section I been fined by any state or governmental agency or authority in any matter regarding service contracts. (Ex. 22; Ex. P at 2; Test. Mandalawi.)
 - 7. As part of the application, HWAN submitted its proposed contract. (Test. Mandalawi.)
- 8. On November 30, 2010, the Division issued HWAN a letter, along with a certificate of registration ("COR") with Company ID No. 113194 and with an anniversary date of November 18 of

on September 12, 2017, "Tr.2" for the hearing transcript on September 13, 2017, and "Tr.3" for the hearing transcript on September 14, 2017.

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each year. (Ex. U; Ex. 22; Test. Mandalawi.) In the letter, the Division noted that it had reviewed the service contract #HWAADMIN-8/2/10 that was submitted with the application, and that it was approved for use. (Ex. U at 1.)

- 9. In 2011, HWAN submitted another service contract for approval. The Division approved the service contract under the form number HWA-NV-0711. (Test. Mandalawi; Test. Ghan.)
- The service contract shows the Home Warranty Administrators' logo at the top right of 10. the first page. Under it is the name Choice Home Warranty followed by the text "America's Choice in Home Warranty Protection," and under the text in finer print it says "Obligor: Home Warranty Administrator of Nevada, Inc." This first page is a sample letter to the consumer. The first two lines of the letter says, "Welcome to Choice Home Warranty! You made a wise decision when you chose to protect your home with a home warranty." The consumer is asked to read the coverage. The letter includes a toll-free number, (888)-531-5403, and a website, www.ChoiceHomeWarranty.com. Under the letter in finer print, it states that the contract explains the coverage, limitations, and exclusions. Then there are two boxes: the box on the left identifies the contract number, contract term, covered property, property type, rate, and service call fee; the box on the right identifies the coverage plan, included items, and optional coverage. Under the two boxes is the name Choice Home Warranty and the address, 510 Thornall Street, Edison, NY 08837, along with the toll-free number (888) 531-5403. The bottom right of the page contains "HWA-NV-0711" in a finer print, which indicates approval by the Division in July 2011, and is applied to each page. (Ex. 35; Ex. EE; Test. Ghan; Test. Jain; Test. Mandalawi.)
- 11. According to Mandalawi, there are no contracts sold to Nevada consumers other than the Nevada contract authorized in 2011. (Test. Mandalawi.)
- 12. For the registration years 2011 through 2016, HWAN filed renewal applications. (Ex. 2, 4, 5, 7, 12, 21; Ex. I; Test. Mandalawi.)
- 13. The renewal applications asked the applicant to identify the pre-approved service contract form name and form numbers that applicant sells in Nevada. On each application, HWAN identified form HWA-NV-0711. (Ex. 2, 4, 5, 7, 12, 21; Ex. I.)

- 14. The renewal applications for the years 2011, 2012, and 2013 asked the following questions:
 - "Have there been any changes in the executive officers or in the officers responsible for service contract business since your last application?"
 - "Have you made any changes in the administrator or designated a new administrator since your last application? Current administrator is listed as:"
 - "Since the last application, has applicant or any of the officers listed in question 1 ever...(c) Been refused a license or registration...or had an existing one suspended or revoked by any state... [or] (d) Been fined by any state or governmental agency or authority in any matter regarding service contracts?"

On behalf of HWAN, Mandalawi answered "No" to each of the questions. For the current administrator, Mandalawi wrote "Self." (Ex. 2, 4, 5; Ex. I; Test. Dennis; Test. Mandalawi.)

- 15. The renewal applications for years 2011, 2012, and 2013 were approved. (Ex. Y, Z, AA; Test. Mandalawi.)
- 16. The renewal applications also ask how many service contracts were sold to Nevada residents, other information related to revenue, claims paid, and customer complaints, and information about how complaints are handled. Mandalawi responded to these questions for the renewal applications for years 2011, 2012, and 2013. (Ex. 2, 4, 5; Ex. I.)
- 17. In 2013, the Division initiated an investigation into Choice Home Warranty, and began monitoring complaints. The Division also discovered that a company called Choice Home Warranty had administrative actions against it in several states. (Test. Jain.)
- Ahrens, then-Chief of the Property and Casualty Section, indicated that she wanted to work with Mandalawi "regarding having an official dba of Choice Home Warranty." She said that she had stopped the issuance of a cease and desist, and wanted to remedy the situation from occurring in the future. (Ex. T at 1.) The Division asked HWAN to register the dba Choice Home Warranty because the Division "thought it was confusing for consumers having just the name Home Warranty of Nevada." (Test. Mandalawi.) Mandalawi registered the dba "Choice Home Warranty" under HWAN. (Ex. T at 7-11; Ex. B; Ex. 30-32; Test. Mandalawi.)
- 19. The Division issued a memo to then-Commissioner Scott J. Kipper from Derick Dennis, Management Analyst, indicating that Mandalawi notified the Division that HWAN filed the dba name,

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"Choice Home Warranty," in Carson City and Washoe County. A handwritten note on the memo states, "7/8/14 This was at the request of the Division, recommend approval" with Ahrens' initials "ea." (Ex. 23 at 3; Ex. Q.) The Division issued a new Certificate of Registration dated July 14, 2014, under HWAN's same Company ID No. 113194, for Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty. (Ex. 23; Ex. T at 39, 51–53; Test. Mandalawi.)

- 20. For the registration years beginning 2014, 2015, and 2016, HWAN filed renewal applications. The applicant was listed as "Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty." (Ex. 7, 12, 21; Ex. I; Test. Mandalawi.)
- 21. The renewal applications for the years 2014, 2015, and 2016 asked the same following questions:
 - "Have there been any changes in the executive officers or in the officers responsible for service contract business since your last application?"

 "Have you made any changes in the administrator or designated a new administrator since your last application? Current administrator is listed as:"

"Since the last application, has applicant or any of the officers listed in question 1 ever...(c) Been refused a license or registration...or had an existing one suspended or revoked by any state... [or] (d) Been fined by any state or governmental agency or authority in any matter regarding service contracts?"

On behalf of HWAN, Mandalawi answered "No" to each of the questions. (Ex. 7, 12, 21; Test. Mandalawi.) For the current administrator, Mandalawi wrote "Self." (Ex. 21)

- 22. The renewal application for 2014, 2015, and 2016 added a request that the applicant "List all aliases or names under which the company conducts business (Doing Business As). Provide supporting documentation." On behalf of HWAN, Mandalawi answered "NA" because he believed the question related to additional fictitious names. (Ex. 7, 12, 21; Ex. I at 12, 16, 20; Test. Mandalawi.)
- 23. The renewal applications for 2014, 2015, and 2016 also ask how many service contracts were sold to Nevada residents, other information related to revenue, claims paid, and customer complaints, and information about how complaints are handled. For years 2014, 2015, and 2016, Mandalawi responded to some of these questions, but left blank the number of customer complaints by Nevada residents and the question asking how complaints are handled. (Ex. 7, 12, 21; Ex. I at 14, 18, 23.)

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- 24. The renewal applications for years 2014 and 2015 were approved. (Ex. BB, CC; Test. Mandalawi.)
- 25. At the time the Division received HWAN's 2016 renewal application, the Division requested additional information because the application was deemed incomplete. Specifically, the statutory security deposit was not sufficient and questions on the application were left blank. The Division's requests for information were ignored. As of the date of the hearing, the Division had not received all of the information requested. (Ex. 33; Ex. L; Ex. DD; Test. Jain.)
- 26. As a result of this matter, Mandalawi learned that HWAN's COR was inactive. Mary Strong, Management Analyst III, emailed HWAN on July 21, 2017, explaining that HWAN's COR had expired and that the 2016 renewal application was denied. No additional explanation was provided. A printout of HWAN's licensing status with the Division shows that HWAN dba Choice Home Warranty is inactive as of 11/18/2016. (Ex. O, DD; Test. Mandalawi.)

B. Complaints

- 27. In 2009, the Division began receiving complaints about Choice Home Warranty, which was not registered to sell service contracts in Nevada. (Ex. 28 at 2; Ex. J at 2.)
- 28. On January 4, 2014, the Division received a complaint from a technician who provided services to a consumer on behalf of Choice Home Warranty, but "CHW (CHOICE HOME WARRANTY, CHW GROUP)" refused to pay them the \$20,000 alleged to be owed. The Division worked out a settlement between Choice Home Warranty and the technician for \$7,296. (Ex. 25; Test. Kuhlman.)
- 29. On July 16, 2014, the Division received a consumer complaint against Choice Home Warranty alleging that Choice Home Warranty failed to pay a valid claim for a broken air conditioning ("A/C") unit under the service contract (policy number 628975268). The consumer was forced to pay \$1,025 for an A/C compressor that the consumer believed should have been covered by the service contract. The consumer requested the claim denial in writing, but was told by the Choice Home Warranty employee claimed that it was against company policy to issue a denial in writing. (Ex. 11; Test. Kuhlman.)

- 30. On November 19, 2014, the Division received a consumer complaint against Choice Home Warranty alleging Choice Home Warranty improperly denied a claim when the consumer's pipe broke the same day he had purchased the service contract (policy number 465308123). The consumer paid \$826 for repair of a broken pipe. The consumer also complained because he felt Choice Home Warranty's advertisement was deceitful and misleading by claiming that the consumer could get coverage "today," when the contract requires a thirty-day waiting period. The Division worked out a settlement between Choice Home Warranty and the consumer for \$500. (Ex. 11; Test. Kuhlman.)
- Warranty alleging Choice Home Warranty improperly denied a claim for a broken A/C unit. The consumer filed a claim with Choice Home Warranty on June 27, 2016, and Choice Home Warranty sent a technician, who replaced the capacitor. The A/C unit failed again within a few hours. The technician returned to look at the unit three times and provided all the information Choice had requested. The A/C unit still had not been fixed. The consumer called Choice Home Warranty numerous times and was put on hold on every call for extensive periods and, after 45 minutes, the call would fail. The consumer was told that the claim was rejected because the consumer did not maintain the unit. The consumer sent Choice Home Warranty proof that he did maintain the unit. The consumer explained that the situation was a "life or death situation" because his significant other, who is disabled, suffered from heatstroke because she and their little dog have been left in the house with temperatures exceeding 100-plus degrees. On or about July 25, 2016, the Division worked out a settlement between Choice Home Warranty and the consumer for \$1,500. (Ex. 38; Test. Kuhlman.)
- 32. On October 4, 2016, the Division received a consumer complaint against Choice Home Warranty alleging Choice Home Warranty improperly denied a claim for a broken A/C unit. The consumer filed a claim with Choice Home Warranty on June 8, 2016, and Choice Home Warranty sent eight technicians and four A/C companies, and all agreed that the A/C compressor and coil needed to be replaced. Choice Home Warranty denied the claim explaining that it had a photo of the unit from August 17, 2016 showing that no maintenance had been done on the unit. The consumer asked for a copy of the photo, but Choice Home Warranty did not provide the photo. The consumer faxed her maintenance records for the A/C unit, but was told that Choice Home Warranty could not read the

A/C in Las Vegas. (Ex. 24; Test. Kuhlman.)

open. All other complaints had been closed. The Division's concern was that Choice Home Warranty had a higher ratio of complaints than any other of the 170-plus service contract providers licensed in Nevada. (Ex. 28; Ex. J, W; Test. Jain.)

34. The Division conducted a general search on Choice Home Warranty online, and

discovered numerous complaints by consumers on different websites. (Test. Jain.)

records. At the time of the complaint, the consumer was alleged to have endured ten weeks without

Warranty. Eliminating duplicates, the total was 62. At the time the Complaint, only 2 complaints were

In all, the Division had received approximately 80 complaints about Choice Home

- 35. The Business Consumer Alliance rated Choice Home Warranty with an "F". It notes the company's website as www.choicehomewarranty, DBAs are CHW Group, Inc., Victor Mandalawi as president, and Victor Hakim as principal. (Ex. 9.)
- 36. On October 31, 2016, Mike from Henderson, Nevada posted a complaint on the Ripoff Report claiming Choice Home Warranty in Edison, New Jersey, was attempting to withdraw money from the consumer's bank account after the contract period ended. (Ex. 14.)
- 37. On July 7, 2016, Stardust from Henderson, Nevada posted a complaint on the Ripoff Report claiming Choice Home Warranty refused to replace a pool pump because it was not correctly installed. (Ex. 15.)
- 38. On April 20, 2016, Ira B. from Las Vegas, Nevada, a technician, posted a complaint on Ripoff Report advising people to stay away from Choice Home Warranty because Choice Home Warranty does not pay its vendors, and requires vendors to use repair parts according to their terms. (Ex. 16.)
- 39. On January 14, 2016, Iaappliance from Las Vegas, Nevada posted a complaint on Ripoff Report that Choice Home Warranty is a huge scam among contractors. The company had completed 200 jobs for Choice Home Warranty, but Choice Home Warranty had not yet paid them. (Ex. 17.)
- 40. On October 12, 2016, David N. of Las Vegas, Nevada posted a complaint on Yelp.com that Choice Home Warranty improperly denied his claims on two occasions. The second claim denial was after a technician came and inspected the microwave and took photos. The consumer included in

his complaint the he received an email from Choice Home Warranty that said, "CHW strives to be rated #1 in the home warranty industry. Help us succeed with your positive feedback and you will receive 1 FREE month of coverage." (Ex. 18 at 2.)

- 41. Choice Home Warranty has been the subject of complaints in other cities—Houston, Texas, Chicago, Illinois, Overland Park, Kansas, and Titusville, Florida. According to the reports, Choice Home Warranty in New Jersey denies claims on the basis that the consumers did not maintain their units, even after consumers provide proof of maintenance. (Ex. 19, 19a, 20, 20a, 39, 40, and 40a.)
- 42. In reviewing complaints, Mandalawi has CHW Group employees participate in the resolution. Mandalawi distinguishes claims as problems with a system or appliance, and a complaint as a consumer who is dissatisfied with the claim or outcome. When complaints are received, they are handled by CHW Group employees. If they are escalated, Mandalawi gets involved. Mandalawi has final authority on complaints and "want[s] to be sure that CHW Group is adhering to the terms and conditions of the policy and make[s] sure they are in compliance." Complaint resolution activity is done at Executive Drive, CHW Group's Somerset location; sales and marketing is done at the King Georges Post Road in Edison. Mandalawi spends most of his time at the Somerset location. (Test. Mandalawi; Test. Ramirez.)
- 43. At a meeting of the Parties pending this proceeding, Mandalawi and Hakim reviewed the records of HWAN to determine how many complaints they have received from the Division since HWAN's inception. (Test. Mandalawi; Test. Hakim.)
- 44. CHW Group handled the claims for the consumer complaints filed with the Division. CHW Group documents its communications with the consumers. CHW Group concluded that the consumers' claims were not covered by the service contracts. (Test. Ramirez.)
- 45. HWAN presented what it named "Customer Testimonials NV DOI Status of HWAN," which is 867 pages of positive testimonials of Choice Home Warranty consumers from around the country, including Nevada. (Ex. M.)

C. Regulatory Actions

46. On July 23, 2010, California issued a cease and desist order against Choice Home Warranty and its officers, along with notices related to a monetary penalty and right to hearing for

 acting as a provider of home protection contracts without a license. (Ex. 1 at 1–4 of 16.) A final order was entered on August 19, 2010. On October 12, 2010, the California Insurance Commissioner found that Choice Home Warranty acted as a home protection company without a license from October 25, 2008 through October 1, 2010, and fined Choice Home Warranty \$3,530,000. In December 2010, Mandalawi, as president of Choice Home Warranty, entered into an agreement with California agreeing to take certain actions with regard to their business, and pay a \$10,000 fine. The agreement was adopted by the California Commissioner on January 6, 2011. (Ex. 1; Ex. G.)

- 47. On July 29, 2010, Oklahoma issued a cease and desist against Choice Home Warranty for engaging in service warranty contracts without authorization. Despite the order, Choice Home Warranty continued to engage in the business. The matter was settled on January 2, 2012, with a fine of \$15,000, and Choice Home Warranty was permitted to continue servicing existing contracts. (Ex. 3; Ex. H.)
- 48. On February 7, 2014, the Oklahoma Commissioner issued an order alleging that Choice Home Warranty continued to engage in the business "in a course of unfair and deceptive conduct while circumventing regulatory authority." (Ex. 3 at 2.) Choice Home Warranty was fined \$10,000. (Ex. 3.) On October 21, 2010, the Insurance Commissioner of the State of Washington issued an Order to Cease and Desist against CHW Group, Inc. doing business as Choice Home Warranty and www.ChoiceHomeWarranty.com, Victor Mandalawi, President of CHW Group, Inc. (incorporated in both New York and New Jersey), and others. The Order demanded that all named parties, who are unlicensed in Washington, cease transacting in the unauthorized business of insurance in Washington, seeking business in Washington, and soliciting Washington residents to buy unauthorized products based on the sale of at least 92 service contracts. On January 27, 2011, the Washington Commissioner issued a Final Order Terminating Proceeding after the named parties filed a stipulation withdrawing their hearing demand. The Final Order indicated that the Order to Cease and Desist would remain in effect indefinitely. (Ex. 8 at 3 of 32.)
- 49. On June 9, 2015, CHW Group, Inc. dba Choice Home Warranty, Victor Mandalawi, and Victor Hakim agreed to a Final Consent Judgment with the New Jersey Attorney General's Office for allegations of using deceptive means to deny claims after the New Jersey Division of Consumer Affairs

received 1,085 complaints about Choice Home Warranty. The Judgment requires Choice Home Warranty, Mandalawi, and Hakim to address issues related to improper advertisements, sales representatives' misrepresentations, terms and conditions of the contract, properly licensed technicians, fair review of claims, timely payment to technicians, payment in lieu of replacement, refunds, training of employees handling sales and claims, and future consumer complaints. Choice Home Warranty, Mandalawi, and Hakim were required to pay a \$779,913.93 fine including consumer restitution, revise their business practices, pay for an independent compliance monitor to oversee compliance with the terms of the Judgment, and execute confessions of judgment in the event of a default on the Judgment. (Ex. 6; Ex. F, X.)

D. Other Evidence Presented at Hearing

- 50. In 2016, Home Warranty Administrator of Florida, Inc. and Choice Home Warranty were named defendants in a civil action in New Jersey. That same year, CHW Group, Inc. dba Choice Home Warranty and Victor Mandalawi were named defendants in a civil complaint in South Carolina. (Ex. 9, 29; Test. Mandalawi.)
- Administrator of South Carolina, Inc.'s application with the State of South Carolina submitted by Mandalawi. The application included a biographical affidavit, which requested information about Mandalawi's background. To the question, "Are you operating, acting, or have acted as a controlling person for any other service contract provider or service contract related company?", Mandalawi responded yes. To the question, "Have you or a service contract provider or service contract related company in which you were, or are a controlling person, ever been disciplined by a state regulatory body?", Mandalawi responded yes. To the question, "Have you or a service contract provider or service contract related company for which you were, or are a controlling person, ever been subject to a cease and desist letter or order, or enjoined, either temporarily or permanently, in any judicial, administrative, regulatory or disciplinary action?", Mandalawi responded yes.

Attached to the biographical affidavit is Mandalawi's résumé. According to it, Mandalawi is the President of Home Warranty Administrators, which "is currently licensed / registered in Arizona, Florida, Illinois, New York, Nevada, Oklahoma, and Texas." Mandalawi has held this position since

2010. The résumé also shows that Mandalawi is also President of Choice Home Warranty, and has held this position since 2008. (Ex. 41 at 14.)

Mandalawi presented a letter to the South Carolina Department of Insurance explaining his "Yes" responses to the questions on the biographical affidavit. In the letter, Mandalawi introduces himself as president of Home Warranty Administrator of South Carolina, Inc., and all of its affiliates, which includes HWAN, and president of Choice Home Warranty. Through the letter, Mandalawi explains that

Choice Home Warranty (CHW) was the subject of a cease and desist letter in California, Oklahoma, and Washington. In California, CHW entered into a consent order, in Oklahoma, Home Warranty Administrator of Oklahoma, Inc. is [sic] now holds a Service Warranty License, and in Washington CHW is complying with all terms of the cease and desist.

CHW has been doing business for roughly two years and our home state of New Jersey does not require companies, such as ours, to be licensed. During the course of its activities, CHW discovered that all states are not created equal when it came to licensing requirements for service contracts. In fact, the very definition of the words "service contracts" changes from state to state. To address this newly discovered issue, CHW developed the Home Warranty administrators ("HWA") brand. That is, in order to address every state's particular requirements, a separate HWA was created for that state.

(Ex. 41 at 15-16; Test. Mandalawi.)

- 52. Choice Home Warranty has a landing page, which is a webpage that consumers land on when they click a particular email or internet link to Choice Home Warranty. The landing page is part of Choice Home Warranty's internet advertising. A potential consumer would enter his/her zip code. Choice Home Warranty provides some general information and invites people to call them at (888) 531-5403. The advertisement is copyrighted 2017 Choice Home Warranty, and includes its address, 1090 King Georges Post Rd. Edison, NJ 08837, and phone number (888) 531-5403. In finer print at the bottom of the advertisement are links to Choice Home Warranty's limits of liability and exclusions, other terms, and the privacy policy. (Ex. 26; Test. Jain; Test. Hakim.)
- 53. On August 21, 2017, Felecia Casci, Supervising Legal Secretary at the Division, received an email from 'CHOICE Warranty (enews@choicehomewarranty.com)" with the subject, "VIP Offer: \$50 Off & 1 Month Free" in her personal email account. Choice Home Warranty, identified at the top of the email, invites Casci to "Never Pay for Covered Home Repairs Again," offering \$50 off and one month free. According to the email, Choice Home Warranty plans are subject

to terms and conditions. Choice Home Warranty identifies its address as 1090 King Georges Post Rd, Edison, NJ 08837, and phone number as 800-814-4206. The advertisement is copyrighted to Choice Home Warranty in 2017. Nothing in the solicitation identified HWAN as the party selling the service contract. (Ex. 27; Test. Casci.)

- 54. On August 16, 2017, Casci received another email from "CHOICE Warranty (enews@choicehomewarranty.com)" with the subject, "We Appreciate You Felecia" in her personal email account. Choice Home Warranty, identified at the top of the email, invites Casci to "Never Pay for Covered Home Repairs Again," offering \$75 off and one month free. According to the email, Choice Home Warranty plans are subject to terms and conditions. Choice Home Warranty identifies its address as 1090 King Georges Post Rd, Edison, NJ 08837, and phone number as 800-814-4206. The advertisement is copyrighted to Choice Home Warranty in 2017. (Ex. 27; Test. Casci.)
- 55. The Division discovered that some service contracts issued by HWAN were not approved for use. In the unapproved service contract's letter to the consumer, the first two lines of the letter says, "Welcome to Choice Home Warranty! You made a wise decision when you chose to protect your home with a CHW Warranty." Again in the second paragraph, there is a reference to CHW Warranty. Under the two boxes is the name Choice Home Warranty and the address, 1090 King Georges Post Road, Edison, NJ 08837, along with the toll-free number (888) 531-5403. There is no service contract form number on the bottom of the page indicating approval by the Division. The font of the contract is reduced such that the contract is 4 pages long instead of the 5 ½ pages in the approved service contract. (Ex. 37; Test. Ghan.)
- 56. When Hakim acknowledged that CHW Group is not licensed to sell, solicit, or offer for sale service contracts in Nevada, he explained that "Pursuant to section 690C.120.2, administrators are not required to be licensed to sell service contracts in Nevada." (Test. Hakim.)
- 57. The setup for HWAN in Nevada is the same setup Mandalawi uses for all of the Home Warranty Administrators companies. All of these entities have a contract with CHW Group, and all of the entities use the website www.choicehomewarranty.com to sell their service contracts. All of the entities use substantially the same contract and terms of service. All of the businesses use CHW Group's services as provided in agreements similar to the Agreement HWAN has with CHW Group.

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This creates efficiencies in managing the product being sold across the country, with the nuances of different states' requirements identified in the service contract sent to consumers. (Test. Mandalawi.)

- Since HWAN became licensed in Nevada, CHW Group has continually provided 58. services to HWAN through the Agreement. CHW Group has tracked its claims statistics. According to its claims statistics, 23,889 customers have purchased a service contract through Choice Home Warranty in Nevada since 2011. (Ex. K; Test. Hakim.)
- In some years, the Division communicated with Mandalawi by telephone or email when items were not provided with HWAN's applications. (Test. Mandalawi.)

CONCLUSIONS OF LAW

In its Amended Complaint, the Division seeks administrative action against Respondent for (1) falsifying material facts in its applications; (2) engaging in unfair practices in settling claims; (3) conducting business in an unsuitable manner; and (4) failing to make records available to the Commissioner upon request. The Division also seeks a cease and desist order because the Commissioner refused to renew Respondent's 2016 COR. The Division bears the burden of showing, by a preponderance of the evidence, that Respondent violated these provisions of the Insurance Code. In hearings for the Division, "The hearing officer shall liberally construe the pleadings and disregard any defects which do not affect the substantial rights of any party." NAC 679B.245.

A. Jurisdiction

The Commissioner is charged with regulating the business of service contracts, which includes but is not limited to promulgating regulations, reviewing provider records, investigating complaints and alleged violations of law, and conducting examinations. NRS 679B.120.3 & -.5, 690C.300, -.310 & .320. Service contracts are regulated under the Insurance Code pursuant to chapter 690C.

B. Statement of Law

In Nevada, "A provider shall not issue, sell or offer for sale service contracts in this state unless the provider has been issued a certificate of registration pursuant to the provisions of [NRS chapter 690C]." NRS 690C.150. A provider "means a person who is obligated to a holder pursuant to the terms of a service contract to repair, replace or perform maintenance on, or to indemnify the holder for the costs of repairing, replacing or performing maintenance on, goods." NRS 690C.070. A holder is a Nevada resident who may enforce the rights under a service contract. NRS 690C.060. administrator "means a person who is responsible for administering a service contract that is issued, sold or offered for sale by a provider." NRS 690C.020.

submit to the Commissioner: A registration application on a form prescribed by the Commissioner; ... A copy of each type of service contract the provider proposes to issue, sell or offer for sale; [and] The name, address and telephone number of each administrator with whom the provider intends to contract

A provider who wishes to issue, sell or offer for sale service contracts in this state must

NRS 690C.160.1(a), (c)-(d).

A certificate of registration is valid for 1 year after the date the Commissioner issues the certificate to the provider. A provider may renew his or her certificate of registration if, before the certificate expires, the provider submits to the Commissioner an application on a form prescribed by the Commissioner, [among other things].

NRS 690C.160.3.

Providers are required to comply with certain requirements to ensure the provider is financially viable. NRS 690C.170. A provider has limitations on the name of its business, and may not use the name of another provider. NRS 690C.200.1(b). A provider's service contract must comply with certain provisions. For example, a service contract must be "understandable and printed in a typeface that is easy to read." NRS 690C.260.1(a). A service contract must also "[i]nclude the name and address of the provider and, if applicable: The name and address of the administrator...." NRS 690C.260.1(d)(1). A provider is prohibited from making "a false or misleading statement" or "intentionally omit[ting] a material statement." NRS 690C.260.2.

When a provider receives a claim, it must address the claim within a reasonable amount of time. If a claim "relates to goods that are essential to the health and safety of the holder", emergency provisions must be included in the contract. NAC 690C.110.1(c). Related to claims, certain activities are considered unfair practices:

- (a) Misrepresenting to insureds or claimants pertinent facts or insurance policy provisions relating to any coverage at issue.
- (b) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.
- (c) Failing to adopt and implement reasonable standards for the prompt investigation and processing of claims arising under insurance policies.
- (e) Failing to effectuate prompt, fair and equitable settlements of claims in which liability of the insurer has become reasonably clear.
- (n) Failing to provide promptly to an insured a reasonable explanation of the basis in the insurance policy, with respect to the facts of the insured's claim and the applicable law, for the denial of the claim or for an offer to settle or compromise the claim.

NRS 686A.310.1.

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Generally, no other provision of the Insurance Code applies except as otherwise provided in NRS chapter 690C. NRS 690C.120. Provisions that specifically apply to service contracts include trade practices. examinations, hearings, certain prohibitions, process, NRS 690C.120.1. Also, "[a] provider, person who sells service contracts, administrator or any other person is not required to obtain a certificate of authority from the Commissioner pursuant to chapter 680A of NRS to issue, sell, offer for sale or administer service contracts." NRS 690C.120.2.

The Commissioner is authorized to observe the conduct of a service contract provider to ensure that "business is not conducted in an unsuitable manner." NRS 679B.125.2.

"[U]nsuitable manner" means conducting [] business in a manner which:

- 1. Results in a violation of any statute or regulation of this State relating to insurance;
- 2. Results in an intentional violation of any other statute or regulation of this State; or
- 3. Causes injury to the general public,
- with such frequency as to indicate a general business practice.

NAC 679B.0385.

C. Respondent

In order to address the Division's allegations, the Hearing Officer must make a determination about the parties involved in this matter because many of the issues presented in this hearing hang on who the service contract provider is. Relying on the use of the different names by Respondent's witnesses, who interact with or on behalf of Respondent through a contract, and who would most be familiar with the entities, the Hearing Officer relies on the names used in the hearing as follows:

- Home Warranty Administrator of Nevada, Inc. is HWAN
- Choice Home Warranty is CHW Group, Inc., CHW, and Choice Home Warranty
- Home Warranty Administrators is an affiliate of companies with the name Home Warranty Administrator of [State]

In this case, HWAN is the legal entity that has been authorized to be a service contract provider in Nevada. HWAN contracted with CHW Group, or Choice Home Warranty, as administrator of HWAN's service contracts. In 2014, the Division requested HWAN to register the fictitious name, Choice Home Warranty.

The evidence is clear that Choice Home Warranty is CHW Group. Respondents have argued this throughout the case. (Resp't's Prehr'g Stmt 3-4.) During the hearing, Mandalawi, Hakim, and Ramirez referred to CHW Group as Choice Home Warranty. Mandalawi and Hakim both testified that

HWAN's administrator is CHW Group, and that HWAN and CHW Group engaged in a contract for such services. Choice Home Warranty is owned and controlled by CHW Group. CHW Group owns the website www.ChoiceHomeWarranty.com, through which various service contracts are sold and administered, and the employees handling sales, marketing, claims, finance, etc. are all CHW Group employees. Finally, according to Mandalawi's résumé submitted to the State of South Carolina in 2011, Mandalawi was the president of Home Warranty Administrators and the president of Choice Home Warranty. The names are listed in his résumé as two separate companies. At the time the South Carolina application was filed, which included Mandalawi's résumé, Choice Home Warranty was not registered as a dba for HWAN. This leads to the conclusion that Choice Home Warranty is CHW Group, Inc.

When an entity registers a dba, or fictitious name, the entity creates a name under which it will operate. This does not create a new company or change the entity's legal status. Registering a dba cannot make one company liable for the acts of another company, even if the two companies share the same name—it is a legal impossibility. Further, NRS 690C.200.1(b) prohibits a provider from using a name that is the name of another provider. Choice Home Warranty, under CHW Group, is another provider even if it is not a Nevada-registered provider. Why the Division requested HWAN to register the dba Choice Home Warranty is unknown, as it makes the arrangement of these businesses confusing at best. Registering Choice Home Warranty as HWAN's dba did not make HWAN and CHW Group one legal entity for purposes of regulation. Accordingly, it is the Hearing Officer's position that Choice Home Warranty as discussed in this matter should not be treated as a fictitious name of HWAN, but instead as a separate company under CHW Group. For purposes of this Order, the Hearing Officer relies on this distinction between HWAN and Choice Home Warranty: HWAN is one legal entity, and Choice Home Warranty is CHW Group, an incorporated entity that is separate from HWAN.

D. The Division Claims Respondent Made False Entries of Material Facts in Its Applications

1. Administrative Actions Against Choice Home Warranty

The Division claims that by failing to disclose other states' administrative actions against Choice Home Warranty on its Nevada renewal applications, Respondent engaged in acts that constitute the unlawful making of false entry of material fact in violation of NRS 686A.070. The Hearing Officer

disagrees.

Respondent argues that it is legally and factually impossible for HWAN to have made false misrepresentations in its renewal applications because the *renewal* applications do not ask for regulatory information about any of the officers of the applicant, and the Hearing Officer agrees. The Division's questions in each of the renewal applications do not ask whether any of the applicant's officers have had actions taken against them; rather, the questions ask whether any of the *new* officers identified in the renewal application have had actions taken against them. If the Division wanted to know whether any of applicant's officers had administrative actions taken against them in other states, the Division should have asked that question. The Division's intent regarding the questions on its own renewal application is not clear, and it would be improper to hold applicants responsible for failing to disclose information about which the Division never asked.

For the renewal applications submitted for 2011, 2012, and 2013, the service contract provider that submitted the applications with the Division is Home Warranty Administrators of Nevada, Inc. HWAN is incorporated in Nevada, creating an independent legal entity. As its own legal entity, HWAN is responsible for the acts of its business. At no time during this period was HWAN named in any administrative action in any other state. Therefore, it cannot be said that HWAN made a false entry on the renewal applications for these years by not reporting administrative actions against Choice Home Warranty.

For the renewal applications submitted for 2014 and 2015, the service contract provider that submitted the applications with the Division is Home Warranty Administrators of Nevada, Inc. dba Choice Home Warranty. As explained in Section C above, however, Choice Home Warranty is CHW Group. It is a legal impossibility for HWAN to also be CHW Group even if HWAN registered a dba called Choice Home Warranty. HWAN did not violate Nevada law by failing to disclose administrative actions taken against CHW Group in other states. CHW Group is HWAN's administrator, and none of the applications asked whether the administrator or its officers have been the subject of administrative actions in other states. To that end, HWAN was not required to report administrative actions against Choice Home Warranty in its 2014 and 2015 renewal applications.

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2. Applications Filed with the Division

With the Hearing Officer's determination that HWAN and Choice Home Warranty are separate entities, the evidence shows that Respondent did make a false entry of material fact in its applications. All the applications presented at the hearing ask the applicant to disclose the name of the administrator. For all of the renewal applications Mandalawi submitted on behalf of HWAN, the administrator is noted as "self," and this was not true. "Self" means that the service contract provider-HWAN in this case—was administering all of the claims. According to the testimony of Mandalawi, Hakim, and Ramirez, Choice Home Warranty (which is CHW Group) is the administrator for HWAN. Respondent argues that this fact was disclosed in HWAN contract HWA-NV-0711, which was provided to the Division in 2011. Even if the disclosure is sufficient to say the Division was on notice in 2011 (when the HWAN contract was approved) that Choice Home Warranty was the administrator, every renewal application submitted indicated the contrary. When asked on the renewal applications whether there were any changes to the administrator or a newly designated administrator, in each renewal application, Mandalawi responded that there was no change—the administrator was "self," which is HWAN. If CHW Group was the administrator, then "self" was not an accurate response to the question on the applications. Claims administration is a material part of service contracts and, therefore, a material fact, required by NRS 690C.160.3. As such, HWAN misstated a material fact in its application. For each application year starting in 2011 that HWAN reported "self" as the administrator, is one violation of NRS 686A.070. (Five counts.)

Additionally, HWAN indicated in its applications filed starting in 2011 that it was using the service contract HWA-NV-0711 that was approved by the Division. On at least one occasion, there is evidence that HWAN used a service contract that, in fact, was not approved by the Division. Service contracts must comply with certain provisions of the Insurance Code and, therefore, must be approved before they are used. The application year 2015 did not disclose the use of an unapproved form. The service contract is a material part of the service contract provider application and, therefore, a material fact of the application. As such, HWAN misstated another material fact in its 2015 renewal application, in violation of NRS 686A.070. (One count.)

E. The Division Claims Respondent Has Engaged in Unfair Practices in Settling Claims

The Division alleges that the number of complaints against Respondent show that Respondent has engaged in unfair practices in settling claims in violation of NRS 686A.310 and had, thereby, acted in an unsuitable manner. NRS 679B.125.2. Respondent argues that the number of complaints does not amount to unfair practices in settling claims, and that it believes it provides Nevada customers sterling service.

In this case, the evidence shows that the Division received at least 63 individual consumer complaints about HWAN, and 25 consumer complaints against Choice Home Warranty. Of the complaints, five were presented at the hearing: three complaints from 2014 and two complaints from 2016. The complaints allege that Choice Home Warranty did not cover appliances that consumers believed were covered, or that Choice Home Warranty did not pay the technician who provided services on the appliance. When the Division got involved, HWAN agreed to cover or settle the complaints. The Division's evidence says the claims were covered; Respondent's evidence says the claims were not covered. Respondent's agreeing to pay the claims as a result of the Division's involvement does not mean that Respondent admitted that the claims were covered. As presented, the Division's evidence was insufficient to show that Respondent engaged in unfair practices in settling claims.

F. The Division Claims Respondent Has Failed to Make Its Records Available

The Division claims that Respondent failed to make available information requested by the Commissioner in violation of NRS 690C.320.2. The Division sought information about HWAN's claims and open contracts in Nevada. Respondent argues that the Division presented no evidence to support this claim.

The evidence shows that the Division made several requests of Respondent through Mandalawi, including to Mandalawi's email address of record. Respondent acknowledges having communicated with the Division via email or telephone on other occasions, as evident through the testimony and exhibits. The parties both state that the requested information was produced, but only after a subpoena was issued, which was at least six months after the renewal application was received. Moreover, this information relating to how many open contracts and claims Respondent had in Nevada was requested

in the renewal application, but Respondent did not respond to those questions. The law is clear that, upon the Commissioner's request, "[a] provider shall...make available" records concerning any service contract issued, sold, or offered for sale available. NRS 690C.320.2. Thus, Respondent violated NRS 690C.320.2 when it did not produce such information when requested. (One count.)

G. Respondent Has Conducted Business in an Unsuitable Manner

1. Complaints Against Respondent

The Division claims that, given the number of consumer complaints in Nevada, media reports, and findings by other states, constitutes a pattern of behavior that Respondent is operating in an unsuitable manner, and that Respondent's practices cause injury to the general public with such frequency as to indicate a general business practice, in violation of NRS 690C.325.1(b) and NRS 679B.125.2.

The evidence shows a number of consumer complaints posted online. These reports include complaints by Nevadans, but the Division made no effort to verify the substance of the complaints. This evidence, while consistent with the consumer complaints received by the Division, does not substantiate that Respondent is operating in an unsuitable manner because the substance of the reports was not vetted. This evidence tends to corroborate that there may be a problem with claims handling. These violations are troubling, and may warrant further review to determine whether Respondent's claims handling is appropriate. However, this evidence regarding claims handling does not show that Respondent is violating Nevada laws or causing injury to the general public "with such frequency as to indicate a general business practice."

2. HWAN's Association with CHW Group

With the Hearing Officer's determination that HWAN and Choice Home Warranty are separate entities, as argued by Respondent, the Hearing Officer concludes that Respondent conducted business in an unsuitable manner by allowing an unregistered entity to engage in the business of service contracts in Nevada.

Respondent argues that the Division violated its due process rights in claiming that HWAN allowed CHW Group to operate without a license because Respondent "never received proper notice of the Division's argument that CHW Group, Inc. is one and the same with HWAN." (HWAN's Closing

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27 28 Arg. 4.) Respondent further argues that this Order should find "that HWAN and CHW are separate entities and that CHW has not used HWAN to avoid its own licensing." (Id. at 7.) The Hearing Officer finds Respondent's arguments to be contradictory and unsupported.

Based on the Amended Complaint, it is clear that the Division considered HWAN and Choice Home Warranty to be one-and-the-same entity. When the Division claimed that Respondent should have disclosed that Choice Home Warranty had been disciplined in other states, Respondent argued in its prehearing statement that no such duty existed because HWAN and Choice Home Warranty are two separate entities because Choice Home Warranty is CHW Group. Facts about how Respondent operates were presented during the hearing, and it was Respondent's witnesses who explained who the different entities, and their respective roles, are. Respondent brought as witnesses the CEO of CHW Group and the COO of CHW Group, in addition to Mandalawi, President of both HWAN and CHW Group, who all spoke proficiently about the entities and clearly distinguished them. It was Respondent's position that Choice Home Warranty was CHW Group, and Respondent presented considerable evidence to support its position. Respondent cannot claim that HWAN and Choice Home Warranty are two separate entities and, in the same breath, conclude that Respondent had no notice of the Division's position that HWAN and Choice Home Warranty were considered one and the same entity to avoid responsibility for violations of law that resulted from the very conclusion they advocated. Therefore, it cannot be said that Respondent had no notice of the Division's argument that CHW Group is one and the same with HWAN.

Respondent also argues that the Division is equitably estopped from taking action against it because the Division knew that CHW Group and HWAN were selling contracts in Nevada. There is no evidence that the Division knew that CHW Group and Choice Home Warranty were the same. The record likewise shows no evidence that the Division was aware that CHW Group was selling contracts in Nevada, only that Choice Home Warranty was selling contracts in Nevada. The Division asked HWAN to register Choice Home Warranty as a dba because, after a discussion with Mandalawi, "[i]t was identified that Choice and HWAN were one and the same entity, that Choice was not selling illegally because HWAN was a licensed entity in Nevada." (Test. Jain.) Respondent argues that it detrimentally relied upon the Division's representation that in exchange for HWAN's use of the

 fictitious name, the Division released the legal right to initiate an adversarial action that HWAN and CHW Group are the same entity. How a fictitious name registration amounts to detrimental reliance is unclear. The Commissioner's obligation under the Insurance Code is to protect Nevadans in the business of service contracts. The Commissioner cannot ignore her charge under the law—when an entity is violating a law that harms Nevadans, the Commissioner must act.

Respondent claims that the Division is estopped from taking action against Respondent because the Division made express representations to HWAN relative to HWAN's relationship with CHW Group, and that HWAN relied on these in conducting its operations. There is no evidence in the record that HWAN had to or did change its operations as a result of the dba registered in Nevada. More importantly, there is no evidence that the Division knew that Choice Home Warranty was CHW Group or of the contract between HWAN and CHW Group. Even if in 2011 the Division approved a contract in 2011 that indicated that Choice Home Warranty was administering the contract, contract administration is not approval to issue, sell, or offer for sale service contracts. Moreover, after that contract was approved in 2011, Respondent indicated that it was itself administering its service contracts, which was not true.

Based on the presentation of Mandalawi and Hakim, CHW Group, Inc. is the legal entity that controls and operates all the content, data, contracts, information, processing, management, claims, marketing, advertising, and sales of all products sold through HWAN, while HWAN manages regulatory compliance. Respondent claims this creates efficiencies in managing the product being sold across the country, with the nuances of different states' requirements identified in the service contract issued to consumers. According to Hakim, an administrator is permitted to issue, sell, and offer for sale or administer service contracts without a certificate of registration pursuant to NRS 690C.120.2. Hakim is incorrect.

Nevada law clearly prohibits the issuance, sale, or offering for sale service contracts unless the provider has been issued a certificate of <u>registration</u>. NRS 690C.150. The provision Hakim incorrectly relies on, NRS chapter 690C section 120 subsection 2, involves a certificate of <u>authority</u> issued pursuant to NRS chapter 680A, which is a certificate issued to *insurance companies* to operate in Nevada. A certificate of registration and a certificate of authority are two different things. What NRS

 690C.120.2 says is that a certificate of authority is not required in the business of service contracts and, so, anyone involved in service contracts is not required to obtain a certificate of authority. It most certainly does not say that an administrator may issue, sell, or offer to sell service contracts without proper registration pursuant to NRS 690C.150. Such a reading would make the entirety of NRS chapter 690C a nullity.

By definition, an administrator should not be engaged in issuing, selling, or offering to sell service contracts. Hakim, Mandalawi, and Ramirez all testified that Choice Home Warranty handles all sales, advertising, and marketing for HWAN. As Hakim stated, his interest in HWAN is that HWAN continue to operate, "because if [HWAN is] not operating in the State of Nevada, then Choice Home Warranty is not operating in the State of Nevada." (Tr3. 98:9-16.) This is a reflection of CHW Group's intent to operate in Nevada using HWAN for "regulatory compliance." This intent is further reflected in the service contract that was sold in Nevada that identified CHW Warranty as the company—a service contract that was not approved for use in Nevada.

Based on the evidence, it is clear that "regulatory compliance" as stated by Mandalawi means that HWAN holds the certificate of registration in Nevada, and nothing more. Since receiving its COR, HWAN has been merely a figurehead, enabling an unlicensed entity to engage in the business of service contracts in Nevada under HWAN's license. CHW Group has engaged in the business of service contracts without a license, which is a violation of NRS 690C.150, and skirted regulation by the Division, which is a danger to the public. This activity has been occurring since at least 2010, when HWAN was first licensed. With the sale of over 69,000 service contracts, it is undeniable that it is Respondent's practice to allow CHW Group to issue, sell, and offer for sale service contracts in Nevada, thereby avoiding regulation for each contract sold in Nevada. HWAN's practice has occurred with such frequency as to indicate a general business practice, which amounts to conducting business in an unsuitable manner, in violation of NRS 690C.325 and 679B.125.

H. The Division Requests a Cease and Desist Order to Prevent Respondent from Engaging in the Business of Service Contracts Without a Certificate of Registration

In the Amended Complaint, the Division indicates that Respondent filed a renewal application for 2016, and that the Commissioner is authorized to refuse to renew a provider's certificate of

 registration ("COR"). The Division requested a cease and desist be issued. In arguing that Respondent's 2016 COR was properly denied the Division appears to be claiming that Respondent is improperly engaging in the business of service contracts. Respondent argues that it had no notice of the facts underlying the Division's position that it did not appropriately renew its COR in 2016. Mandalawi believed that the issue of the 2016 renewal application would be considered in this hearing and that, until then, HWAN could continue operating in Nevada. (Test. Mandalawi.) The Hearing Officer finds that the Division did not properly notify Respondent that the 2016 renewal application was denied.

In Nevada, certificates of registration for service contract providers expire one year after the COR is issued. NRS 690C.160.3. Nothing in Nevada law grants the Division authority to allow a provider to continue operating after the expiration of a COR, but a provider may submit a renewal application to receive a new COR to continue operating. It is unclear how the automatic expiration of a COR after one year would require notice to the provider for due process purposes when the law clearly makes the COR available for one year and no longer. However, when a provider timely submits a renewal application that is denied, then the Division must issue a notice to the provider about the denial, providing an explanation for the denial and an opportunity for the provider to request a hearing on the propriety of the denial. A hearing on such denials are heard within 30 days.

In this case, Respondent timely filed a renewal application on or about November 7, 2016, to obtain a new COR. When the Division found the renewal application to be incomplete, the Division should have promptly notified Respondent that the renewal application was not complete and, therefore, denied so that Respondent would know that it was not approved to continue operating in Nevada. Notice of the denial was finally provided on or about July 21, 2017, almost eight months after HWAN submitted the application. The denial also provided no information as to why the renewal application was denied, nor did it notify Respondent that it could appeal the decision through a hearing request. Thus, the Hearing Officer finds that for the service contracts sold up until the date of this Order, Respondent cannot be found to have sold without a valid COR in violation of Nevada law since the Division did not properly notify Respondent of the denial with an explanation of the denial or of the opportunity for a hearing on the denial, which would have been adjudicated within 30 days of a hearing

request and prevented 13 months of Respondent selling service contracts without a COR.

Nonetheless, the registration expired as a matter of law on November 18, 2016. Therefore, as of the date of this Order, Respondent is on notice that it must apply for a renewal of its certificate of registration if it wishes to continue in the business of service contracts in Nevada within 30 days of the date of this Order. The Division must issue its determination on the application no later than 15 business days after receipt of the complete application. As a result, the Division cannot take action against Respondent for issuing, selling, or offering for sale service contracts without a certificate of registration from the date of this Order plus 45 days.³

ORDER OF THE HEARING OFFICER

Based on the foregoing Findings of Fact and Conclusions of Law, the preponderance of the evidence presented at hearing shows that Respondent has violated the provisions of the Insurance Code complained of by the Division. Accordingly, the Hearing Officer HEREBY ORDERS that:

- Respondent be fined \$30,000, the maximum fine of \$5,000 allowed under NRS 686A.183.1(a), for each of six violations of making a false entry of material fact in a record or statement in violation of NRS 686A.070;
- 2. Respondent be fined \$500, an administrative fine authorized pursuant to NRS 690C.325.1 in lieu of a revocation, for failing to make its records available to the Commissioner upon request;
- 3. Respondent be fined \$50 for each act or violation,⁴ for conducting business in an unsuitable manner by allowing an unregistered entity to issue and offer service contracts in Nevada, and to sell 23,889 service contracts in Nevada through Respondent's certificate of registration, for a total of \$1,194,450; and

³ This ruling does not prevent the Division from taking action for other violations in connection with the service contracts issued, sold, or offered for sale, during this period if any are later discovered.

Pursuant to NRS 690C.325.1, the maximum administrative fine allowed is \$1,000 per act or violation.

- 4. If Respondent wishes to continue engaging in the business of service contracts in Nevada, Respondent may apply for a certificate of registration as provided in this Order.
- 5. All administrative fines imposed in this Order are due no later than 30 days from the date of this Order.

So ORDERED this 18th day of December 2017.

Alexia M. Emmermann Hearing Officer

FINAL ORDER OF THE COMMISSIONER

Based on the record in this administrative hearing and having reviewed the Hearing Officer's Findings of Fact and Conclusion of Law in this matter, Cause No. 16.0126, I concur with the Hearing Officer's Order. For good cause appearing, I specifically adopt the Findings of Fact, Conclusions of Law, and Order of the Hearing Officer as the Final Order in this matter.

IT IS SO ORDERED.

DATED this _____ day of December, 2017.

BARBARA D. RICHARDSON
Commissioner of Insurance

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER OF HEARING OFFICER, AND FINAL ORDER OF THE COMMISSIONER, in CAUSE NO. 17.0050, via electronic mail and by mailing a true and correct copy thereof, properly addressed with postage prepaid, certified mail return receipt requested, to the following:

> Kirk B. Lenhard, Esq. Brownstein Hyatt Farber Schreck, LLP 100 North City Parkway, Suite 1600 Las Vegas, NV 89106 E-MAIL: klenhard@bhfs.com CERTIFIED MAIL NO. 7017 1070 0000 8962 9357

> Travis F. Chance, Esq. Brownstein Hyatt Farber Schreck, LLP 100 North City Parkway, Suite 1600 Las Vegas, NV 89106 E-MAIL: tchance@bhfs.com CERTIFIED MAIL NO. 7017 1070 0000 8962 9364

> Lori Grifa, Esq. Archer & Greiner, P.C. Court Plaza South, West Wing 21 Main Street, Suite 353 Hackensack, NJ 07601 E-MAIL: lgrifa@archerlaw.com CERTIFIED MAIL NO. 7017 1070 0000 8962 9371

and copies of the foregoing were sent via electronic mail to:

Richard Yien, Deputy Attorney General Nevada Attorney General's Office E-MAIL: ryien@ag.nv.gov

DATED this 18th day of December, 2017.

Employee of the State of Nevada Department of Business and Industry Division of Insurance

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9590 9402 2940 7094 9268 97 2. Article Number (Transfer from service label) 7017 1070 0000 8962 936	3. Service Type ☐ Adult Signature ☐ Registered Mell™ ☐ Cartified Mail® Restricted Delivery ☐ Collect on Delivery ☐ Collect on Delivery ☐ Collect on Delivery Restricted Delivery ☐ Collect on Delivery ☐ Collect on Delivery ☐ Collect on Delivery ☐ Signature Confirmation™ ☐ Signature Confirmation ☐ Restricted Delivery ☐ Restricted Delivery ☐ Restricted Delivery
PS Form 3811, July 2015 PSN 7530-02-000-9053	TL 17.0050 9R D-18 Domestic Return Receipt



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1. Article Addressed to; KIRK B. LENHARD, ESQ. BROWNSTEIN HYATT FARBER SCHRECK, LLF 100 NORTH CITY PARKWAY, SUITE 1600 LAS VEGAS, NV 89106	D. Is delivery address different from item 1? Yes If YES, enter delivery address below:
9590 9402 2940 7094 9269 03 2. Article Number (Transfer from service label) 7017 1070 0000 8962 935	3. Service Type □ Adurt Signature □ Adurt Signature □ Adurt Signature Restricted Delivery □ Cortified Mails Restricted Delivery □ Collect on Delivery Restricted Delivery □ Signature Confirmation Restricted Delivery 30
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I KIRK B. LENHARD, ESO., Nevada Bar No. 1437 REC'D& FILE klenhard@bhfs.com TRAVIS F. CHANCE, ESQ., Nevada Bar No. 13800 2 tchance@bhfs.com 3 MACKENZIE WARREN, ESQ., Nevada Bar No. 14642 JUSAN MERRINGTHER mwarren@bhfs.com 4 BROWNSTEIN HYATT FARBER SCHRECK, LLP 100 North City Parkway, Suite 1600 5 Las Vegas, NV 89106-4614 Telephone: 702.382.2101 Facsimile: 702.382.8135 6 Attorneys for Plaintiff Home Warranty Administrator of Nevada, 7 Inc., dba Choice Home Warranty 8 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA 9 BROWNSTEIN HVATT FARBER SCHRECK, LL.P 100 North City Parkway, Suite 1690 Las Vegas, NV 89106-4614 702.382.2101 IN AND FOR CARSON CITY 10 CASE NO.: / 706 60 26 9 18 HOME WARRANTY ADMINISTRATOR 11 DEPT NO.: OF NEVADA, INC., dba CHOICE HOME WARRANTY, a Nevada 12 corporation, 13 Plaintiff, 14 15 STATE OF NEVADA, DEPARTMENT OF BUSINESS AND INDUSTRY -16 DIVISION OF INSURANCE, a Nevada 17 administrative agency. Desendant. 18 19 AFFIRMATION 20 Pursuant to NRS 239B.030/603A.040 (Initial Appearance) 21 The undersigned does hereby affirm that upon the filing of additional documents in the 22

above matter, an Affirmation will be provided **ONLY** if the document contains a social security number (NRS 239B.030) or "personal information" (NRS 603A.040) which means a natural person's first name or first initial and last name in combination with any one or more of the following data elements:

- Social Security number. 1.
- Driver's license number or identification card number. 2. 16250340

3. Account number, credit card number or debit card number, in combination with any required security code, access code or password that would permit access to the person's financial account.

The term does not include publicly available information that is lawfully made available to the general public.

DATED this <u>b</u> day of December, 2017.

BROWNSTEIN HYATT/FARBER SCHRECK, LLP

KIRK B. LENHARD, ESQ., NV Bar No. 1437

klenhard@bhfs.com

TRAVIS F. CHANCE, ESQ., NV Bar No. 13800

tchance@bhfs.com

MACKENZIE WARREN, ESQ., NV Bar No. 14642

mwarren@bhfs.com

100 North City Parkway, Suite 1600

Las Vegas, NV 89106-4614 Telephone: 702.382.2101 Facsimile: 702.382.8135

Attorneys for Plaintiff Home Warranty Administrator of Nevada, Inc., dba Choice Home Warranty

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3	MACKENZIE WARREN, ESQ., Nevada Bar No	5/14642	
	mwarren@bhfs.com	Y Man GLENIC	
4	mwarren@bhfs.com BROWNSTEIN HYATT FARBER SCHRECK,	LIP	
5	100 North City Parkway, Suite 1600 Las Vegas, Nevada 89106-4614	15/417	
ا د	Telephone: 702.382.2101		
6	Facsimile: 702.382.8135		
_	C. Butthey	•	
7	Attorneys for Petitioner		
8	IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA		
9	IN AND FOR CARSON CITY		
10	HOME WARRANTY ADMINISTRATOR	Case No.: 1706 60269 18	
10	OF NEVADA, INC. dba CHOICE HOME	Dept No.:	
11	WARRANTY, a Nevada corporation,		
12	Petitioner,	PETITION FOR JUDICIAL REVIEW	
12	Tennoner,	TETTION FOR GODICALE REVIEW	
13	vs.	[EXEMPT FROM ARBITRATION –	
1.4	CTATE OF NEWADA INCRADIMENT	JUDICIAL REVIEW]	
14	STATE OF NEVADA, DEPARTMENT OF BUSINESS AND INDUSTRY –		
15	DIVISION OF INSURANCE, a Nevada		
	administrative agency,		
16	Respondent.		
17	Respondent.		
18	Petitioner HOME WARRANTY ADMI	NISTRATOR OF NEVADA, INC. dba CHOICE	

HOME WARRANTY ("HWAN"), a Nevada corporation, by and through its attorneys of record, Kirk B. Lenhard, Esq., Travis F. Chance, Esq., and Mackenzie Warren, Esq., of the law firm of Brownstein Hyatt Farber Schreck, LLP, hereby petitions this Court for judicial review of the STATE OF NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY – DIVISION OF INSURANCE's (the "Division") Findings of Fact, Conclusions of Law, Order of Hearing Officer, and Final Order of the Commissioner (the "Decision"), filed on December 18, 2017, in the matter of *In re Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty*, Cause No. 17.0050, as follows:

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PARTIES

- HWAN is an active Nevada corporation in good standing, wholly owned and 1. operated by Victor Mandalawi.
- At all times relevant hereto, HWAN is and was a registered service contract 2. provider in the State of Nevada and has been so since 2010.1
- The Division is a division of the Nevada Department of Business and Industry and 3. oversees the licensing and regulation of providers of, inter alia, insurance and service contracts in the State of Nevada.

JURISDICTION AND VENUE

- Jurisdiction is proper in this Court pursuant to the Nevada Constitution, Article 6, 4. § 6 and NRS 233B.120(2)(b).
 - Venue is proper in this Court pursuant to NRS 233B.130(2)(b). 5.

COMMON ALLEGATIONS

- On May 9, 2017, the Division, through the Nevada Attorney General, filed a 6. Complaint and Application for Order to Show Cause with the Nevada Insurance Commissioner (the "Complaint").
- On September 5, 2017, the Division filed an Amended Complaint and Application 7. for Order to Show Cause (the "Amended Complaint"), whose allegations substantively mirror those in the Complaint.
 - The Amended Complaint set forth the following allegations against HWAN: 8.
 - Violations of NRS 686A.070 by submitting knowingly false statements that no new officers of HWAN had been fined in HWAN's 2011, 2012, 2014, and 2015 license renewal applications;
 - Violations of NRS 686A.310(1)(b) by failing to promptly and reasonably b. respond to claims made under HWAN's policies;

As will become apparent in this proceeding, one of the issues to be resolved is whether HWAN timely and properly submitted its renewal application in November 2016. HWAN contends that it did timely renew its certificate and that the Division must be estopped from contending otherwise.

c.	Violations of NRS 679B.125(2) by conducting its business in an unsuitable			
	manner, based upon consumer complaints, alleged news articles, and			
	decisions of agencies and courts in other states:			

- Violations of NRS 686A.170 by engaging in unfair and deceptive trade practices based upon administrative and court decisions from other states;
 and
- e. Violation of NRS 690C.320 by failing to make available for inspection HWAN's records related to its offered service contracts.

A true and correct copy of the Amended Complaint is attached hereto as Exhibit 1.

- 9. On September 12, 13, and 14 2017, a hearing (the "Hearing") was held before Hearing Officer Alexia M. Emmermann, Esq. to determine the merits of the Division's allegations against HWAN as set forth in the Amended Complaint.
- 10. On October 30, 2017, HWAN and the Division submitted post-hearing briefs on a legal issue and subsequently submitted their Closing Arguments in writing on November 17, 2017.
- 11. Ms. Emmermann signed the Decision on December 18, 2017. That same day, the Commissioner of the Division adopted the findings of fact and conclusions of law in the Decision and it was filed of record.² A true and correct copy of the Decision is attached hereto as **Exhibit** 2.
 - 12. In the Decision, Ms. Emmermann found that:
 - a. HWAN violated NRS 686A.070 five separate times when it stated on its renewal applications for years 2011-2015 that its service contracts were selfadministered when they were actually administered by CHW Group, Inc.;
 - b. HWAN violated NRS 686A.070 when it misrepresented in its 2015 renewal application that it was using an unapproved service contract form;

² On December 19, 2017, the Division provided a corrected copy of the Decision. The revisions were non-substantive and were made to correct the cause number in the Commissioner's adoption of the hearing officer's findings and conclusions.

LOWNSTEIN HYATT FARBER SCHRECK, LLP	100 North City Parkway, Suite 1600	Las Veges, Nevada 89106 (702) 382-2101	
WNSTEIN HYATT	100 North City P.	Las Vegas, 1 (702) 3	

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c.	HWAN failed to make its records available to the Division upon request, i	ir
	violation of NRS 690C.325(2);	

- d. HWAN engaged in unsuitable business practices in violation of NRS 690C.325(1)(b) since 2010 by allowing CHW Group, Inc. to sell 23,889 service contracts under which HWAN was the obligor without CHW Group, Inc. being registered as a provider in Nevada; and
- although the Division had failed to give proper notice to HWAN that its 2016 renewal application was incomplete and the reasons therefore, HWAN's certificate of registration expired as a matter of law as of November 18, 2016.
- 13. The Decision imposed the following penalties:
 - a. a \$30,000.00 fine for six violations of NRS 686A.070;
 - b. a \$500.00 fine in lieu of revocation of HWAN's certificate of registration for violation of NRS 690C.325(2);
 - c. a \$50 fine for each violation of NRS 690C.325(1)(b) for CHW Group, Inc.'s sale of 23,889 service contracts without proper registration, for a total fine of \$1,194,450.00.
- The Decision further found that, despite the Division's misfeasance in failing to 14. notify HWAN that its 2016 renewal application was incomplete, HWAN's certificate had nevertheless expired. The Decision gave HWAN an additional 30 days from the date of the Decision to submit another renewal application. The Division was given 15 days thereafter to respond and was prohibited from taking action against HWAN related to the lack of registration for 45 days from the date of the Decision.
- The Decision prejudices HWAN's substantial rights in that it was arbitrary and 15. capricious and was clearly erroneous in view of the reliable, probative, and substantial evidence. This is because, inter alia:
 - the evidence presented at the Hearing showed that HWAN did not violate NRS 686A.070 since there was no evidence presented of any intent to deceive by making each of the alleged misrepresentations, as is required by that statute

1		and because the Division in fact knew that the statements were inaccurate
2		when they were made.
3	b.	the evidence presented at the Hearing showed that HWAN did not violate
4		NRS 690C.325(2) since the Division proffered no proof that HWAN received
5		the requests for information cited as a basis for that violation.
6	c.	the evidence presented at the Hearing showed that HWAN did not violate
7		NRS 690C.325(1)(b) and did not - and does not - eng age in unsuitable
8		business practices since NRS Chapter 690C does not require CHW Group,
9		Inc. to hold a certificate of registration in order to sell service contracts in this
10		state on behalf of HWAN, which is itself a properly registered entity.
11	16. The	e Decision further prejudices HWAN's substantial rights because the Decision:
12	a.	violates HWAN's constitutional rights to due process;
13	b.	violates clear statutory provisions;
14	c.	is in excess of the Division's statutory authority;
15	d.	was made upon improperly admitted evidence; and
16	e.	is unsupported, incorrect, and against the weight of legal authority and
17	5. 1	precedent.
18	17. Ne	evada Revised Statute 233B.130(1) provides that a party aggrieved by a final
19	decision in a con	tested case in front of an administrative agency is entitled to judicial review of
20	the decision.	
21	18. As	s the Decision is final and adverse to the substantial rights and interests of
22	HWAN, HWAN	is an aggrieved party.
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6 7 8 9 10 BROWNSTEIN HYATT FARBER SCHRECK, LLP 100 North City Parkway, Suite 1600 Las Vegas, Nevada 89106 (702) 382-2101 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25

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WHEREFORE, HWAN prays for relief as follows:

- For review of the Decision by this Court; 1.
- For an order vacating the Decision on the bases set forth herein; and 2.
- For such other relief as the Court may deem appropriate. 3.

DATED this 21st day of December, 2017.

BROWNSTEIN HYATT FARBER, SCHRECK, LLP

BY:

KIRK B. LENHARD, ESQ., Bar No. 1437

klenhard@bhfs.com TRAVIS F. CHANCE, ESQ., Bar No. 13800

tchance@bhfs.com

MACKENZIE WARREN, ESQ., Bar No. 14642

mwarren@bhfs.com

100 North City Parkway, Suite 1600

Las Vegas, NV 89106-4614 Telephone: 702.382.2101 Facsimile: 702.382.8135

Attorneys for Petitioner

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EXHIBIT 1

EXHIBIT 1



3 4 IN THE MATTER OF

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CAUSE NO. 17,0050

HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. dba CHOICE HOME WARRANTY

AMENDED
COMPLAINT AND APPLICATION
FOR ORDER TO SHOW CAUSE

Respondent.

The State of Nevada, Department of Business and Industry, Division of Insurance ("Division"), sends greetings to:

HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. dba CHOICE HOME WARRANTY

YOU ARE HEREBY NOTIFIED of the conduct, conditions, or acts which are deemed by the Commissioner of Insurance ("Commissioner") to be in violation of the following provision of Nevada Revised Statutes ("NRS"): NRS 686A.070—falsifying material fact in any book, report, or statement; NRS 690C.325(1)(b)—conducting business in an unsuitable manner; and NRS 686A.310—engaging in unfair practices in settling claims. The Commissioner may refuse to renew or may suspend a provider's certificate of registration pursuant to NRS 690C.325.

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¹NRS 690C.120 Applicability of other provisions.

^{1.} Except as otherwise provided in this chapter, the marketing, issuance, sale, offering for sale, making, proposing to make and administration of service contracts are not subject to the provisions of title 57 of NRS, except, when applicable, the provisions of:

⁽a) NRS 679B.020 to 679B.152, inclusive;

⁽b) NRS 679B.159 to 679B.300, inclusive;

⁽c) NRS 679B.310 to 679B.370, inclusive;

⁽d) NRS 679B.600 to 679B.690, inclusive;

⁽e) NRS 685B.090 to 685B.190, inclusive;

⁽f) NRS 686A.010 to 686A.095, inclusive;

⁽g) NRS 686A.160 to 686A.187, inclusive; and

⁽h) NRS 686A.260, 686A.270, 686A.280, 686A.300 and 686A.310.

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A. Jurisdiction

 The Commissioner has exclusive jurisdiction to regulate the business of service contracts in the state of Nevada pursuant to chapter 690C of the NRS. The actions described in this complaint are actions that involve the regulation of the business of service contracts in the state of Nevada.

B. Respondent

 Respondent, Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty ("CHW"), had a certificate of registration (ORG ID# 113194) as a service contract provider in Nevada since November 18, 2010. CHW submitted a renewal application of registration on November 8, 2016.

C. Allegations of Fact

- 1. On July 23, 2010, Insurance Commissioner of California, Steve Poizner, issued a cease and desist order to CHW for "acting in a capacity for which a license, registration, or certificate of authority from the Commissioner was required but not possessed." CHW had, through the internet, through toll-free telephone lines, and through other means and devises, solicited the purchase of home protection contracts to persons residing in California. CHW did not possess the proper licensure, registration, or certificate required to conduct such business in California. An entry of default judgment was entered in this case on October 12, 2010, finding CHW "has continued to act in a capacity for which a home protection company license or a certificate of authority is required but is not possessed" thereby issuing CHW a fine of \$3,530,000.00.
- 2. President of CHW, Victor Mandalawi, signed a 2011-2012 Service Contractor Provider Renewal Application to the Nevada Division on Insurance on October 31, 2011. Mr. Mandalawi falsely answered "no" to question 3(d), on page 2 of the application, which reads, "Since the last application, has applicant or any of the

officers listed in Section 1 ever: (d) been fined by any state governmental agency or authority in any matter regarding service contracts?" The "no" answer provided is false because the Insurance Commissioner of California fined CHW \$3,530,000.00 on October 12, 2010, during the time between CHW's initial (last) application and CHW's October 31, 2011, renewal application.

- 3. On July 15, 2011, the Insurance Commissioner of the state of Oklahoma issued an Order in response to an Emergency Cease and Desist Order issued by the Oklahoma Insurance Department on July 29, 2010. The Cease and Desist Order was issued "pursuant to a finding that CHW was unauthorized to engage in the business of offering, providing, servicing, and entering service warranty agreements, service warranty contracts, indemnity agreements or indemnity contracts, and in violation of Oklahoma insurance code." Mr. Mandalawi stipulated on behalf of CHW that CHW "does not hold any license, certificate of authority, or other authorization from the Oklahoma Insurance Department to engage in the business of offering, providing, servicing, and entering service warranty agreements." On December 29, 2011, the Oklahoma Insurance Commissioner fined CHW \$15,000.00.
- 4. President Victor Mandalawi of CHW signed a 2012-2013 Service Contractor Provider Renewal Application to the Nevada Division on Insurance on October 19, 2012. Mr. Mandalawi falsely answered "no" to question 3(d), on page 2 of the application, which reads, "Since the last application, has applicant or any of the officers listed in Section 1 ever: (d) been fined by any state governmental agency or authority in any matter regarding service contracts?" The "no" answer provided was false because the Insurance Commissioner of the state of Oklahoma fined CHW \$15,000,00 on December 29, 2011, during the time between CHW's last application and CHW's renewal application.
- 5. On February 7, 2014, the Insurance Commissioner in the State of Oklahoma

 issued an Order stating:

"CHW had willfully violated a Consent Order dated January 2, 2012, by failing to pay all valid claims and refunds that arise pursuant to service warranty agreements in Oklahoma. IT IS FURTHER ORDERED that Respondent (CHW) has knowingly and willfully violated provisions of the Service Warranty Act; failed to update its address with the Oklahoma consumer and the Insurance Commissioner; and failed to respond to the Oklahoma Insurance Commissioner and, as a result, Respondent is fined in the amount of Ten Thousand Dollars."

This Order was issued in response to a consumer complaint submitted to the Insurance Commissioner in the state of Oklahoma alleging that CHW denied a claim from the consumer without ever investigating circumstances surrounding the claim and ignoring repeated attempts from the consumer to resolve the issue in good faith. The February 7, 2014, Order concluded that CHW violated Oklahoma's deceptive trade acts

"by failing to acknowledge and act promptly upon communication with respect to the claim; by denying Johnson's (aggrieved consumer) claim without conducting reasonable investigation based upon available information; failing to promptly provide a reasonable explanation to Johnson in relation to the facts or applicable law for the denial of the claim."

6. President Victor Mandalawi of CHW, signed a 2014-2015 Service Contractor Provider Renewal Application to the Nevada Division on Insurance on November 12, 2014. Mr. Mandalawi falsely answered "no" to question 4(d), on page 2 of the application, which reads, "Since the last application, has applicant or any of the officers listed in Section 1 ever: (d) been fined by any state governmental agency or authority in any matter regarding service contracts?" The "no" answer provided was false because the Insurance Commissioner of the state of Oklahoma fined CHW \$10,000.00 on February 7, 2014, during the time between CHW's last

- 7. CHW and its officers, directors, employees, et al., agreed to a Final Consent Judgment on May 21, 2015, to resolve a complaint brought by the New Jersey Attorney General's Office and the New Jersey Division of Consumer Affairs alleging violation of New Jersey's Consumer Fraud Act and New Jersey regulations governing general advertising. The Final Consent Judgment was filed by the Superior Court of New Jersey and signed by the Honorable Travis L. Francis on June 9, 2015, and required various injunctive relief, revised business practices; the reporting of additional consumer complaints; the mandatory retaining of a compliance monitor; and a settlement payment of \$779,913.93.
- 8. President Victor Mandalawi of CHW signed a 2015-2016 Service Contractor Provider Renewal Application to the Nevada Division on Insurance on November 17, 2015. Mr. Mandalawi falsely answered "no" to question 4(d), on page 2 of the application, which reads, "Since the last application, has applicant or any of the officers listed in Section 1 ever: (d) been fined by any state governmental agency or authority in any matter regarding service contracts?" The "no" answer provided was false because the New Jersey Attorney General's Office and the New Jersey Division of Consumer Affairs settled the matter with CHW for \$779,913.93 during the time between CHW's last application and CHW's renewal application.
- 9. During the period CHW was registered as a Service Contractor Provider in Nevada, the Nevada Division of Insurance has received more than 80 consumer complaints. The consumer's descriptions detailing the complaints depict incidents where CHW does not communicate with a policyholder after the policyholder has filed a claim, incidents where policyholder claims are denied without communication or investigation, and complaints from service providers who have not been paid from CHW after performing services for them.

10. CHW submitted their 2016-2017 Service Contractor Provider renewal application on November 8, 2016. Subsequently, the Nevada Division of Insurance requested information from CHW inquiring as to how many open contracts and claims CHW had in Nevada. CHW has since responded to the Division's request upon a subpoena ordered in these proceedings.

D. Violations Alleged

- 1. NRS 686A.070 provides that it is unlawful to knowingly make or cause to be made any false entry of a material fact in any book, report, or statement of any person or knowingly omit to make a true entry of any material fact pertaining to such person's business in any book, report, or statement of such person. Any person who violates, or with like intent, aids or abets any violation of this section is guilty of a gross misdemeanor.
- CHW by and through its president, Victor Mandalawi, engaged in acts that
 constitute the unlawful making of false entry of material fact in each of CHW's
 renewal applications in the years 2011, 2012, 2014, and 2015.
- 3. CHW's complaints regarding failures to communicate with policyholders and inappropriately denying claims violates NRS 686A,310(1)(b)—"failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies."
- 4. The business practices of CHW, as documented by Nevada complaints; the Better Business Bureau, news and media outlets; and the findings of fact of the various Courts' actions described above, constitute a pattern of behavior that CHW is operating in an unsuitable manner. CHW's practices cause injury to the general public with such frequency as to indicate a general business practice. As such, CHW is in violation of NRS 679B.125(2)—conducting business in an unsuitable manner.
- 5. Pursuant to the findings of fact of the various Courts' Orders described above,

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CHW also is in violation of NRS 686A.170—engaging in unfair and deceptive trade practices.

 The Commissioner may refuse to renew or may suspend a provider's certificate of registration pursuant to NRS 690C.325.

E. Action Required

Based upon the foregoing and pursuant to NRS 690C.325:

- Refuse to renew and revoke, subject to the rights afforded under the law, the certificate of registration for HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. dba CHOICE HOME WARRANTY.
- Pursuant to NRS 686A.183(1)(a), fine HOME WARRANTY
 ADMINISTRATOR OF NEVADA, INC. dba CHOICE HOME WARRANTY
 \$5,000 for each act or violation of NRS 686A.010 to 686A.310.
- 3. Pursuant to NRS 690C.325, discipline and/or refuse to renew and revoke HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. dba CHOICE HOME WARRANTY for violating NRS 690C.320(2) and failing to make available to the Commissioner for inspection any accounts, books, and records concerning any service contract issued, sold, or offered for sale by the provider.
- 4. Issue a cease and desist order pursuant to NRS 686A.170.
- Withhold the security deposit, as required by NRS 690C.170(2), to service existing contractual obligations of HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. dba CHOICE HOME WARRANTY.
- 6. Order any other action deemed appropriate by the Hearing Officer.

23 II. APPLICATION FOR ORDER TO SHOW CAUSE

Under the authority of Title 57 of the NRS, and other applicable laws and regulations of the State of Nevada, and other general powers and duties of the Commissioner, the Division hereby respectfully requests that an Order to Show Cause be issued requiring Respondent HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. dba CHOICE HOME

WARRANTY to appear and show cause, if any, why the non-renewal of its certificate of registration, and the imposition of fines and a cease and desist, should not be ordered.

At the hearing, the Division may offer written and oral evidence. Respondent also would have the opportunity to offer written and oral evidence.

Pursuant to Nevada Administrative Code (NAC) 679B.311, Respondent may choose to be represented by an attorney in this matter. If Respondent wishes to be represented by an attorney, Respondent shall notify the Division in writing of the name, address, and telephone number of its counsel not later than five (5) days before the hearing.

WHEREFORE, unless Respondent appears at the time and place of the hearing and shows good and just cause why appropriate administrative action should not be taken, the Commissioner may issue an Order against Respondent for the relief requested by the Division.

DATED this 5th day of September 2017.

ADAM PAUL LAXALT Attorney General

Ву:

RICHARD PAILI YIEN
Deputy Attorney General
100 N. Carson Street
Carson City, Nevada 89701

(775) 684-1129

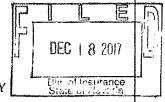
Attorney for the Division of Insurance

CERTIFICATE OF SERVICE 2 I hereby certify that I have this date served the AMENDED COMPLAINT AND 3 APPLICATION FOR ORDER TO SHOW CAUSE, in CAUSE NO. 17.0050, via electronic 4 mail, to the following: 5 Kirk B. Lenhard, Esq. Brownstein Hyatt Farber Schreck, LLP 100 North City Parkway, Suite 1600 Las Vegas, NV 89106 6 E-MAIL: klenhard@bhfs.com 7 Travis F. Chance, Esq. 8 Brownstein Hyatt Farber Schreck, LLP 9 100 North City Parkway, Suite 1600 Las Vegas, NV 89106 E-MAIL: tchance@bhfs.com 10 Lori Grifa, Esq. 11 Archer & Greiner, P.C. Court Plaza South, West Wing 12 21 Main Street, Suite 353 Hackensack, NJ 07601 13 E-MAIL: lgrifa@archerlaw.com 14 and the originals of the foregoing were hand-delivered to: 15 Alexia M. Emmermann, Esq. 16 Hearing Officer Department of Business and Industry 17 Division of Insurance 1818 East College Parkway, Suite 103 18 Carson City, NV 89706 19 and copies of the foregoing were sent via electronic mail to: 20 Richard Yien, Deputy Attorney General 21 Nevada Attorney General's Office 22 E-MAIL: ryien@ag.nv.gov DATED this 6th day of September, 2017. 23 24 Employee of the State of Nevada 25 Department of Business and Industry Division of Insurance 26 27 28

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EXHIBIT 2

EXHIBIT 2



STATE OF NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY DIVISION OF INSURANCE

IN THE MATTER OF

CAUSE NO. 17.0050

HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. dba CHOICE HOME WARRANTY,

Respondent.

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FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER OF HEARING OFFICER, AND FINAL ORDER OF THE COMMISSIONER¹

This matter is before the Nevada Division of Insurance ("Division") on an Order to Show Cause issued by the Commissioner of Insurance ("Commissioner") on May 11, 2017, against Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty. The Commissioner, as head of the Division, is charged with regulating the business of insurance in Nevada. NRS 232.820, -.825.2; NRS 679B.120, The Division alleges that Respondent violated various provisions of the Nevada Revised Statutes ("NRS") title 57 ("Insurance Code") and of insurance regulations found under the Nevada Administrative Code ("NAC"). A hearing was scheduled for August 1, 2017, and continued to September 12, 2017. A prehearing conference was held on September 8, 2017, at the office of the Division in Carson City. The hearing was held on September 12, 13, and 14, 2017, at the office of the Division in Carson City. At the close of the hearing, the Parties were ordered to file briefs on a legal issue due on October 30, 2017, and written closing arguments due on November 15, 2017. On November 7, 2017, Respondent filed a motion to strike portions of the Division's brief. The motion was denied, but the Parties were granted five extra pages for their written closing arguments to address any issues from the briefs, and the due date for the written closings was extended to November 17, 2017.

¹ See NRS 679B.360.2-.3 (explaining that "the Commissioner shall make an order on hearing covering matters involved in such hearing" and enumerating what is required in the order); NRS 679B.330.1 (authorizing the Commissioner to appoint a person as a hearing officer for a hearing); and NAC 679B.411 ("The hearing officer shall file a copy of his or her order with the Division" and "[i]f

I. FINDINGS OF FACT²

A. HWAN Applications

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- 1. CHW Group, Inc. ("CHW Group") was incorporated in the State of New Jersey in May 2009. Victor Mandalawi ("Mandalawi") and Victor Hakim ("Hakim") set up the company to provide service contracts. Both Hakim and Mandalawi are officers for CHW Group: Hakim is the chief executive officer and Mandalawi is the president. The company operates under the name "Choice Home Warranty," which is registered as a fictitious name in New Jersey. CHW Group uses the brand Choice Home Warranty, to include the website www.ChoiceHomeWarranty.com. CHW Group owns the website, through which all service contracts are sold and administered. Hakim has final say or approval on all content on the website. CHW Group's employees handle sales, marketing, claims, finance. CHW Group's sales, marketing, and finance occur at its office located at 1090 King Georges Post Road in Edison, New Jersey; CHW Group's operations, or claims handling, occurs at 2 Executive Drive in Somerset, New Jersey. CHW Group is not registered to do business in Nevada. (Ex. A; Test. Mandalawi; Test. Hakim; Test. Ramirez.)
- 2. Under the name Choice Home Warranty, CHW Group sold service contracts online, so sales reached consumers nationally, and consumers were purchasing the service contract in states where CHW Group was not licensed. Mandalawi and Hakim were not aware that other states required a license in order to sell this type of product. Choice Home Warranty was named in administrative actions in different states. As a result, Mandalawi created the Home Warranty Administrators name for states that require licensure. Home Warranty Administrator of Nevada, Inc. ("HWAN") was incorporated in Nevada on July 23, 2010. Mandalawi is the only employee for each of the Home Warranty Administrators companies. HWAN's address is 90 Washington Valley Road in Bedminster, New Jersey. (Test. Mandalawi.)
 - 3. On or about July 29, 2010, Mandalawi signed a service contract provider application on

the hearing officer is not the Commissioner, the Commissioner will indicate on the order his or her concurrence or disagreement with the order of the hearing officer").

The hearing transcripts are distinguished by day, not volume number or consecutively numbered pages. Accordingly, the transcripts are distinguished in the citations as "Tr.1" for the hearing transcript

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27 28 behalf of Home Warranty Administrator of Nevada, Inc., which was received by the Division on or about September 2, 2010. (Ex. 22; Ex. P.) Mandalawi is noted on the application as president of HWAN. (Ex. 22; Ex. P at 12-14; Ex. C; Test. Mandalawi.)

- 4. On July 29, 2010, HWAN entered into an independent service provider agreement ("Agreement") with CHW Group. Through the Agreement, CHW Group handles sales, marketing, operations (claims), and advertising for HWAN service contracts, while HWAN handles regulatory compliance. CHW Group maintains the service contracts sold to Nevada consumers. According to the Agreement, CHW Group is responsible for providing the following services:
 - Communicating with potential clients (the "Clients") seeking Warranties and negotiating
 the signing of contracts, the form of which shall be previously approved by HWA[N],
 between Clients and HWA[N].
 - Collecting any and all amounts paid by the Clients for the Warranties and distributing same to HW[AN] pursuant to the terms of Article 2 hereof;
 - Keeping records of all Warranties
 - Providing customer service to Clients; and
 - Inspecting any claims made by Clients regarding goods under a Warranty and, if possible, repairing same or causing same to be replaced.
- (Ex. E.) CHW Group sells service contracts on behalf of HWAN per the Agreement. When CHW Group sells a contract, CHW Group collects the payment from the consumer, and that money is eventually paid to HWAN. (Test. Mandalawi; Test. Hakim.)
- 5. According to the 2010 application, an administrator was not designated to be responsible for the administration of Nevada contracts. (Ex. 22; Ex. P at 1.)
- 6. According to the application's Section II, neither the applicant nor any of the officers listed in Section I had ever been refused a license or registration or had an existing license suspended or revoked by any state, nor had the applicant or any of the officers listed in Section I been fined by any state or governmental agency or authority in any matter regarding service contracts. (Ex. 22; Ex. P at 2; Test. Mandalawi.)
 - 7. As part of the application, HWAN submitted its proposed contract. (Test. Mandalawi.)
- 8. On November 30, 2010, the Division issued HWAN a letter, along with a certificate of registration ("COR") with Company ID No. 113194 and with an anniversary date of November 18 of

on September 12, 2017, "Tr.2" for the hearing transcript on September 13, 2017, and "Tr.3" for the hearing transcript on September 14, 2017.

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27 28 each year. (Ex. U; Ex. 22; Test. Mandalawi.) In the letter, the Division noted that it had reviewed the service contract #HWAADMIN-8/2/10 that was submitted with the application, and that it was approved for use. (Ex. U at 1.)

- 9. In 2011, HWAN submitted another service contract for approval. The Division approved the service contract under the form number HWA-NV-0711. (Test. Mandalawi; Test. Ghan.)
- 10. The service contract shows the Home Warranty Administrators' logo at the top right of the first page. Under it is the name Choice Home Warranty followed by the text "America's Choice in Home Warranty Protection," and under the text in finer print it says "Obligor: Home Warranty Administrator of Nevada, Inc." This first page is a sample letter to the consumer. The first two lines of the letter says, "Welcome to Choice Home Warranty! You made a wise decision when you chose to protect your home with a home warranty." The consumer is asked to read the coverage. The letter includes a toll-free number, (888)-531-5403, and a website, www.ChoiceHomeWarranty.com. Under the letter in finer print, it states that the contract explains the coverage, limitations, and exclusions, Then there are two boxes: the box on the left identifies the contract number, contract term, covered property, property type, rate, and service call fee; the box on the right identifies the coverage plan. included items, and optional coverage. Under the two boxes is the name Choice Home Warranty and the address, 510 Thornall Street, Edison, NY 08837, along with the toll-free number (888) 531-5403. The bottom right of the page contains "HWA-NV-0711" in a finer print, which indicates approval by the Division in July 2011, and is applied to each page. (Ex. 35; Ex. EE; Test. Ghan; Test. Jain; Test. Mandalawi.)
- According to Mandalawi, there are no contracts sold to Nevada consumers other than the Nevada contract authorized in 2011. (Test. Mandalawi.)
- 12. For the registration years 2011 through 2016, HWAN filed renewal applications. (Ex. 2, 4, 5, 7, 12, 21; Ex. I; Test. Mandalawi.)
- 13. The renewal applications asked the applicant to identify the pre-approved service contract form name and form numbers that applicant sells in Nevada. On each application, HWAN identified form HWA-NV-0711. (Ex. 2, 4, 5, 7, 12, 21; Ex. I.)

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- 14. The renewal applications for the years 2011, 2012, and 2013 asked the following questions:
 - "Have there been any changes in the executive officers or in the officers responsible for service contract business since your last application?"
 - "Have you made any changes in the administrator or designated a new administrator since your last application? Current administrator is listed as:"
 - "Since the last application, has applicant or any of the officers listed in question I ever...(c) Been refused a license or registration...or had an existing one suspended or revoked by any state... [or] (d) Been fined by any state or governmental agency or authority in any matter regarding service contracts?"

On behalf of HWAN, Mandalawi answered "No" to each of the questions. For the current administrator, Mandalawi wrote "Self." (Ex. 2, 4, 5; Ex. I; Test. Dennis; Test. Mandalawi.)

- 15. The renewal applications for years 2011, 2012, and 2013 were approved. (Ex. Y, Z, AA; Test. Mandalawi.)
- 16. The renewal applications also ask how many service contracts were sold to Nevada residents, other information related to revenue, claims paid, and customer complaints, and information about how complaints are handled. Mandalawi responded to these questions for the renewal applications for years 2011, 2012, and 2013. (Ex. 2, 4, 5; Ex. I.)
- 17. In 2013, the Division initiated an investigation into Choice Home Warranty, and began monitoring complaints. The Division also discovered that a company called Choice Home Warranty had administrative actions against it in several states. (Test, Jain.)
- Ahrens, then-Chief of the Property and Casualty Section, indicated that she wanted to work with Mandalawi "regarding having an official dba of Choice Home Warranty." She said that she had stopped the issuance of a cease and desist, and wanted to remedy the situation from occurring in the future. (Ex. T at I.) The Division asked HWAN to register the dba Choice Home Warranty because the Division "thought it was confusing for consumers having just the name Home Warranty of Nevada." (Test. Mandalawi.) Mandalawi registered the dba "Choice Home Warranty" under HWAN. (Ex. T at 7-11; Ex. B; Ex. 30-32; Test. Mandalawi.)
- 19. The Division issued a memo to then-Commissioner Scott J. Kipper from Derick Dennis, Management Analyst, indicating that Mandalawi notified the Division that HWAN filed the dba name.

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"Choice Home Warranty," in Carson City and Washoe County. A handwritten note on the memo states, "7/8/14 This was at the request of the Division, recommend approval" with Ahrens' initials "ea." (Ex. 23 at 3; Ex. Q.) The Division issued a new Certificate of Registration dated July 14, 2014, under HWAN's same Company ID No. 113194, for Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty. (Ex. 23; Ex. T at 39, 51-53; Test. Mandalawi,)

- 20. For the registration years beginning 2014, 2015, and 2016, HWAN filed renewal applications. The applicant was listed as "Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty." (Ex. 7, 12, 21; Ex. I; Test. Mandalawi.)
- 21. The renewal applications for the years 2014, 2015, and 2016 asked the same following questions:
 - "Have there been any changes in the executive officers or in the officers responsible for service contract business since your last application?"

 - "Have you made any changes in the administrator or designated a new administrator since your last application? Current administrator is listed as:"

 "Since the last application, has applicant or any of the officers listed in question 1 ever...(c) Been refused a license or registration...or had an existing one suspended or revoked by any state ... [or] (d) Been fined by any state or governmental agency or authority in any matter regarding service contracts?"

On behalf of HWAN, Mandalawi answered "No" to each of the questions. (Ex. 7, 12, 21; Test. Mandalawi.) For the current administrator, Mandalawi wrote "Self." (Ex. 21)

- 22. The renewal application for 2014, 2015, and 2016 added a request that the applicant "List all aliases or names under which the company conducts business (Doing Business As). Provide supporting documentation." On behalf of HWAN, Mandalawi answered "NA" because he believed the question related to additional fictitious names. (Ex. 7, 12, 21; Ex. 1 at 12, 16, 20; Test. Mandalawi.)
- The renewal applications for 2014, 2015, and 2016 also ask how many service contracts 23. were sold to Nevada residents, other information related to revenue, claims paid, and customer complaints, and information about how complaints are handled. For years 2014, 2015, and 2016, Mandalawi responded to some of these questions, but left blank the number of customer complaints by Nevada residents and the question asking how complaints are handled. (Ex. 7, 12, 21; Ex. I at 14, 18, 23.)

- 24. The renewal applications for years 2014 and 2015 were approved. (Ex. BB, CC; Test. Mandalawi.)
- 25. At the time the Division received HWAN's 2016 renewal application, the Division requested additional information because the application was deemed incomplete. Specifically, the statutory security deposit was not sufficient and questions on the application were left blank. The Division's requests for information were ignored. As of the date of the hearing, the Division had not received all of the information requested. (Ex. 33; Ex. L; Ex. DD; Test, Jain.)
- 26. As a result of this matter, Mandalawi learned that HWAN's COR was inactive. Mary Strong, Management Analyst III, emailed HWAN on July 21, 2017, explaining that HWAN's COR had expired and that the 2016 renewal application was denied. No additional explanation was provided. A printout of HWAN's licensing status with the Division shows that HWAN dba Choice Home Warranty is inactive as of 11/18/2016. (Ex. O, DD; Test. Mandalawi.)

B. Complaints

- 27. In 2009, the Division began receiving complaints about Choice Home Warranty, which was not registered to sell service contracts in Nevada. (Ex. 28 at 2; Ex. J at 2.)
- 28. On January 4, 2014, the Division received a complaint from a technician who provided services to a consumer on behalf of Choice Home Warranty, but "CHW (CHOICE HOME WARRANTY, CHW GROUP)" refused to pay them the \$20,000 alleged to be owed. The Division worked out a settlement between Choice Home Warranty and the technician for \$7,296. (Ex. 25; Test. Kuhlman.)
- 29. On July 16, 2014, the Division received a consumer complaint against Choice Home Warranty alleging that Choice Home Warranty failed to pay a valid claim for a broken air conditioning ("A/C") unit under the service contract (policy number 628975268). The consumer was forced to pay \$1,025 for an A/C compressor that the consumer believed should have been covered by the service contract. The consumer requested the claim denial in writing, but was told by the Choice Home Warranty employee claimed that it was against company policy to issue a denial in writing. (Ex. 11; Test. Kuhlman.)

- 30. On November 19, 2014, the Division received a consumer complaint against Choice Home Warranty alleging Choice Home Warranty improperly denied a claim when the consumer's pipe broke the same day he had purchased the service contract (policy number 465308123). The consumer paid \$826 for repair of a broken pipe. The consumer also complained because he felt Choice Home Warranty's advertisement was deceitful and misleading by claiming that the consumer could get coverage "today," when the contract requires a thirty-day waiting period. The Division worked out a settlement between Choice Home Warranty and the consumer for \$500. (Ex. 11; Test. Kuhlman.)
- Warranty alleging Choice Home Warranty improperly denied a claim for a broken A/C unit. The consumer filed a claim with Choice Home Warranty on June 27, 2016, and Choice Home Warranty sent a technician, who replaced the capacitor. The A/C unit failed again within a few hours. The technician returned to look at the unit three times and provided all the information Choice had requested. The A/C unit still had not been fixed. The consumer called Choice Home Warranty numerous times and was put on hold on every call for extensive periods and, after 45 minutes, the call would fail. The consumer was told that the claim was rejected because the consumer did not maintain the unit. The consumer sent Choice Home Warranty proof that he did maintain the unit. The consumer explained that the situation was a "life or death situation" because his significant other, who is disabled, suffered from heatstroke because she and their little dog have been left in the house with temperatures exceeding 100-plus degrees. On or about July 25, 2016, the Division worked out a settlement between Choice Home Warranty and the consumer for \$1,500. (Ex. 38; Test. Kuhlman.)
- 32. On October 4, 2016, the Division received a consumer complaint against Choice Home Warranty alleging Choice Home Warranty improperly denied a claim for a broken A/C unit. The consumer filed a claim with Choice Home Warranty on June 8, 2016, and Choice Home Warranty sent eight technicians and four A/C companies, and all agreed that the A/C compressor and coil needed to be replaced. Choice Home Warranty denied the claim explaining that it had a photo of the unit from August 17, 2016 showing that no maintenance had been done on the unit. The consumer asked for a copy of the photo, but Choice Home Warranty did not provide the photo. The consumer faxed her maintenance records for the A/C unit, but was told that Choice Home Warranty could not read the

 records. At the time of the complaint, the consumer was alleged to have endured ten weeks without A/C in Las Vegas. (Ex. 24; Test. Kuhlman.)

- 33. In all, the Division had received approximately 80 complaints about Choice Home Warranty. Eliminating duplicates, the total was 62. At the time the Complaint, only 2 complaints were open. All other complaints had been closed. The Division's concern was that Choice Home Warranty had a higher ratio of complaints than any other of the 170-plus service contract providers licensed in Nevada. (Ex. 28; Ex. J, W; Test. Jain.)
- 34. The Division conducted a general search on Choice Home Warranty online, and discovered numerous complaints by consumers on different websites. (Test. Jain.)
- 35. The Business Consumer Alliance rated Choice Home Warranty with an "F". It notes the company's website as www.choicehomewarranty, DBAs are CHW Group, Inc., Victor Mandalawi as president, and Victor Hakim as principal. (Ex. 9.)
- 36. On October 31, 2016, Mike from Henderson, Nevada posted a complaint on the Ripoff Report claiming Choice Home Warranty in Edison, New Jersey, was attempting to withdraw money from the consumer's bank account after the contract period ended. (Ex. 14.)
- 37. On July 7, 2016, Stardust from Henderson, Nevada posted a complaint on the Ripoff Report claiming Choice Home Warranty refused to replace a pool pump because it was not correctly installed. (Ex. 15.)
- 38. On April 20, 2016, Ira B. from Las Vegas, Nevada, a technician, posted a complaint on Ripoff Report advising people to stay away from Choice Home Warranty because Choice Home Warranty does not pay its vendors, and requires vendors to use repair parts according to their terms. (Ex. 16.)
- 39. On January 14, 2016, laappliance from Las Vegas, Nevada posted a complaint on Ripoff Report that Choice Home Warranty is a huge scam among contractors. The company had completed 200 jobs for Choice Home Warranty, but Choice Home Warranty had not yet paid them. (Ex. 17.)
- 40. On October 12, 2016, David N. of Las Vegas, Nevada posted a complaint on Yelp.com that Choice Home Warranty improperly denied his claims on two occasions. The second claim denial was after a technician came and inspected the microwave and took photos. The consumer included in

 his complaint the he received an email from Choice Home Warranty that said, "CHW strives to be rated #1 in the home warranty industry. Help us succeed with your positive feedback and you will receive 1 FREE month of coverage." (Ex. 18 at 2.)

- 41. Choice Home Warranty has been the subject of complaints in other cities—Houston, Texas, Chicago, Illinois, Overland Park, Kansas, and Titusville, Florida. According to the reports, Choice Home Warranty in New Jersey denies claims on the basis that the consumers did not maintain their units, even after consumers provide proof of maintenance. (Ex. 19, 19a, 20, 20a, 39, 40, and 40a.)
- 42. In reviewing complaints, Mandalawi has CHW Group employees participate in the resolution. Mandalawi distinguishes claims as problems with a system or appliance, and a complaint as a consumer who is dissatisfied with the claim or outcome. When complaints are received, they are handled by CHW Group employees. If they are escalated, Mandalawi gets involved. Mandalawi has final authority on complaints and "want[s] to be sure that CHW Group is adhering to the terms and conditions of the policy and make[s] sure they are in compliance." Complaint resolution activity is done at Executive Drive, CHW Group's Somerset location; sales and marketing is done at the King Georges Post Road in Edison. Mandalawi spends most of his time at the Somerset location. (Test. Mandalawi; Test. Ramirez.)
- 43. At a meeting of the Parties pending this proceeding, Mandalawi and Hakim reviewed the records of HWAN to determine how many complaints they have received from the Division since HWAN's inception. (Test. Mandalawi; Test. Hakim.)
- 44. CHW Group handled the claims for the consumer complaints filed with the Division. CHW Group documents its communications with the consumers. CHW Group concluded that the consumers' claims were not covered by the service contracts. (Test. Ramirez.)
- 45. HWAN presented what it named "Customer Testimonials NV DOI Status of HWAN," which is 867 pages of positive testimonials of Choice Home Warranty consumers from around the country, including Nevada. (Ex. M.)

C. Regulatory Actions

46. On July 23, 2010, California issued a cease and desist order against Choice Home Warranty and its officers, along with notices related to a monetary penalty and right to hearing for

 acting as a provider of home protection contracts without a license. (Ex. 1 at 1-4 of 16.) A final order was entered on August 19, 2010. On October 12, 2010, the California Insurance Commissioner found that Choice Home Warranty acted as a home protection company without a license from October 25, 2008 through October 1, 2010, and fined Choice Home Warranty \$3,530,000. In December 2010, Mandalawi, as president of Choice Home Warranty, entered into an agreement with California agreeing to take certain actions with regard to their business, and pay a \$10,000 fine. The agreement was adopted by the California Commissioner on January 6, 2011. (Ex. 1; Ex. G.)

- 47. On July 29, 2010, Oklahoma issued a cease and desist against Choice Home Warranty for engaging in service warranty contracts without authorization. Despite the order, Choice Home Warranty continued to engage in the business. The matter was settled on January 2, 2012, with a fine of \$15,000, and Choice Home Warranty was permitted to continue servicing existing contracts. (Ex. 3; Ex. H.)
- 48. On February 7, 2014, the Oklahoma Commissioner issued an order alleging that Choice Home Warranty continued to engage in the business "in a course of unfair and deceptive conduct while circumventing regulatory authority." (Ex. 3 at 2.) Choice Home Warranty was fined \$10,000. (Ex. 3.) On October 21, 2010, the Insurance Commissioner of the State of Washington issued an Order to Cease and Desist against CHW Group, Inc. doing business as Choice Home Warranty and www.ChoiceHomeWarranty.com, Victor Mandalawi, President of CHW Group, Inc. (incorporated in both New York and New Jersey), and others. The Order demanded that all named parties, who are unlicensed in Washington, cease transacting in the unauthorized business of insurance in Washington, seeking business in Washington, and soliciting Washington residents to buy unauthorized products based on the sale of at least 92 service contracts. On January 27, 2011, the Washington Commissioner issued a Final Order Terminating Proceeding after the named parties filed a stipulation withdrawing their hearing demand. The Final Order indicated that the Order to Cease and Desist would remain in effect indefinitely. (Ex. 8 at 3 of 32.)
- 49. On June 9, 2015, CHW Group, Inc. dba Choice Home Warranty, Victor Mandalawi, and Victor Hakim agreed to a Final Consent Judgment with the New Jersey Attorney General's Office for allegations of using deceptive means to deny claims after the New Jersey Division of Consumer Affairs

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received 1,085 complaints about Choice Home Warranty. The Judgment requires Choice Home Warranty, Mandalawi, and Hakim to address issues related to improper advertisements, sales representatives' misrepresentations, terms and conditions of the contract, properly licensed technicians, fair review of claims, timely payment to technicians, payment in lieu of replacement, refunds, training of employees handling sales and claims, and future consumer complaints. Choice Home Warranty, Mandalawi, and Hakim were required to pay a \$779,913.93 fine including consumer restitution, revise their business practices, pay for an independent compliance monitor to oversee compliance with the terms of the Judgment, and execute confessions of judgment in the event of a default on the Judgment. (Ex. 6; Ex. F, X.)

D. Other Evidence Presented at Hearing

- 50. In 2016, Home Warranty Administrator of Florida, Inc. and Choice Home Warranty were named defendants in a civil action in New Jersey. That same year, CHW Group, Inc. dba Choice Home Warranty and Victor Mandalawi were named defendants in a civil complaint in South Carolina. (Ex. 9, 29; Test. Mandalawi.)
- Administrator of South Carolina, Inc.'s application with the State of South Carolina submitted by Mandalawi. The application included a biographical affidavit, which requested information about Mandalawi's background. To the question, "Are you operating, acting, or have acted as a controlling person for any other service contract provider or service contract related company?", Mandalawi responded yes. To the question, "Have you or a service contract provider or service contract related company in which you were, or are a controlling person, ever been disciplined by a state regulatory body?", Mandalawi responded yes. To the question, "Have you or a service contract provider or service contract related company for which you were, or are a controlling person, ever been subject to a cease and desist letter or order, or enjoined, either temporarily or permanently, in any judicial, administrative, regulatory or disciplinary action?", Mandalawi responded yes.

Attached to the biographical affidavit is Mandalawi's résumé. According to it, Mandalawi is the President of Home Warranty Administrators, which "is currently licensed / registered in Arizona, Florida, Illinois, New York, Nevada, Oklahoma, and Texas." Mandalawi has held this position since

2010. The résumé also shows that Mandalawi is also President of Choice Home Warranty, and has held this position since 2008. (Ex. 41 at 14.)

Mandalawi presented a letter to the South Carolina Department of Insurance explaining his "Yes" responses to the questions on the biographical affidavit. In the letter, Mandalawi introduces himself as president of Home Warranty Administrator of South Carolina, Inc., and all of its affiliates, which includes HWAN, and president of Choice Home Warranty. Through the letter, Mandalawi explains that

Choice Home Warranty (CHW) was the subject of a cease and desist letter in California, Oklahoma, and Washington. In California, CHW entered into a consent order, in Oklahoma, Home Warranty Administrator of Oklahoma, Inc. is [sic] now holds a Service Warranty License, and in Washington CHW is complying with all terms of the cease and desist.

CHW has been doing business for roughly two years and our home state of New Jersey does not require companies, such as ours, to be licensed. During the course of its activities, CHW discovered that all states are not created equal when it came to licensing requirements for service contracts. In fact, the very definition of the words "service contracts" changes from state to state. To address this newly discovered issue, CHW developed the Home Warranty administrators ("HWA") brand. That is, in order to address every state's particular requirements, a separate HWA was created for that state.

(Ex. 41 at 15-16; Test. Mandalawi.)

- 52. Choice Home Warranty has a landing page, which is a webpage that consumers land on when they click a particular email or internet link to Choice Home Warranty. The landing page is part of Choice Home Warranty's internet advertising. A potential consumer would enter his/her zip code. Choice Home Warranty provides some general information and invites people to call them at (888) 531-5403. The advertisement is copyrighted 2017 Choice Home Warranty, and includes its address, 1090 King Georges Post Rd. Edison, NJ 08837, and phone number (888) 531-5403. In finer print at the bottom of the advertisement are links to Choice Home Warranty's limits of liability and exclusions, other terms, and the privacy policy. (Ex. 26; Test. Jain; Test. Hakim.)
- 53. On August 21, 2017, Felecia Casci, Supervising Legal Secretary at the Division, received an email from 'CHOICE Warranty (enews@choicehomewarranty.com)" with the subject, "VIP Offer: \$50 Off & 1 Month Free" in her personal email account. Choice Home Warranty, identified at the top of the email, invites Casci to "Never Pay for Covered Home Repairs Again," offering \$50 off and one month free. According to the email, Choice Home Warranty plans are subject

 to terms and conditions. Choice Home Warranty identifies its address as 1090 King Georges Post Rd, Edison, NJ 08837, and phone number as 800-814-4206. The advertisement is copyrighted to Choice Home Warranty in 2017. Nothing in the solicitation identified HWAN as the party selling the service contract. (Ex. 27; Test. Casci.)

- 54. On August 16, 2017, Casci received another email from "CHOICE Warranty (enews@choicehomewarranty.com)" with the subject, "We Appreciate You Felecia" in her personal email account. Choice Home Warranty, identified at the top of the email, invites Casci to "Never Pay for Covered Home Repairs Again," offering \$75 off and one month free. According to the email, Choice Home Warranty plans are subject to terms and conditions. Choice Home Warranty identifies its address as 1090 King Georges Post Rd, Edison, NJ 08837, and phone number as 800-814-4206. The advertisement is copyrighted to Choice Home Warranty in 2017. (Ex. 27; Test. Casci.)
- 55. The Division discovered that some service contracts issued by HWAN were not approved for use. In the unapproved service contract's letter to the consumer, the first two lines of the letter says, "Welcome to Choice Home Warranty! You made a wise decision when you chose to protect your home with a CHW Warranty." Again in the second paragraph, there is a reference to CHW Warranty. Under the two boxes is the name Choice Home Warranty and the address, 1090 King Georges Post Road, Edison, NJ 08837, along with the toll-free number (888) 531-5403. There is no service contract form number on the bottom of the page indicating approval by the Division. The font of the contract is reduced such that the contract is 4 pages long instead of the 5 ½ pages in the approved service contract. (Ex. 37; Test. Ghan.)
- 56. When Hakim acknowledged that CHW Group is not licensed to sell, solicit, or offer for sale service contracts in Nevada, he explained that "Pursuant to section 690C.120.2, administrators are not required to be licensed to sell service contracts in Nevada." (Test. Hakim.)
- 57. The setup for HWAN in Nevada is the same setup Mandalawi uses for all of the Home Warranty Administrators companies. All of these entities have a contract with CHW Group, and all of the entities use the website www.choicehomewarranty.com to sell their service contracts. All of the entities use substantially the same contract and terms of service. All of the businesses use CHW Group's services as provided in agreements similar to the Agreement HWAN has with CHW Group.

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services to HWAN through the Agreement. CHW Group has tracked its claims statistics. According to its claims statistics, 23,889 customers have purchased a service contract through Choice Home

Warranty in Nevada since 2011. (Ex. K; Test. Hakim.)

59. In some years, the Division communicated with Mandalawi by telephone or email when items were not provided with HWAN's applications. (Test. Mandalawi.)

This creates efficiencies in managing the product being sold across the country, with the nuances of

Since HWAN became licensed in Nevada, CHW Group has continually provided

different states' requirements identified in the service contract sent to consumers, (Test, Mandalawi,)

II. CONCLUSIONS OF LAW

In its Amended Complaint, the Division seeks administrative action against Respondent for (1) falsifying material facts in its applications; (2) engaging in unfair practices in settling claims; (3) conducting business in an unsuitable manner; and (4) failing to make records available to the Commissioner upon request. The Division also seeks a cease and desist order because the Commissioner refused to renew Respondent's 2016 COR. The Division bears the burden of showing, by a preponderance of the evidence, that Respondent violated these provisions of the Insurance Code. In hearings for the Division, "The hearing officer shall liberally construe the pleadings and disregard any defects which do not affect the substantial rights of any party." NAC 679B.245.

A. Jurisdiction

The Commissioner is charged with regulating the business of service contracts, which includes but is not limited to promulgating regulations, reviewing provider records, investigating complaints and alleged violations of law, and conducting examinations. NRS 679B.120.3 & -.5, 690C.300, -.310 & -.320. Service contracts are regulated under the Insurance Code pursuant to chapter 690C.

B. Statement of Law

In Nevada, "A provider shall not issue, sell or offer for sale service contracts in this state unless the provider has been issued a certificate of registration pursuant to the provisions of [NRS chapter 690C]." NRS 690C.150. A provider "means a person who is obligated to a holder pursuant to the terms of a service contract to repair, replace or perform maintenance on, or to indemnify the holder for the costs of repairing, replacing or performing maintenance on, goods." NRS 690C.070. A holder is a Nevada resident who may enforce the rights under a service contract. NRS 690C.060. An administrator "means a person who is responsible for administering a service contract that is issued, sold or offered for sale by a provider." NRS 690C.020.

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A provider who wishes to issue, sell or offer for sale service contracts in this state must submit to the Commissioner: A registration application on a form prescribed by the Commissioner; ... A copy of each type of service contract the provider proposes to issue, sell or offer for sale; [and] The name, address and telephone number of each administrator with whom the provider intends to contract

NRS 690C.160.1(a), (c)-(d).

A certificate of registration is valid for 1 year after the date the Commissioner issues the certificate to the provider. A provider may renew his or her certificate of registration if, before the certificate expires, the provider submits to the Commissioner an application on a form prescribed by the Commissioner, [among other things].

NRS 690C.160.3.

Providers are required to comply with certain requirements to ensure the provider is financially viable. NRS 690C.170. A provider has limitations on the name of its business, and may not use the name of another provider. NRS 690C.200.1(b). A provider's service contract must comply with certain provisions. For example, a service contract must be "understandable and printed in a typeface that is easy to read." NRS 690C.260.1(a). A service contract must also "[i]nclude the name and address of the provider and, if applicable: The name and address of the administrator...." NRS 690C.260.1(d)(1). A provider is prohibited from making "a false or misleading statement" or "intentionally omit[ting] a material statement." NRS 690C.260.2.

When a provider receives a claim, it must address the claim within a reasonable amount of time. If a claim "relates to goods that are essential to the health and safety of the holder", emergency provisions must be included in the contract. NAC 690C.110.1(c). Related to claims, certain activities are considered unfair practices:

- (a) Misrepresenting to insureds or claimants pertinent facts or insurance policy provisions relating to any coverage at issue.
- (b) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.
- (c) Failing to adopt and implement reasonable standards for the prompt investigation and processing of claims arising under insurance policies.
- (e) Failing to effectuate prompt, fair and equitable settlements of claims in which liability of the insurer has become reasonably clear.
- (n) Failing to provide promptly to an insured a reasonable explanation of the basis in the insurance policy, with respect to the facts of the insured's claim and the applicable law, for the denial of the claim or for an offer to settle or compromise the claim.

NRS 686A.310.1.

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27 28 Generally, no other provision of the Insurance Code applies except as otherwise provided in NRS chapter 690C. NRS 690C.120. Provisions that specifically apply to service contracts include trade practices, examinations, hearings, certain prohibitions, process, and advertising. NRS 690C.120.1. Also, "[a] provider, person who sells service contracts, administrator or any other person is not required to obtain a certificate of authority from the Commissioner pursuant to chapter 680A of NRS to issue, sell, offer for sale or administer service contracts." NRS 690C.120.2.

The Commissioner is authorized to observe the conduct of a service contract provider to ensure that "business is not conducted in an unsuitable manner." NRS 679B.125.2.

"[U]nsuitable manner" means conducting [] business in a manner which:

- 1. Results in a violation of any statute or regulation of this State relating to insurance;
- 2. Results in an intentional violation of any other statute or regulation of this State; or
- 3. Causes injury to the general public,
 with such frequency as to indicate a general business practice.

NAC 679B.0385.

C. Respondent

In order to address the Division's allegations, the Hearing Officer must make a determination about the parties involved in this matter because many of the issues presented in this hearing hang on who the service contract provider is. Relying on the use of the different names by Respondent's witnesses, who interact with or on behalf of Respondent through a contract, and who would most be familiar with the entities, the Hearing Officer relies on the names used in the hearing as follows:

- Home Warranty Administrator of Nevada, Inc. is HWAN
- Choice Home Warranty is CHW Group, Inc., CHW, and Choice Home Warranty Group
- Home Warranty Administrators is an affiliate of companies with the name Home Warranty Administrator of [State]

In this case, HWAN is the legal entity that has been authorized to be a service contract provider in Nevada. HWAN contracted with CHW Group, or Choice Home Warranty, as administrator of HWAN's service contracts. In 2014, the Division requested HWAN to register the fictitious name, Choice Home Warranty.

The evidence is clear that Choice Home Warranty is CHW Group. Respondents have argued this throughout the case. (Resp't's Prehr'g Stmt 3-4.) During the hearing, Mandalawi, Hakim, and Ramirez referred to CHW Group as Choice Home Warranty. Mandalawi and Hakim both testified that

 HWAN's administrator is CHW Group, and that HWAN and CHW Group engaged in a contract for such services. Choice Home Warranty is owned and controlled by CHW Group. CHW Group owns the website www.ChoiceHomeWarranty.com, through which various service contracts are sold and administered, and the employees handling sales, marketing, claims, finance, etc. are all CHW Group employees. Finally, according to Mandalawi's résumé submitted to the State of South Carolina in 2011, Mandalawi was the president of Home Warranty Administrators and the president of Choice Home Warranty. The names are listed in his résumé as two separate companies. At the time the South Carolina application was filed, which included Mandalawi's résumé, Choice Home Warranty was not registered as a dba for HWAN. This leads to the conclusion that Choice Home Warranty is CHW Group, Inc.

When an entity registers a dba, or fictitious name, the entity creates a name under which it will operate. This does not create a new company or change the entity's legal status. Registering a dba cannot make one company liable for the acts of another company, even if the two companies share the same name—it is a legal impossibility. Further, NRS 690C.200.1(b) prohibits a provider from using a name that is the name of another provider. Choice Home Warranty, under CHW Group, is another provider even if it is not a Nevada-registered provider. Why the Division requested HWAN to register the dba Choice Home Warranty is unknown, as it makes the arrangement of these businesses confusing at best. Registering Choice Home Warranty as HWAN's dba did not make HWAN and CHW Group one legal entity for purposes of regulation. Accordingly, it is the Hearing Officer's position that Choice Home Warranty as discussed in this matter should not be treated as a fictitious name of HWAN, but instead as a separate company under CHW Group. For purposes of this Order, the Hearing Officer relies on this distinction between HWAN and Choice Home Warranty: HWAN is one legal entity, and Choice Home Warranty is CHW Group, an incorporated entity that is separate from HWAN.

D. The Division Claims Respondent Made False Entries of Material Facts in Its Applications

1. Administrative Actions Against Choice Home Warranty

The Division claims that by failing to disclose other states' administrative actions against Choice Home Warranty on its Nevada renewal applications, Respondent engaged in acts that constitute the unlawful making of false entry of material fact in violation of NRS 686A.070. The Hearing Officer

disagrees.

Respondent argues that it is legally and factually impossible for HWAN to have made false misrepresentations in its renewal applications because the *renewal* applications do not ask for regulatory information about any of the officers of the applicant, and the Hearing Officer agrees. The Division's questions in each of the renewal applications do not ask whether any of the applicant's officers have had actions taken against them; rather, the questions ask whether any of the *new* officers identified in the renewal application have had actions taken against them. If the Division wanted to know whether any of applicant's officers had administrative actions taken against them in other states, the Division should have asked that question. The Division's intent regarding the questions on its own renewal application is not clear, and it would be improper to hold applicants responsible for failing to disclose information about which the Division never asked.

For the renewal applications submitted for 2011, 2012, and 2013, the service contract provider that submitted the applications with the Division is Home Warranty Administrators of Nevada, Inc. HWAN is incorporated in Nevada, creating an independent legal entity. As its own legal entity, HWAN is responsible for the acts of its business. At no time during this period was HWAN named in any administrative action in any other state. Therefore, it cannot be said that HWAN made a false entry on the renewal applications for these years by not reporting administrative actions against Choice Home Warranty.

For the renewal applications submitted for 2014 and 2015, the service contract provider that submitted the applications with the Division is Home Warranty Administrators of Nevada, Inc. dba Choice Home Warranty. As explained in Section C above, however, Choice Home Warranty is CHW Group. It is a legal impossibility for HWAN to also be CHW Group even if HWAN registered a dba called Choice Home Warranty. HWAN did not violate Nevada law by failing to disclose administrative actions taken against CHW Group in other states. CHW Group is HWAN's administrator, and none of the applications asked whether the administrator or its officers have been the subject of administrative actions in other states. To that end, HWAN was not required to report administrative actions against Choice Home Warranty in its 2014 and 2015 renewal applications.

2. Applications Filed with the Division

With the Hearing Officer's determination that HWAN and Choice Home Warranty are separate entities, the evidence shows that Respondent did make a false entry of material fact in its applications. All the applications presented at the hearing ask the applicant to disclose the name of the administrator. For all of the renewal applications Mandalawi submitted on behalf of HWAN, the administrator is noted as "self," and this was not true. "Self" means that the service contract provider-HWAN in this case—was administering all of the claims. According to the testimony of Mandalawi, Hakim, and Ramirez, Choice Home Warranty (which is CHW Group) is the administrator for HWAN. Respondent argues that this fact was disclosed in HWAN contract HWA-NV-0711, which was provided to the Division in 2011. Even if the disclosure is sufficient to say the Division was on notice in 2011 (when the HWAN contract was approved) that Choice Home Warranty was the administrator, every renewal application submitted indicated the contrary. When asked on the renewal applications whether there were any changes to the administrator or a newly designated administrator, in each renewal application, Mandalawi responded that there was no change—the administrator was "self," which is HWAN. If CHW Group was the administrator, then "self" was not an accurate response to the question on the applications. Claims administration is a material part of service contracts and, therefore, a material fact, required by NRS 690C.160.3. As such, HWAN misstated a material fact in its application. For each application year starting in 2011 that HWAN reported "self" as the administrator, is one violation of NR\$ 686A.070. (Five counts.)

Additionally, HWAN indicated in its applications filed starting in 2011 that it was using the service contract HWA-NV-0711 that was approved by the Division. On at least one occasion, there is evidence that HWAN used a service contract that, in fact, was not approved by the Division. Service contracts must comply with certain provisions of the Insurance Code and, therefore, must be approved before they are used. The application year 2015 did not disclose the use of an unapproved form. The service contract is a material part of the service contract provider application and, therefore, a material fact of the application. As such, HWAN misstated another material fact in its 2015 renewal application, in violation of NRS 686A.070. (One count.)

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E. The Division Claims Respondent Has Engaged in Unfair Practices in Settling Claims

The Division alleges that the number of complaints against Respondent show that Respondent has engaged in unfair practices in settling claims in violation of NRS 686A.310 and had, thereby, acted in an unsuitable manner. NRS 679B.125.2. Respondent argues that the number of complaints does not amount to unfair practices in settling claims, and that it believes it provides Nevada customers sterling service.

In this case, the evidence shows that the Division received at least 63 individual consumer complaints about HWAN, and 25 consumer complaints against Choice Home Warranty. Of the complaints, five were presented at the hearing: three complaints from 2014 and two complaints from 2016. The complaints allege that Choice Home Warranty did not cover appliances that consumers believed were covered, or that Choice Home Warranty did not pay the technician who provided services on the appliance. When the Division got involved, HWAN agreed to cover or settle the complaints. The Division's evidence says the claims were covered; Respondent's evidence says the claims were not covered. Respondent's agreeing to pay the claims as a result of the Division's involvement does not mean that Respondent admitted that the claims were covered. As presented, the Division's evidence was insufficient to show that Respondent engaged in unfair practices in settling claims.

F. The Division Claims Respondent Has Failed to Make Its Records Available

The Division claims that Respondent failed to make available information requested by the Commissioner in violation of NRS 690C.320.2. The Division sought information about HWAN's claims and open contracts in Nevada. Respondent argues that the Division presented no evidence to support this claim.

The evidence shows that the Division made several requests of Respondent through Mandalawi, including to Mandalawi's email address of record. Respondent acknowledges having communicated with the Division via email or telephone on other occasions, as evident through the testimony and exhibits. The parties both state that the requested information was produced, but only after a subpoena was issued, which was at least six months after the renewal application was received. Moreover, this information relating to how many open contracts and claims Respondent had in Nevada was requested

in the renewal application, but Respondent did not respond to those questions. The law is clear that, upon the Commissioner's request, "[a] provider shall...make available" records concerning any service contract issued, sold, or offered for sale available. NRS 690C.320.2. Thus, Respondent violated NRS 690C.320.2 when it did not produce such information when requested. (One count.)

G. Respondent Has Conducted Business in an Unsuitable Manner

1. Complaints Against Respondent

The Division claims that, given the number of consumer complaints in Nevada, media reports, and findings by other states, constitutes a pattern of behavior that Respondent is operating in an unsuitable manner, and that Respondent's practices cause injury to the general public with such frequency as to indicate a general business practice, in violation of NRS 690C.325.1(b) and NRS 679B.125.2.

The evidence shows a number of consumer complaints posted online. These reports include complaints by Nevadans, but the Division made no effort to verify the substance of the complaints. This evidence, while consistent with the consumer complaints received by the Division, does not substantiate that Respondent is operating in an unsuitable manner because the substance of the reports was not vetted. This evidence tends to corroborate that there may be a problem with claims handling. These violations are troubling, and may warrant further review to determine whether Respondent's claims handling is appropriate. However, this evidence regarding claims handling does not show that Respondent is violating Nevada laws or causing injury to the general public "with such frequency as to indicate a general business practice."

2. HWAN's Association with CHW Group

With the Hearing Officer's determination that HWAN and Choice Home Warranty are separate entities, as argued by Respondent, the Hearing Officer concludes that Respondent conducted business in an unsuitable manner by allowing an unregistered entity to engage in the business of service contracts in Nevada.

Respondent argues that the Division violated its due process rights in claiming that HWAN allowed CHW Group to operate without a license because Respondent "never received proper notice of the Division's argument that CHW Group, Inc. is one and the same with HWAN." (HWAN's Closing

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Arg. 4.) Respondent further argues that this Order should find "that HWAN and CHW are separate entities and that CHW has not used HWAN to avoid its own licensing.' (Id. at 7.) The Hearing Officer finds Respondent's arguments to be contradictory and unsupported.

Based on the Amended Complaint, it is clear that the Division considered HWAN and Choice Home Warranty to be one-and-the-same entity. When the Division claimed that Respondent should have disclosed that Choice Home Warranty had been disciplined in other states, Respondent argued in its prehearing statement that no such duty existed because HWAN and Choice Home Warranty are two separate entities because Choice Home Warranty is CHW Group. Facts about how Respondent operates were presented during the hearing, and it was Respondent's witnesses who explained who the different entities, and their respective roles, are. Respondent brought as witnesses the CEO of CHW Group and the COO of CHW Group, in addition to Mandalawi, President of both HWAN and CHW Group, who all spoke proficiently about the entities and clearly distinguished them. It was Respondent's position that Choice Home Warranty was CHW Group, and Respondent presented considerable evidence to support its position. Respondent cannot claim that HWAN and Choice Home Warranty are two separate entities and, in the same breath, conclude that Respondent had no notice of the Division's position that HWAN and Choice Home Warranty were considered one and the same entity to avoid responsibility for violations of law that resulted from the very conclusion they advocated. Therefore, it cannot be said that Respondent had no notice of the Division's argument that CHW Group is one and the same with HWAN.

Respondent also argues that the Division is equitably estopped from taking action against it because the Division knew that CHW Group and HWAN were selling contracts in Nevada. There is no evidence that the Division knew that CHW Group and Choice Home Warranty were the same. The record likewise shows no evidence that the Division was aware that CHW Group was selling contracts in Nevada, only that Choice Home Warranty was selling contracts in Nevada. The Division asked HWAN to register Choice Home Warranty as a dba because, after a discussion with Mandalawi, "[i]t was identified that Choice and HWAN were one and the same entity, that Choice was not selling illegally because HWAN was a licensed entity in Nevada." (Test. Jain.) Respondent argues that it detrimentally relied upon the Division's representation that in exchange for HWAN's use of the

fictitious name, the Division released the legal right to initiate an adversarial action that HWAN and CHW Group are the same entity. How a fictitious name registration amounts to detrimental reliance is unclear. The Commissioner's obligation under the Insurance Code is to protect Nevadans in the business of service contracts. The Commissioner cannot ignore her charge under the law—when an entity is violating a law that harms Nevadans, the Commissioner must act.

Respondent claims that the Division is estopped from taking action against Respondent because the Division made express representations to HWAN relative to HWAN's relationship with CHW Group, and that HWAN relied on these in conducting its operations. There is no evidence in the record that HWAN had to or did change its operations as a result of the dba registered in Nevada. More importantly, there is no evidence that the Division knew that Choice Home Warranty was CHW Group or of the contract between HWAN and CHW Group. Even if in 2011 the Division approved a contract in 2011 that indicated that Choice Home Warranty was administering the contract, contract administration is not approval to issue, sell, or offer for sale service contracts. Moreover, after that contract was approved in 2011, Respondent indicated that it was itself administering its service contracts, which was not true.

Based on the presentation of Mandalawi and Hakim, CHW Group, Inc. is the legal entity that controls and operates all the content, data, contracts, information, processing, management, claims, marketing, advertising, and sales of all products sold through HWAN, while HWAN manages regulatory compliance. Respondent claims this creates efficiencies in managing the product being sold across the country, with the nuances of different states' requirements identified in the service contract issued to consumers. According to Hakim, an administrator is permitted to issue, sell, and offer for sale or administer service contracts without a certificate of registration pursuant to NRS 690C.120.2. Hakim is incorrect.

Nevada law clearly prohibits the issuance, sale, or offering for sale service contracts unless the provider has been issued a certificate of <u>registration</u>. NRS 690C.150. The provision Hakim incorrectly relies on, NRS chapter 690C section 120 subsection 2, involves a certificate of <u>authority</u> issued pursuant to NRS chapter 680A, which is a certificate issued to *insurance companies* to operate in Nevada. A certificate of registration and a certificate of authority are two different things. What NRS

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continue to operate, "because if [HWAN is] not operating in the State of Nevada, then Choice Home Warranty is not operating in the State of Nevada." (Tr3. 98:9-16.) This is a reflection of CHW Group's intent to operate in Nevada using HWAN for "regulatory compliance." This intent is further reflected in the service contract that was sold in Nevada that identified CHW Warranty as the company—a service contract that was not approved for use in Nevada.

Based on the evidence, it is clear that "regulatory compliance" as stated by Mandalawi means that HWAN holds the certificate of registration in Nevada, and nothing more. Since receiving its COR, HWAN has been merely a figurehead, enabling an unlicensed entity to engage in the business of service contracts in Nevada under HWAN's license. CHW Group has engaged in the business of service contracts without a license, which is a violation of NRS 690C.150, and skirted regulation by the Division, which is a danger to the public. This activity has been occurring since at least 2010, when HWAN was first licensed. With the sale of over 69,000 service contracts, it is undeniable that it is Respondent's practice to allow CHW Group to issue, sell, and offer for sale service contracts in Nevada, thereby avoiding regulation for each contract sold in Nevada. HWAN's practice has occurred with such frequency as to indicate a general business practice, which amounts to conducting business in an unsuitable manner, in violation of NRS 690C.325 and 679B.125.

690C.120.2 says is that a certificate of authority is not required in the business of service contracts and,

so, anyone involved in service contracts is not required to obtain a certificate of authority. It most

certainly does not say that an administrator may issue, sell, or offer to sell service contracts without proper registration pursuant to NRS 690C.150. Such a reading would make the entirety of NRS chapter

service contracts. Hakim, Mandalawi, and Ramirez all testified that Choice Home Warranty handles all

sales, advertising, and marketing for HWAN. As Hakim stated, his interest in HWAN is that HWAN

By definition, an administrator should not be engaged in issuing, selling, or offering to sell

H. The Division Requests a Cease and Desist Order to Prevent Respondent from Engaging in the Business of Service Contracts Without a Certificate of Registration

In the Amended Complaint, the Division indicates that Respondent filed a renewal application for 2016, and that the Commissioner is authorized to refuse to renew a provider's certificate of

registration ("COR"). The Division requested a cease and desist be issued. In arguing that Respondent's 2016 COR was properly denied the Division appears to be claiming that Respondent is improperly engaging in the business of service contracts. Respondent argues that it had no notice of the facts underlying the Division's position that it did not appropriately renew its COR in 2016. Mandalawi believed that the issue of the 2016 renewal application would be considered in this hearing and that, until then, HWAN could continue operating in Nevada. (Test. Mandalawi.) The Hearing Officer finds that the Division did not properly notify Respondent that the 2016 renewal application was denied.

In Nevada, certificates of registration for service contract providers expire one year after the COR is issued. NRS 690C,160.3. Nothing in Nevada law grants the Division authority to allow a provider to continue operating after the expiration of a COR, but a provider may submit a renewal application to receive a new COR to continue operating. It is unclear how the automatic expiration of a COR after one year would require notice to the provider for due process purposes when the law clearly makes the COR available for one year and no longer. However, when a provider timely submits a renewal application that is denied, then the Division must issue a notice to the provider about the denial, providing an explanation for the denial and an opportunity for the provider to request a hearing on the propriety of the denial. A hearing on such denials are heard within 30 days.

In this case, Respondent timely filed a renewal application on or about November 7, 2016, to obtain a new COR. When the Division found the renewal application to be incomplete, the Division should have promptly notified Respondent that the renewal application was not complete and, therefore, denied so that Respondent would know that it was not approved to continue operating in Nevada. Notice of the denial was finally provided on or about July 21, 2017, almost eight months after HWAN submitted the application. The denial also provided no information as to why the renewal application was denied, nor did it notify Respondent that it could appeal the decision through a hearing request. Thus, the Hearing Officer finds that for the service contracts sold up until the date of this Order, Respondent cannot be found to have sold without a valid COR in violation of Nevada law since the Division did not properly notify Respondent of the denial with an explanation of the denial or of the opportunity for a hearing on the denial, which would have been adjudicated within 30 days of a hearing

request and prevented 13 months of Respondent selling service contracts without a COR.

Nonetheless, the registration expired as a matter of law on November 18, 2016. Therefore, as of the date of this Order, Respondent is on notice that it must apply for a renewal of its certificate of registration if it wishes to continue in the business of service contracts in Nevada within 30 days of the date of this Order. The Division must issue its determination on the application no later than 15 business days after receipt of the complete application. As a result, the Division cannot take action against Respondent for issuing, selling, or offering for sale service contracts without a certificate of registration from the date of this Order plus 45 days.³

ORDER OF THE HEARING OFFICER

Based on the foregoing Findings of Fact and Conclusions of Law, the preponderance of the evidence presented at hearing shows that Respondent has violated the provisions of the Insurance Code complained of by the Division. Accordingly, the Hearing Officer HEREBY ORDERS that:

- 1. Respondent be fined \$30,000, the maximum fine of \$5,000 allowed under NRS 686A.183.1(a), for each of six violations of making a false entry of material fact in a record or statement in violation of NRS 686A.070;
- 2. Respondent be fined \$500, an administrative fine authorized pursuant to NRS 690C.325.1 in lieu of a revocation, for failing to make its records available to the Commissioner upon request;
- 3. Respondent be fined \$50 for each act or violation, for conducting business in an unsuitable manner by allowing an unregistered entity to issue and offer service contracts in Nevada, and to sell 23,889 service contracts in Nevada through Respondent's certificate of registration, for a total of \$1,194,450; and

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³ This ruling does not prevent the Division from taking action for other violations in connection with the service contracts issued, sold, or offered for sale, during this period if any are later discovered.

⁴ Pursuant to NRS 690C.325.1, the maximum administrative fine allowed is \$1,000 per act or violation.

If Respondent wishes to continue engaging in the business of service contracts in Nevada,
 Respondent may apply for a certificate of registration as provided in this Order.

All administrative fines imposed in this Order are due no later than 30 days from the date of this Order.

So ORDERED this 18th day of December 2017.

Alexia M. Emmermann Hearing Officer

FINAL ORDER OF THE COMMISSIONER

Based on the record in this administrative hearing and having reviewed the Hearing Officer's 17.0050 Findings of Fact and Conclusion of Law in this matter, Cause No. 16.0126, I concur with the Hearing Officer's Order. For good cause appearing, I specifically adopt the Findings of Fact, Conclusions of Law, and Order of the Hearing Officer as the Final Order in this matter.

IT IS SO ORDERED.

DATED this 12 day of December, 2017.

BARBARA D. RICHARDSON Commissioner of Insurance

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER OF HEARING OFFICER, AND FINAL ORDER OF THE COMMISSIONER, in CAUSE NO. 17.0050, via electronic mail and by mailing a true and correct copy thereof, properly addressed with postage prepaid, certified mail return receipt requested, to the following:

Kirk B. Lenhard, Esq.
Brownstein Hyatt Farber Schreck, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106
E-MAIL: klenhard@bhfs.com
CERTIFIED MAIL NO. 7017 1070 0000 8962 9357

Travis F. Chance, Esq.
Brownstein Hyatt Farber Schreck, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106
E-MAIL: tchance@bhfs.com
CERTIFIED MAIL NO. 7017 1070 0000 8962 9364

Lori Grifa, Esq.
Archer & Greiner, P.C.
Court Plaza South, West Wing
21 Main Street, Suite 353
Hackensack, NJ 07601
E-MAIL: lgrifa@archerlaw.com
CERTIFIED MAIL NO. 7017 1070 0000 8962 9371

and copies of the foregoing were sent via electronic mail to:

Richard Yien, Deputy Attorney General Nevada Attorney General's Office E-MAIL: ryien@ag.nv.gov

DATED this 18th day of December, 2017.

Employee of the State of Nevada Department of Business and Industry Division of Insurance

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DISTRICT COURT CIVIL COVER SHEET

Carson City County, Nevada

Case No / JO COU J G J C D & F I L

(Assigned by Clerk's (typice)

I. Party Information (provide both ho.	<u>"\" 1 + </u>	TUEC 22 PH L: 27
Plaintiff(s) (name/address/phone):	·····	Defendant(s) (name/address/phone); SAH MERRIWETHER
Home Warranty Administra	ator of Nevada, Inc.	State of Nevada, Department of Business and
dba Choice Home Warranty,	······································	Industry: Division of Insurance, a Nevada
	200 JOHN STORY CO.	administrative agency
Attorney (name/address/phone):	garante en la garante general de la compansión de la comp	Attorney (name/address/phone):
, ,		
Kirk B. Lenhard, Esq., Travis F. Chance	e, Esq., Mackenzie Warren, Esq.	
Brownstein Hyatt Farber Schreck,	LLP - 100 N. City Parkway	
Suite 1600, Las Vegas, NV 8	39106 (702) 382-2101	
II. Nature of Controversy (please se	elect the one most applicable filing type	below)
Civil Case Filing Types		
Real Property		Torts
Landlord/Tenant	Negligence	Other Torts
Unlawful Detainer	Auto	Product Liability
Other Landlord/Tenant	Premises Liability	Intentional Misconduct
Title to Property	Other Negligence	Employment Tort
Judicial Forecksure	Malpractice	Insurance Tort
Foreclosure Mediation Assistance	Medical Dental	Other Ton
Other Title to Property	Legal	
Other Real Property	Accounting	
Condemnation/Eminent Domain	Other Malpractice	
Other Real Property		
Probate	Construction Defect & Cont	
Probate (select case type and estate value)	Construction Defect	Judiciał Review
Summary Administration	Chapter 40	Petition to Seal Records
General Administration	Other Construction Defect	Mental Competency
Special Administration	Contract Case	Nevada State Agency Appeal
Sct Aside Surviving Spouse	Uniform Commercial Code	Department of Motor Vehicle
Trust/Conservatoship	Building and Construction	Worker's Compensation
Other Probate	Insurance Carrier	Other Nevada State Agency
Estate Value	Commercial Instrument	Appeal Other
Greater than \$300,000 \$200,000-\$300,000	Collection of Accounts	Appeal from Lower Court
S100,001-\$199, 999	Employment Contract	Other Judicial Review/Appeal
\$25,001-\$100,000	Other Contract	
\$20,001-\$25,00 0 \$2,501-20,000		
\$2,500 or less		
Civi	l Writ	Other Civil Filing
Civil Writ		Other Civil Filing
Writ of Hubeas Corpus	Writ of Prohibition	Compromise of Minor's Claim
Writ of Mandamus Other Civil Writ		Foreign Adgment
Writ of Que Warrant		Other Civil Matters
Business C	ourt filings should be filed using th	e Business Courgeivil coversheet./) //
12/21/2017	-	LEBILI
Date		Signature of initiating party or representative

 $See \ other \ side for family-related \ case filings.$

Nevada ACC -Research Statistica Usat Pursung to NRS 3-273 Form PA 201 Rev 1 1 Case No.: 17 OC 00269 1B

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IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR CARSON CITY

HOME WARRANTY ADMINISTRATOR OF NEVADA, INC., dba CHOICE HOME WARRANTY, a Nevada corporation,

Petitioner,

vs.

STATE OF NEVADA, DEPARTMENT OF BUSINESS AND INDUSTRY – DIVISION OF INSURANCE, a Nevada administrative agency,

Respondent.

ORDER FOR BRIEFING SCHEDULE

On December 22, 2017, Petitioner filed a Petition for Judicial Review. Petitioner must serve the Petition for Judicial Review upon the agency and every party within 45 days after the filing of the Petition for Judicial Review. NRS 233B.130(5).

The agency and any party desiring to participate in the judicial review must file and serve a statement of intent to participate within 20 days after service of the Petition for Judicial Review. NRS 233B.130(3).

The agency that rendered the decision shall transmit to this Court the entire record, including a transcript, within 30 days after service of the Petition for Judicial Review, and shall give written notice of the transmittal. NRS 233B.131(1). "The record may be shortened by stipulation of the parties to the proceeding." *Id*.

Petitioners must file and serve an Opening Brief (memorandum of points and authorities) within 40 days after the agency has given written notice that the record has been filed with the Court. NRS 233B.133(1). Petitioners' failure to file an Opening Brief within the time limitation

shall be deemed an admission the appeal was not well founded and shall constitute adequate cause for dismissal of this action.

Respondents shall file and serve an Answering Brief (memorandum of points and authorities) within 30 days after service of Petitioners' Opening Brief. NRS 233B.133(2). Petitioner may file and serve and Reply Brief (memorandum of points and authorities) within 30 days after service of Respondent's Answering Brief. NRS 233B.133(3). Either party shall file a request for submission once the appeal is fully briefed to bring the matter to this Court's attention.

Any party may request a hearing within 7 days after expiration of the time within which Petitioners are required to file a Reply Brief. NRS 233B.133(4). The grant or denial of a hearing shall lie within the Court's discretion. Rule 15 FJDCR.

IT IS SO ORDERED.

Dated this 26 day of December, 2017.

JAMES T. RUSSELL DISTRICT JUDGE

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District Court, and that on this <u>26</u> day of December, 2017, I deposited for mailing at Carson City, Nevada, a true and correct copy of the foregoing Order addressed as follows:

Kirk B. Lenhard, Esq. 100 North City Parkway, Suite 1600 Las Vegas, NV 89106-4614

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Travis F. Chance, Esq. 100 North City Parkway, Suite 1600 Las Vegas, NV 89106

Lori Grifa, Esq. Court Plaza South, West Wing 21 Main Street, Suite 353 Hackensack, NJ 07601

Richard Yien Deputy Attorney General 100 N. Carson Street Carson City, NV 89701

> Angela Jeffries Judicial Assistant, Dept. 1

AFFT 1 2 Kirk B. Lenhard, Esq. 100 North City Pkwy., #1600 3 Las Vegas, NV 89106 4 State Bar No.: 1437 Attorney(s) for: Petitioner(s) 5 6 7 8 9 10 Warranty, a Nevada corporation VS 11 12 13 14 15 16 17 18 19 20

IFS

(702) 471-7255

Street, Las Vegas, NV 89101

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Process Service,

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Brownstein Hyatt Farber Schreck, LLP

FIRST JUDICIAL DISTRICT COURT CARSON CITY, NEVADA

Home Warranty Administrator of Nevada, Inc. dba Choice Home

Petitioner(s)

State of Nevada, Department of Business and Industry - Division of Insurance, a Nevada administrative agency

Respondent(s)

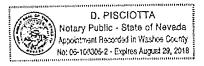
Case No.: 17OC002691B

Dept. No.: I

Date: Time:

AFFIDAVIT OF SERVICE

I, Sophia A. McMahan, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in the proceeding in which this affidavit is made. The affiant received 1 copy(ies) of the: Petition for Judicial Review on the 2nd day of January, 2018 and served the same on the 2nd day of January, 2018 at 1:34pm by serving the Adverse Party. State of Nevada, Department of Business and Industry - Division of Insurance, a Nevada administrative agency by personally delivering and leaving a copy at Office of Nevada Attorney General, 100 N. Carson St., Carson City, NV 89701 with Diana Herrera as Administrative Assistant I an agent lawfully designated by statute to accept service of process.



State of	Nevada, C	County of	Wash	oe
SUBSCF	RIBED AND	SWORN	to before	e me on this
2nd	_day of	Janua	ıry	2018
	day of	Jn	`/	

Notary Public

Affiant - Sophia A. McMahan # R-058810

Legal Process Service License # 604 WorkOrderNo 1708997

ADAM PAUL LAXALT
Attorney General



NICHOLAS A. TRUTANICH Chief of Staff

> KETAN D. BHIRUD General Counsel

STATE OF NEVADA

OFFICE OF THE ATTORNEY GENERAL

100 North Carson Street Carson City, Nevada 89701

DATE RECEIVED: 1/2/18	
RECEIVED BY: Diana Herrera	
CASE NAME: Home Warranty Admin. of Novada, INC., v.	
State of Nevada, Department of BBI - Division of insurar	n(e
CASE NUMBER: 17000026918 COURT: 48+1D	, 23
DOCUMENT(S) RECEIVED: Petition for Judicial Review	
NOTICE	

NRS 41.031(2) provides in part that, in any action against the State of Nevada, the action must be brought in the name of the State of Nevada on relation of the particular department, commission, board or other agency of the state whose actions are the basis for the suit. In an action against the State of Nevada, the summons and a copy of the complaint must be served upon the Attorney General, at the Office of the Attorney General in Carson City and upon the person serving in the office of administrative head of the named agency. Service on the Attorney General or designee does not constitute service on any individual or administrative head.

This Receipt acknowledges that the documents described herein have been received by the Nevada Attorney General or the designee authorized by NRS 41.031 (2) (a). This Receipt does not ensure that any party, person or agency has been properly served, nor does it waive any legal requirement for service.

Receipt of a subpoena by the Office of the Attorney General does not constitute valid service of the subpoena upon any individual or upon any state agency, except the Office of the Attorney General. Receipt of summons and complaint or any other process by the Attorney General or designee does not constitute service upon any individual, nor does it constitute service upon the administrative head of an agency pursuant to NRS 41.0321 (2)(b).

Notary Public

AFFT
Brownstein Hyatt Farber Schreck, LLP
Kirk B. Lenhard, Esq.
100 North City Pkwy., #1600
Las Vegas, NV 89106
State Bar No.: 1437
Attorney(s) for: Petitioner(s)

FIRST JUDICIAL DISTRICT COURT CARSON CITY, NEVADA

Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty, a Nevada corporation

vs Petitioner(s)

State of Nevada, Department of Business and Industry - Division of Insurance, a Nevada administrative agency

Respondent(s)

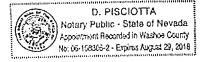
Case No.: 17OC002691B

Dept. No.: 1

Date: Time:

AFFIDAVIT OF SERVICE

I, <u>Sophia A. McMahan</u>, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in the proceeding in which this affidavit is made. The affiant received 1 copy(ies) of the: <u>Petition for Judicial Review</u> on the <u>2nd</u> day of <u>January</u>, 2018 and served the same on the <u>2nd</u> day of <u>January</u>, 2018 at 1:03pm by serving the <u>Adverse Party</u>. <u>State of Nevada, Department of Business and Industry - Division of Insurance</u>, a <u>Nevada administrative agency</u> by personally delivering and leaving a copy at <u>Nevada</u> <u>Commissioner of Insurance</u>, <u>Barbara Richardson</u>, 1818 E. <u>College Pkwy</u>., <u>Suite 103</u>, <u>Carson City</u>, <u>NV 89706</u> with <u>Yvonne Renta</u> as <u>Legal Secretary</u> an agent lawfully designated by statute to accept service of process.



D. Pisciotta

State of	Nevada, C	County of <u>Was</u>	hoe
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2nd	day of	્રJanuary	2018
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Affiant - Sophia A. McMahan # R-058810

Legal Process Service License # 604
WorkOrderNo 1708998

1 ADAM PAUL LAXALT Attorney General 2 RICHARD PAILI YIEN Deputy Attorney General Nevada Bar No. 13035 3 Office of the Attorney General 100 N. Carson Street Carson City, NV 89701 E-mail: ryien@ag.nv.gov 5 Attorneys for Respondent Nevada Division of Insurance 6 7 8 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA 9 IN AND FOR CARSON CITY 10 HOME WARRANTY ADMINISTRATOR OF CASE No.: 17 OC 00269 1B 11 NEVADA, INC. dba CHOICE HOME 12 WARRANTY, a Nevada corporation, DEPT No.: 1 Petitioner, 13 vs. 14 STATE OF NEVADA, DEPARTMENT OF 15 BUSINESS AND INDUSTRY, DIVISION OF 16 INSURANCE, a Nevada administrative agency, 17 Respondents. 18 19 ADMINISTRATIVE RECORD Pursuant to NRS 233B.140, the STATE OF NEVADA, DEPARTMENT OF BUSINESS AND 20 INDUSTRY, DIVISION OF INSURANCE, ("DOI") now files the entire record of the proceedings under 21 review by this Court as a result of the Petition for Judicial Review pursuant to NRS 233B.130 filed by 22 HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. dba CHOICE HOME WARRANTY, 23 Petitioner. 24 25 26 27 28 Page 1 of 5

RECORDS FOR CAUSE NO: 17.0050

2	DOCUMENT BATES NO.			
,	$\ \cdot\ $	1.	Complaint and Application for Order to Show Cause	000001-000010
3	╟	2.	Order to Show Cause	00001-00010
4	\parallel	3.	Order Appointing Hearing Officer	000015-000017
	$\ \cdot\ $	4.	Application for Subpoena Duces Tecum	000018-000021
5		5.	Subpoena Duces Tecum	000022-000025
6	6. Letter from Lori Grifa to Alexia Emmermann, Hearing Officer re:		000026-000032	
			Respondent's Petition to Enlarge Time to Respond to Subpoena Duces	
7			Tecum	
		7.	Notice of Non-Opposition to Respondent's Request for Extension of	000033-000034
8			Time to Comply with Subpoena Duces Tecum	
9	$\ $	8.	Petition to Enlarge Time to Respond to Subpoena Duces Tecum	000035-000038
	-	9.	Notice of Representation	000039-000040
10		10.	Second Request for Extension of Time to Comply with Subpoena Duces	000041-000044
11	\parallel		Tecum	000045 000046
11		11.	Notice of Non-Opposition to Respondent's Second Request for Extension	000045-000046
12	╟	10	of Time to Comply with Subpoena Duces Tecum	000047 000048
12. Letter to Richard Yien from Lori Grifa in response to Subpoena Duces		Tecum	000047-000048	
13	╟	13.	Joint Request to Continue Hearing	000049-000051
14	$\ \cdot\ $	14.	Order on Motion Requesting Extension of Time and Order on Joint	000049-000031
1		17.	Request for Continuance	000032-000034
15	╟	15.	Prehearing Order	000055-000060
1.	-	16	Notice of Association of Counsel	000061-000063
16		17.	Motion for Pre-Hearing Deposition Subpoenas or, in the Alternative,	000064-000074
17				
			Tecum	
18		18.	Second Application for Subpoena Duces Tecum	000075-000081
19		19.	Request to Continue Hearing	000082-000083
		20.	Limited Opposition to Motion for Pre-Hearing Deposition Subpoenas or	000084-000086
20			in the Alternative Application for Hearing Subpoenas and Application for	
21			Subpoena Duces Tecum	
21		21.	Letter to Counsel regarding correspondence	000087-000092
22		22.	Notice of No Opposition to Request to Continue Hearing	000093-000094
		23.	Subpoena Duces Tecum	000095-000099
23		24.	Order on Motions	000100-000107
24		25.1	Subpoena for Appearance at Hearing – Sanja Samardzija	000108-000111
	$\ \cdot \ $	25.2	Subpoena for Appearance at Hearing – Vincent Capitini	000112-000115
25		25.3	Subpoena for Appearance at Hearing – Dolores Bennett	000116-000119
26		25.4	Subpoena Duces Tecum – State of Nevada	000120-000124
27		25.5	Subpoena for Appearance at Hearing - Chloe Stewart	000125-000128
27		25.6	Subpoena for Appearance at Hearing – Derrick Dennis	000129-000132
28	╟	25.7	Subpoena for Appearance at Hearing – Geoffrey Hunt	000133-000136
	-			

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1	25.8	Subpoena for Appearance at Hearing – Kim Kuhlman	000137-000140
1	25.9	Subpoena for Appearance at Hearing – Linda Stratton	000141-000144
2	25.10	Subpoena for Appearance at Hearing – Martin Reis	000145-000148
3	25.11	Subpoena for Appearance at Hearing – Mary Strong	000149-000152
	25.12	Subpoena for Appearance at Hearing – Vicki Folster	000153-000156
4	25.13	Subpoena for Appearance at Hearing – State of Nevada	000157-000160
5	25.14	Subpoena for Appearance at Hearing – State of Nevada	000161-000164
	26.	Joint Application to Conduct Deposition to Preserve Hearing Testimony	000165-000168
6	27.	Request for Pre-Hearing Conference	000169-000172
7	28.	Order on Joint Application to Conduct Deposition	000173-000178
	29.	Order Setting Prehearing Conference	000179-000184
8	30.	Amended Complaint and Application for Order to Show Cause	000185-000193
9	31.	Division's Pre-Hearing Statement	000194-000204
	32.	Proposed Hearing Exhibits and Witness List	000205-000623
10	33.	Home Warranty Administrator of Nevada, Inc.'s Prehearing Statement	000624-000637
11	34.	List of Hearing Witnesses	000638-000641
12	35.	Home Warranty Administrator of Nevada, Inc.'s Hearing Exhibit List	000642-003814
12	36.	Updated Hearing Exhibits and Updated Witness List	003815-003866
13	37.	Home Warranty Administrator of Nevada, Inc.'s Notice of Intent to File	003867-003927
14	38.	Supplemental Hearing Exhibits and Amended Hearing Exhibit List Home Warranty Administrator of Nevada, Inc.'s Notice of Filing	003928-003952
15] 56.	Supplemental Hearing Exhibit SS	
15	39.	Order	003953-003955
16	40.	Division's Post Hearing Brief Pursuant to Order	003956-003964
17	41.	Home Warranty Administrator of Nevada, Inc.'s Post-Hearing Brief on Hearing Officer's Inquiry	003965-003982
18	42.	Motion to Strike Portions of the Division of Insurance's Post-Hearing Brief	003983-003989
19	43.	Division of Insurance's Opposition to Respondent's Motion to Strike Portions of the Division's Post-Hearing Brief	003990-003995
20	44.	Order	003996-003997
21	45.	Home Warranty Administrator of Nevada, Inc. d/b/a Choice Home Warranty's Closing Argument	003998-004017
22	46.	Division's Closing Statement	004018-004035
23	47.	Findings of Fact, Conclusions of Law, Order of the Hearing Officer, and	004036-004066
24		Final Order of the Commissioner	
24			
25	///		
26	///		
27	///		
28	111		

TRANSCRIPTS

Hearing Transcript - 09/12/17	004067-004337
Hearing Transcript - 09/13/17	004338-004634
Hearing Transcript - 09/14/17	004635-004754

DATED this 12th day of January 2018.

ADAM PAUL LAXALT Attorney General

By:

RICHARD PAILI YIEN
Deputy Attorney General
Nevada Bar No. 13035
100 N. Carson Street
Carson City, Nevada 89701

(775) 684-1129

Attorney for the Division of Insurance

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on the 12th day of January 2018, I filed a copy of the foregoing *Administrative Record* with First Judicial District Court, and served a copy of the *Administrative Record* on CD by depositing for mailing at Carson City, Nevada, a true and correct copy in first class mail, postage prepaid, fully addressed to:

Alexia Emmerman, Hearing Officer Attn: Yvonne Renta Department of Business and Industry Division of Insurance 1818 E. College Pky., Ste. 103 Carson City NV 89706

Kirk B. Lenhard, Esq. Travis F. Chance, Esq. Brownstein Hyatt Farber Schreck, LLP 100 N. City Pky., Ste. 1600 Las Vegas NV 89106-4614

An employee of the Office of the Attorney General

Page 5 of 5

BROWNSTEIN HYATT FARBER SCHRECK, LL.P 100 North City Parkway, Suite 1600 Las Vegas, Nevada 89106 (702) 382-2101	1 2 3	KIRK B. LENHARD, ESQ., Nevada Bar No. 14 klenhard@bhfs.com TRAVIS F. CHANCE, ESQ., Nevada Bar No. 14 tchance@bhfs.com MACKENZIE WARREN, ESQ., Nevada Bar N	13800 SUSAN MERRINGETHER		
	4 5 6	machenzie warken, esq., nevada bar newarren@bhfs.com BROWNSTEIN HYATT FARBER SCHRECK 100 North City Parkway, Suite 1600 Las Vegas, Nevada 89106-4614 Telephone: 702.382.2101 Facsimile: 702.382.8135	(O. 14042		
	7 8 9 10	LORI GRIFA, ESQ., (pro hac vice application pending) lgrifa@archerlaw.com ARCHER & GREINER P.C. 21 Main Street, Suite 353 Hackensack, NJ 97601 Telephone: 201.342.6000 Attorneys for Petitioner Home Warranty Administrator of Nevada, Inc., dba Choice Home Warranty			
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rARBER S rkway, Sui cvada 8911 82-2101	13	IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA			
ATT Filly Par fily Par gas, N (02) 38	14	IN AND FOR CARSON CITY			
ANSTEIN HY 100 North C Las Ve (7	15 16	HOME WARRANTY ADMINISTRATOR OF NEVADA, INC., dba CHOICE HOME WARRANTY, a Nevada corporation,	CASE NO.: 17 OC 00269 1B DEPT NO.: 1		
вком	17 18	Petitioner, vs.	MOTION FOR STAY OF FINAL ADMINISTRATIVE DECISION		
	20	STATE OF NEVADA, DEPARTMENT	PURSUANT TO NRS 233B.140		
	21	OF BUSINESS AND INDUSTRY – DIVISION OF INSURANCE, a Nevada administrative agency,			
	22				
	23	Respondent.	The state of the s		
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	26	DEPARTMENT OF BUSINESS AND INDU	JSTRY - DIVISION OF INSURANCE'S (the		
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consider.

"Division") Order, filed on December 18, 2017, in the matter of *In re Home Warranty Administrator of Nevada, Inc. d/b/a Choice Home Warranty*, Cause No. 17.0050 (the "Motion").

This Motion is made and based upon the following memorandum of points and authorities, the pleadings and papers on file herein, and any oral argument this Court may

DATED this 11th day of January, 2018.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

BY:
KIRK B. LENHARD, ESQ., NV Bar No. 1437
klenhard@bhfs.com

TRAVIS F. CHANCE, ESQ., NV Bar No. 13800 tchance@bhfs.com

MACKENZIE WARREN, ESQ., NV Bar No. 14642 mwarren@bhfs.com

100 North City Parkway, Suite 1600

Las Vegas, NV 89106-4614 Telephone: 702.382.2101 Facsimile: 702.382.8135

ARCHER & GREINER P.C.

LORI GRIFA, ESQ.

(pro hac vice application pending) lgrifa@archerlaw.com 21 Main Street, Suite 353 Hackensack, NJ 97601 Telephone: 201.342.6000

Attorneys for Petitioner Home Warranty Administrator of Nevada, Inc., dba Choice Home Warranty

¹ On December 19, 2017, the Division provided a corrected copy of the Order. The revisions were non-substantive and were made to correct the cause number in the Commissioner's adoption of the hearing officer's findings and conclusions.

BROWNSTEIN HYATT FARBER SCHRECK, LLP 100 North City Parkway, Suite 1600 Las Vegas, Newada 89106 (702) 382-2101

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MEMORANDUM OF POINTS AND AUTHORITIES

I. PROCEDURAL AND FACTUAL BACKGROUND

HWAN has been a licensed, registered service contract provider in the State of Nevada since 2010. Pursuant to its certificate of authority, HWAN provides and administers home warranty contracts in this State.

On May 9, 2017, the Division filed a Complaint and Order to Show Cause with the Nevada Insurance Commissioner. An Amended Complaint was then filed on September 5, 2017, alleging the same substantive allegations as the original Complaint with the addition of a new alleged violation, to wit:

- a. Violations of NRS 686A.070 by allegedly engaging in acts "that constitute the unlawful making of false entry of material facts in each of CHW's renewal applications in the years 2011, 2012, 2014, and 2015";
- Violations of NRS 686A.310(1)(b) by purportedly "failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies";
- Violations of NRS 679B.125(2) by conducting its business in an "unsuitable manner," based upon consumer complaints, alleged news articles, and decisions of agencies and courts in other states;
- d. Violations of NRS 686A.170 by engaging in "unfair and deceptive trade practices" based upon administrative and court decisions from other states;
 and
- e. Violation of NRS 690C.320 by failing to make available for inspection HWAN's records related to its offered service contracts.

On September 12, 13 and 14 2017, a contested hearing (the "Hearing") on the merits of the aforesaid allegations brought by the Division against HWAN was held. Division Hearing Officer Alexia M. Emmermann, Esq. presided. Following the conclusion of the proofs, post-hearing briefing and written closing arguments, Ms. Emmermann issued Findings of Fact,

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Conclusions of Law and an Order of the Hearing Officer (the "Decision") on December 18, 2017. That same day, the Commissioner of Insurance adopted the aforesaid and the Commissioner issued a Final Order, filing the same. A true and correct copy of the Decision and Final Order is attached to HWAN's Petition for Judicial Review, filed December 22, 2017, as Exhibit 2.

In rendering the Decision, Ms. Emmermann found that:

- a. HWAN violated NRS 686A.070 five separate times when it stated on its renewal applications for years 2011-2015 that its service contracts were selfadministered when they were actually administered by CHW Group, Inc.;
- b. HWAN violated NRS 686A.070 when it misrepresented in its 2015 renewal application that it was using an unapproved service contract form;
- c. HWAN failed to make its records available to the Division upon request, in violation of NRS 690C,325(2);
- d. HWAN had engaged in unsuitable business practices in violation of NRS 690C.325(1)(b) since 2010 by allowing CHW Group, Inc. to sell 23,889 service contracts under which HWAN was the obligor without CHW Group, Inc. being registered as a provider in Nevada; and
- e. although the Division failed to give proper notice to HWAN that its 2016 renewal application was incomplete and the reasons therefore, HWAN's certificate of registration expired as a matter of law as of November 18, 2016.

The Decision further stated that, despite the Division's misfeasance in failing to notify HWAN that its 2016 renewal application was incomplete, HWAN's certificate had nevertheless expired. The Decision gave HWAN an additional 30 days from the date of the Decision to submit another renewal application. The Division was given 15 business days thereafter to respond and was prohibited from taking action against HWAN related to the lack of registration for 45 days from the date of the Decision.

This Motion concerns the Decision's imposition of administrative fines totaling \$1,224,950 as follows; (1) a \$30,000.00 fine for six violations of making a false entry of material

fact in a record or statement in violation of NRS 686A.070; (2) a \$500.00 fine in lieu of revocation of HWAN's certificate of registration for violation of NRS 690C.325(1) for failing to make its records available to the Commissioner upon request; (3) a \$50 fine for each violation of NRS 690C.325(1)(b), "for conducting business in an unsuitable manner by allowing an unregistered entity to issue and offer service contracts in Nevada," namely, for CHW Group, Inc.'s sale of 23,889 service contracts without proper registration, for a total fine of \$1,194,450.00. See Decision at 27:1-3.

On December 22, 2017, HWAN filed a Petition for Judicial Review of the Decision (the "Petition") on the grounds that the Decision was arbitrary and capricious, and was clearly erroneous in view of the reliable, probative, and substantial evidence. The Petition also contends that the Decision prejudices HWAN's substantial rights because it: violates HWAN's constitutional rights to due process; violates clear statutory provisions; is in excess of the Division's statutory authority; and is unsupported, incorrect, and against the weight of legal authority and precedent. Pursuant to NRS 233B.140, HWAN now seeks a stay of the administrative fines imposed by the Decision pending resolution of its Petition.

II. LEGAL STANDARD

Upon filing a petition for judicial review, NRS 233B.140(1) allows a party aggrieved by a final administrative decision to also file a motion to stay the decision. NRS 233B.140(2) provides that, in determining whether to grant or deny a stay, this Court is to consider the same factors as those for a preliminary injunction under Nev. R. Civ. P. ("NRCP") 65. The relevant factors for consideration are: (1) the threat of irreparable harm; (2) the relative interests of the parties; (3) the likelihood of the moving party's success on the merits of its petition; and (4) any public interest considerations. See Sobol v. Capital Mgmt. Consultants, Inc., 102 Nev. 444, 446, 726 P.2d 335, 337 (1986); IT Corp. v. Cnty. of Imperial, 672 P.2d 121, 127-28 (Cal. 1983). NRS 233B.140(3)(a) further requires that this Court give deference to the administrative agency when determining whether to grant or deny a stay.

Here, there is ample good cause to impose a stay of the hearing officer's Decision to fine HWAN because the penalties levied against HWAN exceed the Division's statutory authority to impose administrative fines in two distinct ways. See Section III(A) & (B), infra. Additionally, good cause exists to impose a stay of the Decision because of the irreparable harm HWAN will suffer to its reputation and business goodwill in this State and the damages it will sustain that it is precluded from recovering due to the Division's sovereign immunity. Therefore, this Motion should be granted and the Decision must be stayed.

DISCUSSION III.

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A stay is warranted because the Division's disproportionate imposition of \mathbf{A}_{\cdot} fines clearly exceeds its statutory authority, as the Decision violates the 5year-limitations period that governs such administrative fines.

As an initial matter, the significant and excessive fine of \$1,194,450 ordered in the Decision is precluded by the applicable statute of limitations set forth in Nevada law. The Decision seeks to improperly fine HWAN "\$50 for each violation of NRS 690C.325(1)(b) for CHW Group, Inc.'s sale of 23,889 service contracts without proper registration." See Decision at 27:18-21. Quite plainly, the Division is attempting to fine HWAN for the sale of service contracts since the inception of HWAN's doing business in the State of Nevada. See Decision at 15:3-5, 27:18-21 ("Since HWAN became licensed in Nevada, CHW has continually provided services to HWAN...According to its claims statistics, 23,889 customers have purchased a service contract through Choice Home Warranty in Nevada since 2011.").

However, NRS 690C.120(1)(b) makes the provisions of NRS 679B.150 to 679B.300 upon which the Division almost exclusively relies in its imposition of the nearly \$1.2-million fine applicable to the "the marketing, issuance, sale, offering for sale, making, proposing to make and administration of service contracts." Accordingly, NRS 679B.185(4) requires the Division to commence proceedings that impose administrative fines for "willfully engaging in [the] unauthorized transaction of insurance" "not later than 5 years after the date on which the act or violation occurred." See NRS 679B.185(4) (emphasis added). This statutory time limitation simultaneously incentivizes the Division to police service contract providers in real time, while

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also defining the time frame for which service contract providers can be held accountable. The Division's dual responsibility to the consumer and the regulated service contract provider is well known and the Decision plainly acknowledges the same, recognizing that "[t]he Commissioner cannot ignore her charge under the law—when an entity is violating a law that harms Nevadans, the Commissioner must act." See Decision at 24: 4-5.

It is undisputed that the Division did not commence any proceeding against HWAN until May 9, 2017. The Division only now seeks to fine HWAN related to sales of service contracts that occurred at least seven (7) years ago - going back to 2010 - the year in which HWAN first became a service contract provider in the State. The Decision enables this, penalizing HWAN for purported conduct that happened well beyond the five-year threshold set forth in NRS 679B.185(4). This is contrary to the time limits set by statute.

Thus, it is clear that the Decision's imposition of a significant fine for violations of NRS 690C.325(1)(b) is well in excess of the Division's statutory authority, and therefore the full fine amount should be stayed. The Division's discretion to penalize service contract providers is not unfettered, despite the Decision's sweeping attempt to characterize it as such. Indeed, HWAN would suffer palpable damage to its business reputation to the tune of unjust and dire financial consequences if the Division were allowed to ignore the limitations period. Upon a plain reading and its clear application to service contract providers, NRS 679B.185(4) prevents the Division from commencing the tardy underlying proceeding and ultimately issuing this inappropriate fine some seven (7) years later.

In the alternative, if this Court finds to the contrary that the entire fine should be stayed, at a minimum the Division should only be permitted to subject HWAN to an administrative fine related to HWAN's sale of service contracts beginning in May 2012 - that is, five (5) years from when the Division first took action against HWAN for its purported violations in May 2017 - and exclude the previous transactions that are well outside the statute of limitations. In sum, the Division's disregard for the statutory constraints that govern its imposition of administrative fines supports a grant of the stay for the full fine amount.

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В. The Division's prohibitive \$1.224 million fine exceeds the total aggregate amount permitted by Nevada law and thus a stay should be issued.

Similarly to the foregoing, the more than \$1.2 million total fine grossly exceeds the total aggregate amount permitted by the applicable statutory scheme. NRS 690C.325(1) states in relevant part that "the Commissioner may levy upon the provider, and the provider shall pay forthwith, an administrative fine of not more than \$1,000 for each act or violation." The calculation outlined in the Decision appears to have taken at least this particular statutory cap into consideration. See Decision at 27, n. 4 ("Pursuant to NRS 690C.325.1, the maximum administrative fine allowed is \$1,000 per act or violation."). The ultimate calculation outlined in the Decision, however, merely cherry-picks the true statutory scheme in order to reach the staggering result of \$1,224,950. Indeed, notably absent from the Decision is any reference to NRS 690C.330, which immediately follows 690C.325(1) and further limits the permissible amounts of civil penalties to be assessed by the Commissioner:

"A person who violates any provision of this chapter or an order or regulation of the Commissioner issued or adopted pursuant thereto may be assessed a civil penalty by the Commissioner of not more than \$500 for each act or violation, not to exceed an aggregate amount of \$10,000 for violations of a similar nature. For the purposes of this section, violations shall be deemed to be of a similar nature if the violations consist of the same or similar conduct, regardless of the number of times the conduct occurred."

(emphasis added). The nearly \$1.2 million fine is impermissible, as it well exceeds the \$10,000 cap, which renders it very clearly outside the Division's statutory authority and thus worthy of a stay of the entire fine. The Decision's improper attempts to characterize the fine as comporting with Nevada law must fail.

Looking specifically at the \$1.194 million fine issued for the 23,889 service contracts, the Decision found "it is undeniable that it is [HWAN's] practice to allow CHW Group to issue, sell, and offer for sale service contracts in Nevada, thereby avoiding regulation for each contract sold in Nevada." See Decision at 25:20-22 (emphasis added). Clearly, the Decision's determination that HWAN avoided regulation fits squarely with NRS 690C.330, which limits the aggregate fee amount to \$10,000 for regulation violations of a similar nature. In further support of this point, the Decision makes no distinction of HWAN's conduct to which it levied the \$1.194 million fine.

In fact, the Decision labels HWAN's sale of service contracts as a "general business practice," which only proves the point – the Decision cannot wage a \$1.194 million fine for these alleged violations because they are "deemed to be of a similar nature if the violations consist of the same or similar conduct, regardless of the number of times the conduct occurred." See NRS 690C.330 (emphasis added). In other words, the Decision cannot use the very pattern of selling 23,889 service contracts as a way to bolster an excessive and impermissible fine. This result-oriented effort, apparently designed to drum up an excessive fine is in clear violation of the Divison's statutory authority. Accordingly, the fine should be stayed.

C. HWAN will suffer irreparable harm to its reputation and business goodwill in this State if a stay is not issued.

 The imposition of such prohibitive fines will interfere with HWAN's property right to conduct its business and greatly damage its goodwill and reputation.

If this Court denies HWAN's request for a stay of the Decision, HWAN will suffer irreparable harm to its business goodwill and reputation in this State. A longstanding corollary of the requirement of showing a threat of irreparable harm is that "a court of equity will not interfere" when "a complete and adequate remedy can be had at law." *Champion v. Sessions*, 1 Nev. 480 (1865). Harm cannot be irreparable if there is an adequate legal remedy, the purpose of which is to compensate a plaintiff for sustained damages. *Number One Rent-A-Car v. Ramada Inns. Inc.*, 94 Nev. 779, 780-781, 587 P.2d 1329, 1330-1331 (1978). In other words, where monetary damages will compensate for any alleged loss, injunctive relief is inappropriate. *Dixon v. Thatcher*, 103 Nev. 414, 415, 742 P.2d 1029, 1029 (1987).

On its face, the stay sought herein might be construed as only taking issue with the amount of the monetary fine, making the request for such relief inappropriate. But here, a deeper review is in order. It is well established in Nevada that "acts committed without just cause which unreasonably interfere with a business or destroy its credit or profits, may do an irreparable injury and thus authorize issuance of an injunction." Sobal, 102 Nev. at 446, 726 P.2d at 337 (emphasis added) (citing Guion v. Terra Marketing of Nev., Inc., 90 Nev. 237, 240, 523 P.2d 847,

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848 (1974)). Moreover, when a person or administrative body interferes with the operation of a "legitimate business by creating confusion, infringing on goodwill, and damaging reputation." irreparable harm may result. Id. On such facts, injunctive relief such as a stay may be in order.

For example, in Guion, Terra Marketing placed a booth in a shop managed by Walt Guion, from which Terra Marketing's representative would give land sale presentations. 90 Nev. at 238-39, 523 P.2d at 847-48. After Terra Marketing refused to remove the booth at Mr. Guion's request, Mr. Guion placed signs in front of the building that claimed a "Terracor representative threatened to kill" him, among other disparaging remarks. Id. at 239, 523 P.2d at 848. Once a suit was filed, the lower court entered an injunction against Mr. Guion prohibiting him from displaying the signs. Id. On appeal of that order, the Nevada Supreme Court in affirming the injunction held that "ftlhe right to carry on a lawful business without obstruction is a property right, and acts committed without just cause or excuse which interfere with the carrying on of plaintiff's business or destroy its custom, its credit or its profits, do an irreparable injury and thus authorize the issuance of an injunction." Id.

HWAN has a right to carry on its lawful business without inappropriate obstruction by the Division - and without the Division acting in clear excess of its statutory authority as set forth above. Here, the Division's fine unreasonably interferes with HWAN's operation because the sheer amount of the fines alone. In other words, leveraging such devastating financial consequences most certainly infringes upon the viability of HWAN and ultimately, interferes with HWAN's property right to conduct its business. Such interference constitutes irreparable harm and "authorizefs] the issuance of an injunction," Guion, supra. Furthermore, the Division's conduct in issuing such potentially business-ending sanctions undeniably hampers HWAN's ability to conduct business in the State of Nevada. The Division's prohibitive fines, which exceed statutory boundaries, fit squarely within the type of conduct that would cause a business irreparable harm.

It is highly likely that such a sizable fine and accompanying public admonishment will garner negative media attention, news stories, and press releases. Indeed, the Division may seek

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to announce the same itself. This negative publicity will create public confusion over HWAN's ability to insure its customers and ultimately will damage HWAN's business reputation in this State, which constitutes further irreparable harm and justifies issuance of a stay, See Sobol, supra (finding that damage to a business' reputation to its creditors is irreparable and authorizes an injunction). It is clear that if a stay is not issued pending resolution of HWAN's Petition for Judicial Review, HWAN will suffer great harm to its business goodwill and reputation, harm for which monetary damages are a wholly inadequate remedy. Therefore, this Court should issue a stay of the Decision.

> 2. Should HWAN prevail on its Petition for Judicial Review, it will have no legal remedy against the Division whatsoever because of the Division's sovereign immunity.

As is set forth above, equitable relief, including a stay of the Decision, may not be granted where "a complete and adequate remedy can be had at law." Champion, supra. In addition to the foregoing concrete, irreparable harm HWAN will suffer should this Motion not be granted, HWAN will also have no legal remedy to recoup the losses to its business from the time the Decision goes into effect until this Court's order reversing the Decision is entered. Although monetary losses are generally not irreparable, the facts before this Court uniquely warrant the imposition of a stay due to the Division's sovereign immunity, as HWAN would be left without any other remedy.

The Division is an agency of the State of Nevada. See NRS 233B,031 (defining an "agency" for purposes of Nevada law to be, inter alia, a "division...of the Executive Department of the State Government authorized by law to make regulations or to determine contested cases"). As a general matter, the State of Nevada has waived the sovereign immunity of its agencies from suits for damages except for those matters set forth in NRS 41.032. That statute provides that no suit may be brought against the Division if it is:

> 1. Based upon an act or omission of an officer, employee or immune contractor, exercising due eare, in the execution of a statute or regulation... or

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Based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of the State or any of its agencies or political subdivisions or of any officer, employee or immune contractor of any of these, whether or not the discretion involved is abused.

(emphasis added). The Division's choice to levy such prohibitive fines against HWAN which could, in turn, instigate revocation proceedings against HWAN, and the Decision on its face, are conceivably discretionary functions and therefore fall within the purview of NRS 41.032. In other words, even if HWAN is successful in the instant matter, it would be unable to recoup any of its business losses from the Division for the period of the revocation of its Certificate of Registration, should it come to that point for HWAN. A stay is appropriate here given HWAN's limited recourse, if any at all.

Such a loss constitutes irreparable harm because, although "[i]n general, lost revenue does not constitute irreparable harm because an award of damages at the end of a case, if appropriate, will make a party whole[, t]hat general proposition does not apply here[]" since the Division would likely be immune from suit for those damages. Jefferson Village Enter., Inc. v. United States, 2011 WL 740896. at (E.D. Mich. Feb.24, 2011). See also Cal. Pharm. Ass'n v. Maxwell-Jolly, 563 F.3d847, 852 (9th Cir.2009), reversed on other grounds by Douglas v. Indep. Living Cir. of S. Cal., Inc., 565 U.S. 606 (2012) (holding that harm that is otherwise remedied by an award of monetary damages may be irreparable, such that injunctive relief may issue, where those damages are precluded by immunity principles). Because HWAN is precluded from pursuing its lost revenues from the Division should it succeed in the instant matter, or ultimately revoke HWAN's certificate of authority, this Motion should be granted and the Decision must be stayed.

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HWAN is highly likely to succeed on the merits of its Petition for Judicial D. Review.

It is likely that HWAN will prevail on the merits of its Petition for Judicial Review, so a stay is warranted. Boulder Oaks Community Ass'n v. B & J Andrews Enterprises, LLC, 125 Nev. 397, 215 P.3d 27 (2009) (holding in the preliminary injunction context that probable success is a determining factor). The Decision resoundingly agrees with HWAN that it had "no notice of the facts underlying the Division's position." See Decision at 26: 3-4. However, this Court need not predict the outcome on the merits with certainty nor must it agree with the Decision - rather, HWAN's demonstration of the likelihood of ultimate success on the merits is adequate to support a stay of the Decision. Moreover, the Division's imposition of the excessive fine quite clearly exceeds the Division's statutory authority, which shows a strong likelihood of success on the merits. Even a facial reading of the statutes makes clear that it is evident to support HWAN's showing of a reasonable likelihood of prevailing on the merits.

E. HWAN's interests greatly outweigh those of the Division.

In addition to the irreparable harm that will be inflicted upon HWAN should the Decision not be stayed, HWAN's interests in granting the stay far outweigh those of the Division. "[T]rial courts should evaluate two interrelated factors when deciding whether or not to issue a [stay]. The first is the likelihood that the plaintiff will prevail on the merits at trial. The second is the interim harm that the plaintiff is likely to sustain if the [stay] were denied compared to the harm that the defendant is likely to suffer if the [stay] were issued." IT Corp. v. Cnty. of Imperial, 672 P.2d 121, 127 (Cal. 1983). Furthermore, "[t]he ultimate goal of any test to be used in deciding whether a [stay] should issue is to minimize the harm which an erroneous interim decision may cause." Id.

Here, as is set forth in full above, HWAN is certain to suffer substantial and irreparable harm should the stay here not be issued. HWAN is likely to suffer significant negative attention as a result of the Decision and, as a result, its reputation and business goodwill will be irreversibly damaged. Moreover, the significant amount of the fines at issue will prejudice HWAN's ability to continue operating. The protection of tens of thousands of Nevada customers that rely on HWAN's service to protect their homes and possessions hangs in the balance. In sum, the harm

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that will result to HWAN in the absence of a stay of the Decision is significant, extensive, and potentially permanent.

Against the clear harm to HWAN this Court must weigh any potential harm that could result to the Division should the stay issue. The Division's only real interest here is the public's interest to be protected from unsuitable service contract providers. Yet, the Decision itself found that the Division failed to show that HWAN conducts business in an unsuitable manner or engages in deceptive trade practices. The Division never established any consumer was defrauded. See Decision at 21:1-17, 22:5-20. Accordingly, granting the stay is unlikely to cause the Division or the public any appreciable harm. On balance, the harm that HWAN will suffer if a stay does not issue vastly outweighs any harm to the Division or the general public that may occur if it does. Thus, this Motion should be granted and a stay issued.

IV. CONCLUSION

Based upon the foregoing, HWAN respectfully requests that the fines against HWAN be stayed in their entirety and the Decision be stayed pending resolution of HWAN's Petition for Judicial Review.

DATED this 11th day of January, 2018.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

BY:

KIRK B LENHARD, ESQ., Bar No. 1437

klenhard@bhfs.com

TRAVIS F. CHANCE, ESQ., Bar No. 13800

tchance@bhfs.com

MACKĒNZIE WARREN, ESQ., Bar No. 14642

mwarren@bhfs.com

100 North City Parkway, Suite 1600

Las Vegas, NV 89106-4614

Telephone: 702.382,2101

Facsimile: 702.382.8135

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BROWNSTEIN HYATT FARBER SCHRECK, LLP 100 North City Parkway, Suite 1600 Las Vegas, Nevada 89106 (702) 382-2101

16302719.2

ARCHER & GREINER P.C.

LORI GRIFA, ESQ. (pro hac vice application pending) lgrifa@archerlaw.com
21 Main Street, Suite 353
Hackensack, NJ 97601
Telephone: 201.342.6000

Attorneys for Petitioner Home Warranty Administrator of Nevada, Inc., dba Choice Home Warranty

BROWNSTEIN HYATT FARBER SCHRECK. LLP 100 North City Parkway, Suite 1630 Las Vegas, Nevada 89106 (702) 382-2101

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CERTIFICATE OF SERVICE

I hereby certify that on 11th day of January, 2018, I served a true and correct copy of the foregoing MOTION FOR STAY OF FINAL ADMINISTRATIVE DECISION PURSUANT TO NRS 233B.140 via United States Mail, first class postage prepaid, at Las Vegas, Nevada, addressed to the following at the last known address of said individuals:

Adam Laxalt, Nevada Attorney General Richard P. Yien, Esq., Deputy Attorney General Office of the Attorney General 100 North Carson Street Carson City, NV 89701 Telephone: 775-684-1100 Fax: 775-684-1108

Barbara Richardson Nevada Commissioner of Insurance 1818 E. College Pkwy., Suite 103 Carson City, NV 89706

Attorneys for Defendant State of Nevada, Department Of Business And Industry -Division Of Insurance

an employee of Brownstein Ryaft Farber Schreck, LLP

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1 ADAM PAUL LAXALT Attorney General RICHARD PAILI YIEN 2 Deputy Attorney General Nevada Bar No. 13035 Office of the Attorney General 100 N. Carson Street Carson City, NV 89701 E-mail: ryien@ag.nv.gov 5 Attorneys for Respondent Nevada Division of Insurance 6 7 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA 8 IN AND FOR CARSON CITY 9 CASE No.: 17 OC 00269 1B HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. dba CHOICE HOME 11 DEPT No.: 1 WARRANTY, a Nevada corporation, Petitioner, 12 vs. 13 STATE OF NEVADA, DEPARTMENT OF BUSINESS AND INDUSTRY, DIVISION OF 15 INSURANCE, a Nevada administrative agency, 16 Respondents. 17 STATEMENT OF INTENT TO PARTICIPATE 18 In accordance with NRS 233B.130(3), the STATE OF NEVADA, DEPARTMENT OF 19 BUSINESS AND INDUSTRY, DIVISION OF INSURANCE, by and through its counsel, Nevada 20 Attorney General ADAM PAUL LAXALT and Deputy Attorney General RICHARD PAILI YIEN, 21 hereby notifies this Court of its intent to participate in this judicial review. 22 111 23 24 /// 25 III26 27 /// 28 Page 1 of 3

This notice shall not constitute a waiver of the right to file any motions to dismiss this action for lack of jurisdiction or any other reason. DATED this 19th day of January 2018. ADAM PAUL LAXALT Attorney General By: RICHARD PAILI YIEN Deputy Attorney General Nevada Bar No. 13035 100 N. Carson Street Carson City, Nevada 89701 (775) 684-1129 Attorney for the Division of Insurance Page 2 of 3

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on the 19th day of January 2018, I filed a copy of the foregoing *Statement of Intent to Participate* with First Judicial District Court and served a copy of same by depositing for mailing at Carson City, Nevada, a true and correct copy in first class mail, postage prepaid, fully addressed to:

Alexia Emmerman, Hearing Officer Attn: Yvonne Renta Department of Business and Industry Division of Insurance 1818 E. College Pky., Ste. 103 Carson City NV 89706

Kirk B. Lenhard, Esq. Travis F. Chance, Esq. Brownstein Hyatt Farber Schreck, LLP 100 N. City Pky., Ste. 1600 Las Vegas NV 89106-4614

An employee of the Office of the Attorney General

Page 3 of 3

1	ADAM PAUL LAXALT		
2	Attorney General JOANNA N. GRIGORIEV		
3	Senior Deputy Attorney General Nevada Bar No. 5649		
4	RICHARD PAILI YIEN Deputy Attorney General Nevada Bar No. 13035		
5	Office of the Attorney General 100 N. Carson Street		
6	Carson City, NV 89701 E-mail: ryien@ag.nv.gov		
7	Attorneys for Respondent Nevada Division of Insurance		
8			
9	IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA		
10	IN AND FOR CARSON CITY		
11	HOME WARRANTY ADMINISTRATOR OF	CASE No.: 17 OC 00269 1B	
12	NEVADA, INC. dba CHOICE HOME WARRANTY, a Nevada corporation,	DEPT No.: 1	
13	Petitioner,		
14	VS.	DIVISION'S OPPOSITION TO MOTION FOR STAY OF FINAL ADMINISTRATIVE	
15		DECISION PURSUANT TO NRS 233B.140	
16	STATE OF NEVADA, DEPARTMENT OF BUSINESS AND INDUSTRY, DIVISION OF		
17	INSURANCE, a Nevada administrative agency,		
18	Respondents.		
19			
20	Respondent, Department of Business and Industry, Division of Insurance ("Division") throug		
21	11		
22	YIEN, hereby files its Opposition to Motion for Stay of Final Administrative Order Pursuant to NR.		
23	233B.140 on the following memorandum of points and authorities.		
24		NTS AND AUTHORITIES	
25	I. <u>INTRODUCTION AND S</u>		
26	Home Warranty Administrator of Nevada dba Choice Home Warranty's ("Petitioner") Motic		
27	 	ant to NRS 233B.140 ("Motion") is directed at the	
28	Findings of Fact, Conclusions of Law, Order of Hearing Officer and Final Order ("Final Order," Ex.1		
	Page	1 of 14	

of the Commissioner. The administrative proceeding held before Hearing Officer Alexia M. Emmermann, Esq., in Carson City, Nevada, over a three-day period on September 12, 13, and 14, 2017, resulted in the issuance of the Final Order on December 18, 2017.

In its Amended Complaint against Petitioner, the Nevada Division of Insurance ("Division") alleged regulatory violations of the Insurance Code, including failing to disclose multistate regulatory actions against "Choice Home Warranty," in California, Washington, Oklahoma, and New Jersey¹, not disclosed by the Petitioner on any of its applications filed with the Division. The Hearing Officer found that the "Choice Home Warranty," subject to those disciplinary actions, was a dba used by CHW Group, Inc. ("CHW Group"), a business entity incorporated in New Jersey, selling service contracts online in numerous states, including Nevada.² Central to Petitioner's defense against that allegation by the Division was that the "Choice Home Warranty," subject to regulatory violations in other states, was really "CHW Group, Inc.," and that Petitioner was a separate business entity—"Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty." Petitioner was successful in arguing that it did not need to disclose violations against a separate business entity.

Hearing Officer Emmermann did, however, find numerous violations of the Insurance Code, including making false entries of material fact by not disclosing Choice Home Warranty ("CHW"), as its Administrator, in violation of NRS 686A.070 (Final Order 20:1-19; 27:13-15); conducting business in an unsuitable manner by using CHW, an unlicensed entity, for all activities for which Nevada law requires a certificate of registration (Final Order 25:17-24; 27:18-21); and for failing to make records available to the Commissioner upon request in violation of NRS 690C.320.2. (Final Order 21:23-28; 22:1-5; 27:16-17). In lieu of revocation, the Hearing Officer ordered fines against Petitioner. (Final Order 27:13-21). As the Hearing Officer did not order a revocation, and at the time of the hearing,

¹ Choice Home Warranty was subject to regulatory action in California, Oklahoma, Washington, and New Jersey. (See Final Order, 10: 26-28; 11:1-28).

² Prior to incorporating as Home Warranty Administrator of Nevada Inc., Petitioner had sold Service contracts online as Choice Home Warranty. The Division began receiving complaints against Choice Home Warranty in 2009. (Final Order 7:14-15). CHW Group's president, Victor Mandalawi ("Mandalawi") incorporated in Nevada in 2010 as Home Warrant Administrator of Nevada, Inc., dba Choice Home Warranty, and it was Mandalawi on behalf of this entity that filed the applications with the Division.

Petitioner's certificate of registration had expired as a matter of law, the Hearing Officer included procedural instructions on how to apply for a renewal of Petitioner's certificate of registration to sell service contracts in Nevada. (Final Order 27:2-8; 28: 1-2).

Petitioner filed a Petition for Judicial Review ("PJR") on December 22, 2017, and subsequently filed a Motion for Stay of the Final Order. The Division opposes the Motion because Petitioner failed to meet the requirements set forth in NRS 233B.140, namely, to file for a stay at the statutorily required time under NRS 233B.140.1 and to meet its burden as the moving party as set forth in the statute.

II. <u>LEGAL STANDARD</u>

NRS Chapter 233B governs administrative contested cases as well as appeals from such cases in the State of Nevada. NRS 233B.140 sets forth the following requirements for a party applying for a stay of an administrative decision and for the court reviewing such a request:

- 1. A petitioner who applies for a stay of the final decision in a contested case *shall* file and serve a written motion for the stay on the agency and all parties of record to the proceeding *at the time of filing* the petition for judicial review.
- 2. In determining whether to grant a stay, the court shall consider the same factors as are considered for a preliminary injunction under Rule 65 of the Nevada Rules of Civil Procedure.
- 3. In making a ruling, the court shall:
 - (a) Give deference to the trier of fact; and
- (b) Consider the risk to the public, if any, of staying the administrative decision.

The petitioner must provide security before the court may issue a stay.

(Emphasis added).

Under NRS 233B.140.2, the factors that a court must consider are the same as in Rule 65 of the Nevada Rules of Civil Procedure (NRCP). Under Rule 65, the moving party must demonstrate a "reasonable likelihood of success on the merits" and "irreparable harm for which compensatory damages would not suffice," absent an injunction. The burden is on the moving party. *Boulder Oaks Community Ass'n. v. B&J Andrews Enterprises, LLC*, 125 Nev. 397, 403, 215 P.3d 27, 31. Deference must be given to the decision of the Hearing Officer, as well as, consideration of the risk to the public if the administrative decision is stayed. NRCP 65.

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III. LEGAL ARGUMENT

PETITIONER'S MOTION SHOULD BE DENIED AS IT FAILED TO SUSTAIN ITS BURDEN UNDER NRS 233B.140

A. Petitioner Failed to Timely File Its Motion as Required Under NRS 233B.140.1

Petitioner should be barred from seeking a stay as it failed to timely file its Motion. Petitioner failed to comply with the requirement of NRS 233B.140 (1) which mandates as follows: "[a] petitioner who applies for a stay of the final decision in a contested case *shall* file and serve a written motion for the stay on the agency and all parties of record to the proceeding *at the time* of filing the petition for judicial review." Petitioner filed the Motion for Stay on January 16, 2018, while its Petition for Judicial Review was filed more than 3 weeks prior, on December 22, 2017. The use of the word "shall' is a term of command; it is imperative or mandatory, not permissive or directory." *Washoe Medical Ctr. v. Second Judicial Dist. Court*, 122 Nev. 148 P.3d 790, 794 n.18. (2006) Therefore, Petitioner's untimely application for a stay should be denied on this factor alone.

B. Petitioner's Arguments Fail to Satisfy the Remaining Requirements Under NRS 233B.140

1. Petitioner's Arguments Fail to Demonstrate Likelihood of Success on the Merits

Under the remaining requirements of NRS 233B.140, the Court must consider the same factors as it would consider when granting an injunction under NRCP 65, namely, the likelihood of the moving party's success on the merits, and whether, without a stay, the moving party will suffer irreparable harm.³ The Court is required to give deference to the decision of the Hearing Officer as well as consideration of the risk to the public if the administrative decision is stayed. Petitioner failed to sustain its burden as the moving party. Petitioner addresses only two legal issues in its Motion, presumably to demonstrate likelihood of success on the merits thereon; however, neither one appears in its PJR. The issues stated in the PJR as the basis for its appeal, on the other hand, are not addressed in its Motion.

³ Excellence Cmty. Mgmt., LLC v. Gilmore, 351 P.3d, 720, 722 (2015).

a. <u>Petitioner's Argument in the Motion that the Imposition of Fines Violates 5-year Statute of Limitations Has no Merit as the Statute is Inapplicable to This Case.</u>

Petitioner alleges that the Hearing Officer's order imposing a fine of \$50 for each act or violation⁴ for "conducting business in an unsuitable manner" is precluded by NRS 679B.185.4. Petitioner argues that because the 23,889 service contracts, found by the Hearing Officer to be sold by Petitioner through an unlicensed entity, CHW, in violation of law, go back to 2011, the Order violates a five-year statute of limitations. Petitioner relies on NRS 670B.185.4. However, this purported statute of limitations is inapplicable to this case. This statute is applicable to persons who engage in "unauthorized transaction of insurance." NRS 679B.185.1. Petitioner, the moving party here, and the sole respondent in the administrative hearing, is *a licensee* of the Division with a Nevada certificate of registration. The fine was imposed on Petitioner, a Division licensee, for conducting business in an unsuitable manner in violation of NRS 690C.325.1 (c) and 679B.125.2.⁵ The finding of an "unsuitable manner" of conducting

- 1. The Commissioner may refuse to renew or may suspend, limit or revoke a provider's certificate of registration if the Commissioner finds after a hearing thereon, or upon waiver of hearing by the provider, that the provider has:
- (a) Violated or failed to comply with any lawful order of the Commissioner;
 - (b) Conducted business in an unsuitable manner;

NRS 679B.125 provides:

The Commissioner may observe the conduct of each authorized insurer and other persons who have a direct material involvement with the insurance business to ensure that:

- 1. An unqualified, disqualified or unsuitable person is not involved in insurance; and
 - 2. The insurance business is not conducted in an unsuitable manner.

The Commissioner shall, by regulation, define the terms "unsuitable person" and "unsuitable manner" for use in carrying out the provisions of this section and NRS 679B.310 and 680A.200.

NAC 679B.0385 interprets "unsuitable manner" as follows:

As used in NRS 679B.125 and 680A.200, "unsuitable manner" means conducting insurance business in a manner which:

1. Results in a violation of any statute or regulation of this State relating to insurance;

⁴ The maximum fine allowed pursuant to NRS 690C.325.1 is \$1,000 per violation.

⁵ NRS 690C.325 provides in pertinent part:

business was based on the factual finding that Petitioner has allowed an unregistered entity to perform functions on its behalf for which Nevada law requires a certificate of registration. NRS 679B.185 does not apply to Petitioner.

It should be noted, that as a matter of public policy, the courts have held that in the absence of specific time limitations, general statutes of limitations do not apply to disciplinary proceedings under statutory licensing schemes designed to protect the public. The policy behind this is articulated by the court in Sinha v. Ambach, 91 A.D.2d 703, 457 N.Y.S.2d 603, 604 (NYAD, 1982), a case involving disciplinary proceedings against a licensed physician: "[1]icensing of a physician imposes on the licensee an obligation to serve the public's good with concomitant adherence to strict ethics standards; errant behavior of a physician which contravenes such high calling should not be protected by the shield of a Statute of Limitations." Id. (Emphasis added). Protection of the public is also the underlying purpose of other licensing schemes. The Nevada Insurance Code does not impose statutes of limitations on the licensees of the Division. There is no statute of limitations under chapter 690C for violations by persons possessing a certificate of registration. The provisions addressing unauthorized and unlicensed entities are not applicable to Petitioner, a registered service contract provider. It is clear, that this argument by Petitioner will not succeed on the merits.

b. Petitioner's Argument in the Motion that the Imposition of Fines Violates an Alleged Cap Has No Merit as the Statute is Inapplicable to This Case.

Similarly inapposite is Petitioner's second argument, namely, that the total amount of fines imposed by the Hearing Officer in this matter exceeds "the total aggregate amount permitted by the applicable statutory scheme." Mot. 8: 2-3. As discussed above, the Hearing Officer in this case imposed an administrative fine pursuant to NRS 690C.325.1 against Petitioner for 23,889 violations, at \$50 per violation. NRS 690C.325, enacted in 2011, provides:

^{2.} Results in an intentional violation of any other statute or regulation of this State; or

^{3.} Causes injury to the general public, with such frequency as to indicate a general business practice.

1. The Commissioner may refuse to renew or may suspend, limit or revoke a provider's certificate of registration if the Commissioner finds after a hearing thereon, or upon waiver of hearing by the provider, that the provider has:

(a) Violated or failed to comply with any lawful order of the Commissioner;

(b) Conducted business in an unsuitable manner;

- (c) Willfully violated or willfully failed to comply with any lawful regulation of the Commissioner; or
 - (d) Violated any provision of this chapter.

In lieu of such a suspension or revocation, the Commissioner may levy upon the provider, and the provider shall pay forthwith, an administrative fine of not more than \$1,000 for each act or violation.

Id. (Emphasis added).

Petitioner argues that the Hearing Officer failed to apply to her calculations a cap of \$10,000 purportedly imposed by NRS 690C.330: "[i]ndeed, notably absent from the Decision is any reference to NRS 690C.330, which immediately follows 690C.325 (1) The nearly \$1.2 million fine is impermissible, as it well exceeds the \$10,000 cap " (Mot. 8: 10-18). NRS 690C.330, referenced in Petitioner's Motion was enacted in 1999 and provides as follows:

A person who violates any provision of this chapter or an order or regulation of the Commissioner issued or adopted pursuant thereto may be assessed a civil penalty by the Commissioner of not more than \$500 for each act or violation, not to exceed an aggregate amount of \$10,000 for violations of a similar nature. For the purposes of this section, violations shall be deemed to be of a similar nature if the violations consist of the same or similar conduct, regardless of the number of times the conduct occurred.

(Emphasis added). Petitioner argues in effect that NRS 690C.330 provides a cap for the administrative fines set forth in 697.325. This interpretation would suggest that these two statutes are in conflict, even for the simple reason that each imposes a different maximum amount per violation. NRS 690C.325 provides that the administrative fine imposed may not exceed \$1,000 for each act or violation. If both statutes were addressing the same thing, then NRS 690C.330, which provides that a civil penalty assessed by the Division may not exceed \$500 for each act or violation, would be in conflict with the former.

The rules of statutory construction dictate that whenever it is possible to do so, two potentially conflicting statutes must be interpreted "in harmony with one another." *DeStefano v. Berkus*, 121 Nev.

627, 629, 119 P.3d 1238, 1240. (2005), citing Williams v. Clark County Dist. Attorney, 118 Nev. 473, 485, 50 P.3d 536, 543 (2002). "We are obliged to construe statutory provisions so that they are compatible, provided that in doing so, we do not violate the legislature's intent. Additionally, we should not render any part of a statute ineffective if such consequences can be avoided." Williams, 118 Nev. at 485, 50 P.3d at 543-544 (internal citations omitted). The Court in DeStefano provides guidance for determining whether statutes can be harmonized: "[w]hile the two statutes apply to the same subject . . . they do not conflict, since they differ in scope and available remedy." Similarly, in the present case, the scope and intent behind each statute are different. The language of NRS 690C.325 clearly establishes that this provision addresses violations by the Division's licensees, namely service contract providers possessing a certificate of registration. This statute provides for non-renewal, suspension, or revocation of a certificate of registration held by a provider for violations and non-compliance. In lieu of a suspension or revocation, the statute further authorizes the Commissioner to impose fines on the provider. There is no cap on the total sum of fines allowed to be imposed. NRS 690C.330, in turn, provides the Commissioner with authority to impose a civil penalty on any "person who violates any provision of this chapter," which allows the imposition of a penalty on a non-licensee. NRS 690C.325 and .330 do not conflict. NRS 690C.325 addresses remedies available to the Division against its licensees—registered contract service providers. NRS 690C.330 allows the imposition of limited civil penalties against entities that are not regulated by the Division.

However, if this Court finds that the statutes indeed are in conflict, then Nevada law of statutory construction provides additional well-settled rules. Under both principles, NRS 690C.325 is the applicable provision. If there is a conflict, the statute that is "more recent in time controls over the provisions of an earlier enactment." Laird v. State Public Emp. Retirement Bd., 98 Nev. 42, 45, 639 P.2d 1171, 1173 (1982) (citations omitted). NRS 690C.325 was enacted in 2011, while 697.330 was enacted in 1999. Furthermore, "when a specific statute is in conflict with a general one, the specific statute will take precedence." Sheriff v. Witzenburg, 122 Nev 1056, 1062, 145 P.3d 1002, 1005 (2006) (citations omitted). In the present case, NRS 690C.325 unequivocally applies specifically to registered service contract providers—Division licensees. Petitioner is a Nevada registered service contract provider, therefore, this more recent statute, specifically targeting service providers registered with the Division,

is the provision that will take precedence if the Court finds a conflict. NRS 690C.325 applies and with no cap on the fines imposed.

Petitioner has not demonstrated that there is any likelihood it would prevail on the merits of this argument.

c. <u>Issues on Appeal Appearing in Petitioner's PJR but not Addressed</u> in its Motion for <u>Stay</u>.

Petitioner broadly asserts in its PJR that "the Decision prejudices Petitioner's substantial rights in that it was arbitrary and capricious and was clearly erroneous in view of the reliable, probative, and substantial evidence." (Pet. 4:23-24). However, Petitioner does not attempt to illustrate in their Motion for Stay how these allegations in PJR support a stay or what the likelihood of success of these "arguments," but rather rely solely on the new above-mentioned issues related to the imposition of fines. As such, the Division only addresses those arguments brought in Petitioner's Motion for Stay and the Court should not entertain any new arguments if brought on Reply to Division's Opposition.

C. Petitioner's Arguments Fail to Demonstrate Irreparable Harm for Which Compensatory Damages Would Not Suffice

Petitioner argues it will suffer irreparable harm to its reputation and business goodwill in this State if a stay is not issued. "The imposition of such prohibitive fines will interfere with Petitioner's property right to conduct its business and greatly damage its goodwill and reputation." As a matter of law, the Court should find no irreparable harm due to the fact that the Nevada Supreme Court has expressly recognized that "money damages is an adequate remedy for the vindication of appellant's rights." *Number One Rent-A-Car v. Ramada Inns, Inc.*, 94 Nev. 779, 780-781, 587 P.2d 1329, 1330-1331 (1978). A fine, which is a monetary damage, can be refunded. Petitioner acknowledges and the Division reiterates that: "Harm cannot be irreparable if there is an adequate legal remedy, the purpose of which is to compensate a plaintiff for sustained damages." (Mot 9:17-21) In other words, where monetary damages will compensate for any alleged loss, injunctive relief is inappropriate. *Dixon v. Thatcher*, 103 Nev. 414, 415, 742 P.2d 1029, 1029 (1987). As a matter of law, therefore the Court should find that the refund of the fine, a monetary damage, would compensate Petitioner for any alleged loss, thereby making any flaw in the Final Order, as it relates to fines, reparable.

Setting aside the dispositive, the Division will nonetheless also consider Petitioner's two-prong

1) the fines would interfere with HWAN's property right to conduct business, and

2) the fines would greatly damage its goodwill and reputation.

In addressing argument 1, it is most important to note that Petitioner's certificate of registration was *not* revoked in the Final Order. The Division filed its Complaint against Petitioner seeking revocation of its certificate of registration based on its violations of the Insurance Code. At the time of the revocation hearing, Petitioner's certificate of registration had not been renewed and had effectively lapsed by operation of law on November 18, 2016.⁶ In addition to deciding NOT to revoke Petitioner's certificate for the violations she found, she drafted the Final Order to explicitly *protect* Petitioner's rights as pertaining to the renewal procedure. The Order admonished the Division for failing to process Petitioner's renewal application in a timely manner and went on to remedy this by allowing Petitioner to "apply for a renewal of its certificate of registration if it wishes to continue in the business of service contracts in Nevada within 30 days of the date of this Order." The Division, in turn, was ordered to "issue its determination on the application no later than 15 business days after receipt of the complete application."

Ironically, therefore, a stay of the Final Order would effectively *prevent* Petitioner from taking the necessary steps to apply for a renewal. If Petitioner's renewal were to be approved by the Division, it would be able to operate in Nevada. If Petitioner's renewal application were to be denied, it would be *entitled to a hearing within 30 days* of the denial⁸, thereby protecting Petitioner's due process rights. As such, Petitioner's attempt to request a stay to protect its property right is disingenuous and counterproductive to its cause.

In addressing argument 2, that the fines would greatly damage its goodwill and reputation, Petitioner asserts: "acts committed without just cause which unreasonably interfere with a business or destroy its credit or profits, may do an irreparable injury and thus authorize issuance of an injunction."

⁶ Final Order 27:2.

⁷ Final Order 27: 2-8.

⁸ *Id.*

Sobol, 102 Nev. At 446, 726 P.2d at 337 citing Guion v. Terra Marketing of Nev., Inc., 90 Nev. 237, 240, 523 P.2d 847, 848 (1974). The premise for such damage to reputation is described by Petitioner as follows: "it is highly likely that such a fine and accompanying public admonishment will garner negative media attention, news stories, and press releases. Indeed the Division may seek to announce the same itself." (Mot.10:26-28; 11:1-2). At the time of this filing, more than six weeks after issuance of the Order, no such announcement has been made by the Nevada Division of Insurance, nor is counsel aware of any media attention given to the matter. Without such premise, argument as to damage to goodwill or reputation cannot be entertained. Moreover, as Petitioner cites dictum in Guion to support such a stance, it makes no effort to analyze the "without just cause" and "unreasonable" elements of the holding.

In *Guion*, the lower court found that "statements appearing on signs placed in front of corporation's business location that corporation's president had threatened to kill defendant . . . were false and malicious and authorized issuance of an injunction." Even if the Division were to publicize the Final Order, no such falsity or malice exists here. The Hearing Officer's findings of facts are supported by multiple sworn witness testimonies and presented evidence over a three-day hearing. "Just cause" is overwhelming. By contrast, the "threaten to kill" statement in *Guion* was false and made after a representative threatened to ""knock my (blank) head off my shoulders." Moreover, any publication would be reasonable given it is the duty of the Nevada Division of Insurance to regulate the business of service contracts in Nevada and to protect the public. Here, even if the Division were to publicize the holding, it would be with cause and reasonable. Lastly, as presented by the Division at hearing, there is already voluminous negative publicity about Petitioner's administrator with the same dba. A mere publication from the Division announcing regulatory fines for Petitioner would be miniscule in swaying public opinion of a company whose Administrator has already garnered a well-established negative public reputation.

In conclusion, a monetary fine as a matter of law, is not irreparable harm. Petitioner's argument

 $^{^9}$ Guion v. Terra Marketing of Nev., Inc., 90 Nev. 237, 240, 523 P.2d 847 (1974).

¹⁰ NRS 233B.140. 3(b) requires that "[i]n making a ruling, the court shall: (a) Give deference to the trier of fact...."

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that its property rights are threatened is false, especially given that the holding explicitly protects Petitioner's property interests. Whereas issuance of NRCP 65 injunctive relief requires "clear" appearance of "immediate and irreparable injury," and whereas six weeks past issuance of the Final Order, there has been no damage to the goodwill or reputation of Petitioner because Respondents have not publicized the Final Order, the burden necessary for NRCP 65 relief is unmet. As the elements of irreparable harm require a two-prong conjunctive analysis of likelihood of success and irreparable harm, and where no irreparable harm is apparent, a stay is unwarranted.

Danger to the Public

NRS 233B.140 states in subsection (3), "In making a ruling, the court shall: (b) Consider the risk to the public, if any, of staying the administrative decision. In this case, Petitioner was found to have not disclosed the identity of their administrator, CHW. This is the same CHW that was subject to regulatory action in California, Washington, Oklahoma, and New Jersey. It is also the same Administrator that has contracted with Petitioner to service and sell contracts illegally in Nevada.¹¹

Whereas the Division has presented evidence of fielding 62 complaints¹² against Petitioner and its Administrator and whereas the Division has presented complaints from multiple online self-reporting web sites against Petitioner and its Administrator, the Court should consider the risk a stay would have on Nevada consumers, allowing Petitioner to continue circumventing the legal requirements by using an unlicensed entity operating without certificate or oversight with impunity. Notably, Petitioner again is violating the law. The fines ordered by the Hearing Officer are now past due as Petitioner continues to disregard Nevada law and Commissioner's authority. Should the Court grant Petitioner's Motion for Stay, the Petitioner must provide security pursuant to NRS 233B.140 and NRCP 65(c). As the fines are now past due, Division requests that the full amount be deposited with the Court.¹³

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¹¹ Final Order 22:21-25; 24: 21-28; 25:1-8.

¹² Final Order 9:4.

¹³ "The petitioner must provide security before the court may issue a stay." NRS 233B.140.

CONCLUSION 1 The Court should deny the Motion for Stay for the above reasons. 2 **AFFIRMATION** 3 Pursuant to NRS 239B.030, the undersigned affirms that the preceding Opposition to Motion for 4 Stay of Final Administrative Order Pursuant to NRS 233B.140, filed in case number 17 OC 00269 1B, 5 does not contain the personal information of any person. 6 7 DATED: January 30, 2018 8 ADAM PAUL LAXALT Attorney General 9 10 By: 11 RICHARD PAILI YIEN Deputy Attorney General 12 Nevada State Bar 13035 100 N. Carson Street 13 Carson City, NV 89701 14 775.684.1129 Attorney for Division of Insurance 15 16 17 18 19 20 21 22 23 24 25 26 27 28

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CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on the 30th day of January 2018, I served the preceding Opposition To Motion For Stay of Final Administrative Order Pursuant to NRS 233B.140 by depositing for mailing at Carson City, Nevada, a true and correct copy in first class mail, postage prepaid, fully addressed to:

Alexia Emmerman, Hearing Officer

Attn: Yvonne Renta yrenta@doi.nv.gov

Department of Business and Industry

Division of Insurance

1818 E. College Parkway, Suite 103

Carson City NV 89706

Kirk B. Lenhard, Esq.

klenhard@bhfs.com

Travis F. Chance, Esq.

tchance@bhfs.com

Mackenzie Warren, Esq.

mwarren@bhfs.com

Brownstein Hyatt Farber Schreck, LLP

100 N. City Parkway, Suite 1600 Las Vegas, NV 89106-4614

Lori Grifa, Esq.

lgrifa@archerlaw.com

Archer & Greiner, P.C.

21 Main Street, Suite 353

Hackensack, New Jersey 97601

An employee of the

Office of the Attorney General

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1 ADAM PAUL LAXALT Attorney General 2 JOANNA N. GRIGORIEV Senior Deputy Attorney General 3 Nevada Bar No. 5649 RICHARD PAILI YIEN Deputy Attorney General Nevada Bar No. 13035 Office of the Attorney General 5 100 N. Carson Street Carson City, NV 89701 6 E-mail: ryien@ag.nv.gov Attorneys for Respondent 7 Nevada Division of Insurance 8 9 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR CARSON CITY 10 CASE No.: 17 OC 00269 1B HOME WARRANTY ADMINISTRATOR OF 11 NEVADA, INC. dba CHOICE HOME 12 DEPT No.: 1 WARRANTY, a Nevada corporation, 13 Petitioner, SUPPLEMENT TO 14 DIVISION'S OPPOSITION TO MOTION VS. 15 FOR STAY OF FINAL ADMINISTRATIVE **DECISION PURSUANT TO NRS 233B.140** STATE OF NEVADA, DEPARTMENT OF 16 BUSINESS AND INDUSTRY, DIVISION OF INSURANCE, a Nevada administrative agency, 17 Respondents. 18 19 Respondent, Department of Business and Industry, Division of Insurance ("Division") through 20 its counsel, Nevada Attorney General ADAM P. LAXALT and his Deputy Attorney General RICHARD 21 YIEN, hereby files this Supplement to Opposition to Motion for Stay of Final Administrative Order 22 23 Pursuant to NRS 233B.140 ("Supplement") in the above-captioned receivership. On January 30, 2018, Respondent filed its Opposition to Motion for Stay of Final Administrative 24 Decision Pursuant to NRS 233B.140 ("Opposition"). Exhibit 1—the Findings of Fact, Conclusions of 25 Law, Order of Hearing Officer and Final Order ("Final Order")—referenced on page 1, line 28, 26 inadvertently was not included in the Opposition. 27 Exhibit 1, the Final Order, is attached hereto. We respectfully request that the Court file this 28

Page 1 of 5

Supplement accordingly.

AFFIRMATION

Pursuant to NRS 239B.030, the undersigned affirms that the preceding Supplement to Opposition to Motion for Stay of Final Administrative Order Pursuant to NRS 233B.140, filed in case number 17 OC 00269 1B, does not contain the personal information of any person.

DATED: January 31, 2018

ADAM PAUL LAXALT Attorney General

By:

RICHARD PAILI YIEN

Deputy Attorney General

Nevada State Bar 13035

100 N. Carson Street

Carson City, NV 89701

775.684.1129

Attorney for Division of Insurance

Page 2 of 5

CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on the 31st day of January 2018, I served the preceding *Supplement to Opposition To Petitioners' Motion*For Stay of Final Administrative Order Pursuant to NRS 233B.140 by depositing for mailing at Carson City, Nevada, a true and correct copy in first class mail, postage prepaid, fully addressed to:

Alexia Emmerman, Hearing Officer Attn: Yvonne Renta <u>yrenta@doi.nv.gov</u> Department of Business and Industry Division of Insurance 1818 E. College Parkway, Suite 103 Carson City NV 89706

Kirk B. Lenhard, Esq.

klenhard@bhfs.com
Travis F. Chance, Esq.
tchance@bhfs.com
Mackenzie Warren, Esq.
mwarren@bhfs.com
Brownstein Hyatt Farber Schreck, LLP
100 N. City Parkway, Suite 1600
Las Vegas, NV 89106-4614

Lori Grifa, Esq.
lgrifa@archerlaw.com
Archer & Greiner, P.C.

21 Main Street, Suite 353
Hackensack, New Jersey 97601

An employee of the Office of the Attorney General

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LIST OF EXHIBITS

to

Supplement to Division's Opposition to Motion for Stay of Final Administrative Decision Pursuant to NRS 233B.140

Exhibit Number	Exhibit Description	Number of Pages [includes exhibit cover page for each exhibit]
1	Findings of Fact, Conclusions of Law, Order of Hearing Officer and Final Order of the Commissioner	30

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EXHIBIT 1 Supplement to Division's Opposition to Motion for Stay of Final Administrative Decision Pursuant to NRS 233B.140 **EXHIBIT 1** Supplement to Division's Opposition to Motion for Stay of Final Administrative Decision Pursuant to NRS 233B.140 Page 5 of 5



IN THE MATTER OF

CAUSE NO. 17.0050

HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. dba CHOICE HOME WARRANTY,

Respondent.

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FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER OF HEARING OFFICER. AND FINAL ORDER OF THE COMMISSIONER

This matter is before the Nevada Division of Insurance ("Division") on an Order to Show Cause issued by the Commissioner of Insurance ("Commissioner") on May 11, 2017, against Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty. The Commissioner, as head of the Division, is charged with regulating the business of insurance in Nevada. NRS 232.820, -.825.2; NRS 679B.120. The Division alleges that Respondent violated various provisions of the Nevada Revised Statutes ("NRS") title 57 ("Insurance Code") and of insurance regulations found under the Nevada Administrative Code ("NAC"). A hearing was scheduled for August 1, 2017, and continued to September 12, 2017. A prehearing conference was held on September 8, 2017, at the office of the Division in Carson City. The hearing was held on September 12, 13, and 14, 2017, at the office of the Division in Carson City. At the close of the hearing, the Parties were ordered to file briefs on a legal issue due on October 30, 2017, and written closing arguments due on November 15, 2017. On November 7, 2017, Respondent filed a motion to strike portions of the Division's brief. The motion was denied, but the Parties were granted five extra pages for their written closing arguments to address any issues from the briefs, and the due date for the written closings was extended to November 17, 2017.

See NRS 679B.360.2-.3 (explaining that "the Commissioner shall make an order on hearing covering matters involved in such hearing" and enumerating what is required in the order); NRS 679B.330.1 (authorizing the Commissioner to appoint a person as a hearing officer for a hearing); and NAC 679B.411 ("The hearing officer shall file a copy of his or her order with the Division" and "[i]f

I. FINDINGS OF FACT²

A. HWAN Applications

- 1. CHW Group, Inc. ("CHW Group") was incorporated in the State of New Jersey in May 2009. Victor Mandalawi ("Mandalawi") and Victor Hakim ("Hakim") set up the company to provide service contracts. Both Hakim and Mandalawi are officers for CHW Group: Hakim is the chief executive officer and Mandalawi is the president. The company operates under the name "Choice Home Warranty," which is registered as a fictitious name in New Jersey. CHW Group uses the brand Choice Home Warranty, to include the website www.ChoiceHomeWarranty.com. CHW Group owns the website, through which all service contracts are sold and administered. Hakim has final say or approval on all content on the website. CHW Group's employees handle sales, marketing, claims, finance. CHW Group's sales, marketing, and finance occur at its office located at 1090 King Georges Post Road in Edison, New Jersey; CHW Group's operations, or claims handling, occurs at 2 Executive Drive in Somerset, New Jersey. CHW Group is not registered to do business in Nevada. (Ex. A; Test. Mandalawi; Test. Hakim; Test. Ramirez.)
- 2. Under the name Choice Home Warranty, CHW Group sold service contracts online, so sales reached consumers nationally, and consumers were purchasing the service contract in states where CHW Group was not licensed. Mandalawi and Hakim were not aware that other states required a license in order to sell this type of product. Choice Home Warranty was named in administrative actions in different states. As a result, Mandalawi created the Home Warranty Administrators name for states that require licensure. Home Warranty Administrator of Nevada, Inc. ("HWAN") was incorporated in Nevada on July 23, 2010. Mandalawi is the only employee for each of the Home Warranty Administrators companies. HWAN's address is 90 Washington Valley Road in Bedminster, New Jersey. (Test. Mandalawi.)
 - 3. On or about July 29, 2010, Mandalawi signed a service contract provider application on

the hearing officer is not the Commissioner, the Commissioner will indicate on the order his or her concurrence or disagreement with the order of the hearing officer").

The hearing transcripts are distinguished by decrease the decrease of the hearing officer.

² The hearing transcripts are distinguished by day, not volume number or consecutively numbered pages. Accordingly, the transcripts are distinguished in the citations as "Tr.I" for the hearing transcript

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 behalf of Home Warranty Administrator of Nevada, Inc., which was received by the Division on or about September 2, 2010. (Ex. 22; Ex. P.) Mandalawi is noted on the application as president of HWAN. (Ex. 22; Ex. P at 12-14; Ex. C; Test. Mandalawi.)

- 4. On July 29, 2010, HWAN entered into an independent service provider agreement ("Agreement") with CHW Group. Through the Agreement, CHW Group handles sales, marketing, operations (claims), and advertising for HWAN service contracts, while HWAN handles regulatory compliance. CHW Group maintains the service contracts sold to Nevada consumers. According to the Agreement, CHW Group is responsible for providing the following services:
 - Communicating with potential clients (the "Clients") seeking Warranties and negotiating the signing of contracts, the form of which shall be previously approved by HWA[N], between Clients and HWA[N].
 - Collecting any and all amounts paid by the Clients for the Warranties and distributing same to HW[AN] pursuant to the terms of Article 2 hereof;
 - Keeping records of all Warranties
 - Providing customer service to Clients; and
 - Inspecting any claims made by Clients regarding goods under a Warranty and, if possible, repairing same or causing same to be replaced.
- (Ex. E.) CHW Group sells service contracts on behalf of HWAN per the Agreement. When CHW Group sells a contract, CHW Group collects the payment from the consumer, and that money is eventually paid to HWAN. (Test. Mandalawi; Test. Hakim.)
- 5. According to the 2010 application, an administrator was not designated to be responsible for the administration of Nevada contracts. (Ex. 22; Ex. P at 1.)
- 6. According to the application's Section II, neither the applicant nor any of the officers listed in Section I had ever been refused a license or registration or had an existing license suspended or revoked by any state, nor had the applicant or any of the officers listed in Section I been fined by any state or governmental agency or authority in any matter regarding service contracts. (Ex. 22; Ex. P at 2: Test. Mandalawi.)
 - 7. As part of the application, HWAN submitted its proposed contract. (Test. Mandalawi.)
- 8. On November 30, 2010, the Division issued HWAN a letter, along with a certificate of registration ("COR") with Company ID No. 113194 and with an anniversary date of November 18 of

on September 12, 2017, "Tr.2" for the hearing transcript on September 13, 2017, and "Tr.3" for the hearing transcript on September 14, 2017.

each year. (Ex. U; Ex. 22; Test. Mandalawi.) In the letter, the Division noted that it had reviewed the service contract #HWAADMIN-8/2/10 that was submitted with the application, and that it was approved for use. (Ex. U at 1.)

- 9. In 2011, HWAN submitted another service contract for approval. The Division approved the service contract under the form number HWA-NV-0711. (Test. Mandalawi; Test. Ghan.)
- 10. The service contract shows the Home Warranty Administrators' logo at the top right of the first page. Under it is the name Choice Home Warranty followed by the text "America's Choice in Home Warranty Protection," and under the text in finer print it says "Obligor: Home Warranty Administrator of Nevada, Inc." This first page is a sample letter to the consumer. The first two lines of the letter says, "Welcome to Choice Home Warranty! You made a wise decision when you chose to protect your home with a home warranty." The consumer is asked to read the coverage. The letter includes a toll-free number, (888)-531-5403, and a website, www.ChoiceHomeWarranty.com. Under the letter in finer print, it states that the contract explains the coverage, limitations, and exclusions. Then there are two boxes: the box on the left identifies the contract number, contract term, covered property, property type, rate, and service call fee; the box on the right identifies the coverage plan, included items, and optional coverage. Under the two boxes is the name Choice Home Warranty and the address, 510 Thornall Street, Edison, NY 08837, along with the toll-free number (888) 531-5403. The bottom right of the page contains "HWA-NV-0711" in a finer print, which indicates approval by the Division in July 2011, and is applied to each page. (Ex. 35; Ex. EE; Test. Ghan; Test. Jain; Test. Mandalawi.)
- 11. According to Mandalawi, there are no contracts sold to Nevada consumers other than the Nevada contract authorized in 2011. (Test. Mandalawi.)
- 12. For the registration years 2011 through 2016, HWAN filed renewal applications. (Ex. 2, 4, 5, 7, 12, 21; Ex. I; Test. Mandalawi.)
- 13. The renewal applications asked the applicant to identify the pre-approved service contract form name and form numbers that applicant sells in Nevada. On each application, HWAN identified form HWA-NV-0711. (Ex. 2, 4, 5, 7, 12, 21; Ex. I.)

- 14. The renewal applications for the years 2011, 2012, and 2013 asked the following questions:
 - "Have there been any changes in the executive officers or in the officers responsible for service contract business since your last application?"
 - "Have you made any changes in the administrator or designated a new administrator since your last application? Current administrator is listed as:"
 - "Since the last application, has applicant or any of the officers listed in question 1 ever...(c) Been refused a license or registration...or had an existing one suspended or revoked by any state... [or] (d) Been fined by any state or governmental agency or authority in any matter regarding service contracts?"

On behalf of HWAN, Mandalawi answered "No" to each of the questions. For the curren administrator, Mandalawi wrote "Self." (Ex. 2, 4, 5; Ex. I; Test. Dennis; Test. Mandalawi.)

- 15. The renewal applications for years 2011, 2012, and 2013 were approved. (Ex. Y, Z, AA; Test. Mandalawi.)
- 16. The renewal applications also ask how many service contracts were sold to Nevada residents, other information related to revenue, claims paid, and customer complaints, and information about how complaints are handled. Mandalawi responded to these questions for the renewal applications for years 2011, 2012, and 2013. (Ex. 2, 4, 5; Ex. I.)
- 17. In 2013, the Division initiated an investigation into Choice Home Warranty, and began monitoring complaints. The Division also discovered that a company called Choice Home Warranty had administrative actions against it in several states. (Test. Jain.)
- 18. In email correspondence with Mandalawi related to a consumer complaint, Elena Ahrens, then-Chief of the Property and Casualty Section, indicated that she wanted to work with Mandalawi "regarding having an official dba of Choice Home Warranty." She said that she had stopped the issuance of a cease and desist, and wanted to remedy the situation from occurring in the future. (Ex. T at 1.) The Division asked HWAN to register the dba Choice Home Warranty because the Division "thought it was confusing for consumers having just the name Home Warranty of Nevada." (Test. Mandalawi.) Mandalawi registered the dba "Choice Home Warranty" under HWAN. (Ex. T at 7-11; Ex. B; Ex. 30-32; Test. Mandalawi.)
- 19. The Division issued a memo to then-Commissioner Scott J. Kipper from Derick Dennis, Management Analyst, indicating that Mandalawi notified the Division that HWAN filed the dba name,

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"Choice Home Warranty," in Carson City and Washoe County. A handwritten note on the memo states, "7/8/14 This was at the request of the Division, recommend approval" with Ahrens' initials "ea." (Ex. 23 at 3; Ex. Q.) The Division issued a new Certificate of Registration dated July 14, 2014, under HWAN's same Company ID No. 113194, for Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty. (Ex. 23; Ex. T at 39, 51–53; Test. Mandalawi.)

- 20. For the registration years beginning 2014, 2015, and 2016, HWAN filed renewal applications. The applicant was listed as "Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty." (Ex. 7, 12, 21; Ex. I; Test. Mandalawi.)
- 21. The renewal applications for the years 2014, 2015, and 2016 asked the same following questions:
 - "Have there been any changes in the executive officers or in the officers responsible for service contract business since your last application?"
 - "Have you made any changes in the administrator or designated a new administrator since your last application? Current administrator is listed as:"
 - "Since the last application, has applicant or any of the officers listed in question 1 ever...(c) Been refused a license or registration...or had an existing one suspended or revoked by any state... [or] (d) Been fined by any state or governmental agency or authority in any matter regarding service contracts?"

On behalf of HWAN, Mandalawi answered "No" to each of the questions. (Ex. 7, 12, 21; Test. Mandalawi.) For the current administrator, Mandalawi wrote "Self." (Ex. 21)

- 22. The renewal application for 2014, 2015, and 2016 added a request that the applicant "List all aliases or names under which the company conducts business (Doing Business As). Provide supporting documentation." On behalf of HWAN, Mandalawi answered "NA" because he believed the question related to additional fictitious names. (Ex. 7, 12, 21; Ex. I at 12, 16, 20; Test. Mandalawi.)
- 23. The renewal applications for 2014, 2015, and 2016 also ask how many service contracts were sold to Nevada residents, other information related to revenue, claims paid, and customer complaints, and information about how complaints are handled. For years 2014, 2015, and 2016, Mandalawi responded to some of these questions, but left blank the number of customer complaints by Nevada residents and the question asking how complaints are handled. (Ex. 7, 12, 21; Ex. I at 14, 18, 23.)

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- 24. The renewal applications for years 2014 and 2015 were approved. (Ex. BB, CC; Test. Mandalawi.)
- 25. At the time the Division received HWAN's 2016 renewal application, the Division requested additional information because the application was deemed incomplete. Specifically, the statutory security deposit was not sufficient and questions on the application were left blank. The Division's requests for information were ignored. As of the date of the hearing, the Division had not received all of the information requested. (Ex. 33; Ex. L; Ex. DD; Test. Jain.)
- 26. As a result of this matter, Mandalawi learned that HWAN's COR was inactive. Mary Strong, Management Analyst III, emailed HWAN on July 21, 2017, explaining that HWAN's COR had expired and that the 2016 renewal application was denied. No additional explanation was provided. A printout of HWAN's licensing status with the Division shows that HWAN dba Choice Home Warranty is inactive as of 11/18/2016. (Ex. O, DD; Test. Mandalawi.)

B. Complaints

- 27. In 2009, the Division began receiving complaints about Choice Home Warranty, which was not registered to sell service contracts in Nevada. (Ex. 28 at 2; Ex. J at 2.)
- 28. On January 4, 2014, the Division received a complaint from a technician who provided services to a consumer on behalf of Choice Home Warranty, but "CHW (CHOICE HOME WARRANTY, CHW GROUP)" refused to pay them the \$20,000 alleged to be owed. The Division worked out a settlement between Choice Home Warranty and the technician for \$7,296. (Ex. 25; Test. Kuhlman.)
- 29. On July 16, 2014, the Division received a consumer complaint against Choice Home Warranty alleging that Choice Home Warranty failed to pay a valid claim for a broken air conditioning ("A/C") unit under the service contract (policy number 628975268). The consumer was forced to pay \$1,025 for an A/C compressor that the consumer believed should have been covered by the service contract. The consumer requested the claim denial in writing, but was told by the Choice Home Warranty employee claimed that it was against company policy to issue a denial in writing. (Ex. 11; Test. Kuhlman.)

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Home Warranty alleging Choice Home Warranty improperly denied a claim when the consumer's pipe broke the same day he had purchased the service contract (policy number 465308123). The consumer paid \$826 for repair of a broken pipe. The consumer also complained because he felt Choice Home Warranty's advertisement was deceitful and misleading by claiming that the consumer could get coverage "today," when the contract requires a thirty-day waiting period. The Division worked out a settlement between Choice Home Warranty and the consumer for \$500. (Ex. 11; Test. Kuhlman.)

On November 19, 2014, the Division received a consumer complaint against Choice

- Warranty alleging Choice Home Warranty improperly denied a claim for a broken A/C unit. The consumer filed a claim with Choice Home Warranty on June 27, 2016, and Choice Home Warranty sent a technician, who replaced the capacitor. The A/C unit failed again within a few hours. The technician returned to look at the unit three times and provided all the information Choice had requested. The A/C unit still had not been fixed. The consumer called Choice Home Warranty numerous times and was put on hold on every call for extensive periods and, after 45 minutes, the call would fail. The consumer was told that the claim was rejected because the consumer did not maintain the unit. The consumer sent Choice Home Warranty proof that he did maintain the unit. The consumer explained that the situation was a "life or death situation" because his significant other, who is disabled, suffered from heatstroke because she and their little dog have been left in the house with temperatures exceeding 100-plus degrees. On or about July 25, 2016, the Division worked out a settlement between Choice Home Warranty and the consumer for \$1,500. (Ex. 38; Test. Kuhlman.)
- 32. On October 4, 2016, the Division received a consumer complaint against Choice Home Warranty alleging Choice Home Warranty improperly denied a claim for a broken A/C unit. The consumer filed a claim with Choice Home Warranty on June 8, 2016, and Choice Home Warranty sent eight technicians and four A/C companies, and all agreed that the A/C compressor and coil needed to be replaced. Choice Home Warranty denied the claim explaining that it had a photo of the unit from August 17, 2016 showing that no maintenance had been done on the unit. The consumer asked for a copy of the photo, but Choice Home Warranty did not provide the photo. The consumer faxed her maintenance records for the A/C unit, but was told that Choice Home Warranty could not read the

records. At the time of the complaint, the consumer was alleged to have endured ten weeks without A/C in Las Vegas. (Ex. 24; Test. Kuhlman.)

- 33. In all, the Division had received approximately 80 complaints about Choice Home Warranty. Eliminating duplicates, the total was 62. At the time the Complaint, only 2 complaints were open. All other complaints had been closed. The Division's concern was that Choice Home Warranty had a higher ratio of complaints than any other of the 170-plus service contract providers licensed in Nevada. (Ex. 28; Ex. J, W; Test. Jain.)
- 34. The Division conducted a general search on Choice Home Warranty online, and discovered numerous complaints by consumers on different websites. (Test. Jain.)
- 35. The Business Consumer Alliance rated Choice Home Warranty with an "F". It notes the company's website as www.choicehomewarranty, DBAs are CHW Group, Inc., Victor Mandalawi as president, and Victor Hakim as principal. (Ex. 9.)
- 36. On October 31, 2016, Mike from Henderson, Nevada posted a complaint on the Ripoff Report claiming Choice Home Warranty in Edison, New Jersey, was attempting to withdraw money from the consumer's bank account after the contract period ended. (Ex. 14.)
- 37. On July 7, 2016, Stardust from Henderson, Nevada posted a complaint on the Ripoff Report claiming Choice Home Warranty refused to replace a pool pump because it was not correctly installed. (Ex. 15.)
- 38. On April 20, 2016, Ira B. from Las Vegas, Nevada, a technician, posted a complaint on Ripoff Report advising people to stay away from Choice Home Warranty because Choice Home Warranty does not pay its vendors, and requires vendors to use repair parts according to their terms. (Ex. 16.)
- 39. On January 14, 2016, Iaappliance from Las Vegas, Nevada posted a complaint on Ripoff Report that Choice Home Warranty is a huge scam among contractors. The company had completed 200 jobs for Choice Home Warranty, but Choice Home Warranty had not yet paid them. (Ex. 17.)
- 40. On October 12, 2016, David N. of Las Vegas, Nevada posted a complaint on Yelp.com that Choice Home Warranty improperly denied his claims on two occasions. The second claim denial was after a technician came and inspected the microwave and took photos. The consumer included in

his complaint the he received an email from Choice Home Warranty that said, "CHW strives to be rated #1 in the home warranty industry. Help us succeed with your positive feedback and you will receive 1 FREE month of coverage." (Ex. 18 at 2.)

- 41. Choice Home Warranty has been the subject of complaints in other cities—Houston, Texas, Chicago, Illinois, Overland Park, Kansas, and Titusville, Florida. According to the reports, Choice Home Warranty in New Jersey denies claims on the basis that the consumers did not maintain their units, even after consumers provide proof of maintenance. (Ex. 19, 19a, 20, 20a, 39, 40, and 40a.)
- 42. In reviewing complaints, Mandalawi has CHW Group employees participate in the resolution. Mandalawi distinguishes claims as problems with a system or appliance, and a complaint as a consumer who is dissatisfied with the claim or outcome. When complaints are received, they are handled by CHW Group employees. If they are escalated, Mandalawi gets involved. Mandalawi has final authority on complaints and "want[s] to be sure that CHW Group is adhering to the terms and conditions of the policy and make[s] sure they are in compliance." Complaint resolution activity is done at Executive Drive, CHW Group's Somerset location; sales and marketing is done at the King Georges Post Road in Edison. Mandalawi spends most of his time at the Somerset location. (Test. Mandalawi; Test. Ramirez.)
- 43. At a meeting of the Parties pending this proceeding, Mandalawi and Hakim reviewed the records of HWAN to determine how many complaints they have received from the Division since HWAN's inception. (Test. Mandalawi; Test. Hakim.)
- 44. CHW Group handled the claims for the consumer complaints filed with the Division. CHW Group documents its communications with the consumers. CHW Group concluded that the consumers' claims were not covered by the service contracts. (Test. Ramirez.)
- 45. HWAN presented what it named "Customer Testimonials NV DOI Status of HWAN," which is 867 pages of positive testimonials of Choice Home Warranty consumers from around the country, including Nevada. (Ex. M.)

C. Regulatory Actions

46. On July 23, 2010, California issued a cease and desist order against Choice Home Warranty and its officers, along with notices related to a monetary penalty and right to hearing for

acting as a provider of home protection contracts without a license. (Ex. 1 at 1-4 of 16.) A final order was entered on August 19, 2010. On October 12, 2010, the California Insurance Commissioner found that Choice Home Warranty acted as a home protection company without a license from October 25, 2008 through October 1, 2010, and fined Choice Home Warranty \$3,530,000. In December 2010, Mandalawi, as president of Choice Home Warranty, entered into an agreement with California agreeing to take certain actions with regard to their business, and pay a \$10,000 fine. The agreement was adopted by the California Commissioner on January 6, 2011. (Ex. 1; Ex. G.)

- 47. On July 29, 2010, Oklahoma issued a cease and desist against Choice Home Warranty for engaging in service warranty contracts without authorization. Despite the order, Choice Home Warranty continued to engage in the business. The matter was settled on January 2, 2012, with a fine of \$15,000, and Choice Home Warranty was permitted to continue servicing existing contracts. (Ex. 3; Ex. H.)
- 48. On February 7, 2014, the Oklahoma Commissioner issued an order alleging that Choice Home Warranty continued to engage in the business "in a course of unfair and deceptive conduct while circumventing regulatory authority." (Ex. 3 at 2.) Choice Home Warranty was fined \$10,000. (Ex. 3.) On October 21, 2010, the Insurance Commissioner of the State of Washington issued an Order to Cease and Desist against CHW Group, Inc. doing business as Choice Home Warranty and www.ChoiceHomeWarranty.com, Victor Mandalawi, President of CHW Group, Inc. (incorporated in both New York and New Jersey), and others. The Order demanded that all named parties, who are unlicensed in Washington, cease transacting in the unauthorized business of insurance in Washington, seeking business in Washington, and soliciting Washington residents to buy unauthorized products based on the sale of at least 92 service contracts. On January 27, 2011, the Washington Commissioner issued a Final Order Terminating Proceeding after the named parties filed a stipulation withdrawing their hearing demand. The Final Order indicated that the Order to Cease and Desist would remain in effect indefinitely. (Ex. 8 at 3 of 32.)
- 49. On June 9, 2015, CHW Group, Inc. dba Choice Home Warranty, Victor Mandalawi, and Victor Hakim agreed to a Final Consent Judgment with the New Jersey Attorney General's Office for allegations of using deceptive means to deny claims after the New Jersey Division of Consumer Affairs

 received 1,085 complaints about Choice Home Warranty. The Judgment requires Choice Home Warranty, Mandalawi, and Hakim to address issues related to improper advertisements, sales representatives' misrepresentations, terms and conditions of the contract, properly licensed technicians, fair review of claims, timely payment to technicians, payment in lieu of replacement, refunds, training of employees handling sales and claims, and future consumer complaints. Choice Home Warranty, Mandalawi, and Hakim were required to pay a \$779,913.93 fine including consumer restitution, revise their business practices, pay for an independent compliance monitor to oversee compliance with the terms of the Judgment, and execute confessions of judgment in the event of a default on the Judgment. (Ex. 6; Ex. F, X.)

D. Other Evidence Presented at Hearing

- 50. In 2016, Home Warranty Administrator of Florida, Inc. and Choice Home Warranty were named defendants in a civil action in New Jersey. That same year, CHW Group, Inc. dba Choice Home Warranty and Victor Mandalawi were named defendants in a civil complaint in South Carolina. (Ex. 9, 29; Test. Mandalawi.)
- As part of the Division's investigation, it obtained a copy of Home Warranty Administrator of South Carolina, Inc.'s application with the State of South Carolina submitted by Mandalawi. The application included a biographical affidavit, which requested information about Mandalawi's background. To the question, "Are you operating, acting, or have acted as a controlling person for any other service contract provider or service contract related company?", Mandalawi responded yes. To the question, "Have you or a service contract provider or service contract related company in which you were, or are a controlling person, ever been disciplined by a state regulatory body?", Mandalawi responded yes. To the question, "Have you or a service contract provider or service contract related company for which you were, or are a controlling person, ever been subject to a cease and desist letter or order, or enjoined, either temporarily or permanently, in any judicial, administrative, regulatory or disciplinary action?", Mandalawi responded yes.

Attached to the biographical affidavit is Mandalawi's résumé. According to it, Mandalawi is the President of Home Warranty Administrators, which "is currently licensed / registered in Arizona, Florida, Illinois, New York, Nevada, Oklahoma, and Texas." Mandalawi has held this position since

2010. The résumé also shows that Mandalawi is also President of Choice Home Warranty, and has held this position since 2008. (Ex. 41 at 14.)

Mandalawi presented a letter to the South Carolina Department of Insurance explaining his "Yes" responses to the questions on the biographical affidavit. In the letter, Mandalawi introduces himself as president of Home Warranty Administrator of South Carolina, Inc., and all of its affiliates, which includes HWAN, and president of Choice Home Warranty. Through the letter, Mandalawi explains that

Choice Home Warranty (CHW) was the subject of a cease and desist letter in California, Oklahoma, and Washington. In California, CHW entered into a consent order, in Oklahoma, Home Warranty Administrator of Oklahoma, Inc. is [sic] now holds a Service Warranty License, and in Washington CHW is complying with all terms of the cease and desist.

CHW has been doing business for roughly two years and our home state of New Jersey does not require companies, such as ours, to be licensed. During the course of its activities, CHW discovered that all states are not created equal when it came to licensing requirements for service contracts. In fact, the very definition of the words "service contracts" changes from state to state. To address this newly discovered issue, CHW developed the Home Warranty administrators ("HWA") brand. That is, in order to address every state's particular requirements, a separate HWA was created for that state.

(Ex. 41 at 15-16; Test. Mandalawi.)

- 52. Choice Home Warranty has a landing page, which is a webpage that consumers land on when they click a particular email or internet link to Choice Home Warranty. The landing page is part of Choice Home Warranty's internet advertising. A potential consumer would enter his/her zip code. Choice Home Warranty provides some general information and invites people to call them at (888) 531-5403. The advertisement is copyrighted 2017 Choice Home Warranty, and includes its address, 1090 King Georges Post Rd. Edison, NJ 08837, and phone number (888) 531-5403. In finer print at the bottom of the advertisement are links to Choice Home Warranty's limits of liability and exclusions, other terms, and the privacy policy. (Ex. 26; Test. Jain; Test. Hakim.)
- 53. On August 21, 2017, Felecia Casci, Supervising Legal Secretary at the Division, received an email from 'CHOICE Warranty (enews@choicehomewarranty.com)" with the subject, "VIP Offer: \$50 Off & 1 Month Free" in her personal email account. Choice Home Warranty, identified at the top of the email, invites Casci to "Never Pay for Covered Home Repairs Again," offering \$50 off and one month free. According to the email, Choice Home Warranty plans are subject

to terms and conditions. Choice Home Warranty identifies its address as 1090 King Georges Post Rd, Edison, NJ 08837, and phone number as 800-814-4206. The advertisement is copyrighted to Choice Home Warranty in 2017. Nothing in the solicitation identified HWAN as the party selling the service contract. (Ex. 27; Test. Casci.)

- 54. On August 16, 2017, Casci received another email from "CHOICE Warranty (enews@choicehomewarranty.com)" with the subject, "We Appreciate You Felecia" in her personal email account. Choice Home Warranty, identified at the top of the email, invites Casci to "Never Pay for Covered Home Repairs Again," offering \$75 off and one month free. According to the email, Choice Home Warranty plans are subject to terms and conditions. Choice Home Warranty identifies its address as 1090 King Georges Post Rd, Edison, NJ 08837, and phone number as 800-814-4206. The advertisement is copyrighted to Choice Home Warranty in 2017. (Ex. 27; Test. Casci.)
- 55. The Division discovered that some service contracts issued by HWAN were not approved for use. In the unapproved service contract's letter to the consumer, the first two lines of the letter says, "Welcome to Choice Home Warranty! You made a wise decision when you chose to protect your home with a CHW Warranty." Again in the second paragraph, there is a reference to CHW Warranty. Under the two boxes is the name Choice Home Warranty and the address, 1090 King Georges Post Road, Edison, NJ 08837, along with the toll-free number (888) 531-5403. There is no service contract form number on the bottom of the page indicating approval by the Division. The font of the contract is reduced such that the contract is 4 pages long instead of the 5 ½ pages in the approved service contract. (Ex. 37; Test. Ghan.)
- 56. When Hakim acknowledged that CHW Group is not licensed to sell, solicit, or offer for sale service contracts in Nevada, he explained that "Pursuant to section 690C.120.2, administrators are not required to be licensed to sell service contracts in Nevada." (Test. Hakim.)
- 57. The setup for HWAN in Nevada is the same setup Mandalawi uses for all of the Home Warranty Administrators companies. All of these entities have a contract with CHW Group, and all of the entities use the website www.choicehomewarranty.com to sell their service contracts. All of the entities use substantially the same contract and terms of service. All of the businesses use CHW Group's services as provided in agreements similar to the Agreement HWAN has with CHW Group.

 This creates efficiencies in managing the product being sold across the country, with the nuances of different states' requirements identified in the service contract sent to consumers. (Test. Mandalawi.)

- 58. Since HWAN became licensed in Nevada, CHW Group has continually provided services to HWAN through the Agreement. CHW Group has tracked its claims statistics. According to its claims statistics, 23,889 customers have purchased a service contract through Choice Home Warranty in Nevada since 2011. (Ex. K; Test. Hakim.)
- 59. In some years, the Division communicated with Mandalawi by telephone or email when items were not provided with HWAN's applications. (Test. Mandalawi.)

II. CONCLUSIONS OF LAW

In its Amended Complaint, the Division seeks administrative action against Respondent for (1) falsifying material facts in its applications; (2) engaging in unfair practices in settling claims; (3) conducting business in an unsuitable manner; and (4) failing to make records available to the Commissioner upon request. The Division also seeks a cease and desist order because the Commissioner refused to renew Respondent's 2016 COR. The Division bears the burden of showing, by a preponderance of the evidence, that Respondent violated these provisions of the Insurance Code. In hearings for the Division, "The hearing officer shall liberally construe the pleadings and disregard any defects which do not affect the substantial rights of any party." NAC 679B.245.

A. Jurisdiction

The Commissioner is charged with regulating the business of service contracts, which includes but is not limited to promulgating regulations, reviewing provider records, investigating complaints and alleged violations of law, and conducting examinations. NRS 679B.120.3 & -.5, 690C.300, -.310 & -.320. Service contracts are regulated under the Insurance Code pursuant to chapter 690C.

B. Statement of Law

In Nevada, "A provider shall not issue, sell or offer for sale service contracts in this state unless the provider has been issued a certificate of registration pursuant to the provisions of [NRS chapter 690C]." NRS 690C.150. A provider "means a person who is obligated to a holder pursuant to the terms of a service contract to repair, replace or perform maintenance on, or to indemnify the holder for the costs of repairing, replacing or performing maintenance on, goods." NRS 690C.070. A holder is a Nevada resident who may enforce the rights under a service contract. NRS 690C.060. An administrator "means a person who is responsible for administering a service contract that is issued, sold or offered for sale by a provider." NRS 690C.020.

 A provider who wishes to issue, sell or offer for sale service contracts in this state must submit to the Commissioner: A registration application on a form prescribed by the Commissioner; ... A copy of each type of service contract the provider proposes to issue, sell or offer for sale; [and] The name, address and telephone number of each administrator with whom the provider intends to contract

NRS 690C.160.1(a), (c)-(d).

A certificate of registration is valid for 1 year after the date the Commissioner issues the certificate to the provider. A provider may renew his or her certificate of registration if, before the certificate expires, the provider submits to the Commissioner an application on a form prescribed by the Commissioner, [among other things].

NRS 690C.160.3.

Providers are required to comply with certain requirements to ensure the provider is financially viable. NRS 690C.170. A provider has limitations on the name of its business, and may not use the name of another provider. NRS 690C.200.1(b). A provider's service contract must comply with certain provisions. For example, a service contract must be "understandable and printed in a typeface that is easy to read." NRS 690C.260.1(a). A service contract must also "[i]nclude the name and address of the provider and, if applicable: The name and address of the administrator..." NRS 690C.260.1(d)(1). A provider is prohibited from making "a false or misleading statement" or "intentionally omit[ting] a material statement." NRS 690C.260.2.

When a provider receives a claim, it must address the claim within a reasonable amount of time. If a claim "relates to goods that are essential to the health and safety of the holder", emergency provisions must be included in the contract. NAC 690C.110.1(c). Related to claims, certain activities are considered unfair practices:

- (a) Misrepresenting to insureds or claimants pertinent facts or insurance policy provisions relating to any coverage at issue.
- (b) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.
- (c) Failing to adopt and implement reasonable standards for the prompt investigation and processing of claims arising under insurance policies.
- (e) Failing to effectuate prompt, fair and equitable settlements of claims in which liability of the insurer has become reasonably clear.
- (n) Failing to provide promptly to an insured a reasonable explanation of the basis in the insurance policy, with respect to the facts of the insured's claim and the applicable law, for the denial of the claim or for an offer to settle or compromise the claim.

NRS 686A.310.1.

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Generally, no other provision of the Insurance Code applies except as otherwise provided in NRS chapter 690C. NRS 690C.120. Provisions that specifically apply to service contracts include trade practices, examinations, hearings, certain prohibitions, process, and advertising. NRS 690C.120.1. Also, "[a] provider, person who sells service contracts, administrator or any other person is not required to obtain a certificate of authority from the Commissioner pursuant to chapter 680A of NRS to issue, sell, offer for sale or administer service contracts." NRS 690C.120.2.

The Commissioner is authorized to observe the conduct of a service contract provider to ensure that "business is not conducted in an unsuitable manner." NRS 679B.125.2.

"[U]nsuitable manner" means conducting [] business in a manner which:

- 1. Results in a violation of any statute or regulation of this State relating to insurance;
- 2. Results in an intentional violation of any other statute or regulation of this State; or
- 3. Causes injury to the general public,
- with such frequency as to indicate a general business practice.

C. Respondent

NAC 679B,0385.

In order to address the Division's allegations, the Hearing Officer must make a determination about the parties involved in this matter because many of the issues presented in this hearing hang on who the service contract provider is. Relying on the use of the different names by Respondent's witnesses, who interact with or on behalf of Respondent through a contract, and who would most be familiar with the entities, the Hearing Officer relies on the names used in the hearing as follows:

- Home Warranty Administrator of Nevada, Inc. is HWAN
- Choice Home Warranty is CHW Group, Inc., CHW, and Choice Home Warranty Group
- Home Warranty Administrators is an affiliate of companies with the name Home Warranty Administrator of [State]

In this case, HWAN is the legal entity that has been authorized to be a service contract provider in Nevada. HWAN contracted with CHW Group, or Choice Home Warranty, as administrator of HWAN's service contracts. In 2014, the Division requested HWAN to register the fictitious name, Choice Home Warranty.

The evidence is clear that Choice Home Warranty is CHW Group. Respondents have argued this throughout the case. (Resp't's Prehr'g Stmt 3-4.) During the hearing, Mandalawi, Hakim, and Ramirez referred to CHW Group as Choice Home Warranty. Mandalawi and Hakim both testified that

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Group, Inc.

When an entity registers a dba, or fictitious name, the entity creates a name under which it will operate. This does not create a new company or change the entity's legal status. Registering a dba cannot make one company liable for the acts of another company, even if the two companies share the same name—it is a legal impossibility. Further, NRS 690C.200.1(b) prohibits a provider from using a name that is the name of another provider. Choice Home Warranty, under CHW Group, is another provider even if it is not a Nevada-registered provider. Why the Division requested HWAN to register the dba Choice Home Warranty is unknown, as it makes the arrangement of these businesses confusing at best. Registering Choice Home Warranty as HWAN's dba did not make HWAN and CHW Group one legal entity for purposes of regulation. Accordingly, it is the Hearing Officer's position that Choice Home Warranty as discussed in this matter should not be treated as a fictitious name of HWAN, but instead as a separate company under CHW Group. For purposes of this Order, the Hearing Officer relies on this distinction between HWAN and Choice Home Warranty: HWAN is one legal entity, and Choice Home Warranty is CHW Group, an incorporated entity that is separate from HWAN.

HWAN's administrator is CHW Group, and that HWAN and CHW Group engaged in a contract for

such services. Choice Home Warranty is owned and controlled by CHW Group. CHW Group owns

the website www.ChoiceHomeWarranty.com, through which various service contracts are sold and administered, and the employees handling sales, marketing, claims, finance, etc. are all CHW Group

employees. Finally, according to Mandalawi's résumé submitted to the State of South Carolina in 2011, Mandalawi was the president of Home Warranty Administrators and the president of Choice

Home Warranty. The names are listed in his résumé as two separate companies. At the time the South

Carolina application was filed, which included Mandalawi's résumé, Choice Home Warranty was not

registered as a dba for HWAN. This leads to the conclusion that Choice Home Warranty is CHW

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D. The Division Claims Respondent Made False Entries of Material Facts in Its Applications

1. Administrative Actions Against Choice Home Warranty

The Division claims that by failing to disclose other states' administrative actions against Choice Home Warranty on its Nevada renewal applications, Respondent engaged in acts that constitute the unlawful making of false entry of material fact in violation of NRS 686A.070. The Hearing Officer

disagrees.

Respondent argues that it is legally and factually impossible for HWAN to have made false misrepresentations in its renewal applications because the *renewal* applications do not ask for regulatory information about any of the officers of the applicant, and the Hearing Officer agrees. The Division's questions in each of the renewal applications do not ask whether any of the applicant's officers have had actions taken against them; rather, the questions ask whether any of the *new* officers identified in the renewal application have had actions taken against them. If the Division wanted to know whether any of applicant's officers had administrative actions taken against them in other states, the Division should have asked that question. The Division's intent regarding the questions on its own renewal application is not clear, and it would be improper to hold applicants responsible for failing to disclose information about which the Division never asked.

For the renewal applications submitted for 2011, 2012, and 2013, the service contract provider that submitted the applications with the Division is Home Warranty Administrators of Nevada, Inc. HWAN is incorporated in Nevada, creating an independent legal entity. As its own legal entity, HWAN is responsible for the acts of its business. At no time during this period was HWAN named in any administrative action in any other state. Therefore, it cannot be said that HWAN made a false entry on the renewal applications for these years by not reporting administrative actions against Choice Home Warranty.

For the renewal applications submitted for 2014 and 2015, the service contract provider that submitted the applications with the Division is Home Warranty Administrators of Nevada, Inc. dba Choice Home Warranty. As explained in Section C above, however, Choice Home Warranty is CHW Group. It is a legal impossibility for HWAN to also be CHW Group even if HWAN registered a dba called Choice Home Warranty. HWAN did not violate Nevada law by failing to disclose administrative actions taken against CHW Group in other states. CHW Group is HWAN's administrator, and none of the applications asked whether the administrator or its officers have been the subject of administrative actions in other states. To that end, HWAN was not required to report administrative actions against Choice Home Warranty in its 2014 and 2015 renewal applications.

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2. Applications Filed with the Division

With the Hearing Officer's determination that HWAN and Choice Home Warranty are separate entities, the evidence shows that Respondent did make a false entry of material fact in its applications. All the applications presented at the hearing ask the applicant to disclose the name of the administrator. For all of the renewal applications Mandalawi submitted on behalf of HWAN, the administrator is noted as "self," and this was not true. "Self" means that the service contract provider--HWAN in this case—was administering all of the claims. According to the testimony of Mandalawi, Hakim, and Ramirez, Choice Home Warranty (which is CHW Group) is the administrator for HWAN. Respondent argues that this fact was disclosed in HWAN contract HWA-NV-0711, which was provided to the Division in 2011. Even if the disclosure is sufficient to say the Division was on notice in 2011 (when the HWAN contract was approved) that Choice Home Warranty was the administrator, every renewal application submitted indicated the contrary. When asked on the renewal applications whether there were any changes to the administrator or a newly designated administrator, in each renewal application, Mandalawi responded that there was no change—the administrator was "self," which is HWAN. If CHW Group was the administrator, then "self" was not an accurate response to the question on the applications. Claims administration is a material part of service contracts and, therefore, a material fact, required by NRS 690C.160.3. As such, HWAN misstated a material fact in its application. For each application year starting in 2011 that HWAN reported "self" as the administrator, is one violation of NRS 686A.070. (Five counts.)

Additionally, HWAN indicated in its applications filed starting in 2011 that it was using the service contract HWA-NV-0711 that was approved by the Division. On at least one occasion, there is evidence that HWAN used a service contract that, in fact, was not approved by the Division. Service contracts must comply with certain provisions of the Insurance Code and, therefore, must be approved before they are used. The application year 2015 did not disclose the use of an unapproved form. The service contract is a material part of the service contract provider application and, therefore, a material fact of the application. As such, HWAN misstated another material fact in its 2015 renewal application, in violation of NRS 686A.070. (One count.)

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E. The Division Claims Respondent Has Engaged in Unfair Practices in Settling Claims

The Division alleges that the number of complaints against Respondent show that Respondent has engaged in unfair practices in settling claims in violation of NRS 686A.310 and had, thereby, acted in an unsuitable manner. NRS 679B.125.2. Respondent argues that the number of complaints does not amount to unfair practices in settling claims, and that it believes it provides Nevada customers sterling service.

In this case, the evidence shows that the Division received at least 63 individual consumer complaints about HWAN, and 25 consumer complaints against Choice Home Warranty. Of the complaints, five were presented at the hearing: three complaints from 2014 and two complaints from 2016. The complaints allege that Choice Home Warranty did not cover appliances that consumers believed were covered, or that Choice Home Warranty did not pay the technician who provided services on the appliance. When the Division got involved, HWAN agreed to cover or settle the complaints. The Division's evidence says the claims were covered; Respondent's evidence says the claims were not covered. Respondent's agreeing to pay the claims as a result of the Division's involvement does not mean that Respondent admitted that the claims were covered. As presented, the Division's evidence was insufficient to show that Respondent engaged in unfair practices in settling claims.

F. The Division Claims Respondent Has Failed to Make Its Records Available

The Division claims that Respondent failed to make available information requested by the Commissioner in violation of NRS 690C.320.2. The Division sought information about HWAN's claims and open contracts in Nevada. Respondent argues that the Division presented no evidence to support this claim.

The evidence shows that the Division made several requests of Respondent through Mandalawi, including to Mandalawi's email address of record. Respondent acknowledges having communicated with the Division via email or telephone on other occasions, as evident through the testimony and exhibits. The parties both state that the requested information was produced, but only after a subpoena was issued, which was at least six months after the renewal application was received. Moreover, this information relating to how many open contracts and claims Respondent had in Nevada was requested

 in the renewal application, but Respondent did not respond to those questions. The law is clear that, upon the Commissioner's request, "[a] provider shall... make available" records concerning any service contract issued, sold, or offered for sale available. NRS 690C.320.2. Thus, Respondent violated NRS 690C.320.2 when it did not produce such information when requested. (One count.)

G. Respondent Has Conducted Business in an Unsuitable Manner

1. Complaints Against Respondent

The Division claims that, given the number of consumer complaints in Nevada, media reports, and findings by other states, constitutes a pattern of behavior that Respondent is operating in an unsuitable manner, and that Respondent's practices cause injury to the general public with such frequency as to indicate a general business practice, in violation of NRS 690C.325.1(b) and NRS 679B.125.2.

The evidence shows a number of consumer complaints posted online. These reports include complaints by Nevadans, but the Division made no effort to verify the substance of the complaints. This evidence, while consistent with the consumer complaints received by the Division, does not substantiate that Respondent is operating in an unsuitable manner because the substance of the reports was not vetted. This evidence tends to corroborate that there may be a problem with claims handling. These violations are troubling, and may warrant further review to determine whether Respondent's claims handling is appropriate. However, this evidence regarding claims handling does not show that Respondent is violating Nevada laws or causing injury to the general public "with such frequency as to indicate a general business practice."

2. HWAN's Association with CHW Group

With the Hearing Officer's determination that HWAN and Choice Home Warranty are separate entities, as argued by Respondent, the Hearing Officer concludes that Respondent conducted business in an unsuitable manner by allowing an unregistered entity to engage in the business of service contracts in Nevada.

Respondent argues that the Division violated its due process rights in claiming that HWAN allowed CHW Group to operate without a license because Respondent "never received proper notice of the Division's argument that CHW Group, Inc. is one and the same with HWAN." (HWAN's Closing

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Arg. 4.) Respondent further argues that this Order should find "that HWAN and CHW are separate entities and that CHW has not used HWAN to avoid its own licensing.' (Id. at 7.) The Hearing Officer finds Respondent's arguments to be contradictory and unsupported.

Based on the Amended Complaint, it is clear that the Division considered HWAN and Choice Home Warranty to be one-and-the-same entity. When the Division claimed that Respondent should have disclosed that Choice Home Warranty had been disciplined in other states, Respondent argued in its prehearing statement that no such duty existed because HWAN and Choice Home Warranty are two separate entities because Choice Home Warranty is CHW Group. Facts about how Respondent operates were presented during the hearing, and it was Respondent's witnesses who explained who the different entities, and their respective roles, are. Respondent brought as witnesses the CEO of CHW Group and the COO of CHW Group, in addition to Mandalawi, President of both HWAN and CHW Group, who all spoke proficiently about the entities and clearly distinguished them. It was Respondent's position that Choice Home Warranty was CHW Group, and Respondent presented considerable evidence to support its position. Respondent cannot claim that HWAN and Choice Home Warranty are two separate entities and, in the same breath, conclude that Respondent had no notice of the Division's position that HWAN and Choice Home Warranty were considered one and the same entity to avoid responsibility for violations of law that resulted from the very conclusion they advocated. Therefore, it cannot be said that Respondent had no notice of the Division's argument that CHW Group is one and the same with HWAN.

Respondent also argues that the Division is equitably estopped from taking action against it because the Division knew that CHW Group and HWAN were selling contracts in Nevada. There is no evidence that the Division knew that CHW Group and Choice Home Warranty were the same. The record likewise shows no evidence that the Division was aware that CHW Group was selling contracts in Nevada, only that Choice Home Warranty was selling contracts in Nevada. The Division asked HWAN to register Choice Home Warranty as a dba because, after a discussion with Mandalawi, "[i]t was identified that Choice and HWAN were one and the same entity, that Choice was not selling illegally because HWAN was a licensed entity in Nevada." (Test. Jain.) Respondent argues that it detrimentally relied upon the Division's representation that in exchange for HWAN's use of the

fictitious name, the Division released the legal right to initiate an adversarial action that HWAN and CHW Group are the same entity. How a fictitious name registration amounts to detrimental reliance is unclear. The Commissioner's obligation under the Insurance Code is to protect Nevadans in the business of service contracts. The Commissioner cannot ignore her charge under the law—when an entity is violating a law that harms Nevadans, the Commissioner must act.

Respondent claims that the Division is estopped from taking action against Respondent because the Division made express representations to HWAN relative to HWAN's relationship with CHW Group, and that HWAN relied on these in conducting its operations. There is no evidence in the record that HWAN had to or did change its operations as a result of the dba registered in Nevada. More importantly, there is no evidence that the Division knew that Choice Home Warranty was CHW Group or of the contract between HWAN and CHW Group. Even if in 2011 the Division approved a contract in 2011 that indicated that Choice Home Warranty was administering the contract, contract administration is not approval to issue, sell, or offer for sale service contracts. Moreover, after that contract was approved in 2011, Respondent indicated that it was itself administering its service contracts, which was not true.

Based on the presentation of Mandalawi and Hakim, CHW Group, Inc. is the legal entity that controls and operates all the content, data, contracts, information, processing, management, claims, marketing, advertising, and sales of all products sold through HWAN, while HWAN manages regulatory compliance. Respondent claims this creates efficiencies in managing the product being sold across the country, with the nuances of different states' requirements identified in the service contract issued to consumers. According to Hakim, an administrator is permitted to issue, sell, and offer for sale or administer service contracts without a certificate of registration pursuant to NRS 690C.120.2. Hakim is incorrect.

Nevada law clearly prohibits the issuance, sale, or offering for sale service contracts unless the provider has been issued a certificate of <u>registration</u>. NRS 690C.150. The provision Hakim incorrectly relies on, NRS chapter 690C section 120 subsection 2, involves a certificate of <u>authority</u> issued pursuant to NRS chapter 680A, which is a certificate issued to *insurance companies* to operate in Nevada. A certificate of registration and a certificate of authority are two different things. What NRS

690C.120.2 says is that a certificate of authority is not required in the business of service contracts and, so, anyone involved in service contracts is not required to obtain a certificate of authority. It most certainly does not say that an administrator may issue, sell, or offer to sell service contracts without proper registration pursuant to NRS 690C.150. Such a reading would make the entirety of NRS chapter 690C a nullity.

By definition, an administrator should not be engaged in issuing, selling, or offering to sell service contracts. Hakim, Mandalawi, and Ramirez all testified that Choice Home Warranty handles all sales, advertising, and marketing for HWAN. As Hakim stated, his interest in HWAN is that HWAN continue to operate, "because if [HWAN is] not operating in the State of Nevada, then Choice Home Warranty is not operating in the State of Nevada." (Tr3. 98:9-16.) This is a reflection of CHW Group's intent to operate in Nevada using HWAN for "regulatory compliance." This intent is further reflected in the service contract that was sold in Nevada that identified CHW Warranty as the company—a service contract that was not approved for use in Nevada.

Based on the evidence, it is clear that "regulatory compliance" as stated by Mandalawi means that HWAN holds the certificate of registration in Nevada, and nothing more. Since receiving its COR, HWAN has been merely a figurehead, enabling an unlicensed entity to engage in the business of service contracts in Nevada under HWAN's license. CHW Group has engaged in the business of service contracts without a license, which is a violation of NRS 690C.150, and skirted regulation by the Division, which is a danger to the public. This activity has been occurring since at least 2010, when HWAN was first licensed. With the sale of over 69,000 service contracts, it is undeniable that it is Respondent's practice to allow CHW Group to issue, sell, and offer for sale service contracts in Nevada, thereby avoiding regulation for each contract sold in Nevada. HWAN's practice has occurred with such frequency as to indicate a general business practice, which amounts to conducting business in an unsuitable manner, in violation of NRS 690C.325 and 679B.125.

H. The Division Requests a Cease and Desist Order to Prevent Respondent from Engaging in the Business of Service Contracts Without a Certificate of Registration

In the Amended Complaint, the Division indicates that Respondent filed a renewal application for 2016, and that the Commissioner is authorized to refuse to renew a provider's certificate of

 Respondent's 2016 COR was properly denied the Division appears to be claiming that Respondent is improperly engaging in the business of service contracts. Respondent argues that it had no notice of the facts underlying the Division's position that it did not appropriately renew its COR in 2016. Mandalawi believed that the issue of the 2016 renewal application would be considered in this hearing and that, until then, HWAN could continue operating in Nevada. (Test. Mandalawi.) The Hearing Officer finds that the Division did not properly notify Respondent that the 2016 renewal application was denied.

In Nevada, certificates of registration for service contract providers expire one year after the

registration ("COR"). The Division requested a cease and desist be issued. In arguing that

In Nevada, certificates of registration for service contract providers expire one year after the COR is issued. NRS 690C.160.3. Nothing in Nevada law grants the Division authority to allow a provider to continue operating after the expiration of a COR, but a provider may submit a renewal application to receive a new COR to continue operating. It is unclear how the automatic expiration of a COR after one year would require notice to the provider for due process purposes when the law clearly makes the COR available for one year and no longer. However, when a provider timely submits a renewal application that is denied, then the Division must issue a notice to the provider about the denial, providing an explanation for the denial and an opportunity for the provider to request a hearing on the propriety of the denial. A hearing on such denials are heard within 30 days.

In this case, Respondent timely filed a renewal application on or about November 7, 2016, to obtain a new COR. When the Division found the renewal application to be incomplete, the Division should have promptly notified Respondent that the renewal application was not complete and, therefore, denied so that Respondent would know that it was not approved to continue operating in Nevada. Notice of the denial was finally provided on or about July 21, 2017, almost eight months after HWAN submitted the application. The denial also provided no information as to why the renewal application was denied, nor did it notify Respondent that it could appeal the decision through a hearing request. Thus, the Hearing Officer finds that for the service contracts sold up until the date of this Order, Respondent cannot be found to have sold without a valid COR in violation of Nevada law since the Division did not properly notify Respondent of the denial with an explanation of the denial or of the opportunity for a hearing on the denial, which would have been adjudicated within 30 days of a hearing

request and prevented 13 months of Respondent selling service contracts without a COR.

Nonetheless, the registration expired as a matter of law on November 18, 2016. Therefore, as of the date of this Order, Respondent is on notice that it must apply for a renewal of its certificate of registration if it wishes to continue in the business of service contracts in Nevada within 30 days of the date of this Order. The Division must issue its determination on the application no later than 15 business days after receipt of the complete application. As a result, the Division cannot take action against Respondent for issuing, selling, or offering for sale service contracts without a certificate of registration from the date of this Order plus 45 days.³

ORDER OF THE HEARING OFFICER

Based on the foregoing Findings of Fact and Conclusions of Law, the preponderance of the evidence presented at hearing shows that Respondent has violated the provisions of the Insurance Code complained of by the Division. Accordingly, the Hearing Officer HEREBY ORDERS that:

- Respondent be fined \$30,000, the maximum fine of \$5,000 allowed under NRS 686A.183.1(a), for each of six violations of making a false entry of material fact in a record or statement in violation of NRS 686A.070;
- 2. Respondent be fined \$500, an administrative fine authorized pursuant to NRS 690C.325.1 in lieu of a revocation, for failing to make its records available to the Commissioner upon request;
- Respondent be fined \$50 for each act or violation,⁴ for conducting business in an unsuitable manner by allowing an unregistered entity to issue and offer service contracts in Nevada, and to sell 23,889 service contracts in Nevada through Respondent's certificate of registration, for a total of \$1,194,450; and

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This ruling does not prevent the Division from taking action for other violations in connection with the service contracts issued, sold, or offered for sale, during this period if any are later discovered.
 Pursuant to NRS 690C.325.1, the maximum administrative fine allowed is \$1,000 per act or violation.

4. If Respondent wishes to continue engaging in the business of service contracts in Nevada,
Respondent may apply for a certificate of registration as provided in this Order.

All administrative fines imposed in this Order are due no later than 30 days from the date of this Order.

So ORDERED this 18th day of December 2017.

Alexia M. Emmermann

Hearing Officer

FINAL ORDER OF THE COMMISSIONER

Based on the record in this administrative hearing and having reviewed the Hearing Officer's 17.0050. Findings of Fact and Conclusion of Law in this matter, Cause No. 16.0126, I concur with the Hearing Officer's Order. For good cause appearing, I specifically adopt the Findings of Fact, Conclusions of Law, and Order of the Hearing Officer as the Final Order in this matter.

IT IS SO ORDERED.

DATED this _____ day of December, 2017.

BARBARA D. RICHARDSON
Commissioner of Insurance

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER OF HEARING OFFICER, AND FINAL ORDER OF THE COMMISSIONER, in CAUSE NO. 17.0050, via electronic mail and by mailing a true and correct copy thereof, properly addressed with postage prepaid, certified mail return receipt requested, to the following:

Kirk B. Lenhard, Esq.
Brownstein Hyatt Farber Schreck, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106
E-MAIL: klenhard@bhfs.com
CERTIFIED MAIL NO. 7017 1070 0000 8962 9357

Travis F. Chance, Esq.
Brownstein Hyatt Farber Schreck, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106
E-MAIL: tchance@bhfs.com
CERTIFIED MAIL NO. 7017 1070 0000 8962 9364

Lori Grifa, Esq.
Archer & Greiner, P.C.
Court Plaza South, West Wing
21 Main Street, Suite 353
Hackensack, NJ 07601
E-MAIL: lgrifa@archerlaw.com
CERTIFIED MAIL NO. 7017 1070 0000 8962 9371

and copies of the foregoing were sent via electronic mail to:

Richard Yien, Deputy Attorney General Nevada Attorney General's Office E-MAIL: ryien@ag.nv.gov

DATED this 18th day of December, 2017.

Employee of the State of Nevada Department of Business and Industry Division of Insurance

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REC'D& FILED 1 KIRK B. LENHARD, ESQ., Nevada Bar No. 1437 klenhard@bhfs.com 2 TRAVIS F. CHANCE, ESO., Nevada Bar No. 13800 tchance@bhfs.com 3 MACKENZIE WARREN, ESO., Nevada Bar No. 14642 mwarren@bhfs.com 4 BROWNSTEIN HYATT FARBER SCHRECK, LLP 100 North City Parkway, Suite 1600 5 Las Vegas, NV 89106-4614 Telephone: 702.382.2101 Facsimile: 702.382.8135 6 LORI GRIFA, ESQ., (pro hac vice application pending) 7 lgrifa@archerlaw.com ARCHER & GREINER P.C. 8 21 Main Street, Suite 353 9 Hackensack, NJ 97601 Telephone: 201.342.6000 BROWNSTEIN HYATT FARBER SCHRECK, LLP 100 North Gity Parkway, Suite 1600 Las Vegas, NV 89106-4614 702,382,2101 10 Attorneys for Petitioner Home Warranty Administrator of 11 Nevada, Inc. dba Choice Home Warranty 12 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA 13 IN AND FOR CARSON CITY 14 CASE NO.: 17 OC 00269 1B HOME WARRANTY ADMINISTRATOR 15 DEPT NO.: I OF NEVADA, INC., dba CHOICE HOME WARRANTY, a Nevada 16 corporation, 17 REPLY IN SUPPORT OF MOTION FOR Petitioner, STAY OF FINAL ADMINISTRATIVE 18 **DECISION PURSUANT TO NRS 233B.140** ٧. 19 STATE OF NEVADA, DEPARTMENT OF BUSINESS AND INDUSTRY -20 DIVISION OF INSURANCE, a Nevada administrative agency, 21 22 Respondent. 23 Petitioner HOME WARRANTY ADMINISTRATOR OF NEVADA, INC. dba CHOICE 24 HOME WARRANTY ("HWAN"), by and through its counsel of record, Kirk B. Lenhard, Esq., 25 Travis F. Chance, and Mackenzie Warren, Esq., of the law firm of Brownstein Hyatt Farber 26 Schreck, LLP, hereby files this Reply In Support of Motion for Stay of Final Administrative 27 Decision Pursuant to NRS 233B.140 (the "Reply"). 28 16474392

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This Reply is made and based upon the following memorandum of points and authorities, the pleadings and papers on file herein, and any oral argument this Court may consider.

DATED 7th day of February, 2018.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

BY:

KIRK B. LENHARD, ESQ., Bar No. 1437

klenhard@bhfs.com

TRAVIS F. CHANCE, ESQ., Bar No. 13800

tchance@bhfs.com

MACKENZIE WARREN, ESQ., Bar No. 14642

mwarren@bhfs.com

100 North City Parkway, Suite 1600

Las Vegas, NV 89106-4614 Telephone: 702.382.2101

Facsimile: 702.382.8135

ARCHER & GREINER P.C.

LORI GRIFA, ESQ.

(pro hac vice application pending)

lgrifa@archerlaw.com

21 Main Street, Suite 353

Hackensack, NJ 97601

Telephone: 201.342.6000

Attorneys for Petitioner Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Division attempts to characterize HWAN's Motion to Stay Administrative Decision Pursuant to NRS 233B.140 (the "Motion") as untimely but ignores the fact that courts of this state with proper administrative appellate jurisdiction have the inherent authority to issue injunctions which, in the context of the Motion, is identical to a request for a stay. The Division further attempts to muddy the waters by claiming that HWAN's Motion must be denied simply because HWAN did not address the potential success of all of its claims on appeal.

To be clear, HWAN seeks only a stay of the administrative fines imposed by the Decision pending resolution of its Petition for Judicial Review (the "Petition"), despite the Division's contention to the contrary. A stay is warranted for several reasons: (i) although the Decision rendered below is final, this Court has the authority to issue an injunction to preserve the status quo by virtue of its proper jurisdiction over HWAN's Petition, an identical remedy to a stay under NRS 233B.140; (ii) the Division's imposition of nearly \$1.2 million in fines exceeds its statutory authority because Nevada law only allows for a maximum penalty of \$10,000.00, no matter how many times similar conduct occurred; (iii) the Division's actions actively threaten HWAN's reputation and business goodwill, which constitute an irreparable injury to support a stay that is distinct from any monetary damages; and (iv) the purported "danger to the public" that would result in the event that a stay is granted is belied by the Division's own findings. Accordingly, the fine should be stayed.

II. DISCUSSION

A. HWAN's Motion is timely because, notwithstanding the provisions of NRS 233B.140, this Court has the inherent authority to issue an injunction, which is akin to a stay.

The Division's first argument is an attempt to avoid resolution of the Motion on its merits by citing to the procedural deadline set forth in NRS 233B.140. Subsection 1 of that statute provides that a stay application is to be "file[d] and serve[d]... at the time of filing the petition for judicial review." Notwithstanding this requirement, the Division's attempt to end-run the merits of HWAN's Motion must fail. Nevada law makes clear that "once a statute has conferred power, 16474392

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that power may not be unduly abridged, as the judiciary is tasked with managing and finally deciding cases." Tate v. State, Bd. of Med. Exam'rs, 131 Nev. Adv. Op. 67, 356 P.3d 506, 508-09 (2015) (citing Smothers v. Lewis, 672 S.W.2d 62, 64 (Ky.1984) (concluding "that a court, once having obtained jurisdiction of a cause of action, has, as an incidental to its constitutional grant of power, inherent power to do all things reasonably necessary to the administration of justice in the case before it"), and Commonwealth v. Yameen, 401 Mass. 331, 516 N.E.2d 1149, 1151 (1987) (declining to interpret a statute to prohibit a stay of a license revocation pending judicial review)). By extension, "once a court gains jurisdiction of a case, it has the power "to preserve the status quo and maintain and protect ... the subject-matter of the suit as it existed at the time the appeal was taken."" Id. at 510 (citing and quoting Houston, B. & T. Ry. Co. v. Hornberger, 141 S.W. 311, 312 (Tex. Civ. App. 1911)).

Here, adopting the Division's position and denying the Motion as untimely would only undermine and contravene this policy. The stay sought here is, undeniably, injunctive relief. See NRS 233B.140(2) (setting the standard for granting or denying a stay the same as that for granting or denying an injunction under NRCP 65). To bar this Court from granting this injunctive stay solely on the basis that NRS 233B.140(1) requires the same to be served and filed concurrently with the Petition effectively "render[s] the appeal a meaningless and merely ritualistic process, as the sanctions imposed will likely have been implemented or completed before the court could judicially review the case." Tate, supra at 510 (internal citations and quotations omitted). Reading NRS 233B.140(1) to forever preclude the grant of a stay in this case if a request for the same is not filed and served with a petition for review impermissibly infringes upon this Court's inherent authority to preserve the status quo and to fully determine the issues raised in HWAN's Petition. See id. Therefore, it is a distinction without a difference as to whether this Motion is construed as one for a stay under NRS 233B.140 or one for an injunction under NRCP 65 and the Division's argument of untimeliness must be rejected. The Motion should be considered on its merits.

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B. NRS 679B.185(4) applies to the instant dispute because it is incorporated by NRS 690C.120(1)(b).

The Division claims that NRS 679B.185(4)'s five year statute of limitations does not apply to service contract providers because they are licensees. It must be noted that nowhere does the Division's Opposition address the fact that NRS 679B.185(4) is presumptively incorporated as applicable to such providers by virtue of NRS 690C.120(1)(b). Moreover, NRS 679B.185(4) applies to violations related to the "unauthorized transaction of insurance." "Transacting insurance," in turn, is defined in NRS 679A.130 as including certain specific actions, as well as "other aspects of insurance operations to which provisions of this Code by their terms apply." It is indisputable that NRS 690C, the chapter governing service contract providers, is part and parcel of the Insurance Code. Thus, NRS 679B.185(4) applies here and a five year statute of limitations must be applied to bar at least some of the fines set forth in the Decision, as noted in the Motion.

C. The Division's unconvincing attempt to distinguish HWAN's status as a licensee versus a non-licensee under the statutory scheme produces an absurd result that would surely pose actual "danger to the public."

The Division's Opposition too finely parses Nevada law to justify the Division's excessive fine of approximately \$1.2 million, and yet in the process sets the stage for an absurd outcome that undermines its own arguments. The Division's position that no statutory cap applies to potential fines against HWAN because HWAN is a "licensee" is without legal merit. *See* Opp. at 6-9. The Decision found HWAN to be in violation of NRS 690C.325(1), among other statutes. NRS 690C.325(1) states in relevant part that "the Commissioner may levy upon the **provider**, and the **provider** shall pay forthwith, an administrative fine of not more than \$1,000 for each act or violation." (emphasis added). Yet, a "provider" is defined as "a **person** who is obligated to a holder pursuant to the terms of a service contract…" NRS 690C.070 (emphasis added).

This definition makes clear that a provider is also "person" within the meaning of NRS 690C.330, which specifies that "[a] person who violates any provision of this chapter or an order or regulation of the Commissioner issued or adopted pursuant thereto may be assessed a civil penalty by the Commissioner of not more than \$500 for each act or violation, not to exceed an

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aggregate amount of \$10,000 for violations of a similar nature." In refuting HWAN's argument that NRS 690C.330 does not apply, the Division's entire premise rests on the position that HWAN is a "licensee," as apparently distinguished from a "person" - and therefore, the statute of limitations is inapplicable. See Opp. at 6-9. This argument is contradictory to the clear statutory definitions. Provider is clearly defined as a "person," and not merely a licensee, which is supported by the Division's own findings. Specifically, the Division's Amended Complaint alleged that HWAN was in violation of NRS 679B.125, which provides that "[t]he Commissioner may observe the conduct of each authorized insurer and other persons..." to assess whether business is conducted in an unsuitable manner. (emphasis added). See Pet., Ex. 1 at I(D), ¶ 4.

When two statutes can stand together harmoniously - as do the statutes at issue here - "it is the duty of the judge to give both of them full effect." Presson v. Presson, 38 Nev. 203, 210, 147 P. 1081, 1083 (1915). See also State v. Eggers, 36 Nev. 372, 136 P. 100, 104("It is also a well-recognized principle that statutes relating to the same matter which can stand together should be construed so as to make each effective."). The Division admits that NRS 690C.325 and 690C.330 "do not conflict." See Opp. at 8:15-16. HWAN agrees but for the reason that "providers" are clearly also defined as "persons" falling within the ambit of NRS 690C.330.

Furthermore, the Division's reliance on a New York case to equate HWAN's purported insurance violations to the strict ethical standards of a medical doctor is unconvincing. See Opp. at 6:4-16. Likening the Division's supposed lack of statute of limitations to the fact that none exist in New York's professional misconduct proceedings against physicians is a farfetched comparison. Moreover, the Sinha case was decided in the context of a medical license suspension proceeding to examine a doctor's moral unfitness to practice medicine - this is clearly inapposite to the Decision below.

Lastly, the Division's attempt to distinguish the statutory cap ignored in the Decision results in an absurd outcome. Specifically, adopting the Division's interpretation results in a situation in which an unlicensed "person" found to be in violation of NRS 690C would enjoy a \$10,000.00 cap on fines for similar conduct, while an unfortunate "licensee" like HWAN would not. Surely, a licensee that has been vetted through the Division's presumably stringent review 16474392

The Division's proffered interpretation is absurd because the entire purpose of the licensing statute itself is to protect the public from unsuitable providers and this Court must seek to avoid that result. See Sheriff v. Smith, 91 Nev. 729, 733, 542 P.2d 440, 443 (1975) (holding that statutory interpretation should avoid absurd or unreasonable results); see also Presson v. Presson, 38 Nev. 203, 210, 147 P. 1081, 1083 (1915) (reasoning that "the Legislature cannot be presumed to have done an absurd thing."). If the Legislature intended to parse these definitions to make the distinction that the Division does, it would have done so. See State v. Quinn, 117 Nev. 709, 712–13, 30 P.3d 1117, 1120 (2001) (holding that courts only look beyond the plain language of the statute if that language is ambiguous or its plain meaning clearly was not intended). The Division's interpretation has the potential to place the public "in danger" because reading NRS 690C to allow for a cap for non-licensees does not discourage those persons from operating in this State without proper authority – one of the arguments the Division cites to support denial of the stay. See Opp. at 12:8-22. Accordingly, the Division's position should be rejected and the fine should be stayed.

D. The basis for HWAN's Motion is not the Division's imposition of the monetary fine itself but the irreparable harm to its reputation and business goodwill that would result if the Decision is not stayed.

The Division's Opposition misstates HWAN's position as one being solely related to monetary damages, when in fact HWAN will suffer irreparable harm with its business reputation should a stay not be issued. Nowhere in HWAN's Motion did it presuppose that a monetary fine alone constitutes irreparable harm. As HWAN clearly outlined in its Motion, it is well established in Nevada that "acts committed without just cause which unreasonably interfere with a business or destroy its credit or profits, may do an irreparable injury and thus authorize issuance of an injunction." See Sobol v. Capital Mgmt. Consultants, Inc., 102 Nev. 444, 446, 726 P.2d 335, 337 (1986) (emphasis added) (citing Guion v. Terra Marketing of Nev., Inc., 90 Nev. 237, 240, 523 P.2d 847, 848 (1974)). In other words, HWAN did not take issue with the

monetary fine in a vacuum to which a request for a stay would be inappropriate relief. Instead, HWAN clearly outlined how its business goodwill was at stake if a stay was not issued. It is the damage to HWAN's reputation that no dollar figure can be assigned to compensate.

In *Tate*, *supra*, the Supreme Court engaged in an extensive discussion of whether, once given the power of review, a court has the inherent authority to issue an injunction to preserve the status quo. *See generally*, 356 P.3d 506. In so doing, the Supreme Court noted that administrative sanctions may include "fees and fines, a public reprimand, and suspension of [a] license" and that, in the absence of a stay, irreparable harm may occur. *Id.* 356 P.3d at 510. Such is the case before the Court here. The fines imposed by the Decision sought to be stayed pose the threat of irreparable harm to HWAN's reputation and ability to continue operating its business in this state pending appeal. This harm is irreparable because such a significant fine, without a stay, obviates the need for an appeal since the aforementioned harm may occur before the instant appeal is resolved. *See Tate*, *supra*.

The Division somewhat paradoxically insinuates that HWAN has *already* suffered irreparable injury pointing to its administrator's alleged "well-established negative public reputation," further arguing that a public announcement of the regulatory fines would only add insult to injury. *See* Opp. at 11:21-23. This logic is misguided and flatly contradicts the Decision because HWAN's supposed use of an unsuitable administrator was not a finding of the Decision, or any other order for that matter. In fact, the Decision below found there was **insufficient evidence** to support this very claim. *See* Pet., Ex. 2 at 21-22. Thus, the Opposition lacks merit and a stay should be issued to avoid irreparable harm to HWAN's reputation and business goodwill in this State.

E. The public interest weighs in favor of staying the Decision because otherwise, HWAN's contract holders will suffer harm due to the lack of service of and/or cancellation of their contracts.

The risk to the public should the Court grant the stay is marginal at best. Of the tens of thousands of service contracts issued by HWAN in the State of Nevada, the Division relied upon just 62 wholly unverified and uncorroborated consumer complaints to substantiate its claims of purported "danger to the public." See Opp. at 12: 8-22. Instead, this Court should consider the

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public's interest in the issuance of a stay of the Decision. See IT Corp. v. Cnty. of Imperial, 672 P.2d 121, 127-28 (Cal. 1983). First, the public's interest in being protected from unsuitable business practices is minimal here as illustrated by the Decision itself, which noted that the "Division made no effort to verify the substance of the [consumer] complaints." See Decision at 22:13. The substance of these complaints "was not vetted" by the Division and yet, the Division now seeks to again rely upon these complaints because HWAN has moved for a stay. See id. at 22:15-16. In fact, the Decision concluded that HWAN did not engage in conduct "caus[ing] injury to the general public 'with such frequency as to indicate a general business practice."" See id. at 22:19-20. Yet, the Division still wishes to rely on these 62 complaints to argue that the public is at risk should this Court enter a stay for the full fine amount. Such an argument is untenable in the face of the evidence and preliminary findings outlined in the Decision itself.

Second, the public has an actual, significant interest in a stay of the Decision. Specifically, HWAN has thousands of active contracts in the State of Nevada. The Decision's imposition of such punitive and excessive fines most certainly destroys HWAN's consumer confidence and business reputation. It also imposes a real threat of cancellation of those contracts and/or HWAN's financial inability to service them. HWAN's contract holders will be prejudiced because they will no longer have any benefits under the service contracts for which they have paid. This must be weighed against the fact that, as set forth above, the Decision itself clearly found that there was wholly insufficient evidence to show that HWAN has engaged in unsuitable or deceptive trade practices. See Decision at 21:15-17. Therefore, the public has an interest weighing in favor of issuing a stay - and any attempt by the Division to sound the alarm on the public's behalf is unfounded.

Moreover, denying the Motion on this basis would only undermine and contravene the policy underlying the public's interest, as the stay sought here is, again, injunctive relief. Resolving an injunction motion requires a delicate balance, and instructs courts to weigh the various "interest[s] of the public." Tate, 365 P.3d at 510-511. See also 42 Am. Jur. 2d Injunctions § 39 (2015) (discussing how the public interest and the rights of third parties weighs in the grant

or denial of injunctive relief). If allowing a stay presents little to no danger to the public, as it does here, the public interest scale tips in favor of granting the stay requested by HWAN.

III. CONCLUSION

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Based upon the foregoing, HWAN respectfully requests that the fines against HWAN be stayed in their entirety. Alternatively, HWAN requests that it be permitted to post the full amount of the fine with the Court pending resolution of its Petition.

DATED this 7th day of February, 2018.

BROWNSTAIN HYATT FARBER SCHRECK, LLP

BY:

KIRK B. LENHARD, ESQ., Bar No. 1437

klenhard@bhfs.com

TRAVIS F. CHANCE, ESQ., Bar No. 13800

tchance@bhfs.com

MACKENZIE WARREN, ESQ., Bar No. 14642

mwarren@bhfs.com

100 North City Parkway, Suite 1600

Las Vegas, NV 89106-4614 Telephone: 702.382.2101

Facsimile: 702.382.8135

ARCHER & GREINER P.C.

LORI GRIFA, ESQ.

(pro hac vice application pending)

lgrifa@archerlaw.com

21 Main Street, Suite 353

Hackensack, NJ 97601

Telephone: 201.342.6000

Attorneys for Petitioner Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty

16474392

BROWNSTEIN HYATT FARBER SCHRECK, LLP 100 North City Parkway, Suite 1600 Lss Versas, No 9106-4614 702.382.2101

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of February, 2018, I served a true and correct copy of the foregoing REPLY IN SUPPORT OF MOTION FOR STAY OF FINAL ADMINISTRATIVE DECISION PURSUANT TO NRS 233B.140 via United States Mail, first class postage prepaid, at Las Vegas, Nevada, addressed to the following at the last known address of said individuals:

Richard P. Yien, Esq., Deputy Attorney General Office of the Attorney General 100 North Carson Street Carson City, NV 89701 Telephone: 775-684-1100 Fax: 775-684-1108

Attorneys for Respondent State of Nevada, Department Of Business And Industry -Division Of Insurance

hemployee of Brownstein Hyatt Farber Schreck, LLP

ę

1	KIRK B. LENHARD, ESQ., Nevada Bar No. 1437 klenhard@bhfs.com REC'D & FILEU REC'D & FILEU
2	TRAVIS F. CHANCE, ESQ., Nevada Bar No. 13800
3	tchance@bhfs.com MACKENZIE WARREN, ESQ., Nevada Bar No. 14642 SUSAN MERRIWETHER mwarren@bhfs.com
4	mwarren@bhfs.com BROWNSTEIN HYATT FARBER SCHRECK, LLP BY CLERK
	100 North City Parkway, Suite 1600
5	Las Vegas, NV 89106-4614 Telephone: 702.382.2101
6	Facsimile: 702.382.8135
7	LORI GRIFA, ESQ., (pro hac vice application pending)
8	lgrifa@archerlaw.com ARCHER & GREINER P.C.
	21 Main Street, Suite 353
9	Hackensack, NJ 97601 Telephone: 201.342.6000
10	•
11	Attorneys for Petitioner Home Warranty Administrator of Nevada, Inc., dba Choice Home Warranty
12	
12	

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR CARSON CITY

HOME WARRANTY ADMINISTRATOR OF NEVADA, INC., dba CHOICE HOME WARRANTY, a Nevada corporation,

CASE NO.: 17 OC 00269 1B DEPT NO.: I

Petitioner,

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STATE OF NEVADA, DEPARTMENT
OF BUSINESS AND INDUSTRY DIVISION OF INSURANCE, a Nevada
administrative agency,

Respondent.

MOTION FOR STAY OF FINAL ADMINISTRATIVE DECISION PURSUANT TO NRS 233B.140

REQUEST FOR SUBMISSION OF

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Petitioner Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty ("Petitioner") filed its Motion for Stay of Final Administrative Decision Pursuant to NRS 233B.140 (the "Motion") on January 16, 2018. Respondent State of Nevada, Department of Business and Industry - Division of Insurance filed its Opposition to the Motion on January 30, 2018. Petitioner's Reply is being submitted to the Court for filing concurrently herewith.

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to FJDCR 15(6), as all briefing has been completed, Petitioner hereby requests ibmit the matter to the Court for decision.

this 7th day of February, 2018.

BROWNSTEAN HYATT FARBER SCHRECK, LLP

BY:

KIRK B. LENHARD, ESQ., Bar No. 1437 klenhard@bhfs.com

TRAVIS F. CHANCE, ESQ., Bar No. 13800

tchance@bhfs.com

MACKENZIE WARREN, ESQ., Bar No. 14642

mwarren@bhfs.com

100 North City Parkway, Suite 1600

Las Vegas, NV 89106-4614 Telephone: 702.382.2101 Facsimile: 702.382.8135

ARCHER & GREINER P.C.

LORI GRIFA, ESQ.

(pro hac vice application pending)

lgrifa@archerlaw.com

21 Main Street, Suite 353

Hackensack, NJ 97601

Telephone: 201.342.6000

Attorneys for Plaintiff Home Warranty Administrator of Nevada, Inc., dba Choice Home Warranty

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BROWNSTEIN HYATT FARBER SCHRECK, LLP 100 Narth City Parkway, Suite 1600 Las Vegas, NV 89160-4614 702.882.2101

CERTIFICATE OF SERVICE

I hereby certify that on the day of February, 2018, I served a true and correct copy of the foregoing REQUEST FOR SUBMISSION OF MOTION FOR STAY OF FINAL ADMINISTRATIVE DECISION PURSUANT TO NRS 233B.140 via United States Mail, first class postage prepaid, at Las Vegas, Nevada, addressed to the following at the last known address of said individuals:

Richard P. Yien, Esq., Deputy Attorney General Office of the Attorney General 100 North Carson Street Carson City, NV 89701 Telephone: 775-684-1100 Fax: 775-684-1108

Attorneys for Respondent State of Nevada, Department Of Business And Industry -Division Of Insurance

an employee of Brownstein Hyart Farber Schreck, LLP

1	ADAM PAUL LAXALT		
2	Attorney General RICHARD PAILI YIEN		
3	Deputy Attorney General Nevada Bar No. 13035		
4	100 N. Carson St		
5	Carson City, NV 89701 (775) 684-1129		
6	(775) 684-1156 (fax) Email: <u>ryien@ag.nv.gov</u>		
7	Attorneys for the Division of Insurance		
8	IN THE FIRST JUDICIAL DISTRICT	COURT	Γ OF THE STATE OF NEVADA
9	IN AND FOR	CARSO	N CITY
10	HOME WARRANTY ADMINISTRATOR OF)	Case No. 17 OC 00269 1B
11	NEVADA, INC., dba CHOICE HOME WARRANTY, a Nevada corporation,)	Dept. No. 1
12	Petitioner,)	
13))	
14	VS.)	
15	STATE OF NEVADA, DEPARTMENT OF BUSINESS AND INDUSTRY – DIVISION OF)	
16	INSURANCE, a Nevada administrative agency)	
17	Respondent.)	
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19			
20	NOTICE OF ENTRY OF ORDE		
21			Motion for Stay, in the above-entitled matter,
22	was entered by Judge Russell on February 14, 2018	3, a copy	of which is attached hereto as Exhibit 1.
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AFFIRMATION

Pursuant to NRS 239B.030, the undersigned affirms that this document does not contain the personal information of any person.

DATED this 16th day of February 2018.

ADAM PAUL LAXALT Attorney General

By:

RICHARD PAILI YIEN
Deputy Attorney General
Nevada State Bar #13035
100 N. Carson Street
Carson City, Nevada 89701

(775) 684-1129

Attorney for the Division of Insurance

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the State of Nevada, Office of the Attorney General and that on the 16th day of February 2018, I filed a copy of the foregoing NOTICE OF ENTRY OF ORDER DENYING MOTION FOR STAY with First Judicial District Court; and served the same via email and by depositing for mailing at Carson City, Nevada, a true and correct copy in first class mail, postage prepaid, fully addressed to:

Alexia Emmerman, Hearing Officer Attn: Yvonne Renta <u>yrenta@doi.nv.gov</u> Division of Insurance 1818 E. College Parkway, Suite 103 Carson City NV 89706

Kirk B. Lenhard, Esq.

klenhard@bhfs.com
Travis F. Chance, Esq.
tchance@bhfs.com
Mackenzie Warren, Esq.
mwarren@bhfs.com
Brownstein Hyatt Farber Schreck, LLP
100 N. City Parkway, Suite 1600
Las Vegas, NV 89106-4614

Lori Grifa, Esq.
lgrifa@archerlaw.com
Archer & Greiner, P.C.

21 Main Street, Suite 353
Hackensack, New Jersey 97601

An employee of the U
Office of the Attorney General

LIST OF EXHIBITS

to Notice of Entry of Order Denying Motion for Stay

Exhibit Number	Exhibit Description	Number of Pages [This List of Exhibits' page is not included in the total number of exhibit pages]
1	File-stamped Order Denying Motion for Stay	4

Exhibit 1 Notice of Entry of Order Denying Motion for Stay Exhibit 1 Notice of Entry of Order Denying Motion for Stay

Case No.: 17 OC 00269 1B

Dept. No.: 1

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26 27 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

HOME WARRANTY ADMINISTRATOR OF NEVADA, INC., dba CHOICE HOME WARRANTY, a Nevada corporation,

Petitioner,

VS.

STATE OF NEVADA, DEPARTMENT OF BUSINESS AND INDUSTRY – DIVISION OF INSURANCE, a Nevada administrative agency,

Respondent.

ORDER DENYING MOTION FOR STAY

This matter is before the Court pursuant to a Motion for Stay of Final Administrative Decision Pursuant to NRS 233B.140 filed on January 16, 2018. An Opposition to this Motion was filed on January 30, 2018, and a Reply thereto was filed on February 8, 2018.

The Findings of Fact, Conclusion of Law, Order of hearing Officer, and Final Order of the Commissioner were entered on December 18, 2017, and a Certificate of Service was entered on December 18, 2017. The Petition for Judicial Review was filed in the First Judicial District Court on December 22, 2017. The Motion for Stay of Appeal of Final Administrative Decision Pursuant to NRS 233B.140 was not filed until January 16, 2018.

NRS 233B.140 provides that a petitioner who applies for a stay of the final decision in a contested case <u>shall</u> file and serve a written motion for the stay on the agency and all parties of record to the proceeding at the time of filing the petition for judicial review.

As set forth above, the Petition for Judicial Review in this matter was duly filed on December 22, 2017. The Motion for Stay was not filed until January 16, 2018, and not submitted for decision until February 8, 2018. Petitioners have failed to comply with the requirements of NRS 233B.140.

Therefore, good cause appearing;

IT IS HEREBY ORDERED that the Motion for Stay is DENIED.

Dated this <u>/4</u> day of February, 2018.

JAMES T. RÜSSELI DISTRICT JUDGE

1	<u>CERTIFICATE OF MAILING</u>
2	Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District
3	Court, and that on this day of February, 2018, I deposited for mailing at Carson City,
4	Nevada, a true and correct copy of the foregoing Order addressed as follows:
5	Kirk B. Lenhard, Esq. 100 North City Parkway, Suite 1600
7	Las Vegas, NV 89106-4614 Travis F. Chance, Esq.
8	100 North City Parkway, Suite 1600 Las Vegas, NV 89106
10	Lori Grifa, Esq. Court Plaza South, West Wing 21 Main Street, Suite 353 Hackensack, NJ 07601
12	Richard Yien
13	Deputy Attorney General 100 N. Carson Street Carson City, NV 89701
15	
16	Angela Jeffries
17	Judicial Assistant, Dept. 1
18	
19	

-3-

CERTIFICATE OF SERVICE

Pursuant to NRAP 25(1)(b) and 25(1)(d), I, the undersigned, hereby certify that I electronically filed the foregoing APPELLANT'S APPENDIX (VOLUME VIII OF XIV) with the Clerk of Court for the Supreme Court of Nevada by using the Supreme Court of Nevada's E-filing system on May 12, 2020.

I further certify that all participants in this case are registered with the Supreme Court of Nevada's E-filing system, and that service has been accomplished to the following individuals through the Court's E-filing System as indicated below:

Via Electronic Filing System:

Richard P. Yien Joanna N. Grigoriev

/s/ Joyce Heilich
An Employee of Holland & Hart LLP