

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

GABRIEL J. DALEY

Appellant,

Vs.

ENCORE GROUP OF PROFESSIONALS, LLC

ENCORE GROUP OF CALIFORNIA, LLC

ENCORE GROUP OF NEVADA, LLC

ENCORE GROUP OF TEXAS, LLC

ENCORE GROUP OF HAWAII, LLC

JOHN JACKSON;

TERRY JACKSON;

Respondents.

No. 84745

Electronically Filed

Jul 15 2022 03:06 p.m.

DOCKETING STATEMENT
CIVIL APPEALS

Elizabeth A. Brown

Clerk of Supreme Court

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department 5
County Clark Judge Veronica Barisich
District Ct. Case No. A-16-735644-C

2. Attorney filing this docketing statement:

Attorney Timothy P. Thomas, Esq. Telephone 702-227-0011
Firm Law Office of Timothy P. Thomas, LLC
Address 1771 E. Flamingo Rd., Suite B212
Las Vegas, NV 89119

Client(s) Gabriel J. Daley, Individual

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Kent P. Woods, Esq. Telephone 702-703-1540
Firm Law Office of Kent P. Woods
Address 197 E. California Ave #300
Las Vegas, NV 89104

Client(s) Encore Group of Professionals, LLC

Attorney Phillip R. Emerson, Esq. Telephone 702-384-9444

Firm Emerson Law Group
Address 1055 Whitney Ranch Dr., #120
Henderson, NV 89014

ENCORE GROUP OF CALIFORNIA, LLC, Third Party Defendant
ENCORE GROUP OF NEV ADA, LLC, Third Party Defendant
ENCORE GROUP OF TEXAS, LLC, Third Party Defendant
ENCORE GROUP OF HAW All, LLC, Third Party Defendant
Client(s) JACKSON FAMILY TRUST, Third Party Defendant
JOHN JACKSON, Third Party Defendant
TERRI JACKSON, Third Party Defendant
(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|---|--|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input checked="" type="checkbox"/> Other disposition (specify): <u>Motion to Enforce Settlement</u> |

5. Does this appeal raise issues concerning any of the following? NO

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

NONE

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

NONE

8. Nature of the action. Briefly describe the nature of the action and the result below:

Gabriel Daley was hired for employment as a manager of Plaintiff Encore Group of Professionals ("EGOP"), and offered a 25% ownership interest in EGOP. Subsequently, Daley signed a Membership Purchase Agreement ("MP A") and an Employment Agreement. ("EA"). Defendant Daley and Third Party Defendant John Jackson signed an Amended Operating Agreement making Daley a manager of EGOP, and represented that Daley owned 25% of the company. Daley asserts that he did not resign his employment or position with EGOP and that Daley remains a partial owner of the company EGOP.

Daley asserts that he remains a member of EGOP and the Third Party Defendant Jackson created subsidiary entities, also Third Party Defendants, but that Jackson remains the majority member and solely in control of all financial and operating decisions within the companies.

During a jury trial, the parties reached a preliminary agreement to resolve the case. The settlement involved the parties negotiating a promissory note to Third Party Defendant Jackson, with the provision that if \$25,000 was paid, by Defendant Daley the balance of the note would be forgiven. In consideration, Daley would give up his interest in EGOP and claims against the subsidiaries. The jury was dismissed upon these representations. The specific terms of the note such as duration and dollar amount were not discussed.

The parties could not reach an agreement on the terms of the note due to the tax effects of the proposed provisions. The Plaintiff and Third Party Defendants filed a Motion to Enforce Settlement. The Court granted the Motion to Enforce and ordered the parties to agree to undefined terms on the settlement documents, including the amount, the time term of the note and other terms. Daley could not agree to the proposed terms.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

- a. Was the court authorized to force a party to sign a contract against his will?
- b. Was the court authorized to enforce a non-final settlement agreement?
- c. Were the outside negotiation discussions relevant to the Motion to Enforce Settlement?
- d. Was the court able to direct the inclusion of settlement terms that were not agreed to by the parties?

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

NONE

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☐ N/A

☐ Yes

☒ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues? N/A

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This matter is assigned to the Court of Appeals under NRAP 17(b)(7). It involves a motion granted to terminate the case after the jury trial was released.

14. Trial. If this action proceeded to trial, how many days did the trial last? 3 days until settlement reached

Was it a bench or jury trial? Jury Trial

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

NO

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from April 17, 2022

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

Based upon Order Granting Motion to Enforce Settlement

17. Date written notice of entry of judgment or order was served April 20, 2022

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59) N/A

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ___, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed May 11, 2022

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

20. Specify statute or rule governing the time limit for filing the notice of appeal, *e.g.*, NRAP 4(a) or other

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

☐ NRAP 3A(b)(1)

☐ NRS 38.205

☐ NRAP 3A(b)(2)

☐ NRS 233B.150

☐ NRAP 3A(b)(3)

☐ NRS 703.376

☐ Other (specify) _____

(b) Explain how each authority provides a basis for appeal from the judgment or order:

NRAP 3 A (b)(I). This is a civil action in which a final order was entered on the Plaintiffs motion to enforce settlement in an action following the start of a jury trial and motion for attorney's fees. There are no other matters pending making the order a final decision.

22. List all parties involved in the action or consolidated actions in the district court:
(a) Parties:

Plaintiff: Encore Group of Professionals, LLC

Defendant: Gabriel J. Daley

Third Party Defendants:

ENCORE GROUP OF CALIFORNIA, LLC ENCORE GROUP OF NEV ADA, LLC ENCORE GROUP OF TEXAS, LLC ENCORE GROUP OF HAW All, LLC JOHN JACKSON; TERRI JACKSON

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

All parties are involved in the settlement agreement and therefore are all parties to the appeal

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Encore Group of Professionals. -

-Breach of Contract

-Implied Covenant of Good Faith and Fair Dealing

-Negligence

-Fraud

-Intentional Interference with Contractual Relations

-Interference with Potential Economic Advantage

2. Gabriel Daley - Counterclaims

-Declaratory Relief

-Alter Ego

-Breach of Contract

-Breach of Implied Covenant of Good Faith and Fair Dealing

-Tortious Breach of the Implied Covenant

3. THIRD PARTY CLAIMS

-Declaratory Judgment

-Alter Ego

-Breach of Contract

-Breach of Implied Covenant of Good Faith and Fair Dealing

-Tortious Breach of the Implied Covenant

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

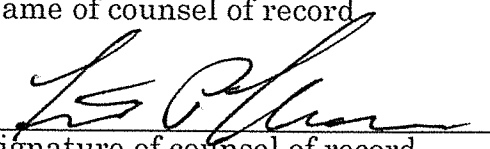
VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Gabriel J. Daley
Name of appellant

Timothy P. Thomas, Esq.
Name of counsel of record

07/13/2022
Date


Signature of counsel of record


Nevada, Clark County
State and county where signed

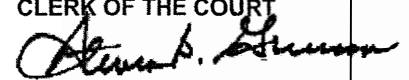
CERTIFICATE OF SERVICE

I certify that on the 15th day of July, 2022, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Dated this 15th day of July, 2022


Signature



NEO (CIV)
KENT P. WOODS, ESQ.
Nevada Bar No. 12306
LAW OFFICE OF KENT P. WOODS LLC
197 E. California Ave. #300
Las Vegas, NV 89104
Telephone: 702-703-1540
Email: kent@kwoodslaw.com
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

ENCORE GROUP OF PROFESSIONALS, LLC,

Plaintiff,

Case No.: A-16-735644-C

Dept. No.: V

vs.

GABRIEL J. DALEY, DOES I through X AND
ROE CORPORATIONS XI through XX, inclusive,

Defendants.

AND RELATED CLAIMS

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that on April 17, 2022, the above-entitled Court entered its Order Granting in Part and Denying in Part the Plaintiff's and Third-Party Defendants' Joint Motion to Enforce Settlement Agreement and for Fees and Costs, a full and complete copy of which is attached to this Notice.

DATED this 20th day of April, 2022.

LAW OFFICE OF KENT P. WOODS LLC

By: /s/ Kent P. Woods
KENT P. WOODS, ESQ.
Nevada Bar No. 12306
197 E. California Ave. #300

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Las Vegas, NV 89104
(702) 703-1540
kent@kwoodslaw.com
*Attorney for Plaintiff Encore Group of
Professionals LLC*

OGM (CIV)
KENT P. WOODS, ESQ.
Nevada Bar No. 12306
LAW OFFICE OF KENT P. WOODS LLC
197 E. California Ave. #300
Las Vegas, NV 89104
Telephone: 702-703-1540
Email: kent@kwoodslaw.com
Attorney for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

ENCORE GROUP OF PROFESSIONALS, LLC,

Plaintiff,

vs.

GABRIEL J. DALEY, DOES I through X AND
ROE CORPORATIONS XI through XX, inclusive,

Defendants.

AND RELATED CLAIMS

Case No.: A-16-735644-C

Dept. No.: V

**ORDER GRANTING IN PART AND DENYING IN PART THE PLAINTIFF'S AND
THIRD-PARTY DEFENDANTS' JOINT MOTION TO ENFORCE SETTLEMENT
AGREEMENT AND FOR FEES AND COSTS**

Plaintiff ENCORE GROUP OF PROFESSIONALS LLC ("Plaintiff") and Third-Party Defendants JOHN D. JACKSON, THE JOHN D. AND TERRI L. JACKSON FAMILY TRUST, ENCORE GROUP OF CALIFORNIA LLLP, ENCORE GROUP OF NEVADA LLC, ENCORE GROUP OF HAWAII LLC, and ENCORE GROUP OF TEXAS LLC (collectively, the "Third Party Defendants" and together with the Plaintiff, the "Movant") having filed for this Court's consideration a Joint Motion to Enforce Settlement Agreement and for Fees and Costs (the "Motion"), and the Court clerk having set March 22, 2022, for the hearing thereon before the Court, notice thereof having been given to the Defendant thereof, and the Court having reviewed

1 the evidence submitted by the parties and having considered the papers and pleadings on file and
2 the argument made by the parties, and good cause appearing therefor,

3 **THE COURT FINDS AND CONCLUDES**, as follows:

4 A. A valid, binding, and final settlement agreement was entered on the record before the
5 Court on January 12, 2022, the material terms of which were as follows: (1) Defendant
6 will execute a promissory note in favor of the Plaintiff in an amount equal to the
7 attorneys' fees and costs that Plaintiff and Third-Party Defendants incurred from
8 inception of the case to January 12, 2022; (2) Defendant will relinquish and disclaim
9 any interest in Plaintiff or its affiliates; (3) the amount of the promissory note and the
10 terms will be negotiated by the parties following the hearing; and (4) provided that the
11 Defendant pays \$25,000 before December 31, 2022, the remainder of the promissory
12 note will be forgiven.

13 B. The Defendant did not make a sufficient showing as to the existence of a condition to
14 the settlement agreement or that the agreement as set forth on the record failed to
15 contain material terms such that enforcement would be improper. Likewise, the
16 Defendant did not make a sufficient showing of mutual mistake in order to prevent
17 enforcement of the agreement.

18 C. The Movants made a sufficient showing that the Defendant is bound by promissory
19 estoppel to complete the settlement agreement because he intended that his words and
20 conduct at the January 12, 2022, hearing be acted upon. The Defendant failed to put
21 forth any evidence that the parties or their counsel were aware of missing conditions or
22 terms in the agreement, and the Movants relied to their detriment on the Defendant's
23 conduct.

24 D. The Defendant presented a genuine dispute as to whether certain terms of the agreement
25 were material; accordingly, EDCR 7.60 does not support an award of attorney fees or
26 costs in favor of the Movants.

27 **ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED**, as
28 follows:

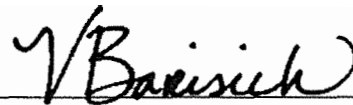
1 A. The Motion filed with the Court is GRANTED IN PART AND DENIED IN PART, as
2 noted below.

3 B. The Movants' request for an order enforcing the settlement agreement placed on the
4 Court's record at the January 12, 2022, hearing is GRANTED. The Parties are to
5 directed enter into final settlement agreements consistent with the contract reflected on
6 the record of the January 12, 2022 hearing, to wit (a) that the Defendant will execute a
7 promissory note in favor of the Plaintiff in an amount equal to the Plaintiff's and Third
8 Party Defendants' accumulated fees and costs from inception of the case through
9 January 12, 2022; (b) provided that \$25,000 is paid to the Plaintiff on or before
10 December 31, 2022, the remaining balance of the promissory note will be forgiven; and
11 (c) the Defendant will surrender and/or disclaim any interest in the Defendant or the
12 Third-Party Defendants or their affiliates. All other terms of the settlement documents
13 shall be negotiated in good faith between the parties using commercially reasonable
14 terms.

15 C. The Movants' request for an award of attorney fees and costs related to bringing the
16 Motion is DENIED. In the event that any party is unwilling to negotiate the final
17 settlement documents in good faith, the parties may submit a motion for attorney fees
18 and costs at that time.

19
20 SO ORDERED

Dated this 17th day of April, 2022

21 
22

23 DISTRICT COURT JUDGE
24 C08 CF8 78CB CD04
25 Veronica M. Barisich
26 District Court Judge
27
28

1 Submitted by:

2 LAW OFFICE OF KENT P. WOODS LLC

3
4 By: /s/ Kent P. Woods

5 KENT P. WOODS, ESQ.

6 Nevada Bar No. 12306

7 197 E. California Ave. #300

8 Las Vegas, NV 89104

9 (702) 703-1540

10 kent@kwoodslaw.com

11 *Attorney for Plaintiff*

12
13 EMERSON LAW GROUP

14 By: /s/ Phillip R. Emerson

15 Phillip R. Emerson

16 Nevada Bar No. 5940

17 1055 Whitney Ranch Blvd.

18 Henderson, NV 89014

19 *Attorney for Third-Party Defendants*

20
21 Approved as to form and content:

22 LAW OFFICE OF TIMOTHY P. THOMAS LLC

23 By: /s/ Timothy P. Thomas

24 Timothy P. Thomas, Esq.

25 Nevada Bar No. 5148

26 1771 E. Flamingo Road, Suite 212-B

27 Las Vegas, NV 89119

28 *Attorney for Defendant*

OGM (CIV)
KENT P. WOODS, ESQ.
Nevada Bar No. 12306
LAW OFFICE OF KENT P. WOODS LLC
197 E. California Ave. #300
Las Vegas, NV 89104
Telephone: 702-703-1540
Email: kent@kwoodslaw.com
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

ENCORE GROUP OF PROFESSIONALS, LLC,

Plaintiff,

vs.

GABRIEL J. DALEY, DOES I through X AND
ROE CORPORATIONS XI through XX, inclusive,

Defendants.

AND RELATED CLAIMS

Case No.: A-16-735644-C

Dept. No.: V

**ORDER GRANTING IN PART AND DENYING IN PART THE PLAINTIFF'S AND
THIRD-PARTY DEFENDANTS' JOINT MOTION TO ENFORCE SETTLEMENT
AGREEMENT AND FOR FEES AND COSTS**

Plaintiff ENCORE GROUP OF PROFESSIONALS LLC ("Plaintiff") and Third-Party Defendants JOHN D. JACKSON, THE JOHN D. AND TERRI L. JACKSON FAMILY TRUST, ENCORE GROUP OF CALIFORNIA LLLP, ENCORE GROUP OF NEVADA LLC, ENCORE GROUP OF HAWAII LLC, and ENCORE GROUP OF TEXAS LLC (collectively, the "Third Party Defendants" and together with the Plaintiff, the "Movant") having filed for this Court's consideration a Joint Motion to Enforce Settlement Agreement and for Fees and Costs (the "Motion"), and the Court clerk having set March 22, 2022, for the hearing thereon before the Court, notice thereof having been given to the Defendant thereof, and the Court having reviewed

the evidence submitted by the parties and having considered the papers and pleadings on file and the argument made by the parties, and good cause appearing therefor,

THE COURT FINDS AND CONCLUDES, as follows:

- A. A valid, binding, and final settlement agreement was entered on the record before the Court on January 12, 2022, the material terms of which were as follows: (1) Defendant will execute a promissory note in favor of the Plaintiff in an amount equal to the attorneys' fees and costs that Plaintiff and Third-Party Defendants incurred from inception of the case to January 12, 2022; (2) Defendant will relinquish and disclaim any interest in Plaintiff or its affiliates; (3) the amount of the promissory note and the terms will be negotiated by the parties following the hearing; and (4) provided that the Defendant pays \$25,000 before December 31, 2022, the remainder of the promissory note will be forgiven.
- B. The Defendant did not make a sufficient showing as to the existence of a condition to the settlement agreement or that the agreement as set forth on the record failed to contain material terms such that enforcement would be improper. Likewise, the Defendant did not make a sufficient showing of mutual mistake in order to prevent enforcement of the agreement.
- C. The Movants made a sufficient showing that the Defendant is bound by promissory estoppel to complete the settlement agreement because he intended that his words and conduct at the January 12, 2022, hearing be acted upon. The Defendant failed to put forth any evidence that the parties or their counsel were aware of missing conditions or terms in the agreement, and the Movants relied to their detriment on the Defendant's conduct.
- D. The Defendant presented a genuine dispute as to whether certain terms of the agreement were material; accordingly, EDCR 7.60 does not support an award of attorney fees or costs in favor of the Movants.

ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, as follows:

- A. The Motion filed with the Court is GRANTED IN PART AND DENIED IN PART, as noted below.
- B. The Movants' request for an order enforcing the settlement agreement placed on the Court's record at the January 12, 2022, hearing is GRANTED. The Parties are to directed enter into final settlement agreements consistent with the contract reflected on the record of the January 12, 2022 hearing, to wit (a) that the Defendant will execute a promissory note in favor of the Plaintiff in an amount equal to the Plaintiff's and Third Party Defendants' accumulated fees and costs from inception of the case through January 12, 2022; (b) provided that \$25,000 is paid to the Plaintiff on or before December 31, 2022, the remaining balance of the promissory note will be forgiven; and (c) the Defendant will surrender and/or disclaim any interest in the Defendant or the Third-Party Defendants or their affiliates. All other terms of the settlement documents shall be negotiated in good faith between the parties using commercially reasonable terms.
- C. The Movants' request for an award of attorney fees and costs related to bringing the Motion is DENIED. In the event that any party is unwilling to negotiate the final settlement documents in good faith, the parties may submit a motion for attorney fees and costs at that time.

SO ORDERED

DISTRICT COURT JUDGE

Submitted by:

LAW OFFICE OF KENT P. WOODS LLC

By: /s/ Kent P. Woods

KENT P. WOODS, ESQ.

Nevada Bar No. 12306

197 E. California Ave. #300

Las Vegas, NV 89104

(702) 703-1540

kent@kwoodslaw.com

Attorney for Plaintiff

EMERSON LAW GROUP

By: /s/ Phillip R. Emerson

Phillip R. Emerson

Nevada Bar No. 5940

1055 Whitney Ranch Blvd.

Henderson, NV 89014

Attorney for Third-Party Defendants

Approved as to form and content:

LAW OFFICE OF TIMOTHY P. THOMAS LLC

By: _____

Timothy P. Thomas, Esq.

Nevada Bar No. 5148

1771 E. Flamingo Road, Suite 212-B

Las Vegas, NV 89119

Attorney for Defendant



1 **AACC**
2 **ACCELERATED LAW GROUP**
3 Joseph T. Nold, Esq.
4 State Bar No.: 008210
5 624 South 10th Street
6 Las Vegas, Nevada 89101
7 Phone (702) 262-1651
8 Fax (702) 383-6051
9 Email: noldj@cox.net
10 Attorney for Gabriel Daley

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 **ENCORE GROUP OF**
14 **PROFESSIONALS, LLC,**

15 Plaintiff,

16 vs.

17 **GABRIEL J. DALEY, DOES I**
18 **through X and ROES**
19 **CORPORATIONS XI through XX,**
20 **inclusive,**
21 **Defendants.**

22 **GABRIEL J. DALEY,**

23 Counterclaimant,

24 vs.

25 **ENCORE GROUP OF**
26 **PROFESSIONALS, LLC, a Nevada**
27 **Limited Liability Company, DOES and**
28 **ROES 1 thru 10,**

Counterdefendants.

GABRIEL J. DALEY,

Third Party Plaintiff,

vs.

JOHN D. JACKSON, an individual;
SYLO MANAGEMENT, LLC, a
Nevada Limited Liability Company;
ENCORE GROUP OF HAWAII, LLC,
a Nevada Limited Liability Company;

Case No.: A-16-735644-C

Dept. No.: ~~XX~~X

ANSWER TO COMPLAINT,
AFFIRMATIVE DEFENSES, AND
AMENDED COUNTERCLAIM
AND AMENDED THIRD PARTY
COMPLAINT

1 ENCORE GROUP OF CALIFORNIA,
2 LLLP, a Nevada Limited Liability
3 Limited Partnership; ENCORE GROUP
4 OF NEVADA, LLC, a Nevada Limited
5 Liability Company; ENCORE GROUP
6 OF TEXAS, LLC, a Nevada Limited
7 Liability Company; JOHN D. & TERRI
8 L. JACKSON TRUST, u/d/a 10/31/03, a
9 Trust Entity; DOES and ROES 1 thru 10,

Third Party Defendants.

8 COMES NOW, Plaintiff, GABRIEL J. DALEY, by and through his attorney of
9 record, Joseph T. Nold, Esq., of the Accelerated Law Group and for his Answer to
10 Plaintiff's Complaint filed herein, Defendant admits, denies and alleges as follows:

11 In answering paragraphs 1, 2, 4, 7, 8, 9, 11, 12, 13, 14, 16, 26, 32, and 35 of
12 Plaintiff's Complaint, the allegations are ADMITTED.

13 In answering paragraphs 5, 6, 10, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28,
14 29, 31, 33, 36, 37, 38, 39, 40, 41, 42, 43, 44, 46, 47, 48, 49, 50, 51, 53, 54, 55, 56, 57,
15 59, 60, 61, 62, 63, 64, 66, 67, 68, 70, 72, 73, 74, 75, 76, 77, 78, 80, 82, 83, 84, 85, 86,
16 and 87 of Plaintiff's Complaint, these allegations are DENIED.

17 In answering paragraphs 71 and 81 of Plaintiff's Complaint, this answering
18 Defendant does not have sufficient information to answer, therefore, in the abundance
19 of caution, these allegations are DENIED.

20 In answering paragraphs 3, 30, 34, 45, 52, 58, 65, 69, and 79 of Plaintiff's
21 Complaint, no response is required.

22 23 24 **AFFIRMATIVE DEFENSES**

25 **FIRST AFFIRMATIVE DEFENSE**

26 Plaintiff's Complaint fails to state a claim upon which relief can be granted in
27 favor of Plaintiff or against Defendants.

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At all times denying in any intentional action, negligence, fault or responsibility on Defendants' behalf, Defendants aver that the contributory negligence, fault or responsibility of Defendants must be compared to that of Plaintiff, if any, in accordance with the laws of the State of Nevada.

At all times denying in any intentional action, negligence, fault or responsibility on Defendants' behalf, Defendants aver that the contributory negligence, fault or responsibility of Defendants must be compared to that of Plaintiff, if any, in accordance with the laws of the State of Nevada.

FOURTH AFFIRMATIVE DEFENSE

FIFTH AFFIRMATIVE DEFENSE

SIXTH AFFIRMATIVE DEFENSE

SEVENTH AFFIRMATIVE DEFENSE

EIGHTH AFFIRMATIVE DEFENSE

Page 3 of 21

1 **NINTH AFFIRMATIVE DEFENSE**

2 Defendants reserve the right to assert accord and satisfaction as to Plaintiff's
3 Complaint.

4 **TENTH AFFIRMATIVE DEFENSE**

5 Defendants allege that because the Complaint is couched in conclusionary
6 terms, answering Defendants cannot fully anticipate all affirmative defenses that may
7 be applicable to this action. Accordingly, the right to assert additional affirmative
8 defenses, if any, to the extent applicable, is reserved.

9 **ELEVENTH AFFIRMATIVE DEFENSE**

10 Defendants allege that the Complaint is brought solely for the purpose of
11 harassment, without merit, and in violation of law.

12 **TWELFTH AFFIRMATIVE DEFENSE**

13 Plaintiff's claims are barred as a result of the failure to satisfy condition(s)
14 precedent.

15 **THIRTEENTH AFFIRMATIVE DEFENSE**

16 Plaintiff's claims are barred as a result of the failure to satisfy condition(s) subsequent.

17 **FOURTEENTH AFFIRMATIVE DEFENSE**

18 Plaintiff's claims are barred by the doctrine of unclean hands.

19 **FIFTEENTH AFFIRMATIVE DEFENSE**

20 Plaintiff's claims are barred as a result of the lack of good faith.

21 **SIXTEENTH AFFIRMATIVE DEFENSE**

22 Plaintiff's claims are void for lack of consideration.

23 **SEVENTEENTH AFFIRMATIVE DEFENSE**

24 Defendants' actions or inactions were not the proximate or legal cause of
25 Plaintiff's damages, if any.

26 **EIGHTEENTH AFFIRMATIVE DEFENSE**

27 Defendants did not make any false or misleading statements to Plaintiff.
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1 **NINETEENTH AFFIRMATIVE DEFENSE**

2 Plaintiff did not or could not have reasonably relied on any allegedly false or
3 misleading statements by answering Defendants.

4 **TWENTIETH AFFIRMATIVE DEFENSE**

5 Plaintiff failed to allege facts or causes of action against Defendants sufficient
6 to support a claim for attorney' fees or costs.

7 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

8 Defendants assert that Plaintiff's Complaint is barred based on impossibility of
9 contract.

10 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

11 Defendants incorporate by reference the affirmative defenses enumerated in the
12 Nevada Rules of Civil Procedure, Rule 8 as if fully set forth in this Answer. In the
13 event further investigation or discovery reveals the applicability of any additional
14 affirmative defense, Defendants reserve the right to seek leave of Court to amend this
15 Answer and Counterclaim. Those defenses are incorporated by reference for the
16 specific purpose of not waiving any applicable defense.

17 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

18 Defendants assert that Plaintiff's Complaint is barred based on the truth being
19 asserted as an affirmative defense.

20 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

21 Defendants assert that Plaintiff's Complaint is barred based on Plaintiff's
22 acquiesce.

23 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

24 Defendants assert that Plaintiff's Complaint is barred based on first breach by
25 Plaintiff.

26 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

27 Defendants assert that Plaintiff's Complaint is barred based on Defendant's lack
28 of required knowledge required for Plaintiff to prevail on his claims.

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COUNTERCLAIM AGAINST PLAINTIFF ENCORE GROUP OF PROFESSIONALS, LLC, AND THIRD PARTY COMPLAINT AGAINST JOHN D. JACKSON, SYLO MANAGEMENT, LLC, ENCORE GROUP OF HAWAII, LLC, ENCORE GROUP OF CALIFORNIA, LLLP, ENCORE GROUP OF NEVADA, LLC, ENCORE GROUP OF TEXAS, LLC, and JOHN D. & TERRIL JACKSON TRUST, u/d/a 10/31/03

PARTIES, JURISDICTION AND VENUE

1. Counterclaimant/Third Party Plaintiff GABRIEL J. DALEY (hereinafter Daley), is and was at all times herein mentioned, a resident of the State of Texas.
2. Plaintiff/Counterdefendant, Encore Group of Professionals, LLC (hereinafter Encore - Professionals), is a Nevada Limited Liability Company, doing business in the state of Nevada.
3. Third Party Defendant, John D. Jackson (hereinafter Jackson), was and is at all times herein mentioned, based on information and belief, a resident of Clark County, Nevada.
4. Third Party Defendant, SYLO Management, LLC (hereinafter SYLO), is a Nevada Limited Liability Company, that is controlled by and, based on information and belief, owned by Third Party Defendant Jackson or some person or entity under Jackson's control.
5. Third Party Defendant, Encore Group of Hawaii, LLC (hereinafter Encore - Hawaii), is a Nevada Limited Liability Company, that is controlled by and, based on information and belief, owned by Third Party Defendant Jackson or some person or entity under Jackson's control.
6. Third Party Defendant, Encore Group of California, LLLP (hereinafter Encore - California), is a Nevada Limited Liability Limited Partnership, that is controlled by and, based on information and belief, owned by Third Party Defendant Jackson or some person or entity under Jackson's control.
7. Third Party Defendant, Encore Group of Nevada, LLC (hereinafter Encore - Nevada), is a Nevada Limited Liability Company, that is controlled by and, based on information and belief, owned by Third Party Defendant Jackson or

1 some person or entity under Jackson's control.

2 8. Third Party Defendant, Encore Group of Texas, LLC (hereinafter Encore -
3 Texas), is a Nevada Limited Liability Company, that is controlled by and, based
4 on information and belief, owned by Third Party Defendant Jackson or some
5 person or entity under Jackson's control.

6 9. Third Party Defendant, John D. & Terri L. Jackson Trust, u/d/a 10/31/03
7 (hereinafter the Trust), is an unknown type of Trust, and is, based on
8 information and belief, a Nevada Family Trust set up for the benefit of Third
9 Party Defendant John D. Jackson and his family, including his wife Terri L.
10 Jackson.

11 10. This Court has jurisdiction in this matter, and venue is proper because all Third
12 Party Defendants are located in, and/or do business in, and/or are incorporated
13 in, Clark County, Nevada.

14 11. Daley does not know the true names and capacities, whether individual,
15 corporate, associate or otherwise, of Counterdefendants named herein as Does
16 and Roes, 1 through 10, inclusive. Daley therefore sues those
17 Counterdefendants by such fictitious names. On information and belief, each
18 Counterdefendant sued herein as Doe and/or Roe is in some way legally
19 responsible for the acts alleged herein. Daley will amend this Amended
20 Counterclaim/Third Party Complaint to show the true names and capacities of
21 said Counterdefendant(s) when he subsequently ascertains such information.

22 **GENERAL ALLEGATIONS**

23 12. That Daley was contacted in April of 2014 by Jackson, and offered a position in
24 a company owned by Jackson.

25 13. That during the initial communications, Jackson offered Daley a position that
26 was generally described as "running a business".

27 14. Jackson, who is the uncle of Daley, had worked with Daley in the past in prior
28 business ventures.

- 1 15. Based on their prior business history, Daley believed that he could assist
2 Jackson with running a business, noting that Jackson's weakness in the business
3 realm is in running businesses.
- 4 16. At the time that Jackson contacted Daley about the business opportunity in April
5 of 2014, Daley was the Project Controls Manager for Ed Bell Construction, in
6 Dallas Texas. Although the Ed Bell Construction position was financially more
7 lucrative than the position offered by Jackson, it had no ownership stake in the
8 company. The position offered by Jackson included business ownership.
- 9 17. The position ultimately offered by Jackson to Daley required longer hours, more
10 business travel away from home, more work, higher stress, an inferior bonus
11 structure, and inferior health insurance. However, Jackson represented to Daley
12 that the company was worth in excess of one million dollars (\$1,000,000.00),
13 and offered Daley a 25% ownership stake in the company. Additionally,
14 Jackson agreed to supply Daley with a company vehicle to match the prior
15 employer's benefit, as well as for an ownership benefit.
- 16 18. As a result of the job offer from Jackson, Daley gave Ed Bell Construction a one
17 month notice of his resignation.
- 18 19. Prior to leaving Ed Bell Construction, Daley asked Jackson why he was being
19 brought on board to run the company, and as a owner; for his ability, or because
20 he was family. Jackson assured Daley that he recognized Daley's business
21 ability, including reputation and competency. Jackson further assured Daley
22 that a family relationship had nothing to do with the offer to run and own the
23 company.
- 24 20. Jackson's solicitation of Daley for employment was for the company Defendant
25 Encore Group of Professionals, LLC (hereinafter Encore - Professionals).
26 Encore - Professionals was started by Jackson in 2009, and is vaguely described
27 as a construction consulting company.
- 28 21. On or about June 30, 2014, Daley began his employment with Encore -

- 1 Professionals. This included the execution of a lease for an executive suite in
2 Dallas, Texas.
- 3 22. Due to Daley's reputation in the community, and positive relationship with his
4 prior employer's clientele, Daley was able to retain many clients for Encore -
5 Professionals in Texas. As a result, Encore - Professionals almost immediately
6 became a much stronger company.
- 7 23. In November of 2014, Daley and Jackson met with the attorneys for Encore -
8 Professionals, WOOD ERICKSON & WHITAKER LLP (hereinafter the Woods
9 Law Firm), for the purpose of reviewing, approving, and executing the
10 Operating Agreement and Membership Agreement that delineated Daley's
11 employment, duties, and ownership in Encore - Professionals.
- 12 24. Beginning in November, 2014, and through January, 2015, Daley began
13 attempting to organize Encore - Professionals' books, streamline the company,
14 and other duties that an owner and Chief Operating Officer (COO) would
15 engage in.
- 16 25. After an initial examination of the books and records of Encore - Professionals,
17 Daley discovered that a different company, Third Party Defendant SYLO, was
18 "commingled" with Encore - Professionals. Daley immediately questioned
19 Jackson about this commingling, and Jackson assured Daley that the SYLO
20 costs and/or expenses that were being paid for by Encore - Professionals would
21 be reimbursed by Jackson. Jackson asserted that it did not make sense to have
22 separate payroll for the few additional employees at SYLO.
- 23 26. A continued examination of the books and records of Encore - Professionals
24 revealed the fact that Jackson was being paid interest on his capital contribution,
25 in violation of the Amended and Restated Operating Agreement, dated
26 November 7, 2014.
- 27 27. When Daley raised the issue of the interest on the capital contribution with
28 Jackson, Jackson confirmed that it was his capital contribution, but took no

- 1 action to stop the interest from being paid.
- 2 28. In May of 2015, Jackson met with Daley in Las Vegas to discuss the status and
3 future of Encore - Professionals. It was decided that a new, more centralized
4 office for Encore - Professionals should be obtained in Dallas, that a new IT
5 manager would be hired for the Dallas office, and that Jackson's salary would
6 be reduced to \$100,000.00 to match Daley's salary.
- 7 29. In July of 2015, Daley sent Jackson an additional communication regarding the
8 payment of the interest on Jackson's capital contribution.
- 9 30. Throughout July of 2015, the relationship between Daley and Jackson began to
10 have some trouble. Daley notified Jackson of his ongoing concerns about
11 timely closing monthly books, salary issues, eliminating the interest paid to
12 Jackson, the added expenses to Encore - Professionals from Jackson personally,
13 as well as Jackson's other company(s) expenses being ran through Encore -
14 Professionals, and other business issues.
- 15 31. By July, 2015, Daley had raised his concerns about the improper financial
16 activity discovered in Encore - Professionals with the Woods Laws Firm. No
17 action was taken. Furthermore, the Woods Law Firm did not disclose to Daley
18 that at that time period the founding and managing partner of the Woods Law
19 Firm was also an officer for Third Party Defendant SYLO.
- 20 32. Near the end of July, 2015, harsh words were exchanged between the Parties.
21 Jackson attempted to take advantage of the situation, and asserted that Daley
22 had resigned. Based on information and belief, Jackson was falsely claiming
23 that Daley resigned in an attempt to obtain a financial gain pursuant to the terms
24 of the Parties Agreements.
- 25 33. Based on information and belief, after bringing Daley into Encore -
26 Professionals as an owner and employee, after Daley helped get Encore on track
27 and increased the company's revenue via Daley's contacts and connections in
28 Texas, and after Daley put in enormous effort to turn the profitability of Encore

- 1 - Professionals around, Jackson simply wanted to get rid of Daley and keep all
2 of the rewards of Daley's hard work.
- 3 34. That at no time did Daley tender his resignation from Encore - Professionals to
4 Jackson, the Woods Law Firm, or anyone else.
- 5 35. That as of the date of this Amended Counterclaim, Daley is still a partial owner
6 of Encore - Professionals.
- 7 36. That during 2015, Jackson made unilateral decisions to hire employees and/or
8 incur obligations on behalf of Encore - Professionals, without consulting Daley,
9 in violation of the Operating Agreement.
- 10 37. During 2015, Jackson continued to violate the terms of the Operating
11 Agreement by failing to timely provide a K-1 statement, wrongfully attributing
12 contribution(s) to a different year, by attempting to transfer Daley's interest in
13 Encore - Professionals without Daley's consent, and by making distribution(s)
14 to himself and not to Daley.
- 15 38. In August of 2015, Daley attempted to gain access to the books of Encore -
16 Professionals, pursuant to the Operating Agreement and NRS 86.241. Jackson,
17 through the Woods Law Firm, refused to allow Daley access to the books.
- 18 39. That Daley required access to the books to determine, in addition to other
19 reasons related to Daley being a Member, the amount of money that Jackson had
20 commingled, the amount of expenses that Jackson had paid for other entities,
21 and the amount of personal expenses that Jackson had paid using Encore -
22 Professionals funds.
- 23 40. That Daley had met with the Woods Law Firm in his capacity as a Member of
24 Encore - Professionals, to discuss ownership, employment, and other
25 information regarding Encore - Professionals. There was no question that the
26 Woods Law Firm was, and is, the attorney firm representing Encore -
27 Professionals. As a result, the Woods Law Firm has a duty to protect Encore -
28 Professionals, including Daley's interest in the Company.

- 1 41. That due to the conflicts between the Parties herein, a business evaluation must
2 be done, fully accounting for all of the improper and adverse financial actions
3 done by Jackson that were to the detriment of Encore - Professionals and Daley
4 including, but not limited to, commingling of funds, payment of personal
5 expenses, unauthorized draws, and payment of non-Encore - Professionals
6 expenses. Additionally, all assets of Encore - Professionals must be determined.
- 7 42. During the period of August, 2015 through September, 2015, Daley attempted to
8 resolve this matter with Jackson, both directly and through counsels, with no
9 success.
- 10 43. Despite repeated attempts at resolving these disputes prior to the filing of a
11 lawsuit, Third Party Defendants refused to allow access to the books and records
12 of Encore - Professionals, which is required in order to complete any meaningful
13 evaluation of Encore - Professionals. As a result, Daley remains an owner of
14 Encore - Professionals, with all respective rights that an owner would have.
- 15 44. On or about October 19, 2015, Daley sued Jackson and Encore - Professionals
16 in Justice Court. The Woods Law Firm appeared on behalf of Encore -
17 Professionals, and an Order of Dismissal Without Prejudice was filed on
18 December 16, 2015.
- 19 45. That after filing the Counterclaim in this case, Daley has discovered that
20 Jackson, and/or Jackson's agents, have been running the expenses of Third Party
21 Defendants Encore - Nevada, Encore - Hawaii, Encore - Texas, and Encore -
22 California, and the Third Party Defendant Trust through Encore - Professionals,
23 while keeping all of the revenue and profits, in an attempt to lower the value of
24 the Plaintiff, Encore - Professionals.
- 25 46. That, based on information and belief, Third Party Defendants Encore - Nevada,
26 Encore - Hawaii, and Encore - Texas were created by Jackson with the specific
27 intent to lower the value of Encore - Professionals, and to intentionally lower
28 the judgment that Daley will receive against Jackson and the Third Party

Defendants.

47. That, based on information and belief, Jackson's actions regarding the creations and falsifying of the Third Party Defendants' expenses run through Encore - Professionals was/is an intentional act to lower the value of Encore - Professionals.
48. That, based on information and belief, Jackson is paying his personal expenses through Encore - Professionals, as well as allowing his immediate family member(s) and others to charge expenses to Encore - Professionals, including credit cards, and car payments/car ownership and/or the use of Encore - Professionals vehicles by Jackson's family members and/or other individuals, as well as paying the expenses of the Third Party Defendant Trust.
49. That based on information and belief, including limited financial documents obtained, Jackson is taking money from Encore - Professionals and converting these funds to the Third Party Defendant Trust.

I.

FIRST CAUSE OF ACTION

DECLARATORY RELIEF

(Against Plaintiff and all Third Party Defendants)

50. Daley hereby incorporates paragraphs 1-49 as if fully stated herein.
51. Under the standard set forth in NRS 30.010 *et. seq.*, this Court is empowered to declare the rights of the Parties herein.
52. There is a current controversy and dispute as to the ownership of Encore - Professionals.
53. That there are current controversies and disputes involving the Employment Agreement, the Operating Agreement, and the Membership Agreement including, but not limited to, an invalid non-compete clause, capital contributions, and others.

- 1 54. That there are current controversies and disputes regarding Jackson taking
2 money from Encore - Professionals, and converting these funds to the other
3 Third Party Defendants named herein, and Jackson's right to engage in these
4 financial acts to the detriment of Encore - Professionals and Daley.
- 5 55. That the controversies and disputes are actual, real, present, and ripe for
6 determination and adjudication by this Court.

7 **II.**

8 **SECOND CAUSE OF ACTION**

9 **ALTER EGO**

10 **(Against Plaintiff and all Third Party Defendants)**

- 11 56. Daley hereby incorporates paragraphs 1-55 as if fully stated herein.
- 12 57. Jackson has influenced, controlled, and governed Encore - Professionals by
13 commingling funds (both personal and with other businesses), by using the
14 Encore - Professionals monies as his own (demonstrated by taking unauthorized
15 draws), by unilaterally terminating Daley's access to the Encore - Professionals
16 books, by allowing his family and/or other individuals to use Encore -
17 Professionals vehicles and credit cards, by the other acts described in this
18 Counterclaim, and otherwise to be determined.
- 19 58. That Jackson controlled, governed, influenced, and/or created the other Third
20 Party Defendant Companies named in this Counterclaim to reduce the value of
21 Encore - Professionals, and to reduce any judgment that Daley may obtain
22 against Encore - Professionals. As a result, Jackson is the alter ego of all Third
23 Party Defendant Companies named herein.
- 24 59. That by his actions, Jackson has clearly demonstrated that there is a unity of
25 interest, control, and ownership so that Jackson cannot be separated from
26 Encore - Professionals or the other Third Party Defendants.
- 27 60. In light of the fact that Daley has actual and measurable damages based on
28 Jackson's unity of interest and ownership of Encore - Professionals and the

1 other Third Party Defendants, adherence to the corporate fiction would promote
2 an injustice and sanction a fraud.

- 3 61. It has been necessary for Daley to retain the services of an attorney to prosecute
4 this action, and Counterdefendant/Third Party Defendants should be required to
5 pay attorney's fees in a sum to be determined at the time of trial and costs
6 incurred to collect this amount, as well as pre and post judgment interest.

7 **III.**

8 **THIRD CAUSE OF ACTION**

9 **BREACH OF CONTRACT**

10 **(Against Plaintiff Encore - Professionals and Third Party Defendant Jackson)**

- 11 62. Daley hereby incorporates paragraphs 1-61 as if fully stated herein.
- 12 63. That Daley and Encore - Professionals entered into an Operating Agreement, an
13 Employment Agreement, and a Membership Agreement.
- 14 64. Daley performed all of his valid obligations and duties pursuant to the terms of
15 the Agreements.
- 16 65. That most, but not all parts of the Agreement(s), are valid and binding contracts,
17 with valid offer, acceptance, and consideration.
- 18 66. As a result of his reliance on the Agreements, Daley stopped working for Ed
19 Bell Construction, and started working for Encore - Professionals. This change
20 in employment was based on the representations from Jackson of the potential
21 of Encore - Professionals.
- 22 67. That Jackson, under the authority and guise of Encore - Professionals, as well as
23 Encore - Professionals itself, breached the Agreements by taking disbursements
24 in violation of the terms of the Agreements, by paying personal expenses
25 through Encore - Professionals, by paying the expenses of other businesses
26 through Encore - Professionals, by terminating Daley's employment based on
27 Daley's uncovering of improper conduct, and by the other acts and inactions
28 described herein. Jackson's breach is a direct result of his alter ego control of

- 1 Encore - Professionals and/or under the principal/agency doctrine.
- 2 68. As a direct and proximate result of the Counterdefendant/Third Party
- 3 Defendant's breach of contract, Daley has been damaged in an amount in excess
- 4 of \$10,000.00.
- 5 69. It has been necessary for Daley to retain the services of an attorney to prosecute
- 6 this action, and Counterdefendant/Third Party Defendant should be required to
- 7 pay attorney's fees in a sum to be determined at the time of trial and costs
- 8 incurred to collect this amount, as well as pre and post judgment interest.

9 **IV.**

10 **FOURTH CAUSE OF ACTION**

11 **BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR**

12 **DEALING/TORTIOUS BREACH OF THE IMPLIED COVENANT**

13 **(Against Plaintiff Encore - Professionals and Third Party Defendant Jackson)**

- 14 70. Daley hereby incorporates paragraphs 1-69 as if fully stated herein.
- 15 71. That in every contract in Nevada, there is an implied covenant of good faith and
- 16 fair dealing.
- 17 72. That the Agreement(s) at issue in this case caused Jackson and Daley to be joint
- 18 owners of Encore - Professionals. As a result, there was, and is, a fiduciary duty
- 19 between them, as well as a special relationship in that these two individuals are
- 20 united for the same purpose: to ensure that Encore - Professionals succeeds.
- 21 73. Jackson, both himself and with his control of Encore - Professionals, has
- 22 breached the implied covenant of good faith and fair dealing by the actions and
- 23 inactions described herein including, but not limited to, falsely claiming that
- 24 Daley resigned in order to obtain a financial gain; by taking draws in violation
- 25 of the Agreement(s), and to the detriment of Daley; by paying himself interest in
- 26 violation of the Agreement(s), and to the detriment of Daley; by allowing his
- 27 family members to use Encore - Professionals credit cards and vehicles; and by
- 28 commingling personal and business expenses with Encore - Professionals in

violation of the Agreement(s), and to the detriment of Daley.

74. That the actions of Jackson were intentional, malicious, wanton, and with complete disregard of the harm to Daley and with disregard of Daley's rights. Additionally, after the dispute between the Parties herein began, Jackson created some of the listed Third Party Defendant businesses in a direct effort to lower the value of Plaintiff Encore - Professionals, and in a conscience effort to take money from Daley, as well as having transferred money to the Third Party Defendant Trust.
75. As a direct and proximate result of the breach/tortious breach of the implied covenant, Daley has been damaged in an amount in excess of \$10,000.00.
76. It has been necessary for Daley to retain the services of an attorney to prosecute this action, and Counterdefendant/Third Party Defendants should be required to pay attorney's fees in a sum to be determined at the time of trial and costs incurred to collect this amount, as well as pre and post judgment interest.

V.

FIFTH CAUSE OF ACTION

UNJUST ENRICHMENT

(Against Plaintiff Encore - Professionals and All Third Party Defendants)

77. Daley hereby incorporates paragraphs 1-76 as if fully stated herein.
78. That Jackson paid his personal expenses, his family's expenses, and other companies expenses with money from Encore - Professionals.
79. That based on information and belief, Third Party Defendants SYLO, Encore - California, Encore - Nevada, Encore - Texas, and Encore - Hawaii, and the Third Party Defendant Trust, had expenses paid by Plaintiff Encore - Professionals and/or simply received money from Encore - Professionals, but Encore - Professionals received no benefit, service, or otherwise from these Third Party Defendants.
80. Third Party Defendants Jackson, SYLO, Encore - California, Encore - Nevada,

- 1 Encore - Texas, Encore - Hawaii, and the Third Party Defendant Trust have
2 been unjustly enriched at the expense of Daley and Encore -Professionals.
- 3 81. Under the most basic fundamental principals of equity, justice, fairness, and
4 good conscience, Third Party Defendants Jackson, SYLO, Encore - California,
5 Encore - Nevada, Encore - Texas, Encore - Hawaii, and the Third Party
6 Defendant Trust should not be allowed to retain the benefit of having their
7 expenses paid, and/or receiving money with nothing in exchange, all to the
8 detriment and loss of Daley.
- 9 82. This Court should Order Third Party Defendants Jackson, SYLO, Encore -
10 California, Encore - Nevada, Encore - Texas, Encore - Hawaii, and the Third
11 Party Defendant Trust to pay back all money paid by Encore - Professionals on
12 their behalf or direct to them, along with interest.
- 13 83. As a direct and proximate result of the unjust enrichment, Daley has been
14 damaged in an amount in excess of \$10,000.00.
- 15 84. It has been necessary for Daley to retain the services of an attorney to prosecute
16 this action, and Counterdefendant/Third Party Defendants should be required to
17 pay attorney's fees in a sum to be determined at the time of trial and costs
18 incurred to collect this amount, as well as pre and post judgment interest.

19 **VI.**

20 **SIXTH CAUSE OF ACTION**

21 **BREACH OF FIDUCIARY DUTY**

22 **(Against Third Party Defendant Jackson)**

- 23 85. Daley hereby incorporates paragraphs 1-84 as if fully stated herein.
- 24 86. That during all times relevant, Jackson ran and controlled Encore -
25 Professionals, and was a director, officer, and/or manager.
- 26 87. That during all times relevant, Jackson owned 75% of Encore - Professionals,
27 and Daley owner 25% of Encore - Professionals.
- 28 88. That Jackson had a fiduciary duty, owed to Daley, to conduct himself with

1 regards to Encore - Professionals, in good faith and with a view to the interests
2 of the Company.

3 89. That pursuant to statute, common law, and case law, Jackson was/is required to
4 be truthful, honest, and loyal to both Encore - Professionals and Daley.

5 90. That Jackson breached his fiduciary duties as a director, officer, and manager of
6 Encore - Professionals by the acts detailed in this Third Party Complaint,
7 including Jackson's paying of expenses of SYLO from funds of Encore -
8 Professionals, by lying to Daley that the money paid for SYLO expenses and/or
9 costs would be returned to Encore - Professionals, by paying his personal and
10 family expenses with money from Encore - Professionals, by paying himself
11 interest on his capital contribution, in violation of the Amended and Restated
12 Operating Agreement, dated November 7, 2014, by creating other entities (listed
13 herein as the Third Party Defendant Companies) in an intentional effort to
14 reduce the value of Encore - Professionals and to financially harm Daley, by
15 paying the expenses of the Third Party Defendant Companies with money from
16 Encore - Professionals with nothing in exchange, and other actions set forth
17 herein.

18 91. That the actions of Jackson described in this cause of action and this Amended
19 Third Party Complaint were intentional, malicious, and a knowing violation of
20 law and the duties owed to Daley.

21 92. As a direct and proximate result of the Breach of Fiduciary Duty, Daley has
22 been damaged in an amount in excess of \$10,000.00.

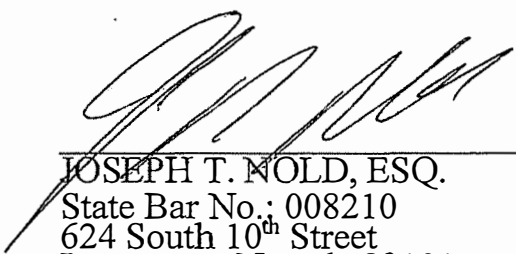
23 93. It has been necessary for Daley to retain the services of an attorney to prosecute
24 this action, and Third Party Defendant Jackson should be required to pay
25 attorney's fees in a sum to be determined at the time of trial and costs incurred
26 to collect this amount, as well as pre and post judgment interest.

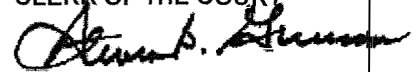
27
28 WHEREFORE, Counterclaimant/Third Party Plaintiff GABRIEL J. DALEY

1 expressly reserves the right to amend this Amended Counterclaim at the time of trial of
2 this action herein to all Defendants, Corporations, Does and Roes, and damages not yet
3 ascertained, demand judgment against Plaintiff and the Third Party Defendants as
4 follows:

- 5 1. General damages in excess of \$10,000.00;
- 6 2. For punitive/special damages in excess of \$10,000.00;
- 7 3. For costs and disbursements of suit;
- 8 4. For attorney's fees to be determined at the conclusion of the case;
- 9 5. For reasonable attorney's fees and costs incurred to collect a judgment in favor
10 of Third Party Plaintiff Daley, and against Counterdefendant and Third Party
11 Defendants;
- 12 6. For both post and pre judgment interest; and
- 13 7. For such other and further relief as the Court may deem just and proper.

14
15 DATED this 2 day of June, 2017.

16
17 
18 JOSEPH T. NOLD, ESQ.
19 State Bar No.: 008210
20 624 South 10th Street
21 Las Vegas, Nevada 89101
22 Phone (702) 262-1651
23 Fax (702) 383-6051
24 Email: noldj@cox.net
25 Attorney for Gabriel J. Daley
26
27
28



1 **ACOM**
2 KENT P. WOODS, ESQ.
3 Nevada Bar No. 12306
4 WOODS ERICKSON & WHITAKER LLP
5 1349 Galleria Drive #200
6 Henderson, NV 89014
7 Email: kwoods@woodserickson.com
8 Tel: (702) 433-9696
9 Fax: (702) 434-0615
10 *Attorneys for Encore Group of Professionals LLC*

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 ENCORE GROUP OF PROFESSIONALS, LLC,
14
15 Plaintiff,

16 vs.

17 GABRIEL J. DALEY, DOES I through X AND
18 ROE CORPORATIONS XI through XX, inclusive,

19 Defendants.

20 AND RELATED CLAIMS

Case No.: A-16-735644-C
Dept. No.: XXIX

Date of Hearing: 5/22/2017
Time of Hearing: In Chambers

**ARBITRATION EXEMPT: AMOUNT
IN CONTROVERSY IN EXCESS OF
\$50,000 AND CONTAINS CLAIMS FOR
DECLARATORY RELIEF**

21 **FIRST AMENDED COMPLAINT**

22 COMES NOW, Plaintiff Encore Group of Professionals, LLC ("Encore" or the "Plaintiff"),
23 by and through its attorney of record, Kent P. Woods, Esq., of the Law Firm of Woods, Erickson &
24 Whitaker, LLP, and for its First Amended Complaint states, avers, and alleges as follows:

25 **Jurisdiction & Parties**

26 1. Encore is and was at all times relevant to this Complaint a limited liability company
27 formed under the laws of the State of Nevada and regularly performing business in Clark County,
28 Nevada.

2. Defendant Gabriel J. Daley ("Daley") is and was at all times relevant to this
Complaint an individual residing in Denton County, Texas.

3. Does I through X, inclusive, and Roe Corporations XI through XX, inclusive, are
those individuals, entities, and/or corporations who, through their acts, omissions, contracts, or other
activities are liable to Encore for damages related to the subject matter set forth herein. Encore does

1 not currently know the names and identities of these Doe Defendants but will seek leave of Court to
2 amend its Complaint to add these Doe Defendants as discovery reveals their identities.

3 **Governing Documents**

4 4. On or about November 7, 2014, Encore and Daley entered into that certain "Company
5 – Employment Agreement" (the "Employment Agreement"), a true and correct copy of which is
6 attached hereto as Exhibit A.

7 5. Pursuant to section 4.2 of the Employment Agreement, Daley agreed not to
8 participate in any activity that is competitive with the business of Encore for two years from the date
9 Daley's employment terminated at Encore.

10 6. Pursuant to section 4.3 of the Employment Agreement, Daley consented to entry of
11 an injunction to ensure compliance with the Employment Agreement.

12 7. On or about November 7, 2014, Encore and Daley entered into that certain
13 "Membership Purchase Agreement" (the "Membership Purchase Agreement"), a true and correct
14 copy of which is attached hereto as Exhibit B.

15 8. Pursuant to the Membership Purchase Agreement, Daley purchased a 25% Percentage
16 Membership Interest in Encore for the total purchase price of \$100.

17 9. The Membership Purchase Agreements provides that Encore shall have an option to
18 repurchase Daley's Percentage Membership Interest at the original purchase price; provided,
19 however, that certain portions of Daley's Percentage Membership Interest would be released from
20 this option at regular intervals.

21 10. Pursuant to Section 3.01(c) of the Membership Purchase Agreement, eighty percent
22 of Daley's purchased 25% Percentage Membership Interest remained subject to Encore's repurchase
23 option as of August 31, 2015.

24 11. Pursuant to Section 9 of the Membership Purchase Agreement, Daley agreed that
25 during any time that he shall hold any portion of the purchased membership interest and for twelve
26 months thereafter, he would not render any services directly or indirectly for any competitor or
27 company client (as such terms are defined in the Membership Purchase Agreement).
28

1 12. Pursuant to Section 10.01 of the Membership Purchase Agreement, Daley agreed that
2 for a period of twelve months after termination of Daley's employment with the Company, Daley
3 would keep Encore advised in writing of the name and address of each of Daley's employers, would
4 provide each such employer with a copy of the Membership Purchase Agreement, and would
5 provide Encore upon its request with evidence of Daley's compliance with the Membership
6 Purchase Agreement.

7 13. On or about November 7, 2014, John D. & Terri L. Jackson, and their successors, as
8 trustees of the John D. & Terri L. Jackson Trust, u/a/d October 31, 2003, on the one hand, and
9 Daley, on the other, entered into that certain Amended and Restated Operating Agreement for
10 Encore Group of Professionals LLC, a Nevada limited liability company (the "Operating
11 Agreement"), a true and correct copy of which is attached hereto as Exhibit C.

12 14. Section 6.03 of the Operating Agreement provides Encore with an option to purchase
13 any Member's Percentage interest upon "retirement or resignation of a Member from the Company."

14 15. Section 6.06(c) of the Operating Agreement provides a mechanism for calculating the
15 purchase price upon exercise of the repurchase option provided by Section 6.03, namely:

16 [T]he value of each one percent (1%) Percentage Interest in the capital and profits
17 of the Company shall be determined by three appraisers who are competent to
18 appraise properties and businesses of the type owned and/or operated by the
19 Company. The seller shall select one appraiser, and the purchasers shall agree
20 upon a second appraiser. The two appraisers so selected shall agree upon a third
21 appraiser. . . . The appraisers shall conduct their appraisals so as to determine as
22 expeditiously as possible the fair market value of each one percent (1%)
23 Percentage Interest in the capital and profits of the Company The appraised
24 value that most differs from the average of the other two appraised values shall be
25 disregarded, and the arithmetic average of the remaining two appraised values
26 shall be the fair market value of each one percent (1%) Percentage Interest, and
27 shall be valid, binding and conclusive upon all parties to this Agreement and upon
28 their heirs and successors.

Operating Agreement § 6.06(c).

16. Section 6.08 of the Operating Agreement provides that the purchase price determined
pursuant to Section 6.06(c) shall be paid by a 20% down payment and simultaneous execution by the
purchaser of a promissory note payable as follows: "four equal annual payments of principal, plus
accrued interest payable at a fluctuating rate equal to the prime, reference or base rate quoted or

1 charged from time to time by Bank of America, Las Vegas, Nevada” Operating Agreement §
2 6.08.

3 17. On or about November 7, 2014, Daley was appointed as a Manager of Encore. John
4 D. Jackson, Encore’s co-defendant in this litigation, was also appointed to serve as Manager.

5 **Daley’s Resignation**

6 18. Throughout June and July of 2015, disputes arose between the Mangers over various
7 issues affecting the management and operation of Encore.

8 19. As a result of those disputes, on August 4, 2015, Daley submitted to encore via text
9 message his immediate resignation from the company. Mr. Jackson accepted this resignation on
10 behalf of Encore.

11 20. On August 5, 2015, Daley contacted Mr. Jackson once again to provide oral notice of
12 his resignation from Encore but requested a two-week notice period before termination of his
13 employment. Mr. Jackson accepted on behalf of Encore Daley’s resignation.

14 21. On August 17, 2015, Daley and Mr. Jackson met to discuss additional details related
15 to Daley’s resignation from Encore. During that meeting, it was agreed that Daley’s employment
16 would terminate on August 31, 2015.

17 **Daley’s Breach of the Operating Agreement**

18 22. On September 23, 2015, Encore provided notice to Daley of the exercise of its
19 repurchase options under both the Membership Purchase Agreement and the Operating Agreement.

20 23. Also on September 23, 2015, Encore tendered to Daley the purchase price for the
21 portion of Daley’s Percentage Interest subject to the repurchase option in the Membership Purchase
22 Agreement. In the same correspondence, Encore identified its selected appraiser for the purposes of
23 calculating the value of Mr. Daley’s remaining Percentage Interest governed by Encore’s repurchase
24 option in the Operating Agreement.

25 24. By return correspondence, Daley refused to identify his nominated appraiser and
26 indicated his refusal to honor Encore’s repurchase option for his remaining Percentage Interest.

27 / / /
28

Daley's Conversion of Company Property

25. At the time of this resignation, Daley was in possession of certain property belonging to Encore, namely, a 2014 Chevrolet Silverado pickup truck, a Surface Pro 3 computer, and a Galaxy S5 cellular telephone (collectively, the "Company Property"). Each of these items is the property of Encore but had been furnished to Daley to assist in the performance of his duties to the Company.

26. The Surface Pro 3 computer and the Galaxy S5 cellular telephone each contain files, customer lists, contact lists, intellectual property, and confidential information related to the business of Encore.

27. On or about September 4, 2015, acting through counsel, Encore contacted Daley to demand return of the Company Property. Daley refused to return the Company Property and continues to use these items for his own benefit.

28. Section 4.08 of the Operating Agreement provides that Members of Encore in their capacity as Manager or Member shall have no authority to "[p]ossess Company properties . . . for other than a Company purpose"

29. As a result of Daley's continued use of the Company Property, the Company Property has depreciated in value, and Encore has been deprived of its use.

Daley's Breach of the Employment Agreement and Membership Purchase Agreement

30. Upon information and belief, following his resignation from Encore, Daley has contacted certain of Encore's clients, including the Doe Defendants. This action violates the provisions of the Employment Agreement that prohibit competitive activity within two years from termination of Daley's employment.

31. Upon information and belief, Daley has requested that certain of Encore's clients, including the Doe Defendants, cease their business and contractual relationships with Encore and instead enter into business and contractual relationships with Daley. This action violates the provisions of the Employment Agreement and the Membership Purchase Agreement that prohibit competitive activity within two years from termination of Daley's employment and for during any time that Daley holds a purchased membership interest in Encore.

1 32. Daley is currently employed by Flatiron Construction in the position of "Planning and
2 Scheduling Manager."

3 33. The work performed by Daley for Flatiron Construction is competitive to the services
4 provided by Encore Group.

5 34. Performing such services violates the terms of the Employment Agreement and the
6 Membership Purchase Agreement.

7 35. Upon accepting employment at Flatiron Construction, Daley did not abide by the
8 covenants in the Membership Purchase Agreement regarding subsequent employment; specifically,
9 Daley did not advise Encore in writing of the name and address of his employer and did not provide
10 his employer with a copy of the Membership Purchase Agreement.

11 **First Cause of Action – Declaratory Judgment Pursuant to NRS 30.040**

12 36. Encore repeats and realleges the allegations of the preceding paragraphs as though
13 fully set forth herein.

14 37. An actual, present, and justiciable controversy has arisen between Encore and Daley
15 concerning whether Daley's resignation in August of 2015 satisfied the conditions precedent to
16 Encore's option to repurchase Daley's Percentage Interest pursuant to Section 6.06 of the Operating
17 Agreement.

18 38. Daley claims that he has not resigned from membership in Encore and that the
19 repurchase option provided by the Operating Agreement is not enforceable against him.

20 39. Encore seeks declaratory judgment from this Court that Daley resigned from
21 membership in Encore and that Encore may repurchase Daley's Percentage Interest in Encore on the
22 terms set forth in the Operating Agreement.

23 **Second Cause of Action – Breach of Contract**

24 40. Encore repeats and realleges the allegations of the preceding paragraphs as though
25 fully set forth herein.

26 41. The Operating Agreement constitutes a valid, binding contract between Encore and
27 Daley.
28

1 52. Encore and Daley entered into the Operating Agreement and the Employment
2 Agreement, which constituted binding and enforceable contracts.

3 53. As a result of entering into the Operating Agreement and the Employment
4 Agreement, Nevada law imposes on Daley an implied covenant of good faith and fair dealing with
5 respect to the obligations set forth in the Operating Agreement and the Employment Agreement.

6 54. Daley has breached the implied covenant of good faith and fair dealing by: (1)
7 refusing to convey to Encore his Percentage Interest; (2) refusing to nominate an appraiser to
8 calculate the purchase price for Daley's Percentage Interest; (3) retaining the Company Property
9 following termination of his employment and resignation from membership in the Company; (4)
10 soliciting clients of Encore; (5) securing employment in direct competition with Encore Group; and
11 (6) failing to inform his employer of the restrictions imposed by the Membership Purchase
12 Agreement.

13 55. As a result of Daley's actions set forth above, Encore's justified expectations that the
14 Operating Agreement and the Employment Agreement would be carried out pursuant to their terms
15 have been denied.

16 56. As a direct and proximate result of Daley's actions set forth above, encore has
17 incurred damages in an amount to be determined at trial.

18 57. As a direct and proximate result of Daley's actions, Encore has been required to
19 retain the services of an attorney to prosecute this action and is entitled to an award of reasonable
20 attorney's fees and costs incurred herein.

21 **Fourth Cause of Action – Specific Performance**

22 58. Encore repeats and realleges the allegations of the preceding paragraphs as though
23 fully set forth herein.

24 59. Within the time prescribed by the Operating Agreement, Encore has offered to pay
25 the full amounts called for in the Operating Agreement for the exercise of its repurchase option for
26 Daley's remaining Percentage Interest.

27 60. Encore has demanded that Daley convey his Percentage Interest in Encore upon the
28 terms set forth in the Operating Agreement.

1 61. Daley has refused and continues to refuse to convey to Encore his remaining
2 Percentage Interest or to identify an appraiser to calculate the purchase price for the Percentage
3 Interest as required by the Operating Agreement.

4 62. Encore has no adequate remedy at law to enforce the provisions of the Operating
5 Agreement related to the exercise of its repurchase option other than specific performance of the
6 relevant portions of the Operating Agreement.

7 63. Encore is entitled to specific performance of the terms, conditions, and provisions of
8 the Operating Agreement related to its repurchase option, by court decree, among other things,
9 ordering Daley to complete conveyance of his Percentage Interest.

10 **Fifth Cause of Action – Injunctive Relief**

11 64. Encore repeats and realleges the allegations of the preceding paragraphs as though
12 fully set forth herein.

13 65. Pursuant to the Employment Agreement, Daley agreed not to engage in any activity
14 competitive to Encore within two years of termination of his employment at Encore.

15 66. Since his resignation from Encore, upon information and belief, Daley has contacted
16 certain of Encore's clients, including the Doe Defendants, and has encouraged them to withdraw
17 from their business and contractual relationships with Encore and instead to engage in business and
18 contractual relationships with Daley.

19 67. Daley's actions violate the terms of the covenants not to compete as set forth in the
20 Employment Agreement.

21 68. Encore has been and continues to be harmed as a result of Daley's violations of his
22 covenants not to compete.

23 69. Encore will be irreparably harmed if Daley is permitted to continue to violate the
24 terms of his covenants not to compete.

25 70. Monetary damages alone are insufficient to compensate Encore for the harm caused
26 by Daley's violation of his contractual obligations not to compete.

Sixth Cause of Action – Conversion

71. Encore repeats and realleges the allegations of the preceding paragraphs as though fully set forth herein.

72. Encore has clear legal ownership and right to possession of the Company Property (as such term is defined above).

73. Daley has wrongfully misappropriated the Company Property by intentionally using the Company Property for personal purposes and by refusing to return the Company Property upon Encore's timely and reasonable demand.

74. As a proximate result of Daley's acts of conversion, Encore has been deprived of its property rights and has suffered damages in an amount to be proved at trial.

Seventh Cause of Action – Replevin

75. Encore repeats and realleges the allegations of the preceding paragraphs as though fully set forth herein.

76. Encore has clear and legal ownership and right to possession of the Company Property (as such term is defined above).

77. Each item comprising the Company Property is separately and readily identifiable by serial number and/or vehicle identification number, as applicable.

78. An action for damages will not adequately compensate Encore for loss of the Company Property.

79. The balance of the equities requires return of the Company Property to Encore.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Encore Group of Professionals, LLC, prays judgment against the Defendants as follows:

1. For general damages, according to proof, in excess of ten thousand dollars (\$10,000.00).
2. For damages for breach of contract, including consequential damages according to proof;

3. For punitive and/or exemplary damages pursuant to N.R.S. Section 42.005 in an amount to punish Daley and Doe Defendants and/or to set an example of Daley and Doe Defendants;
4. For damages for Encore's other economic losses according to proof;
5. For a judgment declaring that Daley has resigned from any membership in Encore, as provided by the Operating Agreement and applicable law;
6. For specific performance of the Operating Agreement requiring Daley to comply with the provisions of the Operating Agreement related to repurchase of a resigning member's Percentage Interest;
7. For injunctive relief preventing Daley from undertaking any competitive activity in violation of the Employment Agreement;
8. For an order requiring the return of the Company Property to Encore;
9. For all interest as provided by law, including pre-judgment interest and post-judgment interest according to proof;
10. For Court costs incurred herein according to proof;
11. For attorneys' fees incurred herein according to proof; and
12. For such other and further relief, legal and equitable, as the Court deems just and proper.

DATED this 6th day of June, 2017.

WOODS ERICKSON & WHITAKER LLP

By: 

KENT P. WOODS, ESQ.
Nevada Bar No. 12306
1349 W. Galleria Drive, #200
Henderson, NV 89014
(702) 433-9696
Attorney for Encore Group of Professionals, LLC

1 CERTIFICATE OF SERVICE

2 I HEREBY CERTIFY that on the 7th day of June, 2017, I did serve a true and correct copy of
3 the foregoing FIRST AMENDED COMPLAINT on all parties to this action by electronic service on
4 the Odyssey File and Serve eFileNV addressed as follows:

5 Joseph T. Nold, Esq.
6 Accelerated Law Group
624 South 10th Street
7 Las Vegas, NV 89101
8 noldj@cox.net

9 Philip T. Emerson, Esq.
Emerson Law Group
10 1055 Whitney Ranch Dr., #120
Henderson, NV 89014
11 emersonlawgroup@gmail.com
12 receptionist@emersonlawgroup.com

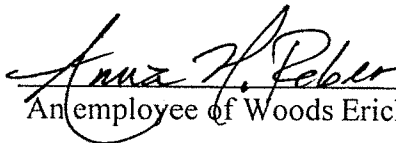
13
14 
An employee of Woods Erickson & Whitaker LLP

EXHIBIT “A”

EXHIBIT “A”

Company – EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT is made as of the 1st day of July 2014, by and between Encore Group of Professionals, LLC ("Company ") and Gabriel Daley (hereinafter called "Employee"), in reference to the following facts:

- A. Simultaneously with the effectiveness of this Agreement, Company desires to assure itself of the continued services of Employee and to that end, desires to enter into a Contract of Employment with Employee upon the terms and conditions herein set forth, which replaces and supersedes all prior Employment Contracts, Agreements or Understandings, if any, between the parties hereto.
- B. Employee is desirous of entering into this Contract of Employment. In view of the foregoing, the parties hereto agree as follows:

1. Duties:

Position. Company hereby employs Employee to perform consulting services for Company.

Best Effort. During the period this Agreement is in effect (the "Employment Period"), Employee shall faithfully perform Employee's duties to the best of his/her ability; and Employee shall devote to the performance of such duties Employee's full working time, attention and energies. Employee agrees to render such reports of the activities of the business undertaken by Employee or conducted under Employee's direction during the Employment Period as Company may reasonably request.

2. Compensation and Other Matters:

Salary. As compensation for the performance for Company of his/her duties, the Employee shall be entitled to an annual salary (the "base salary") as shown on Exhibit A subject to required withholdings, and payable in such installments as customary for employee's of Company from time to time, but no less frequently than monthly. The procedure for making such payments shall be mutually agreed upon. Employee's base salary shall be reviewed after the term of this agreement.

Benefits. As additional compensation for the performance for Company of his/her duties, the Employee shall be entitled to certain employee benefits as shown on Exhibit A subject to the Company's customary policies and Employee Handbook.

Travel Expenses. All travel expenses reasonably incurred by Employee in Company's behalf in accordance with Company's customary policies and Employee Handbook shall be reimbursed upon submission of expense vouchers and supporting detail.

3. Term of Employment:

Term. As used herein, the phrase "Term of Employment" shall mean the period commencing on the effective date and ending one (1) year from that date.

Termination at the Conclusion of Term. At the end of the Term this Agreement will terminate unless extended by both parties in writing.

Termination by the Company without Cause. Notwithstanding anything contrary in the Agreement, the Company may, at any time, terminate Employee's employment without cause (as "cause" is defined below). Upon terminating the Agreement without cause, the Company will pay Employee his/her Base Salary at the rate as shown on Exhibit A of Percent (100%) for 2 weeks. Company will provide no other compensation or benefits to Employee during this time.

Termination by Company for Cause. At any time during this Agreement the Company will terminate Employee for cause. If the Employee is terminated for cause, no compensation will be due from Company to Employee other than those amounts normally paid by the Company under the Employee Handbook to other employees for at-will termination. For purposes of this Agreement only, "cause" shall mean:

- 1) Any act of willful or gross misconduct, or dishonesty on the part of the Employee which is injurious to the Company or any of its subsidiaries, as determined in good faith by Management; or
- 2) Conviction of the Employee for any act which constitutes an offense under federal, state, or local law, not including misdemeanor traffic offenses; or
- 3) Employee's loss of any related regulatory approval or license required to perform his/her duties under the Agreement, or any act which in the good faith determination of Management could subject the Company to discipline or investigation by any regulatory authority; or
- 4) The use by the Employee of alcohol or any controlled substance to an extent that it interferes, in the sole discretion of the Company, on a continuing and material basis with the performance of the Employee's duties under the Agreement; or
- 5) A breach by Employee of any material provision of this Agreement or the Employee Handbook.

4 Confidential Information, Non-Competition, and Non-Solicitation:

4.1 Confidentiality. During the term of Employment and without limitation thereafter, Employee shall not, except as may be specifically authorized by the

Owner of the Company or otherwise required by law, disclose to others or use, whether directly or indirectly, any confidential information regarding the Company. "Confidential information" shall mean information about the Company, its subsidiaries and affiliates, and their respective employees, clients and customers that is not available to the general public and that was learned by Employee in the course of his/her employment by the company, including (without limitation) any proprietary knowledge, software coding, trade secrets, data, future plans, client and customer lists, organizational charts, salary and benefit information, training programs and all papers, resumes, records (including computer records) and documents containing such confidential information. Employee acknowledges that such confidential information is specialized, unique in nature, and of great value to the Company, and that such information gives the Company a competitive advantage. Upon the termination of his/her employment for any reason whatsoever, Employee shall promptly deliver to the Company all documents, computer tapes, disks, and any and all records in his/her possession (and all copies thereof) containing any such confidential information.

4.2 Non-Competition upon Termination. In the event that Employee's employment with the Company is terminated (1) "without cause" by Company (2) voluntarily by Employee during the term, Employee shall not directly or indirectly in any manner or capacity, engage in work for, consult, provide advice, assist, or otherwise participate in any activity (including but not limited to the solicitation of customers or employees of the Company) which is competitive with the business of the Company. This non-competition provision shall last for two years from the termination date.

4.3 Injunctive Relief. Employee acknowledges and agrees that the terms provided in these covenants are the minimum necessary to protect the Company, its successors and assigns in the use and enjoyment of the confidential information and the goodwill of the business of the Company. Employee further agrees that damages cannot adequately compensate the Company in the event of a violation of any of the above restrictive covenants and that injunctive relief shall be essential for the protection of the Company and its respective successors and assigns. Accordingly, Employee agrees and consents that, in the event of a violation or breach of any of the restrictive covenants herein, the Company shall be entitled to obtain injunctive relief against Employee from a court of competent jurisdiction.

5. Miscellaneous: The Agreement shall also be subject to the following provisions:

5.1 The Agreement contains a complete and integrated statement of all the agreements between the parties with respect to Employee's employment by the Company. The Agreement supersedes all prior and existing negotiations

and agreements between the parties concerning Employee's employment and the Agreement can only be changed or modified pursuant to a written instrument duly executed by each of the parties hereto.

5.2 If any provision of the Agreement or any portion thereof is declared invalid, illegal, or incapable of being enforced by a court of competent jurisdiction, the remainder of such provisions and all of the remaining provisions of the Agreement shall continue in full force and effect.

5.3 The Agreement shall be governed by and construed in accordance with the laws of the State of Nevada, and any actions initiate there under shall be initiated in Clark County, Nevada. The prevailing party in any action shall be entitled to attorney fees and costs.

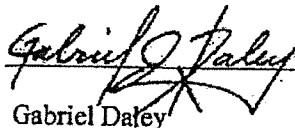
5.4 Failure to insist upon strict compliance with any of the terms, covenants, or conditions hereof shall not be deemed a waiver of such term, covenant, or condition, nor shall any waiver or relinquishment of such right or power at any other time or times.

IN WITNESS WHEREOF, the parties hereto have executed the Agreement as of the day and year first above written.

EMPLOYEE

COMPANY (Company)

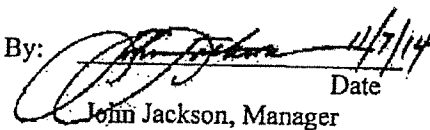
By:


Gabriel Daley

Date

11/7/14

By:


John Jackson, Manager

Date

11/7/14

Exhibit "A"

Start Date: July 1, 2014

Base Salary: \$100,000.00 per year salary

Additional Benefits Include:

- Company provided Health Insurance
- Company provided Dental Insurance
- Company provided Vision Insurance
- Company provided Vehicle
- Company provided 401K Plan
- Company provided FSA Plan

EXHIBIT “B”

EXHIBIT “B”

MEMBERSHIP PURCHASE AGREEMENT
Encore Group of Professionals LLC—Gabriel Daley

This Agreement is made and entered into, by and between Encore Group of Professionals LLC, a Nevada limited liability company ("Encore" or the "Company"); and Gabriel Daley a resident of Dallas County, Texas ("Purchaser") and is dated November 7, 2014.

RECITALS:

- A. Purchaser is an employee of the Company whom the Company desires to allow to purchase a membership interest in the Company according to the terms and conditions set forth.
- B. Among the terms and conditions, the Company has specifically negotiated for restrictions on competition and the use of trade secrets attached to the Purchased Interest.

PROVISIONS:

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and for the purposes expressed above, the parties agree as follows:

1. **Sale of Purchased Interest.** Subject to the terms and conditions of this Agreement, on the Closing Date (as defined below) the Company will issue and sell to Purchaser, and Purchaser agrees to purchase from the Company, a 25% percent Percentage Membership Interest in and to the capital and profits of the Company (the "Purchased Interest") for the total purchase price of \$100. Said purchase price shall be paid as follows: \$100 contemporaneously with the execution and delivery hereof.

2. **Closing.**

2.01 The closing of the purchase and sale of the Purchased Interest under this Agreement (the "Closing") shall be held at the principal office of the Company not more than thirty (30) days after the Effective Date hereof or on such other date and location as the Company and Purchaser shall agree (the "Closing Date").

2.02 At the Closing, Purchaser shall deliver to the Company cash or check made payable to the Company in the amount set forth above and the Company will deliver to Purchaser either a certificate representing the Purchased Interest to be purchased by the Purchaser, which shall be issued in Purchaser's name if the interests are certificated, or a resolution, ledger, or other Company record indicating Purchaser's ownership of the Purchased Interest.

3. **Limitations on Transfer.** In addition to any other limitation on transfer created by applicable securities laws, Purchaser shall not assign, encumber or dispose of any interest in the Purchased Interest while the Purchased Interest are subject to the Company's Repurchase Option (as defined below), except as provided below. After any Purchased Interest have been

released from such Repurchase Option, Purchaser shall not assign, encumber or dispose of any interest in such Purchased Interest except in compliance with the provisions below, the governing documents of the Company, and applicable securities laws.

3.01 Repurchase Option.

a. In the event of (i) the termination of Purchaser's Continuous Status as an Employee or Consultant to the Company, or (ii) if the Purchaser is terminated as an Employee or Consultant to the Company, regardless of cause (as defined below) within 5 years of the Effective Date of this Agreement, the Company shall upon the date of such event (the "Event Date") have an irrevocable, exclusive option (the "Repurchase Option") for a period of one hundred eighty (180) days from such date to repurchase all or any portion of the Purchased Interest held by Purchaser as of the Event Date that have not yet been released from the Company's Repurchase Option, at the original purchase price per unit specified in Section 1 hereof (adjusted for any splits, dividends and the like).

b. The Repurchase Option shall be exercised by the Company by written notice to Purchaser (or Purchaser's executor or heirs if Purchaser is deceased) and delivery with such notice of a check in the amount of the purchase price for the Purchased Interest being purchased. Upon delivery of such notice and payment of the purchase price for the Purchased Interest being repurchased the Company shall become the legal and beneficial owner of the Purchased Interest being repurchased and all rights and interest therein or related thereto, and the Company shall have the right to transfer to its own name the total portion of the Purchased Interest being repurchased by the Company, without further action by Purchaser.

c. One hundred percent (100%) of the Purchased Interest subject to this Agreement shall initially be subject to the Repurchase Option hereby granted. The Percentage Membership Interest shall be released from the Repurchase Option (but shall remain subject to the Right of First Refusal set forth below) on the following schedule: The first Twenty Percent (20%) of the Purchased Interest shall be released on July 1, 2015. The second Twenty Percent (20%) of the Purchased Interest shall be released on the second anniversary date of this agreement, and on each anniversary of that date until all of the Percentage Membership Interest shall be released from the Repurchase Option, provided the Purchaser remains continuously employed by the Company as of each such anniversary date.

3.02 Right of First Refusal. Before any Percentage Membership Interest held by Purchaser or any transferee of Purchaser (either being sometimes referred to herein as the "Holder", and regardless of whether the Percentage Membership Interest have been released from the Repurchase Option set forth above) may be sold or otherwise transferred (including transfer by gift or operation of law), the Company or its assignee(s) shall have a right of first refusal to purchase the Percentage Membership Interest on the terms and conditions set forth in this Section 3.02 (the "Right of First Refusal").

a. **Notice of Proposed Transfer.** The Holder of Percentage Membership Interest shall deliver to the Company a written notice (the "Notice") stating: (i) the Holder's bona fide intention to sell or otherwise transfer such Percentage Membership Interest; (ii) the name of each proposed purchaser or other transferee (the "Proposed Transferee"); (iii) the

Percentage Membership Interest to be transferred to each Proposed Transferee; and (iv) the terms and conditions of each proposed sale or transfer. The Holder shall offer the Percentage Membership Interest at the same price (the "Offered Price") and upon the same terms (or terms as similar as reasonably possible) to the Company or its assignee(s).

b. Exercise of Right of First Refusal. At any time within thirty (30) days after receipt of the Notice, the Company and/or its assignee(s) may, by giving written notice to the Holder, elect to purchase all, but not less than all, of the Percentage Membership Interest proposed to be transferred to anyone or more of the Proposed Transferees, at the purchase price determined in accordance with subsection (iii) below.

c. Purchase Price. The purchase price ("Purchase Price") for the Percentage Membership Interest purchased by the Company or its assignee(s) under this Section 3.02 shall be the lower of the Offered Price, or the price per Percentage Membership Interest set by the Managers of the Company that will reflect the current value of the Percentage Membership Interest in the terms of present earnings and the prospects of the Company. If the Offered Price includes consideration other than cash, the cash equivalent value of the non-cash consideration shall be determined by the Managers of the Company in good faith. Notwithstanding the foregoing, if the Holder's employment by or service to the Company is terminated for "Cause," as defined below, the Purchase Price shall be the price for which the Holder or his predecessor in interest purchased the Percentage Membership Interest in question from the Company.

d. Payment. Payment of the Purchase Price shall be made in cash (by check) within 30 days after receipt of the Notice.

e. Holder's Right to Transfer. If all of the Percentage Membership Interest proposed in the Notice to be transferred to a given Proposed Transferee are not purchased by the Company and/or its assignee(s) as provided in this Section 3.02, then the Holder may sell or otherwise transfer such Percentage Membership Interest to that Proposed Transferee at the Offered Price or at a higher price, provided that such sale or other transfer is consummated within sixty (60) days after the date of the Notice and provided further that any such sale or other transfer is effected in accordance with any applicable securities laws and the Proposed Transferee agrees in writing that the provisions of this Section 3 shall continue to apply to the Percentage Interest in the hands of such Proposed Transferee. If the Percentage Membership Interest described in the Notice are not transferred to the Proposed Transferee within such period, or if the Holder proposes to change the price or other terms to make them more favorable to the Proposed Transferee, a new Notice shall be given to the Company, and the Company and/or its assignee(s) shall again be offered the Right of First Refusal before any Percentage Membership Interest held by the Holder may be sold or otherwise transferred.

f. Exception for Certain Family Transfers. Subject to the approval of the Managers of the Company in their discretion, the transfer of any or all of the Percentage Membership Interest during the Purchaser's lifetime or on the Purchaser's death by will or intestacy to a member of the Purchaser's immediate family shall not be subject to the Right of First Refusal under this Section. As used in this paragraph, "Immediate Family" shall mean spouse, lineal descendant or antecedent, father, mother, brother or sister. In such case, the

transferee or other recipient shall receive and hold the Percentage Membership Interest so transferred subject to the provisions of this Section, and there shall be no further transfer of such Percentage Membership Interest except in accordance with the terms of this Section.

3.03 Involuntary Transfer.

a. Company's Right to Purchase upon Involuntary Transfer. In the event, at any time after the date of this Agreement, of any transfer by operation of law or other involuntary transfer (including death or divorce) of all or a portion of the Purchased Interest by the record holder thereof, the Company shall have an option to purchase all of the Purchased Interest transferred at the greater of the purchase price paid by Purchaser pursuant to this Agreement or the fair market value of the Percentage Membership Interest on the date of transfer. Upon such a transfer, the person acquiring the Percentage Membership Interest shall promptly notify the Managers of the Company of such transfer. The right to purchase such Percentage Membership Interest shall be provided to the Company for a period of thirty (30) days following receipt by the Company of written notice by the person acquiring the Percentage Membership Interest.

b. Price for Involuntary Transfer. With respect to any Percentage Membership Interest to be transferred pursuant to Section 3.03(a), the price per Percentage Membership Interest shall be a price set by the Managers of the Company that will reflect the current fair market value of the Company. The Company shall notify Purchaser or his or her executor or heir of the price so determined within thirty (30) days after receipt by it of written notice of the transfer or proposed transfer of Percentage Membership Interest.

3.04 Assignment. The right of the Company to purchase any part of the Purchased Interest may be assigned in whole or in part to any one or more holders of Purchased Interest in the Company or other persons or organizations; provided, however, that an assignee, other than an entity is the parent or a one hundred percent (100%) owned subsidiary of the Company, must pay the Company, upon assignment of such right, cash equal to the difference between the original purchase price and fair market value, if the original purchase price is less than the fair market value of the Purchased Interest subject to the assignment.

3.05 Restrictions Binding on Transferees. All transferees of Purchased Interest or any interests therein will receive and hold such Purchased Interest or interest subject to the provisions of this Agreement, including, insofar as applicable, the Company's option to repurchase under Section 3.01 and the Company's rights under Section 2. Any sale or transfer of the Company's Purchased Interest shall be void unless the provisions of this Agreement are met.

3.06 Termination of Rights. The right of first refusal granted the Company by Section 3.02 above and the option to repurchase the Purchased Interest in the event of an involuntary transfer granted by the Company by Section 3.03 above shall terminate at such time as Public Market exists for Purchased Interest in the Company (or any other securities issued to the Purchaser in exchange for the Purchased Interest purchased under this Agreement). For the purpose of this Agreement, a "Public Market" shall be deemed to exist if the Common Stock is listed on any established securities exchange or a national market system including without

limitation the national market of the National Association of Securities Dealers, Inc. Automated Quotation ("NASDAQ") System.

4. **Escrow of Unvested Purchased Interest.** To facilitate the enforcement of the provisions of Section 3 above, Purchaser agrees, immediately upon receipt of any certificate(s) for the Purchased Interest subject to the Company's Repurchase Option described in Section 3.01, to deliver such certificate(s), together with an Assignment Separate from Certificate in the form attached to this Agreement as Exhibit "A" executed by Purchaser and by Purchaser's spouse (if required for transfer), in blank, to the Managers of the Company, or their designee, to hold such certificate(s) and Assignment Separate from Certificate in escrow and to take all such actions and to effectuate all such transfers and/or releases as are in accordance with the terms of this Agreement. Purchaser hereby acknowledges that the Managers of the Company or their designee, are so appointed and that said appointment is coupled with an interest and is accordingly irrevocable. Purchaser agrees that said escrow holder shall not be liable to any party hereof (or to any other party). The escrow holder may rely upon any letter, notice or other document executed by any signature purported and believed to be genuine and may resign at any time. Purchaser agrees that if any Manager of the Company, or a Manager's designee, resigns as escrow holder for any or no reason, the Managers of the Company shall have the power to appoint a successor to serve as escrow holder pursuant to the terms of this Agreement.

5. **Investment Representation.** In connection with the purchase of the Purchased Interest, Purchaser represents to the Company the following:

5.01 Purchaser is aware of the Company's business affairs and financial condition and has acquired sufficient information about the Company to reach an informed and knowledgeable decision to acquire the securities. Purchaser is purchasing these securities for investment for his or her own account only and not with a view to, or for resale in connection with, any "distribution" thereof within the meaning of the Securities Act.

5.02 Purchaser understands that the securities have not been registered under the Securities Act by reason of a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of Purchaser's investment intent as expressed herein.

5.03 Purchaser further acknowledges and understands that the securities must be held indefinitely unless they are subsequently registered under the Securities Act or an exemption from such registration is available. Purchaser further acknowledges and understands that the any certificate evidencing the securities will be imprinted with a legend which prohibits the transfer of the securities unless they are registered or such registration is not required in the opinion of counsel for the Company.

6. **Restrictive Legends and Stop Transfer Orders.**

6.01 **Legends.** If certificated, the certificate or certificates representing the Purchased Interest shall bear the following legend (as well as any legends required by the operating agreement and applicable state and federal corporate and securities laws):

a. The membership interest represented by this certificate is subject to the operating agreement of the company, including, but not limited to, restrictions on the

encumbrance, transfer, purchase, and ownership of membership interests. The membership interests are not registered with the United States Securities and Exchange Commission. In certain circumstances, all or any part of the membership interest represented hereby may be purchased by the company or the members at a purchase price determined according to the provisions of the operating agreement of the company.

b. In addition to any other applicable restrictions, the membership interest represented by this certificate may be transferred only in accordance with the terms of an agreement between the Company and the member

6.02 Refusal to Transfer. The Company shall not be required (i) to transfer on its books any portion of the Purchased Interest that may have been sold or otherwise transferred in violation of any of the provisions of this Agreement or (ii) to treat as owner of such Purchased Interest or to accord the right to vote or pay dividends to any purchaser or other transferee to whom such portion of the Purchased Interest shall have been so transferred.

7. No Employment Rights. Nothing in this Agreement shall affect in any manner whatsoever the right or power of the Company, or a parent or subsidiary of the Company, to terminate Purchaser's employment, for any or no reason, with or without cause.

8. Confidential Information.

8.01 The Purchaser shall never, either during the Term of the Purchaser's employment by the Company or thereafter, use or employ for any purpose or disclose to any other individual or entity any Confidential Information. The Purchaser acknowledges and agrees that all Confidential Information is proprietary to the Company, is extremely important to the Company's business, and that the use by or disclosure of such Confidential Information to a Competitor could have a materially and adversely affect the Company, its business and its customers.

8.02 Upon any termination of the Purchaser's employment with the Company, the Purchaser shall leave with or return immediately to the Company any and all records and any and all compositions, articles, devices and other similar or related items that disclose or contain any Confidential Information, including all copies or specimens thereof, whether in the Purchaser's possession or under the Purchaser's control, or whether prepared by the Purchaser or by others.

8.03 For purposes of this Agreement, the term "Company" shall refer to the Company and each of its affiliated entities and any corporation or other entity that is owned or controlled, directly or indirectly, by the Company or that is under common ownership or control with the Company.

8.04 For purposes of this Agreement, the term "Confidential Information" shall mean information in any form that is not generally known to the public that relates to the Company's past, present or future operations, processes, products or services. All information disclosed to the Purchaser or to which the Purchaser obtains access during any period of employment with the Company, whether pursuant to this Agreement or otherwise, or to which the Purchaser obtains access by reason of his employment by the Company, that the Purchaser

has a reasonable basis to believe is or may be Confidential Information, shall be presumed for purposes of this Agreement to be Confidential Information.

9. **Non-Competition.** Independent of any duties arising from the Operating Agreement, at any time when Purchaser shall hold any portion of the Purchased Interest and for twelve months after Purchaser shall cease to hold any portion of the Purchased Interest, Purchaser shall not render any services directly or indirectly for any Competitor or Company client.

9.01 For purposes of this Agreement, the term "Competitor" shall mean any individual (including the Consultant individually, in an association, or in a joint venture with others) or entity that at any time is directly or indirectly (for example, through an affiliated or controlled individual or entity) providing (or bidding or negotiating to provide) construction project management services.

9.02 The Consultant shall not directly or indirectly influence or attempt to influence, either directly or indirectly, any employee of the Company or of any affiliated entity to leave or terminate such individual's employment with the Company or with an Affiliate of the Company.

9.03 The Purchaser shall not directly or indirectly influence or attempt to influence, either directly or indirectly, any customer or client of the Company or of any affiliated entity to discontinue using the services of, or to cancel or fail to renew a contract with, the Company or an affiliate of the Company.

9.04 Purchaser's obligations pursuant to this Section shall survive the expiration or other termination of this Agreement.

10. **Non-Circumvention.**

10.01 **Subsequent Employment.** For a period of twelve months after any termination of the Purchaser's employment with the Company, the Purchaser will keep the Company advised in writing of the name and address of each of the Purchaser's employers, will provide each such employer with a copy of this Agreement, and will provide the Company upon its request with evidence of the Purchaser's compliance with this Agreement, including specifically the confidentiality provisions and the Referral Fee provision.

10.02 **Referral Fee.** The Purchaser hereby agrees that for a period of twelve months after the termination of the Purchaser's employment with the Company, the Purchaser shall pay or cause to be paid to Company as a referral fee, fifty percent (50%) of the gross amount of all receipts earned or received by or on behalf of the Purchaser from any individual or entity who was a customer or client of the Company or (if not then a customer or client of the Company) to whom the Purchaser made or participated in the making of a presentation or from whom the Purchaser solicited or participated in the soliciting of business during the period of one year that ended on the effective date of the termination of the Purchaser's employment by the Company.

11. **Section 83(b) Election.** Purchaser understands that Section 83(a) of the Internal Revenue Code of 1986, as amended (the "Code"), taxes as ordinary income the difference between the amount paid for the Purchased Interest and the fair market value of the Purchased Interest as of the date any restrictions on the Purchased Interest lapse. In this context, the term "restriction" likely includes the right of the Company to buy back the Purchased Interest pursuant to the Repurchase Option set forth in Section 3 of this Agreement. Purchaser understands that Purchaser may elect to be taxed at the time the Purchased Interest are purchased, rather than when and as the Repurchase Option expires, by filing an election under Section 83(b) of the Code (a Section "83(b) Election") with the Internal Revenue Service within 30 days from the date of purchase.

11.01 Even if the fair market value of the Purchased Interest at the time of the execution of this Agreement equals the amount paid for the Purchased Interest, the election must be made to avoid income and alternative minimum tax treatment under Section 83(a) in the future. Purchaser understands that failure to file such an election in a timely manner may result in adverse tax consequences to Purchaser. Purchaser further understands that an additional copy of such election form must be filed with his or her federal income tax return for the calendar year in which the date of the Agreement falls. Purchaser acknowledges that the foregoing is only a summary of the effect of United States federal income taxation with respect to purchase of the Share hereunder, and does not purport to be complete. Purchaser further acknowledges that the Company has directed Purchaser to seek independent advice regarding the applicable provisions of the Code, the income tax laws of any municipality, state or foreign country in which Purchaser may reside, and the tax consequences of Purchaser's death.

11.02 Purchaser agrees that he will execute and deliver to the Company with this executed Agreement a copy of the Acknowledgment and Statement of Decision Regarding Section 83(b) Election (the "Acknowledgment"), attached hereto as Exhibit "B". Purchaser further agrees that he will execute and submit with the Acknowledgment a copy of the Section 83(b) Election, attached hereto as Exhibit "C", if Purchaser has indicated in the Acknowledgment his decision to make such an election.

12. **Market Standoff Agreement.** In connection with the initial public offering of the Company's securities and upon request of the Company, Purchaser agrees not to sell, make any short sale of, loan, grant any option for the purchase of, or otherwise dispose of any Purchased Interest (other than those included in the registration) without the prior written consent of the Company, for such period of time (not to exceed 180 days) from the effective date of such registration as may be requested by the Company and to execute an agreement reflecting the foregoing as may be requested by the underwriters at the time of the public offering.

13. **Miscellaneous.**

13.01 **Governing Law.** This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of Nevada, without giving effect to principles of conflicts of law.

13.02 Entire Agreement; Enforcement of Rights. This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter herein and merges all prior discussions between them. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be effective unless in writing signed by the parties to this Agreement. The failure by either party to enforce any rights under this Agreement shall not be construed as a waiver of any rights of such party.

13.03 Consent to Jurisdiction. The parties agree that any action or proceeding to enforce, or that arises out of, this Agreement may be commenced and maintained in the district courts of the State of Nevada, or in the United States District Court for the District of Nevada, and hereby waive any objection to the jurisdiction of said courts in any litigation arising hereunder on the basis that such court is an inconvenient forum or otherwise.

13.04 Attorney Fees. In the event that this Agreement is breached by either party, the breaching party shall be liable for all costs and attorney fees incurred by the non-breaching party as a result of the breach or in enforcing the terms of this Agreement.

13.05 Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this Agreement, (ii) the balance of the Agreement shall be interpreted as if such provision were so excluded and (iii) the balance of the Agreement shall be enforceable in accordance with its terms.

13.06 Construction. This Agreement is the result of negotiations between and has been reviewed by each of the parties hereto and their respective counsel, if any; accordingly, this Agreement shall be deemed to be the product of all of the parties hereto, and no ambiguity shall be construed in favor of or against any one of the parties hereto.

13.07 Notices. Any notice required or permitted by this Agreement shall be in writing and shall be deemed sufficient when delivered personally or sent by telegram or fax or forty-eight (48) hours after being deposited in the U.S. mail, as certified or registered mail, with postage prepaid, and addressed to the party to be notified at such party's address as set forth below or as subsequently modified by written notice.

13.08 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

13.09 Successors and Assigns. The rights and benefits of this Agreement shall inure to the benefit of, and be enforceable by the Company's successors and assigns. The rights and obligations of Purchaser under this Agreement may only be assigned with the prior written consent of the Company.

[Signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first set forth above.

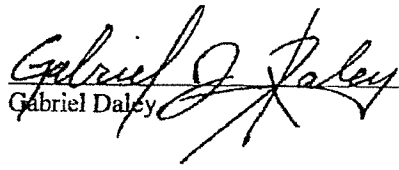
"ENCORE"

Encore Group of Professionals LLC
a Nevada limited liability company

By: 

John Jackson, Manager

"PURCHASER"


Gabriel Daley

CONSENT OF SPOUSE

I, the undersigned spouse of the above-named Purchaser, hereby certify to the Company that I have read and hereby approve the foregoing Membership Share Purchase Agreement. In consideration of the Company's granting my spouse the right to purchase the Purchased Interest as set forth in the Agreement, I hereby agree to be irrevocably bound by the Agreement and further agree that any community property or other such interest shall be similarly bound by the Agreement. I hereby appoint my spouse as my attorney-in-fact with respect to any amendment or exercise of any rights under the Agreement.

"Spouse"

Nicholas Daby

Address:

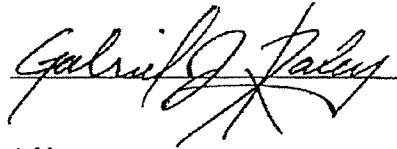
EXHIBIT A
ASSIGNMENT SEPARATE FROM CERTIFICATE

FOR VALUE RECEIVED and pursuant to that certain Membership Purchase Agreement by and between the undersigned ("Purchaser") and Encore Group of Professionals LLC, dated Nov 7, 2014, Purchaser hereby sells, assigns, and transfers unto Encore Group of Professionals LLC a 25 percent Percentage Interest in and to the capital, profits, and losses of Encore Group of Professionals LLC, standing in Purchaser's name on the books of the Company represented by Certificate No. ___, and do hereby irrevocably constitute and appoint the Managers of the Company, and each of them, to transfer said Purchased Interest on the books of the Company, with full power of substitution in the premises.

This Assignment may only be used as only be used as authorized by the Agreement and the Exhibits thereto.

Dated this 8th day of November, 2014:

"Purchaser"



Address:

Instruction: Please do not fill in any blanks other than the signature line. The purpose of this Assignment is to enable the Company to exercise its repurchase option set forth in the Agreement without requiring additional signatures on the part of Purchaser or any of Purchaser's heirs, successors or assigns.

EXHIBIT B
ACKNOWLEDGMENT AND STATEMENT OF DECISION
REGARDING SECTION 83(b) ELECTION

The undersigned, for the undersigned and the undersigned's spouse, heirs, successors and assigns, a purchaser of a _____ percent Percentage Interest in Encore Group of Professionals LLC, a Nevada limited liability company (the "Company"), by exercise of purchase rights (the "Rights") granted by the Company, hereby states as follows:

1. The undersigned has carefully reviewed the purchase agreement pursuant to which the Rights were granted.

2. The undersigned either [check and complete as applicable]:

(a) _____ has consulted, and has been fully advised by, the undersigned's own tax advisor, whose name and business address are: _____

_____ regarding the federal, state and local tax consequences of purchasing such Percentage Interest, and particularly regarding the advisability of making an election pursuant to Section 83(b) of the Internal Revenue Code of 1986, as amended (the "Code") and pursuant to the corresponding provisions, if any, of applicable state law; or

(b) _____ has knowingly chosen not to consult such a tax advisor.

3. The undersigned hereby states that the undersigned has decided [check as applicable]:

(a) _____ to make an election pursuant to Section 83(b) of the Code, and is submitting to the Company, together with the undersigned's executed Membership Purchase Agreement, an executed form entitled "Election Under Section 83(b) of the Internal Revenue Code of 1986"; or

(b) _____ not to make an election pursuant to Section 83(b) of the Code.

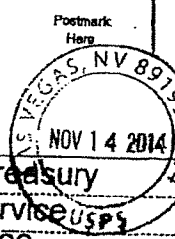
4. Neither the Company nor any subsidiary or representative of the Company has made any warranty or representation to the undersigned with respect to the tax consequences of the undersigned's purchase of Purchased Interest or of the making or failure to make an election pursuant to Section 83(b) of Code or the corresponding provisions, if any, of applicable state law.

DATED this _____ day of _____, 20____.

"Purchaser"



**ELECTION UNDER SECTION 83(b)
OF THE INTERNAL REVENUE CODE OF 1986**

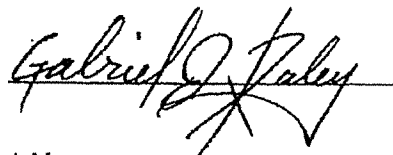
U.S. Postal Service CERTIFIED MAIL[®] RECEIPT <i>(Domestic Mail Only; No Insurance Coverage Provided)</i>											
For delivery information visit our website at www.usps.com .											
OFFICIAL USE											
Delivery? (Extra Fee) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> C.O.D. <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Express Mail	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 5px;">Postage</td> <td style="text-align: right; padding: 5px;">\$1.19</td> </tr> <tr> <td style="padding: 5px;">Certified Fee</td> <td style="text-align: right; padding: 5px;">3.30</td> </tr> <tr> <td style="padding: 5px;">Return Receipt Fee (Endorsement Required)</td> <td style="text-align: right; padding: 5px;">2.70</td> </tr> <tr> <td style="padding: 5px;">Restricted Delivery Fee (Endorsement Required)</td> <td style="text-align: right; padding: 5px;"></td> </tr> <tr> <td style="padding: 5px;">Total Postage & Fees</td> <td style="text-align: right; padding: 5px;">\$6.19</td> </tr> </table>	Postage	\$1.19	Certified Fee	3.30	Return Receipt Fee (Endorsement Required)	2.70	Restricted Delivery Fee (Endorsement Required)		Total Postage & Fees	\$6.19
Postage	\$1.19										
Certified Fee	3.30										
Return Receipt Fee (Endorsement Required)	2.70										
Restricted Delivery Fee (Endorsement Required)											
Total Postage & Fees	\$6.19										
											
Department of the Treasury Internal Revenue Service											
Austin, TX 73301-0002											
PS Form 3800, August 2005 See Reverse for Instructions											

property. The transferee of such property is the person performing the services in connection with the transfer of said property.

The undersigned understands that the foregoing election may not be revoked except with the consent of the Commissioner of Internal Revenue.

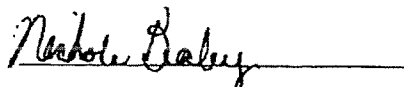
DATED this ____ day of _____, 20 ____.

"Purchaser"



Address:

"Spouse"




Address:

RECEIPT OF PAYMENT FOR PURCHASED INTEREST

Encore Group of Professionals LLC, a Nevada limited liability company, hereby acknowledges receipt of payment in the amount of \$ _____ as consideration a ____ percent Percentage Interest in the Company, as represented, if applicable by for Certificate No. ____.

DATED this 7th day of November, 2014.

ENCORE GROUP OF PROFESSIONALS LLC,
a Nevada limited liability company

By: 
Title: Manager

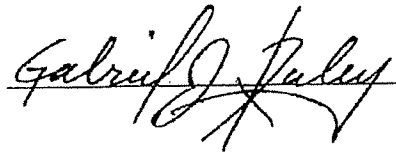
RECEIPT AND CONSENT

The undersigned hereby acknowledges receipt of a copy of certificate No. ___, representing a ___ percent Percentage Interest in the Company.

The undersigned further acknowledges that the Managers of the Company, or their designee, is acting as escrow holder pursuant to the Membership Share Purchase Agreement previously entered into between Purchaser and the Company. As escrow holder, the Managers of the Company, or their designee, holds the original of the aforementioned certificate issued in the undersigned's name.

DATED this 9th day of November, 2014.

"Purchaser"

A handwritten signature in dark ink, appearing to read "Gabriel J. Paley". The signature is written in a cursive, flowing style with a horizontal line drawn through the middle of the name.

Address:

EXHIBIT “C”

EXHIBIT “C”

**AMENDED AND RESTATED
OPERATING AGREEMENT
for**

**ENCORE GROUP OF PROFESSIONALS LLC,
a Nevada limited liability company**

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**ENCORE GROUP OF PROFESSIONALS LLC,
a Nevada limited liability company**

THIS AMENDED AND RESTATED OPERATING AGREEMENT (this "Agreement") is made and entered into as of the 7th day of November 2014, by John D. Jackson and Terri L. Jackson and their successors, as trustees of the John D. & Terri L. Jackson Trust, w/a/d October 31, 2003; Gabriel Daley, an individual; and each other person who may hereafter be admitted to the Nevada limited liability company known as the Encore Group of Professionals LLC as a Member (said persons are hereinafter referred to collectively as the "Members" and individually as a "Member").

The Members previously formed a limited liability company pursuant to the laws of the State of Nevada. On October 7, 2009 the Members entered into an Operating Agreement for the Company. The Members now desire to Amend and restate in their entirety the provisions of the Operating Agreement. Accordingly, in consideration of the mutual covenants contained herein, the Members agree and certify as follows:

Article I – THE LIMITED LIABILITY COMPANY

1.01 Amendment and Restatement. The Members previously formed a limited liability company pursuant to the provisions of Chapter 86, Nevada Revised Statutes, Section 86.010 et seq. as currently in effect (the "Act"). The Members entered into an Operating Agreement for the Company on and as of said date. The Members now desire to amend and restate in their entirety the provisions of said Operating Agreement. Accordingly, the Operating Agreement of the Company, as it presently exists, is hereby superseded and replaced in its entirety, as follows:

1.02 Filings. Upon the execution of this Amended and Restated Operating Agreement, the Members shall execute and file for record such other and further documents (including amendments to the Articles of Organization) and shall take such other and further action as may be appropriate to comply with the requirements of law for the formation or operation of a limited liability company in all states and counties in which the Company may conduct its business.

1.03 Name. The name of the limited liability company is Encore Group of Professionals LLC, a Nevada limited liability company.

1.04 Term. The term of existence of the Company commenced on the date of which the Articles of Organization for the Company were filed in the office of the Secretary of State of Nevada. The Company shall have a perpetual existence unless sooner terminated by law or by action of the Members as hereinafter provided.

1.05 Registered Office; Registered Agent. The address of the registered office of the Company shall be 1349 Galleria Drive, Suite 200, Henderson, Nevada 89014, and thereafter at such other location as the Managers may designate. The Company's registered agent for the service of legal process in Nevada at such address shall be R. Glen Woods.

1.06 Purpose and Business. The purpose and business of the Company shall be:

(a) To transact any and all other businesses for which limited liability companies may be formed under Nevada law.

(b) To accomplish any of the foregoing purposes for its own account or as a nominee, agent or trustee for others.

1.07 Principal Place of Business. The location of the principal place of business of the Company shall be 1349 Galleria Drive, Henderson, Nevada 89014, or at such other place as the Members may from time to time determine.

1.08 Managers. The name and business address of each Manager of the Company are as follows:

Name	Business Address	Designee of
John D. Jackson	1349 Galleria Drive, Suite 200 Henderson, Nevada 89014	John D. Jackson and Terri L. Jackson, and their Successors, as Trustees of the John D. & Terri L. Jackson Trust uad 10/31/03
Gabriel Daley	1349 Galleria Drive, Suite 200 Henderson, Nevada 89014	Additional Manager

1.09 Members. The names and business addresses of each Member are as follows:

Name	Business Address
John D. Jackson and Terri L. Jackson, and their Successors, as Trustees of the John D. & Terri L. Jackson Trust uad 10/31/03	1349 Galleria Drive, Suite 200 Henderson, Nevada 89014
Gabriel Daley	1349 Galleria Drive, Suite 200 Henderson, Nevada 89014

Article II – CAPITAL CONTRIBUTIONS

2.01 Initial Contributions. The initial capital of the Company is cash and services in the amounts agreed by the Members, which were contributed to the Company prior to or upon its formation by the Members.

2.02 Percentage Interests. The Percentage Interests of the Members in and to the capital, profits and losses of the Company ("Percentage Interests") shall initially be in the following ratios:

Name	Percentage Interest
John D. Jackson and Terri L. Jackson, and their Successors, as Trustees of the John D. & Terri L. Jackson Trust uad 10/31/03	75%
Gabriel Daley	25%

2.03 Certification of Percentage Interests. Percentage Interests shall be issued in non-certificated form unless otherwise determined by the Managers. In the event that the Managers determine to issue Certificates, such Certificates shall be signed by one or more Managers and, if applicable, shall be sealed with the seal of the Company or with a facsimile thereof. If any Certificate is issued, then such certificate shall bear a legend substantially in the following form:

The membership interest represented by this certificate is subject to the operating agreement of the company, including, but not limited to, restrictions on the encumbrance, transfer, purchase, and ownership of membership interests. The membership interests are not registered with the United States Securities and Exchange Commission. In certain circumstances, all or any part of the membership interest represented hereby may be purchased by the company or the members at a purchase price determined according to the provisions of the operating agreement of the company.

2.04 Additional Capital Contributions.

(a) Pursuant to Annual Operating Budget. Beginning with the Annual Operating Budget of the Company to be submitted for the calendar year 2014 (as provided hereinafter), the Members shall contribute to the capital of the Company each year in the amount, if any, set forth in the Annual Operating Budget. Each Member shall make such contribution as may be required of such Member pursuant to the Annual Operating Budget, as

and when required by the Annual Operating Budget for each calendar year of the Company's operations.

(b) Other than Pursuant to Annual Operating Budget. If the Managers determine that additional capital in excess of the initial capital contributions of the Members or the capital contributions made pursuant to the Annual Operating Budgets of the Company is necessary for the Company's best interests, the Managers shall then determine the total amount to be contributed, and shall so notify each Member. The notice shall state the amount of capital required, the means by which the additional capital shall be raised, and the date or dates by which the capital shall be required and the additional contributions shall be made by the Members. Each Member shall then contribute to the Company such Member's pro rata share of the total amount to be contributed, as and when the same shall be required. Each Member's pro rata share shall correspond to such Member's Percentage Interest in the capital of the Company.

(c) Additional Capital Contributions. Additional capital contributions shall be made only as specified in this Agreement or as otherwise determined by the Managers.

2.05 Failure to Make Capital Contributions. If, within the time provided, any Member fails to make an additional capital contribution required of such Member pursuant to Section 2.04 above (a "Defaulting Member"), the Percentage Interests of the Members in the capital of the Company and in the Company's profits and losses shall be adjusted pursuant to Section 2.06 below on a pro rata basis. In addition, each Member shall be notified in writing of the total amount of contributions not made, and, within thirty (30) days of such notice, a non-Defaulting Member may make an additional capital contribution in an amount equal to the contributions not made by the Defaulting Member. If more than one non-Defaulting Member elects to make such an additional capital contribution, then the additional capital contribution shall be made by such Members in proportion to their respective Percentage Interests in the capital of the Company. If any Member makes such an additional capital contribution, such Member's Percentage Interest in the capital and profits of the Company shall be adjusted as provided in Section 2.06, below. If a non-defaulting Member is unable to make a capital contribution in excess of the amount originally called for under Section 2.04, above, then Managers may determine the terms and conditions upon which necessary funds shall be solicited from outside parties, and this Agreement shall be amended accordingly.

2.06 Adjustments of Percentage Interests and Capital Accounts for Disproportionate Additional Contributions. If the Members make disproportionate additional capital contributions as described in Section 2.05 above, the Defaulting Member's Percentage Interest and share of the capital and profits of the Company shall be decreased and the non-defaulting Members' Percentage Interests and shares of the capital and profits shall be increased on a pro rata basis. If a non-defaulting Member makes an additional contribution in an amount equal to the contributions not made by the Defaulting Member as provided in Section 2.05, above, the Defaulting Member's Percentage Interest and share of capital and profits shall be decreased and the non-Defaulting Members' Percentage Interests and shares of the capital and profits of the Company shall be increased as appropriate to reflect the changes in cumulative capital contributions.

2.07 Admission of Additional Members. New Members may be admitted to the Company by the unanimous determination of the Managers. The Managers shall have the power to determine the terms and conditions upon which any such additional Members may be admitted to the Company. New Members must execute a counterpart to this Agreement and agree to be bound by all of the terms and provisions hereof.

2.08 No Interest on Capital Accounts. No interest shall be paid by the Company on any capital accounts or capital contributions of the Members.

2.09 Return of Capital Contributions. The capital contributions of the Members will be returned to them to the extent provided in Section 7.04 at the end of the term of the Company or upon earlier termination and dissolution of the Company. No Members shall have the right to demand the return of such Members' capital contributions other than at the time provided herein, and no Member shall have the right to demand and receive property other than cash in return for such Member's capital contributions. Notwithstanding the foregoing, however, the Company may with the consent of Members owning not less than a majority of the Percentage Interests in the Company (determined immediately prior to such event) return all or part of any Member's capital contribution to such Member.

Article III – PROFITS, LOSSES AND DISTRIBUTIONS

3.01 Allocation of Profits and Losses. Except as provided below, the Company's net profits or net losses and each item of the Company's net income, gain, loss, deduction, credit and tax preference shall be determined on an annual basis, and shall be allocated, for purposes of both book and tax accounting, in accordance with the Percentage Interests of the Members in the profits of the Company as set forth in Section 2.02.

3.02 Distributions. Cash available for distribution, if any, may be distributed quarterly or from time to time as established in connection with the Annual Operating Budget, and shall be distributed to all Members in accordance with their respective Percentage Interests in the capital of the Company set forth in Section 2.02.

3.03 Distributions of Capital Proceeds. In the event of the sale, financing, refinancing, or other disposition of any of the assets of the Company and in the discretion of the Managers, the net proceeds of the sale, financing, refinancing, or other disposition (after deducting any expenses incurred in connection therewith) (hereinafter "Capital Proceeds"), in the sole discretion of the Managers, may be applied to pay any indebtedness of the Company, to purchase or finance any improvements to any Company assets, to pay any other expenses or to establish or increase any reserves deemed reasonably necessary by the Managers. Any balance remaining after the foregoing applications shall be distributed among the Members in the following manner:

(a) First, to the Members, pro rata, in repayment of the positive (credit) balances in their capital accounts.

(b) All remaining Capital Proceeds shall be distributed among the Members in accordance with their Percentage Interests in the capital of the Company set forth in Section 2.02.

3.04 Net Profits and Net Losses. The terms "net profits" and "net losses" as used in this Agreement and for accounting purposes shall mean taxable income and taxable losses, respectively, as calculated for federal income tax purposes.

3.05 Cash Available for Distribution. The term "cash available for distribution" shall mean gross cash operating receipts of the Company, less:

(a) All cash charges and business expenses incurred in the establishment and operation of the business of the Company;

(b) Principal and interest payments on Company indebtedness (including indebtedness, if any, to a Member or an affiliate or associate of a Member); and

(c) All cash reserves determined by the Managers to be necessary or desirable for the reasonable needs of the Company or for future investment or business opportunities (regardless of whether any specific opportunities have then been identified for consideration), including, but not limited to, reserves for contingencies, taxes, insurance, debt reduction and working capital.

3.06 Allocation of Tax Credits. Any tax credits arising out of the operation of the Company for a given year shall be allocated among the Members in the same manner as net profits and net losses are allocated for such year pursuant to Section 3.01.

3.07 Recapture of Tax Credits. The Members agree that any amounts of tax credit that are required to be recaptured, as a result of the disposition of any of the properties of the Company with respect to which any tax credit was claimed, will be allocated and taken into account with respect to each Member in the same proportion as the amounts of such tax credit were allocated to each Member.

3.08 Members' Accounts. The Company shall maintain separate capital and distribution accounts for each Member. The capital accounts shall at all times be maintained in accordance with the applicable requirements of Section 704 of the Internal Revenue Code of 1986 and the Treasury Regulations issued thereunder. Each Member's capital account shall consist of the Member's initial capital contribution, increased by (i) any additional capital contributions made by such Member, and (ii) credit balances transferred from such Member's distribution account to such Member's capital account, and shall be decreased by (iii) distributions to such Member in reduction of Company capital, and (iv) such Member's share of Company losses, if charged to the Members' capital accounts. The Members shall (a) maintain their capital accounts at all times in proportion to their respective Percentage Interests; (b) charge all distributions to the Members' distribution accounts; (c) charge the Company's losses to the Members' distribution accounts, unless the Members determine to charge any such losses to the Members' capital accounts; and (d) credit the Company's net profits to the Members'

distribution accounts. The Members may transfer to their capital accounts all or any portion of the credit balances in their distribution accounts. Any amounts transferred shall be in proportion to the Members' Percentage Interests. A credit balance in a Member's distribution account shall constitute a liability of the Company to that Member; it shall not constitute a part of that Member's interest in the Company's capital. A debit balance in a Member's distribution account, whether occasioned by distribution in excess of the Member's share of Company profits or by charging the Member for such Member's share of Company loss, shall constitute an obligation of the Member to the Company; it shall not reduce the Member's interest in the capital of the Company. Payment of any amount owed to the Company shall be made at such time and in such manner as the Managers may determine.

Article IV – MANAGEMENT BY MANAGERS

4.01 Management.

(a) The business of the Company shall be under the full and exclusive management of the Managers, who shall make all decisions by majority vote (except as otherwise provided herein) with each Manager having one vote on each such decision for each one percent (1%) Percentage Interest in and to the Capital that is owned or represented by the Member who designated each Manager. In the management of the Company's business, a Manager may delegate duties to such persons as such Manager may deem appropriate.

(b) Each Member who owns at least fifty percent (50%) of the Percentage Interests in the capital of the Company at the time of execution and delivery of this Amended and Restated Operating Agreement shall have the right to designate one individual to act as a Manager of the Company. A Manager so designated by a Member shall serve at the pleasure of the Member who designated such Manager, and may be removed and replaced by the Member who designated such Manager. A Manager who is from time to time designated as provided in this Section shall be deemed to have been elected a Manager of the Company as provided in Section 6.09 hereof (relating to the Managers of the Company). Each Member who has the right to appoint one or more Managers shall from time to time identify to the Company the Manager or Managers that represent such Member.

(c) The provisions of this Section shall not be interpreted to allow any Member to elect or designate a Manager except as specifically provided in this Agreement. For purposes of this Agreement, the Managers may, either acting alone or acting together, take such actions as are vested in them hereunder.

4.02 Votes by Members. Whenever, whether pursuant to this Agreement or otherwise, a vote is taken by the Members of the Company or an action is required to be approved by the Members, whether by majority or some other proportion otherwise provided herein, such vote or action shall be taken or approved in accordance with the Members' respective Percentage Interests in the capital of the Company.

4.03 Limitation of Liability. Notwithstanding any provision of this Agreement to the contrary, the liability of the Members shall be limited as provided in the Act.

4.04 Responsibilities and Compensation of Managers.

(a) Annual Operating Budget. Within thirty (30) days after the commencement of the Company's first fiscal year, and on or before the first day of each succeeding fiscal year of the Company, the Managers shall prepare an annual business plan or operating budget (the "Annual Operating Budget") for the Company for such calendar year. The Annual Operating Budget shall include such information as the Managers may determine, such as (i) a narrative description of the Company's proposed business activities for such year; (ii) pro forma financial statements for such year; (iii) capital and operating budgets for the Company, including working capital and contingency reserves; and (iv) a schedule of projected operating cash flow. The Annual Operating Budget shall also set forth any projected contributions to the capital of the Company that may be expected to be required of the Members, and the estimated amounts and dates by which such contributions are expected to be required.

(b) Management of the Company. Each Manager shall spend such time in the management of the business of the Company as is necessary to fulfill effectively the duties of the Manager under this Agreement and under the Act, but need not be full-time.

(c) Compensation of Managers. The Managers shall be entitled to such compensation for their services rendered to the Company as may be determined by the Managers. The Company shall also reimburse the Managers for all direct out-of-pocket expenses incurred by them in connection with the formation and establishment of the Company and in managing the business of the Company.

4.05 Major Decisions. In carrying out their responsibilities, as set forth in Section 4.04, no act shall be taken, sum expended, decision made or obligation incurred by any Manager with respect to a matter within the scope of any of the major decisions enumerated below (hereinafter referred to as the "Major Decisions"), unless and until the same has been reviewed and agreed upon by the Managers. The Major Decisions shall include the following:

(a) The financing, refinancing or encumbering of the Company, any interest in the Company, the operations of the Company, or any of the assets of the Company;

(b) Any borrowing made by the Company, except to the extent that the borrowing is necessary to preserve the assets of the Company from foreclosure, levy, repossession, attachment or judgment;

(c) The termination or modification of any agreement involving the Company if such agreement was required to be approved by the Managers, or if such modification would result in a modified agreement that, if such agreement were a new agreement, would require approval by vote of the Managers;

(d) The execution of any financing or sale agreement on behalf of the Company that is not in the ordinary course of the Company's business;

(e) The approval of the annual operating budget of the Company (said budget is hereinafter referred to as the "Annual Operating Budget");

(f) The making of any expenditure or the incurring of any obligation by or on behalf of the Company involving a sum in excess of \$10,000 or involving a sum less than \$10,000 where the same relates to a series of related expenditures, the combined total of which in the current calendar year exceeds \$10,000, except for (i) expenditures made and obligations incurred pursuant to and specifically set forth in the Annual Operating Budget; (ii) expenditures for individual items of equipment not exceeding \$10,000; and (iii) expenditures for routinely used or recurring labor, services or supplies;

(g) The making of any expenditure or the incurring of any obligation that, when added to any other expenditure or obligation for the current calendar year, exceeds the Annual Operating Budget or materially exceeds any line item in the Annual Operating Budget;

(h) The commencement of any legal action by the Company, except in the ordinary course of the collection of accounts receivable;

(i) The entering into of any lease or other contract that may significantly impact the cash flow of the Company; and

(j) The making of any other major decision or the taking of any other major action that materially and substantially affects in a major way not otherwise anticipated by this Section, the Company or the assets or operations of the Company.

4.06 Company Opportunities. No Manager or Member need offer to the Company any opportunity that may come to such Manager or Member, whether or not the opportunity is within the scope of the Company's business. Any Manager or Member shall be free to pursue any such opportunity independently of the Company and of the other Members.

4.07 Powers of Managers. Subject to the limitations of Section 4.05, and except as otherwise provided in this Agreement, each Manager shall have the full authority to control the business and affairs of the Company, to make and carry out all decisions affecting Company affairs, including, without limitation, the power to do the following in connection with and in furtherance of the Company business;

(a) Sell, transfer, lease, borrow against, mortgage, pledge or otherwise dispose of the assets of the Company in the ordinary course of business, and upon such terms and conditions and for such consideration as may be reasonable and prudent.

(b) Manage and operate the business of the Company or any Company property or assets, and enter into agreements with others with respect to the business and assets of the Company containing such terms, covenants and conditions as a Manager shall approve;

- (c) Borrow money from banks or financial institutions and other lenders for any Company purpose and in connection therewith, and issue notes, debentures and other debt securities;
- (d) Enter into agreements and contracts with other parties and give receipts, releases and discharges with respect to all of the foregoing and any matters incident thereto as a Manager may deem advisable or appropriate;
- (e) Maintain, at the expense of the Company, adequate records and books and accounts of all Company operations and expenditures; and cause the obtaining of and furnishing to each Member of annual financial statements as of the end of and for each fiscal year of the Company, together with tax reporting information;
- (f) Make all elections available to the Company under the Internal Revenue Code;
- (g) Retain accountants, investment advisors, legal counsel, appraisers, brokers, and other professional advisors for the purpose of planning, operating and carrying out the affairs of the Company, and the payment of fees, commissions or other compensation of such persons, firms or corporations shall be made by the Company and shall constitute expenses of the Company;
- (h) In accordance with the operating procedures of the Company, open, maintain and close bank accounts, make deposits therein, and draw checks and other orders for the payment of monies therefrom, all in the name and on behalf of the Company;
- (i) Compile reports and be responsible for the preparation, signing and filing of federal and state information returns and other reports and documents required by law or this Amended and Restated Operating Agreement;
- (j) Collect and account for all monies payable to or owned by the Company and disburse the same in accordance with the terms of this Agreement; Company funds other than cash distributions to the Members shall be paid solely for Company obligations. No Member is authorized otherwise to withdraw or advance funds without unanimous written approval of the Members of the Company;
- (k) Exchange on behalf of the Company all promissory notes, security agreements, deeds of trust, mortgages, loan documents, or other documents related to the purchase and sale, financing or refinancing of any Company Properties;
- (l) Perform all other functions necessary for the day-to-day operation of the Company or its business or assets;
- (m) Perform any and all other acts or activities customary or incident to the acquisition, ownership, management or occasional disposition of Company assets.

4.08 Additional Powers. As additional rights and powers, the Managers shall possess and may enjoy and exercise all of the rights and powers of a Manager as more particularly provided by the limited liability company laws of the State of Nevada, except to the extent any such rights may be limited or restricted by the express provisions of this Agreement.

4.09 Limitation on Powers. Notwithstanding anything to the contrary herein, no Manager or Member shall have any authority to:

- (a) Take any action in contravention of this Agreement;
- (b) Do any act that would make it impossible to carry out the ordinary business of the Company;
- (c) Confess judgment against the Company;
- (d) Possess Company properties or assign, increase, modify or consolidate or extend any mortgage, encumbrance, pledge or other rights of the Company in specific property for other than a Company purpose except as otherwise specifically provided herein; or
- (e) Commingle the funds of the Company with the funds of any Member or other person or entity.

4.10 Transactions Between Managers and Affiliates. No contract or other transaction between the Company and one or more of the Managers or any person, firm or corporation in which any of the Managers is a partner, owner, shareholder, member, manager, officer or director, or is otherwise financially interested, shall be either void, voidable or unenforceable because of such relationship or interest, or because any Manager approves or votes as a Manager to approve or ratify such contract or transaction, or because such Manager's vote or approval as a Manager is counted for such purpose, if the contract or transaction is upon terms and conditions that are competitive with those reasonably available to the Company from of unaffiliated persons rendering comparable services.

Article V – ACCOUNTS

5.01 Books and Accounts. The Company shall keep, at all times during the term of its existence, records of all transactions, assets and liabilities, profits and losses of the Company, together with all records required to be kept pursuant to Section 86.241 of the Act. All such records shall be kept at the principal place of business of the Company and shall be open for inspection by any Member for any proper purpose at all reasonable times.

5.02 Taxable Year; Method of Accounting. The Company shall keep its accounting records and shall report for income tax purposes on a cash basis and with a fiscal year ending on December 31 of each year, and shall report all income tax items in the same manner as a partnership (subject to applicable provisions of the Internal Revenue Code of 1986, as amended, or any future United States internal revenue law).

5.03 Income Tax Returns and Information. The Managers shall cause to be prepared and timely filed on behalf of the Company all necessary income tax returns, reports and elections of the Company. The Company shall provide to each Member information on the Company's taxable income or loss and each class of income, gain, loss, deduction and credit that is relevant to reporting Company affairs. The information shall also show each Member's distributive share of each class of income, gain, loss or deduction. This information shall be furnished to the Members as soon as possible after the close of the Company's taxable year, but no later than the first day of March of each year.

5.04 Section 754 Election. If requested by any Member, the Company shall file an election with the Internal Revenue Service pursuant to the provisions of Section 754 of the Internal Revenue Code.

5.05 Tax Controversies. Subject to the provisions hereof, the Managers of the Company are designated the "Tax Matters Partner" or "Tax Matters Member" of the Company (as such term is defined in Section 6231 of the Code), and is authorized and required to represent the Company (at the expense of the Company) in connection with all examinations of the Company's affairs by tax authorities, including resulting administrative and judicial proceedings, and to expend Company funds for professional services and costs associated therewith. Each Member agrees to cooperate with the designated "Tax Matters Member" and to do or refrain from doing any or all things reasonably required by the designated "Tax Matters Member" to conduct such proceedings. The Managers may at any time change the Tax Matters Member.

5.06 Transfers During Year. To avoid an interim closing of the Company's books and records, the share of profits and losses under Article III of a Member who transferred all or part of his Percentage Interest in the Company during the calendar year shall be determined by taking his proportionate share of the amount of profits and losses for the year. The proration shall be made based on the portion of the calendar year that has elapsed prior to the transfer. The balance of the profits and losses attributable to the transferred interest shall be allocated to the transferee of such Percentage Interest.

Article VI – TRANSFERS OF PERCENTAGE INTERESTS

6.01 Non-Assignability of Percentage Interests.

(a) No Member shall transfer or dispose of a Percentage Interest in the Company at any time during the term of this Agreement except strictly in accordance with the provisions of this Article VI. Any transfer or attempted transfer of all or any portion of the Percentage Interest of any Member that is not made in accordance with the provisions of this Article VI shall be void. As used herein, the term "transfer" shall include any sale, gift, pledge, assignment, bequest, trade, exchange, and any other transfer of any kind, whether voluntary or involuntary, and whether or not for consideration.

(b) Estate Planning Transfers. Notwithstanding the restrictions of this Article, an assignment for no more than nominal consideration of any portion of a Member's

Membership Interest to a trust or limited partnership that is controlled by or for the benefit of such Member's family shall not be deemed a "disposition" or "sale" of a Membership Interest provided that any such transferee agrees to be bound by all provisions of this Agreement. Any assignment described above shall nevertheless be characterized as a disposition in the meaning of this Agreement if (a) the assignment would require the company to make a public disclosure or filing under State or Federal securities rules at such time as (b) the assignee ceases to qualify as a "Family Member" under 17 C.F.R. § 230.701(5)(c)(3) or, if applicable, any comparable State rules.

(c) Written Notice of Intent to Transfer Required. Before any Member may negotiate the transfer to any third party of any or all of its interest in the Company, such Member must give written notice of intent to transfer to the Company. This notice shall not be deemed a "Proposed Transfer." In the event a Member attempts to affect a transfer without giving notice, the date of the Offer for the purposes of computing times for exercise of an Option shall be the date up on which the Company receives actual notice of the attempted transfer.

6.02 No Encumbrance. Except as provided in Section 6.08, no Member shall pledge, hypothecate, encumber or otherwise permit a security interest to attach to his Percentage Interest in the Company, as now owned or as may be hereafter acquired, or contract to pledge, hypothecate or encumber such Percentage Interest, without the prior written consent of the Company and of all of the other Members. Whether or not such consent is given, the rights of any security holder shall be subordinate and subject to the rights and obligations created by this Agreement.

6.03 Option to Purchase Upon Certain Events. Upon the occurrence of any of the following events, the Company or the remaining Members shall, pursuant to the procedures and upon the conditions set forth in Section 6.04, below, have the option to purchase the portion of the Percentage Interest of the Member to which such event relates, at the price and upon the terms set forth in this Agreement.

(a) Bankruptcy, Levy, Execution. If the Percentage Interest of any Member is levied upon, sequestered, administered by a receiver or trustee in bankruptcy, or attached, sold or proposed to be sold in foreclosure or execution under any power of sale contained in a note or loan agreement, or by operation of law or court order.

(b) Attempted Transfer. At any time a Member attempts or purports to sell, assign, or otherwise dispose of all or any part of its Percentage Interest in the Company without the written consent of the Members owning more than Fifty Percent (50%) of the Percentage Interests in the capital of the Company that are owned by Members.

(c) Retirement or Resignation. The proposed retirement or resignation of a Member from the Company without the written consent of the Members owning more than Fifty Percent (50%) of the Percentage Interests in the capital of the Company that are owned by Members.

6.04 Exercise of Option to Purchase. Upon the occurrence of any event that, under the terms of this Agreement creates an option for the remaining Members or the Company to purchase the Percentage Interest of a Member to Section 6.03, above, such option shall be exercised in the following manner:

(a) Company's Option. Subject to the provisions of subsection 6.04(b), below, the Company shall have a period of thirty (30) days after receipt of the Offer in which to elect to purchase all or any portion of the Offering Member's Percentage Interest in the Company by delivering written notice of such election to the Offering Member and to the other Members specifying the Percentage Interest of the Offering Member that the Company elects to purchase. The Offering Member shall not participate in the decision of the Company whether to exercise the option to purchase a Percentage Interest of the Offering Member.

(b) Members' Option. If the Company elects not to purchase all of the Member's Percentage Interest pursuant to subsection 6.04(a), all Members (other than the Offering Member) shall each have the right, subject to subsection 6.04(c), to purchase, at the price as established pursuant to Section 6.06, if any, all or any portion of the Offering Member's Percentage Interest in the Company not purchased by the Company pursuant to subsection 6.04(a). This right shall be exercisable for a period of thirty (30) days after the expiration of the Company's right to purchase, and may be exercised by giving written notice to the Offering Member, the other Members and to the Company specifying the amount or portion of the Offering Member's Percentage Interest the other Members desire to purchase. In exercising their right to purchase, the other Members may divide the Offering Member's Percentage Interest to be purchased in any manner in which they all agree. In the absence of a unanimous agreement, the Offering Member's Percentage Interest to be purchased shall be divided among the Members electing to purchase such Percentage Interest in accordance with this subsection in proportion to their Percentage Interests as of the date the Offer was first delivered to the Company and the other Members.

(c) Requirement to Purchase Entire Percentage Interest. The right of the Company and the other Members to purchase the Offering Member's Percentage Interest in the Company under subsections 6.04(a) and (b) shall not be effective unless the entire Percentage Interest that the Member proposes to sell, or that is being sold or otherwise transferred or disposed of pursuant to law, is purchased by the Company and/or the other Members.

(d) Transfer. Any Percentage Interest that is not purchased pursuant to subsections 6.04(a) and (b) may be transferred by the Offering Member to the proposed transferee named in the Offer pursuant to the terms and conditions specified therein; provided, however, that such transferee shall be bound by the terms of this Agreement. If such transfer is not made within thirty (30) days following the expiration of the right to purchase herein granted to the Members, a new offer must be made pursuant to the provisions of this Section 6.04 before the Offering Member can transfer any portion of such Member's Percentage Interest, and the provisions of this Article VI shall again apply to such transfer.

6.05 Substitution of Transferee as Member. No transferee, designee or legal representative of a Member who is not then a Member shall become a substitute Member unless the consent of each Manager is first obtained. In the event that such a consent is not granted, the transferee shall have no right to designate any manager, to participate in any binding vote or in the management of the business and affairs of the Company, and shall be entitled only to receive the share of profits or other compensation by way of income and the return of contributions to which the Offering Member would otherwise be entitled. In the event that consent of the members set forth above has been obtained, as a condition to his admission as a substitute Member, (a) any transferee, designee or legal representative of the Offering Member shall execute and deliver such instruments, in form and substance satisfactory to the Members, as the Members shall deem necessary or desirable to cause the transferee to become a substitute Member, and (b) such transferee, designee or legal representative shall pay all reasonable expenses in connection with the transferee's admission as a substitute Member, including but not limited to, the cost of preparation and filing of any amendment to the Agreement or the Articles of Organization that may be necessary or desirable in connection therewith.

6.06 Purchase Price. The purchase price for a Percentage Interest being purchased or sold under Subsection 6.03 of this Article VI shall be determined by agreement between the selling and purchasing Members or, in the absence of agreement, by multiplying the Percentage Interest being sold by the value of each one percent (1%) Percentage Interest in the capital and profits of the Company, determined in accordance with the following provisions:

(a) As of the date of this Agreement, the Members hereby agree that the value of each one percent (1%) Percentage Interest in the capital and profits of the Company is as set forth in Schedule A attached hereto. This agreed value shall remain effective until the sooner of Eighteen Months from and after the date of this Agreement, or until a redetermination is made of the value of the Percentage Interests, in accordance with the following provisions.

(b) At the end of each of the Company's fiscal years or more frequently, if desired, the Members shall redetermine the value of each one percent (1%) Percentage Interest in the capital and profits of the Company, and shall indicate their redetermination by their execution of a document similar to the form attached to this Agreement as Schedule A. Each redetermination shall be valid and binding for a period of eighteen months from and after the effective date of such redetermination, as indicated on Schedule A pursuant to which such redetermination is made.

(c) In the event that no valid redetermination is effective, the value of each one percent (1%) Percentage Interest in the capital and profits of the Company shall be determined by three appraisers who are competent to appraise properties and businesses of the type owned and/or operated by the Company. The seller shall select one appraiser, and the purchasers shall agree upon a second appraiser. The two appraisers so selected shall agree upon a third appraiser. The fees and expenses of each appraiser shall be paid by the person selecting the appraiser, except that all fees and expenses of the third appraiser shall be divided between and shall be paid in equal shares by the seller and the purchaser. The appraisers shall conduct their appraisals so as to determine as expeditiously as possible the fair market value of each one

percent (1%) Percentage Interest in the capital and profits of the Company as of the date of the deceased Member's death. The appraised value that most differs from the average of the other two appraised values shall be disregarded, and the arithmetic average of the remaining two appraised values shall be the fair market value of each one percent (1%) Percentage Interest, and shall be valid, binding and conclusive upon all parties to this Agreement and upon their heirs and successors.

6.07 Closing. The closing of the purchase or sale of a Percentage Interest in the Company pursuant to Article VI of this Agreement shall be held at the time and place and in a manner mutually agreeable to the parties to the transaction. In the absence of unanimous agreement, the closing shall be held at the principal office of the Company thirty (30) days after the expiration of the last option to purchase under the provisions of this Article VI. At the closing the Offering Member, personal representative or other holder of the Percentage Interest being sold shall assign and deliver the Percentage Interest being sold to the purchase or purchasers thereof.

6.08 Payment of Purchase Price. Unless the parties to the transaction agree otherwise, or as described below in the case of certain purchases of a deceased or permanently disabled Member's Percentage Interest, the purchase price shall be paid by a cash payment in the amount of twenty percent (20%) of such purchase price and a simultaneous execution by the purchaser of a promissory note payable to the order of the seller for the balance of such price. Such promissory note shall provide for four equal annual payments of principal, plus accrued interest payable at a fluctuating rate equal to the prime, reference or base rate quoted or charged from time to time by Bank of America, Las Vegas, Nevada, but in no event to exceed the maximum legal rate of interest. Prepayment without penalty shall be allowed. The promissory note shall be secured by a pledge of the Percentage Interest in the Company being purchased if purchased by Members. In the event that the purchase of a Member's Percentage Interest in the Company upon the death or permanent disability of such a Member is to be paid by life or disability proceeds payable to the Company or the other Members, the purchase price shall be paid in a cash payment equal to the full amount of the life or disability insurance proceeds paid or payable to the remaining Members and/or the Company by reason of the death or disability of the deceased or disabled Member or the full purchase price, if the proceeds exceed the purchase price. The balance of the purchase price, if any, shall be paid in the form of the promissory note as described above.

6.09 Managers of the Company.

(a) A Member who for any reason ceases to own a Percentage Interest in the Company or in another entity that is a Member (to the extent permitted by Section **Error! Reference source not found.**) shall thereupon cease to have the right to appoint a Manager of the Company, as provided in Section 4.01 hereof.

(b) The Members may at any time elect additional Managers of the Company. The election of an additional Manager shall require the vote of Members owning more than Fifty Percent (50%) of the Percentage Interests in the capital of the Company.

(c) The Members may at any time remove a Manager from office. The removal of a Manager shall require the vote of Members owning more than Fifty Percent (50%) of the Percentage Interests in the capital of the Company that are owned by Members. By way of clarification, the prior removal of any Manager by the Members shall not constitute a limitation of the subsequent exercise of a Member's rights under Section 4.01(b).

Article VII – DISSOLUTION AND TERMINATION

7.01 Events of Dissolution. The Company shall continue to exist perpetually until the Company is dissolved by:

(a) The affirmative vote of the Managers and, in addition, Members owning a majority of the Percentage Interests in the capital of the Company;

(b) Any event that makes it unlawful for the business of the Company to be carried on by the Members; or

(c) Any other event that causes a dissolution of a limited liability company under the Act.

7.02 Continuance of the Company. Notwithstanding the foregoing provisions of Section 7.01, upon the occurrence of an event described in subsection 7.01(c), the remaining Members shall have the right to continue the business of the Company. Such right may be exercised only by the affirmative unanimous vote of the remaining Members within 90 days after the occurrence of an event described in Section 7.01(c) to continue the business of the Company. If not so exercised, the right of the Members to continue the business of the Company shall expire and the Company's affairs shall be wound up as provided in this Article VII.

7.03 Final Accounting. In case of the Company's dissolution, the Members shall cause a proper accounting to be made from the date of the last previous accounting to the date of dissolution.

7.04 Liquidation. Upon the Company's dissolution and the failure of the remaining Members to continue the Company as provided in Section 7.02, a person selected by Members owing a majority of the Percentage Interests voting on the question shall act as liquidator to wind up the Company. The liquidator shall have full power and authority to sell, assign and encumber any or all of the Company's assets and to wind up and liquidate the Company's affairs in an orderly and prudent manner. The Capital Accounts of the Members shall be adjusted to account for the operating income and deductions of the Company for the taxable year of the liquidation or dissolution and to account for any sales of Company assets, in the manner provided in Article III of this Agreement. The liquidator shall distribute all proceeds of the liquidation to the Members first in repayment of the positive balances, if any, in their Capital Accounts; and thereafter in proportion to their respective Percentage Interests.

7.05 Distribution in Kind. If the liquidator shall determine that a portion of the Company's assets should be distributed in kind to the Members, it shall distribute such assets to the Members in undivided interests as tenants in common in proportion to their respective Percentage Interests. In the event that some or all of the Company's assets are not sold, the Members shall determine the fair market value of the unsold assets, and the gain or loss that would have been realized if the assets had then been sold shall be determined, and the Capital Accounts of the Members shall be adjusted accordingly.

7.06 Dissolution of Company. Upon the completion of the distribution of Company assets, the Company shall be terminated and the Members shall cause the Company to execute appropriate instruments of dissolution and to take such other actions as may be necessary to terminate the Company.

Article VIII – LIMITED POWERS OF ATTORNEY

8.01 Managers Empowered to Perform Duties Hereunder. Each Member, by execution of this Agreement, irrevocably constitutes and appoints each Manager of the Company, acting separately the Managers of the Company, acting jointly, with full power of substitution, as such Member's true and lawful attorney, in such Member's name, place and stead to file articles of organization with the appropriate depositories and to execute, acknowledge, swear to and file (a) all amendments to this Agreement or to the articles of organization required by law of authorized or required by the provisions of this Agreement or the articles of organization; (b) all certificates and other instruments necessary to qualify or continue the Company as a limited liability company wherein the Members have limited liability in all states and jurisdictions in which the Company may transact business; and (c) all conveyances and other instruments that may be necessary to effect the Company's dissolution and termination.

8.02 Nature of Power of Attorney. The power of attorney herein granted shall be deemed to be coupled with an interest and shall be irrevocable and survive the death or incompetency of the Members. In the event of any conflict between this Agreement and any instruments filed by such attorneys pursuant to the powers of attorney granted in this Section, this Agreement shall control.

Article IX – AMENDMENT TO AGREEMENT

9.01 Amendments to this Agreement and to the Articles of Organization may be proposed by any Member. The Member shall submit to the other Members any such proposed amendment. A proposed amendment shall become effective at such time as it has been approved in writing by Members owning more than fifty percent (50%) of the Percentage Interests in the capital of the Company.

Article X - INDEMNIFICATION

10.01 Definitions. For purposes of this Article X, the following terms shall have the meanings set forth below:

(a) Action. Any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitative or investigative.

(b) Indemnified Party. Any person who is or was a party or is threatened to be made a party to any Action by reason of the fact that he is or was a Manager, officer, employee or agent of the Company or is or was serving at the request of the Company as a Manager, officer, employee or agent of another corporation, limited-liability company, partnership, joint venture, trust or other enterprise.

10.02 Actions. The Company shall indemnify any Indemnified Party against expenses (including attorneys' fees), judgments, fines, excise taxes, and amounts paid in settlement actually and reasonably incurred by him in connection with any Action if, as determined pursuant to 10.4 below, he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company, and with respect to any criminal Action, had no reasonable cause to believe his conduct was unlawful. The termination of any Action by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent, shall not of itself create either a presumption that the Indemnified Party did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Company, or with respect to any criminal Action, a presumption that the Indemnified Party had reasonable cause to believe that his conduct was unlawful.

10.03 Success on Merits or Otherwise. If and to the extent that any Indemnified Party has been successful on the merits or otherwise in defense of any Action referred to in Section 10.02 of this Article X, or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith without the necessity of any determination that he has met the applicable standards of conduct set forth herein.

10.04 Determination. Except as provided in Section 10.03, any indemnification under Section 10.02 (unless ordered by a court) shall be made by the Company only upon a determination that indemnification of the Indemnified Party is proper in the circumstances because he has met the applicable standards of conduct set forth in said Section 10.02. Any such determination shall be made (a) by the Managers who are not parties to the subject Action; or (b) upon the request of a majority of the Managers who are not or were not parties to such Action, or if there be none, by independent legal counsel (which counsel shall not be the counsel generally employed by the Company in connection with its business affairs) in a written opinion; or (c) by Members who own a majority of the Percentage Interest in the capital of the Company.

10.05 Payment in Advance. Expenses (including attorneys' fees) or some part thereof incurred by an Indemnified Party in defending any Action, shall be paid by the Company in advance of the final disposition of such Action if a determination to make such payment is made on behalf of the Company as provided in Section 10.04; of this Article X; provided, that no such

payment may be made unless the Company shall have first received a written undertaking by or on behalf of the Indemnified Party to repay such amount unless it is ultimately determined that he is entitled to be indemnified by the Company as authorized in this Article X.

10.06 Other Indemnification. The indemnification provided by this Article X shall not be deemed exclusive of any other rights to which any Indemnified Party or other person may be entitled under any other agreement (including without limitation any other provision of this Amended and Restated Operating Agreement), vote of the Members or Managers or otherwise, and any procedure provided for by any of the foregoing, both as to action in his official capacity and as to action in another capacity while holding such office.

10.07 Period of Indemnification. Any indemnification pursuant to this Article X shall continue as to any Indemnified Party who has ceased to be a Manager, officer, employee, or agent of the Company, or at the request of the Company, was serving as and has since ceased to be a Manager, officer, employee, or agent of another corporation, limited-liability company, partnership, joint venture, trust, or other enterprise, and shall inure to the benefit of the heirs and personal representatives of such Indemnified Party. The repeal or amendment of this Article X or of any Section or provision thereof which would have the effect of limiting, qualifying, or restricting any of the powers or rights of indemnification provided or permitted in this Article X shall not, solely by reason of such repeal or amendment, eliminate, restrict, or otherwise affect the right or power of the Company to indemnify any person, or affect any right of indemnification of such person, with respect to any acts or omissions which occurred prior to such repeal or amendment.

10.08 Insurance. By action of the Managers, notwithstanding any interest of any Member or Manager in such action, the Company may purchase and maintain insurance, in such amounts as the Managers may deem appropriate, on behalf of any Indemnified Party against any liability asserted against him and incurred by him in his capacity of or arising out of his status as an Indemnified Party, whether or not the Company would have the power to indemnify him against such liability under applicable provisions of law.

10.09 Right to Impose Conditions to Indemnification. The Company may impose, as conditions to any indemnification provided or permitted in this Article X, such reasonable requirements and conditions as to the Managers or Members may appear appropriate in each specific case and circumstance, including but not limited to any one or more of the following: (a) that any counsel representing the person to be indemnified in connection with the defense or settlement of any Action shall be counsel mutually agreeable to the person to be indemnified and to the Company; (b) that the Company shall have the right, at its option, to assume and control the defense or settlement of any claim or proceeding made, initiated, or threatened against the person to be indemnified; and (c) that the Company shall be subrogated, to the extent of any payments made by way of indemnification, to all of the indemnified person's right of recovery, and that the person to be indemnified shall execute all writing and do everything necessary to assure such rights of subrogation to the Company.

Article XI – GENERAL PROVISIONS

11.01 Notices.

(a) Method for Notices. All notices required or permitted hereunder shall be sent by first class mail, postage prepaid, and addressed as set forth in Section 1.08, above, (except that any Member may from time to time give notice changing such Member's address for such purpose) and shall be effective on the date of receipt or on the fifth day after mailing, whichever is earlier.

(b) Computation of Time. In computing any period of time under this Agreement, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or legal holiday in the State of Nevada, in which event the period shall run until the end of the next day that is not a Saturday, Sunday or legal holiday in the State of Nevada.

(c) Notice to Transferees. No transferee of the Percentage Interest of any Member, regardless of whether the transfer was permitted by this Agreement, shall be entitled to receive a notice independently of the notice sent to the Member who made the transfer. A notice sent or given to a Member shall be deemed to have been sent and given to all transferees of the Member.

11.02 Titles and Captions. All Article and Section titles and captions in this Agreement are for convenience or reference only, and shall not be deemed part of this Agreement, and in no way define, limit, extend or describe the scope or intent of any provisions hereof.

11.03 Pronouns and Plurals. Whenever the context may require, any pronoun used herein shall include the corresponding masculine, feminine or neuter forms and the singular form of nouns, pronouns and verbs shall include the plural, and vice versa.

11.04 Entire Agreement. This Agreement constitutes the entire agreement among the parties pertaining to the subject matter hereof and, except as provided in Article IX, may not be amended nor may any rights hereunder be waived except by an instrument in writing signed by the party sought to be charged with such amendment or waiver.

11.05 Applicable Law. This Agreement shall be construed in accordance with and shall be governed by the laws of the State of Nevada.

11.06 Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the Members and their respective heirs, executors, administrators, successors, legal representatives and assigns.

11.07 Rights and Remedies. The rights and remedies of the Members hereunder shall not be mutually exclusive, and the exercise of one or more of the provisions of this Agreement shall not preclude the exercise of any other provision. Each Member confirms that damages at law may be an inadequate remedy for a breach or threatened breach of any provision hereof. The respective rights and obligations of the Members hereunder shall be enforceable by specific

performance, injunction or other equitable remedy, but nothing herein contained is intended to or shall limit or affect any rights at law or by statute or otherwise of any party aggrieved as against the other parties for a breach or threatened breach of any provision hereof, it being the intention of the Members by this provision to make clear their agreement that the respective rights and obligations of the parties hereunder shall be enforceable in equity as well as at law or otherwise.

11.08 Severability. In the event that any condition, covenant or other provision herein contained is held to be invalid or void by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant or condition herein contained. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

11.09 Further Action. The Members shall execute and deliver all documents, provide all information, and take or forbear from all such action as may be necessary or appropriate to achieve the purposes of this Agreement.

11.10 Counterparts. This Agreement may be executed in counterparts, all of which taken together shall constitute one Agreement binding on all of the parties notwithstanding that all the parties are not signatories to the original or the same counterpart. Each party shall become bound by the Agreement immediately upon affixing his signature hereto, independently of the signature of any other party.

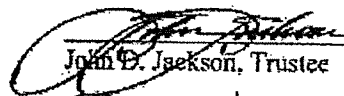
11.11 Waiver of Partition. Each Member hereby waives any right to partition of the property of the Company.

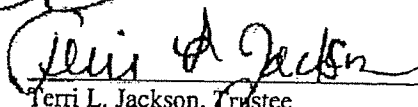
IN WITNESS WHEREOF, the Members acknowledge under penalties of perjury that the matters and facts set forth in this Agreement are true, and that they have signed this Agreement on the respective dates set forth below to be effective as of the date first above written.

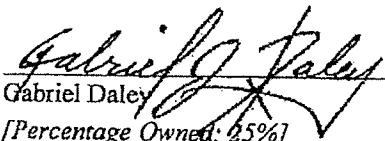
[Signature page follows]

"Members"

John D. Jackson and Terri L. Jackson
and their successors, as trustees of the
John D. & Terri L. Jackson Trust
w/a/d October 31, 2003
[Percentage Owned: 75%]


John D. Jackson, Trustee


Terri L. Jackson, Trustee


Gabriel Daley
[Percentage Owned: 25%]

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Schedule A


Attached to and Forming a Part of that certain Amended and Restated Operating Agreement for ~~Encore Group of Professionals~~ LLC, a Nevada limited liability company (the "Operating Agreement") dated the 7th day of November, 2014.


Each Member of the Company hereby agrees that, as of the 7th day of November, 2014, the total value of each one percent (1%) Percentage Interest in the capital and profits of the Company is \$ _____. Each Member signing this Schedule A agrees that the value hereby determined shall be valid, binding and conclusive upon the Company and upon all Members and their successors for all purposes of the Operating Agreement, and that this Schedule A shall for all purposes be a part of the Operating Agreement.

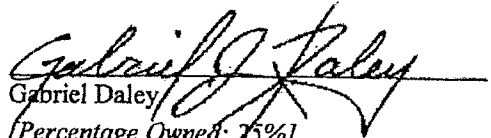
"Members"

John D. Jackson and Terri L. Jackson
and their successors, as trustees of the
John D. & Terri L. Jackson Trust
u/a/d October 31, 2003

[Percentage Owned: 75%]


John D. Jackson, Trustee


Terri L. Jackson, Trustee


Gabriel Daley

[Percentage Owned: 75%]