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Unite Here Health; and Nevada Health  
11 Solutions, LLC

12 IN THE SUPREME COURT OF THE STATE OF NEVADA

13 UNITE HERE HEALTH; AND  
14 NEVADA HEALTH SOLUTIONS, LLC,

15 Appellants,

16 vs.

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

Electronically Filed  
Sep 10 2021 04:13 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Supreme Court No. 82467  
District Court No. A-15-725244-C  
  
(Consolidated with Supreme Court  
No. 82552)

**APPELLANTS/PETITIONERS'  
MOTION TO SEAL EXHIBIT 2  
IN VOLUME 1 OF 2 OF THE  
REPLY APPENDIX**

1 INSURER, NEVADA HEALTH CO-OP;  
2 and GREENBERG TRAUIG, LLP,

3 Respondents.

4 UNITE HERE HEALTH; AND  
5 NEVADA HEALTH SOLUTIONS, LLC,

6 Petitioners,

7 vs.

8 EIGHTH JUDICIAL DISTRICT  
9 COURT OF THE STATE OF NEVADA,  
10 IN AND FOR THE COUNTY OF  
11 CLARK, THE HONORABLE TARA  
12 CLARK NEWBERRY, DISTRICT  
13 COURT JUDGE,

14 Respondent,

15 and

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

Parties in Interest.

Supreme Court No. 82552  
District Court No. A-15-725244-C

**APPELLANTS/PETITIONERS' MOTION TO SEAL EXHIBIT 2**  
**IN VOLUME 1 OF 2 OF THE REPLY APPENDIX**

Pursuant to NRAP 27 and Rule 3(1) of the SRCR, Appellants/Petitioners Unite Here Health and Nevada Health Solutions, LLC (jointly, "UHH") move this Court for leave to file Exhibit 2 in Volume 1 of 2 of the Reply Appendix ("Exhibit 2"), which is being filed concurrently herewith, under seal.

The Respondents/Real Parties in Interest designated Exhibit 2 as "Highly Confidential – Attorney Eyes Only" when it produced the document in the underlying action, asserting that it contains confidential business plans and strategies; proprietary and confidential arrangements with customers, sponsors, and vendors; and/or confidential medical information. (Ex. A,<sup>1</sup> at 2:26-3:2.)

Leave to file Exhibit 2 under seal is warranted by SRCR 3(4)(b), (f), and (g).

Accordingly, UHH requests leave to file this Exhibit under seal.

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<sup>1</sup> A true and correct copy of the Notice of Entry of Order Granting Motion for Approval of Protective Order and Motion for Approval of ESI Protocol (May 16, 2018), entered in the underlying action, is attached as Exhibit A.

1 This Motion is made and based on the record included with the Opening  
2 Brief and Writ Petition and the following Memorandum of Points and  
3 Authorities.

4 DATED this 10th day of September, 2021.

5 BAILEY ❖ KENNEDY

6 By: /s/ Sarah E. Harmon

7 JOHN R. BAILEY

8 DENNIS L. KENNEDY

9 SARAH E. HARMON

10 JOSEPH A. LIEBMAN

11 *Attorneys for Appellants/Petitioners*  
12 *Unite Here Health; and Nevada Health*  
13 *Solutions, LLC*  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

“Any person may request that the court seal or redact court records for a case that is subject to these rules by filing a written motion . . . .” SRCR 3(1). “The court may order the court files and records, or any part thereof, in a civil action to be sealed or redacted, provided the court makes and enters written findings that the specific sealing or redaction is justified by identified compelling privacy or safety interests that outweigh the public interest in access to the court record.” SRCR 3(4). “The . . . privacy . . . interests that outweigh the public interest in open court records include findings that: [t]he sealing or redaction furthers . . . a protective order entered under NRCP 26(c)”; “[t]he sealing or redaction includes medical . . . records”; and/or “[t]he sealing or redaction is necessary to protect intellectual proprietary or property interests such as trade secrets as defined in NRS 600A.030(5).” SRCR 3(4)(b), (f), (g). Once a motion to seal is pending, “the information to be sealed . . . remains confidential for a reasonable period of time until the court rules on the motion.” SRCR 3(2).

Filing Exhibit 2 under seal furthers a protective order entered by the District Court pursuant to NRCP 26(c). (*See* Ex. A.) Moreover, Exhibit 2 concerns Nevada Health CO-OP’s proprietary information, as well as the medical information of some of Nevada Health CO-OP’s members. Because

1 the Respondents/Real Parties in Interest designated Exhibit 2 as “Highly  
2 Confidential – Attorney’s Eyes Only” pursuant to the terms of the Protective  
3 Order entered by the District Court, UHH respectfully requests that this Court  
4 grant the Motion to Seal and maintain Exhibit 2 under seal.

5  
6 DATED this 10th day of September, 2021.

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20  
BAILEY ❖ KENNEDY

By: /s/ Sarah E. Harmon

JOHN R. BAILEY

DENNIS L. KENNEDY

SARAH E. HARMON

JOSEPH A. LIEBMAN

*Attorneys for Appellants/Petitioners*  
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 10th day of September, 2021, service of the foregoing **APPELLANTS/PETITIONERS’ MOTION TO SEAL EXHIBIT 2 IN VOLUME 1 OF 2 OF THE REPLY APPENDIX** was made by electronic service through Nevada Supreme 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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Las Vegas, Nevada 89135	COMMISSIONER OF
	INSURANCE, BARBARA D.
	RICHARDSON, IN HER OFFICIAL
	CAPACITY AS RECEIVER FOR
	NEVADA HEALTH CO-OP; AND
	GREENBERG TRAUIG, LLP

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in Interest*

GREENBERG TRAURIG, LLP

**VIA E-MAIL**

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Dept21JEA@ClarkCountyCourts.us

HONORABLE TARA CLARK NEWBERRY  
**EIGHTH JUDICIAL DISTRICT**  
**COURT OF THE STATE OF**  
**NEVADA, IN AND FOR THE**  
**COUNTY OF CLARK**

*Respondent*

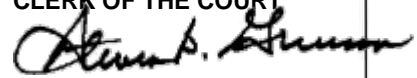
Department XXI  
200 Lewis Avenue  
Las Vegas, Nevada 89155

/s/ Angelique Mattox

Employee of BAILEY ♦ KENNEDY

**EXHIBIT A**

**EXHIBIT A**



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*Counsel for Plaintiff*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

STATE OF NEVADA, EX REL.  
COMMISSIONER OF INSURANCE,  
BARBARA D. RICHARDSON, IN HER  
OFFICIAL CAPACITY AS RECEIVER FOR  
NEVADA HEALTH CO-OP,

Plaintiff,

v.

MILLIMAN, INC., a Washington Corporation;  
JONATHAN L. SHREVE, an Individual; MARY  
VAN DER HEIJDE, an Individual;  
MILLENNIUM CONSULTING SERVICES,  
LLC, a North Carolina Corporation; LARSON &  
COMPANY P.C., a Utah Professional  
Corporation; DENNIS T. LARSON, an  
Individual; MARTHA HAYES, an Individual;  
INSUREMONKEY, INC., a Nevada Corporation;  
ALEX RIVLIN, an Individual; NEVADA  
HEALTH SOLUTIONS, LLC, a Nevada Limited  
Liability Company; PAMELA EGAN, an  
Individual; BASIL C. DIBSIE, an Individual;  
LINDA MATTOON, an Individual; TOM  
ZUMTOBEL, an Individual; BOBBETTE  
BOND, an Individual; KATHLEEN SILVER, an  
Individual; DOES I through X inclusive; and ROE  
CORPORATIONS I-X, inclusive,

Defendants.

CASE NO. A-17-760558-C

DEPT. NO. XXV

**NOTICE OF ENTRY OF ORDER  
GRANTING MOTION FOR APPROVAL  
OF PROTECTIVE ORDER AND MOTION  
FOR APPROVAL OF ESI PROTOCOL**

**GREENBERG TRAURIG, LLP**  
3773 Howard Hughes Parkway  
Suite 400 North  
Las Vegas, Nevada 89169  
Telephone: (702) 792-3773  
Facsimile: (702) 792-9002

**YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE** that an Order Granting Motion for Approval of Protective Order and Motion for Approval of ESI Protocol was entered in the above-captioned matter on the 16th day of May 2018.

A copy of said Order is attached hereto.

DATED this 16th day of May 2018.

GREENBERG TRAURIG, LLP

/s/ *Eric W. Swanis*

MARK E. FERRARIO, ESQ.

Nevada Bar No. 1625

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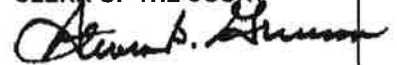
**CERTIFICATE OF SERVICE**

I hereby certify that on this 16th day of May, 2018, a true and correct copy of the foregoing  
**NOTICE OF ENTRY OF ORDER GRANTING MOTION FOR APPROVAL OF  
PROTECTIVE ORDER AND MOTION FOR APPROVAL OF ESI PROTOCOL** 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 U.S. Mail.

/s/ Sandy L. Jackson  
An employee of Greenberg Traurig, LLP

# **EXHIBIT A**



**OGM**

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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

STATE OF NEVADA, EX REL.  
COMMISSIONER OF INSURANCE,  
BARBARA D. RICHARDSON, IN HER  
OFFICIAL CAPACITY AS RECEIVER FOR  
NEVADA HEALTH CO-OP,

Plaintiff,

v.

MILLIMAN, INC., a Washington Corporation;  
JONATHAN L. SHREVE, an Individual; MARY  
VAN DER HEIJDE, an Individual;  
MILLENNIUM CONSULTING SERVICES,  
LLC, a North Carolina Corporation; LARSON &  
COMPANY P.C., a Utah Professional  
Corporation; DENNIS T. LARSON, an  
Individual; MARTHA HAYES, an Individual;  
INSUREMONKEY, INC., a Nevada Corporation;  
ALEX RIVLIN, an Individual; NEVADA  
HEALTH SOLUTIONS, LLC, a Nevada Limited  
Liability Company; PAMELA EGAN, an  
Individual; BASIL C. DIBSIE, an Individual;  
LINDA MATTOON, an Individual; TOM  
ZUMTOBEL, an Individual; BOBBETTE  
BOND, an Individual; KATHLEEN SILVER, an  
Individual; DOES I through X inclusive; and ROE  
CORPORATIONS I-X, inclusive,

Defendants.

CASE NO. A-17-760558-C  
DEPT. NO. XXV

**ORDER GRANTING MOTION FOR  
APPROVAL OF PROTECTIVE ORDER  
AND MOTION FOR APPROVAL OF ESI  
PROTOCOL**

1 The Plaintiff's Motions for Approval of ESI Protocol and Approval of Protective Order on  
2 orders shortening time ("Motions") came on for hearing before this Court on April 3, 2018 at 9:00  
3 a.m.;

4 Appearing were Mr. Prunty on behalf of the Commissioner of Insurance, Mr. James for  
5 Nevada Health Solutions, Ms. Ochoa for the NHC former officer and director defendants Kathleen  
6 Silver, Bobbette Bond, Tom Zumtobel, Pam Egan, Basil Dibsie and Linda Mattoon (the "D&O  
7 Defendants"), and Mr. Brown on behalf of the Larson defendants.

8 The D&O Defendants filed a response for approval of ESI Protocol on order shortening time.

9 During the course of discussion concerning the Motion for Protective Order the D&O  
10 Defendants requested some modification of the Order which was agreed to by the Plaintiff and  
11 incorporated into the final version approved by this Order and attached as Exhibit A hereto.

12 No other opposition to the Motions were received or filed.

13 This Court, having considered the papers and pleadings on file, and the arguments of counsel,  
14 and for good cause appearing, makes the following finding of facts and conclusions of law.

15 This case involves the receivership of a medical insurance company and the receiver's efforts to  
16 recover funds from the defendants for the payment of medical professionals and for medical services.

17 Records at issue are anticipated to include medical records, records of mental health, tax  
18 records, and intellectual property and property interests such as trade secrets as defined in NRS  
19 600A.030(5). Protected private health information may also include such information protected under  
20 the Health Insurance and Portability Act ("HIPPA").

21 This Court hereby finds that the public interest in privacy and safety interests outweigh the  
22 public interest in open court records and the ESI Protocol and the Protective Order provide for  
23 appropriate restriction of personal information and for the sealing or redaction of medical records and  
24 other protected information in conformance with Nevada Supreme Court Rule Part VII, Rule 3.4.  
25 including Subparts (d) and (f).

26 This Court also finds that the ESI Protocol is appropriate for facilitating and providing a  
27 framework for the discovery of electronically stored information in this case.

28 ///

IT IS SO ORDERED this 14<sup>th</sup> day of May, 2018.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 16 day of May, 2018, a true and correct copy of the foregoing  
**ORDER GRANTING MOTION FOR APPROVAL OF PROTECTIVE ORDER AND MOTION  
FOR APPROVAL OF ESI PROTOCOL** was filed with the Clerk of the Court 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 U.S. Mail.

  
An employee of GREENBERG TRAURIG, LLP

# **EXHIBIT A**

**PROTECTIVE ORDER**

WHEREAS, pursuant to Nevada Rules of Civil Procedure 26(c) and 29, and Nevada Supreme Court Rules for Sealing and Redacting Court Records 1-8 ("SRCR"), it is appropriate for the Court to limit the disclosure of certain confidential information produced in the course of discovery;

IT IS HEREBY SET FORTH this Protective Order, as follows:

**I. INTRODUCTION**

**A. PURPOSES AND LIMITATIONS**

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this action may be warranted. Plaintiff petitions the Court to enter the following Protective Order. The Parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The Parties further acknowledge that this Order does not entitle them to file confidential information under seal as set forth in Section XIII(C) below; SRCR 3 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the Court to file materials under seal. Furthermore, the Parties further acknowledge that this Order does not entitle them to file un-redacted personal information in violation of the Nevada Supreme Court Rules for Sealing and Redacting Court Records; SRCR 3(4) sets forth the procedures that must be followed and the standards that will be applied relating to the redaction of personal information upon filing.

**B. GOOD CAUSE STATEMENT**

Plaintiff, as Trustee of NHC, a non-profit health co-op, has brought this action on behalf of NHC, its members, insured enrollees and creditors, claiming Defendants have violated various statutory, negligence, contractual, unjust enrichment and other claims as set forth in the Complaint. The Parties anticipate that each may seek information which may contain confidential and proprietary materials, including their trade secrets, methods of operation and financial resources and disclosure of

1 personal identifying information including personal phone numbers, email addresses and other  
2 confidential information that could cause harm if made part of the public record.

3 Additionally, the Parties may seek the production of medical records which contain information  
4 protected by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). 45 C.F.R. §  
5 164.512 expressly allows for the disclosure of a patient's health information in the course of any  
6 judicial proceeding either in response to (1) a discovery request where the parties have agreed upon a  
7 protective order and have presented it to the court, or (2) a court order.

8 The Parties seek to directly protect confidential and proprietary materials including trade  
9 secrets, financial information and proprietary business deals, and non-public personally identifiable  
10 information including, but not limited to, medical records protected by HIPAA.

11 1. Confidential Designations

12 The Parties anticipate that discovery in this matter may involve disclosure of medical  
13 information, personal phone numbers, email addresses, and other personal identifying information that  
14 would cause harm if made part of the public record. In order to protect from the irreparable harm  
15 resulting from the disclosure of such material, these types of personal information may be properly  
16 designated confidential. The Parties further anticipate that confidential business plans, financial  
17 information, and similar information regarding how the Parties operate their businesses may be  
18 produced in the course of this litigation. In order to protect from the irreparable harm resulting from  
19 the disclosure of these types of trade secrets, they may be properly designated confidential.

20 The public disclosure of this information would cause irreparable harm not only to the Parties,  
21 but to numerous other non-parties as well. Such information should therefore, at minimum, be  
22 designated confidential.

23 2. Highly Confidential Designations

24 The Parties anticipate there may be documents that are of a sensitive nature that would cause  
25 substantial and concrete competitive injury if disclosed to its competitors, or the public.

26 The Parties agree that certain categories of documents will warrant heightened confidentiality  
27 in this case because they will cause substantial and concrete competitive injury to Defendants if  
28 disclosed to Plaintiff, other Defendants or other competitors. Specifically, Defendants' confidential

1 business plans and strategies, proprietary and confidential arrangements with its customers, sponsors  
2 and vendors, as well as certain confidential medical information. Because the Parties or others would  
3 be irreparably harmed and unfairly prejudiced if such information is shared with direct competitors or  
4 others without a specific need to know, this information should be designated "highly confidential –  
5 attorneys' eyes only."

6 3. Intent of the Parties

7 Accordingly, to facilitate the flow of information, to encourage the prompt resolution of  
8 disputes over confidentiality of discovery materials, to adequately protect information the Parties are  
9 entitled to keep confidential, to ensure that the Parties are permitted reasonable use of such material in  
10 preparation for trial, to address the handling of such materials at the end of this litigation, and to serve  
11 the ends of justice, a protective order is justified in this matter. It is the intent of the Parties that  
12 information will not be designated as confidential or highly confidential merely for tactical reasons.  
13 The Parties also intend that no materials will be designated confidential or highly confidential without  
14 a good faith belief that such material has been maintained in a confidential, non-public manner, and  
15 that there is good cause why it should not be part of the public record of this case. Notwithstanding  
16 anything to the contrary above, medical records and records otherwise provided protection under  
17 HIPAA shall presumptively be considered at least "confidential."

18 **II. DEFINITIONS**

19 A. "Action" means *State of Nevada, ex rel. Commissioner of Insurance, Barbara D.*  
20 *Richardson, in her Official Capacity as Receiver for Nevada Health CO-OP v. Milliman, Inc., et*  
21 *al.*, designated as Case Number A-17-760558-C.

22 B. "Challenging Party" means a Party or Non-Party that challenges the designation  
23 applied to any Disclosure or Discovery Material under this Order.

24 C. "CONFIDENTIAL" is a designation that may be applied to any Disclosure or  
25 Discovery Material to denote that it is Confidential Information. Information designated as  
26 "CONFIDENTIAL" may be used and communicated only as provided in this Protective Order.

27 D. "Confidential Information" is any Disclosure or Discovery Material that qualifies  
28 for protection under Nevada Rule of Civil Procedure 26(c), and as specified above in the Good

1 Cause Statement. Confidential Information must be marked with the "CONFIDENTIAL"  
2 designation according to the terms of this Order.

3 E. "Counsel" means Outside Counsel of Record and In-House Counsel as well as the  
4 support staff of each.

5 F. "Designating Party" means any Party or any Non-Party from whom discovery is  
6 sought in this action and who invokes the protections of this Order.

7 G. "Disclosure or Discovery Material" means all items or information, regardless of the  
8 medium or manner in which it is generated, stored, or maintained (including, among other things,  
9 testimony, transcripts, and tangible things), that are produced or generated by any Designating  
10 Party in disclosures or responses to discovery or subpoenas in this matter.

11 H. "Expert" means a person with specialized knowledge or experience in a matter  
12 pertinent to the litigation who has been retained and disclosed by a Party or its counsel to serve as  
13 an expert witness in this Action. For the avoidance of doubt, no person who qualifies under the  
14 definition of a Party shall be considered an Expert for the purposes of this Order.

15 I. "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" is a designation that  
16 may be applied to any Disclosure or Discovery Material to denote that it is Highly Confidential  
17 Information. Information designated as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
18 ONLY" may be used and communicated only as provided in this Protective Order.

19 J. "Highly Confidential Information" is any Disclosure or Discovery Material that  
20 qualifies for protection under Nevada Rule of Civil Procedure 26(c) even from In-House Counsel, and  
21 for which a separate and detailed showing has been made above in the Good Cause Statement.  
22 Confidential Information must be marked with the "HIGHLY CONFIDENTIAL – ATTORNEYS'  
23 EYES ONLY" designation according to the terms of this Order.

24 K. "In-House Counsel" means an attorney who is an employee of a Party and whose  
25 responsibilities consist at least in part of performing legal services for such Party.

26 L. "Non-Party" means any natural person, partnership, corporation, association, or other  
27 legal entity not named as a Party to this Action.  
28

1 M. "Outside Counsel" means outside counsel of record for each Party who do not qualify  
2 as a Party to this Action but are retained to represent or advise a party to this Action and have appeared  
3 in this Action on behalf of that party or are affiliated with a law firm which has appeared on behalf of  
4 that party, including all attorneys, staff, and clerical and support personnel.

5 N. "Party" means any party to this Action, including all of its directors, officers, managers,  
6 managing entities, consultants, partners, members, or employees (or the functional equivalent thereof,  
7 whether or not an employee or independent contractor).

8 O. "Producing Party" means any Party or Non-Party that produces Disclosure or Discovery  
9 Material in this Action.

10 P. "Professional Vendors" means Non-Party persons or entities that are licensed to and  
11 provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or  
12 demonstrations, and organizing, storing, or retrieving data in any form or medium) and their  
13 employees and subcontractors. For the avoidance of doubt, no person who qualifies under the  
14 definition of a Party shall be considered Professional Vendors for the purposes of this Order.

15 Q. "Privilege" or "Privileged" refers to the attorney-client privilege, attorney work-product  
16 doctrine, or any other claim of privilege to justify withholding otherwise discoverable information.

17 R. "Protected Material" means any Disclosure or Discovery Material that is designated as  
18 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."

19 S. "Receiving Party" means a Party that receives Disclosure or Discovery Material from a  
20 Producing Party.

21 **III. SCOPE**

22 The protections conferred by this Protective Order cover not only Protected Material (as  
23 defined above), but also (1) any information copied or extracted from Protected Material; (2) all  
24 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,  
25 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

26 Any use of Protected Material at trial shall be governed by the orders of the trial judge. If any  
27 Party intends to use any Protected Material at trial, that Party shall follow the procedures outlined in  
28 Section X, hereof.

1 **IV. DURATION**

2 Even after final disposition of this litigation, the confidentiality obligations imposed by this  
3 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order  
4 otherwise directs. "Final Disposition" shall be deemed to be the later of (1) dismissal of all claims and  
5 defenses in this Action with prejudice; or (2) final judgment herein after the completion and exhaustion  
6 of all appeals, rehearings, remands, trials, or reviews of this Action, including the time limits for filing  
7 any motions or applications for extension of time pursuant to applicable law.

8 **V. DESIGNATING PROTECTED MATERIAL**

9 **A. Exercise of Restraint and Care in Designating Material for Protection.** Each Party  
10 or Non-Party that designates information or items for protection under this Order must take care to  
11 limit any such designation to specific material that qualifies under the appropriate standards. The  
12 Designating Party must designate for protection only those parts of material, documents, items, or oral  
13 or written communications that qualify so that other portions of the material, documents, items, or  
14 communications for which protection is not warranted are not swept unjustifiably within the ambit of  
15 this Order.

16 Mass, indiscriminate, or routinized designations are prohibited (with the exception of Third-  
17 Party designations and medical records of insureds otherwise protected by HIPAA, as noted herein).  
18 Designations that are shown to be clearly unjustified or that have been made for an improper purpose  
19 (e.g., to unnecessarily encumber the case development process or to impose unnecessary expenses and  
20 burdens on other parties) may expose the Designating Party to sanctions.

21 If it comes to a Designating Party's attention that information or items that it designated for  
22 protection do not qualify for protection, that Designating Party must promptly notify all other Parties  
23 that it is withdrawing the inapplicable designation.

24 **B. Manner and Timing of Designations.** Except as otherwise provided in this Order, or  
25 as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under  
26 this Order must be clearly so designated before the material is disclosed or produced.

27 Designation in conformity with this Order requires:  
28

1           1.     For information in documentary form (e.g., paper or electronic documents, but  
2 excluding transcripts of depositions or other pretrial or trial proceedings): that the Producing Party  
3 affix at a minimum, the legend "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), or  
4 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" (hereinafter "HIGHLY  
5 CONFIDENTIAL legend") or similar legends to each page that contains protected material. If only a  
6 portion or portions of the material on a page qualifies for protection, the Producing Party also must  
7 clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

8           2.     For testimony given in depositions or hearings: that the Designating Party  
9 identify the Disclosure or Discovery Material and all protected testimony on the record as either  
10 Confidential or Highly Confidential before the close of the deposition. Alternatively, counsel for any  
11 Party may elect to take thirty (30) days to designate the portions of the deponent's transcript that  
12 qualify as either Confidential or Highly Confidential by transcript page and line number. Until the  
13 expiration of this thirty day period the transcript shall be treated as "Highly Confidential." Such  
14 designation shall be communicated in writing to all Parties.

15           3.     For information produced in some form other than documentary (such as a DVD  
16 containing documents) and for any other tangible items: that the Producing Party affix in a prominent  
17 place on the exterior of the container or containers in which the information is stored the legend  
18 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL." If only a portion or portions of the information  
19 warrants protection, the Producing Party, to the extent practicable, shall identify the protected  
20 portion(s). When documents are produced on a DVD, CD, or other electronic form, the Producing  
21 Party will provide an accompanying index of the electronically stored information in a non-electronic  
22 form and shall designate on said index the confidential status of each document.

23           **C. Designating Medical Records.** Notwithstanding Section V(A), in order to avoid undue  
24 burdens on Non-Parties producing materials in this litigation, documents containing Medical Records  
25 or any personal protected information of insureds, or a third-party's Disclosures or Discovery  
26 Materials may be designated as Confidential Information or Highly Confidential Information in bulk.  
27 However, such materials will remain subject to challenge under the procedures specified in Section VI,  
28 below.

1           **D. Inadvertent Failure to Designate.** An inadvertent failure to designate qualified  
2 information or items does not, standing alone, waive the Designating Party's right to secure protection  
3 under this Order for such material. Upon timely correction of a designation, the Receiving Party must  
4 make reasonable efforts to assure that the material is treated in accordance with the provisions of this  
5 Order. If feasible, the Designating Party shall promptly provide a copy of any Disclosure or Discovery  
6 Material with the proper designation to counsel for the Receiving Party, upon receipt of which the  
7 Receiving Party shall promptly return or destroy all copies with the incorrect designation.

8 **VI. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

9           **A. Timing of Challenges.** Any Party or Non-Party may challenge a designation of  
10 confidentiality at any time that is consistent with the Court's Scheduling Order.

11           **B. Meet and Confer.** The Challenging Party shall initiate the dispute resolution process  
12 (and, if necessary, file a discovery motion seeking to change the confidentiality designations) under  
13 Nevada Rule of Civil Procedure 16.1(d) and EDCR 2.34. The burden of persuasion in any such  
14 challenge proceeding shall be on the Challenging Party. Frivolous challenges, and those made for an  
15 improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may  
16 expose the Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the  
17 confidentiality designation, all parties shall continue to afford the material in question the level of  
18 protection to which it is entitled under the Designating Party's designation until the Court rules on the  
19 challenge.

20 **VII. ACCESS TO AND USE OF PROTECTED MATERIALS**

21           **A. Basic Principles.** A Receiving Party may use Protected Material that is disclosed or  
22 produced by another Party or by a Non-Party in connection with this Action only for prosecuting,  
23 defending, or attempting to settle this Action. Such Protected Material may be disclosed only to the  
24 categories of persons and under the conditions described in this Order. When the Action has been  
25 terminated, a Receiving Party must comply with the provisions of Section XIV below.

26           Protected Material must be stored and maintained by a Receiving Party at a location and in a  
27 secure manner that ensures that access is limited to the persons authorized under this Order.  
28

1           **B. Disclosure of Confidential Information.** Unless otherwise ordered by the Court or  
2 permitted in writing by the Designating Party, a Receiving Party may disclose any Confidential  
3 Information only to:

4           (a) the Receiving Party's Outside Counsel of Record in this Action, as well as  
5 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
6 information for this Action;

7           (b) the officers, directors, and employees (including In-House Counsel) of the  
8 Receiving Party to whom disclosure is reasonably necessary for this Action who have signed the  
9 "Acknowledgment and Agreement to Be Bound" (Exhibit 1);

10          (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is  
11 reasonably necessary for this Action and who have signed the "Acknowledgment and Agreement to Be  
12 Bound" (Exhibit 1);

13          (d) the Court and its personnel;

14          (e) court reporters and their staff;

15          (f) professional jury or trial consultants, mock jurors, and Professional Vendors to  
16 whom disclosure is reasonably necessary for this Action and who have signed the "Acknowledgment  
17 and Agreement to Be Bound" (Exhibit 1). For the avoidance of doubt, no person qualifying as a Party  
18 shall be considered a mock juror, professional jury or trial consultant, mock witness or Professional  
19 Vendor for the purposes of this Order;

20          (g) the author or recipient of a document whose name appears on the face of the  
21 document indicating their authorship or that the document was delivered to them;

22          (h) during their depositions, witnesses, and attorneys for witnesses, in the Action to  
23 whom disclosure is reasonably necessary provided they will not be permitted to keep any confidential  
24 information, unless otherwise agreed by the Designating Party or ordered by the Court. Pages of  
25 transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be  
26 separately bound by the court reporter and may not be disclosed to anyone except as permitted under  
27 this Protective Order; and  
28

1 (i) any mediator or settlement officer, and their supporting personnel, who have  
2 signed the "Acknowledgement and Agreement to Be Bound" (Exhibit 1) as mutually agreed upon by  
3 each of the parties engaged in settlement discussions.

4 **C. Disclosure of Highly Confidential Information.** Unless otherwise ordered by the  
5 Court or permitted in writing by the Designating Party, a Receiving Party may disclose any Highly  
6 Confidential Information only to:

7 (a) the Receiving Party's Outside Counsel of Record in this Action, as well as  
8 employees of said Outside Counsel of Record whom it is reasonably necessary to disclose the  
9 information for this Action;

10 (b) Experts (as defined in this Order) of a Receiving Party to whom disclosure is  
11 reasonably necessary for this Action and who have signed the "Acknowledgment and Agreement to Be  
12 Bound" (Exhibit 1), provided that such Experts are not current employees of a competitor of the  
13 Designating Party;

14 (c) the Court and its personnel;

15 (d) court reporters and their staff;

16 (e) professional jury or trial consultants, mock jurors, and Professional Vendors to  
17 whom disclosure is reasonably necessary for this Action and who have signed the "Acknowledgment  
18 and Agreement to Be Bound" (Exhibit 1); For the avoidance of doubt, no person qualifying as a Party  
19 shall be considered a professional jury or trial consultant, mock juror or Professional Vendor for the  
20 purposes of this Order;

21 (f) the author or recipient of a document whose name appears on the face of the  
22 document indicating their authorship or that the document was delivered to them;

23 (g) during their depositions, witnesses and attorneys for witnesses, in the Action to  
24 whom disclosure is reasonably necessary provided: (1) they will not be permitted to keep any highly  
25 confidential information; (2) they are otherwise not prohibited from receiving the highly confidential  
26 materials under this Order; and (3) all persons not independently authorized under this Order are  
27 excluded from the portions of the deposition where Protected Material is utilized, unless otherwise  
28 agreed by the Designating Party or ordered by the Court. Pages of transcribed deposition testimony or

1 exhibits to depositions that reveal Protected Material may be separately bound by the court reporter  
2 and may not be disclosed to anyone except as permitted under this Protective Order;

3 (h) any non-judicial mediator or settlement officer, and their supporting personnel,  
4 who have signed the "Acknowledgement and Agreement to Be Bound" (Exhibit 1) as mutually agreed  
5 upon by each of the parties engaged in settlement discussions.

6 **D. Request for Additional Disclosure.** If any Party or counsel of record desires to  
7 disclose Protected Material to any person other than those otherwise permitted access to such  
8 information under the terms of this Protective Order, such Party or counsel must obtain written consent  
9 of the Designating Party or the Court authorizing such disclosure. Prior to seeking Court intervention,  
10 the Requesting Party and the Designating Party shall hold a meet and confer conference to attempt to  
11 work out the issue without Court intervention. If they cannot resolve the issue, then the Party seeking  
12 to use the Protected Materials shall:

13 1. Notify the Designating Party in writing of its intention to seek a court order allowing for  
14 the disclosure of the Protected Materials. The Designating Party shall have 14 days from the receipt of  
15 such written communication to file a motion for protective order.

16 2. If the Designating Party timely seeks a protective order, the Party seeking use of the  
17 Protected Materials shall not use or disclose the Protected Materials before a determination by the  
18 Court as to whether the Protected Materials shall be disclosed.

19 3. If the Designating Party does not seek a protective order within the 14 days subsequent  
20 to notification, then the Party seeking the use of the Protected Materials may file a motion with the  
21 Court seeking use or disclosure of such documents.

22 4. Should such a motion be filed, the Party seeking use of the Protected Materials shall  
23 serve upon all Parties a copy of the motion. The Party seeking to use the Protected Material shall bear  
24 the burden of proof that the use of these Protected Materials is necessary, the information cannot be  
25 obtained in any other fashion and the risk of injury to the Disclosing Party has been mitigated to the  
26 greatest extent possible. Except as expressly agreed in writing by the Designating Party or ordered by  
27 the Court, each person to whom the Protected Material is to be disclosed under this provision must  
28 execute the "Acknowledgment and Agreement to Be Bound" (Exhibit 1).

1           **E. No Effect on Party's Own Use.** A Designating Party's designation of information as  
2 Protected Material shall not affect its own right to use any information so designated nor shall it  
3 impose any restriction upon information previously held by another party.

4 **VIII. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**  
5 **LITIGATION**

6           If a Party is served with a subpoena or a court order issued in other litigation that compels  
7 disclosure of any Protected Materials in this Action, that Party must:

8                   (a) promptly notify in writing the Designating Party. Such notification shall include  
9 a copy of the subpoena or court order;

10                  (b) promptly notify in writing the Party who caused the subpoena or order to issue  
11 in the other litigation that some or all of the material covered by the subpoena or order is  
12 subject to this Protective Order. Such notification shall include a copy of this Order; and

13                  (c) cooperate with respect to all reasonable procedures sought to be pursued by the  
14 Designating Party whose Protected Material may be affected.

15           If the Designating Party timely seeks a protective order, the Party served with the subpoena or  
16 court order shall not produce any Protected Material before a determination by the Court from which  
17 the subpoena or order issued, unless the Party has obtained the Designating Party's permission. The  
18 Designating Party shall bear the burden and expense of seeking protection in that court of its  
19 confidential material and nothing in these provisions should be construed as authorizing or  
20 encouraging a Receiving Party in this Action to disobey a lawful directive by another court.

21 **IX. NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS**  
22 **LITIGATION**

23                   (a) The terms of this Order are applicable to Protected Materials produced by a  
24 Non-Party in this Action. Such information produced by Non-Parties in connection with this  
25 litigation is protected by the remedies and relief provided by this Order. Nothing in these  
26 provisions should be construed as prohibiting a Non-Party from seeking additional protections.

27                   (b) In the event that a Party is required, by a valid discovery request, to produce a  
28 Non-Party's confidential information in its possession, and the Party is subject to an agreement

1 with the Non-Party not to produce the Non-Party's confidential information, then the Party  
2 shall:

3 1. promptly notify in writing the Requesting Party and the Non-Party that  
4 some or all of the information requested is subject to a confidentiality agreement with a  
5 Non-Party;

6 2. promptly provide the Non-Party with a copy of this Order, the relevant  
7 discovery request(s), and a reasonably specific description of the information requested;  
8 and

9 3. make the information requested available for inspection by the Non-  
10 Party, if requested.

11 If the Non-Party fails to seek a protective order from this Court within 14 days of receiving the  
12 notice and accompanying information, the Receiving Party may produce the Non-Party's confidential  
13 information responsive to the discovery request. If the Non-Party timely seeks a protective order, the  
14 Receiving Party shall not produce any information in its possession or control that is subject to the  
15 confidentiality agreement with the Non-Party before a determination by the Court. Absent a court  
16 order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this  
17 Court of its Protected Material.

18 **X. USE OF PROTECTED MATERIALS AT TRIAL**

19 In the event that a Party wishes to use or discloses for use at trial any Protected Materials, the  
20 Party must:

21 (a) promptly so notify the Designating Party in writing at least 14 days prior to any  
22 applicable deadline to allow the Designating Party the opportunity to object to such use.

23 (b) Promptly identify and/or provide copies of the Protected Documents intended to  
24 be used at trial; and

25 (c) If the Designating Party does not seek a protective order from this Court within  
26 14 days of receiving the notice and accompanying information, the Receiving Party may use  
27 the Protected Documents at trial.

28 (d) A Party may seek prompt sealing and/or destruction of its Confidential Protected

Documents at the conclusion of Trial if no appeal is filed and promptly following the appeal if one is initiated.

**XI. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Protective Order, the Receiving Party must immediately: (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit 1.

**XII. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL**

In the event that any Disclosure or Discovery Material containing or constituting privileged attorney-client communications or protected by the attorney work product or other applicable doctrine is inadvertently produced, the producing Party and/or Non-Party shall notify the Receiving Party promptly after it is discovered that such material was inadvertently produced for inspection or provided. Upon receipt of such notification, the Receiving Party shall promptly return to counsel for the disclosing Party any and all copies of such Disclosure or Discovery Material and thereafter refrain from any use whatsoever, in this case or otherwise. Nothing herein shall prevent the Receiving Party from contending that any such Disclosure or Discovery Material was not inadvertently produced or that privilege was waived for reasons other than the mere inadvertent production thereof.

**XIII. MISCELLANEOUS**

**A. Right to Further Relief.** Nothing in this Order abridges the right of any person to seek its modification by the Court in the future. Nothing in this Order shall prohibit the Designating Party from seeking damages, sanctions or other relief for unauthorized disclosure of Protected Materials either in this action or a separate action.

**B. Right to Assert Other Objections.** No Party or Non-Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not

1 addressed in this Order. The Parties reserve their rights to raise appropriate discovery objections,  
2 including but not limited to objections of relevancy, scope and the attorney-client privilege. Similarly,  
3 no Party waives any right to object on any ground to use in evidence of any of the material covered by  
4 this Order.

5 **C. Filing Protected Material.** A Party that seeks to file under seal any Protected Material  
6 must comply with SRCR 3(1). Protected Material may only be filed under seal pursuant to a Court  
7 Order authorizing the sealing of the specific Protected Material at issue. If a Party's request to file  
8 Protected Material under seal is denied by the Court, then the Receiving Party may not file the  
9 Protected Material without the separate permission of the Designating Party or an Order of the Court.  
10 All filings must comply with SRCR 3(4) regarding the redaction of private information.

11 **XIV. FINAL DISPOSITION**

12 Within sixty (60) days after the termination of this litigation (as defined in Section IV above)  
13 and the expiration of the time for appeal, each Receiving Party must return all Protected Material to the  
14 Producing Party or destroy such material. As used in this subdivision, "all Protected Material"  
15 includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing  
16 any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving  
17 Party must submit a written certification to the Producing Party (and, if not the same person or entity,  
18 to the Designating Party) by the 60 day deadline that confirms compliance with the terms of this  
19 Section. Notwithstanding this provision, Outside Counsel are entitled to retain an archival copy of all  
20 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,  
21 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work  
22 product, even if such materials contain Protected Material through the appeal of this case but must  
23 however return or destroy said Protected Documents within one hundred twenty (120) days after the  
24 completion of the final appeal and Final Judgment. Any such archival copies that contain or constitute  
25 Protected Material remain subject to this Protective Order as set forth in Section IV.


26 **XV. PENALTIES**

27 Any willful violation of this Order may be punished by contempt proceedings, financial or  
28 evidentiary sanctions, reference to disciplinary authorities, or other appropriate action at the discretion

1 of the Court in addition to any action which may be brought by the Designating Party for damages or  
2 other relief.

3 **XVI. INTENDED BENEFICIARY**

4 Each Party to this action is a named and intended beneficiary of this Order.

5  
6  
7   
8 DISTRICT COURT JUDGE  
9 May 14, 2018  
10 DATED

**EXHIBIT 1**

**ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_, declare under penalty of perjury under the laws of the United States and Nevada that:

1. My address is \_\_\_\_\_.

2. I HEREBY CERTIFY AND AGREE that I have received, read and understand the terms of the **Protective Order (the "Protective Order")** in the matter *State of Nevada, ex rel. Commissioner of Insurance, Barbara D. Richardson, in her Official Capacity as Receiver for Nevada Health CO-OP v. Milliman, Inc., et al.*, designated as Case Number A-17-760558-C; that I will not use or disclose to anyone any of the contents of any Protected Material received under the protection of the Protective Order except in accordance with the Protective Order; that I will comply with and be bound by the terms and conditions of the Protective Order; and that I hereby submit to the jurisdiction of the Eighth Judicial District Court of Clark County, Nevada for the purposes of enforcement of the Protective Order, even if such enforcement proceeding occurs after termination of this action.

3. I understand and agree that, pursuant to the Protective Order, I am required to and will maintain all Protected Materials in a secure and safe location and shall exercise due and proper care with respect to the storage, custody, use, and disposal of all Protected Material, so as to prevent unauthorized or inadvertent disclosure. I further understand and agree that all Protected Materials are to remain in my custody until they are to be returned or destroyed as specified in the Protective Order. I acknowledge that return or destruction does not relieve me from any of the continuing obligations imposed on me by the Protective Order.

4. I understand and agree that all Parties to the above named case are named and intended beneficiaries of the Protective Order and that as such they may enforce or seek damages for any breach of this Acknowledgement and Agreement to be Bound or the underlying Protective Order in the instant case or by separate action.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

Printed Name: \_\_\_\_\_