

1 JOHN R. BAILEY
Nevada Bar No. 0137
2 DENNIS L. KENNEDY
Nevada Bar No. 1462
3 SARAH E. HARMON
Nevada Bar No. 8106
4 JOSEPH A. LIEBMAN
Nevada Bar No. 10125
5 **BAILEY ♦ KENNEDY**
8984 Spanish Ridge Avenue
6 Las Vegas, Nevada 89148-1302
Telephone: 702.562.8820
7 Facsimile: 702.562.8821
JBailey@BaileyKennedy.com
8 DKennedy@BaileyKennedy.com
SHarmon@BaileyKennedy.com
9 JLiebman@BaileyKennedy.com
10 *Attorneys for Appellants/Petitioners*
UNITE HERE HEALTH; AND NEVADA
11 HEALTH 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

Supreme Court No. 82467
District Court No. A-15-725244-C

(Consolidated with Supreme Court
No. 82552)

**MOTION TO STAY RELATED
DISTRICT COURT ACTION
PENDING RESOLUTION OF
APPEAL AND/OR PETITION
FOR EXTRAORDINARY
WRIT RELIEF**

Electronically Filed
Nov 17 2021 09:44 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

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

3 Respondents.

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

7 Petitioners,

8 vs.

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

15 Respondent,

16 and

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 INSURER,
NEVADA HEALTH CO-OP; and
GREENBERG TRAURIG, LLP,

Real Parties in Interest.

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

MOTION TO STAY RELATED DISTRICT COURT ACTION
PENDING RESOLUTION OF APPEAL AND/OR PETITION FOR
EXTRAORDINARY WRIT RELIEF

I. INTRODUCTION

Appellants/Petitioners Unite Here Health and Nevada Health Solutions, LLC (jointly, “UHH”) respectfully request that this Court stay all proceedings in *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.*, Case No. A-17-760558-B, filed in the Eighth Judicial District Court, Clark County, Nevada, on August 25, 2017, and pending in Department XVI (“Milliman Action”), pending a decision in this consolidated Appeal and Petition for Extraordinary Writ Relief (jointly, “Appeal”). The Milliman Action is related to and emanates from the Receivership Action from which this pending Appeal has been taken, in that the Milliman Action is one of the asset recovery lawsuits commenced by the Receiver. Just as in the Receivership Action, the Receiver is represented in the Milliman Action by Greenberg Traurig, LLP (“Greenberg”). Therefore, Greenberg’s improper conflicts of interest (particularly as to Xerox) have permeated and tainted the proceedings in the Milliman Action — in which Xerox should have been a substantial target defendant — and that litigation should not proceed until this Court has determined whether, pursuant to the pending Appeal, Greenberg

1 should be disqualified as counsel for the Receiver. A substantially similar
2 motion is being filed concurrently in Case No. 83135, which concerns a
3 pending Petition for Extraordinary Writ Relief from the Milliman Action itself.

4 UHH will suffer irreparable harm and the object of the appeal will be
5 defeated if the Milliman Action is not stayed. Most courts agree that a stay of
6 proceedings is warranted when a motion to disqualify is pending in order to
7 preserve the fairness of the underlying proceedings. *See, e.g., Bowers v.*
8 *Ophthalmology Group*, 733 F.3d 647, 654 (6th Cir. 2013) (holding that when a
9 motion to disqualify has been filed, “a court should not reach the other
10 questions or motions presented to it through the disqualified counsel”). In fact,
11 the likelihood that a conflict will taint the proceedings is so great that the mere
12 continuation of proceedings with the conflicted counsel, in and of itself,
13 constitutes irreparable harm to all parties involved in the matter. *See Grimes v.*
14 *Dist. of Columbia*, 794 F.3d 83, 90 (D.C. Cir. 2015) (“Resolving asserted
15 conflicts before deciding substantive motions assures that no conflict taints the
16 proceeding, impairs the public’s confidence, or infects any substantive motion
17 prepared by or under the auspices of conflicted counsel.”).

18 Similarly, there will be no harm or prejudice from entry of a stay. The
19 duration of the stay will not be unreasonable, as the Appeal is fully briefed.
20 Moreover, UHH has agreed to allow for certain urgent matters to be excepted

1 from the stay, such as the deposition of a witness with failing health, so that his
2 testimony may be preserved. (Ex. A¹, at 4:15-25, 20:12-17.)

3 On October 7, 2021, UHH filed a Motion for Stay Pending Resolution of
4 Nevada Supreme Court Appeal and Writ Petition, on shortened time. (Ex. B.²)
5 During the hearing on the motion, the District Court repeatedly emphasized
6 that the Milliman Action was going to proceed to trial as scheduled in May
7 2022, due to “pressure” from this Court to “get cases tried.” (Ex. A, at 17:16-
8 18:4, 21:21-22:1.) Thus, UHH proposed that the District Court impose a
9 limited stay of 90 to 120 days to await this Court’s decision on the Appeal after
10 UHH filed a supplement in this proceeding to inform this Court of the District
11 Court’s intentions. (*Id.* at 20:4-11.) However, the District Court denied even
12 this limited request, stating that this Court doesn’t “listen to [him] anyway.”
13 (*Id.* at 21:2-4.)

14 Therefore, UHH respectfully requests that this Court stay the Milliman
15 Action pending a decision on the Appeal in order to prevent the irreparable
16 harm of tainted proceedings.

17 ///

18
19 ¹ Recorder’s Tr. of Hr’g of Mot. to Stay Pending Resolution of Nev. Sup. Ct.’s Appeal & Writ Pet., on
Appl. for Order Shortening Time, filed in the Milliman Action on October 25, 2021, is attached hereto as
Exhibit A.

20 ² UHH’s Mot. for Stay Pending Resolution of Nev. Sup. Ct. Appeal & Writ Pet., on Appl. for Order
Shortening Time, filed in the Milliman Action on October 7, 2021, is attached hereto as Exhibit B.

II. STATEMENT OF MATERIAL FACTS³

The CO-OP was a non-profit insurance company created under the Patient Protection and Affordable Care Act in 2012. (Opening Br. at 2:12-16.) After a year and a half of operations, the CO-OP failed and the Insurance Commissioner was appointed as the Receiver for the CO-OP. (*Id.* at 6:12-7:12.) The Receiver retained Greenberg to serve as its counsel. (*Id.* at 8:10-13.) Despite the fact that Greenberg represented a significant creditor of the receivership estate, as well as a substantial target defendant for asset recovery purposes, neither Greenberg nor the Receiver disclosed these conflicts of interest to the District Court when it sought the court's approval for the appointment of counsel. (*Id.* at 3:10-6:10, 7:16-8:8, 9:3-6, 9:11-11:6.) In fact, Greenberg and the Receiver actively concealed Greenberg's conflicts of interest from the District Court. (*Id.* at 11:9-13:9.)

On August 25, 2017, Greenberg and the Receiver commenced the Milliman Action, alleging that members of the CO-OP's management and several of its vendors were responsible for the CO-OP's demise. (*Id.* at 17:15-18:7.) Despite the overwhelming evidence of Xerox's liability for the CO-

///

³ In the interest of judicial economy and efficiency, UHH will cite to the undisputed facts set forth in its Opening Brief in the Appeal, as filed on June 14, 2021.

OP’s failure, Xerox was not named as a defendant in the Milliman Action. (*Id.* at 17:8-14, 18:6-19:10.)

Because Greenberg’s conflict of interest prevented the Receiver from suing Xerox (the party at fault) — and led to the Receiver unfairly assigning blame to UHH — UHH filed a Motion to Disqualify Greenberg as counsel for the Receiver on October 8, 2020. (*Id.* at 20:14-23:4.) On January 15, 2021, the District Court denied the Motion. (*Id.* at 23:5-24:5.)

On February 8, 2021, UHH filed a Notice of Appeal pursuant to NRS 696B.190(5). On February 26, 2021, UHH also filed, in the alternative, a Petition for Extraordinary Writ Relief seeking a writ of mandamus vacating the Order denying the Motion to Disqualify and instructing the Receivership Court to disqualify Greenberg.

On October 7, 2021, UHH filed a Motion to Stay the Milliman Action pending a decision of this Appeal. (Ex. B.) On November 16, 2021, the District Court entered an Order denying the Motion. (Ex. C.⁴)

III. ARGUMENT⁵

The four-factor test set forth in NRAP 8(c) dictates that the Milliman Action should be stayed pending resolution of the Appeal. *Fritz Hansen A/S v.*

⁴ Notice of Entry of Order (Nov. 16, 2021), filed in the Milliman Action, is attached hereto as Exhibit C.

⁵ In the interest of judicial economy and efficiency, the grounds advanced in the Motion for Stay submitted to the District Court and/or the Opening Brief are referenced and cited to herein.

1 *Eighth Jud. Dist. Ct. ex rel. Cnty. of Clark*, 116 Nev. 650, 657, 6 P.3d 982, 986
2 (2000).

3 **A. The Object of the Appeal Will Be Defeated if a Stay Is Denied.**

4 The primary issue in the Appeal is whether fiduciaries, like the Receiver
5 and Greenberg, have a duty, at the time of their appointment, to disclose their
6 conflicts of interests to the court. (Opening Br. at xv:5-8.) If this Court
7 determines, like the majority of other jurisdictions which have decided this
8 issue, that disclosure was required, (*id.* at 37:5-44:19, 46:12, 47:16), then the
9 secondary issue in the Appeal is whether Greenberg's undisclosed (and actively
10 concealed) conflicts of interest warrant disqualification. (*Id.* at xv:9-11.)

11 If this Court determines that Greenberg should be disqualified, then the
12 object of the appeal will be defeated if the stay is denied. Greenberg is
13 currently participating in and defending depositions in the Milliman Action in
14 which there has been and will be significant examination relating to its client
15 (Xerox). (Ex. B at 20:13-19.) Greenberg will also be participating in the
16 upcoming trial of the Milliman Action in May 2022, and UHH intends to prove
17 that Xerox is the party responsible for the CO-OP's damages. (Ex. A at 21:21-
18 22:1.) Greenberg's continued role in the Milliman Action is destroying the
19 impartiality and fairness of the action, such that if Greenberg is ultimately
20 disqualified, much of the discovery — and the trial — will have to be redone.

B. UHH Will Suffer Irreparable Harm if the Stay Is Denied.

Most courts presented with similar issues have determined that a stay of proceedings is necessary when a motion to disqualify is pending in order to preserve the fairness of the underlying proceedings. *See, e.g., Bowers v. Ophthalmology Group*, 733 F.3d 647, 654 (6th Cir. 2013); *see also* Ex. B at 24:25-25:18. In fact, it has been determined that the likelihood a conflict of interest will taint the proceedings is so great that the mere continuation of the proceedings with the conflicted counsel's participation constitutes irreparable harm, in and of itself, to all parties in the action. *Grimes v. Dist. of Columbia*, 794 F.3d 83, 90 (D.C. Cir. 2015); *see also* Ex. B at 25:19-26:6.

Here, the Receiver supposedly retained conflicts counsel that could participate in the upcoming depositions, could defend witnesses in such depositions, and could act as trial counsel for the May 2022 trial in the Milliman Action. However, when UHH contacted the Receiver to confirm that Greenberg would refrain from participating in the upcoming depositions (because they would concern Xerox), and that conflicts counsel would be taking over as lead counsel until a decision was rendered in this Appeal, the Receiver refused to provide such assurances. (Ex. B at 19:12-20:11.) Instead, Greenberg has participated in all of the depositions taken in October 2021. (*See generally* Ex. B, at 20:12-19.)

Moreover, on November 9, 2021, the Receiver filed a Second Amended Complaint alleging new claims against UHH for negligence and vicarious liability, as well as seeking declaratory relief invalidating UHH's contracts with the CO-OP. (Ex. D,⁶ at 117:15-118:8, 123:14-124:13.) Greenberg should not be permitted to conduct discovery regarding these newly-alleged claims until the disqualification issues are resolved. Therefore, UHH has suffered and will continue to suffer irreparable harm by Greenberg's continued participation in the Milliman Action while this Appeal is pending.

C. The Receiver Will Not Be Prejudiced By a Stay.

The Appeal is fully briefed and submitted for decision. Thus, it is anticipated that the stay will be of a limited duration. In fact, UHH proposed a limited 90- to 120-day stay to allow for entry of a decision in this Appeal, but the District Court rejected this proposal. (Ex. A at 20:4-11, 21:2-22:2.)

Moreover, the Receiver retained its current conflicts counsel in or around February 2021. UHH proposed, as an alternative to a stay, that the Receiver proceed with discovery and trial preparation with its conflicts counsel, rather than Greenberg; however, the Receiver rejected this proposal. (Ex. B at 19:12-20:11.) Therefore, the Receiver cannot now contend that it will suffer severe prejudice as a result of a limited stay of the Milliman Action.

⁶ Second Am. Compl., filed in the Milliman Action on November 9, 2021, is attached as Exhibit D.

1 **D. UHH Is Likely to Prevail on the Merits of the Appeal.**

2 In the interest of brevity and judicial economy, UHH will not reiterate
3 the extensive arguments set forth in its Opening Brief, Writ Petition, and
4 consolidated Reply Brief; however, UHH is likely to prevail on the merits of
5 the appeal. In summary, a receiver and its counsel owe fiduciary duties to all
6 parties in interest to act impartially and to protect the rights of or act for the
7 benefit of all parties. (Opening Br. at 37:5-38:15.) While Nevada has not yet
8 determined if such fiduciary duties include a duty to disclose conflicts of
9 interest to the court upon appointment, the District Court erred in ignoring the
10 persuasive authority in numerous other jurisdictions that have decided this
11 issue and determined that the receiver and its counsel have fiduciary duties to
12 disclose all conflicts of interest that would affect the receiver or its counsel's
13 impartiality. (*Id.* at 38:16-44:8, 46:12-47:16.) Greenberg and the Receiver
14 failed to disclose Greenberg's conflicts of interest, and then took affirmative
15 actions to conceal these conflicts from the Court's attention. (*Id.* at 45:1-
16 46:11.) As a result, the Receiver has foregone pursuing a substantial target
17 defendant for asset recovery purposes, and UHH has instead been blamed for
18 the harm caused by Xerox. (*Id.* at 49:7-15.)

19 UHH has standing to move for Greenberg's disqualification because it is
20 a creditor of the CO-OP's receivership estate and it has been harmed by being

1 pursued as a defendant in the Milliman Action. (*Id.* at 59:1-60:6.) More
2 importantly, this Court has recognized that non-clients may seek
3 disqualification of counsel in an action if the counsel’s breach of ethics, “so
4 infects the litigation . . . that it impacts the moving party’s interest in a just and
5 lawful determination of her claims.” (*Id.* at 60:7-62:2.) Here, the just and
6 lawful determination of UHH’s defenses to the Receiver’s claims have been
7 impacted by Greenberg’s conflicts of interest, as UHH is being blamed for the
8 harm caused by Xerox and has been prevented from impleading Xerox due to
9 Greenberg’s conflicts of interest. (*Id.* at 28:15-30:8, 60:7-62:2.)

10 IV. CONCLUSION

11 For the foregoing reasons, UHH respectfully requests that this Court stay
12 the Milliman Action pending the resolution of the Appeal.

13 DATED this 17th day of November, 2021.

14 BAILEY ♦ KENNEDY

15 By: /s/ Dennis L. Kennedy

16 JOHN R. BAILEY

DENNIS L. KENNEDY

17 SARAH E. HARMON

JOSEPH A. LIEBMAN

18 *Attorneys for Appellants/Petitioners*

19 UNITE HERE HEALTH; AND

20 NEVADA HEALTH SOLUTIONS, LLC

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 17th day of November, 2021, service of the foregoing **MOTION TO STAY RELATED DISTRICT COURT ACTION PENDING RESOLUTION OF APPEAL AND/OR PETITION FOR EXTRAORDINARY WRIT RELIEF** 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:

MARK E. FERRARIO
DONALD L. PRUNTY
TAMI D. COWDEN

Email: ferrariom@gtlaw.com
pruntyd@gtlaw.com
cowdent@gtlaw.com

GREENBERG TRAUIG, LLP

10845 Griffith Peak Drive, Suite 600
Suite 600
Las Vegas, Nevada 89135

Attorneys for Respondents/Real Parties in Interest
STATE OF NEVADA, EX REL.
COMMISSIONER OF
INSURANCE, BARBARA D.
RICHARDSON, IN HER OFFICIAL
CAPACITY AS RECEIVER FOR
NEVADA HEALTH CO-OP; AND
GREENBERG TRAUIG, LLP

MICHAEL P. MCNAMARA
JENNER & BLOCK LLP
515 South Flower Street, Suite 3300
Los Angeles, California 90071

Email: mmcnamara@jenner.com
Attorney for Respondent/Real Party in Interest
GREENBERG TRAUIG, LLP

1 DAVID JIMENEZ-EKMAN
2 **JENNER & BLOCK LLP**
3 353 North Clark Street, Suite 3900
Chicago, Illinois 60654

Email: djimenez-ekman@jenner.com

*Attorney for Respondent/Real Party
in Interest*

GREENBERG TRAURIG, LLP

4 DANIEL F. POLSENBERG
5 JOEL D. HENRIOD
6 ABRAHAM G. SMITH
7 **LEWIS ROCA ROTHGERBER**
8 **CHRISTIE LLP**

Email: dpolsenberg@lewisroca.com
jhenriod@lewisroca.com
asmith@lewisroca.com

*Attorneys for Respondent/Real Party
in Interest*

3993 Howard Hughes Parkway,
Suite 600
Las Vegas, Nevada 89169

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

11 **VIA E-MAIL**

Email:
Dept21LC@ClarkCountyCourts.us
khouryn@clarkcountycourts.us

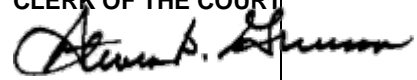
12 HONORABLE TARA CLARK NEWBERRY
13 **EIGHTH JUDICIAL DISTRICT**
14 **COURT OF THE STATE OF**
15 **NEVADA, IN AND FOR THE**
16 **COUNTY OF CLARK**
Department XXI
200 Lewis Avenue
Las Vegas, Nevada 89155

Respondent

17 /s/ Angelique Mattox
Employee of BAILEY ♦ KENNEDY

EXHIBIT A

EXHIBIT A



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

NEVADA COMMISSIONER OF
INSURANCE,

Plaintiff,

vs.

MILLIMAN INC., ET AL.,

Defendants.

CASE#: A-17-760558-B

DEPT. XVI

BEFORE THE HONORABLE TIMOTHY C. WILLIAMS,
DISTRICT COURT JUDGE

WEDNESDAY, OCTOBER 20, 2021

RECORDER'S TRANSCRIPT OF HEARING

**MOTION TO STAY PENDING RESOLUTION OF NEVADA SUPREME
COURT APPEAL AND WRIT PETITION, ON APPLICATION FOR
ORDER SHORTENING TIME**

APPEARANCES:

For the Plaintiff:

DONALD L. PRUNTY, ESQ.
DANIEL F. POLSENBERG, ESQ.
GLENN MEIER, ESQ.

For Unite Here Health and
Nevada Health Solutions, LLC:

DENNIS KENNEDY, ESQ.
JOHN R. BAILEY, ESQ.

RECORDED BY: MARIA GARIBAY, COURT RECORDER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

RECORDER'S TRANSCRIPT OF HEARING continued
**DEFENDANTS PAMELA EGAN, BASIL DIBSIE, LINDA MATTOON,
BOBBETTE BOND, TOM ZUMBOTEL AND KATHLEEN SILVER'S
JOINDER TO DEFENDANTS UNITE HERE HEALTH AND NEVADA
HEALTH SOLUTIONS, LLC'S MOTION FOR STAY PENDING
RESOLUTION OF SUPREME COURT APPEAL AND WRIT PETITION**

APPEARANCES continued:

For the Management ANGELA T. OCHOA, ESQ.
Defendants:

For Larson & Company, RUSSELL B. BROWN, ESQ.
Dennis Larson and
Martha Hayes:

For InsureMonkey and MATTHEW PRUITT, ESQ.
Alex Rivlin:

1 Las Vegas, Nevada, Wednesday, October 20, 2021

2
3 [Case called at 9:27 a.m.]

4 THE COURT: -- the calendar and that's Nevada
5 Commissioner of Insurance versus Milliman Inc. Let's go ahead
6 and set forth our appearances for the record.

7 MR. PRUNTY: Don Prunty, Your Honor, with Greenberg
8 Traurig on behalf of Plaintiff, the Nevada Commissioner of
9 Insurance as receiver for Nevada Health Coop.

10 MR. POLSENBERG: And Dan Polsenberg, Your Honor,
11 also for the Commissioner.

12 THE COURT: All right.

13 MR. KENNEDY: And Your Honor, Dennis Kennedy and
14 John Bailey for the moving parties here, Defendants Unite Here
15 Health and Nevada Health Solutions, LLC.

16 MS. OCHOA: Good morning, Your Honor. Angela Ochoa
17 on behalf of the management defendants.

18 MR. MEIER: Good morning, Your Honor. Glenn Meier
19 from Greenberg Traurig also on behalf of the plaintiff.

20 MR. BROWN: Good morning, Your Honor. Russell Brown
21 on behalf of Defendants Larson & Company, Dennis Larson and
22 Martha Hayes.

23 MR. PRUITT: Good morning, Your Honor. Matthew Pruitt
24 on behalf of InsureMonkey and Alex Rivlin.

25 THE COURT: All right, and so for the record, have we

1 made all appearances? I just want to make sure we didn't overlook
2 anybody.

3 THE CLERK: That's it for (indiscernible) --

4 THE COURT: That's -- okay. So okay, once again, good
5 morning everyone and it's my understanding we have a motion to
6 stay pending resolution of the Nevada Supreme Court appeal and
7 writ -- writ petition on an order shortening time. And let's go ahead
8 with the moving party, you have the floor.

9 MR. KENNEDY: Your Honor, again Dennis Kennedy for
10 the moving parties. You have correctly stated the status of the
11 case. Moving parties have asked that this Court stay further -- with
12 further proceedings in this case with three exceptions which we've
13 set forth in the notice of nonopposition that we filed yesterday, but
14 then there was an opposition filed later.

15 But we've asked for a stay pending the Nevada Supreme
16 Court's decision on an appeal and a writ petition -- actually it's an
17 appeal and two writ petitions with three exceptions; the
18 preservation of the testimony of Gary Odenweller [phonetic] which
19 is scheduled for October 27th and 28th, and the resolution of the
20 motion to amend the order denying Unite Here Health's motion to
21 compel, and the resolution of the Defendants Unite Here Health and
22 Nevada Health Solutions, LLC's Rule 37(c) motions for sanctions, so
23 we've asked for a stay with those three exceptions. Those are
24 matters that are already set and -- and -- and -- and we're agreeable
25 to them going forward.

1 Just to set the stage here, the other defendants have
2 joined in this motion to stay. As of 9 a.m. yesterday morning, we
3 had not received an opposition to the motion so we filed the notice
4 of nonopposition, but that was mooted when later in the day the
5 Commissioner of Insurance did file an opposition.

6 The sum and substance of -- of this motion is as follows:
7 There -- there's an appeal and a writ petition pending in the -- in the
8 Nevada Supreme Court's been -- those have been fully briefed and
9 the issue there is the disqualification of the Greenberg Traurig firm.

10 The other writ petition that is pending before the Nevada
11 Supreme Court where an answering brief has been ordered and will
12 be filed next month is on the issue of this Court's denial of the
13 motion to -- to join by impleader Xerox into this case and the
14 Court's rationale was, well if I did that, there would -- there would
15 be a conflict caused and --

16 THE COURT: Well actually, I want to be clear it was
17 different than that. It was late. It was dilatory. If this would have
18 been filed two or three years ago, yeah, I would have considered it.
19 But let's be clear, it wasn't done timely. What was the --

20 MR. KENNEDY: Well, Your Honor --

21 THE COURT: -- what's the time period, two years, two
22 and a half years, I forget.

23 MR. KENNEDY: Well, here's the problem. Number one, I
24 -- I think in the order it was found to be timely, and second off --

25 THE COURT: Well I don't know -- I don't have the order in

1 front of me, but I do -- maybe I'm wrong, but I -- I do remember in
2 open court making a comment that I was concerned about the
3 timing. Now if someone wants to amend the order and put that in,
4 they can do that. I don't know if they can or not, but I remember
5 discussing the timeliness of it and that was a major concern to me
6 because it was done how many years down the road in litigation?

7 And understand I'm coming from a -- I was a construction
8 defect judge for a long time for a decade and we dealt heavily with
9 third-party practice issues. I just want to make sure --

10 MR. KENNEDY: Okay.

11 THE COURT: -- the record's real clear that's part of it.

12 MR. KENNEDY: Nevertheless, that denial with that as a
13 part of it if -- if -- if -- if that is a part of it, that's in front of the
14 Nevada Supreme Court, that'll be fully briefed next month.

15 THE COURT: I understand.

16 MR. KENNEDY: So what these moving --

17 THE COURT: But I just want to make sure the record's
18 clear here. That's all.

19 MR. KENNEDY: Okay. All right. Well I'll -- I'll stand on
20 the language of the order which I think recognizes --

21 THE COURT: I guarantee you though -- I guarantee you
22 this, if you go back and look at a transcript when this was all going
23 on, I -- I remember discussing that on the record. I do. But go
24 ahead.

25 MR. KENNEDY: Okay. That's fine. And that's in front of

1 the Nevada Supreme Court.

2 So what we're asking the Court to do is because the
3 appeal is in front of the Supreme Court and the writ petition on
4 Greenberg's disqualification is in front of the Supreme Court fully
5 briefed and the writ petition on the denial of the Rule 14 motion
6 from Your Honor, whatever the -- the basis, is also in front of the
7 Supreme Court will be fully briefed next month, what we're asking
8 the Court to do with the three exceptions that we noted is to stay
9 further proceedings until the Supreme Court can decide these
10 issues. The primary issue of course is the disqualification of the
11 Greenberg firm and if the Supreme Court reverses Judge Cory's
12 order, then that is -- that is going to have a significant effect on all
13 of the cases and we're asking the Court to stay further proceedings
14 to allow the Supreme Court to make that determination.

15 We have --we fully briefed this on the -- the Rule 8(c) stay
16 factors and I don't need to go through all of those with the Court. I
17 know you've read this and I know you know these by heart anyway
18 you didn't have to read this, but here is the most -- I know you do.
19 And here is the most important point, and these are the cases that
20 are cited on page 25 of the motion and running over onto page 26.
21 Those are -- and I'll -- I'll -- I'll let you turn to that.

22 Those are the cases which say if there is a question of a
23 conflict, that question should be resolved before the case proceeds
24 further. First off, because the conflict taints further proceedings in
25 the case or cases in this -- in this instance, and second off, if the

1 conflict issue is resolved finding a conflict, then everybody has to
2 go back and start over.

3 And these cases -- these cases say without any question
4 that that issue of the conflict should be resolved first. In fact, the
5 two cases that we cite at the bottom of page 25 and the start of
6 page 26 say if you -- the conflict and the failure to stay is itself
7 irreparable harm to all the parties.

8 If the Court says let's go ahead with all of this in the face
9 of the conflict issue, then that's harming everybody because the
10 prospect of actual harm is twofold. Some -- some firm is
11 disqualified and everybody has to go back and start over, and all of
12 the Court's time into it and all of the parties' time and expenses into
13 it are for not because everything has to be done again because of
14 the conflict.

15 So what we're saying to the Court is -- particularly under
16 these circumstances is this matter is -- the conflict issue is fully
17 briefed in front of the Nevada Supreme Court on the appeal and the
18 writ petition and there really -- it makes all the sense in the world
19 for the Court to say well let's stay things and see what the Supreme
20 Court decides on this. And that's what we're asking Your Honor to
21 do and it -- it -- it seems to make perfect sense because the matters
22 the -- the appeal and the first writ petition are fully briefed up there
23 and awaiting a decision or perhaps an argument date and then a
24 decision.

25 And if the Court has no further questions, that's our

1 argument.

2 THE COURT: Thank you, sir.

3 And we'll hear from the opposition.

4 MR. POLSENBERG: Thank you, Your Honor. Dan
5 Polsenberg for the Commissioner. I am baffled by this motion. I --
6 I'm baffled by the timing, I'm baffled by the scope. I mean this --
7 they keep calling the first proceeding an appeal and then they
8 allude to the fact that it's an appeal on the writ petition. And it's no
9 secret to anybody I don't think the appeal is any good because it's
10 not from a final judgment.

11 But what they do -- they took the appeal and the writ
12 petition back in February. They made the motion back last October.
13 Now they're here this October on an order shortening time to get a
14 stay, just as you had said that they waited too long to make the
15 motion and you did say that. It wasn't just on -- on the merits, you
16 also said that -- that there was an issue with standing, an issue that
17 they had waited too long.

18 But just as they waited too long to make the motion to --
19 to implead, they waited too long to make this motion for stay. And
20 then for some baffling reason they do it on an order shortening
21 time and -- and set it on the week that Abe Smith is on paternity
22 leave. And -- and so there -- this motion is -- is untimely. If there
23 were really an issue here, they would have made this motion long
24 ago.

25 And the scope they talk about their three exceptions. I

1 mean here it is they're saying let's do a stay of everything the
2 plaintiff needs to do to finish this case and get ready for trial, but
3 let's create exceptions so -- so that they can go ahead and do the
4 things that they want to do.

5 And -- and Mr. Kennedy said four times that the -- the --
6 that the appeal is fully briefed. Well first of all, the only briefing on
7 the appeal seems to be a section in their reply brief which serves --
8 which they called their opening brief of appeal, and it just goes --
9 just goes to my point that they have waited so long to do this.

10 You know, they -- they filed a nonopposition before my
11 time to oppose had even run. And under the local rules, when they
12 get an order shortening time, that doesn't shorten my time to file
13 an opposition. But we still put together an opposition before this
14 hearing, although the local rule does say I don't have to file an
15 opposition with an OST. I can come into the hearing and argue it
16 orally and the Court can allow an opposition after the hearing.

17 But -- but we filed this, but the havoc that they cause with
18 these kinds of procedures are -- are kind of like the same havoc that
19 they -- they cause with their motions to disqualify and their motions
20 to implead. I've been very frank that I think they're trying to delay
21 this case. And as I thought about it overnight after I filed my
22 opposition, I -- I'm going to go back to what I said before at our last
23 hearing. They clearly have some -- some motive against Greenberg
24 Traurig and I suspect it's that they want to get rid of my lawyer.
25 And I think that's improper.

1 They make a funny argument -- I mean why did they wait
2 so long? Their argument now is what Joel Henriod calls the jujitsu
3 argument. They're going to use the weight of the bad parts of their
4 argument against -- against us.

5 They're arguing now look, it's fully briefed, it -- it won't
6 take long, you won't need much of stay. But no, that goes to my
7 point that they waited too long. You know, stays on motion to
8 disqualify cancel are incredibly rare. They -- they cite to -- on page
9 26, they cite to a New Mexico case. You know, it's -- it's -- New
10 Mexico's one of the few states that we in Nevada can make fun of.

11 But they -- you know, the Court -- this Court has
12 determined whether there's a -- a disqualifying conflict and it's
13 determined that there isn't one. And -- and if you allowed a stay
14 every time there was a district court determination denying a
15 motion to disqualify, you would effectively give them exactly what
16 they want. You would disrupt all the litigation. You'd stay the
17 litigation when a plaintiff's counsel has been found not to have a
18 disqualification. Clients will be in the situation where they say well
19 I don't want a two-year stay while we resolve the disqualification
20 issue, I'll just fire my lawyer and get a new one. Their approach
21 simply destroys any rights we have.

22 Now Mr. Kennedy says that he doesn't want to address
23 the 8(c) factors. You know what? If I were he, I wouldn't want to
24 address them either. Because you look at the -- the factors, what
25 are the factors? Number 1, will a stay defeat the -- the purpose of

1 the appeal? Well no. I've already talked about how disqualification
2 is rare -- I mean how stays are rare from the denial of
3 disqualification. You can't come in here and cite the DC Circuit and
4 say well look it's -- it's a pox on everybody's house when it's
5 waiting on appeal for the resolution of a disqualification. No, the
6 district court resolved the issue and that's all that's necessary. You
7 don't have to give a stay in every disqualification case.

8 And -- and the point we've made repeatedly, including
9 yesterday, is that there are a number of reasons to deny the
10 disqualification, not just on the merits because these cases are
11 different, but because they waited too long, because they don't
12 have standing and maybe a -- a -- a tertiary reason also was it
13 would affect the -- granting the Rule 14 impleader would affect an
14 unnecessary disqualification.

15 So, even if that were a reason that he brought up, that is
16 the -- that is the -- I said tertiary, but it's really the fourth reason, so
17 it doesn't defeat their appeal, which I don't think they have.

18 How about their writ petition on the impleader? No, it
19 doesn't defeat the -- the basis of that either. They wanted to bring a
20 contribution and indemnity claim late, late. Does it get rid of their
21 claim? No, it doesn't. We -- we all know the statute of limitations
22 under Chapter 17 for a contribution claim is a year after the final
23 resolution of this case.

24 So, they still have a contribution claim. Indemnity doesn't
25 even have a statute of limitations. They can bring these claims

1 separately, they don't need to muck up this case.

2 We briefed the balancing of -- of the hardships. There's
3 no hardship for them. And there'd be incredible hardship not only
4 for us, but -- but for the -- the Court and the litigation itself just to
5 disrupt it at this point.

6 And then the last factor, I heard you talk about that when
7 -- when you were doing an injunctive case before us, the probability
8 of success on appeal. They're -- they're not going to win this
9 appeal. And I've already laid out the reasons why they're not going
10 to win this appeal. There's not enough here to show a
11 disqualification. I was on the brief of the appeal, not for Greenberg
12 Traurig, but for the insurance commission.

13 And -- and the harm it -- it's just so disruptive. But I've
14 been seeing nothing -- since I came into this case as conflicts
15 counsel, I've seen nothing but the other side trying to disrupt this
16 case. I -- I think you should deny their -- their opportunity to do that
17 and deny their motion for stay. Thank you, Your Honor.

18 THE COURT: Thank you, sir.

19 All right. We'll hear the reply.

20 MR. KENNEDY: Thank you, Your Honor. Again, Dennis
21 Kennedy.

22 First off, Mr. Polsenberg is correct that one of the cases
23 that we cite for the proposition that conflict -- conflict issues should
24 be decided before the rest of the case moves on is from the New
25 Mexico Supreme Court, along with a series of cases from federal

1 courts, the DC Circuit, the Sixth Circuit and California Federal
2 Courts, this is on page 25 and 26, all of which say the same thing. If
3 you have a conflict issue, that should be decided first and not to do
4 so is arguably -- and to proceed with the case is arguably an abuse
5 of discretion.

6 Now, Mr. Polsenberg makes a point of saying well, these
7 moving parties waited too long. Well, he neglects to tell you, Your
8 Honor, that the conflict was not disclosed and was affirmatively
9 hidden and concealed for years. It was only after we learned of the
10 conflict, as we voice that out in the motion, that the -- this issue got
11 raised because we didn't know of the conflict, it had never been
12 disclosed.

13 THE COURT: What about the standing --

14 MR. KENNEDY: That's why --

15 THE COURT: Mr. Kennedy, what about the standing issue
16 Mr. Polsenberg raised?

17 MR. KENNEDY: The Nevada Supreme Court in the *Leopis*
18 [phonetic] case which -- which we've cited and discussed says
19 typically, a conflict issue is raised by a client or former client, but if
20 there is the possibility that the proceedings are going to be tainted
21 and that the administration of justice will be interfered with
22 because of another conflict, then any party may raise it.

23 In this case you have a receiver and a receiver's counsel
24 who has a conflict that should have been disclosed. The receiver is
25 a fiduciary and the receiver's counsel is a fiduciary and it is

1 undisputed, undisputed number one, that this conflict was never
2 disclosed to Judge Cory and number two, it is also undisputed that
3 the conflict was affirmatively concealed. It was known to exist and
4 it was concealed.

5 So the argument about standing under the Supreme
6 Court's decision in *Leopis* gets them nowhere. Nobody is
7 contending that any of these defendants were clients of the firm.
8 The argument is that the firm had a conflict it was a fiduciary and
9 that was never disclosed and that fits squarely under the
10 interference with the administration of justice argument that the
11 Supreme Court approved in *Leopis*. And -- and that's not an odd
12 holding, that's a holding that -- that is -- is universal.

13 So, that is the answer to the standing issue --

14 THE COURT: Well here's my next question, if your client
15 really wanted to proceed a claim for indemnity and contribution, in
16 light of the fact that this lawsuit was filed back on August 25th,
17 2017, which is over four years ago, shouldn't that have been
18 proceeded with procedurally a long time ago?

19 And I'll be candid with you, I've never seen it at that late in
20 the -- in the -- in the game. Typically those are done when
21 responsive pleadings are filed or a short time thereafter, but not
22 four years later.

23 MR. KENNEDY: Well that -- that's the issue in the Rule 14
24 decision that this Court made. It doesn't have anything to do with
25 the initial conflict issue that is before the Supreme Court on the --

1 the appeal and the writ. What -- what we're saying is that based on
2 what the Supreme Court does on the initial appeal and writ, that
3 may well have an impact on this Court's order denying the Rule 14
4 motion. But you're right.

5 THE COURT: Well -- well, I'd be -- I'm going to be candid
6 with you --

7 MR. KENNEDY: That could have been done earlier.

8 THE COURT: Mr. Kennedy, trust me I respect you, but I'll
9 be candid with you. On the Rule 14 issue, I'd be surprised if I got
10 reversed on that. I mean, as much third-party practice as I -- as I
11 have presided over, I would be really surprised. And they'll be
12 plowing new ground on that issue, I will say that, because, you
13 know, when you're four years into litigation and -- and now you're
14 going to file a -- a -- a third-party complaint seeking contribution
15 and/or indemnity, that's well down the road. And typically under
16 those -- and that changes the whole character and nature of a case.
17 And I would hope the Supreme Court would understand that.

18 MR. KENNEDY: Well, Your Honor --

19 THE COURT: Because we're walking four years, that's a
20 long time.

21 MR. KENNEDY: I -- I understand that, but let's go back to
22 the scheduling order. That's why I'm -- I'm saying this was timely.
23 The scheduling -- we filed it timely under the scheduling order.

24 THE COURT: But remember this, the -- the scheduling
25 order doesn't determine whether or not -- I get that and I

1 understand Rule 16. I understand that, but I will say this, I probably
2 presided over thousands of cases involving third-party practice.
3 That's all construction defect is. Equitable indemnity,
4 interpretations of contracts based upon contract-based indemnity
5 claims and so on, and -- and -- and they were very complex cases. I
6 just don't remember any third-party claims being asserted four
7 years down the road. Typically that's done very early on, probably
8 six months. And in fact, six months into the -- into the case, that
9 would be near the end of the line because you started discovery.
10 Right, and now we're going to bring on another defendant.

11 That's my point. I -- I just -- I -- I -- I get it, but going back
12 to the -- you got to convince me as it pertains to the 8(c) factors in
13 this matter, because I don't -- I'll be candid with you and I'm looking
14 at it from this perspective and looking at the totality of the case, I
15 have two concerns. Number one would be the 8(c) factors.

16 And I don't mind telling everyone that's on this case as
17 trial judges right now, we're -- we have a little pressure from our
18 supreme court and we're apparently, based on COVID, about 10 --
19 about 2,000 cases behind. Jury trials. That's what my supreme
20 court's telling us, right? That's what they're telling us.

21 And so, I'm looking at it from their perspective, I'm trying
22 to figure out why I would grant a stay. And secondly, I realize
23 there's a lot going on, but I'm going to put everybody on notice that
24 we're going to trial in May. That's -- that's probably the best way I
25 can say it. I've been telling everyone that's been coming in recently

1 we're going to trial and that's what my -- what the supreme court
2 tell us because we're under a lot of pressure right now get these
3 cases tried, because we're behind because of COVID and that's just
4 how it is.

5 But go ahead, sir. Address the 8(c) factors for me.

6 MR. KENNEDY: The -- the 8(c) factors are -- and we've --
7 we've addressed them fully in the -- in the pleading. The first one is
8 the object of the appeal or writ petition will be defeated if the stay is
9 denied. If you don't stay this matter and you go -- and we go ahead
10 with all the discovery and perhaps even the trial in this matter, then
11 the object of the writ petition and the appeal is to disqualify
12 counsel. And if we go ahead with the trial and counsel continues
13 on and tries the case, then that per se defeats the object of the writ
14 petition and the appeal which is to get a determination of whether
15 or not Greenberg is entitled to continue on in the case, whether the
16 appellant or petitioner --

17 THE COURT: But can't we say that -- can't we say that in
18 almost every case? Right? I mean the -- the first factor whether the
19 object of the appeal or writ petition will be defeated if the stay is
20 denied. You know, I guess --

21 MR. KENNEDY: Yeah.

22 THE COURT: -- it -- it depends, I mean if your client
23 prevailed at trial, hypothetically it would be all become moot
24 potentially, but ahead.

25 MR. KENNEDY: Well that -- that's right and that -- that

1 hooks in with the -- with the line of cases that -- that we've already
2 discussed which is to avoid that, to avoid that, the Court should
3 decide or in this case allow the Supreme Court to decide this issue
4 before proceeding further. And that's what those cases that we've
5 cited on page 25 and 26 say is you -- you've got to deal with that
6 issue first. Otherwise, to have the conflict issue pushed off until
7 everything else is decided, that defeats the argument of that issue.

8 And in terms of irreparable harm, the -- those cases and
9 particularly the -- the ones that I've emphasized say it is per se
10 irreparable harm not to do that, not to get the conflict issue decided
11 before we proceed with everything else in the case, and the -- the
12 New Mexico case says that, the DC Circuit says that. It -- it -- it just
13 says why would you go ahead with everything else in the case
14 knowing that this issue -- the conflict issue is out there.

15 And that is -- it's even more important in this matter, Your
16 Honor, because the Nevada Supreme Court has accepted the writ
17 petition and ordered a response to it and it is fully briefed up there.

18 I respect Mr. Polsenberg saying he doesn't think we're
19 going to prevail. Well, the Nevada Supreme Court thinks there is
20 an issue there worthy of its consideration.

21 What we're saying to this Court is, in light of that -- we're
22 not saying hey we're thinking of going to the Supreme Court, we're
23 saying we're there and it's been fully briefed and what we're saying
24 to Your Honor is, under these circumstances, give the Supreme
25 Court the chance to decide that. Don't have the parties proceed

1 with the case on the chance, and I think it's a good chance, that the
2 Supreme Court is going to say hey there's a conflict here, they're
3 disqualified.

4 And what the Court can do, if the Court wants to, is to say
5 look, I'm going to give you a stay of 90 days or 120 days, then let's
6 come back and see if the Supreme Court's done anything on this.
7 And of course what we would do is we would supplement our brief
8 and say to the Supreme Court Judge Williams has said I'll wait 90
9 days or I'll wait 120 days to see if you guys do anything. If you
10 don't -- you guys -- see if this court does anything, and if it doesn't,
11 we're going ahead.

12 Lastly my last point, Mr. Polsenberg mocks our exceptions
13 that we've asked for to the stay. The reason that the deposition is
14 going forward, as everybody agrees, is Gary Odenweller -- his
15 health is in serious jeopardy and his deposition has to be taken
16 because he's seriously ill. That's why we've cut that exception out
17 and said look, we better do this regardless of what else happens.

18 And so that -- that -- that concludes our argument and --
19 and -- and I did amend it a bit by saying let's do 90 days or 120 days
20 and we'll say to the Supreme Court this is what we've got to allow
21 you to make a decision and at the conclusion of that time, I mean
22 nobody can tell them what -- well you try to tell them what to do,
23 but they won't -- they may not listen to you. At that point we'll
24 come back and say well, they're apparently not as concerned as we
25 are. So if the Court has no further questions, that concludes my

1 argument.

2 THE COURT: And -- and thank you, sir. And to be really
3 candid, I don't think the Supreme Court will listen to me anyway.
4 And I look at it from this perspective, I do. Number one, this case
5 has been pending in this department since August 25th of 2017. It's
6 over four years old, number one.

7 Secondly, in -- in looking at the Rule 8(c) standards and --
8 and thinking about the issues, I -- I -- I really don't see for example
9 whether there would be irreparable or serious injury if the stay is
10 denied in this case. The -- your client will always have an
11 opportunity to conduct -- I guess number one they could still
12 conduct discovery as -- as Xerox is concerned in this matter and
13 potentially make a *Banks versus Sunrise Hospital* type of argument
14 or point fingers.

15 Just as important too, they do have claims for
16 contribution and indemnity, and I think I discussed that at a prior
17 time in this case that they can pursue potentially post judgment and
18 that's only under the circumstances where they didn't prevail. And
19 so anyway, I'm -- what I'm going to do -- and I just want to be very
20 clear on this, I'm going to deny the stay, number one.

21 Secondly, I just want to let everyone know this that
22 discovery will proceed in this matter and -- and just as important
23 it's my recollection -- I want this to be clear we have a May trial date
24 and I just want to put everyone on notice that assuming there's no
25 action by our supreme court that the May 12th, 2022 calendar call

1 will occur and be ready for trial on that May 23rd trial stack.

2 So that'll be my decision. We'll have an order prepared
3 and, Mr. Polsenberg, can you prepare the order, sir?

4 MR. POLSENBERG: I'd be happy to, Your Honor, and I'll
5 let Mr. Kennedy take a look at it.

6 THE COURT: Yeah, circulate it.

7 All right. And so that'll be my decision. Everyone enjoy
8 your day.

9 MR. POLSENBERG: Thank you very much, Your Honor.
10 Good morning.

11 THE COURT: All right.

12 [Proceedings concluded at 10:03 a.m.]

13 * * * * *

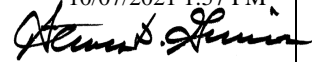
14
15
16
17
18
19
20
21 ATTEST: I hereby certify that I have truly and correctly transcribed
22 the audio/visual proceedings in the above-entitled case to the best
23 of my ability.

24 

25 Tracy A. Gegenheimer, CERT-282
Court Recorder/Transcriber

EXHIBIT B

EXHIBIT B


CLERK OF THE COURT

BAILEY ♦ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

MSTY (CIV)

JOHN R. BAILEY (Nevada Bar No. 0137)
DENNIS L. KENNEDY (Nevada Bar No. 1462)
SARAH E. HARMON (Nevada Bar No. 8106)
JOSEPH A. LIEBMAN (Nevada Bar No. 10125)
REBECCA L. CROOKER (Nevada Bar No. 15202)

BAILEY ♦ KENNEDY

8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148-1302
Telephone: 702.562.8820
Facsimile: 702.562.8821
JBailey@BaileyKennedy.com
DKennedy@BaileyKennedy.com
SHarmon@BaileyKennedy.com
JLiebman@BaileyKennedy.com
RCrooker@BaileyKennedy.com

SUZANNA C. BONHAM (Texas Bar No. 24012307)
EMMA C. MATA (Texas Bar No. 24029470)

SEYFARTH SHAW LLP

700 Milam, Suite 1400
Houston, Texas 77002
Telephone: 713.225.2300
SBonham@seyfarth.com
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;
INSUREMONKEY, INC., a Nevada
Corporation; ALEX RIVLIN, an Individual;
NEVADA HEALTH SOLUTIONS, LLC, a
Nevada Limited Liability Company; PAMELA

Case No. A-17-760558-B
Dept. No. XVI

**UNITE HERE HEALTH AND NEVADA
HEALTH SOLUTIONS' MOTION FOR
STAY PENDING RESOLUTION OF
NEVADA SUPREME COURT APPEAL
AND WRIT PETITION, ON
APPLICATION FOR ORDER
SHORTENING TIME**

Hearing Requested

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.

Defendants Unite Here Health and Nevada Health Solutions, LLC (jointly, “UHH”) respectfully request that this Court stay the remaining discovery¹ and trial of this action pending the resolution of: (1) UHH’s Appeal in *Unite Here Health v. State of Nevada ex rel. Commissioner of Insurance*, Case No. 82467, filed in the Nevada Supreme Court on February 8, 2021, **and** UHH’s Petition for Extraordinary Writ Relief in *Unite Here Health v. Eighth Judicial District Court ex rel. County of Clark*, Case No. 83552, filed in the Nevada Supreme Court on February 26, 2021 (jointly, the “Appeal”)²; and (2) UHH’s Petition for Extraordinary Writ Relief in *Unite Here Health v. Eighth Judicial District Court ex rel. County of Clark*, Case No. 83135, filed in the Nevada Supreme Court on July 1, 2021 (the “Writ Petition”).

The Appeal concerns whether Barbara Richardson, Statutory Receiver (the “Receiver”) for the Nevada Health CO-OP (the “CO-OP”) and her counsel, Greenberg Traurig, LLP’s (“Greenberg”) failure to disclose and concealment of Greenberg’s concurrent representation of: (1) a creditor of the Receivership Estate, Valley Health System (“Valley”), in the receivership proceedings;³ and (2) a significant target defendant of the Receivership Estate, Xerox State Healthcare, LLC (“Xerox”), in related litigation and an administrative action, as well as the continuing conflicts of interest arising therefrom, should have resulted in Greenberg’s disqualification and disgorgement of attorneys’ fees earned in representing the Receiver.⁴

¹ UHH requests that the Court carve out a single exception to allow the parties to preserve the testimony of Gary Odenweller.

² The Supreme Court consolidated Case No. 82467 and Case No. 83552 on April 12, 2021.

³ The receivership proceeding is *State of Nevada ex rel. Commissioner of Insurance v. Nevada Health CO-OP*, Case No. A-15-725244-C, pending in Department XXI (the “Receivership Action”).

⁴ UHH’s Motion to Disqualify Greenberg Traurig, LLP and to Disgorge Attorneys’ Fees (the “Motion to Disqualify”) was filed in the Receivership Action.

1 The Writ Petition illustrates the harm caused by Greenberg’s ongoing conflicted
2 representation of the Receiver (it resulted in the denial of UHH’s timely NRCP 14 Motion) and
3 seeks relief from this Court’s decision to deny UHH’s Motions (1) for Leave to File Third-Party
4 Complaint; and (2) to Consolidate.⁵

5 If this stay is not granted, UHH will suffer irreparable harm and the objects of the Appeal and
6 Writ Petition will be defeated. Greenberg’s continued participation in this action taints the
7 proceeding and erodes the public confidence in the fairness and impartiality of the proceeding.
8 Moreover, if the case proceeds before the Writ Petition is resolved, UHH will be forced to go to trial
9 without Xerox as a third-party defendant, meaning it could be found liable for damage to the CO-OP
10 caused by Xerox’s actions, and could be forced into insolvency before being able to initiate any
11 contribution action and subsequent collection against Xerox. Similarly, if a stay is not granted
12 pending the resolution of the Appeal, Greenberg will continue prosecuting the CO-OP’s claims
13 against UHH with conflicting duties—those owed to its current client (a supposedly independent and
14 neutral Receiver and receivership estate) and those owed to Xerox, a potential target of the
15 receivership estate whose conduct remains at the forefront of this lawsuit.

16 This Motion for Stay is also made in an effort to conserve judicial resources and prevent all
17 parties from incurring unnecessary costs and fees while the Appeal and Writ Petition are pending
18 before the Nevada Supreme Court. Given that the Receiver owes fiduciary duties to all of the
19 creditors of the Receivership Estate (including UHH), and the Receivership Estate has limited assets
20 to pay creditor claims, it is in the Receiver’s and the creditors’ best interests to stay this proceeding
21 until the Appeal and the Writ Petition are resolved in order to avoid unnecessary duplication of legal
22 services and unnecessary costs and fees should Greenberg ultimately be disqualified and/or Xerox
23 ultimately be added as a party to this lawsuit.

24 ///

25 ///

26 _____
27 ⁵ The Receiver recently moved to voluntarily dismiss claims against the Silver State Health Exchange in *State of*
28 *Nevada ex rel. Nevada Health Co-Op v. Silver State Health Insurance Exchange*, Case No. A-20-81616-C. Therefore,
this Motion will discuss the Writ Petition in the context of the Motion for Leave to File Third-Party Complaint (the
“Motion to Implead Xerox”) only.

1 This Motion is based upon the pleadings and papers on file here, the following memorandum
2 of points and authorities, and any oral argument permitted by the Court.

3 DATED this 6th day of October, 2021.

4 BAILEY ♦ KENNEDY

5 By: /s/ Dennis L. Kennedy
6 JOHN R. BAILEY
7 DENNIS L. KENNEDY
8 SARAH E. HARMON
9 JOSEPH A. LIEBMAN
10 REBECCA L. CROOKER

11 AND

12 SEYFARTH SHAW LLP
13 SUZANNA C. BONHAM
14 EMMA C. MATA

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

17 **APPLICATION FOR AN ORDER SHORTENING TIME**

18 Pursuant to EDCR 2.26, UHH hereby applies for an Order Shortening Time for the hearing
19 on its Motion for Stay Pending Resolution of Nevada Supreme Court Appeal and Writ Petition based
20 on the following declaration of John R. Bailey, Esq.

21 DATED this 6th day of October, 2021.

22 BAILEY ♦ KENNEDY

23 By: /s/ Dennis L. Kennedy
24 JOHN R. BAILEY
25 DENNIS L. KENNEDY
26 SARAH E. HARMON
27 JOSEPH A. LIEBMAN
28 REBECCA L. CROOKER

AND

SEYFARTH SHAW LLP
SUZANNA C. BONHAM
EMMA C. MATA

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

**DECLARATION OF JOHN R. BAILEY IN SUPPORT OF APPLICATION
FOR AN ORDER SHORTENING TIME**

I, John R. Bailey, declare as follows:

1. I am the managing partner of the law firm of Bailey❖Kennedy, counsel of record for UHH in the above-captioned matter, pending before this Court, as well as the Receivership Action, the Appeal, and the Writ Petition.

2. I make this declaration in support of UHH's Motion for Stay Pending Resolution of Nevada Supreme Court Appeal and Writ Petition, on Application for Order Shortening Time (the "Motion").

3. I am competent to testify to the facts stated herein, which are based on personal knowledge unless otherwise indicated, and if called upon to testify, I could and would testify competently to the following.

4. On January 15, 2021, the Receivership Court entered an Order Denying Motion to Disqualify Greenberg Traurig, LLP and to Disgorge Attorneys' Fees. Notice of Entry of this Order was filed the same day.

5. On February 11, 2021, UHH filed its Notice of Appeal in the Nevada Supreme Court. UHH's Opening Brief is attached hereto as Exhibit 1.

6. On February 26, 2021, in the alternative, UHH filed a Petition for Extraordinary Writ Relief in the Nevada Supreme Court, raising the same issues as set forth in the Appeal. The Petition is attached hereto as Exhibit 2.

7. On April 12, 2021, the Supreme Court consolidated the Appeal and the Writ Petition. The Supreme Court also ordered additional briefing, stating that "an answer may assist this court in resolving the matter."

8. On May 26, 2021, this Court entered an Order Denying Motions (1) for Leave to File Third-Party Complaint and (2) to Consolidate. Notice of Entry of this Order was filed on June 11, 2021.

9. UHH filed a second Petition for Extraordinary Writ Relief in the Nevada Supreme Court on July 1, 2021. This Petition is attached hereto as Exhibit 3. On August 4, 2021, the

1 Supreme Court ordered additional briefing.

2 10. As set forth in this Motion, *infra*, UHH asserts that it will suffer irreparable harm if
3 this case proceeds prior to the resolution of the Appeal and the Writ Petition. Specifically:

4 First, in the Appeal, UHH contends that Greenberg’s concurrent representation of Valley, the
5 Receiver, and Xerox resulted in an unwaivable conflict of interest, and its failure to disclose
6 (and conceal) this conflict to the court in the Receivership Action necessitated both
7 Greenberg’s disqualification as counsel for the Receiver and its disgorgement of fees
8 received from the Receivership Estate. UHH asserts that Greenberg’s continued participation
9 in this action as counsel for the Receiver taints this proceeding and damages UHH’s ability to
10 defend itself at trial; and

11 Second, UHH contends that this Court erred in denying UHH’s Motion for Leave to File
12 Third-Party Complaint — *a decision this Court based solely on Greenberg’s conflict of*
13 *interest with Xerox*. If the stay is not granted pending the resolution of the Writ Petition,
14 UHH will suffer irreparable harm, as it is at risk of being held liable for damages in excess of
15 \$142 million and it may be forced into insolvency before receiving any contribution from
16 Xerox for such damages.

17 11. Before filing this Motion, UHH attempted to proceed with discovery while
18 minimizing the impact of Greenberg’s conflict on the parties. Before the parties began depositions, I
19 sent correspondence to the Receiver’s “conflicts counsel,” Lewis & Roca, to confirm that Greenberg
20 would not participate in any deposition proceedings wherein the subject of Xerox was likely to be
21 raised. A copy of my correspondence to Daniel F. Polsenberg and Abraham G. Smith, dated
22 September 2, 2021, is attached hereto as Exhibit 4.

23 12. On September 14, 2021, Lewis & Roca responded and refused to provide any
24 assurance that Greenberg would recuse itself when the subject of Xerox was raised at depositions. A
25 copy of Mr. Smith’s correspondence is attached hereto as Exhibit 5.

26 13. The following day, I again wrote to Lewis & Roca, requesting—in the absence of
27 Lewis & Roca’s assurances that it would unilaterally handle any Xerox-related matters—that the
28 Receiver agree to stay discovery pending the Nevada Supreme Court’s decision on the Appeal and

1 the Writ Petition. I also advised the Receiver that at the upcoming deposition of Patty McCoy, a
2 former CO-OP employee, UHH intended to question Ms. McCoy about Xerox. A copy of my
3 correspondence to Mr. Smith, dated September 15, 2021, is attached hereto as Exhibit 6. The
4 Receiver's counsel failed to respond.

5 14. On September 22, 2021, the Receiver commenced the deposition of Ms. McCoy. It is
6 my understanding that Donald Prunty of Greenberg conducted the deposition, and that Lewis &
7 Roca—the Receiver's "conflicts counsel"—was not present at the deposition. A copy of excerpts
8 from the transcript of this deposition are attached hereto as Exhibit 7. Based on information and
9 belief, during the deposition, counsel for UHH asked Ms. McCoy questions pertaining to Xerox and
10 the effect of Xerox's actions on the CO-OP. Mr. Prunty did not leave the room, nor did he refrain
11 from lodging objections. Mr. Prunty did not, however, follow up with any questions about Xerox.
12 (*See id.* at 163:4-177:7, 186:23-187:5.)

13 15. Discovery is currently scheduled to close on December 31, 2021, and the trial of this
14 matter is currently assigned to a 5-week stack commencing on May 16, 2022.

15 16. This Motion cannot be heard in the normal course because the objects of the Appeal
16 and the Writ Petition will be defeated if discovery closes or trial proceeds prior to the resolution of
17 the appellate proceedings. Greenberg's continued participation in this action taints the proceeding
18 and erodes the public's confidence in the impartiality and fairness of the action. Moreover, if the
19 trial proceeds before the Supreme Court's resolution of the Writ Petition, UHH will suffer
20 irreparable harm by having to proceed to trial without impleading Xerox as a third-party defendant.

21 I declare under penalty of perjury, under the laws of the State of Nevada, that the foregoing is
22 true and correct.

23 EXECUTED on this 6th day of October, 2021.

24
25 
26 JOHN R. BAILEY
27
28

MH
Entered

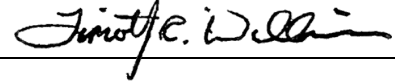
BAILEY ♦ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

ORDER SHORTENING TIME

THE COURT, having considered the foregoing Application for Order Shortening Time,
and the Declaration of John R. Bailey, Esq. in support thereof, and good cause appearing,

HEREBY ORDERS that the time for hearing **UNITE HERE HEALTH AND NEVADA
HEALTH SOLUTIONS' MOTION FOR STAY PENDING RESOLUTION OF NEVADA
SUPREME COURT APPEAL AND WRIT PETITION** be shortened, and the same shall now be
heard on the 20th day of October, 2021, at 9:05 am.m., in Department XVI, or as soon
thereafter as counsel can be heard.

Dated this 7th day of October, 2021



MH

868 432 5488 0BF5
Timothy C. Williams
District Court Judge

Submitted by:

BAILEY ♦ KENNEDY

By: /s/ Dennis L. Kennedy
JOHN R. BAILEY
DENNIS L. KENNEDY
SARAH E. HARMON
JOSEPH A. LIEBMAN
REBECCA L. CROOKER

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

Greenberg’s conflicts of interest with Valley and Xerox have tainted this proceeding. In short, “[b]ecause a conflict of interest could affect the fairness and impartiality of the proceeding, or the perception of fairness and impartiality, ... a plausible claim of conflict ***must be resolved before*** allegedly conflicted counsel or the court ***takes further action in the case.***” *Grimes v. Dist. of Columbia*, 794 F.3d 83, 90 (D.C. Cir. 2015) (emphasis added). Although the Receivership Court denied UHH’s Motion to Disqualify Greenberg, its decision was an abuse of discretion which UHH is confident will be overturned by the Nevada Supreme Court. In fact, the Nevada Supreme Court has already weighed in, stating that “an answer [from Greenberg and the Receiver] may assist this court in resolving the matter.” Awaiting that decision, UHH has been trying to diligently proceed with discovery, whilst attempting to prevent Greenberg’s conflict from further perverting the instant proceedings and irreparably harming UHH, the other Defendants in this action, and the CO-OP’s other creditors. However, it has become clear to UHH that while Greenberg remains counsel for the Receiver, the “fair and impartial” processing of this action will always be compromised.

For example, Greenberg refuses to recuse itself from matters where it has an ethical obligation to do so. Despite the Receiver’s retention of “conflicts counsel” to deal with matters that Greenberg should not, Greenberg refuses to take a step back and allow Lewis & Roca to act as counsel for the Receiver in depositions wherein the topic of Xerox is likely to be raised. Not only does this prejudice UHH—but it affects the Receiver’s ability to fully litigate her claims, and thus presents a risk to the Receivership Estate and its many creditors (including UHH).

Moreover, it was Greenberg’s conflicts of interest that led this Court to deny UHH’s Motion to Implead Xerox. Now, UHH faces the risk of being found liable for damages in excess of \$142 million—damages which UHH would have to pay before even commencing a contribution claim against Xerox. Thus, UHH could be forced into insolvency before recouping its damages through a separate contribution action against Xerox.

In these circumstances, a stay of this action is proper, legally supported, and simply a function of common sense. A stay will prevent the objects of the Appeal and Writ Petition from

1 being defeated; e.g., by preventing Greenberg’s conflict from irreparably tainting this matter,
2 protecting the creditors and Receivership Estate from further erosion of the limited Estate assets, and
3 protecting UHH from irreparable harm by being unable to present a full defense at trial due to the
4 inability to implead Xerox. Any harm from the delay of this action will be negligible, as briefing on
5 the Appeal is complete and the outcome of the Writ Petition⁶ will almost certainly be dependent on
6 the outcome of the Appeal. Moreover, the Receiver will not be prejudiced by a stay; to the contrary,
7 a stay will preserve Estate assets. Finally, UHH has a strong likelihood of success on the merits of
8 the Appeal and the Writ Petition, as the Receivership Court exhibited a manifest abuse of discretion
9 in failing to consider overwhelming authority from other jurisdictions mandating the disqualification
10 of counsel for a fiduciary, like a receiver, with conflicts of interests similar to Greenberg’s.
11 Similarly, UHH contends that it was an abuse of discretion to deny the Motion to Implead Xerox
12 based solely on Greenberg’s self-inflicted, undisclosed, and actively concealed conflicts of interest.

13 Therefore, UHH requests that this Court enter an Order staying all further discovery⁷ and the
14 trial pending the resolution of the Appeal and the Writ Petition.

15 II. STATEMENT OF FACTS

16 A. The Disastrous Nevada Health Exchange.

17 In March 2010, Congress passed the Patient Protection and Affordable Care Act (“ACA”)
18 with the goal of expanding access to affordable health insurance. (Ex. 1, at 2:12-13.) In 2012, the
19 CO-OP was created as a non-profit insurance company under § 1322 of the ACA, which was
20 intended to incentivize the creation of qualified non-profit health insurers, specifically in the
21 individual and small group markets. (Am. Compl. at ¶¶ 2, 68.) The CO-OP retained UHH to act as
22 third-party administrator for some of its medical claims and retained Nevada Health Solutions to
23 perform evaluations of the appropriateness and medical necessity of health care services, procedures,
24 and facilities. (*Id.* at ¶¶ 26, 302.)

25 ///

27 ⁶ While the Receiver has not yet answered the Writ Petition, the delay in briefing is due to the Receiver’s request
for a 60-day continuance due to its counsel’s heavy workload.

28 ⁷ See footnote 1, *supra*.

The ACA also provided for the creation of American Health Benefit Exchanges, where consumers could review and purchase insurance policies from ACA insurers, including, but not limited to, the CO-OP. 42 U.S.C. § 18031(b). Nevada elected to create its own health exchange, and in 2012, awarded Xerox a \$72 million contract to administer and operate it (the “Xerox Exchange”). NRS 695I.200; *see also* Ex. 8;⁸ Ex. 9,⁹ at 2 ¶ 6.

Specifically, Xerox was hired to design an online marketplace where consumers could evaluate and compare insurers, select an insurer, complete the enrollment process, and have their information and premium payments transmitted to the insurers. (Ex. 10,¹⁰ at 2, 6-8, 12-14.) The process was supposed to be seamless. However, the Xerox Exchange’s launch on October 1, 2013, was an utter failure. (Ex. 11.¹¹) The Xerox Exchange website frequently crashed, and consumers encountered great difficulties even completing the enrollment process. (*Id.*; Ex. 12.¹²) Insurers soon found that Xerox was not sending them accurate and timely premium payments and complete data on consumer enrollments. (Ex. 13;¹³ Ex. 14;¹⁴ Ex. 15.¹⁵) The issues were so pervasive that they resulted in two class action settlements; namely:

- *Basich v. State of Nevada ex rel. Silver State Health Insurance Exchange*, No. A-14-698567-C, Eighth Judicial District Court, Clark County, Nevada — a class action filed on behalf of all Nevada consumers who purchased insurance policies on the Xerox Exchange and did not receive the benefits of such policies;¹⁶ and

⁸ Kyle Roerink, *Nevada, Xerox in Private Talks to Settle \$75 Million Health Care Contract Out of Court*, LAS VEGAS SUN (October 1, 2014), attached as Exhibit 8.

⁹ Xerox Contract, attached as Exhibit 9.

¹⁰ Silver State Exchange Requirements Matrix, attached as Exhibit 10.

¹¹ Deloitte Consulting LLP Report, attached as Exhibit 11.

¹² Jennifer Robison, *Silver State Health Insurance Exchange Still Plagued by Problems*, LAS VEGAS REVIEW J. (November 5, 2013), attached as Exhibit 12.

¹³ February 24, 2014 correspondence from Tom Zumbobel to Governor Brian Sandoval and Xerox State Healthcare, LLC, attached as Exhibit 13.

¹⁴ February 19, 2014 NHC Board Minutes, attached as Exhibit 14.

¹⁵ May 23, 2014 NHC Board Minutes, attached as Exhibit 15.

¹⁶ Joint Motion for Final Approval of Class Settlement, Certification of Settlement Class, Approval of Attorney’s Fees and Costs, and Entry of Final Order, Case No. A-14-69857-C, attached as Exhibit 16, at 1, 3:1-4, 4:7; Consent Order, In the Matter of Xerox State Healthcare, LLC, No. 17-0299, State of Nevada, Department of Business and Insurance, Division of Insurance, attached as Exhibit 17, at 2:18-23.

1 • *Casale v. State of Nevada ex rel. Silver State Health Insurance Exchange*, No. A-14-706171-
2 C, Eighth Judicial District Court, Clark County, Nevada — a class action filed on behalf of all
3 Nevada brokers owed unpaid commissions for the sale of insurance policies on the Xerox
Exchange.¹⁷

4 The State of Nevada also retained Deloitte Consulting LLP (“Deloitte”) to evaluate the
5 Xerox Exchange, and Deloitte identified more than 1,500 defects—over 500 of which were
6 classified as a “higher severity.” (Ex. 11, at 3, 10.) Xerox’s performance was so poor and disruptive
7 that Nevada ultimately terminated Xerox and opted to proceed using a federally facilitated exchange.
8 (Ex. 8; Ex. 18, at 4.) Nevada’s Division of Insurance also conducted a regulatory action¹⁸ involving
9 Xerox’s failures in developing, administering, and managing the Xerox Exchange, which resulted in
10 a Consent Order being entered on October 20, 2017. (Ex. 17.)

11 **B. Xerox’s Failures Send the CO-OP Into Insolvency.**

12 Xerox’s failures also had direct ramifications for the CO-OP. In fact, the issues that the CO-
13 OP experienced were so severe and pervasive that the CO-OP’s CEO met three times per week with
14 the Governor’s office, other insurance carriers, and Xerox, to discuss “the challenges the CO-OP
15 [wa]s experiencing with data submission from Xerox.” (Ex. 14, at 1-2.) In February 2014, the CO-
16 OP wrote the Governor and Xerox noting that despite the fact that the CO-OP had “attracted 37% of
17 the [Xerox] Exchange market share,” Xerox’s “broken enrollment system” was “undeniably the
18 greatest threat to [the CO-OP’s] operations.” (Ex. 13, at 1.) By May 2014, the CO-OP determined
19 that “Xerox ha[d] drained the CO-OP’s resources[,] as no less than 50% of the CO-OP’s resources
20 ha[d] been committed to Xerox and Xerox[-]related issues since October 2013.” (Ex. 18,¹⁹ at 5.)

21 On September 25, 2015, the Nevada Department of Insurance (“NDOI”) commenced a
22 delinquency proceeding against the CO-OP by filing a Petition for Appointment of its Commissioner
23 as Receiver and Other Permanent Relief; Request for Temporary Injunction Pursuant to NRS

24
25
26 ¹⁷ Ex. 16, at 2, 3:1-4, 3:7; Ex. 17, at 2:18-25.

27 ¹⁸ In the Matter of Xerox State Healthcare, LLC, No. 17-0299, State of Nevada, Department of Business and
Insurance, Division of Insurance.

28 ¹⁹ Minutes of the Regular Meeting of the Formation Board of Directors of Nevada Health CO-OP, Batesnumbered
LARSON014384-14390 (May 23, 2014), attached as Exhibit 18.

1 696B.270(1). (Ex. 19,²⁰ at 2:22-3:2.) The Receivership Court appointed the Commissioner as the
2 temporary Receiver for the CO-OP on October 1, 2015, and on October 14, 2015, the Receivership
3 Court appointed the Commissioner as the CO-OP's permanent Receiver. (Ex. 20,²¹ Ex. 21.) Cantilo
4 & Bennett, LLP was appointed as the Special Deputy Receiver ("SDR"). (Ex. 21,²² at 2:9-10.)

5 On July 21, 2016, the Receiver moved for a final order (the "Motion for Final Order")
6 declaring the CO-OP to be insolvent and placing it into liquidation. (Ex. 22.²³) The Receivership
7 Court granted the Motion for Final Order on September 21, 2016. (Ex. 23,²⁴ at 2:2-5.)

8 **C. Greenberg Becomes Involved With the Receivership Action.**

9 Before the Receivership Court granted the Motion for Final Order, on August 8, 2016,
10 Greenberg, on behalf of CO-OP creditor, Valley, filed a response to the Receiver's Motion for Final
11 Order, seeking to hold the declaration of insolvency and order for liquidation in abeyance until the
12 Receiver could demonstrate that (i) it had identified all potential sources for recovery of the assets of
13 the CO-OP; and (ii) all efforts had been undertaken to obtain those assets for the CO-OP's creditors.
14 (Ex. 24,²⁵ at 3:5-10.) Greenberg represented that Valley was raising these concerns about efforts for
15 asset recovery for the Receivership Estate because Valley had "a substantial claim exceeding \$5
16 million in this case." (*Id.* at 8:18.)

17 **Four months later**—on December 19, 2016, the Receiver filed a motion in the Receivership
18 Court seeking approval of the Court to retain Greenberg as her counsel. (Ex. 25,²⁶ at 5:24-25, 6:1-

19 _____
20 ²⁰ Petition for Appointment of Commissioner as Receiver and Other Permanent Relief; Request for Temporary
Injunction Pursuant to NRS 696B.270(1) (September 25, 2015), attached as Exhibit 19.

21 ²¹ Order Appointing the Acting Insurance Commissioner, Amy L. Parks, as Temporary Receiver Pending Further
22 Orders of the Court and Granting Temporary Injunctive Relief Pursuant to NRS 696B.270 (October 1, 2015), attached as
Exhibit 20.

23 ²² Permanent Injunction and Order Appointing Commissioner as Permanent Receiver of Nevada Health CO-OP
(October 14, 2015), attached as Exhibit 21.

24 ²³ Motion for Final Order Finding and Declaring Nevada Health CO-OP to Be Insolvent, Placing Nevada Health
CO-OP Into Liquidation, and Granting Related Relief (July 21, 2016), attached as Exhibit 22.

25 ²⁴ Final Order Finding and Declaring Nevada Health CO-OP to Be Insolvent and Placing Nevada Health CO-OP
26 Into Liquidation (September 21, 2016), attached as Exhibit 23.

27 ²⁵ Response to Motion for Final Order Finding and Declaring Nevada Health CO-OP to Be Insolvent, Placing
Nevada Health CO-OP Into Liquidation, and Granting Related Relief (August 8, 2016), attached as Exhibit 24.

28 ²⁶ Motion to Approve Professional Fee Rates on an Order Shortening Time (December 19, 2016), attached as
Exhibit 25.

2.) In the motion, the Nevada Deputy Attorney General, the Receiver’s original counsel, asserted that Greenberg’s representation was needed because “the Receiver does not have access to the legal resources necessary to evaluate the prosecution and defense of litigation.” (*Id.* at 3:11-12.) The Deputy Attorney General also claimed that the “Receiver needs immediate assistance of legal counsel and consulting firms with specialized expertise for the evaluation and resolution of [the creditors’] claims, which may also include the pursuit of related counterclaims.” (*Id.* at 3:12-16.)

While seeking the Receivership Court’s approval of Greenberg’s engagement, *neither Greenberg, the Receiver, nor the SDR made any disclosures regarding potential or actual conflicts of interests.* (*See generally* Ex. 25.)

Unsurprisingly, the Receivership Court expressed no concerns about Greenberg’s representation, other than whether Greenberg’s substantial hourly rates could deplete the CO-OP’s assets and lead to reduced payments for the CO-OP’s creditors, and approved Greenberg’s engagement. (Ex. 26,²⁷ at 4:25-27.)

Eight months later—on August 25, 2017—Greenberg, on behalf of the Receiver, filed this lawsuit. (*See generally* Compl.)

D. UHH Learns of Greenberg’s Multiple Unwaivable Conflicts of Interest.

As the parties engaged in discovery in this action, UHH not only learned about Xerox’s role in the disastrous launch of the Xerox Exchange in Nevada, and the damage that Xerox’s actions caused to the CO-OP, but also about Greenberg’s concurrent representation of the Receiver, Valley, and Xerox. As a result, UHH requested that the Receiver provide some basis for Greenberg’s engagement, in light of what appeared to be multiple unwaivable conflicts of interests. (Ex. 27.²⁸) However, the Receiver refused to produce any engagement letters or conflict waivers to support Greenberg’s assertion that no conflicts of interest existed. (Ex. 28.²⁹) Nor would the Receiver

²⁷ Notice of Entry of Order (January 23, 2017), attached as Exhibit 26.

²⁸ June 16, 2020 correspondence from John R. Bailey to Mark E. Ferrario and Donald Prunty, attached as Exhibit 27.

²⁹ June 26, 2020 email correspondence from Donald Prunty to John R. Bailey, attached as Exhibit 28.

1 provide any logical basis for her decision not to pursue claims against Xerox.³⁰ (Ex. 29,³¹ at 3:23-
2 4:17; Ex. 30,³² at 5:14-17, 6:17-28, 7:1-8:14.)

3 UHH further learned that despite Greenberg’s concurrent representation of the Receiver and
4 both a creditor and a potential target of the Receivership Estate, Greenberg *never disclosed its*
5 *conflicts* to the Receivership Court. In fact, Greenberg actively concealed them. In the Receiver’s
6 Eighth Status Report, filed on October 6, 2017, Greenberg, on behalf of the Receiver, stated that
7 “Counsel for Xerox” in the Basich class action “wrote to the [SDR] on June 15, 2017” concerning
8 “short-pay funds’ that it claims ‘represents payment[s] that the CO-OP’s] consumers submitted to
9 Xerox for the 2014 coverage year that were less than that consumer’s [sic] full premium payment[s]
10 which were] required to initiate transfer of the payment[s] to [the CO-OP].’” (Ex. 31,³³ at 16:2-8.)
11 The unnamed “Counsel for Xerox” also stated that Nevada’s Silver State Health Insurance Exchange
12 had instructed Xerox to remit the funds to carriers, like the CO-OP, so that the carriers could refund
13 the consumers. (*Id.* at 16:8-14.) The unnamed “Counsel for Xerox” likewise informed the SDR that
14 the CO-OP must also refund “other members for overpaid premiums that [the CO-OP] received from
15 Xerox during the 2014 coverage year.” (*Id.* at 16:15-18.)

16 Greenberg reported to the Receivership Court that the SDR, in response to the letter from the
17 unnamed “Counsel for Xerox,” had “asked for further clarification and documentation from Xerox”
18 and was “evaluating the information.” (*Id.* at 16:13-14, 17-18.)

19 In Greenberg’s fourteen subsequent reports filed over the next three and a half years,
20 Greenberg failed to mention this correspondence from the still unnamed “Counsel for Xerox” or the
21 funds to be returned to the CO-OP’s members. In fact, it was not until UHH received responses to
22 its discovery requests that it was able to confirm that the unnamed “Counsel for Xerox” who had

23 ³⁰ The Receiver’s only explanation was that Xerox “had no direct contractual relationship with [the CO-OP],” an
24 explanation which is confounding based on Xerox’s payment of over \$5 million dollars to settle two class action suits
25 brought by individuals who likewise had no direct contractual relationship with Xerox. Ex. 16. at 10:23-25, 14:22-
15:18; Ex. 29, at 4:20-5:1. Simply put, that is precisely what tort claims are designed to address.

26 ³¹ Plaintiff’s Response to Unite Here Health’s Third Set of Interrogatories, served August 7, 2020, attached as
Exhibit 29.

27 ³² Plaintiff’s Response to Unite Here Health’s Sixth Set of Requests for Production, served August 7, 2020,
attached as Exhibit 30.

28 ³³ Eighth Status Report (October 6, 2017), attached as Exhibit 31.

1 been corresponding with the SDR about these premiums was actually Greenberg—who was (and is)
2 concurrently counsel for the Receiver. (Ex. 32.³⁴)

3 **E. UHH Moves to Disqualify Greenberg.**

4 On October 8, 2020, UHH filed a Motion to Disqualify Greenberg in the Receivership
5 Action. (Ex. 33.³⁵) UHH contended that Xerox should have been a primary target of Greenberg’s
6 investigation of entities that were potentially liable to the CO-OP, but that the Receiver was barred
7 from bringing claims against Xerox due to Greenberg’s conflict of interest. (*Id.* at 2:1-7.) UHH also
8 contended that Greenberg’s representation of Valley, a significant creditor of the CO-OP
9 Receivership Estate, “rais[ed] the specter of preferential treatment in favor of Valley and to the
10 detriment of all of the remaining creditors who are not fortunate enough to also be represented by
11 Greenberg.” (*Id.* at 2:10-13.) Due to Greenberg, the Receiver, and the SDR’s failure to disclose
12 these significant and known conflicts to the Receivership Court at the time of Greenberg’s
13 appointment or anytime thereafter, UHH sought disqualification of Greenberg as counsel for the
14 Receiver, as well as disgorgement of all of the attorney’s fees and costs paid to Greenberg from the
15 assets of the Receivership Estate (which were approximately \$5 million at the time of the filing of
16 the Motion to Disqualify). (*Id.* at 2:15-19.)

17 In opposing the Motion to Disqualify, Greenberg, the Receiver, and the SDR asserted, for the
18 first time, and in direct contradiction to the representations made to the Receivership Court at the
19 time of Greenberg’s appointment, as well as in direct contradiction with the reality that Greenberg
20 had appeared and litigated on behalf of the Receiver *in five separate actions*, that: “[Greenberg] was
21 retained by the Receiver for the limited purpose of pursuing specific claims on the Receiver’s
22 behalf” and had “fully advised the Receiver that [Greenberg] had a potential conflict with pursuing
23 any claim against [Xerox]. [Therefore, t]he Receiver consequently did not retain [Greenberg] to
24 evaluate or pursue any such claims.” (Ex. 34³⁶ at 2:14-18.) *Instead*, the Receiver retained conflicts
25

26 ³⁴ June 14, 2017 correspondence from Whitney L. Welch-Kirmse to Patrick Cantilo, attached as Exhibit 32.

27 ³⁵ Unite Here Health and Nevada Health Solutions, LLC’s Motion 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 (October 8, 2020), attached as Exhibit 33.

28 ³⁶ Greenberg’s Traurig LLP’s Opposition to Unite Here Health and Nevada Health Solutions, LLC’s Motion to

1 counsel, Santoro Whitmire, Ltd., “to handle any matters that were outside the scope of [Greenberg’s]
2 retention due to potential conflicts. Since its engagement, [Greenberg] had no involvement
3 whatsoever in the Receiver’s evaluation of its potential claims against Xerox,” nor did Greenberg’s
4 representation include “allocating assets among creditors like Valley.” (*Id.* at 2:19-25; Ex. 25.)

5 However, neither Greenberg nor the Receiver have produced a single shred of evidence,
6 other than self-serving affidavits, to support this assertion. They have produced no engagement
7 letters, conflict of interest waivers, billing invoices, or other correspondence—not even for in camera
8 review.

9 Moreover, the Receiver’s quarterly status reports to the Receivership Court—all of which
10 were prepared and filed by Greenberg since the time of its retention in January 2017—reveal that
11 “conflicts counsel” (Santoro Whitmire) billed less than \$2,000.00 to the Receivership estate since
12 2017, despite the abundance of issues relating to Xerox that have arisen in this action. (Ex. 35,³⁷ at
13 43; Ex. 36,³⁸ at 52.) Further, the Attorney General’s Office—the Receiver’s original counsel—
14 stated that it knew nothing about the conflicts and only discovered Greenberg’s prior representation
15 of Xerox after reviewing UHH’s Motion to Disqualify. (Ex. 37, at 2:9-25 & n.1, 5:9-14.)

16 Despite Greenberg’s duplicitous actions, and a wealth of authority mandating disqualification
17 where counsel for fiduciaries, like receivers, fail to disclose actual or potential conflicts of interest,
18 the Receivership Court denied the Motion to Disqualify because of a lack of *Nevada* authority
19 requiring disclosure of such known conflicts. (Ex. 38.) The Receivership Court, despite the
20 Receiver’s role as a fiduciary and officer of the Court—stated: “[UHH] have not been able to point
21 to any binding authority that mandates the Receiver and her counsel, [Greenberg], disclose all
22 possible conflicts to the Court. Because there is no explicit rule requiring disclosure, the Court
23 cannot disqualify [Greenberg] on that basis.” (*Id.* at 6:17-20.)

24 The Receivership Court also created a new requirement that conflicts must be “substantial
25 enough” to warrant disqualification, and found that the Xerox conflict was not “clear and substantial

26 _____
Disqualify Greenberg Traurig and Disgorge Attorneys’ Fees (November 16, 2020), attached as Exhibit 34.

27 ³⁷ Sixth Status Report (April 5, 2017), attached as Exhibit 35.

28 ³⁸ Seventh Status Report (July 6, 2017), attached as Exhibit 36.

1 enough possible conflict[s] to justify disqualifying [Greenberg] as counsel in this Receivership
2 matter.” (*Id.* at 6:21-22.)

3 Finally, the Receivership Court based its decision on a lack of “related matters where the
4 CO-OP [wa]s adverse to Xerox,” and stated that UHH was “free to attempt to bring in Xerox as a
5 third-party defendant and seek whatever relief they believe they are entitled to with the Judges
6 overseeing those matters.” (*Id.* at 6:22-7:1.)

7 On February 7, 2021, UHH filed a Notice of Appeal in the Nevada Supreme Court, and,
8 alternatively, on February 26, 2021, UHH filed a Petition for Extraordinary Writ Relief regarding the
9 same issues. (*See generally* Ex. 1; Ex. 2.)

10 **F. The Receiver Retains New “Conflicts Counsel.”**

11 Shortly after the Receivership Court’s decision, the Receiver sought and received the
12 Receivership Court’s approval to replace Santoro Whitmire with the law firm of Lewis & Roca as
13 “outside conflicts counsel”. (Ex. 39³⁹ at 4:15-19; Ex. 40⁴⁰ at 6.) The Receiver ambiguously
14 explained that “[p]reviously approved conflicts counsel for the CO-OP has declined further
15 representation as additional parties added to related cases has [sic] caused such counsel to reconsider
16 its ability or willingness to represent the CO-OP.” (Ex. 39 at 4:12-14.) The Receiver did not
17 elaborate as to what caused Santoro Whitmire to “reconsider” its willingness to serve as conflicts
18 counsel, as no additional parties had been added to any of the Receiver’s related actions at the time
19 of its withdrawal.

20 **G. UHH Seeks to Implead Xerox as a Third-Party Defendant.**

21 On October 15, 2020, UHH sought to implead Xerox as a third-party defendant through its
22 Motion to Implead Xerox. The Receiver’s new “conflicts counsel” opposed the Motion to Implead
23 Xerox claiming it would be “futile” for UHH to assert a contribution claim against Xerox.
24 (Combined Resp. to Mots. (I) for Leave to File Third-Party Compl. and (II) to Consolidate (Mar. 29,
25 2021).) The Receiver also proffered the baffling argument that contribution was not permitted

26 ³⁹ Motion to Approve Professional Fee Rates on Order Shortening Time (February 18, 2021), attached as Exhibit
27 39.

28 ⁴⁰ Notice of Entry [Order Granting Motion to Approve Professional Fee Rates] (March 22, 2021), attached as
Exhibit 40.

1 because her claims against UHH were contractual—despite many of her claims being
2 straightforward torts (*e.g.*, malpractice and gross negligence). (*Id.*)

3 On May 3, 2021, this Court issued a minute order denying the Motion to Implead Xerox,
4 agreeing that it was timely under this Court’s scheduling order, yet specifically noting that its
5 decision stemmed from “potential conflicts resulting in the disqualification of Plaintiff’s counsel...”
6 (Minute Order (May 3, 2021).) Notice of Entry of the Order Denying the Motion to Implead Xerox
7 was filed on June 11, 2021. (Notice of Entry of Order Denying Mots. (I) for Leave to File Third-
8 Party Compl. and (II) to Consolidate (June 11, 2021).)

9 On July 1, 2021, UHH filed a Petition for Extraordinary Writ Relief in the Nevada Supreme
10 Court, requesting that the Court vacate the Order Denying the Motion to Implead Xerox. (Ex. 3.)
11 On August 4, 2021, the Court ordered additional briefing on the Writ Petition.

12 **H. Greenberg Refuses to Prevent Its Conflict From Further Tainting the**
13 **Proceedings.**

14 On September 2, 2021, Counsel for UHH (“Mr. Bailey”) sent correspondence to Lewis &
15 Roca, seeking to confirm that Greenberg would refrain from participation in all matters related to
16 Xerox in upcoming depositions. (Ex. 4.) Specifically, Mr. Bailey noted that “a considerable portion
17 of those depositions will involve questioning regarding Xerox State Healthcare, LLC (“Xerox”) and
18 its role as the primary architect and operator of Nevada Health Link...” (*Id.*) Based on Greenberg’s
19 representations that “the Receiver’s use of conflicts counsel to handle the portions of the litigation
20 involving Xerox would avoid any potential conflict,” UHH conveyed its expectation that “Lewis &
21 Roca—as ‘conflicts counsel’—w[ould] unilaterally handle all depositions that would potentially
22 encompass any issues relating to Xerox.” (*Id.*) UHH stated that it also expected that “Greenberg
23 w[ould] not participate in any deposition that concern[ed] or relate[d] to Xerox, including, but not
24 limited to, the preparation for any such deposition. Considering Greenberg’s ongoing loyalties to
25 Xerox, as well as the undisputable presumption that Greenberg obtained confidential and privileged
26 information from Xerox to which no other parties are privy, any participation in these depositions by
27 Greenberg would have the effect of tainting those proceedings. (*Id.*)

28 In response, Lewis & Roca refused to confirm that Greenberg would be screened from all

1 Xerox-related preparation or questioning at the upcoming depositions. (Ex. 5.) Instead, Lewis &
2 Roca stated that “[t]he bare fact that the receiver has hired our firm—expressly “in an abundance of
3 caution” rather than as an admission of an ethical duty—does not give adverse parties the
4 prerogative to dictate who may represent the receiver at depositions.” (*Id.*) Lewis & Roca would
5 not confirm Greenberg’s exclusion from Xerox-related matters, but stated that “the [R]eceiver will
6 decide these questions on an individual basis rather than through a blanket “protocol” as you are
7 proposing.” (*Id.*)

8 Because Lewis & Roca would not provide any assurances that Greenberg would not be
9 permitted to taint the deposition proceedings relating to Xerox, UHH asked that the Receiver agree
10 to stay discovery pending the Nevada Supreme Court’s decision on the appeal of the Order Denying
11 Motion to Disqualify. (Ex. 6.) The Receiver failed to respond.

12 **I. The Deposition of Patty McCoy.**

13 On September 22, 2021, the Receiver deposed former CO-OP employee Patty McCoy. (Ex.
14 7.) Notwithstanding UHH’s correspondence, Greenberg—not Lewis & Roca—appeared on behalf
15 of the Receiver.⁴¹ (*Id.* at 7:20-25.)

16 During UHH’s cross-examination of Ms. McCoy, including UHH’s questions about Xerox,
17 Greenberg participated as counsel, and lodged objections to UHH’s questions. (*Id.* at 163:4-177:7.)
18 Greenberg did not ask Ms. McCoy any follow-up questions pertaining to Xerox. (*Id.* at 186:23-
19 187:5.)

20 **III. ARGUMENT**

21 **A. Standard of Decision.**

22 In deciding whether to issue a stay, the district court should generally consider the following
23 factors: “(1) whether the object of the appeal or writ petition will be defeated if the stay...is denied;
24 (2) whether [the] appellant/petitioner will suffer irreparable or serious injury if the stay...is denied;
25 (3) whether [the] respondent/real party in interest will suffer irreparable or serious injury if the
26 stay...is granted; and (4) whether the appellant/petitioner is likely to prevail on the merits in the
27

28 ⁴¹ *Id.*

1 appeal or writ petition.” NRAP 8(c); *State v. Robles-Nieves*, 129 Nev. 537, 539–40, 306 P.3d 399,
2 401 (2013); *Fritz Hansen A/S v. Eighth Jud. Dist. Ct. ex rel. Cnty. of Clark*, 116 Nev. 650, 657, 6
3 P.3d 982, 986 (2000). No factor weighs heavier than the others; however, “if one or two factors are
4 especially strong, they may counterbalance other weak factors.” *Mikohn Gaming Corp. v. McCrea*,
5 120 Nev. 248, 251, 89 P.3d 36, 38 (2004) (citation omitted); *see also Landis v. N. Am. Co.*, 299 U.S.
6 248, 254 (1936) (“[T]he power to stay proceedings is incidental to the power inherent in every court
7 to control the disposition of the causes on its docket with economy of time and effort for itself, for
8 counsel, and for litigants.”).

9 Here, all four factors establish that this action should be stayed pending resolution of both the
10 Appeal and the Writ Petition.

11 **B. The Object of the Appeal Will Be Defeated if the Stay Is Denied.**

12 The primary issue in the Appeal is whether fiduciaries, such as receivers, special deputy
13 receivers, and their proposed counsel must disclose conflicts of interest to the Receivership Court at
14 the time of their proposed appointment. If so, the question then becomes whether the Receivership
15 Court erred and abused its discretion in finding that Greenberg’s failure to disclose (and active
16 concealment of) its concurrent representation of (1) the Receiver and Valley, a creditor of the
17 Receiver Estate; and (2) the Receiver and Xerox—a significant target of the Receivership Estate—
18 warranted its disqualification as counsel for the Receiver.

19 “[A] receiver must act for the benefit of all persons interested in the property.” *Fullerton v.*
20 *Second Jud. Dist. Ct. ex rel. Cnty. of Washoe*, 111 Nev. 391, 400, 892 P.2d 935, 941 (1995). Thus,
21 “a [r]eceiver owes [a] fiduciary duty to all the parties in interest, including the creditors . . . , and is
22 under the duty to act impartially toward, and protect the rights of, all parties.” *Hilti, Inc. v. HML*
23 *Dev. Corp.*, No. 97271, 2007 Mass. Super. LEXIS 66 at *55-56 (Mass. Super. Ct. Feb. 5, 2007)
24 (internal quotation omitted). Special deputy receivers and *the receiver’s counsel* are also fiduciaries
25 and must therefore be neutral and impartial. *McPherson v. U.S. Physicians Mut. Risk Retention*
26 *Group*, 99 S.W.3d 462, 468 (Mo. Ct. App. 2003) (holding that both the SDR and receiver’s counsel
27 are a “fiduciary of all parties interested in the receivership”); *KeyBank Nat’l Ass’n v. Michael*, 737
28 N.E.2d 834, 852 (Ind. Ct. App. 2000); *In re Coastal Equities, Inc.*, 39 B.R. 304, 309 (Bankr. S.D.

1 Cal. 1984); *Pulitzer Publishing Co. v. Transit Cas. Co.*, 43 S.W.3d 293, 303 (Mo. 2001).

2 The Receiver, SDR, and Greenberg are therefore required to remain neutral and impartial to
3 all creditors of the Receivership estate. However, Greenberg's representation of Valley in front of
4 the Receivership Court irreparably destroys the appearance of neutrality and calls into question the
5 legitimacy of the receivership process. (Ex. 1, at 56:8-13.) Because Greenberg did not disclose, but
6 rather actively concealed its representation of both Valley and Xerox from the Receivership Court,
7 creditors, such as UHH, were unable to lodge objections.

8 Moreover, the Receiver is obligated to pursue all legal avenues which could maximize the
9 receivership estate for the benefit of the creditors. *See Phelan v. Middle States Oil Corp.*, 154 F.2d
10 978, 990 (2d Cir. 1946) (holding that a receiver (and by extension her counsel) have an "affirmative
11 duty to endeavor to realize the largest possible amount for assets of the estate") (internal citation
12 omitted); *see also Hilti, Inc. v. HML Dev. Corp.*, No. 97271, 2007 Mass. Super. LEXIS 66 at *52
13 (Mass. Super. Ct. Feb. 5, 2007).

14 However, Greenberg's representation **of Xerox** in substantially related matters precluded it
15 from analyzing or pursuing claims **against Xerox**, and the Receiver consequently brought claims
16 against other parties (like UHH) who are not culpable. (*See* Ex. 1, at 53:12-54:5.) Greenberg's
17 conflicts of interest have destroyed the Receiver's ability to neutrally appraise which entities to bring
18 claims against, and has marred the Receiver's ability to fully maximize the receivership estate for the
19 benefit of creditors. *See In re S. Kitchens, Inc.*, 216 B.R. 819 (Bankr. D. Minn. 1998) ("**Regardless**
20 **of whom a trustee has identified as an opponent**, if a past or present client of proposed counsel was
21 involved in any way with the events that gave rise to the dispute or could otherwise be the subject of
22 a claim based on those events, the client has an interest adverse to the estate and disqualification
23 results.") (emphasis added); *see also In re Bohack Corp.*, 607 F.2d 258, 264 (2d Cir. 1979).

24 Finally, Greenberg's continued participation in this case is destroying the impartiality and
25 fairness of this proceeding. Greenberg refuses to recuse itself from proceedings (such as
26 depositions) where Xerox is a topic of interest. (*See* Exs. 4-7.) Greenberg's refusal to honor its
27 ethical obligations (and the Receiver's representations to the Court about its "conflicts counsel")
28 further raises the question of whether Greenberg is acting in the interest of the Receiver and creditors

1 of the Receivership Estate, *or* whether Greenberg is acting in the interests of its former client, Xerox.

2 Greenberg's involvement in these proceedings has already begun to destroy the Receiver's
3 appearance of neutrality and has tainted both the Receivership Action and this litigation. Thus, this
4 Court should not permit discovery to continue and this case to proceed to trial before the Supreme
5 Court has rendered a decision on the Appeal, at the risk of allowing Greenberg's conflicts to further
6 infect these proceedings beyond any reasonable cure.

7 **C. The Object of the Writ Petition Will Also Be Defeated if the Stay Is Denied.**

8 UHH's Writ Petition demonstrates that the repercussions of Greenberg's conflict are being
9 felt outside of the Receivership Action and are causing serious prejudice to parties who are not
10 solely creditors of the Receivership Estate.

11 Specifically, Greenberg's fiduciary duties to its former client, Xerox, prevent it from
12 pursuing Xerox as a target of the Receivership Estate. Not only does this impact the creditors of the
13 Receivership Estate, because the Receiver is failing to pursue every possible avenue of recovery, it
14 also directly impacts UHH in the instant action, because the Receiver (and Greenberg) are seeking
15 damages from *UHH* for harm to the CO-OP caused by *Xerox's* failures in designing and operating
16 the Xerox Exchange in Nevada.

17 Greenberg is well aware of Xerox's culpability—having represented Xerox in two class
18 action suits arising from Xerox's failures in conjunction with the Xerox Exchange, as well as in a
19 regulatory investigation conducted by the Nevada Division of Insurance. However, Greenberg
20 cannot bring claims against its former client; therefore, the blame for Xerox's failings has been
21 shifted to UHH.

22 Despite the *Receiver's* failure to name the correct party as a defendant, UHH sought to
23 implead Xerox as a third-party defendant in order to establish that it was Xerox—not UHH—whose
24 actions were a significant contributor to the CO-OP's demise. Impleading Xerox would have
25 maximized judicial efficiency by preventing the necessity of a second, separate action after the
26 conclusion of this matter. Moreover, by impleading Xerox, all parties with potential liability to the
27 CO-OP would have been present in the same forum, allowing for a proper (and timely)
28 apportionment of liability. *Shafarman v. Ryder Truck Rental Inc.*, 100 F.R.D. 454, 458–59

(S.D.N.Y. 1984) (“Impleader is a procedural device that promotes judicial efficiency because it allows for the adjudication of several claims in one action, thereby eliminating circuitous, duplicative actions.”); *Nalder v. Eighth Jud. Dist. Ct ex rel. Cnty. of Clark.*, 136 Nev. Adv. Rep. 24, 462 P.3d 677, 685 (2020) (“Allowing a case that has reached final judgment to be consolidated with a newer case undermines that goal by permitting relitigation of resolved issues and requiring parties to spend unnecessary additional court costs.”).

However, this Court denied said motion, *solely on the basis of Greenberg’s conflict of interest*. Despite the fact that Greenberg’s conflicts were “self-inflicted,” and that Greenberg alone is responsible for the repercussions of those conflicts, it is UHH—not Greenberg, and not the Receiver—who is being prejudiced by Greenberg’s conflicts, Greenberg’s non-disclosure of those conflicts, and Greenberg’s active concealment of those conflicts.

Although UHH attempted to file the Writ Petition as expeditiously as possible, the Receiver recently sought an extension to file her Answer. Now, briefing on the Writ Petition will not conclude until November 2021. Not only will discovery be nearly complete by the time the briefing on the Writ Petition has concluded—but the trial may also be concluded, thereby rendering the Writ Petition moot before the Supreme Court issues a decision.

Moreover, if the Supreme Court grants the Writ Petition, Xerox will be added to this matter as a third-party defendant. Xerox will undoubtedly want to participate in discovery. While the parties may easily provide Xerox with the evidence produced thus far, and permit Xerox time to produce expert reports, the cost and effort associated with re-scheduling and re-deposing the dozens of witnesses involved in this case will severely impact all parties—in addition to the deponents themselves.

Thus, this Court should require the conservation of both party and judicial resources by staying further discovery and trial pending a decision on the Writ Petition.

D. The Harm Posed by Greenberg’s Continued Representation of the Receiver Warrants a Stay.

It is widely accepted that motions to disqualify should be granted “where necessary to preserve the integrity of the adversary process.” *Lowe v. Experian*, 328 F. Supp. 2d 1122, 1125 (D.

Kan. 2004); *see also Plant Genetic Sys. N.V. v. Ciba Seeds*, 933 F. Supp. 514, 517 (M.D.N.C. 1996) (“The guiding principle in considering a motion to disqualify counsel is safeguarding the integrity of the court proceedings; the purpose of granting such motions is to eliminate the threat that the litigation will be tainted.”). Therefore, most courts agree that a stay of proceedings is warranted when a motion to disqualify is pending in order to preserve the fairness of the underlying proceedings. *See, e.g., Bowers v. Ophthalmology Group*, 733 F.3d 647, 654 (6th Cir. 2013) (holding that when a motion to disqualify has been filed, “a court should not reach the other questions or motions presented to it through the disqualified counsel”); *see also Grimes v. Dist. of Columbia*, 794 F.3d 83, 90 (D.C. Cir. 2015); *Allergia, Inc. v. Bouboulis*, No. 14-CV-1566 JLS (RBB), 2015 U.S. Dist. LEXIS 189230, at *13 (S.D. Cal. May 5, 2015) (holding that the motion to disqualify “must be decided before proceeding with other issues in the case”).

Courts routinely preclude conflicted counsel from attending or participating in proceedings where their client (or former client) is a relevant witness—and in some instances, disqualify conflicted counsel from participation altogether. *See, e.g., Koza v. Dist. Ct.*, 99 Nev. 535, 538, 665 P.2d 244, 246 (1983); *United States v. Dunlap*, No. 2:08-cr-00283-RCJ-RJJ, 2010 U.S. Dist. LEXIS 82474, at *14–*18 (D. Nev. July 6, 2010); *Sykes v. Matter*, 316 F. Supp. 2d 630, 633–36 (M.D. Tenn. 2004); *Emmis Operating Co. v. CBS Radio, Inc.*, 480 F. Supp. 2d 1111, 1119–20 (S.D. Ind. 2007); *FMC Techs., Inc. v. Edwards*, 420 S. Supp. 2d 1153, 1160–61 (W.D. Wash. 2016).

Indeed, the likelihood that a conflict will taint the proceedings is so great, that *the mere continuation of the proceedings* constitutes irreparable harm to *all* parties involved in the matter. *See Grimes v. Dist. of Columbia*, 794 F.3d 83, 90 (D.C. Cir. 2015) (“Resolving asserted conflicts before deciding substantive motions assures that no conflict taints the proceeding, impairs the public’s confidence, or infects any substantive motion prepared by or under the auspices of conflicted counsel.”) As one court noted:

It is essential that a tribunal determine whether an attorney or law firm is disqualified from a case immediately upon being alerted to a potential conflict of interest. ***Until that determination is made, no further proceedings may take place.*** Conflicts of interest, left unchecked, could taint an entire case and call into question the integrity of the attorney client relationship.... ***Failing to stay the proceedings was error that***

seriously affected the fairness, integrity, or public reputation of the proceedings.

Living Cross Ambulance Serv., Inc. v. N.M. Pub. Regulation Comm’n, 338 P.3d 1258, 1264 (N.M. 2014) (emphasis added). Greenberg acknowledged this verity in consenting to a stay while the Receivership Court decided the Motion to Disqualify. The same principles apply before the Nevada Supreme Court—particularly since the Supreme Court has decided to entertain the Appeal.

While the hypothetical harm caused by Greenberg’s conflict (especially where, as here, the Receiver is acting in her statutory role and on behalf of Nevada insureds) *warrants* a stay, the actual harm caused by Greenberg’s conflict *mandates* a stay. As discussed *supra*, Greenberg has not simply refrained from suing its former client Xerox—Greenberg has also fought UHH’s attempts to obtain information regarding Xerox for use in its defense, and refused to recuse itself from proceedings where its presence is improper and unethical. While this impacts UHH and its defense, it also prejudices the Receiver and her ultimate ability to recover assets for Receivership Estate.

For example, Greenberg cannot ask questions pertaining to Xerox in its cross-examination or redirect. While this does not immediately impact UHH, it impacts the Receiver’s ability to fully litigate her claims, and thus impacts every creditor and policyholder of the Receivership Estate—one of which is UHH. Greenberg’s refusal to allow “conflicts counsel” to handle matters pertaining to Xerox in discovery also raises the question of whether Greenberg intends to argue Xerox-related matters at trial.

Moreover, as discussed *infra*, UHH is likely to prevail on its eventual appeal. Accordingly, the closer that this case gets to trial, the more the Receiver will have to “unwind” upon Greenberg’s ultimate disqualification. Therefore, the harm to the Receivership Estate and to UHH mandates a stay of discovery and trial pending the outcome of the Appeal.

E. UHH Will Suffer Irreparable Harm if This Matter Is Not Stayed While the Writ Petition Is Pending.

To be clear, UHH has already been harmed by Greenberg’s conflicts of interest. Greenberg has repeatedly frustrated UHH’s attempts to obtain information pertaining to Xerox (and Greenberg’s conflicts) through the discovery process, thereby harming UHH’s attempts to develop

1 its defense.

2 However, while the Receivership Court refused to acknowledge that Greenberg's conflict of
3 interest precluded the Receiver from bringing claims against Xerox, it recognized that UHH could
4 seek to implead Xerox in the underlying action. However, when UHH sought to do so, this Court
5 denied the Motion **based solely on Greenberg's conflict of interest**. In other words, the Receiver
6 cannot sue Xerox due to Greenberg's conflict of interest, and now UHH cannot sue Xerox based on
7 Greenberg's conflict of interest.

8 UHH should not have to suffer the consequences of Greenberg's self-inflicted conflicts of
9 interest. UHH is not responsible for the Receiver's and the SDR's decision to retain Greenberg in
10 the face of known conflicts, nor is UHH responsible for Greenberg's active concealment of those
11 conflicts from the Receivership Court. Further, Greenberg was well aware of Xerox's role in
12 Nevada's disastrous attempt to launch the Xerox Exchange, and it should have foreseen that any
13 parties that Greenberg chose to blame for the failure of the CO-OP would ultimately seek to redirect
14 blame to the true wrongdoer: Xerox.

15 Moreover, should this Court deny the stay pending the Supreme Court's decisions,
16 Greenberg's conflicts of interest may not only damage UHH, but potentially destroy it. **First**,
17 because this Court denied UHH's Motion to Implead Xerox, the factfinder will be precluded from
18 *apportioning* blame to Xerox at trial for harm caused to the CO-OP. NRS 41.141(2)(b)(2);
19 *Warmbrodt v. Blanchard*, 100 Nev. 703, 709, 692 P.2d 1282, 1286 (1984). Instead, UHH may only
20 argue that Xerox is **entirely** at fault for the harm that the CO-OP attributes to UHH, which
21 significantly increases UHH's burden of proof. *Banks ex rel. Banks v. Sunrise Hospital*, 120 Nev.
22 822, 844-45, 102 P.3d 52, 67 (2004).

23 **Second**, "[t]he right of contribution exists only in favor of a tortfeasor who has paid more
24 than his or her equitable share of the common liability. . ." NRS 17.225(2). Therefore, UHH will be
25 required to pay any monetary judgments before it may pursue separate contribution claims against
26 Xerox. The Receiver is seeking more than **\$142 million** in damages. Should UHH be required to
27 pay any portion of this amount, it could be driven into insolvency before receiving (or even
28 pursuing) any contribution from Xerox. *See* 3 Moore's Federal Practice -Civil § 14.03 (2020)

1 (“Even when the defendant is successful in the second suit, it will be required to pay for separate
2 litigation, and may suffer adverse consequences because of the delay between judgments in the two
3 suits.”).

4 The extraordinary prejudice that Greenberg’s conflicts are causing UHH warranted UHH
5 filing its Appeal and Writ Petition in the Supreme Court. The Appeal is now fully briefed.
6 However, while UHH filed its Writ Petition as expeditiously as possible, in the hopes of obtaining a
7 speedy resolution, the Receiver requested an extension of time to file her Answer, which is now due
8 in November 2021. Based on this timeframe, it is likely that the Supreme Court will not have issued
9 a decision on the Writ Petition before the parties’ current May 2022 trial date. Therefore, a stay is
10 necessary to preserve the status quo until the Supreme Court issues its decision.

11 **F. The Receiver Will Suffer No Harm From a Stay.**

12 While UHH will suffer irreparable harm if this Court does not grant a stay—the Receiver
13 will suffer *little to no harm* if this action is stayed pending resolution of the Appeal and Writ
14 Petition. First, the stay would not be for an indefinite period of time. The parties have already
15 completed briefing in the Appeal, and simply await the Supreme Court’s issuance of a decision.
16 Moreover, the decision on the Appeal is likely to have a direct impact on the Court’s ultimate
17 decision on the Writ Petition.

18 Second, the parties have already completed a substantial amount of discovery. The parties
19 have exchanged documents and written discovery, and their experts have produced reports.⁴² The
20 sole remaining piece is the deposition of witnesses and experts. If Greenberg is ultimately
21 disqualified, the Receiver will not be forced to make a determination on whether Greenberg’s
22 presence tainted the depositions. With regard to the Writ Petition, if UHH is allowed to implead
23 Xerox, the parties will have minimized the amount of discovery that must be replicated once Xerox
24 is a party to the proceedings.

25 Finally, if the Court determines that Greenberg must be disqualified—Greenberg may or may
26

27 ⁴² Despite the progress the parties have made in discovery, the Receiver has thus far grossly failed to comply with
28 her discovery obligations by actively concealing relevant and material evidence. These failures are the subject of UHH’s
pending Rule 37(c) Motion for Sanctions and will likewise require UHH to supplement its expert reports.

1 not have to disgorge its fees earned in representing the Receiver. If Greenberg is not forced to
2 disgorge its fees, then a stay benefits the receivership estate and all of its creditors, because it stops
3 the bleeding of limited resources. Therefore, the stay will not prejudice the Receiver financially.

4 **G. UHH Is Likely to Prevail on the Merits of the Appeal.**

5 “[T]he standard of review for an order resolving a motion to disqualify ‘is for abuse of
6 discretion, with the underlying factual findings reviewed for clear error and the interpretation of the
7 relevant rules of attorney conduct reviewed de novo[.]’” *State ex rel. Cannizzaro v. First Judicial*
8 *Dist. Ct.*, 136 Nev. Adv. Rep. 34, 466 P.3d 529, 531 (2020) (citation omitted).

9 The Receivership Court based its decision on the lack of “binding authority that mandates the
10 Receiver and her counsel, Greenberg, disclose all possible conflicts to the Court.” (Ex. 38 at 6:17-
11 20.) While the Receivership Court may have been correct that there is not an explicit Nevada rule or
12 statute which addresses the disclosure of conflicts of interest in a receivership proceeding, the
13 Receivership Court abused its discretion in ignoring the clear, undisputed, and overwhelming weight
14 of authority requiring receivers and their counsel to fully disclose all conflicts of interest (actual or
15 potential) to the appointing court at the time of the appointment.

16 Moreover, while the Receivership Court adopted a new standard to determine that it could
17 not find “a clear and substantial enough possible conflict” in Greenberg’s representation of Xerox to
18 justify disqualification, the Receivership Court failed entirely to address Greenberg’s representation
19 of both the Receiver and a creditor of the Receivership Estate (Valley) in the exact same matter.

20 ***Every receivership and bankruptcy court*** that has encountered this type of conflict of
21 interest has determined that the attorney in question suffers from a disabling conflict of interest. *See*
22 *CFTC v. Ustace*, Nos. 05-2973, 06-1944, 2007 U.S. Dist. LEXIS 33137 (E.D. Pa. May 3, 2007); *In*
23 *re Bohack Corp.*, 607 F.2d 258, 264 (2d. Cir. 1979); *In re Envirodyne Indus.*, 150 B.R. 1008, 1019
24 (Bankr. N.D. Ill. 1993); *Real Estate Capital Corp. v Thunder Corp.*, 31 Ohio Misc. 169, 188 (Ohio
25 Ct. Comm. 1972); *In re Git-N-Go, Inc.*, 321 B.R. 54, 59 n.4 (Bankr. N.D. Okla. 2004); *In re Leslie*
26 *Fay Cos.*, 175 B.R. 525, 534 (Bankr. S.D.N.Y. 1994).

27 The Receivership Court ignored the resounding weight of authority from other jurisdictions
28 in denying UHH’s Motion to Disqualify. Therefore, the Supreme Court is likely to find that the

1 Receivership Court abused its discretion and reverse the Receivership Court’s denial of the Motion
2 to Disqualify.

3 **H. UHH Is Likely to Prevail on the Merits of the Writ Petition.**

4 As discussed *supra*, this Court’s decision to deny UHH’s Motion to Implead Xerox was
5 based on Greenberg’s conflicts of interest. However, the Supreme Court is likely to find that it was
6 a manifest abuse of discretion to allow any “prejudice” caused by Greenberg’s self-inflicted conflicts
7 of interest to outweigh UHH’s rights to implead Xerox. *See El Camino Res., Ltd. v. Huntington*
8 *Nat’l Bank*, 623 F. Supp. 2d 863, 886 (W.D. Mich. 2007) (holding that a thrust upon conflict “must
9 truly be unforeseeable, and that the conflict must truly be no fault of the lawyer.”) (internal quotation
10 omitted). Moreover, as discussed in Section III.E, *supra*, UHH respectfully suggests that this Court
11 underestimated the severe prejudice to UHH should UHH have to pursue contribution claims against
12 Xerox in a separate action.

13 For these reasons, the Supreme Court is likely to find that this Court abused its discretion and
14 will grant UHH’s Writ Petition.

15 **IV. CONCLUSION**

16 For the foregoing reasons, UHH respectfully requests that this Court stay all remaining
17 discovery and the trial in this action pending the outcome of the Appeal and the Writ Petition, and
18 requests that this Court grant this Motion in its entirety.

19 DATED this 6th day of October, 2021.

20 BAILEY❖KENNEDY

21 By: /s/ Dennis L. Kennedy

22 JOHN R. BAILEY

23 DENNIS L. KENNEDY

24 SARAH E. HARMON

25 JOSEPH A. LIEBMAN

26 REBECCA L. CROOKER

27 [Additional Attorneys Listed in Caption]

28 *Attorneys for Defendants*

*Unite Here Health and Nevada Health
Solutions, LLC*

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Nevada Commissioner of
Insurance, Plaintiff(s)

7 vs.

8 Milliman Inc, Defendant(s)
9

CASE NO: A-17-760558-B

DEPT. NO. Department 16

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 10/7/2021

15 Brian Blankenship	brian@nvfirm.com
16 Patrick Byrne	pbyrne@swlaw.com
17 Jeanne Forrest	jforrest@swlaw.com
18 Susana Nutt	snutt@lipsonneilson.com
19 Joseph Liebman	jliebman@baileykennedy.com
20 John Bailey	jbailey@baileykennedy.com
21 Bailey Kennedy, LLP	bkfederaldownloads@baileykennedy.com
22 Michele Caro	mcaro@ag.nv.gov
23 Alex Fugazzi	afugazzi@swlaw.com
24 Cynthia Ney	neyc@gtlaw.com
25 Mark Ferrario	ferrariom@gtlaw.com

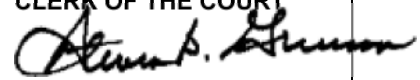
26
27
28

1	Eric Swanis	swanise@gtlaw.com
2	Donald Prunty	pruntyd@gtlaw.com
3	LVGT docketing	lvlitdock@gtlaw.com
4	Andrea Rosehill	rosehilla@gtlaw.com
5	Megan Sheffield	sheffieldm@gtlaw.com
6	Angela Nakamura Ochoa	aochoa@lipsonneilson.com
7	Daniel Polsenberg	dpolsenberg@lewisroca.com
8	Suzanna Bonham	SBonham@seyfarth.com
9	Justin Kattan	justin.kattan@dentons.com
10	Monice Campbell	monice@envision.legal
11	Emma Mata	EMata@seyfarth.com
12	Matthew Pruitt	mpruitt@alversontaylor.com
13	Docket Docket	docket_las@swlaw.com
14	Jessie Helm	jhelm@lewisroca.com
15	Copy Room	efile@alversontaylor.com
16	Aleem Dhalla	adhalla@swlaw.com
17	Kurt Bonds	kbonds@alversontaylor.com
18	Anthony MacKenzie	mackenzie@nvfirm.com
19	Lori Siderman	siderman@mmrs-law.com
20	Russell Brown	brown@mmrs-law.com
21	Michelle Briggs	mbriggs@ag.nv.gov
22	Joel Henriod	jhenriod@lewisroca.com
23	Abraham Smith	asmith@lewisroca.com
24		
25		
26		
27		
28		

1	Ann Fukushima	fukushima@mmrs-law.com
2	Jason Hicks	hicksja@gtlaw.com
3	Jonathan Wong	jwong@lipsonneilson.com
4	D'Andrea Dunn	ddunn@swlaw.com
5	Kimberly Frederick	frederickk@gtlaw.com
6	Juan Cerezo	jcerezo@lipsonneilson.com
7	Mursal Nyazi	nyazi@mmrs-law.com
8	Evelyn Gaddi	escobargaddie@gtlaw.com
9	Christian Spaulding	spauldingc@gtlaw.com
10	Denise Doyle	service@cb-firm.com
11	Taylor Higgins	thiggins@swlaw.com
12	Rebecca Crooker	rcrooker@baileykennedy.com
13	Darnell Lynch	dlynch@lipsonneilson.com
14	Shermielynn Irasga	irasgas@gtlaw.com
15	Cynthia Kelley	ckelley@lewisroca.com
16	Emily Kapolnai	ekapolnai@lewisroca.com
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

EXHIBIT C

EXHIBIT C



NEOJ (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

8984 Spanish Ridge Avenue

Las Vegas, Nevada 89148-1302

Telephone: 702.562.8820

Facsimile: 702.562.8821

JBailey@BaileyKennedy.com

SHarmon@BaileyKennedy.com

JLiebman@BaileyKennedy.com

RCrooker@BaileyKennedy.com

SUZANNA C. BONHAM

Texas Bar No. 24012307

EMMA C. MATA

Texas Bar No. 24029470

SEYFARTH SHAW LLP

700 Milam, Suite 1400

Houston, Texas 77002

Telephone: 713.225.2300

SBonham@seyfarth.com

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

**NOTICE OF ENTRY OF ORDER
DENYING UNITE HERE HEALTH AND
NEVADA HEALTH SOLUTIONS'
MOTION FOR STAY PENDING
RESOLUTION OF NEVADA SUPREME
COURT APPEAL AND WRIT
PETITION**

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.

PLEASE TAKE NOTICE that an Order Denying Defendants Unite Here Health and Nevada Health Solutions, LLC's Motion for Stay Pending Resolution of Nevada Supreme Court Appeal and Writ Petition was entered in the above-entitled action on the 16th day of November, 2021, a true and correct copy of which is attached hereto.

DATED this 16th day of November, 2021.

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*

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 16th day of November, 2021, 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 address:

MARK E. FERRARIO
ERIC W. SWANIS
DONALD L. PRUNTY
GREENBERG TRAURIG LLP
10845 Griffith Peak Drive, Suite 600
Las Vegas, Nevada 89135
Email: ferrariom@gtlaw.com
swanise@gtlaw.com
pruntyd@gtlaw.com
Attorneys for Plaintiff

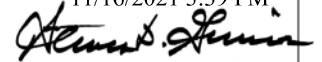
DANIEL F. POLSENBERG
JOEL D. HENRIOD
ABRAHAM G. SMITH
**LEWIS ROCA ROTHGERBER
CHRISTIE LLP**
3993 Howard Hughes Parkway, Ste. 600
Las Vegas, Nevada 89169-5996
Email: DPolsenberg@LewisRoca.com
JHenriod@LewisRoca.com
ASmith@LewisRoca.com
Attorneys for Plaintiff

JOSEPH P. GARIN
ANGELA T. NAKAMURA OCHOA
LIPSON NEILSON, P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89135
Email: jgarin@lipsonneilson.com
aochoa@lipsonneilson.com
Attorneys for Defendants Kathleen Silver, Bobbette Bond, Tom Zumtobel, Pamela Egan, Basil Dibsie, and Linda Mattoon

KURT R. BONDS
MATTHEW PRUITT
ALVERSON TAYLOR & SANDERS
6605 Grand Montecito Parkway, Suite 200
Las Vegas, Nevada 89149
Email: kbonds@alversontaylor.com
mpruitt@alversontaylor.com
Attorneys for Defendants InsureMonkey, Inc. and Alex Rivlin

LORI E. SIDERMAN
RUSSELL B. BROWN
**MEYERS MCCONNELL REISZ
SIDERMAN**
1745 Village Center Circle
Las Vegas, Nevada 89134
Email: siderman@mmrs-law.com
brown@mmrs-law.com
Attorneys for Defendants Martha Hayes, Dennis T. Larson, and Larson & Co, P.C.

/s/ Angelique Mattox
Employee of BAILEY ♦ KENNEDY


CLERK OF THE COURT

BAILEY ♦ KENNEDY
8984 SPANISH RIDGE AVENUE
LAS VEGAS, NEVADA 89148-1302
702.562.8820

ORDR

JOHN R. BAILEY
Nevada Bar No. 0137
DENNIS L. KENNEDY
Nevada Bar No. 1462
SARAH E. HARMON
Nevada Bar No. 8106
JOSEPH A. LIEBMAN
Nevada Bar No. 10125
REBECCA L. CROOKER
Nevada Bar No. 15202
BAILEY ♦ KENNEDY
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148-1302
Telephone: 702.562.8820
Facsimile: 702.562.8821
JBailey@BaileyKennedy.com
SHarmon@BaileyKennedy.com
JLiebman@BaileyKennedy.com
RCrooker@BaileyKennedy.com

SUZANNA C. BONHAM
Texas Bar No. 24012307
EMMA C. MATA
Texas Bar No. 24029470
SEYFARTH SHAW LLP
700 Milam, Suite 1400
Houston, Texas 77002
Telephone: (713) 225-2300
sbonham@seyfarth.com
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

Case No. A-17-760558-B
Dept. No. XVI

**ORDER DENYING UNITE HERE
HEALTH AND NEVADA HEALTH
SOLUTIONS' MOTION FOR STAY
PENDING RESOLUTION OF NEVADA
SUPREME COURT APPEAL AND
WRIT PETITION**

**Date of Hearing: October 20, 2021
Time of Hearing: 9:30 a.m.**

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; 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.

This matter came before the Court, the Honorable Timothy C. Williams presiding, on the 20th day of October, 2021, at 9:30 a.m., in Department 16, on Defendants Unite Here Health and Nevada Health Solutions, LLC's (jointly, "UHH") Motion for Stay Pending Resolution of Nevada Supreme Court Appeal and Writ Petition ("Motion for Stay"). Daniel F. Polsenberg of Lewis Roca Rothgerber Christie LLP and Donald L. Prunty, and Glenn Meier of Greenberg Traurig, LLP appeared on behalf of Plaintiff. John R. Bailey and Dennis L. Kennedy of Bailey ♦ Kennedy appeared on behalf of UHH. Angela Ochoa of Lipson Neilson, P.C. appeared on behalf of the Management Defendants.¹ Matthew Pruitt of Alverson Taylor & Sanders appeared on behalf of the InsureMonkey Defendants.² Russell B. Brown of Meyers McConnell Reisz Sideman appeared on behalf of the Larson Defendants.³

This Court, having considered the papers and pleadings on file and the arguments of counsel for all parties, and for good cause appearing, hereby

///

///

¹ Kathleen Silver, Bobbette Bond, Tom Zumtobel, Pamela Egan, Basil Dibsie, and Linda Mattoon are referred to as the "Management Defendants."

² InsureMonkey, Inc. and Alex Rivlin are referred to as the "InsureMonkey Defendants."

³ Martha Hayes, Dennis T. Larson, and Larson & Co., P.C. are referred to as the "Larson Defendants."

IT IS HEREBY ORDERED that the Motion for Stay is **DENIED**.

~~DATED this ____ day of _____, 2021.~~

Dated this 16th day of November, 2021

Timothy C. Williams

5BA 9C4 46D0 B438
Timothy C. Williams
District Court Judge

MH

Submitted by:

BAILEY ♦ KENNEDY

By: /s/ John R. Bailey

JOHN R. BAILEY

DENNIS L. KENNEDY

SARAH E. HARMON

JOSEPH A. LIEBMAN

REBECCA L. CROOKER

SEYFARTH SHAW LLP

SUZANNA C. BONHAM

EMMA C. MATA

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

Approved as to Form and Content:

GREENBERG TRAURIG, LLP

By: /s/ x

MARK E. FERRARIO
NEVADA BAR NO. 1625
DONALD L. PRUNTY
NEVADA BAR NO. 8230
10845 Griffith Peak Drive, Suite 600
Las Vegas, Nevada 89135

LEWIS ROCA ROTHGERBER CHRISTIE, LLP

DANIEL F. POLSENBERG
NEVADA BAR NO. 2376
JOEL D. HENRIOD
NEVADA BAR NO. 8492
ABRAHAM G. SMITH
NEVADA BAR NO. 13250

Attorneys for Plaintiff

Approved as to Form and Content:

ALVERSON TAYLOR & SANDERS

By: /s/ Matt Pruitt

KURT R. BONDS
NEVADA BAR NO. 6228
MATTHEW PRUITT
NEVADA BAR NO. 12474
6605 Grand Montecito Parkway, Suite 200
Las Vegas, Nevada 89149

*Attorneys for Defendants
InsureMonkey, Inc. and Alex Rivlin*

Approved as to Form and Content:

LIPSON NEILSON, P.C.

By: /s/ Angela Ochoa

JOSEPH P. GARIN
NEVADA BAR NO. 6653
ANGELA T. NAKAMURA OCHOA
NEVADA BAR NO. 10164
9900 Covington Cross Dr., Suite 120
Las Vegas, Nevada 89144

*Attorneys for Defendants Kathleen Silver,
Bobbette Bond, Tom Zumtobel, Pamela Egan,
Basil Dibsie and Linda Mattoon*

Approved as to Form and Content:

**MEYERS McCONNELL REISZ
SIDERMAN**

By: /s/ Lori E. Siderman

LORI E. SIDERMAN
NEVADA BAR NO. 7515
RUSSELL B. BROWN
NEVADA BAR NO. 11355
1745 Village Center Circle
Las Vegas, Nevada 89134

*Attorneys for Defendants Larson & Company,
Martha Hayes and Dennis T. Larson*

Angie Mattox

From: Sarah Harmon
Sent: Wednesday, November 3, 2021 1:58 PM
To: PruntyD@gtlaw.com; ferrariom@gtlaw.com; Polsenberg, Daniel F.; Henriod, Joel D.; ASmith@lewisroca.com; Joe Garin; Angela Ochoa; kbonds@alversontaylor.com; mpruitt@alversontaylor.com; siderman@mms-law.com; brown@mms-law.com
Cc: John Bailey; Joseph Liebman; Rebecca Crooker; Bonham, Suzanna C; Mata, Emma
Subject: State of Nevada (Richardson) v. Milliman, Inc. (No. A-17-760558-B) - Draft Order Denying Motion for Stay
Attachments: Order Denying Motion for Stay (21.11.03).docx

Good afternoon –

Because EDRC 7.21 requires that the parties submit proposed orders to the Court within 14 days of notification of the Court's ruling — and no draft order has been circulated to the parties to date regarding UHH's Motion to Stay (which was heard on October 20th) — Bailey Kennedy has prepared a draft Order Denying UHH's Motion for Stay for your review and approval. Please let me know as soon as possible if you have any revisions or if I may add your e-signature.

Because today is the 14th day since the hearing on the motion, please provide your revisions or authorizations by no later than noon tomorrow, as we will be submitting this draft for the Court's consideration shortly thereafter.

Thank you,
Sarah Harmon

Sarah E. Harmon
Bailey❖Kennedy
8984 Spanish Ridge Avenue
Las Vegas, NV 89148-1302
(702) 562-8820 (Main)
(702) 562-8821 (Fax)
(702) 853-0757 (Direct)
Sharmon@baileykennedy.com

This e-mail message is a confidential communication from Bailey Kennedy, LLP, and is intended only for the named recipient(s) above and may contain information that is a trade secret, proprietary, privileged or attorney work product. If you have received this message in error, or are not the named or intended recipient(s), please immediately notify the sender at 702-562-8820 and delete this e-mail message and any attachments from your workstation or network mail system

Angie Mattox

From: Lori Sideman <sideman@mms-law.com>
Sent: Thursday, November 4, 2021 11:15 AM
To: Sarah Harmon
Cc: Russell Brown
Subject: RE: State of Nevada (Richardson) v. Milliman - Draft Order Denying Stay

You are authorized to attach my e-signature. Thanks

Lori E. Sideman

Meyers | McConnell
Reisz | Sideman

Meyers McConnell Reisz Sideman P.C.

Attorneys at Law

11620 Wilshire Blvd., Suite 800

Los Angeles, CA 90025

Tel: 1-310-312-0772

Fax: 1-310-312-0656

Email: sideman@mms-law.com

1745 Village Center Circle

Las Vegas, NV 89134

Tel: 1-702-253-1377

Fax: 1-702-248-6192

CONFIDENTIALITY NOTICE: This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of the message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you receive this message in error, please immediately delete the message and notify the author by email or telephone at 1-310-312-0772.

Angie Mattox

From: Matt Pruitt <MPruitt@AlversonTaylor.com>
Sent: Wednesday, November 3, 2021 5:45 PM
To: Sarah Harmon; PruntyD@gtlaw.com; ferrariom@gtlaw.com; Polsenberg, Daniel F.; Henriod, Joel D.; ASmith@lewisroca.com; Joe Garin; Angela Ochoa; Kurt Bonds; siderman@mms-law.com; brown@mms-law.com
Cc: John Bailey; Joseph Liebman; Rebecca Crooker; Bonham, Suzanna C; Mata, Emma
Subject: RE: State of Nevada (Richardson) v. Milliman, Inc. (No. A-17-760558-B) - Draft Order Denying Motion for Stay

Approved

Matt Pruitt, Esq.
Alverson Taylor & Sanders
702.384.7000 | alversontaylor.com

Angie Mattox

From: Angela Ochoa <AOchoa@lipsonneilson.com>
Sent: Wednesday, November 3, 2021 2:55 PM
To: Sarah Harmon; PruntyD@gtlaw.com; ferrariom@gtlaw.com; Polsenberg, Daniel F.; Henriod, Joel D.; ASmith@lewisroca.com; Joe Garin; kbonds@alversontaylor.com; mpruitt@alversontaylor.com; siderman@mms-law.com; brown@mms-law.com
Cc: John Bailey; Joseph Liebman; Rebecca Crooker; Bonham, Suzanna C; Mata, Emma
Subject: RE: State of Nevada (Richardson) v. Milliman, Inc. (No. A-17-760558-B) - Draft Order Denying Motion for Stay

I approve the use of my esignature.

Angela

Angie Mattox

From: Sarah Harmon
Sent: Thursday, November 4, 2021 11:22 AM
To: Smith, Abraham
Subject: RE: State of Nevada (Richardson) v. Milliman - Draft Order Denying Stay

Yes, if it would help, I can hold off until 2:30 pm today, as I will be out of the office later this afternoon.

Thanks!!

Sarah E. Harmon
Bailey❖Kennedy
8984 Spanish Ridge Avenue
Las Vegas, NV 89148-1302
(702) 562-8820 (Main)
(702) 562-8821 (Fax)
(702) 853-0757 (Direct)
SHarmon@baileykennedy.com

This e-mail message is a confidential communication from Bailey Kennedy, LLP, and is intended only for the named recipient(s) above and may contain information that is a trade secret, proprietary, privileged or attorney work product. If you have received this message in error, or are not the named or intended recipient(s), please immediately notify the sender at 702-562-8820 and delete this e-mail message and any attachments from your workstation or network mail system

From: Smith, Abraham <ASmith@lewisroca.com>
Sent: Thursday, November 4, 2021 11:18 AM
To: Sarah Harmon <SHarmon@baileykennedy.com>
Subject: RE: State of Nevada (Richardson) v. Milliman - Draft Order Denying Stay

Sarah,

I was out on paternity leave but have asked our team to weigh in on the order. If you could kindly hold off submitting for them to approve, that would be great. I suspect we should have a response shortly.

From: Sarah Harmon <SHarmon@baileykennedy.com>
Sent: Thursday, November 4, 2021 11:14 AM
To: siderman@mmrs-law.com; brown@mmrs-law.com; ferrariom@gtlaw.com; PruntyD@gtlaw.com; Polsenberg, Daniel F. <DPolsenberg@lewisroca.com>; Henriod, Joel D. <JHenriod@lewisroca.com>; Smith, Abraham <ASmith@lewisroca.com>
Subject: State of Nevada (Richardson) v. Milliman - Draft Order Denying Stay

[EXTERNAL]

Good Morning –

In follow-up to my email from yesterday, please let me know if I may add your e-signature to the attached Order Denying UHH's Motion for Stay. We will be submitting this to the court shortly.

Thank you,
Sarah Harmon

Sarah E. Harmon
Bailey❖Kennedy
8984 Spanish Ridge Avenue
Las Vegas, NV 89148-1302
(702) 562-8820 (Main)
(702) 562-8821 (Fax)
(702) 853-0757 (Direct)
Sharmon@baileykennedy.com

This e-mail message is a confidential communication from Bailey Kennedy, LLP, and is intended only for the named recipient(s) above and may contain information that is a trade secret, proprietary, privileged or attorney work product. If you have received this message in error, or are not the named or intended recipient(s), please immediately notify the sender at 702-562-8820 and delete this e-mail message and any attachments from your workstation or network mail system

This message and any attachments are intended only for the use of the individual or entity to which they are addressed. If the reader of this message or an attachment is not the intended recipient or the employee or agent responsible for delivering the message or attachment to the intended recipient you are hereby notified that any dissemination, distribution or copying of this message or any attachment is strictly prohibited. If you have received this communication in error, please notify us immediately by replying to the sender. The information transmitted in this message and any attachments may be privileged, is intended only for the personal and confidential use of the intended recipients, and is covered by the Electronic Communications Privacy Act, 18 U.S.C. §2510-2521.

Angie Mattox

From: Sarah Harmon
Sent: Thursday, November 4, 2021 2:35 PM
To: Smith, Abraham; ferrariom@gtlaw.com; PruntyD@gtlaw.com; Polsenberg, Daniel F.; Henriod, Joel D.
Cc: Joseph Liebman; John Bailey
Subject: RE: State of Nevada (Richardson) v. Milliman - Order Denying Motion for Stay

I understand; however, I will have to submit the order in its current form by 2:50 p.m. this afternoon if we do not hear from you by then.

Thank you!

Sarah E. Harmon
Bailey❖Kennedy
8984 Spanish Ridge Avenue
Las Vegas, NV 89148-1302
(702) 562-8820 (Main)
(702) 562-8821 (Fax)
(702) 853-0757 (Direct)
Sharmon@baileykennedy.com

This e-mail message is a confidential communication from Bailey Kennedy, LLP, and is intended only for the named recipient(s) above and may contain information that is a trade secret, proprietary, privileged or attorney work product. If you have received this message in error, or are not the named or intended recipient(s), please immediately notify the sender at 702-562-8820 and delete this e-mail message and any attachments from your workstation or network mail system

From: Smith, Abraham <ASmith@lewisroca.com>
Sent: Thursday, November 4, 2021 2:27 PM
To: Sarah Harmon <SHarmon@baileykennedy.com>; ferrariom@gtlaw.com; PruntyD@gtlaw.com; Polsenberg, Daniel F. <DPolsenberg@lewisroca.com>; Henriod, Joel D. <JHenriod@lewisroca.com>
Cc: Joseph Liebman <JLiebman@baileykennedy.com>; John Bailey <JBailey@baileykennedy.com>
Subject: RE: State of Nevada (Richardson) v. Milliman - Order Denying Motion for Stay

Sarah, I am just waiting on final approval from the client. We will keep you posted.

From: Sarah Harmon <SHarmon@baileykennedy.com>
Sent: Thursday, November 4, 2021 2:09 PM
To: ferrariom@gtlaw.com; PruntyD@gtlaw.com; Polsenberg, Daniel F. <DPolsenberg@lewisroca.com>; Henriod, Joel D. <JHenriod@lewisroca.com>; Smith, Abraham <ASmith@lewisroca.com>
Cc: Joseph Liebman <JLiebman@baileykennedy.com>; John Bailey <JBailey@baileykennedy.com>
Subject: State of Nevada (Richardson) v. Milliman - Order Denying Motion for Stay

[EXTERNAL]

Abraham –

Just checking in on the status of Plaintiff's review of the proposed Order Denying the Motion for Stay. As I mentioned, I will be out of the office this afternoon, and I will be submitting the order shortly.

Thank you,
Sarah

Sarah E. Harmon
Bailey❖Kennedy
8984 Spanish Ridge Avenue
Las Vegas, NV 89148-1302
(702) 562-8820 (Main)
(702) 562-8821 (Fax)
(702) 853-0757 (Direct)
Sharmon@baileykennedy.com

This e-mail message is a confidential communication from Bailey Kennedy, LLP, and is intended only for the named recipient(s) above and may contain information that is a trade secret, proprietary, privileged or attorney work product. If you have received this message in error, or are not the named or intended recipient(s), please immediately notify the sender at 702-562-8820 and delete this e-mail message and any attachments from your workstation or network mail system

This message and any attachments are intended only for the use of the individual or entity to which they are addressed. If the reader of this message or an attachment is not the intended recipient or the employee or agent responsible for delivering the message or attachment to the intended recipient you are hereby notified that any dissemination, distribution or copying of this message or any attachment is strictly prohibited. If you have received this communication in error, please notify us immediately by replying to the sender. The information transmitted in this message and any attachments may be privileged, is intended only for the personal and confidential use of the intended recipients, and is covered by the Electronic Communications Privacy Act, 18 U.S.C. §2510-2521.

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Nevada Commissioner of
Insurance, Plaintiff(s)

CASE NO: A-17-760558-B

7 vs.

DEPT. NO. Department 16

8
9 Milliman Inc, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 11/16/2021

15 Brian Blankenship

brian@nvfirm.com

16 Patrick Byrne

pbyrne@swlaw.com

17 Jeanne Forrest

jforrest@swlaw.com

18 Susana Nutt

snutt@lipsonneilson.com

19 Sarah Harmon

sharmon@baileykennedy.com

20 Joseph Liebman

jliebman@baileykennedy.com

21 Dennis Kennedy

dkennedy@baileykennedy.com

22 John Bailey

jbailey@baileykennedy.com

23 Bailey Kennedy, LLP

bkfederaldownloads@baileykennedy.com

24 Michele Caro

mcaro@ag.nv.gov

25 Alex Fugazzi

afugazzi@swlaw.com

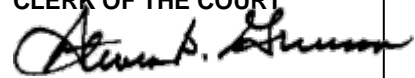
26
27
28

1	Cynthia Ney	neyc@gtlaw.com
2	Mark Ferrario	ferrariom@gtlaw.com
3	Eric Swanis	swanise@gtlaw.com
4	Donald Prunty	pruntyd@gtlaw.com
5	Matthew Pruitt	mpruitt@alversontaylor.com
6	LVGT docketing	lvlitdock@gtlaw.com
7	Andrea Rosehill	rosehilla@gtlaw.com
8	Megan Sheffield	sheffieldm@gtlaw.com
9	Docket Docket	docket_las@swlaw.com
10	Angela Nakamura Ochoa	aochoa@lipsonneilson.com
11	Daniel Polsenberg	dpolsenberg@lewisroca.com
12	Joel Henriod	jhenriod@lewisroca.com
13	Abraham Smith	asmith@lewisroca.com
14	Suzanna Bonham	SBonham@seyfarth.com
15	Justin Kattan	justin.kattan@dentons.com
16	Monice Campbell	monice@envision.legal
17	Emma Mata	EMata@seyfarth.com
18	Denise Doyle	service@cb-firm.com
19	Christian Spaulding	spauldingc@gtlaw.com
20	Dennis Kennedy	SHarmon@baileykennedy.com
21	Jessie Helm	jhelm@lewisroca.com
22	Copy Room	efile@alversontaylor.com
23	Aleem Dhalla	adhalla@swlaw.com
24		
25		
26		
27		
28		

1	Kurt Bonds	kbonds@alversontaylor.com
2	Anthony MacKenzie	mackenzie@nvfirm.com
3	Lori Siderman	siderman@mmrs-law.com
4	Russell Brown	brown@mmrs-law.com
5	Michelle Briggs	mbriggs@ag.nv.gov
6	Ann Fukushima	fukushima@mmrs-law.com
7	Jason Hicks	hicksja@gtlaw.com
8	Jonathan Wong	jwong@lipsonneilson.com
9	D'Andrea Dunn	ddunn@swlaw.com
10	Kimberly Frederick	frederickk@gtlaw.com
11	Juan Cerezo	jcerezo@lipsonneilson.com
12	Evelyn Gaddi	escobargaddie@gtlaw.com
13	Rebecca Crooker	rcrooker@baileykennedy.com
14	Darnell Lynch	dlynch@lipsonneilson.com
15	Shermielynn Irasga	irasgas@gtlaw.com
16	Cynthia Kelley	ckelley@lewisroca.com
17	Emily Kapolnai	ekapolnai@lewisroca.com
18	Glenn Meier	meierg@gmail.com
19	Lacee Netters	netters@mmrs-law.com
20		
21		
22		
23		
24		
25		
26		
27		
28		

EXHIBIT D

EXHIBIT D



SACOM

MARK E. FERRARIO, ESQ.

Nevada Bar No. 1625

DONALD L. PRUNTY, ESQ.

Nevada Bar No. 8230

GLENN F. MEIER, ESQ.

Nevada Bar No. 6059

GREENBERG TRAURIG, LLP

10845 Griffith Peak Drive, Suite 600

Las Vegas, Nevada 89135

Telephone: (702) 792-3773

Facsimile: (702) 792-9002

Email: ferrariom@gtlaw.com

pruntyd@gtlaw.com

meierg@gtlaw.com

Counsel for Plaintiff

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.

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;

CASE NO. A-17-760558-B

DEPARTMENT XVI

**SECOND AMENDED
COMPLAINT**

EXEMPT FROM ARBITRATION:
AMOUNT IN EXCESS OF \$50,000

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.

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

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

1 and the Director Defendants collectively the “Management Defendants”), and UNITE HERE
2 HEALTH (“UHH”) (each a “Defendant,” and collectively, all defendants are referred to as
3 “Defendants”) alleges as follows:

4 INTRODUCTION

5 1. Plaintiff, is the Commissioner of the Nevada Division of Insurance (the
6 “Nevada DOI”) and sues in her capacity as NHC’s court-appointed Receiver, having brought
7 this action on behalf of NHC, NHC’s members, insured enrollees, and creditors.

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

10 3. On information and belief, in 2011, CHF established Hospitality Health, Ltd., a
11 Delaware non-profit corporation (“Hospitality Health”), which was the predecessor in interest
12 to NHC. NHC was formed in October 2012, and all assets and agreements of Hospitality
13 Health were assigned to NHC.

14 4. After preparatory work from 2011 to 2013, NHC began writing and providing
15 health care insurance to Nevada citizens effective as of January 1, 2014. NHC voluntarily
16 stopped the writing of new health care insurance as of August 17, 2015, when it had been run
17 into the ground financially and was just about out of money to meet cash flow obligations.

18 5. With the financial and operating condition of NHC being in dire straits, on
19 September 25, 2015, and with the consent of NHC’s board of directors, a petition for
20 appointment of Commissioner as Receiver and Other Permanent Relief; Request for
21 Injunction Pursuant to NRS 696B.270(1) was filed against NHC by then-acting Nevada
22 Commissioner of Insurance, Amy L. Parks.

23 6. An Order Appointing the Acting Commissioner of Insurance, Amy L. Parks,
24 as Temporary Receiver Pending Further Orders of the Court, Granting Temporary Relief
25 Pursuant to NRS 696B.270, and authorizing the Temporary Receiver to appoint a special
26 deputy receiver was filed on October 1, 2015. The firm of Cantilo & Bennett, L.L.P. was
27 appointed as the Special Deputy Receiver of NHC.

28 ///

1 7. On October 14, 2015, the Court issued a Permanent Injunction and Order
2 Appointing Commissioner as Permanent Receiver of Nevada Health CO-OP. On
3 September 21, 2016, the Court issued a Final Order Finding and Declaring Nevada CO-OP
4 to be insolvent and placing Nevada Health CO-OP into Liquidation.

5 8. The Receiver has a dearth of assets available for the tens of millions of unpaid
6 claims of NHC's policyholders, members, and/or creditors. Health care providers of NHC
7 are owed millions of dollars from NHC's members, and they have not been allowed to seek
8 and obtain payment from NHC members for health care services rendered. Assets of NHC
9 were wasted and cannot, in some instances, be claimed back from third parties.

10 9. The Culinary Health Fund ("CHF") started Hospitality Health and NHC to
11 provide benefits for CHF or its affiliates, and CHF was aided substantially in this matter by
12 its affiliate, UHH, and by management it appointed or controlled, or with which it had close
13 business ties.

14 10. CHF and/or its affiliates or surrogates also retained unseasoned or ill-suited
15 contractors (including persons or entities affiliated with CHF) to manage NHC in a way that
16 provided direct or indirect benefits to CHF.

17 11. This complaint concerns certain providers of services to, and management of,
18 NHC, and how their conduct, including their failure to perform applicable fiduciary,
19 contractual, professional, and statutory standards, caused substantial losses to, and the waste
20 of assets of, NHC.

21 12. NHC's failure has now led to the appointment of a Receiver and the filing of
22 this action by the Receiver, and, ultimately, the other parties represented by the Receiver.

23 13. The complaint also concerns provider claims where providers are limited to
24 receiving payment from receivership recoveries. In asserting these claims, the Commissioner,
25 in her capacity as Receiver, sues on behalf of NHC but also on behalf of its members and
26 other creditors who have suffered damages resulting from common claims that the
27 Commissioner as Receiver can, and must, assert on their behalf beyond the narrow claims of
28 NHC itself.

1 14. InsureMonkey was contracted to provide administrative, software
2 implementation, and related services, including services to administer NHC's call center to
3 enroll insureds, provide the necessary documentation to assist NHC in billing the insureds
4 and the federal government for premiums and APTC², handle electronic payment processing
5 for members, assist NHC to collect premiums from insureds and the federal government by
6 providing proper support services, confirm eligibility and do the work necessary so that NHC
7 had proper member eligibility information, and when necessary, assist NHC in being able to
8 terminate the coverage of insureds who failed to pay premiums due.

9 15. InsureMonkey failed on each account, causing losses to NHC. Additionally,
10 without limitation, as some of InsureMonkey's compensation was paid as a broker based on
11 the number of insureds it calculated, InsureMonkey was overpaid for its services due to its
12 over reporting of the number of insureds, or taking compensation that it was not justly due,
13 and by taking wrongful actions that prolonged the life of NHC that caused NHC to pay Insure
14 Monkey greater compensation.

15 16. InsureMonkey also paid itself, or its representatives, broker commissions to
16 which it was not entitled, and these so-called broker services were already covered and paid
17 for by its other service agreements with NHC.

18 17. The faulty data provided by InsureMonkey also led to inaccurate financial and
19 other reporting to regulatory authorities, and it further resulted in claims being paid outside
20 of enrollment, other improper claim payments, claim delays, loss of federal recoverables, and
21 further Centers for Medicare and Medicaid Services ("CMS") loan events that harmed NHC.

22 18. Defendant Rivlin, InsureMonkey's Chief Executive Officer, who participated
23 in overcharging NHC for InsureMonkey services, also misled NHC concerning the
24 capabilities and efforts of InsureMonkey, which they could and did not perform properly, and
25

26
27 ² APTC means advance premium tax credits. APTC is a federal subsidy used toward the payment of
28 health insurance premiums for members who meet federal income and eligibility requirements for
such subsidy.

1 which was done so as to obtain or retain lucrative contracts from, and to enrich the
2 InsureMonkey Defendants at the expense of, NHC.

3 19. InsureMonkey and Rivlin also misled NHC and failed to appropriately reveal
4 the scope and extent of enrollment and customer service problems at NHC, causing substantial
5 financial and administrative problems and losses for NHC.

6 20. Milliman was NHC's consulting actuary that, among other issues, produced
7 deficient forecasts and studies for loan applications, set inadequate insurance premium levels,
8 provided faulty actuarial guidance to NHC management, promoted and incorporated in its
9 assumptions accounting entries that were neither proper nor authorized without appropriate
10 disclosure, participated in financial misreporting, misled insurance regulators, improperly
11 calculated and certified NHC's projections and reserves to regulators, took actions that caused
12 NHC to wrongfully draw down on CMS loans, and performed wrongful services that resulted
13 in the loss of recoverables from CMS.

14 21. Defendants Shreve and Heijde were individual actuaries of Milliman who
15 certified actuarial data to the Nevada DOI in their individual names.

16 22. Millennium, a self-proclaimed expert in statutory accounting and a consultant
17 for insurance companies, was engaged by NHC to prepare and file NHC's financial statements
18 and supplemental reports with the Nevada DOI and the National Association of Insurance
19 Commissioners ("NAIC"), assist in review and preparation of responses to insurance
20 regulators and NAIC regarding financials, respond to auditor inquiries, and provide statutory
21 accounting and report support as needed.

22 23. Millennium failed in its responsibilities which included, without limitation,
23 ensuring that statutory accounting and reporting principles had been followed, and its work
24 resulted in financial misreporting to the Nevada DOI, and the prolongation of NHC's business
25 at great loss beyond the point at which NHC's operations would have been halted but for
26 Defendant Millennium's acts and conduct.

27 24. Larson served as NHC's independent auditor that, among other issues,
28 performed deficient audits, failed to adequately inspect and value reserves and receivables,

1 failed to properly disclose related party transactions, and failed to disclose the existence of
2 substantial doubts about NHC's inability to continue as a going concern.

3 25. Defendants D. Larson and Hayes were the individual Certified Public
4 Accountants ("CPAs") identified by contract as directly responsible for NHC's audits.

5 26. UHH was an entity contracted to provide third-party administration services for
6 NHC, including administration of NHC's medical claims.

7 27. UHH had direct or indirect business links with Management Defendants Bond,
8 Zumtobel, and Silver, among others.

9 28. UHH misrepresented its capabilities throughout its association with NHC,
10 failed to properly report and account for the scope of its deficient services, and performed
11 services despite not being properly licensed as a third-party administrator.

12 29. On information and belief, UHH was owned by CHF or an affiliated entity, and
13 many of the directors and officers were directly employed by, or had affiliations or other
14 business dealings with, CHF and its affiliates, posing a substantial conflict of interest.

15 30. UHH was awarded its contract for NHC without the benefit of competitive
16 bidding, and UHH was paid very substantial and unwarranted fees by NHC. There was no
17 real accountability over how UHH charged fees to NHC, or how UHH processed claims.

18 31. UHH failed in its duties as third-party administrator by failing to properly
19 confirm the eligibility of insureds, paying claims outside of eligibility, not properly tracking
20 and reporting insurance data, mishandling record keeping and computer systems, and
21 generating inaccurate reports that were relied upon by NHC and others.

22 32. UHH vetted and recommended a claims system that could not appropriately
23 handle NHC's claims administration, which further exacerbated claims problems and issues
24 for NHC.

25 33. UHH represented that it had the requisite expertise to handle and process the
26 NHC claims when it did not have such expertise.

27 ///

28 ///

1 34. UHH failed to timely pay claims of NHC, resulting in financial losses, financial
2 misreporting, improper setting of rates, loss of federal receivables, and further draw downs
3 on CMS loans by NHC.

4 35. NHS is a company that was engaged by NHC to perform medical utilization
5 review services.

6 36. NHS failed in its position as a medical gatekeeper for NHC by, among other
7 concerns, failing to verify the eligibility of members for medical services during their
8 utilization reviews or provide adequate utilization review services.

9 37. NHS and Management Defendant Kathleen Silver engaged in self-dealing in
10 which NHS and/or Kathleen Silver were unjustly paid substantial amounts by NHC for
11 utilization management and member eligibility review services, and Defendant Kathleen
12 Silver used her insider status with NHC as a means to inappropriately provide more favorable
13 contract terms to NHC and UHH.

14 38. Upon information and belief, little work was provided under this utilization
15 management arrangement by NHS for NHC, and NHS compensation was unfairly based on a
16 mechanical formula “capitation” fee determined by how many total members existed at NHC
17 each month; a fee that bore little to no relation to services being provided by NHS.

18 39. Furthermore, NHS used an inflated number of members to bill NHC for its
19 services.

20 40. NHS’ president was Management Defendant Kathleen Silver, and upon
21 information and belief, the owner of NHS was UHH. NHS was owned by another entity,
22 UHH, that was in turn owned by CHF or its affiliated entity, and many of the NHC directors
23 and officers were directly employed by, or had affiliations or other business dealings with,
24 CHF and its affiliates, posing a substantial conflict of interest and providing unjustified
25 financial benefits to them, such that NHS should not have received this contract for services.

26 41. NHS was overseeing or backstopping the claims work that its parent company,
27 UHH, performed for NHC when performing utilization review of certain health care cases.
28 This utilization review work was an inherent conflict of interest that should not have been

1 performed by NHS, and this inappropriate business arrangement drained money from NHC,
2 was ineffectual, and resulted in the loss of NHC's assets.

3 42. This complaint also concerns the management of NHC who intentionally,
4 fraudulently, in knowing violation of the law, and without reasonable belief that their actions
5 were in the interests of NHC, directed, allowed, and/or concealed the internal control
6 weaknesses of NHC, the wrongdoing of NHC's service providers, the squandering of funds
7 to unjustly enrich themselves, the acts of self-dealing at the expense of NHC, the wrongful
8 payment of claims and wrongful member enrollments, the loss of reinsurance recoveries, the
9 inappropriate draw down of CMS loan funds, the loss of federal recoverables from CMS, the
10 awarding of contracts and benefits to themselves and other corporate insiders and related
11 entities that wrongfully drained the assets of NHC, the continuation of NHC in business that
12 led to substantial losses, and the misreporting of financial and operating results to regulators.

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

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

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

23 **PARTIES**

24 46. Plaintiff Commissioner Barbara D. Richardson, in her capacity as
25 Commissioner of Insurance and as Permanent Receiver of NHC, is authorized to liquidate the
26 business of NHC and to wind up its ceased operations pursuant to NRS 696B.220.2. An order
27 was entered on October 14, 2015, by the Eighth Judicial District Court, Clark County,
28 Nevada. This authority includes authorization to institute and to prosecute, in the name of

1 NHC or in the Receiver's own name, any and all suits and other legal proceedings, and to
2 prosecute any action that may exist on behalf of the members, insured enrollees, or creditors
3 of NHC against any person. The Nevada DOI is, and was at all relevant times, a Department
4 of the State of Nevada.

5 47. NHC is, and was at all relevant times, a non-profit Nevada corporation.

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

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

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

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

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

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

26 54. Upon information and belief, Defendant Hayes is a Certified Public Accountant.
27 She was the Larson engagement partner who was responsible for supervising the 2014 audit
28 of NHC.

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

3 56. Upon information and belief, Defendant Rivlin is, and was at all relevant times,
4 an individual residing in Clark County, Nevada, and the Chief Executive Officer of
5 InsureMonkey.

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

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

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

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

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

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

28 ///

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

64. Upon information and belief, Defendant UHH is, and was at all relevant times, a multi-employer health and welfare trust as defined in ERISA Section 3(37), with its primary offices in Las Vegas, Nevada and Aurora, Illinois.

65. All of these defendants, other than UHH, have appeared and answered and no further citation upon them is required.

FACTUAL ALLEGATIONS

A. The Affordable Care Act

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

67. The ACA was intended to bar insurers from taking a person's health into account when deciding whether to sell health insurance, and generally requires each person to maintain insurance coverage or make a payment to the Internal Revenue Service, and gives tax credits³ to certain people to make insurance more affordable.

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

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

///

³ The tax credits are APTC, which is the federal subsidy used toward the payment of health insurance premiums for members who meet federal income and eligibility requirements.

70. Recognizing risks associated with the uncertainty of the reforms initiated by the ACA, Congress also established programs known as the “Federal Transitional Reinsurance,” “Risk Corridors,” and “Risk Adjustment” to help mitigate some of the insurers’ risks during their first few years of operation.

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

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

FACTUAL ALLEGATIONS RELATING TO THE MILLIMAN DEFENDANTS

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

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

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

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

76. CHF entered into a contract with Milliman, dated October 20, 2011 (the “2011 Agreement”).

77. Upon information and belief, the initial compensation for Milliman was contingent on CHF obtaining federal loans for the CO-OP project.

///

///

1 78. Because the CO-OP program required separation from an established insurer,
2 CHF established Hospitality Health, Ltd., a Delaware non-profit corporation (“Hospitality
3 Health”).

4 79. On information and belief, CHF assigned and transferred all rights, title, and
5 interest in the 2011 Agreement to Hospitality Health.

6 80. Milliman continued to perform work under the 2011 Agreement for Hospitality
7 Health after the assignment.

8 81. On or about September 10, 2012, Milliman also directly entered into a
9 Consulting Services Agreement (the “Consulting Services Agreement”) with Hospitality
10 Health.

11 82. The Consulting Services Agreement provides that “Milliman will perform all
12 services in accordance with applicable professional standards.”

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

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

17 85. Milliman represented itself to CHF, Hospitality Health, and NHC, as much
18 more than a simple service provider.

19 86. In its proposal dated April 12, 2012, Milliman described the CO-OP
20 development as “an interactive partnership in order to ensure the viability of the CO-OP in a
21 short timeframe.”

22 87. As a member of the “interactive partnership,” Milliman proclaimed joint
23 responsibility for the success of the CO-OP.

24 88. Furthermore, Milliman committed that its work would be done in a manner “to
25 ensure the viability of the CO-OP.”

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

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

6 91. As newly formed non-profit companies, Hospitality Health, and later NHC,
7 relied on the superior knowledge and expertise of its self-proclaimed “interactive partner”
8 Milliman and Milliman’s actuaries - Shreve and Heijde - to establish and run the enterprise.

9 92. In its position as an “interactive partner,” the Milliman Defendants enjoyed a
10 special relationship and position of trust with CHF, Hospitality Health, and NHC.

11 93. Services ultimately to be provided by the Milliman Defendants included
12 preparing a feasibility study and other financial information to be included in loan applications
13 and statutory filings, projecting future profits, valuing reserves, setting premiums,
14 participating in financial reporting, and serving as the CO-OP’s statutorily required appointed
15 actuary to provide certifications to the state and other entities.

16 **C. Milliman Provides a Defective Feasibility Study, \$66 Million in Federal Loans are**
17 **Obtained, and Hospitality Health’s Assets and Loans are Assigned to and**
18 **Assumed by NHC**

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

23 95. The Feasibility Study included financial projections of what Milliman labeled
24 as its “Best Estimate Scenario” and “Alternative Scenarios.” Milliman also included an
25 analysis of the CO-OP’s ability to repay loans applied for under the application.

26 96. The results of Milliman’s analysis concluded that regardless of each scenario it
27 tested, the CO-OP would:

- 28 • Achieve sufficient market penetration to support its expenses;

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

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

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

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

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

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

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

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

104. NHC was funded by the CMS Loans. Milliman continued to provide favorable financial projections and financial assistance so that NHC could (and did) draw down the maximum amount of those CMS Loans until just before receivership in 2015, and these loans would not have come about but for Milliman’s services and assistance to NHC. Without the

///

1 CMS Loans, NHC would not have had sufficient funds to qualify for licensing or to begin
2 selling insurance, and it could not have remained in business without the loans.

3 105. Based on the conclusions of the Feasibility Study and on the availability of the
4 CMS Loans obtained through its use, in 2013 the Nevada DOI licensed NHC to begin selling
5 insurance as of January 1, 2014. NHC continued to receive loans from CMS through
6 June 2015 with the assistance of Milliman's services.

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

8 106. Throughout its relationships with CHF, Hospitality Health, and NHC, the
9 Milliman Defendants' work failed to meet applicable professional and statutory standards.

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

14 **1. Premium Rate Development**

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

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

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

28 ///

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

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

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

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

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

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

///

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

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

10 v. Milliman's projections, even in its "low enrollment" scenario, did
11 not sufficiently consider the adverse effects of low enrollment or slow
12 enrollment. As a result, the provision for administrative expenses in Milliman's
13 pricing analysis that the NHC relied upon was also deficient. The anticipated
14 administrative expenses of NHC were spread over a smaller enrollment
15 population than Milliman had projected, leading to a greater loss on each
16 insured.

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

23 vii. Later, Milliman did not account for the claims backlog at NHC
24 and claims processing errors at NHC that would impact medical loss ratios,
25 premium rates, federal recoverables from CMS, and NHC's finances. Instead,
26 Milliman provided its financial information and rate projections to NHC and the
27 Nevada DOI, even though it knew, or should have known, that the underlying
28

///

1 claims and enrollment data at NHC was incorrect, and that such information and
2 projections could not be reliably made by Milliman.

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

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

13 **2. Financial Projections**

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

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

23 118. The Feasibility Study included a certification by Milliman Consulting Actuary
24 and Principal, Shreve, that stated, in part, that the projections were prepared under his
25 supervision, were "accurate and complete," and were "prepared in accordance with generally
26 recognized and accepted principles and practices which are consistent with Actuarial
27 Standards of Practice, the Code of Professional Conduct and Qualification Standards for
28 Public Statements of Actuarial Opinion of the American Academy of Actuaries."

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

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

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

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

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

///

///

///

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

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

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

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

128. Milliman failed to include and properly calculate actuarial reserves when preparing liability information that would later be relied upon and used by NHC in its financial reporting to Nevada DOI for year 2014, and the first calendar quarter of year 2015. Milliman provided improper financial information to NHC's management, which management then provided to the DOI, which misled DOI regulators as to the financial condition of NHC. Milliman would also certify to these improper actuarial reserves in separate reports submitted to the Nevada DOI.

3. Reporting of Reserves

129. Milliman and Heijde intentionally or negligently under reported actuarial items used in NHC's financial reports and which were submitted to the Nevada DOI, and they also provided improper financial information to NHC's management, which management then provided to the Nevada DOI so as to mislead the insurance regulators as to NHC's financial condition. The under accrual of the December 31, 2014 reserves, including but not limited to premium deficiency reserves ("PDR") and incurred but not reported ("IBNR") reserves,

1 caused NHC to appear financially stronger and solvent. On information and belief, they also
2 intentionally or negligently used sources containing improper and unreliable financial
3 information that tended to artificially maintain surplus levels reported to the Nevada DOI
4 without proper authorization or adequate disclosure.

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

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

14 132. When developing and certifying reserves, actuaries must comply with statutory
15 and professional requirements and standards.

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

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

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

27 ///

28 ///

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

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

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

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

11 140. This calculation was not credible or in accordance with professional or statutory
12 standards, as evidenced by the substantial prior and continuing losses of NHC. Milliman
13 provided its calculations of incurred and premium deficiency reserves when it knew, or should
14 have known, that the underlying claims and enrollment data at NHC was incorrect, that such
15 calculations could not be reliably made by Milliman, and that such calculations were
16 incorrect.

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

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

21 143. Heijde served as the appointed actuary for NHC and personally executed the
22 2014 Opinion.

23 144. The 2014 Opinion contained the opinion of Heijde and Milliman that the
24 amounts carried on NHC's balance sheet on account of inadequately disclosed information
25 were in accordance with accepted actuarial standards, that they were based on relevant and
26 appropriate actuarial assumptions, that they met the requirements of the insurance laws and
27 regulations of the State of Nevada, and that they were at least as great as the minimum

28 ///

1 amounts required to make full and sufficient provision for all unpaid claims and other
2 actuarial liabilities of the organization.

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

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

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

13 148. On February 10, 2015, the Nevada DOI held a call to discuss the estimation of
14 actuarial items relating to the financial statements with the Milliman team. In an e-mail dated
15 February 14, 2015, at 8:00 p.m. on a Saturday, the Nevada DOI sent extensive and specific
16 recommendations to Milliman and NHC on the methodology to calculate the year-end PDR.
17 The Nevada DOI expressed concerns about unrealistic expense levels and the importance of
18 projecting PDR through the end of 2015, using reasonable and supportable assumptions.

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

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

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

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

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

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

[emphasis added]

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

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

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

155. The July 31, 2015, PDR calculation produced a value of (\$15,928,707), where a negative number implies a reserve to be held, a roughly \$16,000,000 swing from the March 14 calculation.

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

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

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

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

4. Use of Improper and Unauthorized Financial Information

160. In addition to the understatement of reserves, on information and belief, Milliman, Heijde, and NHC management intentionally or negligently used financial information, recording loan proceeds as a receivable in the year prior to that in which a formal

1 application for the draw was made, and participated in misreporting 2014 financial
2 information to the Nevada DOI without adequate and proper disclosures of operating results
3 and NHC's viability—and knew, or should have known, that NHC could not pay back the
4 CMS loan draw down. Milliman, Heijde, and NHC management knew, or should have known,
5 that these practices would tend to artificially maintain surplus levels, avoid the level that
6 would trigger Nevada DOI supervision, misreport financials, and extend the continued and
7 unjustified existence of NHC as an operating insurance business enabling it to write more
8 insurance risks and undertake more financial obligations.

9 161. The practice of prematurely booking potential CMS loan draws as receivables,
10 and without a reasonable assessment and adequate disclosure, was used to bolster RBC levels
11 to help meet statutory requirements.

12 162. The outstanding balance on the Solvency Loan as of December 31, 2014, was
13 \$42,965,683. The maximum principal available under the loan was \$48,820,349. Although
14 a draw in the amount of \$3,152,275 was formally requested in January 2015, and obtained in
15 February 2015, the transaction was recorded as if it had occurred as of December 2014, which
16 Milliman knew was inaccurate and misleading without additional disclosure – and it knew,
17 or should have known, that NHC could not pay back the CMS loan draw down.

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

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

24 165. The clear pattern of reduced and understated actuarial items on the balance sheet
25 for IBNR reserves and PDR, along with the use of inappropriate and inadequately disclosed
26 financial information to meet statutory requirements, indicates that Milliman's estimates were
27 arrived at in an effort to falsely inflate NHC's surplus levels and RBC ratio position, as well as

28 ///

1 to misreport the 2014 financial information of the company, so as to avoid or postpone
2 inevitable Nevada DOI intervention.

3 **FACTUAL ALLEGATIONS RELATING TO MILLENNIUM**

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

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

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

11 168. NHC was required to file statutory-basis financial statements and compliance
12 reports related to the audit of federal awards.

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

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

19 171. Millennium reports on its web site that it provides educational training,
20 regulatory consulting, and administrative services to insurance companies, insurance
21 regulators, and other insurance-related entities throughout the United States and Puerto Rico.

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

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

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

- Prepare and file NHC’s Annual Statement, including all NAIC Supplemental Exhibits and Schedules for filing with the Nevada DOI and NAIC;
- Prepare and file NHC’s Quarterly Statement, including all NAIC Supplemental Exhibits and Schedules for filing with the Nevada DOI and NAIC;
- Assist in the review and preparation of responses to any regulatory letter from the Nevada DOI and NAIC related to the Annual and/or Quarterly Statement filings;
- Respond to any independent auditor inquiries regarding the preparation and filing of NHC’s Audited Statement Supplemental filings, as needed; and
- Acquire, on behalf of NHC, Annual and Quarterly RBC software.

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

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

///

///

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

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

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

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

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

181. Data presented between schedules was inconsistent.

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

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

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

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

///

1 request to CMS until the subsequent year—and when Millennium knew, or should have
2 known, that NHC could not pay back the CMS loan draw down.

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

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

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

16 189. Millennium further participated in the drafting of NHC’s Management’s
17 Discussion & Analysis (the “MD&A”) report for 2014 as required under the Service
18 Agreement.

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

26 191. The 2014 MD&A prepared by Millennium did not explain or discuss the
27 severity of NHC’s financial position, nor did it provide the MD&A’s users with relevant and
28 required information regarding extraordinary accounting practices in use, the inadequacy of

1 reserves, liquidity and borrowing concerns, the organization's viability to continue in business
2 as a going concern, or other challenges faced by NHC. As such, Millennium failed to perform
3 its work in accordance with NAIC rules prescribed and permitted by the State of Nevada, as
4 required by the Service Agreement.

5 **FACTUAL ALLEGATIONS RELATING TO THE LARSON DEFENDANTS**

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

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

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

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

14 195. Larson is a CPA firm that asserts in its web site that it "began practice in 1975
15 with the central purpose of serving the insurance industry. We have grown to become one of
16 the premier insurance audit firms in the nation"

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

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

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

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

- We will audit the statutory financial statements of Nevada Health Co-Op (the Company) which comprise the statutory statements of admitted assets, liabilities, and capital and surplus as of December 31, 2013, and the related statutory statements of income, changes in capital and surplus, and cash flows for the year then ended. Also the following supplementary information accompanying the statutory financial statements will be subjected to the auditing procedures . . . :
- The National Association of Insurance Commissioners' (NAIC) required supplementary information
- Schedule of Expenditures of Federal Awards
- The objective of our audit is the expression of opinions as to whether your statutory financial statements are fairly presented, in all material respects, in conformity with statutory accounting principles and to report on the fairness of the supplementary information referred to in the [above] paragraph.
- Our audit will be conducted in accordance with the auditing standards generally accepted in the United States of America; the standards for financial audits contained in Government Auditing Standard, issued by the Comptroller General of the United States; the Single Audit Act Amendments of 1996; and the provisions of OMB Circular A-133, and will include test of accounting records, a determination of major programs(s) in accordance with OMB Circular A-133, and other procedures we consider necessary to enable us to express such opinions and to render the required reports.
- Dennis T. Larson, CPA, is the engagement partner and is responsible for supervising the engagement and signing the report or authorizing another individual to sign it.

\

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

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

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

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

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

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

205. NHC's reserve levels raised concerns.

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

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

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

///

///

///

///

209. On May 11, 2015, CMS wrote to NHC Chief Executive Officer, Pamela Egan, stating the following:

It has come to our attention that Nevada Health Cooperative (NHC) could have certain financial issues that may impede the organization's short-term viability. Specifically, based on the per member per month net loss for 2014 of \$94 and the increased enrollment for 2015 of 16,523, NHC's financial losses could exceed its working capital. As the lender, the Centers for Medicare and Medicaid services CMS has serious concerns about this issue....

CMS required NHC to provide financial information immediately, and it further advised that it will review the information and determine if corrective actions are necessary, including a site visit. Larson glossed over any financial issues, failed to recognize the ramifications of the company's finances, and issued a clean audit opinion regarding NHC's financial condition.

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

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

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

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

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

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

1 than it actually was. Larson also knew, or should have known, that NHC could not pay back
2 the CMS loan draw down.

3 216. NHC's officers and directors were relatively inexperienced in insurance matters
4 and relied on Larson to establish or verify the establishment of sufficient internal controls
5 over its business.

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

8 218. Contractors handling enrollment, claims processing, billing, receipt of premiums,
9 premium rate setting, actuarial services, and other issues did not perform their work in accordance
10 with industry and professional standards, resulting in significant internal control issues and losses
11 for NHC. There was also a backlog in claims adjudication and problems with enrollment tracking
12 that made loss reserve, premium deficiency reserve, and rate setting for NHC unreliable, and the
13 auditor should have determined the financial ramifications of these operating conditions before
14 issuing any audit report.

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

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

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

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

27 223. On or about May 29, 2014, Larson issued its audit report for the year ended
28 December 31, 2013 (the "2013 Opinion"). The 2013 Opinion contained no information

1 concerning NHC's ability to continue as a going concern, despite the fact that by the time the
2 report was issued, NHC was incurring substantial unanticipated losses. Neither did the 2013
3 audit report disclose the significant internal control weaknesses that existed, or recognize
4 adequate reserves for the contracts on which NHC was already incurring substantial losses.

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

8 225. The 2014 Audit Opinion contained one emphasis of matter paragraph noting
9 only issues with the risk adjustment, the federal transitional reinsurance, and the risk corridor
10 programs. Despite the materiality of receivables from the federal government, and the issues
11 raised concerning their calculation, the 2014 Audit Opinion stated that, "[Larson's] opinion
12 is not modified with respect to this matter."

13 226. The 2014 Audit Opinion was without any qualification as to the reported
14 reserves, the recording of loan receipts in the year prior to actual receipts, internal control
15 weaknesses, CMS' serious concerns about the viability of NHC as stated in its letter dated
16 May 11, 2015, or NHC's ability to continue as a going concern.

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

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

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

28 ///

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

244. Larson failed to adequately test, disclose, and report the collectability and reserves for material receivables, and it failed to recognize how problems with processing and paying claims and tracking enrollments would impact such receivables or amounts owed to or from CMS.

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

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

///

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

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

FACTUAL ALLEGATIONS RELATING TO THE
INSUREMONKEY DEFENDANTS

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

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

250. In 2012 and 2013, NHC and its predecessor, Hospitality Health, sought a qualified contractor to provide software implementation and services, including a customer portal to enroll and to provide member services to NHC's customers. The software implementation and services would also collect and provide to NHC data necessary for making operational decisions and reporting to regulators.

251. Defendants Rivlin and InsureMonkey represented to NHC that InsureMonkey was qualified to provide, and capable of providing, the software implementation and services.

252. For example, in a September 21, 2012, proposal, the InsureMonkey Defendants stated they had first-class product design standards, simple and easy user experiences, subject matter expertise, and seamless integration with other vendors. Each of these statements were false.

253. On or about April 13, 2013, NHC and InsureMonkey entered into a Memorandum of Understanding for InsureMonkey to provide the technology and software services. NHC and InsureMonkey subsequently entered into a Master Services Agreement relating to technology and services, making the agreement effective as of the date of the earlier Memorandum of Understanding (the "2013 Master Services Agreement"). Rivlin largely negotiated and executed the 2013 Master Services Agreement on behalf of himself and InsureMonkey.

1 254. As part of the 2013 Master Services Agreement, InsureMonkey expressly
2 acknowledged that it was required to “comply with [NHC’s] obligations” under NHC’s CMS
3 Loan Agreement as part of performing InsureMonkey’s services. Similarly, InsureMonkey
4 acknowledged that it had to maintain certain records and provide NHC, CMS, and others with
5 access to certain information relating to InsureMonkey’s performance under the 2013 Master
6 Services Agreement.

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

10 256. During this April to May 2013 time period, InsureMonkey’s representatives,
11 especially its Chief Executive Officer Rivlin, expressly represented that InsureMonkey was
12 capable of providing all of the additional customer service support functions that NHC was
13 seeking, in addition to its technological and software support.

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

19 258. On or about August 1, 2013, NHC and InsureMonkey entered into another
20 Memorandum of Understanding governing InsureMonkey’s provision of customer service
21 functions to NHC (the “August 2013 Customer Service MOU”). Rivlin negotiated and
22 executed the August 2013 Customer Service MOU on behalf of InsureMonkey.

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

27 ///

28 ///

1 260. The August 2013 Customer Service MOU represented that InsureMonkey
2 would provide “professionally licensed and trained Contact Center Agents” and that
3 InsureMonkey would “train all Agents on NHC products and enrollment processes as well as
4 enrollment processes” through the exchange, “including determining subsidy eligible
5 populations and providing eligibility” through the exchange. Under this agreement and
6 others, InsureMonkey acted as a broker for NHC.

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

14 262. On or about September 3, 2013, InsureMonkey and NHC entered into an
15 additional Memorandum of Understanding further expanding InsureMonkey’s
16 responsibilities and obligations with respect to customer and member services (the
17 “September 2013 Customer Service MOU”). Yet again, this agreement was predicated upon
18 the express representations of Rivlin regarding InsureMonkey’s capabilities with respect to
19 these types of services.

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

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

28 ///

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

4 266. On or about August 1, 2014, NHC and InsureMonkey entered into a Master
5 Services Agreement “to consolidate the terms of their continuing business relationship under
6 the terms of this Agreement” and to set forth the scope of the parties’ relationship moving
7 forward (the “Master Agreement”). Rivlin again negotiated and executed the Master
8 Agreement on behalf of InsureMonkey.

9 267. Like the prior agreements, InsureMonkey expressly represented in the Master
10 Agreement that it would “comply with the terms of the [CMS] Loan Agreement” in
11 performing its obligations to NHC.

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

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

19 270. Throughout the relationship between InsureMonkey and NHC, at least in part
20 because of the inexperience of NHC management and the representations of InsureMonkey
21 as to its superior knowledge and expertise, NHC trusted, relied on, and depended on
22 InsureMonkey as a key component of its operation in its business of insuring and servicing
23 NHC’s Members.

24 271. At the time Rivlin executed the Master Agreement, he and InsureMonkey knew
25 or reasonably should have known that they had no intention or ability to honor the terms of
26 the Master Agreement, that InsureMonkey would not and could not perform the services
27 contemplated by the Master Agreement in accordance with industry standards, and that

28 ///

1 InsureMonkey did not have adequately trained and competent personnel to perform such
2 service.

3 272. On or about October 2013, InsureMonkey and NHC entered into an
4 Agent/Broker Contract, the purpose of which was for InsureMonkey, in its capacity as an
5 agent/broker, to solicit applications for individual and group contracts for NHC's insurance
6 programs. As agent, InsureMonkey was responsible to enroll new members in NHC for which
7 it would act as broker of record, and commissions were to be paid monthly for such members
8 subject to receipt of premiums from the members by NHC. Since InsureMonkey maintained
9 the member information on which its commissions would be paid, it provided NHC with a
10 monthly accounting of enrolled members to memorialize its claim for commissions. NHC
11 used and relied upon InsureMonkey's monthly accounting of members as a basis to pay
12 commissions. To be entitled to broker commissions, InsureMonkey must have personally
13 affected the sale of insurance for business it solicited and sold on behalf of NHC.
14 InsureMonkey was already being richly compensated with administration fees (*i.e.*, under a
15 separate and different agreement signed by Rivlin of InsureMonkey) for services that
16 included, but were not limited to, the following: maintaining a member services center and
17 handling telephone calls to and from members and potential members of NHC related to the
18 company's insurance programs, educating members and prospective members about available
19 NHC health plans, and discussing with members and prospective members all things related
20 to NHC's business. Members and prospective members of NHC could also physically walk
21 into the call center to access and speak with InsureMonkey representatives, and many
22 customers and prospective customers of NHC did just that.

23 273. A material portion of NHC's insurance business arose in 2014 from the Nevada
24 Health Link (*i.e.*, the Nevada state exchange website), and in 2015 from Healthcare.gov (the
25 federal exchange website) (together referred to as the "Exchanges"), where members and
26 prospective members would access NHC's available health care information and contact NHC
27 to purchase their health insurance. Some contacts were made to NHC from prospective
28 members that did not come through the Exchanges (hereinafter, "Off Exchanges").

274. On information and belief, InsureMonkey would receive these contacts from members and prospective members, through the call center it was operating for NHC under its administrative service agreement, and it would then direct members or prospective members of NHC to its agency representatives so that InsureMonkey could receive a broker commission from those customers. These InsureMonkey agency representatives would communicate with the members or prospective members and then assign an InsureMonkey agent as the agent of record on the insurance contract for these individuals.

275. These member or potential member calls could have, and they most certainly should have, been handled by NHC or non-agent representatives of InsureMonkey who were assigned to work for NHC. There was no need to assign these members or prospective members to agency representatives of InsureMonkey so that it could get compensated again through a broker commission, but even if they were so assigned, it should have in any event been covered as an administrative service provided under InsureMonkey's other agreements with NHC for which it receives no broker commissions.

276. InsureMonkey received undue and unnecessary broker commission compensation, as to these members or prospective members coming through the Exchanges or Off Exchanges, and InsureMonkey did nothing to solicit those members before they ever contacted NHC. In effect, InsureMonkey took an unjustified "double dip" of compensation (*i.e.*, administrative fees and broker commissions) for providing the same service to NHC, which caused further losses to NHC.

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

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

///

1 278. InsureMonkey failed to follow industry standards relating to tracking and
2 reporting basic enrollment, billing, and eligibility data, including without limitation the
3 failures set forth herein. InsureMonkey also improperly billed for broker commissions.

4 279. At critical times during the open enrollment process, InsureMonkey was unable
5 to make the broker portal it had created work properly and allow agents to sign up individuals
6 for insurance policies. These portal issues impacted and depressed enrollment numbers in
7 both 2014 and 2015, leading to fewer members being insured under the plan and lower
8 premium income for NHC. The broker information was also not provided by InsureMonkey
9 to NHC in a form that could be updated into the Javelina claims system of NHC, causing
10 accounting, recordkeeping, and financial problems for NHC in its administration of broker
11 commissions. Instead, InsureMonkey kept its own information on NHC's enrollments and
12 members through Salesforce, and upon information and belief, it did not provide NHC
13 representatives with direct access to its Salesforce software and related information, hindering
14 NHC from obtaining a full overview of work performed by InsureMonkey.

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

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

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

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

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

26 285. InsureMonkey failed to properly log eligibility data for individuals during the
27 enrollment process.

28 ///

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

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

5 288. InsureMonkey failed to disclose to NHC that it had failed to timely terminate
6 members' eligibility and that as a result NHC would be paying for health care services for
7 which it had no obligation to pay.

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

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

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

16 292. As a result of InsureMonkey's incompetence despite its representations to the
17 contrary, as well as its deficient hiring, training, supervision, and retention of employees,
18 InsureMonkey's performance under the agreements was woefully deficient and very harmful
19 to NHC.

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

23 294. Notably, several of the parties' agreements, including the Master Agreement,
24 calculated the payment due to InsureMonkey from NHC based on a certain "capitation" (price
25 per member), per month that the member was enrolled in the plan. InsureMonkey also earned
26 more broker commissions by reflecting members as not being terminated.

27 295. Upon information and belief, InsureMonkey, at the direction of its Chief
28 Executive Officer Rivlin, who also signed service agreements with NHC on behalf of

1 InsureMonkey, intentionally misrepresented the membership enrollment numbers in order to
2 procure larger payments to InsureMonkey under their agreements.

3 296. At the time, InsureMonkey failed to properly report enrollment, billing, broker,
4 and eligibility data or its deliberately misreported enrollment, billing, broker, and eligibility
5 data. The Receiver of NHC only learned of the full extent of InsureMonkey's misreporting
6 sometime after the NHC receivership commenced.

7 297. Despite its woefully deficient and harmful performance, InsureMonkey was
8 paid approximately \$4.4 million for contracted services in 2014 and over \$5 million in 2015.

9 298. InsureMonkey's actions and conduct addressed herein resulted in grave
10 consequences to NHC. Without limitation, InsureMonkey's actions led to the following:
11 (a) underpayment to NHC for advanced premium tax credits that NHC would have been
12 entitled to had InsureMonkey properly performed its services and provided reliable data
13 concerning enrollment to NHC and CMS; (b) NHC paying out additional claims as a
14 proximate result of InsureMonkey's reporting of faulty eligibility data; (c) NHC overpaying
15 into the transitional reinsurance program as the proximate result of InsureMonkey's reporting
16 of faulty eligibility data; (d) NHC overpaying InsureMonkey and other contractors in
17 payments calculated on faulty enrollment data provided by InsureMonkey and for other
18 undocumented services; (e) decreased risk corridor and risk adjustment payments to NHC as
19 the proximate result of InsureMonkey providing faulty and unreliable enrollment data;
20 (f) overpaying InsureMonkey for broker commissions that it should not have received;
21 (g) overpayment of fees and costs that it did not justly deserve; and (h) financial misreporting
22 by NHC as a consequence of InsureMonkey's actions in not properly tracking and
23 implementing enrollments and customer service information.

24 **FACTUAL ALLEGATIONS RELATING TO NEVADA HEALTH SOLUTIONS**

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

27 299. Plaintiff realleges and incorporates all of the allegations contained in the
28 proceeding paragraphs as if fully set forth herein.

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

4 301. NHS represented itself to be a capable utilization management services
5 company.

6 302. Pursuant to a Utilization Management Services Agreement (the “Utilization
7 Agreement”), NHS contracted with NHC to perform evaluations of appropriateness and
8 medical necessity of health care services, procedures and facilities; perform precertification of
9 hospital admissions and outpatient procedures; process information related to in-hospital
10 observations; provide concurrent reviews for inpatient acute care, rehabilitation and long term
11 acute care; provide discharge planning; and perform provider appeal reviews, along with other
12 services. NHS was also engaged to perform member eligibility review services for NHC, a
13 process through which the enrollment of NHC’s members must be verified for medical
14 benefits to be allowed by NHC.

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

20 304. NHS breached the Utilization Agreement by failing to perform contracted work
21 and by failing to perform to applicable contractual, professional and industry standards.
22 Without limitation, NHS failed to perform to the standards set forth in the Utilization
23 Management Program that was incorporated into the Utilization Agreement.

24 305. Under the Utilization Agreement, NHS was to perform its services utilizing
25 appropriate medical staff including accredited physicians. On information and belief, NHS
26 did not employ qualified personnel to perform the contracted services, and at most
27 subcontracted such services to others, to the extent they were performed at all.

28 ///

1 306. Initial compensation was mechanically calculated based on the total persons
2 enrolled as NHC members each month, a fee that bore little to no relation to services being
3 provided by NHS. Upon information and belief, little work was actually performed by NHS
4 for NHC.

5 307. Fees under the Utilization Agreement were charged by NHS on a per member
6 per month basis, but NHS required a minimum monthly fee to be paid based on an enrolled
7 membership of 10,000 members. NHC did not have 10,000 enrolled members for the first four
8 months of 2014 and was substantially short of 10,000 enrolled members in those months; thus,
9 NHC paid the minimum monthly fee to NHS in each of those first four months of 2014.
10 Additionally, NHC was to be charged by NHS for all direct and indirect provider costs incurred
11 by NHS for performing its services. However, since NHS provided little services to NHC in
12 2014, there were no other direct or indirect costs charged by NHS to NHC other than the per
13 member per month flat monthly fee stated above. On information and belief, NHS failed to
14 adjust for the actual cost of the limited work performed.

15 308. NHS and Management Defendant Silver among others engaged in self-dealing
16 in which NHS was unjustly paid substantial amounts by NHC for the so-called utilization
17 management services, and Defendant Kathleen Silver used her insider status with NHC as a
18 means to inappropriately provide more favorable contract terms for NHC than were justified.
19 NHS' President was Management Defendant Silver, and upon information and belief, the
20 owner of NHS was UHH. Upon information and belief, UHH was an entity with financial
21 ties and/or direct or indirect business links with Management Defendants Bond, Zumtobel,
22 and Silver. NHS was owned by another entity, UHH, that was in turn owned by CHF or its
23 affiliated entity, and many of the directors and officers were directly employed by, or had
24 affiliations or other business dealings with, CHF and its affiliates, posing a substantial conflict
25 of interest whereas a result of which NHS should not have received this contract for services.
26 UHH was being paid to process and adjudicate claims of NHC, and then it was being paid
27 again through NHS to do a quality control review check of the very claims that UHH
28 processed. The NHS and NHC medical utilization management review arrangement was

1 unfair, unreasonable, ineffectual, and just another way to siphon more money out of NHC to
2 the detriment of its members, policyholders, and creditors. NHS' actions and conduct resulted
3 in substantial losses to NHC. Without limitation, NHS failed to properly perform eligibility
4 verifications during utilization reviews or provide adequate utilization review services for
5 NHC's claims, resulting in the loss of NHC's assets. NHS was paid fees and expenses totaling
6 \$382,968 under this utilization management and enrollment eligibility review arrangement.
7 Costs which should not have been incurred under the Utilization Management Program were
8 incurred, contracted assistance to members for managing health care decisions was not
9 received, and inappropriate financial benefits were paid from this arrangement to the
10 detriment of NHC's members, policyholders, and creditors.

11 **FACTUAL ALLEGATIONS RELATING TO THE MANAGEMENT DEFENDANTS**

12 **M. The Management Defendants Fail to Uphold Their Fiduciary Duties to NHC**

13 309. Plaintiff realleges and incorporates all of the allegations contained in the
14 proceeding paragraphs as if fully set forth herein.

15 310. As officers and directors of NHC, each of the Management Defendants owed
16 duties of good faith and loyalty to NHC and was charged with exercising his or her powers,
17 authority, and discretion in the best interests of NHC.

18 311. Additionally, the Management Defendants executed employment agreements
19 and ethics and conflicts of interest documents which contractually specified such duties.

20 312. The duties owed by the Management Defendants included, without limitation,
21 not misleading regulatory authorities, instituting adequate internal controls to protect
22 company assets and operations, adequately selecting and supervising employees and
23 contractors, avoiding self-dealing, fully and adequately disclosing related party transactions,
24 avoiding the squandering of NHC's assets, and reviewing and ensuring the accuracy of loan
25 applications, financial statements, and regulatory filings submitted by NHC.

26 ///

27 ///

28 ///

1 313. From NHC's inception through its being put in receivership in October 2015,
2 as outlined below, each of the Management Defendants failed to uphold his or her duties owed
3 to NHC when exercising his or her powers and authority with respect to the business
4 decisions, operations, reporting and management of NHC.

5 **N. Management Defendants Unreasonably Fail to Establish Internal Controls,**
6 **Exercise Oversight, Ensure Accurate Reporting, or Adequately Disclose**
7 **Related Party Transactions**

8 314. A primary responsibility of Management Defendants was to institute sufficient
9 internal controls to ensure the protection of assets, to establish and enforce procedures to run
10 NHC, and to conform with statutory requirements, including providing accurate reporting to
11 regulators and the public.

12 315. The Management Defendants failed to establish sufficient internal controls over
13 its business.

14 316. Initially, the Management Defendants failed to hire or train adequate personnel
15 to run its business. As a result, NHC relied on contractors to perform critical processes for
16 NHC, creating another set of internal control concerns, ones that were likewise overlooked
17 and ignored by the Management Defendants. NHC also funded certain contractors to be in
18 position to perform services for NHC, without sufficient controls and oversight over this
19 process.

20 317. Rather than prudently limiting the scope of business until such time as adequate
21 internal controls had been established, the Management Defendants appear to have adopted
22 an "even if we lose money on each customer we will make it up in volume" approach.

23 318. Contractors handling enrollment, claims processing, billing, receipt of
24 premiums, premium rate setting, actuarial services, and other issues did not perform their
25 work in accordance with industry and professional standards, resulting in significant internal
26 control issues and losses for NHC, issues that should have been caught and remedied by the
27 Management Defendants, but were not.

28 ///

1 319. Additionally, the total breakdown in internal controls caused misleading reports
2 to be issued in violation of applicable statutes and standards.

3 320. The Management Defendants knew, or should have known, of the dearth of
4 internal controls to protect NHC and the public. The Management Defendants' refusal to
5 institute such controls involved and/or constituted negligence, intentional misconduct, fraud,
6 and/or knowing violations of the law.

7 321. The Management Defendants similarly failed or refused to exercise the
8 necessary required oversight of NHC and its contractors.

9 322. The Management Defendants' failures included, but were not limited to,
10 approval of contracts that were illegal due to a lack of appropriate NDOI regulatory approvals
11 or required licensure by contractors engaged on behalf of NHC including, but not limited to,
12 UHH and WellHealth Medical Associates (Volker), PLLC d/b/a WellHealth Quality Care.

13 323. Employees without the expertise or experience to run such a large undertaking
14 were negligently hired and retained, or were simply allowed to keep positions given to them
15 by CHF.

16 324. As discussed herein, rather than replacing or obtaining sufficient training for its
17 employees, the Management Defendants engaged contractors whose work was not properly
18 performed or appropriately overseen. InsureMonkey and UHH did not have the ability to
19 perform the service work on their own without large and wasteful upfront funding subsidies
20 by NHC to set up these contractors in business to perform NHC's work, and these contractors,
21 as well as NHS⁴, did not have the expertise to perform this service work.

22 325. Even when significant problems arose, the Management Defendants failed to
23 exercise their oversight function and remedy them.

24 326. Contractors created overly optimistic feasibility studies, on information and
25 belief, in order to receive compensation that would only be paid if loans were received.

26
27
28 ⁴ Upon information and belief, NHS was a start-up enterprise set up by NHC insiders to perform
utilization review services for NHC

1 327. Early in the process, NHC’s officers and directors, including each of the
2 Management Defendants, authorized and/or ratified financial transactions and assumed
3 financial obligations that they knew, or should have known, NHC could not meet or otherwise
4 satisfy.

5 328. Customers had difficulty signing up for services, premiums went unbilled or
6 unpaid, failures in reporting data to CMS caused government subsidies to be lost, and vendors
7 were paid despite failing to perform under contracts. Insureds failed to receive coverage
8 because of bad data, and costs were paid because NHC could not confirm whether coverage
9 was or was not in effect. Claims were backlogged, member terminations were not being
10 made, and enrollments were not being tracked properly. Proper utilization review of claims
11 was not performed. Still, the Management Defendants failed to exercise appropriate oversight
12 to remedy the situation.

13 329. Despite horrendous losses, the Management Defendants authorized NHC to
14 continue to draw down on government loans, knowing there was no reasonable way that such
15 loans could be repaid, but keeping the flow of money coming as long as possible so that
16 management insiders, related third-party contractors, and other contractors could continue to
17 be paid by NHC until the “well would finally run dry” by the company’s receivership.

18 330. In addition, despite substantial doubt about NHC’s ability to fulfill them,
19 Management Defendants caused NHC to continue assuming contractual obligations, causing
20 further losses to NHC.

21 331. As further discussed herein, the Management Defendants, including the audit
22 committee members, the chief financial officer, and NHC’s president, also failed to exercise
23 oversight to ensure accurate, truthful, and non-misleading dissemination of financial
24 information to regulatory authorities and the public with respect to NHC’s affairs.

25 332. The Management Defendants knew, or should have known, that their
26 intentional decision not to exercise appropriate oversight would cause significant damages
27 and would involve and/or constitute negligence, intentional misconduct, fraud, and/or
28 knowing violations of the law.

1 333. The Management Defendants' actions or inactions similarly caused misleading
2 reporting of financial and operational results to the Nevada DOI and others.

3 334. From 2012 through 2015, the Management Defendants retained and/or
4 approved the retention of certain third-party entities to perform financial reporting and/or
5 auditing on behalf of NHC, including, but not limited to, Milliman, Millennium, and Larson.

6 335. In early 2015, a preliminary report was filed with the Nevada DOI for the year
7 ended December 31, 2014.

8 336. As discussed above, NHC's reserve levels raised concerns with the Nevada
9 DOI, and throughout early 2015 the Nevada DOI went to extraordinary lengths to
10 communicate clear guidance for the proper calculation of reserves. Nevada DOI guidance
11 went directly to NHC management.

12 337. Additionally, NAIC pointed out deficiencies in NHC's statutory reporting
13 directly to NHC management.

14 338. The Nevada DOI stated they expected the PDR to be re-evaluated on a quarterly
15 basis and adjusted as necessary if the emerging experience was substantially different from
16 the projected experience. These steps were not taken and, in fact, the PDR calculation appears
17 to have been skipped at the end of the first quarter, contrary to the Nevada DOI's explicit
18 request and prior to the issuance of certain audits and financial reports adopted, ratified, and/or
19 disseminated by the Management Defendants.

20 339. The balances of the reserves should have been questioned and audited by the
21 Management Defendants, both from a year-end review perspective and as part of NHC's
22 management, audit committee, and overall oversight responsibilities, yet there is no evidence
23 that any such actions were taken, and the Management Defendants issued later reports without
24 adjustment.

25 340. Even without adjusting reserve balances, NHC had reported losses of over
26 \$8 million in 2013 and over \$16 million in 2014.

27 ///

28 ///

341. On May 11, 2015, CMS wrote to NHC Chief Executive Officer Pamela Egan, stating the following:

NHC could have certain financial issues that may impede the organizations short-term viability. Specifically, based on the per member per month net loss for 2014 of \$94 and the increased enrollment for 2015 of 16, 523, NHC's financial losses could exceed its working capital. As the lender, the centers for Medicare and Medicaid services CMS has serious concerns about this issue.

CMS required NHC to provide financial information immediately, and it further advised that it will review the information and determine if corrective actions are necessary, including a site visit. NHC's financial problems and issues were glaringly apparent, even to an outside party, and yet, the Management Defendants glossed over any financial issues, failed to recognize the ramifications of the company's finances, borrowed more money from CMS, and took actions to prolong the life of NHC when it should have been immediately shut down.

342. Up until NHC issued reports on June 1, 2015, NHC continued to hemorrhage losses under the direction, guidance, and management of the Management Defendants.

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

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

345. As previously mentioned, the amount of a draw on the CMS Loans, that had not been formally applied for in 2014, was recorded as a receivable in the 2014 annual financial reports without adequate disclosure—and despite the fact that Management Defendants knew, or should have known, that the loan draw down could not be repaid by NHC.

346. At a minimum, NHC's Audit Committee members, including Defendant Bond, knew, or should have known that recording of a receivable for a loan in the year before it was formally applied for, without adequate disclosure, was misleading, could artificially inflate NHC's reported surplus levels, and could make NHC's finances appear better than they actually were.

///

1 347. These issues should all have been obvious “red flags” to the Management
2 Defendants, and they should have been disclosed, along with the fact that NHC would be
3 unable to continue as a going concern. They should also have resulted in appropriate remedial
4 measures.

5 348. The Management Defendants knew, or should have known, that their
6 intentional decision not to properly address red flags raised by regulators, as well as the
7 obvious deficiencies of NHC’s financial reports, would cause significant damages and involve
8 and/or constitute negligence, intentional misconduct, fraud, and/or knowing violations of the
9 law.

10 349. Additionally, the Management Defendants drafted or ratified and approved of
11 the release of the 2013 and 2014 MD&A’s. These documents, which are intended to disclose
12 and serve as management’s discussion and analysis of important issues facing NHC, failed to
13 disclose or analyze important issues, including without limitation, NHC’s extraordinary
14 accounting practices, insufficient reserves, liquidity concerns, lack of borrowing capacity or
15 its inability to continue as a going concern. The failure of management to adequately disclose
16 or analyze these and other issues was in violation of statutory and industry requirements,
17 including those set forth by NAIC, the Nevada DOI and incorporated into Nevada law.

18 350. The Management Defendants did not ensure proper reporting of related party
19 transactions or provide proper oversight over those related parties.

20 351. NHC management had extensive connections with the Culinary Union and its
21 UHH administrator. Many of the Director Defendants had served on the Board of CHF, and
22 some Directors also had positions with the Culinary Union. NHC hired UHH to administer
23 the medical side of NHC’s business. As a result, UHH was paid significant fees that, on
24 information and belief, provided a windfall for UHH.

25 352. Defendant Kathy Silver served as a director of NHC and was president of two
26 Culinary Union related entities, NHS and CHF.

27 ///

28 ///

1 353. As discussed above, NHC management engaged NHS to perform utilization
2 management and member eligibility review services for NHC in 2014. NHC paid substantial
3 fees to NHS for this service, receiving limited and deficient services in return. NHS also had
4 a conflict of interest, or the appearance of a conflict of interest, by being engaged to provide
5 a quality control review of claim services provided by its parent company, UHH.

6 354. Despite requirements to disclose these related party transactions in financial
7 statements and other filings to the Nevada DOI, CMS and others, NHC management failed to
8 adequately provide such disclosure.

9 355. NHC management also paid themselves substantial compensation without
10 justification and despite the fact that NHC was losing millions of dollars each financial report
11 period.

12 356. Due to the material amounts of funds flowing from NHC to UHH and NHS, the
13 Management Defendants were under an obligation to report the related party transactions in
14 NHC's financial statements, and they were under a further obligation to assure that these related
15 party transactions were fair and reasonable to NHC and performed satisfactorily. The
16 Management Defendants, however, failed to do so.

17 357. Management Defendants, including but not limited to Egan, Dibsie, and
18 Mattoon, authorized or caused to be paid claims outside of eligibility, failed to terminate
19 members when appropriate, allowed a claims backlog to occur to benefit a corporate insider,
20 UHH, which caused losses to NHC, all of which were in violation to their fiduciary and other
21 duties to NHC, and resulted in substantial losses to NHC.

22 358. Such acts and omissions with respect to NHC's failure to adequately disclose
23 related party transactions and to assure their fairness, paying claims outside of eligibility,
24 failure to terminate members, failure to adequately supervise UHH and NHS and have claims
25 properly adjudicated, along with paying themselves unreasonable compensation, by the
26 Management Defendants involved and/or constituted intentional misconduct, fraud, self-
27 dealing, and/or the knowing violation of the law.

28 ///

FACTUAL ALLEGATIONS RELATING TO UHH

O. The Management Defendants Fail to Uphold Their Fiduciary Duties to NHC

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

360. Prior to the formation of NHC, Hospitality Health entered into an agreement with its affiliate UHH, effective May 17, 2012, wherein UHH would provide third-party administration of NHC's insurance policies (the "UHH Consulting Agreement").

361. The UHH Consulting Agreement was subsequently assigned by Hospitality Health to NHC effective December 21, 2012. Subsequently on June 27, 2013, an Administrative Services Agreement (the "UHH Administrative Services Agreement") effective as of January 1, 2014, was entered into between UHH and NHC.

362. UHH was owned by CHF or its affiliated entity, and many of its directors and officers were directly employed by, or had affiliations or other business dealings with, CHF and its affiliates, posing a substantial conflict of interest. UHH was awarded its contract for NHC without the benefit of competitive bidding, and UHH was paid very substantial and unwarranted fees by NHC. There was no real accountability over how UHH charged fees to NHC or how UHH processed claims. NHC allowed UHH, as a corporate insider, to run amuck, not perform critical services, overcharge for services, and put NHC in a deeper financial hole. In particular, Defendants Zumtobel, Bond, and Silver had direct or indirect affiliations with UHH, while also being in management control over NHC, and these defendants allowed UHH to be enriched at NHC's expense.

363. In its position as a third-party administrator, UHH controlled the administration of NHC's insurance policies. Under the UHH Consulting Agreement and the UHH Administrative Services Agreement, UHC was required to, among other duties:

- Process all claims timely and in accordance with NHC's health plans, and process medical benefits in accordance with industry standards;
- Properly track and implement member enrollments;
- Properly track and implement member terminations;

- Properly handle record keeping and computer systems and generate accurate reports that would be relied upon by NHC and others;
- Meet all governmental rules related to claims processing and due dates and responses to Beneficiaries;
- Generate Explanations of Benefits (“EOB’s”);
- Provide accurate and timely reports;
- Operate computer systems necessary for performance of its duties, and maintain its systems as necessary to comply with all governmental laws and regulations;
- Develop and implement an internal claims audit process;
- Maintain secured, controlled and reliable access to their systems;
- Provide timely, complete and verified data feeds;
- Assist with the preparation and filing of any Federal and State reports, which are required by law.

364. Although third-party administrators are required to be licensed under Nevada law, UHH was performing as a third-party administrator without an appropriate and required license.

365. UHH’s lack of the appropriate and required license to act as a third-party administrator in Nevada rendered the UHH Consulting Agreement illegal and *void ab initio*.

366. UHH’s lack of the appropriate and required license to act as a third-party administrator in Nevada rendered the UHH Administrative Services Agreement illegal and *void ab initio*.

367. UHH vetted and recommended a claims system that could not appropriately handle NHC’s claims and member administration, which further exacerbated claims problems and issues for NHC, causing the company losses. UHH represented that it had the requisite expertise to handle and process the NHC claims when it did not have such expertise or understanding, and it was not even properly licensed to perform these claim functions. In its position as NHC’s benefits administrator, UHH owed NHC a fiduciary duty which arose due to UHH’s superior and trusted position with NHC.

///

///

///

P. UHH Fails in its Responsibility as a Third-Party Administrator

368. UHH failed to fulfill its contractual, statutory, and professional obligations as a third-party administrator of NHC's medical policies, including but not limited to the following:

- UHH failed to maintain NHC's claims and provider data accurately and consistently, leading to incorrect data being used throughout the company and leading to incorrect claims adjudications.
- UHH failed to timely and accurately process and pay claims.
- UHH failed to properly track and implement member enrollments and terminations.
- UHH failed to use internal controls to test platforms and provide cross-checks and verifications on data and systems.
- UHH failed to timely correct errors in data entry or claims processing even when NHC raised these issues.
- UHH failed in its fiduciary responsibilities to NHC to act in the best interests of NHC.
- UHH failed to perform to the level of skill required under contractual statutory or professional standards.
- UHH failed to hire appropriate personnel with sufficient knowledge or experience for the work assigned, or provide adequate training for its personnel assigned to NHC matters.
- UHH Failed to properly recommend, select, operate and maintain adequate information technology systems and records to perform the services UHC was obligated to perform for NHC.

369. As a result of these failures, NHC sustained damages that included, without limitation, improper costs related to uninsured persons, financial misreporting, improper setting of rates and reserves, loss of reimbursements from government sources, further draw downs on CMS Loans, additional business overhead for NHC's operation, and substantial costs related to identifying and correcting UHH's errors.

///

///

///

370. Despite the prohibition on existing insurance companies benefiting from the funding of health cooperatives like NHC, over the course of NHC's operation, millions of dollars were paid by NHC to UHH effectively subsidizing costs that would otherwise be borne by UHH and its affiliates to NHC's detriment.

371. These costs included transferring unprofitable insureds to NHC, the development of software and related training for the use of UHH and its affiliates, and the transferring of salaries of certain of the Management Defendants working for UHH and its affiliates, among others, to NHC, and the life of NHC was prolonged to financially benefit those affiliated with insiders such as UHH.

Q. The Financial Collapse of NHC and the Resulting State Rehabilitation and Liquidation Proceedings

372. Ultimately, no one could deny that NHC was incapable of continuing as a going concern, and the Nevada DOI was required to step in. On August 17, 2015, NHC's board of directors voted to cease writing new business and to suspend voluntarily its certificate of authority, effectively "throwing in the towel" and ending any prospect of recovery.

373. On September 25, 2015, and with the consent of NHC's Board of Directors, a petition for appointment of Commissioner as Receiver and Other Permanent Relief; Request for Injunction Pursuant to NRS 696B.270(1) was filed by then-acting Nevada Commissioner of Insurance, Amy L. Parks, in her official capacity as Temporary Receiver of NHC.

374. An Order Appointing the Acting Commissioner of Insurance, Amy L. Parks, as Temporary Receiver Pending Further Orders of the Court, Granting Temporary Relief Pursuant to NRS 696B.270, and authorizing the Temporary Receiver to appoint a special deputy receiver was filed on October 1, 2015. The Commissioner, as Temporary Receiver, appointed the firm of Cantilo & Bennett, L.L.P. as Special Deputy Receiver on October 1, 2015.

375. On October 14, 2015, the Court issued a Permanent Injunction and Order Appointing Commissioner as Permanent Receiver of Nevada Health CO-OP. On

1 September 21, 2016, the Court issued a Final Order Finding and Declaring Nevada CO-OP
2 to be insolvent and placing Nevada Health CO-OP into Liquidation.

3 376. Under these orders the Commissioner of Insurance (as the Permanent
4 Receiver) and Cantilo & Bennett (as the Special Deputy Receiver) are authorized to
5 liquidate the business of NHC and wind up its ceased operations pursuant to
6 NRS 696B.220.2. This authority includes authorization to institute and to prosecute, in the
7 name of NHC or in the Receiver's own name, any and all suits and other legal proceedings,
8 and to prosecute any action which may exist on behalf of the members, enrollees insured,
9 or creditors, of NHC against any person.

10 377. The consequences of Defendants' actions have been substantial and very
11 harmful to NHC and many others. Over \$65 million in federal loans are in default and
12 federal recoverables were lost. Medical insurance for tens of thousands of people was
13 disrupted; doctors and hospitals went unpaid; and insured patients were left concerned about
14 receiving needed care and whether they would be able to pay medical bills.

15 378. The Receiver is now tasked with liquidating the failed insurer to protect
16 members, insured enrollees, and creditors of NHC and the public.

17 **CAUSES OF ACTION RELATED TO MILLIMAN DEFENDANTS**

18 **FIRST CAUSE OF ACTION**

19 **(Negligence Per Se - Violation of NRS 681B Against Milliman and Heijde)**

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

22 380. NRS 681B requires, in part, the opinion of an appointed actuary as to whether
23 the reserves and related actuarial items held in support of the policies and contracts are
24 computed appropriately, are based on assumptions that satisfy contractual provisions, are
25 consistent with prior reported amounts, and comply with applicable laws of the State of
26 Nevada.

27 381. NRS 681B also prescribes minimum standards of form and substance for the
28 opinion, including those set forth in the Valuation Manual adopted by NAIC.

382. Plaintiff and those represented by Plaintiff, including the members of NHC, NHC's insured enrollees, NHC's creditors, NHC, and the State of Nevada belong to a class of persons that NRS 681B was designed to protect.

383. Milliman and Heijde accepted appointment as NHC's appointed actuary, and provided opinions under NRS 681B.

384. As a result, Milliman and Heijde were subject to the minimum standards as set forth in NRS 681B.

385. As set forth above, Defendants Milliman and Heijde violated NRS 681B by failing to perform their duties as the appointed actuary in accordance with the applicable minimum statutory and applicable professional standards.

386. Plaintiff's injury was the type against which NRS 681B was intended to protect.

387. As a direct and proximate result of Defendants Milliman and Heijde's conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars (\$15,000).

388. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

SECOND CAUSE OF ACTION

(Professional Malpractice Against Milliman Defendants)

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

390. The Milliman Defendants were engaged by NHC and its predecessors in interest to provide professional actuarial services to NHC.

391. Such services included but were not limited to providing certification required pursuant to NRS 681B, conducting a feasibility study, providing business plan support, assisting NHC in setting premium rates, addressing matters with CMS, participating in the preparation of financial reports and information to regulators, and establishing policies of insurance as set forth herein.

///

392. The Milliman Defendants had a duty to use such skill, prudence, and diligence as other members of the profession commonly possess and exercise.

393. As detailed above, the Milliman Defendants breached that duty by failing to comply with applicable statutory and professional standards including those set forth in NRS 681B, the Valuation Manual adopted by NAIC, the ASOPs as adopted by the Actuarial Standards Board of the American Academy of Actuaries, and by taking actions that caused the misreporting of the 2014 financial results without reasonable basis.

394. As a direct and proximate result of the Milliman Defendants' conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars (\$15,000).

395. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

THIRD CAUSE OF ACTION

(Intentional Misrepresentation (Fraud) Against Milliman Defendants)

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

397. On or about December 21, 2011 Milliman and Shreve issued a document entitled "Hospitality Health Feasibility Study and Business Support for Consumer Operated and Oriented Plan (CO-OP) Application."

398. On or about March 1, 2015 and on or about May 14, 2015, Milliman and Heijde issued the valuation and certification of NHC's reserves pursuant to NRS 681B.

399. In each of these documents, the respective Milliman Defendants certified that the statements contained therein were, to the best of their knowledge and belief, accurate, complete, and prepared in accordance with generally recognized and accepted actuarial principles and practices consistent with ASOPs, the Code of Professional Conduct and Qualification Standards for Public Statements of Actuarial Opinion of the American Academy of Actuaries.

///

(Negligent Misrepresentation Against Milliman Defendants)

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

412. The Milliman Defendants, in a course of action in which they had a pecuniary interest, failed to exercise reasonable care or competence in obtaining or communicating information to Plaintiff as set forth above.

413. Such information included, without limitation, the information set forth in the Feasibility Study, the calculation of premiums, the calculation of financial projections, the calculation of required reserves, and the communication of financial information to the Nevada DOI.

414. Plaintiff justifiably relied on the information it received.

415. As a direct and proximate result of the Milliman Defendants' conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars (\$15,000).

416. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

(Breach of Fiduciary Duty Against Milliman Defendants)

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

418. A fiduciary duty existed between Plaintiff and the Milliman Defendants where Milliman was in a superior or trusted position as set forth herein.

419. The Milliman Defendants breached that duty by failing to perform to statutory and professional standards as set forth above.

3 421. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to
4 prosecute this action and is entitled to recover an award of reasonable attorneys' fees and
5 costs incurred herein.

SEVENTH CAUSE OF ACTION

(Negligence Against Milliman Defendants)

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

423. The Milliman Defendants owed a duty of care to Plaintiff, including the duty to perform its work in accordance with applicable statutory and professional standards.

424. As detailed above, by failing to perform to applicable statutory and professional standards, the Milliman Defendants breached that duty.

14 425. The breach was the legal cause of Plaintiff's injuries.

426. As a direct and proximate result of the Milliman Defendants' conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars (\$15,000).

427. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

EIGHTH CAUSE OF ACTION

(Breach of Contract Against Milliman)

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

24 429. Milliman and Hospitality Health entered into a valid and enforceable contract -
25 the Consulting Services Agreement - that required Milliman to perform professional actuarial
26 services.

430. A provision of the Consulting Services Agreement states, “Milliman will perform all services in accordance with applicable professional standards.”

431. Plaintiff was assigned all rights, benefits, and interests in the Consulting Services Agreement by Hospitality Health.

432. Milliman failed to perform under the Consulting Services Agreement by failing to perform actuarial services as required under applicable professional and statutory standards, as detailed above.

433. Plaintiff performed, or was excused from performance, under the Consulting Services Agreement.

434. As a direct and proximate result of Milliman's conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars (\$15,000).

435. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

NINTH CAUSE OF ACTION

(Tortious Breach of the Implied Covenant Against Milliman)

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

437. Milliman and Hospitality Health entered into a valid and enforceable contract - the Consulting Services Agreement - that required Milliman to perform professional actuarial services.

438. Plaintiff was assigned all rights, benefits, and interests in the Consulting Services Agreement by Hospitality Health.

439. Milliman owed a duty of good faith to Plaintiff arising from the contract.

440. A special element of reliance or fiduciary duty existed between Plaintiff and Milliman where Milliman was in a superior or trusted position.

441. Milliman breached the duty of good faith by engaging in misconduct in a manner that was unfaithful to the purpose of the Consulting Services Agreement, by failing to perform in accordance with statutory and professional standards as set forth herein.

///

452. The Milliman Defendants undertook to provide actuarial services, including but not limited to, providing a feasibility study, calculating insurance premiums, performing other forecasts, calculating and certifying required reserves and other actuarial items, and participating in the preparation of financial information and reports that would be submitted to the Nevada DOI.

453. The Milliman Defendants knew or should have recognized these undertakings as necessary for the protection of NHC's members, NHC's enrolled insured, NHC's creditors, and the State of Nevada.

454. By performing the actuarial services detailed above, the Milliman Defendants undertook to perform a duty owed by NHC to its members, enrolled insureds, creditors and regulators to act in accordance with statutory and professional standards, to properly compute premiums, to properly perform feasibility studies and forecasts, to properly value the reserves and other actuarial items of NHC, and to submit proper and reasonable reports of financial condition.

455. The Milliman Defendants' failure to exercise reasonable care in performing its services, including their failure to perform actuarial services in accordance with applicable standards as detailed herein, increased the risk of harm to (and did in fact harm) NHC, NHC's members, insureds, creditors, customers and vendors, and the State of Nevada, and it unnecessarily prolonged, and it led to, the continued and unjustified existence of NHC.

456. As a direct and proximate result of the Milliman Defendants' conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars (\$15,000).

457. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorney fees and costs incurred herein.

TWELFTH CAUSE OF ACTION
(Unjust Enrichment Against Milliman)

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

1 459. Milliman was paid over \$1 million for actuarial services that were to be
2 performed in accordance with statutory and professional standards.

3 460. Despite failure to provide such services in accordance with statutory and
4 professional standards, Milliman unjustly retained the fees paid to it for such services against
5 fundamental principles of justice, equity, and good conscience.

6 461. As a direct and proximate result of Milliman's conduct, Plaintiff has suffered
7 damages in an amount in excess of fifteen thousand dollars (\$15,000).

8 462. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to
9 prosecute this action and is entitled to recover an award of reasonable attorneys' fees and
10 costs incurred herein.

11 **THIRTEENTH CAUSE OF ACTION**
12 **(Civil Conspiracy Against Milliman Defendants)**

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

15 464. Defendants Milliman and Shreve acted in concert with each other and with the
16 management of NHC, including, but not limited to, Dibsie, to obtain funds for NHC under
17 false pretenses and to license NHC through the use of the Feasibility Study, which they knew
18 to be false and not in accordance with required statutory and professional actuarial standards.

19 465. Defendants Milliman and Heijde acted in concert with each other and with
20 management of NHC, including, but not limited to, Egan and Dibsie, to falsify reserves and
21 financial reporting and avoid statutory supervision by their use of the 2014 Opinion,
22 participated in the preparation of false and misleading financial information that was provided
23 to Nevada DOI, and had subsequent communications with NHC and/or Nevada DOI, which
24 they knew to be false and not in accordance with required statutory and professional standards.

25 466. As a direct and proximate result of the Milliman Defendants' conduct, Plaintiff
26 has suffered damages in an amount in excess of fifteen thousand dollars (\$15,000).

27 ///

28 ///

1 467. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to
2 prosecute this action and is entitled to recover an award of reasonable attorney fees and costs
3 incurred herein.

4 **FOURTEENTH CAUSE OF ACTION**

5 **(Concert of Action Against Milliman Defendants)**

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

8 469. Defendants Milliman and Shreve acted in concert with each other and the
9 management of NHC, including, but not limited to, Dibsie, to obtain money under false
10 pretenses and license NHC through use of the Feasibility Study, which they knew to be false
11 and not in accordance with required statutory and professional actuarial standards.

12 470. Defendants Milliman and Heijde acted in concert with each other and the
13 management of NHC, including Egan and Dibsie, to falsify reserves and avoid statutory
14 supervision by their use of the 2014 Opinion, participated in the preparation of financial
15 information provided to Nevada DOI, and had subsequent communications with NHC and/or
16 Nevada DOI, which they knew to be false and not in accordance with required statutory and
17 professional standards.

18 471. The Milliman Defendants knew that their actions were inherently dangerous or
19 posed a substantial risk of harm to others in that their actions could affect and disrupt the
20 medical care of NHC's members and insured enrollees.

21 472. The Milliman Defendants' actions did affect and disrupt the medical care of
22 NHC's members and enrolled insureds. The Milliman Defendants' actions have adversely
23 impacted the ability of health care providers to seek and obtain payment from NHC members
24 for services rendered.

25 473. As a direct and proximate result of the Milliman Defendants' conduct, Plaintiff
26 has suffered damages in an amount in excess of fifteen thousand dollars (\$15,000).

27 ///

28 ///

1 474. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to
2 prosecute this action and is entitled to recover an award of reasonable attorneys' fees and
3 costs incurred herein.

4 **CAUSES OF ACTION RELATED TO MILLENNIUM DEFENDANTS**

5 **FIFTEENTH CAUSE OF ACTION**

6 **(Professional Malpractice Against Millennium)**

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

9 476. Millennium was engaged by NHC and was responsible for providing
10 professional accounting services to NHC.

11 477. Such services included, but were not limited to, preparing and filing the NHC
12 annual reports, quarterly reports, and other reports as listed herein.

13 478. Services to be performed by Millennium included the preparation of financial
14 statements, participating in the drafting of the year 2014 MD&A that was filed with the
15 Nevada DOI, evaluating general ledger entries to ensure that statutory accounting and
16 reporting principles and rules were followed, and recommending any adjustments to adhere
17 to statutory accounting and reporting rules prescribed by the State of Nevada.

18 479. Millennium had a duty to use such skill, prudence, and diligence as other
19 members of the profession commonly possess and exercise.

20 480. As detailed above, Millennium breached that duty by failing to comply with
21 applicable statutory and professional standards.

22 481. As a direct and proximate result of Millennium's conduct, Plaintiff has suffered
23 damages in an amount in excess of fifteen thousand dollars (\$15,000).

24 482. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to
25 prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs
26 incurred herein.

27 ///

28 ///

SIXTEENTH CAUSE OF ACTION

(Intentional Misrepresentation (Fraud) Against Millennium)

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

484. Throughout the time that Millennium performed services for NHC, Millennium represented that it was performing such services in accordance with applicable statutory, professional, and contractual standards.

485. Millennium contracted to advise NHC on and preparing the quarterly reports for NHC for 2014 and March of 2015.

486. Millennium advised NHC and prepared the quarterly reports for NHC for 2014 and March of 2015.

487. Millennium knew or believed that the quarterly reports it prepared for NHC contained false and misleading statements and that its representations as to its work standards as stated above, were false, or Millennium had an insufficient basis of information for making such representations.

488. Plaintiff justifiably relied upon Millennium's representations.

489. As a direct and proximate result of Millennium's conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars (\$15,000).

490. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

SEVENTEENTH CAUSE OF ACTION

(Negligent Misrepresentation Against Millennium)

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

492. Millennium, in the course of action in which it had a pecuniary interest, failed to exercise reasonable care or competence in obtaining or communicating information to Plaintiff, as set forth above.

1 493. Such information included, without limitation, that the accounting services of
2 Millennium were performed in accordance with applicable standards and that the information
3 contained in the reports prepared by Millennium on NHC was accurate.

4 494. Plaintiff justifiably relied on the information it received.

5 495. As a direct and proximate result of Millennium's conduct, Plaintiff has suffered
6 damages in an amount in excess of fifteen thousand dollars (\$15,000).

7 496. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to
8 prosecute this action and is entitled to recover an award of reasonable attorneys' fees and
9 costs incurred herein.

10 **EIGHTEENTH CAUSE OF ACTION**

11 **(Negligence Against Millennium)**

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

14 498. Millennium owed a duty of care to Plaintiff, including the duty to perform its
15 work in accordance with applicable statutory, professional, and contractual standards.

16 499. As detailed above, by failing to perform to applicable statutory, professional,
17 and contractual standards, Millennium breached that duty.

18 500. The breach was the legal cause of Plaintiff's injuries.

19 501. As a direct and proximate result of Millennium's conduct, Plaintiff has suffered
20 damages in an amount in excess of fifteen thousand dollars (\$15,000).

21 502. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to
22 prosecute this action and is entitled to recover an award of reasonable attorneys' fees and
23 costs incurred herein.

24 **NINETEENTH CAUSE OF ACTION**

25 **(Gross Negligence Against Millennium)**

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

28 ///

1 504. Millennium owed a duty of care to NHC, including the duty to perform its work
2 in accordance with industry standards, and to not provide misleading or otherwise inaccurate
3 information upon which it intended for and knew NHC, the NDOI or others would rely.

4 505. As detailed above, Millennium failed to perform to applicable standards of care,
5 by failing to exercise even the slightest degree of care.

6 506. Millennium engaged in an act or omission as detailed above of an aggravated
7 character, or with willful, wanton misconduct, misreporting information that it knew would
8 be relied upon by NHC and others.

9 507. The breach was the legal cause of NHC's injuries.

10 508. As a direct and proximate result of Millennium's conduct, NHC has suffered
11 damages in an amount in excess of fifteen thousand dollars (\$15,000).

12 509. In committing the acts hereinabove alleged, Millennium is guilty of oppression,
13 fraud, and malice towards NHC. Therefore, NHC is entitled to recover punitive damages
14 from Millennium for the purpose of deterring it and others similarly situated from engaging
15 in like conduct in the future.

16 510. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to
17 prosecute this action and is entitled to recover an award of reasonable attorneys' fees and
18 costs incurred herein.

19 **TWENTIETH CAUSE OF ACTION**
20 **(Breach of Contract Against Millennium)**

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

23 512. Millennium and NHC entered into a valid and enforceable contract - the
24 January 7, 2015, Service Agreement – that required Millennium to perform professional
25 accounting and consulting services.

26 513. Provisions of the Service Agreement provided for Millennium to perform all
27 services in accordance with applicable professional, statutory, and contractual standards.

28 ///

3 515. Plaintiff performed, or was excused from performance, under the Services
4 Agreement.

5 516. As a direct and proximate result of Millennium's conduct, Plaintiff has suffered
6 damages in an amount in excess of fifteen thousand dollars (\$15,000).

517. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

TWENTY-FIRST CAUSE OF ACTION

(Tortious Breach of the Implied Covenant Against Millennium)

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

14 519. Millennium and NHC entered into a valid and enforceable contract - the
15 January 7, 2015 Service Agreement – that required Millennium to perform professional,
16 accounting, and consulting services.

520. Under applicable law, the Service Agreement contains an implied covenant of good faith and fair dealing among all parties.

521. A special element of reliance or fiduciary duty existed between Plaintiff and Millennium where Millennium was in a superior or trusted position.

522. In failing to perform in accordance with statutory and professional standards as set forth herein, Millennium breached the duty of good faith and engaged in misconduct in a manner that was unfaithful to the purpose of the Service Agreement.

523. As a direct and proximate result of Millennium's conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars (\$15,000).

524. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorney fees and costs incurred herein.

TWENTY-SECOND CAUSE OF ACTION

(Breach of the Implied Covenant of Good Faith and Fair Dealing Against Millennium)

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

526. Millennium and NHC entered into a valid and enforceable contract – the January 7, 2015, Service Agreement - that required Millennium to perform professional, accounting, and consulting services.

527. Under applicable law, the Service Agreement contains an implied covenant of good faith and fair dealing among all parties.

528. Millennium, by failing to follow applicable professional and statutory standards as set forth herein, breached that duty by performing in a manner that was unfaithful to the purpose of the Service Agreement.

529. As a direct and proximate result of Millennium's conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars (\$15,000).

530. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorney fees and costs incurred herein.

TWENTY-THIRD CAUSE OF ACTION

(Negligent Performance of an Undertaking Against Millennium)

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

532. Millennium undertook to provide accounting and consulting services, including, but not limited to, preparing and filing financial statements on behalf of NHC.

533. Such services included, but were not limited to, preparing and filing the NHC annual reports, quarterly reports, and other reports as listed herein, and it assisted with the preparation of the 2014 MD&A that was reported to the Nevada DOI.

534. Services to be performed by Millennium also included evaluating general ledger entries to ensure that statutory accounting and reporting principles had been followed, and

1 recommending any adjustments so as to adhere to statutory accounting and reporting rules
2 prescribed by the State of Nevada.

3 535. Millennium knew or should have recognized these undertakings as being
4 necessary for the protection of NHC's members, NHC's enrolled insureds, NHC's creditors,
5 and the State of Nevada.

6 536. By agreeing to perform the accounting and consulting services detailed above,
7 Millennium undertook to perform a duty owed by NHC to its members, enrolled insureds,
8 creditors, and regulators and to act in accordance with statutory and professional standards.

9 537. Millennium's failure to exercise reasonable care in performing its services,
10 including Millennium's failure to perform accounting services in accordance with applicable
11 standards as detailed herein and misreporting of financial information and reports, increased
12 the risk of harm to (and did in fact harm) NHC, NHC's members, insureds, creditors,
13 customers and vendors, and the State of Nevada, and it unnecessarily prolonged, and it led to,
14 the continued and unjustified existence of NHC.

15 538. As a direct and proximate result of Millennium's conduct, Plaintiff has suffered
16 damages in an amount in excess of fifteen thousand dollars (\$15,000).

17 539. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to
18 prosecute this action and is entitled to recover an award of reasonable attorney fees and costs
19 incurred herein.

20 **TWENTY-FOURTH CAUSE OF ACTION**

21 **(Unjust Enrichment Against Millennium)**

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

24 541. Millennium was paid for accounting and consulting services that were to be
25 performed in accordance with professional, statutory, and contractual standards.

26 542. Despite not providing such services in accordance with professional, statutory,
27 and contractual standards, and against fundamental principles of justice, equity, and good
28 conscience, Millennium unjustly retained the fees paid to it for such services.

543. As a direct and proximate result of Millennium's conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars (\$15,000).

544. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorney fees and costs incurred herein.

CAUSES OF ACTION RELATED TO LARSON DEFENDANTS

TWENTY-FIFTH CAUSE OF ACTION

(Negligence Per Se - Violation of NRS 628.435 Against Larson Defendants)

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

546. NRS 628.435 requires, in part, that a CPA comply with all professional standards for accounting and documentation related to an audit applicable to a particular engagement.

547. Plaintiff, and those represented by Plaintiff, including the members of NHC, NHC's insured enrollees, NHC's vendors, and the State of Nevada, belong to a class of persons that NRS 628.435 was designed to protect.

548. The Larson Defendants undertook to perform audits of NHC.

549. As a result, the Larson Defendants were subject to the minimum standards as set forth in NRS 628.435.

550. As set forth above, the Larson Defendants violated NRS 628.435 by failing to perform their duties as CPAs in accordance with the minimum statutory and applicable professional standards required.

551. Plaintiff's injury was the type against which NRS 628.435 was intended to protect.

552. As a direct and proximate result of the Larson Defendants' conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars (\$15,000).

///

///

553. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

TWENTY-SIXTH CAUSE OF ACTION

(Professional Malpractice Against Larson Defendants)

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

555. The Larson Defendants were engaged by NHC or were responsible for providing professional accounting and auditing services to NHC.

556. Such services included, but were not limited to, auditing the books and records of NHC for the years ended December 31, 2013, and 2014, and its MD&A for those years, and providing the audit opinions set forth in related reports, including the Audit Report Concerning NHC's December 31, 2013, and 2014, Financial Statements, The Reports of Independent Certified Public Accountants required by OMB Circular A-133, Independent Auditor's Report on Compliance for each Major Program, and Report on Internal Control Over Compliance Independent Auditor's Report on Internal Control over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with Government Auditing Standards.

557. The Larson Defendants had a duty to use such skill, prudence, and diligence as other members of the profession commonly possess and exercise.

558. As detailed above, the Larson Defendants breached that duty by failing to comply with applicable statutory and professional standards.

559. As a direct and proximate result of the Larson Defendants' conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars (\$15,000).

560. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorney fees and costs incurred herein.

///

TWENTY-SEVENTH CAUSE OF ACTION

(Intentional Misrepresentation (Fraud) Against Larson Defendants)

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

562. On or about May 29, 2014, Larson issued its audit report concerning NHC's December 31, 2013, financial statements.

563. On or about June 1, 2015, Larson issued its audit report concerning NHC's December 31, 2013, and 2014, Financial Statements.

564. The audit reports contained the following statements:

i. We conducted our audits in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States.

ii. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our qualified audit opinion.

iii. In our opinion, the statutory financial statements referred to above present fairly, in all material respects, the admitted assets, liabilities, and capital and surplus of Nevada Health Co-Op as of December 31, 2014, and 2013, and the results of its operations and its cash flow for the years then ended, in accordance with the financial reporting provisions of the Nevada DOI described in Note 1.

iv. In our opinion, the [Supplementary] information is fairly stated in all material respects in relation to the financial statements taken as a whole.

565. On or about June 1, 2015, Larson issued its report entitled The Reports of Independent Certified Public Accountants required by OMB Circular A-133.

566. These reports included an "Independent Auditor's Report on Internal Control over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with Government Auditing Standards," and

1 an “Independent Auditor’s Report on Compliance for each Major Program; Report on Internal
2 Control Over Compliance; and Report on Schedule of Expenditures of Federal Awards
3 Required by OMB Circular A-133.”

4 567. The “Independent Auditor’s Report on Internal Control over Financial
5 Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements
6 Performed in Accordance with Government Auditing Standards” contained the following
7 statements:

8 i. We have audited, in accordance with the auditing standards
9 generally accepted in the United States of America and the standards applicable
10 to financial audits contained in Government Auditing Standards issued by the
11 Comptroller General of the United States, the statutory financial statements of
12 Nevada Health Co-Op (the Co-Op) (a nonprofit organization), which comprise
13 the statement of financial position as of December 31, 2014, and the related
14 statutory financial statements of activities, and cash flows for the year then
15 ended, and the related notes to the statutory financial statements, and have issued
16 our report thereon dated June 1, 2015.

17 ii. . . . during our audit we did not identify any deficiencies in
18 internal control that we consider to be material weaknesses.

19 iii. As part of obtaining reasonable assurance about whether the Co-
20 Op’s financial statements are free from material misstatement, we performed
21 tests of its compliance with certain provisions of laws, regulations, contracts,
22 and grant agreements, noncompliance with which could have a direct and
23 material effect on the determination of financial statement amounts.

24 iv. The results of our tests disclosed no instances of noncompliance
25 or other matters that are required to be reported under Government Auditing
26 Standards.

27 ///

28 ///

1 568. The “Independent Auditor’s Report on Compliance for each Major Program;
2 Report on Internal Control Over Compliance; and Report on Schedule of Expenditures of
3 Federal Awards Required by OMB Circular A-133” contained the following statements:

4 i. We believe that our audit provides a reasonable basis for our
5 opinion in compliance for each major federal program.

6 ii. In our opinion, the Co-Op complied, in all material respects, with
7 the types of compliance requirements referred to above that could have a direct
8 and material effect on each of its major federal programs for the year ended
9 December 31, 2014.

10 iii. In planning and performing our audit of compliance, we
11 considered the Co-Op’s internal control over compliance with the types of
12 requirements that could have a direct and material effect on each major federal
13 program to determine the auditing procedures that are appropriate in the
14 circumstances for the purpose of expressing an opinion on compliance for each
15 major federal program and to test and report on internal control over compliance
16 in accordance with OMB Circular A-133.

17 iv. We did not identify any deficiencies in internal control over
18 compliance that we considered to be material weaknesses. We did not identify
19 any deficiencies in internal control over compliance that we consider to be
20 material weaknesses.

21 v. We have audited the statutory financial statements of the Co-Op,
22 as of and for the year ended December 3, 2014, and the related notes to the
23 statutory financial statements. We issued our report thereon dated June 1, 2015,
24 which contained an unmodified opinion on those statutory financial statements.

25 vi. The [Schedule of Expenditures for Financial Awards] has been
26 subjected to the auditing procedures applied in the audit of the statutory financial
27 statements and certain additional procedures, including comparing and
28 reconciling such information directly to the underlying accounting and other

1 records used to prepare the additional procedures in accordance with auditing
2 standards generally accepted in the United States of America. In our opinion,
3 the schedule of expenditures of federal awards is fairly stated in all material
4 respects in relation to the statutory financial statements as a whole.

5 569. The Larson Defendants knew or believed that their representations as stated
6 above, were false, or that the Larson Defendants had an insufficient basis of information for
7 making the representations.

8 570. Plaintiff justifiably relied upon the Larson Defendants' representations.

9 571. As a direct and proximate result of the Larson Defendants' conduct, Plaintiff
10 has suffered damages in an amount in excess of fifteen thousand dollars (\$15,000).

11 572. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to
12 prosecute this action and is entitled to recover an award of reasonable attorneys' fees and
13 costs incurred herein.

14 **TWENTY-EIGHTH CAUSE OF ACTION**

15 **(Negligent Misrepresentation Against Larson Defendants)**

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

18 574. The Larson Defendants, in the course of action in which they had a pecuniary
19 interest, failed to exercise reasonable care or competence in obtaining or communicating
20 information to Plaintiff as set forth above.

21 575. Such information included, without limitation, that the accounting and auditing
22 services of the Larson Defendants were performed in accordance with applicable standards
23 and other information contained in the reports of the Larson Defendants on NHC, as set forth
24 herein.

25 576. Plaintiff justifiably relied on the information it received.

26 577. As a direct and proximate result of the Larson Defendants' conduct, Plaintiff
27 has suffered damages in an amount in excess of fifteen thousand dollars (\$15,000).

28 ///

1 578. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to
2 prosecute this action and is entitled to recover an award of reasonable attorneys' fees and
3 costs incurred herein.

4 **TWENTY-NINTH CAUSE OF ACTION**

5 **(Negligence Against Larson Defendants)**

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

8 580. The Larson Defendants owed a duty of care to Plaintiff, including the duty to
9 perform their work in accordance with applicable statutory and professional standards.

10 581. As detailed above, by failing to perform to applicable statutory and professional
11 standards, the Larson Defendants breached that duty.

12 582. The breach was the legal cause of Plaintiff's injuries.

13 583. As a direct and proximate result of the Larson Defendants' conduct, Plaintiff
14 has suffered damages in an amount in excess of fifteen thousand dollars (\$15,000).

15 584. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to
16 prosecute this action and is entitled to recover an award of reasonable attorneys' fees and
17 costs incurred herein.

18 **THIRTIETH CAUSE OF ACTION**

19 **(Breach of Contract Against Larson)**

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

22 586. Larson and NHC entered into two valid and enforceable contracts - the 2013 and the
23 2014 Engagement Letters - that required Larson to perform professional accounting and auditing
24 services.

25 587. Provisions of the Engagement Letters provided for Larson to perform all
26 services in accordance with applicable professional standards.

27 ///

28 ///

1 588. Larson failed to perform under the Engagement Letters by failing to perform
2 accounting and auditing services as required under applicable professional and statutory
3 standards, as detailed above.

4 589. Plaintiff performed, or was excused from performance, under the Engagement
5 Letters.

6 590. As a direct and proximate result of Larson's conduct, Plaintiff has suffered
7 damages in an amount in excess of fifteen thousand dollars (\$15,000).

8 591. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to
9 prosecute this action and is entitled to recover an award of reasonable attorneys' fees and
10 costs incurred herein.

11 **THIRTY-FIRST CAUSE OF ACTION**

12 **(Tortious Breach of the Implied Covenant Against Larson)**

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

15 593. Larson and NHC entered into two valid and enforceable contracts - the 2013
16 and the 2014 Engagement Letters - that required Defendant to perform professional
17 accounting and auditing services.

18 594. Under applicable law, the Engagement Letters contain an implied covenant of
19 good faith and fair dealing among all parties.

20 595. A special element of reliance or fiduciary duty existed between Plaintiff and
21 Larson where Larson was in a superior or trusted position.

22 596. Larson breached the duty of good faith by engaging in misconduct in a manner
23 that was unfaithful to the purpose of the Engagement Letters, by failing to perform in
24 accordance with statutory and professional standards as set forth herein.

25 597. As a direct and proximate result of Larson's conduct, Plaintiff has suffered
26 damages in an amount in excess of fifteen thousand dollars (\$15,000).

27 ///

28 ///

598. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

THIRTY-SECOND CAUSE OF ACTION

(Breach of the Implied Covenant of Good Faith and Fair Dealing Against Larson)

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

600. Larson and NHC entered into two valid and enforceable contracts - the 2013 and the 2014 Engagement Letters - that required Defendant to perform professional accounting and auditing services.

601. Under applicable law, the Engagement Letters contain an implied covenant of good faith and fair dealing among all parties.

602. Larson, by failing to follow applicable professional and statutory standards as set forth herein, breached that duty by performing in a manner that was unfaithful to the purpose of the Engagement Letters.

603. As a direct and proximate result of Larson's conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars (\$15,000).

604. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

THIRTY-THIRD CAUSE OF ACTION

(Negligent Performance of an Undertaking Against Larson Defendants)

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

606. The Larson Defendants undertook to provide accounting and auditing services, including but not limited to, examining the books and records of NHC.

607. Such services included, but were not limited to, auditing the books and records of NHC for the years ended December 31, 2013, and 2014, and its MD&A for those years,

1 and providing the audit opinions set forth in related reports, including the Audit Report
2 concerning NHC's December 31, 2013, and 2014, Financial Statements, The Reports of
3 Independent Certified Public Accountants required by OMB Circular A-133, Independent
4 Auditor's Report on Compliance for each Major Program, and Report on Internal Control
5 Over Compliance Independent Auditor's Report on Internal Control over Financial Reporting
6 and on Compliance and Other Matters Based on an Audit of Financial Statements Performed
7 in Accordance with Government Auditing Standards.

8 608. The Larson Defendants knew, or should have recognized, these undertakings as
9 necessary for the protection of NHC's members, NHC's enrolled insureds, NHC's creditors,
10 and the State of Nevada.

11 609. By performing the accounting and auditing services detailed above, the Larson
12 Defendants undertook to perform a duty owed by NHC to its members, enrolled insureds,
13 creditors, and regulators to act in accordance with statutory and professional standards.

14 610. The Larson Defendants' failure to exercise reasonable care in performing its
15 services, including the Larson Defendants' failure to perform accounting and auditing
16 services in accordance with applicable standards as detailed herein, increased the risk of harm
17 to (and did in fact harm) NHC, NHC's members, insureds, creditors, customers and vendors,
18 and the State of Nevada.

19 611. As a direct and proximate result of the Larson Defendants' conduct, Plaintiff
20 has suffered damages in an amount in excess of fifteen thousand dollars (\$15,000).

21 612. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to
22 prosecute this action and is entitled to recover an award of reasonable attorneys' fees and
23 costs incurred herein.

24 **THIRTY-FOURTH CAUSE OF ACTION**

25 **(Unjust Enrichment Against Larson)**

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

28 ///

614. Larson was paid for accounting and auditing services that were to be performed in accordance with statutory and professional standards.

615. Despite failing to provide such services in accordance with statutory and professional standards, Larson unjustly retained the fees paid to it for such services against fundamental principles of justice, equity, and good conscience.

616. As a direct and proximate result of Larson's conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars (\$15,000).

617. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

CAUSES OF ACTION RELATED TO INSUREMONKEY DEFENDANTS

THIRTY-FIFTH CAUSE OF ACTION

(Intentional Misrepresentation/Fraud in the Inducement Against InsureMonkey Defendants)

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

619. In its proposal dated September 21, 2012, the InsureMonkey Defendants misrepresented their experience, products, subject matter expertise and the scalability and ease of integration of their products with other vendors' products.

620. From April through September 2013, InsureMonkey's officers, directors, and agents - including its CEO Rivlin - represented to NHC that they had the necessary skill, experience, and expertise to handle all aspects of the customer and members' services contemplated by the parties' potential agreements in a competent and professional manner. These misrepresentations continued throughout InsureMonkey's course of dealings with NHC.

621. InsureMonkey also served as a broker for the sale of NHC insurance policies. Throughout the course of dealing with NHC, the InsureMonkey Defendants misrepresented the number of customers obtained by InsureMonkey's marketing efforts and the number of

1 insured enrollees in order to obtain additional fees and income that InsureMonkey had not
2 earned. InsureMonkey Defendants overcharged NHC for services and further enriched itself
3 with broker commissions on NHC business that it should not have received. InsureMonkey
4 Defendants also did not properly report the extent and scope of problems to NHC as such
5 problems arose.

6 622. The InsureMonkey's Defendants' wrongful and deficient acts also led to
7 financial misreporting by NHC based upon incorrect enrollment, members not being
8 terminated, and claims not being properly tracked and paid, all of which were foreseeable
9 consequences of the InsureMonkey's Defendants' actions.

10 623. The InsureMonkey Defendants knew or believed that their representations were
11 false, or the InsureMonkey Defendants had an insufficient basis of information for making
12 the representation.

13 624. The InsureMonkey Defendants made such representations to induce NHC to
14 enter into the various agreements listed herein with InsureMonkey related to member and
15 customer services and so that CEO Rivlin could personally obtain exorbitant salaries,
16 bonuses, and other remuneration for entering into the lucrative agreements with NHC.

17 625. NHC reasonably and justifiably relied upon the InsureMonkey Defendants'
18 representations.

19 626. As a direct and proximate result of the InsureMonkey Defendants' conduct,
20 NHC has suffered damages in an amount in excess of fifteen thousand dollars (\$15,000).

21 627. In committing the acts hereinabove alleged, the InsureMonkey Defendants are
22 guilty of oppression, fraud, and malice towards NHC. Therefore, NHC is entitled to recover
23 punitive damages from the InsureMonkey Defendants for the purpose of deterring them and
24 others similarly situated from engaging in like conduct in the future.

25 628. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to
26 prosecute this action and is entitled to recover an award of reasonable attorneys' fees and
27 costs incurred herein.

28 ///

THIRTY-SIXTH CAUSE OF ACTION

(Constructive Fraud Against InsureMonkey Defendants)

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

630. At all relevant times, a fiduciary duty existed between Plaintiff and the InsureMonkey Defendants, where the InsureMonkey Defendants were in a superior or trusted position as set forth herein.

631. The InsureMonkey Defendants owed a legal or equitable duty to NHC arising from a fiduciary or confidential relationship.

632. The InsureMonkey Defendants breached that duty by misrepresenting or concealing material facts, *i.e.*, that the InsureMonkey Defendants did not have the requisite skill, experience, or expertise to perform the services contemplated by the parties' agreements listed herein and that it failed to perform in a manner consistent with minimum industry standards as set forth herein.

633. The InsureMonkey Defendants also breached that duty by misrepresenting the number of customers obtained by InsureMonkey's marketing efforts and the number of insured enrollees in order to obtain additional fees and income InsureMonkey had not earned. InsureMonkey overcharged NHC for services and further enriched itself with broker commissions on NHC business that it should not have received. InsureMonkey Defendants also did not properly report the extent and scope of problems to NHC as such problems arose.

634. The InsureMonkey's Defendants' wrongful and deficient acts also led to financial misreporting by NHC based upon incorrect enrollment, members not being terminated, and claims not being properly tracked and paid, all of which were foreseeable consequences of the InsureMonkey's Defendants' actions.

635. As a direct and proximate result of the InsureMonkey Defendants' conduct, NHC has suffered damages in an amount in excess of fifteen thousand dollars (\$15,000).

///

///

636. In committing the acts hereinabove alleged, the InsureMonkey Defendants are guilty of oppression, fraud, and malice towards NHC. Therefore, NHC is entitled to recover punitive damages from the InsureMonkey Defendants for the purpose of deterring them and others similarly situated from engaging in like conduct in the future.

637. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

THIRTY-SEVENTH CAUSE OF ACTION

(Negligent Misrepresentation Against InsureMonkey Defendants)

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

639. The InsureMonkey Defendants, in the course of action in which they had a pecuniary interest, failed to exercise reasonable care or competence in obtaining or communicating information to NHC as set forth above.

640. Such information included, without limitation, the number of customers obtained by InsureMonkey's marketing efforts, the number of eligible enrollees, the eligibility data provided to NHC and/or CMS, and other reporting information provided to NHC or otherwise required by the parties' agreements or the CMS Loan Agreement.

641. NHC reasonably and justifiably relied on the information it received from the InsureMonkey Defendants.

642. As a direct and proximate result of the InsureMonkey Defendants' conduct, NHC has suffered damages in an amount in excess of fifteen thousand dollars (\$15,000).

643. In committing the acts alleged above, the InsureMonkey Defendants are guilty of oppression, fraud, and malice towards NHC. Therefore, NHC is entitled to recover punitive damages from the InsureMonkey Defendants for the purpose of deterring them and others similarly situated from engaging in like conduct in the future.

///

///

644. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

THIRTY-EIGHTH CAUSE OF ACTION

(Breach of Fiduciary Duty Against InsureMonkey)

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

646. A fiduciary duty existed between NHC and InsureMonkey wherein InsureMonkey was in a superior or trusted position as set forth herein.

647. InsureMonkey breached that duty by failing to perform minimum professional standards and by otherwise providing misleading and inaccurate information as set forth above.

648. As a direct and proximate result of InsureMonkey's conduct, NHC has suffered damages in an amount in excess of fifteen thousand dollars (\$15,000).

649. In committing the acts alleged above, InsureMonkey is guilty of oppression, fraud, and malice towards NHC. Therefore, NHC is entitled to recover punitive damages from InsureMonkey for the purpose of deterring it and others similarly situated from engaging in like conduct in the future.

650. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

THIRTY-NINTH CAUSE OF ACTION

(Negligence Against InsureMonkey)

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

652. InsureMonkey owed a duty of care to NHC, including the duty to perform its work in accordance with industry standards, and to not provide misleading or otherwise inaccurate information upon which it intended for and knew NHC would rely.

653. As detailed above, InsureMonkey failed to perform to applicable professional standards, by using inflated insureds numbers to bill for its work, by not accurately accounting for NHC's member enrollees and misreporting that information, and by causing NHC to pay claims outside of enrollment among other actions, InsureMonkey breached that duty.

654. The breach was the legal cause of NHC's injuries.

655. As a direct and proximate result of InsureMonkey's conduct, NHC has suffered damages in an amount in excess of fifteen thousand dollars (\$15,000).

656. In committing the acts hereinabove alleged, InsureMonkey is guilty of oppression, fraud, and malice towards NHC. Therefore, NHC is entitled to recover punitive damages from InsureMonkey for the purpose of deterring it and others similarly situated from engaging in like conduct in the future.

657. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

FORTIETH CAUSE OF ACTION

(Gross Negligence Against InsureMonkey)

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

659. InsureMonkey owed a duty of care to NHC, including the duty to perform its work in accordance with industry standards, and to not provide misleading or otherwise inaccurate information upon which it intended for and knew NHC would rely.

660. As detailed above, InsureMonkey failed to perform to applicable professional standards, by failing to exercise even the slightest degree of care.

661. InsureMonkey engaged in an act or omission as detailed above of an aggravated character, or with willful, wanton misconduct, including without limitation, not accurately keeping track of insureds, billing for services for insured numbers which it knew to be inaccurate, and misreporting information that it knew would be relied upon by NHC and others.

1 662. The breach was the legal cause of NHC's injuries.

2 663. As a direct and proximate result of InsureMonkey's conduct, NHC has suffered
3 damages in an amount in excess of fifteen thousand dollars (\$15,000).

4 664. In committing the acts hereinabove alleged, InsureMonkey is guilty of
5 oppression, fraud, and malice towards NHC. Therefore, NHC is entitled to recover punitive
6 damages from InsureMonkey for the purpose of deterring it and others similarly situated from
7 engaging in like conduct in the future.

8 665. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to
9 prosecute this action and is entitled to recover an award of reasonable attorneys' fees and
10 costs incurred herein.

11 **FORTY-FIRST CAUSE OF ACTION**

12 **(Breach of Contract Against InsureMonkey)**

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

15 667. InsureMonkey and NHC entered into a series of valid and enforceable contracts
16 as set forth herein.

17 668. InsureMonkey failed to perform under the various agreements as set forth
18 herein, including, but not limited to, the Nevada Health CO-OP Agent Broker contract
19 between InsureMonkey, Inc. and NHC. the 2013 Master Services Agreement, the 2013
20 Customer Service MOU, and the Master Agreement, by failing to provide the services
21 contemplated therein in a reasonable and satisfactory manner, as detailed above.

22 669. InsureMonkey was to be compensated, in part on the number of insureds of
23 NHC. InsureMonkey provided inflated numbers of insureds as part of their billings to NHC.
24 By billing with inflated numbers of insureds, InsureMonkey failed to perform under the
25 above-named agreements.

26 670. NHC performed, or was excused from performance, all of the agreements set
27 forth and detailed above. Such performance included paying InsureMonkey in excess of \$9.4
28 million for services rendered and additional start-up costs.

671. As a direct and proximate result of InsureMonkey's conduct, NHC has suffered damages in an amount in excess of fifteen thousand dollars (\$15,000).

672. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

FORTY-SECOND CAUSE OF ACTION

(Tortious Breach of the Implied Covenant of Good Faith and Fair Dealing Against InsureMonkey)

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

674. InsureMonkey and NHC entered into a series of valid and enforceable contracts as set forth herein.

675. InsureMonkey owed a duty of good faith to Plaintiff arising from such contracts.

676. A special element of reliance or fiduciary duty existed between Plaintiff and InsureMonkey wherein InsureMonkey was in a superior or trusted position.

677. InsureMonkey breached the duty of good faith by engaging in misconduct in a manner that was unfaithful to the purpose of the agreements described herein, by failing to perform in accordance with basic, minimum professional standards as set forth herein, including, but not limited to, providing intentionally false and/or misleading and faulty sales, enrollment, and eligibility data, upon which it intended for NHC to rely.

678. As a direct and proximate result of InsureMonkey's conduct, NHC has suffered damages in an amount in excess of fifteen thousand dollars (\$15,000).

679. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

///

///

///

FORTY-THIRD CAUSE OF ACTION

**(Breach of the Implied Covenant of Good Faith and Fair Dealing
Against InsureMonkey)**

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

681. InsureMonkey and NHC entered into a series of valid and enforceable contracts as set forth herein.

682. InsureMonkey owed a duty of good faith to Plaintiff arising from such contracts.

683. Under applicable law, these agreements contained an implied covenant of good faith and fair dealing among all parties.

684. InsureMonkey breached the duty of good faith by engaging in misconduct in a manner that was unfaithful to the purpose of the agreements described herein, by failing to perform in accordance with basic, minimum professional standards as set forth herein, including, but not limited to, providing intentionally false and/or misleading and faulty sales, enrollment, and eligibility data, upon which it intended for NHC to rely. InsureMonkey also induced NHC into agreements that InsureMonkey knew, or should have known, that it could not perform.

685. As a direct and proximate result of InsureMonkey's conduct, NHC has suffered damages in an amount in excess of fifteen thousand dollars (\$15,000).

686. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

FORTY-FOURTH CAUSE OF ACTION

(Negligent Performance of an Undertaking Against InsureMonkey)

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

688. InsureMonkey undertook to provide certain services related to tracking and reporting enrollment and eligibility data on behalf of NHC, to provide that information to both

1 NHC and CMS for purposes of calculating certain amounts owed by NHC, to be received by
2 NHC, or for other purposes.

3 689. InsureMonkey knew or should have recognized that these undertakings were
4 necessary for the protection of NHC's members, NHC's enrolled insureds, NHC's creditors,
5 and the State of Nevada.

6 690. By performing the services detailed above, InsureMonkey undertook to perform
7 a duty owed by NHC to its members, enrolled insureds, creditors, and regulators to act in
8 accordance with statutory and professional standards, and to properly track and report
9 enrollment and eligibility data.

10 691. InsureMonkey's failure to exercise reasonable care in performing its services
11 increased the risk of harm to NHC, NHC's customers and vendors, and the State of Nevada.

12 692. As a direct and proximate result of InsureMonkey's conduct, NHC has suffered
13 damages in an amount in excess of fifteen thousand dollars (\$15,000).

14 693. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to
15 prosecute this action and is entitled to recover an award of reasonable attorneys' fees and
16 costs incurred herein.

17 **FORTY-FIFTH CAUSE OF ACTION**
18 **(Unjust Enrichment Against InsureMonkey)**

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

21 695. InsureMonkey was paid over \$9.4 million for start-up costs and services that
22 were to be performed in accordance with certain professional and industry standards and/or
23 based on the number of NHC insureds.

24 696. Despite its failure to provide such services and/or not providing the quality or
25 quantity of services required for the number of NHC insureds billed for, InsureMonkey
26 unjustly retained the fees paid to it for such services and start-up costs against fundamental
27 principles of justice, equity, and good conscience.

28 ///

697. As a direct and proximate result of InsureMonkey's conduct, NHC has suffered damages in an amount in excess of fifteen thousand dollars (\$15,000).

698. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

FORTY-SIXTH CAUSE OF ACTION

(Negligent Hiring, Training, Supervision, and Retention Against InsureMonkey)

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

700. InsureMonkey owed a duty to exercise due care towards NHC in all of its dealings in providing the services contemplated by their various agreements, including, but not limited to, the Master Agreement.

701. InsureMonkey breached that duty by failing to provide services to satisfy minimum industry standards and practices.

702. InsureMonkey's failure to properly hire, train, and supervise its employees and agents to ensure that they acted in a competent and professional manner, and with the requisite skill and expertise necessary to perform and complete the work, was a direct and proximate cause of NHC's injuries as set forth herein.

703. InsureMonkey's decision to provide inadequate training and to hire and retain certain employees who were unsatisfactory and unable to fulfill InsureMonkey's obligations and responsibilities to NHC was the direct and proximate cause of NHC's injuries as set forth herein.

704. As detailed above, by failing to perform to applicable professional and industry standards, InsureMonkey breached that duty.

705. The breach was the legal cause of Plaintiff's injuries.

706. InsureMonkey knew, or should have known, that the employees and agents it had hired were unfit for their positions and would likely cause harm to third parties when placed in the positions in which InsureMonkey placed them.

1 707. As a direct and proximate result of InsureMonkey's conduct, NHC has suffered
2 damages in an amount in excess of fifteen thousand dollars (\$15,000).

3 708. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to
4 prosecute this action and is entitled to recover an award of reasonable attorneys' fees and
5 costs incurred herein.

6 **CAUSES OF ACTION RELATED TO NHS**

7 **FORTY-SEVENTH CAUSE OF ACTION**

8 **(Professional Malpractice Against NHS)**

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

11 710. NHS was engaged by NHC and was responsible for providing professional
12 medical utilization management and member eligibility review services to NHC.

13 711. Such services included, but were not limited to, performing evaluations of
14 appropriateness and medical necessity of health care services, procedures and facilities;
15 performing precertification of hospital admissions and outpatient procedures; processing
16 information related to in-hospital observations; providing concurrent reviews for inpatient
17 acute care, rehabilitation, and long-term acute care; providing discharge planning; performing
18 provider appeal reviews; and performing member eligibility review, along with other services,
19 as listed herein.

20 712. NHS had a duty to use such skill, prudence, and diligence as other members of
21 the profession commonly possess and exercise.

22 713. As detailed above, NHS breached that duty by failing to comply with applicable
23 contractual, professional and industry standards.

24 714. As a direct and proximate result of NHS' conduct, Plaintiff has suffered
25 damages in an amount in excess of fifteen thousand dollars (\$15,000).

26 715. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to
27 prosecute this action and is entitled to recover an award of reasonable attorneys' fees and
28 costs incurred herein.

(Negligence Against NHS)

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

717. NHS owed a duty of care to Plaintiff, including the duty to perform its work in accordance with applicable statutory, professional, and contractual standards.

718. As detailed above, by failing to perform to applicable statutory, professional, and contractual standards, NHS breached that duty.

719. The breach was the legal cause of Plaintiff's injuries.

720. As a direct and proximate result of NHS' conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars (\$15,000).

721. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

FORTY-NINTH CAUSE OF ACTION

(Gross Negligence Against NHS)

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

723. NHS owed a duty of care to NHC, including the duty to perform its work in accordance with industry standards, and to not provide misleading or otherwise inaccurate information upon which it intended for and knew NHC would rely.

724. As detailed above, NHS failed to perform to applicable professional standards, by failing to exercise even the slightest degree of care.

725. NHS engaged in an act or omission as detailed above of an aggravated character, or with willful, wanton misconduct, including without limitation, not verifying information concerning insureds, improperly authorizing service, transmitting data it knew to be inaccurate and misreporting information that it knew would be relied upon by NHC and others.

1 726. The breach was the legal cause of NHC's injuries.

2 727. As a direct and proximate result of NHS's conduct, NHC has suffered damages

3 in an amount in excess of fifteen thousand dollars (\$15,000).

4 728. In committing the acts hereinabove alleged, NHS is guilty of oppression, fraud,

5 and malice towards NHC. Therefore, NHC is entitled to recover punitive damages from NHS

6 for the purpose of deterring it and others similarly situated from engaging in like conduct in

7 the future.

8 729. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to

9 prosecute this action and is entitled to recover an award of reasonable attorneys' fees and

10 costs incurred herein.

FIFTIETH CAUSE OF ACTION
(Breach of Contract Against NHS)

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

15 731. NHS and NHC entered into a valid and enforceable contract – the July 19, 2013,
16 Utilization Agreement – that required NHS to perform professional medical utilization
17 management and member eligibility review services.

732. Provisions of the Utilization Agreement provided for NHS to perform all services in accordance with applicable professional, statutory, and contractual standards.

733. NHS failed to perform required utilization and consulting services as required
under applicable professional, statutory, and contractual standards.

734. Plaintiff performed or was excused from performance under the Utilization
Agreement.

735. As a direct and proximate result of NHS' conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars (\$15,000).

736. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

FIFTY-FIRST CAUSE OF ACTION

(Tortious Breach of the Implied Covenant Against NHS)

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

738. NHS and NHC entered into a valid and enforceable contract - the July 19, 2013, Utilization Agreement – that required NHS to perform professional medical utilization management and member eligibility review services and to bill for services, in part, based on the number of NHC insureds.

739. Under applicable law, the Utilization Agreement contains an implied covenant of good faith and fair dealing among all parties.

740. A special element of reliance or fiduciary duty existed between Plaintiff and NHS where NHS was in a superior or trusted position.

741. In failing to perform in accordance with contractual, statutory, and professional standards as set forth herein, NHS breached the duty of good faith and engaged in misconduct in a manner that was unfaithful to the purpose of its Utilization Agreement.

742. As a direct and proximate result of NHS' conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars (\$15,000).

743. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

FIFTY-SECOND CAUSE OF ACTION

(Breach of the Implied Covenant of Good Faith and Fair Dealing Against NHS)

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

745. NHS and NHC entered into a valid and enforceable contract - the July 19, 2013, Utilization Agreement – that required NHS to perform professional medical utilization management and member eligibility review services and bill for those services, based at least in part on the number of NHC insureds.

3 747. NHS, by failing to follow applicable contractual, professional and statutory
4 standards as set forth herein, breached that duty by performing in a manner that was unfaithful
5 to the purpose of the Utilization Agreement.

748. As a direct and proximate result of NHS' conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars (\$15,000).

749. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

FIFTY-THIRD CAUSE OF ACTION

(Negligent Performance of an Undertaking Against NHS)

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

15 751. NHS undertook to provide medical utilization management and member
16 eligibility review services.

752. Such services included, but were not limited to, the fair and impartial performing of evaluations of the appropriateness and medical necessity of health care services, procedures and facilities; performing precertification of hospital admissions and outpatient procedures; processing information related to in-hospital observations; providing concurrent reviews for inpatient acute care, rehabilitation and long term acute care; providing discharge planning; performing provider appeal reviews; and performing member eligibility review, along with other services, as listed herein.

24 753. NHS knew or should have recognized these undertakings as being necessary for
25 the protection of NHC's members, NHC's enrolled insureds, NHC's creditors, and the State
26 of Nevada.

27 |||

28 |||

1 754. By agreeing to perform the medical utilization and member eligibility review
2 services detailed above, NHS undertook to perform a duty owed by NHC to its members,
3 enrolled insureds, creditors, and regulators and to act in accordance with statutory and
4 professional standards.

5 755. NHS' failure to exercise reasonable care in performing its services, including
6 NHS' failure to perform medical utilization management and member eligibility review
7 services in accordance with applicable standards as detailed herein, as well as failing to act in
8 a fair and impartial capacity, increased the risk of harm to NHC, NHC's customers and
9 vendors, and the State of Nevada, resulting in the loss of NHC's assets.

10 756. As a direct and proximate result of NHS' conduct, Plaintiff has suffered
11 damages in an amount in excess of fifteen thousand dollars (\$15,000).

12 757. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to
13 prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs
14 incurred herein.

FIFTY-FOURTH CAUSE OF ACTION

(Unjust Enrichment Against NHS)

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

19 759. NHS received lucrative no-bid contracts with NHC, with better than market
20 terms, as a result of insider influence despite substantial conflicts of interest.

21 760. NHS was paid for medical utilization management and member eligibility
22 review services that were to be performed in accordance with professional, statutory, and
23 contractual standards.

24 761. NHS' compensation was mechanically calculated based on the total persons
25 enrolled as NHC members each month, a fee that bore little to no relation to services being
26 provided by NHS, and a fee that unjustly enriched NHS as a related party to a corporate
27 insider. Upon information and belief, little work was actually performed by NHS for NHC in
28 relation to the substantial fees paid.

762. Upon information and belief, UHH was the owner of NHS. UHH was being paid to process and adjudicate claims of NHC, and then it was being paid again through NHS to do a quality control review check of the very claims that UHH processed, which also resulted in NHS being unjustly compensated. NHS also had a conflict of interest, or the appearance of a conflict of interest, by being engaged to provide a quality control review of claim services provided by its parent company, UHH, resulting in unjust compensation to NHS.

763. Despite not providing its services in accordance with professional, statutory, and contractual standards, receiving contracts tainted with conflicts of interest without competitive bidding, and against fundamental principles of justice, equity, and good conscience, NHS unjustly retained the fees paid to it for such services.

764. As a direct and proximate result of NHS' conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars (\$15,000).

765. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

CAUSES OF ACTION RELATED TO MANAGEMENT DEFENDANTS

FIFTY-FIFTH CAUSE OF ACTION

(Breach of Fiduciary Duty Against Management Defendants)

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

767. As officers and directors of NHC, the Management Defendants, and each of them, owed duties of good faith and loyalty to act in the best interests of NHC.

768. Each of the Management Defendants breached his or her duties by failing to act in the best interests of NHC and instead in their own self-serving interests as set forth above.

769. The breaches of fiduciary duties outlined herein involved intentional misconduct, fraud, and/or a knowing violation of the law.

///

770. As a direct and proximate result of the Management Defendants' conduct, NHC has suffered damages in an amount in excess of fifteen thousand dollars (\$15,000).

771. In committing the acts hereinabove alleged, the Management Defendants are guilty of oppression, fraud, and malice towards NHC. Therefore, NHC is entitled to recover punitive damages from the Management Defendants for the purpose of deterring them and others similarly situated from engaging in like conduct in the future.

772. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

FIFTY-SIXTH CAUSE OF ACTION

(Intentional Misrepresentation/Fraud Against Management Defendants)

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

774. On February 28, 2015, and approximately mid-May 2015, the Management Defendants adopted and submitted the 2014 and March 2015 quarterly financial statements for NHC to the Nevada DOI. On or about April 1, 2015, the Management Defendants adopted and submitted a MD&A that was submitted to the Nevada DOI as to the financial condition and prospective information of NHC.

775. On or about June 1, 2015, the Management Defendants adopted and authorized the release of the Audit Report prepared by Larson concerning NHC's December 31, 2013, and 2014, Financial Statements.

776. The financial statements, MD&A, and Audit Report contained information that was false and misleading as set forth herein.

777. The Management Defendants knew or believed that their representations as stated above were false, or the Management Defendants had an insufficient basis of information for making the representations.

///

///

1 778. Plaintiff and those represented by Plaintiff justifiably relied upon the
2 Management Defendants' representations contained in NHC's financial statements, MD&A,
3 and Audit Report.

4 779. As a direct and proximate result of the Management Defendants' conduct,
5 Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars (\$15,000).

6 780. In committing the acts hereinabove alleged, the Management Defendants are
7 guilty of oppression, fraud, and malice towards NHC. Therefore, NHC is entitled to recover
8 punitive damages from the Management Defendants for the purpose of deterring them and
9 others similarly situated from engaging in like conduct in the future.

10 781. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to
11 prosecute this action and is entitled to recover an award of reasonable attorneys' fees and
12 costs incurred herein.

FIFTY-SEVENTH CAUSE OF ACTION

(Unjust Enrichment Against Management Defendants)

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

17 783. Each of the Management Defendants was paid excessive amounts in
18 compensation, including salary and bonuses without justification, and such compensation was
19 paid despite the fact that NHC was losing millions of dollars each financial reporting period.

20 784. Some of the Management Defendants' compensation was based upon the
21 unreliable and untruthful financial information prepared by, approved by, and/or ratified by
22 these Management Defendants, which amounts Management Defendants are continuing to
23 hold in violation of equity and good conscience.

24 785. Management Defendants granted lucrative no-bid contracts to NHS and UHH,
25 with better than market terms, as a result of insider influence despite substantial conflicts of
26 interest.

27 786. In light of the actions set forth herein, such amounts should be disgorged from
28 the Management Defendants and returned to NHC in the interests of equity.

788. As a direct and proximate result of the Management Defendants' conduct, NHC has suffered damages in an amount in excess of fifteen thousand dollars (\$15,000).

789. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

FIFTY-EIGHTH CAUSE OF ACTION

(Breach of Contract Against Management Defendants)

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

791. Upon information and belief, each of the Management Defendants entered into enforceable agreements with NHC, including, but not limited to, employment agreements and ethics and conflicts of interest agreements, which contractually provided for Management Defendants to operate in a fiduciary manner and to exercise the utmost good faith in all transactions involving their duties and to refrain from conflicts of interest, as set forth above.

17 792. The Management Defendants failed to perform under such agreements as set
18 forth above.

19 793. Plaintiff performed, or was excused from performance, under such agreements.

794. As a direct and proximate result of the Management Defendants' conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars (\$15,000).

795. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

25 |||

26 |||

27 |||

28 |||

CAUSES OF ACTION RELATED TO ALL DEFENDANTS

FIFTY NINTH CAUSE OF ACTION

(Civil Conspiracy Against All Defendants)

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

797. Defendants acted in concert with each other, and with certain members of NHC's management and vendors, including, but not limited to, the Management Defendants, Milliman, Millennium, Larson, and InsureMonkey, to falsify operating results and reserves, to conceal internal control weaknesses and other wrongdoing, and to avoid statutory supervision by their use of untruthful and/or unreliable financial data and other information they knew to be false and not in accordance with required statutory and professional standards in order to continue the flow of money to NHC, and subsequently, to the Management Defendants and NHC's vendors for their own personal gain.

798. Defendants acted in concert with each other to inflate amounts paid to certain defendants, including without limitation InsureMonkey, NHS and UHH though the utilization of inflated counts of the numbers of insureds used for billing NHC for services as detailed above.

799. Defendants' conduct described herein involved intentional misconduct, fraud, and/or a knowing violation of the law.

800. Each of the Defendants are jointly and severally liable for the damages described herein.

801. As a direct and proximate result of Defendants' conduct, NHC has suffered damages in an amount in excess of fifteen thousand dollars (\$15,000).

802. In committing the acts hereinabove alleged, Defendants are guilty of oppression, fraud, and malice towards NHC. Therefore, NHC is entitled to recover punitive damages from Defendants for the purpose of deterring them and others similarly situated from engaging in like conduct in the future.

///

(Concert of Action Against All Defendants)

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

8 805. Defendants acted in concert with each other and with certain of NHC's
9 management and vendors, including, but not limited to, the Management Defendants,
10 Milliman, Millennium, Larson, NHS, UHH and InsureMonkey, to grant contracts with better
11 than market terms to related parties despite substantial conflicts of interest, to fund unjustified
12 start-up costs of UHH and InsureMonkey so that they could participate in a business
13 opportunity with NHC, to falsify operating results and reserves, to conceal internal control
14 weaknesses and other wrongdoing, and to avoid statutory supervision and receivership by
15 their use of untruthful and/or unreliable financial data and other information they knew to be
16 false and not in accordance with required statutory and professional standards in order to
17 continue the flow of money to NHC, and subsequently, to the Management Defendants and
18 NHC's vendors for their own personal gain.

19 806. Defendants acted in concert with each other to inflate amounts paid to certain
20 defendants, including without limitation InsureMonkey, NHS and UHH though the utilization
21 of inflated counts of the numbers of insureds used for billing NHC for services as detailed
22 above.

807. Defendants knew that their actions were inherently dangerous or posed a substantial risk of harm to others in that their actions could affect and disrupt the medical care of NHC's members and insured enrollees.

26 808. Defendants' actions did affect and disrupt the medical care of NHC's members
27 and enrolled insureds.

28 |||

809. Defendants' actions did result in health care providers not being allowed to seek and obtain payment from NHC members for services rendered.

810. The conduct described herein involved intentional misconduct, fraud, and/or a knowing violation of the law.

811. Each of the Defendants are jointly and severally liable for the damages described herein.

812. As a direct and proximate result of Defendants' conduct, NHC has suffered damages in an amount in excess of fifteen thousand dollars (\$15,000).

813. In committing the acts hereinabove alleged, Defendants are guilty of oppression, fraud, and malice towards NHC. Therefore, NHC is entitled to recover punitive damages from the Defendants for the purpose of deterring them and others similarly situated from engaging in like conduct in the future.

814. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

CAUSES OF ACTION RELATED TO UHH DEFENDANTS

SIXTY-FIRST CAUSE OF ACTION

(Professional Malpractice Against UHH)

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

816. UHH was engaged by NHC and was responsible for providing professional third-party administration services for NHC's medical policies.

817. Such services included, but were not limited to, helping to set up NHC as a proper operating health care insurer, processing medical claims, meeting governmental standards, providing accurate and timely reports that NHC could use and rely upon for financial and CMS reporting and projections, and operating computer systems necessary for performance of its duties as set forth herein and verifying eligibility of insureds.

///

1 818. UHH had a duty to use such skill, prudence, and diligence as other members of
2 the profession commonly possess and exercise, and it needed to perform those duties under
3 fair and impartial performance standards where it would be accountable to NHC.

4 819. As detailed above, UHH breached that duty by failing to comply with applicable
5 statutory and professional standards.

6 820. As a direct and proximate result of UHH's conduct, Plaintiff has suffered
7 damages in an amount in excess of fifteen thousand dollars (\$15,000).

8 821. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to
9 prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs
10 incurred herein.

11 **SIXTY-SECOND CAUSE OF ACTION**

12 **(Negligence Against UHH)**

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

15 823. UHH owed a duty of care to Plaintiff, including the duty to perform its work in
16 accordance with applicable statutory and professional and contractual standards.

17 824. As detailed above, by failing to perform to applicable statutory, professional,
18 and contractual standards, UHH breached its duties.

19 825. UHH further owed a duty of care to Plaintiff to adequately oversee the actions
20 of its employees who acted as executives for NHC including, but not limited to, Bobbette
21 Bond and Tom Zumtobel.

22 826. UHH breached this duty by failing to adequately oversee the actions of its
23 employees who acted as executives for NHC.

24 827. The actions of the Management Defendants who were also employees of UHH
25 were within the course and scope of the relevant Management Defendants' employment with
26 UHH.

27 828. UHH is responsible for the acts and omissions of its employees who acted as
28 executives for NHC pursuant to the doctrine of *respondeat superior*.

829. These breaches were the legal cause of Plaintiff's injuries.

830. As a direct and proximate result of UHH's conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars (\$15,000).

831. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

SIXTY-THIRD CAUSE OF ACTION

(Gross Negligence Against UHH)

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

833. UHH owed a duty of care to NHC, including the duty to perform its work in accordance with industry standards, and to not provide misleading or otherwise inaccurate information upon which it intended for and knew NHC would rely.

834. As detailed above, UHH failed to perform to applicable professional standards, by failing to exercise even the slightest degree of care.

835. UHH engaged in an act or omission as detailed above of an aggravated character, or with willful, wanton misconduct, including without limitation, not accurately tracking insured's eligibility for medical services, and misreporting information that it knew would be relied upon by NHC and others.

836. The breach was the legal cause of NHC's injuries.

837. As a direct and proximate result of UHH's conduct, NHC has suffered damages in an amount in excess of fifteen thousand dollars (\$15,000).

838. In committing the acts hereinabove alleged, UHH is guilty of oppression, fraud, and malice towards NHC. Therefore, NHC is entitled to recover punitive damages from UHH for the purpose of deterring it and others similarly situated from engaging in like conduct in the future.

///

///

1 839. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to
2 prosecute this action and is entitled to recover an award of reasonable attorneys' fees and
3 costs incurred herein.

4 **SIXTY-FOURTH CAUSE OF ACTION**

5 **(Breach of Consulting Agreement Against UHH)**

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

8 841. UHH and Hospitality Health entered into a valid and enforceable contract - the
9 May 17, 2012, Consulting Agreement - that required UHH to perform professional various
10 consulting services.

11 842. The May 17, 2012, Consulting Agreement was assigned to NHC effective
12 December 21, 2012 by letter agreement dated May 8, 2013.

13 843. Provisions of the Consulting Agreement provided for UHH to perform all
14 services in accordance with applicable professional, statutory, and contractual standards.

15 844. UHH failed to perform accounting and consulting services as required under
16 applicable professional, statutory, and contractual standards as set forth herein.

17 845. Plaintiff performed, or was excused from performance, under the Consulting
18 Agreement.

19 846. As a direct and proximate result of UHH's conduct, Plaintiff has suffered
20 damages in an amount in excess of fifteen thousand dollars (\$15,000).

21 847. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to
22 prosecute this action and is entitled to recover an award of reasonable attorneys' fees and
23 costs incurred herein.

24 ///

25 ///

26 ///

27 ///

28 ///

SIXTY-FIFTH CAUSE OF ACTION

(Breach of UHH Administrative Services Agreement by UHH)

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

849. UHH and NHC entered into a valid and enforceable contract - the June 27, 2013, Administrative Services Agreement - that required UHH to perform professional third-party administrative services for NHC as detailed herein.

850. Provisions of the Administrative Services Agreement provided for UHH to perform all services in accordance with applicable professional, statutory, and contractual standards.

851. UHH failed to perform services as required under applicable professional, statutory, and contractual standards as set forth herein.

852. Plaintiff performed or was excused from performance under the Administrative Services Agreement.

853. As a direct and proximate result of UHH's conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars (\$15,000).

854. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorney fees and costs incurred herein.

SIXTY-SIXTH CAUSE OF ACTION

(Tortious Breach of the Implied Covenant Against UHH)

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

856. UHH and Hospitality Health entered into a valid and enforceable contract – the May 17, 2012, Consulting Agreement – that required UHH to perform professional various consulting services. This contract was subsequently assigned by Hospitality Health to NHC.

///

///

1 857. UHH and NHC entered into a valid and enforceable contract – the
2 June 27, 2013, Administrative Services Agreement – that required UHH to perform
3 professional third-party administrative services for NHC as detailed herein.

4 858. Under applicable law, these agreements contain an implied covenant of good
5 faith and fair dealing among all parties.

6 859. A special element of reliance or fiduciary duty existed between Plaintiff and
7 UHH where UHH was in a superior or trusted position.

8 860. In failing to perform in accordance with statutory and professional standards, as
9 set forth herein, UHH breached the duty of good faith and engaged in misconduct in a manner
10 that was unfaithful to the purpose of the two agreements.

11 861. As a direct and proximate result of UHH's conduct, Plaintiff has suffered
12 damages in an amount in excess of fifteen thousand dollars (\$15,000).

13 862. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to
14 prosecute this action and is entitled to recover an award of reasonable attorneys' fees and
15 costs incurred herein.

16 **SIXTY-SEVENTH CAUSE OF ACTION**

17 **(Breach of the Implied Covenant of Good Faith and Fair Dealing Against UHH)**

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

20 864. UHH and NHC entered into two valid and enforceable contracts - the
21 Consulting Agreement and the Administrative Services Agreement - that required UHH to
22 perform professional third-party administration and other services as set forth herein.

23 865. Under applicable law, the agreements contain implied covenants of good faith
24 and fair dealing among all parties.

25 866. UHH, by failing to follow applicable professional and statutory standards, as
26 set forth herein, breached that duty of good faith and fair dealing by performing in a manner
27 that was unfaithful to the purpose of the agreements.

28 ///

1 867. As a direct and proximate result of UHH's conduct, Plaintiff has suffered
2 damages in an amount in excess of fifteen thousand dollars (\$15,000).

3 868. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to
4 prosecute this action and is entitled to recover an award of reasonable attorney fees and costs
5 incurred herein.

6 **SIXTY-EIGHTH CAUSE OF ACTION**

7 **(Negligent Performance of an Undertaking Against UHH)**

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

10 870. UHH undertook to provide third-party administrative and other services,
11 including, but not limited to, administering NHC's medical policies and generating data and
12 reports concerning their services for NHC.

13 871. UHH knew or should have recognized these undertakings as being necessary
14 for the protection of NHC's members, NHC's enrolled insureds, NHC's creditors, and the
15 State of Nevada.

16 872. By agreeing to perform the services detailed herein, UHH undertook to perform
17 a duty owed by NHC to its members, enrolled insureds, creditors, and regulators and to act in
18 accordance with statutory and professional standards.

19 873. UHH's failure to exercise reasonable care in performing its services increased
20 the risk of harm to (and did in fact harm) NHC, NHC's members, insureds, creditors,
21 customers and vendors, and the State of Nevada.

22 874. As a direct and proximate result of UHH's conduct, Plaintiff has suffered
23 damages in an amount in excess of fifteen thousand dollars (\$15,000).

24 875. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to
25 prosecute this action and is entitled to recover an award of reasonable attorneys' fees and
26 costs incurred herein.

27 ///

28 ///

SIXTY-NINTH CAUSE OF ACTION

(Unjust Enrichment Against UHH)

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

877. UHH received lucrative no-bid contracts with NHC, with better than market terms, as a result of insider influence despite substantial conflicts of interest.

878. UHH was paid for start-up costs and third-party administration and consulting services that were to be performed in accordance with professional, statutory, and contractual standards.

879. Despite not providing such services in accordance with professional, statutory, and contractual standards, and against fundamental principles of justice, equity, and good conscience, UHH unjustly retained the fees paid to it for such services.

880. As a direct and proximate result of UHH's conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars (\$15,000).

881. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

SEVENTIETH CAUSE OF ACTION

(Declaratory Relief Against UHH)

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

883. A present and ongoing controversy exists regarding the validity of the UHH Consulting Agreement.

884. A further present and ongoing controversy exists regarding the validity of the UHH Administrative Services Agreement.

885. UHH's lack of licensure as a third-party administrator rendered UHH ineligible to enter into the either the UHH Consulting Agreement.

///

886. UHH's lack of licensure as a third-party administrator rendered UHH ineligible to enter into the either the UHH Administrative Services Agreement.

887. As a result of UHH's ineligibility to conduct the services it contracted to perform in the UHH Consulting Agreement, Plaintiff is entitled to an order declaring the UHH Consulting Agreement void *ab initio*.

888. As a result of UHH's ineligibility to conduct the services it contracted to perform in the UHH Administrative Services Agreement, Plaintiff is entitled to an order declaring the UHH Administrative Services Agreement void *ab initio*.

889. Plaintiff is further entitled to such further orders as are necessary to return Plaintiff to its position *status quo ante* prior to accepting the assignment of the UHH Consulting Agreement from Hospitality Health.

890. Plaintiff is further entitled to such further orders as are necessary to return Plaintiff to its position *status quo ante* prior to entering into the UHH Administrative Services.

891. As a direct and proximate result of UHH's conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars (\$15,000).

892. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief in favor of Plaintiff and against each of the Defendants, as follows:

1. For damages in an amount in excess of fifteen thousand dollars (\$15,000);
2. For a declaration that the UHH Consulting Agreement is rescinded and ordering such steps as are necessary to return Plaintiff to its position *status quo ante*;
3. For a declaration that the UHH Administrative Services Agreement is rescinded and ordering such steps as are necessary to return Plaintiff to its position *status quo ante*;

4. For pre- and post-judgment interest;
5. For all attorneys' fees and costs of suit; and
6. For such other and further relief as this Court may deem just and proper.

DATED this 9th day of November 2021.

GREENBERG TRAURIG, LLP

/s/ Donald L. Prunty

MARK E. FERRARIO, ESQ.

Nevada Bar No. 1625

DONALD L. PRUNTY, ESQ.

Nevada Bar No. 8230

GLENN F. MEIER, ESQ.

Nevada Bar No. 6059

10845 Griffith Peak Drive, Suite 600

Las Vegas, Nevada 89135

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this **9th day of November 2021**, a true and correct copy of the foregoing **SECOND AMENDED COMPLAINT** 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 United States mail.

/s/ Evelyn Escobar-Gaddi

An employee of Greenberg Traurig, LLP