IN THE SUPREME COURT OF THE STATE OF NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Petitioner, vs. THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, AND THE HONORABLE NANCY L. ALLF, DISTRICT JUDGE, DEPARTMENT NO. XXVII, Respondents, ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS, UNI-TER UNDER-WRITING MANAGEMENT CORP., UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION Real Parties in Interest	Supreme Court No. Dist. Ct. Case. No. A-19-797331-C **APPENDIX TO PETITION FOR A WRIT OF MANDAMUS VOLUME 9 OF 10**

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1	Complaint, filed 12/23/2014	1	PA000001-PA000133
2	Motion to Dismiss, filed 12/11/2015	1	PA000134-PA000146
3	Opposition to Motion to Dismiss, filed 1/15/2016	1	PA000147-PA000162
4	Transcript re: Directors' Motion to Dismiss, hearing held on 1/27/2016	1	PA000163-PA000171
5	Notice of Entry of Order Granting in Part and Denying in Part Motion to Dismiss, filed 2/26/2016	1	PA000172-PA000177
6	First Amended Complaint, filed 4/1/2016	1	PA000178-PA000696
7	Motion to Dismiss First Amended Complaint, filed 4/18/2016	2	PA000697-PA000723
8	Decision and Order, filed 5/4/2016	2	PA000723-PA000732
9	Opposition to Motion to Dismiss First Amended Complaint, filed 5/5/2016	2	PA000733-PA000820
10	Reply to Motion to Dismiss First Amended Complaint, filed 5/19/2016	2	PA000821-PA000831
11	Second Amended Complaint, filed 6/13/2016	2	PA000832-PA001353
12	Supplemental Motion to Dismiss First Amended Complaint, filed 7/18/2016	2	PA001354-PA001358
13	Third Amended Complaint, filed 8/5/2016	2, 3	PA001359-PA001887

14	U.S. Re Corporation's Answer to Third Amended Complaint, filed 8/12/2016	3	PA001888-PA001903
15	Uni-Ter Claims Services Corp.'s Answer to Third Amended Complaint, filed 8/12/2016	3	PA001904-PA001919
16	Second Supplement to Motion to Dismiss First Amended Complaint, filed 9/2/2016	3	PA001920-PA001923
17	Notice of Entry of Order Denying Motion to Dismiss First Amended Complaint, filed 10/11/2019	3	PA001924-PA001928
18	Answer to Third Amended Complaint [Directors'], filed 10/21/2016	3	PA001929-PA001952
19	Motion for Judgment on the Pleadings, filed 8/14/2018	3, 4	PA001953-PA002232
20	Opposition to Motion for Judgment on the Pleadings, filed 9/19/2018	4, 5	PA002233-PA002584
21	Reply to Motion for Judgment on the Pleadings, filed 10/4/2018	6	PA002585-PA002700
22	Transcript re: hearing held on 10/11/2018 re: all pending motions	6	PA002701-PA002722
23	Order Denying Motion for Judgment on the Pleadings, filed 11/2/2018	6	PA002723-PA002725
24	Motion for Reconsideration, filed 11/29/2018	6	PA002726-PA002744
25	Opposition to Motion for Reconsideration, filed 12/27/2018	6	PA002745-PA002758
26	Reply to Motion for Reconsideration, filed 1/4/2019	6	PA002759-PA002772
27	Transcript re: hearing held on 1/9/2019 re: Motion for Reconsideration	6	PA002773-PA002791
28	Scheduling Order, filed 1/29/2019	6	PA002792-PA002794

29	Order Denying Motion for Reconsideration, filed 2/11/2019	6	PA002795-PA002798
30	Motion for Stay Pending Petition, filed 3/8/2019	6	PA002799-PA002812
31	Joinder to Motion for Stay Pending Petition, filed 3/11/2019	7	PA002813-PA002822
32	Opposition to Motion for Stay Pending Petition, filed 3/12/2019	7	PA002823-PA002856
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35	Order Granting Motion for Stay, filed 4/4/2019	7	PA002866-PA002868
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37	Opposition to Motion to Lift Stay, filed 7/9/2019	7	PA002887-PA002892
38	Response to Motion to Lift Stay, filed 7/10/2019	7	PA002893-PA002897
39	Court Minutes re: Motion to Lift Stay, 7/11/2019	7	PA002898-PA002899
40	Notice of Entry of Order Denying Motion to Lift Stay, filed 8/12/2019	7	PA002900-PA002905
41	Motion for Clarification, filed 4/6/2020	7	PA002906-PA002915
42	Limited Opposition to Motion for Clarification [Directors'], filed 4/8/2020	7	PA002916-PA002920
43	Limited Opposition to Motion for Clarification [Uni-Ter], filed 4/9/2020	7	PA002921-PA002940

44	Transcript re: hearing held on 4/10/2020 re: Motion for Clarification	7	PA002941-PA002954
45	Notice of Entry of Order re: Motion for Clarification, filed on 4/28/2020	7	PA002955-PA002960
46	Transcript re: hearing held on 6/18/2020 re: Motion for Clarification	7	PA002961-PA002971
47	Notice of Entry of Order re: Motion for Clarification, filed 6/30/2020	7	PA002972-PA002981
48	Motion for Leave to File Fourth Amended Complaint, filed 7/2/2020	7	PA002982-PA003013
49	Opposition to Motion for Leave to File Fourth Amended Complaint [Directors'], filed 7/17/2020	7	PA003014-PA003044
50	Opposition to Motion for Leave to File Fourth Amended Complaint [Unit-Ter], filed 7/17/2020	8	PA003045-PA003072
51	Reply to Motion for Leave to file Fourth Amended Complaint, filed 7/21/2020	8	PA003073-PA003245
52	Transcript re: hearing held on 7/23/2020 re: all pending motions	8	PA003246-PA003273
53	Answer to Third Amended Complaint [U.S. Re Corporation], filed 8/7/2020	9	PA003274-PA003289
54	Amended Answer to Third Amended Complaint [Uni-Ter Underwriting Management Corp.], filed 8/7/2020	9	PA003290-PA003306
55	Amended Answer to Third Amended Complaint [Uni-Ter Claims Services Corp.], filed 8/7/2020	9	PA003307-PA003323
56	Order Denying Motion for Leave to File Fourth Amended Complaint, filed 8/10/2020	9	PA003324-PA003329
57	Motion for Partial Reconsideration of Motion	9	PA003330-

	for Leave, filed 8/14/2020		PA003361
58	Opposition to Motion for Partial Reconsideration, filed 8/24/2020	9, 10	PA003362-PA003515
59	Reply to Motion for Partial Reconsideration, filed 8/25/2020	10	PA003516-PA003525
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62	Opposition to Motion for Stay, filed 9/1/2020	10	PA003626-PA003630
63	Motion to Certify Judgment as Final, filed 9/3/2020	10	PA003631-PA003641
64	Transcript re: hearing held on 9/3/2020 re: all pending motions	10	PA003642-PA003659
65	Opposition to Motion to Certify Judgment as Final [Directors'], filed 9/8/2020	10	PA003660-PA003662
66	Opposition to Motion to Certify Judgment as Final [Uni-Ter], filed 9/8/2020	10	PA003663-PA003675
67	Notice of Entry of Order Denying Motion for Partial Reconsideration, filed 9/10/2020	10	PA003676-PA003690
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18	Answer to Third Amended Complaint [Directors'], filed 10/21/2016	3	PA001929-PA001952
53	Answer to Third Amended Complaint [U.S. Re Corporation], filed 8/7/2020	9	PA003274-PA003289
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34	Court Minutes re: Motion to Stay Pending Petition, 3/14/2019	7	PA002864-PA002865
8	Decision and Order, filed 5/4/2016	2	PA000723-PA000732
6	First Amended Complaint, filed 4/1/2016	1	PA000178-PA000696
31	Joinder to Motion for Stay Pending Petition, filed 3/11/2019	7	PA002813-PA002822
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43	Limited Opposition to Motion for Clarification [Uni-Ter], filed 4/9/2020	7	PA002921-PA002940
41	Motion for Clarification, filed 4/6/2020	7	PA002906-PA002915
19	Motion for Judgment on the Pleadings, filed 8/14/2018	3, 4	PA001953-PA002232
48	Motion for Leave to File Fourth Amended Complaint, filed 7/2/2020	7	PA002982-PA003013

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49	Opposition to Motion for Leave to File Fourth Amended Complaint [Directors'], filed 7/17/2020	7	PA003014-PA003044
50	Opposition to Motion for Leave to File Fourth Amended Complaint [Unit-Ter], filed 7/17/2020	8	PA003045-PA003072
58	Opposition to Motion for Partial Reconsideration, filed 8/24/2020	9, 10	PA003362-PA003515
25	Opposition to Motion for Reconsideration, filed 12/27/2018	6	PA002745-PA002758
62	Opposition to Motion for Stay, filed 9/1/2020	10	PA003626-PA003630
32	Opposition to Motion for Stay Pending Petition, filed 3/12/2019	7	PA002823-PA002856
65	Opposition to Motion to Certify Judgment as Final [Directors'], filed 9/8/2020	10	PA003660-PA003662
66	Opposition to Motion to Certify Judgment as Final [Uni-Ter], filed 9/8/2020	10	PA003663-PA003675
3	Opposition to Motion to Dismiss, filed 1/15/2016	1	PA000147-PA000162
9	Opposition to Motion to Dismiss First Amended Complaint, filed 5/5/2016	2	PA000733-PA000820
37	Opposition to Motion to Lift Stay, filed 7/9/2019	7	PA002887-PA002892
23	Order Denying Motion for Judgment on the Pleadings, filed 11/2/2018	6	PA002723-PA002725
56	Order Denying Motion for Leave to File Fourth Amended Complaint, filed 8/10/2020	9	PA003324-PA003329

29	Order Denying Motion for Reconsideration, filed 2/11/2019	6	PA002795-PA002798
69	Order Granting Judgment on the Pleadings, filed 8/13/2020	10	PA003703-PA003707
35	Order Granting Motion for Stay, filed 4/4/2019	7	PA002866-PA002868
21	Reply to Motion for Judgment on the Pleadings, filed 10/4/2018	6	PA002585-PA002700
51	Reply to Motion for Leave to file Fourth Amended Complaint, filed 7/21/2020	8	PA003073-PA003245
59	Reply to Motion for Partial Reconsideration, filed 8/25/2020	10	PA003516-PA003525
26	Reply to Motion for Reconsideration, filed 1/4/2019	6	PA002759-PA002772
33	Reply to Motion for Stay Pending Petition, filed 3/13/2019	7	PA002857-PA002863
10	Reply to Motion to Dismiss First Amended Complaint, filed 5/19/2016	2	PA000821-PA000831
38	Response to Motion to Lift Stay, filed 7/10/2019	7	PA002893-PA002897
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11	Second Amended Complaint, filed 6/13/2016	2	PA000832-PA001353
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13	Third Amended Complaint, filed 8/5/2016	2, 3	PA001359-PA001887

4	Transcript re: Directors' Motion to Dismiss, hearing held on 1/27/2016	1	PA000163-PA000171
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64	Transcript re: hearing held on 9/3/2020 re: all pending motions	10	PA003642-PA003659
14	U.S. Re Corporation’s Answer to Third Amended Complaint, filed 8/12/2016	3	PA001888-PA001903
15	Uni-Ter Claims Services Corp.’s Answer to Third Amended Complaint, filed 8/12/2016	3	PA001904-PA001919

CERTIFICATE OF SERVICE

I certify that I am an employee of HUTCHISON & STEFFEN, LLC and that on this date **APPENDIX TO PETITION FOR A WRIT OF MANDAMUS VOLUME 9 OF 10** was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

George F. Ogilvie III, Esq. (3352)
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2300 West Sahara Ave., Ste. 1200
Las Vegas, NV 89102

Attorney for Uni-Ter Defendants

Angela T. Nakamura Ochoa, Esq. (10164)
Lipson Neilson
9555 Hillwood Dr., 2nd Floor
Las Vegas, NV 89134

Attorney for Director Defendants

Further, a copy was mailed via U.S. Mail to the following:

The Honorable Nancy Allf
Eighth Judicial District Court
Regional Justice Center
200 Lewis Avenue
Department XXVII
Las Vegas, Nevada 89155

DATED this 28th day of September, 2020.

/s/ Kaylee Conradi

An employee of Hutchison & Steffen, PLLC

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DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Plaintiff, vs. ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP. UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION, DOES 1-50, inclusive; and ROES 51-100, inclusive, Defendants.	Case No. A-14-711535-C Dept. No.: XXVII **DEFENDANT U.S. RE CORPORATION'S AMENDED ANSWER TO THIRD AMENDED COMPLAINT**

U.S. RE CORPORATION ("U.S. RE"), by and through its counsel of record, George F. Ogilvie III of McDONALD CARANO LLP and Jon M. Wilson of NELSON MULLINS BROAD AND CASSEL, as and for its Amended Answer to the Third Amended Complaint filed herein on behalf of Plaintiff COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS

RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC. ("Plaintiff"), admits, denies, and responds as follows:

PARTIES, JURISDICTION AND VENUE

1. Answering paragraph 1 of the Third Amended Complaint, U.S. RE states, on information and belief, that L&C was formed in 2003. U.S. RE admits the remainder of the allegation set forth therein.

2. Answering paragraph 2 of the Third Amended Complaint, U.S. RE admits only that the Nevada Division of Insurance ("DOI") filed a Receivership Action related to L&C in 2012 with case number A-12-672047-B and that an Order of Liquidation was entered in that action on February 28, 2013. With respect to the allegations in paragraph 2 regarding the terms of the Order of Liquidation, U.S. RE submits that the terms of this document speak for themselves, refers the Court to the document for its complete and exact contents, and denies each and every allegation set forth in paragraph 2 that mischaracterizes the terms of said document.

3. Answering paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, and 29 of the Third Amended Complaint, U.S. RE lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in said paragraphs and, on that basis, denies each and every allegation set forth therein.

4. Answering paragraph 26 of the Third Amended Complaint, U.S. RE admits only that it is a reinsurance broker and denies each and every remaining allegation set forth therein.

5. Answering paragraph 27 of the Third Amended Complaint, U.S. RE admits only that Uni-Ter Underwriting Management Corp. ("Uni-Ter UMC") is presently a wholly owned subsidiary of U.S. RE and denies each and every remaining allegation set forth therein.

6. Answering paragraph 28 of the Third Amended Complaint, U.S. RE denies each and every allegation set forth therein.

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GENERAL ALLEGATIONS

7. Answering paragraphs 30, 35, 36, 42, 65, 118, and 211 of the Third Amended Complaint, U.S. RE admits the allegation set forth therein.

8. Answering paragraph 31 of the Third Amended Complaint, U.S. RE admits that L&C expanded its area of operation over the years, but lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 31 and, on that basis, denies each and every remaining allegation set forth therein.

9. Answering paragraphs 32, 34, 39, 55, 56, 58, 59, 76, 89, 90, 91, 92, 93, 94, 99, 101, 104, 105, 107, 108, 113, 114, 115, 116, 117, 120, 121, 122, 126, 130, 145, 148, 164, 168, 170, 203, 205, and 206 of the Third Amended Complaint, U.S. RE denies each and every allegation set forth therein.

10. Answering paragraph 33 of the Third Amended Complaint, U.S. RE admits only that Uni-Ter UMC and Uni-Ter Claims Services Corp. ("Uni-Ter CS") were retained as managers of L&C and denies each and every remaining allegation set forth therein.

11. Answering paragraphs 37, 57, 63, 71, 72, 100, 132, 169, 174, 177, 178, 179, 181, and 210 of the Third Amended Complaint, U.S. RE lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in said paragraphs and, on that basis, denies each and every allegation set forth therein.

12. Answering paragraph 38 of the Third Amended Complaint, U.S. RE admits that L&C was managed by Uni-Ter UMC. U.S. RE also admits that Uni-Ter UMC also sent out offering memoranda and offering documents, but qualifies such response by noting that such actions were within the normal course of business for a risk retention group.

13. Answering paragraph 40 of the Third Amended Complaint, U.S. RE admits only that Uni-Ter UMC has organized five risk retention groups.

14. Answering paragraph 41 of the Third Amended Complaint, U.S. RE submits that Uni-Ter UMC's services to L&C are set forth in the 2004 and 2011 Management Agreements and that the terms of these documents speak for themselves, refers the Court to these documents for their complete and exact contents, and denies each and every allegation set forth in

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paragraph 41 that mischaracterizes the terms of said document.

15. Answering paragraph 43 of the Third Amended Complaint, U.S. RE admits only that Uni-Ter UMC entered into the 2004 Management Agreement. With respect to the allegations in paragraph 43 regarding the terms of the 2004 Management Agreement, U.S. RE submits that the terms of this document speak for themselves, refers the Court to the document for its complete and exact contents, and denies each and every allegation set forth in paragraph 43 that mischaracterizes the terms of said document.

16. Answering paragraphs 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 61, 62, 66, 67, 68, 69, 70, 74, 75, 96, 97, 98, 109, 110, 111, 112, 123, 124, 125, 127, 131, 133, 134, 135, 136, 137, 138, 140, 141, 142, 143, 144, 149, 150, 151, 152, 156, 157, 158, 160, 162, 167, 171, 172, 173, 175, 176, 180, 182, 183, 187, 188, 189, 191, 196, 197, 198, 199, 200, 201, 202, and 204 of the Third Amended Complaint, U.S. RE submits that the terms of the documents referenced in these paragraphs speak for themselves, refers the Court to those documents for their complete and exact contents, and denies each and every allegation set forth in said paragraphs that mischaracterizes the terms of those documents.

17. Answering paragraph 60 of the Third Amended Complaint, U.S. RE submits that the terms of the "contracts at issue" referenced in said paragraph speak for themselves, refers the Court to this document for its complete and exact contents, and denies each and every allegation set forth in paragraph 60 that mischaracterizes the terms of said document. U.S. RE denies each and every remaining allegation set forth in paragraph 60.

18. Answering paragraph 64 of the Third Amended Complaint, U.S. RE admits only that Uni-Ter UMC and Uni-Ter CS entered into the 2011 Management Agreement. With respect to the allegations in paragraph 64 regarding the terms of the 2011 Management Agreement, U.S. RE submits that the terms of this document speak for themselves, refers the Court to the document for its complete and exact contents, and denies each and every allegation set forth in paragraph 64 that mischaracterizes the terms of said document. U.S. RE denies each and every remaining allegation set forth in paragraph 64.

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19. Answering paragraph 73 of the Third Amended Complaint, U.S. RE admits only that Lewis & Clark LTC Risk Retention Group, Inc. ("L&C") and U.S. RE entered into a Broker of Record Letter Agreement. With respect to the allegations in paragraph 73 regarding the terms of the Broker of Record Letter Agreement, U.S. RE submits that the terms of this document speak for themselves, refers the Court to the document for its complete and exact contents, and denies each and every allegation set forth in paragraph 73 that mischaracterizes the terms of said document.

20. Answering paragraph 77 of the Third Amended Complaint, U.S. RE admits only that the 2004 and 2011 Management Agreements exist and submits that the terms of these documents speak for themselves, refers the Court to the documents for their complete and exact contents, and denies each and every allegation set forth in paragraph 77 that mischaracterizes the terms of said documents.

21. Answering paragraph 78 of the Third Amended Complaint, U.S. RE admits only that Uni-Ter UMC and Uni-Ter CS are presently wholly owned subsidiaries of U.S. RE.

22. Answering paragraph 79, 80, 82, 86, 87, and 88 of the Third Amended Complaint, U.S. RE submits that, to the extent referenced, the terms of the Broker of Record Letter Agreement speak for themselves, refers the Court to the Broker of Record Letter Agreement for its complete and exact contents, and denies each and every allegation set forth in said paragraphs that mischaracterizes the terms of the Broker of Record Letter Agreement. U.S. RE further denies each and every remaining allegation set forth in said paragraphs.

23. Answering paragraphs 81, 83, and 85 of the Third Amended Complaint, U.S. RE states that the allegations contained in said paragraphs call for legal conclusions to which no response is required.

24. Answering paragraph 84 of the Third Amended Complaint, U.S. RE states that, to the extent paragraph 84 calls for a legal conclusion, no response is required. U.S. RE denies each and every remaining allegation set forth therein.

25. Answering paragraph 95 of the Third Amended Complaint, U.S. RE admits only that it procured certain reinsurance treaties. With respect to the allegations in paragraph 95

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regarding the terms of certain alleged treaties, U.S. RE submits that the terms of those documents speak for themselves, refers the Court to those documents for their complete and exact contents, and denies each and every allegation set forth in paragraph 95 that mischaracterizes the terms of said documents.

26. Answering paragraph 102 of the Third Amended Complaint, U.S. RE lacks sufficient knowledge or information to form a belief as to whether Sanford Elsass ("Elsass") and Donna Dalton sent a memorandum. With respect to the allegations in paragraph 102 regarding the terms of said memorandum, U.S. RE submits that the terms of this document speak for themselves, refers the Court to the document for its complete and exact contents, and denies each and every allegation set forth in paragraph 102 that mischaracterizes the terms of said document.

27. Answering paragraph 103 of the Third Amended Complaint, U.S. RE admits only that Praxis was hired and denies each and every remaining allegation set forth therein.

28. Answering paragraph 106 of the Third Amended Complaint, U.S. RE admits only that a report from Praxis dated September 15, 2011 exists. With respect to the allegations in paragraph 106 regarding the terms of said report, U.S. RE submits that the terms of this document speak for themselves, refers the Court to the document for its complete and exact contents, and denies each and every allegation set forth in paragraph 106 that mischaracterizes the terms of said document. U.S. RE denies each and every remaining allegation set forth in paragraph 106.

29. Answering paragraph 119 of the Third Amended Complaint, U.S. RE admits only that Elsass and employees of the Uni-Ter entities provided reports about the company to the Board members. U.S. RE denies each and every remaining allegation set forth in paragraph 119.

30. Answering paragraph 128 of the Third Amended Complaint, U.S. RE admits only that Uni-Ter established loss reserves for the company. With respect to the allegations in paragraph 128 regarding the September 14, 2005 Minutes, U.S. RE submits that the terms of this document speak for themselves, refers the Court to the document for its complete and exact

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contents, and denies each and every allegation set forth in paragraph 128 that mischaracterizes the terms of said document. U.S. RE denies each and every remaining allegation set forth in paragraph 128.

31. Answering paragraph 129 of the Third Amended Complaint, U.S. RE lacks sufficient knowledge or information to form a belief as to whether the Audit Committee was established at the February 10, 2006 meeting of the Board. With respect to the allegations in paragraph 129 regarding the February 10, 2006 Minutes, which are not attached to the Complaint, U.S. RE submits that the terms of this document speak for themselves, refers the Court to the document for its complete and exact contents, and denies each and every allegation set forth in paragraph 129 that mischaracterizes the terms of said document. U.S. RE denies each and every remaining allegation set forth in paragraph 129.

32. Answering paragraph 139 of the Third Amended Complaint, U.S. RE denies that the December 2, 2009 Minutes are attached as Exhibit 17 to the Third Amended Complaint. With respect to the allegations in paragraph 139 addressing the terms of the December 2, 2009 Minutes, U.S. RE submits that the terms of documents referenced therein speak for themselves, refers the Court to those documents for their complete and exact contents, and denies each and every allegation set forth in said paragraphs that mischaracterizes the terms of those documents.

33. Answering paragraphs 146, 153, 154, 155, 159, 163, 192, 193, 194, and 195 of the Third Amended Complaint, U.S. RE submits that, with respect to the allegations in said paragraphs addressing the terms of certain documents, the terms of documents referenced therein speak for themselves, refers the Court to those documents for their complete and exact contents, and denies each and every allegation set forth in said paragraphs that mischaracterizes the terms of those documents. U.S. RE denies each and every remaining allegation set forth in said paragraphs.

34. Answering paragraph 147 of the Third Amended Complaint, U.S. RE admits only that William Fishlinger ("Fishlinger") was retained in 2011 to perform claims review. With respect to the allegations in paragraph 147 regarding the terms of the December 28, 2011 Minutes, U.S. RE submits that the terms of this document speak for themselves, refers the

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Court to the document for its complete and exact contents, and denies each and every allegation set forth in paragraph 147 that mischaracterizes the terms of said document.

35. Answering paragraph 161 of the Third Amended Complaint, U.S. RE admits the first sentence of this paragraph, but lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 161 and, on that basis, denies each and every remaining allegation set forth therein.

36. Answering paragraph 165 of the Third Amended Complaint, U.S. RE submits that, with respect to the allegations addressing the Annual Statement and Quarterly statement, such documents speak for themselves, refers the Court to those documents for their complete and exact contents, and denies each and every allegation set forth in paragraph 165 that mischaracterizes the terms of those documents. U.S. RE lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 165 and, on that basis, denies each and every remaining allegation set forth therein.

37. Answering paragraph 166 of the Third Amended Complaint, U.S. RE admits only that Uni-Ter was the underwriter for Sophia Palmer. U.S. RE lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 31 and, on that basis, denies each and every remaining allegation set forth therein.

38. Answering paragraph 184 of the Third Amended Complaint, U.S. RE lacks sufficient knowledge or information to form a belief as to whether the board package for the September 2011 meeting included the September 2011 Praxis Report. With respect to the allegations in paragraph 184 regarding the terms of the 2011 Praxis Report, U.S. RE submits that the terms of this document speak for themselves, refers the Court to the document for its complete and exact contents, and denies each and every allegation set forth in paragraph 184 that mischaracterizes the terms of said document.

39. Answering paragraph 185 of the Third Amended Complaint, U.S. RE lacks sufficient knowledge or information to form a belief as to whether the board package for the September 2011 meeting included a power point from Milliman. With respect to the allegations in paragraph 185 regarding the power point, U.S. RE submits that the terms of this document

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speak for themselves, refers the Court to the document for its complete and exact contents, and denies each and every allegation set forth in paragraph 185 that mischaracterizes the terms of said document. U.S. RE further denies each and every remaining allegation set forth in paragraph 185.

40. Answering paragraph 186 of the Third Amended Complaint, U.S. RE lacks sufficient knowledge or information to form a belief as to whether Milliman provided a preliminary draft of certain schedules. With respect to the allegations in paragraph 186 regarding these drafts, U.S. RE submits that the terms of those document speak for themselves, refers the Court to the documents for their complete and exact contents, and denies each and every allegation set forth in paragraph 186 that mischaracterizes the terms of said documents.

41. Answering paragraph 190 of the Third Amended Complaint, U.S. RE lacks sufficient knowledge or information to form a belief as to whether Milliman provided a preliminary draft of certain schedules. With respect to the allegations in paragraph 190 regarding these drafts, U.S. RE submits that the terms of those document speak for themselves, refers the Court to the documents for their complete and exact contents, and denies each and every allegation set forth in paragraph 190 that mischaracterizes the terms of said documents.

42. Answering paragraph 207 of the Third Amended Complaint, U.S. RE admits only that the Action dated October 5, 2011 is attached as Exhibit 22 to the Third Amended Complaint. U.S. RE submits that the terms of this document speak for themselves, refers the Court to this document for its complete and exact contents, and denies each and every allegation set forth in paragraph 207 that mischaracterizes the terms of said document.

43. Answering paragraph 208 of the Third Amended Complaint, U.S. RE admits only that the Action dated October 5, 2011 is attached as Exhibit 22 to the Third Amended Complaint and submits that the terms of this document for themselves, refers the Court to this document for its complete and exact contents, and denies each and every allegation set forth in paragraph 208 that mischaracterizes the terms of said document.

44. Answering paragraph 209 of the Third Amended Complaint, U.S. RE denies the allegations of "captive manager." U.S. RE admits the remainder of the allegation set forth

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therein.

45. Answering paragraph 212 of the Third Amended Complaint, U.S. RE states that, with respect to the allegations in paragraph 212 regarding Fishlinger's report, U.S. RE submits that the terms of this document speak for themselves, refers the Court to this document for its complete and exact contents, and denies each and every allegation set forth in paragraph 212 that mischaracterizes the terms of said document. U.S. RE lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 212 and, on that basis, denies each and every remaining allegation set forth therein.

46. Answering paragraph 213 of the Third Amended Complaint, U.S. RE lacks sufficient knowledge or information to form a belief as to the truth of the allegations regarding assumptions made by the Board. With respect to the allegations in paragraph 213 regarding Praxis's July 2012 report, U.S. RE submits that the terms of this document speak for themselves, refers the Court to the document for its complete and exact contents, and denies each and every allegation set forth in paragraph 213 that mischaracterizes the terms of said document.

47. Answering paragraph 214 of the Third Amended Complaint, U.S. RE admits only that Fishlinger performed a second review, which reported conclusions speak for themselves. U.S. RE further admits that an additional review of the case reserves occurred. U.S. RE denies each and every remaining allegation set forth in paragraph 60.

48. Answering paragraph 215 of the Third Amended Complaint, U.S. RE lacks sufficient knowledge or information to form a belief as to the truth of the allegations regarding whether Milliman booked its estimate of reserves at 6/30 and 12/31 of each year, based on its own analysis. With respect to the allegations in paragraph 215 regarding Milliman's June 30, 2012 analysis, U.S. RE submits that the terms of this document speak for themselves, refers the Court to the document for its complete and exact contents, and denies each and every allegation set forth in paragraph 215 that mischaracterizes the terms of said document.

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CLAIMS

49. Answering paragraph 216 of the Third Amended Complaint, U.S. RE repeats, realleges, and incorporates each of its admissions, denials and/or other responses to the allegations set forth in the paragraphs referenced therein as if set forth at length and in full.

FIRST CLAIM FOR RELIEF

(Gross Negligence of the Former Officers and Directors of L&C)

50. Answering paragraphs 217–234 of the Third Amended Complaint, U.S. RE states that the First Claim for Relief is not directed at U.S. RE, and, therefore, no response to said paragraphs is required.

SECOND CLAIM FOR RELIEF

(Deepening of the Insolvency of L&C Caused by the Former Directors and Officers)

51. Answering paragraphs 235–240 of the Third Amended Complaint, U.S. RE states that the Second Claim for Relief is not directed at U.S. RE, and, therefore, no response to said paragraphs is required.

THIRD CLAIM FOR RELIEF

(Negligent Misrepresentation by Uni-Ter UMC)

52. Answering paragraphs 241–248 of the Third Amended Complaint, U.S. RE states that the Third Claim for Relief is not directed at U.S. RE, and, therefore, no response to said paragraphs is required.

FOURTH CLAIM FOR RELIEF

(Breach of Fiduciary Duty by Uni-Ter UMC and Uni-Ter CS)

53. Answering paragraphs 249–255 of the Third Amended Complaint, U.S. RE states that the Third Claim for Relief is not directed at U.S. RE, and, therefore, no response to said paragraphs is required.

FIFTH CLAIM FOR RELIEF

(Breach of Fiduciary Duty Against U.S. RE)

54. Answering paragraph 257 of the Third Amended Complaint, U.S. RE repeats, realleges, and incorporates each of its admissions, denials and/or other responses to the

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allegations set forth in the paragraphs referenced therein as if set forth at length and in full.

55. Answering paragraphs 258, 259, and 262 of the Third Amended Complaint, U.S. RE admits only that L&C and U.S. RE entered into a Broker of Record Letter Agreement, the terms of which speak for themselves, and U.S. RE refers the Court to this document for its complete and exact contents and denies each and every allegation set forth in these paragraphs that mischaracterizes the terms of said document. U.S. RE denies each and every remaining allegation set forth in these paragraphs.

56. Answering paragraphs 260, 264, 265, 266, 267, and 268 of the Third Amended Complaint, U.S. RE denies each and every allegation set forth therein.

57. Answering paragraphs 261 and 263 of the Third Amended Complaint, U.S. RE states that the allegations contained in said paragraphs call for legal conclusions to which no response is required

58. Answering paragraph 269 of the Third Amended Complaint, U.S. RE lacks sufficient knowledge or information to form a belief as to Plaintiff's fee arrangement with its attorneys. U.S. RE denies that Plaintiff is entitled to recover attorney's fees and costs.

59. U.S. RE denies each and every remaining allegation set forth in the Third Amended Complaint to which a specific admission, denial or other response is not set forth herein, including Plaintiff's prayers for relief.

60. U.S. RE has been forced to retain the services of attorneys and other professionals to defend itself in connection with the Third Amended Complaint, and should be awarded its reasonable attorneys' fees, costs of suit, and other expenses incurred in connection with this matter.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff's claim against U.S. RE is barred, in whole or in part, because the Third Amended Complaint fails to state a cause of action against U.S. RE upon which relief can be granted.

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SECOND AFFIRMATIVE DEFENSE

Plaintiff's claim against U.S. RE is barred, in whole or in part, because U.S. RE owed L&C no duties outside those explicitly set forth in the Broker of Record Letter Agreement.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claim against U.S. RE is barred, in whole or in part, because U.S. RE has not breached any duty, contractual, fiduciary, or otherwise, owed to Plaintiff or L&C.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because U.S. RE did not engage in any willful, fraudulent, intentional, or any other behavior resulting in a breach of any fiduciary duty owed to Plaintiff or L&C.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claim against U.S. RE is barred, in whole or in part, because of a lack of causation. Plaintiff has not suffered any injury or harm as a result of any action or omission of U.S. RE.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claim against U.S. RE is barred, in whole or in part, because the alleged damages were the result of intervening and superseding conduct of others, including but not limited to L&C acting through the Board.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claim against U.S. RE is barred, in whole or in part, by the fact that U.S. RE faithfully executed instructions provided by the Board.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's claim against U.S. RE is barred, in whole or in part, by the applicable statute of limitations.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's claim against U.S. RE is barred, in whole or in part, because L&C ratified U.S. RE's actions.

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TENTH AFFIRMATIVE DEFENSE

Plaintiff's claim against U.S. RE is barred, in whole or in part, because any action taken or decision made by U.S. RE was within its sound business judgment.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claim against U.S. RE is barred, in whole or in part, because U.S. RE reasonably believed in good faith that its actions were lawful, necessary and justified.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's claim against U.S. RE is barred, in whole or in part, because Plaintiff has failed to mitigate its alleged damages.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of unclean hands.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of laches.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of estoppel.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because Plaintiff has waived its right to seek damages.

SEVENTEENTH AFFIRMATIVE DEFENSE

U.S. RE is entitled to a setoff against any damages that may be awarded to Plaintiff for amounts owed to U.S. RE by Plaintiff.

EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims for damages, if valid, are reduced because U.S. RE is entitled to recoupment for amounts owed to U.S. RE by Plaintiff.

NINETEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims may be barred by other affirmative defenses enumerated in or allowed under NRCP 8(c). U.S. RE hereby reserves the right to amend this list of Affirmative

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Defenses to add new defenses should discovery or investigation reveal facts giving rise to such defenses.

WHEREFORE, having fully responded to the Third Amended Complaint, U.S. RE respectfully prays as follows:

A. That Plaintiff take nothing by virtue of its Third Amended Complaint, that the Third Amended Complaint be dismissed with prejudice as it relates to U.S. RE, and that the Court enter judgment in favor of U.S. RE;

B. For an award of reasonable attorneys' fees and costs incurred in connection with this litigation; and

C. For such other and further relief as the Court deems fair and just under the circumstances.

DATED this 7th day of August, 2020.

McDONALD CARANO LLP

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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of August, 2020, **DEFENDANT U.S. RE CORPORATION'S AMENDED ANSWER TO THIRD AMENDED COMPLAINT** was Electronically Served to all parties of record via this Court's electronic filing system to all parties listed on the E-SERVICE MASTER LIST.

By: */s/ Jelena Jovanovic*
An employee of McDonald Carano LLP

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DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Plaintiff, vs. ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP. UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION, DOES 1-50, inclusive; and ROES 51-100, inclusive, Defendants.	Case No. A-14-711535-C Dept. No.: XXVII **DEFENDANT UNI-TER UNDERWRITING MANAGEMENT CORP.'S AMENDED ANSWER TO PLAINTIFF'S THIRD AMENDED COMPLAINT**

UNI-TER UNDERWRITING MANAGEMENT CORP. ("Uni-Ter UMC"), by and through its counsel of record, George F. Ogilvie III of MCDONALD CARANO LLP and Jon M. Wilson of NELSON MULLINS BROAD AND CASSEL, as and for its Amended Answer to the Third

Amended Complaint filed herein on behalf of Plaintiff COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC. ("Plaintiff"), admits, denies, and responds as follows:

PARTIES, JURISDICTION AND VENUE

1. Answering paragraph 1 of the Third Amended Complaint, Uni-Ter UMC states, on information and belief, that L&C was formed in 2003. Uni-Ter UMC admits the remainder of the allegation set forth therein.

2. Answering paragraph 2 of the Third Amended Complaint, Uni-Ter UMC admits only that the Nevada Division of Insurance ("DOI") filed a Receivership Action related to L&C in 2012 with case number A-12-672047-B and that an Order of Liquidation was entered in that action on February 28, 2013. With respect to the allegations in paragraph 2 regarding the terms of the Order of Liquidation, Uni-Ter UMC submits that the terms of this document speak for themselves, refers the Court to the document for its complete and exact contents, and denies each and every allegation set forth in paragraph 2 that mischaracterizes the terms of said document.

3. Answering paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, and 29 of the Third Amended Complaint, Uni-Ter UMC lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in said paragraphs and, on that basis, denies each and every allegation set forth therein.

4. Answering paragraph 26 of the Third Amended Complaint, Uni-Ter UMC admits only that U.S. RE Corporation ("U.S. RE") is a reinsurance broker and denies each and every remaining allegation set forth therein.

5. Answering paragraph 27 of the Third Amended Complaint, Uni-Ter UMC admits only that it is presently a wholly owned subsidiary of U.S. RE and denies each and every remaining allegation set forth therein.

6. Answering paragraph 28 of the Third Amended Complaint, Uni-Ter UMC denies each and every allegation set forth therein.

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GENERAL ALLEGATIONS

7. Answering paragraphs 30, 35, 36, 42, 63, 65, 100, 118, and 211 of the Third Amended Complaint, Uni-Ter UMC admits the allegation set forth therein.

8. Answering paragraph 31 of the Third Amended Complaint, Uni-Ter UMC admits that L&C expanded its area of operation over the years, but lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 31 and, on that basis, denies each and every remaining allegation set forth therein.

9. Answering paragraphs 32, 34, 39, 55, 56, 58, 59, 76, 89, 90, 91, 92, 93, 94, 99, 101, 104, 105, 107, 108, 113, 114, 115, 116, 117, 120, 121, 122, 126, 130, 145, 148, 164, 168, 170, 203, 205, and 206 of the Third Amended Complaint, Uni-Ter UMC denies each and every allegation set forth therein.

10. Answering paragraph 33 of the Third Amended Complaint, Uni-Ter UMC admits only that Uni-Ter UMC and UNI-TER CLAIMS SERVICES CORP ("Uni-Ter CS") were retained as managers of L&C and denies each and every remaining allegation set forth therein.

11. Answering paragraphs 37, 57, 132, 169, 174, 177, 178, 179, 181, and 210 of the Third Amended Complaint, Uni-Ter UMC lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in said paragraphs and, on that basis, denies each and every allegation set forth therein.

12. Answering paragraph 38 of the Third Amended Complaint, Uni-Ter UMC admits that L&C was managed by Uni-Ter UMC. Uni-Ter UMC also admits that it also sent out offering memoranda and offering documents, but qualifies such response by noting that such actions were within the normal course of business for a risk retention group.

13. Answering paragraph 40 of the Third Amended Complaint, Uni-Ter UMC admits only that it has organized five risk retention groups.

14. Answering paragraph 41 of the Third Amended Complaint, Uni-Ter UMC submits that its services to L&C are set forth in the 2004 and 2011 Management Agreements and that the terms of these documents speak for themselves, refers the Court to these documents

for their complete and exact contents, and denies each and every allegation set forth in paragraph 41 that mischaracterizes the terms of said document.

15. Answering paragraph 43 of the Third Amended Complaint, Uni-Ter UMC admits only that it entered into the 2004 Management Agreement. With respect to the allegations in paragraph 43 regarding the terms of the 2004 Management Agreement, Uni-Ter UMC submits that the terms of this document speak for themselves, refers the Court to the document for its complete and exact contents, and denies each and every allegation set forth in paragraph 43 that mischaracterizes the terms of said document.

16. Answering paragraphs 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 61, 62, 66, 67, 68, 69, 70, 74, 75, 96, 97, 98, 109, 110, 111, 112, 123, 124, 125, 127, 131, 133, 134, 135, 136, 137, 138, 140, 141, 142, 143, 144, 149, 150, 151, 152, 156, 157, 158, 160, 162, 167, 171, 172, 173, 175, 176, 180, 182, 183, 187, 188, 189, 191, 196, 197, 198, 199, 200, 201, 202, and 204 of the Third Amended Complaint, Uni-Ter UMC submits that the terms of the documents referenced in these paragraphs speak for themselves, refers the Court to those documents for their complete and exact contents, and denies each and every allegation set forth in said paragraphs that mischaracterizes the terms of those documents.

17. Answering paragraph 60 of the Third Amended Complaint, Uni-Ter UMC submits that the terms of the "contracts at issue" referenced in said paragraph speak for themselves, refers the Court to this document for its complete and exact contents, and denies each and every allegation set forth in paragraph 60 that mischaracterizes the terms of said document. Uni-Ter UMC denies each and every remaining allegation set forth in paragraph 60.

18. Answering paragraph 64 of the Third Amended Complaint, Uni-Ter UMC admits only that Uni-Ter UMC and Uni-Ter CS entered into the 2011 Management Agreement. With respect to the allegations in paragraph 64 regarding the terms of the 2011 Management Agreement, Uni-Ter UMC submits that the terms of this document speak for themselves, refers the Court to the document for its complete and exact contents, and denies each and every allegation set forth in paragraph 64 that mischaracterizes the terms of said document. Uni-Ter UMC denies each and every remaining allegation set forth in paragraph 64.

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19. Answering paragraph 71 of the Third Amended Complaint, Uni-Ter UMC admits only that not less than $1,000,000.00 in management fees were received in 2011 and denies each and every remaining allegation set forth therein.

20. Answering paragraph 72 of the Third Amended Complaint, Uni-Ter UMC admits that Milliman did the work alleged; however, on information and belief, such work was done for and on behalf of L&C. To the extent the allegations of paragraph 72 are inconsistent with this, such allegations are denied.

21. Answering paragraph 73 of the Third Amended Complaint, Uni-Ter UMC admits only that Lewis & Clark LTC Risk Retention Group, Inc. ("L&C") and U.S. RE entered into a Broker of Record Letter Agreement. With respect to the allegations in paragraph 73 regarding the terms of the Broker of Record Letter Agreement, Uni-Ter UMC submits that the terms of this document speak for themselves, refers the Court to the document for its complete and exact contents, and denies each and every allegation set forth in paragraph 73 that mischaracterizes the terms of said document.

22. Answering paragraph 77 of the Third Amended Complaint, Uni-Ter UMC admits only that the 2004 and 2011 Management Agreements exist and submits that the terms of these documents speak for themselves, refers the Court to the documents for their complete and exact contents, and denies each and every allegation set forth in paragraph 77 that mischaracterizes the terms of said documents.

23. Answering paragraph 78 of the Third Amended Complaint, Uni-Ter UMC admits only that Uni-Ter UMC and Uni-Ter CS are presently wholly owned subsidiaries of U.S. RE.

24. Answering paragraph 79, 80, 82, 86, 87, and 88 of the Third Amended Complaint, Uni-Ter UMC submits that, to the extent referenced, the terms of the Broker of Record Letter Agreement speak for themselves, refers the Court to the Broker of Record Letter Agreement for its complete and exact contents, and denies each and every allegation set forth in said paragraphs that mischaracterizes the terms of the Broker of Record Letter Agreement. Uni-Ter UMC further denies each and every remaining allegation set forth in said paragraphs.

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25. Answering paragraphs 81, 83, and 85 of the Third Amended Complaint, Uni-Ter UMC states that the allegations contained in said paragraphs call for legal conclusions to which no response is required.

26. Answering paragraph 84 of the Third Amended Complaint, Uni-Ter UMC states that, to the extent paragraph 84 calls for a legal conclusion, no response is required. Uni-Ter UMC denies each and every remaining allegation set forth therein.

27. Answering paragraph 95 of the Third Amended Complaint, Uni-Ter UMC admits only that U.S. RE procured certain reinsurance treaties. With respect to the allegations in paragraph 95 regarding the terms of certain alleged treaties, Uni-Ter UMC submits that the terms of those documents speak for themselves, refers the Court to those documents for their complete and exact contents, and denies each and every allegation set forth in paragraph 95 that mischaracterizes the terms of said documents.

28. Answering paragraph 102 of the Third Amended Complaint, Uni-Ter UMC admits only that on or around this time Sanford Elsass ("Elsass") and Donna Dalton sent a memorandum. With respect to the allegations in paragraph 102 regarding the terms of said memorandum, Uni-Ter UMC submits that the terms of this document speak for themselves, refers the Court to the document for its complete and exact contents, and denies each and every allegation set forth in paragraph 102 that mischaracterizes the terms of said document.

29. Answering paragraph 103 of the Third Amended Complaint, Uni-Ter UMC admits only that Praxis was hired and denies each and every remaining allegation set forth therein.

30. Answering paragraph 106 of the Third Amended Complaint, Uni-Ter UMC admits only that a report from Praxis dated September 15, 2011 exists. With respect to the allegations in paragraph 106 regarding the terms of said report, Uni-Ter UMC submits that the terms of this document speak for themselves, refers the Court to the document for its complete and exact contents, and denies each and every allegation set forth in paragraph 106 that mischaracterizes the terms of said document. Uni-Ter UMC denies each and every remaining allegation set forth in paragraph 106.

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31. Answering paragraph 119 of the Third Amended Complaint, Uni-Ter UMC admits only that Elsass and employees of the Uni-Ter entities provided reports about the company to the Board members. Uni-Ter UMC denies each and every remaining allegation set forth in paragraph 119.

32. Answering paragraph 128 of the Third Amended Complaint, Uni-Ter UMC admits only that Uni-Ter established loss reserves for the company. With respect to the allegations in paragraph 128 regarding the September 14, 2005 Minutes, Uni-Ter UMC submits that the terms of this document speak for themselves, refers the Court to the document for its complete and exact contents, and denies each and every allegation set forth in paragraph 128 that mischaracterizes the terms of said document. Uni-Ter UMC denies each and every remaining allegation set forth in paragraph 128.

33. Answering paragraph 129 of the Third Amended Complaint, Uni-Ter UMC lacks sufficient knowledge or information to form a belief as to whether the Audit Committee was established at the February 10, 2006 meeting of the Board. With respect to the allegations in paragraph 129 regarding the February 10, 2006 Minutes, which are not attached to the Complaint, Uni-Ter UMC submits that the terms of this document speak for themselves, refers the Court to the document for its complete and exact contents, and denies each and every allegation set forth in paragraph 129 that mischaracterizes the terms of said document. Uni-Ter UMC denies each and every remaining allegation set forth in paragraph 129.

34. Answering paragraph 139 of the Third Amended Complaint, Uni-Ter UMC denies that the December 2, 2009 Minutes are attached as Exhibit 17 to the Third Amended Complaint. With respect to the allegations in paragraph 139 addressing the terms of the December 2, 2009 Minutes, Uni-Ter UMC submits that the terms of documents referenced therein speak for themselves, refers the Court to those documents for their complete and exact contents, and denies each and every allegation set forth in said paragraphs that mischaracterizes the terms of those documents.

35. Answering paragraphs 146, 153, 154, 155, 159, 163, 192, 193, 194, and 195 of the Third Amended Complaint, Uni-Ter UMC submits that, with respect to the allegations in

said paragraphs addressing the terms of certain documents, the terms of documents referenced therein speak for themselves, refers the Court to those documents for their complete and exact contents, and denies each and every allegation set forth in said paragraphs that mischaracterizes the terms of those documents. Uni-Ter UMC denies each and every remaining allegation set forth in said paragraphs.

36. Answering paragraph 147 of the Third Amended Complaint, Uni-Ter UMC admits only that William Fishlinger ("Fishlinger") was retained in 2011 to perform claims review. With respect to the allegations in paragraph 147 regarding the terms of the December 28, 2011 Minutes, Uni-Ter UMC submits that the terms of this document speak for themselves, refers the Court to the document for its complete and exact contents, and denies each and every allegation set forth in paragraph 147 that mischaracterizes the terms of said document.

37. Answering paragraph 161 of the Third Amended Complaint, Uni-Ter UMC admits the first sentence of this paragraph, but lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 161 and, on that basis, denies each and every remaining allegation set forth therein.

38. Answering paragraph 165 of the Third Amended Complaint, Uni-Ter UMC submits that, with respect to the allegations addressing the Annual Statement and Quarterly statement, such documents speak for themselves, refers the Court to those documents for their complete and exact contents, and denies each and every allegation set forth in paragraph 165 that mischaracterizes the terms of those documents. Uni-Ter UMC lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 165 and, on that basis, denies each and every remaining allegation set forth therein.

39. Answering paragraph 166 of the Third Amended Complaint, Uni-Ter UMC admits only that Uni-Ter was the underwriter for Sophia Palmer. Uni-Ter UMC lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 31 and, on that basis, denies each and every remaining allegation set forth therein.

40. Answering paragraph 184 of the Third Amended Complaint, Uni-Ter UMC admits only that the board package for the September 2011 meeting included the September

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2011 Praxis Report. With respect to the allegations in paragraph 184 regarding the terms of the 2011 Praxis Report, Uni-Ter UMC submits that the terms of this document speak for themselves, refers the Court to the document for its complete and exact contents, and denies each and every allegation set forth in paragraph 184 that mischaracterizes the terms of said document.

41. Answering paragraph 185 of the Third Amended Complaint, Uni-Ter UMC admits only that the board package for the September 2011 meeting included a power point from Milliman. With respect to the allegations in paragraph 185 regarding the power point, Uni-Ter UMC submits that the terms of this document speak for themselves, refers the Court to the document for its complete and exact contents, and denies each and every allegation set forth in paragraph 185 that mischaracterizes the terms of said document. Uni-Ter UMC further denies each and every remaining allegation set forth in paragraph 185.

42. Answering paragraph 186 of the Third Amended Complaint, Uni-Ter UMC admits only that Milliman provided a preliminary draft of certain schedules. With respect to the allegations in paragraph 186 regarding these drafts, Uni-Ter UMC submits that the terms of those document speak for themselves, refers the Court to the documents for their complete and exact contents, and denies each and every allegation set forth in paragraph 186 that mischaracterizes the terms of said documents.

43. Answering paragraph 190 of the Third Amended Complaint, Uni-Ter UMC admits only that Milliman provided a preliminary draft of certain schedules. With respect to the allegations in paragraph 190 regarding these drafts, Uni-Ter UMC submits that the terms of those document speak for themselves, refers the Court to the documents for their complete and exact contents, and denies each and every allegation set forth in paragraph 190 that mischaracterizes the terms of said documents.

44. Answering paragraph 207 of the Third Amended Complaint, Uni-Ter UMC admits only that the Action dated October 5, 2011 is attached as Exhibit 22 to the Third Amended Complaint. Uni-Ter UMC submits that the terms of this document speak for themselves, refers the Court to this document for its complete and exact contents, and denies

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each and every allegation set forth in paragraph 207 that mischaracterizes the terms of said document.

45. Answering paragraph 208 of the Third Amended Complaint, Uni-Ter UMC admits only that the Action dated October 5, 2011 is attached as Exhibit 22 to the Third Amended Complaint and submits that the terms of this document for themselves, refers the Court to this document for its complete and exact contents, and denies each and every allegation set forth in paragraph 208 that mischaracterizes the terms of said document.

46. Answering paragraph 209 of the Third Amended Complaint, Uni-Ter UMC denies the allegations of "captive manager." Uni-Ter UMC admits the remainder of the allegation set forth therein.

47. Answering paragraph 212 of the Third Amended Complaint, Uni-Ter UMC states that, with respect to the allegations in paragraph 212 regarding Fishlinger's report, Uni-Ter UMC submits that the terms of this document speak for themselves, refers the Court to this document for its complete and exact contents, and denies each and every allegation set forth in paragraph 212 that mischaracterizes the terms of said document. Uni-Ter UMC lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 212 and, on that basis, denies each and every remaining allegation set forth therein.

48. Answering paragraph 213 of the Third Amended Complaint, Uni-Ter UMC lacks sufficient knowledge or information to form a belief as to the truth of the allegations regarding assumptions made by the Board. With respect to the allegations in paragraph 213 regarding Praxis's July 2012 report, Uni-Ter UMC submits that the terms of this document speak for themselves, refers the Court to the document for its complete and exact contents, and denies each and every allegation set forth in paragraph 213 that mischaracterizes the terms of said document.

49. Answering paragraph 214 of the Third Amended Complaint, Uni-Ter UMC admits only that Fishlinger performed a second review, which reported conclusions speak for

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themselves. Uni-Ter UMC further admits that an additional review of the case reserves occurred. Uni-Ter UMC denies each and every remaining allegation set forth in paragraph 214.

50. Answering paragraph 215 of the Third Amended Complaint, Uni-Ter UMC lacks sufficient knowledge or information to form a belief as to the truth of the allegations regarding whether Milliman booked its estimate of reserves at 6/30 and 12/31 of each year, based on its own analysis. With respect to the allegations in paragraph 215 regarding Milliman's June 30, 2012 analysis, Uni-Ter UMC submits that the terms of this document speak for themselves, refers the Court to the document for its complete and exact contents, and denies each and every allegation set forth in paragraph 215 that mischaracterizes the terms of said document.

CLAIMS

51. Answering paragraph 216 of the Third Amended Complaint, Uni-Ter UMC repeats, realleges, and incorporates each of its admissions, denials and/or other responses to the allegations set forth in the paragraphs referenced therein as if set forth at length and in full.

FIRST CLAIM FOR RELIEF

(Gross Negligence of the Former Officers and Directors of L&C)

52. Answering paragraphs 217–234 of the Third Amended Complaint, Uni-Ter UMC states that the First Claim for Relief is not directed at Uni-Ter UMC, and, therefore, no response to said paragraphs is required.

SECOND CLAIM FOR RELIEF

(Deepening of the Insolvency of L&C Caused by the Former Directors and Officers)

53. Answering paragraphs 235–240 of the Third Amended Complaint, Uni-Ter UMC states that the Second Claim for Relief is not directed at Uni-Ter UMC, and, therefore, no response to said paragraphs is required.

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THIRD CLAIM FOR RELIEF

(Negligent Misrepresentation by Uni-Ter UMC)

54. Answering paragraph 241 of the Third Amended Complaint, Uni-Ter UMC repeats, realleges, and incorporates each of its admissions, denials and/or other responses to the allegations set forth in the paragraphs referenced therein as if set forth at length and in full.

55. Answering paragraphs 242, 243, 244, 245, 246, and 247 of the Third Amended Complaint, Uni-Ter UMC denies each and every allegation set forth therein.

56. Answering paragraph 248 of the Third Amended Complaint, Uni-Ter UMC lacks sufficient knowledge or information to form a belief as to Plaintiff's fee arrangement with its attorneys. Uni-Ter UMC denies that Plaintiff is entitled to recover attorney's fees and costs.

FOURTH CLAIM FOR RELIEF

(Breach of Fiduciary Duty by Uni-Ter UMC and Uni-Ter CS)

57. Answering paragraph 249 of the Third Amended Complaint, Uni-Ter UMC repeats, realleges, and incorporates each of its admissions, denials and/or other responses to the allegations set forth in the paragraphs referenced therein as if set forth at length and in full.

58. Answering paragraphs 250, 251, 253, and 255 of the Third Amended Complaint, Uni-Ter UMC denies each and every allegation set forth therein.

59. Answering paragraph 252 of the Third Amended Complaint, Uni-Ter UMC admits only that the January 10, 2008 Board Meeting Minutes are attached as Exhibit 14 to the Third Amended Complaint. Uni-Ter UMC submits that the terms of this document speak for themselves, refers the Court to this document for its complete and exact contents, and denies each and every allegation set forth in paragraph 252 that mischaracterizes the terms of said document.

60. Answering paragraph 254 of the Third Amended Complaint, Uni-Ter UMC submits that the terms of the emails referenced in this paragraph speak for themselves, refers the Court to those documents for their complete and exact contents, and denies each and every allegation set forth in paragraph 254 that mischaracterizes the terms of said documents. Further, Uni-Ter UMC denies that the February 2, 2012 Minutes are attached as Exhibit 26 to

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the Third Amended Complaint; however, Uni-Ter UMC submits that the terms of the February 2, 2012 Minutes speak for themselves, refers the Court to that document for their complete and exact contents, and denies each and every allegation set forth in paragraph 254 that mischaracterizes the terms of said document.

61. Answering paragraph 256 of the Third Amended Complaint, Uni-Ter UMC lacks sufficient knowledge or information to form a belief as to Plaintiff's fee arrangement with its attorneys. Uni-Ter UMC denies that Plaintiff is entitled to recover attorney's fees and costs.

FIFTH CLAIM FOR RELIEF

(Breach of Fiduciary Duty Against U.S. RE)

62. Answering paragraphs 257–269 of the Third Amended Complaint, Uni-Ter UMC states that the Fifth Claim for Relief is not directed at Uni-Ter UMC, and, therefore, no response to said paragraphs is required.

63. Uni-Ter UMC denies each and every remaining allegation set forth in the Third Amended Complaint to which a specific admission, denial or other response is not set forth herein, including Plaintiff's prayers for relief.

64. Uni-Ter UMC has been forced to retain the services of attorneys and other professionals to defend itself in connection with the Third Amended Complaint, and should be awarded its reasonable attorneys' fees, costs of suit, and other expenses incurred in connection with this matter.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff's claim against Uni-Ter UMC is barred, in whole or in part, because the Third Amended Complaint fails to state a cause of action against Uni-Ter UMC upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claim against Uni-Ter UMC is barred, in whole or in part, because Uni-Ter UMC owed L&C no duties outside those explicitly set forth in the 2004 and 2011 Management Agreements.

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THIRD AFFIRMATIVE DEFENSE

Plaintiff's claim against Uni-Ter UMC is barred, in whole or in part, because Uni-Ter UMC has not breached any duty, contractual, fiduciary, or otherwise, owed to Plaintiff or L&C.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because Uni-Ter UMC did not engage in any willful, fraudulent, intentional, or any other behavior resulting in a breach of any fiduciary duty owed to Plaintiff or L&C.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claim against Uni-Ter UMC is barred, in whole or in part, because of a lack of causation. Plaintiff has not suffered any injury or harm as a result of any action or omission of Uni-Ter UMC.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claim against Uni-Ter UMC is barred, in whole or in part, because the alleged damages were the result of intervening and superseding conduct of others, including but not limited to L&C acting through the Board.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claim against Uni-Ter UMC is barred, in whole or in part, by the fact that Uni-Ter UMC faithfully executed instructions provided by the Board.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's claim against Uni-Ter UMC is barred, in whole or in part, by the applicable statute of limitations.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's claim against Uni-Ter UMC is barred, in whole or in part, because L&C ratified Uni-Ter UMC's actions.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's claim against Uni-Ter UMC is barred, in whole or in part, because any action taken or decision made by Uni-Ter UMC was within its sound business judgment.

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ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claim against Uni-Ter UMC is barred, in whole or in part, because Uni-Ter UMC reasonably believed in good faith that its actions were lawful, necessary and justified.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's claim against Uni-Ter UMC is barred, in whole or in part, because Plaintiff has failed to mitigate its alleged damages.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of unclean hands.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of laches.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of estoppel.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because Plaintiff has waived its right to seek damages.

SEVENTEENTH AFFIRMATIVE DEFENSE

Uni-Ter UMC is entitled to a setoff against any damages that may be awarded to Plaintiff for amounts owed to Uni-Ter UMC by Plaintiff.

EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims for damages, if valid, are reduced because Uni-Ter UMC is entitled to recoupment for amounts owed to Uni-Ter UMC by Plaintiff.

NINETEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims may be barred by other affirmative defenses enumerated in or allowed under NRCP 8(c). Uni-Ter UMC hereby reserves the right to amend this list of Affirmative Defenses to add new defenses should discovery or investigation reveal facts giving rise to such defenses.

WHEREFORE, having fully responded to the Third Amended Complaint, Uni-Ter UMC respectfully prays as follows:

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A. That Plaintiff take nothing by virtue of its Third Amended Complaint, that the Third Amended Complaint be dismissed with prejudice as it relates to Uni-Ter UMC, and that the Court enter judgment in favor of Uni-Ter UMC;

B. For an award of reasonable attorneys' fees and costs incurred in connection with this litigation; and

C. For such other and further relief as the Court deems fair and just under the circumstances.

DATED this 7th day of August, 2020.

MCDONALD CARANO LLP

By: */s/ George F. Ogilvie III*
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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of August 2020, this document **DEFENDANT UNI-TER UNDERWRITING MANAGEMENT CORP.'S AMENDED ANSWER TO PLAINTIFF'S THIRD AMENDED COMPLAINT** was Electronically Served to all parties of record via this Court's electronic filing system to all parties listed on the E-SERVICE MASTER LIST.

By: */s/ Jelena Jovanovic*
An employee of McDonald Carano LLP

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DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Plaintiff, vs. ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP. UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION, DOES 1-50, inclusive; and ROES 51-100, inclusive, Defendants.	Case No. A-14-711535-C Dept. No.: XXVII **DEFENDANT UNI-TER CLAIMS SERVICES CORP.'S AMENDED ANSWER TO THIRD AMENDED COMPLAINT**

UNI-TER CLAIMS SERVICES CORP. ("Uni-Ter CS"), by and through its counsel of record, George F. Ogilvie III of McDONALD CARANO LLP and Jon M. Wilson of NELSON MULLINS BROAD AND CASSEL, as and for its Amended Answer to the Third Amended Complaint filed herein on behalf of Plaintiff COMMISSIONER OF INSURANCE FOR THE

STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC. ("Plaintiff"), admits, denies, and responds as follows:

PARTIES, JURISDICTION AND VENUE

1. Answering paragraph 1 of the Third Amended Complaint, Uni-Ter CS states, on information and belief, that L&C was formed in 2003. Uni-Ter CS admits the remainder of the allegation set forth therein.

2. Answering paragraph 2 of the Third Amended Complaint, Uni-Ter CS admits only that the Nevada Division of Insurance ("DOI") filed a Receivership Action related to L&C in 2012 with case number A-12-672047-B and that an Order of Liquidation was entered in that action on February 28, 2013. With respect to the allegations in paragraph 2 regarding the terms of the Order of Liquidation, Uni-Ter CS submits that the terms of this document speak for themselves, refers the Court to the document for its complete and exact contents, and denies each and every allegation set forth in paragraph 2 that mischaracterizes the terms of said document.

3. Answering paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, and 29 of the Third Amended Complaint, Uni-Ter CS lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in said paragraphs and, on that basis, denies each and every allegation set forth therein.

4. Answering paragraph 26 of the Third Amended Complaint, Uni-Ter CS admits only that U.S. RE Corporation ("U.S. RE") is a reinsurance broker and denies each and every remaining allegation set forth therein.

5. Answering paragraph 27 of the Third Amended Complaint, Uni-Ter CS admits only that Uni-Ter Underwriting Management Corp. ("Uni-Ter UMC") is presently a wholly owned subsidiary of U.S. RE and denies each and every remaining allegation set forth therein.

6. Answering paragraph 28 of the Third Amended Complaint, Uni-Ter CS denies each and every allegation set forth therein.

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GENERAL ALLEGATIONS

7. Answering paragraphs 30, 35, 36, 42, 63, 65, 100, 118, and 211 of the Third Amended Complaint, Uni-Ter CS admits the allegation set forth therein.

8. Answering paragraph 31 of the Third Amended Complaint, Uni-Ter CS admits that L&C expanded its area of operation over the years, but lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 31 and, on that basis, denies each and every remaining allegation set forth therein.

9. Answering paragraphs 32, 34, 39, 55, 56, 58, 59, 76, 89, 90, 91, 92, 93, 94, 99, 101, 104, 105, 107, 108, 113, 114, 115, 116, 117, 120, 121, 122, 126, 130, 145, 148, 164, 168, 170, 203, 205, and 206 of the Third Amended Complaint, Uni-Ter CS denies each and every allegation set forth therein.

10. Answering paragraph 33 of the Third Amended Complaint, Uni-Ter CS admits only that Uni-Ter UMC and Uni-Ter CS were retained as managers of L&C and denies each and every remaining allegation set forth therein.

11. Answering paragraphs 37, 57, 132, 169, 174, 177, 178, 179, 181, and 210 of the Third Amended Complaint, Uni-Ter CS lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in said paragraphs and, on that basis, denies each and every allegation set forth therein.

12. Answering paragraph 38 of the Third Amended Complaint, Uni-Ter CS admits that L&C was managed by Uni-Ter UMC. Uni-Ter CS also admits that Uni-Ter UMC also sent out offering memoranda and offering documents, but qualifies such response by noting that such actions were within the normal course of business for a risk retention group.

13. Answering paragraph 40 of the Third Amended Complaint, Uni-Ter CS admits only that Uni-Ter UMC has organized five risk retention groups and denies each and every remaining allegation set forth therein.

14. Answering paragraph 41 of the Third Amended Complaint, Uni-Ter CS submits that Uni-Ter UMC's services to L&C are set forth in the 2004 and 2011 Management

Agreements and that the terms of these documents speak for themselves, refers the Court to these documents for their complete and exact contents, and denies each and every allegation set forth in paragraph 41 that mischaracterizes the terms of said document.

15. Answering paragraph 43 of the Third Amended Complaint, Uni-Ter CS admits only that Uni-Ter UMC entered into the 2004 Management Agreement. With respect to the allegations in paragraph 43 regarding the terms of the 2004 Management Agreement, Uni-Ter CS submits that the terms of this document speak for themselves, refers the Court to the document for its complete and exact contents, and denies each and every allegation set forth in paragraph 43 that mischaracterizes the terms of said document.

16. Answering paragraphs 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 61, 62, 66, 67, 68, 69, 70, 74, 75, 96, 97, 98, 109, 110, 111, 112, 123, 124, 125, 127, 131, 133, 134, 135, 136, 137, 138, 140, 141, 142, 143, 144, 149, 150, 151, 152, 156, 157, 158, 160, 162, 167, 171, 172, 173, 175, 176, 180, 182, 183, 187, 188, 189, 191, 196, 197, 198, 199, 200, 201, 202, and 204 of the Third Amended Complaint, Uni-Ter CS submits that the terms of the documents referenced in these paragraphs speak for themselves, refers the Court to those documents for their complete and exact contents, and denies each and every allegation set forth in said paragraphs that mischaracterizes the terms of those documents.

17. Answering paragraph 60 of the Third Amended Complaint, Uni-Ter CS submits that the terms of the "contracts at issue" referenced in said paragraph speak for themselves, refers the Court to this document for its complete and exact contents, and denies each and every allegation set forth in paragraph 60 that mischaracterizes the terms of said document. Uni-Ter CS denies each and every remaining allegation set forth in paragraph 60.

18. Answering paragraph 64 of the Third Amended Complaint, Uni-Ter CS admits only that Uni-Ter UMC and Uni-Ter CS entered into the 2011 Management Agreement. With respect to the allegations in paragraph 64 regarding the terms of the 2011 Management Agreement, Uni-Ter CS submits that the terms of this document speak for themselves, refers the Court to the document for its complete and exact contents, and denies each and every

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allegation set forth in paragraph 64 that mischaracterizes the terms of said document. Uni-Ter CS denies each and every remaining allegation set forth in paragraph 64.

19. Answering paragraph 71 of the Third Amended Complaint, Uni-Ter CS admits only that not less than $1,000,000.00 in management fees were received in 2011 and denies each and every remaining allegation set forth therein.

20. Answering paragraph 72 of the Third Amended Complaint, Uni-Ter CS admits that Milliman did the work alleged; however, on information and belief, such work was done for and on behalf of L&C. To the extent the allegations of paragraph 72 are inconsistent with this, such allegations are denied.

21. Answering paragraph 73 of the Third Amended Complaint, Uni-Ter CS admits only that Lewis & Clark LTC Risk Retention Group, Inc. ("L&C") and U.S. RE entered into a Broker of Record Letter Agreement. With respect to the allegations in paragraph 73 regarding the terms of the Broker of Record Letter Agreement, Uni-Ter CS submits that the terms of this document speak for themselves, refers the Court to the document for its complete and exact contents, and denies each and every allegation set forth in paragraph 73 that mischaracterizes the terms of said document.

22. Answering paragraph 77 of the Third Amended Complaint, Uni-Ter CS admits only that the 2004 and 2011 Management Agreements exist and submits that the terms of these documents speak for themselves, refers the Court to the documents for their complete and exact contents, and denies each and every allegation set forth in paragraph 77 that mischaracterizes the terms of said documents.

23. Answering paragraph 78 of the Third Amended Complaint, Uni-Ter CS admits only that Uni-Ter UMC and Uni-Ter CS are presently wholly owned subsidiaries of U.S. RE.

24. Answering paragraph 79, 80, 82, 86, 87, and 88 of the Third Amended Complaint, Uni-Ter CS submits that, to the extent referenced, the terms of the Broker of Record Letter Agreement speak for themselves, refers the Court to the Broker of Record Letter Agreement for its complete and exact contents, and denies each and every allegation set forth in

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said paragraphs that mischaracterizes the terms of the Broker of Record Letter Agreement. Uni-Ter CS further denies each and every remaining allegation set forth in said paragraphs.

25. Answering paragraphs 81, 83, and 85 of the Third Amended Complaint, Uni-Ter CS states that the allegations contained in said paragraphs call for legal conclusions to which no response is required.

26. Answering paragraph 84 of the Third Amended Complaint, Uni-Ter CS states that, to the extent paragraph 84 calls for a legal conclusion, no response is required. Uni-Ter CS denies each and every remaining allegation set forth therein.

27. Answering paragraph 95 of the Third Amended Complaint, Uni-Ter CS admits only that U.S. RE procured certain reinsurance treaties. With respect to the allegations in paragraph 95 regarding the terms of certain alleged treaties, Uni-Ter CS submits that the terms of those documents speak for themselves, refers the Court to those documents for their complete and exact contents, and denies each and every allegation set forth in paragraph 95 that mischaracterizes the terms of said documents.

28. Answering paragraph 102 of the Third Amended Complaint, Uni-Ter CS admits only that on or around this time Sanford Elsass ("Elsass") and Donna Dalton sent a memorandum. With respect to the allegations in paragraph 102 regarding the terms of said memorandum, Uni-Ter CS submits that the terms of this document speak for themselves, refers the Court to the document for its complete and exact contents, and denies each and every allegation set forth in paragraph 102 that mischaracterizes the terms of said document.

29. Answering paragraph 103 of the Third Amended Complaint, Uni-Ter CS admits only that Praxis was hired and denies each and every remaining allegation set forth therein.

30. Answering paragraph 106 of the Third Amended Complaint, Uni-Ter CS admits only that a report from Praxis dated September 15, 2011 exists. With respect to the allegations in paragraph 106 regarding the terms of said report, Uni-Ter CS submits that the terms of this document speak for themselves, refers the Court to the document for its complete and exact contents, and denies each and every allegation set forth in paragraph 106 that mischaracterizes

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the terms of said document. Uni-Ter CS denies each and every remaining allegation set forth in paragraph 106.

31. Answering paragraph 119 of the Third Amended Complaint, Uni-Ter CS admits only that Elsass and employees of the Uni-Ter entities provided reports about the company to the Board members. Uni-Ter CS denies each and every remaining allegation set forth in paragraph 119.

32. Answering paragraph 128 of the Third Amended Complaint, Uni-Ter CS admits only that Uni-Ter established loss reserves for the company. With respect to the allegations in paragraph 128 regarding the September 14, 2005 Minutes, Uni-Ter CS submits that the terms of this document speak for themselves, refers the Court to the document for its complete and exact contents, and denies each and every allegation set forth in paragraph 128 that mischaracterizes the terms of said document. Uni-Ter CS denies each and every remaining allegation set forth in paragraph 128.

33. Answering paragraph 129 of the Third Amended Complaint, Uni-Ter CS lacks sufficient knowledge or information to form a belief as to whether the Audit Committee was established at the February 10, 2006 meeting of the Board. With respect to the allegations in paragraph 129 regarding the February 10, 2006 Minutes, which are not attached to the Complaint, Uni-Ter CS submits that the terms of this document speak for themselves, refers the Court to the document for its complete and exact contents, and denies each and every allegation set forth in paragraph 129 that mischaracterizes the terms of said document. Uni-Ter CS denies each and every remaining allegation set forth in paragraph 129.

34. Answering paragraph 139 of the Third Amended Complaint, Uni-Ter CS denies that the December 2, 2009 Minutes are attached as Exhibit 17 to the Third Amended Complaint. With respect to the allegations in paragraph 139 addressing the terms of the December 2, 2009 Minutes, Uni-Ter CS submits that the terms of documents referenced therein speak for themselves, refers the Court to those documents for their complete and exact contents, and denies each and every allegation set forth in said paragraphs that mischaracterizes the terms

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of those documents.

35. Answering paragraphs 146, 153, 154, 155, 159, 163, 192, 193, 194, and 195 of the Third Amended Complaint, Uni-Ter CS submits that, with respect to the allegations in said paragraphs addressing the terms of certain documents, the terms of documents referenced therein speak for themselves, refers the Court to those documents for their complete and exact contents, and denies each and every allegation set forth in said paragraphs that mischaracterizes the terms of those documents. Uni-Ter CS denies each and every remaining allegation set forth in said paragraphs.

36. Answering paragraph 147 of the Third Amended Complaint, Uni-Ter CS admits only that William Fishlinger ("Fishlinger") was retained in 2011 to perform claims review. With respect to the allegations in paragraph 147 regarding the terms of the December 28, 2011 Minutes, Uni-Ter CS submits that the terms of this document speak for themselves, refers the Court to the document for its complete and exact contents, and denies each and every allegation set forth in paragraph 147 that mischaracterizes the terms of said document.

37. Answering paragraph 161 of the Third Amended Complaint, Uni-Ter CS admits the first sentence of this paragraph, but lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 161 and, on that basis, denies each and every remaining allegation set forth therein.

38. Answering paragraph 165 of the Third Amended Complaint, Uni-Ter CS submits that, with respect to the allegations addressing the Annual Statement and Quarterly statement, such documents speak for themselves, refers the Court to those documents for their complete and exact contents, and denies each and every allegation set forth in paragraph 165 that mischaracterizes the terms of those documents. Uni-Ter CS lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 165 and, on that basis, denies each and every remaining allegation set forth therein.

39. Answering paragraph 166 of the Third Amended Complaint, Uni-Ter CS admits only that Uni-Ter was the underwriter for Sophia Palmer. Uni-Ter CS lacks sufficient

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knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 31 and, on that basis, denies each and every remaining allegation set forth therein.

40. Answering paragraph 184 of the Third Amended Complaint, Uni-Ter CS admits only that the board package for the September 2011 meeting included the September 2011 Praxis Report. With respect to the allegations in paragraph 184 regarding the terms of the 2011 Praxis Report, Uni-Ter CS submits that the terms of this document speak for themselves, refers the Court to the document for its complete and exact contents, and denies each and every allegation set forth in paragraph 184 that mischaracterizes the terms of said document.

41. Answering paragraph 185 of the Third Amended Complaint, Uni-Ter CS admits only that the board package for the September 2011 meeting included a power point from Milliman. With respect to the allegations in paragraph 185 regarding the power point, Uni-Ter CS submits that the terms of this document speak for themselves, refers the Court to the document for its complete and exact contents, and denies each and every allegation set forth in paragraph 185 that mischaracterizes the terms of said document. Uni-Ter CS further denies each and every remaining allegation set forth in paragraph 185.

42. Answering paragraph 186 of the Third Amended Complaint, Uni-Ter CS admits only that Milliman provided a preliminary draft of certain schedules. With respect to the allegations in paragraph 186 regarding these drafts, Uni-Ter CS submits that the terms of those document speak for themselves, refers the Court to the documents for their complete and exact contents, and denies each and every allegation set forth in paragraph 186 that mischaracterizes the terms of said documents.

43. Answering paragraph 190 of the Third Amended Complaint, Uni-Ter CS admits only that Milliman provided a preliminary draft of certain schedules. With respect to the allegations in paragraph 190 regarding these drafts, Uni-Ter CS submits that the terms of those document speak for themselves, refers the Court to the documents for their complete and exact contents, and denies each and every allegation set forth in paragraph 190 that mischaracterizes the terms of said documents.

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44. Answering paragraph 207 of the Third Amended Complaint, Uni-Ter CS admits only that the Action dated October 5, 2011 is attached as Exhibit 22 to the Third Amended Complaint. Uni-Ter CS submits that the terms of this document speak for themselves, refers the Court to this document for its complete and exact contents, and denies each and every allegation set forth in paragraph 207 that mischaracterizes the terms of said document.

45. Answering paragraph 208 of the Third Amended Complaint, Uni-Ter CS admits only that the Action dated October 5, 2011 is attached as Exhibit 22 to the Third Amended Complaint and submits that the terms of this document for themselves, refers the Court to this document for its complete and exact contents, and denies each and every allegation set forth in paragraph 208 that mischaracterizes the terms of said document.

46. Answering paragraph 209 of the Third Amended Complaint, Uni-Ter CS denies the allegations of "captive manager." Uni-Ter CS admits the remainder of the allegation set forth therein.

47. Answering paragraph 212 of the Third Amended Complaint, Uni-Ter CS states that, with respect to the allegations in paragraph 212 regarding Fishlinger's report, Uni-Ter CS submits that the terms of this document speak for themselves, refers the Court to this document for its complete and exact contents, and denies each and every allegation set forth in paragraph 212 that mischaracterizes the terms of said document. Uni-Ter CS lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 212 and, on that basis, denies each and every remaining allegation set forth therein.

48. Answering paragraph 213 of the Third Amended Complaint, Uni-Ter CS lacks sufficient knowledge or information to form a belief as to the truth of the allegations regarding assumptions made by the Board. With respect to the allegations in paragraph 213 regarding Praxis's July 2012 report, Uni-Ter CS submits that the terms of this document speak for themselves, refers the Court to the document for its complete and exact contents, and denies each and every allegation set forth in paragraph 213 that mischaracterizes the terms of said document.

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49. Answering paragraph 214 of the Third Amended Complaint, Uni-Ter CS admits only that Fishlinger performed a second review, which reported conclusions speak for themselves. Uni-Ter CS further admits that an additional review of the case reserves occurred. Uni-Ter CS denies each and every remaining allegation set forth in paragraph 60.

50. Answering paragraph 215 of the Third Amended Complaint, Uni-Ter CS lacks sufficient knowledge or information to form a belief as to the truth of the allegations regarding whether Milliman booked its estimate of reserves at 6/30 and 12/31 of each year, based on its own analysis. With respect to the allegations in paragraph 215 regarding Milliman's June 30, 2012 analysis, Uni-Ter CS submits that the terms of this document speak for themselves, refers the Court to the document for its complete and exact contents, and denies each and every allegation set forth in paragraph 215 that mischaracterizes the terms of said document.

CLAIMS

51. Answering paragraph 216 of the Third Amended Complaint, Uni-Ter CS repeats, realleges, and incorporates each of its admissions, denials and/or other responses to the allegations set forth in the paragraphs referenced therein as if set forth at length and in full.

FIRST CLAIM FOR RELIEF

(Gross Negligence of the Former Officers and Directors of L&C)

52. Answering paragraphs 217–234 of the Third Amended Complaint, Uni-Ter CS states that the First Claim for Relief is not directed at Uni-Ter CS, and, therefore, no response to said paragraphs is required.

SECOND CLAIM FOR RELIEF

(Deepening of the Insolvency of L&C Caused by the Former Directors and Officers)

53. Answering paragraphs 235–240 of the Third Amended Complaint, Uni-Ter CS states that the Second Claim for Relief is not directed at Uni-Ter CS, and, therefore, no response to said paragraphs is required.

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THIRD CLAIM FOR RELIEF

(Negligent Misrepresentation by Uni-Ter UMC)

54. Answering paragraphs 241–248 of the Third Amended Complaint, Uni-Ter CS states that the Third Claim for Relief is not directed at Uni-Ter CS, and, therefore, no response to said paragraphs is required.

FOURTH CLAIM FOR RELIEF

(Breach of Fiduciary Duty by Uni-Ter UMC and Uni-Ter CS)

55. Answering paragraph 249 of the Third Amended Complaint, Uni-Ter CS repeats, realleges, and incorporates each of its admissions, denials and/or other responses to the allegations set forth in the paragraphs referenced therein as if set forth at length and in full.

56. Answering paragraphs 250, 251, 253, and 255 of the Third Amended Complaint, Uni-Ter CS denies each and every allegation set forth therein.

57. Answering paragraph 252 of the Third Amended Complaint, Uni-Ter CS admits only that the January 10, 2008 Board Meeting Minutes are attached as Exhibit 14 to the Third Amended Complaint. Uni-Ter CS submits that the terms of this document speak for themselves, refers the Court to this document for its complete and exact contents, and denies each and every allegation set forth in paragraph 252 that mischaracterizes the terms of said document.

58. Answering paragraph 254 of the Third Amended Complaint, Uni-Ter CS submits that the terms of the emails referenced in this paragraph speak for themselves, refers the Court to those documents for their complete and exact contents, and denies each and every allegation set forth in paragraph 254 that mischaracterizes the terms of said documents. Further, Uni-Ter CS denies that the February 2, 2012 Minutes are attached as Exhibit 26 to the Third Amended Complaint; however, Uni-Ter CS submits that the terms of the February 2, 2012 Minutes speak for themselves, refers the Court to that document for their complete and exact contents, and denies each and every allegation set forth in paragraph 254 that mischaracterizes the terms of said document.

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59. Answering paragraph 255 of the Third Amended Complaint, Uni-Ter CS lacks sufficient knowledge or information to form a belief as to Plaintiff's fee arrangement with its attorneys. Uni-Ter CS denies that Plaintiff is entitled to recover attorney's fees and costs.

FIFTH CLAIM FOR RELIEF

(Breach of Fiduciary Duty Against U.S. RE)

60. Answering paragraphs 257–269 of the Third Amended Complaint, Uni-Ter CS states that the Fifth Claim for Relief is not directed at Uni-Ter CS, and, therefore, no response to said paragraphs is required.

61. Uni-Ter CS denies each and every remaining allegation set forth in the Third Amended Complaint to which a specific admission, denial or other response is not set forth herein, including Plaintiff's prayers for relief.

62. Uni-Ter CS has been forced to retain the services of attorneys and other professionals to defend itself in connection with the Third Amended Complaint, and should be awarded its reasonable attorneys' fees, costs of suit, and other expenses incurred in connection with this matter.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff's claim against Uni-Ter CS is barred, in whole or in part, because the Third Amended Complaint fails to state a cause of action against Uni-Ter CS upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claim against Uni-Ter CS is barred, in whole or in part, because Uni-Ter CS owed L&C no duties outside those explicitly set forth in the 2011 Management Agreement.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claim against Uni-Ter CS is barred, in whole or in part, because Uni-Ter CS has not breached any duty, contractual, fiduciary, or otherwise, owed to Plaintiff or L&C.

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FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because Uni-Ter CS did not engage in any willful, fraudulent, intentional, or any other behavior resulting in a breach of any fiduciary duty owed to Plaintiff or L&C.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claim against Uni-Ter CS is barred, in whole or in part, because of a lack of causation. Plaintiff has not suffered any injury or harm as a result of any action or omission of Uni-Ter CS.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claim against Uni-Ter CS is barred, in whole or in part, because the alleged damages were the result of intervening and superseding conduct of others, including but not limited to L&C acting through the Board.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claim against Uni-Ter CS is barred, in whole or in part, by the fact that Uni-Ter CS faithfully executed instructions provided by the Board.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's claim against Uni-Ter CS is barred, in whole or in part, by the applicable statute of limitations.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's claim against Uni-Ter CS is barred, in whole or in part, because L&C ratified Uni-Ter CS's actions.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's claim against Uni-Ter CS is barred, in whole or in part, because any action taken or decision made by Uni-Ter CS was within its sound business judgment.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claim against Uni-Ter CS is barred, in whole or in part, because Uni-Ter CS reasonably believed in good faith that its actions were lawful, necessary and justified.

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TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's claim against Uni-Ter CS is barred, in whole or in part, because Plaintiff has failed to mitigate its alleged damages.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of unclean hands.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of laches.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of estoppel.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because Plaintiff has waived its right to seek damages.

SEVENTEENTH AFFIRMATIVE DEFENSE

Uni-Ter CS is entitled to a setoff against any damages that may be awarded to Plaintiff for amounts owed to Uni-Ter CS by Plaintiff.

EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims for damages, if valid, are reduced because Uni-Ter CS is entitled to recoupment for amounts owed to Uni-Ter CS by Plaintiff.

NINETEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims may be barred by other affirmative defenses enumerated in or allowed under NRCP 8(c). Uni-Ter CS hereby reserves the right to amend this list of Affirmative Defenses to add new defenses should discovery or investigation reveal facts giving rise to such defenses.

WHEREFORE, having fully responded to the Third Amended Complaint, Uni-Ter CS respectfully prays as follows:

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That Plaintiff take nothing by virtue of its Third Amended Complaint, that the Third Amended Complaint be dismissed with prejudice as it relates to Uni-Ter CS, and that the Court enter judgment in favor of Uni-Ter CS;

B. For an award of reasonable attorneys' fees and costs incurred in connection with this litigation; and

C. For such other and further relief as the Court deems fair and just under the circumstances.

DATED this 7th day of August, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of August, 2020, **DEFENDANT UNI-TER CLAIMS SERVICES CORP.'S AMENDED ANSWER TO THIRD AMENDED COMPLAINT** was Electronically Served to all parties of record via this Court's electronic filing system to all parties listed on the E-SERVICE MASTER LIST.

By: */s/ Jelena Jovanovic*
An employee of McDonald Carano LLP

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DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Plaintiffs, v. ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP. UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION, DOES 1-50, inclusive; and ROES 51-100, inclusive, Defendants.	Case No. A-14-711535-C Dept. No.: XXVII **ORDER DENYING PLAINTIFF'S MOTION FOR LEAVE TO FILE FOURTH AMENDED COMPLAINT**

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This matter came before the Court for hearing on July 23, 2020 on Plaintiff's Motion for Leave to File Fourth Amended Complaint ("Motion"). Brenoch R. Wirthlin, Esq. appeared on behalf of Plaintiff Commissioner of Insurance for the State of Nevada ("Plaintiff"); George F. Ogilvie III, Esq., Jon N. Wilson, Esq. and Erin Kolmansberger, Esq. appeared on behalf of Defendants Uni-Ter Underwriting Management Corp., Uni-Ter Claims Services Corp., and U.S. RE Corporation; and Angela T. Nakamura Ochoa, Esq. appeared on behalf of Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall and Eric Stickels.

Having considered the record and the briefs submitted in support of and in opposition to the Motion, and having entertained the arguments of counsel, the Court finds that the Motion is untimely; that Plaintiff unduly delayed the assertion of the new allegations and claims for relief set forth in the proposed Fourth Amended Complaint; that granting Plaintiff leave to file the Fourth Amended Complaint would unduly prejudice defendants; that the new defendant sought to be added was known to Plaintiff at the time of the filing of the original Complaint; and that the proposed new claims for relief do not relate back to the filing of the original Complaint and are, therefore, time-barred. Based on these findings and good cause appearing therefor,

IT IS HEREBY ORDERED that Plaintiff's Motion for Leave to File Fourth Amended Complaint is **DENIED**.

DATED this ____ day of July, 2020.

Dated this 10th day of August, 2020

Nancy L Allf

NANCY L. ALLF
District Court Judge

B19 B66 6A18 37FC
Nancy Allf
District Court Judge

Approved as to Form and Content:

HUTCHISON & STEFFEN

By: /s/
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DISTRICT COURT
CLARK COUNTY, NEVADA

Commissioner of Insurance for the State of Nevada as Receiver of Lewis and Clark, Plaintiff(s) vs. Robert Chur, Defendant(s)	CASE NO: A-14-711535-C DEPT. NO. Department 27

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

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DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC. Plaintiff, *vs.* ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP., UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION,; DOES 1-50, inclusive; and ROES 51-100, INCLUSIVE, Defendants.	CASE NO.: A-14-711535-C DEPT. NO.: XXVII **MOTION FOR PARTIAL RECONSIDERATION OF MOTION FOR LEAVE TO AMEND REGARDING DIRECTOR DEFENDANTS** **Request for Hearing on OST Pending**

Plaintiff, COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP (the "Plaintiff")[1], by

[1] "L&C" or the "Company."

and through its attorneys, the law firm of Hutchison & Steffen, hereby submits the following Motion for Partial Reconsideration of Motion for Leave to Amend ("Motion to Amend"). This Motion seeks reconsideration of the Court's order on the Motion to Amend ("Order") with respect to the Director Defendants.[2] This motion is brought pursuant to EDCR 2.24 and is based on the following Memorandum of Points and Authorities, any argument the Court entertains at a hearing on this matter, and all papers and pleadings on file herein.

DATED: August 14, 2020.

HUTCHISON & STEFFEN
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND SUMMARY OF ARGUMENT

Respectfully, this Court's decision on Plaintiff's Motion to Amend is clearly erroneous as justice requires the Plaintiff be allowed to amend with respect to the Directors.[3]

First, with respect, the Court's finding of delay is clearly erroneous. The Plaintiff could not have moved to amend to conform to the new *Chur*[4] Opinion before the *Chur* Opinion was entered. In fact, the *Chur* Opinion incorporates the Tenth Circuit's decision in *In re Zagg*, which did not

[2] The "Director Defendants" or "Directors" include Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall and Eric Stickels.

[3] This motion does not seek reconsideration regarding the Court's decision to deny leave to amend concerning Mr. Piccione, or to add causes of action for aiding and abetting or deepening the insolvency as to the Uni-Ter Defendants and U.S. RE.

[4] 136 Nev. Adv. Op. 7 (2020).

even exist when Plaintiff filed its Complaint. A plaintiff cannot be expected to anticipate a change in the law in the future which did not exist at the time of the original complaint. This Court, as well as state and federal court in Nevada, accepted and relied on the holding in *Shoen* that gross negligence was a basis for individual liability against directors. When that language was disavowed in the *Chur* Opinion, Plaintiff moved to amend its complaint within 48 hours of the stay being lifted, and within the time set by this court to file a motion to amend. It is a grave miscarriage of justice to not even permit the Plaintiff to amend its claims against the Directors to meet the new standard under these circumstances. Justice requires that Plaintiff, who filed its complaint without the benefit of the *Chur* or *Zagg* opinions, be permitted to amend as to the Directors.

Second, the finding that the Motion to Amend was untimely is clearly erroneous. This Court provided a scheduling order which set a deadline for all parties to move to amend. In the Court's Order Granting Plaintiff's Motion for Clarification ("Clarification Order") the Court expressly stated that "the parties shall have to and including July 2, 2020, in order to move to amend pleadings." The Plaintiff filed its Motion to Amend on July 2, 2020, within the deadline set by this Court. For the Court to then determine that the Motion to Amend was untimely is very unfair and unjust. A party should be able to rely on the Court's scheduling order, and when a court says a party has until a particular date to move to amend, filing the requisite motion by that date should necessarily mean the motion is timely. In addition, any finding of delay or untimeliness is erroneous as Plaintiff filed its Motion to Lift the Stay on July 2, 2019, to move this matter forward. This Court denied it. It is unfair and unjust for Plaintiff's motion to lift the stay and proceed to be denied, then for delay to be found. Accordingly, Plaintiff respectfully requests this Court reconsider its decision on the Motion to Amend as to the Directors.

II. APPLICABLE STANDARD

"A district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous." *Masonry & Tile Contractors Ass'n of S. Nevada v. Jolley, Urga & Wirth, Ltd*., 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). A decision may be determined to be clearly erroneous based on clarifying case law.

Masonry & Tile Contractors Ass'n of S. Nevada v. Jolley, Urga & Wirth, Ltd., 113 Nev. 737, 741, 941 P.2d 486, 489 (1997) ("Judge Breen rested his reconsideration of Judge Handelsman's arbitrability analysis on the basis that it was 'clearly erroneous,' particularly in light of what he considered to be new clarifying case law.")

III. ARGUMENT

A. Plaintiff could not have moved to amend under the *Chur/Zagg* standard until the *Chur* Opinion was handed down.

Respectfully, the Court's finding of delay is clearly erroneous. The Plaintiff could not have moved to amend to conform to the *Chur* Opinion before the *Chur* Opinion was entered. In fact, the *Chur* Opinion incorporates the Tenth Circuit's decision in *In re Zagg*, which did not even exist when Plaintiff filed its Complaint. A plaintiff cannot be expected to anticipate a change in the law in the future which did not exist at the time of the original complaint. This Court, as well as state and federal court in Nevada, accepted the holding in *Shoen* that gross negligence was a basis for individual liability against directors.[5] In fact, in addition to denying prior motions to amend – *see* orders dated February 25, 2016 and October 10, 2016[6] – this Court expressly relied on *Shoen* in denying the Directors' Motion for Judgment on the Pleadings and expressly noted *Shoen* was the controlling case law:

> IT IS HEREBY ORDERED that the Director Defendants' Motionf or Judgment on the Pleadings pursuant to NRCP 12(c) is DENIED. The Court finds the Motion deals with the same issue the Court addressed in 2016. And while the Court recognizes that NRS 78.138 was amended in 2017, **the Court believes that *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 137 P.3d 1171 (2006) is still the controlling law regarding Directors' personal liability,** even with the additional case law that has come down from the Nevada Supreme Court in 2017, including *Wynn Resorts v. Eighth Judicial District Court*, 399 P.3d 334 (Nev. 2017).

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[5] *See, without limitation, FDIC v. Jacobs*, No. 3:13-cv-00084-RCJ-VPC, 2014 WL 5822873, at *2, *4 (D. Nev. 2014); *FDIC v. Johnson*, No. 2:12-CV-209-KJD-PAL, 2014 WL 5324057, at *3 (D. Nev. 2014); *FDIC v. Jones*, No. 2:13-cv-168-JAD-GWF, 2014 WL 4699511, at *9 (D. Nev. 2014); *FDIC v. Delaney*, No. 2:13-CV-924- JCM (VCF), 2014 WL 3002005, at *2 (D. Nev. 2014), *Jacobi v. Ergen*, No. 2:12-cv-2075-JAD-GWF, 2015 WL 1442223, at *4 (D. Nev. 2015).

[6] Plaintiff requests the Court take judicial notice of its docket pursuant to NRS §§ 47.130-47.170.

See Order Denying Director Defendants' Motion for Judgment on the Pleadings dated November 2, 2018, Exhibit 1 hereto, at p. 2; *see also* Transcript from October 11, 2018 hearing (filed 10/19/18), at 20:19-21:8, included in Exhibit 1 (same). Further, in denying the Directors' motion for reconsideration on February 11, 2019, the Court specifically found as follows:

> COURT FURTHER FINDS after review that Plaintiff's Third Amended Complaint has pleaded sufficient facts to rebut the business judgment rule and to state a cause of action for a breach of the fiduciary duty of care pursuant to *Jacobi v. Ergen* and *F.D.I.C. v. Jacobs.*

See Decision and Order (filed February 11, 2019) at p. 3. The Court in *Jacobi v. Ergen* held "[a] director's misconduct must rise at least to the level of gross negligence to state a breach-of-the-fiduciary-duty-of-due-care claim, **or** involve 'intentional misconduct, fraud, or a knowing violation of the law,' to state a duty-of-loyalty claim…" *Jacobi v. Ergen*, 2015 WL 1442223, at *4 (D. Nev. Mar. 30, 2015). The Court in *F.D.I.C. v. Jacobs* held that the business judgment rule "does not protect the gross negligence of uninformed directors and officers." *Fed. Deposit Ins. Corp. v. Jones*, 2014 WL 4699511, at *10 (D. Nev. Sept. 19, 2014). Up until the issuance of the *Chur* Opinion, this was the law in Nevada as multiple courts had recognized, and on which this Court and Plaintiff justifiably relied.

In fact, *Chur* sets forth a new standard for determining the definition of "intentional" and "knowing" for determining whether a director's or officer's act or failure to act constitutes a breach of fiduciary duties. *See Chur*, 136 Nev. Adv. Op. at 11 ("We agree with and adopt the Tenth Circuit's definition of 'intentional' and 'knowing,' as enunciated in *Zagg*, for determining whether a 'director's or officer's act or failure to act constituted a breach of his or her fiduciary duties…" The decision in *Zagg* was not even handed down until 2016. *See In re Zagg Inc., S'holder Derivative Action*, 826 F.3d 1222, 1232 (10th Cir. 2016). Plaintiff filed its complaint in December, 2014. It is logically impossible for Plaintiff to have met the *Zagg* standard, adopted in *Chur*, at the time it filed its complaint.

When the Nevada Supreme Court disavowed the language in *Shoen* – which it did not do until the *Chur* Opinion in early 2020 – Plaintiff moved to amend its complaint within 48 hours of the stay being lifted, and within the time set by this court to file a motion to amend. It is a grave

miscarriage of justice to not even permit the Plaintiff to amend its claims against the Directors to meet the new standard under these circumstances.

Numerous other courts facing this situation, including the Ninth Circuit, have held that when underlying law is changed, it is only fair and just to permit amendment. For example, in *Moss v. U.S. Secret Serv.*, 572 F.3d 962 (9th Cir. 2009), the Court held as follows:

> **Plaintiffs contend that, if the Supreme Court's intervening decisions altered pleading standards in a meaningful way, and their complaint is found deficient under those standards, they should be granted leave to amend**. Courts are free to grant a party leave to amend whenever "justice so requires," Fed.R.Civ.P. 15(a)(2), and requests for leave should be granted with "extreme liberality." … " '**Dismissal without leave to amend is improper unless it is clear, upon de novo review, that the complaint could not be saved by any amendment**.' " *Gompper v. VISX, Inc.*, 298 F.3d 893, 898 (9th Cir.2002) (quoting *Polich v. Burlington N., Inc.*, 942 F.2d 1467, 1472 (9th Cir.1991)).
>
> We agree with Plaintiffs that they should be granted leave to amend. Prior to *Twombly*, a complaint would not be found deficient if it alleged a set of facts consistent with a claim entitling the plaintiff to relief. … Under the Court's latest pleadings cases, however, the facts alleged in a complaint must state a claim that is plausible on its face. As many have noted, this is a significant change, with broad-reaching implications. … **Having initiated the present lawsuit without the benefit of the Court's latest pronouncements on pleadings, Plaintiffs deserve a chance to supplement their complaint with factual content in the manner that *Twombly* and *Iqbal* require.**

Id., 572 F.3d 962 at 972 (internal citations omitted) (emphasis added); *see also Darney v. Dragon Prod. Co., LLC*, 266 F.R.D. 23 (D. Me. 2010) ("Maine court's recent change in law relating to strict liability claims arising from blasting activity constituted good cause to allow homeowners leave to amend complaint to add such a claim against operator of a cement-manufacturing plant near their home, even though leave was not sought until well after the scheduling order deadlines for amendment of the pleadings and designation of experts, beyond the close of the discovery period, and months after rulings on summary judgment issues"); *Gregory v. Harris-Teeter Supermarkets, Inc.*, 728 F. Supp. 1259 (W.D.N.C. 1990) (Civil rights plaintiff's motion to amend complaint and second motion to amend complaint would be granted where each motion was filed immediately after an apparent change in the law occurring after plaintiff had filed his complaint.).

Here, there was no way for the Federal courts, this Court, or Plaintiff to know of the *Chur* Opinion, the disavowal of *Shoen*, or the adoption of the new *Zagg* standard, until the *Chur* Opinion was issued. To deny even the ability to amend in this case with respect to the Directors after the *Chur* Opinion is to hold Plaintiff to a standard of anticipating what neither this Court, nor other courts in Nevada could have anticipated. Just as the plaintiffs in the above cases, Plaintiff herein "initiated the present lawsuit without the benefit" of the *Chur* Opinion, and just as to the plaintiffs in the above cases, Plaintiff herein deserves a chance to amend its complaint with factual content in the manner that the *Chur* and adopted *Zagg* opinions require.

Moreover, any claim of prejudice by the Directors is meritless. This court denied the Directors' motions to dismiss beginning February 25, 2016. The Directors could have filed their writ any time after that if they chose to. They did not. They delayed for over three (3) years and did not file their writ petition until March 13, 2019. Any prejudice is of the Directors' own making, and should not form the basis for denial of the Motion to Amend. *See Jacobs v. McCloskey & Co.*, 40 F.R.D. 486, 488 (E.D. Pa. 1966) ("To the extent that the complaining party causes the prejudice, it is not, in the judgment of this Court, 'undue' within the meaning of the rule.").[7] Accordingly, Plaintiff respectfully submits the Court's decision on the Motion to Amend should be reconsidered with respect to the Directors.

B. <u>The Motion to Amend was timely filed within the deadline set by this Court.</u>

The Court's operative scheduling order entered January 29, 2019 ("Operative Scheduling Order"), attached hereto as Exhibit 2, provided that the deadline to move to amend or add parties was March 15, 2019. *See* Exhibit 2 hereto, at p. 2. However, on March 13, 2019, the Directors filed their Petition for Writ of Mandamus ("Directors' Writ") with the Nevada Supreme Court. The Directors could have filed a writ petition at any time, but chose instead to wait until March 13, 2019, despite their numerous motions to dismiss having been denied beginning in early 2016.

[7] Moreover, the Directors have admitted that the Fourth Amended Complaint is "not based on new facts." See opposition filed by Director Defendants at p. 3, ll. 8-11.

On March 14, 2019, the Directors' Motion for Stay was heard and the stay requested by the Directors ("Stay") was granted by this Court. At that time, one judicial day remained for the parties to move to amend. The notice in lieu of remittitur with respect to the *Chur* petition proceedings was not issued until June 16, 2020. In the Court's Clarification Order, the Court expressly stated that "the parties shall have to and including July 2, 2020, in order to move to amend pleadings." The Court lifted the Stay on July 1, 2020, and Plaintiff filed its Motion to Amend on July 2, 2020, within the deadline set by this Court and the one day remaining under the Operative Scheduling Order. Other parties also filed a motion to amend on the same day, which this Court did not find to be untimely. It is unjust and unfair for a party to move to amend within the time frame set by a court, only to have the court then determine the motion to be untimely.

Moreover, Plaintiff tried to move this case forward and moved to lift the Stay on July 2, 2019. This Court denied the Plaintiff's motion. Respectfully, it is unfair and clearly erroneous for the Plaintiff's motion to lift the Stay and move the case forward to be denied, then to have a finding of delay.[8]

IV. CONCLUSION

For all these reasons, Plaintiff respectfully requests that the Court reconsider its decision on the Motion for Leave to File Fourth Amended Complaint as to the Director Defendants, permit the filing of the Fourth Amended Complaint as it relates to the Directors, and grant such other and

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[8] It bears noting that it was Directors' counsel who proposed a "global mediation" (Exhibit 3), then postponed it multiple times (Exhibits 4 and 5), then unilaterally withdrew from the mediation (Exhibit 6). Subsequently, the Directors spent nearly another year filing multiple motions to dismiss (*see* the Directors' motions to dismiss/supplements filed October 11, 2015, April 18, 2016, July 18, 2016, and September 9, 2016), finally answering the third amended complaint on October 21, 2016.

further relief as the Court deems appropriate.

DATED: August 14, 2020.

HUTCHISON & STEFFEN

By */s/ Brenoch Wirthlin, Esq.*

MARK A. HUTCHISON, ESQ.
PATRICIA LEE, ESQ.
BRENOCH R. WIRTHLIN, ESQ.
CHRISTIAN ORME, ESQ.
10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I certify that I am an employee of Hutchison & Steffen, and that on this date, I served the foregoing **MOTION FOR PARTIAL RECONSIDERATION ON MOTION FOR LEAVE TO AMEND REGARDING DIRECTOR DEFENDANTS** on the parties set forth below by legally serving via Odyssey electronic service as follows:

Joseph P. Garin, Esq.
Angela Ochoa, Esq.
Lipson, Neilson, Cole, Seltzer & Garin, P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
Attorneys for Director Defendants

George Oglive, III
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Attorneys for Defendants Uni-Ter Underwriting Management Corp., Uni-Ter Claims Services Corp., and U.S. RE Corporation

Jon M. Wilson
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Attorneys for Defendants Uni-Ter Underwriting Management Corp., Uni-Ter Claims Services Corp.,

DATED August 14, 2020.

/s/ Danielle Kelley
An Employee of Hutchison & Steffen

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EXHIBIT PAGE ONLY

EXHIBIT 1

HUTCHISON & STEFFEN
A PROFESSIONAL LLC

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Attorneys for Plaintiff

DISTRICT COURT OF NEVADA

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Plaintiff, vs. ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP., UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION,; DOES 1-50, inclusive; and ROES 51-100, inclusive; Defendants.	Case No.: A-14-711535-C Dept. No.: XXVII **ORDER DENYING DIRECTOR DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS PURSUANT TO NRCP 12(c)** **Date of Hearing: October 11, 2018** **Time of Hearing: 9:30 a.m.**

This matter came before the Court for hearing on October 11, 2018; Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall and Eric Stickels' (collectively, the "Directors" or "Director Defendants") having filed their Motion for Judgment on the Pleadings Pursuant to NRCP 12(c) ("Motion") on August 14, 2018; Plaintiff having filed its opposition to the Motion on September 19, 2018; the Director Defendants having filed their reply in support of the Motion on October 4, 2018; J. William Ebert, Esq., and Angela T. Ochoa, Esq., having appeared on behalf of the Director Defendants;

Brenoch Wirthlin and Dan Cereghino having appeared on behalf of the Plaintiff; George Ogilvie having made an appearance on behalf of defendants Uni-ter Underwriting management Corp., Uni-ter Claims Services Corp., and U.S. Re Corp., the Court having read and considered all filed pleadings regarding the Motion, having heard argument regarding the Motion, and being fully advised regarding the same, good cause appearing,

IT IS HEREBY ORDERED that the Director Defendants' Motion for Judgment on the Pleadings pursuant to NRCP 12(c) is DENIED. The Court finds the Motion deals with the same issue the Court addressed in 2016. And while the Court recognizes that NRS 78.138 was amended in 2017, the Court believes that *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 137 P.3d 1171 (2006) is still the controlling law regarding Directors' personal liability, even with the additional case law that has come down from the Nevada Supreme Court in 2017, including *Wynn Resorts, Ltd. v. Eighth Judicial Dist. Ct.*, 399 P.3d 334 (Nev. 2017).

DATED this 31 day of October, 2018.

Nancy L Allf

HONORABLE JUDGE NANCY ALLF

Submitted by:
FENNEMORE CRAIG, P.C.

James Wadhams, Esq.
Brenoch Wirthlin, Esq.
Daniel Cereghino, Esq.
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Las Vegas. NV 89101
Attorneys for Plaintiff

Approved as to Form and Content:
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Angela Ochoa, Esq.
9900 Covington Cross Dr., Suite 120
Las Vegas, NV 89144
Attorneys for Director Defendants

Approved as to Form and Content:
MCDONALD CARANO LLP

George Ogilvie, III, Esq.
Attorneys for Uni-Ter Defendants and U.S. Re Corp.

Brenoch Wirthlin and Dan Cereghino having appeared on behalf of the Plaintiff; George Ogilvie having made an appearance on behalf of defendants Uni-ter Underwriting management Corp., Uni-ter Claims Services Corp., and U.S. Re Corp.; the Court having read and considered all filed pleadings regarding the Motion, having heard argument regarding the Motion, and being fully advised regarding the same, good cause appearing,

IT IS HEREBY ORDERED that the Director Defendants' Motion for Judgment on the Pleadings pursuant to NRCP 12(c) is DENIED. The Court finds the Motion deals with the same issue the Court addressed in 2016. And while the Court recognizes that NRS 78.138 was amended in 2017, the Court believes that *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 137 P.3d 1171 (2006) is still the controlling law regarding Directors' personal liability, even with the additional case law that has come down from the Nevada Supreme Court in 2017, including *Wynn Resorts, Ltd. v. Eighth Judicial Dist. Ct.*, 399 P.3d 334 (Nev. 2017).

DATED this _____ day of October, 2018.

HONORABLE JUDGE NANCY ALLF

Submitted by:
FENNEMORE CRAIG, P.C.

James Wadhams, Esq.
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MCDONALD CARANO LLP

George Ogilvie, III, Esq.
Attorneys for Uni-Ter Defendants and U.S. Re Corp.

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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK, Plaintiff(s), vs. ROBERT CHUR, Defendant(s).	CASE NO: A-14-711535-C DEPT. XXVII

BEFORE THE HONORABLE NANCY ALLF, DISTRICT COURT JUDGE

THURSDAY, OCTOBER 11, 2108

RECORDER'S TRANSCRIPT OF PROCEEDINGS
RE: ALL PENDING MOTIONS

APPEARANCES:

For the Plaintiff(s): DANIEL S. CEREGHINO, ESQ.
BRENOCH R. WIRTHLIN, ESQ.

For the Defendant(s): J. WILLIAM "BILL" EBERT, ESQ.
ANGELA T. OCHOA, ESQ.
GEORGE F. OGILVIE III, ESQ.

RECORDED BY: BRYNN GRIFFITHS, COURT RECORDER

LAS VEGAS, NEVADA; THURSDAY, OCTOBER 11, 2018

[Proceedings commenced at 10:13 a.m.]

THE COURT: And I thank everyone for your patience. You were -- I wanted to give you guys the most time this morning because your legal issues were fairly meaty. So thank you for your patience in waiting.

Let's take appearances from the right -- your right to left.

MR. CEREGHINO: Good morning, Your Honor. Daniel Cereghino, 11534, on behalf of plaintiff.

THE COURT: Thank you.

MR. WIRTHLIN: Good morning, Your Honor. Brenoch Wirthlin on behalf of plaintiff.

THE COURT: Thank you.

MS. OCHOA: Good morning, Your Honor. Angela Ochoa on behalf of the Re Corp. defendants.

THE COURT: Thank you.

MR. EBERT: Good morning, Your Honor. Bill Ebert on behalf of the Re Corp. Defendants.

THE COURT: Thank you.

MR. OGILVIE: Good morning, Your Honor. George Ogilvie on behalf of the Uni-Ter defendants and U.S. Re.

THE COURT: Thank you very much. We --

MR. CEREGHINO: Real quick, Your Honor, if I could just get rid of my gum.

THE COURT: So I'll take -- give me a minute, and I'll take a look at that. 60?

MS. OCHOA: Footnote 60. They're actually talking about the amendments from 2001. They're looking at 78.1387, while -- and the operative language is, while this section applies only to claims arising after June 15, 2001.

Since 2003, that statute has been amended twice, 2003 amendments and the 2017 amendments. And they all say, Since October of 2003, this is the standard that you apply. So we don't think that state -- that Shoen is on point.

Your Honor, again, so the only knowing violation that I heard is this -- is the alleged you weren't supposed to rely on your experts, that you knew your experts are wrong. Well, that's just built into the same 78.138, but you're not supposed to breach your fiduciary duty. I'm sure that's not what the knowing violation of the law was intended to be. So for those bases, we think that the motion should be granted.

THE COURT: Thank you.

This is the Board of Directors Defendants' Motion for Judgment on the Pleadings pursuant to NRS -- I'm sorry -- NRCP 12(c), the motion will be denied for the following reasons: This is the same issue I looked at in 2016. And while I realize that 78.138 was amended in 19 -- or 2017, I believe that the Shoen v. SAC is still the controlling law, and that's even with the decision that came down in 2017, Wynn Resorts v. Eighth Judicial District Court, 399 Pacific 3rd

334.

So there's -- in my mind there's no new analysis.

Did you have something to add?

MS. OCHOA: Oh, no, no, Your Honor.

MR. EBERT: Beg your pardon, Your Honor.

THE COURT: All right. So the same analysis that I used previously, I believe still is the applicable analysis. So the motion will be denied for the reason that we've already looked at it. So --

Did you have something to say, you guys?

MS. OCHOA: No, no.

THE COURT: No. Okay. Very good.

MR. WIRTHLIN: Thank you, Your Honor.

THE COURT: So Mr. Cereghino and Mr. Wirthlin, if you would prepare the order, I think actually Mr. Wirthlin --

MR. WIRTHLIN: Yes, Your Honor.

THE COURT: And with regard to the motion the strike, Ms. Ochoa, all I don't have you make sure that everyone has the ability to review and approve the form of those orders. And I see that you guys are set for trial next year. Would it do any good to send you to a settlement conference, guys?

MR. WIRTHLIN: We --

MR. CEREGHINO: We've tried.

MR. WIRTHLIN: Yeah. We -- we're certainly open to whatever defendants would like to address. We did do a mediation in July, I believe, and weren't able to resolve it. But that may

change. We'll see.

THE COURT: Yeah. Thank you all.

MR. WIRTHLIN: Thank you, Your Honor.

MR. CEREGHINO: Thank you, Your Honor.

THE COURT: Let me ask one last thing, there was a motion to associate on the 16th of October. If there's not going to be an opposition, I can go ahead and grant that and vacate to the [indiscernible].

MR. WIRTHLIN: No opposition, Your Honor.

MS. OCHOA: There's no opposition from us.

THE COURT: All right. So go ahead. The motion to associate will be granted. The heairing on October 16th, well, it's in chambers, but it'll be vacated. Go ahead and submit an order to that effect.

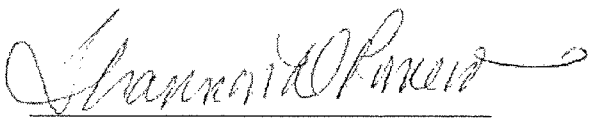
MR. WIRTHLIN: Thank you, Your Honor.

THE COURT: Thank you, both.

[Proceedings adjourned at 10:43 a.m.]

* * * * * * * *

ATTEST: Pursuant to Rule 3C (d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.



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Court Recorder/Transcriber
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EXHIBIT 2

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

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ORDG
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DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Plaintiff, vs. ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP., UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION,; DOES 1-50, inclusive; and ROES 51-100, inclusive, Defendants.	CASE NO.: A-14-711535-C DEPT. NO.: 27 **ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION FOR EXTENSION OF DISCOVERY DEADLINES AND TO CONTINUE TRIAL ON AN ORDER SHORTENING TIME**

Plaintiff's Motion for Extension of Discovery Deadlines and to Continue Trial on an Order Shortening Time ("Motion to Extend") was heard on December 27, 2018. In attendance were Brenoch Wirthlin, Esq. on behalf of Plaintiff, Commissioner of

Lipson Neilson, P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 FAX: (702) 382-1512

Insurance for the State of Nevada as Receiver for the Lewis & Clark Risk Retention Group, Inc.; Angela Ochoa, Esq. on behalf of Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshal and Eric Stickels; and George Ogilvie, III, Esq. on behalf of U.S. RE Corporation, Uni-Ter Underwriting Management Corp., and Uni-Ter Claims Servicing Corp.

The Honorable Nancy Allf presiding, and the Court having heard oral argument, reviewed the pleadings and papers on file herein and being fully advised in the premises and for good cause appearing,

THE COURT HEREBY ORDERS that Plaintiff's Motion to Extend is GRANTED in PART and DENIED in PART.

Specifically, the Court grants the Motion to Extend to allow for a sixty (60) day extension on all discovery deadlines. The Court denies the Motion to Extend insofar as it requests an extension of more than 60 days on the discovery deadlines. The new discovery deadlines are as follows:

	Current Deadline:	New Deadline:
Discovery Cut-Off:	April 30, 2019	**July 1, 2019**
Last Day to Amend or Add Parties:	January 14, 2019	**March 15, 2019**
Plaintiff's Initial Expert Disclosures Due:	January 14, 2019	**March 15, 2019**
Defendant's Initial Expert Disclosures Due:	February 13, 2019	**April 15, 2019**
Rebuttal Expert Disclosures Due:	March 15, 2019	**May 14, 2019**
Last Day to File Dispositive Motions:	June 5, 2019	**August 5, 2019**

///

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It is FURTHER ORDERED that there shall be no further extensions of the discovery deadlines.

It is FURTHER ORDERED that the current trial date be vacated and that a firm trial setting in this matter be set for October 21, 2019 at 10:20 a.m. through November 8, 2019.

DATED this 25 day of January, 2019.

Nancy L Allf

JUDGE NANCY ALLF

Submitted by:
LIPSON NEILSON, P.C.

Joseph P. Garin, Esq. (NV Bar No. 6653)
Angela Ochoa, Esq. (NV Bar No. 10164)
Jonathan Wong, Esq. (NV Bar No. 13621)
9900 Covington Cross Dr., Suite 120
Las Vegas, NV 89144
Attorneys for Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall & Eric Stickels

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EXHIBIT 3

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

From: Joe Garin [mailto:JGarin@lipsonneilson.com]
Sent: Monday, March 23, 2015 11:42 AM
To: NIELSON, KARL; WIRTHLIN, BRENOCH
Cc: Darnell Lynch
Subject: Introduction re: COI v Chur, et al, case no. A14-711535C

Karl and Brencoch:

I have been asked to represent Chur, Fogg, Garber, Harter, Hurlbrut, Lumpkin, Marshall and Stickels in the referenced matter. All of my clients have been served and I would like to explore adding parties, early mediation and setting a date for an answer or other responsive pleadings.

First, I'm wondering if you will be adding Sandy Elsass and/or Curtis Sitterson as defendants. Based on initial discussions with some of my clients, it seems that one or both should have been included as defendants.

Second, do you have any interest in pursuing an early, global mediation? If yes, I would like to put the brakes on defense expenses sooner vs. later if there is a shot with mediation.

Third, can we agree to enlarge the time for a response from my clients to Friday May 1, 2015 while we sort out other issues?

Thank you for your courtesy and attention to this matter. Please let me know your thoughts.

Lipson|Neilson
COLE, SELTZER, GARIN, P.C.
Attorneys and Counselors at Law

Joseph P. Garin, Esq.
Lipson, Neilson, Cole, Seltzer & Garin, P.C.
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Las Vegas, Nevada 89144

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EXHIBIT 4

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

From: Darnell Lynch <DLynch@lipsonneilson.com>
Sent: Wednesday, April 01, 2015 5:05 PM
To: NIELSON, KARL; Joe Garin; WIRTHLIN, BRENOCH
Cc: LANDIS, CHERYL
Subject: RE: Introduction re: COI v Chur, et al, case no. A14-711535C

Dear Mr. Nielson:

On behalf of Joe Garin, thank you for your email. Unfortunately Mr. Garin's calendar is booked for the coming months; we would like to propose the 2nd week of June for an early global mediation with Judge Jackie Glass at Private Trials. Mr. Garin and Judge Glass are both available on June 9, 10, or 11.

Please note we are working with the clients and carrier to confirm availability for these dates as well and we will get back to you as soon as possible. Several of the clients reside outside of Nevada and will have to participate by phone. In the meantime, please let us know if you agree to our recommendation of Judge Glass and whether one of these dates work for you.

Best regards,

Lipson | Neilson
COLE, SELTZER, GARIN, P.C.
Attorneys and Counselors at Law

Darnell Lynch
Legal Assistant to Joseph P. Garin, Esq.
Lipson, Neilson, Cole, Seltzer & Garin, P.C.
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EXHIBIT 5

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

From:	Angela Ochoa <AOchoa@lipsonneilson.com>
Sent:	Thursday, July 16, 2015 12:00 PM
To:	NIELSON, KARL; Mindi Merritt; WADHAMS, JAMES; WIRTHLIN, BRENOCH; Joe Garin; Siria Gutierrez; jwilson@broadandcassel.com; gogilvie@Mcdonaldcarano.com
Cc:	LANDIS, CHERYL
Subject:	RE: Commissioner of Insurance for the State of Nevada vs. Churr, Robert et al., Uni-Ter Underwriting Management Corp. et al. - REF# 1260003426

All-
I just received notice from my client Jeff Marshall that he cannot make the 08/20 mediation due to a conflict. I would like to move this date and will work directly with Mindi to obtain a new date that would work with all of you.
Thank you,
Angela

Lipson|Neilson
COLE, SELTZER, GARIN, P.C.
Attorneys and Counselors at Law

Angela T. Nakamura Ochoa
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EXHIBIT 6

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

JEFFREY T. NEILSON[1,2,5]
JOSEPH P. GARIN[1,2,3,5]
PHILLIP E. SELTZER[1,2]
SHANNON D. NORDSTROM[1,6]
J. WILLIAM EBERT[1]
KALEB D. ANDERSON[1]
STEPHEN G. KEIM[1,7]
ANGELA T. NAKAMURA OCHOA[1]
JESSICA A. GREEN[1]
H. SUNNY JEONG[1]
SIRIA L. GUTIERREZ[1,6]
PETER E. DUNKLEY[1]
KRISTOFER D. LEAVITT[1]

1 ADMITTED IN NEVADA
2 ADMITTED IN MICHIGAN
3 ADMITTED IN ILLINOIS
4 ADMITTED IN NEW YORK
5 ADMITTED IN COLORADO
6 ADMITTED IN CALIFORNIA
7 ADMITTED IN PENNSYLVANIA
8 ADMITTED IN MASSACHUSETTS
9 ADMITTED IN MARYLAND
10 ADMITTED IN ARIZONA

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BARRY J. LIPSON
(1955-2003)

STEVEN R. COLE[2]
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DAVID B. DEUTSCH[2]
STEVEN H. MALACH[2]
DAXTON R. WATSON[10]
KAREN A. SMYTH[2,4]
C. THOMAS LUDDEN[2]
STUART D. LOGAN[2]
SANDRA D. GLAZIER[2]
MARY T. SCHMITT SMITH[2]
STARR HEWITT KINCAID[2]
MICHAEL H. ORCUTT[10]
SHAWN Y. GRINNEN[2]
SAMANTHA K. HERAUD[2,8]
EMILY J. SCHOLLER[2]
CARLY R. KOLO[2,9]
DAVID G. MICHAEL[2]
JOHN F. FYKE[10]

November 2, 2015

VIA EMAIL ONLY:
Karl Nielsen
Brennoch Wirthlin
Fennemore Craig Jones Vargas
300 S. Fourth Street, Suite 1400
Las Vegas, Nevada 89101
knielsen@fclaw.com
bwirthlin@fclaw.com

Re: ***NVDIC v. Chur, Fogg, et al.***
Case No. A711535
November 20, 2015 Mediation

Dear Mr. Nielsen and Mr. Wirthlin:

Please allow this letter to respond to yours dated October 16, 2015.

As you know, I requested a demand package in preparation of the mediation so that my clients could be prepared with the appropriate authority to bring and as a starting point for discussion at mediation. Unfortunately, the demand package provided no further insight as to potential liability and specific errors and omissions alleged against my clients than what was stated in the Complaint. I believed and hoped that as the holder of all of the relevant documents in this case that you would have provided a clearer picture as to where you believe there was liability against my clients.

At this point, I do not think a mediation on November 20, 2015 will lead to resolution. Based on the documentation and analysis provided, I will not be able to recommend to my clients to be prepared to resolve this case at the policy limits, which is what your demand package seems to suggests. In addition to questionable liability, this case is further complicated with the fact that there may not be coverage under the directors and officers policy. I am enclosing the two reservation of rights letters RSUI has issued to my clients.

In an effort to resolve this case, I would like to nonetheless meet with you along with your client. Even if your client is not available, the adjuster for RSUI can be available to explain to you any issues with coverage, further a board member may be available to explain facts that may not have been quite so clear from the documents in your possession. These facts include but are not limited to the following: my clients received nominal compensation for their service on the board; board members continued to use independent insurance brokers to ensure that Lewis & Clark premiums were competitive; and that the board members-none who have ever operated an insurance company, reasonably relied upon the advice and representations of Uniter.

In conclusion, we will be withdrawing from the November 20, mediation. Please let me know if you would like to meet in person with my clients to discuss moving forward from this point and the coverage issues in this case. If you are interested, I propose a meeting at your office any time during the week of December 14, 2015.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Very truly yours,

LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.

ANGELA NAKAMURA OCHOA

Enclosures: Letter dated March 9, 2015, Exhibit "1"
Letter dated October 14, 2015, Exhibit "2"

AO/kg/RS4246-098

cc: Joe Garin - via email
Jon Wilson - via email
George Ogilvie, III - via email

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Attorneys for Defendants/Third-Party Plaintiffs Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall, and Eric Stickels

DISTRICT COURT

CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC., Plaintiff, vs. ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS, UNI-TER UNDERWRITING MANAGEMENT CORP., UNI-TER CLAIMS SERVICES CORP., and U.S. RE CORPORATION; DOES 1-50, inclusive; and ROES 51-100, inclusive, Defendants.	CASE NO.: A-14-711535-C DEPT. NO.: 27 **DEFENDANTS ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, AND ERIC STICKELS' OPPOSITION TO THE MOTION FOR RECONSIDERATION DENYING THE MOTION FOR LEAVE TO FILE FOURTH AMENDED COMPLAINT** Date of Hearing: August 26, 2020 Time of Hearing: 9:00 a.m.

Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall, and Eric Stickels (collectively "Directors") by and through their counsel, Lipson Neilson P.C. hereby file their Opposition to the Motion for Reconsideration Denying the Motion for Leave to File Fourth Amended Complaint.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

For five years, the Commissioner of Insurance for the State of Nevada as Receiver of Lewis and Clark LTD Risk Retention Group, Inc. (hereinafter "the Commissioner" or "Plaintiff") pursued claims against the Directors that fail as a matter of law. This Court properly denied Plaintiff's motion for leave to file a proposed Fourth Amended Complaint. Now Plaintiff urges this Court to reconsider that denial, in yet another faulty motion.

The *Chur* decision did specifically reject the *dicta* in *Shoen* upon which Plaintiff based her gross negligence claims. But what Plaintiff still seems not to grasp is that *dicta* is not law. *Chur* did not suddenly invalidate gross negligence claims against Nevada directors. As *Chur* carefully explains, the *Shoen dicta* was never the law in the first place. In essence, Plaintiff has it exactly backwards. What the Nevada Supreme Court did in *Chur* is decline Plaintiff's invitation to convert *Shoen's dicta* into law. Gross negligence was not actionable then, and is not actionable now. Only a contrary holding in *Chur* would have been "new."

To compound the error, Plaintiff also offers the bizarre excuse that prior to *Chur*, she could not have alleged that the Directors knowingly violated the law. This is pure fiction. "Could not" and "chose not to" are two different things. *Chur* confirmed that Nevada directors cannot be personally liable for gross negligence. Nothing was stopping Plaintiff from years ago accusing the Directors of knowingly violating the law, if that is what Plaintiff believed happened. Tellingly, Plaintiff churned through four different operative complaints and mountains of discovery in this case without even a hint of such allegations.

It was not the absence of *Chur* that kept Plaintiff from alleging a knowing violation of the law; it was the existence of *Chur* that forced her hand. With gross negligence off the table, Plaintiff went looking for another option and suddenly found intentional misconduct where, for five years of litigation and four operative complaints, there was

only negligence. Plaintiff admits as much in her Motion. If Plaintiff wanted to accuse the Directors of intentional conduct and litigate *that* case, the time to do so has long since passed. Choices have consequences and the Directors are entitled to judgment.

The Court got it right the first time when it denied Plaintiff's Motion for Leave to Amend. Respectfully, this Court should likewise deny Plaintiff's Motion for Reconsideration and issue the Findings of Facts and Conclusions of law previously submitted to the Court, and further find that Plaintiff's proposed Fourth Amended Complaint as against the Directors is futile.

II. THE COURT MUST DENY THE DEFICIENT MOTIONFOR RECONSIDERATION

"Only in very rare instances in which new issues of fact or law are raised supporting a ruling contrary to the ruling already reached should a motion for rehearing be granted." *Moore v. Las Vegas* (1976) 92 Nev. 402,405. Further, points and contentions not raised in the first instance cannot be raised on rehearing. *Carmar Drive Tr. v. Bank of Am., N.A*. (2016) 2016 Nev. Unpub. Lexis 1098, *2, citing *Achrem v. Expressway Plaza, Ltd.*, 112 Nev. 737, 742 (1996); *See also Chowdhry v. NLVH, Inc*. (1995) 111 Nev. 560, 562 (explaining that failure to make arguments in the first instance constitutes waiver).

Plaintiff offers no new facts or law in support of its Motion for Reconsideration. The case law cited in this instant Motion was available to Plaintiff at the initial briefing on the Motion for Leave to Amend and was not initially raised. Plaintiff offers no evidence to refute the Directors prejudice. Rather, incredulously, Plaintiff argues that the Directors caused themselves to be prejudiced by not filing a Writ as early as 2016.

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III. THE COMMISSIONER HAS PROCEEDED IN BAD FAITH

A. It is bad faith to Continue to Represent that *Chur* established new Law.

Respectfully, this Court committed judicial error when it relied on *dicta* set forth in *Shoen* and other non-precedential cases for the proposition that a plaintiff need only allege gross negligence to maintain a claim against a Nevada director. "Dicta is not controlling. A statement in a case is dictum when it is 'unnecessary to a determination of the questions involved.'" *Argentena Consol. Mining Co. v. Jolley Urga Wirth Woodbury & Standish*, 125 Nev. 527, 536, 216 P.3d 779, 785 (2009) (internal citations omitted.)

The Nevada Supreme Court confirmed the Directors' contention that *Shoen* was nothing more than *dicta*. *Chur v. Eighth Jud. Dist. Ct. of Nev.,* 458 P.3d 336, 340 (2020). The Directors correctly argued that the plain language of NRS 78.138 controlled. From time to time, judicial error may occur, but it does not excuse a party's contribution to that error. As set forth in the pleadings on file in this case, Plaintiff consistently presented to this Court cases of no precedential value.

Citing *Moss v. U.S. Secret Serv*., 572 F.3d 962, 972 (9th Cir. 2009), Plaintiff contends that where a higher court's decision alters the pleading standard in a meaningful way, the plaintiff should be granted leave to amend. This case however, is not analogous.

Unlike *Moss*, Plaintiff is not simply asking for the ability to meet the "plausibility" standard of pleading facts for a case in its infancy. For years, Plaintiff contended that gross negligence was the applicable standard to a finding of liability; Directors contended otherwise. In fact, so convinced was Plaintiff, that it did not once utter the words "violation of the law," let alone, a "knowing violation of the law," in any prior

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versions of its complaint.[1] Plaintiff entitled the sole cause of action against Directors as "GROSS NEGLIGENCE," so no party could ever be confused of what Plaintiff was alleging. Moreover, in discovery, Plaintiff never once stated that Directors, "knowingly violated the law," or referred to any statutes that the Directors violated.

It is understandable for a court to grant leave to amend when substantive changes in the law have occurred, for which the party could not foresee. But that is not what happened here. Although *In re Zagg Inc. v. S'holder Derivative Action,* 862 F.3d 1222 (10th Cir. 2016), was issued after the commencement of this case, the Nevada Supreme Court's reliance on *Zagg* was only for the purpose of setting forth the scienter necessary in pleading "knowing violation of the law."[2] Here, Plaintiff never once posited that the Directors knowingly violated the law. Rather, Plaintiff made the strategic choice to pursue a lesser standard of liability, hoping that would suffice.[3]

It is disingenuous for Plaintiff to claim it could not have possibly alleged claims of "intentional misconduct, fraud or knowing violation of the law" before the Nevada Supreme Court's decision of *Chur* in February of 2020, when the Commissioner of Insurance has sued Nevada directors for breach of fiduciary duties arising out of "intentional misconduct, fraud or knowing violations of law," even before then. As this Court is aware, on August 25, 2017, the Commissioner of Insurance filed a complaint in this district against other directors and officers, alleging that they breached their duty of

[1] See Complaint, First Amended Complaint, Second Amended Complaint and Third Amended Complaint, on file herein.

[2] *Chur*, at 341.

[3] Plaintiff so boldly contended that gross negligence was the standard, that Plaintiff filed a Motion for Partial Summary Judgment against the Directors for gross negligence! *See* September 12, 2018 Plaintiff's Opposition to the Motion for Judgment on the Pleadings and Countermotion for Summary Judgment.

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care arising out of "intentional misconduct, fraud or knowing violation of the law". **Exhibit A**, *e.g.* ¶ 10, 279, 289, 693.

Plaintiff is asking the Court to rewrite history when it says that *Shoen* stood for the proposition that gross negligence was an acceptable cause of action against officers and directors. Plaintiff is asking the Court to ignore four operative complaints in this case that never once uttered the words, "intentional misconduct, fraud or knowing violation of law." The Commissioner is asking to change the game; add that the Directors "knowingly violated the law," in support of a claim for "BREACH OF FIDUCIARY DUTY" where none was ever pled before, and to do so eight years after the last possible violation of law. These are nothing more than strained attempts to resuscitate a dead case and the Court should deny this instant Motion.

B. Plaintiff did not Timely File for Leave to Amend Under Rule 15

In a nutshell, Plaintiff argues, without any supporting case law, that because it filed the Motion for Leave to Amend on the last day allowed under the NRCP 16.1 Scheduling Order, the Court is required to grant leave to amend.

This is absurd. To grant a motion for leave to amend just because it was filed on the last day of the scheduling order would render NRCP 15(a)(2) nugatory. The Ninth Circuit is instructive in this regard, even though Nevada Rule of Civil Procedure 15(a) makes it optional for the court to grant leave, with the word "should" instead of its Federal counterpart, which states "shall."[4]

In *AmerisourceBergen Corp. v. Dialysist West, Inc.*, 465 F.3d 946, 951-952 (9th Cir. 2006), the court was asked whether it was an abuse of discretion to deny a motion for leave to amend pleadings that was filed before the deadline to amend pursuant to a

[4] *See* FRCP 15(a)(2)

scheduling order. The court held that "in assessing timeliness, we do not merely ask whether a motion was filed within the period of time allotted by the district court in a Rule 16 scheduling order. Rather in evaluating undue delay, we also inquire 'whether the moving party knew or should have known the facts and theories raised by the amendment in the original pleading.'" *Id.*, at 953 (internal citations omitted). The court held that the moving party's 15-month delay from when it first discovered the possibility of the theory for leave to amend and the 8 months left in discovery, was sufficient to deny leave to amend. *Id.* The court found that if leave to amend was granted, it would require 'the parties to scramble and attempt to ascertain" the facts that "would have unfairly imposed potentially high, additional litigation costs on [non-moving party] that could have easily been avoided had [moving party] pursued" the theory in the original complaint. *Id.*

Here, NRS 78.138 plainly always stated the need for a breach of fiduciary duty claim to be supported by "intentional misconduct, fraud or knowing violation of the law," and to the extent a violation of the law actually occurred, the Plaintiff should have been aware of it as early as 2012, when the last possible act could have occurred. At the very least, Plaintiff should have been aware of it in 2014 when it was given control of all of Lewis & Clark documents pursuant to the Order of Liquidation. For Plaintiff to seek amendment six to eight years after the fact is an undue delay.

Further, upon information and belief discovery is set to close in less than three months. Although no revised scheduling order has been issued concerning the close of discovery, Plaintiff previously moved for the Court to issue an order closing discovery on October 19, 2020.[5] Thus, at the time of the hearing on Plaintiff's Motion for Leave to

[5] See Plaintiff's Motion for Preferential Trial Setting on OST, filed on June 24, 2020, P. 17.

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Amend, Plaintiff was asking this Court to require Directors to defend against a newly pled theory, which would alter their affirmative defenses with less than three months left for discovery.

With Plaintiff having never previously identifying any knowing violations of the law, if Plaintiff was granted leave to amend, the Directors would have to scramble and engage in a herculean effort to complete discovery. Directors would in the span of three months need to 1) complete the depositions previously anticipated of Uniter former employees, 2) retake depositions of individuals, including the Plaintiff regarding the facts that support its claims for a knowing violation of law, 3) take the deposition of all of Lewis & Clark's former attorneys, 4) take the deposition of numerous Division of Insurance employees and former employees about whether in fact they believed there to be knowing violations of the law, and 4) make expert disclosures. All the while, the effects of time have weathered individual's memories and access to relevant documents and left witnesses unavailable because they are either deceased or retired.[6]

Indeed, under the *AmerisourceBergen* analysis, Plaintiff's Motion for Leave to Amend was untimely and prejudicial to the Directors.

C. Plaintiff Incredulously Claims that the Directors Caused Themselves to be Prejudiced.

In an apparent last act of desperation, Plaintiff argues that any prejudice to the Directors is self-inflicted because they did not file a Writ Petition sooner. This argument is completely meritless.

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[6] See Deposition of Robert Greer and Connie Akridge, attached to the Directors' Opposition to the Motion for Leave to Amend.

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First, the granting of a writ petition is extraordinary and rarely done.[7] Second, the Nevada Supreme Court has already rejected the notion that the Directors unreasonably delayed in the filing of their writ petition.[8] The Directors had no obligation to make sure the Plaintiff properly stated her case. It is the plaintiff's burden to establish its own claims and damages.

In *Jacobs v. McCloskey & Co*., 40 F.R.D. 486, 487, 1966 U.S. Dist. LEXIS 10664 (E.D. Pa. 1966), a defendant sought to amend its pleadings, to identify that it was not the defendant that the plaintiff claimed caused him to be injured. The plaintiff claimed he would be prejudiced because he had not actually identified the correct defendant in his complaint and the statute of limitations had passed. *Jacobs,* 40 F.R.D. at 488, 1966 U.S. Dist. LEXIS at 2-3. The plaintiff asked that he be allowed to amend his complaint to allege the correct defendant. *Jacobs,* 40 F.R.D. at 489, 1966 U.S. Dist. LEXIS at 5. In response, the Pennsylvania district court granted the defendant leave to amend its answer and denied plaintiff's motion to substitute the real defendant. The court recognized that it is the plaintiff's burden to correctly identify the defendant and that it was the plaintiff's fault for not leaving himself more time to amend. Further, to grant leave to amend to add a new defendant would cause prejudice to the incoming defendant who would be deprived of the statute of limitations defense.

Jacobs reiterates what we all know to be true. It is the burden of the plaintiff to move a case forward and motions for leave to amend against a defendant are guided by principles of due process. For years, the Directors demanded their due process rights

[7] *Chur*, at 339 ("we generally decline to entertain writ petitions challenging the denial of a motion to dismiss. This rule applies equally to orders denying a motion for judgment on the pleadings, as we consider them under the same standard as motions to dismiss.").

[8] See Plaintiff's Answering Brief, attached hereto as Exhibit **B**, P 4.

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be respected; that they be apprised of what they have done wrong, asking for justification for the claims made against them via written discovery and deposition testimony. And yet, Plaintiff said nothing. Not once were the Directors apprised of so-called "knowing violations of law" in pleadings or discovery.[9]

Further, the Directors did not cause prejudice by exploring an early mediation. Seeking early resolution of a case is consistent with the Nevada Rules of Civil Procedure, and certainly not something that should be punished.[10] It is the Commissioner's fault for not acting timely; not reasonably reviewing the facts[11]; not reasonably understanding the case; not reasonably interpreting the law; not reasonably and timely moving its case forward, and not accepting the Directors' reasonable offers to settle.[12]

As stated, many times over now, Plaintiff has had months since the Nevada Supreme Court issued *Chur* in February 2020 to prepare the motion for leave to amend and proposed amended complaint, and yet, once again to their prejudice, the Directors must defend against Plaintiff's belated arguments.

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[9] *See* November 30, 2017 Amended Responses to Interrogatories; June 7, 2018 Responses to Second Set of Interrogatories; May 31, 2018 Responses to Request for Production of Documents, attached to Director's Opposition to the Motion for Leave to Amend.

[10] *See* NRCP 1 "the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding;" NRCP 16.1 "at each conference, the parties must do the following: (1) consider the nature and basis of their claims and defenses; (ii) consider the possibilities for a prompt settlement or resolution of the case…"

[11] See Appendix to Defendant Uniter's Response in Opposition to the Motion for Leave to Amend, filed on July 17, 2020, in which Judge Gonzales discusses Plaintiff's lack of diligence in pursuing a document request against the Uniter Defendants.

[12] Directors have an unbeaten Offer of Judgment that they intend to proceed upon pursuant to NRCP 68.

The record was clear that *Chur* is not new law. The "knowing violations of law" that Plaintiff complains about were well within their knowledge for over eight years, and ONLY NOW, do they place them at issue. To grant Plaintiff leave to amend at this point in the case, would be a miscarriage of justice.

D. The Court Correctly Exercised its Broad Discretion to Deny Plaintiff from Leave to Amend to File a Fourth Amended Complaint

Whether to allow amendment to a pleading resides within the sound discretion of the trial court. *Kantor v. Kantor*, 116 Nev. 886, 891, 8 P.3d 825, 828 (2000). Where a plaintiff has previously amended her complaint, the discretion to deny further amendment is "particularly broad." *Cafasso v. Gen. Dynamics C4 Sys.*, 637 F.3d 1047, 1058 (9th Cir. 2011). Denial of a motion for leave to amend is appropriate where the amendment "(1) prejudices the opposing party; (2) is sought in bad faith; (3) produces an undue delay in litigation; or is (4) futile." *AmerisourceBergen corp. v. Dialysist West, Inc.*, 465 F.3d 946, 951 (2006).

Plaintiff has already filed four complaints in this case. As set forth in the Directors' Opposition to the Motion for Leave to Amend, the Directors arduously believe the Commissioner has acted in bad faith and the proposed Fourth Amended Complaint is futile. Plaintiff's instant motion and the arguments contained therein show a complete lack of understanding of its duty as a plaintiff to be forthcoming in the litigation process with all facts and circumstances regarding the claims. Plaintiff cannot have it both ways. The Directors either violated the law and Plaintiff should have alleged these facts in 2014 when the Complaint was initially filed or Plaintiff truly believed gross negligence to be the standard for director liability, in which it still had an obligation to set forth all statutes that the Directors allegedly violated in response to discovery. Neither of these events occurred, showing Plaintiff is either now bringing a suit they know to be unmeritorious or committed serious discovery abuses, for which there is no remedy at this stage in the case. Respectfully, Directors request this Court revisit the Directors

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brief in Opposition to the Motion for Leave to Amend regarding Plaintiff's bad faith conduct and futile claims.

IV. CONCLUSION

As set forth above, the Court has wide discretion when it comes to reviewing a previously amended complaint. Plaintiff continues to proffer a narrative that has been shut down by the Nevada Supreme Court. *Shoen* was only *dicta* and it was the Commissioner's folly in misleading this Court to deny the Directors' motions to dismiss based on *dicta* and cases with no precedence. Plaintiff strategically and purposely chose not to allege "intentional misconduct, fraud or a knowing violation of law," and not respond to reasonable discovery and must now live with those strategic decisions. With three months left in discovery, the fact that the alleged misconduct took place over eight years ago, and witnesses are now unavailable, a cramdown of discovery at this point is inherently prejudicial to the Directors.

Based thereon, the Court should deny the Motion for Reconsideration.

Dated this 24th day of August, 2020.

LIPSON NEILSON P.C.

/s/ Angela Ochoa

By: _____

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and Administrative Order 14-2, I certify that on the 24th day of August, 2020, I electronically transmitted the foregoing **DEFENDANTS ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, AND ERIC STICKELS' OPPOSITION TO THE MOTION FOR LEAVE TO FILE FOURTH AMENDED COMPLAINT** to the Clerk's Office using the Odyssey E-File & Serve System for filing and transmittal to the following Odyssey E-File & Serve registrants:

E-Service Master List
For Case

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/s/ Juan Cerezo

An employee of LIPSON NEILSON P.C.

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EXHIBIT "A"

EXHIBIT "A"

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DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA, EX REL. COMMISSIONER OF INSURANCE, BARBARA D. RICHARDSON, IN HER OFFICIAL CAPACITY AS RECEIVER FOR NEVADA HEALTH CO-OP, Plaintiff, v. MILLIMAN, INC., a Washington Corporation; JONATHAN L. SHREVE, an Individual; MARY VAN DER HEIJDE, an Individual; MILLENNIUM CONSULTING SERVICES, LLC, a North Carolina Corporation; LARSON & COMPANY P.C., a Utah Professional Corporation; DENNIS T. LARSON, an Individual; MARTHA HAYES, an Individual; INSUREMONKEY, INC., a Nevada Corporation; ALEX RIVLIN, an Individual; NEVADA HEALTH SOLUTIONS, LLC, a Nevada Limited Liability Company; PAMELA EGAN, an Individual; BASIL C. DIBSIE, an Individual; LINDA MATTOON, an Individual; TOM ZUMTOBEL, an Individual; BOBBETTE BOND, an Individual; KATHLEEN SILVER, an Individual; DOES I through X inclusive; and ROE CORPORATIONS I-X, inclusive, Defendants.	CASE NO. A-17-760558-C DEPT. NO. Department 18 **COMPLAINT** Exempt from Arbitration: Amount in excess of $50,000

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COMES NOW, Plaintiff, Barbara D. Richardson, Commissioner of Insurance in the State of Nevada, in her official capacity as Permanent Receiver of Nevada Health Co-Op ("Plaintiff" or "Commissioner"), with the Commissioner appointed in that official capacity on October 14, 2015 by the Eighth Judicial District Court, Clark County Nevada,[1] to serve as the permanent receiver ("Receiver") of the NEVADA HEALTH CO-OP ("NHC"), for the benefit of NHC's members, enrolled insureds, creditors, and the Receiver, by and through her attorneys, GREENBERG TRAURIG, LLP, and for her cause of action against Defendants MILLIMAN, INC. ("Milliman"), JONATHAN L. SHREVE ("Shreve"), and MARY VAN DER HEIJDE ("Heijde") (collectively the "Milliman Defendants"); MILLENNIUM CONSULTING SERVICES, LLC ("Millennium"); LARSON & COMPANY, P.C. ("Larson"), DENNIS T. LARSON ("D. Larson"), MARTHA HAYES ("Hayes") ("Larson," together with "D. Larson" and "Hayes," collectively the "Larson Defendants"); INSUREMONKEY, INC. ("InsureMonkey") and ALEX RIVLIN ("Rivlin," together with InsureMonkey, collectively the "InsureMonkey Defendants"); NEVADA HEALTH SOLUTIONS, LLC ("NHS"); PAMELA EGAN ("Egan"), BASIL C. DIBSIE ("Dibsie"), LINDA MATTOON ("Mattoon"), TOM ZUMTOBEL ("Zumtobel," together with Egan, Dibsie, and Mattoon, the "Officer Defendants"); BOBBETTE BOND ("Bond"), and KATHLEEN SILVER ("Silver," together with "Bond, the "Director Defendants") (the Officer Defendants and the Director Defendants collectively the "Management Defendants") (each a "Defendant," and collectively, all defendants are referred to as "Defendants") alleges as follows:

INTRODUCTION

1. Plaintiff, as Commissioner of the Nevada Division of Insurance (the "Nevada DOI") and NHC's Receiver, has brought this action on behalf of NHC, NHC's members, insured enrollees, and creditors.

2. NHC and its predecessors-in-interest were formed to provide health insurance to individuals and small businesses under the federal Affordable Care Act (the "ACA").

/ / /

[1] Commissioner Barbara D Richardson has succeeded Amy L. Parks, the former Commissioner of Insurance, who was initially appointed as Receiver by the Eight Judicial District Court.

3. This complaint concerns certain providers of services to, and management of, NHC, and how their conduct, including their failure to perform applicable fiduciary, contractual, professional, and statutory standards, caused substantial losses to NHC and, ultimately, the other parties represented by the Commissioner.

4. InsureMonkey was contracted to provide software and related services, and to administer NHC's call center to enroll insureds, bill the insureds and the federal government for premiums, collect the premiums, confirm eligibility and, when necessary, terminate the coverage of insureds who failed to pay premiums due.

5. InsureMonkey failed on each account, causing losses to NHC. Additionally, without limitation, as some of InsureMonkey's compensation was paid based on the number of insureds it calculated, InsureMonkey was overpaid for its services due to its over reporting of the number of insureds. The faulty data provided by InsureMonkey also led to inaccurate reporting to regulatory authorities. Defendant Rivlin, InsureMonkey's Chief Executive Officer, mislead NHC concerning the capabilities and efforts of InsureMonkey to obtain lucrative contracts with NHC.

6. Milliman was NHC's consulting actuary, that, among other issues, produced deficient forecasts and studies for loan applications, set inadequate insurance premium levels, provided faulty actuarial guidance to NHC management, promoted and incorporated in its assumptions accounting entries that were neither proper nor authorized without appropriate disclosure, participated in financial misreporting, and improperly calculated and certified NHC's projections and reserves to regulators. Defendants Shreve and Heijde were individual actuaries of Milliman who certified actuarial data to the Nevada DOI in their individual names.

7. Millennium, an expert in statutory accounting and a consultant for insurance companies, was engaged by NHC to prepare and file NHC's financial statements and supplemental reports with the Nevada DOI and the National Association of Insurance Commissioners (the "NAIC"), assist in review and preparation of responses to insurance regulators and the NAIC regarding financials, respond to auditor inquiries, and provide statutory accounting and report support as needed. Millennium failed in its responsibilities, which included, without limitation, ensuring that statutory accounting and reporting principles had been followed, and its work resulted

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in financial misreporting to the Nevada DOI insurance regulators, and the prolongation of NHC's business at great loss beyond the point at which it would have been halted but for Defendant Millennium's acts and conduct.

8. Larson served as NHC's independent auditor that, among other issues, performed deficient audits, failed to adequately inspect and value reserves and receivables, failed to properly disclose related party transactions, and failed to disclose the existence of substantial doubts about NHC's inability to continue as a going concern. Defendants D. Larson and Hayes were the individual CPAs identified by contract as directly responsible for NHC's audits.

9. NHS is a company that was engaged by NHC to perform medical utilization management services. NHS failed in its position as a medical gatekeeper for NHC by among other concerns, failing to verify the eligibility of members for medical services during their utilization reviews, resulting in over $1 million in overpayments to medical services providers. In addition, NHS and Management Defendant Kathleen Silver engaged in self-dealing in which NHS and/or Kathleen Silver were unjustly paid substantial amounts by NHC for so-called utilization management and member eligibility review services. Upon information and belief, little work was provided under this utilization management arrangement by NHS for NHC, and NHS compensation was unfairly based on a mechanical fee of how many total members existed at NHC each month; a fee that bore little to no relation to services being provided by NHS. NHS's president was Management Defendant Kathleen Silver, and upon information and belief, the owner of NHS was Unite Here Health ("UHH"). Upon information and belief, UHH was an entity with financial ties and/or direct or indirect business links with Management Defendants Bobbette Bond, Thomas Zumtobel, and Kathleen Silver. UHH was being paid to process and adjudicate claims of NHC, and then it was being paid again through NHS to do a quality control review check of the very claims that UHH processed. NHS also had a conflict of interest, or the appearance of a conflict of interest, by being engaged to provide a quality control review of claim services provided by its parent company, UHH. The NHS and NHC medical utilization management review arrangement was unfair, unreasonable, and just another way to siphon more money out of NHC to the detriment of its members, policyholders, and creditors.

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10. This complaint also concerns the management of NHC who intentionally, fraudulently, in knowing violation of the law, and without reasonable belief that their actions were in the interests of NHC, directed, allowed, and/or concealed the internal control weaknesses of NHC, the wrongdoing of NHC's service providers, the squandering of funds to unjustly enrich themselves, the acts of self-dealing at the expense of NHC, the wrongful payment of claims and wrongful member enrollments, the loss of reinsurance recoveries, the continuation of NHC in business that led to substantial losses, and the misreporting of financial and operating results to regulators.

11. Each of the Defendants had a fundamental duty not to mislead government regulators and to perform their work in accordance with applicable fiduciary, statutory, professional, and contractual standards.

12. Defendants' acts and conduct concealed, for a time, NHC's approaching insolvency and its inability to continue as a going concern from regulators, and ultimately increased the losses suffered by NHC and the others represented by the Receiver.

13. Defendants' actions caused significant losses to NHC, its members, insured enrollees, and creditors, among others, until NHC ultimately failed, and the State of Nevada was forced to protect the public, seek appointment as a receiver, recoup losses caused by Defendants, and liquidate NHC's assets for the benefit of the public.

PARTIES

14. Plaintiff Commissioner Barbara D. Richardson, in her capacity as Commissioner of Insurance and as Permanent Receiver of Nevada Health Co-Op, is authorized to liquidate the business of NHC and to wind up its ceased operations pursuant to NRS 696B.220.2 and an order entered on October 14, 2015 by the Eighth Judicial District Court, Clark County, Nevada. This authority includes authorization to institute and to prosecute, in the name of NHC or in the Receiver's own name, any and all suits and other legal proceedings, and to prosecute any action that may exist on behalf of the members, insured enrollees, or creditors of NHC against any person. The Nevada DOI is and was at all relevant times a Department of the State of Nevada.

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15. NHC is and was at all relevant times a non-profit Nevada corporation.

16. Upon information and belief, Defendant Milliman is and was at all relevant times a Washington state corporation.

17. Upon information and belief, Defendant Shreve is and was at all relevant times a Consulting Actuary and Principal of Milliman residing in Denver, Colorado. He issued the Feasibility Study described later herein.

18. Upon information and belief, Defendant Heijde is and was at all relevant times a Consulting Actuary and Principal of Milliman residing in Denver, Colorado, and served as NHC's first "Appointed Actuary."

19. Upon information and belief, Defendant Millennium is and was at all relevant times a North Carolina limited liability company, with its principal place of business located in Raleigh, North Carolina.

20. Upon information and belief, Defendant Larson is and was at all relevant times a Utah professional corporation and Certified Public Accounting firm with its principal place of business located in Salt Lake City, Utah. Larson is registered to provide accounting services to Nevada entities with the Nevada State Board of Accountancy.

21. Upon information and belief, Defendant D. Larson is a CPA. He was the engagement partner who was responsible for supervising the 2013 audit of NHC. Upon information and belief, he is an individual residing in Utah. D. Larson is registered to provide accounting services to Nevada entities with the Nevada State Board of Accountancy.

22. Upon information and belief, Defendant Hayes is a CPA. She was the Larson engagement partner who was responsible for supervising the 2014 audit of NHC.

23. Upon information and belief, Defendant InsureMonkey is and was at all relevant times a Nevada corporation with its headquarters located in Clark County, Nevada.

24. Upon information and belief, Defendant Rivlin is and was at all relevant time an individual residing in Clark County, Nevada, and the Chief Executive Officer of InsureMonkey.

25. Upon information and belief, Defendant NHS is and was at all relevant times a Nevada limited liability company, with its headquarters located in Clark County, Nevada.

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26. Upon information and belief, Defendant Egan is and was at all relevant times an individual residing in Clark County, Nevada. Egan was NHC's Chief Development Officer from its inception through approximately April 2014. In or around April 2014, Egan became NHC's Chief Executive Officer, and she remained in that position through NHC's placement into receivership.

27. Upon information and belief, Defendant Dibsie is and was at all relevant times an individual residing in Clark County, Nevada. Dibsie was NHC's Chief Financial Officer from its inception through its placement into receivership.

28. Upon information and belief, Defendant Mattoon is and was at all relevant times an individual residing in Clark County, Nevada. Mattoon was NHC's Chief Operating Officer from approximately November 2014 through NHC's placement into receivership.

29. Upon information and belief, Defendant Zumtobel is and was at all relevant times an individual residing in Clark County, Nevada. Zumtobel was NHC's Chief Executive Officer from its inception through approximately April 2014. Zumtobel served on NHC's Board of Directors from May 4, 2012 through November 14, 2014. Zumtobel served on NHC's Budget and Audit and Consumer Advisory Committees.

30. Upon information and belief, Defendant Bond is and was at all relevant times an individual residing in Clark County, Nevada. Bond was a member of NHC's Board of Directors from May 4, 2012 through NHC's placement into receivership. Bond served on NHC's Budget and Audit and Consumer Advisory Committees.

31. Upon information and belief, Defendant Silver is and was at all relevant times an individual residing in Clark County, Nevada. Silver was a member of NHC's Board of Directors from May 4, 2012 through January 1, 2015, President of the Culinary Health Fund and President of Defendant NHS.

FACTUAL ALLEGATIONS

A. The Affordable Care Act

32. Congress enacted the Affordable Care Act (the "ACA") in March of 2010. The ACA included a series of interlocking reforms designed to expand coverage in the individual health insurance market.

33. The ACA bars insurers from taking a person's health into account when deciding whether to sell health insurance, generally requires each person to maintain insurance coverage or make a payment to the Internal Revenue Service, and gives tax credits to certain people to make insurance more affordable.

34. The ACA also established a Consumer Operated and Oriented Plan ("CO-OP") program which was intended to foster the creation of qualified non-profit health insurance issuers to facilitate the purchase of health plans by individuals and small businesses.

35. Under the CO-OP program, qualifying insurers were eligible for federal loans to establish and provide stability to insurers. Applicants were required to submit a feasibility study and a business plan as part of the loan application process.

36. Recognizing risks associated with the uncertainty of the reforms initiated by the ACA, Congress also established programs known as the "Federal Transitional Reinsurance," "Risk Corridors," and "Risk Adjustment" (known collectively as the "3Rs") to help mitigate some of the insurers' risks during their first few years of operation.

37. In addition to conforming to the ACA, health insurance providers, including those in Nevada, are required to adhere to state law and are regulated by state commissioners of insurance.

38. Without limitation, under Nevada law, NHC is required to have its reserves valued and certified by an actuary, file statutory financial statements, enroll members and pay claims according to guidelines, file independently audited financial statements, and submit other operational and financial data as determined by statute and by the Nevada DOI.

FACTUAL ALLEGATIONS RELATING TO THE MILLIMAN DEFENDANTS

B. Milliman is Engaged by and Establishes a Fiduciary Relationship with NHC and its Predecessors in Interest.

39. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

40. Recognizing the possible benefits to some of its members, the Culinary Health Fund (the health insurance affiliate of the Culinary Union), considered the possibility of establishing a qualifying CO-OP under the ACA.

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41. Due to the need to set insurance rates, establish appropriate reserves, apply for government loans, obtain required certifications, and forecast future results, the Culinary Health Fund sought out an actuarial expert.

42. The Culinary Health Fund entered into a contract with Milliman, dated October 20, 2011 (the "2011 Agreement").

43. Upon information and belief, the initial compensation for Milliman was contingent on the Culinary Health Fund obtaining federal loans for the CO-OP project.

44. Because the CO-OP program required separation from an established insurer, the Culinary Health Fund established Hospitality Health, Ltd., a Delaware non-profit corporation ("Hospitality Health").

45. On information and belief, the Culinary Health Fund assigned and transferred all rights, title, and interest in the 2011 Agreement to Hospitality Health.

46. Milliman continued to perform work under the 2011 Agreement for Hospitality Health after the assignment.

47. On or about September 10, 2012, Milliman also directly entered into a Consulting Services Agreement (the "Consulting Services Agreement") with Hospitality Health.

48. The Consulting Services Agreement provides that "Milliman will perform all services in accordance with applicable professional standards."

49. NHC was formed in October, 2012, and all assets and agreements of Hospitality Health, including the Consulting Services Agreement, were assigned to NHC.

50. Milliman holds itself and its employees out as experts in providing actuarial opinions and other services to third parties.

51. Milliman represented itself to the Culinary Health Fund, Hospitality Health, and NHC, as much more than a simple service provider.

52. In its proposal dated April 12, 2012, Milliman described the CO-OP development as "an interactive partnership in order to ensure the viability of the CO-OP in a short timeframe."

53. As an "interactive partnership," Milliman proclaimed joint responsibility for the success of the CO-OP.

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54. Furthermore, Milliman committed that its work would be done in a manner "to ensure the viability of the CO-OP."

55. The proposal further boasted that Milliman could provide "significant assistance" to the CO-OP in areas of standard actuarial tasks within an insurer, as well as development, strategy, and training.

56. Milliman, by framing itself as an interactive partner with Hospitality Health and its successor, NHC, in developing strategy, and in training its staff, Milliman did not perform a mere set of outsourced tasks, but rather served as the key partner providing budget forecasts, planning, premium pricing, opinions, and judgments that were justifiably relied on by the new CO-OP.

57. As newly formed non-profit companies, Hospitality Health, and later NHC, relied on the superior knowledge and expertise of its self-proclaimed "interactive partner" Milliman and Milliman's actuaries - Shreve and Heijde - to establish and run the enterprise.

58. In its position as an "interactive partner," the Milliman Defendants enjoyed a special relationship and position of trust with the Culinary Health Fund, Hospitality Health, and NHC.

59. Services ultimately to be provided by the Milliman Defendants included preparing a feasibility study to be included in loan applications and statutory filings, projecting future profits, valuing reserves, setting premiums, participation in financial reporting, and serving as the CO-OP's statutorily required appointed actuary to provide certifications to the state and other entities.

C. Milliman Provides a Defective Feasibility Study, $66 Million in Federal Loans are Obtained, and Hospitality Health's Assets and Loans are Assigned to and Assumed by NHC.

60. On or about December 21, 2011, Milliman issued a document entitled "Hospitality Health Feasibility Study and Business Support for Consumer Operated and Oriented Plan (CO-OP) Application" (the "Feasibility Study"), which was to be used for the application for federal loans under the CO-OP program and for other purposes.

61. The Feasibility Study included financial projections of what Milliman labeled as its "Best Estimate Scenario" and "Alternative Scenarios." Milliman also included an analysis of the CO-OP's ability to repay loans applied for under the application.

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62. The results of Milliman's analysis concluded that regardless of each scenario it tested, the CO-OP would:

- Achieve sufficient market penetration to support its expenses;
- Meet statutory minimum loss ratio requirements;
- Maintain a surplus level in excess of the minimum required to avoid Nevada DOI oversight; and
- Generate enough surplus to repay its federal loans.

63. In fact, Milliman projected that under its "Best Estimate Scenario," the CO-OP would generate an accumulated surplus in excess of $27 million by the end of 2014, $64 million by the end of 2017, and $144 million by the end of 2033.

64. Indeed, under each and every scenario presented in its report, Milliman stated that the CO-OP would generate a positive accumulated surplus.

65. Based at least in part on the Milliman projections, the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services ("CMS") and Hospitality Health, entered into a loan agreement with a closing date of May 17, 2012 (the "CMS Loan Agreement").

66. The CMS Loan Agreement provided for a total of $65,925,394 in loans, including a Series A Start-up Loan with a maximum amount of $17,105,047 (the "Start-up Loan"), and a Series B Solvency Loan in the maximum amount of $48,820,347 (the "Solvency Loan," collectively, the "CMS Loans").

67. On or about December 21, 2012, by a Joint Resolution of the Boards of Directors of Hospitality Health and of NHC, the assets and liabilities of Hospitality Health, including the CMS Loans and the Consulting Services Agreement with Milliman, were assigned to and assumed by NHC.

68. During the transaction, the Boards of Directors of Hospitality Health and of NHC were identical and included many of the Management Defendants.

69. On December 21, 2012, CMS amended the CMS Loan Agreement to substitute NHC for Hospitality Health.

70. NHC was funded by the CMS Loans. Without the CMS Loans, NHC would not have had sufficient funds to qualify for licensing or to begin selling insurance.

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71. Based on the conclusions of the Feasibility Study and on the availability of the CMS Loans obtained through its use, in 2013 the Nevada DOI licensed NHC to begin selling insurance as of January 1, 2014.

D. Milliman's Work Does Not Meet Applicable Professional and Statutory Standards.

72. Throughout its relationships with the Culinary Health Fund, Hospitality Health, and NHC, the Milliman Defendants' work failed to meet applicable professional and statutory standards.

73. Without limitation, these deficiencies manifested themselves in the work Milliman performed relating to premium rate development, financial projections and reserve calculations, and financial misreporting. Moreover, Milliman improperly utilized financial information that it knew to be incorrect and that had not been adequately disclosed.

1. Premium Rate Development.

74. Premium rate development is a critical process for the viability of an insurer. If rates are set too low, the insurer cannot pay the medical and administrative costs, and the company will eventually fail. Conversely, if rates are set too high, the insurer will not achieve the necessary or desired market share because its products will be more expensive than those of its competitors. As a result, revenue will be inadequate.

75. As a start-up company, NHC relied heavily on its expert, actuary, and "interactive partner" Milliman, to identify appropriate assumptions and to perform the necessary actuarial calculations to establish NHC's premiums at a level that could support NHC's continued existence.

76. When developing premium rates, actuaries must comply with applicable statutory and professional standards, including those published by the NAIC and the Actuarial Standards of Practice ("ASOPs") of the U.S. Actuarial Standards Board. Such standards require the use of appropriate assumptions when developing premium rates.

77. The Milliman Defendants intentionally or negligently failed to comply with such standards.

78. In the development of NHC's 2014 and 2015 premium rates, the Milliman Defendants made a series of unjustified and inappropriate assumptions that adversely impacted NHC's premium rates.

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79. The use of these unjustified and inappropriate assumptions ultimately impacted NHC's financial viability, as mispriced premiums were unable to cover actual expenses and costs.

80. Inappropriate assumptions used by the Milliman Defendants in the premium development process that NHC ultimately relied on for its financial viability included, but were not necessarily limited to:

i. Milliman's estimates of premium rates were based on Milliman's Health Cost Guidelines (HCGs). The HCGs are based on data collected from large-group, employer-based health plans, a population with characteristics that are inherently different from those present in the individual and small-group market. As such, Milliman knew or should have known that the claim costs it projected based on data underlying the HCGs were not appropriate for the individual and small group customers that plans under the Affordable Care Act were designed to serve, unless substantial adjustments were made. Milliman failed to make such appropriate adjustments.

ii. Contrary to the ASOPs applicable to its work, Milliman did not adequately account for adverse selection - the concept that those with the greatest need and likely to generate the highest cost would be the most likely to seek apply for their most beneficial plans. Adverse selection was a critical, material, obvious, and foreseeable consideration from an actuarial perspective. The upper tier plans proved so unprofitable that all Platinum and most Gold plans were cancelled in NHC's second year of operations.

iii. Inflation adjustments used by Milliman were too low, based on commonly known data and Milliman's own firm views. Had Milliman appropriately applied a higher inflation factor, premiums would have been higher, reducing NHC's financial losses.

iv. Milliman underestimated pent-up demand for medical insurance at a lower price point. The ACA subsidized lower income insureds. Once funded, individuals with conditions that had remained untreated were suddenly able to receive the health care they needed, and understandably and predictably, these individuals tended to make use of medical services en masse.

v. Milliman's projections, even in its "low enrollment" scenario did not sufficiently consider the adverse effects of low enrollment or slow enrollment. As a result, the provision for administrative expenses in Milliman's pricing analysis that the NHC relied upon was

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also deficient. The anticipated administrative expenses of NHC were spread over a smaller enrollment population than Milliman had projected, leading to a greater loss on each insured.

vi. Milliman failed to account for the high administrative costs necessary for a startup company, such as NHC. Despite the fact that the Feasibility Study showed administrative cost of $6.8 million in 2014 for far fewer enrollees, actual 2014 expenses were $23.6 million, flagging the disastrous financial impact of improper budgeting based on Milliman's faulty projections.

vii. Finally, proper consideration of NHC's target market was essential to estimating appropriate premiums and understanding potential risks. Milliman intentionally or negligently failed to assess NHC's target market by attempting to position NHC as the low-cost provider and in effect, "buy" participation.

81. While Milliman was aware of the challenges in the market, Milliman intentionally or negligently failed to adequately explain to NHC or to its regulators the inherent risks and uncertainty in the underlying rate development, the interaction of coverage levels in product offerings, and the dangers of competitive positioning as the low-cost provider in the market. This failure contributed significantly to the mispricing of premiums, and ultimately, the demise of NHC.

2. Financial Projections.

82. In developing NHC's financial projections, such as the Feasibility Study and other pro formas or financial reports, Milliman and Shreve made a series of inappropriate and unjustified assumptions that caused the financial projections they presented to management, the Nevada DOI, and CMS to be unrealistic and unachievable in practice.

83. When preparing financial projections such as those prepared by Milliman, an actuary's work is subject to professional and statutory standards, including those published by the NAIC, and the American Academy of Actuaries, including but not limited to ASOP No. 7 – "Analysis of Life, Health, or Property-Casualty Insurer Cash Flows," among other professional guidance.

84. The Feasibility Study included a certification by Milliman Consulting Actuary and Principal, Shreve, that stated, in part, that the projections were prepared under his supervision, were "accurate and complete," and were "prepared in accordance with generally recognized and accepted

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principles and practices which are consistent with Actuarial Standards of Practice, the Code of Professional Conduct and Qualification Standards for Public Statements of Actuarial Opinion of the American Academy of Actuaries."

85. The inappropriate and unrealistic assumptions used by Milliman in its financial projections include, but are not limited to, those set forth in the Premium Rate Development section above.

86. The use of such inappropriate and unjustified assumptions violated applicable statutory and actuarial standards.

87. In the feasibility study dated December 21, 2011, prepared by Milliman and used in support of the loan application to CMS, Milliman concluded, "Our financial projections indicate [the CO-OP] will be able to repay its startup loans within five years of their specific drawdown dates. Further, we project [the CO-OP] will have sufficient capital to repay its solvency loans within fifteen years of their specific drawdown dates while meeting state reserve requirements and solvency regulations. These projections are based on best estimate assumptions but also hold true for the alternate scenarios tested."

88. None of the enrollment scenarios considered the possibility that NHC would have trouble attracting an adequate level of enrollment, and every economic scenario assumed that the loss ratio in nearly every modeled year would contribute to a surplus. These assumptions completely disregarded the obvious possibility that there would be significant volatility in enrollment and/or the medical loss ratio. In fact, for example, NHC's medical payments in 2014 alone exceeded the premiums received, even before administrative costs.

89. With all of the uncertainty surrounding implementation of the ACA, a competent actuary should have understood that it was a very realistic possibility that NHC would fail to be viable. Some of the modeled scenarios should have identified this possibility so as to inform NHC management and regulators. Possible scenarios, such as low enrollment, very high medical costs, and high administration expense, were not presented in the Feasibility Study, while in actuality, these possibilities should have been anticipated by Milliman actuaries when they prepared the Feasibility Study.

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90. Milliman's intentional or negligent failure to consider the possibility of these adverse enrollment and/or medical loss ratio scenarios resulted in every single scenario of the Feasibility Study showing that NHC would generate significant positive cash flows over the mid to long-term time period.

91. Milliman had a financial incentive to paint such a rosy outlook, even if it was in contradiction to actuarial standards. Upon information and belief, Milliman conditioned payment for its preparation of NHC's Feasibility Study upon NHC being awarded a loan by CMS. That is, Milliman would only receive payment for its services if NHC's efforts to secure a loan from CMS were successful.

92. By conditioning payment upon a successful result, Milliman compromised its independence as an actuary and thereby breached its duty to NHC.

93. As the certifying actuary for the Feasibility Study, Shreve is jointly and severally responsible with Milliman, his employer, for the work performed on the Feasibility Study.

94. Milliman failed to include and properly calculate actuarial reserves when preparing liability information that would later be relied upon and used by NHC in its financial reporting to Nevada DOI insurance regulators for year 2014 and the first calendar quarter of year 2015. Milliman would also certify to these improper actuarial reserves in separate reports submitted to the Nevada DOI regulators.

3. Reporting of Reserves.

95. Milliman and Heijde intentionally or negligently underreported actuarial items used in NHC's financial reports and which were submitted to the Nevada DOI. The under accrual of the December 31, 2014 reserves, including but not limited to premium deficiency reserves ("PDR") and incurred but not reported ("IBNR") reserves, caused NHC to appear financially stronger and solvent. On information and belief, they also intentionally or negligently used sources containing improper financial information that tended to artificially maintain surplus levels reported to the Nevada DOI without proper authorization or adequate disclosure.

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96. The understated PDR and IBNR reserves overstated the surplus levels and risk based capital ("RBC") ratios that the Nevada DOI used to assess the solvency of insurers. An insufficient RBC ratio would have been a red flag to the Nevada DOI and would have required NHC to take corrective steps, limiting acceptability to consumers, creditors, and regulators.

97. NHC management and the Milliman Defendants understood that the higher the IBNR reserves and PDR were, the lower the surplus and the worse the RBC ratio would be. Keeping the IBNR reserves and PDR artificially low and the surplus high masked NHC's insolvency and allowed NHC to continue to take on risk and lose money.

98. When developing and certifying reserves, actuaries must comply with statutory and professional requirements and standards.

99. NRS 681B requires, in part, that the opinions of an "appointed actuary" as to whether the reserves and related actuarial items held in support of the policies and contracts of an insurer are computed appropriately, be based on conditions that satisfy contractual provisions, be consistent with prior reported amounts, and comply with applicable laws of the State of Nevada.

100. NRS 681B also provides minimum statutory requirements for actuarial opinions on reserves, including compliance with the Valuation Manual adopted by the NAIC.

101. Actuaries are also required to comply with relevant standards set forth by the American Academy of Actuaries and the Actuarial Standards Board when setting reserves, including but not limited to ASOP 42 – "Determining Health and Disability Liabilities Other Than Liabilities for Incurred Claims" and ASOP 5 – "Incurred Health and Disability Claims."

102. For the typical health entity offering comprehensive medical insurance coverage, the size of the PDR reported in a company's annual financial statement should be consistent with the expected underwriting loss for the following year.

103. On March 13, 2015, and subsequently on May 14, 2015, Heijde and Milliman issued their Actuarial Memorandum and Statement of Opinion for the NHC (the "2014 Opinion"). In the 2014 Opinion, Heijde described that their role was to "certify that all required reserves have been established, at good and sufficient levels."

104. For the 2014 Opinion, Heijde and Milliman calculated a PDR of $0 for NHC.

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105. The PDR calculation produced a positive value of $197,162, where a negative number implies a reserve is to be held.

106. This calculation was not credible or in accordance with professional or statutory standards, as evidenced by the substantial prior and continuing losses of NHC.

107. Heijde and Milliman also grossly underestimated NHC's year-end 2014 IBNR reserves, overstating NHC's surplus position.

108. That calculation, based on known facts concerning unprocessed claims, was inconsistent with statutory and professional standards.

109. Heijde served as the appointed actuary for NHC and personally executed the 2014 Opinion.

110. The 2014 Opinion contained the opinion of Heijde and Milliman that the amounts carried on NHC's balance sheet on account of inadequately disclosed information were in accordance with accepted actuarial standards, that they were based on relevant and appropriate actuarial assumptions, that they met the requirements of the insurance laws and regulations of the State of Nevada, and that they were at least as great as the minimum amounts required to make full and sufficient provision for all unpaid claims and other actuarial liabilities of the organization.

111. The 2014 Opinion stated that Heijde's review indicated that the parties were in a financial position to meet all liabilities resulting from its relevant contracts, that she performed calculations to determine the need for a PDR, and that she determined that such a PDR was not necessary.

112. The 2014 Opinion confirmed that it was prepared for NHC's filings with the State of Nevada, NHC's auditors, the NAIC, CMS, and the Nevada DOI.

113. The 2014 Opinion raised concerns with the Nevada DOI when it noticed the apparent discrepancies between the report filed by Heijde and the actual results of NHC. It held telephonic conferences and issued written correspondence in an effort to investigate the issue.

114. On February 10, 2015, the Nevada DOI held a call to discuss the estimation of actuarial items relating to the financial statements with the Milliman team. In an e-mail dated February 14, 2015, at 8:00 p.m. on a Saturday, the Nevada DOI sent extensive and specific

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recommendations to Milliman and NHC on the methodology to calculate the year-end PDR. The Nevada DOI expressed concerns about unrealistic expense levels and the importance of projecting PDR through the end of 2015 using reasonable and supportable assumptions.

115. The Nevada DOI included an excerpt of the then-current draft of applicable guidance to address the calculation and communication of the PDR, and it highlighted in bold italics detailed notes specific to NHC. In particular, the DOI questioned NHC's financial position and its elevated combined ratio stating, specifically:

> "In particular, based on the high level of expenses, and the level of underwriting losses projected for 2015, along with the premium increase limitations built into the ACA, we do not believe that it is reasonable for NHC's PDR to reflect a projection to the end of the contract period. In other words, without providing significant evidence to support the adequacy of renewal premiums, NHC should be projecting all groups through the end of the projection period (to 12/31/2015) using reasonable and supportable projection assumptions."

116. Milliman's calculated PDR of zero is even more alarming, given the detailed instructions provided to Milliman by the Nevada DOI in an e-mail from Annette James to Colleen Norris, dated February 14, 2015:

> "The size of the PDR reported in a company's annual financial statement should be consistent with the expected underwriting loss for the following year."

117. A week later, on February 18, 2015, the Nevada DOI followed up with a conference call with Milliman regarding the calculation of actuarial items. In a February 26, 2015 e-mail from Annette James to Basil Dibsie, the DOI stated the following:

> "***We are concerned that the preliminary December 31, 2014 premium deficiency reserve (PDR) of zero which was discussed during that call appears to be understated.*** While the projected premiums and claims appear to be in line with our expectation, the level of projected expenses, combined with the expected risk corridor receipts appear to be optimistic, resulting in a PDR that appears to be understated. From a big picture perspective, it appears to be optimistic for the CO-OP to go from $21 million deficit as of 12/31/14 to a surplus position within a year. ***We therefore urge you and your actuaries to review the estimates and ensure that the appropriate level of conservatism is incorporated into the year-end estimates.*** Once the requested spreadsheets and back-up information are provided to us, we will review the calculations and may be in a position to provide specific feedback at that time." ***[emphasis added]***

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118. The Nevada DOI went to extraordinary lengths to communicate clear guidelines for the calculation of PDR so as to produce "fairly stated year-end financials with information that is consistently applied." The then acting Insurance Commissioner made herself available for multiple calls and initiated and responded to numerous e-mails, including during non-traditional business hours. Despite the Nevada DOI's clear instructions, Milliman, Heijde, and certain members of NHC management, including but not limited to Egan and Dibsie conspired to conceal the true financial position of NHC and refused to follow the Nevada DOI's guidance.

119. In addition, in its e-mails dated February 14, 2015 and February 26, 2015, the Nevada DOI stated it expected the PDR to be reevaluated on a quarterly basis and adjusted as necessary if the emerging experience was substantially different from the projected experience. These steps were not taken and, in fact, the PDR calculation appears to have been skipped at the end of the first quarter, contrary to the Nevada DOI's explicit request.

120. By July 31, 2015, Milliman issued a document titled "Premium Deficiency Reserve as of June 30, 2015." This time, Milliman calculated that NHC would be required to hold a significant PDR.

121. The July 31 PDR calculation produced a value of ($15,928,707), where a negative number implies a reserve to be held, a roughly $16,000,000 swing from the March 14 calculation.

122. On December 31, 2014, Milliman had first calculated an IBNR reserve of $5.8 million, but then in May restated that number to be $11.0 million. By June 30, 2015, Milliman calculated the balance as $15,027,286, while still not establishing a PDR. This was a significant and unfavorable swing in NHC's financial position from year-end.

123. Still, Milliman did not restate the 2014 financial statement information. The continuing avalanche of negative claims should have provided ample reason to revisit the 2014 reserves, but Milliman failed to do so.

124. In total, the reported reserves shifted tens of millions of dollars in a few short months.

125. As the certifying actuary for the 2014 Opinion, actuarial memorandum, and subsequent communications with the Nevada DOI, Heijde is jointly and severally responsible with her employer, Milliman, for the work performed for the 2014 Opinion, actuarial memorandum, and NHC's reserve calculations.

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4. Use of Improper and Unauthorized Financial Information.

126. In addition to the understatement of reserves, on information and belief, Milliman, Heijde, and NHC management intentionally or negligently used financial information, recording loan proceeds as a receivable in the year prior to that in which a formal application for the draw was made, and participated in misreporting 2014 financial information to the Nevada DOI without adequate and proper disclosures of operating results and NHC's viability. Milliman, Heijde, and NHC management knew or should have known that these practices would tend to artificially maintain surplus levels, avoid the level that would trigger Nevada DOI supervision, misreport financials, and extend the continued and unjustified existence of NHC as an operating insurance business enabling it to write more insurance risks and undertake more financial obligations.

127. The practice of prematurely booking potential CMS loan draws as receivables without adequate disclosure was used to bolster risk-based capital levels to help meet statutory requirements.

128. The outstanding balance on the Solvency Loan as of December 31, 2014, was $42,965,683. The maximum principal available under the loan was $48,820,349. Although a draw in the amount of $3,152,275 was formally requested in January 2015 and obtained in February 2015, the transaction was recorded as if it had occurred as of December 2014, which Milliman knew was inaccurate and misleading without additional disclosure.

129. Milliman set IBNR reserves too low and no PDR reserves until July 31, 2015, in violation of actuarial standards and practices and without due regard to NHC's operating results and information, which was inaccurate and misleading.

130. Given the other issues noted above, had the CMS loan final draw been correctly recorded in 2015, it would have negatively impacted the critical ratio testing requirement with the Nevada DOI.

131. The clear pattern of reduced and understated actuarial items on the balance sheet for IBNR reserves and PDR, along with the use of inappropriate and inadequately disclosed financial information to meet statutory requirements, indicates that Milliman's estimates were arrived at in an effort to falsely inflate NHC's surplus levels and RBC ratio position, as well as to misreport the 2014 financial information of the company, so as to avoid or postpone inevitable Nevada DOI intervention.

FACTUAL ALLEGATIONS RELATING TO MILLENNIUM

E. Millennium Represents Itself as an Accounting and Consulting Firm with Insurance Industry Expertise and is Engaged by NHC to Prepare and File Statutory Statements.

132. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

133. Financial reporting for insurance companies is complex and involves issues not frequently encountered by those in other industries.

134. NHC was required to file statutory basis financial statements and compliance reports related to the audit of federal awards.

135. The Nevada DOI recognizes only statutory accounting practices prescribed or permitted by the State of Nevada. The NAIC's Accounting Practices and Procedures Manual ("SAP") has been adopted as a component of prescribed or permitted practices by the State of Nevada.

136. On information and belief, during late 2014, NHC sought out an accounting firm that was an expert in insurance accounting, reporting, and consulting.

137. Millennium reports on its website that it provides educational training, regulatory consulting, and administrative services to insurance companies, insurance regulators, and other insurance-related entities throughout the United States and Puerto Rico.

138. Millennium's website also states that "Millennium Consulting's portfolio of services provides a variety of solutions to meet the demanding obligations of statutory accounting and reporting regulations."

139. On information and belief, NHC identified and engaged Millennium after NHC's employee attended a statutory accounting seminar put on by Millennium and because of Millennium's self-proclaimed expertise in statutory accounting and reporting regulations for the insurance industry.

140. On or about January 7, 2015, NHC entered into a service agreement (the "Service Agreement") with Millennium to provide accounting and consulting services. Under the terms of the Service Agreement, Millennium was to:

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- Prepare and file NHC's Annual Statement, including all NAIC Supplemental Exhibits and Schedules for filing with the Nevada DOI and the NAIC;

- Prepare and file NHC's Quarterly Statement, including all NAIC Supplemental Exhibits and Schedules for filing with the Nevada DOI and the NAIC;

- Assist in the review and prepare responses to any regulatory letter from the Nevada DOI and the NAIC related to the Annual and/or Quarterly Statement filings;

- Respond to any independent auditor inquiries regarding the preparation and filing of NHC's Audited Statement Supplemental filings, as needed; and

- Acquire, on behalf of NHC, Annual and Quarterly RBC software.

141. Schedule A to the Millennium Service Agreement specified that the contracted work would include preparation of schedules "in accordance with statutory accounting and reporting rules prescribed and permitted by the State of Nevada" and "entail evaluating general ledger accounting entries, ensuring that statutory accounting and reporting principles have been followed, recommending any adjustments to adhere to statutory accounting and reporting rules prescribed by the state of [Nevada] and preparing any supporting worksheets that may be needed in arriving at appropriate allocations of financial amounts within some of the schedules."

142. By undertaking the contractual duties specified in the Service Agreement, Millennium agreed to perform the duties of an internal financial controller. In this position, NHC relied on the superior knowledge and expertise that Millennium touted to run NHC. In this position, Millennium enjoyed a special relationship and position of trust with NHC.

F. Millennium Fails to Live Up to its Contractual Obligations to Prepare Financial Statements in Accordance with Applicable Standards.

143. Despite the fact that Millennium was to evaluate general ledger entries, to ensure that statutory accounting and reporting principles had been followed, and to recommend any adjustments so as to adhere to statutory accounting and reporting rules prescribed by the State of Nevada, the reports prepared and filed by Millennium under the Service Agreement failed to meet applicable statutory, professional, and contractual standards.

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144. NHC's 2014 Annual Statement (the "2014 Annual Statement") was not prepared in accordance with statutory accounting and reporting rules, and it had to be subsequently amended.

145. Millennium did not properly disclose the reliance on extraordinary state prescribed or permitted practices, whether such prescribed or permitted practices were approved, or whether the reporting entity's risk based capital ratios would have triggered a regulatory event had it not used a prescribed or permitted practice.

146. Inappropriate and unapproved wording was used in the notes to the 2014 Annual Statement.

147. Data presented between schedules was inconsistent.

148. The 2014 Annual Statement disclosure regarding the CMS Loans was not in conformity with applicable standards, including SSAP 15, because there was no disclosure regarding the covenants associated with these loans.

149. The 2014 Annual Statement did not disclose material related party transactions.

150. The 2014 Annual Statement did not disclose significant internal control weaknesses that materially impacted operations and the financial statement.

151. The 2014 Annual Statement reflected without adequate disclosure, a receivable amount of $3.2 million as of December 31, 2014, with an offsetting entry to surplus in the form of the CMS Solvency Loan, despite the fact that NHC did not submit a formal loan request to CMS until the subsequent year.

152. NHC incurred significant losses for the year ending December 31, 2014 that exceeded the financial projections included in its CMS application and in NHC's licensing application with the Nevada DOI. Additionally, enrollments were substantially below target, and cash flow was a problem, with credit lines becoming rapidly exhausted.

153. Millennium failed to adequately disclose required reserves, projected future losses for 2015, the impact on NHC's RBC results, the impact on NHC's CMS loan covenant requirements, projected future shortfalls in enrollments, the exhaustion of NHC's available lines of credit, the growing concern regarding NHC's ability to continue as a going concern, and NHC's plan to mitigate these negative trends.

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154. For the first quarter of 2015, many of these issues, including without limitation the understatement of reserves, remained unaddressed, and the first quarter 2015 statutory statements prepared and filed by Millennium were not in conformance with required contractual, statutory, or professional standards.

155. Millennium further participated in the drafting of NHC's Management's Discussion & Analysis (the "MD&A") report for 2014 as required under the Service Agreement.

156. Nevada has adopted NAIC reporting rules by statute and order of the Nevada DOI. Pursuant to NAIC rules, the MD&A requirements are intended to provide, in one section, material historical and prospective textual disclosure enabling regulators to assess the financial condition and results of operations of the reporting entity. Under NAIC rules, reporting entities should identify any known trends or any known demands, commitments, events or uncertainties that will result in or that are reasonably likely to result in the reporting entities' liquidity increasing or decreasing in any material way.

157. The 2014 MD&A prepared by Millennium did not explain or discuss the severity of NHC's financial position nor did it provide the MD&A's users with relevant and required information regarding extraordinary accounting practices in use, the inadequacy of reserves, liquidity and borrowing concerns, or other challenges faced by NHC. As such, Millennium failed to perform its work in accordance with the NAIC rules prescribed and permitted by the State of Nevada, as required by the Service Agreement.

FACTUAL ALLEGATIONS RELATING TO THE LARSON DEFENDANTS

G. Larson Represents Itself as a CPA Firm with Insurance Industry Expertise and is Engaged by NHC to Audit the Company.

158. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

159. The audits of insurance companies may be complex and involve issues not frequently encountered by companies not specializing in such audits.

160. On information and belief, during late 2013 and early 2014, NHC sought out a CPA firm that was an expert in auditing and advising insurance companies.

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161. Larson is a Certified Public Accounting firm that asserts in its website that it "began practice in 1975 with the central purpose of serving the insurance industry. We have grown to become one of the premier insurance audit firms in the nation . . ."

162. Its website continues by saying that, "while many insurance companies prepare GAAP [Generally Accepted Accounting Practices] statements for internal use, statutory filings are required by all licensed insurance companies. These regulations are very different from GAAP regulations. Because of this, only individual with industry specific expertise can fully comprehend the impact of different transactions. And without this understanding, it is difficult for an insurance company to operate successfully long term. . . . When choosing professional advisors to help you navigate the rapidly shifting waters of the insurance industry, you need experienced, knowledgeable professionals. Our insurance group is an integrated team of audit, tax, and advisory professionals delivering sophisticated business solutions to help our clients minimize their growth potential and remain competitive."

163. On information and belief, NHC identified and engaged Larson because of its self-proclaimed expertise in insurance company audits.

164. On or about February 19, 2014, NHC and Larson entered into an engagement letter under which Larson would provide professional services to NHC.

165. The February 19, 2014 engagement letter drafted by Larson included the following statements:

- "We will audit the statutory financial statements of Nevada Health Co-Op (the Company) which comprise the statutory statements of admitted assets, liabilities, and capital and surplus as of December 31, 2013, and the related statutory statements of income, changes in capital and surplus, and cash flows for the year then ended. Also the following supplementary information accompanying the statutory financial statements will be subjected to the auditing procedures . . . . :
  - The National Association of Insurance Commissioners' (NIAC) required supplementary information
  - Schedule of Expenditures of Federal Awards

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- The objective of our audit is the expression of opinions as to whether your statutory financial statements are fairly presented, in all material respects, in conformity with statutory accounting principles and to report on the fairness of the supplementary information referred to in the [above] paragraph.

- Our audit will be conducted in accordance with the auditing standards generally accepted in the United States of America; the standards for financial audits contained in Government Auditing Standard, issued by the Comptroller General of the United States; the Single Audit Act Amendments of 1996; and the provisions of OMB Circular A-133, and will include test of accounting records, a determination of major programs(s) in accordance with OMB Circular A-133, and other procedures we consider necessary to enable us to express such opinions and to render the required reports.

- Dennis T. Larson, CPA, is the engagement partner and is responsible for supervising the engagement and signing the report or authorizing another individual to sign it."

166. A subsequent engagement letter with similar terms, dated September 30, 2014 (collectively, with the February 19, 2014 engagement letter, "Engagement Letters"), was also entered into by NHC and Larson for the year ended on December 31, 2014, with Martha Hayes as the responsible CPA.

H. Larson Defendants Ignore Glaring Warning Signs, Perform Only a Cursory Review of Material Items, and Issue Opinions on NHC's 2013 and 2014 Financial Statements without Adequate Justification, Disclosure, or Qualifications.

167. During 2014 and into 2015, the Larson Defendants performed an audit on the books and records of NHC and completed other work concerning supplemental information to be presented regarding NHC.

168. In early 2015, NHC and its actuary, Milliman, filed preliminary financial reports with the Nevada DOI for the year ended December 31, 2014.

169. These reports included analysis of NHC's actuarial reserves.

170. These reports showed no PDR and only $5.8 million in IBNR reserves as of December 31, 2014.

171. NHC's reserve levels raised concerns.

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172. As set forth above, throughout early 2015, the Nevada DOI went to extraordinary lengths to communicate clear guidance for the proper calculation of reserves.

173. Given the guidance delivered by the Nevada DOI and additional guidance given by the NAIC, the balances of the reserves should have been questioned and audited both from a year-end perspective and as part of Larson's subsequent event testing. Yet there is no evidence in the audit work papers that anything more than a cursory review took place.

174. Even without adjusting reserve balances, NHC had reported losses of over $8 million in 2013 and over $16 million in 2014.

175. Up until Larson issued its reports on June 1, 2015, NHC continued to hemorrhage losses.

176. NHC had all but exhausted its remaining capital by that time.

177. NHC exhausted what remained of its almost $66 million in CMS Loans in early 2015, and had no borrowing capacity remaining, given its huge losses.

178. These should all have been "red flags" to the Larson Defendants that NHC would be unable to continue as a going concern.

179. Alarmingly, a receivable related to a CMS loan request was recorded in 2014, although it was not even formally applied for in that year, but rather in the following year. Adequate disclosure of this transaction was not included in the 2014 audited financial statements.

180. As auditors specializing in insurance companies, Larson knew or should have known that recording of a receivable concerning proceeds of the loan in the year before it was formally applied for, without adequate authorization or disclosure, was misleading, could artificially inflate NHC's reported surplus levels, and could make NHC appear more solvent than it actually was.

181. NHC's officers and directors were relatively inexperienced in insurance matters and were unable to establish sufficient internal controls over its business.

182. NHC also relied on outside service providers to perform critical processes for NHC, creating another set of internal control concerns.

183. Contractors handling enrollment, claims processing, billing, receipt of premiums, premium rate setting, actuarial services, and other issues did not perform their work in accordance with industry and professional standards, resulting in significant internal control issues and losses for NHC.

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184. Larson should have planned its audit procedures, taking into account the internal control weaknesses evident at NHC.

185. However, Larson did not adequately plan for, search for, identify, or disclose these internal control weaknesses.

186. Both the 2013 and 2014 financial reports submitted to the Nevada DOI attached supplemental information, including respective MD&A's, which were subject to Larson's auditing procedures.

187. The MD&A's however, were at best deficient prohibited boilerplate that did not conform to statutory, industry or NAIC requirements and neither discussed nor disclosed significant issues concerning, without limitation, NHC's extraordinary accounting practices, insufficient reserves, liquidity concerns, lack of borrowing capacity or its inability to continue as a going concern, as set forth herein.

188. On or about May 29, 2014, Larson issued its audit report for the year ended December 31, 2013 (the "2013 Opinion"). The 2013 Opinion contained no information concerning NHC's ability to continue as a going concern, despite the fact that by the time the report was issued, NHC was incurring substantial unanticipated losses. Neither did the 2013 audit report disclose the significant internal control weaknesses that existed or recognize adequate reserves for the contracts on which NHC was already incurring substantial losses.

189. On or about June 1, 2015, Larson issued its Statutory Financial Statements and Independent Auditor's Report and other Legal and Regulatory Information (the "2014 Audit Opinion") regarding NHC's 2013 and 2014 financial statements.

190. The 2014 Audit Opinion contained one emphasis of matter paragraph noting only issues with the Risk Adjustment, the Federal Transitional Reinsurance, and the Risk Corridor programs. Despite the materiality of receivables from the federal government, and the issues raised concerning their calculation, the 2014 Audit Opinion stated that, "[Larson's] opinion is not modified with respect to this matter."

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191. The 2014 Audit Opinion was without any qualification as to the reported reserves, the recording of loan receipts in the year prior to actual receipts, internal control weaknesses, or NHC's ability to continue as a going concern.

192. On or about June 1, 2015, Larson issued its Reports of Independent Certified Public Accountants Required by OMB Circular A-133 for the Year Ended December 31, 2014 (the "2014 OMB Report"), which included its analysis of internal controls for the purpose of expressing its opinion on the financial statements.

193. In the 2014 OMB Report, Larson stated that during its audit, it did not identify any deficiencies in internal control that it considered to be material weaknesses.

194. Additionally, in the 2014 OMB Report, Larson represented that, as part of obtaining reasonable assurance about whether NHC's financial statements were free from material misstatements, it performed tests of NHC's compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have had a direct and material effect on the determination of financial statement amounts.

195. In the 2014 OMB Report, Larson further stated the results of its tests disclosed no instances of noncompliance or other matters that were required to be reported under government auditing standards.

196. As part of the 2014 OMB Report, Larson also included an Independent Auditor's Report on Compliance for Each Major Program; Report on Internal Control over Compliance; and Report on Schedule of Expenditures of Federal Awards Required by OMB Circular A-133 ("the 2014 Major Program Report").

197. In the 2014 Major Program Report, Larson reported that, in its opinion, NHC complied in all material respects with the types of compliance requirements referred to in the report that could have had a direct and material effect on each of its major federal programs for the year ended December 31, 2014; that it did not identify any deficiencies in internal control over compliance that it considered to be material weaknesses; and that, in its opinion, the schedule of expenditures of federal awards was fairly stated in all material respects in relation to the statutory financial statements taken as a whole.

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I. The Larson Defendants' Work Failed to Meet Statutory and Professional Standards Required of CPAs.

198. In performing its audits of NHC and in providing other accounting services to NHC, Larson failed to meet statutory and professional standards, including, but not limited to those set forth herein.

199. Larson did not properly identify or disclose the reliance of NHC on extraordinary state prescribed or permitted practices, whether such prescribed or permitted practices were approved, or whether the reporting entity's risk based capital ratios would have triggered a regulatory event had it not used a prescribed or permitted practice.

200. Larson failed to identify and adequately disclose that material transactions, including the posting of a multi-million dollar receivable from a loan that had not even been formally applied for, were recorded in the year prior to formal application and receipt.

201. Larson failed to identify and disclose that as of December 31, 2013, and 2014, NHC's ability to continue as a going concern was in doubt.

202. Larson failed to adequately identify and disclose that NHC's insurance reserves including its PDR as of December 31, 2013, and 2014, and IBNR reserves as of December 31, 2014, were materially misstated.

203. Larson failed to adequately analyze and test work performed by NHC's actuary.

204. Larson failed to identify and disclose related party transactions.

205. Larson failed to identify and disclose internal control deficiencies, including but not limited to financial reporting controls, as well as internal controls relating to claims, enrollment, member termination, premium tracking, and provider arrangements.

206. Larson failed to identify and disclose violations of loan covenants and NHC's inability to repay existing debt.

207. Larson failed to identify or properly assess business risks, including but not limited to insufficient premium rates to support the policies issued, inadequate information technology systems and vendors, problems with processing and paying claims, issues with billings for premiums, issues with processing premium payments, and a lack of additional borrowing capacity.

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208. Larson failed to identify, plan for, or disclose NHC management's lack of experience and competence to produce financial statements that were in conformance with applicable reporting standards and free from material misstatements.

209. Larson failed to adequately test, disclose and report the collectability and reserves for material receivables.

210. Larson failed to prepare an adequate audit plan or to even follow the inadequate audit plan that it prepared.

211. Larson failed to perform proper subsequent events testing and did not identify or disclose numerous subsequent events that should have been considered in analyzing year-end account balances and that should have been disclosed in the financial statements.

212. Larson failed to identify or disclose deficient MD&A information and disclosures contained in the supplemental information provided with NHC's 2013 and 2014 financial statements.

213. Larson also failed to properly document and maintain appropriate audit evidence in support of any audit work it performed.

FACTUAL ALLEGATIONS RELATING TO THE INSUREMONKEY DEFENDANTS

J. InsureMonkey is Engaged by NHC Based on its Claimed Expertise.

214. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

215. In 2013, NHC sought a qualified contractor to provide software and services, including a customer portal to enroll and to service NHC's customers. The software and services would also collect and provide to NHC data necessary for making operational decisions and reporting to regulators.

216. Defendants Rivlin and InsureMonkey represented to NHC that InsureMonkey was qualified and capable of providing the software and services.

217. On or about April 13, 2013, NHC and InsureMonkey entered into a Memorandum of Understanding for InsureMonkey to provide the technology and software services. NHC and InsureMonkey subsequently entered into a Master Services Agreement relating to technology and

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services, making the agreement effective as of the date of the earlier Memorandum of Understanding (the "2013 Master Services Agreement"). Rivlin largely negotiated and executed the 2013 Master Services Agreement on behalf of InsureMonkey.

218. As part of the 2013 Master Services Agreement, InsureMonkey expressly acknowledged that it was required to "comply with [NHC's] obligations" under NHC's CMS Loan Agreement as part of performing InsureMonkey's services. Similarly, InsureMonkey acknowledged that it had to maintain certain records and provide NHC, CMS, and others with access to certain information relating to InsureMonkey's performance under the 2013 Master Services Agreement.

219. In a similar timeframe, NHC was also searching for a contractor to perform additional customer service functions, including establishing a call center and providing support to consumers involved in the enrollment process.

220. During this April-May 2013 time period, InsureMonkey's representatives, especially its CEO Rivlin, expressly represented that InsureMonkey was capable of providing all of the additional customer service support functions that NHC was seeking, in addition to its technological and software support.

221. From June through August 2013, NHC and InsureMonkey continued to negotiate terms of a customer services contract to handle both on-exchange and off-exchange support services. Again, during this time, InsureMonkey's representatives, including Rivlin, repeatedly touted InsureMonkey's capabilities in the customer service space relating to the insurance business.

222. On or about August 1, 2013, NHC and InsureMonkey entered into another Memorandum of Understanding governing InsureMonkey's provision of customer service functions to NHC (the "August 2013 Customer Service MOU"). Rivlin negotiated and executed the August 2013 Customer Service MOU on behalf of InsureMonkey.

223. The August 2013 Customer Service MOU required InsureMonkey to deliver "contact center service...for new and renewing member enrollments" on behalf of NHC. This included providing, staffing, and operating both a call center and a walk-in center for consumers.

224. The August 2013 Customer Service MOU represented that InsureMonkey would provide "professionally licensed and trained Contact Center Agents" and that InsureMonkey would

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"train all Agents on NHC products and enrollment processes as well as enrollment processes" through the exchange, "including determining subsidy eligible populations and providing eligibility" through the exchange.

225. Upon information and belief, when Rivlin and other representatives of InsureMonkey made representations regarding the services they could and would perform, they either had no intention of fulfilling those obligations and/or should have reasonably understood that InsureMonkey was unable to adequately perform the critical services they were contracting to perform on behalf of NHC. As a result, InsureMonkey knew or should have known that its failure necessarily would have impacted NHC's status with CMS and the loan proceeds NHC was to obtain under the CMS Loans Agreement.

226. On or about September 3, 2013, InsureMonkey and NHC entered into an additional Memorandum of Understanding further expanding InsureMonkey's responsibilities and obligations with respect to customer and member services (the "September 2013 Customer Service MOU"). Yet again, this agreement was predicated upon the express representations of Rivlin regarding InsureMonkey's capabilities with respect to these types of services.

227. Among other things, the September 2013 Customer Service MOU detailed NHC's obligations with respect to developing "a comprehensive model of member services that addresses all aspects of stakeholder management." In addition to providing a member services center on behalf of NHC, InsureMonkey agreed that it would track certain information regarding members, their eligibility status, and other contacts relating to information and data that needed to be reported to CMS.

228. InsureMonkey performed services under its agreements with NHC relating to the 2013 enrollment period for 2014 coverage.

229. During this time, NHC relied upon InsureMonkey's ability to perform its services and on the reporting and tracking data provided to it by InsureMonkey in submitting reports and information to CMS.

230. On or about August 1, 2014, NHC and InsureMonkey entered into a Master Services Agreement "to consolidate the terms of their continuing business relationship under the terms of

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this Agreement" and to set forth the scope of the parties' relationship moving forward (the "Master Agreement"). Rivlin again negotiated and executed the Master Agreement on behalf of InsureMonkey.

231. Like the prior agreements, InsureMonkey expressly represented in the Master Agreement that it would "comply with the terms of the [CMS] Loan Agreement" in performing its obligations to NHC.

232. InsureMonkey represented in the Master Agreement that the "[s]ervices contemplated hereunder will be performed by adequately trained, competent personnel, in a professional manner, with such personnel having the requisite skill and expertise necessary to perform and complete the Services in accordance with industry standards[.]"

233. InsureMonkey also represented in the Master Agreement that the "[s]ervices will substantially conform to the applicable specifications and acceptance criteria (if any) agreed to by the parties in the applicable Statement of Work[.]"

234. Throughout the relationship between InsureMonkey and NHC, because of the inexperience of NHC management and the representations of InsureMonkey as to its superior knowledge and expertise, NHC trusted, relied on, and depended on InsureMonkey as a key component of its operation in its business of insuring and servicing NHC's Members.

235. At the time Rivlin executed the Master Agreement, he and InsureMonkey knew or reasonably should have known that that they had no intention or ability to honor the terms of the Master Agreement, that InsureMonkey would not and could not perform the services contemplated by the Master Agreement in accordance with industry standards, and that InsureMonkey did not have adequately trained and competent personnel to perform such service.

K. InsureMonkey Fails to Perform Under its Agreement and Misrepresents Key Data that NHC Relied upon in Reporting to CMS.

236. Under the parties' agreements, NHC was largely left to the mercy of InsureMonkey. InsureMonkey was responsible for reporting current, complete, and accurate enrollment, billing, and eligibility data, upon which NHC was to rely in servicing its members and in making its reports to CMS, the Nevada DOI, and others.

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237. InsureMonkey failed to follow industry standards relating to tracking and reporting basic enrollment, billing, and eligibility data, including without limitation the failures set forth herein.

238. At critical times during the open enrollment process, InsureMonkey was unable to make the broker portal it had created work properly and allow agents to sign up individuals for insurance policies. These portal issues impacted and depressed enrollment numbers in both 2014 and 2015, leading to fewer members being insured under the plan and lower premium income for NHC.

239. InsureMonkey failed to attend regular CMS information calls on NHC's behalf, which it was contractually required to do, leading to NHC failing to receive necessary information from CMS that InsureMonkey was obligated to obtain and transmit.

240. InsureMonkey failed to submit monthly reconciliation files to CMS for many months as required, impacting the receipt of premium subsidies from CMS.

241. InsureMonkey failed to hire qualified individuals to provide the customer and member services as contemplated by the parties' agreements.

242. InsureMonkey failed to properly train individuals to provide the customer and member services contemplated by the parties' agreements.

243. InsureMonkey failed to properly supervise individuals providing the customer and member services contemplated by the parties' agreements.

244. InsureMonkey failed to properly log eligibility data for individuals during the enrollment process.

245. InsureMonkey failed to obtain premium payments from new and renewing members or to transmit that information in a timely manner.

246. InsureMonkey failed to timely terminate members' eligibility when they became ineligible for benefits under the plan.

247. InsureMonkey failed to timely transmit information regarding premiums received, causing the improper suspension of insureds' coverage and terminating or negatively affecting premium subsidies that NHC would otherwise have received from CMS.

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248. InsureMonkey even failed at the most basic level in reporting the total number of enrollees in the plan.

249. When the incompetency of InsureMonkey's employees was brought to InsureMonkey's attention, InsureMonkey failed to retrain or replace those individuals, and it allowed them to continue to provide deficient customer and member services.

250. As a result of InsureMonkey's incompetency despite its representations to the contrary, as well as its deficient hiring, training, supervision, and retention of employees, InsureMonkey's performance under the agreements was woefully deficient.

251. InsureMonkey had an incentive to over report the number of members enrolled in the plan at any given time and to not terminate a member's eligibility in NHC's books and records.

252. Notably, several of the parties' agreements, including the Master Agreement, calculated the payment due to InsureMonkey from NHC based on a certain price per member, per month that the member was enrolled in the plan.

253. Upon information and belief, InsureMonkey, at the direction of its CEO Rivlin, intentionally misrepresented the membership enrollment numbers in order to procure larger payments to InsureMonkey under their agreements.

254. At the time, NHC had no reason to know or suspect the extent of InsureMonkey's failure to properly report enrollment, billing, and eligibility data or its deliberate misreporting of enrollment, billing, and eligibility data. NHC only learned of the extent of InsureMonkey's misreporting after the appointment of a receiver over NHC.

255. Despite its woefully deficient performance, InsureMonkey was paid approximately $4.4 million for contracted services in 2014 and over $5 million in 2015.

256. InsureMonkey's actions and conduct addressed herein resulted in grave consequences to NHC. Without limitation, InsureMonkey's actions led to the following: (a) underpayment to NHC for advanced premium tax credits that NHC would have been entitled to had InsureMonkey properly performed its services and provided reliable data concerning enrollment to NHC and CMS; (b) NHC paying out additional claims as a proximate result of InsureMonkey's reporting of faulty eligibility data; (c) NHC overpaying into the transitional reinsurance program as

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the proximate result of InsureMonkey's reporting of faulty eligibility data; (d) NHC overpaying InsureMonkey and other contractors in payments calculated on faulty enrollment data provided by InsureMonkey; and (e) decreased risk corridor payments to NHC as the proximate result of InsureMonkey providing faulty and unreliable enrollment data.

FACTUAL ALLEGATIONS RELATING TO NEVADA HEALTH SOLUTIONS

L. NHS Engages with Kathleen Silver in Self-Dealing, Receiving Substantial Sums for Deficient Utilization Management Services.

257. Plaintiff realleges and incorporates all of the allegations contained in the proceeding paragraphs as is fully set forth herein.

258. Utilization management is the evaluation of appropriateness and medical necessity of health care services, procedures and facilities according to evidence-based criteria or guidelines, and under the provisions of an applicable health insurance plan.

259. NHS represented itself to be a capable utilization management services company.

260. Pursuant to a Utilization Management Services Agreement (the "Utilization Agreement"), NHS contracted with NHC to perform evaluations of appropriateness and medical necessity of heath care services, procedures and facilities; perform precertification of hospital admissions and outpatient procedures; process information related to in-hospital observations; provide concurrent reviews for inpatient acute care, rehabilitation and long term acute care; provide discharge planning; and perform provider appeal reviews, along with other services. NHS was also engaged to perform member eligibility review services for NHC, a process through which the enrollment of NHC's members must be verified for medical benefits to be allowed by NHC.

261. Throughout the relationship between NHS and NHC, because of the relative inexperience of NHC management (well known to NHS) and the representations of NHS as to its superior knowledge and expertise, NHC trusted, relied on, and depended on NHS as its gatekeeper to ensure the appropriateness and medical necessity of medical services incurred by NHC's members and their eligibility for such services.

262. NHS breached the Utilization Agreement by failing to perform contracted work and by failing to perform to applicable contractual, professional and industry standards. Without

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limitation, NHS failed to perform to the standards set forth in the Utilization Management Program that was incorporated into the Utilization Agreement.

263. Under the Utilization Agreement, NHS was to perform its services utilizing appropriate medical staff including accredited physicians. On information and belief, NHS did not employ qualified personnel to perform the contracted services, and at most subcontracted such services to others, to the extent they were performed at all.

264. Initial compensation was mechanically calculated based on the total persons enrolled as NHC members each month, a fee that bore little to no relation to services being provided by NHS. Upon information and belief, little work was actually performed by NHS for NHC.

265. Fees under the Utilization Agreement were charged by NHS on a per member per month basis, but NHS required a minimum monthly fee to be paid based on an enrolled membership of 10,000 members. NHC did not have 10,000 enrolled members for the first four months of 2014 and was substantially short of 10,000 enrolled members in those months; thus, NHC paid the minimum monthly fee to NHS in each of those first four months of 2014. Additionally, NHC was to be charged by NHS for all direct and indirect provider costs incurred by NHS for performing its services. However, since NHS provided little services to NHC in 2014, there were no other direct or indirect costs charged by NHS to NHC other than the per member per month flat monthly fee stated above. On information and belief, NHS failed to adjust for the actual cost of the limited work performed.

266. NHS and Management Defendant Kathleen Silver engaged in self-dealing in which NHS was unjustly paid substantial amounts by NHC for the so-called utilization management services. NHS's president was Management Defendant Kathleen Silver, and upon information and belief, the owner of NHS was UHH. Upon information and belief, UHH was an entity with financial ties and/or direct or indirect business links with Management Defendants Bobbette Bond, Thomas Zumtobel, and Kathleen Silver. UHH was being paid to process and adjudicate claims of NHC, and then it was being paid again through NHS to do a quality control review check of the very claims that UHH processed. The NHS and NHC medical utilization management review arrangement was unfair, unreasonable, and just another way to siphon more money out of NHC to the detriment of its members, policyholders, and creditors.

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267. NHS's actions and conduct resulted in substantial losses to NHC. Without limitation, in excess of $1 million in claims were paid outside of enrollment when NHS failed to properly perform eligibility checks during utilization reviews. NHS was paid fees and expenses totaling $382,968 under this utilization management and enrollment eligibility review arrangement. Costs which should not have been incurred under the Utilization Management Program were incurred, contracted assistance to members for managing health care decisions was not received, and inappropriate financial benefits were paid from this arrangement to the detriment of NHC's members, policyholders, and creditors.

FACTUAL ALLEGATIONS RELATING TO THE MANAGEMENT DEFENDANTS

M. The Management Defendants Fail to Uphold Their Fiduciary Duties to NHC.

268. Plaintiff realleges and incorporates all of the allegations contained in the proceeding paragraphs as is fully set forth herein.

269. As officers and directors of NHC, each of the Management Defendants owed duties of good faith and loyalty to NHC and was charged with exercising his or her powers, authority, and discretion in the best interests of NHC.

270. Additionally, the Management Defendants executed employment agreements and ethics and conflicts of interest documents which contractually specified such duties.

271. The duties owed by the Management Defendants included, without limitation, not misleading regulatory authorities, instituting adequate internal controls to protect company assets and operations, adequately selecting and supervising employees and contractors, avoiding self-dealing, fully and adequately disclosing related party transactions, avoiding the squandering of NHC's assets, and reviewing and ensuring the accuracy of loan applications, financial statements, and regulatory filings submitted by NHC.

272. From NHC's inception through its being put in receivership in October 2015, as outlined below, each of the Management Defendants failed to uphold his or her duties owed to NHC when exercising his or her powers and authority with respect to the business decisions, operations, reporting and management of NHC.

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N. Management Defendants Unreasonably Fail to Establish Internal Controls, Exercise Oversight, Ensure Accurate Reporting, or Adequately Disclose Related Party Transactions.

273. A primary responsibility of Management Defendants was to institute sufficient internal controls to ensure the protection of assets, to establish and enforce procedures to run NHC, and to conform with statutory requirements, including providing accurate reporting to regulators and the public.

274. The Management Defendants failed to establish sufficient internal controls over its business.

275. Initially, the Management Defendants failed to hire or train adequate personnel to run its business. As a result, NHC relied on contractors to perform critical processes for NHC, creating another set of internal control concerns, ones that were likewise overlooked and ignored by the Management Defendants.

276. Rather than prudently limiting the scope of business until such time as adequate internal controls had been established, the Management Defendants appear to have adopted an "even if we lose money on each customer we will make it up in volume" approach.

277. Contractors handling enrollment, claims processing, billing, receipt of premiums, premium rate setting, actuarial services, and other issues did not perform their work in accordance with industry and professional standards, resulting in significant internal control issues and losses for NHC, issues that should have been caught and remedied by the Management Defendants, but were not.

278. Additionally, the total breakdown in internal controls caused misleading reports to be issued in violation of applicable statutes and standards.

279. The Management Defendants knew or should have known of the dearth of internal controls to protect NHC and the public. The Management Defendants' refusal to institute such controls involved and/or constituted negligence, intentional misconduct, fraud, and/or knowing violations of the law.

280. The Management Defendants similarly failed or refused to exercise the necessary required oversight of NHC and its contractors.

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281. Employees without the expertise or experience to run such a large undertaking were negligently hired and retained, or were simply allowed to keep positions given to them by the Culinary Health Fund.

282. As discussed herein, rather than replacing or obtaining sufficient training for its employees, the Management Defendants engaged contractors whose work was not properly performed or appropriately overseen.

283. Even when significant problems arose, the Management Defendants failed to exercise their oversight function and remedy them.

284. Contractors created overly optimistic feasibility studies, on information and belief, in order to receive compensation that would only be paid if loans were received.

285. Early in the process, NHC's officers and directors, including each of the Management Defendants, authorized and/or ratified financial transactions and assumed financial obligations that they knew or should have known NHC could not meet or otherwise satisfy.

286. Customers had difficulty signing up for services, premiums went unbilled or unpaid, failures in reporting data to CMS caused government subsidies to be lost, and vendors were paid despite failing to perform under contracts. Insureds failed to receive coverage because of bad data, and costs were paid because NHC could not confirm whether coverage was or was not in effect. Still, the Management Defendants failed to exercise appropriate oversight to remedy the situation.

287. Despite horrendous losses, the Management Defendants authorized NHC to continue to draw down on government loans, knowing there was no reasonable way that such loans could be repaid.

288. As further discussed herein, the Management Defendants, including the audit committee members, the chief financial officer, and NHC's president, also failed to exercise oversight to ensure accurate, truthful, and non-misleading dissemination of financial information to regulatory authorities and the public with respect to NHC's affairs.

289. The Management Defendants knew or should have known that their intentional decision not to exercise appropriate oversight would cause significant damages and would involve and/or constitute negligence, intentional misconduct, fraud, and/or knowing violations of the law.

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290. The Management Defendants' actions or inactions similarly caused misleading reporting of financial and operational results to the Nevada DOI and others.

291. From 2012 through 2015, the Management Defendants retained and/or approved the retention of certain third party entities to perform financial reporting and/or auditing on behalf of NHC, including, but not limited to Milliman, Millennium, and Larson.

292. In early 2015, a preliminary report was filed with the Nevada DOI for the year ended December 31, 2014.

293. As discussed above, NHC's reserve levels raised concerns with the Nevada DOI, and throughout early 2015 the Nevada DOI went to extraordinary lengths to communicate clear guidance for the proper calculation of reserves. Nevada DOI guidance went directly to NHC management.

294. Additionally, the NAIC pointed out deficiencies in NHC's statutory reporting directly to NHC's management.

295. The Nevada DOI stated they expected the PDR to be re-evaluated on a quarterly basis and adjusted as necessary if the emerging experience was substantially different from the projected experience. These steps were not taken and, in fact, the PDR calculation appears to have been skipped at the end of the first quarter, contrary to the Nevada DOI's explicit request and prior to the issuance of certain audits and financial reports adopted, ratified, and/or disseminated by the Management Defendants.

296. The balances of the reserves should have been questioned and audited by the Management Defendants, both from a year-end review perspective and as part of NHC's management, audit committee, and overall oversight responsibilities, yet there is no evidence that any such actions were taken, and the Management Defendants issued later reports without adjustment.

297. Even without adjusting reserve balances, NHC had reported losses of over $8 million in 2013 and over $16 million in 2014.

298. Up until NHC issued reports on June 1, 2015, NHC continued to hemorrhage losses under the direction, guidance, and management of the Management Defendants.

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299. NHC had all but exhausted its remaining capital by that time.

300. NHC exhausted what remained of its almost $66 million in CMS loans in early 2015, and had no borrowing capacity remaining given its huge losses.

301. As previously mentioned, the amount of a draw on the CMS Loans, that had not been formally applied for in 2014, was recorded as a receivable in the 2014 annual financial reports without adequate disclosure.

302. At a minimum, NHC's Audit Committee members, including Defendant Bond, knew, or should have known that recording of a receivable for a loan in the year before it was formally applied for, without disclosure, was misleading, could artificially inflate NHC's reported surplus levels, and could make NHC appear more solvent than it actually was.

303. These issues should all have been obvious "red flags" to the Management Defendants, and they should have been disclosed, along with the fact that NHC would be unable to continue as a going concern. They should also have resulted in appropriate remedial measures.

304. The Management Defendants knew or should have known that their intentional decision not to properly address red flags raised by regulators, as well as the obvious deficiencies of NHC's financial reports, would cause significant damages and involve and/or constitute negligence, intentional misconduct, fraud, and/or knowing violations of the law.

305. Additionally, the Management Defendants drafted or ratified and approved of the release of the 2013 and 2014 MD&A's. These documents, which are intended to disclose and serve as management's discussion and analysis of important issues facing NHC, failed to disclose or analyze important issues, including without limitation, NHC's extraordinary accounting practices, insufficient reserves, liquidity concerns, lack of borrowing capacity or its inability to continue as a going concern. The failure of management to adequately disclose or analyze these and other issues was in violation of statutory and industry requirements, including those set forth by the NAIC, the Nevada DOI and incorporated into Nevada law.

306. The Management Defendants did not ensure proper reporting of related party transactions.

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307. NHC management had extensive connections with the Culinary Union and its UHH administrator. Many of the Director Defendants had served on the Board of the Culinary Health Fund, and some Directors also had positions with the Culinary Union. NHC hired UHH to administer the medical side of NHC's business. As a result, UHH was paid significant fees that, on information and belief, provided a windfall for UHH.

308. Defendant Kathy Silver served as a director of NHC and was president of two Culinary Union related entities, NHS and the Culinary Health Fund.

309. As discussed above, NHC management engaged NHS to perform utilization management and member eligibility review services for NHC in 2014. NHC paid substantial fees to NHS for this service, receiving limited and deficient services in return. NHS also had a conflict of interest, or the appearance of a conflict of interest, by being engaged to provide a quality control review of claim services provided by its parent company, UHH.

310. Despite requirements to disclose these related party transactions in financial statements and other filings to the Nevada DOI, CMS and others, NHC management failed to adequately provide such disclosure.

311. NHC management also paid themselves exorbitant compensation without justification and despite the fact that NHC was losing millions of dollars each financial report period.

312. Due to the material amounts of funds flowing from NHC to UHH and NHS, the Management Defendants were under an obligation to report the related party transactions in NHC's financial statements, and they were under a further obligation to assure that these related party transactions were fair and reasonable to NHC. The Management Defendants, however, failed to do so.

313. Management Defendants, including but not limited to Egan, Dibsie and Mattoon, authorized or caused to be paid claims outside of eligibility, in violation to their fiduciary duties to NHC, resulting in substantial losses to NHC.

314. Such acts and omissions with respect to NHC's failure to adequately disclose related party transactions and to assure their fairness, paying claims outside of eligibility, along with paying themselves unreasonable compensation, by the Management Defendants involved and/or constituted intentional misconduct, fraud, self-dealing, and/or the knowing violation of the law.

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O. The Financial Collapse of NHC and the Resulting State Rehabilitation and Liquidation Proceedings.

315. Ultimately, no one could deny that NHC was incapable of continuing as a going concern, and the Nevada DOI was required to step in. On August 17, 2015, NHC's board of directors voted to cease writing new business and to suspend voluntarily its certificate of authority, effectively "throwing in the towel" and ending any prospect of recovery.

316. On September 25, 2015, and with the consent of NHC's board of directors, a petition for appointment of Commissioner as Receiver and Other Permanent Relief; Request for Injunction Pursuant to NRS 696 B.270(1) was filed by the then acting Nevada Commissioner of Insurance, Amy L. Parks, in her official capacity as Temporary Receiver of the Nevada Health CO-OP.

317. An Order Appointing the Acting Commissioner of Insurance, Amy L. Parks, as Temporary Receiver Pending Further Orders of the Court, Granting Temporary Relief Pursuant to NRS 696B.270, and authorizing the Temporary Receiver to appoint a special deputy receiver was filed on October 1, 2015. The Commissioner, as Temporary Receiver, appointed the firm of Cantilo & Bennett, L.L.P. as Special Deputy Receiver on October 1, 2015.

318. On October 14, 2015, the Court issued a Permanent Injunction and Order Appointing Commissioner as Permanent Receiver of Nevada Health CO-OP. On September 21, 2016, the Court issued a Final Order Finding and Declaring Nevada CO-OP to be insolvent and placing Nevada Health CO-OP into Liquidation.

319. Under these orders the Commissioner of Insurance (as the Permanent Receiver) and Cantilo & Bennett (as the Special Deputy Receiver) are authorized to liquidate the business of NHC and wind up its ceased operations pursuant to NRS 696B.220.2. This authority includes authorization to institute and to prosecute, in the name of the CO-OP or in the receiver's own name, any and all suits and other legal proceedings, and to prosecute any action which may exist on behalf of the members, enrollees insured, or creditors, of CO-OP against any person.

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320. The consequences of Defendants' actions were not simply academic. Over $65 million in federal loans are in default. Medical insurance for tens of thousands of people was disrupted; doctors and hospitals went unpaid; and insured patients were left concerned about receiving needed care and whether they would be able to pay medical bills.

321. The Receiver is now tasked with liquidating the failed insurer to protect members, insured enrollees, and creditors of NHC and the public.

CAUSES OF ACTION RELATED TO MILLIMAN DEFENDANTS

FIRST CAUSE OF ACTION

(Negligence Per Se - Violation of NRS 681B Against Milliman and Heijde)

322. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

323. NRS 681B requires, in part, the opinion of an appointed actuary as to whether the reserves and related actuarial items held in support of the policies and contracts are computed appropriately, are based on assumptions that satisfy contractual provisions, are consistent with prior reported amounts, and comply with applicable laws of the State of Nevada.

324. NRS 681B also prescribes minimum standards of form and substance for the opinion, including those set forth in the Valuation Manual adopted by the NAIC.

325. Plaintiff and those represented by Plaintiff, including the members of NHC, NHC's insured enrollees, NHC's creditors, NHC, and the State of Nevada belong to a class of persons that NRS 681B was designed to protect.

326. Milliman and Heijde accepted appointment as NHC's appointed actuary, and provided opinions under NRS 681B.

327. As a result, Milliman and Heijde were subject to the minimum standards as set forth in NRS 681B.

328. As set forth above, Defendants Milliman and Heijde violated NRS 681B by failing to perform their duties as the appointed actuary in accordance with the applicable minimum statutory and applicable professional standards.

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329. Plaintiff's injury was the type against which NRS 681B was intended to protect.

330. As a direct and proximate result of Defendants Milliman and Heijde's conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

331. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

SECOND CAUSE OF ACTION

(Professional Malpractice Against Milliman Defendants)

332. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

333. The Milliman Defendants were engaged by NHC and its predecessors in interest to provide professional actuarial services to NHC.

334. Such services included but were not limited to providing certification required pursuant to NRS 681B, conducting a feasibility study, providing business plan support, assisting NHC in setting premium rates, participating in the preparation of financial reports and information to regulators, and establishing policies of insurance as set forth herein.

335. The Milliman Defendants had a duty to use such skill, prudence, and diligence as other members of the profession commonly possess and exercise.

336. As detailed above, the Milliman Defendants breached that duty by failing to comply with applicable statutory and professional standards including those set forth in NRS 681B, the Valuation Manual adopted by the NAIC, the ASOPs as adopted by the Actuarial Standards Board of the American Academy of Actuaries, and by taking actions that caused the misreporting of the 2014 financial results without reasonable basis.

337. As a direct and proximate result of the Milliman Defendants' conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

338. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

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THIRD CAUSE OF ACTION

(Intentional Misrepresentation (Fraud) Against Milliman Defendants)

339. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

340. On or about December 21, 2011 Milliman and Shreve issued a document entitled "Hospitality Health Feasibility Study and Business Support for Consumer Operated and Oriented Plan (CO-OP) Application."

341. On or about March 1, 2015 and on or about May 14, 2015, Milliman and Heijde issued the valuation and certification of NHC's reserves pursuant to NRS 681B.

342. In each of these documents, the respective Milliman Defendants certified that the statements contained therein were, to the best of their knowledge and belief, accurate, complete, and prepared in accordance with generally recognized and accepted actuarial principles and practices consistent with ASOPs, the Code of Professional Conduct and Qualification Standards for Public Statements of Actuarial Opinion of the American Academy of Actuaries.

343. The Milliman Defendants knew or believed that these representations were false, or that they had an insufficient basis of information for making them.

344. Milliman also participated in the preparation of 2014 financial information to the Nevada DOI insurance regulators for 2014 that presented and represented NHC's financial condition, and this information was misleading, false, without sufficient basis, and misreported the financial information of NHC.

345. Plaintiff justifiably relied upon the Milliman Defendant's representations.

346. As a direct and proximate result of the Milliman Defendants' conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

347. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

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FOURTH CAUSE OF ACTION

(Constructive Fraud Against Milliman Defendants)

348. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

349. At all relevant times, the Milliman Defendants had a fiduciary and/or confidential relationship with NHC.

350. The Milliman Defendants owed a legal or equitable duty to Plaintiff arising from a fiduciary or confidential relationship.

351. The Milliman Defendants breached that duty by misrepresenting or concealing a material fact, i.e. that the Milliman Defendants had not performed their services in accordance with applicable statutory and professional standards as set forth herein and that as a result NHC should not have relied on their conclusions, advice and opinions.

352. As a direct and proximate result of the Milliman Defendants' conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

353. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

FIFTH CAUSE OF ACTION

(Negligent Misrepresentation Against Milliman Defendants)

354. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

355. The Milliman Defendants, in a course of action in which they had a pecuniary interest, failed to exercise reasonable care or competence in obtaining or communicating information to Plaintiff as set forth above.

356. Such information included, without limitation, the information set forth in the Feasibility Study, the calculation of premiums, the calculation of financial projections, the calculation of required reserves, and the communication of financial information to the Nevada DOI insurance regulators.

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357. Plaintiff justifiably relied on this information it received.

358. As a direct and proximate result of the Milliman Defendants' conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

359. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

SIXTH CAUSE OF ACTION

(Breach of Fiduciary Duty Against Milliman Defendants)

360. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

361. A fiduciary duty existed between Plaintiff and the Milliman Defendants where Milliman was in a superior or trusted position as set forth herein.

362. The Milliman Defendants breached that duty by failing to perform to statutory and professional standards as set forth above.

363. As a direct and proximate result of the Milliman Defendants' conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

364. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

SEVENTH CAUSE OF ACTION

(Negligence Against Milliman Defendants)

365. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

366. The Milliman Defendants owed a duty of care to Plaintiff, including the duty to perform its work in accordance with applicable statutory and professional standards.

367. As detailed above, by failing to perform to applicable statutory and professional standards, the Milliman Defendants breached that duty.

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368. The breach was the legal cause of Plaintiff's injuries.

369. As a direct and proximate result of the Milliman Defendants' conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

370. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

EIGHTH CAUSE OF ACTION

(Breach of Contract Against Milliman)

371. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

372. Milliman and Hospitality Health entered into a valid and enforceable contract - the Consulting Services Agreement - that required Milliman to perform professional actuarial services.

373. A provision of the Consulting Services Agreement states, "Milliman will perform all services in accordance with applicable professional standards."

374. Plaintiff was assigned all rights benefits and interests in the Consulting Services Agreement by Hospitality Health.

375. Milliman failed to perform under the Consulting Services Agreement by failing to perform actuarial services as required under applicable professional and statutory standards, as detailed above.

376. Plaintiff performed or was excused from performance under the Consulting Services Agreement.

377. As a direct and proximate result of Milliman's conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

378. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

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NINTH CAUSE OF ACTION

(Tortious Breach of the Implied Covenant Against Milliman)

379. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

380. Milliman and Hospitality Health entered into a valid and enforceable contract - the Consulting Services Agreement - that required Milliman to perform professional actuarial services.

381. Plaintiff was assigned all rights benefits and interests in the Consulting Services Agreement by Hospitality Health.

382. Milliman owed a duty of good faith to Plaintiff arising from the contract.

383. A special element of reliance or fiduciary duty existed between Plaintiff and Milliman where Milliman was in a superior or trusted position.

384. Milliman breached the duty of good faith by engaging in misconduct in a manner that was unfaithful to the purpose of the Consulting Services Agreement, by failing to perform in accordance with statutory and professional standards as set forth herein.

385. As a direct and proximate result of Milliman's conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

386. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

TENTH CAUSE OF ACTION

(Breach of the Implied Covenant of Good Faith and Fair Dealing Against Milliman)

387. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

388. Milliman and Hospitality Health entered into a valid and enforceable contract - the Consulting Services Agreement - which required Milliman to perform professional actuarial services.

389. Plaintiff was assigned all rights benefits and interests in the Consulting Services Agreement by Hospitality Health.

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390. Under applicable law, the Consulting Services Agreement contains an implied covenant of good faith and fair dealing among all parties.

391. Milliman, by failing to follow applicable professional and statutory standards as set forth herein, breached that duty by performing in a manner that was unfaithful to the purpose of the Consulting Services Agreement.

392. As a direct and proximate result of Milliman's conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

393. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

ELEVENTH CAUSE OF ACTION

(Negligent Performance of an Undertaking Against Milliman Defendants)

394. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

395. The Milliman Defendants undertook to provide actuarial services, including but not limited to providing a feasibility study, calculating insurance premiums, performing other forecasts, calculating and certifying required reserves and other actuarial items, and participating in the preparation of financial information and reports that would be submitted to the Nevada DOI insurance regulators.

396. The Milliman Defendants knew or should have recognized these undertakings as necessary for the protection of NHC's members, NHC's enrolled insured, NHC's creditors, and the State of Nevada.

397. By performing the actuarial services detailed above, the Milliman Defendants undertook to perform a duty owed by NHC to its members, enrolled insureds, creditors and regulators to act in accordance with statutory and professional standards, to properly compute premiums, to properly perform feasibility studies and forecasts, to properly value the reserves and other actuarial items of NHC, and to submit proper and reasonable reports of financial condition.

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398. The Milliman Defendants' failure to exercise reasonable care in performing its services, including their failure to perform actuarial services in accordance with applicable standards as detailed herein, increased the risk of harm to NHC, NHC's customers and vendors, and the State of Nevada, and it unnecessarily prolonged, and it led to, the continued and unjustified existence of NHC.

399. As a direct and proximate result of the Milliman Defendants' conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

400. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

TWELFTH CAUSE OF ACTION

(Unjust Enrichment Against Milliman)

401. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

402. Milliman was paid over $1 million for actuarial services that were to be performed in accordance with statutory and professional standards.

403. Despite failure to provide such services in accordance with statutory and professional standards, Milliman unjustly retained the fees paid to it for such services against fundamental principles of justice, equity, and good conscience.

404. As a direct and proximate result of Milliman's conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

405. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

THIRTEENTH CAUSE OF ACTION

(Civil Conspiracy Against Milliman Defendants)

406. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

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407. Defendants Milliman and Shreve acted in concert with each other and with the management of NHC, including, but not limited to, Dibsie, to obtain funds for NHC under false pretenses and to license NHC through the use of the Feasibility Study, which they knew to be false and not in accordance with required statutory and professional actuarial standards.

408. Defendants Milliman and Heijde acted in concert with each other and with management of NHC, including, but not limited to, Egan and Dibsie, to falsify reserves and financial reporting and avoid statutory supervision by their use of the 2014 Opinion, participated in the preparation of false and misleading financial information that was provided to Nevada DOI insurance regulators, and had subsequent communications with NHC and/or Nevada DOI insurance regulators, which they knew to be false and not in accordance with required statutory and professional standards.

409. As a direct and proximate result of the Milliman Defendants' conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

410. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

FOURTEENTH CAUSE OF ACTION

(Concert of Action Against Milliman Defendants)

411. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

412. Defendants Milliman and Shreve acted in concert with each other and the management of NHC, including, but not limited to, Dibsie, to obtain money under false pretenses and license NHC through use of the Feasibility Study, which they knew to be false and not in accordance with required statutory and professional actuarial standards.

413. Defendants Milliman and Heijde acted in concert with each other and the management of NHC, including Egan and Dibsie, to falsify reserves and avoid statutory supervision by their use of the 2014 Opinion, participated in the preparation of financial information provided to Nevada DOI insurance regulators, and had subsequent communications with NHC and/or Nevada

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DOI insurance regulators, which they knew to be false and not in accordance with required statutory and professional standards.

414. The Milliman Defendants knew that their actions were inherently dangerous or posed a substantial risk of harm to others in that their actions could affect and disrupt the medical care of NHC's members and insured enrollees.

415. The Milliman Defendants' actions did affect and disrupt the medical care of NHC's members and enrolled insured.

416. As a direct and proximate result of the Milliman Defendants' conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

417. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

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CAUSES OF ACTION RELATED TO MILLENNIUM DEFENDANTS

FIFTEENTH CAUSE OF ACTION

(Professional Malpractice Against Millennium)

418. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

419. Millennium was engaged by NHC and was responsible for providing professional accounting services to NHC.

420. Such services included, but were not limited to, preparing and filing the NHC Annual Reports, quarterly reports, and other reports as listed herein.

421. Services to be performed by Millennium included the preparation of financial statements, participating in the drafting of the year 2014 Management & Discussion and Analysis that was filed with the Nevada DOI insurance regulators, evaluating general ledger entries to ensure that statutory accounting and reporting principles and rules were followed, and recommending any adjustments to adhere to statutory accounting and reporting rules prescribed by the State of Nevada.

422. Millennium had a duty to use such skill, prudence, and diligence as other members of the profession commonly possess and exercise.

423. As detailed above, Millennium breached that duty by failing to comply with applicable statutory and professional standards.

424. As a direct and proximate result of Millennium's conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

425. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

SIXTEENTH CAUSE OF ACTION

(Intentional Misrepresentation (Fraud) Against Millennium)

426. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

427. Throughout the time that Millennium performed services for NHC, Millennium represented that it was performing such services in accordance with applicable statutory, professional, and contractual standards.

428. Millennium knew or believed that its representations as stated above, were false, or Millennium had an insufficient basis of information for making such representations.

429. Plaintiff justifiably relied upon Millennium's representations.

430. As a direct and proximate result of Millennium's conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

431. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

SEVENTEENTH CAUSE OF ACTION

(Negligent Misrepresentation Against Millennium)

432. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

433. Millennium, in the course of action in which it had a pecuniary interest, failed to exercise reasonable care or competence in obtaining or communicating information to Plaintiff, as set forth above.

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434. Such information included, without limitation, that the accounting services of Millennium were performed in accordance with applicable standards and that the information contained in the reports prepared by Millennium on NHC was accurate.

435. Plaintiff justifiably relied on the information it received.

436. As a direct and proximate result of Millennium's conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

437. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

EIGHTEENTH CAUSE OF ACTION

(Negligence Against Millennium)

438. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

439. Millennium owed a duty of care to Plaintiff, including the duty to perform its work in accordance with applicable statutory and professional and contractual standards.

440. As detailed above, by failing to perform to applicable statutory, professional, and contractual standards, Millennium breached that duty.

441. The breach was the legal cause of Plaintiff's injuries.

442. As a direct and proximate result of Millennium's conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

443. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

NINETEENTH CAUSE OF ACTION

(Breach of Contract Against Millennium)

444. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

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445. Millennium and NHC entered into a valid and enforceable contract - the January 7, 2015 Service Agreement - that required Millennium to perform professional accounting and consulting services.

446. Provisions of the Service Agreement provided for Millennium to perform all services in accordance with applicable professional, statutory, and contractual standards.

447. Millennium failed to perform accounting and consulting services as required under applicable professional, statutory and contractual standards.

448. Plaintiff performed or was excused from performance under the Services Agreement.

449. As a direct and proximate result of Millennium's conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

450. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

TWENTIETH CAUSE OF ACTION

(Tortious Breach of the Implied Covenant Against Millennium)

451. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

452. Millennium and NHC entered into a valid and enforceable contract - the January 7, 2015 Service Agreement - that required Millennium to perform professional accounting and consulting services.

453. Under applicable law, the Service Agreement contains an implied covenant of good faith and fair dealing among all parties.

454. A special element of reliance or fiduciary duty existed between Plaintiff and Millennium where Millennium was in a superior or trusted position.

455. In failing to perform in accordance with statutory and professional standards as set forth herein, Millennium breached the duty of good faith and engaged in misconduct in a manner that was unfaithful to the purpose of the Service Agreement.

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456. As a direct and proximate result of Millennium's conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

457. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

TWENTY-FIRST CAUSE OF ACTION

(Breach of the Implied Covenant of Good Faith and Fair Dealing Against Millennium)

458. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

459. Millennium and NHC entered into a valid and enforceable contract - the January 7, 2015 Service Agreement - that required Millennium to perform professional accounting and consulting services.

460. Under applicable law, the Service Agreement contains an implied covenant of good faith and fair dealing among all parties.

461. Millennium, by failing to follow applicable professional and statutory standards as set forth herein, breached that duty by performing in a manner that was unfaithful to the purpose of the Service Agreement.

462. As a direct and proximate result of Millennium's conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

463. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

TWENTY-SECOND CAUSE OF ACTION

(Negligent Performance of an Undertaking Against Millennium)

464. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

465. Millennium undertook to provide accounting and consulting services, including, but not limited to, preparing and filing financial statements on behalf of NHC.

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466. Such services included, but were not limited to, preparing and filing the NHC Annual Reports, quarterly reports, and other reports as listed herein, and it assisted with the preparation of the 2014 Management Discussion & Analysis that was reported to the Nevada DOI insurance regulators.

467. Services to be performed by Millennium also included evaluating general ledger entries to ensure that statutory accounting and reporting principles had been followed, and recommending any adjustments so as to adhere to statutory accounting and reporting rules prescribed by the State of Nevada.

468. Millennium knew or should have recognized these undertakings as being necessary for the protection of NHC's members, NHC's enrolled insured, NHC's creditors, and the State of Nevada.

469. By agreeing to perform the accounting and consulting services detailed above, Millennium undertook to perform a duty owed by NHC to its members, enrolled insureds, creditors, and regulators and to act in accordance with statutory and professional standards.

470. Millennium's failure to exercise reasonable care in performing its services, including Millennium's failure to perform accounting services in accordance with applicable standards as detailed herein and misreporting of financial information and reports, increased the risk of harm to NHC, NHC's customers and vendors, and the State of Nevada, and it unnecessarily prolonged, and it led to, the continued and unjustified existence of NHC.

471. As a direct and proximate result of Millennium's conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

472. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

TWENTY-THIRD CAUSE OF ACTION

(Unjust Enrichment Against Millennium)

473. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

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474. Millennium was paid for accounting and consulting services that were to be performed in accordance with professional, statutory, and contractual standards.

475. Despite not providing such services in accordance with professional, statutory, and contractual standards, and against fundamental principles of justice, equity, and good conscience, Millennium unjustly retained the fees paid to it for such services.

476. As a direct and proximate result of Millennium's conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

477. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

CAUSES OF ACTION RELATED TO LARSON DEFENDANTS

TWENTY-FOURTH CAUSE OF ACTION

(Negligence Per Se - Violation of NRS 628.435 Against Larson Defendants)

478. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

479. NRS 628.435 requires, in part, that a CPA comply with all professional standards for accounting and documentation related to an audit applicable to a particular engagement.

480. Plaintiff, and those represented by Plaintiff, including the members of NHC, NHC's insured enrollees, NHC's vendors, NHC, and the State of Nevada, belong to a class of persons that NRS 628.435 was designed to protect.

481. The Larson Defendants undertook to perform audits of NHC.

482. As a result, the Larson Defendants were subject to the minimum standards as set forth in NRS 628.435.

483. As set forth above, the Larson Defendants violated NRS 628.435 by failing to perform their duties as CPAs in accordance with the minimum statutory and applicable professional standards required.

484. Plaintiff's injury was the type against which NRS 628.435 was intended to protect.

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485. As a direct and proximate result of the Larson Defendants' conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

486. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

TWENTY-FIFTH CAUSE OF ACTION

(Professional Malpractice Against Larson Defendants)

487. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

488. The Larson Defendants were engaged by NHC or were responsible for providing professional accounting and auditing services to NHC.

489. Such services included but were not limited to auditing the books and records of NHC for the years ended December 31, 2013 and 2014 and its Management Discussion & Analysis for those years, and providing the audit opinions set forth in related reports, including the Audit Report Concerning NHC's December 31, 2014 and 2015 Financial Statements, The Reports of Independent Certified Public Accountants required by OMB Circular A-133, Independent Auditor's Report on Compliance for each Major Program, and Report on Internal Control Over Compliance Independent Auditor's Report on Internal Control over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with Government Auditing Standards.

490. The Larson Defendants had a duty to use such skill, prudence, and diligence as other members of the profession commonly possess and exercise.

491. As detailed above, the Larson Defendants breached that duty by failing to comply with applicable statutory and professional standards.

492. As a direct and proximate result of the Larson Defendants' conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

493. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

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TWENTY-SIXTH CAUSE OF ACTION

(Intentional Misrepresentation (Fraud) Against Larson Defendants)

494. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

495. On or about May 29, 2014, Larson issued its audit report concerning NHC's December 31, 2013 financial statements.

496. On or about June 1, 2015, Larson issued its audit report concerning NHC's December 31, 2014 and 2015 Financial Statements.

497. The audit reports contained the following statements:

a) We conducted our audits in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States.

b) We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our qualified audit opinion.

c) In our opinion, the statutory financial statements referred to above present fairly, in all material respects, the admitted assets, liabilities, and capital and surplus of Nevada Health Co-Op as of December 31, 2014, and 2013, and the results of its operations and its cash flow for the years then ended, in accordance with the financial reporting provisions of the Nevada DOI described in Note 1.

d) In our opinion, the [Supplementary] information is fairly stated in all material respects in relation to the financial statements taken as a whole.

498. On or about June 1, 2015, Larson issued its report entitled The Reports of Independent Certified Public Accountants required by OMB Circular A-133.

499. These reports included an "Independent Auditor's Report on Internal Control over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with Government Auditing Standards," and an "Independent Auditor's Report on Compliance for each Major Program; Report on Internal Control Over Compliance; and Report on Schedule of Expenditures of Federal Awards Required by OMB Circular A-133."

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500. The "Independent Auditor's Report on Internal Control over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with Government Auditing Standards" contained the following statements:

a) We have audited, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in Government Auditing Standards issued by the Comptroller General of the United States, the statutory financial statements of Nevada Health Co-Op (the Co-Op) (a nonprofit organization), which comprise the statement of financial position as of December 31, 2014, and the related statutory financial statements of activities, and cash flows for the year then ended, and the related notes to the statutory financial statements, and have issued our report thereon dated June 1, 2015.

b) ... during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses.

c) As part of obtaining reasonable assurance about whether the Co-Op's financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts.

d) The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under Government Auditing Standards.

501. The "Independent Auditor's Report on Compliance for each Major Program; Report on Internal Control Over Compliance; and Report on Schedule of Expenditures of Federal Awards Required by OMB Circular A-133" contained the following statements:

a) We believe that our audit provides a reasonable basis for our opinion on compliance for each major federal program.

b) In our opinion, the Co-Op complied, in all material respects, with the types of compliance requirements referred to above that could have a direct and material effect on each of its major federal programs for the year ended December 31, 2014.

c) In planning and performing our audit of compliance, we considered the Co-Op's internal control over compliance with the types of requirements that could have a direct and material effect on each major federal program to determine the auditing procedures that are appropriate in the circumstances for the purpose of expressing an

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opinion on compliance for each major federal program and to test and report on internal control over compliance in accordance with OMB Circular A-133.

d) We did not identify any deficiencies in internal control over compliance that we considered to be material weaknesses. We did not identify any deficiencies in internal control over compliance that we consider to be material weaknesses.

e) We have audited the statutory financial statements of the Co-Op, as of and for the year ended December 3, 2014, and the related notes to the statutory financial statements. We issued our report thereon dated June 1, 2015, which contained an unmodified opinion on those statutory financial statements.

f) The [Schedule of Expenditures for Financial Awards] has been subjected to the auditing procedures applied in the audit of the statutory financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the schedule of expenditures of federal awards is fairly stated in all material respects in relation to the statutory financial statements as a whole.

502. The Larson Defendants knew or believed that their representations as stated above, were false, or that the Larson Defendants had an insufficient basis of information for making the representations.

503. Plaintiff justifiably relied upon the Larson Defendants' representations.

504. As a direct and proximate result of the Larson Defendants' conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

505. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

TWENTY-SEVENTH CAUSE OF ACTION

(Negligent Misrepresentation Against Larson Defendants)

506. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

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507. The Larson Defendants, in the course of action in which they had a pecuniary interest, failed to exercise reasonable care or competence in obtaining or communicating information to Plaintiff as set forth above.

508. Such information included, without limitation, that the accounting and auditing services of the Larson Defendants were performed in accordance with applicable standards and other information contained in the reports of the Larson Defendants on NHC, as set forth herein.

509. Plaintiff justifiably relied on this information it received.

510. As a direct and proximate result of the Larson Defendants' conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

511. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

TWENTY-EIGHTH CAUSE OF ACTION

(Negligence Against Larson Defendants)

512. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

513. The Larson Defendants owed a duty of care to Plaintiff, including the duty to perform their work in accordance with applicable statutory and professional standards.

514. As detailed above, by failing to perform to applicable statutory and professional standards, the Larson Defendants breached that duty.

515. The breach was the legal cause of Plaintiff's injuries.

516. As a direct and proximate result of the Larson Defendants' conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

517. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

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TWENTY-NINTH CAUSE OF ACTION

(Breach of Contract Against Larson)

518. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

519. Larson and NHC entered into two valid and enforceable contracts - the 2013 and the 2014 Engagement Letters - that required Larson to perform professional accounting and auditing services.

520. Provisions of the Engagement Letters provided for Larson to perform all services in accordance with applicable professional standards.

521. Larson failed to perform under the Engagement Letters by failing to perform accounting and auditing services as required under applicable professional and statutory standards, as detailed above.

522. Plaintiff performed or was excused from performance under the Engagement Letters.

523. As a direct and proximate result of Larson's conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

524. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

THIRTIETH CAUSE OF ACTION

(Tortious Breach of the Implied Covenant Against Larson)

525. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

526. Larson and NHC entered into two valid and enforceable contracts - the 2013 and the 2014 Engagement Letters - that required Defendant to perform professional accounting and auditing services.

527. Under applicable law, the Engagement Letters contain an implied covenant of good faith and fair dealing among all parties.

528. A special element of reliance or fiduciary duty existed between Plaintiff and Larson where Larson was in a superior or trusted position.

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529. Larson breached the duty of good faith by engaging in misconduct in a manner that was unfaithful to the purpose of the Engagement Letters, by failing to perform in accordance with statutory and professional standards as set forth herein.

530. As a direct and proximate result of Larson's conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

531. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

THIRTY-FIRST CAUSE OF ACTION

(Breach of the Implied Covenant of Good Faith and Fair Dealing Against Larson)

532. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

533. Larson and NHC entered into two valid and enforceable contracts - the 2013 and the 2014 Engagement Letters - that required Defendant to perform professional accounting and auditing services.

534. Under applicable law, the Engagement Letters contain an implied covenant of good faith and fair dealing among all parties.

535. Larson, by failing to follow applicable professional and statutory standards as set forth herein, breached that duty by performing in a manner that was unfaithful to the purpose of the Engagement Letters.

536. As a direct and proximate result of Larson's conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

537. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

THIRTY-SECOND CAUSE OF ACTION

(Negligent Performance of an Undertaking Against Larson Defendants)

538. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

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539. The Larson Defendants undertook to provide accounting and auditing services, including but not limited to examining the books and records of NHC.

540. Such services included but were not limited to auditing the books and records of NHC for the years ended December 31, 2013 and 2014 and its Management Discussion & Analysis for those years, and providing the audit opinions set forth in related reports, including the Audit Report concerning NHC's December 31, 2014 and 2015 Financial Statements, The Reports of Independent Certified Public Accountants required by OMB Circular A-133, Independent Auditor's Report on Compliance for each Major Program, and Report on Internal Control Over Compliance Independent Auditor's Report on Internal Control over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with Government Auditing Standards.

541. The Larson Defendants knew or should have recognized these undertakings as necessary for the protection of NHC's members, NHC's enrolled insured, NHC's creditors, and the State of Nevada.

542. By performing the accounting and auditing services detailed above, the Larson Defendants undertook to perform a duty owed by NHC to its members, enrolled insureds, creditors, and regulators to act in accordance with statutory and professional standards.

543. The Larson Defendants' failure to exercise reasonable care in performing its services, including the Larson Defendants' failure to perform accounting and auditing services in accordance with applicable standards as detailed herein, increased the risk of harm to NHC, NHC's customers and vendors, and the State of Nevada.

544. As a direct and proximate result of the Larson Defendants' conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

545. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

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THIRTY-THIRD CAUSE OF ACTION

(Unjust Enrichment Against Larson)

546. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

547. Larson was paid for accounting and auditing services that were to be performed in accordance with statutory and professional standards.

548. Despite failing to provide such services in accordance with statutory and professional standards, Larson unjustly retained the fees paid to it for such services against fundamental principles of justice, equity, and good conscience.

549. As a direct and proximate result of Larson's conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

550. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

CAUSES OF ACTION RELATED TO INSUREMONKEY DEFENDANTS

THIRTY-FOURTH CAUSE OF ACTION

(Intentional Misrepresentation/Fraud in the Inducement Against InsureMonkey Defendants)

551. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

552. From April through September 2013, InsureMonkey's officers, directors, and agents - including its CEO Rivlin - represented to NHC that they had the necessary skill, experience, and expertise to handle all aspects of the customer and members' services contemplated by the parties' potential agreements in a competent and professional manner.

553. Throughout the course of dealing with NHC, the InsureMonkey Defendants also misrepresented the number of customers obtained by InsureMonkey's marketing efforts and the number of insured enrollees in order to obtain additional fees and income that InsureMonkey had not earned.

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554. The InsureMonkey Defendants knew or believed that their representations were false, or the InsureMonkey Defendants had an insufficient basis of information for making the representation.

555. The InsureMonkey Defendants made such representations to induce NHC to enter into the various agreements listed herein with InsureMonkey related to member and customer services and so that CEO Rivlin could personally obtain exorbitant salaries, bonuses, and other remuneration for entering into the lucrative agreements with NHC.

556. NHC reasonably and justifiably relied upon the InsureMonkey Defendants' representations.

557. As a direct and proximate result of the InsureMonkey Defendants' conduct, NHC has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

558. In committing the acts herein above alleged, the InsureMonkey Defendants are guilty of oppression, fraud, and malice towards NHC. Therefore, NHC is entitled to recover punitive damages from the InsureMonkey Defendants for the purpose of deterring them and others similarly situated from engaging in like conduct in the future.

559. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

THIRTY-FIFTH CAUSE OF ACTION

(Constructive Fraud Against InsureMonkey Defendants)

560. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

561. At all relevant times, a fiduciary duty existed between Plaintiff and the InsureMonkey Defendants, where the InsureMonkey Defendants were in a superior or trusted position as set forth herein.

562. The InsureMonkey Defendants owed a legal or equitable duty to NHC arising from a fiduciary or confidential relationship.

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563. The InsureMonkey Defendants breached that duty by misrepresenting or concealing material facts, i.e. that the InsureMonkey Defendants did not have the requisite skill, experience, or expertise to perform the services contemplated by the parties' agreements listed herein and that it failed to perform in a manner consistent with minimum industry standards as set forth herein.

564. The InsureMonkey Defendants also breached that duty by misrepresenting the number of customers obtained by InsureMonkey's marketing efforts and the number of insured enrollees in order to obtain additional fees and income InsureMonkey had not earned.

565. As a direct and proximate result of the InsureMonkey Defendants' conduct, NHC has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

566. In committing the acts herein above alleged, the InsureMonkey Defendants are guilty of oppression, fraud, and malice towards NHC. Therefore, NHC is entitled to recover punitive damages from the InsureMonkey Defendants for the purpose of deterring them and others similarly situated from engaging in like conduct in the future.

567. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

THIRTY-SIXTH CAUSE OF ACTION

(Negligent Misrepresentation Against InsureMonkey Defendants)

568. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

569. The InsureMonkey Defendants, in the course of action in which they had a pecuniary interest, failed to exercise reasonable care or competence in obtaining or communicating information to NHC as set forth above.

570. Such information included, without limitation, the number of customers obtained by InsureMonkey's marketing efforts, the number of eligible enrollees, the eligibility data provided to NHC and/or CMS, and other reporting information provided to NHC or otherwise required by the parties' agreements or the CMS Loan Agreement.

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571. NHC reasonably and justifiably relied on the information it received from the InsureMonkey Defendants.

572. As a direct and proximate result of the InsureMonkey Defendants' conduct, NHC has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

573. In committing the acts herein above alleged, the InsureMonkey Defendants are guilty of oppression, fraud, and malice towards NHC. Therefore, NHC is entitled to recover punitive damages from the InsureMonkey Defendants for the purpose of deterring them and others similarly situated from engaging in like conduct in the future.

574. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

THIRTY-SEVENTH CAUSE OF ACTION

(Breach of Fiduciary Duty Against InsureMonkey)

575. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

576. A fiduciary duty existed between NHC and InsureMonkey wherein InsureMonkey was in a superior or trusted position as set forth herein.

577. InsureMonkey breached that duty by failing to perform minimum professional standards and by otherwise providing misleading and inaccurate information as set forth above.

578. As a direct and proximate result of InsureMonkey's conduct, NHC has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

579. In committing the acts herein above alleged, InsureMonkey is guilty of oppression, fraud, and malice towards NHC. Therefore, NHC is entitled to recover punitive damages from InsureMonkey for the purpose of deterring it and others similarly situated from engaging in like conduct in the future.

580. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

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THIRTY-EIGHTH CAUSE OF ACTION

(Negligence Against InsureMonkey)

581. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

582. InsureMonkey owed a duty of care to NHC, including the duty to perform its work in accordance with industry standards and to not provide misleading or otherwise inaccurate information upon which it intended for and knew NHC would rely.

583. As detailed above, by failing to perform to applicable professional standards, InsureMonkey breached that duty.

584. The breach was the legal cause of NHC's injuries.

585. As a direct and proximate result of InsureMonkey's conduct, NHC has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

586. In committing the acts herein above alleged, InsureMonkey is guilty of oppression, fraud, and malice towards NHC. Therefore, NHC is entitled to recover punitive damages from InsureMonkey for the purpose of deterring it and others similarly situated from engaging in like conduct in the future.

587. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

THIRTY-NINTH CAUSE OF ACTION

(Breach of Contract Against InsureMonkey)

588. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

589. InsureMonkey and NHC entered into a series of valid and enforceable contracts as set forth herein.

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590. InsureMonkey failed to perform under the various agreements as set forth herein, including, but not limited to, the 2013 Master Services Agreement, the 2013 Customer Service MOU, and the Master Agreement, by failing to provide the services contemplated therein in a reasonable and satisfactory manner, as detailed above.

591. NHC performed or was excused from performance with respect to all of the agreements set forth and detailed above. Such performance included paying InsureMonkey in excess of $9.4 million for services rendered.

592. As a direct and proximate result of InsureMonkey's conduct, NHC has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

593. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

FORTIETH CAUSE OF ACTION

(Tortious Breach of the Implied Covenant of Good Faith and Fair Dealing Against InsureMonkey)

594. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

595. InsureMonkey and NHC entered into a series of valid and enforceable contracts as set forth herein.

596. InsureMonkey owed a duty of good faith to Plaintiff arising from such contracts.

597. A special element of reliance or fiduciary duty existed between Plaintiff and InsureMonkey wherein InsureMonkey was in a superior or trusted position.

598. InsureMonkey breached the duty of good faith by engaging in misconduct in a manner that was unfaithful to the purpose of the agreements described herein, by failing to perform in accordance with basic, minimum professional standards as set forth herein, including, but not limited to, providing intentionally false and/or misleading and faulty sales, enrollment, and eligibility data, upon which it intended for NHC to rely.

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599. As a direct and proximate result of InsureMonkey's conduct, NHC has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

600. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

FORTY-FIRST CAUSE OF ACTION

(Breach of the Implied Covenant of Good Faith and Fair Dealing Against InsureMonkey)

601. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

602. InsureMonkey and NHC entered into a series of valid and enforceable contracts as set forth herein.

603. InsureMonkey owed a duty of good faith to Plaintiff arising from such contracts.

604. Under applicable law, these agreements contained an implied covenant of good faith and fair dealing among all parties.

605. InsureMonkey breached the duty of good faith by engaging in misconduct in a manner that was unfaithful to the purpose of the agreements described herein, by failing to perform in accordance with basic, minimum professional standards as set forth herein, including, but not limited to, providing intentionally false and/or misleading and faulty sales, enrollment, and eligibility data, upon which it intended for NHC to rely.

606. As a direct and proximate result of InsureMonkey's conduct, NHC has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

607. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

FORTY-SECOND CAUSE OF ACTION

(Negligent Performance of an Undertaking Against InsureMonkey)

608. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

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609. InsureMonkey undertook to provide certain services related to tracking and reporting enrollment and eligibility data on behalf of NHC, to provide that information to both NHC and CMS for purposes of calculating certain amounts owed by NHC, to be received by NHC, or for other purposes.

610. InsureMonkey knew or should have recognized that these undertakings were necessary for the protection of NHC's members, NHC's enrolled insured, NHC's creditors, and the State of Nevada.

611. By performing the services detailed above, InsureMonkey undertook to perform a duty owed by NHC to its members, enrolled insureds, creditors, and regulators to act in accordance with statutory and professional standards, and to properly track and report enrollment and eligibility data.

612. InsureMonkey's failure to exercise reasonable care in performing its services increased the risk of harm to NHC, NHC's customers and vendors, and the State of Nevada.

613. As a direct and proximate result of InsureMonkey's conduct, NHC has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

614. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

FORTY-THIRD CAUSE OF ACTION

(Unjust Enrichment Against InsureMonkey)

615. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

616. InsureMonkey was paid over $9.4 million for services that were to be performed in accordance with certain professional and industry standards.

617. Despite its failure to provide such services and/or not providing the quality of services required, InsureMonkey unjustly retained the fees paid to it for such services against fundamental principles of justice, equity, and good conscience.

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618. As a direct and proximate result of InsureMonkey's conduct, NHC has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

619. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

FORTY-FOURTH CAUSE OF ACTION

(Negligent Hiring, Training, Supervision, and Retention Against InsureMonkey)

620. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

621. InsureMonkey owed a duty to exercise due care towards NHC in all of its dealings in providing the services contemplated by their various agreements, including, but not limited to, the Master Agreement.

622. InsureMonkey breached that duty by failing to provide services to satisfy minimum industry standards and practices.

623. InsureMonkey's failure to properly hire, train, and supervise its employees and agents to ensure that they acted in a competent and professional manner and with the requisite skill and expertise necessary to perform and complete the work was a direct and proximate cause of NHC's injuries as set forth herein.

624. InsureMonkey's decision to provide inadequate training and to hire and retain certain employees who were unsatisfactory and unable to fulfill InsureMonkey's obligations and responsibilities to NHC was the direct and proximate cause of NHC's injuries as set forth herein.

625. As detailed above, by failing to perform to applicable professional and industry standards, InsureMonkey breached that duty.

626. The breach was the legal cause of Plaintiff's injuries.

627. InsureMonkey knew or should have known that the employees and agents it had hired were unfit for their positions and would likely cause harm to third parties when placed in the positions in which InsureMonkey placed them.

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628. As a direct and proximate result of InsureMonkey's conduct, NHC has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

629. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

CAUSES OF ACTION RELATED TO NHS

FORTY-FIFTH CAUSE OF ACTION

(Professional Malpractice Against NHS)

630. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

631. NHS was engaged by NHC and was responsible for providing professional medical utilization management and member eligibility review services to NHC.

632. Such services included, but were not limited to performing evaluations of appropriateness and medical necessity of heath care services, procedures and facilities; performing precertification of hospital admissions and outpatient procedures; processing information related to in-hospital observations; providing concurrent reviews for inpatient acute care, rehabilitation and long term acute care; providing discharge planning; performing provider appeal reviews; and performing member eligibility review, along with other services, as listed herein.

633. NHS had a duty to use such skill, prudence, and diligence as other members of the profession commonly possess and exercise.

634. As detailed above, NHS breached that duty by failing to comply with applicable contractual, professional and industry standards.

635. As a direct and proximate result of NHS's conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

636. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

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FORTY-SIXTH CAUSE OF ACTION

(Intentional Misrepresentation (Fraud) Against NHS)

637. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

638. Throughout the time that NHS performed services for NHC, NHS represented that it was performing such services, and that such services were being performed in accordance with applicable statutory, professional, and contractual standards.

639. NHS knew or believed that its representations as stated above, were false, or NHS had an insufficient basis of information for making such representations.

640. Plaintiff justifiably relied upon NHS's representations.

641. As a direct and proximate result of NHS's conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

642. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

FORTY-SEVENTH CAUSE OF ACTION

(Negligent Misrepresentation Against NHS)

643. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

644. NHS, in the course of action in which it had a pecuniary interest, failed to exercise reasonable care or competence in obtaining or communicating information to Plaintiff, as set forth above.

645. Such information included, without limitation, that the services of NHS were performed in accordance with applicable standards and that the information contained in the reports prepared by NHS was accurate.

646. Plaintiff justifiably relied on the information it received.

647. As a direct and proximate result of NHS's conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

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648. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

FORTY-EIGHTH CAUSE OF ACTION

(Negligence Against NHS)

649. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

650. NHS owed a duty of care to Plaintiff, including the duty to perform its work in accordance with applicable statutory and professional and contractual standards.

651. As detailed above, by failing to perform to applicable statutory, professional, and contractual standards, NHS breached that duty.

652. The breach was the legal cause of Plaintiff's injuries.

653. As a direct and proximate result of NHS's conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

654. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

FORTY-NINTH CAUSE OF ACTION

(Breach of Contract Against NHS)

655. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

656. NHS and NHC entered into a valid and enforceable contract - the July 19, 2013 Utilization Management Services Agreement - that required NHS to perform professional medical utilization management and member eligibility review services.

657. Provisions of the Utilization Agreement provided for NHS to perform all services in accordance with applicable professional, statutory, and contractual standards.

658. NHS failed to perform accounting and consulting services as required under applicable professional, statutory and contractual standards.

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659. Plaintiff performed or was excused from performance under the Utilization Agreement.

660. As a direct and proximate result of NHS's conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

661. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

FIFTIETH CAUSE OF ACTION

(Tortious Breach of the Implied Covenant Against NHS)

662. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

663. NHS and NHC entered into a valid and enforceable contract - the July 19, 2013 Utilization Management Services Agreement - that required NHS to perform professional medical utilization management and member eligibility review services.

664. Under applicable law, the Utilization Agreement contains an implied covenant of good faith and fair dealing among all parties.

665. A special element of reliance or fiduciary duty existed between Plaintiff and NHS where NHS was in a superior or trusted position.

666. In failing to perform in accordance with contractual, statutory and professional standards as set forth herein, NHS breached the duty of good faith and engaged in misconduct in a manner that was unfaithful to the purpose of the Service Agreement.

667. As a direct and proximate result of NHS's conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

668. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

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FIFTY-FIRST CAUSE OF ACTION

(Breach of the Implied Covenant of Good Faith and Fair Dealing Against NHS)

669. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

670. NHS and NHC entered into a valid and enforceable contract - the July 19, 2013 Utilization Management Services Agreement - that required NHS to perform professional medical utilization management and member eligibility review services.

671. Under applicable law, the Utilization Agreement contains an implied covenant of good faith and fair dealing among all parties.

672. NHS, by failing to follow applicable contractual, professional and statutory standards as set forth herein, breached that duty by performing in a manner that was unfaithful to the purpose of the Utilization Agreement.

673. As a direct and proximate result of NHS's conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

674. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

FIFTY-SECOND CAUSE OF ACTION

(Negligent Performance of an Undertaking Against NHS)

675. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

676. NHS undertook to provide medical utilization management and member eligibility review services.

677. Such services included, but were not limited to performing evaluations of appropriateness and medical necessity of heath care services, procedures and facilities; performing precertification of hospital admissions and outpatient procedures; processing information related to in-hospital observations; providing concurrent reviews for inpatient acute care, rehabilitation and long term acute care; providing discharge planning; performing provider appeal reviews; and performing member eligibility review, along with other services, as listed herein.

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678. NHS knew or should have recognized these undertakings as being necessary for the protection of NHC's members, NHC's enrolled insureds, NHC's creditors, and the State of Nevada.

679. By agreeing to perform the accounting and consulting services detailed above, NHS undertook to perform a duty owed by NHC to its members, enrolled insureds, creditors, and regulators and to act in accordance with statutory and professional standards.

680. NHS's failure to exercise reasonable care in performing its services, including NHS's failure to perform medical utilization management and member eligibility review services in accordance with applicable standards as detailed herein, increased the risk of harm to NHC, NHC's customers and vendors, and the State of Nevada, and it unnecessarily prolonged, and it led to, the continued and unjustified existence of NHC.

681. As a direct and proximate result of NHS's conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

682. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

FIFTY-THIRD CAUSE OF ACTION

(Unjust Enrichment Against NHS)

683. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

684. NHS was paid for medical utilization management and member eligibility review services that were to be performed in accordance with professional, statutory, and contractual standards.

685. Despite not providing such services in accordance with professional, statutory, and contractual standards, and against fundamental principles of justice, equity, and good conscience, NHS unjustly retained the fees paid to it for such services.

686. NHS's compensation was mechanically calculated based on the total persons enrolled as NHC members each month, a fee that bore little to no relation to services being provided by NHS. Upon information and belief, little work was actually performed by NHS for NHC in relation to the substantial fees paid.

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687. Upon information and belief, UHH was the owner of NHS. UHH was being paid to process and adjudicate claims of NHC, and then it was being paid again through NHS to do a quality control review check of the very claims that UHH processed, which also resulted in NHC being unjustly compensated. NHS also had a conflict of interest, or the appearance of a conflict of interest, by being engaged to provide a quality control review of claim services provided by its parent company, UHH, resulting in unjust compensation to NHS.

688. As a direct and proximate result of NHS's conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

689. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

CAUSES OF ACTION RELATED TO MANAGEMENT DEFENDANTS

FIFTY-FOURTH CAUSE OF ACTION

(Breach of Fiduciary Duty Against Management Defendants)

690. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

691. As officers and directors of NHC, the Management Defendants, and each of them, owed duties of good faith and loyalty to act in the best interests of NHC.

692. Each of the Management Defendants breached his or her duties by failing to act in the bests interests of NHC and instead in their own self-serving interests as set forth above.

693. The breaches of fiduciary duties outlined herein involved intentional misconduct, fraud, and/or a knowing violation of the law.

694. As a direct and proximate result of the Management Defendants' conduct, NHC has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

695. In committing the acts herein above alleged, the Management Defendants are guilty of oppression, fraud, and malice towards NHC. Therefore, NHC is entitled to recover punitive damages from the Management Defendants for the purpose of deterring them and others similarly situated from engaging in like conduct in the future.

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696. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

FIFTY-FIFTH CAUSE OF ACTION

(Intentional Misrepresentation/Fraud Against Management Defendants)

697. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

698. On February 28, 2015, and approximately mid-May 2015, the Management Defendants adopted and submitted the 2014 and March 2015 quarterly financial statements for NHC to the Nevada DOI insurance regulators. On or about April 1, 2015, the Management Defendants adopted and submitted a Management Discussion & Analysis that was submitted to the Nevada DOI insurance regulators as to the financial condition and prospective information of NHC.

699. On or about June 1, 2015, the Management Defendants adopted and authorized the release of the Audit Report prepared by Larson concerning NHC's December 31, 2014 and 2015 Financial Statements.

700. The financial statements, Management Discussion & Analysis, and Audit Report contained information that was false and misleading as set forth herein.

701. The Management Defendants knew or believed that their representations as stated above were false, or the Management Defendants had an insufficient basis of information for making the representations.

702. Plaintiff and those represented by Plaintiff justifiably relied upon the Management Defendants' representations contained in NHC's financial statements, Management Discussion & Analysis, and Audit Report.

703. As a direct and proximate result of the Management Defendants' conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

704. In committing the acts herein above alleged, the Management Defendants are guilty of oppression, fraud, and malice towards NHC. Therefore, NHC is entitled to recover punitive damages from the Management Defendants for the purpose of deterring them and others similarly situated from engaging in like conduct in the future.

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705. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

FIFTY-SIXTH CAUSE OF ACTION

(Negligent Misrepresentation Against Management Defendants)

706. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

707. The Management Defendants, in the course of action in which they had a pecuniary interest, failed to exercise reasonable care or competence in obtaining or communicating information to Plaintiff as set forth above.

708. Such information included, without limitation, that the financial statements and Management Discussion & Analysis prepared, approved, ratified, or otherwise adopted by the Management Defendants were truthful, accurate, prepared, and performed in accordance with applicable standards.

709. Such representations involved negligence, intentional misconduct, fraud, and/or a knowing violation of the law.

710. Plaintiff justifiably relied on this information it received.

711. As a direct and proximate result of the Management Defendants' conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

712. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

FIFTY-SEVENTH CAUSE OF ACTION

(Constructive Fraud Against Management Defendants)

713. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

714. At all relevant times, the Management Defendants had a fiduciary and/or confidential relationship with NHC based on the facts alleged herein.

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715. The Management Defendants owed a legal or equitable duty to NHC arising from a fiduciary or confidential relationship.

716. The Management Defendants breached that duty by misrepresenting or concealing material facts by preparing, disseminating, and authorizing unreliable and untruthful financial information and a Management Discussion & Analysis concerning NHC and its operations.

717. The Management Defendants' conduct described herein involved intentional misconduct, fraud, and/or a knowing violation of the law.

718. As a direct and proximate result of the Management Defendants' conduct, NHC has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

719. In committing the acts herein above alleged, the Management Defendants are guilty of oppression, fraud, and malice towards NHC. Therefore, NHC is entitled to recover punitive damages from the Management Defendants for the purpose of deterring them and others similarly situated from engaging in like conduct in the future.

720. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

FIFTY-EIGHTH CAUSE OF ACTION

(Negligent Performance of an Undertaking Against Management Defendants)

721. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

722. The Management Defendants undertook to provide certain management and operational services to NHC, knowing that information would be used by NHC and provided to CMS for purposes of calculating certain amounts owed by NHC, to be received by NHC, or for other known purposes.

723. The Management Defendants knew or should have recognized these undertakings as necessary for the protection of NHC's members, NHC's enrolled insured, NHC's creditors, and the State of Nevada.

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724. By performing the services detailed above, the Management Defendants undertook to perform a duty owed by NHC to its members, enrolled insureds, creditors, and regulators to act in accordance with statutory and professional standards.

725. The Management Defendants' failure to exercise reasonable care in performing its services increased the risk of harm to NHC, NHC's customers and vendors, and the State of Nevada.

726. The Management Defendants' conduct described herein involved intentional misconduct, fraud, and/or a knowing violation of the law.

727. As a direct and proximate result of the Management Defendants' conduct, NHC has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

728. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

FIFTY-NINTH CAUSE OF ACTION

(Unjust Enrichment Against Management Defendants)

729. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

730. Each of the Management Defendants was paid considerable and exorbitant amounts in compensation, including salary and bonuses without justification, and such compensation was paid despite the fact that NHC was losing millions of dollars each financial reporting period.

731. Management Defendants also engaged NHS to perform utilization review and management for claims and eligibility status in 2014, and NHC paid substantial fees to NHS for this service that also included NHS's overhead, out-of-pocket expenses, and taxes. Former Chief Executive Officer William Donahue claimed that he was unjustly pressured to sign the NHS engagement agreement. Upon information and belief, Management Director Defendant Kathleen Silver was President of NHS and UHH was its sole member, and Defendant Kathleen Silver engaged in self-dealing and was unjustly paid substantial amounts by NHS in this role, or she allowed UHH to be paid unjust amounts under this agreement. Upon information and belief, little

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work was provided by NHS for NHC, and NHS compensation was unfairly based on a mechanical fee of how many total members existed at NHC each month; a fee that bore little to no relation to services being provided. In 2014, in excess of $1 million in claims were paid outside of enrollment when NHS was required but failed to properly perform eligibility status for member claims, with approximately $382,968 paid to NHS for it so called utilization management and member eligibility review services.

732. Some of the Management Defendants' compensation was based upon the unreliable and untruthful financial information prepared by, approved by, and/or ratified by these Management Defendants, which amounts Management Defendants are continuing to hold in violation of equity and good conscience.

733. In light of the actions set forth herein, such amounts should be disgorged from the Management Defendants and returned to NHC in the interests of equity.

734. The Management Defendants' conduct described herein involved intentional misconduct, fraud, and/or a knowing violation of the law.

735. As a direct and proximate result of the Management Defendants' conduct, NHC has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

736. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

SIXTIETH CAUSE OF ACTION

(Negligent Hiring, Training, Supervision, and Retention Against Management Defendants)

737. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

738. The Management Defendants owed a duty to exercise due care towards NHC in all of its dealings, in providing management, operational, and supervisory services to NHC.

739. The Management Defendants breached their duty by failing to provide services to satisfy basic, minimum industry standards and practices with respect to hiring, training, supervising and retaining employees, agents, consultants, and vendors on behalf of NHC.

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740. The Management Defendants' failure to properly hire, train, and supervise its employees to ensure that its employees and agents acted in a competent and professional manner with the requisite skill and expertise necessary to perform and complete the work necessary to fulfill NHC's business was the direct and proximate cause of NHC's injuries, as set forth herein.

741. The Management Defendants' decisions to retain certain employees, agents, consultants, and vendors who were unsatisfactory and unable to fulfill the Management Defendants' obligations and responsibilities were the direct and proximate cause of NHC's injuries.

742. As detailed above, by failing to perform to applicable professional and industry standards, the Management Defendants breached that duty.

743. The Management Defendants' conduct involved intentional misconduct, fraud, and/or a knowing violation of the law.

744. These actions were the legal cause of Plaintiff's injuries.

745. The Management Defendants knew or should have known that the employees, agents, consultants, and vendors they had hired were unfit for their positions and would likely cause harm to third parties when placed in the positions in which the Management Defendants placed them.

746. As a direct and proximate result of the Management Defendants' conduct, NHC has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

747. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

SIXTY-FIRST CAUSE OF ACTION

(Breach of Contract Against Management Defendants)

748. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

749. Upon information and belief, each of the Management Defendants entered into enforceable agreements with NHC, including, but not limited to employment agreements and ethics and conflicts of interest agreements, which contractually provided for Management Defendants to operate in a fiduciary manner and to exercise the utmost good faith in all transactions involving their duties and to refrain from conflicts of interest, as set forth above.

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750. The Management Defendants failed to perform under such agreements as set forth above.

751. Plaintiff performed or was excused from performance under such agreements.

752. As a direct and proximate result of the Management Defendants' conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

753. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

CAUSES OF ACTION RELATED TO ALL DEFENDANTS

SIXTY-SECOND CAUSE OF ACTION

(Civil Conspiracy Against All Defendants)

754. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

755. Defendants acted in concert with each other and with certain of NHC's management and vendors, including, but not limited to, Milliman, Millennium, Larson, and InsureMonkey, to falsify operating results and reserves, to conceal internal control weaknesses and other wrongdoing, and to avoid statutory supervision by their use of untruthful and/or unreliable financial data and other information they knew to be false and not in accordance with required statutory and professional standards in order to continue the flow of money to NHC, and subsequently, to the Management Defendants and NHC's vendors for their own personal gain.

756. Defendants' conduct described herein involved intentional misconduct, fraud, and/or a knowing violation of the law.

757. Each of the Defendants are jointly and severally liable for the damages described herein.

758. As a direct and proximate result of Defendants' conduct, NHC has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

759. In committing the acts herein above alleged, Defendants are guilty of oppression, fraud, and malice towards NHC. Therefore, NHC is entitled to recover punitive damages from Defendants for the purpose of deterring them and others similarly situated from engaging in like conduct in the future.

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760. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

SIXTY-THIRD CAUSE OF ACTION

(Concert of Action Against All Defendants)

761. Plaintiff realleges and incorporates all of the allegations contained in the preceding paragraphs as if fully set forth herein.

762. Defendants acted in concert with each other and with certain of NHC's management and vendors, including, but not limited to, Milliman, Millennium, Larson, and InsureMonkey, to falsify operating results and reserves, to conceal internal control weaknesses and other wrongdoing, and to avoid statutory supervision by their use of untruthful and/or unreliable financial data and other information they knew to be false and not in accordance with required statutory and professional standards in order to continue the flow of money to NHC, and subsequently, to the Management Defendants and NHC's vendors for their own personal gain.

763. Defendants knew that their actions were inherently dangerous or posed a substantial risk of harm to others in that their actions could affect and disrupt the medical care of NHC's members and insured enrollees.

764. Defendants' actions did affect and disrupt the medical care of NHC's members and enrolled insureds.

765. The conduct described herein involved intentional misconduct, fraud, and/or a knowing violation of the law.

766. Each of the Defendants are jointly and severally liable for the damages described herein.

767. As a direct and proximate result of Defendants' conduct, NHC has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

768. In committing the acts herein above alleged, Defendants are guilty of oppression, fraud, and malice towards NHC. Therefore, NHC is entitled to recover punitive damages from the Defendants for the purpose of deterring them and others similarly situated from engaging in like conduct in the future.

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769. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief in favor of Plaintiff and against each of the Defendants, as follows:

1. For damages in an amount in excess of fifteen thousand dollars ($15,000);

2. For prejudgment and post-judgment interest;

3. For all attorneys' fees and costs of suit; and

4. For such other and further relief as this Court may deem just and proper.

DATED this 25th day of August, 2017.

GREENBERG TRAURIG, LLP

/s/ Mark E. Ferrario, Esq.
MARK E. FERRARIO, ESQ.
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EXHIBIT "B"

EXHIBIT "B"

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC STICKELS;

Petitioners,

vs.

EIGHTH JUDICIAL DISTRICT COURT of the State of Nevada, in and for the County of Clark, and the HONORABLE NANCY ALLF, District Court Judge, Dept. 27,

Respondent,

AND

COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS & CLARK LTC RRG, INC.,

Real Party in Interest.

Supreme Court Case No.: 78301

REAL PARTY IN INTEREST'S ANSWERING BRIEF

FENNEMORE CRAIG, P.C.
James Wadhams (No. 1115)
Christopher H. Byrd (No. 1633)
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COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS & CLARK LTC RRG, INC.

DCEREGHI/14937134.2/037881.0001

NRAP 26.1 DISCLOSURE

The undersigned counsel of record for Real Party in Interest[1] certifies that the following are persons and entities described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the justices of this Court may evaluate possible disqualification or recusal:

- Commissioner of Insurance of the State of Nevada
- Fennemore Craig, P.C., including, but not limited to:
  - James Wadhams, Esq.;
  - Christopher Byrd, Esq.;
  - Scott Freeman, Esq.;
  - Brenoch Wirthlin, Esq.;
  - Daniel Cereghino, Esq.;
  - Brandi Planet, Esq.; and

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[1] The Court's May 15, 2019 Order Directing Answer, n.1, clarified that the only "real party in interest" vis-à-vis this particular Petition for Writ of Mandamus is Commissioner of Insurance for the State of Nevada as Receiver of Lewis & Clark LTC RRG, Inc., the filer of this Answering Brief. See No. 19-21298.

- Chelsie Adams, Esq.

DATED this 12th day of June, 2019.

FENNEMORE CRAIG, P.C.

By: */s/ Brenoch R. Wirthlin, Esq.*
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ROUTING STATEMENT

Real Party in Interest does not dispute the end result of the routing analysis by Petitioners. Real Party in Interest does contend, however, that the most appropriate basis for such routing is that the Petition raises "a question of statewide public importance" (NRAP 17(a)(12)) as opposed to the other bases offered by Petitioners.[2]

DATED this 12th day of June, 2019.

FENNEMORE CRAIG, P.C.

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[2] Petitioners refer to NRAP 17(a)(10) and NRAP 17(b)(7), though such appear to be in error. Those rules do not correlate to Petitioners' described bases (cases originating from business court and questions of first impression). In addition, this is not a business court case (Case No. A-14-711535-C).

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND RELIEF REQUESTED

The central issue in this writ proceeding is whether the Third Amended Complaint ("TAC") sufficiently states a claim against the Directors for breach of fiduciary duty. Real Party in Interest Commissioner of Insurance, as Receiver for Lewis & Clark LTC RRG, Inc. ("L&C"), seeks to hold the directors of L&C ("Petitioners" or "Directors") personally liable for their gross negligence in breaching their fiduciary duty of care to L&C, which left the taxpayers of Nevada confronted with a multi-million dollar loss.

L&C alleges facts that demonstrate that the Directors were grossly negligent in carrying out their fiduciary duties owed to the corporation. The TAC sufficiently alleges facts that show the Directors: (1) were indifferent to their legal duty to act on an informed basis; (2) knew that information supplied to them was either inadequate or incomplete; (3) knew they failed to obtain readily available information before making certain, material business decisions; and (4) should have known, had they exercised even the slightest care, the truth about L&C's rapidly deteriorating financial condition (and the internal causes thereof). These

allegations are all that is required to overcome the business judgment rule and state a breach of the duty of care under NRS 78.138.

The Directors concede that the TAC sufficiently alleges facts of gross negligence and that pleading gross negligence is sufficient to overcome the business judgment rule codified in NRS 78.138. However, without any legal authority, the Directors argue that the TAC is still insufficient because NRS 78.138 also requires allegations of fraud or intentional misconduct to state a claim for breach of the fiduciary duty of care. Their interpretation of NRS 78.138 is wrong.

NRS 78.130 plainly indicates that fraud and intentional misconduct are not the only bases to hold a director accountable. Directors are also accountable for breaching a duty of care when there is a "knowing violation of the law", which includes their duty to act on an informed basis as required by NRS 78.138. The case law makes it clear that the same allegations of gross negligence, which is the test for and/or substantive equivalent of "knowing violation of the law" are sufficient to satisfy all of the elements of a claim under NRS 78.130.

Judge Allf has consistently applied NRS 78.138 and concluded on numerous occasions that the TAC's allegations are sufficient to both

initially overcome the business judgment rule ("BJR") and provide the Directors with appropriate notice of the claim(s) against them under NRS 78.138.[3] Notice pleading is all that is required under NRS 78.138.

The Directors criticize Judge Allf for an "inconsistent" decision, but without providing any explanation or legal citation that would demonstrate an error in her reasoning. To the contrary, the Directors ignore numerous authorities that directly undermine their position and support Judge Allf's repeated findings that the TAC states a claim against the Directors for breach of the duty of care.

The Petition's only purpose is to seek an escape from having to answer for their gross negligence without having to rebut the TAC's allegations with admissible evidence, either by a motion for summary judgment or at trial. Instead of sticking to the simple notice pleading analysis, the Directors urge a new, substantially broader interpretation of NRS 78.138 to preclude them from liability in spite of allegations

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[3] The Directors filed two motions pursuant to NRCP 12 challenging the sufficiency of the TAC: (1) first, they filed an NRCP 12(b)(5) motion; and (2) they then filed an NRCP 12(c) motion years later. These two Rule 12 motions (and the subsequent Motion for Reconsideration) relating to the TAC followed an earlier Rule 12 motion with respect to Plaintiff's original Complaint. In other words, the Directors have gone to the Rule 12 well four (4) different times in this case.

demonstrating that they were grossly negligent. NRS 78.138 is not intended to exonerate the Directors from their gross negligence and the Directors have not cited any authority that would support such an interpretation.

Make no mistake, the Directors' misinterpretation of NRS 78.138 would permit directors to abdicate their duties in the absence of fraud or intentional misconduct without consequence. However, this is not the law in Nevada or any other jurisdiction. Such absolute protection has never been the purpose for the BJR, nor should it be the corporate policy of Nevada. Being business friendly is decidedly different from creating a haven for corporate abuse. If this Court adopts the Directors' interpretation of NRS 78.138, the State of Nevada and individual shareholders will ultimately bear the losses from the corporate abuses that are sure to follow.

As discussed more fully below, this Court should decline extraordinary relief and deny the Directors' Petition because:

1. Allegations of gross negligence sufficiently state a claim for breach of the duty of care under NRS 78.138;

2. The Directors delayed for 2 years before filing the Petition for

relief and such delay, for which they offer no explanation, constitutes laches and bars the relief sought; and

3. The Directors have an adequate remedy at law, either by way of summary judgment or appeal.

II. ISSUES PRESENTED

1. "Are allegations referencing (1) gross negligence; (2) uninformed decision-making; (3) lack of diligence and/or care; and/or (4) knowledge of adverse circumstances inconsistent with legal, fiduciary obligations as directors; sufficient to plead a claim for director liability for breach of the duty of care?"

2. Does the two year delay in bringing the Petition and the existence of other legal remedies bar the relief sought?

III. STATEMENT OF THE CASE

a. Party / Case Background

The Directors were the members of the board of directors for L&C, a Nevada risk retention group insuring long-term care facilities ("LTC's") around the country. See Petition, at p.4. L&C began operating in 2004. Because L&C had no employees of its own, it was operationally managed by the other defendants in this case, the Uni-Ter entities (whose parent

company, US RE Corp., provided reinsurance brokerage services to L&C). In 2010, the Nevada Division of Insurance ("DOI") admonished the Directors about L&C's material capital deterioration. The DOI again stated their growing concerns about capital deterioration in 2011. In 2012, L&C was placed into receivership and ultimately liquidated. See Petition, at p.4.

b. The Directors file multiple NRCP 12(b)(5) motions.

Plaintiff commenced this action on December 23, 2014. See Petition, at p.4.[4] In December 2015, the Directors moved to dismiss Plaintiff's original Complaint pursuant to NRCP 12(b)(5). See Petition, at p.4. The District Court granted in part and denied in part. See id.

On April 1, 2016, Plaintiff filed a First Amended Complaint, to which the Directors again filed another NRCP 12(b)(5) motion to dismiss. See Petition, at p.4. While that particular motion was still pending and undecided, Plaintiff filed: (1) a Second Amended Complaint (6/13/16); and (2) on August 5, 2016, the challenged TAC. See Petition, at p.5; 1 APP00037. Thus the TAC became the operative pleading with respect to

[4] On June 29, 2015, the Directors filed a Third-Party Complaint against two former Uni-Ter employees (Sanford "Sandy" Elsass and Donna Dalton), but they failed to properly serve or otherwise pursue that Third-Party Complaint. See **RPIA000048-60**, Third-Party Complaint.

the Directors' second 12(b)(5) motion. See Petition, at pp.5-6. The District Court denied that motion.

c. Proceedings giving rise to the instant Petition.

On August 14, 2018, almost two full years after the District Court denied their second 12(b)(5) motion (and close to four years into the overall case), the Directors tried the new approach of seeking NRCP 12(c) relief. See Petition, at p.6; 3 APP00607. The District Court considered those arguments to be duplicative and denied that motion. See 6 APP01379; see also Petition, at p.6. Three weeks later, the Directors filed a Motion for Reconsideration. See 6 APP01382. The District Court denied that motion. See 6 APP01429.

Meanwhile, the parties were conducting extensive discovery, including sets of written discovery requests (including related discovery dispute proceedings) and numerous out-of-state depositions (Oregon, Washington, California, and three (3) separate trips to New York).[5]

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[5] These out-of-state depositions included:
(1) Director Steve Fogg (Oregon, Nov. 15, 2018);
(2) Director Eric Stickels (New York, Nov. 28, 2018);
(3) Director Jeff Marshall (Washington, Dec. 11 and 12, 2018);
(4) Director Dr. Carol Harter (California, Dec. 17, 2018);
(5) Director Robert Hurlbut (New York, Jan. 30, 2019);
(6) the NRCP 30(b)(6) designees for:

Writ proceedings were expressly discussed during the January 9, 2019 hearing on the Directors' Motion for Reconsideration. See **RPIA000107-125**, at 17:4-18:12.[6] The Directors nonetheless delayed filing the instant Petition until March 13, 2019.

IV. LEGAL ANALYSIS

a. Judge Allf correctly denied the Directors' various Rule 12 motions.

i. There is no substantive difference between Nevada and Delaware law regarding pleading director liability.

The Directors misunderstand both the BJR and the substantial overlap of Delaware and Nevada law on the issue. "The fiduciary duties owed by directors of a Delaware corporation are the duties of due care and loyalty." See In re Walt Disney Co. Derivative Litig., 907 A.2d 693, 745 (Del.Ch.2005); Aronson v. Lewis, 473 A.2d 805, 812 (Del. 1984),

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(a) Uni-Ter Underwriting Management;
(b) Uni-Ter Claims Services; and
(c) US RE Corporation

(New York, Feb. 19 and 20, and Mar. 13 and 14, 2019, Joseph Fedor, Dick Davies, and Anthony Ciervo)

There were also depositions taken in Las Vegas, including: (1) the NRCP 30(b)(6) designee for the Receiver (Mr. Bob Greer, Nov 8, 2018); and (2) Ms. Constance Akridge, Esq. (percipient witness, Mar. 1, 2019).

[6] "MR. PEEK: And thank you, Your Honor, because you do anticipate a writ. THE COURT: I see the handwriting on the wall."

overruled on other grounds by Brehm v. Eisner, 746 A.2d 244 (Del. 2000) ("[The BJR] is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company."); Smith v. Van Gorkom, 488 A.2d 858, 872 (Del. 1985), overruled on other grounds by Gantler v. Stephens, 965 A.2d 695 (Del. 2009).

For its part, NRS 78.138 tracks that exact language. See NRS 78.138(1) (The fiduciary duties of directors and officers are to exercise their respective powers in good faith and with a view to the interests of the corporation."), and NRS 78.138(3) ("directors and officers, in deciding upon matters of business, are presumed to act in good faith, on an informed basis and with a view to the interests of the corporation"); see also Shoen v. SAC Holding Corp., 122 Nev. 621, 636-38, 137 P.3d 1171, 1181-82 (2006) (discussing in depth and adopting Aronson); Wynn Resorts, Ltd. v. Eighth Judicial Dist. Ct., 399 P.3d 334, 342-43 (Nev. 2017) (also citing to Aronson). Therefore, there is no substantive difference between Nevada and Delaware law, which explains and supports the wholly appropriate and still viable reliance by Nevada courts

on Delaware authorities.

ii. The TAC only needs to satisfy notice pleading standards.

In resolving pleadings stage challenges, "[t]he test for determining whether the allegations of a cause of action are sufficient to assert a claim for relief is whether the allegations give **fair** notice of the nature of the basis of the claim and relief requested." See Ravera v. City of Reno, 100 Nev. 68, 70, 675 P.2d 407, 408 (1984) (emphasis added); see also Liston v. Las Vegas Metro. Police Dep't, 111 Nev. 1575, 1578–79, 908 P.2d 720, 723 (1995) ("A plaintiff who fails to use the precise legalese … but who sets forth the facts which support his complaint thus satisfies the requisites of notice pleading."). In F.D.I.C. v. Delaney, No. 2:13-CV-924-JCM (VCF), 2014 WL 3002005, *1 (D.Nev.), the court applied FRCP 8, and only FRCP 8, with respect to the breach of fiduciary duty claim alleged under Nevada state law. See id. There is no obligation to give complete or perfect notice or otherwise satisfy hyper-technical language requirements. Traditional notice pleading sufficiency is all that was and is required of the TAC.

The In re KNH Aviation Servs., Inc. case, 549 B.R. 356, 362–63

(Bankr. D.S.C. 2016) (applying Delaware law), is particularly useful. Holding the subject complaint was sufficient, the court made the following remarks:

- "The amended complaint speaks in general terms of the alleged actions constituting a breach of fiduciary duty." See id.
- "A claim for breach of the duty of care requires a showing of gross negligence which generally 'requires directors and officers to fail to inform themselves fully and in a deliberate manner'." See id. (quoting Burtch v. Opus, LLC ("In re Opus East, LLC"), 528 B.R. 30, 66 (Bankr.D.Del.2015)).[7]

The In re KNH Aviation Servs. court then went on to evaluate the sufficiency of the allegations as to the fiduciary duty of care:

- The subject complaint "states that Defendants were 'grossly negligent in failing to recommend that the owners properly capitalize the Debtor in late 2010 and in each fiscal quarter thereafter'." See id.
- "It also states that Defendants 'failed to inform themselves, before

[7] The court here also quoted Mukamal v. Bakes, 378 Fed.Appx. 890, 901–02 (11th Cir.2010) (applying Delaware law) in stating: "Moreover, even upon insolvency, the duty of care to the corporation remains the same." See id.

making business decisions, of all material information reasonably available to them'." See id.

- "With respect to the breach of the duty of care, Plaintiff's amended complaint contains, among other relevant allegations, that [Defendants] 'failed to make properly informed management decisions and/or were grossly negligent in their failure to recommend to the owners that an infusion of additional capital was necessary or advisable'[.]" See id.
- The subject complaint also alleged the Defendants "abdicated their duty to be informed and/or were wholly disregarding the financial information to which they had access'[.]" See id.
- The subject complaint also alleged the Defendants "were grossly negligent in failing to inform themselves of all material information regarding repayment of insider loans and in creating and utilizing KNH Air Logistics, LLC[.]" See id.
- It also alleged that Defendants "were grossly negligent in allowing Debtor to continue in insolvency and in failing to inform themselves of all material information reasonably available to them[.]" See id.

These are virtually identical to the allegations made in the TAC. See e.g.,

1 APP00037, at ¶¶ 32, 34, 58, 59, 99, 105, 113, 117, 122, 126, 145, 146, 148, 153-55, 163, 164, 170, 192, 193, 220, 221, 226, 230-32

Moreover, the Delaney court plainly supports Plaintiff and fatally undermines the Directors' "plead and prove" argument:

> However, defendants misstate the BJR. The BJR does not "preclude" liability for a breach of fiduciary duty; it merely creates a presumption that directors act on an informed basis and in the best interest of the corporation. Although the BJR states that a claimant must prove that the breach of fiduciary duties involved intentional misconduct, fraud or knowing violation of the law, **such proof is not required at this stage of the proceedings**. The allegations set forth by the complaint are sufficient at this stage to rebut the presumption created by the BJR. While defendants may prevail under the BJR at the summary judgment stage or at trial, such a determination is inappropriate at this motion to dismiss stage.

See Delaney, 2014 WL 3002005, at *4 (emphasis added).

iii. The TAC is sufficiently pleaded, even under the Directors' incorrect framing of the applicable test.

The Directors posit that, instead of conducting the above type of analysis of the pertinent allegations, the District Court should have evaluated the TAC in light of the supposed "elements" set forth in NRS 78.138(7). See Petition, at § IV.C. Those three (3) putative "elements"

are: (1) rebuttal of the BJR (NRS 78.138(3)); (2) that the acts or omissions constitute a breach of fiduciary duty; and (3) that the acts or omissions are characterized by "fraud, intentional misconduct, or a knowing violation of the law." See id. The Directors are incorrect on each point.

The first "element" is rebuttal of the business judgment rule's ("BJR") protective presumption in NRS 78.138(3). The Directors concede the TAC's sufficiency in that regard. The second element is that the alleged acts or omissions constitute a breach of fiduciary duty. The TAC repeatedly alleges as much. Moreover, the test for whether there is a breach of the duty of care is gross negligence, which has also been expressly and repeatedly alleged in the TAC. But again, this is not actually an issue because the Directors concede that the TAC adequately pleads gross negligence. See 6 APP01382, at 11:21-12:2, and n.8, and at 5:7; see also Petition, at p.5, and p.14, n.3; **RPIA000085-106**, at 10:5-6; **RPIA000107-125**, at 8:10-16.[8] The third element requires the Directors to

[8] The Directors also admit the sufficiency of the TAC's allegations as to the deepening claim. See Petition, at p.5 (that the Directors failed "to take corrective actions *[which thereby]* prolonged L&C's operations such that [the Directors'] inaction increased L&C's insolvency"); see also Smith v. Arthur Andersen LLP, 421 F.3d 989, 1006 (9th Cir.2005) (recognizing validity of deepening of the insolvency claim); In re Agribiotech, Inc., 319 B.R. 216, 224 (D.Nev. 2004) (same).

have acted with either "fraud, intentional misconduct, or a knowing violation of the law." Again, the TAC repeatedly alleges the Directors knowingly violated the law by: (1) failing to properly inform themselves as to several decisions (as well as L&C's overall financial condition); and (2) unreasonably relying on the UniTer Defendants, especially following the Division of Insurance's ("DOI") warnings regarding L&C's capital deterioration.

1. The TAC sufficiently pleads gross negligence, which thereby rebuts the BJR.

This particular aspect of the analysis requires nothing more than resort to the Directors' own admissions that the TAC sufficiently pleads gross negligence. See 6 APP01382, at 11:21-12:2, and n.8, and at 5:7; see also Petition, at p.5, and p.14, n.3; **RPIA000085-106**, at 10:5-6; **RPIA000107-125**, at 8:10-16.

But besides the Directors' concessions, other courts considering allegations nearly identical to those in the TAC have concluded that such are sufficient to state a claim for breach of fiduciary duty. In NCS Healthcare, Inc. v. Candlewood Partners, LLC, 827 N.E.2d 797, 803, ¶¶ 28, 29, 160 Ohio App.3d 421, 429 (2005), the court held that had the plaintiff alleged that "the board failed to exert any deliberative effort in

making its decisions" or "were uninformed … or were grossly negligent," then the subject complaint would have sufficiently stated a claim for breach of fiduciary duty. See id. That comports exactly with the court's determination of sufficiency in the In re KNH Aviation Servs., Inc. case as discussed above. See id., 549 B.R. at 362–63; see also Van Gorkom, 488 A.2d at 873 ("While [there are] a variety of terms to describe the applicable standard of care, … under the business judgment rule director liability is predicated upon concepts of gross negligence.). To the same extent and effect, "[i]n Nevada, the business judgment rule defines the line between unactionable ordinary negligence and actionable gross negligence." See F.D.I.C. v. Jacobs, 3:13-CV-00084-RCJ, 2014 WL 5822873, at *4 (D.Nev.); see also Shoen, 122 Nev. at 639, 137 P.3d at 1184.

In this instance, the TAC repeatedly alleges both that the Directors were uninformed and grossly negligent. See 1 APP00037, at ¶¶ 32, 34, 58, 59, 99, 105, 113, 117, 122, 126, 145, 146, 148, 153-55, 163, 164, 170, 192, 193, 220, 221, 226, 230-32.[9] These allegations more than suffice to rebut

[9] The TAC's sufficiency is evaluated in its entirety and not merely by reference to the title given or specific few paragraphs related to a particular claim for relief. See 1 APP00037, at ¶ 217 (incorporating all

the BJR and give "fair notice" of Plaintiff's theory to the Directors. See Ravera, 100 Nev. at 70, 675 P.2d at 408; Liston, 111 Nev. at 1578–79, 908 P.2d at 723.[10]

2. The TAC sufficiently alleges the Directors breached their fiduciary duty of care.

The remaining analysis is in some respects circuitous. "[D]irector liability is predicated upon concepts of gross negligence." See Van Gorkom, 488 A.2d at 873. Nevada courts come to the same conclusion. See Jacobi v. Ergen, No. 2:12-cv-2075-JAD-GWF, 2015 WL 1442223, *4 (D.Nev.) ("A director's misconduct must rise at least to the level of gross negligence to state a breach of the fiduciary duty of due care claim[.]"). In other words, allegations that sufficiently state gross negligence are by definition equally sufficient to satisfy the supposed second "element" of NRS 78.138.

The TAC repeatedly alleges that the Directors were uninformed,

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other paragraphs); Cohen v. Mirage Resorts, Inc., 119 Nev. 1, 19-20, 62 P.3d 720, 732 (2003).

[10] This Court will also note that the Directors themselves advocated minimal pleading standards in their Third-Party Complaint. See e.g., **RPIA000048-60**, including at ¶ 38. The Directors nowhere explain why their own notice-pleading allegations suffice, whereas the TAC does not.

grossly negligent, and failed to exercise appropriate diligence and/or care. See e.g., 1 APP00037, at ¶¶ 32, 34, 58, 59, 99, 105, 113, 117, 122, 126, 145, 146, 148, 153-55, 163, 164, 170, 192, 193, 220, 221, 226, 230-32. Moreover, the Directors concede that the TAC adequately pleads gross negligence. See 6 APP01382, at 11:21-12:2, and n.8, and at 5:7 (calling gross negligence claim "viable"); see also Petition, at p.5 (reiterating that gross negligence claim is "viable"), and p.14, n.3; **RPIA000085-106**, at 10:5-6; **RPIA000107-125**, at 8:10-16.

3. The TAC also sufficiently alleges the Directors' knowingly violated their duties, and thus, the law.

But the circularity does not end there. Having conceded that the TC sufficiently pleads gross negligence, the Directors cannot claim that the TAC does not sufficiently also plead a knowing violation of the law.

Nevada case authorities define "gross negligence" in terms only of "indifference to legal duty" and expressly declare that it "falls short of ... a willful and intentional wrong."[11] See Hart v. Kline, 61 Nev. 96, 116 P.2d

[11] Furthermore, in their own prior lawsuit against the Uni-Ter defendants (Case No. 5:13-cv-00746-MAD-ATB, Oneida Savings Bank, et al. v. Uni-Ter Underwriting Management Corp., et al.), the Directors themselves argued that a certain degree of recklessness constitutes "conscious

672, 674 (1941); see also Dushane v. Acosta, 2015 WL 9480185, *1 (Nev.App.); F.D.I.C. v. Johnson, No. 2:12-CV-00209-KJD, 2012 WL 5818259, *6 (D.Nev.). Had the Legislature intended only for actual fraud or intentional misconduct to trigger individual liability as the Directors contend, it easily could and would have said so. It did not. Rather, NRS 78.138(7)(b)(2) expressly and unambiguously includes the clause "or knowing violation of the law." The Directors do not even mention this (inconvenient) portion of the statute. Given the Directors' wholesale indifference to and abdication of their duties in this case, that language cannot simply be ignored as the Directors desire.

The TAC repeatedly and expressly alleges the Directors' knowing violations of their statutory duty to be informed. See e.g., 1 APP00037, at ¶¶ 104, 105, 117, 121, 122, 145, 230-32.[12] Thus, the TAC provides sufficient notice to the Directors of their "knowing violation of the law."

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misconduct sufficient for the scienter aspects of a fraud-related claim." See id. [ECF. 45], **RPIA000001-47**, at RPIA000020, at ll.18-22.

[12] The Directors are charged with knowing their statutory duties. See Advanced Countertop Design, Inc. v. Second Judicial Dist. Ct., 115 Nev. 258, 272, 984 P.2d 756, 759 (1999).

iv. There is no requirement to plead either fraud or intentional misconduct.

The Directors' position that director liability requires "something more than gross negligence ... because NRS 78.138(7) says there must be more than gross negligence" is simply incorrect, as well as internally inconsistent. See **RPIA000085-106**, at 10:5-15; 6 APP01382, at 6:22-23.[13] This argument is directly counter to the Directors' own argument that NRS 78.138 must be strictly construed. See e.g., 6 APP01382, at 8:21-22 (arguing for strict construction of the conjunctive term "and" in the very same section, NRS 78.138(7)). In addition, the Directors' position is neither supported by any authorities in the Petition nor any rational public policy considerations. The plain language of NRS 78.138 plainly states that liability can be predicated merely on a "knowing violation of law," with no reference at all to either "fraud" or "intentional misconduct." See Shoen, 122 Nev. at 639, 137 P.3d at 1184; Wynn Resorts, 399 P.3d at 343; Jacobs, 2014 WL 5822873, at *4.

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[13] But compare 6 APP01382, at 11:21-12:2 and n.8 ("[T]he Director Defendants do not dispute that, at the pleading stage, allegations of gross negligence involving inattention and lack of diligence ... may be sufficient to plead rebuttal of the [BJR] presumption."); Jacobs, 2014 WL 5822873, at *4; Shoen, 122 Nev. at 639, 137 P.3d at 1184; Wynn Resorts, 399 P.3d at 343; In re Newport Corp. Shareholder Litig., 2018 WL 1475469, *2 (Nev.Dist.Ct.); In re Parametric Sound Corp. Shareholders' Litig., 2018 WL 1867909, *2 (Nev.Dist.Ct.); Jacobi, 2015 WL 1442223, at *4.

This Court must give meaning and effect to all parts and words of the statute. See Harris Assoc. v. Clark County Sch. Dist., 119 Nev. 638, 642, 81 P.3d 532, 534 (2003). However, the Directors' interpretation of NRS 78.138 ignores a significant part of the statute that deals with the precise situation presented by this case. By holding directors accountable for knowing violations of the law, corporations and their shareholders are protected from directors, such as these, who ignore their duties to be informed when making decisions. To only hold directors liable for intentional or fraudulent harm would be the demise of informed directors and the protections of corporations in Nevada. There must be some deterrent to shirking fiduciary duties. As stated before, being business friendly is different from allowing a system that encourages corporate mismanagement and losses to the public.

b. The Directors' Petition is also barred by laches.

The Petition should also be denied based on the Directors' unreasonable delay in seeking such relief from this Court. In Building and Const. Trades Council of Northern Nevada v. State, 108 Nev. 605, 610-12, 836 P.2d 633, 636-37 (1992), writ relief was denied based on a single

month's delay in seeking relief from this Court. See id.[14] This Court should do likewise in this case based on the Directors' far greater and more unreasonable delays.

This Court set forth three factors that weigh on the applicability of laches: (1) whether there was inexcusable delay in making the petition; (2) whether there is a waiver implied from the petitioner's acquiescence in existing conditions; and (3) whether there is prejudice to the responding parties. See id. at 611, 836 P.2d at 637. In this case, all three factors work against the Directors and compel the application of the doctrine to bar the requested relief.

The close of pleadings occurred in this case years ago, on October 21, 2016. See **RPIA000061-84**; see also 3 APP00607, at 4:15-17 ("The pleadings closed and discovery opened ...").[15] "Ordinarily, a motion for

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[14] In Building and Const. Trades, a public works project was bid pursuant to NRS 341. All bids came in above the appropriated budget, which mandated rejection of all bids and a project re-design / re-bid. See id. The public agency did not adhere to the statutory process and, instead, negotiated exclusively with the lowest original bidder. A competing bidder learned of those exclusive negotiations, as well as the awarded bidder's commencement of work, yet delayed one (1) month in seeking any legal or equitable relief from this Court. See id. at 611, 836 P.2d at 637.

[15] The various Uni-Ter defendants filed their Answers months earlier, in August 2016.

judgment on the pleadings should be made promptly after the close of the pleadings." See 5 C. Wright & A. Miller, *Federal Practice and Procedure*, § 1367 (1969). The Directors, however, waited almost two years to file their 12(c) Motion. See 3 APP00607. After that dilatory 12(c) motion was denied, they elected to further delay by filing an unnecessary Motion for Reconsideration. See 6 APP01382. Then, the Directors again unreasonably delayed before filing their Petition.

In this case, all three factors bearing on the application of laches work against the Directors to bar the requested relief. See Building and Const. Trades, 108 Nev. at 611, 836 P.2d at 637. First, the Directors unreasonably and repeatedly delayed before seeking any relief from this Court. Second, the Directors waived the matter by their knowing acquiescence to existing conditions, meaning their continued presence in the litigation. The Directors knew back in 2016 of their potential recourse to this Court based on identical arguments. Their requested relief, the same as they requested in 2016, would obviously have a material impact on the litigation landscape, yet the Directors chose to do nothing for years in that regard. Third, Plaintiff has conducted extensive written and

deposition discovery since: (1) the 2016 denial of the Directors' 12(b)(5) Motion; and (2) the 2018 filing of the Directors' 12(c) Motion (and the related Motion for Reconsideration). Such discovery included numerous out-of-state depositions. See n.6 (pp.7-8), supra.

All of the factors supporting the application of the laches bar exist in this case. This Court should thus deny the Directors' Petition on this basis.

c. There is no basis for extraordinary relief because the Directors still have an adequate remedy at law.

Finally, extraordinary relief is available only when there is no "plain, speedy and adequate remedy in the ordinary course of law." See Okada v. Eighth Judicial Dist. Ct, -- P.3d --, 2018 WL 387927, at *2 (Nev. Jan. 11, 2018); see also Petition, at p.8. The Directors, however, fail to explain how they have no such plain, speedy and adequate remedy under the circumstances of this case. See generally, Petition. The real issue here is that the Directors have not availed themselves of the obvious and available procedures below, like summary judgment. Instead, the Directors seek an excuse from having to explain their failures and rebut the allegations that they breached their fiduciary duty via admissible evidence.

The Directors could have, at any time over the four (4) years of litigation, filed a motion for summary judgment. Doing so would have triggered Plaintiff's obligation to rebut the BJR via appropriate evidence (as opposed to simply allegations). See NRCP 56. They eschewed that obvious step in favor of: (1) doing nothing for years; and then (2) filing their NRCP 12(c) Motion (and subsequent Motion for Reconsideration). As will be discussed further herein, the reason for their choice is transparent; they know they cannot establish the condition precedent to the protections of the BJR (that they took good faith efforts to implement policies, procedures, and/or systems) and that, ultimately, they will be liable.

Even if the District Court denied such a motion for summary judgment, the Directors would still have a plain, speedy, and adequate remedy via a timely appeal following trial. However, the Directors conveniently ignore their various legal remedies and skip to the contentions that: (1) in this case, there is no factual dispute and the trial court ignored its statutory obligation to dismiss them; and/or (2) that "an important issue of law needs clarification." See Petition, at pp.8-9. Neither of these applies.

First, there is no "clear" statutory obligation to dismiss the action. See Petition, at p.9 (citing State v. Eighth Judicial Dist. Ct., 118 Nev. 140, 147, 42 P.3d 233, 238 (2002)). NRS 78.138 only creates a presumption upon which the Directors may rely conditioned on their ability to produce evidence that they acted on an informed basis. See Delaney, 2014 WL 3002005, at *4; In re Walt Disney, 907 A.2d 693, 747 (Del.Ch. Aug2005) ("Disney IV"). In other words, the determination of whether the BJR is even applied to provide any measure of protection at all is made at trial, a point the Directors actually concede. See NRS 78.138(7)(a) ("... [t]he **trier of fact** determines that the *[BJR]* presumption ... has been rebutted" (emphasis added)). The Directors dance around that plain language in their Petition.

The Directors' authorities regarding extraordinary relief to rectify incorrect decisions on motions to dismiss are unhelpful to the Directors. For example, in State, 118 Nev. 140, there were numerous prior motions for summary judgment already granted in favor of various defendants at the time of decision on the challenged motion to dismiss. See id. at 148,

42 P.3d at 238.[16] In Smith v. Eighth Judicial Dist. Ct., 113 Nev. 1343, 950 P.2d 280 (1997), the issue was the legal effect of a plainly fugitive document. These cases present entirely different procedural postures and/or purely legal issues as compared against the case at bar.

Other cases, such as Round Hill General Improvement Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981), reveal that the narrow exception for extraordinary relief applies only to instances statutorily mandated action. See id. at 603-04, 637 P.2d at 536; see also Advanced Countertop Design, Inc. v. Second Judicial Dist. Ct., 115 Nev. 258, 270-71, 984 P.2d 756, 758-59 (1999). There simply is no action mandated in NRS 78.138, so these cases are distinguishable and inapposite.

Second, no "clarification" is necessary on the narrow point actually before this Court. All that is required of the TAC are normal, notice-pleading allegations. See e.g., Liston, 111 Nev. at 1578–79, 908 P.2d at 723; NCS Healthcare, Inc., 827 N.E.2d at 803, 160 Ohio App.3d at 429. This is a well-settled, and clearly and consistently stated principle. That the Directors dislike the District Court's rulings does not mean there is a lack of clarity or serve as a basis for extraordinary relief.

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[16] This Court should also note Justice Shearing's dissent. See id. at 156, 42 P.3d at 243-44.

V. CONCLUSION

The bottom line is that the TAC sufficiently describes and alleges numerous variants of a claim for director liability. It expressly alleges gross negligence by the Directors in carrying out their duties to L&C. It expressly alleges the Directors failed to act on an informed basis. It expressly alleges the Directors failed to exercise appropriate diligence and/or care as to their duties to L&C. It expressly alleges the Directors knew of various circumstances impacting the execution of their legal duties to L&C and yet failed to alter their conduct appropriately. These all suffice to state a claim from breach of the fiduciary duty and survive any and all Rule 12 motions.

Moreover, the Directors have unreasonably slow-played this aspect of the litigation while watching Plaintiff (as well as the Uni-Ter defendants) expend much time and effort in both written and cross-country deposition discovery.

The Directors' Petition is a tactic to avoid having to ever present evidence as to what they did – or more accurately, failed to do – during their stewardship of L&C. Adopting the Directors' interpretation of NRS 78.138 would be to abandon the policy underlying the statute and be

dangerous for the state and people of Nevada.

For the reasons set forth above, this Court should deny the Directors' Petition and permit this action to proceed through the remaining discovery and to trial. At that time, the Directors will have an opportunity to explain themselves and defend against the claim they breached their fiduciary duty to L&C.

DATED this 12th day of June, 2019.

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