

IN THE SUPREME COURT OF NEVADA

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UNITE HERE HEALTH, a multi-employer health and welfare plan, as defined in ERISA Section 3(37); and NEVADA HEALTH SOLUTIONS, LLC, a Nevada limited liability company,

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Elizabeth A. Brown  
Clerk of Supreme Court

Appellants,

vs.

STATE OF NEVADA EX REL. COMMISSIONER OF INSURANCE,  
BARBARA D. RICHARDSON, IN HER OFFICIAL CAPACITY AS  
STATUTORY RECEIVER FOR DELINQUENT DOMESTIC INSURER,  
NEVADA HEALTH CO-OP; and GREENBERG TRAURIG, LLP,

Respondents.

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District Court Case No. A-15-725244-C, Department XXI

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**APPELLANTS' APPENDIX - VOLUME 10 OF 13**

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**June 14, 2021**

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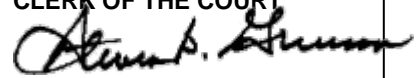
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**TAB 40**

**TAB 40**



**OPPM**

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**EIGHTH JUDICIAL 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.

NEVADA HEALTH CO-OP,

Defendant.

Case No.: A-15-725244-C

Dept. No.: I

**OPPOSITION TO MOTION TO  
INTERVENE**

**Hearing: November 5, 2020, Chambers**

COMES NOW Plaintiff, Commissioner of Insurance BARBARA D. RICHARDSON (“Commissioner” or “Plaintiff”), in her capacity as Receiver of Nevada Health CO-OP (“NHC”), by and through her undersigned counsel, and hereby files this Opposition to the Motion to Intervene filed by Silver State Health Insurance Exchange. This Opposition is made and based on the points and authorities set forth below, all pleadings on file in this matter, and any oral argument allowed by



1 the Court at the time of hearing.

2 DATED this 13th day of October, 2020.

3 GREENBERG TRAURIG, LLP

4 /s/ Donald L. Prunty  
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14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 Silver State Health Insurance Exchange (the “Exchange”) asks this Court to grant relief that  
16 cannot be granted for multiple reasons. The Exchange essentially asks the Court to ignore the  
17 deadline for filing claims against the Receivership Estate, and to allow a claim, even though that  
18 claims has not been filed despite the deadline to do so lapsing more than three years ago. Allowing  
19 such an untimely claim would not only violate the express orders of this Court but would also violate  
20 the statutory law governing the same and prejudice other claimants. Moreover, the Exchange  
21 concedes that the relief sought is moot, the claim the Exchange seeks to assert cannot be paid through  
22 the receivership. As such, the Exchange’s Motion fails to provide this Court with any recognizable  
23 basis to permit intervention and should be denied in its entirety.

24 **STATEMENT OF RELEVANT FACTS**

25 The Plaintiff, Barbara Richardson, is the Nevada Commissioner of Insurance and is the  
26 Receiver for NHC. NHC was a non-profit health insurer created in accordance with Nevada insurance  
27 law and the Patient Protection and Affordable Care Act, 42 U.S.C. § 18001, *et seq.* (“ACA”). NHC  
28 operated as a CO-OP insuring Nevada residents in 2014 and 2015, but experienced significant  
financial distress. In 2015, the then-acting Nevada Commissioner of Insurance filed the petition  
herein requesting appointment as Receiver of NHC, for issuance of a Temporary Injunction, and for

1 other related relief.<sup>1</sup> On October 14, 2015, the Receivership Court entered its Permanent Injunction  
2 and Order Appointing the Commissioner of Insurance as Permanent Receiver of NHC, and Cantilo  
3 & Bennett, LLP as the Special Deputy Receiver (the “Receivership Order”).<sup>2</sup> As relevant here, the  
4 Receivership Order provided:

5 “(8) All claims against the CO-OP, its assets, or the Property must be submitted to the  
6 Receiver as specified herein to the exclusion of any other method of submitting or  
7 adjudicating such claims in any forum, court or tribunal, subject to further Order of  
8 this Court. The Receiver is hereby authorized to establish a Receivership Claims and  
9 Appeal Process for all receivership claims. The Receivership Claims and Appeal  
10 Process shall be used to facilitate the orderly disposition or resolution of all claims  
11 involving the receivership or the receivership estate.”<sup>3</sup>

12 In September 2016, NHC was ordered to be liquidated.<sup>4</sup> Thereafter, the Receivership Court  
13 approved the Receiver’s Claims and Appeal Procedures and set an absolute deadline for the filing of  
14 claims for April 28, 2017.<sup>5</sup> Specifically, on October 10, 2016, the Court issued an order declaring  
15 NHC insolvent and placing NHC into liquidation which provided, in pertinent part:

16 “[A]ll claims must be submitted to the Receiver and verified by affidavit with  
17 supporting documentation under NRS 696B.330(1) and submitted under the claims  
18 filing deadline under NRS 696B.330.(2)...”<sup>6</sup>

19 Per the terms of the Liquidation Order the claim filing deadline was April 29, 2017.<sup>7</sup> The Liquidation  
20 Order further stated:

21 “No claim filed after the Claim Filing Deadline may share in the assets of the estate,  
22 and NHC shall have no liability as to any such late-filed claims.”<sup>8</sup>

23 The Receiver has processed those claims that were timely filed in accordance with the terms  
24 of the Liquidation Order and the Liquidation Relief Order.<sup>9</sup>

25 <sup>1</sup> See petition for Appointment of Receiver, filed September 25, 2015

26 <sup>2</sup> See Permanent Injunction and Order Appointing the Commissioner of Insurance as Permanent Receiver of NHC, and  
27 Cantilo & Bennett, LLP as the Special Deputy Receiver (the “Receivership Order”).

28 <sup>3</sup> *Id.*

<sup>4</sup> See Final Order Declaring NHC to be Insolvent and Placing NHC into Receivership (“Liquidation Order”), dated  
September 16, 2016.

<sup>5</sup> See Final Order Granting Other Relief Related to Receiver’s Motion for Final Order Finding and Declaring Nevada  
Health Co-Op to Be Insolvent and Placing Nevada Health Co-Op into Liquidation dated October 10, 2016 (the  
“Liquidation Relief Order”).

<sup>6</sup> *Id.* at ¶ 2(b).

<sup>7</sup> Liquidation Order, p. 2, item (5).

<sup>8</sup> *Id.* at (7).

<sup>9</sup> See the Liquidation Order and the Liquidation Relief Order *supra*.

As noted by the Exchange, the assets of the NHC are not expected to be sufficient to satisfy any claims below Priority Class B.<sup>10</sup> Moreover, The Receiver has no records indicating that any claim was filed on behalf of the Exchange.<sup>11</sup>

#### **The Exchange's Purported Claim**

In the Motion, the Exchange states that it "believes" that it filed a proof of claim with the Receiver but did not produce any affidavit asserting that the claim had been submitted. Indeed, the Exchange concedes that it cannot prove that a claim was timely filed.<sup>12</sup> Moreover, despite this unsupported belief that a claim had been filed, it is apparent that the Exchange never inquired of NHC as to the status of this phantom claim, despite the passage of more than three years since the Claim Filing Deadline. Indeed, it was not until NHC filed suit against the Exchange in June 2020 that the Exchange seems to have suddenly remember that it purported to have a claim for roughly the same amount, and apparently made inquiry.

In response to that inquiry, NHC advised that it had not received a timely filed claim. Citing the Claim Filing Deadline, NHC advised that should the Exchange submit a claim at this point, such claim would not be processed due to its untimeliness.

The Exchange's Motion to Intervene followed this advisement, demanding that the Receiver be required to process and classify the Exchange's claim.<sup>13</sup> In its Motion, the Exchange concedes that regardless of whether the claim is processed and classified, the Exchange will not share in any proceeds of NHC's Receivership Estate.<sup>14</sup>

#### **LEGAL ARGUMENT**

The Motion to Intervene should be denied. The Exchange's efforts to "intervene" in this insurance delinquency proceeding is nothing more than an effort to circumvent the claims process and its express final deadline for submission of claims. Rule 24 should not be used as a tool to escape the consequences of failing to comport with deadlines, particularly three years after the deadlines

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<sup>10</sup> Motion, 3:16-20, citing the Receiver's Nineteenth Status Report, filed July 10, 2020.

<sup>11</sup> Motion, Exhibit B.

<sup>12</sup> Motion, 6:3-5.

<sup>13</sup> Motion, 7:18.

<sup>14</sup> Motion, 5:13-15 ("[T]he Exchange would not share in any distribution from the estate even if [its claim] it were in Class E where it should be, so putting it in Class J makes no difference to the Exchange or to the CO-OP.").

1 have passed. Indeed, the Exchange cannot show that its interests were not adequately represented,  
2 because it failed to comply with and take advantage of the claims process. Moreover, the Exchange  
3 did not comply with the requirements of NRCP 24 in seeking intervention, and thus, denial is  
4 appropriate on that basis as well.

5 Finally, even if were appropriate here, such intervention would be futile. Permitting the  
6 Exchange to intervene offers no practical benefit, as the Exchange concedes it is not entitled to a share  
7 in NHC's estate. Indeed, the Receiver is precluded, by this Court's Final Liquidation Order, from  
8 recognizing any liability of NHC for late filed claims. Thus, there is no rational basis upon which  
9 this Court could permit the Exchange to intervene.

10 As the Exchange has failed to show that it is entitled to intervention, the Motion should be  
11 denied.

12 **I. THE EXCHANGE IS NOT ENTITLED TO INTERVENE IN THIS INSURANCE**  
13 **DELINQUENCY ACTION, AS IT HAS NOT SATISFIED THE REQUIREMENTS OF**  
14 **NRCP 24.**

15 The Motion should be denied, as the Exchange cannot show that it is entitled to intervention  
16 under NRCP 24. Indeed, the Exchange has not even complied with the procedural requirements of  
17 NRCP 24.

18 The Rule provides, in relevant part:

19 (a) **Intervention of Right.** On timely motion, the court must permit anyone to  
20 intervene who:

- 21 (1) is given an unconditional right to intervene by a state or federal statute; or  
22 (2) claims an interest relating to the property or transaction that is the subject  
23 of the action, and is so situated that disposing of the action may as a practical  
24 matter impair or impede the movant's ability to protect its interest, unless  
25 existing parties adequately represent that interest.

26 \* \* \*

27 (c) **Notice and Pleading Required.** A motion to intervene must be served on  
28 the parties as provided in Rule 5. The motion must state the grounds for  
intervention and be accompanied by a pleading that sets out the claim or defense  
for which intervention is sought.

NRCP 24.

**A. The Exchange Failed to Comply with the Procedural Requirements of NRCP 24(c), as No Pleading Setting Forth its Purported Claim or Defense is Provided.**

The Exchange's Motion must be denied, because the Motion fails to include a complaint (or answer) that sets forth the nature of either its claim against NHC or its defense against the claims of the Receiver, as required under NRCP 24(c). Indeed, the Exchange does not even indicate whether it seeks to be a Plaintiff or Defendant in this delinquency action. Presumably, since the Exchange discusses a claim against NHC, it would seek to act as a Plaintiff. However, under NRS 696B.350, *only* the Insurance Commissioner has the authority to petition for receivership, or to otherwise take action that interferes with the business of a Nevada insurer. Given the foregoing, the Exchange has unsurprisingly failed to provide a complaint demonstrating how the Exchange could have standing to proceed as a Plaintiff Intervenor in this delinquency action. Nor has the Exchange presented any information to establish any possible defense to the delinquency claims raised by the Insurance Commissioner against NHC.

The Exchange may have attempted to comply with the requirements of NRCP 24 through the filing of its disingenuously titled "Errata," which contains only an "Exhibit C." Oddly, the Motion itself does not reference Exhibit C. Moreover, Exhibit C appears to consist of the Motion recast into another form, *i.e.*, an "objection"<sup>15</sup> to the Receiver's determination, as it contains the same factual summary as the Motion, and the same legal argument as found in Parts B and C of the Motion. Thus, it appears that the Exchange does not truly seek to intervene as a party to this delinquency action, but instead, seeks to intervene in a single aspect of the proceedings. However, NRCP 24 does not permit any such piecemeal intervention; rather it contemplates the intervenor becoming a *party* in the litigation. *Saticoy Bay LLC v. JPMorgan Chase Bank, N.A.*, 388 P.3d 226 (Nev. 2017) (noting that intervenors are treated as parties to the original action, bound to all prior orders and decrees).

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<sup>15</sup> Under the Receivership Appeal Procedures approved by this Court, an Objection to a claim determination should be filed with the Special Deputy Receiver, and not with the Court. *See* Liquidation Relief Order, p. 2, item, (2), approving the Receivership Appeal Procedures set forth in Exhibit 4 to the Motion for Order Finding and Declaring NHC to be Insolvent, Placing NHC in Liquidation, and Granting Related Relief.

**B. The Exchange Cannot Show that it is Entitled to Intervention as of Right.**

Citing NRCP 24(a)(2), the Exchange argues that it is entitled to intervention as of right, contending that its interests are not adequately represented by the parties to the litigation. However, in making this claim, the Exchange is merely trying to circumvent the claims process that was instituted specifically to address those who had claims against NHC. While the Exchange is a debtor of NHC's, it also claims to have been a creditor. Here, the Receiver represents all those who were creditors of NHC. The Exchange has not shown that the Receiver's representation has been inadequate.

Here, the Exchange acknowledges that a claims procedure had been established, and that it had notice of such procedures. It also acknowledges that it is unable to show that it availed itself of that claim procedure in a timely manner. Rather, the Exchange contends the Receiver's unwillingness to accept and process a claim more than three years tardy renders the Receiver's representation inadequate. However, the Exchange's own failure to cooperate with the claims procedure cannot be deemed cause to permit intervention. Nevertheless, even if the Exchange were permitted to intervene, it would still be bound by the express order of this Court that NHC has no liability for untimely claims. *See Estate of Lomastro v. American Family Ins*, 124 Nev. 1060, 1067-68 (Nev. 2008) ("[W]hen an intervenor intervenes, it is bound by all prior orders and adjudications of fact and law as though it had been a party from the commencement of the suit.") (Internal quotation and citations omitted). Such prior orders may only be set only if the intervenor has not been remiss in seeking its rights. *Id.*

Moreover, to show inadequate representation, the intervenor must demonstrate that his interests in the outcome of the case diverge from those of existing parties. "If an applicant for intervention and an existing party share the same ultimate objective," then courts presume that the party adequately represents the interests of the non-party. *Citizens for Balanced Use v. Mont. Wilderness Ass'n*, 647 F.3d 893, 898 (9th Cir. 2011); *see Texas v. United States*, 805 F.3d 653, 661 (5th Cir. 2015) ("when the would-be intervenor has the same ultimate objective as a party to the lawsuit," then the party is presumed to adequately represent the interests of the non-party).<sup>16</sup>

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<sup>16</sup> Nevada's Rule 24 mirrors that of the federal rules. Where the Nevada Rules of Civil Procedure parallel the Federal Rules of Civil Procedure, rulings of federal courts interpreting and applying the federal rules are persuasive authority

1 This presumption may only be overcome by a "compelling showing" that the non-party's interests are  
2 not being adequately represented. *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003). Given  
3 that the Exchange has not even attempted to demonstrate that its interests are not adequately  
4 represented, the Exchange's request to intervene lacks any basis under NRCP 24.

5 The Receiver's goal, indeed, her *duty*, in this matter is to marshal NHC's assets, and to use  
6 such assets to pay NHC's obligations, including, if the assets are sufficient, claims of creditors. NRS  
7 696B.420(b). The Exchange's interest is as a creditor, and therefore, its goal is to have its claims  
8 paid. Accordingly, his interest is identical to that of the Receiver. *See also, Metcalf v. Investors*  
9 *Equity Life Ins. Co. of Hawaii, Ltd.* 910 P.2d 110 (Haw. 1966), cert. denied. 518 U.S. 1018 (1996)  
10 (noting that statutes governing the rehabilitation and liquidation of an insurer are designed "to protect  
11 the interests of the insureds, claimants, creditors, and the public generally.").

12 The Exchange *had* the opportunity to have his claim as an insured addressed by the Receiver  
13 yet failed to do so. The statutory scheme required under NRS 696B.330 was established for Exchange  
14 to file its claim in a timely manner, but the Exchange failed to comply with these requirements. The  
15 Exchange's failure to avail itself of the claims process does not result in its interests diverging from  
16 the Receiver's; such a result would render the claims process illusory.

## 17 **II. The Motion to Intervene Should be Denied Because it is Futile.**

18 As shown above, the Motion to Intervene should be denied because the Exchange has failed  
19 to show that it is entitled to intervention by right. Nevertheless, even as a practical matter,  
20 intervention should also be denied because the relief sought cannot be granted for several reasons  
21 and the Motion should be denied as futile.

22 Nevada law requires that claims be filed no later than the deadline determined by the  
23 Receivership Court. NRS 696B.330(2). Here, the Liquidation Order further precludes the relief  
24 requested by the Exchange, as it expressly proscribes any payment for claims filed after the Claims  
25 Filing Date, and, further provides that "NHC shall have no liability as to any such late-filed claims."<sup>17</sup>

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27 for this court in applying the Nevada Rules. *See Exec. Mgmt. Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 872,  
28 876 (2002).

<sup>17</sup> Liquidation Order, p. 2, at (7).

1 Accordingly, the Exchange’s contention that the Receiver failed to comply with the law by refusing  
2 to process the claim is simply wrong. To the contrary, the Receiver would violate the law in allowing  
3 a late filed claim to be paid.

4 In the Motion, the Exchange improperly contends that a Receiver has discretion to allow a  
5 late-filed claim, even if a timely claim is statutorily mandated, citing dicta in *Settlemeyer Sons v.*  
6 *Smith Harmer*, 124 Nev. 1206 (Nev. 2008). However, neither *Settlemeyer*, nor the cases cited therein  
7 explained how such discretion could exist in the face of a statutory mandate for timely claims, given  
8 the many decisions which have held that where statutory language is mandatory, there is no judicial  
9 discretion. See, e.g., *Fink v. Markowitz (In re Estate of Black)*, 367 P.3d 416, 418 (Nev.  
10 2016) (“‘Must’ is mandatory, as distinguished from the permissive ‘may.’”); *Johanson v. Eighth*  
11 *Judicial Dist. Court*, 124 Nev. 245, 249-50, 182 P.3d 94, 97 (2008) (holding that mandatory language  
12 in a statute “does not denote judicial discretion.”). Significantly, the existence of such a statutory  
13 mandate in the general receivership statutes was not even mentioned in *Settlemeyer*. Nor, contrary to  
14 the Exchange’s description of the *Settlemeyer* ruling, did the Supreme Court find that a receivership  
15 court had abused its discretion by refusing to allow a late filed claim. In fact, the appeal in *Settlemeyer*  
16 was not even from a judgment issued by a receivership court. Instead, *Settlemeyer* involved the  
17 reversal of a judgment entered in a non-receivership proceeding permitting the receivership to be  
18 garnished. Thus, the Exchange’s reliance on *Settlemeyer* is misplaced and has no bearing on this  
19 matter.

20 The Exchange also contends that because there is a priority class that includes “late claims”,  
21 that the Receiver has a duty to process such claims. However, NRS 696B.420 does not create a  
22 right to a late claim; it merely establishes that the priority class of a late filed claim—a striking  
23 difference. The existence of a claim class cannot override the statutory mandate that claims be  
24 timely filed. As one court explained:

25 Although the decisional law has established many rules of statutory construction, they all  
26 are basically guides in the judicial quest to determine the Legislature's intent so that the  
27 purpose of the legislation may be effectuated. Although the decisional law has established  
28 many rules of statutory construction, they all are basically guides in the judicial quest to  
determine the Legislature's intent so that the purpose of the legislation may be effectuated.



Courts must give effect to statutes according to the usual, ordinary import of the language employed in framing them.

*Kinder v. Pacific Public Carriers Co-op, Inc.*, 105 Cal.App.3d 657, 664 (Cal. Ct. App. 1980) (internal quotations and citations omitted). Here, NRS 696B.330 requires that claims be timely filed. To the extent that 696B.330(2) could be said to conflict with NRS 696B.420(1)(j), 696B.330(2) would necessarily prevail, as that provision was last amended in 2007, while 696B.420(1)(j) has been untouched since 1999. *See* 2007 Statutes of Nevada, p. 3332; *see also*, 1999 Statutes of Nevada, p. 2526; *see also*, *Williams v. State*, 402 P.3d 1260, 1265 (Nev. 2017) (“[W]hen statutes are in conflict, the one more recent in time controls over the provisions of an earlier enactment.”) (internal quotation and citation omitted). Moreover, the simple inclusion of late claims in the list of priority cannot override the express terms of the Court’s Liquidation Order prohibiting against NHC for late filed claims.

Furthermore, Nevada law expressly provides that a Receiver is *not* required to process any claims within priority classes that will not share in the assets of the estate. Specifically, the relevant statute states:

***“The receiver is not required to process any claims in a class until it appears that assets will be available for distribution to that class.*** If there are insufficient assets to process claims for a class, the receiver shall notify the court and may make a recommendation to the court for the processing of any such claims.”

NRS 696B.330(4) (emphasis added). As conceded by the Exchange, the Receiver notified the Court that assets are not available for distribution of any priority class below “B.” Accordingly, there is no basis for the Exchange’s contention that the Receiver violated the law in refusing to process a claim that should have been filed more than three years ago but is nevertheless **not** subject to distribution. In essence, the Exchange is seeking to intervene and asking this Court to permit an untimely claim which will admittedly never be paid to be processed in contravention of the clear terms of this Court’s Liquidation Order and the statutes governing the same.

It cannot be overshadowed that the Exchange concedes it is not entitled to share in any assets of NHC’s estate. This indisputable fact renders the relief sought in the Motion completely moot. *See Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010) (noting that a case may be

1 dismissed as moot when the court is not able to afford the complaint any effective relief, even if  
2 successful ). Because the ultimately relief sought by the Exchange by way of intervention simply  
3 cannot be granted, permitting intervention would be futile. Accordingly, the Motion should be  
4 denied.

5 **CONCLUSION**

6 For the foregoing reasons, Plaintiff respectfully requests this Court deny the Motion to  
7 intervene.

8 DATED this 13<sup>th</sup> day of October, 2020.

9 GREENBERG TRAURIG, LLP

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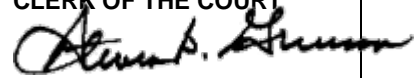
**CERTIFICATE OF SERVICE**

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I hereby certify that on this 13<sup>th</sup> day of October, 2020 , a true and correct copy of the foregoing ***Plaintiff's Opposition To Motion To Intervene*** was submitted for service using the Odyssey eFileNV Electronic Service system and served on all parties with an email address on record, pursuant to Administrative Order 14-2 and Rule 9 of the N.E.F.C.R. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

/s/ Andrea Lee Rosehill  
An employee of Greenberg Traurig, LLP

**TAB 41**

**TAB 41**



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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;

Case No. A-17-760558-B

Dept. No. XVI

**DEFENDANTS UNITE HERE HEALTH AND  
NEVADA HEALTH SOLUTIONS, LLC'S  
MOTION FOR LEAVE TO FILE THIRD-  
PARTY COMPLAINT**

**(Hearing Requested)**

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; UNITE HERE HEALTH, is a multi-employer health and welfare trust as defined in ERISA Section 3(37); DOES I through X inclusive; and ROE CORPORATIONS I-X, inclusive,

Defendants.

Pursuant to NRCP 14(a)(1), Defendants Unite Here Health and Nevada Health Solutions, LLC (jointly, “UHH”) hereby seek leave (the “Motion for Leave”) to file a Third-Party Complaint against Conduent State Healthcare, LLC, f/k/a Xerox State Healthcare, LLC (“Xerox”) and State of Nevada ex rel. Silver State Health Insurance Exchange (“Silver State”) (jointly, the “Proposed Third-Party Defendants”). As detailed below, UHH is entitled to contribution from the Proposed Third-Party Defendants in the event that Plaintiff Nevada Health CO-OP (the “CO-OP” or “NHC”) obtains a judgment against UHH. Pursuant to EDCR 2.30(a), a copy of the Proposed Third-Party Complaint is attached hereto as Exhibit A.

This Motion for Leave is made and based on the papers and pleadings on file, the following Memorandum of Points and Authorities, the exhibits attached hereto, and any oral argument as may be heard by this Court.

DATED this 15<sup>th</sup> day of October, 2020.

BAILEY ♦ KENNEDY

By: /s/ John R. Bailey

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JOSEPH A. LIEBMAN  
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## I. INTRODUCTION

Discovery has revealed that two non-parties—Xerox and Silver State—are responsible for a significant amount of the harm the CO-OP alleges it suffered from UHH’s alleged conduct. As a result, under NRCP 14(a) and well-established Nevada law, UHH may assert an inchoate claim for contribution against Xerox and Silver State via third-party practice in this litigation. Third-party practice promotes NRCP 14(a)’s goal of judicial economy and avoiding inconsistent judgments. If leave is not granted and UHH is found liable to the CO-OP, UHH will be forced to file a separate lawsuit against Xerox and Silver State. Requiring a separate lawsuit would be grossly inefficient and would risk inconsistent findings by different courts. Accordingly, this Court should grant leave to UHH to file its Proposed Third-Party Complaint.

Courts look at various factors—while keeping Rule 14(a)’s goal of promoting judicial economy at the forefront—in deciding whether to grant leave to a defendant to assert a third-party claim, including: “(1) possible prejudice to the plaintiff, (2) the possible prejudice to the third-party defendants, (3) the reasons for the delay in joinder, and (4) whether the joinder will delay or unnecessarily complicate the trial.”<sup>1</sup> Here, these factors clearly support giving UHH leave to file their Proposed Third-Party Complaint. First, there is no prejudice to the CO-OP. If anything, the CO-OP will benefit from having additional sources of recovery if liability is established. Second, there is no prejudice to Xerox or Silver State in participating in this litigation versus participating in a separate action for contribution; in fact, the availability of evidence and the knowledge possessed by witnesses will likely be greater in this action than in a subsequent action several years from now. Third, UHH justifiably waited to bring these third-party claims until they obtained and reviewed sufficient evidence—including, but not limited to, documents produced in discovery, documents received from public records requests, and opinions from their experts—before deciding to seek leave. Fourth, joinder of Xerox and Silver State (which are currently involved in related litigation with the CO-OP) in this litigation is not likely to delay or complicate trial, and is being requested prior to the Court’s deadline for amending pleadings and adding parties.

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<sup>1</sup> *United States v. New Castle Cty.*, 111 F.R.D. 628, 632 (D. Del. 1986).

1 In sum, this Court should grant the Motion in its entirety and permit UHH to file its Proposed  
2 Third-Party Complaint.

3 **II. RELEVANT FACTS AND PROCEDURAL HISTORY**

4 **A. Xerox and Silver State’s Involvement and Their Relationship to the CO-OP.**

5 In 2010, the United States enacted the Patient Protection and Affordable Care Act (“ACA”).  
6 Relevant here, the ACA provided for the creation of American Health Benefit Exchanges,  
7 commonly referred to as “health exchanges,” where consumers could evaluate and purchase  
8 insurance plans.<sup>2</sup> The ACA required that each state could either create its own health exchange or  
9 use the federal health exchange (often referred to as a “federally-facilitated exchange”).<sup>3</sup>

10 Nevada elected to create its own health exchange and created an agency, Silver State, to  
11 develop and oversee Nevada’s health exchange.<sup>4</sup> In 2012, Silver State awarded Xerox a \$72 million  
12 contract to develop, administer, and manage Nevada’s health exchange—the Xerox Exchange.<sup>5</sup> In  
13 developing, administering, and managing the Xerox Exchange, Xerox’s primary duties included  
14 ensuring that the Xerox Exchange promptly transferred consumer data and consumer premium  
15 payments to insurers and/or their vendors.<sup>6</sup>

16 Beginning with its initial rollout on October 1, 2013, the Xerox Exchange was a disaster—it  
17 suffered from an egregious number of technical defects.<sup>7</sup> For example, many consumers would  
18 select and pay for insurance through the Xerox Exchange but, due to Xerox’s failures, their  
19 information and payments were never transmitted to insurers, including the CO-OP.<sup>8</sup>

20 Indeed, the CO-OP’s own board minutes indicate the difficulties it faced as a result of the  
21 poorly designed and poorly managed Xerox Exchange. For example, the CO-OP’s board minutes  
22

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23 <sup>2</sup> 42 U.S.C. § 18301(b).

24 <sup>3</sup> Compare *id.* with 42 U.S.C. § 18041(c).

25 <sup>4</sup> NRS 695I.200.

26 <sup>5</sup> See Exhibit B, Xerox Contract, at 2 ¶ 6.

27 <sup>6</sup> See Exhibit C, Silver State Exchange Requirements Matrix.

28 <sup>7</sup> Exhibit D, Deloitte Report.

<sup>8</sup> *Id.* at 42-43.



1 reflect that they had numerous meetings with government officials, other insurers, and Xerox to  
2 discuss “the challenges the CO-OP [wa]s experiencing with data submission from Xerox to the  
3 CO-OP,” such as “more than 3,000 members that are on Xerox pending list that the CO-OP has not  
4 received any data on to date.”<sup>9</sup> The CO-OP complained that Xerox’s negligence was “negatively  
5 impacting the CO-OP’s membership,”<sup>10</sup> that Xerox’s “payment collection process...[was] only  
6 working at 45% capacity to accept payments, ... [and that Xerox] ... has drained the CO-OP’s  
7 resources[,] as no less than 50% of the CO-OP’s resources have been committed to Xerox and Xerox  
8 related issues since October 2013.”<sup>11</sup> In fact, Xerox’s failures caused significant damage to the  
9 CO-OP for an extended period of time, as aptly summarized in the CO-OP CEO’s February 24, 2014  
10 letter to Governor Brian Sandoval and to Xerox.<sup>12</sup>

11 Xerox’s catastrophes led Silver State to engage Deloitte Consulting LLP (“Deloitte”) to  
12 evaluate the failings of the Xerox Exchange and Silver State’s options going forward.<sup>13</sup> Deloitte’s  
13 report found over **1,500 defects** with the Xerox Exchange, over 500 of which were of a “higher  
14 severity.”<sup>14</sup> Ultimately, Silver State elected to terminate its contract with Xerox and switch to a  
15 federally-facilitated exchange.<sup>15</sup>

16 Indeed, Xerox and Silver State faced two class-action lawsuits based on their failure to  
17 develop, administer, and manage the Xerox Exchange:

- 18 ➤ *Basich v. Xerox State Healthcare, LLC, et al.*, Case No. A-14-698567-C, a class action  
19 complaint filed on behalf of all Nevada consumers who purchased an insurance policy on  
20 the Xerox Exchange and did not receive the benefits of such policy; and  
21

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22 <sup>9</sup> Exhibit E, 2014.02.19 NHC Board Minutes (LARSON014368).

23 <sup>10</sup> *Id.*

24 <sup>11</sup> Exhibit F, 2014.05.23 NHC Board Minutes (LARSON014354, 355 and 388).

25 <sup>12</sup> Exhibit G, Feb. 24, 2014 Letter from Tom Zumtobel.

26 <sup>13</sup> Exhibit D, Deloitte Report.

27 <sup>14</sup> *Id.* at 9.

28 <sup>15</sup> Kyle Roerink, *Nevada, Xerox in private talks to settle \$75 million health care contract out of court*, LAS VEGAS SUN (Oct. 1, 2014), available at <https://lasvegassun.com/news/2014/oct/01/nevada-xerox-private-talks-settle-75-million-healt/>.

➤ *Casale v. State of Nevada Ex. Rel. Silver State Health Insurance Exchange, et al.*, Case No. A-14-706171-C, a class action complaint filed on behalf of all Nevada brokers owed unpaid commissions for the sale of insurance policies on the Xerox Exchange.<sup>16</sup>

Ultimately, Xerox agreed to pay up to \$5 million to satisfy class member claims and \$1.75 million in attorneys' fees and costs.<sup>17</sup>

**B. The Receivership.**

On September 25, 2015, the Nevada Attorney General, on behalf of the Nevada Division of Insurance (the "NDOI"), filed a Petition for Appointment of Commissioner as Receiver for the CO-OP "for the purpose of conservation/rehabilitation."<sup>18</sup> On October 14, 2015, the Eighth Judicial District Court (Judge Cory) granted the Petition.<sup>19</sup> The Receiver and the Special Deputy Receiver were "authorized to rehabilitate or liquidate the CO-OP's business and affairs as and when they deem appropriate under the circumstances...."<sup>20</sup> The Receiver was further authorized to "[i]nstitute and to prosecute, in the name of CO-OP or in her own name, any and all suits and other legal proceedings...on such terms and conditions as she deems appropriate."<sup>21</sup>

**C. The Receiver, on Behalf of the CO-OP, Initiates This Lawsuit.**

On August 25, 2017, the Receiver, on behalf of the CO-OP, initiated this lawsuit by filing its initial Complaint against numerous entities and individuals, including Nevada Health Solutions, LLC.<sup>22</sup> In essence, the CO-OP alleged defendants—mainly vendors of the CO-OP and the vendors'

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<sup>16</sup> Exhibit H, Joint Mot. for Final Approval of Class Settlement, Certification of Settlement Class, Approval of Attorney's Fees and Costs, and Entry of Final Order.

<sup>17</sup> *Id.*

<sup>18</sup> Exhibit I, Petition for Appointment of Commissioner as Receiver and Other Permanent Relief; Request for Temporary Injunction Pursuant to NRS 696B.270(1), at 1:26-2:2, filed on Sept. 25, 2015, *State of Nevada, ex rel. Commissioner of Insurance v. Nevada Health CO-OP*, Case No. 15-725244-C.

<sup>19</sup> Exhibit J, Permanent Injunction and Order Appointing Commissioner as Permanent Receiver of Nevada Health CO-OP, filed Oct. 14, 2015, *State of Nevada, ex rel. Commissioner of Insurance v. Nevada Health CO-OP*, Case No. 15-725244-C.

<sup>20</sup> *Id.* at 2:16-18.

<sup>21</sup> *Id.* at 8:16-22.

<sup>22</sup> *See generally* Compl., filed on Aug. 25, 2017.

officers—caused the CO-OP to fail.<sup>23</sup> Nevada Health Solutions, LLC, filed its answer on November 7, 2017.

**D. The Parties Attend a Judicial Settlement Conference.**

On January 23, 2018, the Court ordered the parties to participate in a judicial settlement conference.<sup>24</sup> The Judicial Settlement Conference was held on June 8, 2018, before the Honorable Nancy Allf.<sup>25</sup> The parties were not able to resolve this matter.<sup>26</sup>

**E. Certain Defendants Compel Arbitration.**

On November 6, 2017, Defendants Milliman, Inc.; Jonathan L. Shreve; and Mary van der Heijde filed a Motion to Compel Arbitration. On March 12, 2018, the Court granted the Motion.<sup>27</sup> The CO-OP filed a Motion for Reconsideration, which was denied on August 8, 2018.<sup>28</sup>

**F. The CO-OP Amends Its Complaint.**

On July 17, 2018, the CO-OP moved for leave to file an Amended Complaint to add additional factual allegations, remove certain claims, and add Unite Here Health as a defendant.<sup>29</sup> The Court granted the CO-OP leave to file its Amended Complaint,<sup>30</sup> and it did so on September 24, 2018.<sup>31</sup> Unite Here Health filed its Answer to the Amended Complaint on October 22, 2018.<sup>32</sup>

**G. UHH Conducts Discovery Concerning Xerox and Silver State.**

During the course of discovery, it became apparent to UHH that Xerox and Silver State could potentially be liable to the CO-OP for their negligence in developing, operating, and managing the Xerox Exchange (as detailed in Section II.A, *supra*). Accordingly, UHH served written discovery

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<sup>23</sup> See generally *id.*

<sup>24</sup> See Minute Order, filed on Jan. 23, 2018.

<sup>25</sup> See Minute Order, filed on June 8, 2018.

<sup>26</sup> *Id.*

<sup>27</sup> Order Granting Milliman’s Motion to Compel Arbitration, filed on March 12, 2018.

<sup>28</sup> Order Denying Plaintiff’s Motion for Reconsideration, filed on August 18, 2018.

<sup>29</sup> See generally Plaintiff’s Motion to Amend Complaint, filed on July 17, 2018.

<sup>30</sup> Order Granting Motion to Amend Complaint, filed on September 18, 2018.

<sup>31</sup> Amended Complaint, filed on September 24, 2018.

<sup>32</sup> Unite Here Health’s Answer to Amended Complaint, filed on October 22, 2018.

on the CO-OP concerning its relationship with Xerox and Silver State and made public records requests to the State of Nevada (including to the Nevada Department of Insurance).

**H. UHH's Expert Finds That Xerox and Silver State Are Responsible for Much of the CO-OP's Alleged Damages.**

With the information obtained in discovery and from the public records requests, UHH obtained opinions from its experts indicating that much of the harm the CO-OP is attempting to blame on UHH was actually the result of Xerox and Silver State's negligence in developing, administering, and managing the Xerox Exchange.<sup>33</sup>

**III. THE PROPOSED THIRD-PARTY COMPLAINT**

A copy of the Proposed Third-Party Complaint is attached to this Motion as Exhibit A. In essence, UHH alleges that Xerox and Silver State breached their duties to the CO-OP and its vendors (including UHH) by negligently and carelessly developing, administering, and managing the Xerox Exchange. Accordingly, UHH seeks contribution from Xerox and Silver State in the event that UHH is found liable to the CO-OP.

**IV. ARGUMENT**

**A. Standard of Decision.**

NRCP 14(a) provides that a "defending party may, as third-party plaintiff, file a third-party complaint against a nonparty, the third-party defendant, who is or may be liable to it for all or part of the claim against it." "The primary purpose of impleading third parties is to promote judicial efficiency by eliminating circuity of actions," that is, "to avoid a situation that arises when a defendant has been held liable to a plaintiff and then finds it necessary to bring a separate action against a third individual who may be liable to defendant for all or part of plaintiff's original claim." *Tourangeau v. Uniroyal, Inc.*, 189 F.R.D. 42, 48 (D. Conn. 1999) (internal quotation marks omitted).<sup>34</sup>

<sup>33</sup> See e.g., Exhibit K, Dr. Henry Miller Report, at 36-39, 56-57, 93 (addressing issues with Xerox Exchange).

<sup>34</sup> "Federal cases interpreting the Federal Rules of Civil Procedure 'are strong persuasive authority,'" for interpreting the Nevada Rules of Civil Procedure. *Exec. Mgmt. Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 872, 876 (2002) (citing *Las Vegas Novelty v. Fernandez*, 106 Nev. 113, 119, 787 P.2d 772, 776 (1990)).

1 The Nevada Supreme Court has “repeatedly recognized that a third-party plaintiff has the  
2 right” to assert an inchoate claim for contribution against a third-party defendant, meaning they may  
3 “seek contribution in an original action prior to entry of judgment.” *Pack v. LaTourette*, 128 Nev.  
4 264, 269, 277 P.3d 1246, 1249 (2012). “Specifically, NRCP 14(a) allows a third-party plaintiff to  
5 implead a third-party defendant who is or may be liable to the third-party plaintiff for all or part of  
6 the plaintiff’s claim at any time after [the] commencement of the action.” *Id.* (internal quotation  
7 marks omitted) (alteration in original).

8 If more than fourteen days have elapsed from the defending party’s service of its original  
9 answer, the defending party must obtain the court’s leave to file the third-party complaint. NRCP  
10 14(a). “Timely motions for leave to implead non-parties should be *freely granted to promote this*  
11 *efficiency* unless to do so would prejudice the plaintiff, unduly complicate the trial, or would foster  
12 an obviously unmeritorious claim.” *Shafarman v. Ryder Truck Rental Inc.*, 100 F.R.D. 454, 459  
13 (S.D.N.Y. 1984) (emphasis added). In deciding whether to give leave, courts often look to various  
14 factors such as: “(1) possible prejudice to the plaintiff, (2) the possible prejudice to the third-party  
15 defendants, (3) the reasons for the delay in joinder, and (4) whether the joinder will delay or  
16 unnecessarily complicate the trial.” *See United States v. New Castle Cty.*, 111 F.R.D. 628, 632 (D.  
17 Del. 1986). Courts weigh such “factors against Rule 14’s goal of avoiding circuitry of actions and a  
18 multiplicity of suits.” *Id.*

19 As detailed below, an analysis of these factors and Rule 14(a)’s goal of promoting judicial  
20 efficiency demonstrates that the Court should give UHH leave to file its Proposed Third-Party  
21 Complaint against Xerox and Silver State.

22 **B. UHH Should Be Granted Leave to File Their Proposed Third-Party Complaint.**

23 **1. *There is No Prejudice to the Plaintiff—if Anything, Plaintiff Will Benefit***  
24 ***From the Addition of Two New Potential Sources for Recovery.***

25 The addition of Xerox and Silver State will not cause any potential prejudice to the CO-OP.  
26 In fact, the CO-OP is currently suing Silver State to recover unpaid premiums—a related lawsuit  
27  
28

1 which will likely be consolidated into this matter.<sup>35</sup> Regardless, the joinder of Xerox and Silver  
2 State provides two additional sources of recovery for the CO-OP. *See id.* (finding addition of third-  
3 party defendant was likely to “expedite the settlement of claims,” and supported giving leave to  
4 defendant to file third-party complaint).

5 **2. *There Is No Prejudice to the Proposed Third Party Defendants—They Have***  
6 ***Already Engaged in Substantial Litigation Over Their Failures Concerning***  
7 ***the Xerox Exchange.***

8 The “prejudice to a third-party defendant must be measured by whether the third-party  
9 defendant will incur greater expense or be at a greater disadvantage in defending a third-party suit  
10 than in defending a separate action brought against it.” *Id.* at 633 (internal quotation marks omitted).  
11 The third-party defendant has the “burden to show substantial litigation handicap[s].” *Id.* (internal  
quotation marks omitted) (alteration in original).

12 Here, neither Xerox nor Silver State can demonstrate a substantial litigation handicap.  
13 Indeed, as detailed above, Xerox and Silver State have already heavily litigated their failures  
14 concerning the development, administration, and management of the Xerox Exchange (i.e. the class  
15 action lawsuits). And, again, Silver State is currently being sued by the CO-OP.

16 **3. *UHH Needed to Conduct Discovery Before Seeking Leave to File Its***  
17 ***Proposed Third-Party Complaint.***

18 The party seeking leave has the burden of explaining the timing of the motion. *Id.* at 634.  
19 “To determine the merits of a Third-Party Plaintiff’s excuse for a delay in joinder, the Court should  
20 give greater weight to the nature of the cause of action and the circumstances of the particular case  
21 than to the mere quantity of elapsed time.” *Id.* In complex matters that require significant  
22 investigation, discovery, or expert analysis to evaluate potential claims against third-party  
23 defendants, significant delays—including delays of up to three (3) years—are justified. *Id.* at 634-36  
24 (holding delay of three years was justified where discovery and consultation with experts was  
25 necessary to evaluate potential claims against third-party defendants); *accord Zielinski v. Zappala,*  
26  
27

28 <sup>35</sup> *See State of Nevada, ex rel. Commissioner of Insurance v. Silver State Health Insurance Exchange*, Case No. A-20-  
816161-C.

1 470 F. Supp. 351, 353 (E.D. Pa. 1979) (finding sixteen-month delay was justified where defendant  
2 sought two expert opinions before seeking leave).

3 Here, the deadline to amend pleadings and add parties has not yet passed and UHH needed to  
4 conduct substantial discovery and consult with experts before it sought leave to file its Proposed  
5 Third Party Complaint—a decision UHH did not take lightly. As detailed above, based on certain  
6 information it learned in discovery, UHH then sought specific discovery concerning Xerox and  
7 Silver State. Further, UHH served public records requests to various Nevada agencies concerning  
8 Silver State’s relationship with Xerox. Based on that information,<sup>36</sup> UHH obtained expert opinions  
9 indicating that Xerox’s and Silver State’s negligence in developing, administering, and managing the  
10 Xerox Exchange was responsible for a substantial amount of the harm that the CO-OP alleges it  
11 suffered and for which it seeks to hold UHH liable. Based on the information received in discovery  
12 and the expert opinions UHH obtained, UHH determined to seek leave to add Xerox and Silver State  
13 as third-party defendants. Thus, although some time has elapsed from when UHH initially filed their  
14 answers in this matter, UHH did not have the information it needed to assert a claim for contribution  
15 against Xerox and Silver State until recently. *See New Castle Cty.*, 111 F.R.D. at 634 (finding  
16 defendant acted “with reasonable dispatch,” where it had to “analyz[e] and verify[] the discovery  
17 responses made by Third-Party Defendants,” and “consult[] with scientific and medical experts.”).

18 **4. Joinder of Xerox and Silver State Will Not Delay or Complicate Trial.**

19 The close of discovery in this matter is not until February 19, 2021, and this matter is on a  
20 May 3, 2021, jury trial stack.<sup>37</sup> Considering the significant backlog of trials due to COVID-related  
21 issues, and the Constitutional requirement of conducting criminal trials first, it is unclear whether the  
22 existing trial date is even feasible. Nevertheless, considering that the CO-OP is currently suing  
23 Silver State in a related matter and given that both Silver State and Xerox have had to engage in  
24 prior litigation concerning the same subject matter (i.e. the class actions), it is unlikely that their  
25 addition as third-party defendants will cause delay of the trial or unduly complicate trial.

26 <sup>36</sup> Notably, the Nevada agencies have not yet made a complete production in response to UHH’s request. *See* Exhibit  
27 L, Letter from the Office of the Governor to John R. Bailey, dated June 26, 2020; Exhibit M, Letter from the Office of  
the Attorney General to John R. Bailey, dated August 31, 2020.

28 <sup>37</sup> UHH intends to move to strike the CO-OP’s demand for a jury trial.

1                                   **5.       Giving Leave to UHH to File the Proposed Third-Party Complaint Will**  
2                                   **Promote Rule 14(a)’s Goal of Judicial Economy by Avoiding a Separate**  
3                                   **Lawsuit for Contribution (if Necessary).**

4           There are strong policy reasons for giving UHH leave to file its Proposed Third-Party  
5 Complaint. “Third-party practice fosters efficient litigation by packaging the underlying claim for  
6 liability and any indemnity or contribution claims in a single case,” which “spares the judicial  
7 system and at least some of the parties the waste and expense of multiple suits.” 3 Moore’s Federal  
8 Practice - Civil § 14.03 (2020).<sup>38</sup> Further, third-party practice “avoids the possibility of inconsistent  
9 judgments” as the joinder “of all persons interested in the ultimate resolution of the dispute binds  
10 them to a single judgment.” *Id.* If the third-party defendant is not added, the defendant must bring a  
11 separate action for contribution, and, “[b]ecause the alleged . . . contributor is not bound by the  
12 judgment in the first case (because it was not a party) the defendant might be unsuccessful,” and the  
13 defendant may “incur a liability it should have been able to pass on to another.” *Id.* “Effecting  
14 joinder of the . . . contributor in a single case thus promotes judicial economy and fosters a  
15 consistent outcome that allows the defendant to avoid these potential harms.” *Id.*

16           Indeed, the promotion of Rule 14(a)’s policy goals often—by itself—outweighs findings of  
17 potential prejudice or delay. *See e.g., Green Valley Corp. v. Caldo Oil Co.*, No. 09-CV-04028-LHK,  
18 2011 U.S. Dist. LEXIS 44540, at \*21-22 (N.D. Cal. Apr. 18, 2011) (granting defendant’s motion for  
19 leave to file a third-party complaint despite finding (i) defendant’s delay was not justified and (ii) the  
20 addition of third-party defendants would likely slow discovery and possibly require a new trial date,  
21 because requiring defendant to bring a separate action “would frustrate judicial efficiency.”).

22           Here, granting UHH leave to file its Proposed Third-Party Complaint promotes Rule 14(a)’s  
23 goal of increasing judicial economy. Granting UHH leave will avoid the necessity of a separate  
24 lawsuit for contribution (if necessary). Further, granting UHH leave will avoid the possibility of  
25 inconsistent judgments—*i.e.*, a finding of liability in this action and a finding of no liability in a  
26 subsequent contribution action. Accordingly, to promote Rule 14(a)’s sound policy goals, this Court  
27 should give UHH leave to assert contribution claims against Xerox and Silver State.

28           <sup>38</sup> The Nevada Supreme Court often relies on Moore’s Federal Practice. *See, e.g., NC-DSH, Inc. v. Garner*, 125 Nev.  
647, 654-55, 218 P.3d 853, 858-59 (2009).



1 In sum, there is good cause for this Court to grant UHH leave to file its Proposed Third-Party  
2 Complaint because (i) the CO-OP will not suffer any prejudice, (ii) Xerox and Silver State will not  
3 suffer any prejudice, (iii) UHH justifiably waited to ensure they had all necessary information and  
4 opinions prior to seeking leave, and (iv) it is unlikely to delay or complicate the trial. Moreover,  
5 granting UHH leave will promote Rule 14(a)'s goals of judicial economy and avoiding inconsistent  
6 judgments.

7 **V. CONCLUSION**

8 For the reasons set forth above, this Court should grant UHH leave to file their Proposed  
9 Third-Party Complaint against Xerox and Silver State. Neither the CO-OP, Xerox, nor Silver State  
10 will suffer any prejudice and doing so will promote Rule 14(a)'s goal of judicial economy.

11 DATED this 15<sup>th</sup> day of October, 2020.

12 BAILEY ♦ KENNEDY

13 By: /s/ John R. Bailey

14 JOHN R. BAILEY

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22 *Unite Here Health and Nevada Health Solutions, LLC*

**CERTIFICATE OF SERVICE**

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 15<sup>th</sup> day of October, 2020, service of the foregoing was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known addresses:

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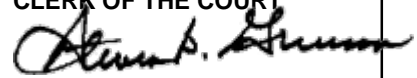
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**IN THE EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

STATE OF NEVADA, EX REL. ) CASE NO. A-15-725244-C  
COMMISSIONER OF INSURANCE, IN HER ) DEPARTMENT 1  
OFFICIAL CAPACITY AS STATUTORY )  
RECEIVER FOR DELINQUENT DOMESTIC )  
INSURER, )

Plaintiff, )

vs. )

NEVADA HEALTH CO-OP, )

Defendant. )

**TWENTIETH STATUS REPORT**

COME NOW, Commissioner of Insurance Barbara D. Richardson in her capacity as  
Receiver of Nevada Health CO-OP ("NHC," or the "CO-OP"), and CANTILO & BENNETT,  
L.L.P., Special Deputy Receiver ("SDR" - SDR and the Commissioner as Receiver are referred

to collectively herein as “Receiver”) and file this Twentieth Status Report in the above-captioned receivership.

### **I. INTRODUCTION AND HISTORICAL BACKGROUND**

The CO-OP is a state-licensed health insurer, formed in 2012 as a Health Maintenance Organization, with a Certificate of Authority granted by the State of Nevada Division of Insurance effective January 2, 2013. NHC was an Internal Revenue Code 501(c)(29) Qualified Non-Profit Health Insurance Issuer, entitled to tax exemption by the Internal Revenue Service. NHC was formed under a provision of the Patient Protection and Affordable Care Act (“ACA”) providing for the formation of Consumer Operated and Oriented Plans. Having received from the Centers for Medicare and Medicaid Services (“CMS”) of the United States Department of Health and Human Services (“HHS”) a start-up loan of \$17,080,047, and a “solvency” loan of \$48,820,349, NHC was required to operate as a non-profit, consumer-driven health insurance issuer for the benefit of the public. The CO-OP’s primary business was to provide ACA-compliant health coverage to residents of Nevada, and it operated its business for the benefit of Nevadans within the state, save for certain arrangements to provide nationwide health coverage to Nevadans traveling outside the state in certain circumstances. NHC began selling products on and off the Silver State Health Insurance Exchange (the “Exchange”) on January 1, 2014. Its products included individual, small group, and large group health care coverages.

On October 1, 2015, this Court issued its Order Appointing the Acting Insurance Commissioner, Amy L. Parks as Temporary Receiver of NHC Pending Further Orders of the Court and Granting Temporary Injunctive Relief Pursuant to NRS 696B.270. Further, on October 14, 2015, the Receivership Court entered its Permanent Injunction and Order Appointing Commissioner as Permanent Receiver of Nevada Health CO-OP, appointing the law firm of CANTILO & BENNETT, L.L.P. as SDR of NHC, in accordance with Chapter 696B of the Nevada Revised Statutes.

Via a Notice of Substitution of Receiver dated April 6, 2016, Deputy Attorney General Joanna N. Grigoriev informed interested parties of the substitution of Commissioner Barbara D. Richardson, in place and stead of former Acting Commissioner Amy L. Parks, as the Receiver

1 of NHC. This substitution of Receiver was subsequent to Commissioner Richardson's  
2 appointment as Commissioner of Insurance for the State of Nevada.

3 This Court, through its Final Order Finding and Declaring Nevada Health CO-OP to be  
4 Insolvent and Placing Nevada Health CO-OP into Liquidation (the "Final Order") dated  
5 September 20, 2016, adjudged NHC to be insolvent on grounds that it was unable to meet  
6 obligations as they mature. The Final Order also authorized the Receiver to liquidate the  
7 business of NHC and wind up its ceased operations pursuant to applicable Nevada law. The  
8 Receiver has since transitioned the receivership estate from rehabilitation to liquidation.

9 The Receiver continues to file quarterly status reports as ordered by this Court.

## 10 II. RECEIVERSHIP ADMINISTRATION

### 11 Receivership Administrative Services and Oversight

12 CANTILO & BENNETT, L.L.P., as SDR of NHC, manages the receivership estate and  
13 conducts its affairs. PALOMAR FINANCIAL, LC ("Palomar"), an affiliate of the SDR, performs  
14 administration, information technology, and other related services for the Receiver under the  
15 supervision of the SDR. The Receiver has included an informational copy, as Exhibit 1 to this  
16 Twentieth Status Report, of the invoices paid to the SDR and other receivership consultants since  
17 the last status report to this Court.<sup>1</sup>

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18 <sup>1</sup> The *in camera* materials are being submitted in a separate envelope that reflect paid invoices.

19 Certain billings submitted to the Court are appropriate for *in camera* review (as opposed to being made  
20 part of a public filing). More particularly, and as discussed in further detail below, certain consultants in this matter  
21 are providing expert witness related services. As such, the billing entries relating thereto should be considered  
22 confidential and/or otherwise not subject to discovery.

23 In this regard, courts have held that the bills of legal counsel and experts may be withheld from legal  
24 discovery and are not subject to legal disclosure, as this information may provide indications or context concerning  
25 potential litigation strategy and the nature of the expert services being provided. *See, e.g., Avnet, Inc. v. Avana*  
26 *Technologies Inc.*, No. 2:13-cv-00929- GMN-PAL, 2014 WL 6882345, at \*1 (D. Nev. Dec. 4, 2014) (finding that  
27 billing entries were privileged because they reveal a party's strategy and the nature of services provided); *Fed.*  
28 *Sav. & Loan Ins. Corp. v. Ferm*, 909 F.2d 372, 374-75 (9th Cir. 1990) (considering whether or not fee information  
revealed counsel's mental impressions concerning litigation strategy). Other courts that have addressed this issue  
have recognized that the "attorney-client privilege embraces attorney time, records and statements to the extent  
that they reveal litigation strategy and the nature of the services provided." *Real v. Cont'l Grp., Inc.*, 116 F.R.D.  
211, 213 (N.D. Cal. 1986).

27 The *in-camera* review should apply not only to documentation concerning attorneys' fees, but it also  
28 extends to "details of work revealed in [an] expert's work description [which] would relate to tasks for which she  
[or he] was compensated[.]" a situation which is "analogous to protecting attorney-client privileged information

## Resolution of Outstanding Receivership Matters

### *Claims Adjudications & Distributions*

Notices of Claim Determination (“NCDs”) were mailed for healthcare claims previously submitted by providers to NHC’s Javelina Claims Processing Database (the “Provider Claims”). The total allowed amount of these approved Provider Claims is approximately \$33.7 million. The NHC members also received NCDs that showed them the amount that the SDR has approved to be paid to their providers, and the amount of member responsibility (*i.e.*, the co-pays, deductibles, and coinsurance), if any, that they may owe on their providers’ outstanding claims. The SDR has received approval from the Court to make a distribution of certain estate assets for the partial payment of these Provider Claims, which have been classified by the SDR as claims made under NHC policies pursuant to NRS 696B.420(1)(b)).<sup>2</sup>

As previously reported, the SDR must collect United States Internal Revenue Service W-9 forms and other necessary documentation from the providers in advance of making any claim payments, to assure that the estate can meet any mandatory federal tax reporting requirements. The SDR will follow-up with these providers to collect the necessary paperwork.

The SDR also mailed NCDs for those Proofs of Claim submitted to the SDR relating to Policy Claims (*i.e.*, Class B claims pursuant to NRS 696B.420(1)(b)). The total allowed amount for the members’ claims, \$5,102.64, is subject to a potential small increase as two NCD appeals have been filed and remain pending.

In addition to the two member appeals described above, there are forty-two (42) outstanding appeals sent by NHC members of the NCDs that were mailed for outstanding

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contained in counsel’s bills describing work performed.” *See DaVita Healthcare Partners, Inc. v. United States*, 128 Fed. Cl. 584, 592-93 (2016); *see also Chaudhry v. Gallerizzo*, 174 F.3d 394, 402 (4th Cir. 1999) (recognizing that “correspondence, bills, ledgers, statements, and time records which also reveal the motive of the client in seeking representation, litigation strategy, or the specific nature of the services provided, such as researching particular areas of law,” are protected from disclosure) (quoting, *Clarke v. Am. Commerce Nat’l Bank*, 974 F.2d 127, 129 (9th Cir. 1992)).

<sup>2</sup> See *infra* section titled “Sale of Risk Corridors Receivable.”

1 healthcare claims submitted by providers to NHC’s Javelina Claims Processing Database.<sup>3</sup> The  
2 SDR is not requesting that hearings be set on these appeals at this time, but may do so in the near  
3 future (*i.e.*, upon the resolution of COVID-19 issues – which in addition to preventing in-person  
4 appearances could also make it difficult for claimants to prepare for hearings). Once all appeals  
5 have been reviewed by the SDR, the SDR will inform the Receivership Court of any unresolved  
6 appeals so that a hearing or hearings may be set. The SDR is working on a resolution of any  
7 outstanding appeals.

8 As reported in the previous Nineteenth Status Report, there were fifty outstanding proofs  
9 of claim (“POC”) assigned to a priority Class “C” (*i.e.*, NRS 696B.420(1)(c)) or lower.<sup>4</sup> The  
10 SDR has now issued NCDs to nearly all of these claimants (*i.e.*, forty (40) out of fifty (50) NCDs  
11 have been sent).<sup>5</sup> It appears unlikely at this time that the estate will have sufficient assets to make  
12 distributions to claims assigned priority below Class B. The Receiver has included as Exhibit 2  
13 to this Twentieth Status Report, a report on the determination of the Receiver on each claim,  
14 assigned to a Class C-L, that has been approved in whole or in part to date.

15 On August 24, 2020, the Silver State Health Insurance Exchange (the “Exchange”)  
16 submitted a POC. The Receiver sent a letter in response to advise that the POC cannot be  
17 processed due to having been filed after the Claims Filing Deadline. The Exchange has now  
18 filed a Motion to Intervene in the receivership proceeding, for the purpose of having its claim  
19 allowed in spite of this Court’s order entered on September 21, 2019, that “no claim received  
20

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21 <sup>3</sup> Members received a copy of the claim determinations that were sent to their providers, so that the  
22 members could see any denied claims, and the deductible, co-pay, and coinsurance that was applied to each of  
23 the allowed provider claims (*i.e.*, the amount of the member’s responsibility on each claim) and have an opportunity  
to appeal.

24 <sup>4</sup> This does not include a claim by the U.S. Department of Health and Human Services, which the SDR  
has previously reported to this Court. That claim was denied in full by the SDR, and the government did not file  
25 an appeal of the SDR’s determination. This determination is now final and non-appealable.

26 <sup>5</sup> One of the forty (40) “NCDs” relates to a very late-filed POC, and as such the notice sent to that claimant  
does not provide a claim determination but instead advises that the claim cannot be processed due to having  
27 been filed after the bar date. The Receiver does not process late-filed claims, due to the limited assets and  
resources of the estate – and this forms part of the rationale for having a Claims Filing Deadline in place – to  
28 provide a stopping point for the work of resolving the claims of the estate so that the Receiver can wind down the  
estate and bring it to a closure. Late filed claims (*i.e.*, if allowed or approved) may (and likely will) also diminish  
distributions for timely filed claims.



1 after the Claims Filing Deadline may share in the assets of the estate and NHC shall have no  
2 liabilities as to any such late-filed claims.”

### 3 ***CMS Receivables***

4 As explained in prior status reports, and throughout the pendency of the receivership, the  
5 Receiver is working to resolve certain outstanding matters relating to the collection of amounts  
6 due under the various federal receivables programs, of which the CO-OP was a participant, and  
7 which are administered primarily by CMS. The recovery of these assets will allow the SDR to  
8 make claim payments to estate creditors. It is also necessary to resolve the receivership’s dispute  
9 of the government’s asserted right to be paid ahead of all other creditors in the estate (including  
10 providers and members). CMS has maintained the position that any monies deemed owed to  
11 NHC (and thus the receivership estate) are to be offset against the amounts CMS asserts it is  
12 owed under the start-up loan awarded to NHC. To date, CMS has offset approximately \$12.9  
13 million against the start-up loan that, the Receiver maintains, should have instead been paid to  
14 NHC. When the full amount of 2014 - 2015 Risk Corridors payments (*i.e.*, not just the prorated  
15 amount<sup>6</sup>) are included in the total, NHC is owed over \$55 million.

16 In light of the U.S. Supreme Court’s recent decision in *Maine Community Health Options*  
17 *v. United States, No. 18-1023* (described further below), the Receiver is trying to resolve some  
18 or all of the claims with CMS.<sup>7</sup> The asset recovery litigation against CMS has since continued  
19 on the questions of debt, rights to offset, and claim and issue preclusion matters.  
20  
21

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22 <sup>6</sup> Due to a shortfall in risk corridor collections, CMS asserts it can only pay a prorated percentage of  
23 issuers’ 2014 Risk Corridors payments and it will use all collections in subsequent years towards the 2014  
24 payments (*i.e.*, they are unable to make payments for the subsequent years at all). DEP’T OF HEALTH & HUMAN  
25 SERVICES & CENTERS FOR MEDICARE & MEDICAID SERVICES (“CMS”), CCIIO MEMORANDUM, RISK  
26 CORRIDORS PAYMENT AND CHARGE AMOUNTS FOR THE 2015 BENEFIT YEAR (November 18, 2016)  
27 (available at <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/2015-RC-Issuer-level-Report-11-18-16-FINAL-v2.pdf>); CMS, CCIIO MEMORANDUM, RISK CORRIDORS PAYMENT AND  
28 CHARGE AMOUNTS FOR THE 2016 BENEFIT YEAR (November 15, 2017) (available at <https://www.cms.gov/CCIIO/Programs-and-Initiatives/Premium-Stabilization-Programs/Downloads/Risk-Corridors-Amounts-2016.pdf>).

<sup>7</sup> See Amy Howe, OPINION ANALYSIS: DECISIVE WIN FOR HEALTH INSURERS SEEKING COMPENSATION FOR ACA LOSSES, SCOTUS BLOG (2020), <https://www.scotusblog.com/2020/04/opinion-analysis-decisive-win-for-health-insurers-seeking-compensation-for-aca-losses/> (last visited Jun 26, 2020).

**Internal Administrative Matters Related to Wind Down**

The Receiver may, in her discretion and as necessary to advance the receivership, contract to use the services of certain former employees for specific, limited-term projects. The Receiver completed the wind down and closure of NHC's administrative office in 2019, and has since transferred estate records, property, and operations to the SDR's offices.

**Continuation of Action Against Various Professionals and Other Firms Who Performed Services for and on Behalf of NHC**

On August 25, 2017, Counsel for the Receiver filed in Clark County District Court a complaint (Case No. A-17-760558-C in Department No. 18) against various persons, third-party vendors, and professional service firms which are alleged to have contributed to NHC's losses by, among other things, failing to adhere to applicable standards of professional care and requirements imposed by law, misrepresentation concerning quality and standard of care for services performed, and breaches of contract, duty, and implied covenants of good faith and fair dealing. The complaint names, among others, NHC's former actuaries, accountants, auditors, and providers of certain business operations and utilization review services, as well as those individuals who specifically performed, or who were in the role of supervising the performance of, those services. The complaint also names several NHC former directors and executive management.

Via Plaintiff's Motion to Amend Complaint, filed on July 17, 2018, the Receiver sought an order granting leave to amend the August 25, 2017, complaint against certain of NHC's various directors, officers, and third-party contractors, citing the discovery of additional facts in support of assertions made in the first complaint, as well as the need to add a new defendant to the existing proceedings. This Motion to Amend Complaint was filed in judicial department number 16, in line with the terms of contemporaneous Notice of Department Reassignment assigning the proceedings to Judge Timothy C. Williams. The Motion to Amend Complaint was approved via an order entered on September 18, 2018. Subsequently, the Court ordered that the case against Milliman must be arbitrated.

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The Receiver's claims are ongoing against NHC's former directors and officers, InsureMonkey and Alex Rivlin, Larson & Company (and individually named Larson defendants), Nevada Health Solutions, LLC, and Unite Here Health. Discovery is underway, and the following deadlines have been set by Judge Timothy C. Williams, per the August 11, 2020, Order Granting Defendants' Joint Motion to Extend Deadline for Defendants' Expert Disclosures (and Other Associated Deadlines) Due to COVID-19 Pandemic on Order Shortening Time:

1. **November 4, 2020:** Status Check regarding Discovery and Case Schedule
2. **October 2, 2020:** Defendants' designation of initial and rebuttal experts
3. **October 16, 2020:** Motions to Amend Pleadings or Add Parties
4. **December 1, 2020:** Plaintiff's designation of rebuttal experts
5. **February 19, 2021:** Discovery Cut Off
6. **March 12, 2021:** Dispositive Motions
7. **March 19, 2021:** Motions *in Limine*
8. **April 22, 2021 at 10:30 a.m.:** Pre-Trial Conference/Calendar call
9. **April 29, 2021:** Pre-Trial Memorandum filing deadline
10. **May 3, 2021:** Case is set to be tried to a jury on a five-week stack.

As of the date of filing of this Status Report, no later scheduling orders have been issued extending these deadlines, although certain deadlines may be amended by stipulation of the parties in the near future if deemed necessary and approved by the Court.

The Receiver has settled its claims against Millennium, and the settlement agreement was approved by the Court. Millennium has made all of the settlement progress payments required under the settlement agreement.

On April 13, 2020, the Defendant directors and officers filed their Motion to Compel Production of Lynn Fulstone documents, seeking to compel certain documents held by the Receiver but not produced in discovery in response to a Defendant's request on the basis that such documents are privileged and protected from disclosure as attorney-client communications and as files falling under the work product doctrine. This Motion was joined by Unite Here

1 Health and Nevada Health Solutions via a Joinder filed on April 22, 2020, and essentially asserts  
2 that a waiver of such privileges has been effected due to the partial disclosure of documents on  
3 the same subject matter in litigation.

4 An Opposition by the Receiver was filed on April 27, 2020, setting forth responses to  
5 these allegations and describing relevant legal authorities. The Opposition maintains that no  
6 such partial disclosure of files was made, that none of the documents that the Motion to Compel  
7 seeks to produce were relied upon by NHC in the making of the Complaint against the  
8 Defendants, and that numerous legal doctrines would protect the documents being sought from  
9 disclosure in any case. A Reply by the Defendant directors and officers in support of the Motion  
10 to Compel was filed under seal on June 16, 2020, and joined by Unite Here Health and Nevada  
11 Health Solutions the same day. Although set initially for hearing on June 17, 2020, per a June  
12 15, 2020, Stipulation and Order, the hearing on the Motion to Compel was re-set for June 24,  
13 2020. Via a Minute Order dated August 10, 2020, the Court denied the Motion to Compel and  
14 the associated joinders. Discovery continues in the litigation, with Plaintiff having provided her  
15 27th Supplemental Disclosure to Defendants as of September 24, 2020, and having responded  
16 to the Defendant directors' and officers' 7th Set of Requests for Production as of September 18,  
17 2020. Plaintiff also responded, as of September 21, 2020, to Defendant Larson's First Set of  
18 Requests for Admissions. The Receiver and SDR remain vigilant in responding to, and in  
19 sending, discovery requests and related correspondence expediently so as to advance this matter  
20 to trial in a timely fashion, though proceedings have been delayed by the ongoing COVID-19  
21 pandemic.

#### 22 **Pending Action Against the United States in the Court of Federal Claims**

23 On November 8, 2018, the Receiver filed a Complaint in the United States Court of  
24 Federal Claims ("CFC Complaint") against the United States for monetary amounts owed to  
25 NHC under the Consumer Operated and Oriented Plan program organized pursuant to the ACA.  
26 The Receiver determined that such litigation was necessary in order to advance the interests of  
27 the receivership estate's various creditors, and to protect and conserve assets that rightfully  
28 belong to the estate.

1 In Counts I through IV, the CFC Complaint prays for relief in the form of an award of  
2 damages and monetary relief equal to the difference between the amount NHC actually received  
3 in payments under Sections 1342, 1341, 1343, and 1401 of the ACA – the statutes which describe  
4 and enact the Risk Corridors, transitional reinsurance, risk adjustment, and cost sharing reduction  
5 programs respectively – and the amount NHC should have received under those laws.

6 The CFC Complaint’s Count V (breach of contract by offset) and Count VI (illegal  
7 exaction) plead alternate theories for recovery of money damages resulting from the United  
8 States, through its agents at HHS and CMS, offsetting payments that CMS owed to NHC against  
9 funds NHC allegedly owed to the government pursuant to the terms of the CO-OP start-up loan.  
10 On March 7, 2019, the United States filed a motion to dismiss the CFC Complaint’s (“Motion  
11 to Dismiss”) argument that none of Counts I through VI state claims upon which relief can be  
12 granted. NHC’s deadline for responding to the Motion to Dismiss was July 9, 2019. However,  
13 on June 24, 2019, the United States Supreme Court granted certiorari in three Risk Corridors  
14 appeals, *i.e.*, the Supreme Court Appeal Cases.

15 Subsequent to a Motion for Enlargement of Time to Respond to Government’s Motion  
16 to Dismiss, filed on June 28, 2019, the Receiver filed her Opposition to Motion to Dismiss, and  
17 Cross-Motion for Final Partial Summary Judgment on July 31, 2019, which sought from the  
18 CFC, *inter alia*, an adjudication in favor of the Receiver regarding that Counts II through IV of  
19 the CFC Complaint, the counts not taken up by the United States Supreme Court for review.  
20 The Cross-Motion for Partial Summary Judgment predicated its arguments on the basis that the  
21 United States had already admitted prior liability and damages concerning the amounts sought  
22 by the CFC Complaints under counts II-IV (*i.e.*, the Federal Transitional Reinsurance program,  
23 the Risk Adjustment program, and the Cost-Sharing Reduction programs provided for explicitly  
24 by ACA statutes), save for their affirmative defense of offset, and that the affirmative defense of  
25 offset must fail as a matter of law as the circumstances provided for in applicable federal law  
26 and regulation permitting an offset of amounts owed under the ACA receivables programs were  
27 not satisfied in this case.

28 ///

1 On August 7, 2019, the United States filed with the CFC its Motion to Stay, or in the  
2 Alternative, for an Enlargement of Time, asserting that the interrelated issues of fact and law at  
3 the center of the CFC litigation, alongside countervailing concerns of judicial economy, justified  
4 a general suspension of proceedings during the pendency of the United States Supreme Court's  
5 review of the legal and constitutional questions in the Supreme Court Appeal Cases,  
6 notwithstanding the theoretical separability of the various federal receivables programs under  
7 which NHC presented its claims. The CFC granted the United States' Motion to Stay on August  
8 12, 2019, until such legal and constitutional questions were resolved.

9 The United States Supreme Court, through its April 27, 2020, decision, found in favor of  
10 the CO-OPs, and held that the Risk Corridors statutes did indeed create a government obligation  
11 to pay insurers the full amount set out in Section 1342's formula. Despite the decision of  
12 Congress to disallow by specific legislative rider the making of Risk Corridors payments from  
13 funding sources which would have otherwise been available under the annual appropriations  
14 omnibus, the plain text of the legislative rider at issue in the litigation did not indicate an intention  
15 to impliedly, retroactively repeal Risk Corridors obligations, and that therefore the CO-OPs  
16 properly relied upon the Tucker Act to bring suits for damages against the United States in the  
17 Court of Federal Claims.

18 Subsequent to this decision, the CFC issued its May 4, 2020, Order scheduling a status  
19 conference to take place on May 19, 2020, concerning the remaining matters at issue in the  
20 litigation. This telephone conference did occur on May 19, 2020, and the issues discussed on  
21 that call were later summarized in the CFC's May 21, 2020, Order staying proceedings for a  
22 further forty-five days and requiring the filing of a joint status report on or before July 6, 2020,  
23 addressing the topics discussed during the telephone conference. This deadline was later moved  
24 to July 10, 2020, upon approval by the Court of Plaintiff's July 6, 2020, Unopposed Motion for  
25 Extension of Time for Filing Joint Status Report. The Joint Status Report was filed on July 10,  
26 2020, and proposed August 3, 2020, as the deadline for NHC's Updated Opposition to the United  
27 States' Motion to Dismiss and Cross Motion for Summary Judgment, with the United States'

28 ///



1 reply in support of the Motion being due on September 18, 2020, and NHC's own reply due on  
2 November 13, 2020.

3 On August 3, 2020, Plaintiff filed her Unopposed Motion to Set Briefing Schedule, which  
4 was approved and ordered the same day. Per this Motion, August 24, 2020, was proposed as the  
5 deadline for NHC's Updated Opposition to the Motion to Dismiss and Cross Motion for  
6 Summary Judgment, with the government's reply due October 9, 2020, and NHC's reply due  
7 October 26, 2020. A subsequent Unopposed Motion for Extension of Time, filed on August 19,  
8 2020, and approved on August 20, 2020, established September 9, 2020, as the deadline for  
9 NHC's Updated Opposition, with the United States' reply due October 26, 2020, and NHC's  
10 own reply due November 13, 2020. As of the date of filing this Status Report, these are the most  
11 current deadlines for briefing the remaining matters at issue in the case.

12 On September 9, 2020, Plaintiff filed her Response and Reply to the United States'  
13 Motion to Dismiss and Cross-Motion for Summary Judgment. A central theme of NHC's  
14 opposition to the Motion to Dismiss is that the Nevada Division of Insurance reviews, evaluates,  
15 and approves applications of both domestic and foreign insurers for licenses to issue and manage  
16 insurance policies in the state of Nevada. As part of this power to review and issue Certificates  
17 of Authority, to which NHC is subject notwithstanding federal law and regulations, the  
18 Commissioner of Insurance may approve or disapprove of lending or funding agreements which  
19 capitalize an insurer, and may place conditions on them. Under Nevada law, specifically NRS  
20 693A.180, such loans used to capitalize an insurer may not be the basis of any setoff of mutual  
21 obligations without obtaining prior approval from the Commissioner of Insurance. Such a setoff  
22 was never approved by the Commissioner, nor was it sought by the United States.

23 The argument made in NHC's Opposition applies both to the start-up and solvency  
24 portions of the CO-OP loan funds, as both loans serve to establish and support NHC's insurance  
25 operations, both loans were necessary in properly capitalizing the CO-OP, and both loans were  
26 subject to review by the Nevada Division of Insurance as part of NHC's application for a  
27 Certificate of Authority. NHC's Opposition also makes other arguments and claims against the  
28 government's attempt to apply an offset of amounts owed, including opposition to the

1 government's debt claim, rights to offset on various grounds, and re-litigation of issues already  
2 decided between the parties (*i.e.*, claim and issue preclusion regarding the government's claims).

3 In regard to the Receiver's grounds for summary judgment on claim and issue preclusion,  
4 the Receiver has already adjudicated the United States' claims for compensation under the loan  
5 agreements, which were filed with the estate as part of the government's POC, and the Receiver  
6 has determined that such claims were not entitled to offset or priority. The Receiver's claim  
7 determination was not appealed by the government, as required by state law, and is now final,  
8 and litigation in order to receive such amounts is not appropriate, as these claims have already  
9 been precluded by prior actions. As has been established by the Supreme Court, NHC has an  
10 affirmative right to recover those amounts (in federal receivables, and specifically in Risk  
11 Corridors) routinely promised to it by the federal government. In contrast, the Commissioner of  
12 Insurance has consistently asserted that repayment of the CO-OP loans may only occur out of  
13 the excess surplus of funds of NHC after satisfying all policyholder, claimant, and creditor  
14 obligations.

15 **Pending Action Against the Silver State Health Insurance Exchange**

16 Through the filing of a Complaint dated June 5, 2020, in Case Number A-20-816161-C,  
17 in Department Number Eight of the Eighth Judicial District Court, the Receiver has brought an  
18 action against the Exchange for, *inter alia*, damages of approximately one-half million dollars  
19 in premiums received from on-exchange insureds on behalf of NHC, but never remitted to the  
20 CO-OP. The Complaint alleges that the retention of these funds by the Exchange, without  
21 explanation or justification, constitutes a violation of the existing agreement between the parties,  
22 unjust enrichment of the Exchange at the expense of receivership claimants, and an appropriate  
23 basis for the imposition of a constructive trust over the assets at issue. The Exchange filed its  
24 Answer on August 24, 2020, denying the relevant allegations and asserting conventional  
25 affirmative defenses such as the doctrine of assumption of risk, sovereign immunity,  
26 contributory negligence, offset, and unclean hands. Discovery will commence in that case upon  
27 the establishment of the appropriate discovery and trial schedule with the Court.

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**Civil Action Against WellHealth Medical Associates, Medsource, and Certain Persons**

Through the filing of a Complaint dated July 16, 2020, in case Number A-20-818118-C, in Department Number Nineteen of the Eighth Judicial District Court, the Receiver has brought an action against WellHealth Medical Associates, PLLC, Medsource Management Group, LLC, and certain individual persons in positions of responsibility within those organizations, for the recovery of amounts owed in connection with certain illegal, unethical, negligent, and intentionally fraudulent transactions which took place with NHC in health plan years 2014 and 2015. The primary allegations involve WellHealth's entry into an illegal and unapproved services contract with NHC, which in the determination of the Nevada Division of Insurance constituted a material shifting of insurance risk from a licensed carrier (NHC) to a non-licensed Delivery Service Intermediary. Defendants in this action received millions of dollars from NHC in exchange for their services, which are alleged in the Complaint to not have been performed at the standard required, or with necessary licenses and legal authority, to justify such inordinate compensation. The Receiver has not yet received an Answer from defendants in this matter but shall proceed to discovery and further litigation when appropriate.

**Current Receivership Assets**

The Receiver's evaluation of the assets and liabilities of the CO-OP is ongoing, and adjusted periodically to accommodate new authorized payments, receipts, and transfers. Below is an overview of some key asset matters thus far identified by the Receiver (other than those already mentioned herein):

1. The unrestricted cash assets of the CO-OP have fluctuated with post-receivership expenses and claim payments, as well as with the Receiver's receipt of member premiums. The currently available, unrestricted cash assets of the CO-OP as of August 31, 2020, were approximately \$5,519,869. The majority of NHC's currently available and liquid assets are held in bank deposits.

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2. The financial information of NHC in this Twentieth Status Report provides estimates. NHC's financials may materially vary depending upon the estate's receipt of the promised federal receivables payments under the various ACA programs described in this report, and future litigation recoverables.

3. The Receiver is including, as Exhibit 3 attached hereto, a cash flow report for NHC for the period covering the inception of the receivership through August 31, 2020. This report reflects a summary of disbursements and collections made by NHC during this period.

### CONCLUSION

The Receiver has submitted this report in compliance with the Receivership Court's instructions for a status report on NHC. The Receiver requests that the Court approve this Twentieth Status Report and the actions taken by the Receiver.

DATED this 16th day of October 2020.

Respectfully submitted:

Barbara D. Richardson, Commissioner of Insurance of the State of Nevada, in her Official Capacity as Statutory Receiver of Delinquent Domestic Insurer,

By: /s/ Cantilo & Bennett, LLP

Special Deputy Receiver

By Its Authorized Representative

Patrick H. Cantilo

Respectfully submitted by:  
GREENBERG TRAURIG, LLP

/s/ Donald L. Prunty

MARK E. FERRARIO, ESQ.

ERIC W. SWANIS, ESQ.

DONALD L. PRUNTY, ESQ.

10845 Griffith Peak Drive, Suite 600

Las Vegas, Nevada 89135

***Counsel for Barbara D. Richardson,***

***Commissioner of Insurance, as the***

***Permanent Receiver for Nevada Health***

***CO-OP***

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on the **16th day of October 2020**, and pursuant to NEFCR 9, NRCF 5(b), and EDCR 7.26, I served this **TWENTIETH STATUS REPORT** on all parties receiving service in this action through electronic transmission via this Court's electronic filing system to:

**E-Service Master List  
For Case**

**State of Nevada, ex rel. Commissioner of Insurance, Plaintiff(s) vs. Nevada Health  
CO-OP, Defendant(s)**

**Attorney General's Office**

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*/s/ Evelyn Escobar-Gaddi*  
An employee of Greenberg Traurig, LLP

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## EXHIBIT 1

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### Summaries

# CANTILO & BENNETT, L.L.P.

ATTORNEYS & COUNSELORS

*A Texas Registered Limited Liability Partnership*

*Comprised of Professional Corporations*

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August 5, 2020

## BILL SUMMARY

70750 Nevada Health Co-Op ("NHC")

May 1 - May 31, 2020

<u>Matter No. and Description</u>	<u>Invoice Numbers</u>	<u>Fees</u>	<u>Costs</u>	<u>Total</u>
May 2020	24689- 24690	\$ 27,268.75	\$ 4,253.84	\$ 31,522.59
<b>Totals (1)</b>		\$ 27,268.75	\$ 4,253.84	\$ 31,522.59

## Cantilo & Bennett, L.L.P.

**NEVADA HEALTH CO-OP  
TIMEKEEPER SUMMARY REPORT  
5/1/20 - 5/31/20**

		<b>Billable Hours</b>	<b>Billable Rate</b>	<b>May Billing</b>
<b>1</b>	<b>Timekeeper - Patrick H. Cantilo</b>	1.00	\$490.00	\$490.00
<b>2</b>	<b>Timekeeper - Mark F. Bennett</b>	45.35	\$400.00	\$18,140.00
<b>3</b>	<b>Timekeeper - Kristen W. Johnson</b>	17.40	\$300.00	\$5,220.00
<b>4</b>	<b>Timekeeper - Josh O. Lively</b>	15.50	\$200.00	\$3,100.00
<b>5</b>	<b>Timekeeper - Douglas J. Coonfield</b>	0.00	\$200.00	\$0.00
<b>6</b>	<b>Timekeeper - Jose M. Rangel</b>	0.00	\$350.00	\$0.00
<b>7</b>	<b>Timekeeper - Arati Bhattacharya</b>	0.00	\$300.00	\$0.00
<b>8</b>	<b>Timekeeper - Law Clerk</b>	0.00	\$85.00	\$0.00
<b>9</b>	<b>Timekeeper - Isaiah Samaniego</b>	1.75	\$125.00	\$218.75
<b>10</b>	<b>TimeKeeper - Daviannie Baham</b>	0.00	\$50.00	\$0.00
<b>11</b>	<b>TimeKeeper - Jeffrey L. Collins</b>	0.80	\$125.00	\$100.00
	<b>GRAND TOTAL</b>	<b>81.80</b>		<b>\$27,268.75</b>

Client ID 70750  
Work Date 5/1/20:05/31/2020

TimeKeeper		Hours	Fees	NC Hours	NC Fees
MFB	MARK F. BENNETT				
70750000	General	0.25	100.00	0.00	0.00
70750008	Company Administration	1.00	400.00	0.00	0.00
70750100	Asset Recovery	10.35	4,140.00	0.00	0.00
70750102	NHC vs. CMS Litigation	33.75	13,500.00	0.00	0.00
	Sub Total (MFB)	45.35	18,140.00	0.00	0.00*
PHC	PATRICK H. CANTILO	1.00	490.00	0.00	0.00
	Sub Total (PHC)	1.00	490.00	0.00	0.00*
JLC	JEFFREY L. COLLINS	0.80	100.00	0.00	0.00
	Sub Total (JLC)	0.80	100.00	0.00	0.00*
KWJ	KRISTEN W. JOHNSON				
70750003	Claims	6.30	1,890.00	0.00	0.00
70750008	Company Administration	2.30	690.00	0.00	0.00
70750100	Asset Recovery	8.80	2,640.00	0.00	0.00
	Sub Total (KWJ)	17.40	5,220.00	0.00	0.00*
JOL	JOSHUA O. LIVELY	15.50	3,100.00	0.00	0.00
	Sub Total (JOL)	15.50	3,100.00	0.00	0.00*
IXS	ISAIAH SAMANIEGO				
70750008	Company Administration	1.75	218.75	0.00	0.00
	Sub Total (IXS)	1.75	218.75	0.00	0.00*
Grand Total		81.80	27,268.75	0.00	0.00



July 27, 2020  
12:09 pm

Cantilo & Bennett, L.L.P.  
Bill Register

Page 1

Client and Matter	Date	Inv No	Fees	Costs	Credits	Total
70750 Nevada Health CO-OP 70750000 General	05/31/20	24691	100.00	0.00	0.00	100.00
70750003 Claims	05/31/20	24692	1,890.00	0.00	0.00	1,890.00
70750008 Company Administration	05/31/20	24693	1,308.75	0.00	0.00	1,308.75
70750100 Asset Recovery	05/31/20	24694	9,880.00	0.00	0.00	9,880.00
70750102 NHC vs. CMS Litigation	05/31/20	24695	14,090.00	0.00	0.00	14,090.00
Totals ( 5)			27,268.75	0.00	0.00	27,268.75

July 27, 2020  
12:08 pm

Cantilo & Bennett, L.L.P.  
Bill Register

Page 1

Client and Matter	Date	Inv No	Fees	Costs	Credits	Total
70750 Nevada Health CO-OP 70750000 General	05/31/20	24689	0.00	372.23	0.00	372.23
70750001 Takeover Administration	05/31/20	24629	0.00	2,289.34	0.00	2,289.34
70750003 Claims	05/31/20	24690	0.00	1,592.27	0.00	1,592.27
Totals ( 3)			0.00	4,253.84	0.00	4,253.84

# CANTILO & BENNETT, L.L.P.

ATTORNEYS & COUNSELORS  
*A Texas Registered Limited Liability Partnership  
Comprised of Professional Corporations*

11401 Century Oaks Terrace  
Suite 300

Telephone: (512) 478-6000

Austin, Texas 78758  
www.cb-firm.com

Facsimile: (512) 404-6550

August 18, 2020

## BILL SUMMARY

70750 Nevada Health Co-Op ("NHC")

June 1 - June 30, 2020

<u>Matter No. and Description</u>	<u>Invoice Numbers</u>	<u>Fees</u>	<u>Costs</u>	<u>Total</u>
June 2020	24729, 24731- 24737, 24759	\$ 22,690.00	\$ 1,578.77	\$ 24,268.77
<b>Totals (1)</b>		\$ 22,690.00	\$ 1,578.77	\$ 24,268.77

## Cantilo & Bennett, L.L.P.

**NEVADA HEALTH CO-OP  
TIMEKEEPER SUMMARY REPORT  
6/1/20 - 6/30/20**

		<b>Billable Hours</b>	<b>Billable Rate</b>	<b>June Billing</b>
<b>1</b>	<b>Timekeeper - Patrick H. Cantilo</b>	0.00	\$490.00	\$0.00
<b>2</b>	<b>Timekeeper - Mark F. Bennett</b>	38.75	\$400.00	\$15,500.00
<b>3</b>	<b>Timekeeper - Kristen W. Johnson</b>	21.80	\$300.00	\$6,540.00
<b>4</b>	<b>Timekeeper - Josh O. Lively</b>	2.50	\$200.00	\$500.00
<b>5</b>	<b>Timekeeper - Douglas J. Coonfield</b>	0.00	\$200.00	\$0.00
<b>6</b>	<b>Timekeeper - Jose M. Rangel</b>	0.00	\$350.00	\$0.00
<b>7</b>	<b>Timekeeper - Arati Bhattacharya</b>	0.00	\$300.00	\$0.00
<b>8</b>	<b>Timekeeper - Law Clerk</b>	0.00	\$85.00	\$0.00
<b>9</b>	<b>Timekeeper - Isaiah Samaniego</b>	0.20	\$125.00	\$25.00
<b>10</b>	<b>TimeKeeper - Daviannie Baham</b>	0.00	\$50.00	\$0.00
<b>11</b>	<b>TimeKeeper - Jeffrey L. Collins</b>	1.00	\$125.00	\$125.00
	<b>GRAND TOTAL</b>	<b>64.25</b>		<b>\$22,690.00</b>

Client ID 70750  
Work Date 6/1/20:06/30/2020

TimeKeeper		Hours	Fees	NC Hours	NC Fees
MFB MARK F. BENNETT					
70750003	Claims	0.50	200.00	0.00	0.00
70750008	Company Administration	4.25	1,700.00	0.00	0.00
70750100	Asset Recovery	18.25	7,300.00	0.00	0.00
70750102	NHC vs. CMS Litigation	15.75	6,300.00	0.00	0.00
	Sub Total (MFB)	38.75	15,500.00	0.00	0.00*
JLC JEFFREY L. COLLINS					
	Sub Total (JLC)	1.00	125.00	0.00	0.00*
KWJ KRISTEN W. JOHNSON					
70750003	Claims	3.70	1,110.00	0.00	0.00
70750008	Company Administration	3.40	1,020.00	0.00	0.00
70750100	Asset Recovery	14.70	4,410.00	0.00	0.00
	Sub Total (KWJ)	21.80	6,540.00	0.00	0.00*
JOL JOSHUA O. LIVELY					
70750008	Company Administration	2.50	500.00	0.00	0.00
	Sub Total (JOL)	2.50	500.00	0.00	0.00*
IXS ISAAH SAMANIEGO					
	Sub Total (IXS)	0.20	25.00	0.00	0.00*
Grand Total		64.25	22,690.00	0.00	0.00

August 18, 2020  
9:53 am

Cantilo & Bennett, L.L.P.  
Bill Register

Page 1

Client and Matter	Date	Inv No	Fees	Costs	Credits	Total
70750 Nevada Health CO-OP 70750003 Claims	06/30/20	24734	1,310.00	0.00	0.00	1,310.00
70750008 Company Administration	06/30/20	24735	3,245.00	0.00	0.00	3,245.00
70750100 Asset Recovery	06/30/20	24736	11,710.00	0.00	0.00	11,710.00
70750102 NHC vs. CMS Litigation	06/30/20	24737	6,425.00	0.00	0.00	6,425.00
Totals ( 4)			22,690.00	0.00	0.00	22,690.00

August 18, 2020  
9:51 am

Cantilo & Bennett, L.L.P.  
Bill Register

Page 1

Client and Matter	Date	Inv No	Fees	Costs	Credits	Total
70750 Nevada Health CO-OP 70750001 Takeover Administration	06/30/20	24729	0.00	286.47	0.00	286.47
70750003 Claims	06/30/20	<del>24730</del> 24729	0.00	80.41	0.00	80.41
70750008 Company Administration	06/30/20	24731	0.00	14.29	0.00	14.29
70750100 Asset Recovery	06/30/20	24732	0.00	1,188.70	0.00	1,188.70
70750102 NHC vs. CMS Litigation	06/30/20	24733	0.00	8.90	0.00	8.90
Totals ( 5)			0.00	1,578.77	0.00	1,578.77

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## PALOMAR FINANCIAL, LC

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[www.palomarfin.com](http://www.palomarfin.com)

July 28, 2020

### **BILL SUMMARY**

70750 Nevada Health Co-Op ("NHC")

May 1, 2020 – May 31, 2020

<b>Matter No. and Description</b>	<b>Fees</b>	<b>Costs</b>	<b>Total</b>
May 2020 Non-IT Services	\$2,597.50	\$0.00	\$2,597.50
May 2020 IT Services Flat Fee	5,000.00	0.00	5,000.00
<b>Totals</b>	<b>\$7,597.50</b>	<b>\$0.00</b>	<b>\$7,597.50</b>



## Palomar Financial, LC

NEVADA HEALTH CO-OP  
PRIVILEGED AND CONFIDENTIAL  
SUMMARY REPORT  
PERIOD MAY 2020

		Billable Hours	Billable Rate	May 2020 Billing
1	TIME KEEPER - Nicole Wilkins	1.25	\$250.00	\$312.50
2	TIME KEEPER - Robert Stebel	0.00	\$160.00	\$0.00
3	TIME KEEPER - Kelly Reed	0.00	\$150.00	\$0.00
4	TIME KEEPER - Neda Khalaf	11.00	\$160.00	\$1,760.00
5	TIME KEEPER - Brent Andrews	0.00	\$150.00	\$0.00
6	TIME KEEPER - Mary Noel	3.50	\$150.00	\$525.00
	GRAND TOTAL	15.75		\$2,597.50

Palomar Financial, LC  
05/01/2020-05/31/2020  
Client: Nevada Health Co-Op ("NHC")

Staff ID	Name	Description	Hours	Amount
NMW	Nicole Wilkins	Accounting Reports/Receivership Team Support	0.40	\$ 100.00
		Payroll & Employee Benefits	0.20	\$ 50.00
		Accounts Payable and Receivable	0.40	\$ 100.00
		Bank Account Administration/Reconciliation	0.25	\$ 62.50
		Sub Total (NMW)	1.25	\$ 312.50
RNS	Robert Stebel	Payroll & Employee Benefits	0.00	\$ -
		Sub Total (RNS)	0.00	\$ -
KJR	Kelly Reed	Claims Matter	0.00	\$ -
		Sub Total (KJR)	0.00	\$ -
NK	Neda Khalaf	Accounting Reports/Receivership Team Support	11.00	\$ 1,760.00
		Sub Total (NK)	11.00	\$ 1,760.00
BA	Brent Andrews	IT Support & Administration	0.00	\$ -
		Sub Total (BA)	0.00	\$ -
MFN	Mary Noel	Investment Accounting/Support	1.50	\$ 225.00
		Accounts Payable and Receivable	2.00	\$ 300.00
		Sub Total (MFN)	3.50	\$ 525.00
Grand Total			15.75	\$ 2,597.50

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August 19, 2020

### **BILL SUMMARY**

70750 Nevada Health Co-Op ("NHC")

June 1, 2020 – June 30, 2020

<b>Matter No. and Description</b>	<b>Fees</b>	<b>Costs</b>	<b>Total</b>
June 2020 Non-IT Services	\$4,602.50	\$0.00	\$4,602.50
June 2020 IT Services Flat Fee	5,000.00	0.00	5,000.00
<b>Totals</b>	<b>\$9,602.50</b>	<b>\$0.00</b>	<b>\$9,602.50</b>

## Palomar Financial, LC

NEVADA HEALTH CO-OP  
PRIVILEGED AND CONFIDENTIAL  
SUMMARY REPORT  
PERIOD JUNE 2020

		Billable Hours	Billable Rate	June 2020 Billing
1	TIME KEEPER - Nicole Wilkins	6.30	\$250.00	\$1,575.00
2	TIME KEEPER - Robert Stebel	0.00	\$160.00	\$0.00
3	TIME KEEPER - Kelly Reed	1.00	\$150.00	\$150.00
4	TIME KEEPER - Neda Khalaf	14.00	\$160.00	\$2,240.00
5	TIME KEEPER - Brent Andrews	0.00	\$150.00	\$0.00
6	TIME KEEPER - Mary Noel	4.25	\$150.00	\$637.50
	GRAND TOTAL	25.55		\$4,602.50

Palomar Financial, LC  
06/01/2020-06/30/2020  
Client: Nevada Health Co-Op ("NHC")

Staff ID	Name	Description	Hours	Amount
NMW	Nicole Wilkins	Accounting Reports/Receivership Team Support	2.10	\$ 525.00
		General Ledger Accounting	0.30	\$ 75.00
		Accounts Payable and Receivable	2.40	\$ 600.00
		Bank Account Administration/Reconciliation	1.50	\$ 375.00
		Sub Total (NMW)	6.30	\$ 1,575.00
RNS	Robert Stebel	Payroll & Employee Benefits	0.00	\$ -
		Sub Total (RNS)	0.00	\$ -
KJR	Kelly Reed	Accounts Payable and Receivable	1.00	\$ 150.00
		Sub Total (KJR)	1.00	\$ 150.00
NK	Neda Khalaf	Accounting Reports/Receivership Team Support	14.00	\$ 2,240.00
		Sub Total (NK)	14.00	\$ 2,240.00
BA	Brent Andrews	IT Support & Administration	0.00	\$ -
		Sub Total (BA)	0.00	\$ -
MFN	Mary Noel	Accounts Payable and Receivable	4.25	\$ 637.50
		Sub Total (MFN)	4.25	\$ 637.50
Grand Total			25.55	\$ 4,602.50



Invoice No.: 5434896  
File No. : 170678.010100  
Bill Date : July 22, 2020

Nevada Health Co-Op  
Cantilo & Bennett, L.L.P.  
c/o Mark F. Bennett, Esq.  
11401 Century Oaks Terrace, Suite 300  
Austin, TX 78758

## **INVOICE**

Re: Asset Recovery matter in State Court

### **Legal Services through June 30, 2020:**

Total Fees: \$ 91,862.00

### **Expenses:**

Professional & Legal 40.00

Total Expenses: \$ 40.00

**Total Current Invoice: \$ 91,902.00**

MEF:TKK  
Tax ID: 13-3613083



Invoice No.: 5434894  
File No. : 170678.010300  
Bill Date : July 22, 2020

Nevada Health Co-Op  
Cantilo & Bennett, L.L.P.  
c/o Mark F. Bennett, Esq.  
11401 Century Oaks Terrace, Suite 300  
Austin, TX 78758

## **INVOICE**

Re: Federal Court of Claims

Legal Services through June 30, 2020:

Total Fees: \$ 20,111.50

**Total Current Invoice: \$ 20,111.50**

MEF:TKK  
Tax ID: 13-3613083

Invoice No.: 5434890  
File No. : 170678.010700  
Bill Date : July 22, 2020

Nevada Health Co-Op  
Cantilo & Bennett, L.L.P.  
c/o Mark F. Bennett, Esq.  
11401 Century Oaks Terrace, Suite 300  
Austin, TX 78758

## **INVOICE**

Re: Silver State Health Insurance Exchange

Legal Services through June 30, 2020:

Total Fees: \$ 1,678.00

Expenses:

Filing Fees 285.10

Subpoenas 125.00

Total Expenses: \$ 410.10

**Total Current Invoice: \$ 2,088.10**

MEF:TKK

Tax ID: 13-3613083





Invoice No.: 5453046  
File No. : 170678.010500  
Bill Date : August 13, 2020

Nevada Health Co-Op  
Cantilo & Bennett, L.L.P.  
c/o Mark F. Bennett, Esq.  
11401 Century Oaks Terrace, Suite 300  
Austin, TX 78758

## **INVOICE**

Re: Special Legal Receivership Matters

Legal Services through July 31, 2020:

Total Fees: \$ 522.50

**Total Current Invoice: \$ 522.50**

MEF:TKK  
Tax ID: 13-3613083

Invoice No.: 5453013  
File No. : 170678.010100  
Bill Date : August 13, 2020

Nevada Health Co-Op  
Cantilo & Bennett, L.L.P.  
c/o Mark F. Bennett, Esq.  
11401 Century Oaks Terrace, Suite 300  
Austin, TX 78758

**INVOICE**

Re: Asset Recovery matter in State Court

Legal Services through July 31, 2020:

Total Fees: \$ 105,494.50

Expenses:

Filing Fees

288.60

Total Expenses: \$ 288.60

**Total Current Invoice: \$ 105,783.10**

MEF:TKK

Tax ID: 13-3613083



Invoice No.: 5453084  
File No. : 170678.010300  
Bill Date : August 13, 2020

Nevada Health Co-Op  
Cantilo & Bennett, L.L.P.  
c/o Mark F. Bennett, Esq.  
11401 Century Oaks Terrace, Suite 300  
Austin, TX 78758

## **INVOICE**

Re: Federal Court of Claims

Legal Services through July 31, 2020:

Total Fees: \$ 134,007.00

**Total Current Invoice: \$ 134,007.00**

MEF:TKK  
Tax ID: 13-3613083

Invoice No.: 5453064  
File No. : 170678.010700  
Bill Date : August 13, 2020

Nevada Health Co-Op  
Cantilo & Bennett, L.L.P.  
c/o Mark F. Bennett, Esq.  
11401 Century Oaks Terrace, Suite 300  
Austin, TX 78758

**INVOICE**

Re: Silver State Health Insurance Exchange

Legal Services through July 31, 2020:

Total Fees: \$ 2,360.00

Expenses:

Subpoenas

125.00

Total Expenses: \$ 125.00

**Total Current Invoice: \$ 2,485.00**

MEF:TKK  
Tax ID: 13-3613083



Invoice No.: 5453054  
File No. : 170678.010800  
Bill Date : August 13, 2020

Nevada Health Co-Op  
Cantilo & Bennett, L.L.P.  
c/o Mark F. Bennett, Esq.  
11401 Century Oaks Terrace, Suite 300  
Austin, TX 78758

## **INVOICE**

Re: NHC v. WellHealth, etcl

Legal Services through July 31, 2020:

Total Fees: \$ 1,557.50

**Total Current Invoice: \$ 1,557.50**

MEF:TKK  
Tax ID: 13-3613083

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## EXHIBIT 2

---

Class C-L NCDs

**NRS 696B.330(6) Claims Report of Allowed Amounts for Class C-L Claims**

<b>Proof of Claim No.</b>	<b>Priority per NRS 696B.420(1)</b>	<b>Claimant Name</b>	<b>Total Allowed Amount</b>
NHC1012	G	Christopher Carothers	\$0.00
NHC1022	G	Phi Long	\$14,400.00
NHC1023	G	Safeguard Insurance, LLC	\$8,633.12
NHC1026	G	Eldorado Computing	\$2,707.50
NHC1027	G	Eldorado Computing	\$2,000.00
NHC1028	G	Eldorado Computing	\$0.00
NHC1029	G	Eldorado Computing	\$2,000.00
NHC1030	G	Eldorado Computing	\$7,820.00
NHC1031	G	Eldorado Computing	\$15,930.00
NHC1032	G	Eldorado Computing	\$8,977.50
NHC1033	G	Eldorado Computing	\$0.00
NHC1034	G	Eldorado Computing	\$0.00
NHC1035	G	Eldorado Computing	\$0.00
NHC1038	G	Insurance Group of Nevada	\$10,882.83
NHC1042	G	Judith A Tompa	\$424.10
NHC1060	D	Internal Revenue Service	\$493.65
NHC1062	G	Frank Sposato	\$11,758.18
NHC1065	G	David Mannina	\$2,716.51
NHC 1068	G	Nevada Benefits	\$52,707.85
NHC 1078	G	Tarkus Mossberg	\$479.59
NHC 1079	G	Conrad Stork	\$2,000.00
NHC 1080	G	Mayfair Management Group	\$9,863.00
NHC 1083	G	Janet Holland-Williams	\$640.09
NHC 1085	G	Carl Cook	\$11,021.79
NHC 1087	G	Elevate Insurance	\$12,473.35
NHC 1092	G	Sun City Financial LLC	\$21,244.45
NHC 1097	G	Afsar Amin-Akbari	\$331.07
NHC 1098	G	Nancy Bellantine	\$1,732.93
NHC 1099	G	Indegene Healthcare LLC Dr. Rajesh Nair	\$59,517.36
NHC 1102	G	Brownstein Hyatt Farber Schreck LLP	\$39,029.96
NHC 1105	G	Nancy Joanne Buford	\$6,151.72
NHC 1111	G	Charles Dean Richard	\$11,437.73
NHC 1117	DENIED	Stewart, Archibald & Barney LLP	\$0.00
NHC 1125	G	RLM LLC	\$5,245.00
NHC 1126	G	RLM Agency	\$116,702.31
NHC 1132	G	Walter Ross	\$4,605.59
NHC 1133	G	3800 Meadows	\$854,608.00
NHC 1134	G	3900 Meadows	\$479,465.75
NHC 1135	G	Soledad Madrigal	\$7,000.00
N/A	LATE	Tillman Clifton, III	\$0.00
N/A	LATE	Silver State Health Ins. Exch.	\$0.00
			<b>\$1,785,000.92</b>

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## EXHIBIT 3

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### Cash Flow Report



## NEVADA HEALTH CO-OP

### Cash Flow Analysis

Oct 2015 - August 2020

#### Sources & Uses

Beginning Cash as of October 1, 2015

\$ 5,352,417

#### SOURCES:

Premium Revenue	17,756,567
CSR Recoveries	2,347,121
Rx Rebates	-
Claims Overpayment Recoveries	720,133
PartnerRe 2014 Premium Refund	374,513
Traditional Reins Recoveries	787,352
FTR Reins Recoveries	735,747
Risk Corridor 2014	1,163,872
Federal Receivables Bridge Loan	-
Restricted Cash became Unrestricted	768,517
Sale of Risk Corridor Receivable Interest	10,000,000
Other	844,664
<b>TOTAL SOURCES:</b>	<b>35,498,486</b>

#### USES:

Medical Claims Q4 2015 and Post 2015 Adj	(176,660)
Rx Claims Q4 2015	(7,599,195)
Risk Adjustment 2015	-
Medical PMPMs Q4	(43,967)
FTR Reinsurance Premium	(898,687)
Traditional Reins Premium Q4 2015	(547,319)
Premium Tax	(294,665)
Other Admin	(12,780,942)
9010 ACA Fee / 720 PCORI Fee	(161,242)
Provider Claims Payments	(65,974)
Professional Services	(12,762,382)

#### TOTAL USES:

(35,331,035)

Net cash increase for period

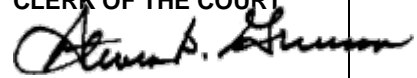
167,452

Ending Cash as of August 31, 2020

\$ 5,519,869

**TAB 43**

**TAB 43**



**MCSO (CIV)**

JOHN R. BAILEY

Nevada Bar No. 0137

SARAH E. HARMON

Nevada Bar No. 8106

JOSEPH A. LIEBMAN

Nevada Bar No. 10125

REBECCA L. CROOKER

Nevada Bar No. 15202

**BAILEY ♦ KENNEDY**

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SUZANNA C. BONHAM

Texas Bar No. 24012307

EMMA C. MATA

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[EMata@seyfarth.com](mailto:EMata@seyfarth.com)

*Attorneys for Defendants*

*Unite Here Health and Nevada Health*

*Solutions, LLC*

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;

Case No. A-17-760558-B

Dept. No. XVI

**DEFENDANTS UNITE HERE HEALTH  
AND NEVADA HEALTH SOLUTIONS,  
LLC'S MOTION TO CONSOLIDATE  
CASE NO. A-20-816161-C**

**HEARING REQUESTED**

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; UNITE HERE HEALTH, is a multi-employer health and welfare trust as defined in ERISA Section 3(37); DOES I through X inclusive; and ROE CORPORATIONS I-X, inclusive,

Defendants.

Pursuant to NRCP 42(a)(2) and EDCR 2.50(a), Defendants Unite Here Health (“UHH”) and Nevada Health Solutions, LLC (“NHS”) (collectively “UHH Defendants”) respectfully move this Court to consolidate the following related lawsuit: *State of Nevada, ex. rel. Commissioner of Insurance, Barbara D. Richardson, in her Official Capacity as Receiver for Nevada Health Co-Op v. Silver State Health Insurance Exchange*, Case No. A-20-816161-C, currently pending in Department 8 (the “Silver State Exchange Action”). This Motion is made and based on the papers and pleadings on file herein, the following Memorandum of Points and Authorities and exhibits attached thereto, and any oral argument heard by this Court.

DATED this 19<sup>th</sup> day of October, 2020.

BAILEY ♦ KENNEDY

By: /s/ John R. Bailey

JOHN R. BAILEY  
SARAH E. HARMON  
JOSEPH A. LIEBMAN  
REBECCA L. CROOKER

AND

SEYFARTH SHAW LLP  
SUZANNA C. BONHAM  
EMMA C. MATA

*Attorneys for Defendants  
Unite Here Health and Nevada Health  
Solutions, LLC*

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

Plaintiff is contemporaneously seeking damages for the same alleged injury in this action and in the Silver State Exchange Action. In this action, Plaintiff seeks damages from UHH for uncollected insurance premiums in the amount of \$510,651.27. In the Silver State Exchange Action, the *exact same Plaintiff* seeks the *exact same damages* from the Silver State Health Insurance Exchange (“Silver State”)—uncollected insurance premiums in the amount of \$510,651.27. If the Silver State Exchange Action is not consolidated with this matter, Plaintiff may very well obtain a significant windfall in the form of a double recovery. Likewise, there is additional overlap between this action and the Silver State Exchange Action, meaning there are common questions of law and fact that would need to be resolved in both matters.

Further, the UHH Defendants recently moved for leave to add Silver State as a third-party defendant in this action.<sup>1</sup> Judicial efficiency and economy dictates that any and all claims involving Silver State should be resolved in the same forum and at the same time, or else there is a significant risk of inconsistent rulings. When combined with the very real possibility of a double recovery in favor of Plaintiff and to the detriment of UHH and Silver State, the best course of action is to consolidate the Silver State Exchange Action into this action. Under EDCR 2.50, this Court—as the first case commenced—would hear and decide both actions.

### II. STATEMENT OF FACTS

#### A. Silver State’s Involvement and Their Relationship to Plaintiff (the CO-OP).

In 2010, the United States enacted the Patient Protection and Affordable Care Act (“ACA”). Relevant here, the ACA provided for the creation of American Health Benefit Exchanges, commonly referred to as “health exchanges,” where consumers could evaluate and purchase insurance plans.<sup>2</sup> The ACA required that each state could either create its own health exchange or use the federal health exchange (often referred to as a “federally-facilitated exchange”).<sup>3</sup>

<sup>1</sup> Defs. Unite Here Health and Nevada Health Solutions, LLC’s Mot. for Leave to File Third-Party Compl. (“Motion for Leave”), filed Oct. 15, 2020.

<sup>2</sup> 42 U.S.C. § 18301(b).

<sup>3</sup> Compare *id.* with 42 U.S.C. § 18041(c).

1 Nevada elected to create its own health exchange and created an agency, Silver State, to  
2 develop and oversee Nevada’s health exchange.<sup>4</sup> In 2012, Silver State awarded Xerox State  
3 Healthcare, LLC (“Xerox”) a \$72 million contract to develop, administer, and manage Nevada’s  
4 health exchange (the “Exchange”).<sup>5</sup> In developing, administering, and managing the Exchange,  
5 some of Silver State’s and Xerox’s duties included ensuring that the Exchange promptly transferred  
6 consumer data and consumer premium payments to insurers and/or their vendors (including the  
7 UHH Defendants).<sup>6</sup>

8 Pursuant to the Consumer Operated and Oriented Plan, which was also established as part of  
9 the ACA, the CO-OP was formed as a Nevada non-profit health insurer that could provide  
10 reasonably-priced health insurance to Nevada residents and small business.<sup>7</sup> The vast majority of  
11 the insurance policies sold by the CO-OP were sold through the Exchange, as operated by Silver  
12 State and by Xerox.<sup>8</sup>

13 Beginning with its initial rollout on October 1, 2013, the Exchange was a disaster—it  
14 suffered from an egregious number of technical defects.<sup>9</sup> For example, many consumers would  
15 select and pay for insurance through the Exchange but, due to Silver State’s and Xerox’s failures,  
16 their information and payments were never transmitted to insurers, including the CO-OP.<sup>10</sup>

17 Indeed, the CO-OP’s own board minutes indicate the difficulties it faced as a result of the  
18 poorly designed and poorly managed Exchange. For example, the CO-OP’s board minutes reflect  
19 that they had numerous meetings with government officials, other insurers, and Xerox to discuss  
20 “the challenges the CO-OP [wa]s experiencing with data submission from Xerox to the  
21  
22

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23 <sup>4</sup> NRS 695I.200.

24 <sup>5</sup> Xerox Contract, at 2 ¶ 6, attached as Exhibit B to the Appendix to the Motion for Leave, filed Oct. 15, 2020.

25 <sup>6</sup> Silver State Exchange Requirements Matrix, attached as Exhibit C to the Appendix to the Motion for Leave, filed Oct. 15, 2020.

26 <sup>7</sup> Compl., Case No. A-17-760558-C, ¶¶ 2, 34, filed Aug. 25, 2017.

27 <sup>8</sup> Am. Compl., Case No. A-17-760558-C, ¶ 273, filed Sep. 24, 2018.

28 <sup>9</sup> Deloitte Consulting Report, attached as Exhibit D to the Appendix to the Motion for Leave, filed Oct. 15, 2020.

<sup>10</sup> *Id.* at 42-43.

CO-OP,” such as “more than 3,000 members that are on Xerox pending list that the CO-OP has not received any data on to date.”<sup>11</sup> The CO-OP complained that the Exchange was “negatively impacting the CO-OP’s membership,”<sup>12</sup> and that the Exchange’s “payment collection process...[was] only working at 45% capacity to accept payments ... [and] ... has drained the CO-OP’s resources[,] as no less than 50% of the CO-OP’s resources have been committed to Xerox and Xerox related issues since October 2013.”<sup>13</sup> Silver State’s and Xerox’s failures caused significant damage to the CO-OP for an extended period of time, as aptly summarized in the CO-OP CEO’s February 24, 2014 letter to Governor Brian Sandoval and to Xerox.<sup>14</sup>

These catastrophes led Silver State to engage Deloitte Consulting LLP (“Deloitte”) to evaluate the failures of the Exchange and Silver State’s options going forward.<sup>15</sup> Deloitte’s report found over **1,500 defects** with the Exchange, over 500 of which were of a “higher severity.”<sup>16</sup> Ultimately, Silver State elected to terminate its contract with Xerox and switch to a federally-facilitated exchange.

Emblematic of their negligence, Xerox and Silver State faced two class-action lawsuits based on their failure to develop, administer, and manage the Exchange:

- *Basich v. Xerox State Healthcare, LLC, et al.*, Case No. A-14-698567-C, a class action complaint filed on behalf of all Nevada consumers who purchased an insurance policy on the Exchange and did not receive the benefits of such policy; and
- *Casale v. State of Nevada Ex. Rel. Silver State Health Insurance Exchange, et al.*, Case No. A-14-706171-C, a class action complaint filed on behalf of all Nevada brokers owed unpaid commissions for the sale of insurance policies on the Exchange.<sup>17</sup>

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<sup>11</sup> 2014.02.19 NHC Board Minutes (LARSON014368), attached as Exhibit E to the Appendix to the Motion for Leave, filed Oct. 15, 2020.

<sup>12</sup> *Id.*

<sup>13</sup> 2014.05.23 NHC Board Minutes (LARSON014354, 355 and 388), attached as Exhibit F to the Appendix to the Motion for Leave, filed Oct. 15, 2020.

<sup>14</sup> Feb. 24, 2014 Letter from Tom Zumtobel, attached as Exhibit G to the Appendix to the Motion for Leave, filed Oct. 15, 2020.

<sup>15</sup> Exhibit D to the Appendix to the Mot. for Leave, Deloitte Report.

<sup>16</sup> *Id.* at 9.

<sup>17</sup> Joint Mot. for Final Approval of Class Settlement, Certification of Settlement Class, Approval of Attorney’s Fees and Costs, and Entry of Final Order, attached as Exhibit H to the Appendix to the Motion for Leave, filed Oct. 15, 2020.

**B. The Milliman Lawsuit.**

On August 25, 2017, Plaintiff filed a Complaint in this Court entitled *State of Nevada, ex rel. Commissioner of Insurance, Barbara D. Richardson, in her Official Capacity as Receiver for Nevada Health CO-OP v. Milliman, et. al.*, Case No. A-17-760558-C.<sup>18</sup> This action was filed by the Statutory Receiver on behalf of the CO-OP.<sup>19</sup> As summarized by the Plaintiff:

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.<sup>20</sup>

Notably, despite all the issues identified above with the Exchange and its deleterious effects on the CO-OP, Plaintiff declined to sue Silver State and Xerox.<sup>21</sup>

Plaintiff filed an Amended Complaint on September 24, 2018.<sup>22</sup> The primary difference between the original Complaint and the Amended Complaint was the addition of UHH as a Defendant.<sup>23</sup> Again, despite all the issues identified above with the Exchange and its deleterious effects on the CO-OP, Plaintiff declined to sue Silver State and Xerox.

**C. Plaintiff's Expert Reports Confirm That Plaintiff is Seeking Damages Against UHH for Uncollected Insurance Premiums From the Exchange.**

On February 7, 2020, Plaintiff disclosed two expert witnesses—Mark Fish and Henry Osowski.<sup>24</sup> Plaintiff intends for Mr. Fish to testify regarding, *inter alia*, “damages suffered by

<sup>18</sup> Compl., Case No. A-17-760558-C, filed Aug. 25, 2017.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at ¶ 3.

<sup>21</sup> Plaintiff's counsel is ethically barred from suing Xerox, considering it was representing Xerox in the related class action lawsuits identified above, and continued to represent Xerox following the filing of the initial Complaint. These disabling conflicts of interest are the subject of a Motion to Disqualify that is currently pending in the CO-OP's receivership action. (Unite Here Health and Nevada Health Solutions, LLC's Mot. to: (1) Disqualify Greenberg Traurig, LLP as Counsel for the Statutory Receiver of Nevada Health CO-OP; and (2) Disgorge Attorney's Fees Paid by Nevada Health CO-OP to Greenberg Traurig, LLP, Case No. A-15-725244-C, filed Oct. 8, 2020.)

<sup>22</sup> Am. Compl., Case No. A-17-760558-C, filed Sep. 24, 2018.

<sup>23</sup> *Id.*

<sup>24</sup> Pls.'s Disclosures of Expert Witnesses Mark Fish and Hank Osowski Pursuant to NRCP 16.1, attached hereto as Exhibit 1.



NHC....”<sup>25</sup> Specifically, in his summary of related damages, Mr. Fish provides the following statement:

6. Damages for Uncollected Premiums from the Nevada State HIE:  
\$510,651.27.

UHH under collected premium payments from the HIE totaling  
\$510,651.27 in 2014.<sup>26</sup>

Although Plaintiff does not describe Mr. Osowski’s proposed expert testimony as being related to the CO-OP’s damages, his report says otherwise. Specifically, Mr. Osowski includes a section in his report entitled: “Damages due to Failures of Duties Performed by Unite Here Health and Insure Monkey, including Failure of Duties by NHC Management.”<sup>27</sup> Within that section, and similar to Mr. Fish, Mr. Osowski includes the following statement:

6. Damages for Uncollected Premiums from the Nevada State HIE:  
\$510,651.27

UHH is responsible for under collected premium payments from the HIE totaling \$510,651.27 in 2014 by not setting up proper data systems to maintain and track NHC enrollment files, including no setup of a proper data system for the reconciliation of membership enrollment with the HIE.<sup>28</sup>

**D. Plaintiff Files a Separate Lawsuit Against Silver State Seeking the Exact Same Damages She is Seeking From UHH.**

On June 5, 2020, Plaintiff filed a Complaint against Silver State entitled *State of Nevada, ex rel. Commissioner of Insurance, Barbara D. Richardson, in her Official Capacity as Receiver for Nevada Health CO-OP v. Silver State Health Insurance Exchange*, Case No. A-20-816161-C.<sup>29</sup> For some unexplained reason, Plaintiff did not seek leave to add Silver State as a defendant in this action, and instead choose to file a brand new lawsuit. For some unexplained reason, Plaintiff chose not to include any allegations relating to the numerous failures of the Exchange (and Xerox) and its

<sup>25</sup> *Id.*, 2:12.

<sup>26</sup> *Id.*, Ex. A, p. 32.

<sup>27</sup> *Id.*, Ex. B, p. 71.

<sup>28</sup> *Id.*, Ex. B, p. 73.

<sup>29</sup> Compl., Case No. A-20-816161-C, filed June 5, 2020.

1 deleterious effects on the CO-OP, instead focusing its allegations on one narrow issue—uncollected  
2 insurance premiums in the amount of \$510,651.27.<sup>30</sup> *As shown above, these are the exact same*  
3 *damages that Mr. Fish and Mr. Osowski are attempting to pin on UHH.*

4 Silver State filed an Answer to the Complaint on August 24, 2020.<sup>31</sup> Notably, Silver State  
5 alleges that it did not retain the \$510,651.27, and that Xerox or Xerox’s subcontractor was in  
6 possession of those funds.<sup>32</sup> Unsurprisingly, Plaintiff has still declined to sue Xerox.<sup>33</sup>

7 **E. UHH and NHS File a Motion for Leave to Implead Silver State and Xerox As Third-**  
8 **Party Defendants.**

9 On October 15, 2020, the UHH Defendants filed a Motion for Leave to file a Third-Party  
10 Complaint against Silver State and Xerox.<sup>34</sup> Unlike Plaintiff’s narrowly-drafted Complaint against  
11 Silver State, the UHH Defendants’ proposed Third-Party Complaint against Silver State and Xerox  
12 encompasses the manifest and numerous failures of the Exchange and its deleterious effects on the  
13 success (or lack thereof) of the CO-OP. Assuming the Motion for Leave is granted, Silver State and  
14 Xerox will be parties to this action.

15 **III. ARGUMENT**

16 **A. Legal Standard.**

17 “If actions before the court involve a common question of law or fact, the court may: (1) join  
18 for hearing or trial any or all matters at issue in the actions; (2) consolidate the actions; or (3) issue  
19 any other orders to avoid unnecessary cost or delay.” NRCP 42(a). “[A] district court enjoys ‘broad,  
20 but not unfettered, discretion in ordering consolidation.’” *Nalder v. Dist. Ct.*, 136 Nev. Adv. Op. 24,  
21 462 P.3d 677, 684 (2020) (quoting *Marcuse v. Del Webb Cmtys, Inc.*, 123 Nev. 278, 286, 163 P.3d  
22 462, 468 (2007)). One of the primary goals of consolidation is to promote judicial efficiency and  
23 economy. *Id.* at 685.

24  
25 <sup>30</sup> *Id.*, ¶ 24.

26 <sup>31</sup> Answer, Case No. A-20-816161-C, filed Aug. 24, 2020.

27 <sup>32</sup> *Id.*, ¶ 22.

28 <sup>33</sup> Again, this is the subject of a pending Motion to Disqualify in the receivership action.

<sup>34</sup> Mot. for Leave, filed Oct. 15, 2020.

A motion for consolidation “must be heard by the judge assigned to the case first commenced.” EDCR 2.50(a)(1). Additionally, once “consolidation is granted, the consolidated case will be heard before the judge ordering consolidation.” *Id.*

**B. This Action and the Silver State Exchange Action Share Common Questions of Law and Fact.**

“As a general principle, a plaintiff suing in tort can only recover once for a single injury, even when several defendants are responsible for that injury.” *J.E. Johns & Assocs. v. Lindberg*, 136 Nev. Adv. Rep. 55, 470 P.3d 204, 206 (2020). As explained above, Plaintiff is seeking the exact same damages in this action as in the Silver State Exchange Action. Plaintiff is suing UHH for \$510,651.27 in uncollected insurance premiums and is suing Silver State for \$510,651.27 in uncollected insurance premiums. If these damages theories were being advanced in the same case, Plaintiff could never recover these identical amounts from UHH and from Silver State. However, since these damages theories are currently subject to separate forums and separate triers of fact, there is a very real chance that Plaintiff could obtain a windfall in the form of a double recovery. Consolidation would remedy that and force Plaintiff’s damages theories to comply with *J.E. Johns & Assocs. v. Lindberg*. See also *Kimberly-Clark Worldwide, Inc. v. First Quality Baby Prods.*, Case No. 09-C-0916, 2011 U.S. Dist. LEXIS 67623, at \*9 (E.D. Wisc. June 22, 2011) (“Consolidation will prevent a situation in which two separate juries decide damages and thus will remove the possibility of duplicative recovery.”).

“Consolidation requires only a common question of law or fact; perfect identity between all claims in any two cases is not required, so long as there is some commonality of issues.” *Zimmerman v. GJS Grp., Inc.*, Case No.: 2:17-cv-00304-GMN-GWF, 2018 U.S. Dist. LEXIS 50158, at \*13 (D. Nev. March 27, 2018).<sup>35</sup> Plaintiff’s entitlement to recover damages for uncollected insurance premiums is but one common issue of law and fact between this action and the Silver State Exchange Action. In fact, there are more common issues between the two actions. Both actions

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<sup>35</sup> Federal cases interpreting rules of civil procedure are persuasive authority in Nevada courts. *Exec. Mgmt. Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 872, 876 (2002) (citing *Las Vegas Novelty v. Fernandez*, 106 Nev. 113, 119, 787 P.2d 772, 776 (1990)).

comprise the same nucleus of operative facts. As described in detail above, Silver State as well as Xerox were key players in the operation and success (or lack thereof) of the CO-OP. Accordingly, the Exchange's role is inexorably intertwined with the CO-OP's pending claims against the various Defendants in this action, especially with respect to UHH and NHS, who were heavily reliant on Silver State and Xerox competently performing their roles in the development and administration of the Exchange. In other words, "[t]hese are all the same transactions that gave rise to these two lawsuits." See *Liberty Mut. Ins. Group v. Panelized Structures*, Case No. 2:10-cv-01951-MMD-PAL, 2012 U.S. Dist. LEXIS 20484, at \*7 (D. Nev. June 22, 2012). All of these issues and transactions are likely to be analyzed at length in both this action as well as the Silver State Exchange Action. For these reasons, consolidation is appropriate, and the Motion should be granted.

C. **Judicial Efficiency and Economy Support the Consolidation of the Silver State Exchange Action.**

There is no logical reason for two separate courts and triers of fact to determine Plaintiff's alleged damages with respect to uncollected insurance premiums from the Exchange. This issue is already squarely before this Court, and it would be redundant for another court to determine the issue as well, including all of the other commonly related issues of law and fact that would need to be analyzed in order to reach that determination. Further, permitting two courts to decide these identical issues will bring a significant risk of inconsistent rulings, which could consume even more judicial resources in efforts to remedy it, including at the appellate level.

As explained above, Silver State and Xerox are proposed third-party defendants in this action. Assuming leave is granted, Silver State would be forced to litigate in two different courtrooms, despite significant overlap between these two actions. Accordingly, for everyone's sake, it is much more reasonable and efficient to resolve all of these common issues in one action. Accordingly, this Court should exercise its discretion under Rule 42(a)(2), and this Motion should be granted.

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IV. CONCLUSION

Plaintiff should have filed its claims against Silver State in this action—not in an entirely separate action. Pursuing these two matters in separate forums grants Plaintiff the possibility of a windfall in the form of a double recovery. The requirements for consolidation under NRCP 42(a) and EDCR 2.50 are satisfied, and thus, the Court should exercise its discretion and promote the judicial efficiency and economy that will be realized by consolidating these related matters.

DATED this 19<sup>th</sup> day of October, 2020.

BAILEY ♦ KENNEDY

By: /s/ John R. Bailey  
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**CERTIFICATE OF SERVICE**

I certify that I am an employee of BAILEY❖KENNEDY and that on the 19<sup>th</sup> day of October, 2020, service of the foregoing **DEFENDANTS UNITE HERE HEALTH AND NEVADA HEALTH SOLUTIONS, LLC'S MOTION TO CONSOLIDATE CASE NO. A-20-816161-C** was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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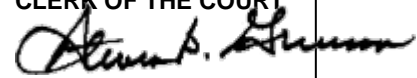
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**TAB 44**

**TAB 44**



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**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

STATE OF NEVADA, EX REL..	)	Case No.: A-15-725244-C
COMMISSIONER OF INSURANCE, IN	)	Dept. No.: I
HER OFFICIAL CAPACITY AS	)	
STATUTORY RECEIVER FOR	)	
DELINQUENT DOMESTIC INSURER,	)	<b>STATE OF NEVADA, EX REL.</b>
	)	<b>SILVER STATE HEALTH</b>
Plaintiff	)	<b>INSURANCE EXCHANGE'S</b>
	)	<b>REPLY TO PLAINTIFF'S</b>
v.	)	<b>OPPOSITION TO MOTION TO</b>
	)	<b>INTERVENE</b>
	)	
NEVADA HEALTH CO-OP,	)	<b>Hearing Date: 11/5/2020</b>
	)	<b>In Chambers</b>
Defendant	)	

Interested Party, Silver State Health Insurance Exchange (the "Exchange"), by and through its counsel, Attorney General Aaron D. Ford, and Senior Deputy Attorney General Michelle Briggs, hereby respectfully submits its reply memorandum of points and authorities to Plaintiff's opposition to the Exchange's Motion to Intervene.

**INTRODUCTION**

Plaintiff's opposition to the Exchange's Motion to Intervene further details Plaintiff's bad faith and unfair dealing regarding the Exchange. The Exchange is



1 pursuing its proof of claim because Plaintiff only recently sued the Exchange for  
2 premiums collected in 2014. There is no prejudice to other creditors by putting a late  
3 filed claim in the late filed claim category provided by law. Plaintiff fails to mention it  
4 contracted with the Exchange in 2018 for the stated purpose of assisting the Exchange  
5 in locating, extracting, and gathering data in the Exchange's possession from plan year  
6 2014 concerning Plaintiff's enrollments. The data in the Exchange's possession came  
7 from Xerox State Healthcare, LLC ("Xerox"). Xerox was under contract to host and  
8 operate the Exchange's health insurance marketplace in 2014, and Xerox received all  
9 premium payments from consumers through 2014. Prior to the receivership, Plaintiff  
10 worked with Xerox on a regular basis. Evidently Plaintiff's attorneys also represented  
11 Xerox, so pursuing Xerox for an explanation of their data would be an issue for  
12 Plaintiff's attorneys,<sup>1</sup> or perhaps based on their representation of Xerox they already  
13 knew premiums were not paid properly. Either way, Plaintiff used the Exchange to  
14 avoid dealing with Xerox.

15 Records provided to the Exchange from Xerox were not complete or understood  
16 by the Exchange. Plaintiff also hired a third-party contractor recommended by the  
17 Exchange, Red River Consulting ("Red River"), to review the Xerox data. The Exchange  
18 and Red River could not verify the data. Yet based on the unverified Xerox data and  
19 unsupported assumptions about the data, Plaintiff filed a lawsuit against the  
20 Exchange in June 2020.<sup>2</sup> Plaintiff complains about the delay in the Exchange pursuing  
21 its claim, but never mentions its delay in pursuing alleged unpaid premiums from 2014  
22 – premiums Xerox would have received, not the Exchange. While the Exchange was  
23 cooperating with Plaintiff in 2018 and trying to decipher the Xerox data, it was  
24 unaware that Plaintiff intended to sue the Exchange and could not pursue Xerox due to  
25 its attorneys' conflict.

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26 <sup>1</sup> See Unite Here Health and Nevada Health Solution, LLC's Motion to Disqualify  
27 Greenburg Traurig, LLC as Counsel for the Statutory Receiver of Nevada Health Co-Op  
28 filed in the matter October 8, 2020.

<sup>2</sup> District Court Case No. A-20-816161-C.

1 In defense of Plaintiff's 2020 lawsuit, the Exchange is asserting its right to an  
2 offset as provided in NRS 696B.440. Having the Exchange's claim part of the categories  
3 of claims is not moot in light of Plaintiff's recent lawsuit against the Exchange.  
4 Plaintiff, under receivership, knew payment was due to the Exchange before any  
5 claims process was approved by the Court. Invoices were sent to the Receiver in 2015  
6 and 2016. Plaintiff wants this Court to deny the Exchange the right to file its proof of  
7 claim in an effort to avoid the offset, not because of timeliness or prejudice to other  
8 creditors. Plaintiff's actions are in bad faith and contrary to the law.

### 9 ARGUMENT

#### 10 A. ORDERS OF THE COURT REGARDING LATE FILED CLAIMS DO 11 NOT SUPERCEDE THE STATUTORY REQUIREMENTS 12 GOVERNING THIS RECEIVERSHIP.

13 Plaintiff's opposition quotes orders of this Court providing for the proof of claim  
14 deadline and the consequence of failing to file claims timely. The Receiver was on  
15 notice of the Exchange's billed invoices prior to those orders. While this Court may  
16 have signed orders drafted by the Receiver for the claims process, that does not mean  
17 those orders supersede NRS 696B. Quite frankly, it is further evidence the actions of  
18 the Receiver in this case need to be checked by this Court. This receivership is  
19 governed by NRS 696B and the powers of the receiver are provided in statute.  
20 NRS 696B.420 very explicitly provides for a category of late filed claims. It is  
21 abundantly clear that the claim owed to the Exchange will not be paid from the  
22 receivership estate. The receivership estate will not even touch Class C claims. Putting  
23 the claim in Class J for late filed claims does not prejudice any other creditor and it is  
24 provided by statute.

25 Plaintiff tries to argue NRS 696B.330(4) means the Exchange's claim does not  
26 have to be processed because there is no way it will be paid. The Exchange is not  
27 requesting that the claim be *processed*. It is asking that the claim be classified as  
28 provided in NRS 696B.420. NRS 696B.330(4) does not apply. The Receiver will only

1 process the claims it will pay, but it still classified all other claims.

2 The Receiver knew from the beginning of this receivership about the Exchange's  
3 claim, and in all fairness, should have added the claim from the beginning. The fee  
4 owed to the Exchange by Plaintiff is in the law and was a known claim. The claims  
5 process is to put the Receiver on notice of the claims. The receivership should be an  
6 equitable proceeding. Most of the fees owed to the Exchange were incurred *after* the  
7 Receiver took control. The Exchange's fee was due for the policies maintained by  
8 Plaintiff after the Receiver was appointed on October 1, 2015. The invoices sent by the  
9 Exchange in October, November and December 2015 and January and February 2016  
10 provided specific notice. The Exchange is merely seeking Class J classification for late  
11 filed claims which is provided by statute – regardless of the Court's orders. Plaintiff's  
12 actions refusing to so classify the Exchange's claim are arbitrary and capricious.

13 **B. THE EXCHANGE'S MOTION DOES NOT NEED AN ANSWER OR**  
14 **COMPLAINT FOR THIS RECEIVERSHIP ACTION.**

15 Plaintiff alleges a complaint or answer is required to be filed with the motion to  
16 intervene. NRCP 24(c) provides that "[t]he motion must state the grounds for  
17 intervention and be accompanied by a pleading that sets out the claim or defense for  
18 which intervention is sought." A complaint did not start this receivership action.  
19 Interested parties routinely intervene into receivership cases without filing a  
20 complaint or answer. In this receivership case, objections and motions are filed without  
21 first having any decision on the filer's party status. The Exchange is trying to  
22 intervene for the sole purpose of having a judicial determination on its claim. The  
23 Exchange's proposed Objection to the Denial of Proof of Claim states the claim for  
24 which the intervention is sought. NRCP 24(c) is satisfied. If the Court is inclined to  
25 accept Plaintiff's argument, the Exchange is willing to do what other companies in this  
26 case have done and merely file the objection. If Plaintiff were acting in accordance with  
27 the Court approved procedure for rejecting claims, the Exchange would not need to  
28 intervene.

There is a Court approved appeal process to the extent the Receiver makes a claim determination. However, in this case, the Deputy Receiver refused to even consider the claim, leaving the Exchange with no ability to protect its interest in the offset under NRS 696B.440. If Plaintiff were not suing the Exchange, it would be rather simple for the Deputy Receiver to put the Exchange's proof of claim in Class J for late filed claims. NRS 696B provides for very few obligations on the Receiver probably because the Receiver is the Commissioner of Insurance, but as she delegated her authority to the Deputy Receiver, this Court should be acting as a check on this receivership and at a minimum ensure NRS 696B is followed. The Deputy Receiver should be pursuing unpaid premiums from Xerox and probably knew about that years ago, but if the Receiver's attorneys represented Xerox previously that option is not available to the detriment of the receivership estate. Due to this situation, the Deputy Receiver refuses to do the very simple act of placing the Exchange's claim in Class J and would rather fight the Exchange needlessly incurring more costs and fees.

## CONCLUSION

The Deputy Receiver's actions should be reviewed by this Court. As provided above and in the motion to intervene, the Exchange respectfully requests that the Exchange be allowed to intervene in this action to file its objection.

Dated: October 28, 2020.

AARON D. FORD  
Attorney General

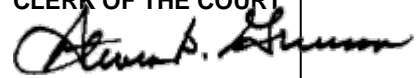
By: /s/ Michelle D. Briggs  
 Michelle D. Briggs (Bar. No. 7617)  
 Senior Deputy Attorney General  
 Attorneys for the State of Nevada ex rel.  
 the Silver State Health Insurance Exchange

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/s/ Michele Caro  
Michele Caro, an employee of the  
Office of the Nevada Attorney General

**TAB 45**

**TAB 45**



**OPPM**

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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 STATUTORY RECEIVER FOR  
DELINQUENT DOMESTIC INSURER,

Plaintiff,

v.

NEVADA HEALTH CO-OP,

Defendant.

Case No. A-15-725244-C

Dept. No. I

**GREENBERG TRAUIG LLP'S  
OPPOSITION TO UNITE HERE  
HEALTH AND NEVADA  
HEALTH SOLUTIONS, LLC'S  
MOTION TO DISQUALIFY  
GREENBERG TRAUIG AND  
DISGORGE ATTORNEYS' FEES**

HEARING DATE: DECEMBER 8, 2020

HEARING TIME: 9:00 A.M.

1 Greenberg Traurig, LLP (“Greenberg Traurig”), counsel to Barbara Richardson as the  
2 Statutory Receiver (the “Receiver”) for the Nevada Health Co-Op (“NHC”) and representing itself  
3 in response to this motion, and Jenner & Block LLP, counsel to Greenberg Traurig, submit this  
4 opposition to the Motion to Disqualify Greenberg Traurig and Disgorge Attorneys’ Fees  
5 (“Motion”) filed by Unite Here Health (“UHH”) and Nevada Health Solutions, LLC (“NHS,” and  
6 together, “Movants”).

### 7 INTRODUCTION

8 The Court should deny the motion to disqualify Greenberg Traurig because it is a baseless  
9 and untimely attempt by litigation adversaries—not current or former clients of Greenberg  
10 Traurig—to improperly use disqualification to delay litigation and obtain a strategic advantage  
11 when all else has failed.

12 The core premise of the Motion is the assumption that Greenberg Traurig was retained as a  
13 general, all-purpose counsel for the Receiver, with obligations to represent the Receiver in all of  
14 her affairs. That unsupported assumption is flat-out wrong. Greenberg Traurig was retained by the  
15 Receiver for the limited purpose of pursuing specific claims on the Receiver’s behalf. Before  
16 Greenberg Traurig was retained, it fully advised the Receiver that Greenberg Traurig had a potential  
17 conflict with pursuing any claim against Xerox State Healthcare, LLC (“Xerox”). The Receiver  
18 consequently did not retain Greenberg Traurig to evaluate or pursue any such claims. Instead, the  
19 Receiver sought and received permission to also retain conflicts counsel, James Whitmire of  
20 Santoro Whitmire, Ltd., to handle any matters that were outside the scope of Greenberg Traurig’s  
21 retention due to potential conflicts. Since its engagement, Greenberg Traurig had no involvement  
22 whatsoever in the Receiver’s evaluation of its potential claims against Xerox. Similarly, the scope  
23 of Greenberg Traurig’s representation of the Receiver did not include defending or administering  
24 the undisputed claims of members of Valley Health System (“Valley”) against the receivership or  
25 allocating assets among creditors like Valley. Accordingly, the central thesis of the Motion lacks  
26 any foundation.

27 The Court should deny the Motion for four independent reasons. **First**, UHH and NHS have  
28 no standing to raise this supposed conflict. Under Nevada law, only a current or former client of



1 an attorney may seek the attorney's disqualification, and it is undisputed that UHH and NHS are  
2 neither current nor former clients of Greenberg Traurig, so they lack standing as a matter of law.

3 **Second**, Greenberg Traurig has no disqualifying conflict because the scope of its  
4 representation does not include being adverse to either Xerox or Valley. Fiduciaries like the  
5 Receiver routinely and properly retain court-approved counsel for specific purposes even if those  
6 counsel would have conflicts performing other duties for the fiduciary. Here, the Receiver retained  
7 Greenberg Traurig only to pursue specific claims against entities with which it had no conflict, and  
8 separately retained conflicts counsel for the precise purpose of handling potential claims against  
9 parties as to whom a potential conflict existed—like Xerox. Nor does the scope of Greenberg  
10 Traurig's representation involve anything relating to Valley. In other words, the main factual  
11 premise of the motion—that Greenberg Traurig's potential conflict with Xerox or Valley  
12 disqualifies Greenberg Traurig—fails because the scope of Greenberg Traurig's representation  
13 does not include anything relating to Xerox or Valley.

14 **Third**, even if a conflict of interest exists—and it clearly does not—disqualification is  
15 inappropriate because it would cause extreme prejudice to the Receiver. Greenberg Traurig has  
16 represented the Receiver for over three years in several cases, including the case against UHH and  
17 NHS, accumulating extensive knowledge of the complex factual and legal issues at play and  
18 preparing for trial. Depriving the Receiver of her trial counsel at late, critical stages of these cases  
19 would impair the Receiver's claims and impose significant costs on her and the stakeholders she  
20 acts for.

21 **Fourth**, even if UHH and NHS had standing to bring this motion, UHH and NHS have  
22 waived and forfeited their argument for disqualification by failing to raise it during three years of  
23 litigation. UHH and NHS offer no explanation for their delay in alleging a conflict based on  
24 information long publicly available, and the true reason is obviously tactical: UHH and NHS are  
25 faced with imminent liability to the Receiver at an upcoming trial and are seeking to delay the trial,  
26 deprive the Receiver of her counsel, and further deprive the receivership estate of resources to  
27 pursue their wrongdoing.

28 / / /

1 **FACTUAL BACKGROUND**

2 The Movants provide a lengthy statement of purported facts that largely consists of improper  
3 argument and baseless speculation. The relevant undisputed facts are set out below.

4 **A. The Appointment Of A Receiver And Special Deputy Receiver With Authority To**  
5 **Engage Counsel Under Nevada Law.**

6 As the Court knows, NHC was a Nevada health insurance provider that began providing  
7 healthcare insurance to Nevada citizens on January 1, 2014, and was placed into receivership on  
8 September 25, 2015, under Nevada Revised Statute (“NRS”) § 696B.290. (*Id.*) On October 14,  
9 2015, the Eighth Judicial District Court entered an order appointing then-Commissioner Parks as  
10 Receiver of NHC, and the law firm Cantilo & Bennett, L.L.P., as the Special Deputy Receiver  
11 (“SDR”). (*See* Oct. 14, 2015 Permanent Injunction and Order Appointing Commissioner as  
12 Permanent Receiver of Nevada Health Co-Op (“October 14, 2015 Order”).) The appointment was  
13 updated to replace the Receiver with the new Commissioner of Insurance, Barbara Richardson, in  
14 April 2016. (*See* Ex. 1, Declaration of Mark Bennett in Support of Greenberg Traurig’s Opposition  
15 (“Bennett Decl.”) ¶ 8.)

16 Under NRS § 696B.290, the Order vested in the Receiver exclusive legal and equitable title  
17 to all “causes of action,” and granted the Receiver and SDR broad authority to rehabilitate or  
18 liquidate NHC’s business and affairs as they saw fit. (October 14, 2015 Order ¶ 2; *see also* NRS §  
19 696B.290(2)-(5).) The Order also expressly authorized the Receiver and SDR to “[i]nstitute and to  
20 prosecute” all “suits and other legal proceedings,” to “defend suits in which CO-OP or the Receiver  
21 is a party,” and to “abandon the prosecution or defense of such suits, legal proceedings and claims  
22 on such terms and conditions as she deems appropriate.” (October 14, 2015 Order, ¶ 14(h).) The  
23 Receiver also has the power to “employ and to fix the compensation of ... counsel” and other  
24 personnel “as she considers necessary” and pay such compensation out of the assets of NHC in  
25 accordance with NRS § 696B.290. (*Id.* ¶ 4; *see also* NRS § 696B.255(6).) Under Nevada law, the  
26 Receiver has broad discretion so long as she does not take actions that are “unlawful, arbitrary or  
27 capricious.” NRS § 696B.290(7).

28 ///

1 The SDR is comprised of experienced professionals with years of experience in insolvency  
2 and receivership matters and with significant professional and business staff support. (*See* Bennett  
3 Decl. ¶¶ 4, 7-8.) Mr. Bennett, the lead authorized representative of the SDR, has decades of  
4 experience in restructuring and insolvency matters, including experience serving as the SDR for  
5 other receiverships and serving as counsel to the Deputy Liquidator of two health maintenance  
6 organization insolvencies. (*Id.* ¶ 4.) Mr. Bennett has been supported in this matter by a significant  
7 team of professionals that includes his partners Patrick Cantilo and Kristen Johnson, associate Josh  
8 Lively, and Cantilo & Bennett support staff. (*Id.* ¶ 7.) UHS and NHS have not alleged that either  
9 the Receiver or SDR has a conflict of interest. (Motion, *passim.*)

10 **B. The Receiver’s Limited-Scope Retention Of Greenberg Traurig To Pursue Certain**  
11 **Specific Claims And Retention Of Whitmire As Conflicts Counsel.**

12 On December 16, 2016, pursuant to the authority granted in NRS § 696B.290(6), the  
13 Receiver sought leave to engage several “Service Providers” to “assist the Receiver, according to  
14 their specialized expertise, in connection with general receivership, claims, and asset recovery  
15 matters.” (Dec. 16, 2016 Motion to Approve Professional Fee Rates on an Order Shortening Time,  
16 at 5.) The Receiver sought leave to retain and pay “the law firms of Greenberg Traurig, L.L.P. and  
17 Santoro Whitmire, Ltd., the consulting firm of FTI Consulting, Inc. and the consulting firm of  
18 DeVito Consulting, Inc.” *Id.* On January 17, 2017, the Court granted the motion to engage these  
19 advisors. (Jan. 17, 2017 Order.)

20 Pursuant to the Court’s Order, Greenberg Traurig was retained by the Receiver for the  
21 limited purpose of prosecuting certain claims on behalf of the Receiver, including claims against  
22 the federal government and claims against UHH, NHS, and the other defendants in the matter  
23 *Nevada Commissioner of Insurance v. Milliman Inc. et al.*, No. A-17-76055-B. (Ex. 2, Declaration  
24 of Mark Ferrario in Support of Greenberg Traurig’s Opposition (“Ferrario Decl.”) ¶ 10; Bennett  
25 Decl. ¶ 18.) Prior to Greenberg Traurig’s retention, the SDR provided Greenberg Traurig with a  
26 list of parties against whom the Receiver was contemplating asserting claims, and Greenberg  
27 Traurig ran these parties through its electronic conflicts checking system and confirmed that no  
28 conflicts existed. (Ferrario Decl. ¶ 8; Bennett Decl. ¶ 16.) Greenberg Traurig notified the SDR

1 that Greenberg Traurig had represented Valley in connection with claims for medical  
2 reimbursement from NHC that were submitted by medical provider members of the Valley Health  
3 System. (Ferrario Decl. ¶ 7; Bennett Decl. ¶ 13.) Greenberg Traurig and the SDR agreed that  
4 Greenberg Traurig’s representation did *not* include any work relating to claims brought by member  
5 facilities of the Valley Hospital System against the Receiver. (Ferrario Decl. ¶¶ 7, 10; Bennett  
6 Decl. ¶¶ 13, 18.) Nor did it include advising the Receiver as to distribution or allocation of the  
7 receivership’s assets to the creditors. (Ferrario Decl. ¶¶ 7, 10; Bennett Decl. ¶¶ 13, 18.) These  
8 responsibilities were outside the scope of Greenberg Traurig’s engagement and were handled by  
9 the Receiver, the SDR, and their experienced professional teams. (Ferrario Decl. ¶ 10; Bennett  
10 Decl. ¶¶ 19-21.)<sup>1</sup>

11 Greenberg Traurig’s limited representation of the Receiver likewise did not include any  
12 matters relating to Xerox. Prior to its retention, Greenberg Traurig notified the Receiver of its  
13 representation of Xerox in other matters. (Ferrario Decl. ¶ 5; Bennett Decl. ¶ 14.) Greenberg  
14 Traurig and the Receiver agreed that Greenberg Traurig’s representation would not include  
15 evaluating or prosecuting claims against Xerox. (Ferrario Decl. ¶ 5; Bennett Decl. ¶ 14.) Instead,  
16 the Receiver also retained another law firm—Santoro Whitmire—as conflicts counsel that would  
17 assist the Receiver and SDR, if necessary, with prosecution of claims against companies as to which  
18 Greenberg Traurig—an international law firm with a broad range of clients—had a potential  
19 conflict. (Ferrario Decl. ¶ 6; Bennett Decl. ¶ 15; Ex. 3, Declaration of James E. Whitmire  
20 (“Whitmire Decl.”), ¶¶ 8, 14.) Such arrangements with conflicts counsel are commonplace in large,  
21 complex receivership matters like the NHC receivership in which the receivership has many claims  
22 against other parties and is subject to many creditor claims. (Bennett Decl. ¶ 15.)

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25 <sup>1</sup> On April 5, 2017, Greenberg Traurig and the SDR submitted the Receiver’s Sixth Status Report to the Court  
26 as required by Nevada law. (April 5, 2017 Sixth Status Report.) Movants claim, without support, that because  
27 prior status reports had been filed by the Nevada Attorney General, Greenberg Traurig’s submission of the  
28 report is evidence that Greenberg Traurig had “fully replaced the Attorney General with respect to all aspects  
of the Receiver’s attorney-client representation.” (Mot. at 12.) This is incorrect—Greenberg Traurig’s  
representation of the Receiver was limited to prosecuting certain specific claims. (See Ferrario Decl., ¶ 10;  
Bennett Decl., ¶ 18.)

1 **C. Greenberg Traurig's Prior Representation Of Xerox.**

2 Greenberg Traurig has represented Xerox in several prior matters that are unrelated to its  
3 representation of the Receiver. On April 1, 2014, Xerox State Healthcare ("Xerox") was named a  
4 defendant in the lawsuit *Basich v. State of Nevada ex rel. Silver State Health Insurance Exchange*  
5 *et al.*, a class action brought by Nevada residents who alleged that they had paid health insurance  
6 premiums but did not receive health insurance coverage. (See Ex. 4, Class Action Complaint, No.  
7 A-14-698567-C (Eighth Judicial District Court, Nevada).) On August 26, 2014, Xerox was named  
8 a defendant in the lawsuit *Casale v. State of Nevada ex rel. Silver State Health Insurance Exchange*  
9 *et al.*, a class action brought by Nevada insurance brokers alleging, among other things, that they  
10 were denied commissions because of Xerox. (See Ex. 5, Class Action Complaint, No. A-14-  
11 706171-C (Eighth Judicial District Court, Nevada).) The plaintiffs' claims against Xerox in these  
12 cases were based on Xerox's contractual relationship with the Silver State Health Insurance  
13 Exchange (the "Exchange"). (E.g., *id.* ¶ 2.) Neither NHC nor the Receiver (who had not yet been  
14 appointed) were party to either of these cases. (See Ferrario Decl. ¶¶ 12-13.)<sup>2</sup>

15 Greenberg Traurig was retained to represent Xerox in the *Basich* and *Casale* matters, which  
16 were later consolidated. (See Ferrario Decl. ¶¶ 12-14.) On May 25, 2017, the *Basich* and *Casale*  
17 cases were settled with no findings or admissions of liability. (*Id.* ¶ 14; Ex. 6, May 25, 2017 Notice  
18 of Entry of Order Granting Final Approval of Class Settlement and Attorneys' Fees.)

19 Greenberg Traurig was also retained to represent Xerox in connection with an investigation  
20 initiated by the Nevada Department of Business and Industry, Division of Insurance. (See Ferrario  
21 Decl. ¶ 15.) That investigation focused primarily on Xerox's licensing under Nevada law. (See  
22 *id.*; Movants' Ex. 10, ¶ 3.) Once again, neither NHC nor the Receiver had any involvement or  
23 interest in this investigation. (See Ferrario Decl. ¶ 15.) On October 19, 2017, the Division of  
24 Insurance entered a consent order resolving its investigation. (Movants' Ex. 10.)

25 Greenberg Traurig also represented affiliates of Xerox—though not Xerox itself—in other  
26 litigation with no relationship whatsoever to the NHC receivership or the Nevada healthcare

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27 <sup>2</sup> Although Xerox had a contractual relationship with the Exchange (see Movants' Ex. 1), and NHC had a  
28 contractual relationship with the Exchange, Xerox had no contractual relationship with NHC. (See Bennett  
Decl., ¶ 14.)

1 insurance market. (*Id.* ¶ 16.) Greenberg Traurig does not currently represent Xerox in any matters.  
2 (*Id.* ¶ 17.)

3 **D. Greenberg Traurig’s Prior Limited Representation Of Valley.**

4 On August 8, 2016, Valley submitted, through its counsel Greenberg Traurig, a pleading in  
5 response to the Receiver’s motion for a finding of insolvency of the Co-Op that noted that Valley  
6 held “a potential claim against the receivership estate in excess of \$5 million.” (Aug. 8, 2016  
7 Response to Motion for Final Order Finding and Declaring Nevada Health Co-Op to Be Insolvent,  
8 at 3.) This represented claims by several of the system’s member facilities for medical  
9 reimbursement from NHC (the “Valley claims”). (Ferrario Decl. ¶ 7; Bennett Decl. ¶ 13.) On  
10 September 21, 2016, the Court granted the Receiver’s motion, declared NHC insolvent, and placed  
11 NHC into liquidation. (Sept. 21, 2016 Final Order Finding and Declaring Nevada Health Co-Op  
12 to Be Insolvent and Placing Nevada Health Co-Op into Liquidation.) Greenberg Traurig did not  
13 perform any work on behalf of Valley in this matter after December 13, 2016, *prior to* this Court’s  
14 approval of Greenberg Traurig’s retention as counsel to the Receiver on January 17, 2017. (Ferrario  
15 Decl. ¶ 20.)

16 Through the claims administration process, handled by the SDR without any involvement  
17 of Greenberg Traurig, the Valley claims were approved and subsequently became final. (Bennett  
18 Decl. ¶ 20; Ferrario Decl. ¶ 21.) Valley was not and is not the subject of any claims by NHC or the  
19 Receiver. (Ferrario Decl. ¶ 22.)

20 **E. Greenberg Traurig’s Lack Of Involvement Or Input On The SDR’s Determination**  
21 **Thus Far To Not Pursue Claims Against Xerox.**

22 To date, the Receiver has not commenced any claims on behalf of the Receivership against  
23 Xerox. (Bennett Decl. ¶ 22.) Greenberg Traurig has not been asked to provide any advice on whether  
24 to pursue claims against Xerox, and has not done so. (*Id.* ¶ 23; Ferrario Decl. ¶ 25.) Rather, on  
25 behalf of NHC in receivership, the SDR, with its experienced team of professionals, has evaluated  
26 (and continues to evaluate) potential claims against Xerox (and other parties) completely independent  
27 of Greenberg Traurig’s involvement. (Bennett Decl. ¶¶ 22-23.) The precise reasons the Receiver has  
28 determined to date not to pursue Xerox are protected as confidential work product. (*Id.* ¶ 22.)

1           However, Nevada law affords the Receiver and her SDR broad discretion to administer the  
2 receivership, and consider, among other things: the strength of potential claims, the strength of  
3 potential defenses, the relative culpability of other potentially responsible parties, the magnitude of  
4 the contribution to the loss of any particular party, the likely expense and difficulty in pursuing  
5 claims, and any other factors rationally related to the decision whether to pursue a particular  
6 potentially responsible party. (*Id.* ¶ 10.) The Receiver’s current determination not to sue Xerox  
7 has nothing to do with Greenberg Traurig’s opinions, putative conflict, or inability to give  
8 unconflicted advice regarding Xerox. (Bennett Decl. ¶¶ 22-23.)

9       **F.     The Receiver’s Claims Against Movants And Movants’ Related Dilatory Tactics.**

10           On August 25, 2017—more than *three years ago*—Greenberg Traurig filed, on behalf of  
11 the Receiver, a complaint in this matter against NHS and several other parties. (Ex. 7, *Nevada*  
12 *Comm’r of Ins. v. Milliman et al.*, No. A-17-760558-B, Docket (District Court of Clark County,  
13 Nevada).) At the time the complaint was filed, Greenberg Traurig’s representation of Valley was  
14 on the public docket in the receivership matter (Case No. A-15-725244-C) and its prior  
15 representation of Xerox in the *Basich* and *Casale* matters and related investigation was public  
16 knowledge. (Ferrario Decl. ¶ 27.) For the past three years, neither NHS nor any other defendant  
17 objected to Greenberg Traurig’s representation of the Receiver or even suggested that a conflict of  
18 interest existed. (*Id.*) On September 24, 2018—more than *two years ago*—the complaint was  
19 amended to add UHH as a defendant. (*See* Ex. 7.) UHH likewise did not object to Greenberg  
20 Traurig’s representation or raise an alleged conflict of interest. (Ferrario Decl. ¶ 27.) Moreover,  
21 neither UHH, NHS, nor any other defendant sought to implead Xerox as a third-party defendant  
22 (*id.* ¶ 28), even though UHH’s counsel was *present in person on behalf of UHH* at the NHC Board  
23 meeting Movants cite as evidence that the Receiver should have pursued a claim against Xerox.  
24 (*See* Movants’ Ex. 4.)

25           As discovery progressed and the Receiver, SDR, and Greenberg Traurig prepared for trial,  
26 UHH and NHS sought to delay and avoid a resolution. After the Receiver tendered its expert  
27 reports on July 31, 2019, UHH and NHS sought an extension of *one full year* to serve their expert  
28 reports. (*See* Ex. 8, *Nevada Comm’r of Ins. v. Milliman et al.*, August 21, 2020 Motion to Extend

1 Expert Disclosure Deadline on Order Shortening Time; Ferrario Decl. ¶ 30.) Next, they filed a  
2 motion to stay the case during the pendency of a Supreme Court case with no influence on the  
3 Receiver’s claims against them. (See Ex. 9, October 1, 2019 Hearing Transcript; Ferrario Decl.  
4 ¶ 30.) Then, in June 2020, with trial approaching, UHH and NHS began their current campaign to  
5 further delay a reckoning on the merits, first by serving discovery about the Receiver’s work  
6 product–protected decision-making process as to Xerox, and then filing this Motion and a belated  
7 motion to implead Xerox. (See Ferrario Decl. ¶ 31; July 10, 2020 Nineteenth Status Report at 8;  
8 Movants’ Exs. 14-17.)

9 Since the Receiver filed claims against UHH and NHS years ago, Greenberg Traurig has  
10 accumulated extensive knowledge of the complex factual and legal issues underlying the Receiver’s  
11 claims against UHH, NHS, and the other defendants. (Ferrario Decl. ¶ 29; Bennett Decl. ¶ 25.)  
12 The Receiver and SDR have relied heavily on Greenberg Traurig’s legal advice and institutional  
13 knowledge in litigating the matter, and Greenberg Traurig will serve as lead counsel at the coming  
14 trial. (Ferrario Decl. ¶ 29; Bennett Decl. ¶ 26.) Greenberg Traurig’s disqualification at this critical  
15 stage of the case would cause the Receiver, the SDR, and the assets of the receivership immense  
16 prejudice. (See Bennett Decl. ¶ 26.) Likewise, Greenberg Traurig’s disqualification from the other  
17 matters in which it represents the Receiver would cause the Receiver significant prejudice. (*Id.*  
18 ¶ 27.)

## 19 ARGUMENT

### 20 I. The Court Should Not Disqualify Greenberg Traurig.

21 Nevada courts have repeatedly recognized the fundamental right of a party to be represented  
22 by counsel of its choice. See, e.g., *Brown v. Eighth Judicial Dist. Ct.*, 116 Nev. 1200, 1205, 14  
23 P.3d 1266, 1270 (2000); *Imperial Credit v. Eighth Judicial Dist. Ct.*, 130 Nev. 558, 562, 331 P.3d  
24 862, 865 (2014). Because disqualification deprives a party of that right, it is “a drastic measure  
25 which courts should hesitate to impose except when absolutely necessary.” *Ryan’s Express v.*  
26 *Amador Stage Lines*, 128 Nev. 289, 295 n.3, 279 P.3d 166, 170 n.3 (2012) (quoting *Freeman v.*  
27 *Chi. Musical Instrument Co.*, 689 F.2d 715, 721-22 (7th Cir. 1982)). Nevada courts scrutinize  
28 motions to disqualify closely given their potential for “misuse” as “instruments of harassment or



1 delay.” *Brown*, 116 Nev. at 1205, 14 P.3d at 1270. The party seeking disqualification bears the  
2 burden of showing that disqualification is proper and presenting *evidence*—not merely unsupported  
3 allegations—in support of such a claim. *See Liapis v. District Ct.*, 128 Nev. 414, 420, 282 P.3d  
4 733, 737 (2012); *Robbins v. Gillock*, 109 Nev. 1015, 1017, 862 P.2d 1195, 1197 (1993).

5 The motion for disqualification of Greenberg Traurig should be denied for four independent  
6 reasons. *First*, UHH and NHS—who are neither current nor former clients of Greenberg Traurig—  
7 have no standing to raise their challenge. (Part I.A, below.) *Second*, Greenberg Traurig has no  
8 disqualifying conflict because its limited-scope representation of the Receiver does not include  
9 evaluating or pursuing claims against Xerox, defending claims by Valley, or allocating receivership  
10 assets to creditors. (Part I.B, below.) *Third*, even if a conflict does exist—and it does not—  
11 disqualification is inappropriate here because of the extreme prejudice that disqualification would  
12 cause to the Receiver and the receivership estate. (Part I.C, below.) *Fourth*, the Court should deny  
13 the Motion because UHH and NHS are improperly seeking a tactical advantage and have waived  
14 their request for disqualification by belatedly raising it after *three years of litigation*. (Part I.D,  
15 below.)

16 **A. UHH And NHS Lack Standing To Seek Disqualification Because They Are Not**  
17 **Current Or Former Clients Of Greenberg Traurig.**

18 As a general rule, “only a former or current client has standing to bring a motion to  
19 disqualify counsel on the basis of a conflict of interest.” *Liapis*, 128 Nev. at 420, 282 P.3d at 737  
20 (quoting Model Rules of Professional Conduct). Indeed, Nevada courts have held that the first  
21 element that a party seeking disqualification must show is “that it had an attorney-client relationship  
22 with the lawyer” whose disqualification is sought. *PennyMac Corp. v. Eighth Judicial Dist. Ct.*,  
23 453 P.3d 398, 2019 WL 6840113, at \*1 (2019) (unpublished disposition); *see Nevada Yellow Cab*  
24 *Corp. v. Eighth Judicial Dist.*, 123 Nev. 44, 50, 152 P.3d 737, 741 (2007). The Nevada Supreme  
25 Court has consistently rejected attempts to disqualify attorneys by parties who are not their current  
26 or former clients. *See, e.g., State ex rel. Cannizzaro v. First Judicial Dist. Ct.*, 466 P.3d 529, 534  
27 (2020) (vacating district court’s order disqualifying counsel where plaintiffs did not have attorney-  
28 client relationship with counsel); *Practice Mgmt. Solutions, LLC v. Eighth Judicial Dist. Ct.*, 132

1 Nev. 1019, 2016 WL 2757512, at \*2 (2016) (unpublished disposition) (same); *Liapis*, 128 Nev. at  
2 419-23, 282 P.3d at 737-39 (same).

3 Here, the Movants—UHH and NHS—are not current or former clients of Greenberg  
4 Traurig. (Ferrario Decl. ¶ 23.) Instead, they are non-clients seeking to derail litigation brought by  
5 Greenberg Traurig’s actual client, the Receiver, who carefully limited the scope of Greenberg  
6 Traurig’s representation to avoid any potential conflicts. (Bennett Decl. ¶¶ 13-16.) Neither of  
7 Greenberg Traurig’s other clients—Xerox and Valley—has raised any issue with Greenberg  
8 Traurig’s limited representation of the Receiver. (Ferrario Decl. ¶ 26.) Given that UHH and NHS  
9 have no attorney-client relationship with Greenberg Traurig, they have no standing to raise their  
10 motion to disqualify. *See Liapis*, 128 Nev. at 420, 282 P.3d at 737.<sup>3</sup> This Court should not  
11 countenance this “misuse” of a motion to disqualify as an “instrument[] of harassment or delay”  
12 and should reject the Motion for lack of standing. *Brown*, 116 Nev. at 1205, 14 P.3d at 1270.

13 **B. Greenberg Traurig Has No Conflict Because It Was Not Engaged To Evaluate**  
14 **Or Pursue Claims Against Xerox, And The Receiver Is Not Adverse To Valley.**

15 Even if Movants have standing (they do not), the Motion should be denied because Greenberg  
16 Traurig’s former representation of Xerox and Valley did not conflict with its representation of the  
17 Receiver for the limited purpose of prosecuting certain claims. In other words, Greenberg Traurig  
18 does not represent the Receiver on the issues for which Movants assert a conflict.

19 **1. Fiduciaries Like The Receiver Routinely And Properly Retain Limited-**  
20 **Scope Counsel With Potential Conflicts With Other Stakeholders.**

21 Fiduciaries like the Receiver routinely retain limited-scope counsel like Greenberg Traurig to  
22 provide legal advice on specific matters—but not *all* matters—relating to a receivership or estate.  
23 Indeed, it is commonplace for counsel to a creditor to serve as counsel to a fiduciary bringing claims  
24

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25 <sup>3</sup> Nor can Movants demonstrate that either of the two potential exceptions in *Liapis* apply. Greenberg  
26 Traurig’s prior representation of Xerox and Valley does not impact Movants “interest in a just and lawful  
27 determination” of the claims *against* Movants, particularly where the Receiver decided completely  
28 independent of Greenberg Traurig whether to pursue Xerox. (*See* Bennett Decl. ¶¶ 22-23.) *Liapis*, 128 Nev.  
at 420, 14 P.3d at 1270. And Greenberg Traurig does not represent and has not represented Movants, so it has  
no “privileged, confidential information” of theirs (aside from documents Movants produced in discovery,  
which Greenberg Traurig does not have as a result of any confidential relationship). *Id.* at 421. (Ferrario Decl.  
¶ 23.) *See Brown*, 116 Nev. at 1206, 14 P.3d at 1270-71.

1 against third parties, given their aligned interest in asset recovery. *See Stoumbos v. Kilimnik*, 988  
2 F.2d 949, 964 (9th Cir. 1993) (“[I]f money is recovered for the estate, [the creditor’s] pro rata recovery  
3 will ultimately be greater.”). Courts have consistently rebuffed attempts to disqualify such limited-  
4 purpose counsel to a fiduciary because of an alleged conflict of interest that is *outside* the scope of  
5 their engagement. *See, e.g., Bartelt v. Smith*, 129 N.W. 782, 784 (Wis. 1911) (no conflict of interest  
6 exists “where it is made clear that [counsel’s] services to the receiver were of such a nature that no  
7 clash of interests was involved between their duties as counsel for the party and as counsel for the  
8 receiver”); *Stoumbos*, 988 F.2d at 964 (“[W]here the trustee seeks to appoint counsel only as ‘special  
9 counsel’ for a specific matter, there need only be no conflict between the trustee and counsel’s creditor  
10 client with respect to the specific matter itself.”).

11 For example, in *In re Arochem Corp.*, the Second Circuit rejected an asserted conflict that,  
12 like here, the movant asserted prevented counsel from asserting claims the movant thought  
13 appropriate, explaining that any alleged conflicts of interest of special counsel to a trustee “must be  
14 evaluated only with respect to the scope” of the special counsel’s engagement. 176 F.3d 610, 622-  
15 25 (2d Cir 1999).<sup>4</sup> The court also rejected the movant’s argument that counsel’s representation of a  
16 creditor created a conflict, as there was no evidence that the creditor’s claims were within the scope  
17 of counsel’s representation of the trustee. *Id.* at 624. For similar reasons, courts routinely approve  
18 of a fiduciary’s use of multiple law firms, or “conflicts counsel,” to cure potential conflicts of interest.  
19 *See, e.g., Securities & Exchange Commission v. Nadel*, No. 8:09-cv-87-T-26TBM, 2012 WL  
20 12910270, at \*8 (M.D. Fla. Apr. 25, 2012) (motion to disqualify denied because conflicts counsel  
21 obviated conflict); *In re REA Holding Corp.*, 2 B.R. 733, 734 (S.D.N.Y. 1980) (affirming bankruptcy  
22 court finding of no conflict where conflicts counsel “eliminate[d] any question of undivided loyalty”);  
23 *In re Lee Way Holding Co.*, 102 B.R. 616, 622 (S.D. Ohio 1988) (no conflict for trustee’s counsel  
24 because it “can be dealt with through designation of a special counsel” in the “unlikely event that a  
25 conflict arises”).

26  
27 <sup>4</sup> Similar decisions abound. *See, e.g., In re Fondiller*, 15 B.R. 890, 892-93 (B.A.P. 9th Cir. 1981); *In re*  
28 *Decade, SAC, LLC*, Bankr. No. 18-1880-MN, 2020 WL 564903, at \*7 (D. Del. Feb. 5, 2020) (noting that  
courts “regularly permit a chapter 7 trustee to retain a creditor’s attorney as his own to pursue claims designed  
to augment the debtor’s estate”); *In re Midway Motor Sales, Inc.*, 355 B.R. 26, 32-33 (Bankr. N.D. Ohio 2006)  
(chapter 7 trustee properly employed as special counsel law firm that represented creditors).

1                   **2. The Receiver's Fully-Informed Retention Of Greenberg Traurig To**  
2                   **Pursue Specific Claims Against Parties Other Than Xerox Was Proper**  
3                   **Under Settled Law.**

4           Under settled principles of fiduciary law, Greenberg Traurig's prior representation of Xerox  
5 did not constitute a conflict of interest because potential claims against Xerox are outside the scope  
6 of Greenberg Traurig's limited representation of the Receiver. *See Stoumbos*, 988 F.2d at 964; *Bartelt*  
7 *v. Smith*, 129 N.W. 784; *In re Arochem Corp.*, 176 F.3d at 622-25. The Receiver and Greenberg  
8 Traurig agreed that the scope of Greenberg Traurig's representation would not include evaluating or  
9 pursuing claims against Xerox, and the Receiver retained Santoro Whitmire as conflicts counsel for  
10 the specific purpose of pursuing any such conflict claims that may arise (if necessary). (Ferrario  
11 Decl. ¶¶ 5-6, 10; Bennett Decl. ¶¶ 14-15, 18; Whitmire Decl., ¶¶ 8, 11, 14.) Ultimately, the Receiver  
12 and SDR have exercised the discretion they are afforded under Nevada law—completely independent  
13 of Greenberg Traurig—and have not decided to pursue claims against Xerox at this time. (*See*  
14 *Bennett Decl.* ¶¶ 22-23; *Ferrario Decl.* ¶ 25.) As in *In re Arochem*, here, a fiduciary made the  
15 informed decision—completely independent of the allegedly conflicted counsel—not to pursue  
16 claims against a potential target of the receivership estate. 176 F.3d at 624-25. Moreover, the  
17 Receiver's employment of Santoro Whitmire as conflicts counsel independently remediates any  
18 concern about Greenberg Traurig's loyalties. *See Nadel*, 2012 WL 12910270, at \*8 (holding no  
19 conflict where separate firm was retained by receiver to pursue claims against party who trustee's  
20 principal attorney represented); *In re REA Holding Corp.*, 2 B.R. at 734; *In re Lee Way Holding Co.*,  
102 B.R. at 622.

21           All of the cases relied on by Movants involved situations where, unlike here, counsel had a  
22 conflict within the scope of its representation. In particular, *CFTC v. Eustace*—the primary case on  
23 which Movants rely—shows exactly why Greenberg Traurig should not be disqualified here. Nos.  
24 05-2973, 06-1944, 2007 WL 1314663 (E.D. Pa. May 3, 2007). There, defendant sought to disqualify  
25 the *receiver*, an attorney, and his counsel, who (unlike the Receiver and SDR here) represented in  
26 other matters UBS Cayman, a target of the receiver's claims. *Id.* at \*2-4. The court disqualified the  
27 receiver himself, but allowed his law firm to stay in place as counsel, given its “significant  
28 knowledge” of the case, and required a receiver *ad litem* to (1) “independently investigate and arrive

1 at an independent judgment as to what course of action should be taken with regarding to UBS  
2 Cayman in this case”; and (2) employ additional counsel on the matter to “exclusively advise the  
3 Receiver ad litem as to UBS Cayman issues.” *Id.* at \*12-13. Here, the Receiver and SDR—both of  
4 whom are unconflicted—have *already done both*: they evaluated (and continue to evaluate) potential  
5 claims against Xerox independent of Greenberg Traurig, and they retained Santoro Whitmire as  
6 conflicts counsel to assist with the prosecution of claims that might arise against any parties as to  
7 whom Greenberg Traurig had a conflict, including Xerox. (Ferrario Decl. ¶¶ 6, 10, 25; Bennett Decl.  
8 ¶¶ 15, 18 22-23; Whitmire Decl. ¶ 8, 11, 14.)

9       Movants’ other cases similarly involve conflicts of interest that were plainly within the scope  
10 of the engagement of the attorneys who were disqualified. *See, e.g., Hilti, Inc. v. HML Development*  
11 *Corp.*, No. 9-01029-B, 2007 WL 6366486 (Mass. Super. Ct. Feb. 5, 2007) (disqualifying the receiver,  
12 who also represented a creditor, because “it would be his duty to see that all creditors and parties are  
13 treated alike”); *KeyBank Nat’l Ass’n v. Michael*, 737 N.E.2d 834, 852 (Ind. Ct. App. 2000)  
14 (disqualifying receiver’s counsel who had represented debtor corporation and its successor in the  
15 same litigation, adverse to the receiver’s interest); *In re Bohack Corp.*, 607 F.2d 258, 262-63 (2d Cir.  
16 1979) (disqualifying counsel for debtor-in-bankruptcy who was responsible for determining if  
17 litigation was necessary against company because counsel was close personal friends and business  
18 associates with the chairman of company); *In re Git-N-Go, Inc.*, 321 B.R. 54, 59 (Bankr. N.D. Okla.  
19 2004) (rejecting motion for approval as “general bankruptcy counsel” by party who had represented  
20 both the debtor and its creditors regarding the transactions at issue in the bankruptcy and thus could  
21 not “provide the objective and independent advice” on these transactions that would be required as  
22 fiduciary). These cases simply do not apply here to Greenberg Traurig’s limited-scope engagement  
23 by the Receiver.

24       Nor does Greenberg Traurig’s representation of the Receiver violate Nevada Rules of  
25 Professional Conduct 1.7 or 1.9. (Mot. at 23.) Rule 1.7 does not apply because Greenberg Traurig  
26 does not have a present attorney-client relationship with Xerox and, even if it did, Greenberg Traurig  
27 is not representing the Receiver adverse to Xerox. (Ferrario Decl. ¶¶ 10, 17.) Rule 1.9 is similarly  
28 inapplicable, because (1) Greenberg Traurig’s current representation—a lawsuit by the Receiver

1 against UHH, NHS, and others to which Xerox is not a party<sup>5</sup>— is not “substantially related” to any  
2 prior matter in which Greenberg Traurig represented Xerox, none of which involved the Receiver,  
3 UHH, or NHS; and (2) the Receiver’s interests are not “materially adverse” to Xerox’s, given that  
4 Xerox is not a party and the Receiver *independently determined* not to yet bring claims against Xerox.  
5 (Bennett Decl. ¶¶ 22-23.)

6 Movants offer only pure speculation about the impact of Greenberg Traurig’s representation  
7 of the Receiver on the Receiver’s decision not to sue Xerox. (Mot. at 22-24.) Such speculation is  
8 plainly inadequate to show a conflict of interest under the Nevada Rules. *See, e.g., Liapis*, 128 Nev.  
9 at 420, 282 P.3d at 737 (“[S]peculative contentions of conflict of interest cannot justify  
10 disqualification of counsel.”); *State v. Eighth Judicial Dist.*, 473 P.3d 1020, 2020 WL 5888026, at \*1  
11 (2020) (unpublished disposition) (reversing disqualification of counsel that was based on speculation  
12 regarding potential litigation that could occur). More importantly, though, Movants’ speculation is  
13 refuted entirely by the actual facts: Greenberg Traurig had no role in the decision whether to pursue  
14 litigation against Xerox. (Ferrario Decl. ¶ 25; Bennett Decl. ¶ 22-23.)

15 **3. Greenberg Traurig’s Limited Representation Of The Receiver, Which**  
16 **Does Not Include Disputing Creditor Claims Or Allocating Assets To**  
17 **Creditors, Is Not A Conflict of Interest With Its Prior Representation Of**  
**Valley.**

18 Greenberg Traurig’s prior representation of Valley does not constitute a conflict of interest  
19 because Valley’s claim against the estate, and any asset distribution that could impact Valley, are  
20 outside the scope of Greenberg Traurig’s representation. Courts have repeatedly held that counsel  
21 to a creditor can subsequently serve as counsel to a fiduciary where counsel’s responsibilities to the  
22 fiduciary do not involve disputing the creditor’s claims or pursuing claims against the creditor. *See*

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23 <sup>5</sup> UHH and NHS’s belated and baseless motion to implead Xerox in the case, like their motion to disqualify,  
24 is a transparent attempt to delay the case and gain a strategic advantage by manufacturing a conflict of interest.  
25 Courts in Nevada and elsewhere have rejected such attempts to implead third-party defendants in attempt to  
26 create a conflict. *See, e.g., Mirch v. Frank*, No. CV-01-0443-ECR, 2003 WL 27387830, at \*4-5 (D. Nev. Oct.  
27 24, 2003) (criticizing use of impleader “as a nefarious litigation tactic” to “spread[] chaos in the opposing  
28 camp” by “creating a conflict of interest” and denying motion to file third-party complaint against party that  
would create a conflict); *Nat’l Cas. Co. v. Beth Abraham Hosp.*, No. 97 Civ. 8091, 1999 WL 710780, at \*6-7  
(S.D.N.Y. Sept. 10, 1999) (denying motion to implead a third-party defendant where doing so would create a  
potential conflict of interest). In any event, even if UHH and NHS were allowed to implead Xerox, the  
Receiver’s use of conflicts counsel to handle the portions of the litigation involving Xerox would avoid any  
potential conflict. *See supra* at 14.

1 *In re Arochem Corp.*, 176 F.3d at 624; *Stoumbos*, 988 F.2d at 964. Indeed, as courts have noted,  
2 the interests of the creditor and the interests of the Receiver are in fact *aligned* in these  
3 circumstances, as both seek a greater recovery for the estate to provide greater recovery to the  
4 creditors. *See Stoumbos*, 988 F.2d at 964 (“[T]he interests of [the counsel’s creditor client] and the  
5 trustee coincide: if money is recovered for the estate, [the credit client’s] pro rata recovery will  
6 ultimately be greater.”); *In re Midway Motor Sales*, 355 B.R. at 34 (noting that the trustee’s and  
7 creditor’s interests were “aligned” in “collecting assets for the benefit of all creditors of the estate”).  
8 There is no conflict because Greenberg Traurig’s representation of the Receiver is limited to  
9 prosecuting specific claims on behalf of the Receiver and does not include defending or  
10 administering the Valley claims or allocating assets among creditors. (Ferrario Decl. ¶¶ 21, 23-24;  
11 Bennett Decl. ¶¶ 13, 20.) Greenberg Traurig has performed no work for Valley related to its claim  
12 since before it was appointed as counsel to the Receiver in January 2017, and Valley’s claim was  
13 approved by the Receiver completely independent of Greenberg Traurig. (Ferrario Decl. ¶¶ 20-21;  
14 Bennett Decl. ¶ 20.) Movants’ arguments to the contrary are fundamentally wrong. Contrary to  
15 Movants’ assertion (at 24-25), Greenberg Traurig has no role in assuring equal treatment among  
16 creditors or allocating “a limited pot of money” to creditors, as the cases Movants cite on this point  
17 assume.<sup>6</sup> Nor does Greenberg Traurig’s representation of the Receiver and former representation  
18 of Valley implicate Rules 1.7 or 1.9. Rule 1.7 does not apply because Greenberg Traurig’s  
19 representation of Valley in this matter has been complete since December 2016—prior to its  
20 appointment as counsel—and because Greenberg Traurig’s limited-scope representation of the  
21 Receiver is not “directly adverse” to Valley or “materially limited” by Greenberg Traurig’s former  
22 representation of Valley. Rule 1.9, likewise, does not apply because Greenberg Traurig’s limited-  
23 scope representation of the Receiver is not “materially adverse” to Valley, who has the same interest

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25 <sup>6</sup> *See, e.g., Scholes v. Tomlinson*, No. 90-cv-1350, 1991 WL 152062, at \*7 (N.D. Ill. 1991) (receiver counsel  
26 disqualified where represented a creditor class and counsel would “undoubtedly will play some role in the  
27 SEC’s plan of distribution” to creditors); *Real Estate Capital Corp. v. Thunder Corp.*, 31 Ohio Misc. 169, 188  
28 (Ohio Ct. Common Pleas 1972) (conflict existed for counsel to receiver who would have to “decide which of  
the creditors he will pay and which of the creditors he will not pay”); *Hilti, Inc. v. HML Dev. Corp.*, No. 9-  
01029-B, 2007 WL 6366486 (Mass. Super. Ct. Feb. 5, 2007) (disqualifying the receiver, who also represented  
a creditor, because “it would be his duty to see that all creditors and parties are treated alike”); *In re Envirodyne*  
*Indus., Inc.*, 150 B.R. 1008, 1019 (N.D. Ill. 1993) (counsel to trustee also actively represented a substantial  
creditor of debtor and representation of trustee would “necessitate negotiation” with creditor).

1 the Receiver has in recovering assets for the receivership estate. Moreover, Greenberg Traurig is  
2 neither bringing claims against Valley nor defending Valley’s claims against the receivership. *See*  
3 NRPC 1.7(a); *Stoumbos*, 988 F.2d at 964. And finally, even if any conflict did exist—and it did  
4 not—Valley provided written consent to Greenberg Traurig’s limited representation of the  
5 Receiver, curing any potential conflict under Rule 1.9. (Ferrario Decl. ¶ 7.)

6 **C. Disqualifying Greenberg Traurig Would Cause The Receiver Substantial**  
7 **Prejudice.**

8 Even if Movants could show standing or an actual conflict of interest—and they cannot—  
9 the Court should not disqualify Greenberg Traurig at this late stage of the case because doing so  
10 would cause significant prejudice to the Receiver and the receivership estate. Under Nevada law,  
11 even if a conflict of interest exists, disqualification of counsel is only proper where the moving  
12 party shows that “the likelihood of public suspicion or obloquy outweighs the social interests which  
13 will be served by a lawyer’s continued participation in a particular case.” *Brown*, 116 Nev. at 1205,  
14 14 P.3d at 1270. Put otherwise, a court must “balance the prejudices that will inure to the parties  
15 as a result of its decision.” *Id.*

16 Here, the balancing of prejudices weighs heavily against disqualification. On one hand,  
17 Greenberg Traurig has served as primary litigation counsel for the Receiver in this matter for over  
18 three years, accumulating extensive knowledge of the complex factual and legal issues underlying  
19 the Receiver’s claims. (Ferrario Decl. ¶ 29; Bennett Decl. ¶ 25.) Greenberg Traurig has served as  
20 lead counsel at all stages of the litigation, including preparation for the coming trial. (Ferrario Decl.  
21 ¶ 29.) Disqualification would deprive the Receiver of Greenberg Traurig’s institutional knowledge  
22 of the case, leaving the Receiver at a great litigation disadvantage. (Bennett Decl. ¶ 26.) *See*  
23 *Openwave Sys. Inc. v. Myriad France S.A.S.*, No. C 10–02805, 2011 WL 1225978, at \*6 (N.D. Cal.  
24 Mar. 31, 2011) (prejudice prevented disqualification where counsel had “developed a strong  
25 understanding of the facts” and the disqualification motion “appeared to be motivated by a desire  
26 to derail” litigation). Moreover, UHH and NHS’s motion to disqualify is not limited to the *Milliman*  
27 case, and disqualifying Greenberg Traurig from representing the Receiver in other cases—  
28 including the Receiver’s claim in the Court of Federal Claims that has been ongoing for years—



1 would also impose a significant burden on the Receiver and receivership estate. (Bennett Decl.  
2 ¶ 27.)

3 On the other hand, Movants have demonstrated no tangible prejudice. Greenberg Traurig  
4 has no potential loyalty to Movants and has none of their confidential information. (Ferrario Decl.  
5 ¶ 23.) *See Brown*, 116 Nev. at 1270-71, 14 P.3d at 1206 (denying motion to disqualify where  
6 movants made no showing that counsel acquired their privileged, confidential information and  
7 opposing party would “be greatly prejudiced” by disqualification). Movants assert in a footnote  
8 that the alleged conflict is “detrimental to all Defendants in the Milliman Lawsuit because Xerox’s  
9 misconduct would not be fully considered by the jury with respect to potential liability against the  
10 other Defendants.” (Mot. at 23.) This is nonsense. UHH, NHS, and other defendants could have  
11 impleaded Xerox as a third-party defendant years ago if they truly believed Xerox’s conduct had  
12 caused their liability to the Receiver. Indeed, however baselessly, the Movants now *have* sought  
13 leave to implead Xerox as a third-party defendant, completely undercutting their own prejudice  
14 argument.

15 **D. Movants Waived Their Tactical Disqualification Motion By Unreasonably**  
16 **Delaying.**

17 A party’s unreasonable delay in moving to disqualify an attorney constitutes de facto  
18 consent to an attorney’s representation and waiver of the right to object. *See Tr. Corp. of Montana*  
19 *v. Piper Aircraft Corp.*, 701 F.2d 85, 87-88 (9th Cir. 1983); *Nadel*, 2012 WL 12910270, at \*8.  
20 Courts determining whether a party has waived its right to object consider the following factors:  
21 (1) the length of the delay; (2) when the movant learned of the conflict; (3) whether the movant  
22 was represented by counsel during the delay; (4) why the delay occurred; (5) whether the motion  
23 was delayed for tactical reasons; and (6) whether disqualification would prejudice the non-moving  
24 party. *See Nadel*, 2012 WL 12910270, at \*8; *United States v. Kincade*, No. 2:15-cr-00071, 2016  
25 WL 6154901, at \*6 (D. Nev. Oct. 21, 2016). These factors all weigh in favor of waiver here.

26 Since being named a defendant, UHH has waited over two years, and NHS has waited over  
27 three, before bringing their motion to disqualify. Courts have found delays far shorter than this to  
28 amount to a waiver. *See, e.g., Nadel*, 2012 WL 12910270, at \*8 (one year and nine months too

long); *Openwave Sys. Inc. v. Myriad France S.A.S.*, No. C 10–02805, 2011 WL 1225978, at \*6 (N.D. Cal. Mar. 31, 2011) (four months too long); *United States v. Kincade*, No. 2:15–cr–00071, 2016 WL 6154901, at \*6–7 (D. Nev. Oct. 21, 2016) (eight months too long). UHH and NHS were on notice of the alleged conflict years ago, as Valley is listed as represented by Greenberg Traurig on the docket in the receivership case, and Greenberg Traurig’s representation of Xerox in the *Basich* and *Casale* matters is a matter of public record. Nevertheless, Movants did not allege a conflict, even as discovery advanced and the matter was set for trial twice. (Ferrario Decl. ¶ 28.) UHH and NHS have been represented by experienced counsel throughout this litigation. They have offered *no explanation whatsoever* for their delay in raising this supposed conflict that they have known about for years. The true reason is obviously tactical and is an independent basis to reject Movant’s request.

## **II. There Is No Basis For Disgorgement Of Greenberg Traurig’s Fees.**

Movants’ request for disgorgement should be denied for three independent reasons. First, disqualification is improper because, as discussed above, Greenberg Traurig does not have a conflict of interest and has not violated its ethical obligations. Second, Movants lack standing to request disgorgement because they did not pay for Greenberg Traurig’s legal services; the Receiver is making no such request. *See Pojunis v. Denis*, 130 Nev. 1231, 2014 WL 7188221, at \*1 (2014) (unpublished disposition) (denying request for disgorgement for lack of standing). Third, Movants’ cases—at most—show that attorney fee requests can be denied based on a conflict of interest, *not* that years’ worth of fees that have already been paid can be disgorged. *See, e.g., Frank Settlemyer & Sons, Inc. v. Harmer, Ltd.*, 124 Nev. 1206, 1217, 197 P.3d 1051, 1058 (2008); *In re Coastal Equities, Inc.*, 39 B.R. 304, 308 (Bankr. S.D. Cal. 1984); *In re Bruno*, 327 B.R. 104, 111–12 (E.D.N.Y. 2005); *Real Estate Capital*, 31 Ohio Misc. at 188–89; *KeyBank Nat’l Ass’n*, 737 N.E.2d at 852. Disgorgement of such fees would be particularly inappropriate here, where Movants went years without ever objecting to Greenberg Traurig’s representation of the Receiver, and now seek to disgorge all the fees Greenberg Traurig earned while Movants sat on their hands.

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1 **III. An Evidentiary Hearing Is Not Necessary Because No Material Facts Are In Dispute.**

2 An evidentiary hearing is not necessary where there are no material facts in dispute or where  
3 a court already has ample factual basis to render a decision. *See, e.g., Villalpando v. State*, 107 Nev.  
4 465, 467-68, 814 P.2d 78, 80 (1991); *In re Int'l Fibercom, Inc.*, 503 F.3d 933, 947 (9th Cir. 2007).  
5 Here, Movants cannot dispute Greenberg Traurig's limited representation of the Receiver for the  
6 purpose of investigating and prosecuting certain claims, excluding any potential claims against  
7 Xerox. Under the settled law discussed above, disqualification is inappropriate. Accordingly, there  
8 are no material facts in dispute, and an evidentiary hearing is not necessary. An evidentiary hearing  
9 would only provide Movants with another opportunity to "misuse" their motion to disqualify as an  
10 "instrument[] of harassment or delay." *Brown*, 116 Nev. at 1205, 14 P.3d at 1270.

11 **CONCLUSION**

12 For the foregoing reasons, the Court should deny the motion to disqualify Greenberg Traurig  
13 and disgorge its attorneys' fees.

14 RESPECTFULLY SUBMITTED this 16<sup>th</sup> day of November 2020.

15 GREENBERG TRAURIG, LLP

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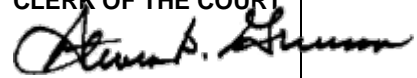
1 **CERTIFICATE OF SERVICE**

2 Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I hereby certify that on this  
3 **16th day of November 2020**, a true and correct copy of the foregoing **GREENBERG**  
4 **TRAURIG LLP'S OPPOSITION TO UNITE HERE HEALTH AND NEVADA HEALTH**  
5 **SOLUTIONS, LLC'S MOTION TO DISQUALIFY GREENBERG TRAURIG AND**  
6 **DISGORGE ATTORNEYS' FEES** was submitted for service using the Odyssey eFileNV  
7 Electronic Service system and served on all parties with an email address on record, pursuant  
8 to Administrative Order 14-2 and Rule 9 of the N.E.F.C.R. The date and time of the electronic  
9 proof of service is in place of the date and place of deposit in the mail.

10  
11 */s/ Evelyn Escobar-Gaddi*  
12 An employee of Greenberg Traurig, LLP  
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**TAB 46**

**TAB 46**



**APEN**  
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*Attorneys for Greenberg Traurig, LLP*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

STATE OF NEVADA, EX. REL. COMMISSIONER  
OF INSURANCE, BARBARA D. RICHARDSON, IN  
HER OFFICIAL CAPACITY AS STATUTORY  
RECEIVER FOR DELINQUENT DOMESTIC  
INSURER,

Plaintiff,

v.

NEVADA HEALTH CO-OP,

Defendant.

Case No. A-15-725244-C  
Dept. No. I

**APPENDIX OF EXHIBITS TO  
GREENBERG TRAUIG, LLP'S  
OPPOSITION TO MOTION TO  
DISQUALIFY GREENBERG  
TRAURIG AND DISGORGE  
ATTORNEYS' FEES**

Pursuant to Eighth Judicial District Court Rule 2.27(b), Greenberg Traurig, LLP (“Greenberg Traurig”) files this Appendix of Exhibits to Greenberg Traurig’s Opposition to Unite Here Health and Nevada Health Solutions, LLC’s Motion to Disqualify Greenberg Traurig and Disgorge Attorney’s Fees.

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1 RESPECTFULLY SUBMITTED this 16<sup>th</sup> day of November 2020.

2 GREENBERG TRAURIG, LLP

3 /s/ Mark E. Ferrario

4 MARK E. FERRARIO, ESQ.  
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18 *Attorneys for Greenberg Traurig, LLP*



1 **CERTIFICATE OF SERVICE**

2 Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I hereby certify that on  
3 this **16th day of November 2020**, a true and correct copy of the foregoing **APPENDIX OF**  
4 **EXHIBITS TO GREENBERG TRAURIG, LLP'S OPPOSITION TO MOTION TO**  
5 **DISQUALIFY GREENBERG TRAURIG AND DISGORGE ATTORNEYS' FEES** was  
6 submitted for service using the Odyssey eFileNV Electronic Service system and served on  
7 all parties with an email address on record, pursuant to Administrative Order 14-2 and Rule  
8 9 of the N.E.F.C.R. The date and time of the electronic proof of service is in place of the  
9 date and place of deposit in the mail.

10  
11 */s/ Evelyn Escobar-Gaddi*  
12 An employee of Greenberg Traurig, LLP  
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## Exhibit 1

1 **DECL (CIV)**

2 MARK E. FERRARIO, ESQ.

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25 **DISTRICT COURT**

26 **CLARK COUNTY, NEVADA**

27 STATE OF NEVADA, EX. REL.

28 COMMISSIONER OF INSURANCE,

BARABARA D. RICHARDSON, IN HER

OFFICIAL CAPACITY AS STATUTORY

RECEIVER FOR DELINQUENT DOMESTIC

INSURER,

Plaintiff,

v.

NEVADA HEALTH CO-OP,

Defendant.

Case No. A-15-725244-C

Dept. No. I

**DECLARATION OF MARK  
BENNETT IN SUPPORT OF  
GREENBERG TRAUIG, LLP'S  
OPPOSITION TO MOTION TO  
DISQUALIFY GREENBERG  
TRAURIG AND DISGORGE  
ATTORNEY'S FEES**

1 I, Mark F. Bennett, declare as follows:

2 1. I am a partner with Cantilo & Bennett, LLP ("Cantilo & Bennett"), which has  
3 been appointed to serve in the role as the Special Deputy Receiver ("SDR") to the Nevada Health  
4 Co-Op ("NHC") pursuant to Nevada Revised Statute ("NRS") § 696B.290 in this matter. I  
5 provide this declaration in support of Greenberg Traurig, LLP's Opposition to Unite Health Here  
6 and Nevada Health Solutions, LLC's "Motion to Disqualify Greenberg Traurig as Counsel for  
7 the Statutory Receiver of Nevada Health Co-Op and Disgorge Attorney's Fees Paid by Nevada  
8 Health Co-Op to Greenberg Traurig, LLP." I make this declaration based on my personal  
9 knowledge and experience and, if called as a witness, I would testify to the facts set forth below.

10 **A. Background**

11 2. I am a member of the State Bar of Texas in good standing and have been  
12 authorized to practice law in Texas since 1984.

13 3. I am a named and founding partner of the law firm Cantilo & Bennett, which is  
14 headquartered in Austin, Texas. I co-founded Cantilo & Bennett in 1999 with my partner Patrick  
15 Cantilo, and we have since grown the firm to twelve lawyers.

16 4. I have significant experience in restructuring and insolvency matters generally  
17 and, in particular, in the insurance and health care industries, including in Nevada. Prior to my  
18 work in this matter, my firm was appointed and has served as Special Deputy Receiver for  
19 Nevada Contractors Insurance Company, Inc. and Builders Insurance Company, Inc. in  
20 connection with their receivership pursuant to NRS § 696B.290, and I have been the chief  
21 authorized representative of the Special Deputy Receiver for those companies. I previously  
22 served as insurance counsel to the Deputy Liquidator of two health maintenance organization  
23 insolvencies, Foundation Health Plan of New Jersey and MedCenters of North Dakota. I also  
24 served as counsel to the Deputy Receiver of Home Warranty Corporation and its affiliates in  
25 connection with their administration, and I have served in outside counsel roles for Receivers of  
26 many insurance receiverships over the course of the past thirty-five years.

**B. Cantilo & Bennett's Appointment as SDR of NHC**

5. On October 14, 2015, the Nevada Commissioner of Insurance—then Amy Parks—was appointed as Permanent Receiver of NHC and Cantilo & Bennett was appointed as SDR pursuant to NRS § 696B.290. Pursuant to this Court's Order and Nevada law, we were authorized to retain counsel to "[i]nstitute and to prosecute" all "suits and other legal proceedings," to "defend suits in which CO-OP or the Receiver is a party," and to "abandon the prosecution or defense of such suits, legal proceedings, and claims which she deems inappropriate." (Permanent Injunction and Order Appointing Commissioner as Permanent Receiver of Nevada Health Co-Op, ¶ 14(h).) We were also authorized to "employ and to fix the compensation of ... counsel" and other personnel as necessary and pay such compensation out of the assets of NHC in accordance with NRS § 696B.290. *Id.* ¶ 4; *see also* NRS § 696B.255.

6. Prior to Cantilo & Bennett's appointment as SDR, we conducted an evaluation of any potential conflicts of interest with our representation of NHC and found no conflicts.

7. Since our appointment as SDR, I have served as the lead authorized representative from Cantilo & Bennett as SDR working on this matter, with support from a significant team of other SDR authorized representatives of my firm, including Patrick Cantilo, Kristen Johnson, Josh Lively, and other support staff.

8. On April 6, 2016, Barbara Richardson—the newly appointed Commissioner of Insurance for the State of Nevada—took over as the Receiver for NHC. We have since worked closely on this matter with the Receiver and her staff.

9. As SDR, we have a broad range of responsibilities for the receivership, as set out in the Court's October 14, 2015 Order and Nevada law. These responsibilities include, among other things, collecting debts and monies due to NHC, managing and in some instances selling assets of NHC, administering the assets of NHC, evaluating and administering claims by creditors against NHC, and evaluating and pursuing claims of NHC against others.

1 **C. The Receiver's Limited Scope Retention of Greenberg Traurig and Santoro**  
2 **Whitmire**

3 10. Since Cantilo & Bennett was appointed as SDR, we have conducted a significant  
4 evaluation of the facts underlying NHC's insolvency and evaluation of claims that the Receiver  
5 might have against other parties. In evaluating such claims, we consider many factors, including  
6 the strength of potential claims, the strength of potential defenses, the relative culpability of other  
7 potentially responsible parties, the magnitude of the contribution to the loss of any particular party,  
8 the likely expense and difficulty in pursuing claims, and other relevant factors. Ultimately, given  
9 the receivership's finite resources, we, as SDR, pursue only those claims that we believe are in  
10 the best interests of the receivership to pursue, as our statutory grant of discretion allows.

11 11. Through this process, by 2016, we had identified a number of parties against  
12 whom we believed the Receiver had viable claims, including the Centers for Medicare and  
13 Medicaid Services ("CMS"), Unite Here Health, Milliman, Inc., and former officers and directors  
14 of NHC. We knew that prosecuting these claims would require a significant commitment of time  
15 and resources and would likely require the prosecution of claims both in Nevada and, as to  
16 CMS—a federal agency—in the Court of Federal Claims. We believed that it was in the  
17 Receiver's best interest to retain outside counsel that had both a national presence and an  
18 expertise in complex civil litigation matters to pursue these claims.

19 12. Accordingly, we began searching for qualified outside counsel to prosecute these  
20 claims. In October 2016, I contacted Mark Ferrario of Greenberg Traurig, L.L.P. ("Greenberg  
21 Traurig") to discuss the potential for Greenberg Traurig to represent the Receiver in prosecuting  
22 these matters. I contacted Mr. Ferrario because of his and Greenberg Traurig's significant  
23 experience in litigating complex matters and their national presence, which would assist the  
24 Receiver in litigating claims in different venues.

25 13. In discussing Greenberg Traurig's representation, both Mark Ferrario and I were  
26 careful to ensure that Greenberg Traurig's representation of the Receiver would not create any  
27 conflicts of interest. Mr. Ferrario told me that Greenberg Traurig represented Valley Health  
28

1 System ("Valley") in connection with claims for medical reimbursement from NHC submitted by  
2 several of the system's member medical facilities ("Valley claims"). I told Mr. Ferrario that the  
3 scope of Greenberg Traurig's representation of the Receiver would not include defending the  
4 receivership against the Valley claims or administering Valley claims--and would not include any  
5 role in the allocation of assets to creditors like Valley.

6 14. Mr. Ferrario also told me that Greenberg Traurig represented Xerox State  
7 Healthcare, LLC ("Xerox") in matters relating to its work on behalf of the Silver State Health  
8 Insurance Exchange in Nevada. I told Mr. Ferrario that at the outset of his representation, the  
9 Receiver had not determined to pursue any claims against Xerox, with whom NHC had not had a  
10 contractual relationship. I explained, however, that our evaluation of all potential claims was  
11 ongoing, and we agreed that the scope of Greenberg Traurig's representation of the Receiver would  
12 not include evaluating or prosecuting any claims against Xerox.

13 15. As an additional precaution, we agreed that the Receiver would retain a separate  
14 conflicts counsel, Santoro Whitmire Ltd. ("Santoro Whitmire"), to assist the SDR with the  
15 prosecution of claims against any parties as to whom Greenberg Traurig had a conflict. Retention  
16 of conflicts counsel like this is commonplace in large, complex receivership matters involving  
17 many parties. Cantilo & Bennett, as SDR, had similarly retained the Santoro Whitmire firm as  
18 conflicts counsel for the Nevada Contractors Insurance Company, Inc. and Builders Insurance  
19 Company, Inc. receivership engagements; thus, based on our experience in other receiverships, we  
20 wanted to have Santoro Whitmire available as conflicts counsel in the NHC case.

21 16. For purposes of allowing Greenberg Traurig to fully evaluate any potential  
22 conflicts, in October 2016, I sent Mr. Ferrario a list of potential parties that the Receiver was  
23 contemplating asserting claims against. That list included CMS, Unite Here Health, Milliman,  
24 Inc., and former officers and directors of NHC. Neither Valley nor Xerox were on this list because  
25 the Receiver did not contemplate having Greenberg Traurig serve as adverse to them when it  
26 retained Greenberg Traurig.

1           17.     On December 19, 2016, the Receiver filed a motion seeking leave from the Court  
2 to engage and pay Greenberg Traurig, Santoro Whitmire, and other consultants pursuant to Nevada  
3 Revised Statute (“NRS”) § 696B.290. The court granted the motion on January 17, 2017.

4           18.     The Receiver retained Greenberg Traurig for the limited purpose of prosecuting  
5 certain claims on behalf of the Receiver, including claims against CMS and claims against UHH,  
6 NHS, and the other defendants in the matter *State of Nevada ex rel. Commissioner of Insurance v.*  
7 *Milliman Inc. et al.*, No. A-17-76055-B (District Court of Clark County, Nevada). Santoro  
8 Whitmire was retained as conflicts counsel to assist the Receiver and SDR, as necessary, with the  
9 prosecution of claims against any parties as to whom Greenberg Traurig had a conflict.

10 **D.     Greenberg Traurig’s Representation of the Receiver**

11           19.     For the past three-and-a-half years, Greenberg Traurig has prosecuted claims on  
12 behalf of the Receiver in the following matters: (1) *Barbara D. Richardson v. United States*,  
13 Case No. 18-1731-C (U.S. Ct. Fed. Cl.); (2) *State of Nevada ex rel. Commissioner of Insurance*  
14 *v. Milliman Inc. et al.*, No. A-17-76055-B (District Court of Clark County, Nevada); (3) *State of*  
15 *Nevada ex rel. Commissioner of Insurance v. Silver State Health Exchange*, No. A-20-816161  
16 (District Court of Clark County, Nevada); and (4) *State of Nevada ex rel. Commissioner of*  
17 *Insurance v. WellHealth Medical Associates et al.*, No. A-20-818118-C (District Court of Clark  
18 County, Nevada).

19           20.     Consistent with the limited scope of its engagement by the Receiver, Greenberg  
20 Traurig has had no role in defending or administering the Valley claims. The claims were  
21 submitted to NHC’s Javelina Claims Database and approved through the receivership claims’  
22 administration process for provider claims, which we handled without any involvement of  
23 Greenberg Traurig. The Receiver has not been adverse to Valley or its members regarding their  
24 medical claims in the NHC receivership, and the Receiver (without assistance from the  
25 Greenberg Traurig firm) has already issued notices of claim determination for the Valley claims  
26 from which there were no legal appeals by Valley or its member facilities. The Valley claims  
27 against the NHC receivership are now final under the court approved claim procedure for NHC.  
28



1           21.     Similarly, Greenberg Traurig has had no role in advising the Receiver or SDR as  
2 to the allocation of assets among creditors like Valley. As we had been doing prior to the  
3 Receiver's limited retention of Greenberg Traurig, my office, with the assistance of financial  
4 professionals, continued to handle all matters relating to the distribution of assets to creditors.

5           22.     Greenberg Traurig has also had no role whatsoever in evaluating or prosecuting  
6 any claim against Xerox. Independent of Greenberg Traurig, the SDR has continued to evaluate  
7 whether a claim should be brought by the Receiver against Xerox, and the Receiver has not yet  
8 brought such a litigation claim at this time. In the event that the Receiver decided to bring a  
9 litigation claim against Xerox, that claim would be handled by legal counsel other than  
10 Greenberg Traurig. The Receiver and SDR continuously evaluate and develop information for  
11 actual or potential litigation against parties, which is protected from disclosure as confidential  
12 work product.

13           23.     Neither the Receiver nor the SDR has ever asked Greenberg Traurig to advise on  
14 the evaluation of potential claims against Xerox, and Greenberg Traurig has not done so. In  
15 short, the process by which the Receiver and SDR have evaluated potential claims against Xerox,  
16 and exercised their broad statutory authority to act in the best interests of the receivership, has  
17 been completely independent of Greenberg Traurig.

18 **E.     Greenberg Traurig's Prosecution of the *Milliman* Case**

19           24.     Greenberg Traurig filed the *Milliman* suit on behalf of the Receiver on August  
20 25, 2017. Greenberg Traurig is counsel of record for the Receiver in the case and has taken the  
21 lead at all stages of the litigation over the past three years.

22           25.     Greenberg Traurig has an extensive knowledge of the factual and legal issues  
23 involved in the *Milliman* case. Although, as the SDR, we communicate with Greenberg Traurig  
24 regarding the case, Greenberg Traurig attorneys are the ones handling the litigation, and they are  
25 the ones who are preparing the case for trial, which is expected to last for several weeks. The  
26 Receiver and SDR have relied significantly on Greenberg Traurig's advice and institutional  
27 knowledge regarding the *Milliman* case.  
28

1           26. If Greenberg Traurig were to be disqualified from even just the *Milliman* case,  
2 the costs and prejudice to the receivership would be extreme. The Receiver would have to retain  
3 separate outside counsel to prosecute the case, and educating that counsel would present an  
4 enormous cost that would further deplete the limited resources of the receivership. Moreover,  
5 Greenberg Traurig's institutional knowledge of the case and organization of the case for trial—  
6 developed over the course of three years—would no longer be available to the Receiver, which  
7 could impact the likelihood of a significant recovery for the receivership. In short,  
8 disqualification of Greenberg Traurig at this late stage of the *Milliman* case would present  
9 significant prejudice and hardship to the receivership.

10 **F. Greenberg Traurig's Prosecution of Other Cases on Behalf of the Receiver.**

11           27. Similarly, Greenberg Traurig has served as lead counsel for the Receiver in the  
12 matters *Barbara D. Richardson v. United States*, Case No. 18-1731-C (U.S. Ct. Fed. Cl.); *State*  
13 *of Nevada ex rel. Commissioner of Insurance v. Silver State Health Exchange*, No. A-20-816161  
14 (District Court of Clark County, Nevada); and *State of Nevada ex rel. Commissioner of Insurance*  
15 *v. WellHealth Medical Associates et al.*, No. A-20-818118-C (District Court of Clark County,  
16 Nevada). As in the *Milliman* case, Greenberg Traurig has extensive institutional knowledge of the  
17 factual and legal issues in these matters and will serve as lead counsel at any trial. Disqualification  
18 would impose a significant burden on the Receiver, who would have to retain new counsel,  
19 incurring additional costs and potentially impacting the likelihood of a significant recovery.

20           I declare under penalty of perjury under the law of the State of Nevada that the foregoing  
21 is true and correct.

22  
23 Executed on: November 15, 2020



24 Mark. F. Bennett  
25  
26  
27  
28

## Exhibit 2

1 **DECL (CIV)**

2 MARK E. FERRARIO, ESQ.  
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24 *Attorneys for Greenberg Traurig, LLP*

25 **DISTRICT COURT**

26 **CLARK COUNTY, NEVADA**

27 STATE OF NEVADA, EX. REL.  
28 COMMISSIONER OF INSURANCE,  
BARABARA D. RICHARDSON, IN HER  
OFFICIAL CAPACITY AS STATUTORY  
RECEIVER FOR DELINQUENT DOMESTIC  
INSURER,

Plaintiff,

v.

NEVADA HEALTH CO-OP,

Defendant.

Case No. A-15-725244-C  
Dept. No. I

**DECLARATION OF MARK E.  
FERRARIO IN SUPPORT OF  
GREENBERG TRAUIG, LLP'S  
OPPOSITION TO MOTION TO  
DISQUALIFY GREENBERG  
TRAURIG AND DISGORGE  
ATTORNEY'S FEES**

1 I, Mark E. Ferrario, declare as follows:

2 1. I am a Shareholder at Greenberg Traurig, LLP (“Greenberg Traurig”), which serves  
3 as counsel to Barbara Richardson as the Statutory Receiver (the “Receiver”) for the Nevada Health  
4 Co-Op (“NHC”) in this matter and related matters, including *Nevada Commissioner of Insurance v.*  
5 *Milliman Inc. et al.*, No. A-17-76055-B. I provide this declaration in support of Greenberg Traurig,  
6 LLP’s Opposition to Unite Here Health and Nevada Health Solutions, LLC’s “Motion to Disqualify  
7 Greenberg Traurig as Counsel for the Statutory Receiver of Nevada Health Co-Op and Disgorge  
8 Attorney’s Fees Paid by Nevada Health Co-Op to Greenberg Traurig, LLP.” I make this declaration  
9 based on my personal knowledge and experience and, if called as a witness, I would testify to the  
10 facts set forth below.

11 **A. Background**

12 2. I currently work out of Greenberg Traurig’s Las Vegas, Nevada office, where I have  
13 practiced since 2009. My practice focuses on complex commercial civil litigation matters of all  
14 sizes. I have served as lead counsel in many jury trials, bench, trials and arbitrations and have been  
15 recognized by Martindale-Hubbell as AV Rated—its highest peer recognition for ethical standards  
16 and legal ability.

17 3. I am a member of the State Bar of Nevada in good standing and have been authorized  
18 to practice law in Nevada since 1981. I am also a member of the State Bar of California in good  
19 standing and have been authorized to practice law in California since 1982.

20 **B. The Receiver’s Limited Scope Retention Of Greenberg Traurig**

21 4. In October 2016, Mark Bennett of Cantilo & Bennett L.L.P., the Special Deputy  
22 Receiver (“SDR”) of NHC, contacted me to discuss the potential for Greenberg Traurig to represent  
23 the Receiver in prosecuting certain claims on behalf of the Receiver.

24 5. Before Greenberg Traurig agreed to represent the Receiver, Mr. Bennett and I took  
25 appropriate measures to make sure that Greenberg Traurig’s representation of the Receiver would not  
26 create any conflicts of interest. I told Mr. Bennett that Greenberg Traurig represented Xerox State  
27 Healthcare (“Xerox”) in matters relating to its work for the Silver State Health Insurance Exchange  
28 (“Silver State”) in Nevada. Mr. Bennett indicated that, at that time, the Receiver had not decided to

1 assert any claims against Xerox. But, he said that the Receiver's evaluation of all its potential claims  
2 was ongoing, and so we agreed that Greenberg Traurig's representation of the Receiver would not  
3 include evaluating or prosecuting any claims against Xerox.

4 6. As an additional precaution, we agreed that the Receiver would retain a separate  
5 conflicts counsel, Santoro Whitmire Ltd. ("Santoro Whitmire"), to assist the SDR with the  
6 prosecution of claims against any parties as to whom Greenberg Traurig had a conflict, including  
7 Xerox, if necessary. I understood that Santoro Whitmire had previously served as conflicts counsel  
8 to Cantilo & Bennett in connection with a separate receivership.

9 7. I also told Mr. Bennett that Greenberg Traurig had represented Valley Health System  
10 ("Valley") in connection with claims for medical reimbursement from NHC that were submitted by  
11 medical provider members of the Valley Health System ("Valley claims"). Mr. Bennett and I both  
12 understood and agreed that Greenberg Traurig's representation of the Receiver would not include  
13 anything relating to the Valley claims and would not include any role in the allocation of assets to  
14 creditors like Valley. Out of an abundance of caution, Greenberg Traurig sought and received  
15 Valley's written consent to Greenberg Traurig's limited representation of the Receiver on matters that  
16 were not adverse to Valley.

17 8. For purposes of evaluating any potential conflicts, Mr. Bennett sent me a list of parties  
18 against whom that the Receiver was contemplating asserting claims. Neither Valley nor Xerox were  
19 on the list. Greenberg Traurig ran the potentially-adverse parties through its electronic conflicts  
20 checking system and determined that the parties against whom Mr. Bennett was contemplating  
21 asserting action were not conflicts for Greenberg Traurig.

22 9. On December 12, 2016, the Receiver sought leave from the Court to engage and pay  
23 Greenberg Traurig, Santoro Whitmire, and other consultants pursuant to Nevada Revised Statute  
24 ("NRS") § 696B.290. The court granted the motion on January 17, 2017.

25 10. Greenberg Traurig was retained by the Receiver for the limited purpose of prosecuting  
26 certain claims on behalf of the Receiver, including claims against CMS and claims against UHH,  
27 NHS, and the other defendants in the matter *State of Nevada ex rel. Commissioner of Insurance v.*  
28 *Milliman Inc. et al.*, No. A-17-76055-B (District Court of Clark County, Nevada). As we had

1 previously agreed, Greenberg Traurig's representation did not include (1) defending the Receiver  
2 against the Valley claims or administering the Valley claims; (2) advising the Receiver as to allocation  
3 of the receivership's assets to the creditors; or (3) evaluating or prosecuting claims against Xerox.  
4 These responsibilities were outside the scope of Greenberg Traurig's engagement and were handled  
5 by the Receiver, the SDR, and their experienced legal and business teams. Santoro Whitmire was  
6 retained as conflicts counsel to assist the SDR with the prosecution of claims that might arise against  
7 any parties as to whom Greenberg Traurig had a conflict, including Xerox.

8 **B. Greenberg Traurig's Prior Representation Of Xerox**

9 11. Greenberg Traurig previously represented Xerox and affiliates of Xerox in several  
10 matters separate from the NHC receivership.

11 12. In July 2014, Greenberg Traurig was retained to represent Xerox in the case *Basich v.*  
12 *State of Nevada ex rel. Silver State Health Insurance Exchange et al.*, No. A-14-698567-C (Eighth  
13 Judicial District Court, Nevada), a class action brought by Nevada residents alleging that they had  
14 paid health insurance premiums but did not receive health insurance coverage. The plaintiffs' claims  
15 against Xerox were based on services Xerox provided under its contract with Silver State. NHC was  
16 not a party to the case.

17 13. In August 2014, Greenberg Traurig was retained by Xerox to represent Xerox in the  
18 case *Casale v. State of Nevada ex rel. Silver State Health Insurance Exchange et al.*, No. A-14-  
19 706171-C (Eighth Judicial District Court, Nevada), a class action brought by Nevada insurance  
20 brokers alleging, among other things, that they were denied commissions because of Xerox. The  
21 plaintiffs' claims against Xerox in this case were also based on the services Xerox provided under its  
22 contract with Silver State. Once again, NHC was not a party to the case.

23 14. The *Basich* and *Casale* matters were subsequently consolidated into a single case. On  
24 May 25, 2017, Xerox settled the consolidated cases with no findings or admissions of liability.  
25 Greenberg Traurig's engagement with Xerox for these matters ended after the settlement was final.

26 15. Greenberg Traurig was also retained to represent Xerox in connection with an  
27 investigation initiated by the Nevada Department of Business and Industry, Division of Insurance.  
28 The investigation focused primarily on Xerox's licensing under Nevada law. (*See* Movants' Ex. 10,

¶ 6.) The investigation did not involve NHC, and NHC had no interest in the investigation. On October 19, 2017, the Division of Insurance entered a consent order resolving its investigation with no admissions of Xerox's liability. (See Movants' Ex. 10.) Greenberg Traurig's engagement with Xerox for these matters ended after the consent order was entered. Greenberg Traurig has not represented Xerox itself in any matters since October 19, 2017.

16. Greenberg Traurig also previously represented affiliates of Xerox, but not Xerox itself, in other litigation with no relationship whatsoever to the NHC receivership or the Nevada healthcare insurance market.

17. Greenberg Traurig does not currently represent Xerox in any matters.

#### **C. Greenberg Traurig's Prior Representation Of Valley**

18. On July 16, 2016, the Receiver in this matter moved for entry of an Order stating that NHC was insolvent and placing NHC into liquidation.

19. Shortly thereafter, Greenberg Traurig was retained by Valley, a regional healthcare system, in connection with the Valley claims. On August 8, 2016, on behalf of Valley, Greenberg Traurig submitted a response to the Receiver's motion for a finding of insolvency, noting that Valley held a potential claim against the receivership estate in excess of \$5 million.

20. Greenberg Traurig has not performed any work on behalf of Valley in this matter since December 13, 2016, *prior to* this Court's approval of Greenberg Traurig's retention as counsel to the Receiver in January 2017.

21. I understand that, through the claims administration process, Valley's claims against NHC were approved, though Greenberg Traurig had no role in the claims administration process.

22. Valley was not and is not the subject of any potential claims of NHC or the Receiver.

#### **D. Greenberg Traurig's Representation Of The Receiver**

23. For the past three-and-a-half years, Greenberg Traurig has prosecuted claims on behalf of the Receiver in the following matters: (1) *Barbara D. Richardson v. United States*, Case No. 18-1731-C (U.S. Ct. Fed. Cl.); (2) *State of Nevada ex rel. Commissioner of Insurance v. Milliman Inc. et al.*, No. A-17-76055-B (District Court of Clark County, Nevada); (3) *State of Nevada ex rel. Commissioner of Insurance v. Silver State Health Exchange*, No. A-20-816161 (District Court



1 of Clark County, Nevada); and (4) *State of Nevada ex rel. Commissioner of Insurance v. WellHealth*  
2 *Medical Associates et al.*, No. A-20-818118-C (District Court of Clark County, Nevada). Greenberg  
3 Traurig does not and has not previously represented any of the defendants in any of these cases,  
4 including UHH and NHS. Nor has Greenberg Traurig received confidential, privileged information  
5 from any of these defendants, including UHH and NHS (aside from any documents UHH and NHS  
6 produced in discovery, which are not privileged).

7       24. Consistent with the limited scope of its engagement, Greenberg Traurig has had no  
8 role in defending or administering the Valley claims or advising the Receiver or SDR as to the  
9 allocation of assets among creditors like Valley. This work is completely outside of the scope of  
10 our work for the Receiver.

11       25. Similarly, Greenberg Traurig has had no role whatsoever in evaluating or  
12 prosecuting any claim against Xerox. The Receiver and SDR have not asked us to weigh in on  
13 these matters, and we have not done offered any advice on these matters.

14       26. Neither Xerox nor Valley has claimed that Greenberg Traurig's representation of the  
15 Receiver in this matter has created a conflict of interest.

16 **E. Greenberg Traurig's Prosecution Of The *Milliman* Case**

17       27. We filed the *Milliman* suit, which named NHS as a defendant, on behalf of the  
18 Receiver on August 25, 2017. For years, neither NHS nor its counsel raised any allegation of a  
19 perceived conflict of interest of Greenberg Traurig, even though our representation of Valley was  
20 on the public docket in the receivership matter and our representation of Xerox was a matter of  
21 public knowledge. When we amended our complaint to add UHH as a defendant on September 24,  
22 2018, they likewise did not object to our representation or raise any allegation of a conflict of  
23 interest.

24       28. Through years of litigation with UHH and NHS, even as the case was set for trial  
25 twice, they did not seek to implead Xerox as a third-party defendant in the matter.

26       29. Greenberg Traurig has invested significant resources in litigating the *Milliman* case.  
27 We have been the principal attorneys on the case, drafting pleadings, responding to dispositive  
28 motions, serving and responding to discovery, preparing and responding to discovery motions,

1 retaining and working with expert witnesses, and preparing for trial. We have accumulated  
2 extensive knowledge surrounding the factual basis of the Receiver's claims and the legal issues that  
3 will be significant at the upcoming trial, at which we will serve as lead counsel.

4 30. On July 31, 2019, we served our expert reports on the defendants and began to prepare  
5 for trial. But shortly thereafter, UHH and NHS set out on a campaign to delay the litigation of the  
6 Receiver's claims against them. First, they filed a motion that sought an extension of *one full year* to  
7 serve their expert reports. Next, they filed a motion to stay the case during the pendency of a Supreme  
8 Court case with no influence on the Receiver's claims.

9 31. On June 16, 2020, with trial approaching, UHH's counsel sent us a letter seeking  
10 materials about the Receiver's decision-making process as to Xerox that are clearly protected by the  
11 work-product doctrine. Then, UHH served on the Receiver written interrogatories and discovery  
12 requests that were aimed not at the Receiver's claims against UHH, but at why the Receiver had not  
13 sued Xerox.

#### 14 **F. Greenberg Traurig's Prosecution Of Other Cases On Behalf Of The Receiver**

15 32. Similarly, Greenberg Traurig has served as lead counsel for the Receiver in the matters  
16 *Barbara D. Richardson v. United States*, Case No. 18-1731-C (U.S. Ct. Fed. Cl.); *State of Nevada ex*  
17 *rel. Commissioner of Insurance v. Silver State Health Exchange*, No. A-20-816161 (District Court of  
18 Clark County, Nevada); and *State of Nevada ex rel. Commissioner of Insurance v. WellHealth*  
19 *Medical Associates et al.*, No. A-20-818118-C (District Court of Clark County, Nevada). Like it has  
20 done in the *Milliman* case, Greenberg Traurig has invested a significant amount of resources in  
21 litigating these matters and has a significant base of institutional knowledge of the factual and legal  
22 issues in these cases.


#### 23 **G. My Professional Obligations To My Clients And This Court**

24 33. As a licensed attorney of nearly forty years, a member in good standing of the Nevada  
25 Bar, and a Shareholder of Greenberg Traurig, I take my professional obligations with the utmost  
26 seriousness. This includes my professional obligations to my current clients, my former clients, and  
27 my duty of candor and honesty with this Court.  
28

34. UHH and NHS's unsupported allegation that Greenberg Traurig or I have violated our ethical obligations in this case is completely spurious. I have built my reputation and career on practicing law as an attorney of the highest ethical caliber. I have never faced disciplinary action by the bar of any state and have never been accused by a client or a court of violating my professional obligations. As I have done for decades, I will continue to scrupulously comply with my ethical obligations throughout the duration of this proceeding.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed this 16<sup>th</sup> day of November 2020

  
Mark E. Ferrario

## Exhibit 3

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

STATE OF NEVADA, EX. REL.  
COMMISSIONER OF INSURANCE,  
BARABARA D. RICHARDSON, IN HER  
OFFICIAL CAPACITY AS STATUTORY  
RECEIVER FOR DELINQUENT DOMESTIC  
INSURER,

Plaintiff,

v.

NEVADA HEALTH CO-OP,

Defendant.

Case No. A-15-725244-C

Dept. No. I

**DECLARATION OF JAMES E. WHITMIRE**

I, James E. Whitmire, declare as follows:

1. I am a shareholder in the law firm Santoro Whitmire Ltd. ("Santoro Whitmire").

2. Our firm was retained for limited purposes by Barbara Richardson, Commissioner of Insurance of the State of Nevada, in her capacity as Receiver of Nevada Health Co-Operative ("NHC").

3. I provide this declaration in connection with a Motion to Disqualify in connection with the above-referenced matter and Greenberg Traurig's Opposition thereto.

4. I make this declaration based on my personal knowledge and experience and, if called as a witness, I would testify to the facts set forth below.

5. I am a member of the State Bar of Nevada in good standing and have been authorized to practice law in Nevada since 1998. Prior to moving to Nevada, I practiced law in Illinois as of 1993.

1           6.     I am one of the founding members of the law firm Santoro Whitmire, which was  
2 formed in 2012 and which is located in Las Vegas, Nevada.

3           7.     My practice includes litigating complex commercial litigation matters of all types,  
4 and I have experience bringing claims on behalf of a receivership.

5           8.     Shortly before the Motion to Appoint Counsel was filed in this case, Mark Bennett  
6 of Cantilo & Bennett L.L.P., the Special Deputy Receiver of NHC, reached out regarding the  
7 potential for Santoro Whitmire to serve as conflicts counsel to the Receiver in the above-referenced  
8 matter.

9           9.     I had previously served and was serving in a similar capacity in the Nevada  
10 Contractors Insurance Company, Inc. ("NCIC") and Builders Insurance Company, Inc. ("BIC")  
11 receiverships.

12          10.    At the time, I was heavily involved in the NCIC and BIC receivership matters.

13          11.    Mr. Bennett indicated that the Receiver intended to seek leave to retain Greenberg  
14 Traurig, LLP as lead counsel to prosecute certain claims on the Receiver's behalf. At the time,  
15 and consistent with the prior Receivership case, the Receiver also wanted to retain conflicts  
16 counsel to handle litigation or discovery against any party as to whom Greenberg Traurig had a  
17 conflict.

18          12.    On or about December 19, 2016, the Receiver filed a motion seeking leave from  
19 the Court to engage and pay Greenberg Traurig, Santoro Whitmire, and other consultants.

20          13.    The court granted the motion on January 17, 2017.

21          14.    Pursuant to this Order, my understanding was that the Court approved Santoro  
22 Whitmire as stand-by conflicts counsel to assist the Receiver and Special Deputy Receiver, as

23 ///

24 ///

25 ///

26 ///

27 ///

1 necessary, with the prosecution of claims against any parties as to whom Greenberg Traurig had a  
2 conflict.

3 I declare under penalty of perjury that the foregoing is true and correct.

4 DATED this 13th day of November, 2020.

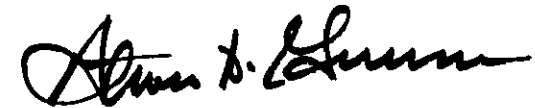
5 /s/ James E. Whitmire  
6 James E. Whitmire, Esq.

## Exhibit 4



Case No. \_\_\_\_\_  
(Assigned by Clerk's Office)

## 020



CLERK OF THE COURT

**COMP**  
**MATTHEW Q. CALLISTER, ESQ.**  
Nevada Bar No. 001396  
mqc@call-law.com  
**MITCHELL S. BISSON, ESQ.**  
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**CALLISTER, IMMERMANN & ASSOCIATES**  
823 Las Vegas Blvd. South  
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Tel: (702) 385-3343 / Fax: (702) 385-2899  
*Attorneys for Plaintiffs*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

**LAWRENCE BASICH**, individually and on  
behalf of all those similarly situated; **LEA**  
**SWARTLEY**, individually and on behalf of  
all those similarly situated;

Plaintiffs,

v.

**STATE OF NEVADA EX REL., SILVER**  
**STATE HEALTH INSURANCE**  
**EXCHANGE; XEROX STATE**  
**HEALTHCARE, LLC**, a foreign limited  
liability company; **DOE INDIVIDUALS I-X;**  
**ROE CORPORATIONS I-X;**

Defendants.

Case No.: A-14-698567-C

Dept. No.: IV

**CLASS ACTION COMPLAINT**

Causes of Action:

1. Negligence/Gross Negligence
2. Negligent Misrepresentation
3. Violations of NRS 686A
4. Negligence Per Se
5. Conversion

**DEMAND FOR JURY TRIAL**

**EXEMPTION FROM ARBITRATION**  
**REQUESTED**

Claims involve an amount in issue in excess of  
\$50,000

COMES NOW, Plaintiff class representatives **LAWRENCE BASICH** and **LEA**  
**SWARTLEY**, individually and on behalf of all those similarly situated, by and through their  
attorneys **Matthew Q. Callister, Esq.** and **Mitchell S. Bisson, Esq.** of the law firm of **Callister,**  
**Immerman & Associates**, and hereby files this Class Action Complaint against the above named  
Defendants as follows:

/.../

/.../

## INTRODUCTION

1. The Silver State Health Insurance Exchange (the "Exchange") was established by the State of Nevada to (1) facilitate the purchase and sale of qualified health plans in the individual market in Nevada, (2) assist qualified small employers in Nevada in facilitating the enrollment and purchase of coverage and the application for subsidies for small business enrollees, (3) reduce the number of uninsured persons in Nevada, (4) provide a transparent marketplace for health insurance and consumer education on matters relating to health insurance, and (5) assist residents of Nevada with access to programs, premium assistance tax credits and cost-sharing reductions.
2. To accomplish its purpose, the Exchange contracted with Xerox State Healthcare, LLC ("Xerox") on August 24, 2012 for Xerox to develop, administer, and oversee the program through which Nevadans apply for health insurance, select insurance providers, and pay monthly insurance premiums (hereinafter referred to as "Nevada Health Link").
3. The Exchange awarded Xerox a contract worth \$72 million to provide the technology and services to design and build Nevada Health Link. Under the agreement, the Exchange will use Xerox's cloud-based technology and web portal to support Nevada Health Link, where individuals and small business employers will compare and buy health insurance plans that meet their needs.
4. Xerox's technology and services (i.e. Nevada Health Link) was said to support premium billing, processing, collection, aggregation and remittance, data analytics and actuarial support, health plan quality review and compliance reporting, and incorporation of tax credits and subsidies in cost calculations.
5. As alleged herein, the Exchange and Xerox have utterly failed to create a system that works as advertised, and as a result, thousands of Nevadans remain uninsured despite payment of insurance premiums.

/.../...

/.../...

## PARTIES AND JURISDICTION

- 1  
2 6. That at all times hereinafter mentioned, Plaintiff Class Representative LAWRENCE  
3 BASICH ("Basich") is and was at all relevant times a resident of Clark County, Nevada.
- 4 7. That at all times hereinafter mentioned, Plaintiff LEA SWARTLEY ("Swartley") is and  
5 was at all relevant times a resident of Clark County, Nevada.
- 6 8. That at all times hereinafter mentioned, Defendant SILVER STATE HEALTH  
7 INSURANCE EXCHANGE ("Exchange") is/was an agency of the State of Nevada  
8 established to, among other things, facilitate the purchase and sale of qualified health  
9 plans in the individual market in Nevada.
- 10 9. That at all times hereinafter mentioned, Defendant XEROX STATE HEALTHCARE,  
11 LLC ("Xerox") is/was a foreign limited liability company doing business in Clark  
12 County, Nevada and headquartered in Fairfax, Virginia.
- 13 10. The true names of the capacities, whether individual, agency, corporate, associate or  
14 otherwise, of Defendant DOE INDIVIDUALS I through X, inclusive, are unknown to  
15 Plaintiffs. Plaintiffs will ask leave of the Court to amend this Complaint to show the true  
16 names and capacities of these Defendants, when they become known to Plaintiffs,  
17 Plaintiffs believe each Defendant named as DOE was responsible for contributing to  
18 Plaintiffs' damages as set forth herein.
- 19 11. The true names of the capacities, whether individual, agency, corporate, associate or  
20 otherwise, of Defendant ROE CORPORATIONS I through X, inclusive, are unknown to  
21 Plaintiffs. Plaintiffs will ask to leave of the Court to amend this Complaint to show the  
22 true names and capacities of these Defendants, when they become known to Plaintiffs,  
23 Plaintiffs believe each Defendant named as ROE CORPORATION was responsible for  
24 contributing to Plaintiffs' damages as set forth herein.
- 25 12. Exercise of the jurisdiction by this Court over each and every Defendant in this action is  
26 appropriate.
- 27 13. Venue is proper in Clark County, Nevada.
- 28

**CLASS ACTION ALLEGATIONS**

14. The Class, as defined in the Class Action claim, consists of all residents of Nevada who applied for health insurance through Nevada Health Link, paid health insurance premiums through Nevada Health Link, and did not receive health insurance coverage for the time period for which the premiums were to apply.
15. The Plaintiffs' Class seeks a judgment that Defendants are responsible for the various negligent and wrongful acts as alleged herein.
16. The members of the Class are so numerous as to render joinder impracticable. On information and belief, there are currently over 10,000 residents of Nevada who have paid for health insurance through Nevada Health Link, yet either do not have health insurance coverage to date, or received a coverage effective date different than that for which they paid. These class members have all suffered harm as a result of Defendants' conduct.
17. The questions of law and fact common to the class include that each class member has suffered a similar loss, actionable in tort, stemming from the same conduct of the Defendants.
18. The named Plaintiff Class Representatives, Lawrence Basich and Lea Swartley, are adequate representatives of the class. The violations alleged by the Plaintiffs stem from the same course of conduct by Defendants; namely, their failure to properly create, administer, and oversee Nevada Health Link. The legal theory under which the Plaintiff Class Representatives seek relief is the same or similar to that on which the class will rely. In addition, the harm suffered by the Plaintiff Class Representatives is typical of the harm suffered by the proposed class members.
19. The named Plaintiff Class Representatives, Lawrence Basich and Lea Swartley, have the requisite personal interest in the outcome of this action and will fairly and adequately protect the interests of the putative class. The Plaintiff Class Representatives are represented by the law firm of Callister, Immerman & Associates. This law firm has the

resources, expertise and experience to prosecute this action. The members of Callister, Immerman & Associates do not have knowledge of any conflicts among the members of the Class or between members of the firm and members of this proposed Class.

20. The class action is superior to other available methods for the fair and efficient adjudication of this controversy because: (a) the prosecution of a multitude of separate actions would be inefficient and wasteful of judicial resources; (b) the members of the class may be scattered throughout Nevada and are not likely to be able to vindicate and enforce their rights unless this actions is maintained as a class action; (c) the issues raised can be more fairly and efficiently resolved in the context of a single action rather than piece-meal litigation in the context of separate actions; (d) the resolution of litigation in a single forum will avoid the danger and resultant confusion of possible inconsistent determinations; (e) the prosecution of separate actions would create the risk of inconsistent or varying adjudications with respect to individuals pursuing claims against defendants which would establish incompatible standards of conducts for defendants; (f) defendants have acted and will act on grounds applicable to all class members, making final declaratory and injunctive relief on behalf of all members necessary and appropriate; and (g) questions of law and/or fact common to members of the class, especially on issues of liability, predominate over any question, such as that of individuals damages that will effect individual class members.

#### FACTS

21. On or about October 1, 2013, Basich started his application for health insurance through Nevada Health Link.
22. As a result of numerous errors and problems with the Nevada Health Link website and application, Basich was unable to complete filling out his application until October 11, 2013, at which point Nevada Health Link requested certain documentation from Basich to prove his eligibility. Basich emailed the requested documentation immediately.

- 1 23. As a result of the continuing problems Nevada Health Link was having, Basich did not  
2 receive confirmation that the requested documentation was received until November 7,  
3 2013.
- 4 24. On or about November 18, 2013, Basich, through the Nevada Health Link website,  
5 selected Health Plan of Nevada as his health insurance provider and elected to enroll in  
6 the MyHPN Silver 1 plan with an effective date of January 1, 2014.
- 7 25. On or about November 21, 2013, Basich, through the Nevada Health Link website, paid  
8 the January 2014 health insurance premium for the MyHPN Silver 1 plan, which totaled  
9 \$160.77.
- 10 26. On or about December 31, 2013, Basich suffered a heart attack and was admitted to  
11 Summerlin Hospital.
- 12 27. On or about January 3, 2014, Basich underwent triple bypass surgery. Basich remained in  
13 the hospital until January 7, 2014.
- 14 28. Basich continued to have pain in his chest and was readmitted to Summerlin Hospital  
15 from January 10, 2014 to January 15, 2014, during which time Basich was treated for the  
16 pain.
- 17 29. Basich was once again readmitted to Summerlin Hospital on January 18, 2014 after being  
18 diagnosed with pleural effusion; Basich was treated and recovered in the hospital until  
19 January 24, 2014, at which point he was release from care.
- 20 30. Subsequently, Basich had numerous doctor appointments, follow-ups, lab work, etc.
- 21 31. Despite selecting Health Plan of Nevada as his insurance carrier, and despite timely  
22 payment of his health insurance premiums through Nevada Health Link, Basich was  
23 denied health insurance coverage from January 1, 2014 through February 28, 2014.
- 24 32. Upon information and belief, the Exchange and Xerox failed to submit Basich's  
25 application and monthly premium to Basich's selected insurance provider - Health Plan  
26 of Nevada.
- 27 33. As a result of the Exchange's and Xerox's conduct, Basich has been billed over  
28

1 \$400,000.00 for medical services which would have been paid by Basich's insurance  
2 provider had the Exchange and Xerox properly processed his application.

3 34. All Plaintiffs, including Plaintiff Swartley and those similarly situated, applied for health  
4 insurance and paid insurance premiums through the Exchange's and Xerox's Nevada  
5 Health Link; Despite doing so, Plaintiffs did not receive health insurance coverage for  
6 the dates for which their premiums were to be applied.

7 35. Upon information and belief, the Exchange and Xerox failed to properly process  
8 Plaintiffs' applications and premiums to ensure Plaintiffs were being provided with  
9 health insurance coverage.

10 36. As a result, Plaintiffs, and those similarly situated, have each been damaged in an amount  
11 in excess of \$10,000.00.

12 37. Additionally, Plaintiffs have suffered enormous emotional, mental, and physical distress  
13 as a result of the Exchange's and Xerox's conduct.

14  
15 **FIRST CAUSE OF ACTION**  
***(Negligence/Gross Negligence)***

16 38. Plaintiffs hereby incorporate and re-allege every allegation contained in this Complaint  
17 and further allege as follows:

18 39. Defendants, and each of them, had a duty to ensure that those who apply for, qualify for,  
19 and pay premiums for a selected insurance policy, get health insurance coverage for the  
20 time period for which they paid.

21 40. Additionally, Defendants, and each of them, had a duty to ensure that Plaintiffs' health  
22 insurance applications and premiums are timely submitted to the selected insurance  
23 provider.

24 41. It is also the duty of the Exchange and Xerox to use reasonable care in selecting, training,  
25 overseeing, and reviewing the competency of their employees to ensure that they can  
26 properly design, create, administer, and run Nevada Health Link.

27 42. Defendants, and each of them, breached these duties owed to Plaintiffs and those  
28



- 1 similarly situated by negligently and carelessly failing to ensure Plaintiffs' health  
2 insurance applications and premiums were being timely submitted to the correct entities.
- 3 43. Defendants, and each of them, further breached these duties owed to Plaintiffs and those  
4 similarly situated by negligently and carelessly failing to process Plaintiffs' health  
5 insurance applications and premiums with reasonable care.
- 6 44. Defendants, and each of them, further breached their duty of care to Plaintiffs and those  
7 similarly situated by failing to properly administer, oversee, audit, supervise, investigate,  
8 and evaluate the Nevada Health Link program and process.
- 9 45. As a proximate and legal result of the said negligence of the Defendants, and each of  
10 them, Plaintiffs have been damaged in an amount in excess of \$10,000.00.
- 11 46. As a further proximate and legal result of the negligence of Defendants, and each of  
12 them, Plaintiffs suffered severe and continuing shock, horror, and physical and emotional  
13 distress and pain and suffering, and other general damages, in an amount in excess of  
14 \$10,000.00.
- 15 47. Additionally, Defendants, and each of them, failed to exercise even the slightest degree  
16 of care, which amounts to *gross negligence*.
- 17 48. The Plaintiffs have been required to retain the services of Callister, Immerman &  
18 Associates to prosecute this action, and Plaintiffs are therefore entitled to recover their  
19 reasonable attorney's fees and costs of court for having to bring this action.  
20

21 **SECOND CAUSE OF ACTION**  
22 **(Negligent Misrepresentation)**

- 23 49. Plaintiffs hereby incorporate and re-allege every allegation contained in this Complaint  
24 and further alleges as follows:
- 25 50. Defendants provided Plaintiffs with statements and other material showing specific  
26 effective dates of health insurance coverage. Specifically as it relates to Plaintiff Basich,  
27 Defendants provided Basich with billing statements and other material showing that his  
28 health insurance coverage effective date was to be January 1, 2014.

- 1 51. Plaintiffs justifiably relied on Defendants representations by timely making monthly  
2 premium payments and by foregoing alternative health insurance options.
- 3 52. Defendants, and each of them, knew or should have known that the coverage effective  
4 dates provided by Defendants were incorrect. Defendants, and each of them, knew or  
5 should have known that Basich's application and/or premium payment was submitted by  
6 Defendants to the incorrect insurance provider.
- 7 53. Defendants, and each of them, did not exercise reasonable care when making the above-  
8 referenced misrepresentations to Plaintiffs.
- 9 54. As a proximate and legal result of Defendants' conduct, Plaintiffs have suffered damages  
10 in an amount in excess of \$10,000.00.
- 11 55. The Plaintiffs have been required to retain the services of Callister, Immerman &  
12 Associates to prosecute this action, and Plaintiffs are therefore entitled to recover their  
13 reasonable attorney's fees and costs of court for having to bring this action.

14  
15 **THIRD CAUSE OF ACTION**  
16 ***(Violations of NRS 686A)***

- 17 56. Plaintiffs hereby incorporate and re-allege every allegation contained in this Complaint  
18 and further alleges as follows:
- 19 57. The Exchange and Xerox are in the business of insurance and are thus subject to the  
20 provisions of Chapter 686A of the Nevada Revised Statutes.
- 21 58. NRS 686A.030(1) prohibits a person from making any statement which misrepresents the  
22 benefits, advantages, conditions or terms of any insurance policy.
- 23 59. NRS 686A.310(1)(a) states that it is an unfair practice to misrepresent pertinent facts or  
24 insurance policy provisions relating to any coverage at issue.
- 25 60. Defendants, and each of them, have misrepresented the terms and facts of the subject  
26 insurance policies. Specifically, Defendants misrepresented to Basich that his insurance  
27 coverage would be effective January 1, 2014. Likewise, Defendants misrepresented the  
28 effective date of coverage for all Plaintiffs.

1 61. Furthermore, NRS 686A.230 states that a person shall not willfully collect any sum as a  
2 premium or charge for insurance which is not then provided.

3 62. Defendants, and each of them, have wilfully collected insurance premiums from  
4 Plaintiffs, yet have not provided insurance coverage for the time periods for which the  
5 premiums were to be applied.

6 63. As a result of Defendants' actions, Plaintiffs have been damaged in an amount in excess  
7 of \$10,000.00

8 64. The Plaintiffs have been required to retain the services of Callister, Immerman &  
9 Associates to prosecute this action, and Plaintiffs are therefore entitled to recover their  
10 reasonable attorney's fees and costs of court for having to bring this action.

11  
12 **FOURTH CAUSE OF ACTION**  
***(Negligence Per Se)***

13 65. Plaintiffs hereby incorporate and re-allege every allegation contained in this Complaint  
14 and further alleges as follows:

15 66. The Exchange and Xerox are in the business of insurance and are thus subject to the  
16 provisions of Chapter 686A of the Nevada Revised Statutes.

17 67. Defendants, and each of them, have a duty not to make any statement which  
18 misrepresents the benefits, advantages, conditions or terms of any insurance policy. NRS  
19 686A.030(1).

20 68. Defendants, and each of them, have a duty not to misrepresent pertinent facts or  
21 insurance policy provisions relating to any coverage at issue. NRS 686A.310(1)(a).

22 69. Furthermore, Defendants, and each of them, have a duty not to collect any sum as a  
23 premium or charge for insurance which is not then provided. NRS 686A.230(1).

24 70. Defendants, and each of them, have breached these duties by misrepresenting the terms  
25 and facts of the subject insurance policies. Specifically, Defendants misrepresented to  
26 Basich that his insurance coverage would be effective January 1, 2014. Likewise,  
27 Defendants misrepresented the effective date of coverage for all Plaintiffs.  
28

1 71. Defendants, and each of them, have further breached these duties by collecting insurance  
2 premiums from Plaintiffs while not providing insurance coverage for the time periods for  
3 which the premiums were to be applied.

4 72. As a proximate and legal result of Defendants' conduct, Plaintiffs have suffered damages  
5 in an amount in excess of \$10,000.00.

6 73. The Plaintiffs have been required to retain the services of Callister, Immerman &  
7 Associates to prosecute this action, and Plaintiffs are therefore entitled to recover their  
8 reasonable attorney's fees and costs of court for having to bring this action.

9  
10 **FIFTH CAUSE OF ACTION**  
***(Conversion)***

11 74. Plaintiffs hereby incorporate and re-allege every allegation contained in this Complaint  
12 and further alleges as follows:

13 75. Defendants, and each of them, committed multiple acts of ongoing dominion of  
14 Plaintiffs' property in the form of their health insurance premiums paid.

15 76. Defendants accepted health insurance premiums from Plaintiffs which were to be paid to  
16 the specific insurance provider selected by each Plaintiff; further, Plaintiffs' insurance  
17 premium payments were to be applied to a specific time period for which coverage was  
18 sought.

19 77. Upon information and belief, Defendants submitted Plaintiffs' insurance premiums to the  
20 incorrect insurance providers and/or for the incorrect time periods.

21 78. Defendants' act of dominion over the funds is in defiance of Plaintiffs' right to said  
22 funds.

23 79. As a direct and proximate result of the conversion by Defendants, the Plaintiffs have  
24 suffered damages in an amount in excess of \$10,000.00.

25 80. Defendants committed all acts herein alleged, maliciously, fraudulently, and  
26 oppressively, with the reckless disregard of Plaintiffs' rights.

27 81. Conduct by the Defendants amounted to malice and was carried out in a despicable,  
28

1 deliberate, cold, callous and intentional manner thereby entitling Plaintiffs to recover  
2 punitive damages from Defendants in an amount according to proof.

3 82. The Plaintiffs have been required to retain the services of Callister, Immerman &  
4 Associates to prosecute this action, and Plaintiffs are therefore entitled to recover their  
5 reasonable attorney's fees and costs of court for having to bring this action.

6  
7 **PRAYER FOR RELIEF**

8 **WHEREFORE**, Plaintiffs pray for relief and damages as follows:

- 9 1. That Plaintiffs be awarded actual damages in excess of \$10,000.00;  
10 2. That Plaintiffs be awarded punitive damages in excess of \$10,000.00;  
11 3. That Plaintiffs be awarded reasonable attorney's fees;  
12 4. That Plaintiffs be awarded their costs of Court;  
13 5. That Plaintiffs be awarded any other relief as the Court may deem proper.


14  
15 **DEMAND FOR JURY TRIAL**

16 Plaintiffs hereby demand a trial by jury on all issues so triable.

17  
18 DATED: This 1<sup>st</sup> day of April, 2014.

19  
20  
21 Respectfully submitted,

22 **CALLISTER, IMMERMANN & ASSOCIATES**

23  
24 By:   
25 **MATTHEW Q. CALLISTER, ESQ.**  
Nevada Bar No. 001396  
26 **MITCHELL S. BISSON, ESQ.**  
Nevada Bar No. 011920  
27 823 Las Vegas Blvd. South, 5<sup>th</sup> Floor  
Las Vegas, NV 89101  
28 *Attorneys for Plaintiffs*

1 **IAFD**

2 **MATTHEW Q. CALLISTER, ESQ.**

3 Nevada Bar No. 001396

4 mqc@call-law.com

5 **MITCHELL S. BISSON, ESQ.**

6 Nevada Bar No. 011920

7 mbisson@call-law.com

8 **CALLISTER, IMMERMANN & ASSOCIATES**

9 823 Las Vegas Blvd. South

10 Las Vegas, Nevada 89101

11 Tel: (702) 385-3343 / Fax: (702) 385-2899

12 *Attorneys for Plaintiffs*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 LAWRENCE BASICH, individually and on  
16 behalf of all those similarly situated; LEA  
17 SWARTLEY, individually and on behalf of all  
18 those similarly situated;

19 Plaintiffs,

20 v.

21 STATE OF NEVADA EX REL., SILVER  
22 STATE HEALTH INSURANCE  
23 EXCHANGE; XEROX STATE  
24 HEALTHCARE, LLC, a foreign limited  
25 liability company; DOE INDIVIDUALS I-X;  
26 ROE CORPORATIONS I-X;

27 Defendants.

Case No.: A-14-698567-C

Dept. No.: IV

**INITIAL APPEARANCE FEE  
DISCLOSURE (NRS CHAPTER 19)**

28 Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for  
parties appearing in the above entitled matter as indicated below:

LAWRENCE BASICH

\$ 270.00

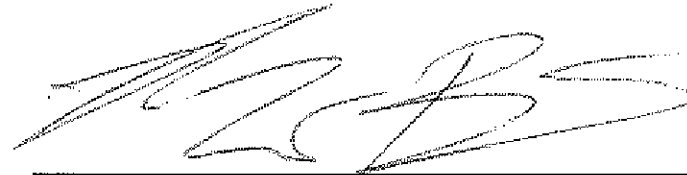
///

1 LEA SWARTLEY \$ 30.00

2 **TOTAL REMITTED:** \$ 300.00

3  
4 DATED: This 1<sup>st</sup> day of April, 2014.

6 **CALLISTER, IMMERMANN & ASSOCIATES**

7  
8 

9 **MATTHEW Q. CALLISTER, ESQ.**

10 Nevada Bar No. 001396

11 **MITCHELL S. BISSON, ESQ.**

12 Nevada Bar No. 011920

13 823 Las Vegas Blvd. South, 5<sup>th</sup> Floor

14 Las Vegas, NV 89101

15 *Attorneys for Plaintiffs*

## Exhibit 5





CLERK OF THE COURT

1 **COMJD**  
2 **ROBERT T. EGLET, ESQ.**  
3 Nevada Bar No. 3402  
4 **ARTEMUS W. HAM, ESQ.**  
5 Nevada Bar No. 7001  
6 **EGLET LAW GROUP**  
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20 Tel: (702) 385-3343 / Fax: (702) 385-2899  
21 *Attorneys for Plaintiffs*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 **PATRICK CASALE**, individually and on behalf  
16 of all those similarly situated; **MARY**  
17 **ELSBERRY**, individually and on behalf of all  
18 those similarly situated; **DWIGHT MAZZONE**,  
19 individually and on behalf of all those similarly  
20 situated; **JEREMY SHUGARMAN**, individually  
21 and on behalf of all those similarly situated;  
22 **GRACE BUTLER**, individually and on behalf of  
23 all those similarly situated; and **ANDREW**  
24 **PERWEIN**, individually and on behalf of all  
25 those similarly situated;

21 Plaintiffs,

22 v.

23 **STATE OF NEVADA EX REL., SILVER**  
24 **STATE HEALTH INSURANCE EXCHANGE;**  
25 **XEROX STATE HEALTHCARE, LLC**, a  
26 foreign limited liability company; **XEROX**  
27 **CORPORATION**, a foreign corporation; **DOE**  
28 **INDIVIDUALS I-X; ROE CORPORATIONS**  
**I-X,**

Defendants.

Case No.: A- 14 - 706171 - C

Dept. No.: XVI

**CLASS ACTION COMPLAINT**  
**AND JURY DEMAND**

**EXEMPTION FROM**  
**ARBITRATION REQUESTED**

Claims involve an amount in issue in excess of  
\$50,000

EGLET LAW GROUP

Attorneys

COMES NOW, Plaintiff Class Representatives PATRICK CASALE, MARY ELSBERRY, DWIGHT MAZZONE, JEREMY SHUGARMAN, GRACE BUTLER, and ANDREW PERWEIN, individually and on behalf of all those similarly situated, through their attorneys Robert T. Eglet, Esq., Robert T. Adams, Esq. and Artemus W. Ham, Esq. of the Eglet Law Group, and Matthew Q. Callister and Mitchell S. Bisson, Esq. of the law firm of Callister, Immerman & Associates, and hereby files this Class Action Complaint and Jury Demand against the above named Defendants as follows:

### INTRODUCTION

1. The Silver State Health Insurance Exchange (the "Exchange") was established by the State of Nevada to (1) facilitate the purchase and sale of qualified health plans in the individual market in Nevada, (2) assist qualified small employers in Nevada in facilitating the enrollment and purchase of coverage and the application for subsidies for small business enrollees, (3) reduce the number of uninsured persons in Nevada, (4) provide a transparent marketplace for health insurance and consumer education on matters relating to health insurance, and (5) assist residents of Nevada with access to programs, premium assistance tax credits and cost-sharing reductions.

2. To accomplish its purpose, the Exchange contracted with Xerox State Healthcare, LLC ("Xerox") on August 24, 2012 for Xerox to develop, administer, and oversee the program through which Nevadans apply for health insurance, select insurance providers, receive and process insurance applications and payments, and forward to insurance providers applications and payments (hereinafter referred to as "Nevada Health Link").

3. The Exchange awarded Xerox a contract worth \$72 million to provide the technology and services to design, build, maintain, administer and oversee Nevada Health Link. Under the agreement, the Exchange will use Xerox's cloud based technology and web portal to support Nevada Health Link, where individuals and small business employers will compare and buy health insurance plans that meet their needs.

4. Xerox's technology and services (i.e. Nevada Health Link) was said to support premium billing, processing, collection, aggregation and remittance, data analytics and actuarial

support, health plan quality review and compliance reporting, and incorporation of tax credits and subsidies in cost calculations.

5. To further facilitate consumer enrollment in Nevada Health Link, licensed Nevada insurance brokers and agents were permitted to sell insurance through Nevada Health Link by obtaining an "appointment" from Nevada Health Link by completing certain forms and by completing a training course with Nevada Health Link.

6. Consumers who wanted assistance obtaining insurance coverage through Nevada Health Link had the option of using their own appointed broker or agent, or could request an appointed broker or agent from a list posted on the Nevada Health Link website.

7. Appointed agents or brokers who assisted consumers with completing enrollment with an insurance carrier through Nevada Health Link were entitled to a commission based upon the selected insurance carrier's contract with the respective agents or brokers, with a typical commission being equal 12% of the total premium paid.

8. For every consumer who enrolled in a qualified insurance plan using Nevada Health Link with the assistance of a broker or agent, the Exchange was required to transmit the National Producer Number ("NPN") of the individual agent or broker to the selected insurance carrier along with the premium payment to facilitate payment of the commission.

9. As alleged herein, despite the efforts of appointed brokers and agents to assist consumers with enrollment, the Exchange and Xerox repeatedly failed to timely forward NPNs and other identifying information of thousands of Nevada brokers and agents to the selected insurance carriers, and in many cases failed to forward the NPN information to the insurance carriers *at all*, thereby denying brokers and agents commissions to which they were entitled.

#### PARTIES AND JURISDICTION

10. That at all times hereinafter mentioned, Plaintiff PATRICK CASALE ("Casale") is and was at all relevant times a licensed insurance broker residing in Clark County, Nevada.

11. That at all times hereinafter mentioned, Plaintiff MARY ELSBERRY ("Elsberry") is and was at all relevant times a licensed insurance broker residing in Clark County, Nevada.

1 12. That at all times hereinafter mentioned, Plaintiff DWIGHT MIZZONI  
2 ("Mizzoni") is and was at all relevant times a licensed insurance broker residing in Clark  
3 County, Nevada.

4 13. That at all times hereinafter mentioned, Plaintiff JEREMY SHUGARMAN  
5 ("Shugarman") is and was at all relevant times a licensed insurance broker residing in Clark  
6 County, Nevada.

7 14. That at all times hereinafter mentioned, Plaintiff GRACE BUTLER ("Butler") is  
8 and was at all relevant times a licensed insurance broker residing in Washoe County, Nevada.

9 15. ANDREW PERWEIN ("Perwein") is and was at all relevant times a licensed  
10 insurance broker residing in Washoe County, Nevada.

11 16. That at all times hereinafter mentioned, Defendant SILVER STATE HEALTH  
12 INSURANCE EXCHANGE ("Exchange") is/was an agency of the State of Nevada established  
13 to, among other things, facilitate the purchase and sale of qualified health plans in the individual  
14 market in Nevada.

15 17. That at all times hereinafter mentioned, Defendant XEROX STATE  
16 HEALTHCARE, LLC ("Xerox") is/was a foreign limited liability company doing business in  
17 Clark County, Nevada and headquartered in Fairfax, Virginia.

18 18. That at all times hereinafter mentioned, Defendant XEROX CORPORATION,  
19 is/was a foreign limited liability company doing business in Clark County, Nevada and  
20 headquartered in Norwalk, Connecticut.

21 19. The true names of the capacities, whether individual, agency, corporate, associate  
22 or otherwise, of Defendant DOE INDIVIDUALS I through X, inclusive, are unknown to  
23 Plaintiffs. Plaintiffs will ask leave of the Court to amend this Complaint to show the true names  
24 and capacities of these Defendants, when they become known to Plaintiffs, Plaintiffs believe  
25 each Defendant named as DOE was responsible for contributing to Plaintiffs' damages as set  
26 forth herein.

27 20. The true names of the capacities, whether individual, agency, corporate, associate  
28 or otherwise, of Defendant ROE CORPORATIONS I through X, inclusive, are unknown to

1 Plaintiffs. Plaintiffs will ask to leave of the Court to amend this Complaint to show the true  
2 names and capacities of these Defendants, when they become known to Plaintiffs, Plaintiffs  
3 believe each Defendant named as ROE CORPORATION was responsible for contributing to  
4 Plaintiffs' damages as set forth herein.

5 21. Exercise of the jurisdiction by this Court over each and every Defendant in this  
6 action is appropriate.

7 22. Venue is proper in Clark County, Nevada as at least some significant portion of  
8 the conduct and damages at issue herein have occurred in Clark County, including but not  
9 limited to those occurring to Plaintiffs.

10 **CLASS ACTION ALLEGATIONS**

11 23. Plaintiffs bring this action individually and on behalf of the Class, hereinafter  
12 referred to as "Plaintiffs' Class", consisting of all Nevada insurance agents and brokers who  
13 obtained an "appointment" from Nevada Health Link and who did not receive commissions or  
14 portions thereof to which they were entitled and/or who experienced unreasonable delays in the  
15 receipt of commissions as a result of the failure of Xerox and the Exchange to properly transmit  
16 their NPNs to the applicable insurance carriers after said agents and brokers assisted consumers  
17 with enrollment through Nevada Health Link.

18 24. Plaintiffs' Class seeks a judgment that Defendants are responsible to each  
19 member of the class for the various negligent and wrongful acts as alleged herein.

20 25. The members of Plaintiffs' Class are so numerous as to render joinder  
21 impracticable. Upon information and belief, there are currently over 1200 appointed Nevada  
22 brokers and agents who assisted individuals with enrollment through Nevada Health Link, who  
23 either did not receive commissions or who received late or partial commissions because  
24 Defendants did not properly transmit NPNs and other identifying agent/broker information to the  
25 applicable insurance carrier.

26 26. The questions of law and fact common to the Plaintiffs' Class include that each  
27 class member has suffered a similar loss (e.g., lost or delayed commissions due to Defendants'  
28 failure to properly transmit NPNs and identifying information to the insurance carriers),

1 actionable in tort, stemming from the same conduct of the Defendants, including but not limited  
2 to Defendants' negligence in failing to properly develop, administer, or oversee Nevada Health  
3 Link.

4 27. The named Representatives of Plaintiffs' Class, Patrick Casale, Mary Elsberry,  
5 Dwight Mazzone, Jeremy Shugarman, Grace Butler and Andrew Perwein are adequate  
6 representatives of the class and possible respective subclass. The violations alleged by  
7 Plaintiffs' Class stem from the same course of conduct by Defendants; namely, their failure to  
8 properly create, administer, and oversee Nevada Health Link to ensure that the NPNs and other  
9 identifying information of appointed agents and brokers assisting enrollees was properly  
10 transmitted to the insurance carriers. The legal theories under which the Plaintiffs' Class  
11 Representatives seek relief are the same or similar to that on which the Plaintiffs' Class will rely.  
12 In addition, the harm suffered by the Representatives of Plaintiffs' Class is typical of the harm  
13 suffered by the proposed Plaintiffs' Class.

14 28. The named Plaintiffs' Class Representatives, Patrick Casale, Mary Elsberry,  
15 Dwight Mazzone, Jeremy Shugarman, Grace Butler and Andrew Perwein have the requisite  
16 personal interest in the outcome of this action and will fairly and adequately protect the interests  
17 of the putative class. The Plaintiffs' Class Representatives are represented jointly by the Eglet  
18 Law Group and the law firm of Callister, Immerman & Associates. These two law firms have the  
19 resources, expertise and experience to prosecute this action. The members of Callister,  
20 Immerman & Associates and the Eglet Law Group do not have knowledge of any conflicts  
21 among the members of Plaintiffs' Class or between members of the firm and members of the  
22 proposed Plaintiffs' Class.

23 29. The class action is superior to other available methods for the fair and efficient  
24 adjudication of this controversy because: (a) the prosecution of a multitude of separate actions  
25 would be inefficient and wasteful of judicial resources; (b) the members of the class may be  
26 scattered throughout Nevada and are not likely to be able to vindicate and enforce their rights  
27 unless this actions is maintained as a class action; (c) the issues raised can be more fairly and  
28 efficiently resolved in the context of a single action rather than piece-meal litigation in the

context of separate actions; (d) the resolution of litigation in a single forum will avoid the danger and resultant confusion of possible inconsistent determinations; (e) the prosecution of separate actions would create the risk of inconsistent or varying adjudications with respect to individuals pursuing claims against Defendants which would establish incompatible standards of conducts for Defendants; (f) Defendants have acted and will act on grounds applicable to all class members, making final declaratory and injunctive relief on behalf of all members necessary and appropriate; and (g) questions of law and/or fact common to members of the class, especially on issues of liability, predominate over any question, such as that of individuals damages that will effect individual class members.

30. Nearly every one of the proposed Plaintiffs' Class members are residents of Nevada, the principal injuries alleged in this action occurred in Nevada, at least one Defendant is a citizen of Nevada, and the Nevada Defendant is one from whom members of the Plaintiffs' Class are seeking significant relief and whose alleged conduct forms a significant basis for the proposed claims of the Plaintiffs' Class.

#### FACTS OF THE CASE

31. On October 1, 2013, Nevada Health Link "went live" and Nevada residents were to be able to begin using Nevada Health Link to sign up and enroll for health insurance.

32. To assist with enrollment, Nevada Health Link authorized certain "appointed" brokers and agents to help consumers obtain insurance coverage through Nevada Health Link by providing training to the brokers and agents and by including a list of "appointed" brokers and agents on the website.

33. From the outset, the Nevada Health Link website was inundated with technical problems and glitches.

34. Upon information and belief, the Exchange and Xerox were aware or should have been aware of multiple problems with Nevada Health Link well before the October 1, 2013 "go live" date.

35. Specifically, by the time Nevada Health Link "went live" on October 1, 2013, the Exchange and Xerox knew or should have known that Nevada Health Link could not perform as

originally intended.

36. As alleged herein, the Exchange and Xerox utterly failed to properly develop, administer, or oversee Nevada Health Link to ensure that the website performed as intended.

37. As a result of the large number of individuals encountering problems using the Nevada Health Link, many requested the assistance of appointed brokers and agents who were often required to spend hours (and sometimes days) assisting individuals obtain insurance coverage through Nevada Health Link.

38. Upon information and belief, the Exchange and Xerox knew that as a result of the numerous technical problems with Nevada Health Link, many enrollees would not have health insurance coverage by January 1, 2014 even though those enrollees had signed up for the same, selected a qualified insurance provider, and began making health insurance premium payments to Nevada Health Link.

39. Upon information and belief, Xerox and the Exchange retained premiums paid by enrollees for months, while collecting interest on those premiums, without transmitting the premiums to the insurance carriers selected by the enrollees.

40. Upon information and belief, repeated system errors and intentional actions taken by Xerox and the Exchange deprived brokers and agents their commissions earned from assisting with enrollment in Nevada Health Link by: (1) failing or delaying transmission of NPNs and identifying information to the selected insurance carriers; (2) intentionally deleting NPNs and identifying information from the system before enrollment information was ever sent to the selected insurance carrier; (3) sending NPNs and identifying information to the wrong insurance carrier or for the wrong enrollee; and/or (4) sending incomplete or incorrect premiums and enrollment information to the selected insurance carrier.

41. Upon information and belief, the Exchange and Xerox knew as early as November 8, 2013 that Nevada Health Link was repeatedly crashing or "freezing" during enrollment, experiencing repeated glitches, and miscalculating enrollees' health insurance premiums such that many enrollees were provided with an incorrect health insurance premium.

42. Upon information and belief, the Exchange and Xerox decided that the only way



1 to address the ongoing technical problems and to re-calculate the premium amounts was to  
2 cancel each enrollee and force them to re-enroll with Nevada Health Link.

3 43. Upon information and belief, the Exchange and Xerox decided that every person  
4 who had enrolled for health insurance through Nevada Health Link would need to have their  
5 accounts canceled, regardless of whether that person had yet to pay their premium, partially paid  
6 their premium, or paid their premium in full, and regardless of whether an appointed broker or  
7 agent had assisted the enrollee with the enrollment.

8 44. Upon information and belief, neither the persons whose accounts were closed nor  
9 the brokers or agents who assisted with the enrollments were ever given notice by the Exchange  
10 and Xerox that the account had been closed prior to transmitting any information or premiums to  
11 the insurance carrier.

12 45. Upon information and belief, the Exchange and Xerox intentionally failed to give  
13 notice to enrollees, agents or brokers that accounts were intentionally closed so that it would just  
14 look like "another glitch in the system" as opposed to the conscious decision by the Exchange  
15 and Xerox to cancel said accounts.

16 46. Upon information and belief, upon closing the subject accounts, NPNs and other  
17 identifying information of brokers and agents were deleted or "dropped" from the system  
18 without any notice to the brokers or agents thereby depriving them any commission for the  
19 services they provided.

20 47. Upon information and belief, further and continued problems in processing  
21 enrollments by Xerox and the Exchange resulted in ongoing incidents of broker/agent NPNs and  
22 identifying information being transmitted incompletely, incorrectly, untimely or never being  
23 transmitted to the selected insurance providers at all.

24 48. Upon information and belief, Nevada Health Link was also improperly designed  
25 to delay the process of transferring the necessary enrollee information to the health insurance  
26 providers so that the providers would be unable to issue insurance cards or provide insurance  
27 coverage to enrollees for the first 3 to 4 months, thereby delaying payment of the commissions  
28 earned by brokers and agents for months.

49. As alleged above, the Exchange and Xerox intentionally, deliberately, knowingly, willfully, and maliciously devised a scheme to cover up the multitude of technical errors which prevented the Nevada Health Link website from functioning properly, including Xerox and the Exchange's inability to timely or properly transmit the NPN number of brokers and agents to the applicable carriers.

50. Casale, Elsberry, Mazzone, Shugarman, Butler, Perwein, and other members of the Class are insurance brokers or agents licensed to sell insurance in Nevada.

51. Casale, Elsberry, Mazzone, Shugarman, Butler, Perwein, and other members of the Class obtained appointments to sell insurance on the Exchange.

52. Casale, Elsberry, Mazzone, Shugarman, Butler, Perwein, and the other members of the Class have valid contracts with the insurance providers available to consumers through the Exchange.

53. From October 1, 2013 through the present, Casale, Elsberry, Mazzone, Shugarman, Butler, Perwein, and other members of the class have assisted numerous individuals with obtaining insurance coverage through the Nevada Health Link website.

54. Despite their time and efforts, Casale, Elsberry, Mazzone, Shugarman, Butler, Perwein, and the other members of the Class did not receive commissions for their efforts as a direct result of actions taken by Xerox and the Exchange.

55. Casale, Elsberry, Mazzone, Shugarman, Butler, Perwein, and the other members of the Class are informed and believe that their NPNs were either not timely provided to the selected insurance providers in connection with individuals they assisted with enrollment or were never transmitted to the selected insurance carriers at all thereby costing them valuable commissions.

56. Upon information and belief, Xerox and the Exchange also improperly retained premiums paid by consumers and collected interest on those premiums for months while causing unnecessary delays in the payment of commissions to brokers and agents.

...

...

**FIRST CAUSE OF ACTION**

***(Negligence/Gross Negligence)***

57. Plaintiffs hereby incorporate and re-allege each and every allegation set forth in this complaint as if set forth herein full.

58. Defendants, and each of them, had a duty to timely transmit to the selected insurance carriers the NPNs and other identifying information for Plaintiffs and Plaintiffs' class, along with the enrollee's information and premiums, for every consumer enrolled by Plaintiffs or members of the Plaintiff class through Nevada Health Link.

59. Defendants, and each of them, had a duty to ensure that the NPNs and other identifying information of appointed brokers and agents was timely forwarded to the selected insurance providers so that the brokers and agents could receive commissions for the services they provided without delay.

60. Defendants, and each of them, had a duty of care to Plaintiffs, and those similarly situated, to properly administer oversee, audit, supervise, investigate, and evaluate the Nevada Health Link program and process to make certain that said program and process worked properly and timely transmitted to insurance carriers the NPNs of brokers and agents who assisted enrollees of Nevada Health Link to ensure that the brokers and agents would obtain commissions for services rendered in connection with the Exchange.

61. It was also the duty of the Exchange and Xerox to use reasonable care in selecting, training, overseeing, and reviewing the competency of their employees and contractors to ensure that they could properly design, create, administer, and run Nevada Health Link so that necessary information, including NPNs, was transmitted to insurance carriers to ensure appointed agents and brokers providing assistance to enrollees would receive the commissions to which they were entitled.

62. Defendants, and each of them, breached these duties owed to Plaintiffs and those similarly situated by negligently and carelessly failing to process broker and agent information with reasonable care.

63. Defendants, and each of them, breached these duties owed to Plaintiffs and those

1 similarly situated by intentionally closing the accounts of individuals who enrolled for insurance  
2 through the Nevada Health Link and by deleting NPNs and other identifying information of the  
3 agents and brokers who assisted those individuals without providing any notice to the agents or  
4 brokers who assisted the enrollees.

5 64. Defendants further breached their duties owed to Plaintiffs and those similarly  
6 situated by taking no steps to restore the deleted broker/agent information or to otherwise notify  
7 Plaintiffs or those similarly situated that enrollee accounts (which included NPNs) had been  
8 closed, deleted or otherwise lost.

9 65. Defendants, and each of them, further breached their duty of care to Plaintiffs and  
10 those similarly situated by failing to properly administer, oversee, audit, supervise, investigate,  
11 and evaluate the Nevada Health Link program and process – so much so that said program and  
12 process did not work properly and did not allow brokers and agents to receive commissions they  
13 earned for services provided in connection with the Exchange.

14 66. The Exchange owed a duty to use reasonable care in conducting due diligence  
15 and investigating and ensuring that the contractor selected to develop, administer, and oversee  
16 Nevada Health Link had a proper plan as well as the financial and logistical backing and support  
17 to provide the contracted services (i.e. a working Nevada Health Link).

18 67. The Exchange breached this duty when it contracted with Xerox on August 24,  
19 2012 for Xerox to develop, administer, and oversee Nevada Health Link without conducting  
20 adequate due diligence into Xerox's plan as well as Xerox's main sub-contractor, Choice  
21 Administrators Exchange Solutions ("Choice").

22 68. Had the Exchange conducted adequate due diligence into the planning as well as  
23 financial and logistical backing and support of Xerox and its sub-contractor Choice, it would  
24 have discovered that neither Xerox nor Choice had a proper plan or the capability to provide the  
25 services required to properly develop, administer and oversee Nevada Health Link to ensure that  
26 appointed agents and brokers were compensated for services performed assisted enrollees obtain  
27 insurance coverage through Nevada Health Link.

28 69. As a proximate and legal result of the said negligence of the Defendants, and each

1 of them, Plaintiffs and those similarly situated have damages in the form of lost commissions  
2 that they would have otherwise received for services performed in connection with the Nevada  
3 Health Link – and have been damaged in an amount in excess of \$10,000.00.

4 70. Defendants committed all acts herein alleged, maliciously, fraudulently, and  
5 oppressively, with the reckless disregard of Plaintiffs’ rights and the rights of those similarly  
6 situated.

7 71. Conduct by the Defendants amounted to malice and was carried out in a  
8 despicable, deliberate, cold, callous and intentional manner thereby entitling Plaintiffs and those  
9 similarly situated to recover punitive damages from Defendants in an amount according to proof.

10 72. At the very least, Defendants, and each of them, failed to exercise even the  
11 slightest degree of care, which amounts to *gross negligence*.

12 73. The Plaintiffs and those similarly situated have been required to retain the  
13 services of attorneys to prosecute this action, and Plaintiffs and those similarly situated are  
14 therefore entitled to recover their reasonable attorney’s fees and costs of court for having to  
15 bring this action.

## 16 SECOND CAUSE OF ACTION

### 17 *(Intentional Interference with Contractual Relations)*

18 74. Plaintiffs hereby incorporate and re-allege each and every allegation set forth in  
19 this complaint as if set forth herein full.

20 75. At all times relevant hereto, Plaintiffs and those similarly situated had valid  
21 contracts with qualified insurance providers to sell insurance through the Nevada Health Link  
22 exchange website.

23 76. Pursuant to those contracts, Plaintiffs and those similarly situated were entitled to  
24 receive commissions for assisting individuals obtain insurance coverage through the Nevada  
25 Health Link, and said commissions were typically an amount equal to 12% of the premium paid  
26 by the enrollee to the selected insurance provider.

27 77. Defendants knew that the Plaintiffs and those similarly situated had contracts with  
28 qualified insurance providers to sell insurance through Nevada Health Link in exchange for

commissions.

78. Defendants knew that in order for Plaintiffs and those similarly situated to receive their commissions pursuant to their contracts with the insurance carriers, Nevada Health Link was required to transmit broker/agent NPNs to the carrier along with the enrollees premium and other enrollment information.

79. Upon information and belief, Defendants committed intentional acts intended or designed to disrupt the contractual relationship between the insurance carriers and Plaintiffs' and those similarly situated by: (1) intentionally closing accounts and deleting Plaintiffs' NPNs from the system instead of transmitting the information to insurance carriers; (2) failing to submit insurance premiums and identifying information of Plaintiffs and those similarly situated to insurance providers, (3) by delaying the submission of insurance premiums and NPNs of Plaintiffs and those similarly situated to insurance providers to delay the payment of commissions by the carrier; and/or (4) sending incomplete or incorrect information to insurance carriers or to the incorrect insurance carriers.

80. All of these actions set forth above deprived Plaintiffs and those similarly situated of commissions earned in connection with services they provided to enrollees in Nevada Health Link.

81. Further, despite knowing that numerous enrollees had been assisted by Plaintiffs and those similarly situated, Defendants took no action to restore lost or deleted broker/agent information or to otherwise notify Plaintiffs or those similarly situated that enrollee accounts had been closed, deleted or lost.

82. As a direct and proximate result of the tortious actions by Defendants, the Plaintiffs and those similarly situated have suffered damages in an amount in excess of \$10,000.00.

83. Defendants committed all acts herein alleged, maliciously, fraudulently, and oppressively, with the reckless disregard of Plaintiffs' rights and the rights of those similarly situated.

84. Conduct by the Defendants amounted to malice and was carried out in a

1 despicable, deliberate, cold, callous and intentional manner thereby entitling Plaintiffs and those  
2 similarly situated to recover punitive damages from Defendants in an amount according to proof.

3 85. The Plaintiffs and those similarly situated have been required to retain the  
4 services of attorneys to prosecute this action, and Plaintiffs and those similarly situated are  
5 therefore entitled to recover their reasonable attorney's fees and costs of court for having to  
6 bring this action.

7 **THIRD CAUSE OF ACTION**

8 ***(Intentional Interference with Prospective Economic Advantage)***

9 86. Plaintiffs hereby incorporate and re-allege each and every allegation set forth in  
10 this complaint as if set forth herein full.

11 87. In the alternative, at all times relevant hereto, Plaintiffs and those similarly  
12 situated had valid contracts with qualified insurance carriers to sell insurance through the  
13 Nevada Health Link exchange website.

14 88. Pursuant to those contracts, Plaintiffs and those similarly situated were entitled to  
15 receive commissions for each individual for whom Plaintiffs and those similarly situated  
16 obtained insurance coverage through Nevada Health Link, and said commissions were typically  
17 an amount equal to 12% of the premium paid by the enrollee to the selected insurance carriers.

18 89. Defendants knew that the Plaintiffs and those similarly situated were entitled to  
19 receive commissions from insurance carriers for any individuals whom Plaintiffs and those  
20 similarly situated assisted with enrollment in a health plan through the Nevada Health Link.

21 90. Defendants knew that in order for Plaintiffs and those similarly situated to receive  
22 their commissions from insurance carriers, Nevada Health Link had to transmit their  
23 broker/agent NPNs to the insurance carrier along with the enrollees premium and other  
24 enrollment information.

25 91. Upon information and belief, Defendants committed intentional acts intended or  
26 designed to disrupt the payment of prospective commissions from the insurance carriers to  
27 Plaintiffs' and those similarly situated by: (1) intentionally closing accounts and deleting  
28

1 Plaintiffs' NPNs from the system instead of transmitting the information to insurance carriers;  
2 (2) failing to submit insurance premiums and identifying information of Plaintiffs and those  
3 similarly situated to insurance providers, (3) by delaying the submission of insurance premiums  
4 and NPNs of Plaintiffs and those similarly situated to insurance providers to delay the payment  
5 of commissions by the carrier; and/or (4) sending incomplete or incorrect information to  
6 insurance carriers or to the incorrect insurance carriers.

7 92. All of these actions set forth above deprived Plaintiffs and those similarly situated  
8 of commissions earned in connection with services they provided to enrollees in Nevada Health  
9 Link.

10 93. Defendants had no privilege or legitimate justification to disrupt the payment of  
11 prospective commissions from the insurance carriers to Plaintiffs and those similarly situated  
12 with regard to services provided to enrollees using Nevada Health Link.

13 94. Further, despite knowing the identity of enrollees assisted by Plaintiffs and those  
14 similarly situated, Defendants took no action to restore the deleted broker/agent information or to  
15 otherwise notify Plaintiffs or those similarly situated that enrollee accounts had been closed,  
16 deleted or lost.

17 95. As a direct and proximate result of the tortious actions by Defendants, the  
18 Plaintiffs and those similarly situated have suffered damages in an amount in excess of  
19 \$10,000.00.

20 96. Defendants committed all acts herein alleged, maliciously, fraudulently, and  
21 oppressively, with the reckless disregard of Plaintiffs' rights and the rights of those similarly  
22 situated.

23 97. Conduct by the Defendants amounted to malice and was carried out in a  
24 despicable, deliberate, cold, callous and intentional manner thereby entitling Plaintiffs and those  
25 similarly situated to recover punitive damages from Defendants in an amount according to proof.

26 98. The Plaintiffs and those similarly situated have been required to retain the  
27 services of attorneys to prosecute this action, and Plaintiffs and those similarly situated are  
28 therefore entitled to recover their reasonable attorney's fees and costs of court for having to



bring this action.

**FOURTH CAUSE OF ACTION**

***(Fraudulent Misrepresentation and Omissions)***

99. Plaintiffs hereby incorporate and re-allege each and every allegation set forth in this complaint as if set forth herein full.

100. At all times mentioned herein, Defendants intentionally made material misrepresentations and omissions of fact as alleged above.

101. Specifically, the Exchange and Xerox intentionally, deliberately, knowingly, willfully, and maliciously devised a scheme to cover up the multitude of technical errors, miscalculated health insurance premiums, intentional delay tactics, by taking intentional actions to prevent Plaintiffs and those similar situated from receiving commissions for hundreds of hours worked enrolling individuals through Nevada Health Link, and by failing to notify Plaintiffs and those similarly situated that NPNs and other enrollment information had been deleted, destroyed or purposely withheld from insurance carriers for months.

102. Plaintiffs and those similarly situated justifiably relied on Defendants' representations and omissions by timely providing NPNs and identifying information to the Exchange reflecting the individuals they assisted with enrollment through the Nevada Health Link.

103. As a proximate and legal result of Defendants' conduct, Plaintiffs and those similarly have suffered damages in an amount in excess of \$10,000.00.

104. The Plaintiffs have been required to retain the services of attorneys to prosecute this action, and Plaintiffs are therefore entitled to recover their reasonable attorney's fees and costs of court for having to bring this action.

**FIFTH CAUSE OF ACTION**

***(Negligent Misrepresentation)***

105. Plaintiffs hereby incorporate and re-allege each and every allegation set forth in this complaint as if set forth herein full.

106. Defendants represented to Plaintiffs and other similarly situated that Defendants

would forward their NPNs information to insurance carriers whenever Plaintiffs or those similarly situated assisted a consumer obtain insurance coverage through the Nevada Health Link.

107. Plaintiffs and those similarly situated justifiably relied on Defendants representations by taking required courses and obtaining "appointments" by the Nevada Health, by assisting consumers enroll with health plans through the Nevada Health Link, and by providing Nevada Health Link with weekly reports of the consumers for whom they provided assistance.

108. Defendants, and each of them, knew or should have known that the NPN information, premiums and other enrollment information were not timely transmitted to the insurance carrier, or in many cases, were lost or deleted and therefore not submitted at all.

109. Defendants, and each of them, did not exercise reasonable care when making the above-referenced misrepresentations to Plaintiffs.

110. As a proximate and legal result of Defendants' conduct, Plaintiffs have suffered damages in an amount in excess of \$10,000.00.

111. The Plaintiffs have been required to retain the services of attorneys to prosecute this action, and Plaintiffs are therefore entitled to recover their reasonable attorney's fees and costs of court for having to bring this action.

# **SIXTH CAUSE OF ACTION**

## ***(Conversion)***

112. Plaintiffs hereby incorporate and re-allege each and every allegation set forth in this complaint as if set forth herein full.

113. Defendants, and each of them, committed multiple acts of ongoing dominion of the property of Plaintiffs and those similarly situated – by retaining and/or denying access to NPNs, enrollment information and premiums actually paid by enrollees for months before transmitting them to the insurance carriers so that Plaintiffs and those similarly situated could not receive earned commissions from those premiums.

114. Upon information and belief, Defendants intentionally delayed and/or denied

1 access to NPNs of Plaintiffs and those similarly situated, enrollment information and insurance  
2 premiums actually paid by enrollees by failing to timely submit the same to the applicable  
3 insurance carriers and/or by failing to submit NPNs of Plaintiffs and those similarly situated,  
4 enrollment information and insurance premiums actually paid by enrollees to the applicable  
5 insurance carriers at all.

6 115. Defendants' act of dominion over the NPNs of Plaintiffs and those similarly  
7 situated, enrollment information and insurance premiums actually paid by enrollees was in  
8 defiance of Plaintiffs' and similarly situated persons' rights to funds payable from or based upon  
9 said funds in the form of a commission.

10 116. As a direct and proximate result of the conversion by Defendants, the Plaintiffs  
11 and those similarly situated have suffered damages in an amount in excess of \$10,000.00.

12 **SEVENTH CLAIM FOR RELIEF**

13 **(Accounting)**

14 117. Plaintiffs hereby incorporate and re-allege each and every allegation set forth in  
15 this complaint as if set forth herein full.

16 118. As a result of the wrongful and tortious acts alleged herein, Defendants have been  
17 and currently are now in possession of substantial sums of money and other consumer  
18 enrollment information which reflects the amount of actual commissions of which Plaintiffs and  
19 Plaintiffs' class have been deprived as well as the amount of commissions which remain due and  
20 owing to Plaintiffs and the Plaintiffs' Class.

21 119. Plaintiffs and the Plaintiffs' Class have been and will be unable to ascertain the  
22 precise amount of said commissions without a full and complete accounting.

23 120. Plaintiffs and the Plaintiffs' Class, therefore, pray that this Court require a full  
24 and complete accounting of premiums collected by Defendants with regard to each and every  
25 Nevada Health Link enrollee assisted by Plaintiffs and the Plaintiffs Class since October 1, 2013.

26 **PRAYER FOR RELIEF**

27 **WHEREFORE**, Plaintiffs pray for relief and damages as follows:

28 A. That Plaintiffs and the Plaintiffs' Class be awarded actual damages in excess of

\$10,000.00;

- B. That a full and complete accounting of premiums paid with regard to each and every Nevada Health Link enrollee assisted by Plaintiffs and the Plaintiffs Class since October 1, 2013 be completed and provided to Plaintiffs by Defendants;
- C. That Plaintiffs and the Plaintiffs' Class be awarded punitive damages in excess of \$10,000.00;
- D. That Plaintiffs and the Plaintiffs' Class be awarded reasonable attorney's fees;
- E. That Plaintiffs and the Plaintiffs' Class be awarded their costs of court;
- F. That Plaintiffs and the Plaintiffs' Class be awarded delay damages and/or Prejudgment and post-judgment interest.
- G. Plaintiffs and the Plaintiffs' Class be awarded any other relief as the Court may deem proper.

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial by jury for all issues so triable.

DATED this 26<sup>th</sup> day of August, 2014.

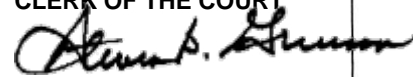
Respectfully submitted,

**EGLET LAW GROUP**

By: /s/ *Artemus W. Ham, Esq.*  
 ROBERT T. EGLET, ESQ.  
 ARTEMUS W. HAM, ESQ.  
 400 South Seventh Street, Box 1, Suite 400  
 Las Vegas, Nevada 89101

**CALLISTER, IMMERMANN & ASSOCIATES**  
 MATTHEW Q. CALLISTER, ESQ.  
 MITCHELL S. BISSON, ESQ.  
 823 Las Vegas Blvd. South, 5th Floor  
 Las Vegas, NV 89101  
*Attorneys for Plaintiffs*

## Exhibit 6



1 **NEOJ**

2 ROBERT T. EGLET, ESQ.

3 Nevada Bar No. 3402

4 ERICA D. ENTSMINGER, ESQ.

5 Nevada Bar No. 7432

6 **EGLET PRINCE**

7 400 South Seventh Street, 4<sup>th</sup> Floor

8 Las Vegas, Nevada 89101

9 Tel: (702) 450-5400

10 Fax: (702) 450-5451

11 E-Mail: [eservice@egletlaw.com](mailto:eservice@egletlaw.com)

12 and

13 MATTHEW Q. CALLISTER, ESQ.

14 Nevada Bar No. 001396

15 E-Mail: [mqc@call-law.com](mailto:mqc@call-law.com)

16 **CALLISTER & ASSOCIATES**

17 823 Las Vegas Blvd. South

18 Las Vegas, Nevada 89101

19 Tel: (702) 385-3343

20 Fax: (702) 385-2899

21 *Attorneys for Plaintiffs*

22 **DISTRICT COURT**  
23 **CLARK COUNTY, NEVADA**

24 **LAWRENCE BASICH**, individually and on  
25 behalf of all those similarly situated; **JOE**  
26 **DOPUDJA**, individually and on behalf of those  
27 similarly situated; **LAURY PHELPS**, individually  
28 and on behalf of those similarly situated; **DAVID**  
**HENRY**, individually and on behalf of those  
similarly situated; **MARC SIMPSON**,  
individually and on behalf of those similarly  
situated; **ALEXANDER LOMBARDO**,  
individually and on behalf of those similarly  
situated; **KAREN ROSS**, individually and on  
behalf of those similarly situated; **JENNIFER**  
**PAULIN**, individually and on behalf of those  
similarly situated; **BEN LAMBERT**, individually  
and on behalf of those similarly situated; **LILA**  
**CEBELLOS**, individually and on behalf of those  
similarly situated; **MORRIS MOLATTO**,  
individually and on behalf of those similarly  
situated; **CARLOS GARCIA**, individually and on  
behalf of those similarly situated; **LESLIE**  
**TAYLOR**, individually and on behalf of those  
similarly situated; **VALERIE BOWMAN**,  
individually and on behalf of those similarly  
situated; **MARK MASCARELLI**, individually  
and on behalf of those similarly situated;

Plaintiffs,

v.

Case No.: A-14-698567-C  
Dept. No.: XVI

**NOTICE OF ENTRY OF ORDER  
GRANTING FINAL APPROVAL OF  
CLASS SETTLEMENT AND  
ATTORNEYS' FEES**

**STATE OF NEVADA EX REL., SILVER  
STATE HEALTH INSURANCE EXCHANGE;  
XEROX STATE HEALTHCARE, LLC, a  
foreign limited liability company; XEROX  
CORPORATION, a foreign corporation; DOE  
INDIVIDUALS I-X; ROE CORPORATIONS I-  
X,**

Defendants.

**PATRICK CASALE, individually and on behalf  
of all those similarly situated; MARY  
ELSBERRY, individually and on behalf of all  
those similarly situated; DWIGHT MAZZONE,  
individually and on behalf of all those similarly  
situated; JEREMY SHUGARMAN, individually  
and on behalf of all those similarly situated;  
GRACE BUTLER, individually and on behalf of  
all those similarly situated; and ANDREW  
PERWEIN, individually and on behalf of all those  
similarly situated;**

Plaintiffs,

v.

**XEROX STATE HEALTHCARE, LLC, a  
foreign limited liability company; XEROX  
CORPORATION, a foreign corporation; DOE  
INDIVIDUALS I-X; ROE CORPORATIONS I-  
X,**

Defendants.

Case No. A-14-706171-C

20 ...  
21 ...  
22 ...  
23 ...  
24 ...  
25 ...  
26 ...  
27 ...  
28 ...

PLEASE TAKE NOTICE that an Order Granting Final Approval of Class Settlement and Attorneys' Fees was signed by this Court on May 25, 2017 and entered on May 25, 2017, a copy is attached as Exhibit "1".

Dated this 25<sup>th</sup> day of May, 2017.

**EGLET PRINCE**

*/s/Erica D. Entsminger*

ROBERT T. EGLET, ESQ.

Nevada Bar No. 3402

ERICA D. ENTSMINGER, ESQ.

Nevada Bar No. 7432

400 South Seventh Street, 4<sup>th</sup> Floor

Las Vegas, Nevada 89101

*and*

MATTHEW Q. CALLISTER, ESQ.

Nevada Bar No. 001396

823 Las Vegas Blvd. South

Las Vegas, Nevada 89101

*Attorneys for Plaintiffs*



**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of EGLET PRINCE, and that on May 25<sup>th</sup>, 2017, I caused the foregoing document entitled **NOTICE OF ENTRY OF ORDER GRANTING FINAL APPROVAL OF CLASS SETTLEMENT AND ATTORNEYS' FEES** to be served upon those parties listed below by U.S. regular mail.

Mark E. Ferrario, Esq.  
Whitney L. Welch-Kirmse, Esq.  
**GREENBERG TRAUIG, LLP**  
3773 Howard Hughes Pkwy., Ste. 400 North  
Las Vegas, NV 89169  
*Attorneys for Defendants*

Matthew Q. Callister, Esq.  
**CALLISTER & ASSOCIATES**  
823 Las Vegas Blvd. South  
Las Vegas, Nevada 89101  
*Attorneys for Plaintiffs*

/s/Crystal Garcia  
An employee of EGLET PRINCE

# EXHIBIT 1

*Steven D. Grierson*

**ORDR**

ROBERT T. EGLET, ESQ.  
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CALLISTER & ASSOCIATES  
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*Class Counsel*

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3773 Howard Hughes Pkwy, #400  
Las Vegas, Nevada 89169

*Attorney for Defendants*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

LAWRENCE BASICH, individually and on behalf of all those similarly situated; JOE DOPUDJA, individually and on behalf of all those similarly situated; LAURY PHELPS individually and on behalf of all those similarly situated; DAVID HENRY, individually and on behalf of all those similarly situated; MARC SIMPSON, individually and on behalf of all those similarly situated; ALEXANDER LOMBARDO; individually and on behalf of all those similarly situated; KAREN ROSS, individually and on behalf of all those similarly situated; JENNIFER PAULIN, individually and on behalf of all those similarly situated; BEN LAMBERT, individually and on behalf of all those similarly situated; LILA CEBELLOS, individually and on behalf of all those similarly situated; MORRIS MOLATTO, individually and on behalf of all those similarly situated; CARLOS GARCIA, individually and on behalf of all those similarly situated; LESLIE TAYLOR, individually and; on behalf of all those similarly situated; VALERIE BOWMAN, individually and on behalf of all those similarly

Case No.: A-14-698567-C

Dept. No.: XXIV

**ORDER GRANTING FINAL  
APPROVAL OF CLASS  
SETTLEMENT AND ATTORNEYS'  
FEES**

LV 420905943v1

situated; and **MARK MASCARELLI**,  
individually and on behalf of all those similarly  
situated

Plaintiffs,

v.

**XEROX STATE HEALTHCARE, LLC**, a  
foreign limited liability company; **XEROX**  
**CORPORATION**, a foreign corporation; **DOE**  
**INDIVIDUALS I-X**; **ROE CORPORATIONS**  
**I-X**;

Defendants.

-AND-

**PATRICK CASALE**, individually and on behalf  
of all those similarly situated; **MARY**  
**ELSBERRY**, individually and on behalf of all  
those similarly situated; **DWIGHT MAZZONE**,  
individually and on behalf of all those similarly  
situated; **JEREMY SHUGARMAN**, individually  
and on behalf of all those similarly situated;  
**GRACE BUTLER**, individually and on behalf of  
all those similarly situated; and **ANDREW**  
**PERWEIN**, individually and on behalf of all  
those similarly situated;

Plaintiffs,

v.

**STATE OF NEVADA EX REL., SILVER**  
**STATE HEALTH INSURANCE**  
**EXCHANGE**; **XEROX STATE**  
**HEALTHCARE, LLC**, a foreign limited  
liability company; **XEROX CORPORATION**, a  
foreign corporation; **DOE INDIVIDUALS I-X**;  
**ROE CORPORATIONS I-X**,

Defendants.

*Consolidated with:*

Case No.: A-14-706171-C

Dept. No.: XVI

The Parties' Joint Motion for Final Approval of Class Settlement and Plaintiffs' Request  
for Attorneys' Fees having come before this court on May 25, 2017, with counsel for both  
parties appearing in person. The Court having considered the papers submitted in support of the  
Motion, and no opposition having been filed,



IT IS HEREBY ORDERED:

1. This Court previously granted preliminary approval of the settlement based upon the terms set forth in the Joint Stipulation of Settlement and Release (the "Settlement Agreement"), a complete copy of which was attached as Exhibit "1" to the Parties' Joint Motion For Preliminary Approval of Class Settlement, Certification of Settlement Class, Approval of Attorneys' Fees And Costs; And Notice To Class Member filed on September 29, 2016. At that time, the Court determined that the settlement fell within the range of reasonableness and appeared to be presumptively valid, subject only to any objections that may be raised at the final fairness hearing. The notices approved and directed in that preliminary approval having gone out to Class Members, and no objection to the settlement having been raised, the Court finds that the settlement is fair and is entitled to final approval which is hereby ordered. The final terms of the settlement are therefore deemed approved as being fair, reasonable and adequate, and in the best interests of the Settlement Class.

2. The Court further finds that the Settlement is the product of arm's length negotiations presided over by a competent mediator, and was not collusive.

3. The Court finds that Defendants, as Claims Administrator, complied with the Court's Preliminary Order with regard to form and content of the notice and the notification process itself and, again, confirms that these met the requirements of due process and provided the best notice practical under the circumstances and constitutes due and sufficient notice to all persons entitled thereto.

4. The Court finds that the total payout of \$99,218.31 to compensate a total of 107 valid claims, as to which no objection has been lodged, is hereby approved as fair, reasonable and adequate.

5. The Court finds that the amount of \$1,750,000 in attorneys' fees and expenses to Class Counsel, as to which no objections were received, is hereby approved as fair, reasonable and adequate.

6. Pursuant to the Settlement Agreement Sections 3.1 through 3.3, the following should occur to effectuate payment of the settlement:

A. Within (20) calendar days after the date of the Order granting final approval, Defendants shall issue a payment check to Class Claimants via First Class United States Mail who are deemed by the Defendants or the Appeal Administrator to have a Valid Claim.

B. Within (20) calendar days after the date of the Order granting final approval, Defendants shall pay Class Counsel \$1,750,000 via wire transfer.

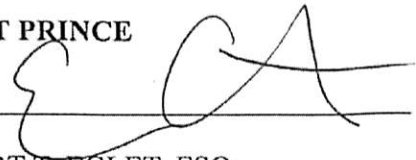
7. Within (5) days of completion of the payments outlined in Paragraph 6, the Court hereby dismisses with prejudice all claims belonging to Representative Plaintiffs and Settlement Class Members who did not timely and validly request exclusion from the Settlement Class. Except as expressly provided in the Settlement Agreement, each of the Parties, including each Settlement Class Member, shall bear his, her or its own costs and attorneys' fees.

DATED this 25 day of May, 2017.

  
DISTRICT COURT JUDGE

Submitted by:

EGLET PRINCE

By:   
ROBERT T. EGLET, ESQ.  
Nevada Bar No. 3402  
400 South Seventh Street, Box 1, Suite 400  
Las Vegas, Nevada 89101

## Exhibit 7

Case Information

A-17-760558-B | Nevada Commissioner of Insurance, Plaintiff(s) vs. Milliman Inc, Defendant(s)

Case Number	Court	Judicial Officer
A-17-760558-B	Department 16	Williams, Timothy C.
File Date	Case Type	Case Status
08/25/2017	Other Business Court Matters	Open

Party

Plaintiff  
Nevada Commissioner of Insurance  
  
Address  
3773 Howard Hughes Parkway  
Suite 400 North  
Las Vegas NV 89169

Active Attorneys ▼  
Lead Attorney  
Ferrario, Mark E.,  
ESQ  
Retained

Attorney  
Swanis, Eric W.  
Retained

Attorney  
Prunty, Donald L.  
Retained

Defendant  
Milliman Inc

Active Attorneys ▼  
Lead Attorney  
Dhalla, Aleem A.  
Retained

Attorney  
Byrne, Patrick G.  
Retained



	Attorney Fugazzi, Alexander L. Retained
Defendant Shreve, Jonathan L	Active Attorneys ▼ Lead Attorney Dhalla, Aleem A. Retained
	Attorney Byrne, Patrick G. Retained
	Attorney Fugazzi, Alexander L. Retained
Defendant Van Der Heijde, Mary	Active Attorneys ▼ Lead Attorney Dhalla, Aleem A. Retained
	Attorney Byrne, Patrick G. Retained
	Attorney Fugazzi, Alexander L. Retained
Defendant Millennium Consulting Services LLC	Active Attorneys ▼ Lead Attorney Bragonje, John E. Retained
	Attorney

	Hostetler, Jennifer K Retained
Defendant Larson & Company PC	Active Attorneys ▼ Lead Attorney Siderman, Lori E. Retained
	Attorney KERSHAW, SETH S, ESQ Retained
	Attorney Brown, Russell B Retained
Defendant Larson, Dennis T	Active Attorneys ▼ Attorney KERSHAW, SETH S, ESQ Retained
	Lead Attorney Siderman, Lori E. Retained
	Attorney Brown, Russell B Retained
Defendant Hayes, Martha	Active Attorneys ▼ Lead Attorney Siderman, Lori E. Retained
	Attorney Brown, Russell B Retained

Defendant  
InsureMonkey Inc

Active Attorneys ▼  
Lead Attorney  
Bonds, Kurt R.  
Retained

Attorney  
Pruitt, Mathew,  
ESQ  
Retained

Defendant  
Rivlin, Alex

Active Attorneys ▼  
Lead Attorney  
Bonds, Kurt R.  
Retained

Attorney  
Pruitt, Mathew,  
ESQ  
Retained

Defendant  
Nevada Health Solutions LLC

Active Attorneys ▼  
Lead Attorney  
Bailey, John R  
Retained

Attorney  
Liebman, Joseph  
A.  
Retained

Attorney  
Bonham, Suzanna  
C.  
Retained

Attorney  
Mata, Emma  
Retained

Defendant  
Egan, Pamela

Active Attorneys ▼  
Lead Attorney  
Garin, Joseph P  
Retained

Attorney  
Nakamura Ochoa,  
Angela T.  
Retained

Attorney  
Wong, Jonathan K.  
Retained

Defendant  
Dibsie, Basil C.

Active Attorneys ▼  
Lead Attorney  
Garin, Joseph P  
Retained

Attorney  
Nakamura Ochoa,  
Angela T.  
Retained

Attorney  
Wong, Jonathan K.  
Retained

Defendant  
Mattoon, Linda

Active Attorneys ▼  
Lead Attorney  
Garin, Joseph P  
Retained

Attorney  
Nakamura Ochoa,  
Angela T.  
Retained

Attorney  
Wong, Jonathan K.

	Retained
Defendant Zumtobel, Tom	Active Attorneys ▼ Lead Attorney Garin, Joseph P Retained
	Attorney Nakamura Ochoa, Angela T. Retained
	Attorney Wong, Jonathan K. Retained
Defendant Bond, Bobbette	Active Attorneys ▼ Lead Attorney Garin, Joseph P Retained
	Attorney Nakamura Ochoa, Angela T. Retained
	Attorney Wong, Jonathan K. Retained
Defendant Silver, Kathleen	Active Attorneys ▼ Lead Attorney Garin, Joseph P Retained
	Attorney Nakamura Ochoa, Angela T. Retained

	Attorney Wong, Jonathan K. Retained
Defendant Unite Here Health	Active Attorneys ▼ Lead Attorney Bailey, John R Retained
	Attorney Liebman, Joseph A. Retained
	Attorney Mata, Emma Retained

Events and Hearings

08/25/2017 Complaint ▼  Document Filed - DOC
08/28/2017 Summons Electronically Issued - Service Pending ▼  Comment Summons
08/28/2017 Summons Electronically Issued - Service Pending ▼  Comment Summons (Basil C. Dibsie)
08/28/2017 Summons Electronically Issued - Service Pending ▼

Comment Summons (Pamela Egan)
08/28/2017 Summons Electronically Issued - Service Pending ▼
Comment Summons (Nevada Health Solutions, LLC)
08/28/2017 Summons Electronically Issued - Service Pending ▼
Comment Summons (Tom Zumtobel)
08/28/2017 Summons Electronically Issued - Service Pending ▼
Comment Summons (Linda Mattoon)
08/28/2017 Summons Electronically Issued - Service Pending ▼
Comment Summons (Martha Hayes)
08/28/2017 Summons Electronically Issued - Service Pending ▼
Comment Summons (Jonathan L. Shreve)
08/28/2017 Summons Electronically Issued - Service Pending ▼
Comment Summons (Milliman, Inc.)
08/28/2017 Summons Electronically Issued - Service Pending ▼
Comment Summons (Larson & Company P.C.)
08/28/2017 Summons Electronically Issued - Service Pending ▼
Comment Summons (Millennium Consulting Services, LLC)
08/28/2017 Summons Electronically Issued - Service Pending ▼
Comment Summons (Mary Van Der Heijde)
08/28/2017 Summons Electronically Issued - Service Pending ▼
Comment Summons (Dennis T. Larson)

**1941**

071

08/28/2017 Summons Electronically Issued - Service Pending ▼

Comment

**Summons (Bobbette Bond)**

08/28/2017 Summons Electronically Issued - Service Pending ▼

Comment

**Summons (Alex Rivlin)**

08/28/2017 Summons Electronically Issued - Service Pending ▼

Comment

**Summons (InsureMonkey, Inc.)**

09/07/2017 Demand for Jury Trial ▼

Demand for Jury Trial - DMJT

Comment

**Demand for Jury Trial**

09/12/2017 Notice ▼

Notice - NOTC

Comment

**Notice of Related Case**

09/12/2017 Acceptance of Service ▼

Acceptance of Service - ACSR

Comment

**Acceptance of Service (Alex Rivlin)**

09/12/2017 Acceptance of Service ▼

Acceptance of Service - ACSR

Comment

**Acceptance of Service (InsureMonkey, Inc.)**

09/15/2017 Motion ▼

Motion - MOT

Comment

**Motion to Coordinate Cases**

09/18/2017 Affidavit of Service ▼

Affidavit of Service - AOS

Comment

**1942**

072



## Affidavit of Service - Tom Zumtobel

09/18/2017 Affidavit of Service ▼

Affidavit of Service - AOS

Comment

Affidavit of Service - Milliman, Inc.

09/18/2017 Affidavit of Service ▼

Affidavit of Service - AOS

Comment

(9/20/2017 Withdrawn) Affidavit of Service - Pamela Egan

09/18/2017 Affidavit of Service ▼

Affidavit of Service - AOS

Comment

Affidavit of Service - Nevada Health Solutions, LLC

09/18/2017 Affidavit of Service ▼

Affidavit of Service - AOS

Comment

Affidavit of Service - Bobbette Bond

09/20/2017 Notice of Withdrawal ▼

Notice of Withdrawal - NOW

Comment

Notice of Withdrawal of Affidavit of Service on Pamela Egan

09/22/2017 Acceptance of Service ▼

Acceptance of Service - ACSR

Comment

Acceptance of Service (Basil C. Dibsie)

09/22/2017 Acceptance of Service ▼

Acceptance of Service - ACSR

Comment

Acceptance of Service (Pamela Egan)

09/22/2017 Acceptance of Service ▼

Acceptance of Service - ACSR

Comment

Acceptance of Service (Linda Mattoon)

**1943****073**

09/22/2017 Affidavit of Service ▼

Affidavit of Service - AOS

Comment

Affidavit of Service - Martha Hayes

09/28/2017 Notice of Appearance ▼

Notice of Appearance - NOTA

Comment

Notice of Appearance

09/28/2017 Initial Appearance Fee Disclosure ▼

Initial Appearance Fee Disclosure - IAFD

Comment

Defendants' Initial Appearance Fee Disclosure

09/28/2017 Notice of Department Reassignment ▼

Notice of Department Reassignment - NODR

Comment

Notice of Department Reassignment

09/28/2017 Request to Transfer to Business Court ▼

Comment

Request to Transfer to Business Court

10/04/2017 Notice of Appearance ▼

Notice of Appearance - NOTA

Comment

Notice of Appearance

10/04/2017 Initial Appearance Fee Disclosure ▼

Initial Appearance Fee Disclosure - IAFD

Comment

Initial Appearance Fee Disclosure (NRS Chapter 19)

10/06/2017 Affidavit of Service ▼

Affidavit of Service - AOS

Comment

Affidavit of Service - Dennis T. Larson

10/06/2017 Affidavit of Service ▼

**1944**

074

Affidavit of Service - AOS

Comment

Affidavit of Service - Jonathan L. Shreve

10/06/2017 Affidavit of Service ▼

Affidavit of Service - AOS

Comment

Affidavit of Service - Kathleen Silver

10/09/2017 Affidavit of Service ▼

Affidavit of Service - AOS

Comment

Affidavit of Service - Larson & Company, P.C.

10/10/2017 Initial Appearance Fee Disclosure ▼

Initial Appearance Fee Disclosure - IAFD

Comment

Initial Appearance Fee Disclosure

10/10/2017 Joinder ▼

Joinder - JOIN

Comment

Defendants Insuremonkey, Inc. and Alex Rivlin's Joinder to  
Request to Transfer to Business Court

10/10/2017 Answer (Business Court) ▼

Answer (Business Court) - ANSBU

Comment

Defendants' Answer to Complaint

10/17/2017 Minute Order ▼

Minute Order

Judicial Officer

Alf, Nancy

Hearing Time

3:00 AM

Result

Minute Order - No Hearing Held

Comment

Minute Order: Disclosure

**1945**

075

10/17/2017 Affidavit of Service ▼

Affidavit of Service - AOS

Comment

Affidavit of Service - Millennium Consulting Services, LLC

10/18/2017 Certificate of Service ▼

Certificate of Service - CSERV

Comment

Certificate of Service

10/19/2017 Motion to Coordinate ▼

Judicial Officer

Cory, Kenneth

Hearing Time

3:00 AM

Cancel Reason

Vacated

Comment

Health Care Co-op's Motion to Coordinate Cases

10/26/2017 Opposition to Motion ▼

Opposition to Motion - OPPM

Comment

Opposition to Motion to Coordinate Cases

10/26/2017 Motion to Dismiss ▼

Motion to Dismiss - MDSM

Comment

Millennium Consulting Services, LLC's Motion to Dismiss

10/26/2017 Notice of Appearance ▼

Notice of Appearance - NOTA

Comment

Notice of Appearance

10/26/2017 Disclosure Statement ▼

Disclosure Statement - DSST

Comment

Millennium Consulting Services, LLC's Disclosure Statement  
Pursuant to NRCP 7.1

**1946**

076

10/30/2017 Initial Appearance Fee Disclosure ▼

Initial Appearance Fee Disclosure - IAFD

Comment

Initial Appearance Fee Disclosure (NRS Chapter 19)

10/30/2017 Joinder ▼

Joinder - JOIN

Comment

Joinder of Opposition to Motion to Coordinate Cases

10/30/2017 Initial Appearance Fee Disclosure ▼

Initial Appearance Fee Disclosure - IAFD

Comment

Initial Appearance Fee Disclosure (NRS Chapter 19)

10/30/2017 Joinder ▼

Joinder - JOIN

Comment

Defendants Insuremonkey, Inc. And Alex Rivlin's Joinder To  
Opposition To Motion To Coordinate Cases

10/31/2017 Acceptance of Service ▼

Acceptance of Service - ACSR

Comment

Acceptance of Service (Mary Van Der Heijde)

10/31/2017 Joinder to Opposition to Motion ▼

Joinder to Opposition to Motion - JOPP

Comment

Joiner to Milliman's Opposition to Motion to Coordinate

11/01/2017 Initial Appearance Fee Disclosure ▼

Initial Appearance Fee Disclosure - IAFD

Comment

Initial Appearance Fee Disclosure (NRS Chapter 19)

11/01/2017 Answer to Complaint ▼

Answer - ANS

Comment

Defendants, Martha Hayes, Dennis T. Larson, Larson &  
Company, P.C.'s Answer to Plaintiff's Complaint

**1947**

077

11/01/2017 Joinder to Opposition to Motion ▼

Joinder to Opposition to Motion - JOPP

Comment

Defendants Martha Hayes, Dennis T. Larson, and Larson & Company P.C.'s Joinder to Opposition to Barbara D. Richardson's Receiver for Nevada Health Co-op, Motion to Coordinate Cases

11/03/2017 Reply in Support ▼

Reply - RPLY

Comment

Reply in Support of Motion to Coordinate Cases

11/06/2017 Motion to Compel ▼

Motion to Compel - MCOM

Comment

Motion to Compel Arbitration

11/07/2017 Answer to Complaint ▼

Answer - ANS

Comment

Nevada Health Solutions, LLC's Answer to Original Complaint

11/09/2017 Notice of Department Reassignment ▼

Notice of Department Reassignment - NODR

Comment

Notice of Department Reassignment

11/09/2017 Notice of Department Reassignment ▼

Notice of Department Reassignment - NODR

Comment

Amended Notice of Department Reassignment

11/09/2017 Peremptory Challenge ▼

Comment

Peremptory Challenge of Judge

11/09/2017 Initial Appearance Fee Disclosure ▼

Comment

Initial Appearance Fee Re: Peremptory Challenge of Judge

**1948**

078

11/20/2017 Business Court Order ▼

Business Court Order - BCO (CIV)

Comment

**Business Court Order**

11/21/2017 Stipulation and Order ▼

Stipulation and Order - SAO (CIV)

Comment

**First Stipulation and Order to Extend Briefing Deadlines and Hearing on Millennium Consulting Services, LLC's Motion to Dismiss**

11/30/2017 Stipulation and Order ▼

Stipulation and Order - SAO (CIV)

Comment

**Stipulation and Order to Continue Defendants Milliman, Inc., Jonathan L. Shreve, and Mary Van Der Heijde's Motion to Compel Arbitration**

11/30/2017 Notice of Entry of Stipulation and Order ▼

Notice of Entry of Stipulation and Order - NTSO (CIV)

Comment

**Notice of Entry of Stipulation and Order to Continue Defendants Milliman, Inc., Jonathan L. Shreve, and Mary Van Der Heijde's Motion to Compel Arbitration**

11/30/2017 Amended Affidavit of Service ▼

Amended Affidavit of Service - AAOS (CIV)

Comment

**Amended Affidavit of Service - Millennium Consulting Services, LLC**

12/11/2017 Order Denying Motion ▼

Order Denying Motion - ODM (CIV)

Comment

**Order Denying Plaintiff's Motion to Coordinate Cases**

12/11/2017 Opposition ▼

Opposition - OPPS (CIV)

Comment

**Plaintiff's Opposition to Milliman's Motion to Compel Arbitration**

12/12/2017 Notice of Entry of Order ▼

**1949****079**

## Notice of Entry of Order - NEOJ (CIV)

## Comment

Notice of Entry of Order Denying Plaintiff's Motion to Coordinate Cases

## 12/15/2017 Stipulation and Order ▼

## Stipulation and Order - SAO (CIV)

## Comment

Stipulation and Order (Second) to Extend Briefing Deadlines and Hearing on Millennium Consulting Services, LLC's Motion to Dismiss

## 12/15/2017 Notice of Entry of Stipulation and Order ▼

## Notice of Entry of Stipulation and Order - NTSO (CIV)

## Comment

Notice of Entry of Stipulation and Order (Second) to Extend Briefing Deadlines and Hearing on Millennium Consulting Services, LLC's Motion to Dismiss

## 12/18/2017 Opposition ▼

## Opposition - OPPS (CIV)

## Comment

Plaintiff's Opposition to Defendant Millennium Consulting Services, LLC's Motion to Dismiss

## 12/19/2017 Motion to Associate Counsel ▼

## Association of Counsel - ASSC (CIV)

## 12/27/2017 Motion to Associate Counsel ▼

## Motion to Associate Counsel - MASS (CIV)

## Comment

Motion to Associate Justin N. Kattan As Counsel on an Order Shortening Time

## 01/02/2018 Motion to Associate Counsel ▼

## Minutes - Motion to Associate Counsel

## Judicial Officer

Delaney, Kathleen E.

## Hearing Time

9:00 AM

## Result

Motion Granted

**1950**

080



## Comment

Defendants' Motion to Associate Justin N. Kattan as Counsel On an Order Shortening Time

## Parties Present ▲

Defendant

Attorney: Fugazzi, Alexander L.

Defendant

Attorney: Fugazzi, Alexander L.

Defendant

Attorney: Fugazzi, Alexander L.

## 01/02/2018 Errata ▼

Errata - ERR (CIV)

## Comment

Errata to Motion to Associate Justin N. Kattan As Counsel On an Order Shortening Time

## 01/03/2018 Reply in Support ▼

Reply in Support - RIS (CIV)

## Comment

Milliman's Reply in Support of Motion to Compel Arbitration

## 01/05/2018 Order Granting Motion ▼

Order Granting Motion - OGM (CIV)

## Comment

Order Granting Motion to Associate Justin N. Kattan, Esq. as Counsel

## 01/05/2018 Notice of Entry of Order ▼

Notice of Entry of Order - NEOJ (CIV)

## Comment

Notice of Entry of Order Granting Motion to Associate Justin N. Kattan, Esq. As Counsel

## 01/09/2018 Motion to Compel ▼

Minutes - Motion to Compel

Judicial Officer

Delaney, Kathleen E.

Hearing Time

9:00 AM

Result

Motion Granted

**1951**

081

<div><div>Comment</div><div>Motion to Compel Arbitration</div><div>Parties Present ▲</div><div>Plaintiff</div><div>Attorney: Ferrario, Mark E., ESQ</div><div>Attorney: Prunty, Donald L.</div><div>Defendant</div><div>Attorney: Byrne, Patrick G.</div><div>Defendant</div><div>Attorney: Byrne, Patrick G.</div><div>Defendant</div><div>Attorney: Byrne, Patrick G.</div></div>	
<div><div>01/09/2018 Reply in Support ▼</div><div>Reply - RPLY (CIV)</div><div>Comment</div><div>Millennium Consulting Services, LLC's Reply in Support of Its Motion to Dismiss</div></div>	
<div><div>01/16/2018 Motion to Dismiss ▼</div><div>Minutes - Motion to Dismiss</div><div>Judicial Officer</div><div>Gonzalez, Elizabeth</div><div>Hearing Time</div><div>9:00 AM</div><div>Result</div><div>Motion Denied</div><div>Comment</div><div>Millennium Consulting Services, LLC's Motion to Dismiss</div><div>Parties Present ▲</div><div>Plaintiff</div><div>Attorney: Ferrario, Mark E., ESQ</div><div>Defendant</div><div>Attorney: Bragonje, John E.</div><div>Defendant</div><div>Attorney: KERSHAW, SETH S, ESQ</div><div>Defendant</div><div>Attorney: KERSHAW, SETH S, ESQ</div></div>	
<div><div>01/16/2018 Motion to Dismiss ▼</div></div>	

<div><div>Motion to Dismiss - MDSM (CIV)</div><div><div>Comment</div><div>(8/15/18 Withdrawn) Kathleen Silver, Bobbette Bond, Tom Zumtobel, Pam Egan, Basil Dibsie and Linda Mattoon s Motion to Dismiss, Alternatively for More Definite Statement</div></div></div>	
<div><div>01/17/2018 Initial Appearance Fee Disclosure ▼</div><div><div>Initial Appearance Fee Disclosure - IAFD (CIV)</div><div><div>Comment</div><div>Initial Appearance Fee Disclosure</div></div></div></div>	
<div><div>01/23/2018 Motion to Associate Counsel ▼</div><div><div>Judicial Officer</div><div>Delaney, Kathleen E.</div><div>Hearing Time</div><div>9:00 AM</div><div>Result</div><div>Motion Granted</div><div>Comment</div><div>Defendant, Nevada Health Solutions, LLC's, Motion to Associate Counsel</div></div></div>	
<div><div>01/23/2018 All Pending Motions ▼</div><div><div>Minutes - All Pending Motions</div><div><div>Judicial Officer</div><div>Delaney, Kathleen E.</div><div>Hearing Time</div><div>9:00 AM</div><div>Result</div><div>Matter Heard</div><div>Parties Present ▲</div><div>Plaintiff</div><div>Attorney: Ferrario, Mark E., ESQ</div><div>Attorney: Prunty, Donald L.</div><div>Defendant</div><div>Attorney: Byrne, Patrick G.</div><div>Defendant</div><div>Attorney: Byrne, Patrick G.</div><div>Defendant</div><div>Attorney: Byrne, Patrick G.</div><div>Defendant</div><div>Attorney: Byrne, Patrick G.</div></div></div></div>	

<div>Attorney: Bragonje, John E.</div> <div>Defendant</div> <div>Attorney: Nakamura Ochoa, Angela T.</div> <div>Defendant</div> <div>Attorney: Nakamura Ochoa, Angela T.</div> <div>Defendant</div> <div>Attorney: Nakamura Ochoa, Angela T.</div> <div>Defendant</div> <div>Attorney: Nakamura Ochoa, Angela T.</div> <div>Defendant</div> <div>Attorney: Nakamura Ochoa, Angela T.</div> <div>Defendant</div> <div>Attorney: Nakamura Ochoa, Angela T.</div> <div>Defendant</div> <div>Attorney: Nakamura Ochoa, Angela T.</div> <div>Defendant</div>	
<div>01/23/2018 Mandatory Rule 16 Conference ▼</div> <div>Judicial Officer</div> <div>Delaney, Kathleen E.</div> <div>Hearing Time</div> <div>10:30 AM</div> <div>Result</div> <div>Matter Heard</div>	
<div>01/23/2018 Order Admitting to Practice ▼</div> <div>Order - ORDR (CIV)</div> <div>Comment</div> <div>Order Admitting to Practice</div>	
<div>01/23/2018 Joinder ▼</div> <div>Joinder - JOIN (CIV)</div> <div>Comment</div> <div>(8/15/18 Withdrawn) Defendants Insuremonkey, Inc. And Alex Rivlin's Limited Joinder To Kathleen Silver, Bobbette Bond, Tom Zumtobel, Pam Egan, Basil Dibsie And Linda Mattoon's Motion To Dismiss, Alternativley For More Definite Statement</div>	
<div>01/24/2018 Order Setting Civil Jury Trial and Calendar Call ▼</div> <div>Order Setting Civil Jury Trial and Calendar Call - OSCJC (CIV)</div> <div>Comment</div> <div>Business Court Scheduling Order Setting Civil Jury Trial and Pre-Trial Conference/Calendar Call</div>	

<div>01/26/2018 Notice of Entry of Order ▼</div> <div>Notice of Entry of Order - NEOJ (CIV)</div> <div>Comment</div> <div>Notice of Entry of Order Admitting to Practice</div>	
<div>02/06/2018 Stipulation and Order ▼</div> <div>Stipulation and Order - SAO (CIV)</div> <div>Comment</div> <div>Stipulation and Order to Continue the Motion to Dismiss, Alternatively for More Definite Statement</div>	
<div>02/06/2018 Notice of Entry ▼</div> <div>Notice of Entry - NEO (CIV)</div> <div>Comment</div> <div>Notice of Entry of Stipulation and Order to Continue the Motion to Dismiss, Alternatively for More Definite Statement</div>	
<div>02/13/2018 Status Check ▼</div> <div>Minutes - Status Check</div> <div>Minutes - Status Check</div> <div>Status Check</div> <div>Judicial Officer</div> <div>Delaney, Kathleen E.</div> <div>Hearing Time</div> <div>9:00 AM</div> <div>Result</div> <div>Continued</div> <div>Comment</div> <div>Status Check: ESI Protocols</div> <div>Parties Present ▲</div> <div>Plaintiff</div> <div>Attorney: Prunty, Donald L.</div> <div>Defendant</div> <div>Attorney: Nakamura Ochoa, Angela T.</div> <div>Defendant</div> <div>Attorney: Nakamura Ochoa, Angela T.</div> <div>Defendant</div> <div>Attorney: Nakamura Ochoa, Angela T.</div> <div>Defendant</div> <div>Attorney: Nakamura Ochoa, Angela T.</div>	

Defendant

Attorney: Nakamura Ochoa, Angela T.

Defendant

Attorney: Nakamura Ochoa, Angela T.

03/09/2018 Substitution of Attorney ▼

Substitution of Attorney - SUBT (CIV)

Comment

Substitutiuon Of Attorney

03/09/2018 Stipulation and Order ▼

Stipulation and Order - SAO (CIV)

Comment

Stipulation and Order to Continue the Motion to Dismiss,  
Alternatively for More Definite Statement

03/12/2018 Order Granting Motion ▼

Order Granting Motion - OGM (CIV)

Comment

Order Granting Milliman's Motion to Compel Arbitration

03/12/2018 Notice of Entry of Order ▼

Notice of Entry of Order - NEOJ (CIV)

Comment

Notice of Entry of Order Granting Milliman's Motion to Compel  
Arbitration

03/23/2018 Motion ▼

Motion - MOT (CIV)

Comment

Plaintiff's Motion for Approval of Protective Order on Order  
Shortening Time

03/23/2018 Motion ▼

Motion - MOT (CIV)

Comment

Plaintiff's Motion for Approval of ESI Protocol on Order  
Shortening Time

03/27/2018 Receipt of Copy ▼

Receipt of Copy - ROC (CIV)

**1956**

086

Comment  
Receipt of Copy

03/28/2018 Order ▼

Order - ORDR (CIV)

Comment  
Order Denying Millennium Consulting Services, LLC's Motion to Dismiss

03/29/2018 Response ▼

Response - RSPN (CIV)

Comment  
Kathleen Silver, Bobbette Bond, Tom Zumtobel, Pam Egan, Basil Dibsie and Linda Mattoon s Response to The Plaintiff s Motion For Approval Of ESI Protocol On Order Shortening Time

03/29/2018 Response ▼

Response - RSPN (CIV)

Comment  
Kathleen Silver, Bobbette Bond, Tom Zumtobel, Pam Egan, Basil Dibsie and Linda Mattoon s Response To The Plaintiff s Motion For Approval Of Protective Order On Order Shortening Time

03/29/2018 Motion to Reconsider ▼

Motion to Reconsider - MRCN (CIV)

Comment  
Plaintiff's Motion for Reconsideration

04/03/2018 Motion for Protective Order ▼

Judicial Officer  
Delaney, Kathleen E.

Hearing Time  
9:00 AM

Result  
Motion Granted

Comment  
Plaintiff's Motion for Approval of Protective Order on Order Shortening Time

04/03/2018 Petition for Approval ▼

Judicial Officer  
Delaney, Kathleen E.

**1957**

087

<div>Hearing Time</div> <div>9:00 AM</div> <div>Result</div> <div>Motion Granted</div> <div>Comment</div> <div>Plaintiff's Motion for Approval of ESI Protocol on Order Shortening Time</div>
<div>04/03/2018 All Pending Motions ▼</div> <div>Minutes - All Pending Motions</div> <div>Judicial Officer</div> <div>Delaney, Kathleen E.</div> <div>Hearing Time</div> <div>9:00 AM</div> <div>Result</div> <div>Matter Heard</div> <div>Parties Present ▲</div> <div>Plaintiff</div> <div>Attorney: Prunty, Donald L.</div> <div>Defendant</div> <div>Attorney: Brown, Russell B</div> <div>Defendant</div> <div>Attorney: Brown, Russell B</div> <div>Defendant</div> <div>Attorney: Brown, Russell B</div> <div>Defendant</div> <div>Attorney: Nakamura Ochoa, Angela T.</div> <div>Defendant</div> <div>Attorney: Nakamura Ochoa, Angela T.</div> <div>Defendant</div> <div>Attorney: Nakamura Ochoa, Angela T.</div> <div>Defendant</div> <div>Attorney: Nakamura Ochoa, Angela T.</div> <div>Defendant</div> <div>Attorney: Nakamura Ochoa, Angela T.</div> <div>Defendant</div> <div>Attorney: Nakamura Ochoa, Angela T.</div>
<div>04/11/2018 Answer ▼</div> <div>Answer - ANS (CIV)</div>



<div>Comment</div> <div>Millennium Consulting Services, LLC's Answer</div>
<div>04/16/2018 Opposition to Motion ▼</div> <div>Opposition to Motion - OPPM (CIV)</div> <div>Comment</div> <div>Milliman's Opposition to Plaintiff's Motion for Reconsideration</div>
<div>04/19/2018 Stipulation and Order ▼</div> <div>Stipulation and Order - SAO (CIV)</div> <div>Comment</div> <div>Stipulation and Order to Continue the Motion to Dismiss, Alternatively for More Definite Statement and the Joinder Thereto</div>
<div>04/24/2018 Reply in Support ▼</div> <div>Reply in Support - RIS (CIV)</div> <div>Comment</div> <div>Plaintiff's Reply in Support of Motion for Reconsideration</div>
<div>05/01/2018 Motion For Reconsideration ▼</div> <div>Minutes - Motion For Reconsideration</div> <div>Minutes - Motion For Reconsideration</div> <div>Judicial Officer</div> <div>Delaney, Kathleen E.</div> <div>Hearing Time</div> <div>9:00 AM</div> <div>Result</div> <div>Matter Continued</div> <div>Comment</div> <div>Plaintiff's Motion for Reconsideration</div> <div>Parties Present ▲</div> <div>Plaintiff</div> <div>Attorney: Ferrario, Mark E., ESQ</div> <div>Attorney: Prunty, Donald L.</div> <div>Defendant</div> <div>Attorney: Byrne, Patrick G.</div> <div>Defendant</div> <div>Attorney: Byrne, Patrick G.</div> <div>Defendant</div> <div>Attorney: Byrne, Patrick G.</div>