Case No. _____

IN THE SUPREME COURT OF NEVADA

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

Petitioners,

vs.

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

Respondent,

- and -

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

Real Parties in Interest.

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

APPENDIX TO PETITION FOR EXTRAORDINARY WRIT RELIEF VOLUME 10 OF 19

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February 25, 2021

APPENDIX TO PETITION FOR EXTRAORDINARY WRIT RELIEF
VOLUME 10 OF 19

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TAB 27

TAB 27

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IN THE EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA, EX REL. COMMISSIONER OF INSURANCE, IN HER OFFICIAL CAPACITY AS STATUTORY RECEIVER FOR DELINQUENT DOMESTIC INSURER, Plaintiff, vs. NEVADA HEALTH CO-OP, Defendant.	Case No. A-15-725244-C Department 1

NINETEENTH STATUS REPORT

COME NOW, Commissioner of Insurance Barbara D. Richardson in her capacity as Receiver of Nevada Health CO-OP ("NHC," or the "CO-OP"), and CANTILO & BENNETT, L.L.P., Special Deputy Receiver ("SDR" - SDR and the Commissioner as Receiver are referred to collectively herein as "Receiver") and file this Nineteenth Status Report in the above-captioned receivership.

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I. INTRODUCTION AND HISTORICAL BACKGROUND

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

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

Via a Notice of Substitution of Receiver dated April 6, 2016, Deputy Attorney General Joanna N. Grigoriev informed interested parties of the substitution of Commissioner Barbara D. Richardson, in place and stead of former Acting Commissioner Amy L. Parks, as the Receiver of NHC. This substitution of Receiver was subsequent to Commissioner Richardson's appointment as Commissioner of Insurance for the State of Nevada.

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

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

II. RECEIVERSHIP ADMINISTRATION

Receivership Administrative Services and Oversight

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

[1] The *in camera* materials are being submitted in a separate envelope that reflect paid invoices.

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

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

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

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Resolution of Outstanding Receivership Matters

Claims Adjudications & Distributions

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

As previously reported, the SDR must collect U.S. Internal Revenue Service ("IRS") W-9 forms and other necessary documentation from the providers in advance of making any claim payments, to assure that the estate can meet any mandatory federal tax reporting requirements. Many providers have submitted the necessary documentation, but a number of providers have not. The SDR has received responsive documentation from around 690 providers, and Palomar is processing this documentation. Numerous providers sent documentation that was defective in some way and this has required Palomar to follow up and retrieve corrected documents from the providers. Still other providers have not submitted any of the requested documentation. The SDR will take reasonable steps to follow-up with these providers.

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

[2] See *infra* section titled "Sale of Risk Corridors Receivable."

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

In addition to the two member appeals described above, there are forty-two (42) outstanding appeals sent by NHC members of the NCDs that were mailed for outstanding healthcare claims submitted by providers to NHC's Javelina Claims Processing Database.[3] The SDR is not requesting that hearings be set on these appeals at this time, but may do so in the near future (*i.e.*, upon the resolution of COVID-19 issues – which in addition to preventing in-person appearances could also make it difficult for claimants to prepare for hearings). Once all appeals have been reviewed by the SDR, the SDR will inform the Receivership Court of any unresolved appeals so that a hearing or hearings may be set. The SDR is working on a resolution of any outstanding appeals.

There are fifty outstanding proofs of claim which have been assigned to a priority Class "C" (*i.e.*, NRS 696B.420(1)(c)) or lower.[4] The SDR will be issuing NCDs to these claimants, and will submit its report of these determinations to the Court. It appears unlikely at this time that the estate will have sufficient assets to make distributions to claims assigned priority below Class B.

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

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

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CMS Receivables

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

In light of the U.S. Supreme Court's recent decision in *Maine Community Health Options v. United States, No. 18-1023* (described further below), the Receiver is trying to resolve some or all of the claims with CMS.[6] The litigation against CMS will continue if an acceptable resolution does not occur.

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

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

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Internal Administrative Matters Related to Wind Down

The Receiver may contract to use the services of certain former employees for specific, limited-term receivership projects. The Receiver completed the wind down and closure of NHC's administrative office in 2019.

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

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

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

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The Receiver's claims are ongoing against NHC's former directors and officers, InsureMonkey and Alex Rivlin, Larson & Company (and individually named Larson defendants), Nevada Health Solutions, LLC, and Unite Here Health. Discovery is underway, and the following deadlines have been set by Judge Timothy C. Williams, per the May 12, 2020, 4th Amended Order Setting Civil Jury Trial, Pre-Trial, Calendar Call, and Deadlines for Motions; Amended Discovery Scheduling Order, in concert with the May 13, 2020, Stipulation and Order to Extend Discovery Deadlines [Fifth Request]:

1. **August 6, 2020:** Status Check regarding Discovery and Case Schedule
2. **August 17, 2020:** Defendants' designation of initial and rebuttal experts
3. **August 31, 2020:** Motions to Amend Pleadings or Add Parties
4. **October 16, 2020:** Plaintiff's designation of rebuttal experts
5. **February 19, 2021:** Discovery Cut Off
6. **March 5, 2021:** Dispositive Motions
7. **March 19, 2021:** Motions *in Limine*
8. **April 22, 2021 at 10:30 a.m.:** Pre-Trial Conference/Calendar call
9. **April 29, 2021:** Pre-Trial Memorandum filing deadline
10. **May 3, 2021:** Case is set to be tried to a jury on a five-week stack.

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

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

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

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by Unite Here Health and Nevada Health Solutions via a Joinder filed on April 22, 2020, and essentially asserts that a waiver of such privileges has been effected due to the partial disclosure of documents on the same subject matter in litigation. An Opposition by the Receiver was filed on April 27, 2020, setting forth responses to these allegations and describing relevant legal authorities. The Opposition maintains that no such partial disclosure of files was made, that none of the documents that the Motion to Compel seeks to produce were relied upon by NHC in the making of the Complaint against the Defendants, and that numerous legal doctrines would protect the documents being sought from disclosure in any case. A Reply by the Defendant directors and officers in support of the Motion to Compel was filed under seal on June 16, 2020, and joined by Unite Here Health and Nevada Health Solutions the same day. Although set initially for hearing on June 17, 2020, per a June 15, 2020, Stipulation and Order, the hearing on the Motion to Compel was re-set for June 24, 2020. The matter was heard on June 24 and has not yet been ruled upon by the Court.

Pending Action Against the United States in the Court of Federal Claims

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

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

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

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

On August 7, 2019, the United States filed with the CFC its Motion to Stay, or in the Alternative, for an Enlargement of Time, asserting that the interrelated issues of fact and law at the center of the CFC litigation, alongside countervailing concerns of judicial economy, justified a general suspension of proceedings during the pendency of the United States Supreme Court's review of the legal and constitutional questions in the Supreme Court Appeal Cases, notwithstanding the theoretical separability of the various federal receivables programs

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under which NHC presented its claims. The CFC granted the United States' Motion to Stay on August 12, 2019, until such legal and constitutional questions were resolved.

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

Subsequent to this decision, the CFC issued its May 4, 2020, Order scheduling a status conference to take place on May 19, 2020, concerning the remaining matters at issue in the litigation. This telephone conference did occur on May 19, 2020, and the issues discussed on that call were later summarized in the CFC's May 21, 2020, Order staying proceedings for a further forty-five days and requiring the filing of a joint status report on or before July 6, 2020, addressing the topics discussed during the telephone conference. The July 6 status report deadline may be postponed by at least a couple of days. The Receiver seeks to pursue the litigation as necessary to obtain funds for the estate if the case is not resolved with CMS. For the joint status report, the Receiver, as ordered, shall submit legal briefing as to whether the issues relating to setoff currently being decided in *Conway v. United States*, Fed. Cir. No. 20-1292, bear on the instant litigation.

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Pending Action Against the Silver State Health Insurance Exchange

Through the filing of a Complaint in Case Number A-20-816161-C, in Department Number Eight of the Eighth Judicial District Court, the Receiver has brought an action against the Exchange for, *inter alia,* damages of approximately one-half million dollars in premiums received from on-exchange insureds on behalf of NHC, but never remitted to the CO-OP.

Current Receivership Assets

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

1. The unrestricted cash assets of the CO-OP have fluctuated with post-receivership expenses and claim payments, as well as with the Receiver's receipt of member premiums. The currently available, unrestricted cash assets of the CO-OP as of May 31, 2020, were approximately $5,731,193. The majority of NHC's currently available and liquid assets are held in bank deposits.

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

3. The Receiver is including, as Exhibit 2 attached hereto, a cash flow report for NHC for the period covering the inception of the receivership through May 31, 2020. This report reflects a summary of disbursements and collections made by NHC during this period.

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CONCLUSION

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

DATED this 10th day of July 2020.

Respectfully submitted:

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

By: /s/ CANTILO & BENNETT, L.L.P.
Special Deputy Receiver
By Its Authorized Representative
Patrick H. Cantilo

Respectfully submitted by:

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as the Permanent Receiver for Nevada Health CO-OP

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the 10th day of July 2020, and pursuant to NEFCR 9, NRCP 5(b), and EDCR 7.26, I served this **NINETEENTH STATUS REPORT** on all parties receiving service in this action through electronic transmission via this Court's electronic filing system to:

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EXHIBIT “1”

CANTILO & BENNETT, L.L.P.

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March 12, 2020

BILL SUMMARY

70750 Nevada Health Co-Op ("NHC")

December 1 - December 31, 2019

Matter No. and Description	Invoice Number	Fees	Costs	Total
December 2019	24329-24331 24334-24340	$ 25,508.75	$ 1,824.62	$ 27,333.37
Totals (1)		$ 25,508.75	$ 1,824.62	$ 27,333.37

Cantilo & Bennett, L.L.P.

NEVADA HEALTH CO-OP
TIMEKEEPER SUMMARY REPORT
12/1/19 - 12/31/19

		Billable Hours	Billable Rate	December 2019 Billing
1	Timekeeper - Patrick H. Cantilo	0.00	$450.00	$0.00
2	Timekeeper - Mark F. Bennett	17.25	$375.00	$6,468.75
3	Timekeeper - Kristen W. Johnson	42.10	$175.00	$7,367.50
4	Timekeeper - Josh O. Lively	62.25	$175.00	$10,893.75
5	Timekeeper - Douglas J. Coonfield	0.00	$150.00	$0.00
6	Timekeeper - Jose M. Rangel	0.00	$300.00	$0.00
7	Timekeeper - Arati Bhattacharya	1.20	$200.00	$240.00
8	Timekeeper - Law Clerks	0.00	$85.00	$0.00
9	Timekeeper - Isaiah Samaniego	4.45	$100.00	$445.00
10	TimeKeeper - Pierre Riou	0.00	$225.00	$0.00
11	TimeKeeper - Jeffrey L. Collins	0.75	$125.00	$93.75
	GRAND TOTAL	**128.00**		**$25,508.75**

CANTILO & BENNETT, L.L.P.

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April 2, 2020

BILL SUMMARY

70750 Nevada Health Co-Op ("NHC")

January 1 - January 31, 2020

Matter No. and Description	Invoice Number	Fees	Costs	Total
January 2020	24350-24353	$ 68,571.25	$ 0.00	$ 68,571.25
Totals (1)		$ 68,571.25	$ 0.00	$ 68,571.25

Cantilo & Bennett, L.L.P.

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

		Billable Hours	Billable Rate	January 2020 Billing
1	Timekeeper - Patrick H. Cantilo	0.50	$490.00	$245.00
2	Timekeeper - Mark F. Bennett	54.15	$400.00	$21,660.00
3	Timekeeper - Kristen W. Johnson	19.70	$300.00	$5,910.00
4	Timekeeper - Josh O. Lively	189.50	$200.00	$37,900.00
5	Timekeeper - Douglas J. Coonfield	0.00	$200.00	$0.00
6	Timekeeper - Jose M. Rangel	0.00	$350.00	$0.00
7	Timekeeper - Arati Bhattacharya	0.00	$300.00	$0.00
8	Timekeeper - Linda Thomas	8.25	$40.00	$330.00
9	Timekeeper - Isaiah Samaniego	15.50	$125.00	$1,937.50
10	TimeKeeper - Daviannie Baham	8.65	$50.00	$432.50
11	TimeKeeper - Jeffrey L. Collins	1.00	$125.00	$125.00
	GRAND TOTAL	**297.25**		**$68,540.00**
	12/2/19 JLC not previously billed .25 hours			$31.25
	Total 1/20 Invoice			$68,571.25

Client ID 70750
Work Date 1/1/20:01/31/2020

TimeKeeper		Hours	Fees	NC Hours	NC Fees
DMB DAVI M.BAHAM					
70750001	Takeover Administration	8.65	432.50	0.00	0.00
Sub Total (DMB)		8.65	432.50	0.00	0.00*
MFB MARK F. BENNETT					
70750000	General	0.20	80.00	0.00	0.00
70750003	Claims	0.50	200.00	0.00	0.00
70750008	Company Administration	0.75	300.00	0.00	0.00
70750100	Asset Recovery	52.70	21,080.00	0.00	0.00
Sub Total (MFB)		54.15	21,660.00	0.00	0.00*
PHC PATRICK H. CANTILO		0.50	245.00	0.00	0.00
Sub Total (PHC)		0.50	245.00	0.00	0.00*
JLC JEFFREY L. COLLINS					
70750102	NHC vs. CMS Litigation	1.00	125.00	0.00	0.00
Sub Total (JLC)		1.00	125.00	0.00	0.00*
KWJ KRISTEN W. JOHNSON					
70750003	Claims	15.70	4,710.00	0.00	0.00
70750008	Company Administration	2.40	720.00	0.00	0.00
70750100	Asset Recovery	1.60	480.00	0.00	0.00
Sub Total (KWJ)		19.70	5,910.00	0.00	0.00*
JOL JOSHUA O. LIVELY		189.50	37,900.00	0.00	0.00
Sub Total (JOL)		189.50	37,900.00	0.00	0.00*
IXS ISAIAH SAMANIEGO					
70750008	Company Administration	15.50	1,937.50	0.00	0.00
Sub Total (IXS)		15.50	1,937.50	0.00	0.00*
LCT LINDA C. THOMAS					
70750001	Takeover Administration	8.25	330.00	0.00	0.00
Sub Total (LCT)		8.25	330.00	0.00	0.00*
Grand Total		297.25	68,540.00	0.00	0.00

CANTILO & BENNETT, L.L.P.

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April 28, 2020

BILL SUMMARY

70750 Nevada Health Co-Op ("NHC")

February 1 - February 29, 2020

Matter No. and Description	Invoice Number	Fees	Costs	Total
February 2020	24431-24436	$ 34,857.50	$ 1,241.15	$ 36,098.65
Totals (1)		$ 34,857.50	$ 1,241.15	$ 36,098.65

Cantilo & Bennett, L.L.P.

NEVADA HEALTH CO-OP
TIMEKEEPER SUMMARY REPORT
2/1/20 - 2/29/20

		Billable Hours	Billable Rate	February 2020 Billing
1	Timekeeper - Patrick H. Cantilo	0.00	$490.00	$0.00
2	Timekeeper - Mark F. Bennett	47.90	$400.00	$19,160.00
3	Timekeeper - Kristen W. Johnson	14.00	$300.00	$4,200.00
4	Timekeeper - Josh O. Lively	47.00	$200.00	$9,400.00
5	Timekeeper - Douglas J. Coonfield	0.00	$200.00	$0.00
6	Timekeeper - Jose M. Rangel	0.00	$350.00	$0.00
7	Timekeeper - Arati Bhattacharya	0.00	$300.00	$0.00
8	Timekeeper - Law Clerk	21.00	$85.00	$1,785.00
9	Timekeeper - Isaiah Samaniego	1.50	$125.00	$187.50
10	TimeKeeper - Daviannie Baham	0.00	$50.00	$0.00
11	TimeKeeper - Jeffrey L. Collins	1.00	$125.00	$125.00
	GRAND TOTAL	**132.40**		**$34,857.50**

Client ID 70750
Work Date 2/1/20:02/29/2020

TimeKeeper		Hours	Fees	NC Hours	NC Fees
MFB MARK F. BENNETT					
70750003	Claims	1.55	620.00	0.00	0.00
70750008	Company Administration	2.65	1,060.00	0.00	0.00
70750010	CMS	0.20	80.00	0.00	0.00
70750100	Asset Recovery	42.25	16,900.00	0.00	0.00
70750102	NHC vs. CMS Litigation	1.25	500.00	0.00	0.00
Sub Total (MFB)		47.90	19,160.00	0.00	0.00*
CLERK					
LAW CLERK					
70750003	Claims	3.75	318.75	0.00	0.00
70750100	Asset Recovery	17.25	1,466.25	0.00	0.00
Sub Total (CLERK)		21.00	1,785.00	0.00	0.00*
JLC JEFFREY L. COLLINS					
70750102	NHC vs. CMS Litigation	1.00	125.00	0.00	0.00
Sub Total (JLC)		1.00	125.00	0.00	0.00*
KWJ KRISTEN W. JOHNSON					
70750003	Claims	4.80	1,440.00	0.00	0.00
70750008	Company Administration	0.30	90.00	0.00	0.00
70750100	Asset Recovery	8.90	2,670.00	0.00	0.00
Sub Total (KWJ)		14.00	4,200.00	0.00	0.00*
JOL JOSHUA O. LIVELY		47.00	9,400.00	0.00	0.00
Sub Total (JOL)		47.00	9,400.00	0.00	0.00*
IXS ISAIAH SAMANIEGO					
70750008	Company Administration	1.50	187.50	0.00	0.00
Sub Total (IXS)		1.50	187.50	0.00	0.00*
Grand Total		132.40	34,857.50	0.00	0.00

Client and Matter	Date	Inv No	Fees	Costs	Credits	Total
70750 Nevada Health CO-OP						
70750003 Claims	02/29/20	24431	0.00	1,241.15	0.00	1,241.15
Totals (1)			0.00	1,241.15	0.00	1,241.15

CANTILO & BENNETT, L.L.P.

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June 25, 2020

BILL SUMMARY

70750 Nevada Health Co-Op ("NHC")

March 1 - March 31, 2020

Matter No. and Description	Invoice Numbers	Fees	Costs	Total
March 2020	24583-24584 24589-24590	$ 49,070.00	$ 501.00	$ 49,571.00
Totals (1)		$ 49,070.00	$ 501.00	$ 49,571.00

Cantilo & Bennett, L.L.P.

NEVADA HEALTH CO-OP
TIMEKEEPER SUMMARY REPORT
3/1/20 - 3/31/20

		Billable Hours	Billable Rate	March 2020 Billing
1	**Timekeeper - Patrick H. Cantilo**	0.00	$490.00	$0.00
2	**Timekeeper - Mark F. Bennett**	41.70	$400.00	$16,680.00
3	**Timekeeper - Kristen W. Johnson**	27.80	$300.00	$8,340.00
4	**Timekeeper - Josh O. Lively**	89.50	$200.00	$17,900.00
5	**Timekeeper - Douglas J. Coonfield**	0.00	$200.00	$0.00
6	**Timekeeper - Jose M. Rangel**	0.00	$350.00	$0.00
7	**Timekeeper - Arati Bhattacharya**	0.00	$300.00	$0.00
8	**Timekeeper - Law Clerk**	4.25	$85.00	$361.25
9	**Timekeeper - Isaiah Samaniego**	1.70	$125.00	$212.50
10	**TimeKeeper - Daviannie Baham**	0.00	$50.00	$0.00
11	**TimeKeeper - Jeffrey L. Collins**	1.25	$125.00	$156.25
	GRAND TOTAL	**166.20**		**$43,650.00**

Audited (not billed time)

1/5/2020 MFB	1.75	$400.00	$700.00
1/8/2020 MFB	4.05	$400.00	$1,620.00
1/9/2020 MFB	2.50	$400.00	$1,000.00
1/10/2020 MFB	2.75	$400.00	$1,100.00
1/11/2020 MFB	2.50	$400.00	$1,000.00
TOTAL	13.55	$400.00	$5,420.00
GRAND TOTAL			**$49,070.00**

Client ID 70750
Work Date 3/1/20:03/31/2020

TimeKeeper		Hours	Fees	NC Hours	NC Fees
MFB MARK F. BENNETT					
70750002	Legal	7.25	2,900.00	0.00	0.00
70750003	Claims	0.55	220.00	0.00	0.00
70750008	Company Administration	2.15	860.00	0.00	0.00
70750010	CMS	0.75	300.00	0.00	0.00
70750100	Asset Recovery	31.00	12,400.00	0.00	0.00
Sub Total (MFB)		41.70	16,680.00	0.00	0.00*
CLK LAW CLERK					
70750003	Claims	2.75	233.75	0.00	0.00
70750100	Asset Recovery	1.50	127.50	0.00	0.00
Sub Total (CLK)		4.25	361.25	0.00	0.00*
JLC JEFFREY L. COLLINS					
70750102	NHC vs. CMS Litigation	1.25	156.25	0.00	0.00
Sub Total (JLC)		1.25	156.25	0.00	0.00*
KWJ KRISTEN W. JOHNSON					
70750003	Claims	8.30	2,490.00	0.00	0.00
70750008	Company Administration	18.20	5,460.00	0.00	0.00
70750100	Asset Recovery	1.30	390.00	0.00	0.00
Sub Total (KWJ)		27.80	8,340.00	0.00	0.00*
JOL JOSHUA O. LIVELY					
70750008	Company Administration	3.00	600.00	0.00	0.00
70750100	Asset Recovery	86.50	17,300.00	0.00	0.00
Sub Total (JOL)		89.50	17,900.00	0.00	0.00*
IXS ISAIAH SAMANIEGO					
70750005	Asset Marshaling	0.10	12.50	0.00	0.00
70750008	Company Administration	1.60	200.00	0.00	0.00
Sub Total (IXS)		1.70	212.50	0.00	0.00*
Grand Total		166.20	43,650.00	0.00	0.00

CANTILO & BENNETT, L.L.P.

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July 2, 2020

BILL SUMMARY

70750 Nevada Health Co-Op ("NHC")

April 1 - April 30, 2020

Matter No. and Description	Invoice Numbers	Fees	Costs	Total
April 2020	24617 24593- 24597	$ 26,072.00	$ 312.86	$ 26,384.86
Totals (1)		$ 26,072.00	$ 312.86	$ 26,384.86

Cantilo & Bennett, L.L.P.

NEVADA HEALTH CO-OP
TIMEKEEPER SUMMARY REPORT
4/1/20 - 4/30/20

		Billable Hours	Billable Rate	April Billing
1	Timekeeper - Patrick H. Cantilo	0.30	$490.00	$147.00
2	Timekeeper - Mark F. Bennett	24.45	$400.00	$9,780.00
3	Timekeeper - Kristen W. Johnson	11.30	$300.00	$3,390.00
4	Timekeeper - Josh O. Lively	57.00	$200.00	$11,400.00
5	Timekeeper - Douglas J. Coonfield	0.00	$200.00	$0.00
6	Timekeeper - Jose M. Rangel	0.00	$350.00	$0.00
7	Timekeeper - Arati Bhattacharya	0.00	$300.00	$0.00
8	Timekeeper - Law Clerk	13.00	$85.00	$1,105.00
9	Timekeeper - Isaiah Samaniego	0.85	$125.00	$106.25
10	TimeKeeper - Daviannie Baham	0.00	$50.00	$0.00
11	TimeKeeper - Jeffrey L. Collins	1.15	$125.00	$143.75
	GRAND TOTAL	**108.05**		**$26,072.00**

Client ID 70750
Work Date 4/1/20:04/30/2020

TimeKeeper		Hours	Fees	NC Hours	NC Fees
MFB MARK F. BENNETT					
70750008	Company Administration	8.25	3,300.00	0.00	0.00
70750010	CMS	0.75	300.00	0.00	0.00
70750100	Asset Recovery	12.45	4,980.00	0.00	0.00
70750102	NHC vs. CMS Litigation	3.00	1,200.00	0.00	0.00
Sub Total (MFB)		24.45	9,780.00	0.00	0.00*
PHC PATRICK H. CANTILO		0.30	147.00	0.00	0.00
Sub Total (PHC)		0.30	147.00	0.00	0.00*
CLK LAW CLERK					
70750003	Claims	13.00	1,105.00	0.00	0.00
Sub Total (CLK)		13.00	1,105.00	0.00	0.00*
JLC JEFFREY L. COLLINS					
70750102	NHC vs. CMS Litigation	1.15	143.75	0.00	0.00
Sub Total (JLC)		1.15	143.75	0.00	0.00*
KWJ KRISTEN W. JOHNSON					
70750003	Claims	3.80	1,140.00	0.00	0.00
70750008	Company Administration	6.00	1,800.00	0.00	0.00
70750100	Asset Recovery	1.50	450.00	0.00	0.00
Sub Total (KWJ)		11.30	3,390.00	0.00	0.00*
JOL JOSHUA O. LIVELY		57.00	11,400.00	0.00	0.00
Sub Total (JOL)		57.00	11,400.00	0.00	0.00*
IXS ISAIAH SAMANIEGO					
70750008	Company Administration	0.85	106.25	0.00	0.00
Sub Total (IXS)		0.85	106.25	0.00	0.00*
Grand Total		108.05	26,072.00	0.00	0.00

Client and Matter	Date	Inv No	Fees	Costs	Credits	Total
70750 Nevada Health CO-OP						
70750003 Claims	04/30/20	24593	0.00	312.86	0.00	312.86
Totals (1)			0.00	312.86	0.00	312.86

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April 27, 2020

BILL SUMMARY

70750 Nevada Health Co-Op ("NHC")

January 1, 2020 – January 31, 2020

Matter No. and Description	Fees	Costs	Total
January 2020 Non-IT Services	$8,815.00	$0.00	$8,815.00
January 2020 IT Services Flat Fee	5,000.00	0.00	5,000.00
Totals	$13,815.00	$0.00	$13,815.00

Palomar Financial, LC

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

		Billable Hours	Billable Rate	January 2020 Billing
1	**TIME KEEPER - Nicole Wilkins**	5.20	$250.00	$1,300.00
2	**TIME KEEPER - Robert Stebel**	0.00	$160.00	$0.00
3	**TIME KEEPER - Kelly Reed**	17.25	$150.00	$2,587.50
4	**TIME KEEPER - Neda Khalaf**	24.00	$160.00	$3,840.00
5	**TIME KEEPER - Brent Andrews**	0.00	$150.00	$0.00
6	**TIME KEEPER - Gayathri Sivadasan**	7.25	$150.00	$1,087.50
	GRAND TOTAL	**53.70**		**$8,815.00**

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

Staff ID	Name	Description	Hours	Amount
NMW	Nicole Wilkins	Accounting Reports/Receivership Team Support	0.25	$ 62.50
		Payroll & Employee Benefits	1.25	$ 312.50
		Accounts Payable and Receivable	3.25	$ 812.50
		Bank Account Administration/Reconciliation	0.45	$ 112.50
		Sub Total (NMW)	**5.20**	**$ 1,300.00**
RNS	Robert Stebel	Regulatory Responses/Compliance	0.00	$ -
		Sub Total (RNS)	**0.00**	**$ -**
KJR	Kelly Reed	Claims Matter	17.25	$ 2,587.50
		Sub Total (KJR)	**17.25**	**$ 2,587.50**
NK	Neda Khalaf	Accounting Reports/Receivership Team Support	18.00	$ 2,880.00
		Accounts Payable and Receivable	6.00	$ 960.00
		Sub Total (NK)	**24.00**	**$ 3,840.00**
BA	Brent Andrews	IT Support & Administration	0.00	$ -
		Sub Total (BA)	**0.00**	**$ -**
GS	Gayathri Sivadasan	Accounts Payable and Receivable	2.25	$ 337.50
		1099 Reports & Administration	5.00	$ 750.00
		Sub Total (GS)	**7.25**	**$ 1,087.50**
	Grand Total		**53.70**	**$ 8,815.00**

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April 28, 2020

BILL SUMMARY

70750 Nevada Health Co-Op ("NHC")

February 1, 2020 – February 29, 2020

Matter No. and Description	Fees	Costs	Total
February 2020 Non-IT Services	$8,086.00	$0.00	$8,086.00
February 2020 IT Services Flat Fee	5,000.00	0.00	5,000.00
Totals	$13,086.00	$0.00	$13,086.00

Palomar Financial, LC

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

		Billable Hours	Billable Rate	February 2020 Billing
1	**TIME KEEPER - Nicole Wilkins**	3.70	$250.00	$925.00
2	**TIME KEEPER - Robert Stebel**	3.35	$160.00	$536.00
3	**TIME KEEPER - Kelly Reed**	15.00	$150.00	$2,250.00
4	**TIME KEEPER - Neda Khalaf**	10.00	$160.00	$1,600.00
5	**TIME KEEPER - Brent Andrews**	0.00	$150.00	$0.00
6	**TIME KEEPER - Mary Noel**	18.50	$150.00	$2,775.00
	GRAND TOTAL	**50.55**		**$8,086.00**

Palomar Financial, LC
02/01/2020-02/29/2020
Client: Nevada Health Co-Op ("NHC")

Staff ID	Name	Description	Hours	Amount
NMW	Nicole Wilkins	Accounting Reports/Receivership Team Support	0.40	$ 100.00
		General Ledger Accounting	0.25	$ 62.50
		Accounts Payable and Receivable	1.75	$ 437.50
		Bank Account Administration/Reconciliation	1.30	$ 325.00
		Sub Total (NMW)	**3.70**	**$ 925.00**
RNS	Robert Stebel	Regulatory Responses/Compliance	3.35	$ 536.00
		Sub Total (RNS)	**3.35**	**$ 536.00**
KJR	Kelly Reed	Claims Matter	15.00	$ 2,250.00
		Sub Total (KJR)	**15.00**	**$ 2,250.00**
NK	Neda Khalaf	Accounting Reports/Receivership Team Support	6.25	$ 1,000.00
		Accounts Payable and Receivable	3.75	$ 600.00
		Sub Total (NK)	**10.00**	**$ 1,600.00**
BA	Brent Andrews	IT Support & Administration	0.00	$ -
		Sub Total (BA)	**0.00**	**$ -**
MFN	Mary Noel	Accounts Payable and Receivable	3.25	$ 487.50
		Claims Matters	15.25	$ 2,287.50
		Sub Total (MFN)	**18.50**	**$ 2,775.00**
	Grand Total		**50.55**	**$ 8,086.00**

11401 Century Oaks Terrace
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PALOMAR FINANCIAL, LC

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May 28, 2020

BILL SUMMARY

70750 Nevada Health Co-Op ("NHC")

March 1, 2020 – March 31, 2020

Matter No. and Description	Fees	Costs	Total
March 2020 Non-IT Services	$12,807.50	$0.00	$12,807.50
March 2020 IT Services Flat Fee	5,000.00	0.00	5,000.00
Totals	$17,807.50	$0.00	$17,807.50

Palomar Financial, LC

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

		Billable Hours	Billable Rate	March 2020 Billing
1	**TIME KEEPER - Nicole Wilkins**	14.25	$250.00	$3,562.50
2	**TIME KEEPER - Robert Stebel**	0.00	$160.00	$0.00
3	**TIME KEEPER - Kelly Reed**	0.00	$150.00	$0.00
4	**TIME KEEPER - Neda Khalaf**	13.25	$160.00	$2,120.00
5	**TIME KEEPER - Brent Andrews**	0.00	$150.00	$0.00
6	**TIME KEEPER - Mary Noel**	47.50	$150.00	$7,125.00
	GRAND TOTAL	**75.00**		**$12,807.50**

Palomar Financial, LC
03/01/2020-03/31/2020
Client: Nevada Health Co-Op ("NHC")

Staff ID	Name	Description	Hours	Amount
NMW	Nicole Wilkins	Accounting Reports/Receivership Team Support	5.75	$ 1,437.50
		Accounts Payable and Receivable	5.45	$ 1,362.50
		Bank Account Administration/Reconciliation	0.55	$ 137.50
		Claims Matters	2.50	$ 625.00
		Sub Total (NMW)	**14.25**	**$ 3,562.50**
RNS	Robert Stebel	Regulatory Responses/Compliance	0.00	$ -
		Sub Total (RNS)	**0.00**	**$ -**
KJR	Kelly Reed	Claims Matter	0.00	$ -
		Sub Total (KJR)	**0.00**	**$ -**
NK	Neda Khalaf	Accounting Reports/Receivership Team Support	13.25	$ 2,120.00
		Sub Total (NK)	**13.25**	**$ 2,120.00**
BA	Brent Andrews	IT Support & Administration	0.00	$ -
		Sub Total (BA)	**0.00**	**$ -**
MFN	Mary Noel	Accounts Payable and Receivable	47.50	$ 7,125.00
		Sub Total (MFN)	**47.50**	**$ 7,125.00**
	Grand Total		**75.00**	**$ 12,807.50**

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July 2, 2020

BILL SUMMARY

70750 Nevada Health Co-Op ("NHC")

April 1, 2020 – April 30, 2020

Matter No. and Description	Fees	Costs	Total
April 2020 Non-IT Services	$5,241.50	$0.00	$5,241.50
April 2020 IT Services Flat Fee	5,000.00	0.00	5,000.00
Totals	$10,241.50	$0.00	$10,241.50

Palomar Financial, LC

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

		Billable Hours	Billable Rate	April 2020 Billing
1	**TIME KEEPER - Nicole Wilkins**	2.85	$250.00	$712.50
2	**TIME KEEPER - Robert Stebel**	1.40	$160.00	$224.00
3	**TIME KEEPER - Kelly Reed**	0.00	$150.00	$0.00
4	**TIME KEEPER - Neda Khalaf**	21.75	$160.00	$3,480.00
5	**TIME KEEPER - Brent Andrews**	0.00	$150.00	$0.00
6	**TIME KEEPER - Mary Noel**	5.50	$150.00	$825.00
	GRAND TOTAL	**31.50**		**$5,241.50**

Palomar Financial, LC
04/01/2020-04/30/2020
Client: Nevada Health Co-Op ("NHC")

Staff ID	Name	Description	Hours		Amount
NMW	Nicole Wilkins	Accounting Reports/Receivership Team Support	0.40	$	100.00
		General Ledger Accounting	0.50	$	125.00
		Accounts Payable and Receivable	1.25	$	312.50
		Bank Account Administration/Reconciliation	0.45	$	112.50
		Claims Matters	0.25	$	62.50
		Sub Total (NMW)	**2.85**	**$**	**712.50**
RNS	Robert Stebel	Payroll & Employee Benefits	1.40	$	224.00
		Sub Total (RNS)	**1.40**	**$**	**224.00**
KJR	Kelly Reed	Claims Matter	0.00	$	-
		Sub Total (KJR)	**0.00**	**$**	**-**
NK	Neda Khalaf	Accounting Reports/Receivership Team Support	21.75	$	3,480.00
		Sub Total (NK)	**21.75**	**$**	**3,480.00**
BA	Brent Andrews	IT Support & Administration	0.00	$	-
		Sub Total (BA)	**0.00**	**$**	**-**
MFN	Mary Noel	Accounts Payable and Receivable	5.50	$	825.00
		Sub Total (MFN)	**5.50**	**$**	**825.00**
	Grand Total		**31.50**	**$**	**5,241.50**

GT GreenbergTraurig

Invoice No.: 5356869
File No. : 170678.010100
Bill Date : April 15, 2020

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

INVOICE

Re: Asset Recovery matter in State Court

Legal Services through March 31, 2020:

	Total Fees:	$	162,602.00
Expenses:			
Deposition/Court Reporters	40.00		
	Total Expenses:	$	40.00
	Retainer and Other Credits Applied:		(15,000.00)
	Total Current Invoice:	**$**	**147,642.00**

MEF:TKK
Tax ID: 13-3613083

GT GreenbergTraurig

Invoice No.: 5386424
File No. : 170678.010100
Bill Date : May 13, 2020

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

INVOICE

Re: Asset Recovery matter in State Court

Legal Services through April 30, 2020:

	Total Fees:	$	114,119.50
Expenses:			
Filing Fees	10.50		
	Total Expenses:	$	10.50
	Total Current Invoice:	**$**	**114,130.00**

MEF:TKK
Tax ID: 13-3613083

GT GreenbergTraurig

Invoice No.: 5408505
File No. : 170678.010100
Bill Date : June 8, 2020

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

INVOICE

Re: Asset Recovery matter in State Court

Legal Services through May 31, 2020:

Total Fees:	$	52,795.00
Total Current Invoice:	**$**	**52,795.00**

MEF:TKK
Tax ID: 13-3613083

GT GreenbergTraurig

Invoice No.: 5382228
File No. : 170678.010300
Bill Date : May 13, 2020

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

INVOICE

Re: Federal Court of Claims

Legal Services through April 30, 2020:

Total Fees:	$	8,205.50
Total Current Invoice:	**$**	**8,205.50**

MEF:TKK
Tax ID: 13-3613083

GT GreenbergTraurig

Invoice No.: 5406997
File No. : 170678.010300
Bill Date : June 5, 2020

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

INVOICE

Re: Federal Court of Claims

Legal Services through May 31, 2020:

Total Fees:	$	40,344.50
Total Current Invoice:	**$**	**40,344.50**

MEF:TKK
Tax ID: 13-3613083

GT GreenbergTraurig

Invoice No.: 5382264
File No. : 170678.010500
Bill Date : May 13, 2020

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

INVOICE

Re: Special Legal Receivership Matters

Legal Services through April 30, 2020:

Total Fees:	$	237.50
Total Current Invoice:	**$**	**237.50**

MEF:TKK
Tax ID: 13-3613083

GT GreenbergTraurig

Invoice No.: 5406946
File No. : 170678.010500
Bill Date : June 5, 2020

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

INVOICE

Re: Special Legal Receivership Matters

Legal Services through May 31, 2020:

Total Fees:	$	47.50
Total Current Invoice:	**$**	**47.50**

MEF:TKK
Tax ID: 13-3613083

FTI CONSULTING

Invoice Remittance

Mark Bennett
Cantilo & Bennett, LLP
11401 Century Oaks Terrace, Suite 300
Austin, TX 78758
mfbennett@cb-firm.com

March 17, 2020
FTI Invoice No. 7541624
FTI Job No. 425623.0005
Terms NET 30
Federal I.D. No. 52-1261113
Currency: USD

Re: Nevada Health CO-OP in Receivership

Current Invoice Period: Charges Posted through February 29, 2020

Amount Due This Period

Professional Services	$18,225.00
Expenses	$0.00
Total Amount Due	**$18,225.00**

EXHIBIT “2”

NEVADA HEALTH CO-OP		
Cash Flow Analysis		
Oct 2015 - May 2020	2019	2019
	Apr	May
Sources & Uses		
Beginning Cash (excl $765,608 restricted)	$ 669,020	$ 595,450
SOURCES:		
Premium Revenue	-	-
CSR Recoveries	-	-
Rx Rebates	-	-
Claims Overpayment Recoveries	-	-
PartnerRe 2014 Premium Refund	-	-
Traditional Reins Recoveries	-	-
FTR Reins Recoveries	-	-
Risk Corridor 2014	-	-
Federal Receivables Bridge Loan	-	-
Restricted Cash became Unrestricted	-	-
Sale of Risk Corridor Receivable Interest		
Other	4,334	72,283
TOTAL SOURCES:	*$4,334*	*$72,283*
USES:		
Medical Claims Q4 2015 and Post 2015 Adj	-	-
Rx Claims Q4 2015	-	-
Risk Adjustment 2015	-	-
Medical PMPMs Q4	-	-
FTR Reinsurance Premium	-	-
Traditional Reins Premium Q4 2015	-	-
Premium Tax	-	-
Other Admin	(61,541)	(30,278)
9010 ACA Fee / 720 PCORI Fee	-	-
Professional Services	(16,363)	(68,934)
TOTAL USES:	*($77,904)*	*(99,212)*
Net cash increase for period	*($73,570)*	*($26,929)*
Cash at end of period (Restricted Cash -> Unrestricted in Aug 2017)	$ 595,450	$ 568,521

TAB 28

TAB 28

COMP

MARK E. FERRARIO, ESQ.
Nevada Bar No. 1625
ERIC W. SWANIS, ESQ.
Nevada Bar No. 6840
DONALD L. PRUNTY, ESQ.
Nevada Bar No. 8230
GREENBERG TRAURIG, LLP
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Email: ferrariom@gtlaw.com
swanise@gtlaw.com
pruntyd@gtlaw.com
Counsel for Plaintiff

CASE NO: A-20-818118-C
Department 19

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. WELLHEALTH MEDICAL ASSOCIATES (VOLKER), PLLC dba WELLHEALTH QUALITY CARE, a Nevada Professional Limited Liability Company; MEDSOURCE MANAGEMENT GROUP, LLC, a Nevada Limited Liability Company; STEVEN KELTIE, an Individual; KENNETH WARREN VOLKER, M.D., an Individual; DOES I through X inclusive; and ROE CORPORATIONS I through X, inclusive, Defendants.	CASE NO. DEPT. NO. **COMPLAINT** EXEMPT FROM ARBITRATION: AMOUNT IN EXCESS OF $50,000

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COMES NOW, Plaintiff, Barbara D. Richardson, Commissioner of Insurance in the State of Nevada, in her official capacity as Permanent Receiver of Nevada Health Co-Op ("Plaintiff" or "Commissioner"), with the Commissioner appointed in that official capacity on October 14, 2015, by the Eighth Judicial District Court, Clark County Nevada,[1] to serve as the permanent receiver ("Receiver") of the NEVADA HEALTH CO-OP ("NHC"), for the benefit of NHC's members, enrolled insureds, creditors, and the Receiver, by and through her attorneys, GREENBERG TRAURIG, LLP, and for her cause of action against Defendant WELLHEALTH MEDICAL ASSOCIATES (VOLKER), PLLC dba WELLHEALTH QUALITY CARE ("WellHealth"), MEDSOURCE MANAGEMENT GROUP, LLC ("Medsource"), STEVEN KELTIE ("Keltie"), and KENNETH WARREN VOLKER, M.D. ("Volker") (collectively, the "WellHealth Defendants") and alleges as follows:

INTRODUCTION

1. Plaintiff is the Commissioner of the Nevada Division of Insurance (the "Nevada DOI") and sues in her capacity as NHC's Court-appointed Receiver, having brought this action on behalf of NHC, NHC's members, insured enrollees, and creditors.

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

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

4. After preparatory work from 2011 to 2013, NHC began writing and providing health care insurance to Nevada citizens effective as of January 1, 2014. NHC voluntarily stopped the writing of new health care insurance as of August 17, 2015.

5. 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;

[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.

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Request for Injunction Pursuant to NRS 696B.270(1) was filed against NHC by then-acting Nevada Commissioner of Insurance, Amy L. Parks.

6. 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 firm of Cantilo & Bennett, L.L.P. was appointed as the Special Deputy Receiver of NHC.

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

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

9. This complaint concerns the services performed by the WellHealth Defendants for NHC, and how the WellHealth Defendants' conduct, including their failure to perform applicable fiduciary, contractual, professional, and statutory standards, caused substantial losses to, and the waste of assets of, NHC.

10. The complaint also concerns the WellHealth Defendants contracting to perform services with, and then providing services for, NHC in negligent, knowing, and/or intentional violation of applicable regulations and laws that governed WellHealth's performance and actions, which thereafter caused substantial losses to, and the waste of assets of, NHC.

11. WellHealth's failures have contributed to the appointment of a Receiver and the filing of this action by the Receiver, and, ultimately, the other parties represented by the Receiver.

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

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

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

PARTIES

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

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

17. Upon information and belief, Defendant WellHealth is, and was at all relevant times, a Nevada professional limited liability company, with its principal office located in Las Vegas, Nevada.

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18. Upon information and belief, Defendant Medsource is, and was at all relevant times, a Nevada limited liability company, with its principal office located in Las Vegas, Nevada.

19. Upon information and belief, Defendant Keltie is, and was at all relevant times, an individual residing in Clark County, Nevada. Keltie has been WellHealth's President of Business Development from September 2012 through the present.

20. Upon information and belief, Defendant Volker is, and was at all relevant times, an individual residing in Clark County, Nevada. Volker is the founder of Defendant WellHealth and has been its Chief Executive Officer from 2011 to the present. Volker has also served as the manager of Medsource.

BACKGROUND AND FACTUAL ALLEGATIONS

A. The Affordable Care Act

21. Congress enacted the ACA in March of 2010. The ACA included a series of interlocking reforms designed to expand coverage in the individual health insurance market.

22. 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 credits[2] to certain people to make insurance more affordable.

23. 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.

24. 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.

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[2] 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.

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

26. 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.

27. Without limitation, WellHealth violated numerous insurance laws and failed to comply with applicable law under its agreement with NHC, and by its performance and conduct thereafter.

First, under Nevada law, in order to be a delivery system intermediary ("DSI"), as the WellHealth Defendants acted in this case, the DSI transaction requires prior approval from the Nevada DOI to act in a DSI capacity. Before DSI approval can be given by the Nevada DOI, NHC is required per NAC 695C.510 and NRS 695C.140 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, submit other operational and financial data as determined by statute and by the Nevada DOI, and be assured that the party taking on DSI risk has the financial wherewithal to honor the DSI obligations with NHC. WellHealth was never approved as a DSI entity by the Nevada DOI, and in fact, when WellHealth was proposed to the Nevada DOI to act as a DSI entity, it was expressly rejected by the Nevada DOI to act in such capacity for NHC.

Second, Nevada law also provides that an individual or entity, such as the WellHealth Defendants, cannot process or adjust claims of NHC without being properly registered with a third-party claim administrator license in Nevada. WellHealth was not registered with the Nevada DOI to act as a third-party administrator for NHC, as required by NAC 695C.520 and NRS 683A.086.

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Third, Nevada law also provides that it is unlawful for any insurer, which includes a prepaid limited health service organization,[3] to transact an insurance business in Nevada without a certificate of authority from the Commissioner.[4] An insurance business in Nevada includes the making of, or proposing to make, as an insurer, an insurance contract; the receiving or collection of any premium, commission, membership fees, assessments, dues or other consideration for any insurance or any part thereof; and the transacting or proposing to transact any insurance business in substance that evades Nevada insurance laws. Under its agreement with NHC and its performance and conduct thereafter, WellHealth engaged in the unauthorized business of insurance in Nevada without an insurance license from the Nevada DOI to act as an insurer.

FACTUAL ALLEGATIONS RELATING TO WELLHEALTH DEFENDANTS

B. The WellHealth Defendants Enter into an Unlawful Contract with NHC.

28. WellHealth is a provider of health care services.

29. Effective January 1, 2014, NHC entered into a network provider agreement with WellHealth (the "WH Agreement").

30. Pursuant to the WH Agreement, NHC would have access to WellHealth's network of providers. Certain services provided by WellHealth providers under the Star Doctors Network Benefit Plan would be covered by a monthly capitated per member per month ("PMPM") payment.

31. From January 1, 2014 to May 31, 2014, NHC paid WellHealth a capitation fee of $92.40 PMPM. NHC also paid a network access fee of $5,000 per month through October 2014, and a one-time fee of $100,000 as a "network development fee."

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[3] Prepaid limited health service organization is defined in NRS 695F.050, providing as follows:

> *1. "Prepaid limited health service organization" means any person who, in return for a prepayment, agrees to provide or arrange for the provision of one or more limited health services to enrollees.*

[4] See NRS 685B.030 1. (a).

WellHealth's services meet the definition of a prepaid limited health service organization based on WellHealth agreeing to provide or arrange for the provision of health services to NHC's members.

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32. Throughout much of 2014, for claims covered by the capitation agreement, WellHealth paid its providers directly out of the PMPM it collected from NHC and provided Explanations of Payment ("EOP") to providers.

33. WellHealth was unable to keep up with claims processing and certain providers were not receiving payments on time, resulting in financial losses, financial misreporting, improper setting of rates, loss of federal receivables, and further draw downs on CMS loans by NHC.

34. Volker, WellHealth's CEO, falsely assured NHC that, as an Independent Practice Association ("IPA"), WellHealth could accept capitation arrangements with an insurance company without being a DSI. Further, without explicit authorization from the Nevada DOI, however, WellHealth agreed to provide or arrange for, and then did provide and arrange, health care services to NHC's members and received premiums, commissions, fees, or other consideration for the processing and administration of insurance business, on NHC's behalf, all in direct violation of DSI, third-party administrator, and insurance license requirements provided by Nevada laws. These license laws require fitness and obligations for individuals or entities to perform and conduct insurance services in Nevada, which are designed for the protection of insurance companies and the insured public.

35. Required contractual terms, as mandated by Nevada regulations governing DSIs, such as those provided by NAC 695C.505, were not included in the WH Agreement, nor did WellHealth comply with regulations governing DSIs or requirements for third-party administrators and authorized insurers.

36. The capitation arrangement under the WH Agreement constituted an unauthorized assumption of insurance risk on the part of WellHealth in contravention of applicable law, among other reasons, because WellHealth committed itself, in exchange for a capitation, to undertake to provide or arrange for the provision of health services to NHC's insured members—instead of NHC doing so directly.

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37. Per the terms of the WH Agreement, WellHealth had a fundamental duty to perform its work in accordance with applicable fiduciary, statutory, professional, and contractual standards.

38. In entering into the WH Agreement, WellHealth agreed to comply with all applicable State laws and regulations relating to Health Plans and all administrative policies and procedures relating to the delivery of medical services.

39. Moreover, WellHealth agreed to comply with all applicable provisions of State law and that WellHealth "shall meet the standard for participation and all applicable requirements for providers of health care services under the Medicare program."

40. Despite the clear terms of the WH Agreement, WellHealth failed to comply with all applicable provisions of state law, including but not limited to, failing to obtain the required approval to act as a DSI from the Nevada DOI.

41. Moreover, upon information and belief, neither WellHealth nor NHC submitted the WH Agreement to the Nevada DOI in advance of signing for mandatory review, as required under Nevada law. See NRS 679B.130, 695C.275; NAC 695C.217.

42. However, in or around April 2014, Nevada DOI became aware of the WH Agreement. The Nevada DOI informed NHC that WellHealth could not act as a DSI under the WH Agreement without substantial revisions to its terms in compliance with applicable law and requested an amended agreement that comported with regulatory requirements. NHC informed the Nevada DOI that it would amend the WH Agreement to avoid DSI treatment of WellHealth.

43. On or about July 1, 2014, WellHealth and NHC began to negotiate Amendment No. 2 to the WH Agreement. Pursuant to proposed Amendment No. 2, the capitation rates for June and July 2014 were to be adjusted to $78.81 and $73.30, respectively. Moreover, effective August 1, 2014, all responsibility for claim payments and EOPs were to be transferred to NHC, and the capitation fee was eliminated and replaced with a monthly payment of 2.75% of all NHC's premiums in consideration of services set forth in Amendment No. 2, which WellHealth continued to receive through July 2015.

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44. Upon information and belief, Amendment No. 2 was never executed by the parties and NHC never submitted it to the Nevada DOI for mandatory review; however, NHC began to follow the terms of the Amendment No. 2 from June 2014 to July 2014—and continuing through July 2015.

45. Although the proposed Amendment No. 2 provided for an adjustment of capitation rates based on actual claims experience, upon information and belief, no reconciliation was made for June or July 2014.

46. Pursuant to the WH Agreement, WellHealth was required to successfully complete the WellHealth Quality Care and NHC credentialing process. WellHealth agreed to be subject to, and comply with, the credentialing guidelines identified in the WellHealth Quality Care and NHC Rules and Regulations, and WellHealth failed to comply with its credentialing obligations to NHC.

47. WellHealth failed to complete credentialing services in a timely or complete fashion, and misrepresented to NHC that it had completed credentialing, which was a contingency for payment under the WH Agreement.

48. WellHealth failed to complete the provider portal, which was a required deliverable under the WH Agreement.

49. WellHealth did not provide a monthly accounting of administrative services in exchange for the 2.75% fee that it took between August 2014 and July 2015, as set forth under the WH Agreement Amendment 2 that was never executed.

50. WellHealth processed or adjusted claims of NHC without being properly registered with a third-party claim administrator license in Nevada, and without NHC's knowledge, WellHealth adjusted prior claim determinations of NHC. This course of action brings WellHealth within the scope of NRS 683A.025(1)(a), and requires WellHealth to make application and receive licensure from the Nevada DOI before acting as a third-party administrator.

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51. At all times prior to and after the execution of the WH Agreement, including WellHealth's acts and conduct through July 2015, the WellHealth Defendants knowingly and intentionally violated state law by failing to comply with all applicable regulations and laws. To the extent that WellHealth sought to modify its arrangement with NHC to avoid Nevada DOI oversight while not substantively changing business operations, this course of action constitutes a direct violation of NRS 685B.030(3)(h), which forbids transacting of insurance business "in a manner designed to evade the provisions of the statutes."

52. Moreover, Defendants Keltie and Volker intentionally misrepresented certain material facts during the negotiation of the WH Agreement, during the contractual relationship, and during the time it performed its acts and conduct concerning NHC's affairs—all while intending for NHC to rely on said misrepresentations. These misrepresentations by WellHealth included, but were not limited to, misrepresenting WellHealth's ability to perform all obligations, what services were performed, and how it performed them for NHC. WellHealth misrepresented its compliance with all state regulations and laws.

FIRST CAUSE OF ACTION

(BREACH OF CONTRACT AGAINST WELLHEALTH)

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

54. NHC and WellHealth entered into a valid and enforceable contract—the WH Agreement—which required WellHealth to perform certain provider services.

55. A provision of the WH Agreement states, "[WellHealth] shall provide all Covered Services within his/her scope of practice in a manner consistent with the proper practice of medicine, and related healing arts, and that such duties shall be performed in accordance with the customary rules of ethics and conduct of such bodies, formal or informal, governmental or otherwise, from which [WellHealth] seeks advice and guidance or to which he/she is subject to licensing and control."

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56. Moreover, the WH Agreement provides, [WellHealth] agrees to comply with all applicable State laws and regulations relating to Health Plans and all administrative policies and procedures relating to the delivery of medical services.

57. WellHealth failed to perform under the WH Agreement by failing to perform the Covered Services under the applicable professional and statutory standards, as detailed above.

58. Moreover, WellHealth failed to comply with all applicable state laws and regulations as detailed above.

59. Plaintiff performed, or was excused from performance, under the WH Agreement.

60. As a direct and proximate result of Defendants' conduct, NHC has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

61. 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.

SECOND CAUSE OF ACTION

(BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING AGAINST WELLHEALTH)

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

63. NHC and WellHealth entered into a valid and enforceable contract—the WH Agreement—which required WellHealth to perform certain provider services.

64. Under Nevada law, the WH Agreement contained an implied covenant of good faith and fair dealing.

65. WellHealth, by failing to perform the Covered Services under the applicable professional and statutory standards and by failing to comply with all applicable state laws and regulations, breached that duty by performing in a manner that was unfaithful to the purpose of the WH Agreement.

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66. As a direct and proximate result of Defendants' conduct, NHC has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

67. 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.

THIRD CAUSE OF ACTION

(NEGLIGENT PERFORMANCE OF AN UNDERTAKING AGAINST WELLHEALTH)

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

69. WellHealth undertook to act as a DSI for NHC, act as a third-party administrator for claims, and engaged in the unauthorized business of insurance. WellHealth undertook these actions while promising to provide all Covered Services in a manner consistent with the proper practice of medicine, and related healing arts, and that such duties were to be performed in accordance with the customary rules of ethics and conduct of such bodies, formal or informal, governmental or otherwise, from which WellHealth sought advice and guidance or to which WellHealth is subject to licensing and control.

70. WellHealth knew or should have recognized these undertakings as necessary for the protection of NHC's members, NHC's enrolled insureds, NHC's creditors, and the State of Nevada.

71. By performing the services detailed above, WellHealth 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.

72. WellHealth's failure to exercise reasonable care in performing its services, including their failure to provide all Covered Services in accordance with the applicable standards and regulations 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.

73. As a direct and proximate result of WellHealth's conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

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74. 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.

FOURTH CAUSE OF ACTION
(UNJUST ENRICHMENT AGAINST WELLHEALTH)

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

76. WellHealth was paid at least $3,597,764.47 in capitation payments for the services to be performed in accordance with the terms of the WH Agreement.

77. Despite its failure to provide services in accordance with the terms of the WH Agreement, WellHealth unjustly retained the fees paid to it for such services against fundamental principles of justice, equity, and good conscience.

78. As a direct and proximate result of WellHealth's conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars ($15,000.00).

79. 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.

FIFTH CAUSE OF ACTION
(INTENTIONAL MISREPRESENTATION (FRAUD) AGAINST ALL DEFENDANTS)

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

81. The WellHealth Defendants misrepresented their ability to take on capitation risk without approval as a DSI, approval as a third-party claim administrator, and without a license as a health insurer to take on such risks to provide or arrange health services for NHC's insured members.

82. The WellHealth Defendants misrepresented their ability to take on claim processing and claim resolution without WellHealth being properly registered with a third-

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party claim administrator license in Nevada, and without NHC's knowledge, WellHealth adjusted prior claim determinations of NHC.

83. In or around January 2014, WellHealth entered into the WH Agreement with NHC through which WellHealth agreed to act as a DSI and claims administrator for the members of NHC, and to comply with all state laws and regulations.

84. In entering into the WH Agreement, the WellHealth Defendants intentionally misrepresented their competence and/or ability to operate as a DSI, third-party claim administrator, and licensed insurer.

85. In making the aforementioned misrepresentations, the WellHealth Defendants intended for NHC to rely upon the same, and for NHC to compensate WellHealth under the terms of the WH Agreement.

86. The WellHealth Defendants knew or believed that these representations were false, or that they had an insufficient basis of information for making them.

87. Plaintiff justifiably relied upon the WellHealth Defendants' representations.

88. As a direct and proximate result of the WellHealth Defendants' conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

89. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover and award of reasonable attorney fees and costs incurred herein.

SIXTH CAUSE OF ACTION

(CONSTRUCTIVE FRAUD AGAINST ALL DEFENDANTS)

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

91. At all relevant times, the WellHealth Defendants had a fiduciary and/or confidential relationship with NHC.

92. The WellHealth Defendants owed a legal or equitable duty to Plaintiff arising from a fiduciary or confidential relationship.

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93. The WellHealth Defendants breached that duty by misrepresenting or concealing a material fact, *i.e.*, that the WellHealth Defendants did not obtain all required state approvals to act as a DSI, third-party claim administrator, or insurer on behalf of NHC and its insured members.

94. As a direct and proximate result of the WellHealth Defendants' conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

95. 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.

SEVENTH CAUSE OF ACTION

(NEGLIGENT MISREPRESENTATION AGAINST WELLHEALTH)

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

97. WellHealth, 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.

98. Such information included, without limitation, WellHealth's representations regarding its ability to act as a DSI, third-party claim administrator, and/or insurer on behalf of NHC and NHC's insured members, including without limitation, WellHealth's ability to comply with all state laws and regulations, and WellHealth's ability to perform the duties set forth in the WH Agreement under the applicable professional and statutory standards, as detailed above.

99. As a direct and proximate result of the WellHealth Defendants' conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

100. 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.

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EIGHTH CAUSE OF ACTION

(BREACH OF FIDUCIARY DUTY AGAINST THE WELLHEALTH DEFENDANTS)

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

102. A fiduciary duty existed between the Plaintiff and the WellHealth Defendants where the WellHealth Defendants were in a superior or trusted position as set forth herein.

103. The WellHealth Defendants breached that duty by failing to perform to statutory and professional standards as set forth above.

104. As a direct and proximate result of the WellHealth Defendants' conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

105. 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.

NINTH CAUSE OF ACTION

(NEGLIGENCE AGAINST WELLHEALTH)

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

107. WellHealth owed a duty of care to Plaintiff, including the duty to perform its work in accordance with the applicable statutory and professional standards.

108. As detailed above, by failing to perform to the applicable statutory and professional standards, WellHealth breached that duty.

109. The breach was the legal cause of Plaintiff's injuries.

110. As a direct and proximate result of WellHealth's conduct, Plaintiff has suffered damages in an amount in excess of fifteen thousand dollars ($15,000).

111. Plaintiff has been required to retain the services of Greenberg Traurig, LLP to prosecute this action and is entitled to recover an award of reasonable attorneys' fees and costs incurred herein.

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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 pre- and post-judgment interest;
3. for all attorneys' fees and costs of suit; and
4. for such other and further relief as this Court may deem just and proper.

DATED this 16th day of July 2020.

GREENBERG TRAURIG, LLP

/s/ Donald L. Prunty
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ERIC W. SWANIS, ESQ.
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TAB 29

TAB 29

RESP

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA, EX REL. COMMISSIONER OF INSURANCE, BARBARA D. RICHARDSON, IN HER OFFICIAL CAPACITY AS RECEIVER FOR NEVADA HEALTH CO-OP, Plaintiff, v. 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	CASE NO. A-17-760558-B DEPARTMENT XVI **PLAINTIFF'S RESPONSE TO UNITE HERE HEALTH'S FIRST SET OF REQUESTS FOR ADMISSIONS**

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.

COMES NOW Plaintiff STATE OF NEVADA, EX REL, COMMISSIONER OF INSURANCE, BARBARA D. RICHARDSON, IN HER OFFICIAL CAPACITY AS RECEIVER FOR NEVADA HEALTH Co-Op, ("Plaintiff") by and through its counsel of record, hereby answers Defendant UNITE HERE HEALTH'S ("UHH") First Set of Requests for Admissions as set forth below. Discovery is ongoing and Plaintiff reserves the right to supplement these responses should additional information be discovered:

GENERAL OBJECTIONS

Plaintiff has not completed its investigation and/or discovery of all facts which support claims and defenses of this action. Plaintiff therefore requests, and specifically reserves, the right to supplement its responses to these discovery requests and to provide additional information and materials as such become known and available.

Plaintiff also reserves the right to object on any ground to the use of any information provided herein in any proceeding whatsoever, and to object at any time to these or further discovery requests from UHH. Plaintiff provides its written responses below subject to the following General Objections as may be applicable to the particular discovery requests:

1. Plaintiff objects to these requests to the extent they seek information or documents not relevant to the claim or defense of any party in this action or are otherwise beyond the scope of permissible discovery.

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2. Plaintiff objects to these requests to the extent they seek information or the identification or production of documents protected by the attorney-work product doctrine, the attorney-client privilege, or are otherwise privileged or protected from discovery.

3. Plaintiff objects to these requests to the extent they seek information or the identification or production of documents not known to Plaintiff, already known to UHH, or are readily ascertainable by UHH through more appropriate means.

No incidental or implied admissions are intended by the responses set forth herein. The fact that Plaintiff has objected to, or answered, any request or part thereof, or has not yet completed her response to any request or part thereof, should not be taken as an admission that Plaintiff accepts or admits the existence of any facts set forth or presupposed by such request, or that such response or objection constitutes admissible evidence. Plaintiff reserves the right to claim any privilege, confidentiality, or to raise any objection that becomes known upon further investigation or discovery. Subject to, and without waiving the foregoing objections, Plaintiff issues her responses to UNITE HERE HEALTH'S First Set of Requests for Admissions as follows:

RESPONSES TO REQUESTS FOR ADMISSIONS

REQUEST FOR ADMISSION NO. 1:

Admit that NHC began experiencing problems associated with information being transmitted to and from the Exchange and/or Nevada Health Link as early as September 2013.

RESPONSE TO REQUEST FOR ADMISSIONS NO. 1:

Respondent objects to this request in that it is compound and does not contain an ending time parameter. Respondent objects to this interrogatory in that the terms "experiencing problems" "associated with", and "information being transmitted to and from the Exchange and/or Nevada Health Link" are ambiguous as used and Respondent is not certain what is being asked of Respondent. Notwithstanding the above, Plaintiff admits that due to the failures of the Defendants as set forth in the Amended Complaint and Plaintiff's

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expert reports among other places, Defendants' failures to establish adequate computer systems, their failures to establish adequate interfaces between NHC and the Exchange, Defendants failures to reconcile information and their failures to establish adequate internal control systems, NHC experienced problems associated with properly utilizing 834 and 820 data received from the Exchange as early as September of 2013. Respondent is currently without sufficient information to further respond to this request and therefore except as stated above denies this request. Significant time remains for discovery and Respondent reserves her right to amend this response.

REQUEST FOR ADMISSION NO. 2:

Admit that as early as September 2013, NHC was concerned that Nevada Health Link was not user-friendly and that the number of screens that had to be completed during enrollment would deter prospective members from finishing the enrollment process.

RESPONSE TO REQUEST FOR ADMISSIONS NO. 2:

Respondent objects in that the term "NHC", a corporate entity and not an individual, used in conjunction with "concerned" is ambiguous as used. Notwithstanding and without waiving such objection, the September 2013 Board of Director Minutes contain the following statement by Defendant Bond in connection with Latino enrollment: "Ms. Bond agreed and stated that the Exchange is not friendly and has too many screens." Respondent is currently without sufficient information to further respond to this request and therefore except as stated above denies this request. Significant time remains for discovery and Respondent reserves her right to amend this response.

REQUEST FOR ADMISSION NO. 3:

Admit that as early as October 2013, NHC worked with other insurance Carriers and the Nevada State Governor's office to address problems that the Co-Op and other Carriers were experiencing with the Exchange and/or Nevada Health Link.

RESPONSE TO REQUEST FOR ADMISSIONS NO. 3:

Respondent objects to this request in that it is compound and does not contain an ending time parameter. Respondent objects to this request in that the terms "other insurance

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Carriers" and "problems that the Co-Op and other Carriers were experiencing with the Exchange and/or Nevada Health Link" are ambiguous as used and Respondent is not certain as to what is being asked. Notwithstanding or waiving such objections, the October 2013 NHC Board of Directors meeting minutes contained the following statement attributed to Defendant Zumtobel. "The CO-OP and other carriers are in close contact with Jackie Bryant of the Governor's office, and all carriers are speaking regularly to uniformly work through the issues with the Exchange." Respondent makes no representations as to the correctness of statements in the document nor to how long, if at all, such a condition continued. Except as stated above, Respondent is currently without sufficient information to further respond to this request and therefore except as stated above denies this request. Significant time remains for discovery and Respondent reserves her right to amend this response.

REQUEST FOR ADMISSION NO. 4:

Admit that as early as January 2014, the issues NHC and/or its members were experiencing with the Exchange and/or Nevada Health Link were so significant that the Co-Op considered refunding January 2014 premiums to its members who had been adversely affected by the Exchange and/or Nevada Health Link.

RESPONSE TO REQUEST FOR ADMISSIONS NO. 4:

Respondent objects to this request in that it is compound and does not contain and ending time parameter. Respondent objects to this request in that the terms "issues NHC and/or its members were experiencing with the Exchange and/or Nevada Health Link", "so significant" and "members who had been adversely affected by the Exchange and/or Nevada health Link" are ambiguous as used and Respondent is left to question what facts she is being asked to admit to. Notwithstanding and without waiving the above objections, the failures of the Defendants as set forth in the Amended Complaint and Plaintiff's expert reports among other places, Defendants' failures to establish adequate computer systems, their failures to establish adequate interfaces between NHC and the Exchange, Defendants failures to reconcile information and their failures to timely process claims and to establish adequate internal control systems, created significant issues for NHC and its members. In

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the January 2014 Board of Directors Meeting Minutes, contains the statement, "Co-op leadership is considering refunding January premiums to those members impacted by the State Exchange issues." Respondent is not admitting to the accuracy of such statement. Respondent is not admitting to the issue of refunding premiums was an ongoing consideration. Respondent is currently without sufficient information to further respond to this request and therefore except as stated above denies this request. Significant time remains for discovery and Respondent reserves her right to amend this response.

REQUEST FOR ADMISSION NO. 5:

Admit that as early as January 2014, the Exchange and/or Nevada Health Link was not communicating accurate and/or complete information to NHC about each consumer that had enrolled in NHC's plans and had paid the required premium.

RESPONSE TO REQUEST FOR ADMISSIONS NO. 5:

Respondent objects to this request in that it is compound and does not contain an ending time parameter. Respondent objects to this request in that the terms "accurate and/or complete information" and "each consumer that had enrolled in NHC's plans and had paid the required premium" are ambiguous as used. Notwithstanding and without waiving the above objections, the failures of the Defendants as set forth in the Amended Complaint and Plaintiff's expert reports among other places, Defendants' failures to establish adequate computer systems, their failures to establish adequate interfaces between NHC and the Exchange, Defendants failures to reconcile information and their failures to establish adequate internal control systems, created significant issues regarding the use of Exchange data by NHC. In the January 2014 Board of Directors Meeting Minutes, the statement is made by Defendant Zumtobel that "the State Exchange is not communicating to the CO-OP every consumer that has enrolled and paid for Nevada Health CO-OP coverage" resulting in "difficulties in getting ID cards out timely." Respondent is not admitting to the accuracy of such statement or that the issue existed if at all over any length of time. Respondent is currently without sufficient information to further respond to this request and therefore

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except as stated above denies this request. Significant time remains for discovery and Respondent reserves her right to amend this response.

REQUEST FOR ADMISSION NO. 6:

Admit that as early as January 2014, NHC began receiving calls from its members and/or consumers complaining about and/or expressing frustrations with the Exchange and/or Nevada Health Link.

RESPONSE TO REQUEST FOR ADMISSIONS NO. 6:

Respondent objects to this request in that it is compound and contains no ending time parameter. Respondent objects to this request in that the term "consumers complaining about and/or expressing frustrations with the Exchange and/or Nevada Health Link" is ambiguous as used. Notwithstanding and without waiving the above objections, the failures of the Defendants as set forth in the Amended Complaint and Plaintiff's expert reports among other places, Defendants' failures to establish adequate computer systems, their failures to establish adequate interfaces between NHC and the Exchange, Defendants failures to reconcile information, their failures in the customer center operations, their failures to timely pay claims and their failures to establish adequate internal control systems, created customer frustrations and complaints. In the January 2014 Board of Directors Meeting Minutes, the statement is made by Defendant Egan that "members are calling in to the call center frustrated with the provider list on the state exchange and with the long wait times getting through to a co-op care member." Respondent believes the long wait times getting through to a co-op care member are frustrations with the customer service unit operated by or in conjunction with the Defendants and not the Exchange. Respondent is not admitting to what length of time, if any, the issue presented was in existence. Respondent is not admitting to the accuracy of Egan's statements. Respondent is currently without sufficient information to further respond to this request and therefore except as stated above denies this request. Significant time remains for discovery and Respondent reserves her right to amend this response.

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REQUEST FOR ADMISSION NO. 7:

Admit that as early as January 2014, NHC was experiencing so many issues with the Exchange and/or Nevada Health Link that the Co-Op chose and/or was forced to operate under the assumption that its members were eligible for coverage so that it could ensure that the medical needs of those members were being met.

RESPONSE TO REQUEST FOR ADMISSIONS NO. 7:

Respondent objects to this request in that it is compound and contains no ending time parameter. Respondent objects to this request in that the terms "so many issues", "chose and/or was forced" and "members" are ambiguous as used. Ineligible individuals are not "members". Notwithstanding and without waiving the above objections, the failures of the Defendants as set forth in the Amended Complaint and Plaintiff's expert reports among other places, Defendants' failures to establish adequate computer systems, their failures to establish adequate interfaces between NHC and the Exchange, Defendants failures to reconcile information, their failures in the customer center operations and their failures to establish adequate internal control systems, created an inability for NHC to determine eligibility of each of its members and certain non-members. Respondent denies that the CO-OP was forced to operate under the assumption that its members were eligible for coverage. The Defendants should have simply performed their duties as required to determine eligibility. Respondent admits that the defendants improperly chose to pay medical service bills for uncovered persons at great cost to the CO-OP. Respondent is not admitting to what length of time, if any, the issue presented was in existence. Respondent is currently without sufficient information to further respond to this request and therefore except as stated above denies this request. Significant time remains for discovery and Respondent reserves her right to amend this response.

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REQUEST FOR ADMISSION NO. 8:

Admit that as early as February 2014, NHC was participating in at least one meeting, if not multiple meetings, a week with the Nevada State Governor's Office, other Carriers, and/or Xerox, in an attempt to address the challenges NHC was experiencing with Xerox, the Exchange, and/or Nevada Health Link.

RESPONSE TO REQUEST FOR ADMISSIONS NO. 8:

Respondent objects to this request in that it is compound and without an ending time parameter. Respondent objects to this request in that the terms "Xerox" and "challenges NHC was experiencing" are ambiguous as used. Respondent is not certain as what facts she is being asked to admit. NHC admits that in the February 2014 board meeting minutes a reference was made attributed to Defendant Zumtobel, that he had been participating in three meetings a week with the Governor's office, the other carriers and Xerox to communicate the challenges the CO-OP was experiencing with data submission from Xerox to the CO-OP. Respondent makes no representations as to the correctness of statements in the document nor to how long if at all such meetings continued. Except as stated above, Respondent is currently without sufficient information to further respond to this request and therefore except as stated above denies this request. Significant time remains for discovery and Respondent reserves her right to amend this response.

REQUEST FOR ADMISSION NO. 9:

Admit that as early as February 2014, Xerox had failed to provide NHC with any information regarding at least 3,000 new enrollees in NHC's plans.

RESPONSE TO REQUEST FOR ADMISSIONS NO. 9:

Respondent objects in that this requests contains no ending time parameter. Respondent objects to this request in that the terms "Xerox", "any information", "failed to provide" and "new enrollees" are ambiguous as used. Respondent is not certain as what facts the Respondent is being asked to admit. There was no contractual nexus between Xerox and NHC. Notwithstanding and without waiving such objection Respondent answers

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"denied". Significant time remains for discovery and Respondent reserves her right to amend this response.

REQUEST FOR ADMISSION NO. 10:

Admit that as early as February 2014, Xerox was not timely providing NHC with enrollment data or "834" electronic transmissions of enrollment data.

RESPONSE TO REQUEST FOR ADMISSIONS NO. 10:

Respondent objects to this request in that the terms "Xerox", "timely providing" "enrollment data" and ""834" electronic transmissions of enrollment data" are ambiguous as used and Respondent is not certain as what facts she is being asked to admit. Notwithstanding and without waiving such objections, Xerox had no contractual nexus with NHC. Respondent admits that the February 2014 Board Meeting Minutes of NHC contains a statement by Defendant Zumtobel that the 834's remain being delayed getting to the CO-OP. Respondent makes no representations as to the correctness of statements in the document nor to how long, if at all such a condition existed. Except as stated above, Respondent is currently without sufficient information to further respond to this request and therefore except as stated above denies this request. Significant time remains for discovery and Respondent reserves her right to amend this response.

REQUEST FOR ADMISSION NO. 11:

Admit that as early as February 2014, Xerox was not timely providing NHC with data related to the payment of insurance premiums or "820" electronic transmission of payments data.

RESPONSE TO REQUEST FOR ADMISSIONS NO. 11:

Respondent objects to this request in that the terms "Xerox", "timely providing" "enrollment data" and ""820" electronic transmissions of payment data" are ambiguous as used and Respondent is not certain as what facts she is being asked to admit. Notwithstanding and without waiving such objection, Xerox had no contractual nexus with NHC. Respondent admits that the February 2014 Board Meeting Minutes of NHC contain a statement by Defendant Zumtobel that the 820's remain being delayed getting to the CO-

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OP. Respondent makes no representations as to the correctness of statements in the document nor to how long if at all such a condition existed. Except as stated above, Respondent is currently without sufficient information to further respond to this request and therefore except as stated above denies this request. Significant time remains for discovery and Respondent reserves her right to amend this response.

REQUEST FOR ADMISSION NO. 12:

Admit that as early as February 2014, Xerox was providing NHC with incomplete enrollment data or "834" electronic transmissions of enrollment data.

RESPONSE TO REQUEST FOR ADMISSIONS NO. 12:

Respondent objects to this request in that the terms "Xerox", "incomplete enrollment data" and ""834" electronic transmissions of enrollment data" are ambiguous as used, and Respondent is not certain as what facts she is being asked to admit. Notwithstanding and without waiving such objection, Xerox had no contractual nexus with NHC. Respondent admits that the February 2014 Board Meeting Minutes of NHC contain a statement by Defendant Zumtobel that 834 data is incomplete. Respondent makes no representations as to the correctness of statements in the document nor to how long, if at all such a condition existed. Except as stated above, Respondent is currently without sufficient information to further respond to this request and therefore except as stated above denies this request. Significant time remains for discovery and Respondent reserves her right to amend this response.

REQUEST FOR ADMISSION NO. 13:

Admit that as early as February 2014, Xerox was providing NHC with incomplete payment of insurance premiums data or "820" electronic transmissions of payment of insurance premium data.

RESPONSE TO REQUEST FOR ADMISSIONS NO. 13:

Respondent objects to this request in that the terms "Xerox", "was providing", "incomplete payment of insurance premiums data" and ""820" electronic transmissions of payment data" are ambiguous as used, and Respondent is not certain as what facts she is

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being asked to admit. Notwithstanding and without waiving such objection, Xerox had no contractual nexus with NHC. Respondent admits that the February 2014 Board Meeting Minutes of NHC contain a statement by Defendant Zumtobel that 820 data is delayed. Respondent makes no representations as to the correctness of statements in the document nor to how long if at all such a condition existed. Except as stated above, Respondent is currently without sufficient information to further respond to this request and therefore except as stated above denies this request. Significant time remains for discovery and Respondent reserves her right to amend this response.

REQUEST FOR ADMISSION NO. 14:

Admit that as early as February 2014, Xerox was providing NHC with inaccurate enrollment data or "834" electronic transmissions of enrollment data.

RESPONSE TO REQUEST FOR ADMISSIONS NO. 14:

Respondent objects to this request in that the terms "Xerox", "inaccurate enrollment data" and ""834" electronic transmissions of enrollment data" are ambiguous as used, and Respondent is not certain as what facts she is being asked to admit. Notwithstanding and without waiving such objection, Xerox had no contractual nexus with NHC. Respondent is currently without sufficient information to further respond to this request and therefore except as stated above denies this request. Significant time remains for discovery and Respondent reserves her right to amend this response.

REQUEST FOR ADMISSION NO. 15:

Admit that as early as February 2014, Xerox was providing NHC with inaccurate payment of insurance premiums data or "820" electronic transmissions of payment of insurance premium data.

RESPONSE TO REQUEST FOR ADMISSIONS NO. 15:

Respondent objects to this request in that the terms "Xerox", "was providing" "inaccurate payment of insurance premiums data" and ""820" electronic transmissions of payment data" are ambiguous as used, and Respondent is not certain as what facts she is being asked to admit. Notwithstanding and without waiving such objection, Xerox had no

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contractual nexus with NHC. Except as stated above, Respondent is currently without sufficient information to further respond to this request and therefore except as stated above denies this request. Significant time remains for discovery and Respondent reserves her right to amend this response.

REQUEST FOR ADMISSION NO. 16:

Admit that in 2014, counsel for NHC sent one or more letters to Xerox and/or the Nevada State Governor's Office regarding the issues NHC and/or its members had experienced with Xerox, the Exchange, and/or Nevada Health Link.

RESPONSE TO REQUEST FOR ADMISSIONS NO. 16:

Respondent objects to this request in that the term "sent", "Xerox" and "such issues with Xerox, the Exchange, and/or Nevada Health Link" .are ambiguous as used. Notwithstanding the above objections, Respondent admits that a letter was sent to Governor Brian Sandoval and Xerox State Healthcare, LLC on or about February 24, 2014 on NHC letterhead that was signed by Defendant Zumtobel. Respondent is not aware of who transmitted the letter. Respondent states that the document contains what the document contains and the document speaks for itself. Respondent makes no representations as to the correctness of statements in the document. Except as stated above respondent denies this request. Significant time remains for discovery and Respondent reserves her right to amend this response.

REQUEST FOR ADMISSION NO. 17:

Admit that in 2014, counsel for NHC sent one or more letters to Xerox and/or the Nevada State Governor's Office regarding the harm that NHC and/or its members had suffered as a result of such issues with Xerox, the Exchange, and/or Nevada Health Link.

RESPONSE TO REQUEST FOR ADMISSIONS NO. 17:

Respondent objects to this request in that the terms "sent", "Xerox" and "had suffered as a result of such issues with Xerox, the Exchange, and/or the Nevada Health Link" are ambiguous as used. Notwithstanding the above objections, Respondent admits that a letter was sent to Governor Brian Sandoval and Xerox State Healthcare, LLC on or about February

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24, 2014 on NHC letterhead that was signed by Defendant Zumtobel. Respondent is not aware of who transmitted the letter. Respondent states that the document contains what the document contains and the document speaks for itself. Respondent makes no representations as to the correctness of statements in the document. Except as stated above respondent is without sufficient information to respond to this request and therefore denies this request.

REQUEST FOR ADMISSION NO. 18:

Admit that by March 2014, approximately 5,200 prospective NHC members had started the enrollment process through the Exchange and/or Nevada Health Link but had been unable to complete enrollment due to the issues they encountered with the Exchange and/or Nevada Health Link.

RESPONSE TO REQUEST FOR ADMISSIONS NO. 18:

Defendant objects to this request in that the terms ”prospective NHC members, “unable to” and “due to the issues they encountered with the Exchange and/or Nevada Health Link” are ambiguous as used. Notwithstanding and without waiving the above, Respondent states that the March 2014 board of directors meeting minutes contains the statement that “Ms. Harris informed the Board the State has not given the CO-OP access to the current data on the 5,200 consumers on the pending list from the Exchange because the sign and submit part of the process was not completed whereby the consumer would have affirmed they’re willing to abide by exchange rules.” Respondent states that the document contains what the document contains and the document speaks for itself. Respondent makes no representations as to the correctness of statements in the document nor for how long such a condition, if it existed, continued. Except as stated above respondent is without sufficient information to respond to this request and therefore denies this request. Significant time remains for discovery and Respondent reserves her right to amend this response.

REQUEST FOR ADMISSION NO. 19:

Admit that by May 2014, over 4,000 prospective NHC members had been unable to pay the premiums for their chosen plans due to the Exchange’s and/or Nevada Health Link’s system errors.

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RESPONSE TO REQUEST FOR ADMISSIONS NO. 19:

Respondent objects to this request in that the terms "prospective NHC Members" and "due to the Exchange's and/or Nevada Health Link's system errors" are ambiguous as used. Notwithstanding and without waiving the above objection, Respondent responds that in the May 23, 2014 Board Minutes of NHC, there is a statement from Defendant Zumtobel that there are over 4,000 consumers wanting to pay their premiums but are unable to do so due to the system errors with Xerox. This figure appears to be related to the entire Exchange and not to NHC in particular. Furthermore, it reads that Xerox states that there are no appeals on record. Respondent makes no representations as to the correctness of statements in the document nor for how long such a condition, if it existed, continued. Respondent is without sufficient information to further respond to this request and therefore denies this request except as stated above. Significant time remains for discovery and Respondent reserves her right to amend this response.

REQUEST FOR ADMISSION NO. 20:

Admit that in or around May 2014, Xerox informed NHC for the first time that over 900 of its members were delinquent in their premium payments.

RESPONSE TO REQUEST FOR ADMISSIONS NO. 20:

Respondent objects to this request in that the terms "Xerox" and "members" are ambiguous as used leaving Respondent to question what facts that she is being asked to respond to. Notwithstanding and without waiving such objections the May 23, 2014 Board Minutes contain the following statement apparently made by Defendant Zumtobel that the Exchanges most recent delinquency report listed over 900 members. It is not clear what portion of the 900 members relate to what time period and it is appropriate for the Exchange to notify NCH of delinquent members. The defendants had a duty to reconcile its records to those of the exchange and failure to do so was the cause of a significant amount of damages to NHC. Respondent makes no representations as to the correctness of statements in the minutes nor for how long such a condition, if it existed, continued. Respondent is without sufficient information to further respond to this request and therefore denies this request

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except as stated above. Significant time remains for discovery and Respondent reserves her right to amend this response.

REQUEST FOR ADMISSION NO. 21:

Admit that in or around May 2014, Xerox informed NHC for the first time that many of its members had been delinquent in their payments since January 2014.

RESPONSE TO REQUEST FOR ADMISSIONS NO. 21:

Respondent objects to this request in that the terms "Xerox", "many" and "members" are ambiguous as used leaving Respondent to question what facts that she is being asked to respond to. Notwithstanding and without waiving such objections the May 23, 2014 Board Minutes contain the following statement apparently made by Defendant Zumtobel that the Exchanges most recent delinquency report listed over 900 members. It is not clear what portion of the 900 members relate to what time period and it is appropriate for the Exchange to notify NCH of delinquent members. The Defendants had a duty to reconcile its records to those of the exchange and failure to do so was the cause of a significant amount of damages to NHC. Respondent makes no representations as to the correctness of statements in the minutes nor for how long such a condition, if it existed, continued. Respondent is without sufficient information to further respond to this request and therefore denies this request except as stated above. Significant time remains for discovery and Respondent reserves her right to amend this response.

REQUEST FOR ADMISSION NO. 22:

Admit that as a result of Xerox's dilatory notifications to NHC regarding delinquent and/or terminated members, NHC unnecessarily paid claims for individuals not eligible for coverage.

RESPONSE TO REQUEST FOR ADMISSIONS NO. 22:

Respondent objects to this claim in that it is compound. Respondent objects to this request in that the terms "Xerox" and "dilatory notifications to NHC regarding delinquent and/or terminated members" is ambiguous as used leaving Respondent unable to determine what she is being asked to admit. Notwithstanding and without waiving the above

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objections, there was no contractual nexus between Xerox and NHC. The failures of the Defendants as set forth in the Amended Complaint and Plaintiff's expert reports among other places, Defendants' failures to establish adequate computer systems, their failures to timely pay medical bills, their failures to establish adequate interfaces between NHC and the Exchange, Defendants failures to reconcile information, their failures in the customer center operations and their failures to establish adequate internal control systems, caused NHC to unnecessarily pay claims for individuals not eligible for coverage. Except as stated above, Respondent denies this request. Significant time remains for discovery and Respondent reserves her right to amend this response.

REQUEST FOR ADMISSION NO. 23:

Admit that as of September 2014, Xerox had not provided NHC with a complete and/or accurate list of its terminated members.

RESPONSE TO REQUEST FOR ADMISSIONS NO. 23:

Respondent objects to this request in that it is compound. Respondent objects to this request in that the terms "Xerox" and "complete and/or accurate list of its terminated members" are ambiguous as used leaving Respondent not certain what she is being asked to admit. Notwithstanding and without waiving these objections, Xerox had no contractual nexus with NHC. Furthermore, it was up to the Defendants to determine when a member was to be terminated and notify Xerox. Defendants' failures to establish adequate computer systems, their failures to establish adequate interfaces between NHC and the Exchange, Defendants failures to reconcile information and their failures to establish adequate internal control systems led to inaccurate lists of terminated members. Except as stated above, Respondent is without sufficient information to respond to this request and therefore denies this request. Significant time remains for discovery and Respondent reserves her right to amend this response.

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REQUEST FOR ADMISSION NO. 24:

Admit that NHC incurred excessive premium taxes as a result of Xerox's and/or the Exchange's failure to collect premiums from NHC's members and to timely terminate members who failed to pay their premiums.

RESPONSE TO REQUEST FOR ADMISSIONS NO. 24:

Respondent objects to this request in that it does not adequately specify a time period and is compound. Respondent objects to this request in that the terms "Xerox", "excessive premium taxes" and "failure to collect premiums from NHC's members and to timely terminate members who failed to pay their premiums" is ambiguous as used leaving Respondent not certain what she is being asked to admit. Xerox had no contractual nexus with NHC. NHC through the Defendants were responsible for collecting late payments. For at least portions of the time at issue in this case NHC through the Defendants were responsible for determining when to terminate a member. Notwithstanding and without waiving the above objections, the failures of the Defendants as set forth in the Amended Complaint and Plaintiff's expert reports among other places, Defendants' failures to establish adequate computer systems, their failures to establish adequate interfaces between NHC and the Exchange, Defendants failures to reconcile information, their failures in the customer center operations, their failures to timely pay claims and their failures to establish adequate internal control systems, may have created inaccuracies in premium tax returns due to the Defendant's actions. To the extent that Defendants over reported premiums billed, and did not subsequently adjust, additional premiums may have been paid. Respondent makes no statement or admissions about the amount of premium taxes that may have been overpaid, if any, at this time. Except as stated above, Respondent is without sufficient information to further respond to this request and therefore denies this request. Significant time remains for discovery and Respondent reserves her right to amend this response.

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REQUEST FOR ADMISSION NO. 25:

Admit that in 2014, prospective members experienced problems with the Exchange and/or Nevada Health Link which caused them to enroll in NHC's plans through brokers rather than through the Exchange and/or Nevada Health Link.

RESPONSE TO REQUEST FOR ADMISSIONS NO. 25:

Respondent objects to this request in that the terms "prospective members", "experienced problems" and "rather than through the Exchange or Nevada Health Link" are ambiguous as used and Respondent is unsure of what she is being asked to admit. In the May 23, 2014 board meeting minutes, in response to a Defendant Dibsie comment that the Broker representation unexpectedly increased, Defendant Zumbtobel stated he was not sure if the higher than expected broker commissions was due to problems with the exchange. Respondent believes that prospective members calling into the CO-OP customer care center were improperly diverted to InsureMonkey brokers and that NHC changed its marketing to increase broker commissions, provide broker bounties and rely more heavily on brokers to push business and that was the reason for the increase in broker usage. Respondent is without sufficient information to respond further to this request and therefore denies this request except as stated above. Significant time remains for discovery and Respondent reserves her right to amend this response.

REQUEST FOR ADMISSION NO. 26:

Admit that in 2014, NHC paid higher broker commissions than anticipated largely due to more prospective members enrolling in NHC's plans through brokers than through the Exchange and/or Nevada Health Link.

RESPONSE TO REQUEST FOR ADMISSIONS NO. 26:

Respondent objects to this request in that the terms "higher than anticipated", "prospective members", "largely due" and "than through the Exchange or Nevada Health Link" are ambiguous as used and Respondent is unsure of what she is being asked to admit. Respondent believes that prospective members calling into the CO-OP customer care center were improperly diverted to InsureMonkey brokers and that NHC changed its marketing to

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increase broker commissions, provide broker bounties and rely more heavily on brokers to push business and that was the reason for the increase in broker commissions. Respondent denies this request except as stated above. Significant time remains for discovery and Respondent reserves her right to amend this response.

REQUEST FOR ADMISSION NO. 27:

Admit that NHC incurred additional administrative costs, expenses and/or fees associated with the termination of Xerox's contract with the Exchange, the failure of the Exchange, and/or Nevada's move to the Federally Facilitated Marketplace.

RESPONSE TO REQUEST FOR ADMISSIONS NO. 27:

Respondent objects to this request in that the request is compound. Respondent also objects in that the terms "termination of Xerox's contract with the Exchange" and "failure of the Exchange" are ambiguous as used leaving Respondent unsure of what is being asked. It is also unclear as to whether this question is asking if costs, expenses or fees went up on a gross or net basis. Without waiving and notwithstanding such objection, Plaintiff admits that due to the failures of the Defendants as set forth in the Amended Complaint and Plaintiff's expert reports among other places, Defendants' failures to establish adequate computer systems, their failures to establish adequate interfaces between NHC and the Exchanges, Defendants failures to reconcile information,, Defendants failures to timely pay claims and their failures to establish adequate internal control systems, NHC experienced costs, expenses or and/or fees in connection with the transition from the state to the federal marketplace on a gross basis. Except as stated above, Respondent denies this request. Significant time remains for discovery and Respondent reserves her right to amend this response.

REQUEST FOR ADMISSION NO. 28:

Admit that NHC incurred additional administrative costs, expenses and/or fees associated with the fact that the responsibility for direct enrollment and premium billing was added to NHC's operations after Xerox's contract with the Exchange was terminated.

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RESPONSE TO REQUEST FOR ADMISSIONS NO. 28:

Respondent objects to this request in that the request is compound. Respondent also objects in that the terms "responsibility for direct enrollment" and "after Xerox's contract with the Exchange" are ambiguous as used leaving Respondent unsure of what is being asked. It is also unclear as to whether this question is asking if costs, expenses or fees went up on a gross or net basis. Without waiving and notwithstanding such objection, Plaintiff admits that due to the failures of the Defendants as set forth in the Amended Complaint and Plaintiff's expert reports among other places, Defendants' failures to establish adequate computer systems, their failures to establish adequate interfaces between NHC and the Exchanges, Defendants failures to timely pay medical claims and reconcile information and their failures to establish adequate internal control systems, NHC experienced costs, expenses or and/or fees in connection with the transition from the state to the federal marketplace on a gross basis. Except as stated above, Respondent denies this request. Significant time remains for discovery and Respondent reserves her right to amend this response.

REQUEST FOR ADMISSION NO. 29:

Admit that between October 2013 and May 2014, NHC was forced to commit approximately 50 percent of its resources to Xerox-related problems and/or issues.

RESPONSE TO REQUEST FOR ADMISSIONS NO. 29:

Respondent objects to this request in that the terms "was forced to commit" and "Xerox-related problems and/or issues" and "approximately 50 percent" are so ambiguous as used that Respondent is not clear what facts it is being asked to admit. Without waiving and notwithstanding the above objections, respondent answers: Denied.

REQUEST FOR ADMISSION NO. 30:

Admit that after the Exchange terminated its contract with Xerox, NHC experienced problems with inaccurate and/or incomplete data received from Xerox in its termination file.

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RESPONSE TO REQUEST FOR ADMISSIONS NO. 30:

Plaintiff objects to this request in that it is compound and it assumes facts not in evidence. Furthermore, the terms "Xerox" "experienced problems" "inaccurate and/or incomplete data" and "termination file" are undefined and so ambiguous as used that Respondent is not clear what facts Respondent is being asked to admit. Without waiving and notwithstanding such objection, Plaintiff admits that due to the failures of the Defendants as set forth in the Amended Complaint and Plaintiff's expert reports among other places, Defendants' failures to establish adequate computer systems, their failures to establish adequate interfaces between NHC and the Exchanges, Defendants failures to reconcile information and their failures to establish adequate internal control systems, NHC experienced issues associated with the transition file to the federal exchange. In responding to this request Respondent is not quantifying the magnitude of any such issues. Respondent is without sufficient information to further respond to this request and therefore except as stated above denies this request. Significant time remains for discovery and Respondent reserves her right to amend this response.

REQUEST FOR ADMISSION NO. 31:

Admit that after the Exchange terminated its contract with Xerox, so many issues pervaded the Carriers' data reconciliation with Xerox that in or around April 2015, the Exchange requested that NHC and the other Carriers discontinue their reconciliation efforts and that NHC's and the other Carriers' data as of a certain date chosen by the Exchange be used as the "official record" of enrollment.

RESPONSE TO REQUEST FOR ADMISSIONS NO. 31:

Respondent objects that the terms "so many issues" and "Carriers' data Reconciliation with Xerox" are so ambiguous as it is not clear to Respondent what facts Respondent is being asked to admit. Without waiving and notwithstanding such objections, Plaintiff admits that due to the failures of the Defendants as set forth in the Amended Complaint and Plaintiff's expert reports among other places, Defendants' failures to establish adequate computer systems, their failures to establish adequate interfaces between

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NHC and the Exchanges, Defendants failures to reconcile information, Defendants failures to timely pay claims and their failures to establish adequate internal control systems, Defendants had not reconciled their records with the state exchange. At some point a beginning data set was necessary for the federal exchange to populate its data base and in or around April 2015, the Silver State Insurance Exchange sought for and requested carriers to finalize numbers for the federal exchange to use as opening balances. In the April 1, 2015, board of directors' minutes, the board noted that the Exchange reported that the remaining exchange participating carriers determined that they would discontinue the reconciliation process and address any outstanding issues one-by-one as they came through the exchange, and that the CO-OP agreed to following this approach. Respondent is without sufficient information to further respond to this request and therefore except as stated above denies this request. Significant time remains for discovery and Respondent reserves her right to amend this response.

REQUEST FOR ADMISSION NO. 32:

Admit that the 2014 assessment of Xerox, the Exchange, and/or Nevada Health Link performed by Deloitte identified over 1,500 defects in the functionality of the Exchange and/or the Nevada Health Link system.

RESPONSE TO REQUEST FOR ADMISSIONS NO. 32:

Respondent objects to the phrase as "the 2014 assessment of Xerox, the Exchange and/or Nevada Health Link" is ambiguous as used and leaves the respondent not knowing what is being asked. To the extent that this request is directed to the assessment report of Nevada Silver State Health Insurance Exchange dated April 25, 2014, a search of the document shows it contains the contains the phrase, "In addition, there are 1,500+ outstanding defects." There is no reference that any of these issues concern or directly affected NHC. Respondent states that the document contains what the document contains and the document speaks for itself. Respondent makes no representations as to the correctness of statements in the document. Except as stated above respondent denies this request.

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REQUEST FOR ADMISSION NO. 33:

Admit that the 2014 assessment of Xerox, the Exchange, and/or Nevada Health Link performed by Deloitte classified over 500 defects as being of "higher severity."

RESPONSE TO REQUEST FOR ADMISSIONS NO. 33:

Respondent objects to the phrases "the 2014 assessment of Xerox, the Exchange and/or Nevada Health Link" and "classified" are ambiguous as used and leaves the Respondent not knowing what is being asked. To the extent that this request is directed to the assessment report of Nevada Silver State Health Insurance Exchange dated April 25, 2014, a search of the document shows it contains the statement, "In addition, there are 1,500+ outstanding defects, of which 500+ are considered higher severity." There is no reference that any of these issues concern or directly affected NHC. Respondent states that the document contains what the document contains and the document speaks for itself. Respondent makes no representations as to the correctness of statements in the document. Except as stated above respondent denies this request.

REQUEST FOR ADMISSION NO. 34:

Admit that in its 2014 assessment of Xerox, the Exchange, and/or Nevada Health Link, Deloitte found that Carriers were receiving incorrect, missing, and/or inconsistent enrollment and premium payment information from Xerox and/or the Exchange.

RESPONSE TO REQUEST FOR ADMISSIONS NO. 34:

Respondent objects to the phrases "the 2014 assessment of Xerox, the Exchange and/or Nevada Health Link", "Carriers" and "found" are ambiguous as used and leaves the Respondent not knowing what is being asked to admit. To the extent that this request is directed to the assessment report of Nevada Silver State Health Insurance Exchange dated April 25, 2014, a search of the document shows it contains the statement, "Carriers receive incorrect, missing and inconstant enrollment and payment information." There is no, reference that any of these issues concern or directly affected NHC. Respondent states that the document contains what the document contains and the document speaks for itself.

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Respondent makes no representations as to the correctness of statements in the document. Except as stated above respondent denies this request.

REQUEST FOR ADMISSION NO. 35:

Admit that in its 2014 assessment of Xerox, the Exchange, and/or Nevada Health Link, Deloitte found that consistent data reconciliation issues existed between the form "834" electronic transmissions of enrollment data, the form "820" electronic submission of premium payment data, and the automated clearing house payments.

RESPONSE TO REQUEST FOR ADMISSIONS NO. 35:

Respondent objects to the phrases "the 2014 assessment of Xerox, the Exchange and/or Nevada Health Link" and "found" are ambiguous as used and leaves the respondent not knowing what is being asked. To the extent that this request is directed to the assessment report of Nevada Silver State Health Insurance Exchange dated April 25, 2014, a search of the document shows the statement, "For certain carriers, reconciliation issues between 834's, 820's and automated clearing house (ACH) payments are proactively being identified and spreadsheets of the issues are being sent to the carriers with the corresponding EDI files." There is no reference that any of these issues directly affected NHC. It also includes the statement "There are consistent data reconciliation issues between the 834's 820's and the automated clearing house (ACH) payments." Respondent states that the document contains what the document contains and the document speaks for itself. Respondent makes no representations as to the correctness of statements in the document. Except as stated above, Respondent denies this request.

REQUEST FOR ADMISSION NO. 36:

Admit that in its 2014 assessment of Xerox, the Exchange, and/or Nevada Health Link, Deloitte found that Xerox, the Exchange, and/or Nevada Health Link's form "834" electronic enrollment data and the form "820" electronic premium payment data files contained invalid and/or missing data.

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RESPONSE TO REQUEST FOR ADMISSIONS NO. 36:

Respondent objects to the phrases "the 2014 assessment of Xerox, the Exchange and/or Nevada Health Link" and "found" are ambiguous as used and leaves the Respondent not knowing what she is being asked to admit. To the extent that this request is directed to the assessment report of Nevada Silver State Health Insurance Exchange dated April 25, 2014, a search of the document shows it contains the statement, "834 and 820 files contain invalid and missing data." There is no reference that any of these issues directly affected NHC. Respondent states that the document contains what the document contains and the document speaks for itself. Respondent makes no representations as to the correctness of statements in the document. Except as stated above respondent denies this request.

REQUEST FOR ADMISSION NO. 37:

Admit that in its 2014 assessment of Xerox, the Exchange, and/or Nevada Health Link, Deloitte found that Xerox, the Exchange, and/or Nevada Health Link were issuing weekly correction reports to the Carriers for Cost Sharing Reduction (CSR) premium subsidy calculation errors.

RESPONSE TO REQUEST FOR ADMISSIONS NO. 37:

Respondent objects to the phrases "the 2014 assessment of Xerox, the Exchange and/or Nevada Health Link" and "found" are ambiguous as used and leaves the Respondent not knowing what she is being asked to admit. To the extent that this request is directed to the assessment report of Nevada Silver State Health Insurance Exchange dated April 25, 2014, a search of the document shows it contains the statement, "Cost-sharing reduction tiers and corresponding calculations are inconsistent. Carriers have reported receiving weekly correction reports from the Exchange." There is no reference that any of these issues directly affected NHC. Respondent states that the document contains what the document contains and the document speaks for itself. Respondent makes no representations as to the correctness of statements in the document. Except as stated above Respondent denies this request.

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REQUEST FOR ADMISSION NO. 38:

Admit that in its 2014 assessment of Xerox, the Exchange, and/or Nevada Health Link, Deloitte found that some Carriers frequently received enrollments with retroactive coverage dates throughout the open enrollment period.

RESPONSE TO REQUEST FOR ADMISSIONS NO. 38:

Respondent objects to the phrases "the 2014 assessment of Xerox, the Exchange and/or Nevada Health Link" and "found" are ambiguous as used and leaves the respondent not knowing what is being asked. To the extent that this request is directed to the assessment report of Nevada Silver State Health Insurance Exchange dated April 25, 2014, a search of the document shows it contains the statement, "During the open enrollment period, some carriers reported frequently receiving enrollments with retroactive coverage effective dates." There is no reference that any of these issues directly affected NHC. Respondent states that the document contains what the document contains and the document speaks for itself. Respondent makes no representations as to the correctness of statements in the document. Except as stated above respondent denies this request.

REQUEST FOR ADMISSION NO. 39:

Admit that of 45 tests Deloitte performed during its 2014 assessment of Xerox, the Exchange, and/or Nevada Health Link, on enrollment processes through the Exchange's and/or Nevada Health Link's system, 33 of those tests failed.

RESPONSE TO REQUEST FOR ADMISSIONS NO. 39:

Respondent objects to the phrases "the 2014 assessment of Xerox, the Exchange and/or Nevada Health Link", "tests", "enrollment processes through the exchange" and "failed" are ambiguous as used and leaves the respondent not knowing what is being asked. To the extent that this request is directed to the assessment report of Nevada Silver State Health Insurance Exchange dated April 25, 2014, a search of the document revealed no such statements when the document is searched using the search terms "45", "33", "tests" and "failed." There is no reference noted that any test directly concerned NHC. Respondent states that the document contains what the document contains and the document speaks for

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itself. Respondent makes no representations as to the correctness of statements in the document. Except as stated above respondent denies this request.

DATED this 7th day of August 2020.

GREENBERG TRAURIG, LLP

/s/ Donald L. Prunty

MARK E. FERRARIO, ESQ.
Nevada Bar No. 001625
ERIC W. SWANIS, ESQ.
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CERTIFICATE OF SERVICE

I hereby certify that on **August 7, 2020**, a true and correct copy of the foregoing **PLAINTIFF'S RESPONSES TO UNITE HERE HEALTH'S FIRST SET OF REQUESTS FOR ADMISSIONS** 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

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TAB 30

TAB 30

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Attorneys for State of Nevada, Ex Rel. Silver State Health Insurance Exchange

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. SILVER STATE HEALTH INSURANCE EXCHANGE, Defendant.	Case No.: A-20-816161-C Dept. No.: VIII **ANSWER**

Comes now, Defendant State of Nevada, Ex. Rel. Silver State Health Insurance Exchange ("the Exchange"), by and through counsel, AARON D. FORD, Attorney General and MICHELLE D. BRIGGS, Senior Deputy Attorney General, and hereby submits the following answer in the above entitled action as follows:

1. The Exchange admits the allegations of paragraph 1 of the Complaint.

2. The Exchange admits the allegations of paragraph 2 of the Complaint.

3. The Exchange admits the allegations of paragraph 3 of the Complaint.

4. As to the allegations of paragraph 4 of the Complaint, the Plaintiff admits the first sentence, denies the second sentence, and admits the third sentence.

5. The Exchange admits the allegations of paragraph 5 of the Complaint.

6. The Exchange admits the allegations of paragraph 6 of the Complaint.

7. The Exchange admits the allegations of paragraph 7 of the Complaint.

8. The Exchange denies the allegations of paragraph 8 of the Complaint.

9. The Exchange admits the allegations of paragraph 9 of the Complaint.

10. The Exchange admits the allegations of paragraph 10 of the Complaint.

11. The Exchange admits the allegations of paragraph 11 of the Complaint.

12. The Exchange admits the allegations of paragraph 12 of the Complaint.

13. The Exchange admits the allegations of paragraph 13 of the Complaint.

14. The Exchange admits the allegations of paragraph 14 of the Complaint.

15. The Exchange denies the allegations of paragraph 15 as a misstatement of the terms of NRS 695I.210.

16. The Exchange admits the allegations of paragraph 16 of the Complaint.

17. As to the allegations of paragraph 17 of the Complaint, the Exchange admits that NHC was an authorized provider of health care insurance in Nevada, but insofar as the use of the word "previously" is of uncertain meaning, the Exchange denies in that respect.

18. As to the allegations of paragraph 18 of the Complaint, the Exchange admits that certain qualified individuals in Nevada were eligible, but denies that all "Nevada citizens" had the option.

19. The Exchange denies the allegations of paragraph 19 of the Complaint.

20. The Exchange denies the allegations of paragraph 20 of the Complaint.

21. The Exchange denies the allegations of paragraph 21 of the Complaint.

22. The Exchange denies the allegations of paragraph 22 in that Defendant never collected and held premiums for Nevada Health Co-op, as any premiums for Nevada Health Co-op were collected or held by Xerox State Healthcare, LLC or its subcontractor, Choice Administrator in its own account(s).

23. The Exchange denies the allegations of paragraph 23 of the Complaint.

24. The Exchange denies the allegations of paragraph 24 of the Complaint.

25. The Exchange denies the allegations of paragraph 25 in that never collected or retained any premiums.

26. Lacking information or belief upon which to base a response, the Exchange denies the allegations of paragraph 26 of the Complaint.

27. As to paragraph 27 of the Complaint, the Exchange realleges and incorporates all of its responses to allegations contained in the preceding paragraphs as if fully set forth herein.

28. The Exchange denies the allegations of paragraph 28 of the Complaint.

29. The Exchange denies the allegations of paragraph 29 of the Complaint.

30. The Exchange denies the allegations of paragraph 30 of the Complaint.

31. The Exchange denies the allegations of paragraph 31 of the Complaint.

32. The Exchange denies the allegations of paragraph 32 of the Complaint.

33. The Exchange denies the allegations of paragraph 33 of the Complaint.

34. As to paragraph 34 of the Complaint, Defendant realleges and incorporates all of its responses to allegations contained in the preceding paragraphs as if fully set forth herein.

35. The Exchange denies the allegations of paragraph 35 of the Complaint.

36. The Exchange denies the allegations of paragraph 36 of the Complaint.

37. The Exchange denies the allegations of paragraph 37 of the Complaint.

38. The Exchange denies the allegations of paragraph 38 of the Complaint.

39. The Exchange denies the allegations of paragraph 39 of the Complaint.

40. As to paragraph 40 of the Complaint, Defendant realleges and incorporates all of its responses to allegations contained in the preceding paragraphs as if fully set forth herein.

41. The Exchange denies the allegations of paragraph 41 of the Complaint.

42. The Exchange denies the allegations in paragraph 42 of the Complaint in that there were no "Retained Premiums."

43. The Exchange denies the allegation in paragraph 43 of the Complaint in that there were no "Retained Premiums."

44. The Exchange denies the allegations of paragraph 44 of the Complaint.

45. The Exchange denies the allegations of paragraph 45 of the Complaint.

46. The Exchange denies the allegations of paragraph 46 of the Complaint.

AFFIRMATIVE DEFENSES

The Exchange alleges the following affirmative defenses to the Complaint:

1. The Complaint fails to state a claim upon which relief may be granted.
2. The Complaint or particular causes of action in the Complaint are barred by statutes of limitation or repose.
3. The claims are barred by the doctrine of assumption of risk.
4. The claims are barred, or recovery thereon is limited, because of sovereign immunity.
5. The claims are barred or reduced by contributory negligence.
6. The claims are barred on equitable grounds, including, but not limited to, laches and unclean hands.
7. If any amount is owed by the Exchange, it is subject to set-off under NRS 696B.440(1) or NRS 353C.190(1), for the amount (in excess of $662,000) Nevada Health Co-op owes the Exchange for fees for listing on the Exchange.

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Wherefore, the Exchange prays as follows:

1. That Plaintiff takes nothing by virtue of its complaint,

2. That Plaintiff's complaint be dismissed with prejudice,

3. That the Exchange have judgment for its attorneys' fees and costs, and

4. For such other and further relief, including declaratory, equitable relief as this Court may deem just and proper.

Dated: August 24, 2020.

AARON D. FORD
Attorney General

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

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on August 24, 2020, I filed the foregoing document via this Court's electronic filing system. Parties that are registered with this Court's EFS will be served electronically.

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

TAB 31

TAB 31

MDQA (CIV)
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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

NEVADA HEALTH CO-OP,

Defendant.

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

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

(Hearing Requested)

Unite Here Health and Nevada Health Solutions, LLC (collectively "UHH") respectfully move this Court to disqualify Greenberg Traurig, LLP ("Greenberg") and its individual attorneys from representing Barbara D. Richardson as the Statutory Receiver (the "Receiver") for Nevada Health CO-OP (the "CO-OP" or "NHC"). Greenberg's representation of the Receiver and the CO-OP is marred with disabling conflicts of interest causing the firm to be directly adverse to the receivership estate and the vast majority of the CO-OP's creditors, including UHH.

As detailed below, during the period of time that Greenberg had the obligation to investigate any potentially culpable parties and initiate litigation against various defendants, ***Greenberg was concurrently representing Xerox State Healthcare, LLC ("Xerox") in related litigation and administrative actions***. Xerox ***should have been*** a primary target of Greenberg's investigation for potential liability to the CO-OP. Unsurprisingly, Greenberg declined to investigate and sue its own client, thereby eradicating a significant potential source of recovery for the receivership estate and its creditors.

As if that wasn't bad enough, prior to Greenberg's appointment as receivership counsel in this matter, Greenberg was also representing ***in this very action*** one of the biggest creditors of the receivership estate—Valley Health System ("Valley"). Accordingly, in addition to its disabling conflict of interest with Xerox, Greenberg owed fiduciary duties to a significant creditor of the CO-OP, thereby raising the specter of preferential treatment in favor of Valley and to the detriment of all the remaining creditors who are not fortunate enough to also be represented by Greenberg. Therefore, Greenberg should be disqualified from serving as counsel for the Receiver.

Due to Greenberg's numerous conflicts and its failure to disclose them to this Court, Greenberg must also disgorge any and all attorney's fees it earned as receivership counsel. Greenberg should not be allowed to profit ***to the tune of approximately $4.8 million in attorney's fees*** while unable to provide competent and ethical representation to the receivership estate, especially when considering the expense that replacement counsel now will be forced to incur.

While UHH believes that sufficient information already exists to disqualify Greenberg and to disgorge its attorney's fees, to the extent this Court needs additional information, this Court should order: (1) a limited discovery period to permit UHH to further investigate any factual issues relating to Greenberg's various conflicts of interest; and (2) an evidentiary hearing to resolve any factual disputes that may arise.

This Motion is made and based on the papers and pleadings on file, the following Memorandum of Points and Authorities, the exhibits attached hereto, and any oral argument as

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may be heard by this Court.

DATED this 8th day of October, 2020.

BAILEY❖KENNEDY

By: /s/ Dennis L. Kennedy
DENNIS L. KENNEDY
JOHN R. BAILEY
JOSEPH A. LIEBMAN
Attorneys for Unite Here Health and Nevada Health Solutions, LLC

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

> "The jaundiced eye and scowling mien of counsel for the debtor should fall upon all who have done business with the debtor recently enough to be potential targets for the recovery of assets of the estate. The representation of any such party disqualifies counsel from representing the debtor."[1]

Greenberg—tasked with evaluating potential targets for recovery for the benefit of the receivership estate and its creditors—had a blind spot. Greenberg could not independently and fairly evaluate Xerox as a potential defendant because, at the same time that Greenberg was investigating and determining who to sue on behalf of the receivership estate (NHC), ***it was representing Xerox*** in the following ***related*** matters:

- *Basich v. Xerox State Healthcare, LLC, et al.*, Case No. A-14-698567-C, a class action complaint filed on behalf of all Nevada consumers who purchased an insurance policy on the Silver State Health Insurance Exchange and did not receive the benefits of such a policy;
- *Casale v. State of Nevada ex. rel. Silver State Health Insurance Exchange, et al.*, Case No. A-14-706171-C, a class action complaint filed on behalf of all Nevada brokers who were owed a commission for the sale of an insurance policy on the Silver State Health Insurance Exchange; and
- *In the Matter of Xerox State Healthcare, LLC*, Cause No. 17.0299, a regulatory action before the State of Nevada, Department of Business and Insurance, Division of Insurance, involving Xerox's deficient performance.

Greenberg's representation of Xerox in these related matters extended through at least October 19, 2017, ***ten months after*** Greenberg was appointed as counsel for the receivership estate by this Court

[1] *In re Git-N-Go, Inc.*, 321 B.R. 54, 59 n. 4 (Bankr. N.D. Okla. 2004) (citation omitted).

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and ***two months after*** it initiated litigation against Nevada Health Solutions and various other Defendants.[2] Unsurprisingly, Greenberg elected not to sue Xerox, its client at the time.

Xerox should have been a prime target of Greenberg's investigation on behalf of the receivership estate. In 2012, Xerox was awarded a $72 million contract from the Silver State Health Insurance Exchange ("Silver State") to design, build, maintain, and administer Nevada Health Link, the online marketplace where Nevada consumers could purchase health insurance policies (the "Xerox Exchange"). Xerox was tasked with developing and administering virtually all aspects of the Xerox Exchange. For example, Xerox was responsible for ensuring the Xerox Exchange could capably and promptly: (1) facilitate the purchase of insurance plans; (2) collect all pertinent information from consumers and transmit it to insurers, including the CO-OP; and (3) collect insurance premiums from consumers and transmit them to insurers, including the CO-OP.[3]

The Xerox Exchange was a disaster. It performed so poorly that Silver State had no choice but to terminate Xerox and move on to a federally-facilitated exchange. Xerox subsequently became a primary defendant in multiple class action lawsuits. Greenberg and Mark Ferrario, Esq.—the same counsel who were tasked with investigating any parties with potential liability to the CO-OP (*i.e.*, Xerox)—***were concurrently representing Xerox*** in the defense of these class action lawsuits and before the Nevada Department of Insurance. There is no indication in the record that Greenberg disclosed these conflicts of interest to the Court at the time of its appointment in January 2017.

The case law is clear—conflicts of interest similar to Greenberg's conflicts are ***unethical and unwaivable***. Thus, courts disqualify (or refuse to appoint) any attorney who represents (or seeks to represent) both a receiver/bankruptcy debtor as well as a potential source of recovery/target of the estate. Regardless of whether Xerox is ultimately liable to the CO-OP (which it likely is), Xerox

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[2] Greenberg continued to represent Xerox Corporation in other unrelated matters until November 28, 2018 (at a minimum), ***two months after*** Greenberg filed the Amended Complaint against Unite Here Health, Nevada Health Solutions, and various other Defendants. *See* Sections II(F), (G), *infra*.

[3] In fact, Greenberg, on behalf of the CO-OP, recently filed a lawsuit against Silver State, alleging that Silver State failed to remit approximately $510,000 in insurance premiums to the CO-OP. (*See generally* Compl., Case No. A-20-816161-C, filed June 5, 2020.) Notably, Greenberg declined to file any such claim against Xerox despite the fact that Silver State, in its Answer, alleged that it "never collected and held premiums for Nevada Health Co-Op, as any premiums for Nevada Health Co-op were collected or held by Xerox State Healthcare, LLC or its subcontractor, Choice Administrator in its own account(s)." (Ans., Case No. A-20-816161-C, ¶ 22, filed Aug. 24, 2020.)

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was—at the bare minimum—a potential target defendant. As counsel for the Receiver, Greenberg was required to remain neutral and disinterested, and to maximize any recovery for the receivership estate. Greenberg was incapable of conducting a fair, independent, and thorough investigation of Xerox without breaching its duty of loyalty to Xerox. Stated differently, the decision not to sue Xerox on behalf of the CO-OP was predetermined by virtue of Greenberg's representation of Xerox.

Just as concerning as Greenberg's biased evaluation of Xerox as a potential defendant is Greenberg's ***representation of one of the most significant creditors to the receivership estate in this matter***. Specifically, in August 2016, Greenberg filed a brief in this action on behalf of Valley Health System ("Valley"), in which it asserted a "potential claim ***against*** the receivership estate in excess of $5 million."[4] Just five months later, Greenberg also became attorney of record for the Receiver and the receivership estate.

Logically, courts routinely hold that an attorney cannot represent both a receivership and/or bankruptcy estate and one of its creditors:

> The duty of a creditor's counsel is to zealously guard his interests at all times. One could easily envision a situation where the attorney might discover that his duties as Receiver required action that his client creditor would disapprove of. This court shares the view of the majority of jurisdictions that ***counsel for a creditor should not act as Receiver or be employed by the Receiver in any capacity because of the potential for conflicts of interest***.[5]

Greenberg's conflict with respect to Valley is particularly egregious considering that it is representing the receivership estate and a creditor ***in the same action***. Greenberg cannot faithfully negotiate or attack Valley's claim against the receivership estate when it has attorney-client obligations to Valley. Thus, when the Receiver distributes assets of the estate to creditors, the Court and other creditors have no choice but to presume that Valley is receiving preferential treatment due to its attorney-client relationship with Greenberg.

Greenberg's conflicts of interest have done significant damage to the receivership estate, directly harming creditors such as UHH. For example, the statute of limitations on certain claims

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[4] Response to Mot. for Final Order Finding and Declaring Nevada Health Co-Op to be Insolvent, Placing Nevada Health Co-Op into Liquidation, and Granting Relating Relief, 3:4-5, filed Aug. 8, 2016 (emphasis added).

[5] *Hilti, Inc. v. HML Dev. Corp.*, 2007 Mass. Super. LEXIS 66, at *53 (Mass. Super. Ct. Feb. 15, 2007) (emphasis added).

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against Xerox may have expired, eradicating a significant source of recovery. Moreover, Greenberg has harmed the receivership estate to the tune of nearly ***$4.8 million in attorney's fees*** through May 2020. Greenberg's astronomical fees are ***diverting millions of dollars in available assets*** away from the creditors, ensuring they will receive a much smaller percentage of their claims. Further, Greenberg has been operating with disabling and undisclosed conflicts of interest, which requires substitute counsel to be appointed. Substitute counsel will then need to re-assess and re-investigate on behalf of the receivership estate, thereby incurring more attorney's fees and diverting more of the receivership's available assets. Considering that Greenberg is to blame, the only equitable result is to force Greenberg to disgorge all attorney's fees it earned from this engagement, back to the receivership estate.

In sum, the only solution to resolve Greenberg's egregious conflicts is to: (1) disqualify Greenberg and ensure that the Receiver is represented by counsel who can and will remain neutral toward ***all*** of the creditors of the receivership estate; and (2) require Greenberg to disgorge all of its ill-gotten attorney's fees. The Motion should be granted in its entirety.

II. STATEMENT OF FACTS

A. Xerox's Involvement and Its Relationship to the CO-OP.

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

Nevada elected to create its own health exchange and created an agency, Silver State, to develop and oversee Nevada's health exchange.[8] In 2012, Silver State awarded Xerox a $72 million contract to develop, administer, and manage Nevada's health exchange—the Xerox Exchange.[9] In

[6] 42 U.S.C. § 18301(b).

[7] *Compare id. with* 42 U.S.C. § 18041(c).

[8] NRS 695I.200.

[9] Xerox Contract, at 2 ¶ 6, attached as Exhibit 1.

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developing, administering, and managing the Xerox Exchange, Xerox's primary duties included ensuring that the Xerox Exchange promptly transferred consumer data and consumer premium payments to insurers and/or their vendors.[10]

Beginning with its initial rollout on October 1, 2013, the Xerox Exchange was a disaster—it suffered from an egregious number of technical defects.[11] For example, many consumers would select and pay for insurance through the Xerox Exchange but, due to Xerox's failures, their information and payments were never transmitted to insurers, including the CO-OP.[12]

Indeed, the CO-OP's own board minutes indicate the difficulties it faced as a result of the poorly-designed and poorly-managed Xerox Exchange. For example, the CO-OP's board minutes reflect that they had numerous meetings with government officials, other insurers, and Xerox to discuss "the challenges the CO-OP is experiencing with data submission from Xerox to the CO-OP," such as "more than 3,000 members that are on Xerox pending list that the CO-OP has not received any data on to date."[13] The CO-OP complained that Xerox's negligence was "negatively impacting the CO-OP's membership,"[14] that Xerox's "payment collection process…[was] only working at 45% capacity to accept payments, … [and that Xerox] … has drained the CO-OP's resources as no less than 50% of the CO-OP's resources have been committed to Xerox and Xerox related issues since October 2013."[15] ***Needless to say, Xerox's failures were causing significant damage to the CO-OP for an extended period of time, as aptly summarized in the CO-OP CEO's February 24, 2014 letter to Governor Brian Sandoval and to Xerox***.[16]

Xerox's failures led Silver State to engage Deloitte Consulting LLP ("Deloitte") to evaluate the failings of the Xerox Exchange and Silver State's options going forward.[17] Deloitte's report

[10] Silver State Exchange Requirements Matrix, attached as Exhibit 2.

[11] *See generally* Deloitte Report, attached as Exhibit 3.

[12] *Id.* at 42-43.

[13] 2014.02.19 NHC Board Minutes (LARSON014368), attached as Exhibit 4.

[14] *Id*.

[15] 2014.05.23 NHC Board Minutes (LARSON014354, 355 and 388), attached as Exhibit 5.

[16] *See generally* Feb. 24, 2014 Letter from Tom Zumtobel, attached as Exhibit 6.

[17] Ex. 3.

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found over ***1,500 defects*** with the Xerox Exchange, over 500 of which were of a "higher severity."[18] Ultimately, Silver State elected to terminate its contract with Xerox and switch to a federally-facilitated exchange.[19] UHH and NHS' various experts have also identified numerous issues with Xerox and the Xerox Exchange, and they are set forth in their various expert reports. To the extent the Court requires additional information in that regard, a copy of one of those expert reports is attached hereto.[20]

B. <u>The Receivership of the CO-OP.</u>

On September 25, 2015, the Nevada Attorney General, on behalf of the Nevada Division of Insurance (the "NDOI"), filed a Petition for Appointment of Commissioner as Receiver "for the purpose of conservation/rehabilitation."[21] On October 14, 2015, this Court granted the Petition.[22] At that time, Amy Parks was the Acting Commissioner of Insurance, and thus, she was appointed Permanent Receiver of the CO-OP. Cantilo & Bennett was likewise appointed as the Permanent Special Deputy Receiver ("SDR") of the CO-OP.[23] The Receiver and SDR were "authorized to rehabilitate or liquidate CO-OP's business and affairs as and when they deem appropriate under the circumstances …."[24]

The Receiver was also "authorized to employ and to fix the compensation of … counsel … as she considers necessary," and "[a]ll compensation and expenses of such persons…shall be paid out of the funds and assets of CO-OP in accordance with NRS 696B.290."[25] The Receiver was

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[18] *Id.* at p. 9.

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

[20] Dr. Henry Miller Report, pp. 36-39, 56-57, 93 (addressing issues with Xerox), attached as Exhibit 7.

[21] Petition for Appointment of Commissioner as Receiver and Other Permanent Relief; Request for Temporary Injunction Pursuant to NRS 696B.270(1), 1:26-2:2, filed Sep. 25, 2015.

[22] Permanent Injunction and Order Appointing Commissioner as Permanent Receiver of Nevada Health CO-OP, filed Oct. 14, 2015.

[23] *Id.* at 2:9-10.

[24] *Id.* at 2:16-18.

[25] *Id.* at 3:21-28.

further authorized to "[i]nstitute and to prosecute, in the name of CO-OP or in her own name, any and all suits and other legal proceedings…on such terms and conditions as she deems appropriate."[26]

C. Greenberg's Representation of Valley Health System.

On July 21, 2016, the Receiver filed a Motion to declare the CO-OP insolvent and place it into liquidation (the "Liquidation Motion").[27] At this time, Barbara Richardson had replaced Amy Parks as the Commissioner of the NDOI, and thus, Ms. Richardson became (and remains) the Receiver of the CO-OP.[28] The Receiver claimed that "[t]here is no reasonable probability that NHC's hazardous financial condition will improve sufficiently to enable NHC to resume operations, much less to meet all obligations as they mature."[29]

On August 8, 2016, Greenberg filed a Response to the Liquidation Motion on behalf of Valley.[30] The Greenberg attorneys who filed the Motion were Mark Ferrario, Esq., and Eric Swanis, Esq., with Mr. Swanis providing a sworn declaration in support of the Response.[31] Greenberg claimed that Valley held a "potential claim ***against*** the receivership estate in excess of $5 million."[32] Greenberg also claimed that the Receiver was not providing relevant information regarding the potential recovery of funds from various sources (including the federal government), and that Valley was entitled to such information as a significant creditor of the receivership estate.[33] Greenberg also pointed out the obvious—***that the Receiver was obligated to "recover all funds available to be dispersed to the as-yet unpaid providers***."[34] On September 21, 2016, this Court granted the Receiver's Motion, declared the CO-OP to be insolvent, and placed it into liquidation.[35]

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[26] *Id.* at 8:16-22.

[27] Mot. for Final Order Finding and Declaring Nevada Health CO-OP to Be Insolvent, Placing Nevada Health CO-OP into Liquidation, and Granting Related Relief, filed July 21, 2016.

[28] *Id.* at 3:16-18.

[29] *Id.* at 4:22-24.

[30] Response to Mot. for Final Order Finding and Declaring Nevada Health Co-Op to be Insolvent, Placing Nevada Health Co-Op into Liquidation, and Granting Relating Relief, filed Aug. 8, 2016.

[31] *See generally id.*

[32] *Id.* at 3:4-5 (emphasis added).

[33] *See generally id.*

[34] *Id.* at 3:10-12 (emphasis added).

[35] Final Order Finding and Declaring Nevada Health Co-Op to be Insolvent and Placing Nevada Health CO-OP into Liquidation, filed Sep. 21, 2016.

D. The Receiver's Engagement of Greenberg.

On December 12, 2016, just four months after Greenberg appeared on behalf of Valley, the Receiver filed a Motion to approve the engagement of Greenberg, including its professional fee rates (the "Greenberg Engagement Motion").[36] The Deputy Attorney General stated that the Receiver needed to retain Greenberg because it had been "determined that further legal and consultant assistance is necessary to address the potential claims and asset recovery matters in the receivership estate."[37] The following Greenberg fee rates were disclosed to the Court: Mark E. Ferrario - $575/hour; Other Partners - $475/hour; Of Counsel - $450/hour; Associates - $320/hour; and Legal Assistants - $190/hour.[38]

At the January 10, 2017 hearing, the Court expressed concerns that Greenberg's substantial hourly rates could deplete the CO-OP's assets and lead to reduced payments for the creditors.[39] Nonetheless, the Court approved, ratified, and confirmed the engagement of Greenberg, as well as its professional fee rates.[40]

E. Greenberg's Representation of Xerox and Valley at the Time of Its Engagement.

At the time the Receiver sought approval from this Court for its retention of Greenberg, Greenberg was counsel of record for Xerox in the following related matters:

- *Basich v. Xerox State Healthcare, LLC, et al.*, Case No. A-14-698567-C, a class action complaint filed on behalf of all Nevada consumers who purchased an insurance policy on the Xerox Exchange and did not receive the benefits of such policy;[41]
- *Casale v. State of Nevada Ex. Rel. Silver State Health Insurance Exchange, et al.*, Case No. A-14-706171-C, a class action complaint filed on behalf of all Nevada brokers owed unpaid commissions for the sale of insurance policies on the Xerox Exchange;[42] and

[36] Mot. to Approve Professional Fee Rates on an Order Shortening Time, filed Dec. 12, 2016.

[37] *Id.* at 6:22-24.

[38] *Id.* at Ex. A.

[39] Rec. Trans., Jan. 10, 2017, 2:22-6:5, attached as Exhibit 8.

[40] Order, filed Jan. 18, 2017.

[41] *See, e.g.*, Joint Mot. for Final Approval of Class Settlement, Certification of Settlement Class, Approval of Attorney's Fees and Costs, and Entry of Final Order, attached as Exhibit 9.

[42] (*Id.*) These two matters were ultimately consolidated, but for the majority of their pendency, were litigated as separate actions.

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- *In the Matter of Xerox State Healthcare, LLC*, Cause No. 17.0299, a regulatory action before the NDOI, involving Xerox's failures in developing, administering, and managing the Xerox Exchange.[43]

As discussed in the Greenberg Engagement Motion, Greenberg was retained for the purpose of "address[ing] the potential claims and asset recovery matters in the receivership estate."[44] According to the Office of the Attorney General:

> [T]he Receiver does not have access to the legal resources necessary to evaluate the prosecution and defense of litigation. Claims continue to be filed with the Receiver during the previously approved claims filed deadline, and the Receiver needs the immediate assistance of legal counsel and consulting firms with specialized expertise for the evaluation and resolution of such claims, ***which may also include the pursuit of related counterclaims***.[45]

Similarly, at the January 10, 2017 hearing, the SDR confirmed that "there are other private entities and parties that we believe may have some culpability for the downfall of this company and that they should be held accountable for that…."[46]

As explained above, Xerox was responsible for developing, administering, and managing the Xerox Exchange, and Xerox's various deficiencies in doing so were well known to Greenberg, ***considering it was representing Xerox in the defense of two class action lawsuits based on the exact same issues***. Greenberg was also representing Valley—***in this very action***—at the time the Receiver sought approval for its retention of Greenberg.[47] Valley remains one of the most significant creditors of the receivership estate, claiming that the CO-OP owes it over $5 million.[48]

Greenberg did not disclose to this Court—in either the Greenberg Engagement Motion or at the hearing—that it was concurrently representing Xerox in three related matters and that it was representing Valley in the same matter.

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43 Consent Order, attached as Exhibit 10.

44 Mot. to Approve Professional Fee Rates on an Order Shortening Time, 6:22-24, filed Dec. 12, 2016.

45 *Id.* at 3:11-16 (emphasis added).

46 Ex. 8, 6:12-13.

47 Response to Mot. for Final Order Finding and Declaring Nevada Health Co-Op to be Insolvent, Placing Nevada Health Co-Op into Liquidation, and Granting Relating Relief, filed Aug. 8, 2016.

48 *Id.* at 3:4-5.

F. Greenberg Investigates and Files Litigation.

On April 5, 2017, Greenberg filed the Sixth Status Report on behalf of the Receiver.[49] Every prior status report had been filed by the Nevada Attorney General's office on behalf of the Receiver, thereby indicating that Greenberg had now fully replaced the Attorney General with respect to all aspects of the Receiver's attorney-client representation.[50]

On August 25, 2017, Greenberg, on behalf of the Receiver, filed a Complaint entitled *State of Nevada, ex rel. Commissioner of Insurance, Barbara D. Richardson, in her Official Capacity as Receiver for Nevada Health CO-OP v. Milliman, et. al.*, Case No. A-17-760558-C (the "Milliman Lawsuit"). The Milliman Lawsuit included numerous Defendants, some of which were former CO-OP vendors, and some of which were former CO-OP management.[51] Greenberg chose to omit two potential defendants despite their substantial involvement with the ACA in Nevada and their clear duty and role to provide pertinent information and premium payments to the CO-OP—Silver State and Xerox. In fact, Greenberg confirmed Xerox's connection to and relationship with the CO-OP when it described to this Court an ongoing dispute the CO-OP had with Xerox.[52] Astoundingly, in Greenberg's description of the CO-OP's dispute with Xerox, it vaguely refers to "Counsel for Xerox," ***but does not disclose to the Court that "Counsel for Xerox" is actually Greenberg***.[53]

Greenberg, on behalf of the Receiver, filed an Amended Complaint on September 24, 2018.[54] The primary difference between the original Complaint and the Amended Complaint was the addition of Unite Here Health as a Defendant. Similar to the original Complaint, Greenberg chose to omit Silver State and Xerox despite their substantial involvement with the ACA in Nevada, and their

[49] Sixth Status Report, filed April 5, 2017.

[50] (*See, e.g.*, Fifth Status Report, filed Jan. 5, 2017.) Santoro Whitmire was also retained by the Receiver at the same time as Greenberg. However, based on the lack of invoices submitted to this Court, it does not appear that Santoro Whitmire did much, if any, work for the Receiver.

[51] Compl., Case No. Case No. A-17-760558-C, filed Aug. 25, 2017.

[52] Eighth Status Report, 16:1-18, filed Oct. 6, 2017.

[53] (*Id.* at 16:1.) Greenberg declined to attach a copy of the letter it was quoting in its Eighth Status Report, seemingly trying to conceal its representation of Xerox from this Court. Undersigned counsel recently requested a copy of this letter from Greenberg, but Greenberg has not provided it. (*See* e-mail correspondence, attached as Exhibit 11.)

[54] Am. Compl., Case No. A-17-760558-C, filed Sep. 24, 2018.

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clear duty and repeated failures to provide pertinent information and premium payments to the CO-OP.

G. Greenberg Continues to Represent Xerox Throughout 2018.

In June 2017, Greenberg filed an appearance on behalf of another Xerox entity, as well as on behalf of Conduent, Inc. (an assignee to Xerox Corporation).[55] The matter lasted through November of 2017. In early 2018, Greenberg also began to represent another Xerox entity in the United States District Court for the District of Nevada. Specifically, on March 5, 2018, Greenberg and Mark Ferrario, Esq., on behalf of Xerox Corporation and Comerica Bank, filed a Motion to Dismiss in *Clement v. Colvin*, Case No. 2:17-cv-02787-JCM-PAL (the "*Clement* Matter").[56] The pendency of the *Clement* Matter continued on until November 28, 2018 (at a minimum).[57] Again, Greenberg never disclosed to this Court that it was continuing to represent Xerox throughout almost the entirety of 2018. Unsurprisingly, when Greenberg moved to amend the Complaint in July 2018, it sought to add only UHH as a Defendant, and declined to add Xerox as a Defendant.[58]

H. Greenberg Files Additional Lawsuits Against Silver State and Others.

On June 5, 2020, Greenberg, on behalf of the CO-OP and the Receiver, filed a separate lawsuit against Silver State (the "Silver State Lawsuit").[59] Greenberg alleged that Silver State owed the CO-OP approximately $510,000.00 in unpaid insurance premiums.[60] Despite significant overlap between Silver State and Xerox's past misconduct (Xerox developed and administered virtually all aspects of the Xerox Exchange), Greenberg again declined to sue Xerox (its client). ***Notably, Silver State later explained that Xerox—not Silver State—retained the insurance premiums at issue***.[61]

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[55] Mot. to Dismiss, Civil No. 3:17-cv-298 (E.D. Va.), attached as Exhibit 12.

[56] Docket, Case No. 2:17-cv-02787-JCM-PAL, attached as Exhibit 13.

[57] *Id.*

[58] Pl.'s Mot. to Amend Compl., Case No. A-17-760558-C, filed July 17, 2018.

[59] Compl., Case No. A-20-816161-C, filed June 5, 2020.

[60] *Id.* at ¶ 24.

[61] Answer, Case No. A-20-816161-C, ¶ 22, filed August 24, 2020 ("[Silver State] denies the allegations of paragraph 22 in that Defendant never collected and held premiums for Nevada Health Co-Op, as any premiums for Nevada Health Co-Op were collected or held by Xerox State Healthcare, LLC or its subcontractor, Choice Administrator in its own account(s)."

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Yet Greenberg ***still*** elected not to add Xerox to the Silver State Lawsuit (presumably because it is ethically barred from suing its own client).

On July 16, 2020, Greenberg, on behalf of the CO-OP and the Receiver, also filed separate litigation against WellHealth Medical Associates, Medsource Management Group, LLC, and individual officers from those two entities (the "WellHealth Lawsuit").[62] The allegations set forth in the WellHealth lawsuit significantly overlap with the allegations set forth in the Milliman Lawsuit as well as the Silver State Lawsuit. Despite this significant overlap, Greenberg again declined to sue Xerox, its client.

I. <u>Correspondence and Discovery Regarding Greenberg's Conflicts.</u>

Greenberg's decision to sue Silver State and not Xerox was suspicious, to say the least. Accordingly, on June 16, 2020, counsel for UHH sent correspondence to Greenberg (i.e. Mark Ferrario, Esq. and Don Prunty, Esq.) in order to try to understand why Greenberg refused to sue Xerox.[63] On June 26, 2020, Mr. Prunty and Greenberg responded, refusing to explain its decision not to sue Xerox under the guise of attorney-work product and the attorney-client privilege.[64] Strangely enough, Greenberg also demanded that UHH explain every single defense UHH and NHS intends to assert in the Milliman Lawsuit, or else Greenberg would "assume that you are conceding that you have no defense to the claims being asserted nor any recognized defense based on the conduct of [Silver State] or its contractor."[65] UHH did not respond to Greenberg's bizarre demand (which was plainly intended to deflect from its own wrongdoing).

UHH propounded written discovery in the Milliman Lawsuit to further investigate the Receiver's and the CO-OP's unexplained refusal to sue Xerox. UHH propounded an interrogatory to determine whether the CO-OP had settled its claims against Xerox out of court, which could have provided a reason for why Xerox was not a defendant. Greenberg, on behalf of the Receiver and the

[62] Compl, Case No. A-20-818118-C, filed July 16, 2020.

[63] June 16, 2020 Correspondence, attached as Exhibit 14.

[64] June 26, 2020 email, attached as Exhibit 15.

[65] *Id.*

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CO-OP, confirmed that no such settlement had occurred.[66] UHH also propounded an interrogatory to again seek an explanation as to why the CO-OP had not sued Xerox. Similar to Mr. Prunty's June 26, 2020 email, the Receiver objected based on the attorney-client privilege and attorney work product. However, the Receiver did provide the following response:

> Notwithstanding and without waiving the above, on information and belief Xerox was a vendor of the Silver State Health Insurance Exchange and had no direct contractual relationship with NHC. In this instant case, based on the merits and resources of the receivership, Plaintiff elected to pursue those entities and individuals that were most directly responsible for NHC's damages, namely the Defendants.[67]

As discussed above, public records confirm that Greenberg represented Xerox in various related matters at the time these litigation decisions were made.[68] Accordingly, in order to further investigate whether Greenberg held a disqualifying conflict of interest, UHH also propounded requests for production seeking Greenberg's engagement agreements with Xerox and Valley, as well as any conflict waivers Greenberg had procured with respect to those engagements. Greenberg refused to produce them, claiming they were irrelevant to the Milliman Litigation.[69]

J. <u>Greenberg's Invoices and Attorney's Fees.</u>

As discussed above, at the time of Greenberg's engagement, this Court was particularly concerned that Greenberg's attorney's fees could substantially decrease the eventual payout to the CO-OP's creditors. ***Greenberg has billed almost $5 million dollars in attorney's fees through May 2020***. Greenberg has very likely surpassed the $5 million threshold in the subsequent months.

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[66] (Pl.'s Response to Unite Here Health's Third Set of Interrogatories, 4:3-10, attached as Exhibit 16.) In her response, the Receiver confirmed that "Xerox has entered into and settled class action claims by certain insureds and vendors ***which may overlap with those represented by Plaintiff in this case***." In other words, Greenberg and the Receiver admitted that the class action lawsuits, ***in which Greenberg represented Xerox,*** were substantially related to the Milliman Lawsuit.

[67] *Id.* at 4:20-5:1.

[68] UHH did not learn of Greenberg's representation of Xerox before the NDOI until July 17, 2020, when it obtained documents from the NDOI via a public records request.

[69] *See generally* Pl.'s Response to Unite Here Health's Sixth Set of Requests for Production, attached as Exhibit 17.

Monthly Fees	Matter # 10100 Receivership	Matter # 10200 Wu Lawsuit	Matter # 10300 - Federal Court of Claims	Matter # 10400 Federal District Court Cases	Matter # 10500 Special Legal Receivership Matters
January 2017	$26,440.92				
February 2017	$15,199.50				
March 2017	Unknown				
April 2017	$23,828.50				
May 2017	$34,333.50	$1,451.50			
June 2017	$89,461.22	$1,629.70			
July 2017	$85,160.50	$1,414.64			
August 2017	$156,373.69	$1,405.50			
September 2017	$49,210.26	$806.00			
October 2017	$69,168.03				
November 2017	$57,010.50				
December 2017	$96,462.82	$96.00			
January 2018	$46,642.75				
February 2018	$50,359.00				
March 2018	$93,413.57				
April 2018	$109,163.50				
May 2018	$131,352.00				
June 2018	$150,540.00				
July 2018	$87,850.50	$142.50			
August 2018	$107,417.00				
September 2018	$123,816.50		$8,414.50		$1,852.50
October 2018	$150,164.71		$18,871.75		$522.50
November 2018	$181,037.80		$26,730.00	$1,140.00	$427.50
December 2018	$169,113.29		$2,391.50	$,1947.50	$142.50
January 2019	$243,837.47		$5,932.50		$1,615.00
February 2019	$193,662.50		$4,491.50		
March 2019	$187,463.61		$56,464.50		$997.50
April 2019	$183,694.96	$191.00	$6,596.00		$1,377.50
May 2019	$154,610.95		$40,083.00		
June 2019	$129,562.62		$45,895.00		
July 2019	$166,844.00		$54,395.00		$950.00
August 2019	$101,519.00		$5,897.50		$28,305.00
September 2019	$80,732.04		$380.00		$17,100.00
October 2019	$94,182.61		$1,710.45		$20,682.50
November 2019	$92,335.00		$1,143.00		$4,322.50
December 2019	$62,724.50		$1,240.00		$1,695.50
January 2020	$116,296.64				$760.00
February 2020	$121,574.31		$142.50		
March 2020	$162,602.00				
April 2020	$114,130.00		$8,205.50		$237.50
May 2020	$52,795.00		$40,344.50		$47.50
Totals	**$4,362,087.27**	**$7,136.84**	**$329,328.70**	**$3,087.50**	**$81,035.50**
***** GRAND TOTAL: $4,782,675.81 *****					

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K. Greenberg's Efforts to Raise Additional Funds to Pay for its Attorney's Fees.

Greenberg's attorney's fees were so substantial that the receivership estate almost ran out of money in 2019. On October 7, 2019, Greenberg reported that the CO-OP's unrestricted cash assets were approximately $322,530.[70] In April 2017, a couple of months after Greenberg was retained, the CO-OP's unrestricted cash assets were $9,136,347.[71] In other words, the Receiver, the SDR, and Greenberg exhausted nearly ***$9 million*** in receivership assets in approximately two years.

Considering the receivership estate was almost out of money, Greenberg needed to figure something out in order to continue to fund its attorney's fees. Accordingly, on September 16, 2019, Greenberg—on behalf of the Receiver—filed a Motion seeking approval for ***the sale of a $43 million federal receivable in exchange for the immediate payment of $10 million***.[72] In other words, in order to ensure there were sufficient funds to continue to pay receivership expenses and Greenberg's substantial attorney's fees, Greenberg and the Receiver asked this Court to approve the sale of the CO-OP's substantial federal receivable in exchange ***for 23% of its face value***, and without even accounting for interest.

Greenberg, on behalf of the Receiver, attempted to justify the fire sale rate of the CO-OP's receivable by claiming there was "great uncertainty" as to whether the CO-OP's position on the recoverability of this receivable would prevail in front of the United States Supreme Court.[73] Approximately seven months later, the United States Supreme Court, in an ***8-1*** decision, ruled in favor of the insurance companies and against the federal government.[74] As a result, the company which purchased the CO-OP's federal receivable is likely to achieve a ***$33 million windfall*** to the detriment of the creditors of the receivership estate. On the bright side (at least for Greenberg), Greenberg has refueled the receivership estate's gas tank so that it may continue to receive

[70] Sixteenth Status Report, 13:22-26, filed Oct. 7, 2019.

[71] Sixth Status Report, 14:18-25.

[72] *See generally* Mot. for Determination of Good Faith Sale of Interest in Receivables by Plaintiff, Order Approving Sale and Permitting Distribution of Certain Funds, on Order Shortening Time, filed Sep. 16, 2019.

[73] *Id.* at 4:3-20.

[74] *See Maine Community Health Options v. United States*, 140 S.Ct. 1308 (2020).

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attorney's fees litigating the Milliman Lawsuit, the Silver State Lawsuit, and the WellHealth Lawsuit—not one of which include its client Xerox as a Defendant.

III. ARGUMENT

A. Legal Standard Regarding Disqualification.

The Court has "broad discretion in determining whether disqualification is required in a particular case." *Brown v. Eighth Jud. Dist. Ct.*, 116 Nev. 1200, 1205, 14 P.3d 1266, 1269 (2000). Under Nevada law, a disqualification analysis is two-fold: first, the Court must find that there is a reasonable possibility that opposing counsel committed "some specifically identifiable impropriety"; and second, the Court must find that "the likelihood of public suspicion or obloquy outweighs the social interests which will be served by [opposing counsel]'s continued participation in [the matter]." *Id.* at 1205, 14 P.3d at 1270. ***Any doubt must be resolved "in favor of disqualification."*** *Id.* (emphasis added).

B. Greenberg's Representation of Xerox Warrants Disqualification.

1. *Greenberg, as Counsel for the Receiver, Is Obligated to Be Impartial and to Maximize the Recovery for the Receivership Estate.*

A receiver is considered to be an "officer of the court," *Bowler v. Leonard*, 70 Nev. 370, 383, 269 P.2d 833, 839 (1954), and is "a ***neutral*** party appointed by the court to take possession of property and preserve its value for the benefit of the person or entity subsequently determined to be entitled to the property." *Anes v. Crown Partnership, Inc.*, 113 Nev. 195, 199, 932 P.2d 1067, 1069 (1997) (emphasis added). "Thus, a Receiver owes [a] fiduciary duty to all the parties in interest, including the creditors…, and is 'under the duty to act impartially toward, and protect the rights of, all parties.'" *Hilti, Inc. v. HML Dev. Corp.*, Mass. Super. LEXIS 66, at *55-56 (Mass. Super. Ct. Feb. 15, 2007).

Logically, if a receiver must be neutral and impartial, then the receiver's counsel—as her designated agent and representative—must also be neutral and impartial. *See KeyBank Nat. Ass'n v. Michael*, 737 N.E.2d 834, 852 (Ind. Ct. App. 2000) ("We agree with KeyBank that an attorney acting as counsel for the receiver should be held to the same standard of impartiality as that for the

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receiver."); *In re Coastal Equities, Inc.*, 39 B.R. 304, 309 (Bankr. S.D. Cal. 1984) ("A debtor-in-possession, as well as its counsel, owe undivided loyalty to the estate.").

Accordingly, an impartial receiver and her disinterested counsel are obligated to pursue all legal avenues which will maximize the receivership estate for the benefit of its creditors. *See Hilti, Inc.*, 2007 Mass. Super. LEXIS 66, at *52. Put another way, a receiver and her counsel have an "'affirmative duty to endeavor to realize the largest possible amount' for assets of the estate." *Phelan v. Middle States Oil Corp.*, 154 F.2d 978, 990 (2d Cir. 1946) (citation omitted).

Greenberg, during its representation of Valley, agreed with these sound receivership principles.[75] Thus, when Greenberg accepted the appointment from this Court as receivership counsel, it had an ongoing obligation to remain neutral and disinterested so that it could fully represent the interests of the receivership estate. Greenberg, in accepting this Court's appointment, assumed obligations toward all of the parties in interest, including the numerous creditors of the receivership estate. And finally, Greenberg, in accepting the appointment from this Court, assumed the ongoing obligation to investigate and pursue all meritorious legal avenues that could maximize any recovery to the receivership estate.

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2. *Any Receivership Attorney Who Represents a Potential Target of the Receivership Estate Has a Disabling Conflict of Interest.*

Considering that a receiver and her counsel must be in a position to freely and fully investigate and pursue any and all culpable parties in order to maximize the assets of the receivership estate, they must not hold any prior allegiances to potential target defendants. Accordingly, Greenberg, before it accepted the appointment from this Court as receivership counsel, ***needed to ensure that it did not represent any parties that were potentially liable to the CO-OP and the receivership estate***. Every receivership and bankruptcy court that has encountered this type of conflict of interest has confirmed that any attorney who endeavors to represent both a receiver/bankruptcy debtor as well as a potential target of the estate suffers from a disabling conflict of interest. In fact, the United States District Court for the Eastern District of Pennsylvania

[75] Response to Mot. for Final Order Finding and Declaring Nevada Health Co-Op to be Insolvent, Placing Nevada Health Co-Op into Liquidation, and Granting Relating Relief, 3:10-12, filed Aug. 8, 2016.

addressed this precise type of conflict of interest in great detail. *See CFTC v. Eustace*, Nos. 05-2973, 06-1944, 2007 U.S. Dist. LEXIS 33137 (E.D. Pa. May 3, 2007).

In *Eustace*, the court specifically addressed whether the receiver (who was a lawyer) should be disqualified because he had prior attorney-client relationships with an entity that participated in the various transactions that were the subject of the case. *Id.* at *1. One of the defendants which had been sued by the receiver—Man Financial, Inc. ("Man")—alleged that the receiver had a conflict of interest due to its preexisting attorney-client relationship with a potential target of the receivership estate (UBS Cayman), and that disqualification was therefore warranted. *Id.* at *19-20. The Commodity Futures Trading Commission ("CFTC"), which originally sought the receivership, also agreed that a conflict of interest was present and that disqualification was warranted. *Id.* at *19. Specifically, the CFTC pointed out the following:

> [T]he Receiver is in a position similar to a bankruptcy trustee and has the duty to avoid even the appearance of possible impropriety, unfairness or partiality. As such, the Receiver and any counsel employed by him were obligated to fully disclose to the Court his and his firm's prior relationships with certain UBS entities, which the CTFC characterizes as a potential conflict of interest, and their failure to do so created an appearance of impropriety affecting the integrity of these proceedings.

Id.

The District Court ultimately agreed with Man and CFTC. The court recognized that due the unique nature of a receivership, the Rules of Professional Conduct may only provide a reference, while receivership and bankruptcy cases are more relevant and persuasive. *Id.* at *22. The court reviewed and summarized various receivership and bankruptcy opinions, all of which explicitly recognized the unique conflict of interest issues that may arise therein, whereby a receiver is under ongoing obligations to remain disinterested and to act in the best interests of all beneficiaries of the receivership estate, as well as to disclose any potential conflicts to the court which could potentially affect that impartiality. *Id.* at *23-33.

The court ultimately determined that the receiver must be disqualified, offering the following hypothetical:

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> Fast forwarding to the end of the case, let us assume that the case has continued to trial with UBS Cayman as a third-party defendant, Man has been found liable for significant damages, but has been unsuccessful in its third-party claim against UBS Cayman. In post-trial motions and/or on appeal, assume Man argues that the Receiver and his counsel, because of allegiances to other UBS entities, and although playing "hardball" against Man (as the Receiver is expected to do), framed questions and arguments to the jury in such a way as to encourage the jury to impose liability only as to Man and to prejudice Man's third-party claim against UBS Cayman.[76]

Id. at *34-35. The court recognized that it is entirely possible that UBS Cayman was not liable and that is why UBS Cayman was not a defendant. However, due to the receiver's "ongoing relationship with other UBS entities," the court had significant concerns that any ultimate judgment would be subject to reversal. *Id.* at 35-36. The court ultimately concluded that "continued prosecution of the case by a Receiver with a history of UBS relationships cannot be squared with the goal of concluding this case free of any doubt as to whether these relationships have tainted the proceedings or prejudiced another party." *Id.* at *38.

Numerous other bankruptcy and receivership courts have addressed these types of conflicts and have deemed that disqualification is necessary to remedy the conflict and ensure that these types of proceedings are fully in compliance with the impartiality and estate maximization principles required therein. Specifically, the following opinions are in accord with *Eustace*:

- *In re Bohack Corp.*, 607 F.2d 258, 264 (2d. Cir. 1979) ("An attorney who has been closely related by professional, business and personal ties to those whose conduct may now be suspect is evidently in no position to make any objective appraisal of the nature and extent of their involvement.");
- *In re Envirodyne Indus.*, 150 B.R. 1008, 1019 (Bankr. N.D. Ill. 1993) ("Also, none of these opinions confront the problem of an attorney seeking to be employed in a case which may require that attorney to negotiate, investigate or sue another client.");
- *Real Estate Capital Corp. v. Thunder Corp.*, 31 Ohio Misc. 169, 188 (Ohio Ct. Comm. 1972) ("Since a lawyer has a duty to maintain the independence of his professional judgment, he is precluded from accepting employment that will adversely affect such judgment on behalf of his client or such employment as will dilute his loyalty to a client. If a lawyer has this duty then he could not represent both the plaintiff in an action and a receiver of the property involved in that action for a situation could arise where it would be necessary for the receiver to file suit against the plaintiff or to deny the claims of the plaintiff.");

[76] UHH will be filing a Motion for Leave to assert third-party claims against Xerox and the Exchange.

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- *In re Git-N-Go, Inc.*, 321 B.R. 54, 59 n.4 (Bankr. N.D. Okla. 2004) ("It is the duty of counsel for the debtor in possession to survey the landscape in search of property of the estate, defenses to claims, preferential transfers, fraudulent conveyances and other causes of action that may yield a recovery to the estate. The jaundiced eye and scowling mien that counsel for the debtor is required to cast upon everyone in sight will likely not fall upon the party with whom he has a potential conflict.");

- *In re Leslie Fay Cos.*, 175 B.R. 525, 534 (Bankr. S.D.N.Y. 1994) ("At the time of its retention, Weil Gotshal had significant ties to three potential targets of investigation, and yet told neither the court nor the U.S. Trustee.… Thus, Weil Gotshal had a perceptible economic incentive not to pursue the possibility of claims against Tarnopol and Friedman with the same vigor and intensity it might have otherwise applied.").

Simply put, it is impossible for an attorney to ethically and competently represent a receivership and/or bankruptcy estate—with ongoing duties of impartiality and estate maximization—while maintaining attorney-client relationships with parties who need to be investigated and possibly sued by the estate. In such an instance, any attorney is either violating her duties to the receivership/bankruptcy estate and its creditors by not pursuing a target of the investigation, or is violating her duties to another client by investigating and suing that client. Either way, such conflicts are disabling and unwaivable. *In re Git-N-Go, Inc.*, 321 B.R. at 60 ("Thus, the Court finds that the written conflict waivers, while necessary in order to satisfy the rules of professional conduct, do not aid the cause of eliminating the adversity of interests between Hale-Halsell and the estate.").

3. *Greenberg's Representation of Xerox Is a Disabling Conflict of Interest Warranting Disqualification.*

As discussed above, the first step in the disqualification analysis is to determine whether "some specifically identifiable impropriety" occurred. *Brown*, 116 Nev. at 1205, 14 P.3d at 1270. If Greenberg was representing Xerox at the same time it was determining who to sue on behalf of the CO-OP and the receivership estate (it was), Greenberg was ethically incapable of making such a liability decision with respect to Xerox, thus impeding its ability to competently represent the Receiver. Greenberg's attorney-client relationship with Xerox would materially affect its analysis as to whether Xerox should have also been named as a defendant in the Milliman Lawsuit. Greenberg also would have been ethically barred from suing Xerox due to its ongoing representation of Xerox in several matters, all of which were substantially related to the receivership action and the eventual

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Milliman Lawsuit. Lo and behold, Xerox was not named a defendant in the Milliman Lawsuit, with Greenberg instead deciding to let it off the hook.[77] Further, Greenberg failed to disclose this conflicting representation in order for the Court to make an informed ruling as to whether Greenberg could competently and ethically represent the receivership estate. Accordingly, it is indisputable that a "specifically identifiable impropriety" occurred, and continues to occur to this day.

As explained above, these unique types of conflicts of interest are generally analyzed under receivership and/or bankruptcy law as opposed to under the Rules of Professional Conduct. That being said, Greenberg's concurrent representation of the receivership estate and Xerox—two adverse parties—would also be precluded under Nevada Rule of Professional Conduct 1.7(a)(1) and (a)(2), and would be unwaivable pursuant to Nevada Rule of Professional Conduct 1.7(b)(3). Even assuming Greenberg's representation of Xerox ended at some point in time, Greenberg still suffers from a conflict of interest pursuant to Nevada Rule of Professional Conduct 1.7(a)(2) ("There is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to…a former client) and Nevada Rule of Professional Conduct 1.9(a).

The second step of the disqualification analysis requires the Court to undertake a balancing test, weighing the interests of the parties, analyzing the prejudice that each party will suffer as a result of the decision, and considering the public interest in the scrupulous administration of justice. *Nev. Yellow Cab Corp. v. Eighth Jud. Dist. Ct.*, 123 Nev. 44, 54, 152 P.3d 737, 742-43 (2007). The outcome of the CO-OP receivership and all related litigation has far-reaching implications within the State of Nevada. There are thousands of Nevada creditors. There were thousands of Nevada insureds. Tens of millions of dollars are at stake. Meanwhile, Greenberg is representing the receivership estate without the ability to fully pursue all potential defendants. As shown above, the CO-OP was heavily reliant on Xerox and its operations were severely disrupted by Xerox's inability to perform its duties. Claims against Xerox could represent millions of dollars in damages that would ultimately be available to the receivership estate and its creditors. Yet the CO-OP is not

[77] Not only was the failure to include Xerox a significant detriment to the receivership estate and its creditors (it eliminated a source of asset recovery due to the potential expiration of the statute of limitations), it was also detrimental to all the Defendants in the Milliman Lawsuit because Xerox's misconduct would not be fully considered by the jury with respect to potential liability against the other Defendants.

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pursuing those claims—and perhaps can no longer pursue those claims—because Xerox is a client of Greenberg. In sum, Greenberg's conflict of interest based on its representation of Xerox warrants disqualification.

C. Greenberg's Representation of Valley Warrants Disqualification.

1. Any Attorney Who Represents a Creditor of the Receivership Estate Has a Disabling Conflict of Interest.

"It is the duty of the Receiver to determine the validity and the preference to be accorded to the claims of creditors. It is of paramount importance that during this process that the Receiver ensures that the creditors receive equality of treatment so far as is permissible under the law." *Hilti, Inc.*, 2007 Mass. Super. LEXIS 66, at *53; *see also KeyBank Nat. Ass'n v. Michael*, 737 N.E.2d 834 (Ind. Ct. App. 2000) ("The receiver is charged with impartially representing the interests of the receivership estate by preserving the assets for the benefit of all creditors and the company."). Thus, "counsel for a creditor should not act as Receiver or be employed by the Receiver in any capacity because of the potential for conflicts of interest." *Hilti, Inc.*, 2007 Mass. Super. LEXIS 66, at *88-89.

The rationale for this rule is straightforward. Creditors are generally adverse to one another because they are fighting over a limited pot of money. Accordingly, the receiver and her counsel must ensure impartiality and equal treatment of each and every creditor. If the receiver or her counsel owes fiduciary duties to one of the creditors based on an existing attorney-client relationship, it can be reasonably assumed that the particular creditor who is fortunate enough to be represented by the same counsel as the receiver could benefit from that arrangement. At a minimum, it taints the entire proceeding and calls into question the legitimacy of the receivership process. Numerous receivership or bankruptcy cases are in accord with these principles:

- *Scholes v. Tomlinson*, 1991 U.S. Dist. LEXIS 10486, at *23 (N.D. Ill. 1991) ("MWE's dual representation of the account holder class and Scholes, as well as Scholes' representation of the class while suing some members of the class, creates the unseemly appearance of partiality toward some of the creditors of the receivership entities.");
- *Real Estate Capital Corp.*, 31 Ohio Misc. at 188 ("There is also a very real problem, as in this particular case, where the assets of the corporation in receivership are not sufficient to pay off the creditors, and the receiver must decide which of the creditors he will pay and which of the creditors he will not pay.");

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- *Hilti, Inc.*, 2007 Mass. Super. LEXIS 66, at *91 ("Arnowitz could not be considered an independent counsel because he was acting on behalf of one of HML's creditors. It is obvious that Arnowitz's duty to Hilti, as one of the creditors of HML, may have conflicted with his performance as Receiver because as counsel to Receiver it would be his duty to see that all creditors and parties are treated alike and with the utmost fairness.").

That is not the only problem. In many instances, a receiver and/or her counsel have to dispute, negotiate, and/or litigate various creditors' claims. If the receiver and/or her counsel represents one or more creditors, those options are off the table, which is extremely detrimental to the receivership estate and the other creditors. Again, numerous receivership and bankruptcy cases have disapproved of these relationships:

- *In re Envirodyne Indus.*, 150 B.R. at 1019 ("The negotiation of a plan of reorganization likely will necessitate negotiation with Salomon, a 'substantial client' of Cleary, Gottlieb. Given these facts in this case, the Debtors' interests and the interests of the creditor body as a whole are not best represented at a negotiation table by a lawyer who faces a substantial client on the other side.");
- *In re Git-N-Go, Inc.*, 321 B.R. at 60 ("Further, as counsel for Hale-Halsell, Conner & Winters cannot effectively object on behalf of the estate to the validity or priority of Hale-Halsell's $ 9 million claim, recharacterize the claim as a contribution of capital rather than a loan, or seek to subordinate Hale-Halsell's claim, all issues that could have a significant impact on the claims of unrelated unsecured creditors of the estate.");
- *In re American Printers and Lithographers, Inc.*, 148 B.R. 862, 865-66 (Bankr. N.D. Ill. 1992) ("In this case, Debtor and LaSalle have conflicting interests. Debtor's counsel must at least vigorously negotiate with LaSalle in order to fulfill its duties to Debtor, even if litigation is not warranted. SCK&G may not be able to do this without jeopardizing its relationship with its large and very important client LaSalle. Therefore, an actual conflict exists, and disqualification of SCK&G is required under the circumstances.").

Thus, as a matter of law, an attorney cannot ethically and competently represent a receivership estate and one of its creditors. Similar to the Xerox conflict described above, not only is such a conflict of interest untenable, it is also unwaivable. *Hilti, Inc.*, 2007 Mass. Super. LEXIS 66, at *91 ("There is no evidence before this Court that HML consented to this arrangement, and it would not matter if it had because a Receiver could not fulfill his role as a fiduciary to HML and the creditors if he represented both simultaneously."); *In re Git-N-Go, Inc.*, 321 B.R. at 60 ("Thus, the Court finds that the written conflict waivers, while necessary in order to satisfy the rules of professional conduct, do not aid the cause of eliminating the adversity of interests between Hale-Halsell and the estate.").

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2. *Greenberg's Representation of Valley is a Disabling Conflict of Interest Warranting Disqualification.*

Similar to the Xerox conflict of interest, the legal authorities above confirm that Greenberg has committed another "specifically identifiable impropriety" by representing a creditor of the receivership estate (Valley) as well as the Receiver. At the time of Greenberg's appointment as receivership counsel, it was representing adverse parties on both sides of the receivership action. Greenberg could not fulfill its obligations to the receivership estate and its creditors because of fiduciary duties owed to one of the most significant creditors of the estate arising out of an ongoing attorney-client relationship. To the extent Greenberg would have any involvement with the administration of the CO-OP's assets, ***which it undoubtedly has and would***, the Court could not be assured that Valley was not receiving preferential treatment from its counsel, especially considering there is a limited amount of assets and creditors will likely need to accept claim discounts. Due to its allegiances and obligations to Valley, Greenberg could not play "hardball" with Valley with respect to its $5,000,000.00 claim. It could not threaten litigation against Valley; nor could it dispute the claim in any respect, as any such adverse action would be a breach of Greenberg's duties owed to Valley. Further, there is no indication that Greenberg disclosed this conflicting representation to this Court at the time of its appointment.[78]

Again, due to the unique nature of receivership and bankruptcy conflicts of interest, courts do not necessarily look to the Rules of Professional Conduct in addressing disqualification. That being said, Greenberg's conflict of interest with Valley would also constitute a violation of Nevada Rule of Professional Conduct 1.7(a)(1) and (a)(2), and would be unwaivable pursuant to Nevada Rule of Professional Conduct 1.7(b)(3). Even assuming Greenberg's representation of Valley ended at some point in time, ***which is not reflected in the receivership docket***, Greenberg still suffers from a conflict of interest pursuant to Nevada Rule of Professional Conduct 1.7(a)(2) ("There is a

[78] Greenberg filed a Response on behalf of Valley in this Court approximately 5 months before its appointment as receivership counsel. However, that would not have absolved Greenberg of its obligation to bring this issue to the Court's attention at the time of its appointment, as the Court cannot be expected to recall that Greenberg was representing Valley five months before nor to identify that any such representation would create a conflict. *In re Glenn Electric Sales Corp.*, 99 B.R. 596, 599 (D.N.J. 1988) ("The reviewing court has no duty 'to search a file to determine for itself that a prospective attorney is not involved in actual or potential conflicts of interest.'") (citation omitted).

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significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to…a former client) and Nevada Rule of Professional Conduct 1.9(a).

The second step of the disqualification analysis is analogous to the Xerox conflict. The outcome of the CO-OP receivership and all related litigation has far-reaching implications within the State of Nevada. There are thousands of Nevada creditors. There were thousands of Nevada insureds. Tens of millions of dollars are at stake. Meanwhile, Greenberg is also representing a significant creditor of the estate to the detriment of all the other creditors who are not fortunate enough to also be represented by Greenberg. In sum, Greenberg's conflict of interest based on its representation of Valley—***in this very same matter***—warrants disqualification.

D. Greenberg Must Disgorge Its Attorney's Fees.

"[A]n attorney may not recover fees for services rendered in violation of the rules of professional conduct." *Frank Settelmeyer & Sons, Inc. & Harmer, Ltd.*, 124 Nev. 1206, 1217, 197 P.3d 1051, 1059 (2008). "If the duty to properly disclose is neglected, however innocently, the attorney performs services at his peril. Should the undisclosed interest turn out to be adverse, or if appointment of this attorney would not have been in the best interest of the estate, the court is empowered to take the punitive measure of denying all compensation." *Coastal Equities, Inc.*, 39 B.R. 304, 308 (Bankr. S.D. Cal. 1984); *see also in re Bruno*, 327 B.R. 104, 110 (E.D.N.Y. 2005) ("The duty of disclosure is so important that the failure of an attorney to disclose all of his or her relevant connections is an independent basis for the disallowance of fees."). Receivership courts have also recognized the need to disallow attorney's fees to the extent receivership counsel has a disqualifying conflict of interest. *See Real Estate Capital Corp.*, 31 Ohio Misc. at 188; *KeyBank Nat. Ass'n*, 737 N.E.2d at 853; *Hilti, Inc.*, 2007 Mass. Super. LEXIS 66, at *92.

As explained above, Greenberg concealed its representations of Xerox and Valley from this Court at the time of its appointment. Further, Greenberg has not disclosed its representation of Xerox or Valley to this Court at any time since its appointment in January 2017. In fact, when Greenberg was discussing Xerox in its Eighth Status Report, it appears to have intentionally concealed its representation by referring to itself in the third-person—"Counsel for Xerox."

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Further, during the entire time of Greenberg's representation of the receivership estate, it has been operating with two disabling conflicts of interest which significantly hindered (and continue to hinder) its ability to provide ethical and competent representation. As a result of Greenberg's nondisclosure, the CO-OP's claims against Xerox are now potentially barred by the statute of limitations. Those claims could have been worth millions of dollars in damages. In comparison, in order to resolve the above-referenced class actions, Xerox (through Greenberg) agreed to pay up to $5 million to satisfy class member claims and $1.75 million in attorneys' fees and costs. Any such funds recovered on behalf of the CO-OP would have ultimately been available to the receivership estate and the creditors.

In sum, Greenberg should not be allowed to profit to the tune of approximately ***$4.8 million dollars in attorney's fees—and counting—***while it was unable to provide competent and ethical representation to the receivership estate, especially considering the expense that replacement counsel will incur to get up to the speed on the receivership matter and associated litigation. Greenberg is to blame for these issues, and therefore, disgorgement is appropriate.

E. If This Court Believes Additional Information Is Needed, Limited Discovery and an Evidentiary Hearing Are Appropriate.

Based upon the legal authority above, the pleadings and papers on file, and the exhibits attached hereto, the following simply cannot be disputed:

- Greenberg and Mark Ferrario, Esq. represented and defended Xerox in two class action lawsuits directly related to the ACA and the Xerox Exchange from 2014 through 2017.
- Greenberg represented and defended Xerox in a regulatory matter before the NDOI in 2017, the subject of which was also directly related to the ACA and the Xerox Exchange.
- Greenberg and Mark Ferrario, Esq. represented and defended another Xerox entity in an unrelated matter in 2018.
- Xerox was responsible for the creation and administration of the Xerox Exchange.
- Xerox (as the primary vendor of Silver State) was obligated to provide pertinent information and premium payments obtained via the Xerox Exchange to the CO-OP.
- Silver State terminated Xerox's contract in 2014 due to its failures to comply with these obligations, including the failure to provide pertinent information and premium payments to ACA insurers such as the CO-OP.
- Greenberg began representing Valley in the receivership action in 2016.

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- Greenberg never withdrew from its representation of Valley in the receivership action.
- Valley is a significant creditor of the receivership estate, with a claim of approximately $5,000,000.00 against the estate.
- Greenberg sought to be appointed as receivership counsel by this Court in December 2016.
- Greenberg was appointed as receivership counsel by this Court in January 2017.
- Greenberg was retained by the Receiver to analyze the CO-OP's potential claims against third parties.
- At the time of its appointment by this Court, Greenberg failed to disclose that it was representing Xerox (a potential target defendant) or that it was representing Valley (a significant creditor) in the same matter.
- Based on Greenberg's non-disclosure, this Court was unable to analyze whether Greenberg's representation of Xerox and Valley would amount to a disqualifying conflict of interest.
- Greenberg did not disclose its continuing representations of Xerox and Valley to this Court after it was appointed counsel.
- Greenberg never brought any claims for relief against its client Xerox, despite filing a lawsuit against Silver State over money that Xerox possesses.
- Greenberg never brought any claims for relief against its client Xerox in litigation by the Receiver against several defendants (including UHH) concerning, *inter alia*, the failures of the Xerox Exchange to provide pertinent information and premium payments to the CO-OP, despite uncontroverted evidence that Xerox's failures were causing significant damage to the CO-OP for an extended period of time.
- Greenberg has been paid (through May 2020) almost $5 million dollars from the receivership estate despite its conflicted representation and its inability to ethically and competently represent the receivership estate and its creditors.

These undisputed facts are sufficient to find that: (i) Greenberg had two disqualifying conflicts of interest at the time of its appointment; (ii) those conflicts of interest have remained throughout Greenberg's appointment; and (iii) Greenberg never disclosed any aspect of these conflicting representations to this Court. Accordingly, further discovery or an evidentiary hearing is unnecessary for the Court to decide this Motion.

Nevertheless, if this Court decides that it needs additional factual information to render a decision, UHH requests that it be permitted to conduct limited discovery regarding Greenberg's conflicting representations. In particular, UHH would conduct discovery (written discovery and depositions) into the following areas: (1) the scope of Greenberg's representation of Xerox; (2) the

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scope of Greenberg's representation of Valley; (3) Greenberg's consideration of these conflicts at the time of its appointment as receivership counsel; (4) whether conflict checks were performed; (5) whether conflict of interest waivers were requested and obtained; (6) the scope of Greenberg's investigation into potential claims against Xerox; (7) the rationale for not suing Xerox; and (8) the Receiver's and SDR's knowledge of the conflicts.

Further, to the extent this Court believes there are material disputed issues of fact, it should also order an evidentiary hearing to address these disputes. *See, e.g.*, *Phelan v. Middle States Oil Corp.*, 154 F.2d 978, 997 (2d Cir. 1946) ("Postponing, for the moment, consideration of appellees' contentions as to estoppel and laches, we think that appellants' charges on the facts now before us, have sufficient merit to require a full hearing in the district court."). Again, UHH believes that any such hearing is unnecessary and that disqualification is warranted now; however, UHH is willing to conduct the above discovery and participate in an evidentiary hearing to the extent this Court believes it is appropriate.

IV. CONCLUSION

For the foregoing reasons, the Motion should be granted. Greenberg and all of its attorneys should be disqualified from representing the Receiver and the receivership estate, and Greenberg should be ordered to disgorge all attorney's fees paid (approximately $4.8 million dollars and counting). Additionally, UHH requests that any order issued by this Court be deemed a "final order" pursuant to NRS 696B.190(5), thereby providing an immediate right to appeal.

DATED this 8th day of October, 2020.

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By: /s/ Dennis L. Kennedy
JOHN BAILEY
DENNIS KENNEDY
JOSEPH A. LIEBMAN
Attorneys for Unite Here Health and Nevada Health Solutions, LLC

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CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY❖KENNEDY and that on the 8th day of October, 2020, service of the foregoing **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**, was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system on all parties with an email address on record in this case.

/s/ Sharon L. Murnane
Employee of BAILEY❖KENNEDY

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