

Case No. _____

IN THE SUPREME COURT OF NEVADA

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

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 14 OF 19**

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APPENDIX TO PETITION FOR EXTRAORDINARY WRIT RELIEF
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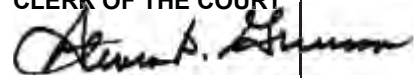
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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

NEVADA HEALTH CO-OP,

Defendant.

Case No. A-15-725244-C

Dept. No. I

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

HEARING DATE: DECEMBER 8, 2020

HEARING TIME: 9:00 A.M.

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

7 INTRODUCTION

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

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

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

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

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

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

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

28 / / /

1 **FACTUAL BACKGROUND**

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

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

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

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

28 ///

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 ARGUMENT

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

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

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

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

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

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

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

3 Here, the Movants—UHH and NHS—are not current or former clients of Greenberg
4 Traurig. (Ferrario Decl. ¶ 23.) Instead, they are non-clients seeking to derail litigation brought by
5 Greenberg Traurig’s actual client, the Receiver, who carefully limited the scope of Greenberg
6 Traurig’s representation to avoid any potential conflicts. (Bennett Decl. ¶¶ 13-16.) Neither of
7 Greenberg Traurig’s other clients—Xerox and Valley—has raised any issue with Greenberg
8 Traurig’s limited representation of the Receiver. (Ferrario Decl. ¶ 26.) Given that UHH and NHS
9 have no attorney-client relationship with Greenberg Traurig, they have no standing to raise their
10 motion to disqualify. *See Liapis*, 128 Nev. at 420, 282 P.3d at 737.³ This Court should not
11 countenance this “misuse” of a motion to disqualify as an “instrument[] of harassment or delay”
12 and should reject the Motion for lack of standing. *Brown*, 116 Nev. at 1205, 14 P.3d at 1270.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 against UHH, NHS, and others to which Xerox is not a party⁵— is not “substantially related” to any
2 prior matter in which Greenberg Traurig represented Xerox, none of which involved the Receiver,
3 UHH, or NHS; and (2) the Receiver’s interests are not “materially adverse” to Xerox’s, given that
4 Xerox is not a party and the Receiver *independently determined* not to yet bring claims against Xerox.
5 (Bennett Decl. ¶¶ 22-23.)

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

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

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

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

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

24
25 ⁶ *See, e.g., Scholes v. Tomlinson*, No. 90-cv-1350, 1991 WL 152062, at *7 (N.D. Ill. 1991) (receiver counsel
26 disqualified where represented a creditor class and counsel would “undoubtedly will play some role in the
27 SEC’s plan of distribution” to creditors); *Real Estate Capital Corp. v. Thunder Corp.*, 31 Ohio Misc. 169, 188
28 (Ohio Ct. Common Pleas 1972) (conflict existed for counsel to receiver who would have to “decide which of
the creditors he will pay and which of the creditors he will not pay”); *Hilti, Inc. v. HML Dev. Corp.*, No. 9-
01029-B, 2007 WL 6366486 (Mass. Super. Ct. Feb. 5, 2007) (disqualifying the receiver, who also represented
a creditor, because “it would be his duty to see that all creditors and parties are treated alike”); *In re Envirodyne*
Indus., Inc., 150 B.R. 1008, 1019 (N.D. Ill. 1993) (counsel to trustee also actively represented a substantial
creditor of debtor and representation of trustee would “necessitate negotiation” with creditor).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 **CONCLUSION**

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

14 RESPECTFULLY SUBMITTED this 16th day of November 2020.

15 GREENBERG TRAURIG, LLP

16 /s/ Mark E. Ferrario

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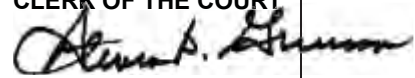
1 **CERTIFICATE OF SERVICE**

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

10
11 */s/ Evelyn Escobar-Gaddi*
12 An employee of Greenberg Traurig, LLP
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TAB 39

TAB 39



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Attorneys for Greenberg Traurig, LLP

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiff,

v.

NEVADA HEALTH CO-OP,

Defendant.

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

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

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

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9	<i>Nevada Comm’r of Ins. v. Milliman et al.</i> , No. A-17-760558-B, October 1, 2019 Hearing Transcript	174 – 230

1 RESPECTFULLY SUBMITTED this 16th day of November 2020.

2 GREENBERG TRAURIG, LLP

3 /s/ Mark E. Ferrario

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

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

Exhibit 1

DECL (CIV)

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DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA, EX. REL.

COMMISSIONER OF INSURANCE,

BARABARA D. RICHARDSON, IN HER

OFFICIAL CAPACITY AS STATUTORY

RECEIVER FOR DELINQUENT DOMESTIC

INSURER,

Plaintiff,

v.

NEVADA HEALTH CO-OP,

Defendant.

Case No. A-15-725244-C

Dept. No. I

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

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

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

10 **A. Background**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 20. Consistent with the limited scope of its engagement by the Receiver, Greenberg
20 Traurig has had no role in defending or administering the Valley claims. The claims were
21 submitted to NHC’s Javelina Claims Database and approved through the receivership claims’
22 administration process for provider claims, which we handled without any involvement of
23 Greenberg Traurig. The Receiver has not been adverse to Valley or its members regarding their
24 medical claims in the NHC receivership, and the Receiver (without assistance from the
25 Greenberg Traurig firm) has already issued notices of claim determination for the Valley claims
26 from which there were no legal appeals by Valley or its member facilities. The Valley claims
27 against the NHC receivership are now final under the court approved claim procedure for NHC.
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1 21. Similarly, Greenberg Traurig has had no role in advising the Receiver or SDR as
2 to the allocation of assets among creditors like Valley. As we had been doing prior to the
3 Receiver's limited retention of Greenberg Traurig, my office, with the assistance of financial
4 professionals, continued to handle all matters relating to the distribution of assets to creditors.

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

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

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

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

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


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

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

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

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

22
23 Executed on: November 15, 2020



24 Mark. F. Bennett
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Exhibit 2

1 **DECL (CIV)**

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24 *Attorneys for Greenberg Traurig, LLP*

25 **DISTRICT COURT**

26 **CLARK COUNTY, NEVADA**

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

Plaintiff,

v.

NEVADA HEALTH CO-OP,

Defendant.

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

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

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

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

11 **A. Background**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. Greenberg Traurig's Prior Representation Of Valley

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

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

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

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

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

D. Greenberg Traurig's Representation Of The Receiver

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Executed this 16th day of November 2020



Mark E. Ferrario

Exhibit 3

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

v.

NEVADA HEALTH CO-OP,

Defendant.

Case No. A-15-725244-C

Dept. No. I

DECLARATION OF JAMES E. WHITMIRE

I, James E. Whitmire, declare as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 ///

24 ///

25 ///

26 ///

27 ///

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

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

4 DATED this 13th day of November, 2020.

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

Exhibit 4

I. Party InformationPlaintiff(s) (name/address/phone): Lawrence Basich, Lea SwartleyDefendant(s) (name/address/phone): State of Nevada Ex Rel Silver State Health Insurance Exchange, Xerox State Health Care, LLCAttorney (name/address/phone): Matthew Q. Callister, Esq. 823 Las Vegas Blvd South, Las Vegas NV 89101 702-385-3343

Attorney (name/address/phone): _____

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)☐ **Arbitration Requested****Civil Cases**

Real Property	Torts	
<input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Title to Property <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	<input type="checkbox"/> Negligence <input type="checkbox"/> Negligence - Auto <input type="checkbox"/> Negligence - Medical/Dental <input type="checkbox"/> Negligence - Premises Liability (Slip/Fall) <input checked="" type="checkbox"/> Negligence - Other	<input type="checkbox"/> Product Liability <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> Employment Torts (Wrongful termination) <input type="checkbox"/> Other Torts <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition

Probate**Other Civil Filing Types**

Estimated Estate Value: _____ <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside Estates <input type="checkbox"/> Trust/Conservatorships <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> Other Probate	<input type="checkbox"/> Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input type="checkbox"/> Breach of Contract <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Acct/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Civil Petition for Judicial Review <input type="checkbox"/> Foreclosure Mediation <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal	<input type="checkbox"/> Appeal from Lower Court (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> Civil Writ <input type="checkbox"/> Other Special Proceeding <input type="checkbox"/> Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment - Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input type="checkbox"/> Other Civil Matters
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III. Business Court Requested (Please check applicable category, for Clark or Washoe Counties only.)

<input type="checkbox"/> NRS Chapters 78-88 <input type="checkbox"/> Commodities (NRS 90) <input type="checkbox"/> Securities (NRS 90)	<input type="checkbox"/> Investments (NRS 104 Art. 8) <input type="checkbox"/> Deceptive Trade Practices (NRS 598) <input type="checkbox"/> Trademarks (NRS 600A)	<input type="checkbox"/> Enhanced Case Mgmt/Business <input type="checkbox"/> Other Business Court Matters
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4/11/14
Date

Signature of initiating party or representative


CLERK OF THE COURT

1 **COMP**
2 **MATTHEW Q. CALLISTER, ESQ.**
3 Nevada Bar No. 001396
4 mqc@call-law.com
5 **MITCHELL S. BISSON, ESQ.**
6 Nevada Bar No. 011920
7 mbisson@call-law.com
8 **CALLISTER, IMMERMANN & ASSOCIATES**
9 823 Las Vegas Blvd. South
10 Las Vegas, Nevada 89101
11 Tel: (702) 385-3343 / Fax: (702) 385-2899
12 *Attorneys for Plaintiffs*

13 **DISTRICT COURT**
14 **CLARK COUNTY, NEVADA**

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

19 Plaintiffs,

20 v.

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

27 Defendants.

Case No.: A-14-698567-C

Dept. No.: IV

CLASS ACTION COMPLAINT

Causes of Action:

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

DEMAND FOR JURY TRIAL

EXEMPTION FROM ARBITRATION
REQUESTED

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

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

33 /.../

34 /.../

INTRODUCTION

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

/.../

/.../

PARTIES AND JURISDICTION

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

CLASS ACTION ALLEGATIONS

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

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

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

FACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 51. Plaintiffs justifiably relied on Defendants representations by timely making monthly
2 premium payments and by foregoing alternative health insurance options.
- 3 52. Defendants, and each of them, knew or should have known that the coverage effective
4 dates provided by Defendants were incorrect. Defendants, and each of them, knew or
5 should have known that Basich's application and/or premium payment was submitted by
6 Defendants to the incorrect insurance provider.
- 7 53. Defendants, and each of them, did not exercise reasonable care when making the above-
8 referenced misrepresentations to Plaintiffs.
- 9 54. As a proximate and legal result of Defendants' conduct, Plaintiffs have suffered damages
10 in an amount in excess of \$10,000.00.
- 11 55. The Plaintiffs have been required to retain the services of Callister, Immerman &
12 Associates to prosecute this action, and Plaintiffs are therefore entitled to recover their
13 reasonable attorney's fees and costs of court for having to bring this action.
14

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6
7 **PRAYER FOR RELIEF**

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

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

14
15 **DEMAND FOR JURY TRIAL**

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

17
18 DATED: This 1st day of April, 2014.

19
20
21 Respectfully submitted,

22 **CALLISTER, IMMERMANN & ASSOCIATES**

23
24 By: 

25 **MATTHEW Q. CALLISTER, ESQ.**

26 Nevada Bar No. 001396

27 **MITCHELL S. BISSON, ESQ.**

28 Nevada Bar No. 011920

823 Las Vegas Blvd. South, 5th Floor

Las Vegas, NV 89101

Attorneys for Plaintiffs

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8 **CALLISTER, IMMERMANN & ASSOCIATES**

9 823 Las Vegas Blvd. South

10 Las Vegas, Nevada 89101

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

12 *Attorneys for Plaintiffs*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

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

19 Plaintiffs,

20 v.

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

27 Defendants.
28

Case No.: A-14-698567-C

Dept. No.: IV

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

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

31 LAWRENCE BASICH

\$ 270.00

32 ///

1 LEA SWARTLEY

\$ 30.00

2 **TOTAL REMITTED:**

\$ 300.00

3
4 DATED: This 1st day of April, 2014.

6 **CALLISTER, IMMERMANN & ASSOCIATES**

7
8 

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

10 Nevada Bar No. 001396

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


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13 823 Las Vegas Blvd. South, 5th Floor

14 Las Vegas, NV 89101

15 *Attorneys for Plaintiffs*

Exhibit 5



CLERK OF THE COURT

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

22 **DISTRICT COURT**

23 **CLARK COUNTY, NEVADA**

24 **PATRICK CASALE**, individually and on behalf
25 of all those similarly situated; **MARY**
26 **ELSBERRY**, individually and on behalf of all
27 those similarly situated; **DWIGHT MAZZONE**,
28 individually and on behalf of all those similarly
situated; **JEREMY SHUGARMAN**, individually
and on behalf of all those similarly situated;
GRACE BUTLER, individually and on behalf of
all those similarly situated; and **ANDREW**
PERWEIN, individually and on behalf of all
those similarly situated;

Plaintiffs,

v.

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

Defendants.

Case No.: A- 14 - 706171 - C

Dept. No.: XVI

CLASS ACTION COMPLAINT
AND JURY DEMAND

EXEMPTION FROM
ARBITRATION REQUESTED

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

EGLET LAW GROUP

TRIAL ATTORNEYS

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

INTRODUCTION

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

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

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

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

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

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

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

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

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

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

PARTIES AND JURISDICTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 **CLASS ACTION ALLEGATIONS**

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

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

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

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

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

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

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

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

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

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

FACTS OF THE CASE

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

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

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

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

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

1 originally intended.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

...

...

1 FIRST CAUSE OF ACTION

2 *(Negligence/Gross Negligence)*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 SECOND CAUSE OF ACTION

17 *(Intentional Interference with Contractual Relations)*

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

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

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

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

1 commissions.

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

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

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

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

22 82. As a direct and proximate result of the tortious actions by Defendants, the
23 Plaintiffs and those similarly situated have suffered damages in an amount in excess of
24 \$10,000.00.

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

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

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

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

THIRD CAUSE OF ACTION

(Intentional Interference with Prospective Economic Advantage)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

bring this action.

FOURTH CAUSE OF ACTION

(Fraudulent Misrepresentation and Omissions)

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

100. At all times mentioned herein, Defendants intentionally made material misrepresentations and omissions of fact as alleged above.

101. Specifically, the Exchange and Xerox intentionally, deliberately, knowingly, willfully, and maliciously devised a scheme to cover up the multitude of technical errors, miscalculated health insurance premiums, intentional delay tactics, by taking intentional actions to prevent Plaintiffs and those similar situated from receiving commissions for hundreds of hours worked enrolling individuals through Nevada Health Link, and by failing to notify Plaintiffs and those similarly situated that NPNs and other enrollment information had been deleted, destroyed or purposely withheld from insurance carriers for months.

102. Plaintiffs and those similarly situated justifiably relied on Defendants' representations and omissions by timely providing NPNs and identifying information to the Exchange reflecting the individuals they assisted with enrollment through the Nevada Health Link.

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

104. The Plaintiffs have been required to retain the services of attorneys to prosecute this action, and Plaintiffs are therefore entitled to recover their reasonable attorney's fees and costs of court for having to bring this action.

FIFTH CAUSE OF ACTION

(Negligent Misrepresentation)

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

106. Defendants represented to Plaintiffs and other similarly situated that Defendants

would forward their NPNs information to insurance carriers whenever Plaintiffs or those similarly situated assisted a consumer obtain insurance coverage through the Nevada Health Link.

107. Plaintiffs and those similarly situated justifiably relied on Defendants representations by taking required courses and obtaining “appointments” by the Nevada Health, by assisting consumers enroll with health plans through the Nevada Health Link, and by providing Nevada Health Link with weekly reports of the consumers for whom they provided assistance.

108. Defendants, and each of them, knew or should have known that the NPN information, premiums and other enrollment information were not timely transmitted to the insurance carrier, or in many cases, were lost or deleted and therefore not submitted at all.

109. Defendants, and each of them, did not exercise reasonable care when making the above-referenced misrepresentations to Plaintiffs.

110. As a proximate and legal result of Defendants’ conduct, Plaintiffs have suffered damages in an amount in excess of \$10,000.00.

111. The Plaintiffs have been required to retain the services of attorneys to prosecute this action, and Plaintiffs are therefore entitled to recover their reasonable attorney’s fees and costs of court for having to bring this action.

SIXTH CAUSE OF ACTION

(Conversion)

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

113. Defendants, and each of them, committed multiple acts of ongoing dominion of the property of Plaintiffs and those similarly situated – by retaining and/or denying access to NPNs, enrollment information and premiums actually paid by enrollees for months before transmitting them to the insurance carriers so that Plaintiffs and those similarly situated could not receive earned commissions from those premiums.

114. Upon information and belief, Defendants intentionally delayed and/or denied

1 access to NPNs of Plaintiffs and those similarly situated, enrollment information and insurance
2 premiums actually paid by enrollees by failing to timely submit the same to the applicable
3 insurance carriers and/or by failing to submit NPNs of Plaintiffs and those similarly situated,
4 enrollment information and insurance premiums actually paid by enrollees to the applicable
5 insurance carriers at all.

6 115. Defendants' act of dominion over the NPNs of Plaintiffs and those similarly
7 situated, enrollment information and insurance premiums actually paid by enrollees was in
8 defiance of Plaintiffs' and similarly situated persons' rights to funds payable from or based upon
9 said funds in the form of a commission.

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

12 **SEVENTH CLAIM FOR RELIEF**

13 **(Accounting)**

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

16 118. As a result of the wrongful and tortious acts alleged herein, Defendants have been
17 and currently are now in possession of substantial sums of money and other consumer
18 enrollment information which reflects the amount of actual commissions of which Plaintiffs and
19 Plaintiffs' class have been deprived as well as the amount of commissions which remain due and
20 owing to Plaintiffs and the Plaintiffs' Class.

21 119. Plaintiffs and the Plaintiffs' Class have been and will be unable to ascertain the
22 precise amount of said commissions without a full and complete accounting.

23 120. Plaintiffs and the Plaintiffs' Class, therefore, pray that this Court require a full
24 and complete accounting of premiums collected by Defendants with regard to each and every
25 Nevada Health Link enrollee assisted by Plaintiffs and the Plaintiffs Class since October 1, 2013.

26 **PRAYER FOR RELIEF**

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

28 A. That Plaintiffs and the Plaintiffs' Class be awarded actual damages in excess of

\$10,000.00;

- B. That a full and complete accounting of premiums paid with regard to each and every Nevada Health Link enrollee assisted by Plaintiffs and the Plaintiffs Class since October 1, 2013 be completed and provided to Plaintiffs by Defendants;
- C. That Plaintiffs and the Plaintiffs' Class be awarded punitive damages in excess of \$10,000.00;
- D. That Plaintiffs and the Plaintiffs' Class be awarded reasonable attorney's fees;
- E. That Plaintiffs and the Plaintiffs' Class be awarded their costs of court;
- F. That Plaintiffs and the Plaintiffs' Class be awarded delay damages and/or Prejudgment and post-judgment interest.
- G. Plaintiffs and the Plaintiffs' Class be awarded any other relief as the Court may deem proper.

DEMAND FOR JURY TRIAL

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

DATED this 26th day of August, 2014.

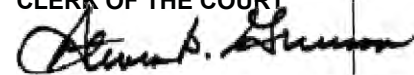
Respectfully submitted,

EGLET LAW GROUP

By: /s/ Artemus W. Ham, Esq.
 ROBERT T. EGLET, ESQ.
 ARTEMUS W. HAM, ESQ.
 400 South Seventh Street, Box 1, Suite 400
 Las Vegas, Nevada 89101

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 MATTHEW Q. CALLISTER, ESQ.
 MITCHELL S. BISSON, ESQ.
 823 Las Vegas Blvd. South, 5th Floor
 Las Vegas, NV 89101
Attorneys for Plaintiffs

Exhibit 6



1 **NEOJ**
2 ROBERT T. EGLET, ESQ.
3 Nevada Bar No. 3402
4 ERICA D. ENTSMINGER, ESQ.
5 Nevada Bar No. 7432
6 **EGLET PRINCE**
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13 MATTHEW Q. CALLISTER, ESQ.
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16 **CALLISTER & ASSOCIATES**
17 823 Las Vegas Blvd. South
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19 Tel: (702) 385-3343
20 Fax: (702) 385-2899
21 *Attorneys for Plaintiffs*

22 **DISTRICT COURT**
23 **CLARK COUNTY, NEVADA**

24 **LAWRENCE BASICH**, individually and on
25 behalf of all those similarly situated; **JOE**
26 **DOPUDJA**, individually and on behalf of those
27 similarly situated; **LAURY PHELPS**, individually
28 and on behalf of those similarly situated; **DAVID**
HENRY, individually and on behalf of those
similarly situated; **MARC SIMPSON**,
individually and on behalf of those similarly
situated; **ALEXANDER LOMBARDO**,
individually and on behalf of those similarly
situated; **KAREN ROSS**, individually and on
behalf of those similarly situated; **JENNIFER**
PAULIN, individually and on behalf of those
similarly situated; **BEN LAMBERT**, individually
and on behalf of those similarly situated; **LILA**
CEBELLOS, individually and on behalf of those
similarly situated; **MORRIS MOLATTO**,
individually and on behalf of those similarly
situated; **CARLOS GARCIA**, individually and on
behalf of those similarly situated; **LESLIE**
TAYLOR, individually and on behalf of those
similarly situated; **VALERIE BOWMAN**,
individually and on behalf of those similarly
situated; **MARK MASCARELLI**, individually
and on behalf of those similarly situated;

Plaintiffs,

v.

Case No.: A-14-698567-C
Dept. No.: XVI

**NOTICE OF ENTRY OF ORDER
GRANTING FINAL APPROVAL OF
CLASS SETTLEMENT AND
ATTORNEYS' FEES**

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

Defendants.

PATRICK CASALE, individually and on behalf
of all those similarly situated; MARY
ELSBERRY, individually and on behalf of all
those similarly situated; DWIGHT MAZZONE,
individually and on behalf of all those similarly
situated; JEREMY SHUGARMAN, individually
and on behalf of all those similarly situated;
GRACE BUTLER, individually and on behalf of
all those similarly situated; and ANDREW
PERWEIN, individually and on behalf of all those
similarly situated;

Plaintiffs,

v.

XEROX STATE HEALTHCARE, LLC, a
foreign limited liability company; XEROX
CORPORATION, a foreign corporation; DOE
INDIVIDUALS I-X; ROE CORPORATIONS I-
X,

Defendants.

Case No. A-14-706171-C

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PLEASE TAKE NOTICE that an Order Granting Final Approval of Class Settlement and Attorneys' Fees was signed by this Court on May 25, 2017 and entered on May 25, 2017, a copy is attached as Exhibit "1".

Dated this 25th day of May, 2017.

EGLET PRINCE

/s/Erica D. Entsminger

ROBERT T. EGLET, ESQ.

Nevada Bar No. 3402

ERICA D. ENTSMINGER, ESQ.

Nevada Bar No. 7432

400 South Seventh Street, 4th Floor

Las Vegas, Nevada 89101

and

MATTHEW Q. CALLISTER, ESQ.

Nevada Bar No. 001396

823 Las Vegas Blvd. South

Las Vegas, Nevada 89101

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of EGLET PRINCE, and that on May 25th, 2017, I caused the foregoing document entitled **NOTICE OF ENTRY OF ORDER GRANTING FINAL APPROVAL OF CLASS SETTLEMENT AND ATTORNEYS' FEES** to be served upon those parties listed below by U.S. regular mail.

Mark E. Ferrario, Esq.
Whitney L. Welch-Kirmse, Esq.
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Las Vegas, NV 89169
Attorneys for Defendants

Matthew Q. Callister, Esq.
CALLISTER & ASSOCIATES
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Las Vegas, Nevada 89101
Attorneys for Plaintiffs

/s/Crystal Garcia
An employee of EGLET PRINCE

EXHIBIT 1

Steven D. Grierson

ORDR

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Las Vegas, Nevada 89169

Attorney for Defendants

DISTRICT COURT

CLARK COUNTY, NEVADA

LAWRENCE BASICH, individually and on behalf of all those similarly situated; JOE DOPUDJA, individually and on behalf of all those similarly situated; LAURY PHELPS individually and on behalf of all those similarly situated; DAVID HENRY, individually and on behalf of all those similarly situated; MARC SIMPSON, individually and on behalf of all those similarly situated; ALEXANDER LOMBARDO; individually and on behalf of all those similarly situated; KAREN ROSS, individually and on behalf of all those similarly situated; JENNIFER PAULIN, individually and on behalf of all those similarly situated; BEN LAMBERT, individually and on behalf of all those similarly situated; LILA CEBELLOS, individually and on behalf of all those similarly situated; MORRIS MOLATTO, individually and on behalf of all those similarly situated; CARLOS GARCIA, individually and on behalf of all those similarly situated; LESLIE TAYLOR, individually and; on behalf of all those similarly situated; VALERIE BOWMAN, individually and on behalf of all those similarly

Case No.: A-14-698567-C

Dept. No.: XXIV

**ORDER GRANTING FINAL
APPROVAL OF CLASS
SETTLEMENT AND ATTORNEYS'
FEES**

LV 420905943v1

situated; and **MARK MASCARELLI**, individually and on behalf of all those similarly situated

Plaintiffs,

v.

XEROX STATE HEALTHCARE, LLC, a foreign limited liability company; **XEROX CORPORATION**, a foreign corporation; **DOE INDIVIDUALS I-X**; **ROE CORPORATIONS I-X**;

Defendants.

-AND-

PATRICK CASALE, individually and on behalf of all those similarly situated; **MARY ELSBERRY**, individually and on behalf of all those similarly situated; **DWIGHT MAZZONE**, individually and on behalf of all those similarly situated; **JEREMY SHUGARMAN**, individually and on behalf of all those similarly situated; **GRACE BUTLER**, individually and on behalf of all those similarly situated; and **ANDREW PERWEIN**, individually and on behalf of all those similarly situated;

Plaintiffs,

v.

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

Defendants.

Consolidated with:

Case No.: A-14-706171-C

Dept. No.: XVI

The Parties' Joint Motion for Final Approval of Class Settlement and Plaintiffs' Request for Attorneys' Fees having come before this court on May 25, 2017, with counsel for both parties appearing in person. The Court having considered the papers submitted in support of the Motion, and no opposition having been filed,

IT IS HEREBY ORDERED:

1. This Court previously granted preliminary approval of the settlement based upon the terms set forth in the Joint Stipulation of Settlement and Release (the "Settlement Agreement"), a complete copy of which was attached as Exhibit "1" to the Parties' Joint Motion For Preliminary Approval of Class Settlement, Certification of Settlement Class, Approval of Attorneys' Fees And Costs; And Notice To Class Member filed on September 29, 2016. At that time, the Court determined that the settlement fell with the range of reasonableness and appeared to be presumptively valid, subject only to any objections that may be raised at the final fairness hearing. The notices approved and directed in that preliminary approval having gone out to Class Members, and no objection to the settlement having been raised, the Court finds that the settlement is fair and is entitled to final approval which is hereby ordered. The final terms of the settlement are therefore deemed approved as being fair, reasonable and adequate, and in the best interests of the Settlement Class.

2. The Court further finds that the Settlement is the product of arm's length negotiations presided over by a competent mediator, and was not collusive.

3. The Court finds that Defendants, as Claims Administrator, complied with the Court's Preliminary Order with regard to form and content of the notice and the notification process itself and, again, confirms that these met the requirements of due process and provided the best notice practical under the circumstances and constitutes due and sufficient notice to all persons entitled thereto.

4. The Court finds that the total payout of \$99,218.31 to compensate a total of 107 valid claims, as to which no objection has been lodged, is hereby approved as fair, reasonable and adequate.

5. The Court finds that the amount of \$1,750,000 in attorneys' fees and expenses to Class Counsel, as to which no objections were received, is hereby approved as fair, reasonable and adequate.

6. Pursuant to the Settlement Agreement Sections 3.1 through 3.3, the following should occur to effectuate payment of the settlement:

A. Within (20) calendar days after the date of the Order granting final approval, Defendants shall issue a payment check to Class Claimants via First Class United States Mail who are deemed by the Defendants or the Appeal Administrator to have a Valid Claim.

B. Within (20) calendar days after the date of the Order granting final approval, Defendants shall pay Class Counsel \$1,750,000 via wire transfer.

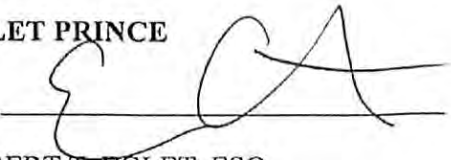
7. Within (5) days of completion of the payments outlined in Paragraph 6, the Court hereby dismisses with prejudice all claims belonging to Representative Plaintiffs and Settlement Class Members who did not timely and validly request exclusion from the Settlement Class. Except as expressly provided in the Settlement Agreement, each of the Parties, including each Settlement Class Member, shall bear his, her or its own costs and attorneys' fees.

DATED this 25 day of May, 2017.


DISTRICT COURT JUDGE

Submitted by:

EGLET PRINCE

By: 
ROBERT T. EGLET, ESQ.
Nevada Bar No. 3402
400 South Seventh Street, Box 1, Suite 400
Las Vegas, Nevada 89101