

IN THE SUPREME COURT OF NEVADA

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

Electronically Filed
Mar 16 2022 01:19 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Petitioners,

vs.

EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN
AND FOR THE COUNTY OF CLARK, THE HONORABLE TIMOTHY C.
WILLIAMS, DISTRICT COURT JUDGE,

Respondent

- and -

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

Real Party in Interest.

District Court Case No. A-17-760558-B, Department XVI

PETITIONERS' REPLY APPENDIX - VOLUME 2 OF 2

JOHN R. BAILEY, Nevada Bar No. 0137
DENNIS L. KENNEDY, Nevada Bar No. 1462
SARAH E. HARMON, Nevada Bar No. 8106
JOSEPH A. LIEBMAN, Nevada Bar No. 10125
BAILEY❖KENNEDY

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

Attorneys for Petitioners UNITE HERE
HEALTH and NEVADA HEALTH
SOLUTIONS, LLC

March 16, 2022

PETITIONERS' REPLY APPENDIX
VOLUME 2 OF 2

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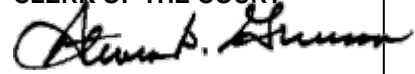
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TAB 18

TAB 18



NTSO

MARK E. FERRARIO, ESQ.

Nevada Bar No. 001625

DONALD L. PRUNTY, ESQ.

Nevada Bar No. 008230

GLENN F. MEIER, ESQ.

Nevada Bar No. 006059

GREENBERG TRAURIG, LLP

10845 Griffith Peak Drive, Suite 600

Las Vegas, Nevada 89135

Telephone: (702) 792-3773

Facsimile: (702) 792-9002

Email: ferrariom@gtlaw.com

pruntyd@gtlaw.com

meierg@gtlaw.com

Counsel for Plaintiff

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

MILLIMAN, INC., a Washington Corporation;
JONATHAN L. SHREVE, an Individual;
MARY VAN DER HEIJDE, an Individual;
MILLENNIUM CONSULTING SERVICES,
LLC, a North Carolina Corporation; LARSON
& COMPANY P.C., a Utah Professional
Corporation; DENNIS T. LARSON, an
Individual; MARTHA HAYES, an Individual;
INSUREMONKEY, INC., a Nevada
Corporation; ALEX RIVLIN, an Individual;
NEVADA HEALTH SOLUTIONS, LLC, a
Nevada Limited Liability Company; PAMELA
EGAN, an Individual; BASIL C. DIBSIE, an
Individual; LINDA MATTOON, an

CASE NO. A-17-760558-B
DEPARTMENT XVI

**NOTICE OF ENTRY
OF STIPULATION AND ORDER
TO EXTEND TIME FOR
PLAINTIFF'S RESPONSE TO
UNITE HERE HEALTH
SOLUTIONS, LLC'S MOTION FOR
SANCTIONS, CONTINUE
HEARING ON UNIT HERE
HEALTH AND NEVADA HEALTH
SOLUTIONS, LLC'S MOTION FOR
SANCTIONS, AND EXTEND
DISCOVERY DEADLINES
[SITH REQUEST]**

Individual; TOM ZUMTOBEL, an Individual;
BOBBETTE BOND, an Individual;
KATHLEEN SILVER, an Individual; UNITE
HERE HEALTH, is a multi-employer health
and welfare trust as defined in ERISA Section
3(37); DOES I through X inclusive; and ROE
CORPORATIONS I-X, inclusive,

Defendants.

YOU AND EACH OF YOU, will please take notice that the **STIPULATION AND
ORDER TO EXTEND TIME FOR PLAINTIFF'S RESPONSE TO UNITE HERE
HEALTH SOLUTIONS, LLC'S MOTION FOR SANCTIONS, CONTINUE
HEARING ON UNIT HERE HEALTH AND NEVADA HEALTH SOLUTIONS,
LLC'S MOTION FOR SANCTIONS, AND EXTEND DISCOVERY DEADLINES
[SITH REQUEST]** was entered on the 14TH day of October 2021. A copy of said Order is
attached hereto as **Exhibit A**.

DATED this 18th day of October 2021.

GREENBERG TRAURIG, LLP

/s/ Donald L. Prunty

MARK E. FERRARIO, ESQ.

Nevada Bar No. 1625

DONALD L. PRUNTY, ESQ.

Nevada Bar No. 8230

GLENN F. MEIER, ESQ.

Nevada Bar No. 6059

10845 Griffith Peak Drive, Suite 600

Las Vegas, Nevada 89135

Telephone: (702) 792-3773

Facsimile: (702) 792-9002

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the **18th day of October 2021**, and pursuant to NEFCR 9, NRCF 5(b), and EDCR 7.26, a true and correct copy of the foregoing **NOTICE OF ENTRY OF STIPULATION AND ORDER TO EXTEND TIME FOR PLAINTIFF'S RESPONSE TO UNITE HERE HEALTH SOLUTIONS, LLC'S MOTION FOR SANCTIONS, CONTINUE HEARING ON UNITE HERE HEALTH AND NEVADA HEALTH SOLUTIONS, LLC'S MOTION FOR SANCTIONS, AND EXTEND DISCOVERY DEADLINES [SITH REQUEST]** was filed with the Clerk of the Court using the Odyssey eFileNV Electronic Service system and served on all parties with an email-address on record, pursuant to Administrative Order 14-2 and Rule 9 of the N.E.F.C.R.

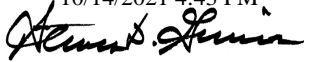
The date and time of the electronic proof of service is in place of the date and place of deposit in the United States mail.

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

EXHIBIT A

EXHIBIT A

STIPULATION AND ORDER


CLERK OF THE COURT

1 **SAO**

2 MARK E. FERRARIO, ESQ.

3 Nevada Bar No. 001625

4 DONALD L. PRUNTY, ESQ.

5 Nevada Bar No. 008230

6 GLENN F. MEIER, ESQ.

7 Nevada Bar No. 006059

8 GREENBERG TRAUERIG, LLP

9 10845 Griffith Peak Drive, Suite 600

10 Las Vegas, Nevada 89135

11 Telephone: (702) 792-3773

12 Facsimile: (702) 792-9002

13 Email: ferrariom@gtlaw.com

14 pruntyd@gtlaw.com

15 meierg@gtlaw.com

16 *Counsel for Plaintiff*

17 **EIGHTH JUDICIAL DISTRICT COURT**

18 **CLARK COUNTY, NEVADA**

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

24 Plaintiff,

25 v.

26 MILLIMAN, INC., a Washington
27 Corporation; JONATHAN L. SHREVE, an
28 Individual; MARY VAN DER HEIJDE, an
Individual; MILLENNIUM CONSULTING
SERVICES, LLC, a North Carolina
Corporation; LARSON & COMPANY P.C., a
Utah Professional Corporation; DENNIS T.
LARSON, an Individual; MARTHA HAYES,
an Individual; INSUREMONKEY, INC., a
Nevada Corporation; ALEX RIVLIN, an
Individual; NEVADA HEALTH
SOLUTIONS, LLC, a Nevada Limited
Liability Company; PAMELA EGAN, an
Individual; BASIL C. DIBSIE, an Individual;

CASE NO. A-17-760558-B

DEPARTMENT XVI

**STIPULATION AND ORDER TO
EXTEND TIME FOR PLAINTIFF'S
RESPONSE TO UNITE HERE
HEALTH AND NEVADA HEALTH
SOLUTIONS, LLC'S MOTION FOR
SANCTIONS, CONTINUE
HEARING ON UNITE HERE
HEALTH AND NEVADA HEALTH
SOLUTIONS, LLC'S MOTION FOR
SANCTIONS, AND EXTEND
DISCOVERY DEADLINES
[SIXTH REQUEST]**

LINDA MATTOON, an Individual; TOM ZUMTOBEL, an Individual; BOBBETTE BOND, an Individual; KATHLEEN SILVER, an Individual; UNITE HERE HEALTH, is a multi-employer health and welfare trust as defined in ERISA Section 3(37); DOES I through X inclusive; and ROE CORPORATIONS I-X, inclusive,

Defendants.

Plaintiff STATE OF NEVADA, EX REL. COMMISSIONER OF INSURANCE, BARBARA D. RICHARDSON, IN HER OFFICIAL CAPACITY AS RECEIVER FOR NEVADA HEALTH CO-OP, by and through her counsel of record Greenberg Traurig, LLP; Defendants, KATHLEEN SILVER, BOBBETTE BOND, TOM ZUMTOBEL, PAM EGAN, BASIL DIBSIE and LINDA MATTOON (the “Management Defendants”), by and through their counsel of record Lipson Nelson, P.C.; Defendants, UNITE HERE HEALTH and NEVADA HEALTH SOLUTIONS, LLC, (the “UHH Defendants”) by and through their counsel of record Bailey Kennedy and Seyfarth Shaw; Defendants, INSUREMONKEY, INC. and ALEX RIVLIN (the “IM Defendants”), by and through their counsel of record Alverson Taylor & Sanders; and Defendants LARSON & COMPANY P.C., MARTHA HAYES and DENNIS T. LARSON (the “Larson Defendants”), by and through their counsel of record Meyers, McConnell, Reisz, Sideman, (collectively, the “Parties”), hereby STIPULATE and JOINTLY move this Court as follows:

WHEREAS, on September 7, 2021, the UHH Defendants filed Defendants Unite Here Health and Nevada Health Solutions, LLC’s Rule 37(c) Motion for Sanctions (“Motion for Sanctions”) ; and

WHEREAS, the Motion for Sanctions is set for hearing on November 10, 2021 at 9:00 a.m.; and

WHEREAS, Plaintiff and UHH Defendants have stipulated and agreed that Plaintiff shall have until October 15, 2021 to file and serve an opposition to the Motion for Sanctions; and

1 **WHEREAS**, UHH Defendants reply to Plaintiff's opposition to the Motion for
2 Sanctions shall be due no later than seven days prior to the hearing on the Motion for
3 Sanctions; and

4 **WHEREAS**, the Parties have stipulated and agreed to vacate the hearing on the
5 Motion for Sanctions set for November 10, 2021 at 9:00 a.m., and request that the Court
6 reset the hearing for the next available court date after November 24, 2021; and

7 **WHEREAS**, the depositions of the Defendants, the Parties' expert witnesses, and
8 over twenty (20) third-party witnesses must be scheduled between now and the close of
9 discovery; and

10 **WHEREAS**, the scheduling of such depositions continues to be complicated by the
11 ongoing effects of the COVID-19 pandemic as well as personal issues experienced by
12 different third party witnesses which have required the rescheduling of certain depositions;
13 and

14 **WHEREAS**, the Parties have stipulated and agreed that the discovery deadline shall
15 be extended to February 18, 2022; and

16 **WHEREAS**, the Parties have stipulated and agreed that the deadline to file
17 dispositive motions shall be extended to March 21, 2022.

18 **WHEREAS**, the Parties have stipulated and agreed that the deadline to file Motions
19 *in Limine* shall be extended to March 28, 2022.

20 **IT IS HEREBY STIPULATED AND AGREED** that:

21 1. Plaintiff shall have until **October 15, 2021** to file and serve an
22 opposition to the Motion for Sanctions;

23 2. UHH Defendants reply to Plaintiff's opposition to the Motion for
24 Sanctions shall be due no later than seven days prior to the hearing on the Motion for
25 Sanctions;

26 3. The November 10, 2021 hearing is hereby **VACATED** and shall be
27 reset by the Court to the next available court date after November 24, 2021, and

28 4. The discovery deadline shall be extended to **February 18, 2022**, and

5. The deadline to file dispositive motions shall be extended to **March 21, 2022**; and

6. The deadline to file Motions *in Limine* shall be extended to **March 28, 2022**.

IT IS SO STIPULATED.

Dated this 13th day of October 2021
GREENBERG TRAURIG, LLP

By: /s/ Glenn F. Meier

MARK E. FERRARIO, ESQ.
DONALD L. PRUNTY, ESQ.
GLENN F. MEIER, ESQ.
10845 Griffith Peak Drive, Suite 600
Las Vegas, Nevada 89135
Counsel for Plaintiff

Dated this 13th day of October 2021
ALVERSON TAYLOR & SANDERS

By: /s/ Matthew Pruitt

KURT R. BONDS, ESQ.
MATTHEW PRUITT, ESQ.
6605 Grand Montecito Parkway
Suite 200
Las Vegas, Nevada 89149
*Attorneys for Defendants,
InsureMonkey, Inc. and Alex
Rivlin*

Dated this 13th day of October 2021
**MEYERS, McCONNELL, REISZ,
SIDERMAN**

By: /s/ Russell B. Brown

LORI E. SIDERMAN, ESQ.
RUSSELL B. BROWN, ESQ.
1745 Village Center Circle
Las Vegas, Nevada 89134
*Counsel for Defendants, Larson &
Company, PC, Martha Hayes and
Dennis T. Larson*

Dated this 13th day of October 2021
LIPSON NEILSON, P.C.

By: /s/ Angela Nakamura Ochoa

JOSEPH P. GARIN, ESQ.
ANGELA T. NAKAMURA OCHOA, ESQ.
9900 Covington Cross Drive
Suite 120
Las Vegas, Nevada 89144
*Counsel for Defendants, Kathleen
Silver, Bobbette Bond, Tom Zumtobel,
Pam Egan, Basil Dibsie and Linda
Mattoon*

Dated this 13th day of October 2021
BAILEY ♦ KENNEDY

By: /s/ John Bailey

JOHN BAILEY, ESQ.
JOSEPH A. LIEBMAN, ESQ.
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148-1302
*Counsel for Defendants, Unite Here
Health and Nevada Health
Solutions, LLC*

Dated this 13th day of October 2021
SEYFARTH SHAW LLP

By: /s/ Suzanna C. Bonham

SUZANNA C. BONHAM, ESQ.
EMMA C. MATA, ESQ.
700 Milam, Suite 1400
Houston, Texas 77002
*Counsel for Defendants, Unite Here
Health and Nevada Health Solutions,
LLC*

ORDER

Based on the foregoing, **IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

1. Plaintiff shall have until **October 15, 2021** to file and serve an opposition to the Motion for Sanctions;

2. UHH Defendants reply to Plaintiff's opposition to the Motion for Sanctions shall be due no later than seven days prior to the hearing on the Motion for Sanctions;

*the Motion for Sanctions and Joinder are

3. The November 10, 2021 hearing on is hereby **VACATED** and shall be reset by the Court to ~~the next available court date after November 24, 2021, and~~ to January 5, 2022 at 9:30 a.m.

Ent'd/LB

4. The discovery deadline shall be extended to **February 18, 2022.**

5. The deadline to file dispositive motions shall be extended to **March 21, 2022.**

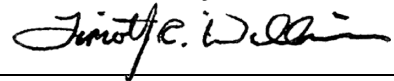
15

6. The deadline to file Motions *in Limine* shall be extended to **March 28, 2022.**

IT IS SO ORDERED.

*The Motion for Leave to file Oversized Brief on Rule 37(c) Motion for Sanctions remains on calendar for November 10, 2021 at 9:00 a.m.

Dated this 14th day of October, 2021



LB

889 929 4D9A 4F4B
Timothy C. Williams
District Court Judge

Respectfully submitted,
GREENBERG TRAURIG, LLP

/s/ Glenn F. Meier

MARK E. FERRARIO, ESQ.
DONALD L. PRUNTY, ESQ.
GLENN F. MEIER, ESQ.
10845 Griffith Peak Drive, Suite 600
Las Vegas, Nevada 89135
Counsel for Plaintiff

GREENBERG TRAURIG, LLP
10845 Griffith Peak Drive
Suite 600
Las Vegas, Nevada 89135
Telephone: (702) 792-3773
Facsimile: (702) 792-9002

From: [Matt Pruitt](#)
To: [Meier, Glenn \(OfCnl-LV-LT\)](#); [SBonham@seyfarth.com](#); [brown@mmrs-law.com](#); [AOchoa@lipsonneilson.com](#); [JLieberman@baileykennedy.com](#); [JBailey@baileykennedy.com](#)
Cc: [Escobar-Gaddi, Evy \(LSS-LV-LT\)](#); [EMata@seyfarth.com](#); [SHarmon@baileykennedy.com](#); [RCrooker@baileykennedy.com](#); [DPolsenberg@lewisroca.com](#); [ASmith@lewisroca.com](#); [Prunty, Donald L. \(Shld-LV-LT\)](#); [Cowden, Tami D. \(OfCnsl-LV-LT\)](#)
Subject: RE: Richardson v. Milliman et al.; Case No. A-17-760558-B
Date: Wednesday, October 13, 2021 10:32:07 AM
Attachments: [image001.png](#)

Yes, you have our permission as well.

Matt Pruitt, Esq.

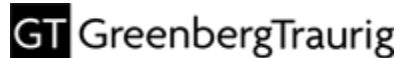
Alverson Taylor & Sanders
702.384.7000 | [alversontaylor.com](#)

From: [meierg@gtlaw.com](#) <[meierg@gtlaw.com](#)>
Sent: Wednesday, October 13, 2021 9:29 AM
To: [SBonham@seyfarth.com](#); [brown@mmrs-law.com](#); [AOchoa@lipsonneilson.com](#); [JLieberman@baileykennedy.com](#); [JBailey@baileykennedy.com](#)
Cc: [escobargaddie@gtlaw.com](#); [EMata@seyfarth.com](#); [SHarmon@baileykennedy.com](#); [RCrooker@baileykennedy.com](#); [DPolsenberg@lewisroca.com](#); [ASmith@lewisroca.com](#); [Matt Pruitt <MPruitt@AlversonTaylor.com>](#); [PruntyD@gtlaw.com](#); [cowdent@gtlaw.com](#)
Subject: RE: Richardson v. Milliman et al.; Case No. A-17-760558-B

Thank you Suzanna. Matt?

Glenn Meier
Of Counsel

Greenberg Traurig, LLP
Suite 600 | 10845 Griffith Peak Drive | Las Vegas, Nevada 89135
T +1 702.938.6866
[meierg@gtlaw.com](#) | [www.gtlaw.com](#) | [View GT Biography](#)



From: Bonham, Suzanna C <[SBonham@seyfarth.com](#)>
Sent: Wednesday, October 13, 2021 9:03 AM
To: Meier, Glenn (OfCnl-LV-LT) <[meierg@gtlaw.com](#)>; [brown@mmrs-law.com](#); [AOchoa@lipsonneilson.com](#); [JLieberman@baileykennedy.com](#); [JBailey@baileykennedy.com](#)
Cc: Escobar-Gaddi, Evy (LSS-LV-LT) <[escobargaddie@gtlaw.com](#)>; Mata, Emma <[EMata@seyfarth.com](#)>; [SHarmon@baileykennedy.com](#); [RCrooker@baileykennedy.com](#); [DPolsenberg@lewisroca.com](#); [ASmith@lewisroca.com](#); [mpruitt@alversontaylor.com](#); Prunty, Donald L. (Shld-LV-LT) <[PruntyD@gtlaw.com](#)>; Cowden, Tami D. (OfCnsl-LV-LT) <[cowdent@gtlaw.com](#)>
Subject: RE: Richardson v. Milliman et al.; Case No. A-17-760558-B

You have our permission.

Suzanna Bonham | Partner | Seyfarth Shaw LLP
700 Milam St. | Suite #1400 | Houston, Texas 77002-2812
Direct: +1-713-860-0085 | Mobile: +1-713-817-0765 | Fax: +1-713-821-0665
sbonham@seyfarth.com | www.seyfarth.com

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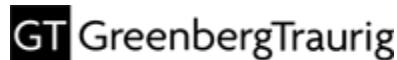
From: meierg@gtlaw.com <meierg@gtlaw.com>
Sent: Wednesday, October 13, 2021 11:01 AM
To: brown@mmsr-law.com; AOchoa@lipsonneilson.com; JLiebman@baileykennedy.com; JBailey@baileykennedy.com
Cc: escobargaddie@gtlaw.com; Bonham, Suzanna C <SBonham@seyfarth.com>; Mata, Emma <EMata@seyfarth.com>; SHarmon@baileykennedy.com; RCrooker@baileykennedy.com; DPolsenberg@lewisroca.com; ASmith@lewisroca.com; mpriott@alversontaylor.com; PruntyD@gtlaw.com; cwudent@gtlaw.com
Subject: RE: Richardson v. Milliman et al.; Case No. A-17-760558-B

[EXT. Sender]

Thank you Russ. Matt and Susanna/Emma, do we have authorization to affix your e-signatures and submit to the court for approval?

Glenn Meier
Of Counsel

Greenberg Traurig, LLP
Suite 600 | 10845 Griffith Peak Drive | Las Vegas, Nevada 89135
T +1 702.938.6866
meierg@gtlaw.com | www.gtlaw.com [gtlaw.com] | [View GT Biography](#) [gtlaw.com]



From: Russell Brown <brown@meyersmccconnell.com>
Sent: Tuesday, October 12, 2021 2:05 PM
To: Angela Ochoa <AOchoa@lipsonneilson.com>; Meier, Glenn (OfCnl-LV-LT) <meierg@gtlaw.com>; JLiebman@baileykennedy.com; JBailey@baileykennedy.com
Cc: Escobar-Gaddi, Evy (LSS-LV-LT) <escobargaddie@gtlaw.com>; sbonham@seyfarth.com;

EMata@seyfarth.com; SHarmon@baileykennedy.com; RCrooker@baileykennedy.com;
DPolsenberg@lewisroca.com; ASmith@lewisroca.com; mpriott@alversontaylor.com; Prunty, Donald
L. (Shld-LV-LT) <PruntyD@gtlaw.com>; Cowden, Tami D. (OfCnsl-LV-LT) <cowdent@gtlaw.com>
Subject: RE: Richardson v. Milliman et al.; Case No. A-17-760558-B

You have my authority to affix my electronic signature as well.

Thank you ,

Russ

From: Angela Ochoa <Achoa@lipsonneilson.com>
Sent: Tuesday, October 12, 2021 1:59 PM
To: meierg@gtlaw.com; JLiebman@baileykennedy.com; brown@mms-law.com;
JBailey@baileykennedy.com
Cc: escobargaddie@gtlaw.com; sbonham@seyfarth.com; EMata@seyfarth.com;
SHarmon@baileykennedy.com; RCrooker@baileykennedy.com; DPolsenberg@lewisroca.com;
ASmith@lewisroca.com; mpriott@alversontaylor.com; PruntyD@gtlaw.com; cowdent@gtlaw.com
Subject: RE: Richardson v. Milliman et al.; Case No. A-17-760558-B

You have my authority to affix my electronic signature.

Angela

From: meierg@gtlaw.com <meierg@gtlaw.com>
Sent: Tuesday, October 12, 2021 12:19 PM
To: JLiebman@baileykennedy.com; brown@mms-law.com; JBailey@baileykennedy.com; Angela
Ochoa <Achoa@lipsonneilson.com>
Cc: escobargaddie@gtlaw.com; sbonham@seyfarth.com; EMata@seyfarth.com;
SHarmon@baileykennedy.com; RCrooker@baileykennedy.com; DPolsenberg@lewisroca.com;
ASmith@lewisroca.com; mpriott@alversontaylor.com; PruntyD@gtlaw.com; cowdent@gtlaw.com
Subject: RE: Richardson v. Milliman et al.; Case No. A-17-760558-B

Thank you Joe.

Counsel, please provide your approval and confirmation of the stipulation as modified by counsel for UHH.

Glenn Meier
Of Counsel

Greenberg Traurig, LLP
Suite 600 | 10845 Griffith Peak Drive | Las Vegas, Nevada 89135
T +1 702.938.6866

meierg@gtlaw.com | www.gtlaw.com [gtlaw.com] | [View GT Biography](#) [gtlaw.com]



From: Joseph Liebman <JLiebman@baileykennedy.com>
Sent: Tuesday, October 12, 2021 12:09 PM
To: Meier, Glenn (OfCnl-LV-LT) <meierg@gtlaw.com>; brown@mmrs-law.com; John Bailey <JBailey@baileykennedy.com>; Achoa@lipsonneilson.com
Cc: Escobar-Gaddi, Evy (LSS-LV-LT) <escobargaddie@gtlaw.com>; sbonham@seyfarth.com; EMata@seyfarth.com; Sarah Harmon <SHarmon@baileykennedy.com>; Rebecca Crooker <RCrooker@baileykennedy.com>; DPolsenberg@lewisroca.com; ASmith@lewisroca.com; mpruitt@alversontaylor.com; Prunty, Donald L. (Shld-LV-LT) <PruntyD@gtlaw.com>; Cowden, Tami D. (OfCnl-LV-LT) <cowdent@gtlaw.com>
Subject: RE: Richardson v. Milliman et al.; Case No. A-17-760558-B

Glenn:

Since we have agreed to address the dispositive motion deadline in this particular stipulation, I went ahead and added a new date for the motions in limine deadline to make it consistent with the prior January 15, 2021 stipulation. With that change, you have my authority to affix my e-signature.

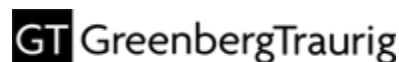
From: meierg@gtlaw.com <meierg@gtlaw.com>
Sent: Tuesday, October 12, 2021 11:50 AM
To: brown@mmrs-law.com; John Bailey <JBailey@baileykennedy.com>; Achoa@lipsonneilson.com
Cc: escobargaddie@gtlaw.com; sbonham@seyfarth.com; EMata@seyfarth.com; Joseph Liebman <JLiebman@baileykennedy.com>; Sarah Harmon <SHarmon@baileykennedy.com>; Rebecca Crooker <RCrooker@baileykennedy.com>; DPolsenberg@lewisroca.com; ASmith@lewisroca.com; mpruitt@alversontaylor.com; PruntyD@gtlaw.com; cowdent@gtlaw.com
Subject: RE: Richardson v. Milliman et al.; Case No. A-17-760558-B

Thank you Counsel.

Attached is the revised stipulation incorporating the extension of the dispositive motion deadline as discussed below. Please review and confirm that I have your authorization to include your e-signature on the stipulation in advance of submitting it to the court for approval.

Glenn Meier
Of Counsel

Greenberg Traurig, LLP
Suite 600 | 10845 Griffith Peak Drive | Las Vegas, Nevada 89135
T +1 702.938.6866
meierg@gtlaw.com | www.gtlaw.com [gtlaw.com] | [View GT Biography](#) [gtlaw.com]



From: Russell Brown <brown@meyersmcconnell.com>
Sent: Tuesday, October 12, 2021 11:14 AM
To: Meier, Glenn (OfCnl-LV-LT) <meierg@gtlaw.com>; JBailey@baileykennedy.com;

[AOchoa@lipsonneilson.com](mailto:Achoa@lipsonneilson.com)

Cc: Escobar-Gaddi, Evy (LSS-LV-LT) <escobargaddie@gtlaw.com>; sbonham@seyfarth.com; EMata@seyfarth.com; JLiebman@baileykennedy.com; SHarmon@baileykennedy.com; RCrooker@baileykennedy.com; DPolsenberg@lewisroca.com; ASmith@lewisroca.com; mpruitt@alversontaylor.com; Prunty, Donald L. (Shld-LV-LT) <PruntyD@gtlaw.com>; Cowden, Tami D. (OfCnsl-LV-LT) <cowdent@gtlaw.com>

Subject: RE: Richardson v. Milliman et al.; Case No. A-17-760558-B

We have no objection to the continuations.

Thank you,

Russ

From: meierg@gtlaw.com <meierg@gtlaw.com>

Sent: Monday, October 11, 2021 5:24 PM

To: JBailey@baileykennedy.com; [AOchoa@lipsonneilson.com](mailto:Achoa@lipsonneilson.com)

Cc: escobargaddie@gtlaw.com; sbonham@seyfarth.com; EMata@seyfarth.com; JLiebman@baileykennedy.com; SHarmon@baileykennedy.com; RCrooker@baileykennedy.com; brown@mmrs-law.com; DPolsenberg@lewisroca.com; ASmith@lewisroca.com; mpruitt@alversontaylor.com; PruntyD@gtlaw.com; cowdent@gtlaw.com

Subject: RE: Richardson v. Milliman et al.; Case No. A-17-760558-B

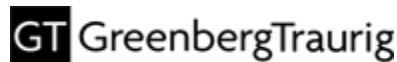
That is also acceptable to the Receiver. If anyone objects to including that in the stip, please advise before tomorrow morning. I'll circulate a revised stip in the morning.

Glenn Meier

Of Counsel

Greenberg Traurig, LLP
Suite 600 | 10845 Griffith Peak Drive | Las Vegas, Nevada 89135
T +1 702.938.6866

meierg@gtlaw.com | www.gtlaw.com [gtlaw.com] | [View GT Biography](#) [gtlaw.com]



From: John Bailey <JBailey@baileykennedy.com>

Sent: Monday, October 11, 2021 10:43 AM

To: Angela Ochoa <[AOchoa@lipsonneilson.com](mailto:Achoa@lipsonneilson.com)>; Meier, Glenn (OfCnsl-LV-LT) <meierg@gtlaw.com>

Cc: Escobar-Gaddi, Evy (LSS-LV-LT) <escobargaddie@gtlaw.com>; sbonham@seyfarth.com; EMata@seyfarth.com; Joseph Liebman <JLiebman@baileykennedy.com>; Sarah Harmon <SHarmon@baileykennedy.com>; Rebecca Crooker <RCrooker@baileykennedy.com>; brown@mmrs-law.com; DPolsenberg@lewisroca.com; ASmith@lewisroca.com; mpruitt@alversontaylor.com; Prunty, Donald L. (Shld-LV-LT) <PruntyD@gtlaw.com>

Subject: RE: Richardson v. Milliman et al.; Case No. A-17-760558-B

That's fine with us (UHH & NHS). Thanks. JRB

John R. Bailey
BAILEY KENNEDY, LLP
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148-1302
Phone: (702) 562-8820
Fax: (702) 562-8821
Direct Dial: (702) 851-0051
JBailey@BaileyKennedy.com

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Sent: Monday, October 11, 2021 10:35 AM
To: meierg@gtlaw.com; John Bailey <JBailey@baileykennedy.com>
Cc: escobargaddie@gtlaw.com; sbonham@seyfarth.com; EMata@seyfarth.com; Joseph Liebman <JLiebman@baileykennedy.com>; Sarah Harmon <SHarmon@baileykennedy.com>; Rebecca Crooker <RCrooker@baileykennedy.com>; brown@mmrs-law.com; DPolsenberg@lewisroca.com; ASmith@lewisroca.com; mpruitt@alversontaylor.com; PruntyD@gtlaw.com
Subject: RE: Richardson v. Milliman et al.; Case No. A-17-760558-B

All,

I have reviewed the stipulation and understand that there may be a rush since this is extending some briefing. My preference is to memorialize the continuation of the dispositive motion deadline as well. Will all agree to move the dispositive motions deadline to March 21?

Angela

From: meierg@gtlaw.com <meierg@gtlaw.com>
Sent: Friday, October 8, 2021 4:39 PM
To: JBailey@baileykennedy.com
Cc: escobargaddie@gtlaw.com; sbonham@seyfarth.com; EMata@seyfarth.com; JLiebman@baileykennedy.com; SHarmon@baileykennedy.com; RCrooker@baileykennedy.com; Angela Ochoa <Achoa@lipsonneilson.com>; brown@mmrs-law.com; DPolsenberg@lewisroca.com; ASmith@lewisroca.com
Subject: Re: Richardson v. Milliman et al.; Case No. A-17-760558-B

Thank you. We will submit once we've heard from all counsel.

Glenn Meier
Of Counsel

Greenberg Traurig, LLP
Suite 600
[10845 Griffith Peak Drive | Las Vegas, Nevada 89135](#)
T [+1 702.938.6866](#)
meiERG@gtlaw.com | www.gtlaw.com [gtlaw.com]

On Oct 8, 2021, at 3:16 PM, John Bailey <JBailey@baileykennedy.com> wrote:

EXTERNAL TO GT

Glenn: You have my permission to affix my signature – on behalf of defendants Unite Here Health and Nevada Health Solutions – to the attached SAO. Thanks. JRB

John R. Bailey
BAILEY KENNEDY, LLP
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148-1302
Phone: (702) 562-8820
Fax: (702) 562-8821
Direct Dial: (702) 851-0051
JBailey@BaileyKennedy.com

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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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

CASE NO: A-17-760558-B

7 vs.

DEPT. NO. Department 16

8
9 Milliman Inc, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 10/14/2021

15 Brian Blankenship

brian@nvfirm.com

16 Patrick Byrne

pbyrne@swlaw.com

17 Jeanne Forrest

jforrest@swlaw.com

18 Susana Nutt

snutt@lipsonneilson.com

19 Joseph Liebman

jliebman@baileykennedy.com

20 John Bailey

jbailey@baileykennedy.com

21 Angela Nakamura Ochoa

aochoa@lipsonneilson.com

22 Bailey Kennedy, LLP

bkfederaldownloads@baileykennedy.com

23 Michele Caro

mcaro@ag.nv.gov

24 Alex Fugazzi

afugazzi@swlaw.com

25 Cynthia Ney

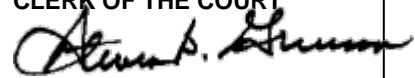
neyc@gtlaw.com

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

| | | |
|----|--------------------|----------------------------|
| 1 | Russell Brown | brown@mmrs-law.com |
| 2 | Michelle Briggs | mbriggs@ag.nv.gov |
| 3 | Ann Fukushima | fukushima@mmrs-law.com |
| 4 | Jason Hicks | hicksja@gtlaw.com |
| 5 | Jonathan Wong | jwong@lipsonneilson.com |
| 6 | D'Andrea Dunn | ddunn@swlaw.com |
| 7 | Kimberly Frederick | frederickk@gtlaw.com |
| 8 | Juan Cerezo | jcerezo@lipsonneilson.com |
| 9 | Mursal Nyazi | nyazi@mmrs-law.com |
| 10 | Evelyn Gaddi | escobargaddie@gtlaw.com |
| 11 | Rebecca Crooker | rcrooker@baileykennedy.com |
| 12 | Darnell Lynch | dlynch@lipsonneilson.com |
| 13 | Shermielynn Irasga | irasgas@gtlaw.com |
| 14 | Cynthia Kelley | ckelley@lewisroca.com |
| 15 | Emily Kapolnai | ekapolnai@lewisroca.com |
| 16 | | |
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TAB 19

TAB 19



SACOM

MARK E. FERRARIO, ESQ.

Nevada Bar No. 1625

DONALD L. PRUNTY, ESQ.

Nevada Bar No. 8230

GLENN F. MEIER, ESQ.

Nevada Bar No. 6059

GREENBERG TRAURIG, LLP

10845 Griffith Peak Drive, Suite 600

Las Vegas, Nevada 89135

Telephone: (702) 792-3773

Facsimile: (702) 792-9002

Email: ferrariom@gtlaw.com

pruntyd@gtlaw.com

meierg@gtlaw.com

Counsel for Plaintiff

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

MILLIMAN, INC., a Washington
Corporation; JONATHAN L. SHREVE, an
Individual; MARY VAN DER HEIJDE, an
Individual; MILLENNIUM CONSULTING
SERVICES, LLC, a North Carolina
Corporation; LARSON & COMPANY P.C., a
Utah Professional Corporation; DENNIS T.
LARSON, an Individual; MARTHA HAYES,
an Individual; INSUREMONKEY, INC., a
Nevada Corporation; ALEX RIVLIN, an
Individual; NEVADA HEALTH
SOLUTIONS, LLC, a Nevada Limited
Liability Company; PAMELA EGAN, an
Individual; BASIL C. DIBSIE, an Individual;

CASE NO. A-17-760558-B

DEPARTMENT XVI

**SECOND AMENDED
COMPLAINT**

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

LINDA MATTOON, an Individual; TOM ZUMTOBEL, an Individual; BOBBETTE BOND, an Individual; KATHLEEN SILVER, an Individual; UNITE HERE HEALTH, is a multi-employer health and welfare trust as defined in ERISA Section 3(37); DOES I through X inclusive; and ROE CORPORATIONS I-X, inclusive,

Defendants.

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

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

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

4 INTRODUCTION

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

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

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

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

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

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

28 ///

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 **PARTIES**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FACTUAL ALLEGATIONS

A. The Affordable Care Act

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

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

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

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

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

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

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

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

FACTUAL ALLEGATIONS RELATING TO THE MILLIMAN DEFENDANTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 **1. Premium Rate Development**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Financial Projections

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Reporting of Reserves

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 151. A week later, on February 18, 2015, the Nevada DOI followed up with a
8 conference call with Milliman regarding the calculation of actuarial items. In a February 26,
9 2015, e-mail from Annette James to Basil Dibsie, the DOI stated the following:

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

24 *[emphasis added]*

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

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

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

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

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

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

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

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

4. Use of Improper and Unauthorized Financial Information

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

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

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

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

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

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

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

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

3 **FACTUAL ALLEGATIONS RELATING TO MILLENNIUM**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

181. Data presented between schedules was inconsistent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

205. NHC's reserve levels raised concerns.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FACTUAL ALLEGATIONS RELATING TO THE
INSUREMONKEY DEFENDANTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 301. NHS represented itself to be a capable utilization management services
5 company.

6 302. Pursuant to a Utilization Management Services Agreement (the “Utilization
7 Agreement”), NHS contracted with NHC to perform evaluations of appropriateness and
8 medical necessity of health care services, procedures and facilities; perform precertification of
9 hospital admissions and outpatient procedures; process information related to in-hospital
10 observations; provide concurrent reviews for inpatient acute care, rehabilitation and long term
11 acute care; provide discharge planning; and perform provider appeal reviews, along with other
12 services. NHS was also engaged to perform member eligibility review services for NHC, a
13 process through which the enrollment of NHC’s members must be verified for medical
14 benefits to be allowed by NHC.

15 303. Throughout the relationship between NHS and NHC, because of the relative
16 inexperience of NHC management (well known to NHS) and the representations of NHS as
17 to its superior knowledge and expertise, NHC trusted, relied on, and depended on NHS as its
18 gatekeeper to ensure the appropriateness and medical necessity of medical services incurred
19 by NHC’s members and their eligibility for such services.

20 304. NHS breached the Utilization Agreement by failing to perform contracted work
21 and by failing to perform to applicable contractual, professional and industry standards.
22 Without limitation, NHS failed to perform to the standards set forth in the Utilization
23 Management Program that was incorporated into the Utilization Agreement.

24 305. Under the Utilization Agreement, NHS was to perform its services utilizing
25 appropriate medical staff including accredited physicians. On information and belief, NHS
26 did not employ qualified personnel to perform the contracted services, and at most
27 subcontracted such services to others, to the extent they were performed at all.

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1 306. Initial compensation was mechanically calculated based on the total persons
2 enrolled as NHC members each month, a fee that bore little to no relation to services being
3 provided by NHS. Upon information and belief, little work was actually performed by NHS
4 for NHC.

5 307. Fees under the Utilization Agreement were charged by NHS on a per member
6 per month basis, but NHS required a minimum monthly fee to be paid based on an enrolled
7 membership of 10,000 members. NHC did not have 10,000 enrolled members for the first four
8 months of 2014 and was substantially short of 10,000 enrolled members in those months; thus,
9 NHC paid the minimum monthly fee to NHS in each of those first four months of 2014.
10 Additionally, NHC was to be charged by NHS for all direct and indirect provider costs incurred
11 by NHS for performing its services. However, since NHS provided little services to NHC in
12 2014, there were no other direct or indirect costs charged by NHS to NHC other than the per
13 member per month flat monthly fee stated above. On information and belief, NHS failed to
14 adjust for the actual cost of the limited work performed.

15 308. NHS and Management Defendant Silver among others engaged in self-dealing
16 in which NHS was unjustly paid substantial amounts by NHC for the so-called utilization
17 management services, and Defendant Kathleen Silver used her insider status with NHC as a
18 means to inappropriately provide more favorable contract terms for NHC than were justified.
19 NHS' President was Management Defendant Silver, and upon information and belief, the
20 owner of NHS was UHH. Upon information and belief, UHH was an entity with financial
21 ties and/or direct or indirect business links with Management Defendants Bond, Zumtobel,
22 and Silver. NHS was owned by another entity, UHH, that was in turn owned by CHF or its
23 affiliated entity, and many of the directors and officers were directly employed by, or had
24 affiliations or other business dealings with, CHF and its affiliates, posing a substantial conflict
25 of interest whereas a result of which NHS should not have received this contract for services.
26 UHH was being paid to process and adjudicate claims of NHC, and then it was being paid
27 again through NHS to do a quality control review check of the very claims that UHH
28 processed. The NHS and NHC medical utilization management review arrangement was

1 unfair, unreasonable, ineffectual, and just another way to siphon more money out of NHC to
2 the detriment of its members, policyholders, and creditors. NHS' actions and conduct resulted
3 in substantial losses to NHC. Without limitation, NHS failed to properly perform eligibility
4 verifications during utilization reviews or provide adequate utilization review services for
5 NHC's claims, resulting in the loss of NHC's assets. NHS was paid fees and expenses totaling
6 \$382,968 under this utilization management and enrollment eligibility review arrangement.
7 Costs which should not have been incurred under the Utilization Management Program were
8 incurred, contracted assistance to members for managing health care decisions was not
9 received, and inappropriate financial benefits were paid from this arrangement to the
10 detriment of NHC's members, policyholders, and creditors.

11 **FACTUAL ALLEGATIONS RELATING TO THE MANAGEMENT DEFENDANTS**

12 **M. The Management Defendants Fail to Uphold Their Fiduciary Duties to NHC**

13 309. Plaintiff realleges and incorporates all of the allegations contained in the
14 proceeding paragraphs as if fully set forth herein.

15 310. As officers and directors of NHC, each of the Management Defendants owed
16 duties of good faith and loyalty to NHC and was charged with exercising his or her powers,
17 authority, and discretion in the best interests of NHC.

18 311. Additionally, the Management Defendants executed employment agreements
19 and ethics and conflicts of interest documents which contractually specified such duties.

20 312. The duties owed by the Management Defendants included, without limitation,
21 not misleading regulatory authorities, instituting adequate internal controls to protect
22 company assets and operations, adequately selecting and supervising employees and
23 contractors, avoiding self-dealing, fully and adequately disclosing related party transactions,
24 avoiding the squandering of NHC's assets, and reviewing and ensuring the accuracy of loan
25 applications, financial statements, and regulatory filings submitted by NHC.

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313. From NHC's inception through its being put in receivership in October 2015, as outlined below, each of the Management Defendants failed to uphold his or her duties owed to NHC when exercising his or her powers and authority with respect to the business decisions, operations, reporting and management of NHC.

N. Management Defendants Unreasonably Fail to Establish Internal Controls, Exercise Oversight, Ensure Accurate Reporting, or Adequately Disclose Related Party Transactions

314. A primary responsibility of Management Defendants was to institute sufficient internal controls to ensure the protection of assets, to establish and enforce procedures to run NHC, and to conform with statutory requirements, including providing accurate reporting to regulators and the public.

315. The Management Defendants failed to establish sufficient internal controls over its business.

316. Initially, the Management Defendants failed to hire or train adequate personnel to run its business. As a result, NHC relied on contractors to perform critical processes for NHC, creating another set of internal control concerns, ones that were likewise overlooked and ignored by the Management Defendants. NHC also funded certain contractors to be in position to perform services for NHC, without sufficient controls and oversight over this process.

317. Rather than prudently limiting the scope of business until such time as adequate internal controls had been established, the Management Defendants appear to have adopted an "even if we lose money on each customer we will make it up in volume" approach.

318. Contractors handling enrollment, claims processing, billing, receipt of premiums, premium rate setting, actuarial services, and other issues did not perform their work in accordance with industry and professional standards, resulting in significant internal control issues and losses for NHC, issues that should have been caught and remedied by the Management Defendants, but were not.

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1 319. Additionally, the total breakdown in internal controls caused misleading reports
2 to be issued in violation of applicable statutes and standards.

3 320. The Management Defendants knew, or should have known, of the dearth of
4 internal controls to protect NHC and the public. The Management Defendants' refusal to
5 institute such controls involved and/or constituted negligence, intentional misconduct, fraud,
6 and/or knowing violations of the law.

7 321. The Management Defendants similarly failed or refused to exercise the
8 necessary required oversight of NHC and its contractors.

9 322. The Management Defendants' failures included, but were not limited to,
10 approval of contracts that were illegal due to a lack of appropriate NDOI regulatory approvals
11 or required licensure by contractors engaged on behalf of NHC including, but not limited to,
12 UHH and WellHealth Medical Associates (Volker), PLLC d/b/a WellHealth Quality Care.

13 323. Employees without the expertise or experience to run such a large undertaking
14 were negligently hired and retained, or were simply allowed to keep positions given to them
15 by CHF.

16 324. As discussed herein, rather than replacing or obtaining sufficient training for its
17 employees, the Management Defendants engaged contractors whose work was not properly
18 performed or appropriately overseen. InsureMonkey and UHH did not have the ability to
19 perform the service work on their own without large and wasteful upfront funding subsidies
20 by NHC to set up these contractors in business to perform NHC's work, and these contractors,
21 as well as NHS⁴, did not have the expertise to perform this service work.

22 325. Even when significant problems arose, the Management Defendants failed to
23 exercise their oversight function and remedy them.

24 326. Contractors created overly optimistic feasibility studies, on information and
25 belief, in order to receive compensation that would only be paid if loans were received.

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28 ⁴ Upon information and belief, NHS was a start-up enterprise set up by NHC insiders to perform
utilization review services for NHC

1 327. Early in the process, NHC's officers and directors, including each of the
2 Management Defendants, authorized and/or ratified financial transactions and assumed
3 financial obligations that they knew, or should have known, NHC could not meet or otherwise
4 satisfy.

5 328. Customers had difficulty signing up for services, premiums went unbilled or
6 unpaid, failures in reporting data to CMS caused government subsidies to be lost, and vendors
7 were paid despite failing to perform under contracts. Insureds failed to receive coverage
8 because of bad data, and costs were paid because NHC could not confirm whether coverage
9 was or was not in effect. Claims were backlogged, member terminations were not being
10 made, and enrollments were not being tracked properly. Proper utilization review of claims
11 was not performed. Still, the Management Defendants failed to exercise appropriate oversight
12 to remedy the situation.

13 329. Despite horrendous losses, the Management Defendants authorized NHC to
14 continue to draw down on government loans, knowing there was no reasonable way that such
15 loans could be repaid, but keeping the flow of money coming as long as possible so that
16 management insiders, related third-party contractors, and other contractors could continue to
17 be paid by NHC until the "well would finally run dry" by the company's receivership.

18 330. In addition, despite substantial doubt about NHC's ability to fulfill them,
19 Management Defendants caused NHC to continue assuming contractual obligations, causing
20 further losses to NHC.

21 331. As further discussed herein, the Management Defendants, including the audit
22 committee members, the chief financial officer, and NHC's president, also failed to exercise
23 oversight to ensure accurate, truthful, and non-misleading dissemination of financial
24 information to regulatory authorities and the public with respect to NHC's affairs.

25 332. The Management Defendants knew, or should have known, that their
26 intentional decision not to exercise appropriate oversight would cause significant damages
27 and would involve and/or constitute negligence, intentional misconduct, fraud, and/or
28 knowing violations of the law.

1 333. The Management Defendants' actions or inactions similarly caused misleading
2 reporting of financial and operational results to the Nevada DOI and others.

3 334. From 2012 through 2015, the Management Defendants retained and/or
4 approved the retention of certain third-party entities to perform financial reporting and/or
5 auditing on behalf of NHC, including, but not limited to, Milliman, Millennium, and Larson.

6 335. In early 2015, a preliminary report was filed with the Nevada DOI for the year
7 ended December 31, 2014.

8 336. As discussed above, NHC's reserve levels raised concerns with the Nevada
9 DOI, and throughout early 2015 the Nevada DOI went to extraordinary lengths to
10 communicate clear guidance for the proper calculation of reserves. Nevada DOI guidance
11 went directly to NHC management.

12 337. Additionally, NAIC pointed out deficiencies in NHC's statutory reporting
13 directly to NHC management.

14 338. The Nevada DOI stated they expected the PDR to be re-evaluated on a quarterly
15 basis and adjusted as necessary if the emerging experience was substantially different from
16 the projected experience. These steps were not taken and, in fact, the PDR calculation appears
17 to have been skipped at the end of the first quarter, contrary to the Nevada DOI's explicit
18 request and prior to the issuance of certain audits and financial reports adopted, ratified, and/or
19 disseminated by the Management Defendants.

20 339. The balances of the reserves should have been questioned and audited by the
21 Management Defendants, both from a year-end review perspective and as part of NHC's
22 management, audit committee, and overall oversight responsibilities, yet there is no evidence
23 that any such actions were taken, and the Management Defendants issued later reports without
24 adjustment.

25 340. Even without adjusting reserve balances, NHC had reported losses of over
26 \$8 million in 2013 and over \$16 million in 2014.

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

NHC could have certain financial issues that may impede the organizations short-term viability. Specifically, based on the per member per month net loss for 2014 of \$94 and the increased enrollment for 2015 of 16, 523, NHC's financial losses could exceed its working capital. As the lender, the centers for Medicare and Medicaid services CMS has serious concerns about this issue.

CMS required NHC to provide financial information immediately, and it further advised that it will review the information and determine if corrective actions are necessary, including a site visit. NHC's financial problems and issues were glaringly apparent, even to an outside party, and yet, the Management Defendants glossed over any financial issues, failed to recognize the ramifications of the company's finances, borrowed more money from CMS, and took actions to prolong the life of NHC when it should have been immediately shut down.

342. Up until NHC issued reports on June 1, 2015, NHC continued to hemorrhage losses under the direction, guidance, and management of the Management Defendants.

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

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

345. As previously mentioned, the amount of a draw on the CMS Loans, that had not been formally applied for in 2014, was recorded as a receivable in the 2014 annual financial reports without adequate disclosure—and despite the fact that Management Defendants knew, or should have known, that the loan draw down could not be repaid by NHC.

346. At a minimum, NHC's Audit Committee members, including Defendant Bond, knew, or should have known that recording of a receivable for a loan in the year before it was formally applied for, without adequate disclosure, was misleading, could artificially inflate NHC's reported surplus levels, and could make NHC's finances appear better than they actually were.

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1 347. These issues should all have been obvious “red flags” to the Management
2 Defendants, and they should have been disclosed, along with the fact that NHC would be
3 unable to continue as a going concern. They should also have resulted in appropriate remedial
4 measures.

5 348. The Management Defendants knew, or should have known, that their
6 intentional decision not to properly address red flags raised by regulators, as well as the
7 obvious deficiencies of NHC’s financial reports, would cause significant damages and involve
8 and/or constitute negligence, intentional misconduct, fraud, and/or knowing violations of the
9 law.

10 349. Additionally, the Management Defendants drafted or ratified and approved of
11 the release of the 2013 and 2014 MD&A’s. These documents, which are intended to disclose
12 and serve as management’s discussion and analysis of important issues facing NHC, failed to
13 disclose or analyze important issues, including without limitation, NHC’s extraordinary
14 accounting practices, insufficient reserves, liquidity concerns, lack of borrowing capacity or
15 its inability to continue as a going concern. The failure of management to adequately disclose
16 or analyze these and other issues was in violation of statutory and industry requirements,
17 including those set forth by NAIC, the Nevada DOI and incorporated into Nevada law.

18 350. The Management Defendants did not ensure proper reporting of related party
19 transactions or provide proper oversight over those related parties.

20 351. NHC management had extensive connections with the Culinary Union and its
21 UHH administrator. Many of the Director Defendants had served on the Board of CHF, and
22 some Directors also had positions with the Culinary Union. NHC hired UHH to administer
23 the medical side of NHC’s business. As a result, UHH was paid significant fees that, on
24 information and belief, provided a windfall for UHH.

25 352. Defendant Kathy Silver served as a director of NHC and was president of two
26 Culinary Union related entities, NHS and CHF.

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353. As discussed above, NHC management engaged NHS to perform utilization management and member eligibility review services for NHC in 2014. NHC paid substantial fees to NHS for this service, receiving limited and deficient services in return. NHS also had a conflict of interest, or the appearance of a conflict of interest, by being engaged to provide a quality control review of claim services provided by its parent company, UHH.

354. Despite requirements to disclose these related party transactions in financial statements and other filings to the Nevada DOI, CMS and others, NHC management failed to adequately provide such disclosure.

355. NHC management also paid themselves substantial compensation without justification and despite the fact that NHC was losing millions of dollars each financial report period.

356. Due to the material amounts of funds flowing from NHC to UHH and NHS, the Management Defendants were under an obligation to report the related party transactions in NHC's financial statements, and they were under a further obligation to assure that these related party transactions were fair and reasonable to NHC and performed satisfactorily. The Management Defendants, however, failed to do so.

357. Management Defendants, including but not limited to Egan, Dibsie, and Mattoon, authorized or caused to be paid claims outside of eligibility, failed to terminate members when appropriate, allowed a claims backlog to occur to benefit a corporate insider, UHH, which caused losses to NHC, all of which were in violation to their fiduciary and other duties to NHC, and resulted in substantial losses to NHC.

358. Such acts and omissions with respect to NHC's failure to adequately disclose related party transactions and to assure their fairness, paying claims outside of eligibility, failure to terminate members, failure to adequately supervise UHH and NHS and have claims properly adjudicated, along with paying themselves unreasonable compensation, by the Management Defendants involved and/or constituted intentional misconduct, fraud, self-dealing, and/or the knowing violation of the law.

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FACTUAL ALLEGATIONS RELATING TO UHH

O. The Management Defendants Fail to Uphold Their Fiduciary Duties to NHC

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

360. Prior to the formation of NHC, Hospitality Health entered into an agreement with its affiliate UHH, effective May 17, 2012, wherein UHH would provide third-party administration of NHC's insurance policies (the "UHH Consulting Agreement").

361. The UHH Consulting Agreement was subsequently assigned by Hospitality Health to NHC effective December 21, 2012. Subsequently on June 27, 2013, an Administrative Services Agreement (the "UHH Administrative Services Agreement") effective as of January 1, 2014, was entered into between UHH and NHC.

362. UHH was owned by CHF or its affiliated entity, and many of its directors and officers were directly employed by, or had affiliations or other business dealings with, CHF and its affiliates, posing a substantial conflict of interest. UHH was awarded its contract for NHC without the benefit of competitive bidding, and UHH was paid very substantial and unwarranted fees by NHC. There was no real accountability over how UHH charged fees to NHC or how UHH processed claims. NHC allowed UHH, as a corporate insider, to run amuck, not perform critical services, overcharge for services, and put NHC in a deeper financial hole. In particular, Defendants Zumtobel, Bond, and Silver had direct or indirect affiliations with UHH, while also being in management control over NHC, and these defendants allowed UHH to be enriched at NHC's expense.

363. In its position as a third-party administrator, UHH controlled the administration of NHC's insurance policies. Under the UHH Consulting Agreement and the UHH Administrative Services Agreement, UHC was required to, among other duties:

- Process all claims timely and in accordance with NHC's health plans, and process medical benefits in accordance with industry standards;
- Properly track and implement member enrollments;
- Properly track and implement member terminations;

- Properly handle record keeping and computer systems and generate accurate reports that would be relied upon by NHC and others;
- Meet all governmental rules related to claims processing and due dates and responses to Beneficiaries;
- Generate Explanations of Benefits (“EOB’s”);
- Provide accurate and timely reports;
- Operate computer systems necessary for performance of its duties, and maintain its systems as necessary to comply with all governmental laws and regulations;
- Develop and implement an internal claims audit process;
- Maintain secured, controlled and reliable access to their systems;
- Provide timely, complete and verified data feeds;
- Assist with the preparation and filing of any Federal and State reports, which are required by law.

364. Although third-party administrators are required to be licensed under Nevada law, UHH was performing as a third-party administrator without an appropriate and required license.

365. UHH’s lack of the appropriate and required license to act as a third-party administrator in Nevada rendered the UHH Consulting Agreement illegal and *void ab initio*.

366. UHH’s lack of the appropriate and required license to act as a third-party administrator in Nevada rendered the UHH Administrative Services Agreement illegal and *void ab initio*.

367. UHH vetted and recommended a claims system that could not appropriately handle NHC’s claims and member administration, which further exacerbated claims problems and issues for NHC, causing the company losses. UHH represented that it had the requisite expertise to handle and process the NHC claims when it did not have such expertise or understanding, and it was not even properly licensed to perform these claim functions. In its position as NHC’s benefits administrator, UHH owed NHC a fiduciary duty which arose due to UHH’s superior and trusted position with NHC.

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P. UHH Fails in its Responsibility as a Third-Party Administrator

368. UHH failed to fulfill its contractual, statutory, and professional obligations as a third-party administrator of NHC's medical policies, including but not limited to the following:

- UHH failed to maintain NHC's claims and provider data accurately and consistently, leading to incorrect data being used throughout the company and leading to incorrect claims adjudications.
- UHH failed to timely and accurately process and pay claims.
- UHH failed to properly track and implement member enrollments and terminations.
- UHH failed to use internal controls to test platforms and provide cross-checks and verifications on data and systems.
- UHH failed to timely correct errors in data entry or claims processing even when NHC raised these issues.
- UHH failed in its fiduciary responsibilities to NHC to act in the best interests of NHC.
- UHH failed to perform to the level of skill required under contractual statutory or professional standards.
- UHH failed to hire appropriate personnel with sufficient knowledge or experience for the work assigned, or provide adequate training for its personnel assigned to NHC matters.
- UHH Failed to properly recommend, select, operate and maintain adequate information technology systems and records to perform the services UHC was obligated to perform for NHC.

369. As a result of these failures, NHC sustained damages that included, without limitation, improper costs related to uninsured persons, financial misreporting, improper setting of rates and reserves, loss of reimbursements from government sources, further draw downs on CMS Loans, additional business overhead for NHC's operation, and substantial costs related to identifying and correcting UHH's errors.

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370. Despite the prohibition on existing insurance companies benefiting from the funding of health cooperatives like NHC, over the course of NHC's operation, millions of dollars were paid by NHC to UHH effectively subsidizing costs that would otherwise be borne by UHH and its affiliates to NHC's detriment.

371. These costs included transferring unprofitable insureds to NHC, the development of software and related training for the use of UHH and its affiliates, and the transferring of salaries of certain of the Management Defendants working for UHH and its affiliates, among others, to NHC, and the life of NHC was prolonged to financially benefit those affiliated with insiders such as UHH.

Q. The Financial Collapse of NHC and the Resulting State Rehabilitation and Liquidation Proceedings

372. Ultimately, no one could deny that NHC was incapable of continuing as a going concern, and the Nevada DOI was required to step in. On August 17, 2015, NHC's board of directors voted to cease writing new business and to suspend voluntarily its certificate of authority, effectively "throwing in the towel" and ending any prospect of recovery.

373. On September 25, 2015, and with the consent of NHC's Board of Directors, a petition for appointment of Commissioner as Receiver and Other Permanent Relief; Request for Injunction Pursuant to NRS 696B.270(1) was filed by then-acting Nevada Commissioner of Insurance, Amy L. Parks, in her official capacity as Temporary Receiver of NHC.

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

375. On October 14, 2015, the Court issued a Permanent Injunction and Order Appointing Commissioner as Permanent Receiver of Nevada Health CO-OP. On

1 September 21, 2016, the Court issued a Final Order Finding and Declaring Nevada CO-OP
2 to be insolvent and placing Nevada Health CO-OP into Liquidation.

3 376. Under these orders the Commissioner of Insurance (as the Permanent
4 Receiver) and Cantilo & Bennett (as the Special Deputy Receiver) are authorized to
5 liquidate the business of NHC and wind up its ceased operations pursuant to
6 NRS 696B.220.2. This authority includes authorization to institute and to prosecute, in the
7 name of NHC or in the Receiver's own name, any and all suits and other legal proceedings,
8 and to prosecute any action which may exist on behalf of the members, enrollees insured,
9 or creditors, of NHC against any person.

10 377. The consequences of Defendants' actions have been substantial and very
11 harmful to NHC and many others. Over \$65 million in federal loans are in default and
12 federal recoverables were lost. Medical insurance for tens of thousands of people was
13 disrupted; doctors and hospitals went unpaid; and insured patients were left concerned about
14 receiving needed care and whether they would be able to pay medical bills.

15 378. The Receiver is now tasked with liquidating the failed insurer to protect
16 members, insured enrollees, and creditors of NHC and the public.

17 **CAUSES OF ACTION RELATED TO MILLIMAN DEFENDANTS**

18 **FIRST CAUSE OF ACTION**

19 **(Negligence Per Se - Violation of NRS 681B Against Milliman and Heijde)**

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

22 380. NRS 681B requires, in part, the opinion of an appointed actuary as to whether
23 the reserves and related actuarial items held in support of the policies and contracts are
24 computed appropriately, are based on assumptions that satisfy contractual provisions, are
25 consistent with prior reported amounts, and comply with applicable laws of the State of
26 Nevada.

27 381. NRS 681B also prescribes minimum standards of form and substance for the
28 opinion, including those set forth in the Valuation Manual adopted by NAIC.

392. The Milliman Defendants had a duty to use such skill, prudence, and diligence as other members of the profession commonly possess and exercise.

393. As detailed above, the Milliman Defendants breached that duty by failing to comply with applicable statutory and professional standards including those set forth in NRS 681B, the Valuation Manual adopted by NAIC, the ASOPs as adopted by the Actuarial Standards Board of the American Academy of Actuaries, and by taking actions that caused the misreporting of the 2014 financial results without reasonable basis.

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

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

THIRD CAUSE OF ACTION

(Intentional Misrepresentation (Fraud) Against Milliman Defendants)

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

397. On or about December 21, 2011 Milliman and Shreve issued a document entitled "Hospitality Health Feasibility Study and Business Support for Consumer Operated and Oriented Plan (CO-OP) Application."

398. On or about March 1, 2015 and on or about May 14, 2015, Milliman and Heijde issued the valuation and certification of NHC's reserves pursuant to NRS 681B.

399. In each of these documents, the respective Milliman Defendants certified that the statements contained therein were, to the best of their knowledge and belief, accurate, complete, and prepared in accordance with generally recognized and accepted actuarial principles and practices consistent with ASOPs, the Code of Professional Conduct and Qualification Standards for Public Statements of Actuarial Opinion of the American Academy of Actuaries.

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(Negligent Misrepresentation Against Milliman Defendants)

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

8 412. The Milliman Defendants, in a course of action in which they had a pecuniary
9 interest, failed to exercise reasonable care or competence in obtaining or communicating
10 information to Plaintiff as set forth above.

11 413. Such information included, without limitation, the information set forth in the
12 Feasibility Study, the calculation of premiums, the calculation of financial projections, the
13 calculation of required reserves, and the communication of financial information to the
14 Nevada DOI.

15 414. Plaintiff justifiably relied on the information it received.

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

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

(Breach of Fiduciary Duty Against Milliman Defendants)

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

418. A fiduciary duty existed between Plaintiff and the Milliman Defendants where
Milliman was in a superior or trusted position as set forth herein.

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

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

SEVENTH CAUSE OF ACTION

(Negligence Against Milliman Defendants)

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

423. The Milliman Defendants owed a duty of care to Plaintiff, including the duty to perform its work in accordance with applicable statutory and professional standards.

424. As detailed above, by failing to perform to applicable statutory and professional standards, the Milliman Defendants breached that duty.

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

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

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

EIGHTH CAUSE OF ACTION

(Breach of Contract Against Milliman)

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

24 429. Milliman and Hospitality Health entered into a valid and enforceable contract -
25 the Consulting Services Agreement - that required Milliman to perform professional actuarial
26 services.

430. A provision of the Consulting Services Agreement states, “Milliman will perform all services in accordance with applicable professional standards.”

431. Plaintiff was assigned all rights, benefits, and interests in the Consulting Services Agreement by Hospitality Health.

432. Milliman failed to perform under the Consulting Services Agreement by failing to perform actuarial services as required under applicable professional and statutory standards, as detailed above.

433. Plaintiff performed, or was excused from performance, under the Consulting Services Agreement.

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

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

NINTH CAUSE OF ACTION

(Tortious Breach of the Implied Covenant Against Milliman)

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

437. Milliman and Hospitality Health entered into a valid and enforceable contract - the Consulting Services Agreement - that required Milliman to perform professional actuarial services.

438. Plaintiff was assigned all rights, benefits, and interests in the Consulting Services Agreement by Hospitality Health.

439. Milliman owed a duty of good faith to Plaintiff arising from the contract.

440. A special element of reliance or fiduciary duty existed between Plaintiff and Milliman where Milliman was in a superior or trusted position.

441. Milliman breached the duty of good faith by engaging in misconduct in a manner that was unfaithful to the purpose of the Consulting Services Agreement, by failing to perform in accordance with statutory and professional standards as set forth herein.

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

TENTH CAUSE OF ACTION

(Breach of the Implied Covenant of Good Faith and Fair Dealing Against Milliman)

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

10 445. Milliman and Hospitality Health entered into a valid and enforceable contract -
11 the Consulting Services Agreement - which required Milliman to perform professional
12 actuarial services.

13 446. Plaintiff was assigned all rights, benefits, and interests in the Consulting
14 Services Agreement by Hospitality Health.

15 447. Under applicable law, the Consulting Services Agreement contains an implied
16 covenant of good faith and fair dealing among all parties.

17 448. Milliman, by failing to follow applicable professional and statutory standards
18 as set forth herein, breached that duty by performing in a manner that was unfaithful to the
19 purpose of the Consulting Services Agreement.

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

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

ELEVENTH CAUSE OF ACTION

(Negligent Performance of an Undertaking Against Milliman Defendants)

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

452. The Milliman Defendants undertook to provide actuarial services, including but not limited to, providing a feasibility study, calculating insurance premiums, performing other forecasts, calculating and certifying required reserves and other actuarial items, and participating in the preparation of financial information and reports that would be submitted to the Nevada DOI.

453. The Milliman Defendants knew or should have recognized these undertakings as necessary for the protection of NHC's members, NHC's enrolled insured, NHC's creditors, and the State of Nevada.

454. By performing the actuarial services detailed above, the Milliman Defendants undertook to perform a duty owed by NHC to its members, enrolled insureds, creditors and regulators to act in accordance with statutory and professional standards, to properly compute premiums, to properly perform feasibility studies and forecasts, to properly value the reserves and other actuarial items of NHC, and to submit proper and reasonable reports of financial condition.

455. The Milliman Defendants' failure to exercise reasonable care in performing its services, including their failure to perform actuarial services in accordance with applicable standards as detailed herein, increased the risk of harm to (and did in fact harm) NHC, NHC's members, insureds, creditors, customers and vendors, and the State of Nevada, and it unnecessarily prolonged, and it led to, the continued and unjustified existence of NHC.

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

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

TWELFTH CAUSE OF ACTION

(Unjust Enrichment Against Milliman)

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

1 459. Milliman was paid over \$1 million for actuarial services that were to be
2 performed in accordance with statutory and professional standards.

3 460. Despite failure to provide such services in accordance with statutory and
4 professional standards, Milliman unjustly retained the fees paid to it for such services against
5 fundamental principles of justice, equity, and good conscience.

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

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

11 **THIRTEENTH CAUSE OF ACTION**
12 **(Civil Conspiracy Against Milliman Defendants)**

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

15 464. Defendants Milliman and Shreve acted in concert with each other and with the
16 management of NHC, including, but not limited to, Dibsie, to obtain funds for NHC under
17 false pretenses and to license NHC through the use of the Feasibility Study, which they knew
18 to be false and not in accordance with required statutory and professional actuarial standards.

19 465. Defendants Milliman and Heijde acted in concert with each other and with
20 management of NHC, including, but not limited to, Egan and Dibsie, to falsify reserves and
21 financial reporting and avoid statutory supervision by their use of the 2014 Opinion,
22 participated in the preparation of false and misleading financial information that was provided
23 to Nevada DOI, and had subsequent communications with NHC and/or Nevada DOI, which
24 they knew to be false and not in accordance with required statutory and professional standards.

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

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

4 **FOURTEENTH CAUSE OF ACTION**

5 **(Concert of Action Against Milliman Defendants)**

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

8 469. Defendants Milliman and Shreve acted in concert with each other and the
9 management of NHC, including, but not limited to, Dibsie, to obtain money under false
10 pretenses and license NHC through use of the Feasibility Study, which they knew to be false
11 and not in accordance with required statutory and professional actuarial standards.

12 470. Defendants Milliman and Heijde acted in concert with each other and the
13 management of NHC, including Egan and Dibsie, to falsify reserves and avoid statutory
14 supervision by their use of the 2014 Opinion, participated in the preparation of financial
15 information provided to Nevada DOI, and had subsequent communications with NHC and/or
16 Nevada DOI, which they knew to be false and not in accordance with required statutory and
17 professional standards.

18 471. The Milliman Defendants knew that their actions were inherently dangerous or
19 posed a substantial risk of harm to others in that their actions could affect and disrupt the
20 medical care of NHC's members and insured enrollees.

21 472. The Milliman Defendants' actions did affect and disrupt the medical care of
22 NHC's members and enrolled insureds. The Milliman Defendants' actions have adversely
23 impacted the ability of health care providers to seek and obtain payment from NHC members
24 for services rendered.

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

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

4 **CAUSES OF ACTION RELATED TO MILLENNIUM DEFENDANTS**

5 **FIFTEENTH CAUSE OF ACTION**

6 **(Professional Malpractice Against Millennium)**

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

9 476. Millennium was engaged by NHC and was responsible for providing
10 professional accounting services to NHC.

11 477. Such services included, but were not limited to, preparing and filing the NHC
12 annual reports, quarterly reports, and other reports as listed herein.

13 478. Services to be performed by Millennium included the preparation of financial
14 statements, participating in the drafting of the year 2014 MD&A that was filed with the
15 Nevada DOI, evaluating general ledger entries to ensure that statutory accounting and
16 reporting principles and rules were followed, and recommending any adjustments to adhere
17 to statutory accounting and reporting rules prescribed by the State of Nevada.

18 479. Millennium had a duty to use such skill, prudence, and diligence as other
19 members of the profession commonly possess and exercise.

20 480. As detailed above, Millennium breached that duty by failing to comply with
21 applicable statutory and professional standards.

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

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

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SIXTEENTH CAUSE OF ACTION

(Intentional Misrepresentation (Fraud) Against Millennium)

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

484. Throughout the time that Millennium performed services for NHC, Millennium represented that it was performing such services in accordance with applicable statutory, professional, and contractual standards.

485. Millennium contracted to advise NHC on and preparing the quarterly reports for NHC for 2014 and March of 2015.

486. Millennium advised NHC and prepared the quarterly reports for NHC for 2014 and March of 2015.

487. Millennium knew or believed that the quarterly reports it prepared for NHC contained false and misleading statements and that its representations as to its work standards as stated above, were false, or Millennium had an insufficient basis of information for making such representations.

488. Plaintiff justifiably relied upon Millennium's representations.

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

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

SEVENTEENTH CAUSE OF ACTION

(Negligent Misrepresentation Against Millennium)

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

492. Millennium, in the course of action in which it had a pecuniary interest, failed to exercise reasonable care or competence in obtaining or communicating information to Plaintiff, as set forth above.

493. Such information included, without limitation, that the accounting services of Millennium were performed in accordance with applicable standards and that the information contained in the reports prepared by Millennium on NHC was accurate.

494. Plaintiff justifiably relied on the information it received.

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

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

EIGHTEENTH CAUSE OF ACTION

(Negligence Against Millennium)

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

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

499. As detailed above, by failing to perform to applicable statutory, professional, and contractual standards, Millennium breached that duty.

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

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

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

NINETEENTH CAUSE OF ACTION

(Gross Negligence Against Millennium)

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

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1 504. Millennium owed a duty of care to NHC, including the duty to perform its work
2 in accordance with industry standards, and to not provide misleading or otherwise inaccurate
3 information upon which it intended for and knew NHC, the NDOI or others would rely.

4 505. As detailed above, Millennium failed to perform to applicable standards of care,
5 by failing to exercise even the slightest degree of care.

6 506. Millennium engaged in an act or omission as detailed above of an aggravated
7 character, or with willful, wanton misconduct, misreporting information that it knew would
8 be relied upon by NHC and others.

9 507. The breach was the legal cause of NHC's injuries.

10 508. As a direct and proximate result of Millennium's conduct, NHC has suffered
11 damages in an amount in excess of fifteen thousand dollars (\$15,000).

12 509. In committing the acts hereinabove alleged, Millennium is guilty of oppression,
13 fraud, and malice towards NHC. Therefore, NHC is entitled to recover punitive damages
14 from Millennium for the purpose of deterring it and others similarly situated from engaging
15 in like conduct in the future.

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

19 **TWENTIETH CAUSE OF ACTION**
20 **(Breach of Contract Against Millennium)**

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

23 512. Millennium and NHC entered into a valid and enforceable contract - the
24 January 7, 2015, Service Agreement – that required Millennium to perform professional
25 accounting and consulting services.

26 513. Provisions of the Service Agreement provided for Millennium to perform all
27 services in accordance with applicable professional, statutory, and contractual standards.

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1 514. Millennium failed to perform accounting and consulting services as required
2 under applicable professional, statutory and contractual standards.

3 515. Plaintiff performed, or was excused from performance, under the Services
4 Agreement.

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

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

10 **TWENTY-FIRST CAUSE OF ACTION**

11 **(Tortious Breach of the Implied Covenant Against Millennium)**

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

14 519. Millennium and NHC entered into a valid and enforceable contract - the
15 January 7, 2015 Service Agreement – that required Millennium to perform professional,
16 accounting, and consulting services.

17 520. Under applicable law, the Service Agreement contains an implied covenant of
18 good faith and fair dealing among all parties.

19 521. A special element of reliance or fiduciary duty existed between Plaintiff and
20 Millennium where Millennium was in a superior or trusted position.

21 522. In failing to perform in accordance with statutory and professional standards as
22 set forth herein, Millennium breached the duty of good faith and engaged in misconduct in a
23 manner that was unfaithful to the purpose of the Service Agreement.

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

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

TWENTY-SECOND CAUSE OF ACTION

(Breach of the Implied Covenant of Good Faith and Fair Dealing Against Millennium)

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

526. Millennium and NHC entered into a valid and enforceable contract – the January 7, 2015, Service Agreement - that required Millennium to perform professional, accounting, and consulting services.

527. Under applicable law, the Service Agreement contains an implied covenant of good faith and fair dealing among all parties.

528. Millennium, by failing to follow applicable professional and statutory standards as set forth herein, breached that duty by performing in a manner that was unfaithful to the purpose of the Service Agreement.

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

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

TWENTY-THIRD CAUSE OF ACTION

(Negligent Performance of an Undertaking Against Millennium)

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

532. Millennium undertook to provide accounting and consulting services, including, but not limited to, preparing and filing financial statements on behalf of NHC.

533. Such services included, but were not limited to, preparing and filing the NHC annual reports, quarterly reports, and other reports as listed herein, and it assisted with the preparation of the 2014 MD&A that was reported to the Nevada DOI.

534. Services to be performed by Millennium also included evaluating general ledger entries to ensure that statutory accounting and reporting principles had been followed, and

1 recommending any adjustments so as to adhere to statutory accounting and reporting rules
2 prescribed by the State of Nevada.

3 535. Millennium knew or should have recognized these undertakings as being
4 necessary for the protection of NHC's members, NHC's enrolled insureds, NHC's creditors,
5 and the State of Nevada.

6 536. By agreeing to perform the accounting and consulting services detailed above,
7 Millennium undertook to perform a duty owed by NHC to its members, enrolled insureds,
8 creditors, and regulators and to act in accordance with statutory and professional standards.

9 537. Millennium's failure to exercise reasonable care in performing its services,
10 including Millennium's failure to perform accounting services in accordance with applicable
11 standards as detailed herein and misreporting of financial information and reports, increased
12 the risk of harm to (and did in fact harm) NHC, NHC's members, insureds, creditors,
13 customers and vendors, and the State of Nevada, and it unnecessarily prolonged, and it led to,
14 the continued and unjustified existence of NHC.

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

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

20 **TWENTY-FOURTH CAUSE OF ACTION**

21 **(Unjust Enrichment Against Millennium)**

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

24 541. Millennium was paid for accounting and consulting services that were to be
25 performed in accordance with professional, statutory, and contractual standards.

26 542. Despite not providing such services in accordance with professional, statutory,
27 and contractual standards, and against fundamental principles of justice, equity, and good
28 conscience, Millennium unjustly retained the fees paid to it for such services.

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

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

CAUSES OF ACTION RELATED TO LARSON DEFENDANTS

TWENTY-FIFTH CAUSE OF ACTION

(Negligence Per Se - Violation of NRS 628.435 Against Larson Defendants)

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

546. NRS 628.435 requires, in part, that a CPA comply with all professional standards for accounting and documentation related to an audit applicable to a particular engagement.

547. Plaintiff, and those represented by Plaintiff, including the members of NHC, NHC's insured enrollees, NHC's vendors, and the State of Nevada, belong to a class of persons that NRS 628.435 was designed to protect.

548. The Larson Defendants undertook to perform audits of NHC.

549. As a result, the Larson Defendants were subject to the minimum standards as set forth in NRS 628.435.

550. As set forth above, the Larson Defendants violated NRS 628.435 by failing to perform their duties as CPAs in accordance with the minimum statutory and applicable professional standards required.

551. Plaintiff's injury was the type against which NRS 628.435 was intended to protect.

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

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

4 **TWENTY-SIXTH CAUSE OF ACTION**

5 **(Professional Malpractice Against Larson Defendants)**

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

8 555. The Larson Defendants were engaged by NHC or were responsible for
9 providing professional accounting and auditing services to NHC.

10 556. Such services included, but were not limited to, auditing the books and records of
11 NHC for the years ended December 31, 2013, and 2014, and its MD&A for those years, and
12 providing the audit opinions set forth in related reports, including the Audit Report Concerning
13 NHC's December 31, 2013, and 2014, Financial Statements, The Reports of Independent
14 Certified Public Accountants required by OMB Circular A-133, Independent Auditor's Report on
15 Compliance for each Major Program, and Report on Internal Control Over Compliance
16 Independent Auditor's Report on Internal Control over Financial Reporting and on Compliance
17 and Other Matters Based on an Audit of Financial Statements Performed in Accordance with
18 Government Auditing Standards.

19 557. The Larson Defendants had a duty to use such skill, prudence, and diligence as
20 other members of the profession commonly possess and exercise.

21 558. As detailed above, the Larson Defendants breached that duty by failing to
22 comply with applicable statutory and professional standards.

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

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

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TWENTY-SEVENTH CAUSE OF ACTION

(Intentional Misrepresentation (Fraud) Against Larson Defendants)

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

562. On or about May 29, 2014, Larson issued its audit report concerning NHC's December 31, 2013, financial statements.

563. On or about June 1, 2015, Larson issued its audit report concerning NHC's December 31, 2013, and 2014, Financial Statements.

564. The audit reports contained the following statements:

i. We conducted our audits in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States.

ii. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our qualified audit opinion.

iii. In our opinion, the statutory financial statements referred to above present fairly, in all material respects, the admitted assets, liabilities, and capital and surplus of Nevada Health Co-Op as of December 31, 2014, and 2013, and the results of its operations and its cash flow for the years then ended, in accordance with the financial reporting provisions of the Nevada DOI described in Note 1.

iv. In our opinion, the [Supplementary] information is fairly stated in all material respects in relation to the financial statements taken as a whole.

565. On or about June 1, 2015, Larson issued its report entitled The Reports of Independent Certified Public Accountants required by OMB Circular A-133.

566. These reports included an "Independent Auditor's Report on Internal Control over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with Government Auditing Standards," and

an “Independent Auditor’s Report on Compliance for each Major Program; Report on Internal Control Over Compliance; and Report on Schedule of Expenditures of Federal Awards Required by OMB Circular A-133.”

567. The “Independent Auditor’s Report on Internal Control over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with Government Auditing Standards” contained the following statements:

i. We have audited, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in Government Auditing Standards issued by the Comptroller General of the United States, the statutory financial statements of Nevada Health Co-Op (the Co-Op) (a nonprofit organization), which comprise the statement of financial position as of December 31, 2014, and the related statutory financial statements of activities, and cash flows for the year then ended, and the related notes to the statutory financial statements, and have issued our report thereon dated June 1, 2015.

ii. . . . during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses.

iii. As part of obtaining reasonable assurance about whether the Co-Op’s financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts.

iv. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under Government Auditing Standards.

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1 568. The “Independent Auditor’s Report on Compliance for each Major Program;
2 Report on Internal Control Over Compliance; and Report on Schedule of Expenditures of
3 Federal Awards Required by OMB Circular A-133” contained the following statements:

4 i. We believe that our audit provides a reasonable basis for our
5 opinion in compliance for each major federal program.

6 ii. In our opinion, the Co-Op complied, in all material respects, with
7 the types of compliance requirements referred to above that could have a direct
8 and material effect on each of its major federal programs for the year ended
9 December 31, 2014.

10 iii. In planning and performing our audit of compliance, we
11 considered the Co-Op’s internal control over compliance with the types of
12 requirements that could have a direct and material effect on each major federal
13 program to determine the auditing procedures that are appropriate in the
14 circumstances for the purpose of expressing an opinion on compliance for each
15 major federal program and to test and report on internal control over compliance
16 in accordance with OMB Circular A-133.

17 iv. We did not identify any deficiencies in internal control over
18 compliance that we considered to be material weaknesses. We did not identify
19 any deficiencies in internal control over compliance that we consider to be
20 material weaknesses.

21 v. We have audited the statutory financial statements of the Co-Op,
22 as of and for the year ended December 3, 2014, and the related notes to the
23 statutory financial statements. We issued our report thereon dated June 1, 2015,
24 which contained an unmodified opinion on those statutory financial statements.

25 vi. The [Schedule of Expenditures for Financial Awards] has been
26 subjected to the auditing procedures applied in the audit of the statutory financial
27 statements and certain additional procedures, including comparing and
28 reconciling such information directly to the underlying accounting and other

1 records used to prepare the additional procedures in accordance with auditing
2 standards generally accepted in the United States of America. In our opinion,
3 the schedule of expenditures of federal awards is fairly stated in all material
4 respects in relation to the statutory financial statements as a whole.

5 569. The Larson Defendants knew or believed that their representations as stated
6 above, were false, or that the Larson Defendants had an insufficient basis of information for
7 making the representations.

8 570. Plaintiff justifiably relied upon the Larson Defendants' representations.

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

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

14 **TWENTY-EIGHTH CAUSE OF ACTION**

15 **(Negligent Misrepresentation Against Larson Defendants)**

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

18 574. The Larson Defendants, in the course of action in which they had a pecuniary
19 interest, failed to exercise reasonable care or competence in obtaining or communicating
20 information to Plaintiff as set forth above.

21 575. Such information included, without limitation, that the accounting and auditing
22 services of the Larson Defendants were performed in accordance with applicable standards
23 and other information contained in the reports of the Larson Defendants on NHC, as set forth
24 herein.

25 576. Plaintiff justifiably relied on the information it received.

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

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

4 **TWENTY-NINTH CAUSE OF ACTION**

5 **(Negligence Against Larson Defendants)**

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

8 580. The Larson Defendants owed a duty of care to Plaintiff, including the duty to
9 perform their work in accordance with applicable statutory and professional standards.

10 581. As detailed above, by failing to perform to applicable statutory and professional
11 standards, the Larson Defendants breached that duty.

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

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

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

18 **THIRTIETH CAUSE OF ACTION**

19 **(Breach of Contract Against Larson)**

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

22 586. Larson and NHC entered into two valid and enforceable contracts - the 2013 and the
23 2014 Engagement Letters - that required Larson to perform professional accounting and auditing
24 services.

25 587. Provisions of the Engagement Letters provided for Larson to perform all
26 services in accordance with applicable professional standards.

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1 588. Larson failed to perform under the Engagement Letters by failing to perform
2 accounting and auditing services as required under applicable professional and statutory
3 standards, as detailed above.

4 589. Plaintiff performed, or was excused from performance, under the Engagement
5 Letters.

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

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

11 **THIRTY-FIRST CAUSE OF ACTION**

12 **(Tortious Breach of the Implied Covenant Against Larson)**

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

15 593. Larson and NHC entered into two valid and enforceable contracts - the 2013
16 and the 2014 Engagement Letters - that required Defendant to perform professional
17 accounting and auditing services.

18 594. Under applicable law, the Engagement Letters contain an implied covenant of
19 good faith and fair dealing among all parties.

20 595. A special element of reliance or fiduciary duty existed between Plaintiff and
21 Larson where Larson was in a superior or trusted position.

22 596. Larson breached the duty of good faith by engaging in misconduct in a manner
23 that was unfaithful to the purpose of the Engagement Letters, by failing to perform in
24 accordance with statutory and professional standards as set forth herein.

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

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

4 **THIRTY-SECOND CAUSE OF ACTION**

5 **(Breach of the Implied Covenant of Good Faith and Fair Dealing Against Larson)**

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

8 600. Larson and NHC entered into two valid and enforceable contracts - the 2013 and the
9 2014 Engagement Letters - that required Defendant to perform professional accounting and
10 auditing services.

11 601. Under applicable law, the Engagement Letters contain an implied covenant of
12 good faith and fair dealing among all parties.

13 602. Larson, by failing to follow applicable professional and statutory standards as
14 set forth herein, breached that duty by performing in a manner that was unfaithful to the
15 purpose of the Engagement Letters.

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

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

21 **THIRTY-THIRD CAUSE OF ACTION**

22 **(Negligent Performance of an Undertaking Against Larson Defendants)**

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

25 606. The Larson Defendants undertook to provide accounting and auditing services,
26 including but not limited to, examining the books and records of NHC.

27 607. Such services included, but were not limited to, auditing the books and records
28 of NHC for the years ended December 31, 2013, and 2014, and its MD&A for those years,

1 and providing the audit opinions set forth in related reports, including the Audit Report
2 concerning NHC's December 31, 2013, and 2014, Financial Statements, The Reports of
3 Independent Certified Public Accountants required by OMB Circular A-133, Independent
4 Auditor's Report on Compliance for each Major Program, and Report on Internal Control
5 Over Compliance Independent Auditor's Report on Internal Control over Financial Reporting
6 and on Compliance and Other Matters Based on an Audit of Financial Statements Performed
7 in Accordance with Government Auditing Standards.

8 608. The Larson Defendants knew, or should have recognized, these undertakings as
9 necessary for the protection of NHC's members, NHC's enrolled insureds, NHC's creditors,
10 and the State of Nevada.

11 609. By performing the accounting and auditing services detailed above, the Larson
12 Defendants undertook to perform a duty owed by NHC to its members, enrolled insureds,
13 creditors, and regulators to act in accordance with statutory and professional standards.

14 610. The Larson Defendants' failure to exercise reasonable care in performing its
15 services, including the Larson Defendants' failure to perform accounting and auditing
16 services in accordance with applicable standards as detailed herein, increased the risk of harm
17 to (and did in fact harm) NHC, NHC's members, insureds, creditors, customers and vendors,
18 and the State of Nevada.

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

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

24 **THIRTY-FOURTH CAUSE OF ACTION**

25 **(Unjust Enrichment Against Larson)**

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

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614. Larson was paid for accounting and auditing services that were to be performed in accordance with statutory and professional standards.

615. Despite failing to provide such services in accordance with statutory and professional standards, Larson unjustly retained the fees paid to it for such services against fundamental principles of justice, equity, and good conscience.

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

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

CAUSES OF ACTION RELATED TO INSUREMONKEY DEFENDANTS

THIRTY-FIFTH CAUSE OF ACTION

(Intentional Misrepresentation/Fraud in the Inducement Against InsureMonkey Defendants)

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

619. In its proposal dated September 21, 2012, the InsureMonkey Defendants misrepresented their experience, products, subject matter expertise and the scalability and ease of integration of their products with other vendors' products.

620. From April through September 2013, InsureMonkey's officers, directors, and agents - including its CEO Rivlin - represented to NHC that they had the necessary skill, experience, and expertise to handle all aspects of the customer and members' services contemplated by the parties' potential agreements in a competent and professional manner. These misrepresentations continued throughout InsureMonkey's course of dealings with NHC.

621. InsureMonkey also served as a broker for the sale of NHC insurance policies. Throughout the course of dealing with NHC, the InsureMonkey Defendants misrepresented the number of customers obtained by InsureMonkey's marketing efforts and the number of

1 insured enrollees in order to obtain additional fees and income that InsureMonkey had not
2 earned. InsureMonkey Defendants overcharged NHC for services and further enriched itself
3 with broker commissions on NHC business that it should not have received. InsureMonkey
4 Defendants also did not properly report the extent and scope of problems to NHC as such
5 problems arose.

6 622. The InsureMonkey's Defendants' wrongful and deficient acts also led to
7 financial misreporting by NHC based upon incorrect enrollment, members not being
8 terminated, and claims not being properly tracked and paid, all of which were foreseeable
9 consequences of the InsureMonkey's Defendants' actions.

10 623. The InsureMonkey Defendants knew or believed that their representations were
11 false, or the InsureMonkey Defendants had an insufficient basis of information for making
12 the representation.

13 624. The InsureMonkey Defendants made such representations to induce NHC to
14 enter into the various agreements listed herein with InsureMonkey related to member and
15 customer services and so that CEO Rivlin could personally obtain exorbitant salaries,
16 bonuses, and other remuneration for entering into the lucrative agreements with NHC.

17 625. NHC reasonably and justifiably relied upon the InsureMonkey Defendants'
18 representations.

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

21 627. In committing the acts hereinabove alleged, the InsureMonkey Defendants are
22 guilty of oppression, fraud, and malice towards NHC. Therefore, NHC is entitled to recover
23 punitive damages from the InsureMonkey Defendants for the purpose of deterring them and
24 others similarly situated from engaging in like conduct in the future.

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

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THIRTY-SIXTH CAUSE OF ACTION

(Constructive Fraud Against InsureMonkey Defendants)

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

630. At all relevant times, a fiduciary duty existed between Plaintiff and the InsureMonkey Defendants, where the InsureMonkey Defendants were in a superior or trusted position as set forth herein.

631. The InsureMonkey Defendants owed a legal or equitable duty to NHC arising from a fiduciary or confidential relationship.

632. The InsureMonkey Defendants breached that duty by misrepresenting or concealing material facts, *i.e.*, that the InsureMonkey Defendants did not have the requisite skill, experience, or expertise to perform the services contemplated by the parties' agreements listed herein and that it failed to perform in a manner consistent with minimum industry standards as set forth herein.

633. The InsureMonkey Defendants also breached that duty by misrepresenting the number of customers obtained by InsureMonkey's marketing efforts and the number of insured enrollees in order to obtain additional fees and income InsureMonkey had not earned. InsureMonkey overcharged NHC for services and further enriched itself with broker commissions on NHC business that it should not have received. InsureMonkey Defendants also did not properly report the extent and scope of problems to NHC as such problems arose.

634. The InsureMonkey's Defendants' wrongful and deficient acts also led to financial misreporting by NHC based upon incorrect enrollment, members not being terminated, and claims not being properly tracked and paid, all of which were foreseeable consequences of the InsureMonkey's Defendants' actions.

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

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636. In committing the acts hereinabove alleged, the InsureMonkey Defendants are guilty of oppression, fraud, and malice towards NHC. Therefore, NHC is entitled to recover punitive damages from the InsureMonkey Defendants for the purpose of deterring them and others similarly situated from engaging in like conduct in the future.

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

THIRTY-SEVENTH CAUSE OF ACTION

(Negligent Misrepresentation Against InsureMonkey Defendants)

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

639. The InsureMonkey Defendants, in the course of action in which they had a pecuniary interest, failed to exercise reasonable care or competence in obtaining or communicating information to NHC as set forth above.

640. Such information included, without limitation, the number of customers obtained by InsureMonkey's marketing efforts, the number of eligible enrollees, the eligibility data provided to NHC and/or CMS, and other reporting information provided to NHC or otherwise required by the parties' agreements or the CMS Loan Agreement.

641. NHC reasonably and justifiably relied on the information it received from the InsureMonkey Defendants.

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

643. In committing the acts alleged above, the InsureMonkey Defendants are guilty of oppression, fraud, and malice towards NHC. Therefore, NHC is entitled to recover punitive damages from the InsureMonkey Defendants for the purpose of deterring them and others similarly situated from engaging in like conduct in the future.

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

THIRTY-EIGHTH CAUSE OF ACTION

(Breach of Fiduciary Duty Against InsureMonkey)

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

646. A fiduciary duty existed between NHC and InsureMonkey wherein InsureMonkey was in a superior or trusted position as set forth herein.

647. InsureMonkey breached that duty by failing to perform minimum professional standards and by otherwise providing misleading and inaccurate information as set forth above.

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

649. In committing the acts alleged above, InsureMonkey is guilty of oppression, fraud, and malice towards NHC. Therefore, NHC is entitled to recover punitive damages from InsureMonkey for the purpose of deterring it and others similarly situated from engaging in like conduct in the future.

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

THIRTY-NINTH CAUSE OF ACTION

(Negligence Against InsureMonkey)

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

652. InsureMonkey owed a duty of care to NHC, including the duty to perform its work in accordance with industry standards, and to not provide misleading or otherwise inaccurate information upon which it intended for and knew NHC would rely.

653. As detailed above, InsureMonkey failed to perform to applicable professional standards, by using inflated insureds numbers to bill for its work, by not accurately accounting for NHC's member enrollees and misreporting that information, and by causing NHC to pay claims outside of enrollment among other actions, InsureMonkey breached that duty.

654. The breach was the legal cause of NHC's injuries.

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

656. In committing the acts hereinabove alleged, InsureMonkey is guilty of oppression, fraud, and malice towards NHC. Therefore, NHC is entitled to recover punitive damages from InsureMonkey for the purpose of deterring it and others similarly situated from engaging in like conduct in the future.

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

FORTIETH CAUSE OF ACTION

(Gross Negligence Against InsureMonkey)

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

659. InsureMonkey owed a duty of care to NHC, including the duty to perform its work in accordance with industry standards, and to not provide misleading or otherwise inaccurate information upon which it intended for and knew NHC would rely.

660. As detailed above, InsureMonkey failed to perform to applicable professional standards, by failing to exercise even the slightest degree of care.

661. InsureMonkey engaged in an act or omission as detailed above of an aggravated character, or with willful, wanton misconduct, including without limitation, not accurately keeping track of insureds, billing for services for insured numbers which it knew to be inaccurate, and misreporting information that it knew would be relied upon by NHC and others.

662. The breach was the legal cause of NHC's injuries.

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

664. In committing the acts hereinabove alleged, InsureMonkey is guilty of oppression, fraud, and malice towards NHC. Therefore, NHC is entitled to recover punitive damages from InsureMonkey for the purpose of deterring it and others similarly situated from engaging in like conduct in the future.

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

FORTY-FIRST CAUSE OF ACTION

(Breach of Contract Against InsureMonkey)

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

667. InsureMonkey and NHC entered into a series of valid and enforceable contracts as set forth herein.

668. InsureMonkey failed to perform under the various agreements as set forth herein, including, but not limited to, the Nevada Health CO-OP Agent Broker contract between InsureMonkey, Inc. and NHC. the 2013 Master Services Agreement, the 2013 Customer Service MOU, and the Master Agreement, by failing to provide the services contemplated therein in a reasonable and satisfactory manner, as detailed above.

669. InsureMonkey was to be compensated, in part on the number of insureds of NHC. InsureMonkey provided inflated numbers of insureds as part of their billings to NHC. By billing with inflated numbers of insureds, InsureMonkey failed to perform under the above-named agreements.

670. NHC performed, or was excused from performance, all of the agreements set forth and detailed above. Such performance included paying InsureMonkey in excess of \$9.4 million for services rendered and additional start-up costs.

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

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

FORTY-SECOND CAUSE OF ACTION

(Tortious Breach of the Implied Covenant of Good Faith and Fair Dealing Against InsureMonkey)

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

674. InsureMonkey and NHC entered into a series of valid and enforceable contracts as set forth herein.

675. InsureMonkey owed a duty of good faith to Plaintiff arising from such contracts.

676. A special element of reliance or fiduciary duty existed between Plaintiff and InsureMonkey wherein InsureMonkey was in a superior or trusted position.

677. InsureMonkey breached the duty of good faith by engaging in misconduct in a manner that was unfaithful to the purpose of the agreements described herein, by failing to perform in accordance with basic, minimum professional standards as set forth herein, including, but not limited to, providing intentionally false and/or misleading and faulty sales, enrollment, and eligibility data, upon which it intended for NHC to rely.

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

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

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FORTY-THIRD CAUSE OF ACTION

**(Breach of the Implied Covenant of Good Faith and Fair Dealing
Against InsureMonkey)**

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

681. InsureMonkey and NHC entered into a series of valid and enforceable contracts as set forth herein.

682. InsureMonkey owed a duty of good faith to Plaintiff arising from such contracts.

683. Under applicable law, these agreements contained an implied covenant of good faith and fair dealing among all parties.

684. InsureMonkey breached the duty of good faith by engaging in misconduct in a manner that was unfaithful to the purpose of the agreements described herein, by failing to perform in accordance with basic, minimum professional standards as set forth herein, including, but not limited to, providing intentionally false and/or misleading and faulty sales, enrollment, and eligibility data, upon which it intended for NHC to rely. InsureMonkey also induced NHC into agreements that InsureMonkey knew, or should have known, that it could not perform.

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

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

FORTY-FOURTH CAUSE OF ACTION

(Negligent Performance of an Undertaking Against InsureMonkey)

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

688. InsureMonkey undertook to provide certain services related to tracking and reporting enrollment and eligibility data on behalf of NHC, to provide that information to both

1 NHC and CMS for purposes of calculating certain amounts owed by NHC, to be received by
2 NHC, or for other purposes.

3 689. InsureMonkey knew or should have recognized that these undertakings were
4 necessary for the protection of NHC's members, NHC's enrolled insureds, NHC's creditors,
5 and the State of Nevada.

6 690. By performing the services detailed above, InsureMonkey undertook to perform
7 a duty owed by NHC to its members, enrolled insureds, creditors, and regulators to act in
8 accordance with statutory and professional standards, and to properly track and report
9 enrollment and eligibility data.

10 691. InsureMonkey's failure to exercise reasonable care in performing its services
11 increased the risk of harm to NHC, NHC's customers and vendors, and the State of Nevada.

12 692. As a direct and proximate result of InsureMonkey's conduct, NHC has suffered
13 damages in an amount in excess of fifteen thousand dollars (\$15,000).

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

17 **FORTY-FIFTH CAUSE OF ACTION**
18 **(Unjust Enrichment Against InsureMonkey)**

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

21 695. InsureMonkey was paid over \$9.4 million for start-up costs and services that
22 were to be performed in accordance with certain professional and industry standards and/or
23 based on the number of NHC insureds.

24 696. Despite its failure to provide such services and/or not providing the quality or
25 quantity of services required for the number of NHC insureds billed for, InsureMonkey
26 unjustly retained the fees paid to it for such services and start-up costs against fundamental
27 principles of justice, equity, and good conscience.

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

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

FORTY-SIXTH CAUSE OF ACTION

(Negligent Hiring, Training, Supervision, and Retention Against InsureMonkey)

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

700. InsureMonkey owed a duty to exercise due care towards NHC in all of its dealings in providing the services contemplated by their various agreements, including, but not limited to, the Master Agreement.

701. InsureMonkey breached that duty by failing to provide services to satisfy minimum industry standards and practices.

702. InsureMonkey's failure to properly hire, train, and supervise its employees and agents to ensure that they acted in a competent and professional manner, and with the requisite skill and expertise necessary to perform and complete the work, was a direct and proximate cause of NHC's injuries as set forth herein.

703. InsureMonkey's decision to provide inadequate training and to hire and retain certain employees who were unsatisfactory and unable to fulfill InsureMonkey's obligations and responsibilities to NHC was the direct and proximate cause of NHC's injuries as set forth herein.

704. As detailed above, by failing to perform to applicable professional and industry standards, InsureMonkey breached that duty.

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

706. InsureMonkey knew, or should have known, that the employees and agents it had hired were unfit for their positions and would likely cause harm to third parties when placed in the positions in which InsureMonkey placed them.

1 707. As a direct and proximate result of InsureMonkey's conduct, NHC has suffered
2 damages in an amount in excess of fifteen thousand dollars (\$15,000).

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

6 **CAUSES OF ACTION RELATED TO NHS**

7 **FORTY-SEVENTH CAUSE OF ACTION**

8 **(Professional Malpractice Against NHS)**

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

11 710. NHS was engaged by NHC and was responsible for providing professional
12 medical utilization management and member eligibility review services to NHC.

13 711. Such services included, but were not limited to, performing evaluations of
14 appropriateness and medical necessity of health care services, procedures and facilities;
15 performing precertification of hospital admissions and outpatient procedures; processing
16 information related to in-hospital observations; providing concurrent reviews for inpatient
17 acute care, rehabilitation, and long-term acute care; providing discharge planning; performing
18 provider appeal reviews; and performing member eligibility review, along with other services,
19 as listed herein.

20 712. NHS had a duty to use such skill, prudence, and diligence as other members of
21 the profession commonly possess and exercise.

22 713. As detailed above, NHS breached that duty by failing to comply with applicable
23 contractual, professional and industry standards.

24 714. As a direct and proximate result of NHS' conduct, Plaintiff has suffered
25 damages in an amount in excess of fifteen thousand dollars (\$15,000).

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

1 **FORTY-EIGHTH CAUSE OF ACTION**

2 **(Negligence Against NHS)**

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

5 717. NHS owed a duty of care to Plaintiff, including the duty to perform its work in
6 accordance with applicable statutory, professional, and contractual standards.

7 718. As detailed above, by failing to perform to applicable statutory, professional,
8 and contractual standards, NHS breached that duty.

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

10 720. As a direct and proximate result of NHS' conduct, Plaintiff has suffered
11 damages in an amount in excess of fifteen thousand dollars (\$15,000).

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

15 **FORTY-NINTH CAUSE OF ACTION**

16 **(Gross Negligence Against NHS)**

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

19 723. NHS owed a duty of care to NHC, including the duty to perform its work in
20 accordance with industry standards, and to not provide misleading or otherwise inaccurate
21 information upon which it intended for and knew NHC would rely.

22 724. As detailed above, NHS failed to perform to applicable professional standards,
23 by failing to exercise even the slightest degree of care.

24 725. NHS engaged in an act or omission as detailed above of an aggravated character,
25 or with willful, wanton misconduct, including without limitation, not verifying information
26 concerning insureds, improperly authorizing service, transmitting data it knew to be
27 inaccurate and misreporting information that it knew would be relied upon by NHC and
28 others.

FIFTY-FIRST CAUSE OF ACTION

(Tortious Breach of the Implied Covenant Against NHS)

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

738. NHS and NHC entered into a valid and enforceable contract - the July 19, 2013, Utilization Agreement – that required NHS to perform professional medical utilization management and member eligibility review services and to bill for services, in part, based on the number of NHC insureds.

739. Under applicable law, the Utilization Agreement contains an implied covenant of good faith and fair dealing among all parties.

740. A special element of reliance or fiduciary duty existed between Plaintiff and NHS where NHS was in a superior or trusted position.

741. In failing to perform in accordance with contractual, statutory, and professional standards as set forth herein, NHS breached the duty of good faith and engaged in misconduct in a manner that was unfaithful to the purpose of its Utilization Agreement.

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

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

FIFTY-SECOND CAUSE OF ACTION

(Breach of the Implied Covenant of Good Faith and Fair Dealing Against NHS)

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

745. NHS and NHC entered into a valid and enforceable contract - the July 19, 2013, Utilization Agreement – that required NHS to perform professional medical utilization management and member eligibility review services and bill for those services, based at least in part on the number of NHC insureds.

1 754. By agreeing to perform the medical utilization and member eligibility review
2 services detailed above, NHS undertook to perform a duty owed by NHC to its members,
3 enrolled insureds, creditors, and regulators and to act in accordance with statutory and
4 professional standards.

5 755. NHS' failure to exercise reasonable care in performing its services, including
6 NHS' failure to perform medical utilization management and member eligibility review
7 services in accordance with applicable standards as detailed herein, as well as failing to act in
8 a fair and impartial capacity, increased the risk of harm to NHC, NHC's customers and
9 vendors, and the State of Nevada, resulting in the loss of NHC's assets.

10 756. As a direct and proximate result of NHS' conduct, Plaintiff has suffered
11 damages in an amount in excess of fifteen thousand dollars (\$15,000).

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

FIFTY-FOURTH CAUSE OF ACTION

(Unjust Enrichment Against NHS)

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

19 759. NHS received lucrative no-bid contracts with NHC, with better than market
20 terms, as a result of insider influence despite substantial conflicts of interest.

21 760. NHS was paid for medical utilization management and member eligibility
22 review services that were to be performed in accordance with professional, statutory, and
23 contractual standards.

24 761. NHS' compensation was mechanically calculated based on the total persons
25 enrolled as NHC members each month, a fee that bore little to no relation to services being
26 provided by NHS, and a fee that unjustly enriched NHS as a related party to a corporate
27 insider. Upon information and belief, little work was actually performed by NHS for NHC in
28 relation to the substantial fees paid.

762. Upon information and belief, UHH was the owner of NHS. UHH was being paid to process and adjudicate claims of NHC, and then it was being paid again through NHS to do a quality control review check of the very claims that UHH processed, which also resulted in NHS being unjustly compensated. NHS also had a conflict of interest, or the appearance of a conflict of interest, by being engaged to provide a quality control review of claim services provided by its parent company, UHH, resulting in unjust compensation to NHS.

763. Despite not providing its services in accordance with professional, statutory, and contractual standards, receiving contracts tainted with conflicts of interest without competitive bidding, and against fundamental principles of justice, equity, and good conscience, NHS unjustly retained the fees paid to it for such services.

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

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

CAUSES OF ACTION RELATED TO MANAGEMENT DEFENDANTS

FIFTY-FIFTH CAUSE OF ACTION

(Breach of Fiduciary Duty Against Management Defendants)

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

767. As officers and directors of NHC, the Management Defendants, and each of them, owed duties of good faith and loyalty to act in the best interests of NHC.

768. Each of the Management Defendants breached his or her duties by failing to act in the best interests of NHC and instead in their own self-serving interests as set forth above.

769. The breaches of fiduciary duties outlined herein involved intentional misconduct, fraud, and/or a knowing violation of the law.

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

771. In committing the acts hereinabove alleged, the Management Defendants are guilty of oppression, fraud, and malice towards NHC. Therefore, NHC is entitled to recover punitive damages from the Management Defendants for the purpose of deterring them and others similarly situated from engaging in like conduct in the future.

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

FIFTY-SIXTH CAUSE OF ACTION

(Intentional Misrepresentation/Fraud Against Management Defendants)

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

774. On February 28, 2015, and approximately mid-May 2015, the Management Defendants adopted and submitted the 2014 and March 2015 quarterly financial statements for NHC to the Nevada DOI. On or about April 1, 2015, the Management Defendants adopted and submitted a MD&A that was submitted to the Nevada DOI as to the financial condition and prospective information of NHC.

775. On or about June 1, 2015, the Management Defendants adopted and authorized the release of the Audit Report prepared by Larson concerning NHC's December 31, 2013, and 2014, Financial Statements.

776. The financial statements, MD&A, and Audit Report contained information that was false and misleading as set forth herein.

777. The Management Defendants knew or believed that their representations as stated above were false, or the Management Defendants had an insufficient basis of information for making the representations.

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1 778. Plaintiff and those represented by Plaintiff justifiably relied upon the
2 Management Defendants' representations contained in NHC's financial statements, MD&A,
3 and Audit Report.

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

6 780. In committing the acts hereinabove alleged, the Management Defendants are
7 guilty of oppression, fraud, and malice towards NHC. Therefore, NHC is entitled to recover
8 punitive damages from the Management Defendants for the purpose of deterring them and
9 others similarly situated from engaging in like conduct in the future.

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

FIFTY-SEVENTH CAUSE OF ACTION

(Unjust Enrichment Against Management Defendants)

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

17 783. Each of the Management Defendants was paid excessive amounts in
18 compensation, including salary and bonuses without justification, and such compensation was
19 paid despite the fact that NHC was losing millions of dollars each financial reporting period.

20 784. Some of the Management Defendants' compensation was based upon the
21 unreliable and untruthful financial information prepared by, approved by, and/or ratified by
22 these Management Defendants, which amounts Management Defendants are continuing to
23 hold in violation of equity and good conscience.

24 785. Management Defendants granted lucrative no-bid contracts to NHS and UHH,
25 with better than market terms, as a result of insider influence despite substantial conflicts of
26 interest.

27 786. In light of the actions set forth herein, such amounts should be disgorged from
28 the Management Defendants and returned to NHC in the interests of equity.

CAUSES OF ACTION RELATED TO ALL DEFENDANTS

FIFTY NINTH CAUSE OF ACTION

(Civil Conspiracy Against All Defendants)

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

797. Defendants acted in concert with each other, and with certain members of NHC's management and vendors, including, but not limited to, the Management Defendants, Milliman, Millennium, Larson, and InsureMonkey, to falsify operating results and reserves, to conceal internal control weaknesses and other wrongdoing, and to avoid statutory supervision by their use of untruthful and/or unreliable financial data and other information they knew to be false and not in accordance with required statutory and professional standards in order to continue the flow of money to NHC, and subsequently, to the Management Defendants and NHC's vendors for their own personal gain.

798. Defendants acted in concert with each other to inflate amounts paid to certain defendants, including without limitation InsureMonkey, NHS and UHH though the utilization of inflated counts of the numbers of insureds used for billing NHC for services as detailed above.

799. Defendants' conduct described herein involved intentional misconduct, fraud, and/or a knowing violation of the law.

800. Each of the Defendants are jointly and severally liable for the damages described herein.

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

802. In committing the acts hereinabove alleged, Defendants are guilty of oppression, fraud, and malice towards NHC. Therefore, NHC is entitled to recover punitive damages from Defendants for the purpose of deterring them and others similarly situated from engaging in like conduct in the future.

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(Concert of Action Against All Defendants)

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

8 805. Defendants acted in concert with each other and with certain of NHC's
9 management and vendors, including, but not limited to, the Management Defendants,
10 Milliman, Millennium, Larson, NHS, UHH and InsureMonkey, to grant contracts with better
11 than market terms to related parties despite substantial conflicts of interest, to fund unjustified
12 start-up costs of UHH and InsureMonkey so that they could participate in a business
13 opportunity with NHC, to falsify operating results and reserves, to conceal internal control
14 weaknesses and other wrongdoing, and to avoid statutory supervision and receivership by
15 their use of untruthful and/or unreliable financial data and other information they knew to be
16 false and not in accordance with required statutory and professional standards in order to
17 continue the flow of money to NHC, and subsequently, to the Management Defendants and
18 NHC's vendors for their own personal gain.

19 806. Defendants acted in concert with each other to inflate amounts paid to certain
20 defendants, including without limitation InsureMonkey, NHS and UHH though the utilization
21 of inflated counts of the numbers of insureds used for billing NHC for services as detailed
22 above.

807. Defendants knew that their actions were inherently dangerous or posed a substantial risk of harm to others in that their actions could affect and disrupt the medical care of NHC's members and insured enrollees.

26 808. Defendants' actions did affect and disrupt the medical care of NHC's members
27 and enrolled insureds.

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809. Defendants' actions did result in health care providers not being allowed to seek and obtain payment from NHC members for services rendered.

810. The conduct described herein involved intentional misconduct, fraud, and/or a knowing violation of the law.

811. Each of the Defendants are jointly and severally liable for the damages described herein.

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

813. In committing the acts hereinabove alleged, Defendants are guilty of oppression, fraud, and malice towards NHC. Therefore, NHC is entitled to recover punitive damages from the Defendants for the purpose of deterring them and others similarly situated from engaging in like conduct in the future.

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

CAUSES OF ACTION RELATED TO UHH DEFENDANTS

SIXTY-FIRST CAUSE OF ACTION

(Professional Malpractice Against UHH)

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

816. UHH was engaged by NHC and was responsible for providing professional third-party administration services for NHC's medical policies.

817. Such services included, but were not limited to, helping to set up NHC as a proper operating health care insurer, processing medical claims, meeting governmental standards, providing accurate and timely reports that NHC could use and rely upon for financial and CMS reporting and projections, and operating computer systems necessary for performance of its duties as set forth herein and verifying eligibility of insureds.

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4 819. As detailed above, UHH breached that duty by failing to comply with applicable
5 statutory and professional standards.

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

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

SIXTY-SECOND CAUSE OF ACTION

(Negligence Against UHH)

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

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

824. As detailed above, by failing to perform to applicable statutory, professional,
and contractual standards, UHH breached its duties.

19 825. UHH further owed a duty of care to Plaintiff to adequately oversee the actions
20 of its employees who acted as executives for NHC including, but not limited to, Bobbette
21 Bond and Tom Zumtobel.

826. UHH breached this duty by failing to adequately oversee the actions of its employees who acted as executives for NHC.

24 827. The actions of the Management Defendants who were also employees of UHH
25 were within the course and scope of the relevant Management Defendants' employment with
26 UHH.

828. UHH is responsible for the acts and omissions of its employees who acted as executives for NHC pursuant to the doctrine of *respondeat superior*.

829. These breaches were the legal cause of Plaintiff's injuries.

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

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

SIXTY-THIRD CAUSE OF ACTION

(Gross Negligence Against UHH)

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

833. UHH owed a duty of care to NHC, including the duty to perform its work in accordance with industry standards, and to not provide misleading or otherwise inaccurate information upon which it intended for and knew NHC would rely.

834. As detailed above, UHH failed to perform to applicable professional standards, by failing to exercise even the slightest degree of care.

835. UHH engaged in an act or omission as detailed above of an aggravated character, or with willful, wanton misconduct, including without limitation, not accurately tracking insured's eligibility for medical services, and misreporting information that it knew would be relied upon by NHC and others.

836. The breach was the legal cause of NHC's injuries.

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

838. In committing the acts hereinabove alleged, UHH is guilty of oppression, fraud, and malice towards NHC. Therefore, NHC is entitled to recover punitive damages from UHH for the purpose of deterring it and others similarly situated from engaging in like conduct in the future.

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

SIXTY-FOURTH CAUSE OF ACTION

(Breach of Consulting Agreement Against UHH)

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

841. UHH and Hospitality Health entered into a valid and enforceable contract - the May 17, 2012, Consulting Agreement - that required UHH to perform professional various consulting services.

842. The May 17, 2012, Consulting Agreement was assigned to NHC effective December 21, 2012 by letter agreement dated May 8, 2013.

843. Provisions of the Consulting Agreement provided for UHH to perform all services in accordance with applicable professional, statutory, and contractual standards.

844. UHH failed to perform accounting and consulting services as required under applicable professional, statutory, and contractual standards as set forth herein.

845. Plaintiff performed, or was excused from performance, under the Consulting Agreement.

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

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

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SIXTY-FIFTH CAUSE OF ACTION

(Breach of UHH Administrative Services Agreement by UHH)

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

849. UHH and NHC entered into a valid and enforceable contract - the June 27, 2013, Administrative Services Agreement - that required UHH to perform professional third-party administrative services for NHC as detailed herein.

850. Provisions of the Administrative Services Agreement provided for UHH to perform all services in accordance with applicable professional, statutory, and contractual standards.

851. UHH failed to perform services as required under applicable professional, statutory, and contractual standards as set forth herein.

852. Plaintiff performed or was excused from performance under the Administrative Services Agreement.

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

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

SIXTY-SIXTH CAUSE OF ACTION

(Tortious Breach of the Implied Covenant Against UHH)

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

856. UHH and Hospitality Health entered into a valid and enforceable contract – the May 17, 2012, Consulting Agreement – that required UHH to perform professional various consulting services. This contract was subsequently assigned by Hospitality Health to NHC.

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1 857. UHH and NHC entered into a valid and enforceable contract – the
2 June 27, 2013, Administrative Services Agreement – that required UHH to perform
3 professional third-party administrative services for NHC as detailed herein.

4 858. Under applicable law, these agreements contain an implied covenant of good
5 faith and fair dealing among all parties.

6 859. A special element of reliance or fiduciary duty existed between Plaintiff and
7 UHH where UHH was in a superior or trusted position.

8 860. In failing to perform in accordance with statutory and professional standards, as
9 set forth herein, UHH breached the duty of good faith and engaged in misconduct in a manner
10 that was unfaithful to the purpose of the two agreements.

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

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

16 **SIXTY-SEVENTH CAUSE OF ACTION**

17 **(Breach of the Implied Covenant of Good Faith and Fair Dealing Against UHH)**

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

20 864. UHH and NHC entered into two valid and enforceable contracts - the
21 Consulting Agreement and the Administrative Services Agreement - that required UHH to
22 perform professional third-party administration and other services as set forth herein.

23 865. Under applicable law, the agreements contain implied covenants of good faith
24 and fair dealing among all parties.

25 866. UHH, by failing to follow applicable professional and statutory standards, as
26 set forth herein, breached that duty of good faith and fair dealing by performing in a manner
27 that was unfaithful to the purpose of the agreements.

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

SIXTY-EIGHTH CAUSE OF ACTION

(Negligent Performance of an Undertaking Against UHH)

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

870. UHH undertook to provide third-party administrative and other services, including, but not limited to, administering NHC's medical policies and generating data and reports concerning their services for NHC.

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

872. By agreeing to perform the services detailed herein, UHH undertook to perform a duty owed by NHC to its members, enrolled insureds, creditors, and regulators and to act in accordance with statutory and professional standards.

873. UHH's failure to exercise reasonable care in performing its services increased the risk of harm to (and did in fact harm) NHC, NHC's members, insureds, creditors, customers and vendors, and the State of Nevada.

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

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

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SIXTY-NINTH CAUSE OF ACTION

(Unjust Enrichment Against UHH)

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

877. UHH received lucrative no-bid contracts with NHC, with better than market terms, as a result of insider influence despite substantial conflicts of interest.

878. UHH was paid for start-up costs and third-party administration and consulting services that were to be performed in accordance with professional, statutory, and contractual standards.

879. Despite not providing such services in accordance with professional, statutory, and contractual standards, and against fundamental principles of justice, equity, and good conscience, UHH unjustly retained the fees paid to it for such services.

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

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

SEVENTIETH CAUSE OF ACTION

(Declaratory Relief Against UHH)

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

883. A present and ongoing controversy exists regarding the validity of the UHH Consulting Agreement.

884. A further present and ongoing controversy exists regarding the validity of the UHH Administrative Services Agreement.

885. UHH's lack of licensure as a third-party administrator rendered UHH ineligible to enter into the either the UHH Consulting Agreement.

///

886. UHH's lack of licensure as a third-party administrator rendered UHH ineligible to enter into the either the UHH Administrative Services Agreement.

887. As a result of UHH's ineligibility to conduct the services it contracted to perform in the UHH Consulting Agreement, Plaintiff is entitled to an order declaring the UHH Consulting Agreement void *ab initio*.

888. As a result of UHH's ineligibility to conduct the services it contracted to perform in the UHH Administrative Services Agreement, Plaintiff is entitled to an order declaring the UHH Administrative Services Agreement void *ab initio*.

889. Plaintiff is further entitled to such further orders as are necessary to return Plaintiff to its position *status quo ante* prior to accepting the assignment of the UHH Consulting Agreement from Hospitality Health.

890. Plaintiff is further entitled to such further orders as are necessary to return Plaintiff to its position *status quo ante* prior to entering into the UHH Administrative Services.

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

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief in favor of Plaintiff and against each of the Defendants, as follows:

1. For damages in an amount in excess of fifteen thousand dollars (\$15,000);

2. For a declaration that the UHH Consulting Agreement is rescinded and ordering such steps as are necessary to return Plaintiff to its position *status quo ante*;

3. For a declaration that the UHH Administrative Services Agreement is rescinded and ordering such steps as are necessary to return Plaintiff to its position *status quo ante*;

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

DATED this 9th day of November 2021.

GREENBERG TRAURIG, LLP

/s/ Donald L. Prunty

MARK E. FERRARIO, ESQ.

Nevada Bar No. 1625

DONALD L. PRUNTY, ESQ.

Nevada Bar No. 8230

GLENN F. MEIER, ESQ.

Nevada Bar No. 6059

10845 Griffith Peak Drive, Suite 600

Las Vegas, Nevada 89135

Counsel for Plaintiff

CERTIFICATE OF SERVICE

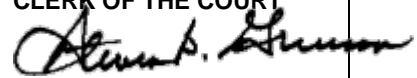
I hereby certify that on this **9th day of November 2021**, a true and correct copy of the foregoing **SECOND AMENDED COMPLAINT** was submitted for service using the Odyssey eFileNV Electronic Service system and served on all parties with an email address on record, pursuant to Administrative Order 14-2 and Rule 9 of the N.E.F.C.R. The date and time of the electronic proof of service is in place of the date and place of deposit in the United States mail.

/s/ Evelyn Escobar-Gaddi

An employee of Greenberg Traurig, LLP

TAB 20

TAB 20



ANS (CIV)

JOHN R. BAILEY

Nevada Bar No. 0137

SARAH E. HARMON

Nevada Bar No. 8106

JOSEPH A. LIEBMAN

Nevada Bar No. 10125

REBECCA L. CROOKER

Nevada Bar No. 15202

BAILEY ♦ KENNEDY

8984 Spanish Ridge Avenue

Las Vegas, Nevada 89148-1302

Telephone: 702.562.8820

Facsimile: 702.562.8821

JBailey@BaileyKennedy.com

SHarmon@BaileyKennedy.com

JBailey@BaileyKennedy.com

RCrooker@BaileyKennedy.com

SUZANNA C. BONHAM

Texas Bar No. 24012307

EMMA C. MATA

Texas Bar No. 24029470

SEYFARTH SHAW LLP

700 Milam, Suite 1400

Houston, Texas 77002

Telephone: 713.225.2300

SBonham@seyfarth.com

EMata@seyfarth.com

Attorneys for Defendants

Unite Here Health and Nevada Health

Solutions, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

MILLIMAN, INC., a Washington Corporation;
JONATHAN L. SHREVE, an Individual;
MARY VAN DER HEIJDE, an Individual;
MILLENNIUM CONSULTING SERVICES,
LLC, a North Carolina Corporation; LARSON
& COMPANY P.C., a Utah Professional
Corporation; DENNIS T. LARSON, an
Individual; MARTHA HAYES, an Individual;

Case No. A-17-760558-B

Dept. No. XVI

**UNITE HERE HEALTH AND NEVADA
HEALTH SOLUTIONS, LLC'S
ANSWER TO SECOND AMENDED
COMPLAINT**

INSUREMONKEY, INC., a Nevada Corporation; ALEX RIVLIN, an Individual; NEVADA HEALTH SOLUTIONS, LLC, a Nevada Limited Liability Company; PAMELA EGAN, an Individual; BASIL C. DIBSIE, an Individual; LINDA MATTOON, an Individual; TOM ZUMTOBEL, an Individual; BOBBETTE BOND, an Individual; KATHLEEN SILVER, an Individual; UNITE HERE HEALTH, is a multi-employer health and welfare trust as defined in ERISA Section 3(37); DOES I through X inclusive; and ROE CORPORATIONS I-X, inclusive,

Defendants.

UNITE HERE HEALTH (“UHH”) and NEVADA HEALTH SOLUTIONS, LLC (“NHS”), by and through their attorneys, in answer to Plaintiff’s Second Amended Complaint (“Complaint”) on file herein admits, denies, and alleges as follows:

1. In response to the allegations contained in Paragraphs 57 and 64 of the Complaint, UHH and NHS admit such allegations.
2. In response to the allegations contained in Paragraphs 1-8, 12-25, 46-56, 58-63, 65-72, 75-165, 167-191, 193-248, 250-298, 310-321, 325-327, 329-350, 354-355, 372-378, 380-388, 390-395, 397-404, 406-410, 412-416, 418-421, 423-427, 429-435, 437-443, 445-450, 452-457, 459-462, 464-467, 469-474, 476-482, 484-490, 492-496, 498-502, 504-510, 512-517, 519-524, 526-530, 532-539, 541-544, 546-553, 555-560, 562-572, 574-578, 580-584, 586-591, 593-598, 600-604, 606-612, 614-617, 619-628, 630-637, 639-644, 646-650, 652-657, 659-665, 667-672, 674-679, 681-686, 688-693, 695-698, 700-708, 767-772, 774-781, 783-789, and 791-795 of the Complaint, UHH and NHS are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein; and therefore, deny the same.
3. In response to the allegations contained in Paragraphs 73, 166, 192, 249, 299, 309, 359, 379, 389, 396, 405, 411, 417, 422, 428, 436, 444, 451, 458, 463, 468, 475, 483, 491, 497, 503, 511, 518, 525, 531, 540, 545, 554, 561, 573, 579, 585, 592, 599, 605, 613, 618, 629, 638, 645, 651, 658, 666, 673, 680, 687, 694, 699, 709, 716, 722, 730, 737, 744, 750, 758, 766,

- 1 773, 782, 790, 796, 804, 815, 822, 832, 840, 848, 855, 863, 869, 876, and 882 of the
2 Complaint, which paragraphs merely incorporate prior allegations, UHH and NHS repeat and
3 allege their responses to those incorporated allegations as if set forth fully herein.
- 4 4. In response to the allegations contained in Paragraphs 9-11, 26-45, 74, 300-308, 322-324,
5 328, 351-353, 356-358, 360-371, 710-715, 717-721, 723-729, 731-736, 738-743, 745-749,
6 751-757, 759-765, 797-803, 805-814, 816-821, 823-831, 833-839, 841-847, 849-854, 856-
7 862, 864-868, 870-875, 877-881, and 883-892 of the Complaint and the Prayer, UHH and
8 NHS deny the allegations contained therein.
- 9 5. Any matter not specifically denied is hereby generally denied.

10 **AFFIRMATIVE DEFENSES**

- 11 1. Plaintiff's claims are subject to arbitration pursuant to the parties' agreement.
- 12 2. Plaintiff fails to state a claim upon which relief can be granted.
- 13 3. Plaintiff's claims and the damages sought by Plaintiff, including but not limited to claims for
14 incidental, indirect, consequential, special or punitive damages, are barred by the express
15 terms of the contracts.
- 16 4. Plaintiff's claim for damages is contractually limited to the aggregate amount of fees actually
17 paid to UHH and NHS.
- 18 5. Plaintiff's tort claims are barred by the economic loss rule.
- 19 6. Plaintiff's claims are barred, in whole or in part, by the doctrines of mistake, excuse and/or
20 nonperformance.
- 21 7. Plaintiff's claims are barred, in whole or in part, by the doctrines of assumption and/or
22 novation.
- 23 8. The claims of Plaintiff have been waived as a result of the acts and the conduct of Plaintiff.
- 24 9. Any and all actions complained of by Plaintiff were approved or ratified by Plaintiff.
- 25 10. By virtue of Plaintiff's actions, conduct and omissions, UHH and NHS have been released.
- 26 11. The claim for breach of contract is barred as a result of the failure to satisfy conditions
27 precedent.
- 28

12. Insofar as any alleged breach of contract is concerned, Plaintiff failed to give UHH and NHS timely notice thereof.
13. The applicable statute of limitations bars all and/or some of Plaintiff's causes of action.
14. Any or all negligence or fault on the part of Plaintiff, if any, was active and primary, and any negligence or fault of UHH and NHS, if any, was secondary and passive.
15. At the time and place and under the circumstances alleged, Plaintiff failed to exercise ordinary care, caution or prudence to protect its own interests, thereby proximately causing or contributing to the cause of its own damages, if any, through its own negligence.
16. The incidents alleged in Plaintiff's Complaint, and the resulting damage, if any, to Plaintiff were proximately caused or contributed to by Plaintiff's own negligence and such negligence was greater than the negligence, if any, of UHH and NHS.
17. The liability, if any, of UHH and NHS must be reduced by the percentage of fault of others, including Plaintiff.
18. The liability, if any, of UHH and NHS is several and not joint, and based upon its own acts and not the acts of others.
19. The conduct of UHH and NHS as pertaining to the incident alleged in the Complaint, was not extreme, outrageous, or reckless.
20. Any and all damages sustained by Plaintiff are the result of negligence, breach of contract and breach of warranty, express and/or implied of a third party over whom the UHH and NHS have no control.
21. Any and all alleged problems and damages were proximately caused or contributed to by the acts of other person and/or other entities, and that said acts were an intervening and/or superseding cause of the injuries and damages, if any, thus barring any recovering against UHH and NHS.
22. The responsibility for Plaintiff's injuries rests with nonparties.
23. Plaintiff failed to mitigate its damages.
24. To the extent Plaintiff's claims and the damages sought against UHH and NHS are based, in whole or in part, on the action(s) or inaction(s) of those defendants who also held positions at

- 1 Nevada Health CO-OP (“NHC”), those defendants were relying upon the advice of NHC’s
2 legal counsel, which advice and the reliance thereon inures to the benefit of UHH and NHS.
- 3 25. Plaintiff’s claims are barred in whole or in part by the doctrine of *in pari delicto*.
- 4 26. Plaintiff’s claims are barred in whole or in part due to Plaintiff’s lack of standing.
- 5 27. Plaintiff’s deepening insolvency theory of damages (*i.e.*, the amount of debt incurred by the
6 NHC), as set forth in her various expert reports, is not an appropriate theory and/or measure
7 of damages.
- 8 28. Plaintiff’s damages are too speculative and remote to form a basis for relief.
- 9 29. To the extent that any of Plaintiff’s claims against UHH and NHS are based on the actions or
10 inactions of Plaintiff’s former officers and/or directors, UHH and NHS are entitled to the
11 protections of the business judgment rule.
- 12 30. Plaintiff’s claims for *respondeat superior* are barred by the borrowed servant doctrine.
- 13 31. Plaintiff’s recent request for rescission of various contracts between UHH and Plaintiff is
14 barred due to untimeliness, laches, waiver, ratification, and/or the failure to provide notice of
15 rescission within a reasonable time following the alleged grounds for rescission.
- 16 32. Plaintiff’s recent request for rescission of various contracts between UHH and Plaintiff is
17 barred because Plaintiff has never offered or tendered any form of restitution to UHH for the
18 benefits Plaintiff received from the contracts at issue.
- 19 33. Plaintiff’s recent request for rescission of various contracts between UHH and Plaintiff is
20 barred because Plaintiff has an adequate remedy at law.
- 21 34. Plaintiff’s recent request for rescission of various contracts between UHH and Plaintiff is
22 barred because it would result in unjust enrichment to Plaintiff and an inequitable forfeiture
23 to UHH.
- 24 35. Plaintiff’s claim for declaratory relief is barred due to a failure to join necessary parties, as
25 required by NRS 30.130.
- 26 36. Pursuant to NRCP 8 and 11, UHH retains the right to amend its answer as all possible
27 affirmative defenses may not have been alleged herein, insofar as sufficient facts were not
28 available after reasonable inquiry upon filing of this Answer, UHH and NHS reserve the

right to amend its Answer as matters become apparent during discovery to add affirmative defenses should the necessity arise.

PRAYER FOR RELIEF

NOW, WHEREFORE, UHH and NHS pray as follows:

1. That Plaintiff takes nothing by way of its Complaint;
2. For an award of attorney fees and costs incurred in this suit herein; and
3. For other and such further relief as the Court deems just and proper.

DATED this 23rd day of November, 2021.

BAILEY ♦ KENNEDY

By: /s/ Joseph A. Liebman
JOHN R. BAILEY
SARAH E. HARMON
JOSEPH A. LIEBMAN
REBECCA L. CROOKER

AND

SEYFARTH SHAW LLP
SUZANNA C. BONHAM
EMMA C. MATA

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

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 23rd day of November, 2021, service of the foregoing was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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

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

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

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

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

/s/ Samantha T. Kishi
Employee of BAILEY ♦ KENNEDY