

**IN THE SUPREME COURT
OF THE STATE OF NEVADA**

FRANCISCO SILVA,
Appellant,
vs.
ED CLAY, AN INDIVIDUAL; SCOTT
NELSON, AN INDIVIDUAL; DEDDRICK
PERRY, AN INDIVIDUAL; AND CPI
MANAGEMENT GROUP, LLC,
Respondents.

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Elizabeth A. Brown
Clerk of Supreme Court

Docket No. 90651

DOCKETING STATEMENT CIVIL APPEALS

GENERAL INFORMATION

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

A complete list of the documents that must be attached appears as Question 28 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. *Id.*

This court has noted that when obligations under NRAP 14 to complete the docketing statement properly and conscientiously are not taken seriously, valuable judicial resources of this court are wasted, making the imposition of sanctions

appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use divider pages to separate any attached documents.

1. Judicial District: Eighth Judicial County: Clark

Judge: Maria Gall District Ct. Case No.: A-25-909767-B

Department: IX

2. Person filing this docketing statement:

Name: Xyzlo Lee

Bar # 16912

Law Firm Name (if applicable): Snell & Wilmer LLP

Address: 1700 S Pavilion Center Drive, Ste. 700, Las Vegas, NV 89135

Telephone #: (702) 784-5200

Email address: xlee@swlaw.com

Client name(s) (if represented by counsel): Francisco Silva

If this is a joint statement by multiple appellants, add the names and addresses of the other appellants and, if applicable, the names of their counsel and have them sign the certification below.

Name

Bar # (if applicable)

Law Firm Name (if applicable)

Address

Telephone #

Email address

Client name(s) (if represented by counsel):

I certify I concur in the filing of this statement.

N/A Date

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

- Judgment after bench trial
- Judgment after jury verdict
- Summary judgment
- Default judgment
- Grant/Denial of NRCP 60(b) relief
- Grant/Denial of injunction
- Dismissal:
 - Lack of jurisdiction
 - Failure to state a claim
 - Failure to prosecute
 - Other (specify):
- Divorce Decree:
 - Original
 - Modification
- Grant/Denial of declaratory relief
- Review of agency determination
- Other disposition (specify): _____

4. Does this appeal raise issues concerning any of the following?

- Child Custody
- Venue
- Termination of parental rights

5. 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:

N/A

- 6. 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:

N/A

- 7. Nature of the action.** Briefly describe the nature of the action and the result below:

This case concerns defendants'/respondents' unauthorized use of plaintiff's/appellant's stems cells at a clinic in Tijuana, Mexico and respondents' conversion of appellant's membership and financial interests in CPI Management Group, LLC, a Nevada limited-liability company. Plaintiff sought a preliminary injunction to enjoin defendants from continued use of his stem cells. The district court denied plaintiff's application. Plaintiff now appeals.

- 8. Issues on appeal.** State concisely the principal issue(s) in this appeal:
Whether the district court erred in denying plaintiff's application for preliminary injunction and in finding that the biological source of stem cells has no authority to withdraw consent from individuals profiting off selling his cells, in the absence of an agreement conveying rights to the cells.

- 9. 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:

N/A

- 10. Constitutional issues:** Does this appeal challenge the constitutionality of a Nevada Statute or ordinance?

No. Continue to #11.

Yes:

- a. Identify the Nevada statute or ordinance being challenged:
- b. Is the State, any State agency, or a State officer or employee a party to this appeal in an official capacity?
 Yes No.

11. Other issues.

a. Does this appeal involve any of the following issues?

- 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

b. If so, explain: As far as appellant is aware, no Court has resolved the issue of whether an individual who is the biological source of stem cells controls consent for third-parties to profit from those cells in the absence of an agreement conveying rights in the cells. This issue implicates public policies relating to an individual's control over their own biological material and consent.

12. Assignment to the Court of Appeals or retention in the Supreme Court.

Briefly set forth whether the matter is retained by the Supreme Court or presumptively assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls.

This matter should be retained by the Supreme Court because it originated

in business court. NRAP 17(a)(9).

13.Trial. If this action proceeded to trial, how many days did the trial last?
__N/A__ days.

Was it a: bench trial jury trial?

14.Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice/judge recuse him/herself from participation in this appeal? *See* NRAP 35. If so, which Justice/Judge? N/A_____

15.Oral argument. Would you object to submission of this appeal for disposition without oral argument? Yes No

TIMELINESS OF NOTICE OF APPEAL

16.Date the written judgment(s) or order(s) appealed from was/were filed in the district court: April 30, 2025.

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

17.Date written notice of entry of the judgment(s) or order(s) was/were served: May 5, 2025.

Was service by:

Electronic or personal delivery

Mail

18.Were any motions seeking relief under NRCP 50(b), 52(b), 59, or 60 or seeking rehearing or reconsideration filed in the district court either before or after the notice of appeal was filed? (attach a copy of the motion)

No, continue to # 19.

Yes:

a. Specify the type of motion and the date the motion was filed in the district court (check all that apply)

NRCP 50(b) Date filed: _____

NRCP 52(b) Date filed: _____

NRCP 59 Date filed: _____

NRCP 60 Date filed: _____

Rehearing/Reconsideration Date filed: _____

b. Date the motion was served: _____

c. How was the motion served:

Electronic or personal delivery

Mail

d. Date the written order resolving the motion was filed: _____

e. Date written notice of entry of the order resolving the motion was served: _____

f. Was service by:

Electronic or personal delivery

Mail

19. Are there any motions other than those identified in #18 above still pending in the district court?

Yes. Identify the motion and the date it was filed in the district court: Defendants' Motion to Dismiss Plaintiff's Third, Fourth, Seventh, Eighth, and Tenth Through Sixteenth Claims for Relief, filed 03/21/2025. Defendants' Motion to Dismiss Plaintiff's Fifth, Sixth, and Ninth Claims for Relief, filed 03/21/2025. Defendant Julie Freeman's Motion to Dismiss, filed 04/25/2025.

No.

20. Date the notice of appeal was filed in the district court: May 16, 2025

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:

N/A

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

SUBSTANTIVE APPEALABILITY

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

a.

- | | |
|---|---|
| <input type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRAP 3A(b)(2) |
| <input checked="" type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRAP 3A(b)(4) |
| <input type="checkbox"/> NRAP 3A(b)(5) | <input type="checkbox"/> NRAP 3A(b)(6) |
| <input type="checkbox"/> NRAP 3A(b)(7) | <input type="checkbox"/> NRAP 3A(b)(8) |
| <input type="checkbox"/> NRAP 3A(b)(9) | <input type="checkbox"/> NRAP 3A(b)(10) |
| <input type="checkbox"/> NRAP 3A(b)(11) | <input type="checkbox"/> NRAP 3A(b)(12) |
| <input type="checkbox"/> NRS 38.205 | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRS 703.376 | <input type="checkbox"/> Other (specify): _____ |

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

The order appealed from refuses to grant an injunction, which is governed by NRAP 3A(b)(3).

23. List all parties involved in the action or consolidated actions in the district court:

a. Parties:

Francisco Silva (plaintiff); Ed Clay, Scott Nelson, Deddrick Perry, Julie Freeman (defendants); CPI Management Group, LLC (nominal defendant).

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:

Defendant Julie Freeman is not involved in this appeal because plaintiff did not seek injunctive relief concerning Freeman.

24. 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.

Plaintiff brings thirteen claims on his own behalf and three derivative claims on CPI's behalf; no other party brings claims. No claim has been subject to disposition.

1. Breach of Operating Agreement against Clay, Nelson, and Perry. Defendants breached duties created by the LLC's Operating Agreement.

2. Breach of Covenant of Good Faith & Fair Dealing against Clay, Nelson, and Perry. Defendants breached the covenant by acting in bad faith to enrich themselves using CPI and Silva's property.

3. Breach of Duty of Loyalty against Clay, Nelson, and Perry. Defendants acted in derogation of their duty of loyalty to Plaintiff.

4. Breach of Duty of Care against Clay, Nelson, and Perry. Defendants acted inconsistently with best interests of the company and the care an ordinarily prudent person would exercise towards Plaintiff.

5. Conversion on behalf of CPI against Freeman. Freeman converted funds belonging to CPI to enrich herself.

6. Conversion on behalf of CPI against Clay, Nelson, and Perry. Defendants converted funds belonging to CPI to enrich themselves.

7. Breach of Fiduciary Duty against Clay, Nelson, and Perry. Defendants improperly removed Plaintiff from CPI and misappropriated funds due to Plaintiff.

8. Negligent Hiring, Supervision, and Retention against Clay, Nelson, and Perry. Defendants acted negligently by hiring Freeman as CFO, causing foreseeable damage to Plaintiff.

9. Negligent Hiring, Supervision, and Retention on behalf of CPI against Clay, Nelson, and Perry. Defendants acted negligently by hiring Freeman as CFO, causing foreseeable damage to CPI.

10. Accounting. Plaintiff seeks an accounting of the LLC.

11. Minority Member Oppression against Clay, Nelson, and Perry. Defendants misused the LLC form to exclude Plaintiff from the benefits he was owed as a minority member of the LLC.

12. Conversion against Clay, Nelson, and Perry. Defendants converted Plaintiff's property, including but not limited to stem cells and related intellectual property.

13. Negligence against Clay, Nelson, and Perry. Defendants acted negligently by using Plaintiff's stem cells even after Plaintiff revoked consent.

14. Misappropriation of Trade Secrets against Clay, Nelson, and Perry. Defendants misappropriated Plaintiff's trade secrets relating to his stem cells and related processes.

15. Unjust Enrichment against Clay, Nelson, and Perry. Defendants improperly benefitted from Plaintiff's stem cells and related processes.

16. Violation of Nevada Deceptive Trade Practices Act against Clay, Nelson, and Perry. Defendants falsely represented association with Plaintiff.

25. Did the judgment or order appealed from adjudicate ALL of the claims alleged below and the rights and liabilities of ALL of the parties to the action or consolidated actions below? Yes No

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

a. Specify the claims remaining pending below:

Because plaintiff appeals from the denial of a preliminary injunction, and the district court has yet to adjudicate the merits of plaintiff's claims, all of plaintiff's claims remain pending below.

b. Specify the parties remaining below:

Francisco Silva (plaintiff); Ed Clay, Scott Nelson, Deddrick Perry, Julie Freeman (defendants); CPI Management Group, LLC (nominal defendant).

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

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

Order is independently appealable under NRAP 3A(b)(3) as it refused to grant injunctive relief.

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

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any motion(s) identified in questions 18 and the order(s) resolving the motion(s)
- Any motions identified in question 19

- Orders or NRCP 41(a)(1) dismissals that formally resolve each claim, counterclaim, cross- claim and/or third-party claim asserted in the action or consolidated action below, **even if not at issue on appeal**
- All orders that finally disposes of any parties in the 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.

s/ Xyzlo Lee (16912)
Xyzlo Lee

05/30/2025
Date

Clark County, Nevada

CERTIFICATE OF SERVICE

I certify that on the 30th day of May, 2025, I served a copy of this completed docketing statement upon all parties to this appeal:

by electronic means to registered users of the court's electronic filing system

If served other than through the court's electronic filing system, enter the names and email address of the parties served by this means and attach a copy of each party's written consent

authorizing service by this means. *See* NRAP 25(c)(2)

by personally serving it upon him/her;

by mailing it by first class mail with sufficient postage prepaid to the following address(es):

Joanna Fung
s/

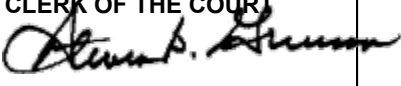
May 30, 2025
Date

Law Firm Name (if applicable): Snell & Wilmer LLP

Address: 1700 S Pavilion Center Drive, Ste. 700, Las Vegas,
NV 89135

Telephone #: (702) 784-5200

Email address: jfung@swlaw.com



1 V.R. Bohman, Esq. (NV Bar No. 13075)
2 Xyzlo Lee, Esq. (NV Bar No. 16912)
3 SNELL & WILMER L.L.P.
4 1700 South Pavilion Center Drive, Suite 700
5 Las Vegas, NV 89135
6 Telephone: (702) 784-5200
7 Facsimile: (702) 784-5252
8 Email: vbohman@swlaw.com
9 xlee@swlaw.com

10 *Attorneys for Plaintiff Francisco Silva*

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

13 Francisco Silva, an individual;
14
15 Plaintiff,

Case No. A-25-909767-B
Dept. No. IX

16 v.

VERIFIED FIRST AMENDED COMPLAINT
ARBITRATION EXEMPTION
NAR(5)(a)(1)(J)
BUSINESS COURT REQUESTED
1.61(a)(1) & (2)(ii).

17 Ed Clay, an individual; Scott Nelson, an
18 individual; Deddrick Perry, an individual;
19 Julie Freeman, an individual; Doe
20 Defendants 1 – 10;
21
22 Defendants,
23 CPI Management Group, LLC, a Nevada
24 limited-liability company;
25
26 Nominal Defendant,

27 **INTRODUCTION**

- 28 1. Plaintiff Francisco Silva brings this action to protect and enforce his rights as both the owner of two lines of stem cells derived from his family’s genetic material and as a 25% owner of CPI Management Group, LLC (“CPI”), a Nevada limited-liability company.
2. Silva and Defendants Edward Clay, Scott Nelson, and Deddrick Perry formed CPI in 2021 to operate a regenerative medicine clinic in Tijuana, Mexico. Together, Clay, Nelson, and Perry are the “Rogue Members.”
3. Silva is a biologist while the Rogue Members are experienced and sophisticated

Snell & Wilmer

1 international business professionals.

2 4. Over the past year, Silva discovered that the Rogue Members have mismanaged CPI
3 and covertly distributed Silva's and CPI's funds to entities owned by the Rogue Members. As
4 Silva's concerns escalated, his inquiries—as a 25% owner of CPI—were met with resistance,
5 obfuscation, and retaliation.

6 5. The Rogue Members' misconduct culminated at a CPI member meeting on
7 December 18, 2024, during which the Rogue Members voted to strip Silva of his ownership interest
8 in CPI—in violation of CPI's Operating Agreement—without compensation.

9 6. Since that vote, Silva demanded that the Rogue Members immediately halt use of
10 Silva's stem cell lines.

11 7. Upon information and belief, the Rogue Members continue to operate CPI in a
12 manner that misappropriates Silva's stem cell lines—without Silva's authorization or consent—by
13 conducting treatments at CPI's clinic using Silva's stem cells.

14 8. This Court must intervene to halt the Rogue Members from further damaging Silva
15 and CPI.

16 * * *

17 9. CPI does business as the "Cellular Performance Institute," widely known for its cell
18 therapy for high-performance athletes.

19 10. Prior to meeting Silva, the Rogue Members had worked together on multiple
20 business projects. One such project was Centro Hospitalario Internacional del Pacifico, S.A
21 ("CHIPSA"). CHIPSA is now the Translational and Advanced Medical Center ("TAM").

22 11. CHIPSA/TAM is an entity owned exclusively by the Rogue Members.

23 12. CHIPSA operated a hospital in Tijuana that offered alternative cancer treatments.
24 Upon information and belief, at the time the Rogue Members approached Silva, CHIPSA was on
25 the verge of bankruptcy.

26 13. The Rogue Members agreed to create CPI and offer CPI's treatment at the
27 CHIPSA/TAM facility in Tijuana.

28 14. The treatment relies upon and employs Silva's stem cell lines, which Silva derived

1 from the umbilical cords of his two children.

2 15. Silva is the owner of the stem cell lines and has sole authority to license or otherwise
3 control use of the stem cells.

4 16. Initially, Silva permitted CPI to use the stem cells.

5 17. As a result of offering CPI's treatment, CHIPSA/TAM experienced a financial
6 turnaround, moving from the brink of bankruptcy to generating large amounts of revenue.

7 18. CPI, in marketing materials posted by CPI's official YouTube account, directly
8 attributes its success to Silva. It describes Silva as "one of the top cellular scientists, stem cell
9 scientists, in the world . . . [after] Francisco agreed to partner . . . the stem cell aspect just blew up.
10 We [CPI] are now the largest manufacturer of mesenchymal stem cells in the world. We're making
11 more stem cells than anybody, by far."¹

12 19. The Rogue Members then diverted Silva's and CPI's funds to various other entities
13 of which Silva is not a partner, including CHIPSA/TAM for a multimillion-dollar renovation.

14 20. CPI admits doing so during the same YouTube video: "And the stem cells have
15 funded our cancer research . . . I can't wait for you to see the lab we're building."²

16 21. CPI also generated significant revenue for itself. Due to the success of CPI, and its
17 positive effect on CHIPSA/TAM's finances, the Rogue Members proposed merging
18 CHIPSA/TAM and CPI.

19 22. In July 2023, Silva requested CPI's and CHIPSA/TAM's company information,
20 financials, and materials to fully review the companies. But the Rogue Members and both entities'
21 Chief Financial Officer at the time, Julie Freeman, delayed and made excuses, never providing
22 Silva with CPI's or CHIPSA/TAM's financials or a list of assets purchased using CPI funds. The
23 proposed merger stalled.

24 23. At an April 2024 CPI members' meeting, the Rogue Members informed Silva that
25 Freeman had embezzled funds from both companies. The Rogue Members added that Freeman had
26 embezzled nearly \$5 million dollars from CPI and CHIPSA/TAM between 2022 and 2024.

27 _____
28 ¹ Cellular Performance Institute, "'Curing Cancer Became an Obsession' – CPI Stem Cells & The
TAM Center"; last accessed March 4, 2025 at <https://www.youtube.com/watch?v=faUXymrht2Y>
² *Id.*

1 24. Without consulting Silva, the Rogue Members replaced Freeman with a new CFO
2 for CPI, Israel Askew. Silva then held several phone conversations with Askew who, along with
3 Clay, confirmed that Askew would work to remunerate Silva, including for the Rogue Members'
4 unauthorized distributions.

5 25. At a May 2024 CPI members' meeting, the Rogue Members and Askew again
6 confirmed that Silva had to be compensated due to the Rogue Members' unauthorized distributions
7 and diverting CPI funds to entities controlled by the Rogue Members or Freeman.

8 26. For example, CPI funds were spent to purchase a property in Tennessee and to fund
9 mortgage payments on an apartment complex in Texas. Both properties are owned by entities
10 controlled or owned by the Rogue Members. The Rogue Members blamed Freeman. The full extent
11 to which the Rogue Members have misallocated CPI's and Silva's assets remains unknown to Silva.

12 27. Upon information and belief, the Rogue Members routinely used CPI funds for their
13 own personal benefit and the benefit of their entities without Silva's consent or knowledge.

14 28. In retaliation for raising these issues, on November 21, 2024, the Rogue Members
15 terminated Silva from his position as an officer of CPI and shut off his access to CPI's financial
16 records.

17 29. Upon information and belief, Silva was terminated by the Rogue Members to
18 disguise their own misappropriation of CPI's and Silva's funds and diversion of those funds to
19 themselves or entities in which they have substantial financial interests.

20 30. On December 18, 2024, Silva met with the Rogue Members to discuss the future of
21 CPI. The Rogue Members announced a surprise vote whereby they voted 3 to 1 to strip Silva of his
22 ownership interest in CPI. This vote breached CPI's Operating Agreement and violated Nevada
23 law.

24 31. The Rogue Members did not compensate Silva for his interest in CPI.

25 32. Since that vote, Silva has revoked authorization and consent for CPI or the Rogue
26 Members to use his stem cell lines or stem cells derived therefrom.

27 33. Silva requests immediate relief from this Court to protect his interests, including his
28 ownership interest to the stem cell lines and his 25% interest in CPI, as well as to protect CPI's

1 interests.

2 **PARTIES**

3 34. Plaintiff Francisco Silva (“Silva”), an individual, resides in Salt Lake City, Utah.
4 Silva is, and at all times relevant has been, a member holding a 25% interest in defendant CPI
5 Management Group, LLC.

6 35. Defendant CPI Management Group, LLC (“CPI”) is a limited-liability company
7 organized under Nevada law and registered with Nevada’s Secretary of State, Entity No.
8 E15681742021-0. CPI has its registered office in Las Vegas, Nevada. Silva names CPI because it
9 is a necessary party to the derivative relief he seeks in this action.

10 36. Upon information and belief, defendant Edward Clay (“Clay”), an individual,
11 resides in Nashville, Tennessee. Upon information and belief, Clay is CPI’s acting Chief Executive
12 Officer. Upon information and belief, Clay is, and at all times relevant has been, a member holding
13 a 37.5% interest in CPI.

14 37. Upon information and belief, defendant Scott Nelson (“Nelson”), an individual,
15 resides in Las Vegas, Nevada. Upon information and belief, Nelson is CPI’s officer in charge of
16 marketing and patient recruitment. Upon information and belief, Nelson is, and at all times relevant
17 has been, a member holding a 22.5% interest in CPI.

18 38. Upon information and belief, defendant Deddrick Perry (“Perry”), an individual,
19 resides in Nashville, Tennessee. Upon information and belief, Perry is CPI’s officer in charge of
20 finance and supply chain management. Upon information and belief, Perry is, and at all times
21 relevant has been, a member holding a 15% interest in CPI.

22 39. Upon information and belief, defendant Julie Freeman (“Freeman”), an individual,
23 resides in Georgia. Upon information and belief, Freeman was CPI’s Chief Financial Officer from
24 2021 through April 2024.

25 40. Silva does not know the true names and capacities of the defendants sued herein as
26 DOES 1-10, inclusive, and will amend this complaint to allege such facts as soon as they are
27 ascertained. Silva is informed and believes that the defendants, and each of them designated herein
28 as DOES 1-10, inclusive, are in some manner responsible for the conversion of CPI funds and/or

1 Silva's funds. Silva is informed and believes that members of CPI's former finance team, CPI's
2 current officers including its current CEO, and other unknown individuals have acted in concert
3 with the Rogue Members or Freeman to effectuate the conversions against CPI and Silva. The
4 Rogue Members, CPI, and DOES 1-10 are sometimes referred to herein collectively as
5 "Defendants."

6 41. The Rogue Members repeatedly acted to enrich themselves at CPI and Silva's
7 expense by disbursing CPI funds to various individuals and entities under their own control, without
8 any corresponding disclosure or disbursement to Silva.

9 JURISDICTION & VENUE

10 42. Jurisdiction is appropriate in this Court because this is a dispute regarding the
11 operation or governance of an entity created under NRS Chapter 86 (Limited-Liability Companies),
12 EDCR 1.61(a)(1), and involving business torts, EDCR 1.61(a)(2)(ii).

13 43. Venue is appropriate in this Court because CPI's principal place of business and
14 registered offices are located in Las Vegas, Nevada.

15 44. The amount in controversy exceeds \$15,000.

16 FACTS AND GENERAL ALLEGATIONS

17 **A. The Formation of CPI**

18 45. Silva is a biologist and has spent his entire career in the field of bioscience, including
19 as the Chief Science Officer of a major biomedicine corporation.

20 46. Prior to forming CPI, the Rogue Members operated an alternative cancer treatment
21 facility originally called CHIPSA, now known as TAM.

22 47. Silva believed that CHIPSA/TAM and its members were financially struggling,
23 possibly on the verge of insolvency, and the Rogue Members might be interested in operating a
24 new cutting-edge medical clinic utilizing his expertise.

25 48. Silva and the Rogue Members formed CPI by executing the Operating Agreement
26 of CPI Management Group, LLC, effective June 29, 2021 (the "Operating Agreement"). A true and
27 correct copy of the Operating Agreement is attached as **Exhibit 1**.

28 49. Pursuant to the Operating Agreement, Silva holds a 25% financial and voting

1 interest in CPI, while the Rogue Members hold the other 75% with varying interests (Clay 37.5%,
2 Nelson 22.5%, and Perry 15%). The stated purpose of CPI is to operate a biotech business and to
3 do any other lawful act permitted by the Nevada Revised Limited Liability Company Act.

4 **B. CPI Clinic in Tijuana**

5 50. CPI hired an experienced local medical director and opened a small clinic in Tijuana,
6 Mexico. Pursuant to the laws of Mexico, CPI and CHIPSA/TAM received license and approval to
7 operate through the Federal Committee for Protection from Sanitary Risks.

8 51. The CPI clinic treats a patient by injecting them with hundreds of millions of stem
9 cells.

10 52. Silva supplied the CPI clinic with “original” stem cell lines derived from the
11 umbilical cords of Silva’s two children. Those “original” stem cell lines come from the “master”
12 cell lines labeled #VJS040119FS and #041321FS.

13 53. Silva owns the “master” stem cell lines, which he created at BioRestorative
14 Therapies, Inc. A true and correct letter from BioRestorative Therapies acknowledging Silva’s
15 ownership of the stem cell lines is attached as **Exhibit 2**.

16 54. The CPI clinic derived “duplicated” stem cells from those “original” stem cell lines
17 using protocols and techniques prepared by Silva that require a low-oxygen environment.

18 55. To launch the CPI clinic and its treatment processes, Silva brought five vials of the
19 “original” stem cell line to the clinic for duplication. The “original” vials are stored frozen and
20 individually unfrozen to initiate the duplication. Each vial can be duplicated multiple times in a
21 months-long process that generates billions of cells for use in the clinic.

22 56. The CPI clinic treats its patients with these “duplicated” stem cells.

23 57. Silva’s stem cell lines are ideal for use in treatment of bulging, herniated, or torn
24 discs causing back and neck pain. The protocols created by Silva have demonstrated a strong anti-
25 inflammatory effect and patients treated with intradiscal injections have experienced tissue
26 remodeling.

27
28

1 58. Silva devised the treatment method on his own and without input from the Rogue
2 Members or other scientists at CPI. Silva further devised the method by which the clinic determines
3 the amount of stem cells (i.e., the dose) to administer to each patient.

4 59. Upon information and belief, only Silva and individuals that Silva taught at CPI
5 know specifics about the duplication process and dosing methodology.

6 60. Doctors and scientists at the CPI clinic were unaware of Silva's processes and
7 methods prior to Silva bringing his knowledge to the clinic.

8 61. Silva has taken steps to preserve the secrecy of his processes and methods.
9 Specifically, he has declined to publish or make publicly available details of his processes and
10 methods. He further attempted to keep information regarding the processes and methods
11 confidential and employed these processes and methods exclusively at CPI.

12 62. Silva and CPI derived economic value and a business advantage by having exclusive
13 use of Silva's cells, processes, and methods.

14 63. Patients travel to Tijuana and stay at the clinic for one to two weeks to receive
15 multiple rounds of treatments. Treatment costs range from \$25,000 to \$35,000 per patient.

16 64. The CPI clinic grew steadily in 2021 and 2022, treating approximately five patients
17 each month. Initial patients were mostly family and close friends of CPI members.

18 65. In July 2022, the business boomed. Due to the success of the treatment protocol,
19 CPI expanded rapidly and serviced 20-30 patients weekly.

20 **C. Potential Merger with CHIPSA/TAM**

21 66. In summer 2023, the Rogue Members approached Silva to propose merging CPI
22 with CHIPSA/TAM, their separate business preexisting CPI. In response, Silva requested
23 CHIPSA/TAM's financial information and statements, plus the same information for CPI,
24 including a list of assets acquired using CPI's funds.

25 67. The Rogue Members never provided Silva with complete information about
26 CHIPSA/TAM. Silva later learned that CHIPSA/TAM had no financial statements and that
27
28

1 CHIPSA/TAM needed to hire an accountant to prepare rudimentary financials after reviewing years
2 of invoices.

3 68. The interpersonal relationship between Silva and the Rogue Members deteriorated
4 around this time. Silva noticed communication from the Rogue Members began to decrease in both
5 frequency and substance.

6 **D. Misappropriation of CPI Assets**

7 69. In April 2024, the Rogue Members informed Silva that CFO Freeman, who was an
8 independent contractor chosen by the Rogue Members without Silva's knowledge, had embezzled
9 approximately \$5,000,000 from CPI and CHIPSA/TAM.

10 70. In response, Silva requested additional information about the embezzlement and
11 CPI's overall financial health. The more Silva attempted to discuss the embezzlement, the more the
12 Rogue Members shut him out.

13 71. Upon information and belief, Freeman converted CPI money from various bank
14 accounts controlled by CPI and related entities, such as CNP Management Partnership LLC and
15 AIMS. Freeman disbursed funds from those accounts directly to herself or an entity she controlled
16 called LAT29 LLC. Between 2021 and 2024, approximately eight bank accounts were used in this
17 scheme.

18 72. Upon information and belief, Freeman further utilized the companies' payroll
19 systems to withdraw over \$4,758,409 between 2021 and 2024. Using her control of the payroll, she
20 authorized disbursements directly in her name, paying herself as an independent contractor.
21 Sometimes, payroll disbursements were part of CPI or the related entities' periodic payrolls. Other
22 times, she disbursed funds to herself and herself alone.

23 73. While the account information and total dollar amount of Freeman's conversion can
24 be determined with specificity, the details of each bank account and transaction are presently
25 unknown to Silva because the Rogue Members have refused to provide him access to the financial
26 information that he is entitled to as a member of CPI.

27 74. Silva took it upon himself to review bank statements to investigate the
28 embezzlement.

1 75. Silva discovered suspicious transactions, including large transfers of money to
2 entities unfamiliar to Silva. In April 2024, Clay told Silva that Freeman had made entries labeled
3 “pre-tax distributions” totaling approximately \$900,000 to the Rogue Members. Silva, who owned
4 25% of CPI, never received his pro rata share of any such distribution.

5 76. During this review, Silva also discovered that the Rogue Members had used CPI
6 funds to purchase a property in Nashville, Tennessee and to make mortgage payments on an
7 apartment complex in Texas.

8 77. Upon information and belief, the Texas property is located at 336-342 Eden Dr. in
9 Longview, Texas. The Texas property is wholly owned by a Nevada limited liability company,
10 Advanced Integrated Medical Solutions, LLC (“AIMS”). AIMS is wholly owned by the Rogue
11 Members. Silva believes that the Rogue Members use AIMS as a shell company to hide assets from
12 Silva.

13 78. Silva believes that the Tennessee property purchased with CPI funds is located at
14 408 and 409 Russell St. in Nashville, Tennessee. According to property records, the Tennessee
15 property is owned by a Tennessee limited liability company, Russell & Fifth, LLC (“Russell &
16 Fifth”). On information and belief, Russell & Fifth is owned by the Rogue Members, and does not
17 include Silva as a member. Silva believes that the Rogue Members use Russell & Fifth as a shell
18 company to hide assets from Silva.

19 79. In May 2024, Silva met with the Rogue Members and CPI’s new CFO, whom the
20 Rogue Members hired without consulting Silva.

21 80. Upon information and belief, the new CFO, Israel Askew (“Askew”), is Clay’s
22 personal accountant.

23 81. Silva questioned the partiality of the Rogue Members’ decision to hire Askew given
24 the recent embezzlement from their previous hire and the suspicious distributions to the Rogue
25 Members.

26 82. The Rogue Members and Askew refused to answer Silva’s questions concerning
27 CPI’s improper distributions at that time. They also declined to explain whether CPI used funds to
28 purchase assets through shell companies owned by the Rogue Members. The Rogue Members could

1 or would not explain who approved these transactions or why they failed to inform Silva about
2 them.

3 83. Silva believes that the Rogue Members worked with Freeman to divert funds away
4 from CPI and Silva for their own personal gain.

5 84. In addition to the Rogue Members' above misconduct, Silva discovered numerous
6 other payments from CPI to entities in the U.S. and Mexico that he believes are owned by the Rogue
7 Members. Silva is not yet aware of the full extent of the Rogue Members' and Freeman's
8 misconduct because they have conspired to hide CPI's financials and conduct—orchestrated by the
9 Rogue Members—from Silva.

10 85. Silva believes that the Rogue Members and Freeman diverted more than \$9,000,000
11 from CPI for their own benefit and to the detriment of CPI and Silva.

12 **E. Silva's Termination and Company Misconduct**

13 86. On November 21, 2024, the Rogue Members purportedly terminated Silva from his
14 position as an officer of CPI.

15 87. The Rogue Members locked Silva out from access to all CPI chat groups (including
16 CPI's WhatsApp group), Google Docs, bank records, and QuickBooks on his date of termination.

17 88. Silva no longer has access to company financial records to further investigate the
18 misappropriation of CPI assets.

19 89. Upon information and belief, Silva believes that CPI hired a forensic accountant,
20 Robert Nordlander, to investigate the alleged asset misappropriation by Freeman.

21 90. The Rogue Members have excluded Silva from their investigation and any
22 correspondence with Nordlander. For months, the Rogue Members claimed that a report was
23 forthcoming any day.

24 91. On December 18, 2024, Silva participated in a CPI member meeting to discuss the
25 Nordlander report and CPI's future. While the Rogue Members represented that Silva would see
26 the report prior to the meeting, they did not send him a copy.

27 92. Silva did not see the Nordlander report until the meeting, moments before the Rogue
28 Members purported to remove him from the company.

1 93. The Rogue Members stated that the Nordlander Report found no impropriety by any
2 member and that Freeman acted alone.

3 94. Silva asked whether the Nordlander Report covered a forensic audit of the Freeman
4 embezzlement or a forensic report of the entire company financials. Askew responded that the
5 report accomplished both.

6 95. Silva then asked if CPI funds were used to purchase the Nashville property. Clay
7 responded that the Rogue Members used their own funds for that purchase. Askew refused to
8 answer further, after which Clay instructed the CFO to leave the meeting.

9 96. At that point, the Rogue Members voted to remove Silva from the company,
10 effective immediately.

11 97. The Rogue Members did not compensate Silva for his interest nor distribute any of
12 CPI's assets or property owed to him as a member of LLC.

13 98. Neither CPI's Operating Agreement nor Nevada law allow a majority of members
14 of an LLC to strip a minority member of their ownership interest under such circumstances.

15 99. Following the December 18 meeting, CPI emailed Silva the Nordlander "report."
16 The "report" was an unsigned letter from Robert Nordlander to CPI's counsel purporting to absolve
17 the Rogue Members of any illicit conduct. It was not a full forensic analysis of Freeman's
18 embezzlement.

19 100. The Rogue Members have stolen assets from CPI and Silva and abused the
20 company's form to the detriment of both Silva and CPI.

21 101. The Rogue Members must be held jointly and severally liable.

22 102. Silva has standing to pursue derivative actions on CPI's behalf against the Rogue
23 Members because he is a 25% owner of CPI.

24 103. Obtaining the Rogue Members' consent for Silva to bring actions on behalf of CPI
25 would be futile because the Rogue Members are named as Defendants due to their own wrongdoing
26 and bad acts that create the factual core for Silva's claims. Such efforts would also be futile in light
27 of their ongoing refusal to respond to Silva's inquiries regarding the conduct undergirding this
28 action.

1 104. As further evidence of futility, the Rogue Members are represented by the same
2 lawyers and law firms as CPI.

3 105. The Rogue Members also joined CPI's motion to dismiss Silva's derivative claim
4 against Freeman in the original complaint. But Silva brings the claim against Freeman on behalf of
5 CPI and its members to recover funds from Freeman that, if Silva succeeds, would be disbursed to
6 CPI and thus enrich each of the Rogue Members.

7 106. The Rogue Members' opposition to Silva's attempts to recover Freeman's stolen
8 funds, on behalf of CPI, underscores Silva's belief that the Rogue Members operated in concert
9 with Freeman. It also confirms that any demand would be futile.

10 **F. CPI Continues to Misappropriate Silva's Stem Cell Line**

11 107. Upon information and belief, since the Rogue Members attempted to oust Silva from
12 CPI, they have continued to use Silva's stem cell line to treat CPI patients.

13 108. Silva believes that the CPI and CHIPSA/TAM clinics possess two frozen vials of
14 the raw, unduplicated stem cells belonging to Silva, the "original" stem cells.

15 109. The CPI clinic further possesses billions of stem cells derived from the vials that
16 Silva authorized CPI to duplicate, but CPI has yet to use for treatment, the "duplicated" stem cells.

17 110. In a letter to CPI dated January 10, 2025, Silva withdrew his consent for CPI or the
18 Rogue Members to use the "original" stem cells and "duplicated" cells derived from Silva's
19 "original" stem cell lines. A true and correct copy of the letter withdrawing consent is attached as
20 **Exhibit 3.**

21 111. On January 13, 2025, Silva served the letter withdrawing consent upon CPI and the
22 Rogue Members.

23 112. In the letter, Silva withdrew his consent for the umbilical cord mesenchymal stem
24 cells (the "original" stem cells) to be used, published, stored, processed, propagated, or analyzed
25 by CPI, in addition to withdrawing consent for CPI to use any processes or methods related to or
26 involving the stem cells.

27 113. On January 21, 2025, the Rogue Members and CPI denied—without citation to
28 authority, legal or otherwise—that Silva had the appropriate ownership rights over the biological

1 materials in question and rejected that Silva’s withdrawal-of-consent letter imposed any obligation
2 upon them.

3 114. Upon information and belief, the CPI and CHIPSA/TAM clinic continues to treat
4 patients using the stem cells and processes belonging to Silva.

5 115. Silva now seeks immediate relief from this Court to prevent CPI and the Rogue
6 Members from continuing to profit off Silva’s property (stem cells, and the related processes and
7 methods), without compensation to Silva, and in derogation of Silva’s property rights in the stem
8 cell lines derived from Silva’s children’s umbilical cords.

9 **FIRST CLAIM FOR RELIEF**

10 **(Breach of Operating Agreement against Clay, Nelson, and Perry)**

11 116. Silva incorporates and realleges each preceding paragraph in this paragraph.

12 117. On June 29, 2021, the four managers of CPI executed a valid Operating Agreement
13 governing CPI.

14 118. NRS 86.286(2)(b) provides that a valid Operating Agreement binds the LLC and is
15 enforceable.

16 119. The Rogue Members have breached their duties and obligations under the Operating
17 Agreement, thereby breaching the Operating Agreement itself, by:

- 18 a. Breaching the duty of loyalty in violation of Section 6.1.
- 19 b. Breaching the duty of care in violation of Section 6.2.
- 20 c. Breaching their fiduciary duties in violation of Section 6.3.
- 21 d. Breaching the implied covenant of good faith and fair dealing inherent to
22 every contract governed by the Laws of the State of Nevada and in violation of
23 Section 6.3.
- 24 e. Authorizing improper cash distributions in violation of Sections 8.1 and
25 8.4.
- 26 f. Failing to provide information to Silva due to him in violation of Section
27 14.1.
- 28 g. Voting to steal Silva’s 25% owner interest in CPI without compensation.

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THIRD CLAIM FOR RELIEF

(Breach of Duty of Loyalty against Clay, Nelson, and Perry)

131. Silva incorporates and realleges each preceding paragraph in this paragraph.

132. NRS 86.286(5) permits an LLC to expand the duties that each member owes to the other members and the LLC.

133. Section 6.1 of CPI’s operating agreement expands the duty owed by its members to each other and to the LLC.

134. Section 6.1 of CPI’s operating agreement requires each member “[t]o account to the Company and to hold as trustee for the Company any property, profit, or benefit derived by the Member in the conduct or winding up of the Company’s business or derived from a use by the Member of the Company’s property, including the appropriation of a Company opportunity.”

135. Clay, Nelson, and Perry have breached this duty by, among other things, failing to properly allocate funds belonging and due to CPI and Silva.

136. Clay, Nelson, and Perry have further breached this duty by failing to hold as trustee the property, profit, and/or benefits produced as a result of CPI’s business.

137. Clay, Nelson, and Perry have further breached this duty by misappropriating CPI’s assets and/or misappropriating opportunities available to CPI for their own personal enrichment to the detriment of CPI and Silva.

138. Upon information and belief, each of Clay, Nelson, and Perry individually voted for, authorized, and/or ratified the conduct by which they funneled CPI assets into their own entities.

139. Each of Clay, Nelson, and Perry are listed as members of AIMS and Russell & Fifth, the entities that Clay, Nelson, and Perry used in furtherance of their breach of the duty of loyalty.

140. As a result of the Defendants’ conduct, Silva is entitled to an award of compensatory damages, punitive damages, attorney fees and costs, interest, injunctive relief, and all other relief deemed appropriate by this Court.

FOURTH CLAIM FOR RELIEF

(Breach of Duty of Care against Clay, Nelson, and Perry)

141. Silva incorporates and realleges each preceding paragraph in this paragraph.

1 152. Furthermore, Clay, Nelson, and Perry are defendants to this action.

2 153. Clay, Nelson, and Perry worked to appoint Freeman as CFO to CPI beginning in
3 2021.

4 154. Over the last two years, Silva grew suspicious of various accounting and financial
5 irregularities at CPI.

6 155. In 2023, Silva requested further information regarding CPI's true financial state
7 from Clay, Nelson, and Perry.

8 156. Clay, Nelson, and Perry provided Silva with incomplete and/or inconsistent reports.

9 157. In April 2024, Clay, Nelson, and Perry surprised Silva with the announcement that
10 they discovered financial irregularities. Upon performing his own research, Silva discovered that
11 Freeman failed to report certain income earned by CPI and retained revenue earned by CPI.

12 158. Further investigation revealed that Freeman has embezzled millions of dollars from
13 CPI.

14 159. Freeman's actions constitute a distinct act of dominion wrongfully exerted over
15 CPI's property.

16 160. Freeman acted in denial, derogation, exclusion, or defiance of CPI's property rights.

17 161. Silva may recover, on behalf of CPI, the funds lost due to Freeman's embezzlement,
18 plus applicable attorney fees and costs, interest, and all other relief deemed appropriate by this
19 Court.

20 162. As a result of the Defendants' conduct, Silva is entitled to an award of compensatory
21 damages, punitive damages, attorney fees and costs, interest, injunctive relief, and all other relief
22 deemed appropriate by this Court.

23 **SIXTH CLAIM FOR RELIEF**

24 **(Conversion on behalf of CPI against Clay, Nelson, and Perry)**

25 163. Silva incorporates and realleges each preceding paragraph in this paragraph.

26 164. Clay, Nelson, and Perry have converted CPI's property by, among other things,
27 using it to purchase assets for their personal benefit to the detriment of the company.

28 165. Clay, Nelson, and Perry did not follow the distribution procedure outlined in Section

1 8.1 of CPI's Operating Agreement when spending excess CPI funds.

2 166. Clay, Nelson, and Perry converted CPI's assets by exerting wrongful dominion over
3 funds that rightfully belonged to CPI.

4 167. Clay, Nelson, and Perry knowingly and fraudulently converted CPI's assets by
5 misrepresenting aspects of their CPI fund transfers.

6 168. Clay, Nelson, and Perry have been unjustly enriched by their conversion and are
7 liable to the company for compensatory damages and applicable interest.

8 169. Clay, Nelson, and Perry are further liable for reasonable attorney fees and expenses
9 associated with bringing this action pursuant to NRS 86.489.

10 170. As a result of the Defendants' conduct, Silva, on behalf of CPI, is entitled to an
11 award of compensatory damages, punitive damages, attorney fees and costs, interest, injunctive
12 relief, and all other relief deemed appropriate by this Court.

13 **SEVENTH CLAIM FOR RELIEF**

14 **(Breach of Fiduciary Duty against Clay, Nelson, and Perry)**

15 171. Silva incorporates and realleges each preceding paragraph in this paragraph.

16 172. Clay, Nelson, and Perry owe Silva a fiduciary duty imposed by the Operating
17 Agreement and Nevada law.

18 173. Clay, Nelson, and Perry breached that duty by improperly purporting to vote Silva
19 out of CPI without authorization and deceitfully misappropriating funds belonging or otherwise
20 due to him.

21 174. Clay, Nelson, and Perry's breach caused injury to Silva.

22 175. Silva has suffered damages as a result of Clay, Nelson, and Perry's actions.

23 176. As a result of the Defendants' conduct, Silva is entitled to an award of compensatory
24 damages, punitive damages, attorney fees and costs, interest, injunctive relief, and all other relief
25 deemed appropriate by this Court.

26 **EIGHTH CLAIM FOR RELIEF**

27 **(Negligent Hiring, Supervision, and Retention against Clay, Nelson, and Perry)**

28 177. Silva incorporates and realleges each preceding paragraph in this paragraph.

1 and confidence.

2 200. That trust and confidence have been eroded due to the actions of the Rogue Members
3 and Freeman.

4 201. CPI is obligated to render an accounting to Silva to determine the damages to Silva
5 as a result of Freeman and the other members' misallocations of funds.

6 **ELEVENTH CLAIM FOR RELIEF**

7 **(Minority Member Oppression against Clay, Nelson, and Perry)**

8 202. Silva incorporates and realleges each preceding paragraph in this paragraph.

9 203. Silva, having a 25% interest in CPI, is a non-controlling member of CPI.

10 204. Clay, Nelson, and Perry collectively held the remaining 75% interest, constituting a
11 majority interest in CPI.

12 205. Clay, Nelson, and Perry undertook control and management of CPI's affairs.

13 206. Clay, Nelson, and Perry owed special duties to CPI and CPI's non-controlling
14 members, to wit, Silva.

15 207. The majority-member duties imposed on Clay, Nelson, and Perry required those
16 Defendants to act in good faith and consistent with the best interests of CPI.

17 208. Clay, Nelson, and Perry breached their duties to act in good faith and consistent with
18 the best interests of CPI by, among other things, raiding CPI's corporate funds; taking improper
19 actions with respect to Silva; and engaging in self-dealing transactions between CPI and the entities
20 controlled or otherwise related to the Defendants.

21 209. As a result of the Defendants' conduct, Silva is entitled to an award of compensatory
22 damages, punitive damages, attorney fees and costs, interest, injunctive relief, and all other relief
23 deemed appropriate by this Court.

24 **TWELFTH CLAIM FOR RELIEF**

25 **(Conversion against Clay, Nelson, and Perry)**

26 210. Silva incorporates and realleges each preceding paragraph in this paragraph.

27 211. Clay, Nelson, and Perry have converted Silva's physical and/or intellectual property
28 associated with Silva's stem cell lines.

1 following its implementation of Silva's methods and processes.

2 237. CPI's doctors and scientists did not know these methods or processes prior to Silva
3 joining the clinic and instructing them.

4 238. CPI's economic value largely results from its implementation of Silva's methods
5 and processes.

6 239. Nonetheless, Clay, Nelson, and Perry have attempted to remove Silva from CPI
7 while retaining and exploiting Silva's stem cells and related methods and processes.

8 240. Clay, Nelson, and Perry had the intent to injure Silva or had reason to believe that
9 their actions would injure Silva.

10 241. After Silva withdrew his consent relating to the stem cell lines, and related processes
11 and methods, Clay, Nelson, and Perry misappropriated and among other things, wrongfully copied,
12 duplicated, altered, transmitted, replicated, communicated, implanted and/or conveyed Silva's
13 trade secrets either directly or indirectly by inducing CPI, CHIPSA, and/or TAM employees to do
14 so.

15 242. Silva has suffered loss caused by the misappropriation and Clay, Nelson, and Perry
16 have been unjustly enriched by the misappropriation.

17 243. As a result of the Defendants' conduct, Silva is entitled to an award of compensatory
18 damages, punitive damages, attorney fees and costs, interest, injunctive relief, and all other relief
19 deemed appropriate by this Court.

20 **FIFTEENTH CLAIM FOR RELIEF**

21 **(Unjust Enrichment against Clay, Nelson, and Perry)**

22 244. Silva incorporates and realleges each preceding paragraph in this paragraph.

23 245. Clay, Nelson, and Perry have benefited financially from CPI and CPI's use of
24 Silva's property, methods, and processes.

25 246. Clay, Nelson, and Perry have appreciated the benefit by authorizing the continued
26 use of the property, methods, and processes after Silva withdrew his consent for CPI to use them.

27 247. Upon information and belief, Clay, Nelson, and Perry have accepted and retained
28 the benefit by continuing to take distributions from the profits generated by the CPI clinic and/or

1 using the profits generated by the CPI clinic to fund other ventures.

2 248. Because Silva has withdrawn his consent for Clay, Nelson, and Perry to authorize
3 the use of his property, methods, and processes, the circumstances are such that it would be
4 inequitable for Clay, Nelson, and Perry to retain the benefit without payment to Silva.

5 249. As a result of the Defendants' conduct, Silva is entitled to an award of compensatory
6 damages, punitive damages, attorney fees and costs, interest, injunctive relief, and all other relief
7 deemed appropriate by this Court.

8 **SIXTEENTH CLAIM FOR RELIEF**

9 **(Violation of Nevada Deceptive Trade Practices Act against Clay, Nelson, and Perry)**

10 250. Silva incorporates and realleges each preceding paragraph in this paragraph.

11 251. NRS 598.0915(3) states: "A person engages in a 'deceptive trade practice' if, in the
12 course of his or her business or occupation, he or she: Knowingly makes a false representation as
13 to affiliation, connection, association with or certification by another person."

14 252. Upon information and belief, Clay, Nelson, and Perry have knowingly made false
15 representations as to the affiliation, connection, association with or certification by Silva in
16 information that CPI provides to its patients.

17 253. Upon information and belief, Clay, Nelson, and Perry made those false
18 representations in the course of their business as managers of CPI.

19 254. As a result of the Defendants' conduct, Silva is entitled to an award of compensatory
20 damages, punitive damages, attorney fees and costs, interest, injunctive relief, and all other relief
21 deemed appropriate by this Court.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff Francisco Silva respectfully requests the Court enter judgment
24 against all defendants, individually and jointly, as follows:

- 25 (a) For damages in an amount in excess of \$15,000;
26 (b) For the imposition of a receiver and other injunctive relief;
27 (c) For costs of suit and attorneys' fees;
28 (d) For a court-ordered accounting;

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- (e) For pre- and post-judgment interest; and
- (f) For such other and further relief as the Court deems just and proper.

DATED this 7th day of March 2025.

SNELL & WILMER L.L.P.

/s/ V.R. Bohman
V.R. Bohman
Xyzlo Lee
1700 South Pavilion Center Drive, Suite 700
Las Vegas, Nevada 89135

Attorneys for Plaintiff Francisco Silva

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INDEX OF EXHIBITS

Exhibit	Description
1	Operating Agreement of CPI Management Group, LLC
2	Ownership Letter between BioRestorative Technologies & Silva
3	Withdrawal of Consent Letter from Silva to CPI, Clay, Nelson & Perry

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VERIFICATION

I, Francisco Silva, have read the foregoing pleading and know the contents thereof. The matters and things set forth are true to the best of my knowledge, except as to those matters set forth upon information and belief and, as to those, I believe them to be true; however, in compiling this information, information has been supplied by others and I am relying in part upon their representations.

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

DATED this 5th day of March 2025.



Francisco Silva

EXHIBIT 1

OPERATING AGREEMENT
OF
CPI MANAGEMENT GROUP, LLC

This OPERATING AGREEMENT (“Agreement”) is made effective the 29th day of June, 2021, by and among EDWARD CLAY, FRANCISCO SILVA, SCOTT NELSON, and DEDDRICK PERRY (collectively referred to as “Members” and individually as “Member”) and CPI MANAGEMENT GROUP, LLC (“Company”).

WITNESSETH:

WHEREAS, the Company has been formed as a limited liability company under Nevada law for the purposes hereinafter set forth; and

WHEREAS, the Members desire to set forth their respective rights, duties, and responsibilities with respect to such limited liability company and wish to adopt this Operating Agreement of the Company.

NOW, THEREFORE, in consideration of the mutual promises, obligations, and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by each of the Members, the Members, intending to be and being legally bound, agree as follows:

ARTICLE I
Definitions

1.1 Definitions. Whenever used in this Agreement, or any amendment hereof, the following terms shall have the meanings set forth below:

(a) **“Act”** means the Nevada Revised Limited Liability Company Act, as amended, and any corresponding provisions of future laws.

(b) **“Agreement”** means this Operating Agreement, together with any amendments hereto.

(c) **“Appraised Value”** shall have the meaning set forth in Section 11.3.

(d) **“Articles of Organization”** means the CPI MANAGEMENT GROUP, LLC Articles of Organization filed with the Nevada Secretary of State by which the Company was organized as a Nevada limited liability company pursuant to the Act, together with any amendments thereto.

(e) **“Capital Account”** means the account established and maintained for each Member on the books of the Company pursuant to Articles VII and VIII hereof.

(f) **“Capital Contribution” or “Contribution to Capital”** means the amount of cash and Gross Asset Value (at the time of the contribution) of any property contributed to

the Company by or on behalf of a Member.

(g) **“Ceased Member”** a Member that triggers an event defined in Article X.

(h) **“Cessation”** means only the action of a Member deemed to be a Cessation by the Member pursuant to Article X, and shall not have the meaning given it in the Act.

(i) **“Code”** means the Internal Revenue Code of 1986, as amended, and any corresponding provisions of future laws.

(j) **“Company”** means CPI MANAGEMENT GROUP, LLC.

(k) **“Company Liability”** means any enforceable debt or obligation for which the Company is liable or which is secured by any Company Property.

(l) **“Company Property”** means any and all property, real, personal, tangible and intangible, either contributed by a Member as capital, transferred to, or otherwise acquired by the Company.

(m) **“Control” or “Controlled”** means with respect to any legal entity, the actual or constructive ownership of more than fifty percent (50%) of all the voting rights in the entity, determined using the constructive ownership rules under Section 318 of the Code, regardless of whether the legal entity in question is a corporation or other legal entity.

(n) **“Disinterested”** means with respect to any Member, a Member who (1) is not a party to a particular transaction or other undertaking, (2) has no material financial interest in any organization that is a party to that undertaking, and (3) is not a Family member of any Person who is either a party to that undertaking or has a material financial interest in any organization that is a party to that undertaking.

(o) **“Fair Market Value”** shall have the meaning set forth in Section 11.3.

(p) **“Family”** means (1) the spouse of any Member as of the initial effective date of this Agreement or any subsequent spouse, unless the Member and spouse become separated or a petition or complaint for divorce is filed, in which case such spouse shall not qualify as Family for purposes of this Agreement; (2) the lineal descendants and ancestors of an individual Member; (3) any estate, trust, guardianship, custodianship, or other fiduciary arrangement for the benefit of any one or more of the individuals described in (1) or (2) above; and (4) any corporation, partnership, limited partnership, limited liability limited partnership, limited liability company, or other business organization Controlled by any one or more individuals or entities described in (1), (2), or (3) above.

(q) **“Financial Rights”** means the right to share in the Profits and Losses of the Company and the right to share in distributions as set forth on Exhibit A.

(r) **“Gain”** means the taxable income or gain for Federal income tax purposes from the Sale of the Company Property.

(s) **“Gross Asset Value”** means, with respect to any asset, the asset’s adjusted basis for federal income tax purposes, except as follows:

(1) The initial Gross Asset Values of any asset contributed by a Member to

the Company shall be the gross fair market value of such asset, as determined by the contributing Member and the Company;

(2) The Gross Asset Values of all Company assets may be adjusted at the discretion of the Members to equal their respective gross fair market values, as determined by the Members, as of the following times:

(i) the acquisition of an additional interest in the Company by any new or existing Members in exchange for a Capital Contribution;

(ii) the distribution by the Company to a Member of Company Property as consideration for an interest in the Company; and

(iii) the liquidation of the Company within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(g); provided, however, that adjustments pursuant to clauses (i) and (ii) above shall be made only if the Members reasonably determine that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company;

(3) The Gross Asset Value of any Company asset distributed to the Members shall be the gross market value of such asset on the date of distribution; and

(4) The Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulations Section 1.704-1(b)(2)(iv)(m) and Sections 8.7, 8.8, 8.9, and 8.10, hereof; provided, however, that Gross Asset Values shall not be adjusted pursuant to this paragraph (s)(4) to the extent the Members determine that an adjustment pursuant to paragraph (s)(2) of this Section is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this paragraph (s)(4).

If the Gross Asset Value of an asset has been determined or adjusted pursuant to paragraph (s)(1), (s)(2), or (s)(4), such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profits and Losses.

(t) **“Losses”** means the losses of the Company as determined under Article VIII hereof.

(u) **“Member”** means the parties to this Agreement from time to time as indicated on Exhibit A.

(v) **“Membership Share”** means all of the rights of a Member under this Agreement and under the Act, including, but not limited to, a Member’s Financial Rights and Voting Rights.

(w) **“Net Cash Flow”** means the total net income, computed for federal income tax purposes, increased by any depreciation or depletion deductions taken into account in computing taxable income and any nontaxable income or receipts (other than capital

contributions and the proceeds of any Company borrowing); and reduced by any principal payments on any Company debts, expenditures to acquire, maintain, or improve Company assets, payments under Section 707(c) of the code, and such reasonable reserves and additions thereto as may be necessary for future contingent liabilities, and the retention of funds for future investment activities, as the Members shall determine to be advisable and in the best interest of the Company.

(x) **“Person”** means an individual, general partnership, limited liability company, limited liability partnership, limited partnership, limited liability limited partnership, trust, estate, corporation, custodian, trustee, executor, personal representative, legal representative, administrator, nominee, or any other entity or person, and any individual or entity acting in a representative capacity.

(y) **“Profits”** means the profits of the Company as determined under Article VIII hereof.

(z) **“Remaining Members”** are those Members owning units in the Company that are not deemed to be a Ceased Member under Article X.

(aa) **“Sale”** means any sale, disposition, or conversion of the Company Property in which gain or loss is recognized for Federal income tax purposes.

(bb) **“Transfer”** includes any assignment, sale, pledge, encumbrance, gift, bequest, or other transfer or disposition of a Company interest or permitting a Company interest to be sold, encumbered, attached, or otherwise disposed of, or changing the ownership in any manner whether voluntarily, involuntarily, or by operation of law.

(cc) **“Triggering Event”** shall be an event of cessation as defined in Article X.

(dd) **“Voting Rights”** means the right of Members to vote on any matter as provided in this Agreement or under the Act. Any reference to a Member’s Voting Rights shall mean the percentage of Voting Rights in the Company held by the Members.

(ee) **“Voting Rights in the Company”** means the Voting Rights held by the Members, collectively. Unless otherwise specifically provided herein, reference to a percentage of Voting Rights in the Company shall mean a percentage of the total Voting Rights held by all the Members.

(ff) **“Wrongful Conduct”** means any illegal or criminal conduct, other than misdemeanors, which may include but is not limited to fraud, theft, embezzlement, or a felonious drug offense.

ARTICLE II Formation, Purposes, and Powers

2.1 Formation.

The parties to this Agreement hereby agree to and adopt the terms and conditions set forth in this Agreement as the operating agreement of the Company. The Company shall exist under and be governed by the provisions of the Act, except as otherwise provided or modified by the

Articles of Organization or this Agreement. The Company shall exist only for the purposes specified in this Agreement and shall not be deemed to create a partnership, joint venture, or any other relationship between the Members.

2.2 Name.

The name of the Company shall be CPI MANAGEMENT GROUP, LLC, and all company business must be conducted in that name or such other names that comply with applicable law as the Members may select from time to time.

2.3 Registered Office and Registered Agent.

The current principal place of business of the company is 3535 W Harmon Ave, Las Vegas NV 89103. The current registered office of the Company is 3535 W Harmon Ave, Las Vegas NV 89103. The current registered agent at such address is Edward Clay. The Company shall have such other registered offices and agents as the Members who own fifty-one percent (51%) of the Voting Rights in the Company may designate from time to time.

2.4 Purposes.

The character of business and purposes of the Company are (a) to operate a biotech business and (b) to do any other lawful act permitted of the Company by the Act.

2.5 Powers.

Subject to the provisions of this Agreement, the Company shall have the same powers as an individual to do all things necessary or convenient to carry on its business and affairs, including the power to:

- (a) Sue and be sued, and defend in its name;
- (b) Purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, maintain, manage, operate, and otherwise deal with property of any kind, real, personal, tangible and intangible, or any legal or equitable interest in property, wherever located;
- (c) Sell, convey, mortgage, grant a security interest in, lease, exchange, and otherwise encumber or dispose of all or any part of its property;
- (d) Purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, grant a security interest in, or otherwise dispose of and deal in and with, shares or other interests in or obligations of any other entity;
- (e) Make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations, which may be convertible into or include the option to purchase other securities of the limited liability company, and secure any of its obligations by a mortgage on or a security interest in any of its property, franchises, or income;
- (f) Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;
- (g) Be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;
- (h) Conduct its business, locate offices, and exercise the powers granted by this

Agreement and the Act within or without the State of Nevada;

- (i) Appoint officers, employees, and agents of the Company, define their duties, fix their compensation, and lend them money and credit;
- (j) Pay pensions and establish qualified and non-qualified retirement plans, bonus plans, option plans, and benefit or incentive plans for any or all of its current or former Members, officers, employees, and agents, if otherwise permitted by law;
- (k) Make donations for the public welfare or for charitable, scientific, or educational purposes;
- (l) Make payments or donations, or do any other act, not inconsistent with law, that furthers the business of the Company;
- (m) Perform any act and execute and deliver any documents required by any governmental authority; and
- (n) Perform any and all other acts or activities customary, incidental, necessary, or convenient to the purposes and powers enumerated herein.

2.6 Construction.

Unless otherwise required by law, if and to the extent the provisions of this Agreement conflict with the Act, this Agreement shall control. If and to the extent the provisions of this Agreement do not conflict with the Act, the Act shall control.

**ARTICLE III
Membership and Capitalization**

3.1 Members.

Each Member’s Capital Contribution to the Company, Financial Rights, and Voting Rights are shown on Exhibit A attached hereto.

3.2 Admission of New Members.

Except as otherwise provided in Article XI, additional Members (including transferees) may be admitted to the Company only with the consent of those Members who own fifty-one percent (51%) of the Voting Rights in the Company. The consenting Members shall indicate their consent to the admission of a new Member by executing with the new Member and the Company an amendment to Exhibit A of this Agreement setting forth the names, addresses, and percentage ownership of Financial Rights and Voting Rights of all the Members as a result of the new Member’s admission. In addition, no Person shall become a Member unless such Person completes and executes an Admission Agreement or a new Operating Agreement with the Company.

Except as otherwise provided in the next paragraph, no creditor of a Member who obtains any portion of a Membership Share by charging order pursuant to the Act, or otherwise, or any Person, including any creditor, receiver, or bankruptcy estate that obtains any rights in the Company by reason of a security interest, pledge, or the filing of an action for foreclosure,

bankruptcy, receivership, divorce, or any similar proceeding may become a Member in the Company without the unanimous written consent of the Members, obtained after the transfer.

Notwithstanding anything herein to the contrary, if at any time the Company has only one Member, and if that Member's entire Membership Share, or all of that Member's Financial Rights, are transferred voluntarily by the Member by sale, exchange, or gift, or involuntarily by reason of the Member's death, incompetence, insolvency, bankruptcy, or dissolution, then the transferee(s) of such Membership Share or Financial Rights shall automatically become full Member(s) of the Company.

3.3 Transferee of Membership Share Admitted as a Member.

Upon the transferee(s) of a transferor Member's entire Membership Share or all of the transferor Member's Financial Rights in the Company becoming Member(s), the transferor ceases to be a Member.

3.4 Transferee of Membership Share Not Admitted as a Member.

If the transferee of all or any part of a Membership Share is not admitted as a Member, he shall be entitled to retain the Financial Rights transferred to him, but he shall not have any Voting Rights and shall not be entitled to participate in the management of the Company or to exercise any other rights of a Member. The transferee is subject to any claims or offsets the Company has against the transferor, regardless of whether those claims or offsets exist at the time of the transfer or arise afterwards. An amendment to this Agreement may change the rights of a transferee, even if the amendment is made after the transfer. A transferee who is not admitted as a Member shall not have the right to seek a judicial determination that it is equitable to dissolve and wind up the Company's business under the Act. The transferor continues to be a Member, entitled to all rights of a Member, other than the rights transferred.

Notwithstanding anything herein to the contrary, a transferee who is not admitted as a Member shall not be entitled to receive any distributions from the Company until such transferee delivers to the Company written notice of the transfer, proof of the transfer deemed sufficient by the Company, the transferee's federal and state tax identification numbers, and/or social security number, current legal address and telephone number, and such other information as the Company may reasonably require.

3.5 Redemption of Member's Financial Rights Subjected to Charging Order.

In the event a Member's Financial Rights are subjected to a charging order under the Act, the Company may redeem the Member's Financial Rights so charged, with Company Property, at any time prior to foreclosure of said Financial Rights in accordance with the Act. Nothing in this Section shall be construed as affecting or limiting the rights of the judgment debtor and the other Members to redeem any Financial Rights subjected to a charging order with their own property in accordance with the Act.

3.6 Power of Attorney.

Any Member may give another Member power of attorney to act for or to execute documents in the name of such Member, provided the Member giving such power of attorney delivers a copy of the power of attorney to the Company. Any such power of attorney may be changed or

revoked at any time by the Member who gave such power by giving notice of its change or revocation to the Company.

3.7 Voluntary Capital Calls.

Those Members who own fifty-one percent (51%) of the Voting Rights in the Company may request that the Members make additional Contributions to Capital by delivering notice of the request to each Member. Any additional capital shall be contributed by the Members in the same ratio as each Member's Financial Rights bears to the total of all the Financial Rights in the Company. Solely for purposes of this Section, a Member who has transferred his Financial Rights, but whose transferee has not become a Member, shall be deemed to hold the Financial Rights so transferred. If any Member fails to make his Capital Contribution within ten (10) days after notice of the capital call ("Defaulting Members") such failure shall not be a breach of this Agreement, and the amount which the Defaulting Member fails to contribute shall not be a personal debt obligation of the Defaulting Member. Such amount shall be payable only out of any distributions from the Company otherwise payable to the Defaulting Member (or his transferee). The Defaulting Member shall not be entitled to receive any distributions from the Company until all amounts due hereunder have been paid in full.

3.8 Indemnification.

Each Member shall and does hereby agree to indemnify and hold harmless the Company and the other Members from any and all liabilities, losses, costs, damages, or expenses (including, without limitation, the costs of litigation and reasonable attorneys' fees) arising out of, resulting from, or in any way related to the misrepresentation or breach of any representation or warranty of such Member set forth in this Agreement.

ARTICLE IV Member Meetings

4.1 Classes and Voting.

Unless otherwise provided by this Agreement, there shall be one class of Members. Each Member shall have the Voting Rights prescribed on Exhibit A.

4.2 Place of Meetings.

All meetings of the Members shall be held at the Company's principal place of business, or at such other place as shall be agreed upon by those Members who own fifty-one percent (51%) of the Voting Rights in the Company.

4.3 Time of Meeting.

Meetings of the Members may be called at any time by any Member by delivery to all Members of written notice at least seven (7) days in advance of the proposed meeting date. The notice shall contain the time, date, and place of the meeting.

4.4 Member Voting and Quorum.

Each Member shall be entitled to vote in proportion to his Voting Rights in the Company. In order for any vote of the Members to be valid, a quorum must be represented at the meeting

either in person or by proxy. Fifty-one percent (51%) of the Voting Rights in the Company constitutes a quorum.

4.5 Voting by Certain Members.

Voting Rights owned by a corporation or other business entity may be voted by the officer, agent, or proxy as the by-laws of that corporation or other governing instruments of the business entity prescribe, or, in the absence of such provision, as the board of directors or other governing body of the corporation or entity may determine.

Voting Rights owned by an administrator, executor, personal representative, or guardian may be voted by him, either in person or by proxy, without a transfer of such Voting Rights into his name. Voting Rights owned by a trustee may be voted by him, either in person or by proxy, but no trustee shall be entitled to exercise any Voting Rights held by him without a transfer of the Voting Rights into his name.

Voting Rights owned by a receiver may be voted by the receiver, and Voting Rights owned by or under the control of a receiver may be voted by the receiver without the transfer thereof into his name if authority so to do is contained in an appropriate order of the court by which such receiver was appointed.

A Member whose Membership Shares or Voting Rights are pledged (if otherwise permitted hereunder) shall be entitled to vote such Voting Rights until the Voting Rights have been transferred into the name of the pledgee and thereafter the pledgee shall be entitled to vote the Voting Rights so transferred.

4.6 Proxies.

Members may vote by proxy appointed by an instrument in writing. A proxy shall be delivered to the other Members before the meeting at which it is to be voted and shall not be valid after the final adjournment of the meeting.

4.7 Waiver of Notice.

A Member may waive notice of any meeting by a signed writing. In addition, a Member who attends a meeting waives his right to assert any lack of notice, or defect in notice, of the meeting unless he states such objection at the outset of the meeting.

4.8 Manner of Meetings.

Members may participate in meetings by means of telephone conference or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting as provided herein shall constitute presence in person at such meeting.

4.9 Action without Meeting.

The Members may take action without notice and a meeting if all the Members consent to such action and sign a Written Consent of the Members that sets forth the action to be taken.

ARTICLE V
Management and Control

5.1 General Authority.

The Company shall be member managed, as defined in the Act. Except as otherwise expressly provided by this Agreement, any matter relating to the business and affairs of the Company shall be decided by those Members who own fifty-one percent (51%) of the Voting Rights in the Company. Such Members, or their authorized delegates, shall have full and complete authority, power, and discretion to manage and control the business, affairs, and properties of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company's business. Without limiting the generality of the foregoing, they shall have the power and authority on behalf of the Company to:

- (a) Acquire property, real, personal, tangible and intangible;
- (b) Borrow money for the Company from banks, other lending institutions, and other Persons and to hypothecate, encumber, and grant security interests in the assets of the Company to secure payment of the borrowed sums;
- (c) Purchase liability and other insurance to protect the Company and the Members;
- (d) Hold, own, invest and reinvest, purchase and sell, any property, real, personal, tangible and intangible, in the name of the Company, including, but not limited to, deeds, mortgages, leasehold interests, general partnerships, limited partnerships, limited liability companies, common trust funds, mutual funds, stocks, options, warrants, rights, puts, calls, contracts, futures, bonds, debentures, securities (public and private), and other debt and equity interests of any kind or nature, and to actively trade, speculate on, maintain, and manage the same;
- (e) Enter into, make, and perform contracts, agreements, and other undertakings binding on the Company that may be necessary, appropriate, or advisable in furtherance of the purposes of the Company and make all decisions and waivers thereunder;
- (f) Employ accountants, legal counsel, managing agents, money managers, property managers, investment advisors, and other advisors to perform services for the Company and to compensate them out of Company Property;
- (g) Screen, interview, and examine staff and personnel to be employed by the Company;
- (h) Open and maintain bank and investment accounts and arrangements, draw checks, letters of credit, and other orders for payment of money and designate individuals with authority to sign or give instructions with respect to those accounts and arrangements;
- (i) Pay debts and obligations of the Company to the extent that Company Property is available;

(j) Sell, purchase, lease, loan, borrow, rent, repair, partition, mortgage, pledge, encumber, develop, improve, subdivide, or otherwise deal with any property, including Company Property;

(k) Collect sums due the Company and bring suit on the Company's behalf or defend the Company in any action, and compromise, settle, collect, and otherwise represent, prosecute, and defend the legal rights and interests of the Company;

(l) File on behalf of the Company a voluntary petition for bankruptcy, or bring an action on behalf of the Company for receivership, insolvency, or other similar relief in any court of competent jurisdiction, and to defend, answer, respond, and otherwise represent the Company in any such action or proceeding; and

(m) Perform all other acts as may be necessary or appropriate to the conduct of the Company's business, and to execute, acknowledge, verify, and deliver any or all instruments desirable to effectuate any of the foregoing.

5.2 Additional Voting Requirements for Certain Major Decisions.

Notwithstanding anything herein to the contrary, the following major decisions shall require approval of the Members in the percentages designated:

(a) Any amendment to this Agreement or the Articles of Organization shall require the approval of those Members who own one hundred percent (100%) of the Voting Rights in the Company.

(b) The Company shall not compromise, settle, waive, or limit the obligation of any Member to make a Capital Contribution to the Company without the consent of those Disinterested Members who own one hundred percent (100%) of the Voting Rights owned by all Disinterested Members.

(c) The Company shall not sell, or contract to sell, or otherwise dispose of all or substantially all of the Company Property without the approval of those Members who own one hundred percent (100%) of the Voting Rights in the Company. For purposes of this subsection, all or substantially all of the Company Property means eighty-five percent (85%) of such property by value.

(d) The Company shall not enter into any merger, or any profit sharing, joint venture, or other such arrangement without the approval of those Members who own one hundred percent (100%) of the Voting Rights in the Company.

5.3 Delegation.

The Members may authorize or delegate any of their authority to any Person from time to time to act on their behalf.

5.4 Ratification.

The Members may ratify and adopt any and all acts of any Person done on behalf of the Company.

5.5 Personal Services.

No Member shall be required to perform any services for the Company by virtue of being a Member of the Company.

5.6 Compensation for Services.

Those Members who provide services to the Company shall be entitled to reasonable compensation from the Company in an amount to be determined by by one hundred percent (100%) of the Disinterested Members. Such compensation shall be paid in the form of guaranteed payments under Section 707(c) of the Code. Also, the Members shall be entitled to reimbursement for all expenses reasonably incurred by them on behalf of the Company.

5.7 Officers.

Those Members who own one hundred percent (100%) of the Voting Rights in the Company may, from time to time, designate one or more individuals to be officers of the Company. Any officers so designated shall have such authority and perform such duties as the Members may, from time to time, delegate to them. The Members may assign titles to particular officers. Unless the Members decide otherwise, if the title is one commonly used for officers of a business corporation, the assignment of such title shall constitute the delegation to such officer of the authority and duties that are normally associated with that office. Any number of offices may be held by the same Person. Designation of a person as an officer shall not of itself create an employment agreement or any other contract rights. Each officer shall hold office until his successor shall be duly designated and qualified, or until his death or until he shall resign or shall have been removed, with or without cause, by those Members who own one hundred percent (100%) of the Voting Rights in the Company.

ARTICLE VI**Fiduciary Duties; Right to Rely; Indemnification****6.1 Duty of Loyalty.**

A Member's duty of loyalty to the Company and the other Members is limited to the following:

- (a) To account to the Company and to hold as trustee for the Company any property, profit, or benefit derived by the Member in the conduct or winding up of the Company's business or derived from a use by the Member of the Company's property, including the appropriation of a Company opportunity;
- (b) To refrain from dealing with the Company in the conduct or winding up of the Company's business as or on behalf of a party having an interest adverse to the Company; and
- (c) To refrain from competing with the Company in the conduct of the Company's business before dissolution of the Company.

With the consent of one hundred percent (100%) of the Disinterested Members, such Disinterested Members may identify specific types or categories of activities that do not violate

the duty of loyalty, if not manifestly unreasonable. With the consent of one hundred percent (100%) of the Disinterested Members, such Disinterested Members may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty.

Notwithstanding anything herein to the contrary, the Members and the Company acknowledge and agree that some or all of the Members, and/or their Family members, either directly or indirectly through other Persons, are engaged in other business and investment activities which may be considered to compete with or be adversarial to the business conducted by the Company; however, the Members and the Company intend and agree that they shall have no interest or rights with respect to any business, investment, or other activities of the Members or their Family members carried on outside the Company. The Members are sophisticated investors and are aware of the extent of the other Members' business and investment activities. No Member shall be under any obligation to disclose any business opportunity to the Company or the other Members. The fiduciary duties of the Members shall be limited to their dealings with the Company Property.

6.2 Duty of Care.

In carrying out his duties and exercising his powers hereunder, each Member shall act in a manner he believes in good faith to be in the best interests of the Company and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. Subject to the preceding sentence, no Member shall be liable, responsible, or accountable in damages or otherwise to the Company or the other Members for any acts performed or omitted by him in good faith and within the scope of this Agreement.

6.3 Fiduciary Duties.

Each Member shall discharge his duties and exercise any of his rights consistently with the obligation of good faith and fair dealing which he owes to the Company and the other Members. A Member does not violate a duty or obligation to the Company merely because the Member's conduct furthers the Member's own interest. A Member may lend money to and transact other business with the Company. As to each loan or transaction, the rights and obligations of the Member are the same as those of a Person who is not a Member, subject to other applicable law.

6.4 Right to Rely.

The Members shall not be held liable to the Company, or to the other Members, for relying in good faith upon the records required to be maintained by this Agreement and upon such information, opinions, reports, or statements by any of the Members, attorneys, accountants, agents, advisors, or any other Person who has been selected with reasonable care by or on behalf of the Company, as to matters the Member reasonably believes are within such other Person's professional or expert competence.

6.5 Indemnification of Members.

To the fullest extent allowed by law, the Members shall be indemnified and held harmless by the Company for any liability resulting from any act performed or omission made by them in good faith on behalf of the Company, except for acts or omissions of intentional misconduct or

knowing violation of the law and any transaction for which the Member received a personal benefit in violation or breach of any provision of this Agreement.

6.6 Duty of Confidentiality.

Each Member hereby warrants, covenants, and agrees that he will not furnish, divulge, communicate, use to the detriment of the Company, or use for the business of any other Person, any of the Company's confidential information, including but not limited to pricing information, data, sales methods, know how, processes, licenses, trade secrets, names of customers, customer lists, names of Members, or the partners, shareholders, members, or other principals of any Member, future plans, accounting, marketing, financial data, or contract information. Each Member agrees to return all documents which contain any confidential information and all copies of such documents upon request by the Company.

ARTICLE VII Capital Accounts and Accounting

7.1 Capital Accounts.

The Company shall establish for each Member a Capital Account, which shall be maintained in accordance with Section 704 of the Code and the capital account rules set forth in Treasury Regulations Section 1.704-1(b).

7.2 Compliance with Section 704(b) of the Code.

The provisions of this Agreement as they relate to the maintenance of Capital Accounts and allocations of Profits and Losses are intended, and shall be construed, and, if necessary, modified to cause the allocations of Profits, Losses, Gain, income, deductions, credit, and other items pursuant to this Agreement to have substantial economic effect within the meaning of the Treasury Regulations promulgated under Section 704(b) of the Code. Notwithstanding anything herein to the contrary, this Agreement shall not be construed as creating a deficit restoration obligation.

7.3 Partnership Representative.

Edward Clay is designated the initial partnership representative of the Company, as defined in Section 6223(a) of the Code. The Company may designate a new partnership representative from time to time without amending this Agreement.

ARTICLE VIII Interim Distributions and Allocations

8.1 Distributions.

Distributions to the Members shall be made in accordance with the following:

(a) First, the Company shall distribute to those Members who have provided services to the Company the compensation to which each is entitled under Article V. Such distributions shall be guaranteed payments within the meaning of Section 707(c) of the Code.

(b) From time to time those Members who own fifty-one percent (51%) of the Voting Rights in the Company shall determine to what extent, if any, the Company's Net Cash Flow exceeds the current and anticipated needs of the Company's business. Any Company Net Cash Flow in excess of such amounts shall be distributed to the Members.

(c) Notwithstanding anything herein to the contrary, within seventy-five (75) days after the end of each calendar year, the Company shall distribute to the Members an amount equal to forty percent (40%) of the Company's income that is taxable to the Members for federal income tax purposes for the immediately preceding calendar year. The amount of the distribution required under this subsection shall be reduced by all distributions which previously have been made from the Company to the Members pursuant to this Section for such calendar year other than guaranteed payments within the meaning of Section 707(c) of the Code.

Except as otherwise provided in this Agreement, all distributions to the Members must be made simultaneously to each of the Members and must be made in proportion to the Members' Financial Rights. Such distributions may be in cash or Company Property or partly in both. Items of Company Property need not be distributed proportionately, provided the Members agree upon the value of the property being distributed and the value of the property and the cash received by each Member is proportionate to his Financial Rights.

Subject to the Act, at the time that a Member becomes entitled to receive a distribution, the Member has the status of and is entitled to all remedies available to a creditor of the Company with respect to the distribution.

8.2 Restrictions on Distributions.

Notwithstanding anything herein to the contrary, no distribution to any Member may be made if after giving effect to the distribution either (a) the Company would not be able to pay its debts as they become due in the ordinary course of business, or (b) the Company's total assets would be less than the sum of its total liabilities plus the amount that would be needed if the Company were to be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up, and termination of Members whose preferential rights are superior to those receiving the distribution. The provisions of Section 14-11-407 of the Act shall apply in construing this Section.

8.3 Calculation of Profits and Losses.

The Profits and Losses of the Company for each fiscal year or other period shall be the taxable income or loss of the Company for such year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss, or deduction required to be separately stated pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(a) Any Company income which is exempt from federal income tax and not otherwise taken into account in computing Profits and Losses pursuant to this subsection shall be added to such taxable income or loss.

(b) Any expenditures of the Company described in Code Section 705(a)(2)(B) (expenditures of the Company not deductible in computing its taxable income and not

properly chargeable to a capital account) or treated as such expenditures pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(i)(2) and (3) (organizational expenditures which the Company elects not to amortize under Code Section 709(b) and certain disallowed losses) and not otherwise taken into account in computing Profits and Losses pursuant to this subsection shall be subtracted from such taxable income or loss.

(c) Gain or loss with respect to the disposition of Company Property with respect to which gain or loss is recognized for federal income tax purposes shall be computed based upon the “adjusted book value” (as determined in the Treasury Regulations promulgated under Code Section 704) of such property without regard to the adjusted basis.

(d) Depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss shall, for purposes of this subsection, be based upon the “adjusted book value” (as determined in the Treasury Regulations promulgated under Section 704) of Company Property.

(e) Notwithstanding any other provision of this Section 8.3, any items which are specifically allocated pursuant to Section 8.11 shall not be taken into account in computing Profits and Losses.

8.4 Allocation of Profits and Losses.

The Profits and Losses of the Company for any fiscal year of the Company shall be allocated among the Members in accordance with their Financial Rights. The proceeds of any life insurance policy insuring the life of a Member which are received by the Company shall be allocated to the surviving Member(s), and the deceased Member, his estate, successors, or legal representatives shall have no interest in or distributive share of such proceeds.

8.5 Tax Item Allocation.

Unless otherwise specially allocated herein, whenever a proportionate part of Profits or Losses is charged or credited to the Capital Account of a Member, every item of income, gain, loss, deduction, credit, allowance, or tax preference entering into the computation of such Profits or Losses or applicable to the period during which such Profits or Losses were realized shall be considered credited or charged, as the case may be, to such Capital Account in the same proportion. In the event of a transfer of Financial Rights in the Company at any time other than at the end of the Company’s tax year, the distributive share of Profits and Losses and any items of Company income, gain, loss, deduction, credit, or tax preference attributable to the transferred Financial Rights shall be apportioned for income tax purposes between the transferor and transferee in accordance with the number of days in the taxable year of the Company that each was the owner of such Financial Rights.

8.6 Code Section 704(c).

In accordance with the provisions of Code Section 704(c), income, gain, loss, and deductions with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated to the Members so as to take account of any variation between the adjusted basis of such property and the Gross Asset Value at the time of contribution.

In the event the Gross Asset Value of any Company asset is adjusted pursuant to Section 1.1(s), subsequent allocations of income, gain, loss, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the same manner as under Code Section 704(c) and the Regulations thereunder.

Any elections or other decisions relating to such allocations shall be made by the Members in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this Section 8.6 are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of the Profits, Losses, other items, or distributions pursuant to any provision of this Agreement.

8.7 Nonrecourse Deductions.

Notwithstanding anything herein to the contrary, beginning in the first taxable year of the Company in which there are nonrecourse deductions, all nonrecourse deductions and distributions of proceeds attributable to nonrecourse borrowing (as defined in Treasury Regulations Section 1.704-2) shall be allocated in accordance with the Members' Financial Rights or in any other manner that is reasonably consistent with allocations that have substantial economic effect of some other significant Company item attributable to the property securing the nonrecourse liabilities. Items attributable to a particular Member's nonrecourse liability (as defined in Treasury Regulations Section 1.704-2(b)(4)) shall be allocated to the Member that bears the economic risk of loss for the liability.

8.8 Minimum Gain Chargeback Requirements.

Except as otherwise provided in Treasury Regulations Section 1.704-2(f), if there is a net decrease in Company minimum gain (as determined under Treasury Regulations Section 1.704-2(d)) for the Company's taxable year, each Member must be allocated items of income and gain for that taxable year equal to that Member's share of the net decrease in Company minimum gain. A Member's share of the net decrease in Company minimum gain is the amount of the total net decrease multiplied by the Member's percentage share of Company minimum gain at the end of the immediately preceding taxable year (as determined in Treasury Regulations Section 1.704-2(g)). A Member is not subject to this minimum gain chargeback requirement to the extent the Member's share of the net decrease in Company minimum gain is caused by a guarantee, refinancing, or other change in the debt instrument causing it to become partially or wholly a recourse liability or a Member nonrecourse liability, and the Member bears the economic risk of loss (within the meaning of Treasury Regulations Section 1.752-2) for the newly guaranteed, refinanced, or otherwise changed liability.

If during a taxable year there is a net decrease in Member nonrecourse debt minimum gain (as determined under Treasury Regulations Section 1.704-2(i)(2)), any Member with a share of that Member nonrecourse debt minimum gain (as determined under Treasury Regulations Section 1.704-2(i)(5)) as of the beginning of that taxable year must be allocated items of income and gain for that taxable year (and, if necessary, for succeeding taxable years) equal to that Member's share of the net decrease in the Member nonrecourse debt minimum gain. A Member's share of the net decrease in Member nonrecourse debt minimum gain is determined in

a manner consistent with the provisions of Treasury Regulations Section 1.704-2(g)(2). A Member is not subject to this minimum gain chargeback requirement, however, to the extent the net decrease in Member nonrecourse debt minimum gain arises because the liability ceases to be Member nonrecourse debt due to a conversion, refinancing, or other change in the debt instrument that causes it to become partially or wholly a nonrecourse liability. The amount that would otherwise be subject to the member nonrecourse minimum gain chargeback is added to the Member's share of Company minimum gain under Treasury Regulations Section 1.704-2(g)(3).

8.9 Qualified Income Offset.

Unless otherwise agreed, a Member is not required to fund any deficit in the Member's Capital Account at any time. However, if a Member unexpectedly receives an adjustment, allocation, or distribution described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5), or (6), and the unexpected adjustment, allocation, or distribution results in a deficit balance in the Capital Account for the Member (or a deficit balance in excess of any limited dollar amount the Member is obligated to restore), the Member will be allocated items of income and gain consisting of a pro rata portion of each item of Company income and gain for such year in an amount and manner sufficient to eliminate the deficit balance or the increase in the deficit balance as quickly as possible. This Section will be interpreted, applied, and if necessary modified to constitute a "qualified income offset" as defined in Treasury Regulations Section 1.704-1(b)(2)(ii)(d).

8.10 Section 754 Adjustments.

To the extent an adjustment to the adjusted tax basis of any Company Property pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Regulations Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Members in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such Section of the Regulations.

8.11 Curative Allocations.

The allocations set forth herein are intended to comply with the Regulations promulgated under Section 704 of the Code and in the event that any allocation is required to be made pursuant to such Regulations ("Regulatory Allocations"), then such Regulatory Allocations shall be taken into account in allocating items of income, gain, loss, and deduction among the Members so that, to the extent possible, the net amount of such allocations of other items and the Regulatory Allocations to each Member shall be equal to the net amount that would have been allocated to each such Member if the Regulatory Allocations had not occurred. The Members shall have reasonable discretion, with respect to each Company tax year, to apply the provisions of this Section 8.11 in whatever order is likely to minimize the economic distortions that might otherwise result from the Regulatory Allocations.

8.12 Distributions Subject to Set-Off.

Except as otherwise provided in this Agreement, all distributions are subject to set-off by the Company for any past-due obligation of a Member to the Company.

**ARTICLE IX
Dissolution, Winding Up, and Termination****9.1 Dissolution.**

Except as otherwise provided herein, the Company shall dissolve, its affairs shall be wound up, and the Company shall terminate only upon the happening of one or more of the following events:

- (a) The written consent of those Members who own fifty-one percent (51%) of the Voting Rights in the Company;
- (b) Any event occurs that makes it unlawful for all or substantially all of the business of the Company to be continued, but any cure of illegality within ninety (90) days after notice to the Company of the event is effective retroactively to the date of the event for purposes of this subsection;
- (c) The filing by the Secretary of State of a certificate administratively dissolving the Company pursuant to the Act, unless the Company is reinstated in accordance with the Act.
- (d) A decree of judicial dissolution entered by a court of competent jurisdiction.

9.2 Winding Up: Powers and Duties of Liquidator.

Except as otherwise provided herein, following dissolution of the Company, those Members who own fifty-one percent (51%) of the Voting Rights in the Company shall appoint one or more Members or an independent third party to serve as liquidator. The liquidator shall have full authority in winding up the Company's affairs. The liquidator shall:

- (a) Deliver notice of the Company's dissolution to all of the Company's known claimants and creditors in the form and manner described in the Act;
- (b) Publish notice of the Company's dissolution as provided in the Act;
- (c) Make final liquidating distributions as provided below, and distribute any Company Property discovered after any such final liquidating distributions in the manner described below; and
- (d) After dissolution and the completion of winding up, file a Certificate of Termination with the Nevada Secretary of State to terminate the legal existence of the Company in accordance with the Act.

9.3 Sale of Company Property.

Unless otherwise agreed by those Members who own fifty-one percent (51%) of the Voting Rights in the Company, the liquidator shall first attempt to sell all or any part of the Company's business as a going concern. If any such sale or partial sale is not consummated within six (6)

months after the date of the dissolution, or such other period of time agreed to by such Members, the liquidator shall publish notice that all unsold Company assets are for sale and solicit bids for such assets. Any Company assets which remain unsold six (6) months after the date of the first publication of such notice shall be marshaled and auctioned by the liquidator. All assets unsold after the auction shall be distributed in kind in the manner described below.

9.4 Distribution in Kind.

The Company may distribute assets in kind to satisfy any or all of its obligations. If the Company will distribute assets in kind, the Members shall have thirty (30) days to agree upon the fair market value of such assets. If the Members cannot agree on the fair market value of any asset, the liquidator shall hire an independent appraiser to determine the fair market value of the asset in question. Any property distributed in kind shall be treated in accordance with Sections 721, 736, 737, and 751 of the Code. The liquidator shall adjust the Members' Capital Accounts to reflect any gain or loss which would have been allocated had such property been sold for its fair market value.

9.5 Final Liquidating Distributions.

After the sale of all Company assets, or the determination of fair market value for distribution in kind of Company assets, the liquidator shall apply the proceeds of the sale or the Company assets as follows:

(a) Payment or adequate provision for payment shall be made to creditors, including the liquidator if the liquidator is not a Member, for reimbursement for out-of-pocket expenses incurred and reasonable compensation for services rendered in connection with winding up the Company, and to the extent permitted by law, to Members who are creditors in satisfaction of liabilities of the Company;

(b) If the liquidator is a Member, to the liquidator for reimbursement for out-of-pocket expenses incurred and reasonable compensation for services rendered in connection with winding up the Company;

(c) All remaining cash and other assets shall be distributed to the Members in accordance with their positive Capital Account balances, determined after taking into account all Capital Account adjustments for the taxable year of the Company during which the distribution occurs.

9.6 Deficit Capital Account Balances.

Any deficit in a Member's Capital Account shall not be an asset of the Company, and no Member or transferee of all or any part of a Membership Share shall be obligated to contribute any amount to the Company in excess of any limited dollar amount the Member or transferee has otherwise agreed to restore.

9.7 Final and Complete Distribution.

The distributions provided for in this Article shall constitute a complete return of the Members' Contributions to Capital, and a final and complete distribution to the Members in satisfaction of all of their rights in the Company.

9.8 Duties during Winding Up.

The duty of loyalty, duty of care, and other fiduciary duties set forth in this Agreement shall apply to any Person winding up the Company's business.

ARTICLE X
Cessation

10.1 Events of Cessation.

The provisions of the Act relating to cessation shall not apply to the Company. No Member shall have the power to withdraw from the Company except as provided herein. Only the occurrence of one or more of the following events with respect to a Member shall constitute the cessation of such Member:

- (a) Withdrawing, retiring, or resigning from the Company with the consent of those Members who own fifty-one percent (51%) of the Voting Rights in the Company; or
- (b) If a Member files a voluntary petition for bankruptcy, is adjudicated a bankrupt, or has a bankruptcy petition filed against him which is not dismissed within ninety (90) days; or
- (c) Entry of an order by a court of competent jurisdiction adjudicating a Member to be insane, the appointment of a guardian for a Member, or a judicial determination that a Member has otherwise become incapable of performing his duties under this Agreement; or
- (d) The giving by a Member of notice to the Company that the Member desires to transfer all or any portion of his Membership Share; or
- (e) The death of a Member; or
- (f) The Disability of a Member (Disability shall mean totally and permanently disabled for a period of twelve (12) months during a fifteen (15) consecutive month period so that a Member is unable to engage in his usual Company duties as determined by a doctor selected and paid by the Company); or
- (g) The engagement in Wrongful Conduct by a Member; or
- (h) The filing of a Petition or Complaint for Divorce, on any grounds, by a Member or Member's spouse resulting in all or a portion of a Member's Shares being transferred or awarded to a Person who is not a Member at the time of the filing; or
- (i) If a Member engages in any sale, merger, share exchange, partnership, joint venture, or other arrangement, including the issuance of new shares of stock or equity interests in the Member or in any Person that Controls the Member, and as a result of said transaction a Person who is not one of the group of Persons in Control of the Member, as of the date such Member became a party to this Agreement, takes Control of the Member; or
- (j) The filing of a Certificate of Dissolution, or the equivalent, for a Member that is a corporation, limited liability company, limited partnership, or other entity, or the lapse of

ninety (90) days after notice to such Member of revocation of its charter without a reinstatement of its charter.

10.2 Effect of a Member's Cessation.

Unless otherwise provided in Article IX, the Cessation of a Member does not dissolve the Company. The right of a Ceased Member to be compensated for his Membership Share shall be governed exclusively by Article XI and not the Act. The parties waive any right they may have to assert that the Act or any other provision of law supersedes or modifies the provisions of this Agreement relating to the cessation of a Member's participation in the Company.

10.3 Effect on Cessation if There is Only One Remaining Member.

If a Triggering Event occurs that would cause the sole Member to be a Ceased Member, such Triggering Event shall not be deemed to cause the Cessation of such Member, but instead all rights associated with such Member's Membership Share shall be held by such Member's personal representative, power of attorney, trustee, conservator, receiver, liquidator, or similar fiduciary. Should a Triggering Event occur that causes simultaneous Cessation of all Remaining Members, then such Members shall not be treated as Ceased Members, but instead all rights associated with such Members' Membership Share shall be held by such Members' personal representative, power of attorney, trustee, conservator, receiver, liquidator, or similar fiduciary.

ARTICLE XI

Restrictions on Transfer and Buy-Sell Provisions

11.1 Restrictions on Transfer.

No Member may Transfer any portion or all of his Membership Share to any Person without the prior written consent of those Members who own fifty-one percent (51%) of the Voting Rights in the Company (without regard to the Member desiring to transfer his Membership Share). If such consent is obtained, the provisions of Article III shall govern the rights of the transferor and transferee. Any attempted conveyance or encumbrance of all or a portion of a Membership Share not expressly permitted herein shall be null, void, and without effect.

11.2 Right to Purchase.

(a) Cessation for Reasons Other Than Death. If a Member Cessation occurs within the meaning of Article X ("Triggering Event") other than by reason of death, then - such Member ("Ceased Member") is deemed to have offered to the Company all of his Membership Share at the price determined in accordance with Section 11.3 and upon the terms contained in Section 11.4.

If the Company does not accept said offer within ten (10) days after receiving written notice of the Triggering Event from the Ceased Member (or his estate or other legal representative, as the case may be) and the determination of the purchase price, then such Ceased Member's Membership Share shall be offered in writing, at the same price and upon the same terms, to the other Members ("Remaining Members") by delivery of written notice to them. The Company and/or the Remaining Members may accept the offer by

delivering written notice to the Ceased Member. If the Company and/or the Remaining Members accept the offer, then all of the Membership Share offered for sale must be purchased by the Company and/or the Remaining Members. In the event more than one offeree accepts the offer, those accepting shall purchase in proportion to their Membership Shares, unless they agree otherwise.

If none of the Remaining Members accept the offer to purchase the Ceased Member's Membership Share within ten (10) days after receipt of written notice by them, then the Membership Share may be offered for sale to any Person, provided that such Membership Share shall be sold for at least the same price and upon the same terms at which it was offered to the Company and the Remaining Members.

In the event any sale of a Membership Share to a third Person shall not be consummated within sixty (60) days after the expiration of the Remaining Members' option to purchase, the Membership Share or any portion thereof may not be transferred unless the same shall be offered again to the Company and the Remaining Members in the manner and in accordance with the terms herein provided.

(b) Death. Notwithstanding anything herein to the contrary, upon the death of a Member, the Company shall purchase, and the estate of the decedent, or his successor in interest by operation of law shall sell all of the decedent's Membership Share in the Company now owned or hereafter acquired. The purchase price of such Membership Share shall be computed in accordance with the provisions of Section 11.3 and paid in accordance with the provisions of Section 11.4.

11.3 Purchase Price.

Unless the Member offering the Membership Share hereunder and those Remaining Members who own fifty-one percent (51%) of the Voting Rights agree otherwise, the purchase price shall be determined in accordance with the following:

The purchase price shall be the Appraised Value (as defined herein) of the Membership Share as of the date of the Triggering Event. Appraised Value shall mean the Fair Market Value (as defined below) of the Membership Share, without taking any applicable minority, lack of marketability, and other similar type discounts, including, but not limited to, those related to undivided interests in real estate, voting versus non-voting interests, blockage, key-person, or portfolio issues, obtained by agreement of two (2) appraisers, one appointed by the seller and one appointed by fifty-one percent (51%) of the Remaining Members on behalf of the Company. The seller and Company must appoint their respective appraisers by delivering notice of the identity of their respective appraisers to each other within thirty (30) days after Company receives written notice of the Triggering Event from the Ceased Member (or his estate or other legal representative, as the case may be). If the two (2) appraisers cannot agree on an Appraised Value within thirty (30) days after the last of them is appointed, then within five (5) days, they shall appoint a third appraiser to value the Membership Share. The third appraiser shall determine the Appraised Value within thirty (30) days after his appointment. The Appraised Value shall be the average of the two (2) appraisals which are closest to each other. In the event the third appraiser's determination of the Appraised Value is an exact average of the first two appraisals, then such third appraiser's determination shall be the Appraised Value. Fair Market

Value is defined as the cash equivalent price at which property would change hands between a hypothetical willing buyer and a hypothetical willing seller, neither being under a compulsion to buy or sell and both having reasonable knowledge of relevant facts. The hypothetical buyer and seller are assumed to be able, as well as willing, to trade and are assumed to be well-informed about the property and concerning the market for such property. The seller and the Company - shall each pay the costs of the appraiser appointed by them, and one-half (1/2) of the cost of the third appraiser. The purchase price as determined herein shall be conclusive and binding on the parties, their personal representatives, legal representatives, heirs, successors and assigns. If any party fails to appoint an appraiser within the time required herein, the purchase price determined by the appraiser appointed by the other party shall be conclusive and binding upon the seller and purchaser(s), their personal representatives, legal representatives, heirs, successors, and assigns.

11.4 Payment of Purchase Price.

The closing of the purchase shall take place at the principal place of business of the Company within sixty (60) days after the purchase price has been determined and an offer accepted, or at such other date and place as the parties may agree.

Unless the parties mutually agree otherwise, ten percent (10%) of the purchase price shall be paid in cash at closing with the balance due in a five (5)-year promissory note at the then existing mid-term applicable federal interest rate.

Further, if a selling Member has personally guaranteed payment of any debt, obligation, or liability of the Company, then the purchaser(s) of the Member's Membership Share shall make reasonable efforts to have such Member (or his estate or successor(s)) released from such guarantee. If the lender or creditor refuses to release such Member, then the Company and the other Members, if the Company is purchasing the Membership Share, (or the purchasing Member(s) only if the Company is not purchasing the Membership Share), shall in writing, jointly and severally, indemnify and hold harmless such selling Member (or his estate, as the case may be) from payment of said debt, obligation, or liability.

11.5 Permitted Transfers.

Any of the Members may transfer a Membership Share without the provisions of this Article XI applying if the transferee is a revocable trust created by a Member that benefits that Member during his lifetime. Additionally, the following transfers are permitted without the provisions of this Article XI applying: (1) any transfer to a successor trustee of the same revocable trust where the original transferor to the revocable trust is still living and (2) any transfer from a revocable trust to the Member that made the original transfer to the revocable trust. The death of any Member whose Membership Share or any portion thereof is held in a revocable trust shall be treated as a Triggering Event under Section 10.1(e). A transfer other than as permitted in this Section 11.5 shall be subject to the provisions of this Article XI.

ARTICLE XII
Resolution of Deadlock

12.1 Deadlock Resolution.

(a) “Deadlock” means a dispute among the Members, including the inability to agree on a vote or other decision, that has continued for more than fifteen (15) days, that is not resolved by the provisions on voting contained herein, concerning the business or affairs of the Company; provided, however, that a Deadlock shall not include any dispute regarding an interpretation of any terms or conditions of this Agreement; provided further, that a Deadlock shall not include the failure of the Members to approve any matter requiring unanimous approval under Section 5.2. In the event the Members reach a Deadlock, each Member agrees to submit the decision to non-binding mediation to attempt to resolve the dispute. Mediation must be requested by any Member or group of Members with the service of a written notice of such request on the other Members. All negotiations pursuant to this Section shall be confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

(b) In the event the Deadlock has not been resolved within thirty (30) days after the date any Member or group of Members first demanded mediation in writing (“Resolution Date”) or mediation is attempted and fails, then any Member or group of Members (“Offering Member”) shall have the right for ten (10) days after the Resolution Date or date of failed mediation, as the case may be, to serve a notice in writing making both an offer to buy and sell, stipulating the price per unit which the Offering Member will purchase all of the units of the Company held by the other Members (“Offeree Members”) or at which the Offering Member will sell all of the units of the Company held by the Offering Member to the Offeree Members, together with the terms upon which the purchase or sale shall be completed. The first Member or group of Members to serve a notice in written shall be deemed to be the Offering Member. The price and terms for the Offering Member’s offer to purchase and offer to sell must be the same. The Offeree Members shall have a period of sixty (60) days from the service of such notice in which to notify the Offering Member, in writing, as to whether the Offeree Members elect to purchase the Offering Member’s units at said price, or to sell to the Offering Member the Offeree Members’ units at the same price. In absence of a response from the Offeree Members, the Offeree Members shall be deemed to have served notice of their willingness to sell all of their remaining units and such deemed notice shall be effective as of the forty-fifth (45th) day following service of notice by the Offering Member. Any group of Members acting as the Offering Member or Offeree Members as defined under this Section 12.1 shall purchase the units pro rata.

(c) In the event no offer is made in the ten (10) day period following the Resolution Date or date of failed mediation, as the case may be, the Member or group of Members who requested mediation shall serve a notice, in writing within ten (10) days of the expiration period provided for in Section 12.1, paragraph (b), making both an offer to buy and sell, stipulating the price per unit which the Member or group of Members (“Mediation Offering Member”) will purchase all of the units of the Company held by the other Members (“Offeree Members”) or at which the Mediation Offering Member will sell all of the units of the Company held by the Mediation Offering Member to the Offeree Members, together with the terms upon which the purchase or sale shall be completed. The price and terms for the Mediation Offering Member’s offer to

purchase and offer to sell must be the same. The Offeree Members shall have a period of sixty (60) days from the service of such notice in which to notify the Mediation Offering Member, in writing, as to whether the Offeree Members elect to purchase the Mediation Offering Member's units at said price, or to sell to the Mediation Offering Member the Offeree Members' units at the same price. In absence of a response from the Offeree Members, the Offeree Members shall be deemed to have served notice of their willingness to sell all of their remaining units and such deemed notice shall be effective as of the forty-fifth (45th) day following service of notice by the Offering Member. Any group of Members acting as the Mediation Offering Member or Offeree Members as defined under this Section 12.1 shall purchase the units pro rata.

ARTICLE XIII Securities Provisions

13.1 Securities Notice.

The membership units have not been registered under the Securities Act of 1933, as amended, or the securities laws of any state. Each membership unit certificate shall have the following legend placed on it:

NEVADA SECURITY LEGEND

THE UNITS REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE NEVADA SECURITIES ACT OF 1980, AS AMENDED, IN RELIANCE UPON EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF SUCH ACTS, INCLUDING, WITHOUT LIMITATION, PARAGRAPH (B)(4) OF T.C.A. § 48-1-103 OF THE NEVADA SECURITIES ACT OF 1980, AS AMENDED. THE UNITS REPRESENTED BY THIS CERTIFICATE MAY NOT BE SOLD OR OTHERWISE TRANSFERRED, NOR WILL AN ASSIGNEE OR ENDORSEE HEREOF BE RECOGNIZED AS AN OWNER OF THE UNITS BY THE ISSUER UNLESS (I) A REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND APPLICABLE STATE SECURITIES LAWS WITH RESPECT TO THE UNITS AND THE TRANSFER SHALL THEN BE IN EFFECT, (II) IN THE OPINION OF COUNSEL SATISFACTORY TO THE ISSUER, THE UNITS ARE TRANSFERRED IN A TRANSACTION WHICH IS EXEMPT FROM THE REGISTRATION REQUIREMENTS OF SUCH LAWS, OR (III) A NO-ACTION LETTER OR ITS THEN EQUIVALENT WITH RESPECT TO SUCH SALE OR TRANSFER HAS BEEN ISSUED BY THE STAFF OF THE SECURITIES AND EXCHANGE COMMISSION AND BY THE SECURITIES DIVISION OF THE STATE OF NEVADA, IF APPROPRIATE. IN ADDITION, THE UNITS REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO THE RESTRICTIONS ON TRANSFER AND OTHER TERMS AND CONDITIONS SET FORTH IN THE OPERATING AGREEMENT AND MAY NOT BE OFFERED FOR SALE, PLEDGED, HYPOTHECATED, SOLD, ASSIGNED, OR TRANSFERRED EXCEPT IN COMPLIANCE WITH THE TERMS AND CONDITIONS OF THE OPERATING AGREEMENT AND ANY AMENDMENT THERETO.

ARTICLE XIV
Miscellaneous Provisions

14.1 Members' Rights to Receive Information.

(a) The Company shall provide Members and their agents and attorneys access to its records, if any, at the Company's principal office. The Company shall provide former Members and their agents and attorneys access for proper purposes to records pertaining to the period during which they were Members. The right of access provides the opportunity to inspect and copy records during ordinary business hours. The Company may impose a reasonable charge, limited to the costs of labor and material, for copies of records furnished.

(b) The Company shall furnish to a Member, and to the legal representative of a deceased Member or Member under legal disability:

(1) Without demand, information concerning the Company's business or affairs reasonably required for the proper exercise of the Member's rights and performance of the Member's duties under this Agreement and the Act; and

(2) On demand, other information concerning the Company's business or affairs, except to the extent the demand or the information is unreasonable or otherwise improper under the circumstances.

(c) A Member has the right upon written demand given to the Company to obtain at the Company's expense a copy of this Agreement.

14.2 Notices.

All notices, consents, requests, demands, offers, reports, or other communications required or permitted hereunder shall be in writing and hand delivered or sent by certified or registered mail, postage prepaid, and return receipt requested, to the Company at its principal place of business and to a Member at the address on Exhibit A attached hereto, or to such other address as may hereafter be designated by the giving of notice in accordance with this Section. All notices, consents, or other communications shall be deemed given when actually hand delivered, or upon the date of mailing in accordance with this Section.

14.3 Amendment or Modification.

The Operating Agreement may be amended and modified from time to time only by a written instrument adopted and executed by all Members as determined in Section 5.2(a).

14.4 Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Nevada regardless of the residence or domicile, now or in the future, of any party hereto and notwithstanding any conflicts of laws.

14.5 Waiver.

No waiver of any breach of any covenant, agreement, or undertaking contained herein shall operate as a waiver of any subsequent breach of the same covenant, agreement, or undertaking or as a waiver of any breach of any other covenant, agreement, or undertaking. In the case of a

breach by any party of any covenant, agreement, or undertaking, the nonbreaching party may nevertheless accept from the other, any payment or performance without waiving its right to exercise any right or remedy provided herein or otherwise, with respect to any such breach which was in existence at the time such payment or performance was accepted by it. No failure of any party to exercise any power given herein or to insist upon strict compliance with any covenant, agreement, or undertaking contained herein, or to object to any custom or practice which varies from the terms hereof, shall constitute a waiver of such party's right to demand exact compliance with the terms of this Agreement. The waiver by any party of a breach of any covenant, agreement, or undertaking contained herein shall be made only by a written waiver in each case, and no such waiver shall operate or be construed as a waiver of any prior or subsequent breach.

14.6 Severability.

If any provision of this Agreement shall, to any extent, be held invalid, illegal, or unenforceable, in whole or in part, the validity, legality, and enforceability of the remaining part of such provision, and the validity, legality, and enforceability of the other provisions hereof, shall not be affected thereby and each term, covenant, or condition shall be valid and enforceable to the fullest extent permitted by law. If any such invalidity shall be caused by the length of any period of time, the size of any area or the scope of activities set forth in any provision hereof, such period of time, such area or scope or all, shall be considered to be reduced to a period, area, or scope which would cure such invalidity. Any provision of this Agreement that is held invalid, illegal, or unenforceable in any jurisdiction shall not be deemed invalid, illegal, or unenforceable in any other jurisdiction.

14.7 Counterparts.

This Agreement may be executed in more than one counterpart, each such counterpart shall be deemed an original, and all such counterparts shall constitute one and the same agreement. This Agreement shall be effective when executed by all parties, but all parties need not execute the original or the same counterpart.

14.8 Captions.

The headings, titles, and captions of the Articles and Sections of this Agreement are inserted only to facilitate reference. They shall not define, limit, extend, or describe the scope or intent of this Agreement or any provision hereof, and they shall not constitute a part hereof or affect the meaning or interpretation of this Agreement or any part hereof.

14.9 Entire Agreement.

This Agreement embodies the entire understanding and agreement among the parties pertaining to the subject matter hereof, and all prior or contemporaneous representations, agreements, and understandings of the parties, whether written or oral, are superseded by this Agreement and shall be deemed merged herein.

14.10 Binding Effect.

This Agreement shall be binding upon, shall inure to the benefit of, and shall be enforceable by and against all the parties and their respective heirs, legal representatives, personal representatives, successors, and permitted assigns. Nothing in this Agreement, expressed or

implied, is intended to or shall confer upon any Person other than the parties, and their respective heirs, legal representatives, personal representatives, successors, and permitted assigns, any rights, remedies, obligations, or liabilities.

14.11 Use of Terms.

Use of the terms “herein,” “hereby,” “hereunder,” “hereof,” “hereinbefore,” “hereinafter,” and other equivalent words refer to this Agreement in its entirety and not solely to the particular portion of the Agreement in which such word is used. Reference to “this Article,” “this Section,” or a similar reference to a specific part of this Agreement shall refer to the particular Article, Section or specific part in which such reference appears. Whenever used herein, any pronoun shall be deemed to include both the singular and plural and all genders.

14.12 Further Assurances.

In connection with this Operating Agreement and the transactions contemplated hereby, each Member shall execute and deliver any additional documents and instruments and perform any additional acts that may be necessary or appropriate to effectuate and perform the provisions of this Operating Agreement and those transactions.

14.13 Exhibits.

The exhibits attached to this Agreement are hereby made a part hereof and incorporated by reference. All such exhibits shall read as of the date of this Agreement or, as to any of the exhibits bearing a particular date, as of any other date specified therein.

14.14 Attorneys’ Fees.

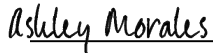
In the event that any party (“Defaulting Party”) defaults in an obligation under this Agreement and, as a result thereof, the other party (“Non-defaulting Party”) seeks to legally enforce rights hereunder against the Defaulting Party, then, in addition to all damages and other remedies to which the Non-defaulting Party is entitled by reason of such default, the Defaulting Party shall promptly pay to the Non-defaulting Party an amount equal to all reasonable costs and expenses (including, but not limited to, reasonable attorneys’ fees, litigation expenses, court costs, and expert witness fees) paid or incurred by the Non-defaulting Party in connection with such enforcement.

Operating Agreement of CPI MANAGEMENT GROUP, LLC

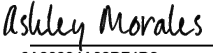
IN WITNESS WHEREOF, the undersigned have executed, with the intent to seal, this Operating Agreement as of the day and year first above written.

WITNESSES:

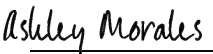
MEMBERS:

DocuSigned by:


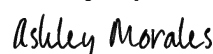
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
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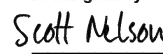
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DocuSigned by:


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DocuSigned by:

 _____ (L.S.)
 EDWARD CLAY

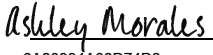
DocuSigned by:

 _____ (L.S.)
 FRANCISCO SILVA

DocuSigned by:

 _____ (L.S.)
 SCOTT NELSON

DocuSigned by:

 _____ (L.S.)
 DERRICK PERRY

COMPANY:

CPI MANAGEMENT GROUP, LLC

DocuSigned by:


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DocuSigned by:

 By: _____ (SEAL)
 Edward Clay, Member

EXHIBIT A

Member Name	Membership Units	Capital Contributed	Financial Rights	Voting Rights
Edward Clay 3535 W Harmon Ave, Las Vegas NV 89103	375	\$375	37.5%	37.5%
Francisco Silva 3535 W Harmon Ave, Las Vegas NV 89103	250	\$250	25%	25%
Scott Nelson 3535 W Harmon Ave, Las Vegas NV 89103	22.5	\$225	22.50%	22.50%
Dedrick Perry 3535 W Harmon Ave, Las Vegas NV 89103	15	\$150	15%	15%

EXHIBIT 2

BioRestorative Therapies, Inc.
40 Marcus Drive, Suite One
Melville, New York 11747

February 11, 2025

To: Francisco Silva

Reference is made to your email of February 3, 2025 and the Executive Employment Agreement, dated as of March 18, 2021, between BioRestorative Therapies, Inc. (the "Company") and you (the "Employment Agreement"). All capitalized terms used and not defined herein shall have the meanings ascribed to them in the Employment Agreement.

In your email, you seek to confirm the ownership of cell lines that were biologically derived from your children's umbilical cords and that were labeled as master cell line #VJS040119FS for Victor Silva and master cell line #041321FS for Selma Silva (collectively, the "FS Cell Lines").

The Company hereby acknowledges and confirms that you own the FS Cell Lines. This letter shall not be construed to limit your obligations under the Employment Agreement, including the restrictive covenants set forth in Section 7 of the Employment Agreement. In addition, except for the ownership of the FS Cell Lines, you remain bound by the provisions of Section 8 of the Employment Agreement with respect to the assignment of Developments to the Company.

Very truly yours,

BIORESTORATIVE THERAPIES, INC.

DocuSigned by:
Lance Alstodt
By: _____
74EF60FA24034EC...
Lance Alstodt
Chief Executive Officer

Agreed:

DocuSigned by:
Francisco Silva

30AGAD05063440F...
Francisco Silva

EXHIBIT 3

January 10, 2025

Trey Harwell
Neal & Harwell, PLC
1201 Demonbreun Street, Suite 1000
Nashville, TN 37203

Attorneys for:
Cellular Performance Institute
Nubes 670-A Esquina Creston
Secc.Jardines Del Sol
Playas Tijuana, Baja California
Mexico CP 22505

Re: Withdrawal of Consent

Dear Mr. Harwell,

As you are aware, we represent Francisco Silva, Silva hereby withdraws any prior consent for the umbilical cord mesenchymal stem cells (“Material”) to be used (including, but not limited to, clinical or research use), published, stored, processed, propagated, or analyzed by Cellular Performance Institute (“CPI”), which he may have provided to CPI or authorized others to provide to CPI on his behalf. As used herein, “Material” includes (a) any unmodified descendant from the UC-MSD, such as cell from cell as well as anything released or secreted from the cells including but not limited to exosomes, secretomes, and other biologics “Progeny”; (b) substances created by CPI that constitute an unmodified functional subunit or product expressed by the Material, for example, subclones of unmodified cell lines, purified or fractionated subsets of the Material “Unmodified Derivatives”; and (c) substances created by CPI which contain or incorporate the Material or are a derivative of the Material and which are not Progeny or Unmodified Derivatives “Modifications.”

Silva further hereby withdraws any prior consent for the Material to be used, stored, processed, propagated or analyzed by CPI, which may have been provided to CPI by Silva on behalf of his spouse/child/children or authorized by him for others to provide to CPI on behalf of his spouse/child/children.

Silva further hereby withdraws any prior consent for “Technology” to be used (including, but not limited to, clinical or research use), published, or analyzed by CPI, which he may have provided to CPI or authorized others to provide to CPI on his behalf. As used herein, “Technology” means all of the following owned by Silva relating to the Material: (i) all know-how, technology, inventions, discoveries, ideas, processes, methods, designs, plans, instructions, specifications,

formulas, testing and other protocols, settings, and procedures, vendor and supply chain contacts and information, and other confidential or proprietary technical, scientific, engineering, business, or financial information; and (ii) all documentation, materials, and other tangible embodiments of any of the foregoing, in any form or medium, including papers, invention disclosures, laboratory notebooks, notes, drawings, flowcharts, diagrams, descriptions, manuals, and prototypes.

This withdrawal of consent is effective on the date received.

Please immediately destroy all Material and Technology within CPI's possession, custody or control, or shared by CPI with other persons or institutions, including but not limited to, the TAM Center, any treating physicians, Dr. Patricia Juarez, any students Dr. Juarez provided the cells to, Centro de Investigación Científica y de Educación Superior de Ensenada, Baja California (CICESE), and any others who have access to the Material and/or Technology and certify such destruction, including an inventory of the Material and/or Technology that was destroyed, in writing within 3 business days of receipt of this letter.

Please immediately notify the medical director of the TAM Center, any treating physicians, Dr. Patricia Juarez, any students Dr. Juarez provided the cells to, CICESE, and any others who have access to the Material and/or Technology of this withdrawal of consent to use the Materials and Technology and certify such notification was provided in writing within 3 business days of receipt of this letter.

For avoidance of doubt, Silva withdraws any consent he may have provided to publish data referring to or related to the Material and/or Technology.

The withdrawal of consent does not affect the use of the Material and Technology up to this point.

Best Regards,

Snell & Wilmer



April Wurster



Manuel Rajunov

cc: TAM CENTER Cárdenas 2928, Las Flores 2da Secc, 22526 Tijuana, B.C., Mexico

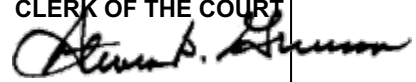
Dr. Patricia Juarez, pjuarez@cicese.mx

CICESE Carretera Ensenada - Tijuana No. 3918, Zona Playitas, CP. 22860, Ensenada, B.C.
México

Ed Clay

Scott Nelson

Dedrick Perry



1 **MDSM**
2 **JEFFERY A. BENDAVID, ESQ.**

3 Nevada Bar No. 6220
4 jbendavid@bendavidfirm.com

5 **JACQUELINE VOKOUN, ESQ.**

6 Nevada Bar No. 16400
7 jvokoun@bendavidfirm.com

8 **BENDAVID LAW**

9 7301 Peak Drive, Suite 150
10 Las Vegas, Nevada 89128
11 (702) 385-6114

12 **PETER S. CHRISTIANSEN, ESQ.**

13 Nevada Bar No. 1656
14 pete@christiansenlaw.com

15 **WHITNEY BARRETT, ESQ.**

16 Nevada Bar No. 13662
17 wbarrett@christiansenlaw.com

18 **CHRISTIANSEN TRIAL LAWYERS**

19 710 S 7th Street
20 Las Vegas, Nevada 89101
21 (702) 240-7979

22 **AUBREY B. HARWELL III, ESQ.** (*Pro Hac Vice Pending*)

23 TN No. 17394
24 Trey.harwell@arlaw.com

25 **ADAMS AND REESE LLP**

26 1600 West End Avenue, Suite 1400
27 Nashville, Tennessee 37203
28 (615) 259-1028

Attorneys for Defendants, Clay, Nelson, and Perry

**DISTRICT COURT
CLARK COUNTY NEVADA**

Francisco Silva, an individual,

Plaintiff,
vs.

Ed Clay, an individual; Scott
Nelson, an individual; Deddrick
Perry, an individual; Julie
Freeman, an individual; Doe
Defendants 1 – 10;

Defendants,

CPI Management Group, LLC, a
Nevada limited liability company;

Nominal Defendant.

Case No. A-25-909767-B
Dept. 9

**DEFENDANTS, ED CLAY,
DEDDRICK PERRY, AND SCOTT
NELSON'S MOTION TO DISMISS
PLAINTIFF'S THIRD, FOURTH,
SEVENTH, EIGHTH, AND TENTH
THROUGH SIXTEENTH CLAIMS
FOR RELIEF ASSERTED IN
PLAINTIFF'S FIRST AMENDED
COMPLAINT PURSUANT TO
N.R.C.P. 12(b)(5).**

Hearing Requested

1 Defendants, Ed Clay, an individual (“Defendant Clay”), Scott Nelson, an individual
2 (“Defendant Nelson”), and Deddrick Perry, an individual (“Defendant Perry”) (together,
3 the “Defendants”), by and through their attorneys of record, Jeffery A. Bendavid, Esq. and
4 Jacqueline Vokoun, Esq., of Bendavid Law, Peter S. Christiansen, Esq., and Whitney
5 Barrett, Esq., of Christiansen Trial Lawyers, and Aubrey B. Harwell III, Esq., of Adams
6 and Reese LLP (Pro Hac Vice Pending), hereby submits their Motion to Dismiss Plaintiff,
7 Francisco Silva’s (the “Plaintiff”) Third, Fourth, Sixth, Seventh, Eighth, and Tenth through
8 Sixteenth Claims for Relief in Plaintiff’s First Amended Complaint (“FAVC”) pursuant to
9 N.R.C.P. 12(b)(5).

10 This Motion is based on the memorandum of points and authorities contained herein,
11 any exhibits, pleadings, and papers on file, and any oral argument permitted by the Court
12 at the time for hearing on this matter.

13 DATED this 21st day of March 2025.

14
15 **BENDAVID LAW**

16 */s/ Jeffery A. Bendavid, Esq.*

17 **JEFFERY A. BENDAVID, ESQ.**

Nevada Bar No. 6220

jbendavid@bendavidfirm.com

18 **JACQUELINE VOKOUN, ESQ.**

Nevada Bar No. 16400

jvokoun@bendavidfirm.com

7301 Peak Dr., Suite 150

Las Vegas, Nevada 89128

(702) 385-6114

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TN no. 17394

trey@nealharwell.com

23 **ADAMS AND REESE LLP**

24 1600 West End Avenue, Suite 1400

Nashville, Tennessee 37203

25 (615) 259-1028

26 **PETER S. CHRISTIANSEN, ESQ.**

Nevada Bar No. 1656

wbarrett@christiansenlaw.com

27 **WHITNEY BARRETT, ESQ.**

Nevada Bar No. 13662

wbarrett@christiansenlaw.com

28 **CHRISTIANSEN TRIAL LAWYERS**

710 S 7th Street

Las Vegas, Nevada 89101

(702) 240-7979

*Attorneys for Defendants, Clay, Nelson,
and Perry*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff's claims against Defendants are legally insufficient and made merely in
4 retaliation for his removal from CPI Management Group, LLC ("CPI") as a result of his
5 fraudulent representations and ineptitudes. In furtherance of his retaliation goal, Plaintiff
6 has asserted multiple claims directly against Defendants based solely on their actions made
7 within the course and scope of their membership and management with CPI. Even though
8 Plaintiff has purportedly attempted to assert claims against Defendants derivatively on
9 behalf of CPI, it is clear from his First Amended Verified Complaint that Plaintiff is either
10 confused about the legal relationship between an entity and its members or attempting to
11 surreptitiously pierce the corporate veil by holding Defendants liable for actions he
12 specifically alleges CPI made. Whatever the reason, Plaintiff has nevertheless failed to
13 allege facts sufficiently demonstrating any claims against Defendants individually and his
14 claims must be dismissed.

15 In 2021, Plaintiff fraudulently induced Defendants to provide him with a 25%
16 membership interest in CPI based in part on false representations that he "owned" a patent
17 for extraction of umbilical cord line derived mesenchymal stem cells and the process of
18 extracting hypoxic stem cells. Plaintiff also falsely represented to Defendants that his
19 "patent" for this extraction process was unencumbered and as such he could, in part,
20 contribute this "patent" and the corresponding process and deliver certain stem cells in his
21 possession to the North Beach Lab in exchange for his 25% membership interest in CPI. In
22 additional consideration for his 25% membership interest, Plaintiff also agreed to perform
23 several commitments for the benefit of CPI.

24 However, after Plaintiff became a member in CPI, he consistently failed to perform
25 the commitments he had made to induce Defendants into providing a 25% membership
26 interest in CPI. Moreover, Defendants learned that Plaintiff did not actually have any
27 ownership interest in the "patent" and process for extracting stem cells. Upon these
28 discoveries, CPI took immediate formal action. CPI terminated Plaintiff's employment and

1 exercised the rights provided under CPI’s Operating Agreement to redeem Plaintiff’s 25%
2 membership interest in CPI.

3 Plaintiff’s claims for breach of the duty of loyalty, duty of care, and fiduciary duty all
4 fail as a matter of law because either the Operating Agreement attached to Plaintiff’s
5 Verified Complaint or Nevada law impose any such duties, as alleged, on Defendants.
6 Moreover, Plaintiff has failed to allege with the required particularity any facts rebutting
7 the business judgment rule or constituting a breach of fiduciary duty involving intentional
8 misconduct, fraud, or a knowing violation of law.

9 Likewise, Plaintiff has failed to meet the heightened pleading standard required to
10 assert his claim for “consumer fraud” as of course he is not a “victim” of consumer fraud
11 and he has made no detailed averments to the parties involved with, nor the time, place,
12 and nature of any consumer fraud. Consumer fraud, which typically applies to “victims of
13 consumer activities” cannot apply to Plaintiff as a “member” of CPI, alleging he is
14 somehow a consumer to the “other members” of CPI.

15 Additionally, under Nevada law, no member or manager is liable for the acts of a
16 limited liability company simply as a result of being a member. Plaintiff’s Amended
17 Complaint repeatedly tries to maintain the fiction that Defendants are individually liable
18 for actions he specifically alleges were made by CPI. Despite Plaintiff’s knowingly false
19 attempt, Defendants simply cannot be sued as a stand-in for any alleged breach of duty or
20 other action taken by CPI. As such, Plaintiff’s claims for negligent hiring, negligence,
21 conversion, accounting, and unjust enrichment asserted against Defendants individually all
22 fail as a matter of law.

23 Furthermore, Plaintiff’s claims for accounting, minority shareholder oppression,
24 misappropriation of trade secrets, conversion, and unjust enrichment must also be
25 dismissed because they are statutorily precluded, nonexistent, or otherwise deficient under
26 Nevada law. As such, Plaintiff has failed to allege sufficient facts to state any cognizable
27 claim against Defendants under Nevada law and Plaintiff’s claims must be dismissed
28 pursuant to NRCP 12(b)(5).

1 II. FACTUAL ALLEGATIONS

2 Prior to the formation of CPI, Defendants operated the Centro Hospitalario
3 Internacional del Pacifico, S.A., which is now known as the Translational Advanced
4 Medical Center (“TAMS”) in Tijuana, Mexico. FAVC at 2. Plaintiff alleges that in 2021,
5 Defendants and Plaintiff agreed to organize CPI to manage a regenerative medicine clinic
6 at TAMS. Id. Contrary to Plaintiff’s false allegation, CPI is and always has been a
7 management company. Based on Plaintiff’s proposed contributions, Plaintiff was allegedly
8 provided a 25% membership interest in CPI and Defendants retained the remaining 75%.
9 Id. at 6.

10 In April 2024, Defendants informed Plaintiff that they had discovered that CPI’s CFO,
11 Defendant, Julie Freeman (“Defendant Freeman”) had taken approximately \$5,000,000
12 from CPI and related entities. Id. at 9. Thereafter, Plaintiff falsely alleges that he “took it
13 upon himself” to review bank statements to investigate the missing funds. Id. Based on
14 these alleged “reviews,” Plaintiff further falsely alleges that he “discovered” that Defendant
15 Freeman had made entries labeled “pre-tax distributions” to Defendants totaling
16 approximately \$900,000 and that Plaintiff had not received any such “pre-tax
17 distributions.” Id. at 10. Plaintiff further alleges that he discovered that Defendants had
18 used CPI funds to purchase real property in Nashville, Tennessee and to make “mortgage
19 payments” on a separate piece of real property located in Longview, Texas. Id. Of course,
20 Plaintiff knows these allegations are false.

21 On November 21, 2024, Plaintiff alleges that Defendants terminated Plaintiff from his
22 position as an unidentified officer of CPI. Id. at 11. On December 18, 2024, Plaintiff further
23 alleges that Defendants voted to remove Plaintiff as a member of the Company. Id. Plaintiff
24 now alleges that he sent CPI a letter on January 10, 2025, allegedly “revoking” CPI’s rights
25 to possess or use “his property” consisting of his solely owned “original stem cells” and
26 the “process and know-how” to duplicate those cells. Id. at 13. Plaintiff alleges that despite
27 contributing and delivering those cells to CPI along with the “processes” to duplicate them,
28 CPI can no longer make use of the cells or the cells that were duplicated. Id. However, as

1 Plaintiff knows, CPI is a management company that neither duplicates nor uses cells.

2 Without any notification to CPI or any request that CPI take any action, Plaintiff filed
3 a Verified Complaint against Defendants and Defendant Freeman asserting several false
4 claims. *See generally*, Verified Complaint. After Defendants moved to dismiss Plaintiff's
5 Verified Complaint, Plaintiff amended his Verified Complaint without materially
6 modifying any of his existing claims. *Id.* Instead, Plaintiff asserted several additional
7 claims directly against the Members Defendants and supposedly on behalf of CPI. *Id.*
8 Regardless of Plaintiff's "amendment," Plaintiff's Third, Fourth, Seventh, Eighth, and
9 Tenth through Sixteenth Claims for Relief must be dismissed pursuant to N.R.C.P. 12(b)(5)
10 as demonstrated below.

11 **III. LEGAL STANDARD**

12 N.R.C.P. 12(b)(5) provides that a party can request a dismissal by motion of an opposing
13 party's claims or counterclaims for that party's failure to state a claim upon which relief
14 can be granted. *Zalk-Josephs Co. v. Wells-Cargo, Inc.*, 81 Nev. 163, 169-70, 400 P.2d 621,
15 624-25 (1965); Dismissal pursuant to N.R.C.P. 12(b)(5) is proper where the factual
16 allegations asserted are not sufficient to establish the elements of a claim for relief.
17 *Stockmeier v. Nevada Department of Corrections Psychological Review Panel*, 124 Nev.
18 313, 316, 183 P.3d 133, 135 (2008). As demonstrated below, Plaintiff's Third, Fourth,
19 Seventh, Eighth, and Tenth through Sixteenth Claims for Relief must be dismissed pursuant
20 to N.R.C.P. 12(b)(5).

21 **IV. ARGUMENT**

22 **A. Plaintiff's Third Claim For Relief Must Be Dismissed Since Plaintiff Has Not** 23 **Asserted Factual Allegations Sufficient to Demonstrate An Actual Breach Of The** 24 **Duty of Loyalty Identified In CPI's Operating Agreement.**

25 Plaintiff has alleged that Defendants owed him a duty of loyalty in the manner
26 prescribed by Section 6.1 of CPI's Operating Agreement. FAVC at 16. Plaintiff then
27 concludes that Defendants "breached this duty of loyalty" by (1) failing to properly allocate
28 funds belonging and due to CPI and Plaintiff, (2) failing to hold as trustee the property,
profit, and/or benefits produced as a result of CPI's business, and (3) misappropriating CPI

1 funds for Defendants' own enrichment. Id.

2 Ordinarily, members of a limited liability company, like Plaintiff and Defendants, are
3 not subject to the fiduciary duty of loyalty. NRS 86.298. However, NRS 86.298(2) permits
4 a Limited liability company to incorporate additional fiduciary duties owed by members of
5 a limited liability company either to other members and/or the limited liability company.
6 Plaintiff alleges that CPI's Operating Agreement added the fiduciary duty of loyalty as part
7 of Section 6.1 of Its Operating Agreement. FAVC at 16.

8 Normally, the duty of loyalty exists only as a duty owed by directors and officers of a
9 corporation. *See e.g.*, NRS to 78.138(7). Under Nevada law, a party alleging a claim for a
10 breach of the duty of loyalty must allege facts with the necessary particularity that when
11 taken as true (1) rebut the business judgment rule, and (2) constitute a breach of a fiduciary
12 duty involving intentional misconduct, fraud, or a knowing violation of law. *Chur v. Eighth*
13 *Judicial Dist. Court of Nev.*, 136 Nev. 68, 71-72, 458 P.3d 336, 340 (2020). *See also, Kahn*
14 *v. Dodds (In re AMERCO Derivative Litig.)*, 127 Nev. 196, 223-24, 252 P.3d 681, 700-701
15 (2011) (claim for breach of duty of loyalty was plead with the required particularity);
16 *Nevada State Bank v. Jamison Family Partnership*, 106 Nev. 792, 799, 801 P.2d 1377, 1382
17 (1990) (an alleged breach of fiduciary duty is an alleged claim in fraud); and N.R.C.P. 9(b).

18 Since Plaintiff has alleged that CPI's Operating Agreement has incorporated the
19 fiduciary duty of loyalty, the pleading requirements for asserting such a claim for the
20 alleged breach of the duty of loyalty must also be incorporated. In Nevada, the business
21 judgment rule is codified, in part, in NRS 78.138(3). *Chur*, 136 Nev. at 71. The business
22 judgment rule is a presumption that in making a business decision the directors of a
23 corporation acted on an informed basis, in good faith, and in the honest belief that the action
24 taken was in the best interests of the company. *Wynn Resorts, Ltd., v. Eighth Judicial Dist.*
25 *Court*, 133 Nev. 369, 375-76, 399 P.3d 334, 341-42 (2017). Generally, the business
26 judgment rule protects directors and officers of a corporation from individual liability and
27 limits judicial interference with corporate decisions when such decisions are made in good
28 faith. *Wynn Resorts, Ltd.*, 133 Nev. at 376. In this matter, the business judgment rule

1 operates to protect managers and members of a limited liability company in the same
2 manner. FAVC at Exhibit 1, page 13. This is particularly the case since CPI's Operating
3 Agreement incorporated Nevada's business judgment rule as part of Sections 6.3, 6.4, and
4 Section 6.5 of its Operating Agreement, which state in part:

5 Each Member shall discharge his duties and exercise any of his rights
6 consistently **with the obligation of good faith and fair dealing which he**
7 **owes to the Company and the other Members. A Member does not**
8 **violate a duty or obligation to the Company merely because the**
9 **Member's conduct furthers the Member's own interest . . .**

10 **The Members shall not be held liable to the Company, or to the other**
11 **Members, for relying in good faith upon the records required to be**
12 **maintained by this Agreement . . .**

13 To the fullest extent allowed by law, **the Members shall be indemnified**
14 **and held harmless by the Company for any liability resulting from any**
15 **act performed or omission made by them in good faith on behalf of the**
16 **Company,** except for acts or omissions of intentional misconduct or
17 knowing violation of the law and any transaction for which the Member
18 received a personal benefit in violation or breach of any provision of this
19 Agreement. Id. (Emphasis Added). *Accord* NRS 78.138(3).

20 As such, Plaintiff was required to allege facts with particularity that could rebut the
21 business judgment rule as prescribed by Nevada law and incorporated into CPI's Operating
22 Agreement. Supra. Plaintiff's Third Claim for Relief does not allege any facts of any kind
23 that could be relied upon to demonstrate Plaintiff's required rebuttal. FAVC at 16. As a
24 result, Plaintiff has failed to meet its initial burden, and therefore, Plaintiff's Third Claim
25 for Relief must be dismissed pursuant to N.R.C.P. 12(b)(5).

26 Additionally, Plaintiff has not alleged any facts with the necessary particularity required
27 to demonstrate the required second prong for the alleged breach of the duty of loyalty. As
28 provided above, Plaintiff is required to allege facts with the necessary particularity to
somehow demonstrate that the actions of Defendants constituted a breach of a fiduciary
duty involving intentional misconduct, fraud, or a knowing violation of law. Supra. *See*
also, Chur, 136 Nev. at 71-72.

Plaintiff alleges that Defendants breached their respective duties of loyalty as set forth

1 in Section 6.1(a), which states:

2 A Member's duty of loyalty . . . is limited to the following:

3 (a) To account to the Company and to hold as trustee for the Company
4 any property, profit, or benefit derived by the Member in the conduct or
5 winding up of the Company's business or derived from a use by the Member
6 of the Company's property, including the appropriation of a Company
7 opportunity[.] FAVC at 16 and at Exhibit 1, page 12.

8 Plaintiff was required to assert factual allegations with the necessary particularity
9 that through either some intentional act of misconduct, fraud, or violation of law, each
10 particular Defendant failed to hold any property, profit, or benefit they derived in the
11 conduct of CPI's business or that they derived from use of CPI's property. *See Chur*, supra.
12 Plaintiff has failed to allege any such acts that could demonstrate any such "intentional,
13 fraudulent, or violative acts." FAVC at 15.

14 To begin with, Plaintiff has only generally concluded through false allegations that
15 Defendants breached this duty of loyalty by (1) failing to properly allocate funds belonging
16 and due to CPI and Plaintiff, (2) failing to hold as trustee the property, profit, and/or benefits
17 produced as a result of CPI's business, and (3) misappropriating CPI funds for Defendants'
18 own enrichment. *Id.* None of these general, conclusory allegations identify what supposedly
19 occurred or identify any violation of Nevada law, an act of fraud, or some intentional act
20 of misconduct. *Id.* Plaintiff has not alleged any facts that could determine which Defendant
21 engaged in these conclusory actions, or when it occurred, or how it occurred, or any other
22 circumstance that could demonstrate how such conclusory acts constituted some benefit
23 received by Defendants as a member of CPI that they failed to hold for CPI. *Id.* No such
24 allegations exist as part of Plaintiff's Third Claim for Relief and in reality, no such facts
25 can be alleged by Plaintiff as they simply do not exist. *Id.* As such, Plaintiff's Third Claim
26 for Relief must be dismissed pursuant to N.R.C.P. 12(b)(5).
27
28

1 **B. Plaintiff's Fourth Claim For Relief Must Be Dismissed Since Plaintiff Has Not**
2 **Asserted Factual Allegations Sufficient to Demonstrate An Actual Breach Of The**
3 **Duty of Care Identified In CPI's Operating Agreement.**

4 In addition to asserting a claim for Defendants' alleged Breach of the Duty of Loyalty,
5 Plaintiff also has attempted to assert a claim for Defendants' alleged Breach of the Duty of
6 Care owed by Defendants to CPI and Plaintiff. FAVC at 17. For the same reasons that
7 require the dismissal of Plaintiff's Third Claim for Relief, Plaintiff's Fourth Claim for
8 Relief must also be dismissed. Supra.

9 Plaintiff has alleged that Defendants owed him a duty of care in the manner prescribed
10 by Section 6.2 of CPI's Operating Agreement. FAVC at 17. Plaintiff then generally and
11 falsely concludes that Defendants breached this duty of care by "enriching themselves,"
12 and by acting in a manner "inconsistent with the best interests of CPI" and the care an
13 ordinarily prudent person would exercise under similar circumstances. Id.

14 Like the claim for the alleged breach of a duty of loyalty, Plaintiff's claim for the alleged
15 breach of the duty of care is subject to the same heightened pleading requirements. *Guzman*
16 *v. Johnson*, 137 Nev. 126, 129-130, 483 P.3d 531, 535-36. Since Plaintiff has alleged that
17 CPI's Operating Agreement has incorporated a fiduciary duty of care, these heightened
18 pleading requirements must also be incorporated.

19 As provided in detail above, a party alleging a claim for a breach of the duty of care
20 must allege facts with the necessary particularity that when taken as true (1) rebut the
21 business judgment rule, and (2) constitute a breach of a fiduciary duty involving intentional
22 misconduct, fraud, or a knowing violation of law. *Chur*, 136 Nev. at 71. In Nevada, the
23 business judgment rule is codified, in part, in NRS 78.138(3), and more importantly
24 provided in portions of Sections 6.3, 6.4, and 6.5 of CPI's Operating Agreement. Id. *Cf.*
25 FAVC at Exhibit 1, page 13. As such, Plaintiff was required to allege facts with particularity
26 that could rebut the business judgment rule as prescribed by Nevada law and incorporated
27 into CPI's Operating Agreement.

28 Plaintiff's claim does not allege any facts of any kind that could be relied upon to

1 demonstrate any rebuttal of any kind to the business judgment rule. FAVC at 17. As a result,
2 Plaintiff has failed to allege sufficient facts with particularity that could somehow rebut the
3 business judgment rule. Thus, Plaintiff's Fourth Claim for Relief must be dismissed
4 pursuant to N.R.C.P. 12(b)(5) because of this initial failure.

5 Additionally, Plaintiff has not alleged any facts with the necessary particularity required
6 to demonstrate the required second prong for the alleged breach of the duty of loyalty. As
7 provided above, Plaintiff is required to allege facts with the necessary particularity to
8 somehow demonstrate that the actions of Defendants constituted a breach of a fiduciary
9 duty involving intentional misconduct, fraud, or a knowing violation of law. See *Chur*, 136
10 Nev. at 71-73.

11 Plaintiff alleges that Defendants breached their respective duties of care as set forth in
12 Section 6.2 which states:

13 In carrying out his duties and exercising his powers hereunder, each
14 Member shall act in a manner he believes in good faith to be in the best
15 interests of the Company and with the care an ordinarily prudent person in
16 a like position would exercise under similar circumstances. Subject to the
17 preceding sentence, no Member shall be liable, responsible, or accountable
in damages or otherwise to the Company or the other Members for any acts
performed or omitted by him in good faith and within the scope of this
Agreement.

18 Nevada law requires Plaintiff to assert factual allegations with the necessary
19 particularity that through either some intentional act of misconduct, fraud, or violation of
20 law failed to act with the care required by Section 6.2 of CPI's Operating Agreement. *Chur*,
21 *supra*.

22 Plaintiff has failed to allege any such acts that could demonstrate such failure by
23 Defendants. FAVC at 17. Instead, Plaintiff only generally and falsely concludes that
24 Defendants breached this duty by "improperly enriching themselves." *Id.* Plaintiff does not
25 assert any allegations of any kind that could demonstrate this conclusion. *Id.* Plaintiff also
26 ignores that portion of Section 6.3 of CPI's Operating Agreement that provides:

27 A Member does not violate a duty [of care] or obligation to the Company
28 merely because the Member's conduct furthers the Member's own interest.

1 FAVC at Exhibit 1, page 13.

2
3 Consequently, Plaintiff's conclusory allegation that Defendants' "enriched themselves"
4 is not sufficient because incurring a benefit (*i.e.*, enriching themselves) is *per se* not a breach
5 of any duty of care owed. As such, Plaintiff must have alleged that Defendants somehow
6 breached this duty through intentional action of misconduct, fraud, or violation of law and
7 that they knew such action was wrongful at the time. *Chur*, 136 Nev. at 74-75. Plaintiff has
8 not made any such allegations and therefore cannot sustain his claim for the alleged Breach
9 of the Duty of Care.

10 Next, Plaintiff concludes that Defendants supposedly breach their duty of care by acting
11 in a manner inconsistent with the best interests of CPI and the care of an ordinarily prudent
12 person would exercise under similar circumstances. FAVC at 17. This is not an allegation
13 of fact that could demonstrate Defendants' alleged breach of their duty of care. *Id.* Plaintiff
14 has only quoted the duty of care set forth in Section 6.2 of CPI's Operating Agreement. *Id.*
15 Nothing in these allegations demonstrates which Defendants allegedly breached their duty
16 of care, when and how that occurred, or whether such conduct constituted an intentional
17 act of misconduct, fraud, or violation of law. FAVC at 17. Nevada law compelled Plaintiff
18 to plead with more specificity. Plaintiff failed to do so. As such, Plaintiff's Fourth Claim
19 for Relief must be dismissed pursuant to N.R.C.P. 12(b)(5).

20 **C. Plaintiff's Seventh Claim For Relief Must Be Dismissed Since Plaintiff Has Not**
21 **Asserted Factual Allegations Sufficient to Demonstrate An Actual Breach Of Any**
22 **Fiduciary Duty.**

23 Plaintiff alleges in his Seventh Claim for Relief that Defendants owed him a "fiduciary
24 duty" imposed by the Operating Agreement and Nevada law. FAVC at 19. On its face, this
25 allegation is inaccurate. To begin with, Nevada law does not provide for a "fiduciary duty"
26 to be owed to a member of a limited liability company, which Plaintiff has alleged that he
27 is a 25% member of CPI. NRS 86.298(1). NRS 86.298 explicitly provides that the only duty
28 owed to any member of a limited liability company by a manager or managing member is
the contractual implied covenant of good faith and fair dealing and those additional duties

1 provided in an operating agreement.

2 Plaintiff has already asserted his claim for the alleged breach of this covenant. FAVC at
3 15. Plaintiff has also already asserted claims for the alleged Breach of the Duty of Loyalty
4 and alleged Breach of the Duty of Care as provided for in CPI's Operating Agreement. Id.
5 at 16-17. Plaintiff has not identified any other "fiduciary duty" owed Plaintiff under the
6 Operating Agreement. Id. at 19. Thus, Defendants do not owe Plaintiff any additional,
7 generic "Fiduciary Duty," and Plaintiff's Seventh Claim for Relief must therefore be
8 dismissed pursuant to N.R.C.P. 12(b)(5).

9 Additionally, Plaintiff has failed again to allege facts sufficient to demonstrate a claim
10 for the Breach of a Fiduciary Duty. Supra. As set forth above, Nevada law requires Plaintiff
11 to allege, with particularity, facts that demonstrate a rebuttal of the business judgment rule
12 and a breach of the alleged fiduciary duty involving intentional actions of misconduct,
13 fraud, or violations of law. *Chur*, 136 Nev. at 71-73. Here, Plaintiff has only alleged that
14 Defendants improperly voted Plaintiff out as a member of CPI and deceitfully
15 misappropriated funds belonging due him. FAVC at 19.

16 First, simply falsely alleging that Defendants "improperly" voted him out is not
17 sufficient to sustain a claim for the alleged breach of a Fiduciary Duty. *Chur*, supra. Plaintiff
18 must have alleged some intentional act of misconduct, fraud, or violation of law by
19 Defendants in voting him out. Id. Plaintiff has not made any such allegations and has not
20 identified any provision of CPI's Operating Agreement where Defendants were somehow
21 prohibited from voting Plaintiff out as a member. Id.

22 Second, Plaintiff has alleged that Defendants "deceitfully misappropriated" Plaintiff's
23 funds. In Nevada, an act of "deceit" is not distinguishable from "fraud." *See e.g., Pacific*
24 *Maxon, Inc. v. Wilson*, 96 Nev. 867, 869-70, 619 P.2d 816, 817 (1980). As such, Plaintiff is
25 absolutely required to plead such fraud with particularity. N.R.C.P. 9(b). Plaintiff was
26 required to identify who participated in the fraud, including each party's role therein, when
27 such fraud occurred, the nature of the fraud, etc. Id. Plaintiff has not alleged any of those
28 facts as part of his Seventh Claim for Relief. FAVC at 19. As a result, Plaintiff's Seventh

1 Claim for Relief must therefore be dismissed pursuant to N.R.C.P. 12(b)(5).

2 **D. Plaintiff’s Eighth Claim For Relief Must Be Dismissed Since Plaintiff Cannot**
3 **Assert a Direct Claim Against Defendants for Negligent Hiring, Supervision, And**
4 **Retention.**

5 Plaintiff falsely and incorrectly alleges in his Eighth Claim for Relief that Defendants
6 directly owed Plaintiff “a duty to exercise reasonable care in the hiring, supervision, and
7 retention of employees of CPI.” FAVC at 20. Plaintiff further alleges that Defendants
8 somehow breached that duty by hiring, failing to supervise, and retaining Defendant
9 Freeman, who allegedly “stole” CPI funds, not Plaintiffs’ funds. Id. Plaintiff alleges that he
10 has suffered only some “pecuniary loss” as a result of Defendants’ breach of their duty
11 allegedly owed Plaintiff. Id.

12 Based on Plaintiff’s allegations, Plaintiff’s claim for “Negligent Hiring, Supervision,
13 and Retention” must be dismissed pursuant to Nevada law. Under Nevada law, only an
14 actual employer has a duty to use reasonable care in the training, supervision, and retention
15 of an employee. *Hall v. SSF, Inc.*, 112 Nev. 1384, 1392, 930 P.2d 94, 98 (1996). *See also,*
16 *Rockwell v. Sun Harbor Budget Suites*, 112 Nev. 1217, 1226 (1996) (for an employer to be
17 liable for negligent hiring, training or supervision, the person involved must be an actual
18 employee). Here, Plaintiffs do not assert any allegations that Defendant Freeman was the
19 employee of Defendants when the underlying tort occurred. FAVC at 20. In fact, Plaintiff
20 specifically alleges otherwise that Defendant Freeman was the Chief Financial Officer of
21 CPI when the underlying tort occurred. Id. at 9. As such, Plaintiff’s Negligent Hiring,
22 Supervision, and Retention claim cannot survive since Defendants were not Defendant
23 Freeman’s employer.

24 Defendants also cannot be liable to Plaintiff since Plaintiff has not alleged any actual
25 facts that could demonstrate that Defendants, either individually or together, owed Plaintiff
26 a personal duty to Plaintiff outside of their membership in CPI. FAVC at 20. As already
27 explained above, Plaintiff only alleges that CPI was the employer of Defendant Freeman
28 at the time of the underlying tort. *Supra.* Defendants cannot under Nevada law owe Plaintiff
any duty of care regarding the hiring, supervision, or retention of Defendant Freeman

1 unless they were somehow her employer, which they were not. Id. Thus, Plaintiff can only
2 and is only alleging that Defendants are liable because of their membership or management
3 of CPI.

4 Such membership in CPI cannot render Defendants liable to Plaintiff under Nevada
5 law. Under Nevada law, a member or manager of a limited liability company cannot be
6 held personally liable for the acts of the entity simply as a result of being a member or
7 manager. NRS 86.381. As a result, no member or manager of a limited liability company is
8 vicariously liable for the obligations of a limited liability company by reason of being a
9 member or manager. *Gardner v. Henderson Water Park, LLC*, 133 Nev. 391, 393-94, 399
10 P.3d 350, 351 (2017). As such, Defendants cannot be liable under Nevada law to Plaintiff
11 under its Negligent Hiring, Supervision, and Retention claim.

12 Further, Plaintiff cannot assert any claim against Defendants for the alleged Negligent
13 Hiring, Supervision and Retention of Defendant Freeman because Plaintiff does not assert
14 any allegations that could demonstrate that he was harmed directly. In Nevada, a member,
15 under specific circumstances, may assert a derivative claim on behalf of a limited liability
16 company to recover for harm done to the company. NRS 86.483. *See also, Cohen v. Mirage*
17 *Resorts, Inc.*, 119 Nev. 1, 17-19, 62 P.3d 720, 731-32 (2003). Alternatively, a member may
18 assert a claim for direct injuries they have suffered that are separate from any injury to the
19 limited liability company. *Cohen*, 119 Nev. at 19.

20 To determine whether a claim is derivative or direct, Nevada law requires the
21 application of the Direct Harm Test. *Parametric Sound Corp. v. Eighth Judicial Dist. Court*
22 *of Nev.*, 113 Nev. 417, 427, 401 P.3d 1100, 1108 (2017) (aligning Nevada jurisprudence
23 with Delaware’s “Direct Harm Test”). As provided by the Nevada Supreme Court in
24 *Parametric Sound Corp.*, courts should consider only (1) who suffered the alleged harm,
25 and (2) who would receive the benefit of any recovery or remedy to determine whether a
26 claim is derivative or direct. Id.

27 Applying the “Direct Harm Test,” it is clear that Plaintiff’s allegations clearly
28 demonstrate that Plaintiff cannot assert a direct claim against Defendants for their alleged

1 negligent hiring, supervision, and retention of Defendant Freeman. First, Plaintiff only
2 falsely alleges that Defendants “breached their duty to use reasonable care” in the hiring,
3 supervision, and retention of Defendant Freeman since Defendant Freeman allegedly
4 converted “CPI funds” while employed at CPI. FAVC at 20. Plaintiff does not assert any
5 allegations that any of his funds were converted by Defendant Freeman while employed at
6 CPI. Id. Plaintiff also does not allege any actual physical harm inflicted upon him by
7 Defendant Freeman or Defendants. Id. As such, the application of the first prong of the
8 “Direct Harm Test” clearly demonstrates that CPI and CPI only suffered all of the alleged
9 harm resulting from Defendant Freeman’s alleged conversion of CPI property.

10 Plaintiff also has not and cannot assert any allegations that any of the funds of CPI are
11 somehow also his since Nevada law plainly provides that the assets, including any “funds,”
12 of a limited liability company, are the sole personal property of the limited liability
13 company and not its members. NRS. 86.311(1); *see also, e.g., In re Real Marketing Servs.,*
14 *LLC*, 309 B. R. 783 788 (S.D. Cal 2004). Thus, any award concerning the alleged conversion
15 of “CPI funds” or the alleged negligent hiring, supervision, and retention of Defendant
16 Freeman that resulted in the conversion of “CPI funds” belongs solely to CPI because it is
17 the sole party who could have suffered any harm for the alleged conversion of its funds.
18 *Cohen*, 119 Nev. at 17-19.

19 As such, the application of the “Direct Harm Test,” plainly establishes that Plaintiff
20 cannot assert a direct claim against Defendants for the alleged negligent hiring, supervision,
21 and retention of Defendant Freeman since he did not suffer any actual harm and cannot,
22 under Nevada law, receive the benefit of any recovery or remedy from such a claim.
23 *Parametric Sound Corp.*, *supra*.

24 Regardless of whether Plaintiff’s Eighth Claim for Relief is derivative or direct,
25 Nevada’s economic loss doctrine bars any recovery against Defendants for the alleged
26 negligent hiring, supervision, and retention of Defendant Freeman. *Sadler v. PacifiCare of*
27 *Nev.*, 130 Nev. 990, 996, 340 P.3d 1264, 1268 (2014) (quoting *Terracon Consultants W.,*
28 *Inc., v. Mandalay Resort Grp.*, 125 Nev. 66, 72-73, 206 P.3d 81, 86 (2009)) (alteration in

1 original) (Nevada’s economic loss doctrine prohibits the recovery for “purely economic
2 losses” on an unintentional tort claim). Here, Nevada’s economic loss doctrine prohibits
3 any ability to recover against Defendants for a claim of Negligent Hiring, Supervision, or
4 Retention because Plaintiff has only alleged purely economic losses. FAVC at 19. Plaintiff
5 does not allege any other injury arising from Defendants’ allegedly negligent actions. As
6 such, Plaintiff’s Eighth Claim for Relief must be dismissed pursuant to N.R.C.P. 12(b)(5).

7 **E. Plaintiff’s Tenth Claim For Relief For An “Accounting” Must Be Dismissed Since**
8 **A Statutory Claim Exists.**

9 Plaintiff’s Tenth Claim for Relief attempts to assert a separate claim for an Accounting
10 against CPI. FAVC at 21-22. On its face, Plaintiff’s Ninth Claim for Relief must be
11 dismissed because Plaintiff has not sued CPI. Id. at 1 and at 4. Instead, Plaintiff has only
12 included CPI as a “Nominal Defendant,” and has alleged that CPI is only named in this
13 matter because it is a necessary party to sustain the derivative claims sought by Plaintiff.
14 Id. at 4. As such, Plaintiff cannot assert a claim for an Accounting against CPI because
15 Plaintiff did not sue CPI directly.

16 Regardless, Plaintiff’s claim for an Accounting must be dismissed because a full and
17 complete legal remedy already exists. Normally, a separate actionable claim for an
18 Accounting “is a proceeding in equity for the purpose of obtaining a judicial settlement of
19 the accounts of the parties in which proceeding the court will adjudicate the amount due,
20 administer full relief and render complete justice.” *Oracle USA, Inc. v. Rimini St., Inc.*,
21 2010 U.S. Dist. LEXIS 84254, *19-20, WL 3257933 (D. Nev. 2010). The equitable claim
22 for an Accounting has been granted in situations where no other legal remedy is available
23 to fiduciaries and to non-fiduciaries where the dealings between such parties are so
24 complex that an equitable master, and not a jury, is required to sort the matter out. Id.

25 Here, however, Plaintiff’s claim for an Accounting must be dismissed even if he had
26 sued CPI, which, of course, he did not. *See* NRS 86.241. Under Nevada law, claims and
27 remedies in equity are not available where a plaintiff has a full and adequate remedy at law.
28 *Korte Constr. Co. v. State (In re Bd. of Regents of the Nev. Sys. of Higher Educ.)*, 492 P.3d

1 540, 541 (2021).

2 Plaintiff alleges in his Complaint that he was a 25% member of CPI. FAVC at 2. As
3 such, NRS 86.241(2) expressly grants Plaintiff, as a member of CPI, the right to obtain,
4 upon a reasonable demand, records regarding the activities and status of the business and
5 financial condition, all tax returns, and all records of cash (*i.e.*, an Accounting). To the
6 contrary, NRS 86.5417(1), does not grant the Court authority to order an accounting on
7 behalf of Plaintiff.

8 Regardless, Plaintiff cannot assert a separate claim for relief for an equitable Accounting
9 because NRS 86.241(2) already grants a full and complete remedy to him as a result of his
10 allegations of membership in CPI. *Korte Constr. Co.*, supra. Further, Plaintiff alleges that
11 Section 14.1 of the Operating Agreement for CPI also provides him with a right to an
12 Accounting. This allegation also demonstrates that he has a full and adequate remedy as a
13 matter of law to obtain an Accounting as result of the terms of the allegedly binding
14 Operating Agreement of CPI to which Plaintiff is allegedly a party. Finally, Plaintiff has
15 not asserted any allegations that he is not afforded an adequate legal remedy requiring his
16 equitable claim for an Accounting. FAVC at 21-22. Consequently, Plaintiff's Tenth Claim
17 for Relief must be dismissed pursuant to N.R.C.P. 12(b)(5).

18 **F. Plaintiff's Eleventh Claim For Relief For "Minority Shareholder Oppression"**
19 **Must Be Dismissed Since This Claim for Relief Does Not Exist Under Nevada law.**

20 Plaintiff's Eleventh Claim for Relief alleges that Defendants somehow owed "special
21 duties" to CPI and Plaintiff, as "non-controlling" Member of CPI. FAVC at 22. Plaintiff
22 further alleges that Defendants breached these "special duties" and therefore are liable to
23 Plaintiff, not CPI, under a claim for "Minority Shareholder Oppression." *Id.*

24 Regardless of Plaintiff's false, generic conclusory statements, research demonstrates
25 that Nevada law does not recognize a common law claim for "Minority Shareholder
26 Oppression" as part of its jurisprudence of corporations, let alone limited liability
27 companies. *See e.g., Turner v. Cheffers*, 2019 Mass. Super LEXIS 14* at 11-12, 35 Mass.
28 L. Rep. 469, WL 995890 (Mass. Super. Ct. 2019) (recognizing Nevada statutory law

1 controls and any duties set forth in NRS Chapter 78 and 78A regarding corporations
2 preempts common law principles borrowed from other jurisdictions). As a result, Plaintiff
3 cannot sustain a claim against Defendants for “Minority Shareholder Oppression” because
4 no such claim exists in Nevada.

5 More importantly, CPI is not a corporation incorporated under Nevada law, but instead,
6 CPI is a limited liability company. FAVC at 1-2. As such, Plaintiff cannot assert a claim
7 for “Minority Shareholder Oppression” when there are no shareholders, no directors, and
8 no corporation. Id. Thus, Defendants and CPI do not owe Plaintiff any duty of any kind that
9 an actual Nevada corporation may owe its shareholders and vice versa, which
10 coincidentally Nevada corporation law also does not recognize a claim for “Minority
11 Shareholder Oppression”. See e.g., *Turner, 2019 Mass. Super LEXIS 14** at 11-12.

12 Further, no provision contained in NRS Chapter 86, the actual statutes governing
13 limited liability companies, provides for any “special duties” owed by a majority “member”
14 to a “minority” member as alleged by Plaintiff in his Tenth Claim for Relief. NRS 86.298.
15 In fact, the only actual duties owed by a member to another member of limited liability
16 company under NRS Chapter 86 is set forth in NRS 86.298. Contrary to Plaintiff’s wholly
17 inapplicable allegations, NRS 86.298 expressly states that the duties of a managing member
18 of a limited liability company in Nevada to any other member are only the implied
19 contractual covenant of good faith and fair dealing and such other duties set forth in that
20 limited liability company’s articles of organization or operating agreement.

21 No part of NRS 86.298 or any other statute in NRS Chapter 86 identifies any duties
22 owed to a “minority” member by the majority. Further, Plaintiff does not identify any
23 provision of the alleged Operating Agreement for CPI attached to Plaintiff’s First Amended
24 Complaint that includes any duty of any kind owed to Plaintiff simply as a result of his
25 alleged “minority status.” FAVC at 22. Plaintiff does not assert any such allegations
26 because there is none to make. See FAVC at Exhibit 1. As such, Plaintiff’s Eleventh Claim
27 for Relief must be dismissed pursuant to N.R.C.P. 12(b)(5).

28

1 **G. Plaintiff's Twelfth Claim For Relief Must Be Dismissed Since Plaintiff's**
2 **Allegations Allege That CPI And Not Defendants Engaged In The Alleged**
3 **Conversion And Such Claim Is Otherwise Precluded By Nevada Law.**

4 Plaintiff's Twelfth Claim for Relief alleges a claim against Defendants for Conversion.
5 FAVC at 22-23. Under Nevada law, Conversion is defined as a "as a distinct act of
6 dominion wrongfully exerted over another's personal property in denial of, or inconsistent
7 with his title or rights therein or in derogation, exclusion, or defiance of such title or rights."
8 *Evans v. Dean Witter Reynolds, Inc.*, 116 Nev. 598, 606, 5 P.3d 1043, 1048 (2000).
9 Conversion is shown when an owner is deprived of their property by the wrongful act of
10 another who assumes dominion over the owner's property. *Blige v. Terry*, 540 P.3d 421,
11 431, 2023 Nev. LEXIS 51, 2023 WL 8943649 (2023).

12 Plaintiff's Conversion claim against Defendants fails under Nevada law because
13 Plaintiff actually has alleged in his First Amended Complaint that CPI, and not Defendants
14 in their individual capacity, has committed the "wrongful act(s)" necessary to sustain a
15 Conversion claim. FAVC at 13.

16 As part of Plaintiff's claim, Plaintiff alleges that only Defendants, together, have
17 "converted" Plaintiff's property since January 10, 2025. *Id.* Specifically, Plaintiff attempts
18 to allege that Defendants somehow converted Plaintiff's "original" stem cell lines and
19 process for duplicating those stem cell lines. *Id.* at 23. Plaintiff also alleges that Defendants
20 continue to use Plaintiff's property to treat patients at the "CPI Clinic" in Tijuana, Mexico.
21 *Id.*

22 Despite Plaintiff's self-serving, false declarations disguised as "factual allegations,"
23 Plaintiff does not provide how any of the Defendants acted individually to convert
24 Plaintiff's alleged property. *Id.* More importantly, Plaintiff does not allege in any way how
25 Defendants have engaged in such alleged conversion of his property outside the course and
26 scope of their membership and management of CPI. *Id.*

27 This absence is critical because Plaintiff actually alleges in his factual allegations, which
28 he expressly incorporated by reference, that CPI actually has possession of Plaintiff's

1 alleged property and continues to make use of it. Id. at 13. In fact, Plaintiff titled these
2 allegations as “CPI Continues to Misappropriate Silva’s [Plaintiff’s] Stem Cell Line.” Id.
3 Plaintiff then proceeds to allege that CPI and TAMS, not Defendants, “possess two frozen
4 vials” of Plaintiff’s “original” stem cells. Id. Plaintiff then alleges that he gave CPI, and not
5 Defendants, his intellectual property for duplicating the “original stem cells.” Id. at 23.
6 Plaintiff further alleges that CPI and not Defendants, possess “billions” of stem cells
7 derived from the “original stem cell” that Plaintiff authorized CPI, and not Defendants to
8 duplicate. Id. at 13. Plaintiff then concludes his allegations that CPI and TAMS, and not
9 Defendants, continues to treat patients using Plaintiff’s alleged property. Id.

10 Amazingly, Plaintiff alleges that he revoked his consent granted to Defendants as part
11 of his January 10, 2025, letter, which he attached to his First Amended Complaint. Id. at
12 23. However, the letter that Plaintiff attached is addressed only to CPI’s attorneys and not
13 addressed in any way to Defendants. Id. at Exhibit “3.” The very first sentence of Plaintiff’s
14 letter only purports to withdraw his alleged consent from CPI, and not Defendants. Id. The
15 next paragraph also only acts to withdraw his consent from CPI, and not Defendants. Id.
16 Plaintiff’s third paragraph in his letter again only withdraws his consent for “Technology”
17 to be used by CPI, and not Defendants. Id. Nowhere in Plaintiff’s letter does Plaintiff
18 identify any consent granted to Defendants or the withdrawal of such non-existent consent
19 from Defendants. Id. It is therefore clear that Plaintiff’s actual allegations do not identify
20 any wrongful act undertaken by Defendants as individuals. Supra. Based on Plaintiff’s
21 actual allegations of fact, Plaintiff can only assert such claims against CPI or TAMS, which
22 are entities that Plaintiff alleges engaged in any actions of any kind and whom Plaintiff did
23 not sue directly and did not assert any claim for Conversion in his First Amended
24 Complaint. Id.

25 Further, Plaintiff cannot, under Nevada law, sustain a claim for Conversion against
26 Defendants because he has not alleged any wrongful acts on the part of Defendants
27 undertaken outside their membership and management of CPI. *Gardner v. Henderson*
28 *Water Park, LLC*, 133 Nev. 391, 393, 399 P.3d 350, 351-52 (2017). As members of CPI,

1 Defendants are not personally responsible for CPI’s liabilities solely because they are the
2 members or managers of CPI. NRS 86.371 and 86.381. *See also, Gardner*, 133 Nev. at 393.
3 Notwithstanding, Nevada law does provide for individual liability to a member or manager
4 of a limited liability company if such liability arises from actions occurring as an individual.
5 *Gardner*, 133 Nev. at 393-94.

6 As demonstrated above and as specifically provided, or more correctly, not provided in
7 Plaintiff’s allegations and his January 10, 2025, letter, Plaintiff has not asserted any
8 allegation of fact that could demonstrate that Defendants somehow acted outside the course
9 and scope of their membership and management of CPI. *Supra*. As such, Defendants cannot
10 be held individually liable for the alleged conversion of Plaintiff’s property since Plaintiff
11 has failed to assert any allegations that Defendants individually have possession of
12 Plaintiff’s alleged property, somehow individually hold dominion over such alleged
13 property of Plaintiff, or have individually undertaken any wrongful act that could give rise
14 to a claim for Conversion. *Blige*, 540 P.3d at 431 (conversion is shown when an owner is
15 deprived of their property by the wrongful act of another who assumes dominion over the
16 owner’s property).

17 Notwithstanding the above, Plaintiff’s claim for Conversion is precluded pursuant to
18 NRS 600A.090. Under NRS 600A.090, a tort claim may not be brought if such claim is
19 based upon the same allegations that are the basis of a claim for Misappropriation of Trade
20 Secrets. *Frantz*, 116 Nev. at 464-65. Here, Plaintiff’s claim for Conversion is based on
21 allegations nearly identical to those asserted to demonstrate his “Misappropriation” claim.
22 FAVC at 22-23 and at 24-25. The basis of each is that Defendants continued to use
23 Plaintiff’s intellectual property, which includes Plaintiff’s alleged “methods and processes”
24 for duplicating “original stem cells” after he allegedly withdrew his consent for such use.
25 *Id.* As such, Plaintiff’s claim for Conversion is precluded under Nevada law because such
26 allegations are the basis of Plaintiff’s Misappropriation of Trade Secrets claim. NRS
27 600A.090. As a result, Plaintiff’s Twelfth Claim for Relief for Conversion must be
28 dismissed pursuant to N.R.C.P. 12(b)(5).

1 **H. Plaintiff's Thirteenth Claim For Relief Must Be Dismissed Since Plaintiff's Claim**
2 **For Negligence Is Prohibited By Nevada Law.**

3 Plaintiff's Thirteenth Claim for Relief alleges a claim against Defendants for
4 Negligence. FAVC at 23-24. Plaintiff alleges that because of his relationship with CPI, a
5 duty of reasonable care was created between Plaintiff and Defendants. Id. at 23. Plaintiff
6 then alleges that Defendants, together, breached that duty when Defendants allegedly voted
7 Plaintiff out of CPI and prohibited him from accessing or preserving his stem cells and
8 thereafter continued to use those cells. Id. at 23-24. Plaintiff incorrectly reasons that as a
9 result of this contrived breach, Defendants are jointly and severally liable to Plaintiff for
10 their Negligence. Id. at 24.

11 Regardless of Plaintiff's allegations, Nevada law prohibits any recovery by Plaintiff
12 against Defendants for negligence based on these allegations. The "relationship" that
13 Plaintiff refers to with Defendants is that as former co-members of CPI. Id. at 23. This is
14 evidenced by the fact that Plaintiff alleges that he was a 25% member with Defendants in
15 CPI and the fact that the alleged breach is as a result of Defendants' vote as members of
16 CPI to remove Plaintiff. Id. at 2 and at 23-24. Plaintiff does not identify any other legal
17 relationship with Defendants. Id. at 23.

18 Under Nevada law, a member or manager of a limited liability company cannot be held
19 personally liable for the acts of the entity simply as a result of being a member or manager.
20 NRS 86.371 and NRS 86.381. As a result, no member or manager of a limited liability
21 company is vicariously liable for the obligations of a limited liability company by reason
22 of being a member or manager. *Gardner v. Henderson Water Park, LLC*, 133 Nev. 391,
23 393-94, 399 P.3d 350, 351 (2017). As such, Defendants cannot be liable under Nevada law
24 to Plaintiff under Plaintiff's claim for Negligence simply because they were members of
25 CPI who acted in that capacity to Plaintiff's alleged detriment. Id. Thus, the act of managing
26 a limited liability company or being a member of a limited liability company cannot result
27 in personal culpability. *Gardner v. EJDC*, 133 Nev. 730, 734, 405 P.3d 651, 655 (2017).

28 Under Nevada law, a member or manager of a limited liability company can be liable

1 to a person where that member or manager otherwise owed a personal duty to that person
2 outside of or beyond their status as a member or manager of a limited liability company
3 and that member or manager intentionally and willfully breached that duty. Id. Here,
4 Plaintiff has not asserted any allegations demonstrating such a “personal duty”. FAVC at
5 23-24. Further, Plaintiff has not alleged that any breach on the part of Defendants was
6 intentionally or willfully done. Id. To the contrary, Plaintiff specifically alleges that
7 Defendants were negligent when they voted Plaintiff out of the limited liability company
8 that they were members of and then prohibited him from accessing his cells. Id. Plaintiff
9 allegations of negligence arise from Defendants’ membership and management of CPI and
10 as a result, Defendants cannot be liable under Nevada law. Supra. Therefore, Plaintiff’s
11 Thirteenth Claim for Relief must be dismissed pursuant to N.R.C.P. 12(b)(5).

12 **I. Plaintiff’s Fourteenth Claim For Relief Must Be Dismissed Since Plaintiff Has**
13 **Failed to Allege Facts Sufficient To Demonstrate The Elements Of A Claim For**
14 **The Alleged Misappropriation of Trade Secrets.**

15 Plaintiff’s Fourteenth Claim for Relief attempts to assert a claim for the alleged
16 Misappropriation of Trade Secrets under NRS 600A.010, et seq. (the “UTSA”). FAVC at
17 24. A misappropriation claim requires Plaintiff to allege facts sufficient to demonstrate (1)
18 the existence of a valuable trade secret; (2) the misappropriation of that trade secret through
19 some use, disclosure, or nondisclosure of use of the trade secret; and (3) and that the
20 misappropriation was wrongful because it was made in breach of an express or implied
21 contract or by a party with a duty not to disclose. *Frantz v. Johnson*, 116 Nev. 455, 999 P.2d
22 351 (2000).

23 Plaintiff alleges that he owns trade secrets consisting of the processes used to duplicate
24 the “original stem cells” and the methodology to determine the proper dosage of stem cells
25 to inject into CPI’s patients. FAVC at 24. Plaintiff further alleges that Defendants, not CPI,
26 somehow misappropriated these trade secrets by allegedly inducing CPI or TAMS
27 employees to misappropriate Plaintiff’s alleged trade secrets. Id.

28 On their face, Plaintiff’s allegations cannot demonstrate a misappropriation claim under
the UTSA because these allegations cannot establish the required third element of this

1 claim. Supra. As provided above, Plaintiff is required to assert factual allegations to
2 demonstrate that Defendants' alleged misappropriation was somehow wrongful because it
3 was made in breach of an express or implied contract or by a party with a duty not to
4 disclose. *Frantz*, 116 Nev. at 466-67. Here, Plaintiff has not alleged any facts that
5 Defendants wrongfully disclosed to any party his alleged trade secrets. FAVC at 24-25.
6 Plaintiff already alleged that he previously disclosed his trade secrets to CPI and TAMS'
7 employees and permitted their use thereof. *Id.* at 2-4.

8 As such, Plaintiff was required to allege facts sufficient to demonstrate that Defendants'
9 alleged misappropriation was somehow in breach of an express or implied contract. *Frantz*,
10 116 Nev. at 466-67. In the entirety of Plaintiff's First Amended Complaint, Plaintiff has
11 not made a single allegation of the existence of any contract, express or implied, with
12 Defendants or anyone else regarding the disclosure, use, knowledge, or possession of
13 Plaintiff's property or his alleged trade secrets. *See generally*, FAVC.

14 Plaintiff does allege that through his January 10, 2025, letter, he revoked his consent to
15 CPI of the use of his "alleged property." *Id.* at 24. Absent, however, from every part of
16 Plaintiff's First Amended Complaint are any allegations of fact as to how he had the right
17 to revoke his consent after he contributed his Property, including his trade secrets to CPI
18 for CPI's use. *See Id.* at 1-14. Plaintiff never alleges that he "only gave CPI a license or that
19 his contribution was conditioned," through an express or implied contract, on his right to
20 later revoke the use of property and trade secrets. *Id.* The only actual facts alleged by
21 Plaintiff is that he disclosed and granted the use of his property, including his alleged trade
22 secrets, to CPI without any conditions and without entering into any express or implied
23 contract whose terms and conditions allowed for his unilateral revocation¹. *Id.* Accordingly,
24 Plaintiff has failed completely to allege any facts that could demonstrate the required third
25 element of his claim for Misappropriation under the UTSA. As such, Plaintiff's claim must
26 be dismissed pursuant to N.R.C.P. 12(b)(5).

27 _____
28 ¹ The actual facts of this matter will demonstrate that Plaintiff contributed his property, including his
his alleged trade secrets to CPI in consideration of his 25% membership interest.

1 **J. Plaintiff's Fifteenth Claim For Relief Must Be Dismissed Since Plaintiff Has**
2 **Failed to Allege Facts Sufficient To Demonstrate The Elements Of A Claim For**
3 **Unjust Enrichment And Such Claim Is Otherwise Precluded.**

4 Plaintiff's Fifteenth Claim for Relief alleges a claim against Defendants for Unjust
5 Enrichment. FAVC at 25-26. Plaintiff alleges that Defendants somehow are liable to
6 Plaintiff because they benefitted financially from CPI, the limited liability company of
7 which Defendants are a member. FAVC at 25. Plaintiff contends that Defendants have been
8 unjustly enriched because they have received distributions from CPI as a result of their
9 membership from the profits that CPI has earned from using Plaintiff's property, methods,
10 and processes without paying Plaintiff. FAVC at 26. Oddly, Plaintiff does not allege that
11 CPI has somehow been unjustly enriched, nor does Plaintiff assert such a claim against
12 CPI. Id.

13 Regardless, Plaintiff's claim for Unjust Enrichment fails for several reasons. To begin
14 with, Plaintiff has failed to allege any facts sufficient to demonstrate the required elements.
15 Under Nevada law, a claim for Unjust Enrichment has three elements; (1) the plaintiff
16 confers a benefit on the defendant, (2) the defendant appreciates such benefit, and (3) there
17 is an acceptance and retention by the defendant of such benefit under such circumstances
18 that it would be inequitable for him to retain the benefit without payment of the value
19 thereof. *Nautilus Ins. Co. v. Access Med., LLC*, 137 Nev. 96, 101, 482 P.3d 683, 688 (2021).

20 Here, Plaintiff's allegations do not demonstrate these three elements as to Defendants.
21 Plaintiff does not allege at any point that he conferred any benefit of any kind on
22 Defendants. FAVC at 25. Instead, Plaintiff alleges that he conferred a benefit on CPI
23 through CPI's use of his alleged property. Id. A benefit that Plaintiff alleges that he
24 somehow "withdrew" without identifying any agreement of any kind with CPI where he
25 had such an alleged right of withdrawal. Id. Nonetheless, Plaintiff has not asserted
26 allegations of fact sufficient to demonstrate he conferred any benefit directly on
27 Defendants.

28 Next, Plaintiff alleges that Defendants appreciated this benefit, which Plaintiff never

1 conferred on Defendants, by authorizing the use of Plaintiff's property [by CPI] after he
2 allegedly withdrew his consent from CPI to use his property. Id. According to the
3 allegations in Plaintiff's Complaint, the only authority that Defendants have is as a result
4 of their membership or management of CPI. As such, Nevada law expressly prohibits the
5 impugment of any liability on Defendants because they are managers or members of CPI.
6 NRS 86.371-381. *See also*, supra. Consequently, Plaintiff's sole allegation is not sufficient
7 to demonstrate the required second element of Plaintiff's Unjust Enrichment claim.

8 Plaintiff also alleges that Defendants have accepted and retained a non-existent benefit
9 by continuing to take distributions from the profits generated by CPI. This allegation cannot
10 possibly demonstrate any element of Plaintiff's Unjust Enrichment claim. Id.

11 First, Defendants' alleged receipt of distributions is from CPI, not Plaintiff, and those
12 distributions are derived from and pursuant to a written operating agreement that Plaintiff
13 has included as an exhibit to its First Amended Complaint. FAVC at Exhibit 1, page 15.
14 Under Nevada law, a party cannot recover under a claim for Unjust Enrichment where an
15 express written contract covering the same subject matter exists. *LeasePartners Corp. v.*
16 *Robert L. Brooks Tr.*, 113 Nev. 747, 755, 942 P.2d 182, 187 (1992). As such, Defendants'
17 alleged receipt of distributions only occurs as a result of a separate written operating
18 agreement between Defendants and CPI, and therefore, such distributions cannot
19 demonstrate or give rise to a claim for Unjust Enrichment for Plaintiff.

20 Second, the distributions allegedly received by Defendants are made solely from the
21 assets of CPI and not from Plaintiff's. *See e.g., In re Real Marketing Servs., LLC*, 309 B. R.
22 783 788 (S.D. Cal 2004) ("Members of an LLC hold no direct ownership interest in the
23 company's [LLC's] assets. *See also*, FAVC at Exhibit 1, page 15. Thus, the distributions
24 received by Defendants cannot demonstrate Defendants' receipt of some benefit from
25 Plaintiff. Id. Plaintiff could only seek equitable relief from CPI for the alleged unjust
26 retention of any benefit conferred by Plaintiff onto CPI. Id. Plaintiff did not seek such
27 recovery from CPI and cannot instead obtain it from Defendants because Plaintiff alleges
28 Defendants later receive a distribution of CPI's assets, which are not Plaintiff's assets, in

1 accordance with CPI's written operating agreement.

2 Notwithstanding the above, Plaintiff's Unjust Enrichment claim is precluded pursuant
3 to NRS 600A.090. Under NRS 600A.090, a tort or a claim for restitution (i.e., unjust
4 enrichment) may not be brought if such claims are based upon the same allegations that are
5 the basis of a claim for Misappropriation of Trade Secrets. *Frantz*, 116 Nev. at 464-65.
6 Here, Plaintiff's Unjust Enrichment claim is based on allegations nearly identical to those
7 asserted to demonstrate his Misappropriation claim. FAVC at 24-26. The basis of each is
8 that Defendants continued to use Plaintiff's property, which includes his methods and
9 processes after he withdrew his consent. *Id.* As such, Plaintiff's Unjust Enrichment claim
10 is precluded by Nevada law because such allegations are the basis of Plaintiff's
11 Misappropriation of Trade Secrets claim. NRS 600A.090.

12 **K. Plaintiff's Sixteenth Claim For Relief Must Be Dismissed Since Plaintiff Has**
13 **Failed to Allege His Claim With Particularity And Plaintiff Is Not A "Victim" Of**
14 **Such Alleged "Consumer Fraud".**

15 Plaintiff's Sixteenth Claim for Relief attempts to assert a claim under Nevada's
16 Consumer Fraud statute, NRS 598.0915(3). FAVC at 26. NRS 598.0915(3) provides that
17 person engages in a "deceptive trade practice" (i.e., "consumer fraud") if he knowingly
18 makes a false representation as to "affiliation, connection, association with or certification
19 by another person. Supposedly to support this made-up consumer fraud claim, Plaintiff only
20 alleges that Defendants made false statements in connection with Plaintiff in information
21 that CPI provides to its patients. FAVC at 26. Plaintiff further alleges that Defendants made
22 those false representations as managers of CPI. *Id.*

23 Under Nevada law, any deceptive trade practice alleged can only form the basis of a
24 private right of action where that person is a victim of consumer fraud. NRS 41.600(1). *See*
25 *also, Nev. Power. Co. v. Eighth Jud. Dist. Ct.*, 120 Nev. 948, 955, n.7, 102 P. 3d 578, 583
26 n.7 (2004). Here, Plaintiff has not asserted any factual allegations that could demonstrate
27 that Plaintiff was somehow a victim of a Deceptive Trade Practice pursuant to NRS
28 598.0915(3). *Id.* In Nevada, a "victim" under NRS 41.600(1) is defined as any person who

1 was directly harmed by consumer fraud, including any Deceptive Trade Practice. *R.J.*
2 *Reynolds Tobacco Co. v. Eighth Jud. Dist. Ct.*, 514 P.3d 425, 433, 138 Nev. Adv. Rep. 55
3 (2022). Here, Plaintiff has not asserted any factual allegations that he somehow was a
4 “victim” as a result of the alleged consumer fraud perpetrated under NRS 598.0915(3).
5 FAVC at 26. More importantly, Plaintiff has not asserted any allegations that could
6 demonstrate how he was “directly harmed” by some unidentified false representation as to
7 “affiliation, connection, association with or certification by another person,” especially
8 since Plaintiff has not identified any actual false representation. *Id.* Thus, Plaintiff has no
9 private right of action to assert his Sixteenth Claim for Relief since Plaintiff has not alleged
10 any facts that could demonstrate that he was a “victim” as defined by NRS 41.600(1).

11 Regardless, Plaintiff has failed to assert his claim for consumer fraud with the required
12 particularity required by N.R.C.P. 9(b). *See Elko, Inc., v. WTH Commer. Servs., LLC*, 20234
13 U.S. Dist. LEXIS 1607072 * 23, 2023 WL 6141623 (D. Nev. 2023) (Rule 9 heightened
14 pleading standard required for claim under NRS 598.0915(3)). As such, Plaintiff must have
15 alleged detailed averments to the time, place, identity of the parties involved, and the nature
16 of the fraud. N.R.C.P. 9(b).

17 Here, Plaintiff’s consumer fraud claim does not meet this standard. Plaintiff alleges that
18 Defendants made knowingly false statements as to the affiliation, connection, association
19 with or certification by Plaintiff. FAVC at 26. Plaintiff does not identify what those
20 allegedly false statements were, when they were made, to whom they were made, which
21 one of the Defendants made them, or how they were fraudulent or otherwise violative of
22 NRS 598.0915(3). *Id.* Plaintiff also does not provide any detailed allegations as to how
23 those allegedly “false statements” make Defendants personally liable to Plaintiff since
24 Plaintiff expressly alleges that at all times Defendants were acting within their course and
25 scope as managers of CPI. FAVC at 26. More importantly, Plaintiff does not assert any
26 allegations as to how these allegedly false statements caused his non-existent harm. *Id.*
27 Further, Plaintiff does not provide any allegations that could differentiate the allegedly false
28 representations among the multiple Defendants. *Id. See also, Swartz v. KPMG LLP*, 476

1 F.3d 756, 764-65 (9th Cir. 2007). As a result, Plaintiff has failed completely to plead his
2 claim for consumer fraud with the particularity required by N.R.C.P. 9(b). Therefore,
3 Plaintiff's Sixteenth Claim for Relief must be dismissed pursuant to N.R.C.P. 12(b)(5).

4 **V. CONCLUSION**

5 Based on the arguments provided above, Defendants hereby respectfully request that
6 Plaintiff's Third, Fourth, Seventh, Eighth, and Tenth through Sixteenth claims for relief be
7 dismissed in accordance with N.R.C.P. 12(b)(5).

8 DATED this 21st day of March 2025.

9 **BENDAVID LAW**

10 */s/ Jeffery A. Bendavid, Esq.*

11 **JEFFERY A. BENDAVID, ESQ.**

Nevada Bar No. 6220
jbendavid@bendavidfirm.com

12 **JACQUELINE VOKOUN, ESQ.**

Nevada Bar No. 16400
jvokoun@bendavidfirm.com
7301 Peak Dr., Suite 150
Las Vegas, Nevada 89128
(702) 385-6114

13 **AUBREY B. HARWELL III, ESQ.**

14 *(Pro Hac Vice Pending)*
TN no. 17394

15 trey@nealharwell.com

16 **NEAL & HARWELL, PLC**

17 1201 Demonbreun Street, Suite 1000
18 Nashville, Tennessee 37203
19 (615) 259-1028

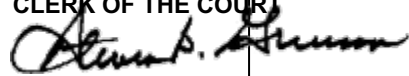
20 **PETER S. CHRISTIANSEN, ESQ.**

Nevada Bar No. 1656
wbarrett@christiansenlaw.com

21 **WHITNEY BARRETT, ESQ.**

Nevada Bar No. 13662
wbarrett@christiansenlaw.com
22 **CHRISTIANSEN TRIAL LAWYERS**
23 710 S 7th Street
24 Las Vegas, Nevada 89101
25 (702) 240-7979

26 *Attorneys for Defendants, Clay, Nelson,*
27 *and Perry*



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MDSM
JEFFERY A. BENDAVID, ESQ.
Nevada Bar No. 6220
jbbendavid@bendavidfirm.com
JACQUELINE VOKOUN, ESQ.
Nevada Bar No. 16400
jvokoun@bendavidfirm.com
BENDAVID LAW
7301 Peak Drive, Suite 150
Las Vegas, Nevada 89128
(702) 385-6114

PETER S. CHRISTIANSEN, ESQ.
Nevada Bar No. 1656
pete@christiansenlaw.com
WHITNEY BARRETT, ESQ.
Nevada Bar No. 13662
wbarrett@christiansenlaw.com
CHRISTIANSEN TRIAL LAWYERS
710 S 7th Street
Las Vegas, Nevada 89101
(702) 240-7979

AUBREY B. HARWELL III, ESQ. (*Pro Hac Vice Pending*)
TN No. 17394
trey@nealharwell.com
NEAL & HARWELL, PLC
1201 Demonbreun Street, Suite 1000
Nashville, Tennessee 37203
(616) 238-3526
Attorneys for CPI Management Group, LLC

**DISTRICT COURT
CLARK COUNTY NEVADA**

Francisco Silva, an individual,

Plaintiff,

vs.

Ed Clay, an individual; Scott Nelson, an individual; Deddrick Perry, an individual; Julie Freeman, an individual; Doe Defendants 1 – 10;

Defendants,

CPI Management Group, LLC, a Nevada limited liability company;

Nominal Defendant.

Case No. A-25-909767-B
Dept. 9

NOMINAL DEFENDANT, CPI MANAGEMENT GROUP, LLC'S MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED VERIFIED COMPLAINT FOR A DERIVATIVE ACTION AND/OR MOTION TO DISMISS PLAINTIFF'S FIFTH, SIXTH, AND NINTH CLAIMS FOR RELIEF PURSUANT TO N.R.C.P. 12(b)(5).

Hearing Requested

1 Nominal Defendant, CPI MANAGEMENT GROUP, LLC, a Nevada limited
2 liability company (“CPI”), by and through its attorneys of record, Jeffery A. Bendavid,
3 Esq. and Jacqueline Vokoun, Esq., of Bendavid Law, Peter S. Christiansen, Esq., and
4 Whitney Barrett, Esq., of Christiansen Trial Lawyers, and Aubrey B. Harwell III, Esq.,
5 of Neal & Harwell, PLC (Pro Hac Vice Pending) hereby submits its Motion to Dismiss
6 Plaintiff’s First Amended Verified Complaint (“FAVC”) for a Derivative Action and/or
7 Plaintiff’s Fifth, Sixth, and Ninth Claims for Relief pursuant to N.R.C.P. 12(b)(5).

8 This Motion is based on the memorandum of points and authorities contained
9 herein, any exhibits, pleadings, and papers on file, and any oral argument permitted by
10 the Court at the time for hearing on this matter.

11 DATED this 21st day of March 2025.

12
13 **BENDAVID LAW**

14 */s/ Jeffery A. Bendavid, Esq.*

15 **JEFFERY A. BENDAVID, ESQ.**

Nevada Bar No. 6220

jbendavid@bendavidfirm.com

16 **JACQUELINE VOKOUN, ESQ.**

Nevada Bar No. 16400

17 jvokoun@bendavidfirm.com

7301 Peak Dr., Suite 150

18 Las Vegas, Nevada 89128

(702) 385-6114

19 **AUBREY B. HARWELL III, ESQ.**

(Pro Hac Vice Pending)

20 TN no. 17394

21 trey@nealharwell.com

ADAMS AND REESE LLP

22 1600 West End Avenue,

Suite 1400

23 Nashville, Tennessee 37203

24 (615) 259-1028

PETER S. CHRISTIANSEN, ESQ.

Nevada Bar No. 1656

wbarrett@christiansenlaw.com

25 **WHITNEY BARRETT, ESQ.**

Nevada Bar No. 13662

26 wbarrett@christiansenlaw.com

CHRISTIANSEN TRIAL LAWYERS

27 710 S 7th Street

Las Vegas, Nevada 89101

28 (702) 240-7979

Attorneys for Defendants, Clay,

Nelson, and Perry

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 In 2021, Plaintiff fraudulently induced Defendants, Ed Clay, Deddrick Perry, and
4 Scott Nelson (together, the “Member Defendants”), to provide him with a 25%
5 membership interest in CPI Management Group, LLC (“CPI”). Plaintiff’s fraudulent
6 inducement was based in part on false representations that he “owned” a patent for the
7 extraction of umbilical cord line derived mesenchymal stem cells and the process of
8 extracting hypoxic stem cells. Plaintiff also falsely represented to Defendants that his
9 “patent” for this extraction process was unencumbered and as such he could contribute
10 this “patent” if the Member Defendants provided him with a 25% membership interest
11 in CPI.
12

13 To further induce the Member Defendants, Plaintiff also agreed to contribute or and
14 deliver certain stem cells in his possession and the extraction process to North Beach
15 Lab and to perform several commitments upon receiving his 25% membership interest
16 in CPI. After Plaintiff became a member in CPI, the Member Defendants later
17 discovered that Plaintiff did not have any ownership interest in the “patent” or process
18 for extracting stem cells, as he falsely represented to the Member Defendants, and that
19 he intentionally did not perform most of the commitments he made to induce Member
20 Defendants into providing a 25% membership interest in CPI. Upon the discovery that
21 Plaintiff did not in fact have a patent, CPI took immediate formal action. CPI terminated
22 Plaintiff’s employment exercised the rights provided under CPI’s Operating Agreement
23 to redeem Plaintiff’s 25% membership interest in CPI.
24

25
26 In retaliation of the CPI’s rightful actions, Plaintiff filed his Verified Complaint,
27 which he now has amended, that included an attempt to assert certain claims for
28

1 Conversion and Negligent Hiring Supervision, and Retention derivatively on behalf of
2 CPI against the Member Defendants.

3 Plaintiff's attempt to assert derivative claims fail immediately because Plaintiff
4 failed to make the required demand on CPI to require CPI to assert the claims for
5 Conversion and Negligent Hiring, Supervision, and Retention that he now seeks to
6 assert on behalf of CPI. Plaintiff was required by NRS 86.487 and N.R.C.P. 23.1 to
7 allege specific factual allegations to attempt to demonstrate the efforts Plaintiff took to
8 demand CPI assert the claims he now asserts on "CPI's behalf," and Plaintiff otherwise
9 was required to state the specific reasons why he was not able to make such a demand
10 on CPI. Plaintiff failed to provide any such allegations and instead just concluded that
11 such an effort would have been futile because the Member Defendants "knew the other
12 Defendants" and they may have conspired together to commit fraud. Such baseless
13 conclusions fail because simply "knowing each other" does not excuse Plaintiff from
14 making the required demand on CPI and Plaintiff never asserted any claims for fraud
15 or conspiracy against any of the Defendants. As such, Plaintiff's attempt at asserting a
16 derivative action fails at every turn.

17
18
19 Next, Plaintiff's individual claims fail for similar reasons. Plaintiff asserted a claim
20 for Conversion against Defendant, Julie Freeman ("Defendant Freeman") supposedly
21 on behalf of CPI for some CPI money she allegedly converted. Plaintiff's claim fails
22 because Plaintiff alleged that he, and not CPI, was entitled to an award of damage even
23 though the money allegedly converted was never his. Only CPI could recover damage
24 for the alleged conversion of its funds. Further, Plaintiff did not identify in any way
25 the money allegedly converted, which under Nevada law cannot give rise to a claim for
26 Conversion without demonstrating otherwise.
27
28

1 For similar reasons, Plaintiff's claim for Conversion against the Member
2 Defendants fails. Plaintiff alleged that the Member Defendants "converted" CPI money
3 in some unknown amount. Plaintiff never identified the actual amount of money
4 alleged "converted" or from what account of CPI that this money was "converted."
5 Under Nevada law, Plaintiff's generic non-specific allegations concerning the alleged
6 conversion of money cannot give rise to an actual claim for Conversion.
7

8 Finally, Plaintiff attempted to assert a claim for the alleged Negligent Hiring,
9 Supervision, and Retention of Defendant Freeman against the Member Defendants.
10 Plaintiff's claim fails immediately because black letter Nevada law only permits such
11 a claim to be asserted against an employer, which in this case was only CPI and not the
12 individual Member Defendants.
13

14 Nevada law also prohibits any member or manager of a limited liability company
15 from being liable for the actions of the limited liability company. Plaintiff only alleged
16 in his First Amended Complaint that the Member Defendants were members and
17 managers of CPI and therefore liable for negligently hiring, supervision, and retaining
18 Defendant Freeman. Such an allegation can never give rise to a claim for Negligent
19 Hiring, Supervision, and Retention against the Member Defendants under Nevada law.
20

21 Plaintiff also sought to recover only his "pecuniary" losses for such Negligent
22 Hiring, Supervision, and Retention of Defendant Freeman. Nevada's economic loss
23 doctrine expressly prohibits any recovery in tort for purely economic damages (*i.e.*,
24 "pecuniary losses").

25 Plaintiff has not properly alleged a derivative action under Nevada law and each
26 of Plaintiff's derivative claims are completely deficient under Nevada law. As a result,
27
28

1 Plaintiff's Fifth, Sixth, and Ninth Claims for Relief must be dismissed pursuant to
2 N.R.C.P. 12(b)(5) as set forth in detail below.

3 **II. FACTUAL ALLEGATIONS**

4 As alleged by Plaintiff in his First Amended Verified Complaint, Plaintiff was a
5 member of CPI having a 25% ownership therein. FAVC at 1. Prior to the organization
6 of CPI, the Member Defendants operated the Centro Hospitalario Internacional del
7 Pacifico, S.A., which is now known as the Translational Advanced Medical Center
8 ("TAMS") in Tijuana, Mexico, which offered integrative cancer treatment to patients.
9 Id. at 2.

11 Plaintiff alleges that in 2021, the Member Defendants, Ed Clay, an individual
12 ("Defendant Clay"), Deddrick Perry, an individual ("Defendant Perry"), and Scott
13 Nelson, an individual ("Defendant Nelson"), and Plaintiff, a biologist, agreed to
14 organize CPI to operate a regenerative medicine clinic at TAMS. Id. Upon organizing
15 CPI, Plaintiff entered into a written Operating Agreement effective June 29, 2021, that
16 provided for the management of the affairs of CPI. Id. at 6 and at Exhibit 1. Pursuant
17 to the terms and conditions of this Operating Agreement, Plaintiff owned 25% of CPI
18 and the Member Defendants retained the remaining 75%. Id. at 6.

20 Plaintiff's receipt of this 25% membership interest in CPI was based on Plaintiff's
21 false representations that he "owned" a patent for the extraction of umbilical lining
22 mesenchymal stem cells grown in a hypoxic environment. Plaintiff also falsely
23 represented to the Member Defendants that "his patent" was unencumbered and as such
24 he would transfer ownership of his patent for its unrestricted use. Plaintiff made this
25 false representation to the Member Defendants to induce them into granting him a 25%
26 membership interest in CPI without any capital investment, but in exchange for the full
27
28

1 use and ownership of “his patent.”

2 As further consideration for his 25% membership interest in CPI, Plaintiff promised
3 to perform several commitments for the benefit of CPI. These commitments included,
4 providing a list of scientific Advisory Board members, preparing protocols and flow
5 charts for cell culture processes such as MSC culture processes, the training of staff, the
6 preparation of a Phase II laboratory work description, providing a list of usable reagents
7 and consumables for CPI’s use, and to appear at the existing Tijuana, Mexico facility on
8 a monthly basis. Later, Plaintiff promised to create plans for certain therapies such as
9 TILS and CAR-T, launch new stem cell treatments for CPI, and provide protocols for
10 integrating stem cell therapies, provide plans for next-generation bioreactor processes,
11 and develop protocols for the collection of data for new CPI indications.
12

13
14 Almost none of Plaintiff’s promised “commitments” ever came to fruition. For
15 instance, Plaintiff continued to be employed by a company called Biorestorative
16 Therapies, where he served as both a director and employee and was subject to certain
17 non-compete obligations. Plaintiff informed the Member Defendants that his
18 employment contract with Biorestorative Therapies permitted his involvement with CPI.
19 Plaintiff also falsely informed the Member Defendants that he was resigning in early
20 2023. Plaintiff also owned a company called iBiologics Consulting through which he
21 tried to license a line of cells to CPI without the knowledge of his other employer,
22 Biorestorative Therapies even though CPI had paid for his moving expenses to relocate
23 closer to the Member Defendants.
24

25 In late 2024, the Member Defendants learned that Plaintiff’s employment contract
26 in fact did not allow his membership and employment with CPI. The Member
27 Defendants also learned that Plaintiff never resigned from Biorestorative Therapies.
28

1 Thereafter, the CPI and the Member Defendants also became aware that Plaintiff
2 did not have any ownership interest in the patent that he used to induce the Member
3 Defendants to provide him his 25% membership interest in CPI and he had no ability to
4 provide the patent or any of the technology associated with that patent. At that time, the
5 Member Defendants became aware that nearly all of the representations made by
6 Plaintiff to the Member Defendants were false and Plaintiff knew they were false at the
7 time he made them so that he could unlawfully obtain a 25% membership interest in
8 CPI.
9

10 In April 2024, the Member Defendants informed Plaintiff that they had discovered
11 that CPI's CFO, Defendant, Julie Freeman ("Defendant Freeman") had taken
12 approximately \$5,000,000 from CPI and TAMS. Id. at 9. Thereafter, Plaintiff falsely
13 alleges that he "took it upon himself" to review bank statements to investigate the
14 missing funds. Id. Based on these alleged "reviews," Plaintiff alleges that he
15 "discovered" that Defendant Freeman had made entries labeled "pre-tax distributions"
16 to the Member Defendants totaling approximately \$900,000 and that Plaintiff had not
17 received any such "pre-tax distributions." Id. Plaintiff further falsely alleges that he
18 discovered that the Member Defendants had used CPI funds to purchase real property in
19 Nashville, Tennessee and to make "mortgage payments" on a separate piece of real
20 property located in Longview, Texas. Id. Of course, Plaintiff is aware that these
21 allegations are completely false.
22
23

24 On November 21, 2024, Plaintiff alleges that the Member Defendants terminated
25 Plaintiff from his position as an unidentified officer of CPI, which of course is incorrect
26 as CPI terminated his employment. Id. at 11. On December 18, 2024, Plaintiff further
27 alleges that the Member Defendants voted to remove Silva as a member of the Company.
28

1 Id.

2 Plaintiff now alleges that he sent CPI a letter on January 10, 2025 allegedly revoking
3 CPI's rights to possess or use his "property" consisting of his solely owned "original
4 stem cells" and the process and know-how to duplicate those cells. Id. at 13. Plaintiff
5 alleges that despite providing those cells to CPI along with the processes to duplicate
6 them, CPI can no longer make use of the cells he provided or the cells that were
7 duplicated. Id. However, as Plaintiff knows, CPI is a management company and does
8 not have possession of or duplicate any cells.
9

10 Without any notice or request made to CPI, Plaintiff filed a Verified Complaint,
11 which he has now amended against the Member Defendants and Defendant Freeman
12 asserting several false claims against the Member Defendants. *See generally*, Verified
13 Complaint and FAVC. After the Member Defendants moved to dismiss Plaintiff's
14 Verified Complaint, Plaintiff amended his Verified Complaint without materially
15 modifying any of his existing claims. *See generally*, FAVC. Instead, Plaintiff asserted
16 several additional claims directly against the Members Defendants and supposedly on
17 behalf of CPI. Id. Specifically, Plaintiff's First Amended Complaint assert claims
18 directly against the Member Defendants for Breach of Contract, Breach of the Implied
19 Covenant of Good Faith and Fair Dealing, Breach of the Duty of Loyalty, Breach of the
20 Duty of Care, Breach of an alleged Fiduciary Duty, Negligent Hiring, Supervision, and
21 Retention, an Accounting, "Minority Shareholder Oppression," Negligence,
22 Misappropriation of Trade Secrets, Unjust Enrichment, and Violation of Nevada's
23 Deceptive Trade Practices Act. Id. Plaintiff also improperly named CPI as a Nominal
24 Defendant and falsely and incorrectly asserted derivative claims allegedly on behalf of
25
26
27
28

1 CPI against Defendant Freeman for Conversion, and against the Member Defendants for
2 Conversion and Negligent Hiring, Supervision, and Retention. *Id.* at 1 and at 13-15.

3 As demonstrated below, Plaintiff's Fifth, Sixth, and Ninth Claims for Relief must
4 be dismissed since Plaintiff has failed to allege facts sufficient to assert his claims
5 derivatively on behalf of CPI. Further, Plaintiff's Fifth, Sixth and ninth Claims for
6 Relief must be dismissed pursuant to N.R.C.P. 12(b)(5) since Plaintiff has failed to state
7 an actual claim for Conversion or Negligent Hiring, Supervision, and Retention under
8 Nevada law.
9

10 **III. LEGAL STANDARD**

11 N.R.C.P. 12(b)(5) provides that a party can request a dismissal by motion of an
12 opposing party's claims or counterclaims for that party's failure to state a claim upon
13 which relief can be granted. *Zalk-Josephs Co. v. Wells-Cargo, Inc.*, 81 Nev. 163, 169-
14 70, 400 P.2d 621, 624-25 (1965); and *Edgar v. Wagner*, 101 Nev. 226, 228, 699 P.2d
15 110, 112 (1985). Dismissal pursuant to N.R.C.P. 12(b)(5) is warranted "if it appears
16 beyond a doubt that Plaintiff could prove no set of facts, which if true, would entitle
17 Plaintiff to relief." *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev 224, 227-28, 181
18 P.3d 670, 672 (2008). For the purposes of a motion under N.R.C.P. 12(b)(5), only the
19 "factual allegations of the complaint must be accepted as true." *Bratcher v. City of Las*
20 *Vegas*, 113 Nev. 502, 507, 937 P.2d 485, 489 (1997) (citations omitted). However, a
21 plaintiff is required "to set forth sufficient facts to demonstrate the necessary elements
22 of a claim for relief so that the defending party has adequate notice of the nature of the
23 claim and the relief sought." *Hay v. Hay*, 100 Nev. 196, 198, 678 P.2d 672, 674 (1984);
24 *Ravera v. City of Reno*, 100 Nev. 68, 70, 675 P.2d 407, 408 (1984). Dismissal pursuant
25 to N.R.C.P. 12(b)(5) is proper where the factual allegations asserted are not sufficient
26 to establish the elements of a claim for relief. *Stockmeier v. Nevada Department of*
27 *Corrections Psychological Review Panel*, 124 Nev. 313, 316, 183 P.3d 133, 135 (2008).
28

1 As demonstrated below, Plaintiff's Fifth, Sixth, and Ninth Claims for Relief must
2 be dismissed since Plaintiff has failed to allege facts sufficient to assert his claims
3 derivatively on behalf of CPI. Further, Plaintiff's Fifth, Sixth and Ninth Claims for
4 Relief must be dismissed pursuant to N.R.C.P. 12(b)(5) since Plaintiff has failed to state
5 an actual claim for Conversion or Negligent Hiring, Supervision, and Retention under
6 Nevada law.

7 **IV. ARGUMENT**

8 **A. Plaintiff's Derivative Claims for Relief Must Be Dismissed Since Plaintiff Has** 9 **Not Asserted Factual Allegations Sufficient to Sustain A Derivative Action.**

10 Based on Plaintiff's allegations, Plaintiff's claims for relief are a combination of
11 direct claims asserted against certain Defendants, including the Member Defendants
12 and indirect claims asserted derivatively on behalf of CPI. *See generally*, FAVC.
13 Specifically, Plaintiff has asserted separate derivative claims on behalf of CPI for
14 Conversion against Freeman, Conversion against the Member Defendants, and
15 Negligent Hiring, Supervision, and Retention against the Member Defendants. *Id.* at
16 17-19 and at 20-21.

17 Derivative actions concerning Nevada limited liability companies are prescribed
18 by NRS 86.483 through NRS 86.489, and subject to the requirements of N.R.C.P. 23.1.
19 NRS 86.483 authorizes a member of a Nevada limited liability company to bring an
20 action in the right of a limited liability company to recover a judgment where its
21 members or managers have refused to bring such an action or if an effort to cause such
22 members and managers is not likely to succeed. In order to appropriately plead a
23 derivative action authorized by NRS 86.483, a plaintiff must set forth with particularity
24 the following:

- 25 1. The effort of the plaintiff to secure initiation of the action; and
- 26 2. The reasons for the plaintiff not making the effort to secure initiation of the
27 action. NRS 86.487.

28 Further, N.R.C.P. 23.1 also requires that any derivative action in Nevada may not

1 be maintained if it appears that the plaintiff does not fairly and adequately represent the
2 interests of the members similarly situated in enforcing the rights of the limited liability
3 company.

4 In support of Plaintiff's derivative action, Plaintiff has asserted only a few
5 allegations. FAVC at 12-13. First, Plaintiff alleges that Plaintiff has standing to assert
6 a derivative action because he was "a 25% owner of CPI." Id. at 12. Second, Plaintiff
7 alleges that obtaining the consent of the members to bring the derivative claims on
8 behalf of CPI would be "futile" because some members are named as Defendants due
9 to their falsely alleged bad acts and an alleged ongoing refusal to respond to Plaintiff's
10 inquiries regarding the conduct allegedly giving rise to the derivative claims. Id. at 17.

11 These limited allegations are not remotely sufficient to meet Nevada's heightened
12 pleading requirements regarding derivative actions. As provided above, NRS 86.487
13 and N.R.C.P. 23.1, Plaintiff was required to allege facts with particularity of Plaintiff's
14 efforts, if any, made to obtain the action that Plaintiff desires from the managers or
15 managing members of CPI and the reasons for his failure to obtain the action or his
16 reasons for not making the effort at all. *See also, Shoen v. SAC Holding Corp.*, 122
17 Nev. 621, 633-34, 137 P.3d 1171, 1179 (2006) (overruled in part on other grounds by
18 *Guzman v. Johson*, 137 Nev. 126, 132, 483 P.3d 531, 537 (2021)) (a member's failure
19 to sufficiently plead compliance with the demand requirement deprives a member of
20 standing and justifies dismissal of complaint for failure to state a claim). Plaintiff failed
21 to assert any particular factual allegations that he made any effort to obtain the action
22 required. FAVC at 12-13.

23 Instead, Plaintiff has only alleged that such efforts were "futile" but failed to allege
24 any specific facts as to why or how such efforts were futile under the circumstances.
25 Id. at 13. In particular, Plaintiff only alleges that his efforts to obtain CPI approval are
26 futile because Defendants, Clay, Perry, and Nelson are individual Defendants in
27 Plaintiff's First Amended Verified Complaint. Id. at 13 and at 17. Plaintiff also alleges
28 that Plaintiff's demand efforts are futile because Defendant, Freeman, is a "good friend"

1 of Defendant Clay and that Defendant Clay “may” have conspired or acted in concert
2 with Defendant Freeman to defraud CPI. *Id.* at 12-13. Of course, Plaintiff knows such
3 allegations are false.

4 Nonetheless, Plaintiff’s self-serving, conclusory allegations are not sufficient to
5 meet the heightened pleading requirement for Plaintiff to maintain a derivative action
6 on behalf of CPI. First, Nevada law has long determined that mere allegations of
7 participation in some “wrongdoing,” almost exactly like Plaintiff’s allegation, are
8 insufficient to excuse the required pre-suit demand requirement necessary to maintain
9 a derivative action. *Shoen*, 122 Nev. at 636. Plaintiff must instead allege facts
10 demonstrating the alleged wrongdoing somehow prevented the Member Defendants
11 from considering Plaintiff’s demand, which is a required demand that Plaintiff never
12 made on CPI or its Members. *Id.* *See also*, FAVC at 13 and at 17. Plaintiff has not
13 made any allegations that the Member Defendants were somehow prevented from
14 considering Plaintiff’s demand. *Id.* As a result, Plaintiff cannot sustain any derivative
15 action.

16 Further Plaintiff alleges that “wrongdoing” of the Member Defendants is that they
17 are somehow liable to CPI because they allegedly “converted” CPI moneys and
18 purchased assets for their personal benefit. FAVC at 18. On its face, this allegation is
19 not an indication of the “wrongdoing” necessary for Plaintiff to not have made a
20 demand for action. No part of this allegation indicates any unlawful activity that could
21 allow Plaintiff to avoid submitting a demand. *See e.g., McMahon v. Adnani*, 2019 Nev.
22 Unpub. LEXIS 210*, 457 P.3d 968 (2019) (citing *Stephens v. Uranium Energy Corp.*,
23 2016 U.S. Dist. LEXIS 91897, 2016 WL 3855860 (S.D. Tex. 2016) (alleged unlawful
24 misconduct is not sufficient to demonstrate demand futility).

25 To begin with, the falsely alleged conversion of CPI’s money as concluded by
26 Plaintiff is not an actual sustainable claim for Conversion under Nevada law based on
27 Plaintiff’s limited allegations of fact. *See e.g., Hester v. Vision Airlines, Inc.*, 2011
28 U.S. Dist. LEXIS 29559 at *2, 2011 WL 856871 (D. Nev. 2011); and *Lopez v. Javier*

1 *Corral, D.C.*, 2010 Nev. LEXIS 69 at *6, 2010 WL 5541115 (D. Nev. 2010). Under
2 Nevada law, a claim for Conversion is not established by what was allegedly purchased
3 with CPI funds or any other funds as alleged by Plaintiff. *See e.g., Evans v. Dean Witter*
4 *Reynolds, Inc.*, 116 Nev. 598, 606, 5 P.3d 1043, 1048 (2000). *See also*, FAVC at 17-
5 19. Further, Plaintiff's allegation that the Member Defendants failed to follow
6 distribution procedures as set forth in CPI's Operating Agreement in no way
7 demonstrates any act of "Conversion" under Nevada law, particularly since the Member
8 Defendants hold more than the required 51% of the total membership interests to
9 require CPI to make distributions to its members. *Wantz v. Redfield*, 74 Nev. 196, 198,
10 326 P.2d 413, 414 (1958) (conversion must involve a wrongful act). *See also*, FAVC
11 at Exhibit 1, page 10. Finally, an action of Conversion is not found by any alleged
12 misrepresentations regarding fund transfers as alleged by Plaintiff. *See e.g., Evans*, 116
13 Nev. at 606.

14 In reality, none of the allegations asserted by Plaintiff, supposedly
15 demonstrating some Conversion by the Member Defendants, establish an actual act of
16 Conversion or any other unlawful activity. *Supra*. More importantly, these allegations
17 do not establish Plaintiff's futility in demanding CPI take action. *Id.* In reality, these
18 allegations are just a formulaic attempt to avoid complying with the requirements of
19 Nevada law.

20 This reality is cemented by the contrary provisions of the alleged Operating
21 Agreement for CPI, included by Plaintiff as part of his First Amended Verified
22 Complaint, which authorized the Member Defendants to manage the business and
23 affairs of CPI, including, but not limited to the use and distribution of CPI funds. FAVC
24 at Exhibit 1. Section 5.1 of the same Operating Agreement provides that CPI would be
25 managed by its Members and the business and affairs of CPI, including, but not limited
26 to, the acquisition of real property, is permitted if approved by those Members having
27 51% of the CPI's voting rights, which as Plaintiff knows, did not happen in the first
28 place. *Id.* at Exhibit 1, page 10. The Operating Agreement plainly provides that the

1 Member Defendants have 75% of the total voting rights in CPI, which is greater than
2 the required 51% necessary to approve any actions or management of CPI. *Id.* at
3 Exhibit 1, page 10 and at page 31. As such, the Member Defendants had the authority
4 to cause CPI to act, including, but not limited to, making distributions to its Members.

5 As such, Plaintiff has not alleged any facts of any actual “wrongdoing” on the part
6 of the Member Defendants that could have been unlawful to such an extent as to excuse
7 Plaintiff from making a demand to commence an action. *Supra.* Therefore, Plaintiff
8 has not alleged facts with the required particularity sufficient to excuse Plaintiff’s
9 demand requirement before commencing a derivative action.

10 Plaintiff also alleges, as part of the derivative claim for Conversion against
11 Defendant Freeman, that Plaintiff’s obligation to make a demand on CPI would be futile
12 because Defendant Clay is a “friend” of Defendant Freeman. *FAVC* at 17. As above,
13 falsely alleging the existence of a personal relationship does not meet the heightened
14 pleading requirements for demand futility. *Shoen*, 122 Nev. at 639, n.56. In order to
15 demonstrate partiality on the party of Defendant Clay, Plaintiff must have alleged facts
16 that could demonstrate “why the relationship creates reasonable doubt,” as to Defendant
17 Clay’s alleged disinterestedness. *Id.* Plaintiff must have asserted allegations with
18 particularity that could demonstrate why this alleged relationship would “materially
19 affect” Defendant Clay’s judgment related to his request for CPI to take action. *Id.*

20 Here, Plaintiff has not asserted any such allegations. *FAVC* at 17. Plaintiff does
21 falsely allege that Defendant Clay “may” have conspired with Defendant Freeman to
22 defraud CPI. *Id.* at 13. This allegation, besides being incredibly speculative and
23 categorically false, is not remotely sufficient because Plaintiff has not asserted any
24 derivative claim for Conspiracy or Fraud amongst Defendant Freeman and Defendant
25 Clay. *See generally*, *FAVC*. Thus, what does not exist cannot demonstrate the required
26 reasonable doubt for Plaintiff to exploit futility. *Shoen*, 122 Nev. at 639, n.56.

27 As provided above, Plaintiff has not met the heightened pleading requirement
28 sufficient to be excused from the demand requirements of N.R.C.P. 23.1 and NRS

1 86.487. Therefore, Plaintiff’s portion of his First Amended Verified Complaint brought
2 derivatively on behalf of CPI must be dismissed.

3 **B. Plaintiff’s Fifth Cause of Action For Conversion Allegedly On Behalf of CPI**
4 **Must Be Dismissed Since Plaintiff Is Not The Owner Of The Personal Property**
5 **Allegedly Converted.**

6 Plaintiff’s Fifth Claim for Relief attempts to assert a claim for Conversion against
7 Defendant Freeman supposedly on behalf of CPI. FAVC at 13-14. Plaintiff asserts this
8 claim based on the singular allegation that Defendant Freeman “embezzled” millions
9 of dollars from CPI. Id. at 14. Although Plaintiff alleges that it has asserted this claim
10 “on behalf of CPI,” Plaintiff actually seeks to recover an award of compensatory
11 damages and punitive damages for himself and not CPI. Id.

12 In Nevada, Conversion is defined as a “as a distinct act of dominion wrongfully
13 exerted over another’s personal property in denial of, or inconsistent with his title or
14 rights therein or in derogation, exclusion, or defiance of such title or rights.” *Wantz v.*
15 *Redfield*, 74 Nev. 196, 198, 326 P.2d 413, 414 (1958); *see also, Evans v. Dean Witter*
16 *Reynolds, Inc.*, 116 Nev. 598, 606, 5 P.3d 1043, 1048 (2000). As explained by the
17 Nevada Supreme Court in *Blige v. Terry*, the effect of the act is critical to a claim for
18 Conversion, and as a result, Conversion is shown when an owner is deprived of their
19 property by the wrongful act of another who assumes dominion over the owner’s
20 property. 540 P.3d 421, 431, 2023 Nev. LEXIS 51, 2023 WL 8943649 (2023) (citing
21 *Studebaker Bros., Co. of Utah v. Witcher*, 44 Nev. 442, 462, 195 P. 334, 340 (1921)).
22 However, a Conversion must be an unlawful act. *Wantz*, 74 Nev. at 198.

23 Here, Plaintiff’s Conversion claim fails because as alleged by Plaintiff in his Fifth
24 Claim for Relief, he is not the owner of the property allegedly converted. FAVC at 13-
25 14. Under Nevada law, only the actual owner of the property wrongfully taken may
26 sustain a claim for Conversion. *Blige*, 540 P.3d at 431. As such, Plaintiff cannot
27 recover compensatory or “punitive damages” directly from Defendant Freeman for her
28 alleged Conversion of CPI’s Property because he is not the owner of the money

1 allegedly converted.

2 Further, there is no set of facts that Plaintiff could allege that would entitle him to
3 receive any award for the alleged Conversion of CPI's property as a result of his alleged
4 membership interest in CPI or as a result of any other relationship alleged with CPI.
5 Under Nevada law, a Nevada limited liability company such as CPI is a legal entity
6 separate and distinct from its Members. NRS 86.201(3). NRS 86.311(1) further
7 provides that any real and personal property owned or purchased by a Nevada limited
8 liability company must be held and owned in the name of that Nevada limited liability
9 company. Thus, an alleged member of a Nevada limited liability company, like
10 Plaintiff, does not own and does not have any interest in the property of such a limited
11 liability company. *See, e.g., In re Real Marketing Servs., LLC*, 309 B. R. 783 788 (S.D.
12 Cal 2004) ("Members of an LLC hold no direct ownership interest in the company's
13 [LLC's] assets and therefore are not directly injured when the company [LLC] suffers
14 an improper deprivation of those assets").

15 Since Plaintiff has alleged only that CPI's property was converted by Defendant
16 Freeman, Plaintiff is prohibited as a matter of Nevada law from receiving, directly or
17 indirectly, any award for the alleged Conversion of CPI's property. Therefore,
18 Plaintiff's Fifth Claim for Relief for Conversion must be dismissed pursuant to
19 N.R.C.P. 12(b)(5) since there no set of facts may to entitle Plaintiff to receive an award
20 for damages for the alleged Conversion of CPI's property.

21 **C. Plaintiff's Fifth Cause of Action For Conversion Also Must Be Dismissed**
22 **Since Plaintiff Has Not Asserted Factual Allegations Sufficient To**
23 **Demonstrate the Conversion of Money Under Nevada Law.**

24 Plaintiff's Fifth Claim for Relief also fails to demonstrate an actual claim for
25 Conversion because Plaintiff has failed to assert any factual allegations that could
26 sufficiently demonstrate that money was converted by Defendant Freeman. In Nevada,
27 money may be the subject of a Conversion claim provided that such money, or a
28 specific amount of money is identifiable, such as where it is earmarked for some

1 specific purpose or set aside in a separate identifiable account. *Hester v. Vision*
2 *Airlines, Inc.*, 2011 U.S. Dist. LEXIS 29559 at *2, 2011 WL 856871 (D. Nev. 2011)
3 (airline failed to pay flight crews federal money earmarked as hazard pay). *See also,*
4 *Lopez v. Javier Corral, D.C.*, 2010 Nev. LEXIS 69 at *6, 2010 WL 5541115 (D. Nev.
5 2010) (funds held in attorney trust account for client could be subject to a conversion
6 claim).

7 In this matter, Plaintiff has not identified any specific money at issue. FAVC at
8 15. The money that Plaintiff alleges that Defendant Freeman converted was some
9 unknown amount of CPI's money. *Id.* Plaintiff has not identified any account(s) from
10 which this money was allegedly converted by Defendant Freeman. *Id.* As such, these
11 allegations are not sufficient to demonstrate that money was converted by Defendant
12 Freeman as required by Nevada law. *See e.g., Dunham Trust Co. v. Wells Fargo Bank*
13 *N.A.*, 2019 US. Dist. LEXIS 20350, at *17-18, WL 489095 (D. Nev. 2019) (allegations
14 of an unidentifiable amount of money converted by a bank was not sufficient to sustain
15 a claim for the conversion of money under Nevada law); and *Geraci v. Vinson*, 2020
16 U.S. Dist. LEXIS 95039, at *7-8, 2020 WL 2840239 (D. Nev. 2020) (general
17 allegations of cash transferred and used for personal benefit are not sufficient to assert
18 a claim for the conversion of money under Nevada law).

19 Since Plaintiff has failed to allege any facts that could identify a specific amount
20 of money that was either earmarked for some specific purpose or set aside in a separate
21 identifiable account, Plaintiff cannot sustain under Nevada law a Conversion claim for
22 money allegedly converted by Defendant Freeman. Therefore, Plaintiff's Fifth Claim
23 for Relief for Conversion must be dismissed pursuant to N.R.C.P. 12(b)(5).

24 **D. Plaintiff's Sixth Cause of Action For Conversion Must Be Dismissed Since**
25 **Plaintiff Has Not Asserted Factual Allegations Sufficient To Demonstrate the**
26 **Conversion of Money Under Nevada Law.**

27 Plaintiff's Sixth Claim for Relief attempts to assert a claim on behalf of CPI
28 against the Member Defendants for Conversion. FAVC 14-15. Specifically, Plaintiff

1 alleges that the Member Defendants converted CPI's property by using CPI's property
2 (*i.e.*, money) to purchase assets for their personal benefit. *Id.* at 15. Further, Plaintiff
3 alleges that the Member Defendants converted CPI's assets by failing to follow the
4 procedure for distributions set forth in Section 8.1 of CPI's Operating Agreement. *Id.*

5 Plaintiff's allegations supposedly in support of his Conversion claim interchanges
6 "CPI's property" with "CPI's assets." *Id.* However, Plaintiff's First Amended Verified
7 Complaint fails entirely to allege that any CPI property or assets, or that its funds were
8 converted either by the Member Defendants or Defendant Freeman. *Id.* at 13-15. To
9 the contrary, Plaintiff alleges that the Member Defendants failed to follow procedures
10 for distributions of excess funds. *Id.* at 15. Plaintiff also alleges that the Member
11 Defendants allegedly misrepresented aspects of "fund transfers." *Id.* As such,
12 Plaintiff's allegations demonstrate that the only CPI property or assets allegedly
13 converted by the Member Defendants is CPI's money. *Id.* As a result, Plaintiff fails to
14 assert a valid claim for Conversion on behalf of CPI against the Member Defendants
15 because Plaintiff has not alleged any facts that could sufficiently demonstrate that CPI's
16 money actually was converted by the Member Defendants. *Id.* at 14-15.

17 In Nevada, money may be the subject of a Conversion claim provided that such
18 money, or a specific amount of money is identifiable, such as where it is earmarked for
19 some specific purpose or set aside in a separate identifiable account. *Hester*, 2011 U.S.
20 Dist. LEXIS 29559 at *2 (airline failed to pay flight crews federal money earmarked as
21 hazard pay). *See also, Lopez v.*, 2010 Nev. LEXIS 69 at *6 (funds held in attorney trust
22 account for client could be subject to a conversion claim).

23 Here, Plaintiff has not identified any specific money of CPI allegedly converted
24 by the Member Defendants. FAVC at 14-15. Instead, Plaintiff has only falsely alleged
25 vaguely to "CPI's funds." *Id.* Plaintiff has not identified any account(s) from which
26 this money was allegedly converted by the Member Defendants. *Id.* Plaintiff has not
27 alleged any earmarks where such CPI funds were to be used. *Id.* As such, these
28 allegations are not sufficient to demonstrate that CPI's money was converted by the

1 Member Defendants in accordance with Nevada law. *See e.g., Dunham Trust Co.*, 2019
2 US. Dist. LEXIS 20350 at *17-18 (allegations of an unidentifiable amount of money
3 converted by a bank was not sufficient to sustain a claim for the conversion of money
4 under Nevada law); and *Geraci*, 2020 U.S. Dist. LEXIS 95039 at *7-8 (general
5 allegations of cash transferred and used for personal benefit are not sufficient to assert
6 a claim for the conversion of money under Nevada law).

7 Since Plaintiff has failed to allege any facts that could identify a specific amount
8 of money that was either earmarked for some specific purpose or set aside in a separate
9 identifiable account, Plaintiff cannot sustain under Nevada law a Conversion claim for
10 money allegedly converted by Defendant Freeman. Therefore, Plaintiff's Sixth Claim
11 for Relief for Conversion must be dismissed pursuant to N.R.C.P. 12(b)(5).

12 **E. Plaintiff's Ninth Cause of Action For Negligent Hiring, Supervision, and**
13 **Retention Must Be Dismissed Since Plaintiff Has Not Asserted Factual**
14 **Allegations Sufficient To Demonstrate This Claim Under Nevada Law.**

15 Plaintiff's Ninth Claim for Relief attempts to assert a claim on behalf of CPI
16 against the Member Defendants for Negligent Hiring, Supervision, and Retention.
17 FAVC at 20-21. Plaintiff alleges that the Member Defendants owed CPI a duty to
18 exercise reasonable care in the hiring, supervision, and retention of CPI's employees.
19 *Id.* at 20. Plaintiff then alleges that the Member Defendants breached that duty by
20 hiring, failing to supervise, and retaining Defendant Freeman. *Id.* at 21.

21 On their face, Plaintiff's allegations do not and cannot demonstrate an actual
22 claim for Negligent Hiring, Supervision, and Retention. Under Nevada law, only an
23 actual employer has a duty to use reasonable care in the training, supervision, and
24 retention of an employee. *Hall v. SSF, Inc.*, 112 Nev. 1384, 1392, 930 P.2d 94, 98
25 (1996). *See also, Rockwell v. Sun Harbor Budget Suites*, 112 Nev. 1217, 1226 (1996)
26 (for an employer to be liable for negligent hiring, training or supervision, the person
27 involved must be an actual employee). Here, Plaintiff alleges that Defendant Freeman
28 was employed by CPI as its Chief Financial Officer and does not assert any allegations

1 that Defendant Freeman was ever the employee of any one of the Member Defendants
2 when any underlying tort occurred. FAVC at 21. As such, the Member Defendants do
3 not and cannot owe any duty to CPI, or anyone else, for any tort allegedly committed
4 by Defendant Freeman since Defendant Freeman was not an employee of the Member
5 Defendants. *Hall*, 112 Nev. at 1392. In fact, the only party under Nevada law who
6 could owe a duty of reasonable care in the training, supervision, and retention of
7 Defendant Freeman based on the allegations asserted by Plaintiff, is CPI since it was
8 Defendant Freeman’s alleged employer. *Id.* Thus, Plaintiff’s derivative claim for
9 Negligent Hiring, Supervision, and Retention fails as a matter of Nevada law and
10 therefore must be dismissed pursuant to N.R.C.P. 12(b)(5).

11 Further, Nevada’s economic loss doctrine bars CPI from recovering against the
12 Member Defendants for the alleged negligent hiring, supervision, and retention of
13 Defendant Freeman. *Sadler v. PacifiCare of Nev.*, 130 Nev. 990, 996, 340 P.3d 1264,
14 1268 (2014) (quoting *Terracon Consultants W., Inc., v. Mandalay Resort Grp.*, 125
15 Nev. 66, 72-73, 206 P.3d 81, 86 (2009)) (alteration in original) (Nevada’s economic
16 loss doctrine prohibits the recovery for “purely economic losses” on an unintentional
17 tort claim). Under Nevada law, the economic loss doctrine marks the fundamental
18 boundary between contract claims and tort claims such as negligence, which impose a
19 duty of reasonable care, and as a result, encourage citizens to avoid causing physical
20 harm to others. *Terracon Consultants W.*, 130 Nev. at 72-73.

21 Here, Nevada’s economic loss doctrine prohibits CPI from recovering against
22 Defendants for the derivative claim of Negligent Hiring, Supervision and Retention
23 because only economic damages are alleged. FAVC at 21. Plaintiff alleges only that
24 CPI suffered some “pecuniary loss” as a result of Defendants’ breach of their duty
25 allegedly owed Plaintiff. *Id.* Plaintiff does not allege that CPI was injured in any other
26 manner because of the Member Defendants’ allegedly negligent actions. *Id.* As such,
27 Plaintiff’s allegations consist purely of CPI’s alleged economic loss. *Id.* Therefore,
28 Plaintiff’s derivative claim for Negligent Hiring, Supervision, and Retention is subject

1 to and prohibited by Nevada's economic loss doctrine and therefore must be dismissed
2 pursuant to N.R.C.P. 12(b)(5).

3 **V. CONCLUSION**

4 Based on the arguments provided above, CPI hereby respectfully requests that
5 Plaintiff's Fifth, Sixth, and Ninth Claims for Relief be dismissed since Plaintiff has
6 failed to sufficiently assert factual allegations to commence a derivative action on
7 behalf of CPI against the Member Defendants. Alternatively, or in addition, Plaintiff's
8 Fifth, Sixth, and Ninth Claims for Relief should be dismissed pursuant to N.R.C.P.
9 12(b)(5) since Plaintiff has failed to assert factual allegations demonstrating valid
10 claims for Conversion and Negligent Hiring, Supervision, and Retention under Nevada
11 law.

12 Dated this 21st day of March 2025.

13 **BENDAVID LAW**

14 */s/ Jeffery A. Bendavid, Esq.*

15 **JEFFERY A. BENDAVID, ESQ.**

Nevada Bar No. 6220

jbendavid@bendavidfirm.com

16 **JACQUELINE VOKOUN, ESQ.**

Nevada Bar No. 16400

jvokoun@bendavidfirm.com

17 7301 Peak Dr., Suite 150

18 Las Vegas, Nevada 89128

(702) 385-6114

19 **AUBREY B. HARWELL III,**
20 **ESQ.**

(Pro Hac Vice Pending)

21 TN no. 17394

trey@nealharwell.com

22 **ADAMS AND REESE LLP**

1600 West End Avenue, Suite 1400

23 Nashville, Tennessee 37203

24 (615) 259-1028

25 **PETER S. CHRISTIANSEN, ESQ.**

Nevada Bar No. 1656

wbarrett@christiansenlaw.com

26 **WHITNEY BARRETT, ESQ.**

Nevada Bar No. 13662

wbarrett@christiansenlaw.com

27 **CHRISTIANSEN TRIAL LAWYERS**

710 S 7th Street

28 Las Vegas, Nevada 89101

(702) 240-7979

*Attorneys for Defendants, Clay, Nelson,
and Perry*

A-25-909767-B Francisco Silva, Plaintiff(s)
vs.
Ed Clay, Defendant(s)

Department 9

April 15, 2025 11:00 AM Preliminary Injunction Hearing

HEARD BY: Gall, Maria COURTROOM: RJC Courtroom 16A

COURT CLERK: Wise, Kelli

RECORDER: Villani, Gina

REPORTER:

PARTIES PRESENT:

Jeffrey A. Bendavid Attorney for Defendant

Peter James Christiansen Attorney for Defendant

Vance R. Bohman Attorney for Plaintiff

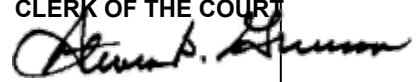
Xyzlo Lee Attorney for Plaintiff

JOURNAL ENTRIES

Whitney Barrett, Esq. present on behalf of Defendant.

Court provided its initial inclinations. Arguments by Mr. Bohman and MR. Christansen on the merits and opposition of the injunction. Court expressed counsel presented great briefing and argument. Court stated its preliminary findings and ORDERED, preliminary injunction DENIED. Ms. Barrett to prepare the findings of fact and conclusion of law and order consistent with the oral pronouncements, as well as the points and authorities raised in the briefing. Court directed Ms. Barrett to ensure Mr. Bohman has the opportunity to review and comment. The order is due to the court in two weeks. COURT ORDERED, in-chambers' status check SET to ensure receipt of the order. Court encouraged counsel file the order as soon as possible.

05/02/2025 3:00 AM (CHAMBERS) STATUS CHECK: SUBMISSION OF ORDER



1 **MDSM**
LOGAN G. WILLSON, ESQ.
2 Nevada Bar No. 14967
E-mail: logan@jfnvlaw.com
3 **JENNINGS & FULTON, LTD.**
4 2580 Sorrel Street
Las Vegas, NV 89146
5 Telephone: (702) 979-3565
Facsimile: (702) 362-2060
6 *Attorneys for Defendant Julie Freeman*

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 FRANCISCO SILVA., an individual,

10 Plaintiff,

11 vs.

12 ED CLAY, an individual; SCOTT
NELSON, an individual; DEDDRICK
13 PERRY; JULIE FREEMAN, an
individual; DOE DEFENDANTS 1-10;

14 Defendants,

15 CPI MANAGEMENT GROUP, LLC, a
Nevada limited liability company;

16 Nominal Defendant.
17

Case No.: A-25-909767-B

Dept. No.: 9

**DEFENDANT JULIE FREEMAN'S
MOTION TO DISMISS**

[HEARING REQUESTED]

18 Defendant Julie Freeman, by and through her attorneys of record, LOGAN G.
19 WILLSON, ESQ., of the law firm of JENNINGS & FULTON, LTD., hereby files this
20 Motion to Dismiss.
21

22 This Motion is made and based upon the papers and pleadings on file herein, the
23 Memorandum of Points and Authorities, the attached exhibits, and any oral argument the
24 Court will permit at the hearing on this matter.

25 DATED: April 25th, 2025

JENNINGS & FULTON, LTD.

26 By: /s/ Logan G. Willson, Esq.
27 LOGAN G. WILLSON, ESQ.
Nevada Bar No. 14967
28 *Attorneys for Julie Freeman*

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MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTUAL BACKGROUND

This matter involves a dispute between owners of Nominal Defendant CPI Management Group, LLC (“CPI”). Defendant Julie Freeman (“Ms. Freeman”) has never had any ownership interest in CPI and served as CPI’s Chief Financial Officer (“CFO”) for a brief period of time. In the First Amended Complaint, Plaintiff Francisco Silva (“Mr. Silva”) alleges that other owners of CPI withheld certain information from him.

Ms. Freeman was never directed to report to Mr. Silva. Ms. Freeman was specifically informed as to what information she was permitted to provide Mr. Silva. Ms. Freeman did not withhold information or financials from Mr. Silva and simply did as she was told to do by her bosses. Ms. Freeman had no authority to go over her boss’ heads to provide information requested by Mr. Silva. Any distributions approved by Ms. Freeman were authorized and directed by her bosses, not based on Ms. Freeman attempting to withhold funds, if any, from Mr. Silva. While there appears to be a significant dispute between Plaintiff and Defendants Clay, Nelson, and Perry over their ownership in CPI and representations made, there is no factual or legal basis for Ms. Freeman to be a Defendant in this case.

Plaintiff alleges that at an April 2024 CPI members’ meeting, ownership informed Mr. Silva that Ms. Freeman had embezzled nearly five (5) million dollars from CPI and CHIPSA/TAM between 2022 and 2024. *See* First Amended Complaint at ¶ 23. Simply because Defendants Clay, Nelson, and Perry blamed Freeman does not trigger liability. There must be specific facts alleged confirming Ms. Freeman allegedly embezzled funds. Plaintiff’s hearsay allegations are insufficient. Moreover, financials would demonstrate funds taken improperly and that surely has not happened as Plaintiff initiating this matter

1 was the first occasion of any party alleging that Ms. Freeman embezzled funds.

2 Defendants Clay, Nelson, and Perry attempting to shift fault to their prior CFO is
3 improper. Ms. Freeman began without any employees reporting directly below her. Ms.
4 Freeman’s staff and accounting team grew up to seven (7) employees. It was not simply
5 Ms. Freeman doing as she pleased with accounting and distributions. Ms. Freeman did not
6 convert any CPI funds or funds owed to Mr. Silva. Plaintiff even confirms that the alleged
7 “Nordlander Report” created to absolve Defendants Clay, Nelson, and Perry was an
8 unsigned letter that did not constitute a complete forensic analysis. *Id.* at ¶ 99. When
9 alleging embezzling \$5,000,000, at a minimum, Plaintiff must be able to outline the who,
10 what, when, where, and how of the alleged conversion took place to demonstrate any
11 personal liability on behalf of Ms. Freeman.¹

12
13
14 Instead, Mr. Silva was informed, by his partners without any evidence, that Ms.
15 Freeman took funds to attempt to shield themselves from liability. Blaming someone else
16 without any supporting facts or evidence does not meet the notice pleading standard. Even
17 if Mr. Silva believed Ms. Freeman made distributions that were improper, Ms. Freeman
18 was simply following her boss’ orders on how to issue distributions. Conclusory allegations
19 are insufficient, especially alleging embezzling \$5,000,000 based on hearsay. Based on the
20 allegations contained within the First Amended Complaint being accepted as true, Plaintiff
21 did not and cannot sufficiently plead its claims for relief and the Motion should be granted
22 in its entirety.

23
24 ///

25 ///

26 _____

27 ¹*Ebeid ex rel. United States v. Lungwitz*, 616 F.3d 993, 998 (9th Cir. 2010) (quoting *Vess v.*
28 *Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003)).

1 **II. LEGAL STANDARD**

2 The standard of review for a dismissal under NRCP 12(b)(5) is rigorous, as this
3 court “must construe the pleading liberally and draw every fair intendment in favor of the
4 [non-moving party].” *Squires v. Sierra Nev. Educational Found.*, 107 Nev. 902, 905, 823
5 P.2d 256, 257 (1991) (citations omitted). All factual allegations of the complaint must be
6 accepted as true. *Capital Mort. Holding v. Hahn*, 101 Nev. 314, 315, 705 P.2d 126, 126
7 (1985). A complaint will not be dismissed for failure to state a claim “unless it appears
8 beyond a doubt that the plaintiff could prove no set of facts which, if accepted by the trier
9 of fact, would entitle him [or her] to relief.” *Edgar v. Wagner*, 101 Nev. 226, 228, 699 P.2d
10 110, 112 (1985) (citing *Conley v. Gibson*, 355 U.S. 41, 45–46, 78 S.Ct. 99, 102, 2 L.Ed.2d
11 80 (1957)).

12
13
14 Because the Nevada Rules of Civil Procedure are modeled after the Federal Rules
15 of Civil Procedure, guidance from Federal courts is appropriate here. To survive a motion
16 to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6), a
17 complaint must satisfy the notice pleading standard of Rule 8(a)(2). *See Mendiondo v.*
18 *Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1103 (9th Cir.2008). Rule 8(a)(2) requires "a
19 short and plain statement of the claim showing that the pleader is entitled to relief..."
20 FRCP 8(a)(2). FRCP 8(a)(2)'s pleading standard does not require detailed factual
21 allegations; however, a pleading that offers only "labels and conclusions" or "a formulaic
22 recitation of the elements of a cause of action" will not suffice. *Ashcroft v. Iqbal*, 129 S.Ct.
23 1937, 1949 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). A
24 claim has facial plausibility when the pleaded factual content allows the court to draw the
25 reasonable inference, based on the court's judicial experience and common sense, that the
26 defendant is liable for the misconduct alleged. *See Id.* at 1949–50.
27
28

1 NRCP 9(b) requires when alleging fraud or mistake, a party must state with
2 particularity the circumstances constituting fraud or mistake. Pursuant to NRCP 12(d), if,
3 on a motion under Rule 12(b)(5) or 12(c), matters outside the pleadings are presented to
4 and not excluded by the court, the motion must be treated as one for summary judgment
5 under Rule 56. All parties must be given a reasonable opportunity to present all the
6 material that is pertinent to the motion. *Id.* A court “may also consider unattached evidence
7 on which the complaint necessarily relies if: (1) the complaint refers to the document; (2)
8 the document is central to the plaintiff's claim; and (3) no party questions the authenticity
9 of the document.” *Baxter v. Dignity Health*, 131 Nev. 759, 764, 357 P.3d 927, 930 (2015)
10 (quoting *United States v. Corinthian Colleges*, 655 F.3d 984, 999 (9th Cir. 2011)).
11

12 As outlined in further detail below, Plaintiff’s First Amended Complaint lacks any
13 particularity in support of its Conversion cause of action. Nor does Plaintiff’s First
14 Amended Complaint demonstrate that Plaintiff is aware of Ms. Freeman allegedly
15 embezzling funds, simply that Mr. Silva was told that the embezzlement took place.
16

17 **III. LEGAL ARGUMENT**

18 **1. Plaintiff’s Fails to Sufficiently Allege that Ms. Freeman Converted CPI Funds**

19 Conversion is “a distinct act of dominion wrongfully exerted over another’s
20 personal property in denial of, or inconsistent with his title or rights therein or in
21 derogation, exclusion, or defiance of such title or rights.” *Evans v. Dean Witter Reynolds,*
22 *Inc.*, 116 Nev. 598, 606, 5 P.3d 1043, 1048 (2000) (quoting *Wantz v. Redfield*, 74 Nev. 196,
23 198, 326 P.2d 413, 414 (1958)). Conversion is an act of general intent, which does not
24 require wrongful intent and is not excused by care, good faith, or lack of knowledge.
25 *Id.* Whether conversion has occurred is generally a question for the jury. *Id.*
26

27 The Nevada Supreme Court has held that personal property need not be tangible in
28 order to give rise to a conversion claim. *M.C. Multi-Family Dev., LLC v. Crestdale Assocs.,*

1 *Ltd.*, 124 Nev. 901, 911, 193 P.3d 536, 543 (2008). Nevada case law does not include the
2 measure of damages as part of the definition of conversion. *Bader v. Cerri*, 96 Nev. 352,
3 356, 609 P.2d 314, 317 (1980), *overruled on other grounds by Evans*, 116 Nev. at 608, 5
4 P.3d at 1050. However, a claim for conversion cannot be based on damages that are de
5 minimus. *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 328-30, 130 P.3d 1280,
6 1287-88 (2006).

8 Plaintiff alleges that Ms. Freeman:

9 [i]s a good friend of Clay's who may have conspired with him to defraud
10 CPI; the Rogue Members have purported to remove Silva from CPI for
11 inquiring in the facts undergirding the embezzlement; the Rogue Members
12 have the same legal counsel as CPI, and both entities have moved to
dismiss this claims against Freeman which, if successful, would restore
millions of embezzled dollars to them.

13 *See* First Amended Complaint at ¶ 151. Plaintiff must allege facts, not a hypothetical
14 "may". Mr. Silva's claims are entirely based on assuming that his partners are telling him
15 the truth about the funds at issue in the case. That does not give life to a claim against Ms.
16 Freeman. Mr. Silva's claims against Ms. Freeman are beyond formulaic and conclusory,
17 they are entirely based on hearsay when it is clear that Mr. Silva's partners are pointing the
18 finger as their former employee.

20 Importantly, Plaintiff alleges that after requesting financials from Defendants Clay,
21 Nelson, and Perry, that they did not provide complete and consistent reports, not Ms.
22 Freeman. Ms. Freeman only received funds from CPI that she was lawfully entitled to. Ms.
23 Freeman did not convert any of CPI or Mr. Silva's funds or engage in any distinct act of
24 wrongful dominion over CPI's property. Mr. Silva's derivative action against Ms. Freeman
25 is futile because there is no justiciable controversy between CPI and Ms. Freeman.

27 ///

28 ///

1 **2. Plaintiff’s Punitive Damage Prayer for Relief Should Also be Dismissed**

2 NRS 42.005 governs when punitive damages are authorized and the process by
3 which those damages are to be awarded. *D.R. Horton, Inc. v. Betsinger*, 130 Nev. 842, 845
4 (2014). In particular, subsection 1 authorizes punitive damages when “it is proven by clear
5 and convincing evidence that the defendant has been guilty of oppression, fraud or
6 malice.” NRS 42.005(1). *Id.*

7 Under Nevada law, a district court “has discretion to determine whether the
8 defendant’s conduct merits punitive damages as a matter of law.” *Bongiovi v. Sullivan*, 138
9 P.3d 433, 451 (Nev. 2006). “Once the district court makes a threshold determination that a
10 defendant’s conduct is subject to this form of civil punishment, the decision to award
11 punitive damages rests entirely within the jury’s discretion.” *Countrywide Home Loans,*
12 *Inc. v. Thitchener*, 192 P.3d 243, 252–53 (Nev. 2008).

13 A plaintiff is never entitled to punitive damages. Instead, punitive damages may be
14 awarded when the plaintiff proves by clear and convincing evidence that the defendant is
15 guilty of oppression, fraud or malice, express or implied. *Bongiovi v. Sullivan*, 138 P.3d
16 433, 451 (Nev. 2006). (quoting NRS 42.005(1)). Oppression means despicable conduct that
17 subjects a person to cruel and unjust hardship with conscious disregard of the rights of the
18 person. *Id.* Fraud means an intentional misrepresentation, deception or concealment of a
19 material fact known to the person with the intent to deprive another person of his rights or
20 property or to otherwise injure another person. *Id.* Malice, express or implied means,
21 “conduct which is intended to injure a person or despicable conduct which is engaged in
22 with a conscious disregard of the rights or safety of others.” NRS 42.001(3).

23 “Conscious disregard,” in turn, means “the knowledge of the probable harmful
24 consequences of a wrongful act and a willful and deliberate failure to act to avoid those
25 consequences.” NRS 42.001(1). Under NRS 42.001, implied malice is a discrete basis for
26
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1 assessing punitive damages where conscious disregard can be demonstrated. *Countrywide*
2 *Home Loans, Inc. v. Thitchener*, 192 P.3d 243, 254-255 (Nev. 2008). The Nevada Supreme
3 Court has held that the “conscious disregard” standard “plainly requires evidence that a
4 defendant acted with a culpable state of mind,” and therefore “denotes conduct that, at a
5 minimum, must exceed mere recklessness or gross negligence.” *Id.* at 255.

6
7 Plaintiff seeks punitive damages against Ms. Freeman. *See* First Amended
8 Complaint ¶ 162. As malicious, oppressive, and fraudulent conduct is required for punitive
9 damages, no factual allegations, even taken as true, sufficiently allege punitive damage.
10 Simply asserting that other parties informed Mr. Silva of Ms. Freeman allegedly
11 embezzling funds does not trigger punitive damages. Most importantly, Defendants Clay,
12 Nelson, and Perry have not alleged in this matter that Ms. Freeman embezzled funds or
13 acted outside of her scope as CFO. Ms. Freeman performed her job as required.

14
15 Mr. Silva’s grievance is against his partners. His partners attempting to shift blame
16 to Ms. Freeman does not constitute oppression, fraud, or malicious intent. There is no cruel
17 or unjust hardship, merely alleged rumors. Without any specific facts alleged regarding Ms.
18 Freeman’s conscious disregard and that she acted with a culpable state of mind, there is no
19 factual or legal basis alleged to maintain punitive damages warranting dismissal.

20
21 **3. Plaintiff Should Not be Permitted Leave to Amend**

22 If the court grants a motion to dismiss for failure to state a claim, leave to amend
23 should be granted unless it is clear the deficiencies cannot be cured by amendment. *DeSoto*
24 *v. Yellow Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992). Under Rule 15(a), the court
25 should "freely" give leave to amend when justice requires and in the absence of a reason
26 such as "undue delay, bad faith or dilatory motive on the part of the movant, repeated
27 failure to cure deficiencies by amendments previously allowed, undue prejudice to the
28 opposing party by virtue of allowance of the amendment, futility of the amendment, etc."

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CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5(b), I hereby certify that I am an employee of JENNINGS & FULTON, LTD., and that on the 25th day of April 2025, I caused a true and correct copy of the foregoing **Defendant Julie Freeman’s Motion to Dismiss** be served as follows:

- _____ by depositing in the United States Mail, first-class postage prepaid, at Las Vegas, Nevada, enclosed in a sealed envelope; or
- _____ by facsimile transmission, pursuant to E.D.C.R. 7.26, as indicated below; or
- X by electronic service, pursuant to N.E.F.C.R. 9 and Administrative Order 14-2, as indicated below:

V.R. Bohman, Esq. (NV Bar No. 13075)
Xyzlo Lee, Esq. (NV Bar No. 16912)
SNELL & WILMER L.L.P.
Email: vbohman@swlaw.com
xlee@swlaw.com
Attorneys for Plaintiff Francisco Silva

BENDAVID LAW
JEFFERY A. BENDAVID, ESQ.
Nevada Bar No. 6220
jbendavid@bendavidfirm.com
JACQUELINE VOKOUN, ESQ.
Nevada Bar No. 16400
jvokoun@bendavidfirm.com

CHRISTIANSSEN TRIAL LAWYERS
PETER S. CHRISTIANSSEN, ESQ.
Nevada Bar No. 1656
pete@christianssenlaw.com
WHITNEY BARRETT, ESQ.
Nevada Bar No. 13662
wbarrett@christianssenlaw.com

ADAMS AND REESE LLP
AUBREY B. HARWELL III, ESQ. (Pro Hac Vice Pending)
TN No. 17394
Trey.harwell@arlaw.com
Attorneys for Defendants, Clay, Nelson, Perry, and CPI

/s/ Erika Perez_____
An Employee of
JENNINGS & FULTON, LTD.

1 **PETER S. CHRISTIANSEN, ESQ. (#5254)**

pete@christiansenlaw.com

2 **WHITNEY J. BARRETT, ESQ. (#13662)**

wbarrett@christiansenlaw.com

3 **CHRISTIANSEN TRIAL LAWYERS**

710 S. 7th Street

4 Las Vegas, Nevada 89101

Telephone: (702) 240-7979

5 Facsimile: (866) 412-6992

6 **JEFFERY A. BENDAVID, ESQ. (#6220)**

jbendavid@bendavidfirm.com

7 **JACQUELINE VOKOUN, ESQ. (#16400)**

jvokoun@bendavidfirm.com

8 **BENDAVID LAW**

7301 Peak Drive, Suite 150

9 Las Vegas, Nevada 89128

(702) 385-6114

11 **AUBREY B. HARWELL III, ESQ. (Pro Hac Vice Pending)**

TN No. 017394

12 trey.harwell@arlaw.com

ADAMS & REESE

13 1600 West End Avenue, Suite 1400

Nashville, Tennessee 37203

(616) 259-1028

15 *Attorneys for CPI Management Group, LLC,*

and Defendants, Clay, Nelson, and Perry

17 **EIGHTH JUDICIAL DISTRICT COURT**
CLARK COUNTY NEVADA

20 Francisco Silva, an individual,

21 Plaintiff,

22 vs.

23 Ed Clay, an individual; Scott Nelson, an
individual; Deddrick Perry, an individual;
24 Julie Freeman, an individual; Doe
Defendants 1 – 10;

25 Defendants,

26 CPI Management Group, LLC;

27 Nominal Defendant.
28

Case No. A-25-909767-B
Dept. 9

CHRISTIANSEN
— TRIAL LAWYERS —



1 3. In Plaintiff’s First Amended Verified Complaint (“FAVC”), Plaintiff alleges that
2 he “supplied the CPI clinic” with five vials of original stem cells derived from the umbilical cords
3 of Plaintiff’s children, and that the CPI clinic has created and injected into its customers duplicates
4 of those original stem cells using protocols and techniques created by Plaintiff. FAVC, ¶¶ 52-56.

5 4. Plaintiff’s Application for Preliminary Injunction sought to enjoin the Member
6 Defendants from continuing to use the original cell vials, duplicated stem cells, and processes
7 used to duplicate the stem cells.

8 5. The Court finds that Plaintiff must show both a likelihood of success on the merits
9 and irreparable harm before a preliminary injunction will issue.

10 6. In support of his Application for Preliminary Injunction, Plaintiff argued and
11 presented a declaration stating that he provided the original stem cells and processes to CPI on a
12 “conditional basis” wherein he could “withdraw” his consent for their use at any time.

13 7. Conversely, Defendants provided a declaration that Plaintiff had provided the
14 original cells and processes as part of Plaintiff’s contribution in exchange for his 25%
15 membership interests in CPI.

16 8. In light of the competing declarations submitted by the parties, the Court finds that
17 there is a real dispute of fact as to the terms of the underlying transaction between Plaintiff and
18 the Member Defendants through which Plaintiff provided the stem cells and cell duplication
19 processes to CPI.

20 9. The Court further finds that Plaintiff did not present sufficient evidence to
21 persuade the Court that Plaintiff entered into a transaction with Member Defendants whereby he
22 could unilaterally “withdraw his consent” for the use of the stem cells or processes at any time.

23 10. The Court also finds that Plaintiff has not identified any wrongful act committed
24 by the Member Defendants amounting to conversion of the stem cells or processes outside the
25 course and scope of their membership and management of CPI. Plaintiff’s claim for conversion
26 cannot proceed against the Member Defendants in their individual capacity.

27 11. The Court further finds that underlying transaction in which the stem cells were
28 provided to CPI was monetary, as Plaintiff received a 25% membership interest in CPI as part of

1 the exchange for providing them. In fact, the Court finds that Plaintiff alleges he will not be able
2 to capitalize on an expiring opportunity to enter an exclusive licensing arrangement with another
3 entity for use of the stem cell lines as one of the bases for seeking the injunction.

4 12. The Court finds that monetary damages would sufficiently address the claimed
5 missed opportunity costs and do not provide a basis for irreparable harm.

6 13. The Court also finds that Plaintiff does not have a privacy interest in the stem cell
7 lines provided to CPI, or that Plaintiff can individually assert his children's privacy interests
8 where he has not brought this case on his children's behalf.

9 14. The Court further finds that, even if Plaintiff could assert a privacy interest,
10 Plaintiff has still failed to show irreparable harm because he already alienated those privacy
11 interests when Plaintiff willingly gave up his children's cells in order to capitalize on them.

12 15. As such, the Court finds that Plaintiff has not demonstrated a likelihood of
13 succeeding on the merits of his conversion claim against the Member Defendants and that
14 Plaintiff would not suffer irreparable harm for which there is no adequate remedy at law in the
15 absence of an injunction.

16 **CONCLUSIONS OF LAW**

17 16. Nevada Courts have long held that a preliminary injunction is only proper where
18 the moving party has demonstrated: (1) that he will suffer irreparable harm for which
19 compensatory damages would not suffice in the absence of a preliminary injunction, and (2) that
20 he has a reasonable likelihood of success on the merits of his claims. *See, e.g., Excellence Cmty.*
21 *Mgmt., LLC v. Gilmore*, 131 Nev. 347, 350, 351 P.3d 720, 722 (2015); *Dangberg Holdings Nev.,*
22 *L.L.C. v. Douglas County*, 115 Nev. 129, 142, 978 P.2d 311, 319 (1999).

23 17. The Court rejects Plaintiff's argument that NRS 33.010 relieves Plaintiff from
24 showing the common law requirements for a preliminary injunction providing that an applicant
25 must show both a likelihood of success on the merits and irreparable harm before a preliminary
26 injunction will issue.

27 18. Here, Plaintiff has failed to demonstrate a likelihood of success on his conversion
28 claim against Member Defendants and failed to demonstrate that he will suffer irreparable harm

1 in the absence of the injunction. However, even if the Court were to employ the alternative
2 sliding-scale approach used by the federal courts, the balance of hardship here does not tilt sharply
3 in Plaintiff's favor. As such, the Court concludes that Plaintiff's Application for Preliminary
4 Injunction must be denied.

5 19. In order to succeed on his conversion claim, Plaintiff must show that Member
6 Defendants: (1) wrongfully exerted dominion over Plaintiff's property, (2) in denial of or
7 inconsistent with Plaintiff's rights or title thereto, or in derogation, exclusion, or defiance of such
8 rights. *Winchell v. Schiff*, 124 Nev. 938, 944, 193 P.3d 946, 950 (2008).

9 20. Here, the Court concludes that Plaintiff has not demonstrated a likelihood of
10 succeeding on the merits of his conversion claim against the Member Defendants.

11 21. The Court concludes that Plaintiff did not present sufficient evidence to persuade
12 the Court that Plaintiff entered into a transaction with Member Defendants whereby he could
13 unilaterally withdraw his consent for the use of the stem cells or processes at any time.

14 22. Furthermore, a member or manager of a limited liability company cannot be held
15 liable for the acts of the entity simply as a result of being a member or manager under Nevada
16 law. NRS 86.381; *Gardner v. Henderson Water Park, LLC*, 133 Nev. 391, 393-94, 399 P.3d 350,
17 351 (2017). The Court rejects Plaintiff's interpretation of *Gardner* and concludes that Plaintiff
18 has not identified any wrongful act committed by the Member Defendants amounting to
19 conversion of the stem cells or processes outside the course and scope of their membership and
20 management of CPI. The Court thus concludes that Plaintiff's claim for conversion cannot
21 proceed against the Member Defendants in their individual capacity.

22 23. As such, the Court concludes that Plaintiff has not demonstrated a likelihood of
23 success on the merits of his conversion claim against the Member Defendants and Plaintiff's
24 Application for Preliminary Injunction must be denied.

25 24. However, even presuming Plaintiff has properly maintained his conversion claim
26 against the Member Defendants and that the Court could find a likelihood of success on the merits,
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28 because Plaintiff has failed to demonstrate irreparable harm.



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Dated this 29th day of April, 2025.

Respectfully submitted by:

CHRISTIANSEN TRIAL LAWYERS

/s/ Peter S. Christiansen, Esq.

Peter S. Christiansen, Esq.
Nevada Bar No. 5254
Whitney Barrett, Esq.
Nevada Bar No. 13662
710 S 7th Street
Las Vegas, Nevada 89101

Jeffery A. Bendavid, Esq.
Nevada Bar No. 6220
Jacqueline Vokoun, Esq.
Nevada Bar No. 16400
BENDAVID LAW
7301 Peak Dr., Suite 150
Las Vegas, Nevada 89128

Aubrey B. Harwell III, Esq.
(Pro Hac Vice Pending)
TN No.. 017394
ADAMS & REESE
1600 West End Avenue, Suite 1400
Nashville, Tennessee 37203

*Attorneys for Defendants, Clay, Nelson, and
Perry and Nominal Defendant CPI*

Dated this 29th day of April, 2025.

Approved as to form:

SNELL & WILMER L.L.P.

/s/ V.R. Bohman, Esq.

V.R. Bohman, Esq.
Nevada Bar No. 13075
Xyzlo Lee, Esq.
Nevada Bar No. 16912
1700 South Pavilion Center Drive, Suite 700
Las Vegas, NV 89135

Attorneys for Plaintiff

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Francisco Silva, Plaintiff(s)

CASE NO: A-25-909767-B

7 vs.

DEPT. NO. Department 9

8 Ed Clay, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 4/30/2025

15 R. Todd Terry

tterry@christiansenlaw.com

16 Keely Perdue

keely@christiansenlaw.com

17 Jonathan Crain

jcraim@christiansenlaw.com

18 Chandi Melton

chandi@christiansenlaw.com

19 Norma Richter

nrichter@jfnvlaw.com

20 Leilani Gamboa

lgamboa@bendavidfirm.com

21 Docket Docket

docket_las@swlaw.com

22 Esther Barrios Sandoval

esther@christiansenlaw.com

23 VR Bohman

vbohman@swlaw.com

24 Logan Willson

Logan@jfnvlaw.com

25 Aileen Bencomo

ab@christiansenlaw.com

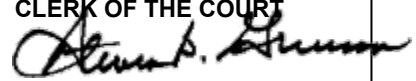
26

27

28

1	Jeffery Bendavid	jbendavid@bendavidfirm.com
2	Erika Perez	erika@jfnvlaw.com
3	Joanna Fung	jfung@swlaw.com
4	Andrew Brown	abrown@christiansenlaw.com
5	Jacqueline Vokoun	jkvokoun@bendavidfirm.com
6	Jacqueline Vokoun	jkvokoun@bendavidfirm.com
7	Jacqueline Vokoun	jkvokoun@bendavidfirm.com
8	Jacqueline Vokoun	jkvokoun@bendavidfirm.com
9	Jacqueline Vokoun	jkvokoun@bendavidfirm.com
10	Peter Christiansen	pete@christiansenlaw.com
11	Whitney Barrett	wbarrett@christiansenlaw.com
12	Peter Christiansen	pete@christiansenlaw.com
13	Whitney Barrett	wbarrett@christiansenlaw.com
14	Peter Christiansen	pete@christiansenlaw.com
15	Whitney Barrett	wbarrett@christiansenlaw.com
16	Peter Christiansen	pete@christiansenlaw.com
17	Whitney Barrett	wbarrett@christiansenlaw.com
18	Peter Christiansen	pete@christiansenlaw.com
19	Whitney Barrett	wbarrett@christiansenlaw.com
20	Xyzlo Lee	xlee@swlaw.com
21	Amy Larsen	amy@christiansenlaw.com
22	Lyndsey Mosbey	lmosbey@swlaw.com
23	Draego Burton	drburton@swlaw.com

24
25
26
27
28



1 **NEOJ**
2 **PETER S. CHRISTIANSEN, ESQ. (#5254)**

3 pete@christiansenlaw.com

4 **WHITNEY J. BARRETT, ESQ. (#13662)**

5 wbarrett@christiansenlaw.com

6 **CHRISTIANSEN TRIAL LAWYERS**

7 710 S. 7th Street

8 Las Vegas, Nevada 89101

9 Telephone: (702) 240-7979

10 Facsimile: (866) 412-6992

11 **JEFFERY A. BENDAVID, ESQ. (#6220)**

12 jbendavid@bendavidfirm.com

13 **JACQUELINE VOKOUN, ESQ. (#16400)**

14 jvokoun@bendavidfirm.com

15 **BENDAVID LAW**

16 7301 Peak Drive, Suite 150

17 Las Vegas, Nevada 89128

18 (702) 385-6114

19 **AUBREY B. HARWELL III, ESQ. (Pro Hac Vice Pending)**

20 TN No. 017394

21 trey.harwell@arlaw.com

22 **ADAMS & REESE**

23 1600 West End Avenue, Suite 1400

24 Nashville, Tennessee 37203

25 (616) 259-1028

26 *Attorneys for CPI Management Group, LLC,*
27 *and Defendants, Clay, Nelson, and Perry*

28 **IN THE EIGHTH JUDICIAL DISTRICT COURT**

CLARK COUNTY NEVADA

Francisco Silva, an individual,

Plaintiff,

vs.

Ed Clay, an individual; Scott Nelson, an
individual; Deddrick Perry, an individual;
Julie Freeman, an individual; Doe
Defendants 1 – 10;

Defendants,

CPI Management Group, LLC, a Nevada
limited liability company;

Nominal Defendant.

Case No. A-25-909767-B
Dept. 9

NOTICE OF ENTRY OF ORDER
DENYING PLAINTIFF'S
APPLICATION FOR PRELIMINARY
INJUNCTION



1 **NOTICE OF ENTRY OF ORDER DENYING PLAINTIFF’S APPLICATION FOR**
2 **PRELIMINARY INJUNCTION**

3 PLEASE TAKE NOTICE that an Order Denying Plaintiff’s Application for Preliminary
4 Injunction was entered in the above captioned case on April 30, 2025, a copy of which is attached
5 hereto as **Exhibit 1**.

6 Dated this 5th day of May, 2025.

7 **CHRISTIANSEN TRIAL LAWYERS**

8 */s/ Whitney J. Barrett, Esq.*

9 PETER S. CHRISTIANSEN, ESQ.

10 WHITNEY J. BARRETT, ESQ.

11 *Attorneys for CPI Management Group, LLC,*
12 *and Defendants, Clay, Nelson, and Perry*

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CHRISTIANSEN
— TRIAL LAWYERS —





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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of CHRISTIANSEN TRIAL LAWYERS, and that on this 5th day of May, 2025, I caused the foregoing document entitled NOTICE OF ENTRY OF ORDER DENYING PLAINTIFF’S APPLICATION FOR PRELIMINARY INJUNCTION to be served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules.

/s/ Amy Larsen
An employee of Christiansen Trial Lawyers

EXHIBIT 1

1 **PETER S. CHRISTIANSEN, ESQ. (#5254)**

pete@christiansenlaw.com

2 **WHITNEY J. BARRETT, ESQ. (#13662)**

wbarrett@christiansenlaw.com

3 **CHRISTIANSEN TRIAL LAWYERS**

710 S. 7th Street

4 Las Vegas, Nevada 89101

Telephone: (702) 240-7979

5 Facsimile: (866) 412-6992

6 **JEFFERY A. BENDAVID, ESQ. (#6220)**

jbendavid@bendavidfirm.com

7 **JACQUELINE VOKOUN, ESQ. (#16400)**

jvokoun@bendavidfirm.com

8 **BENDAVID LAW**

7301 Peak Drive, Suite 150

9 Las Vegas, Nevada 89128

(702) 385-6114

11 **AUBREY B. HARWELL III, ESQ. (Pro Hac Vice Pending)**

TN No. 017394

12 trey.harwell@arlaw.com

ADAMS & REESE

13 1600 West End Avenue, Suite 1400

Nashville, Tennessee 37203

(616) 259-1028

15 *Attorneys for CPI Management Group, LLC,*

and Defendants, Clay, Nelson, and Perry

17 **EIGHTH JUDICIAL DISTRICT COURT**
CLARK COUNTY NEVADA

20 Francisco Silva, an individual,

21 Plaintiff,

22 vs.

23 Ed Clay, an individual; Scott Nelson, an
individual; Deddrick Perry, an individual;
24 Julie Freeman, an individual; Doe
Defendants 1 – 10;

25 Defendants,

26 CPI Management Group, LLC;

27 Nominal Defendant.
28

Case No. A-25-909767-B
Dept. 9

CHRISTIANSEN
— TRIAL LAWYERS —



1 3. In Plaintiff’s First Amended Verified Complaint (“FAVC”), Plaintiff alleges that
2 he “supplied the CPI clinic” with five vials of original stem cells derived from the umbilical cords
3 of Plaintiff’s children, and that the CPI clinic has created and injected into its customers duplicates
4 of those original stem cells using protocols and techniques created by Plaintiff. FAVC, ¶¶ 52-56.

5 4. Plaintiff’s Application for Preliminary Injunction sought to enjoin the Member
6 Defendants from continuing to use the original cell vials, duplicated stem cells, and processes
7 used to duplicate the stem cells.

8 5. The Court finds that Plaintiff must show both a likelihood of success on the merits
9 and irreparable harm before a preliminary injunction will issue.

10 6. In support of his Application for Preliminary Injunction, Plaintiff argued and
11 presented a declaration stating that he provided the original stem cells and processes to CPI on a
12 “conditional basis” wherein he could “withdraw” his consent for their use at any time.

13 7. Conversely, Defendants provided a declaration that Plaintiff had provided the
14 original cells and processes as part of Plaintiff’s contribution in exchange for his 25%
15 membership interests in CPI.

16 8. In light of the competing declarations submitted by the parties, the Court finds that
17 there is a real dispute of fact as to the terms of the underlying transaction between Plaintiff and
18 the Member Defendants through which Plaintiff provided the stem cells and cell duplication
19 processes to CPI.

20 9. The Court further finds that Plaintiff did not present sufficient evidence to
21 persuade the Court that Plaintiff entered into a transaction with Member Defendants whereby he
22 could unilaterally “withdraw his consent” for the use of the stem cells or processes at any time.

23 10. The Court also finds that Plaintiff has not identified any wrongful act committed
24 by the Member Defendants amounting to conversion of the stem cells or processes outside the
25 course and scope of their membership and management of CPI. Plaintiff’s claim for conversion
26 cannot proceed against the Member Defendants in their individual capacity.

27 11. The Court further finds that underlying transaction in which the stem cells were
28 provided to CPI was monetary, as Plaintiff received a 25% membership interest in CPI as part of

1 the exchange for providing them. In fact, the Court finds that Plaintiff alleges he will not be able
2 to capitalize on an expiring opportunity to enter an exclusive licensing arrangement with another
3 entity for use of the stem cell lines as one of the bases for seeking the injunction.

4 12. The Court finds that monetary damages would sufficiently address the claimed
5 missed opportunity costs and do not provide a basis for irreparable harm.

6 13. The Court also finds that Plaintiff does not have a privacy interest in the stem cell
7 lines provided to CPI, or that Plaintiff can individually assert his children's privacy interests
8 where he has not brought this case on his children's behalf.

9 14. The Court further finds that, even if Plaintiff could assert a privacy interest,
10 Plaintiff has still failed to show irreparable harm because he already alienated those privacy
11 interests when Plaintiff willingly gave up his children's cells in order to capitalize on them.

12 15. As such, the Court finds that Plaintiff has not demonstrated a likelihood of
13 succeeding on the merits of his conversion claim against the Member Defendants and that
14 Plaintiff would not suffer irreparable harm for which there is no adequate remedy at law in the
15 absence of an injunction.

16 **CONCLUSIONS OF LAW**

17 16. Nevada Courts have long held that a preliminary injunction is only proper where
18 the moving party has demonstrated: (1) that he will suffer irreparable harm for which
19 compensatory damages would not suffice in the absence of a preliminary injunction, and (2) that
20 he has a reasonable likelihood of success on the merits of his claims. *See, e.g., Excellence Cmty.*
21 *Mgmt., LLC v. Gilmore*, 131 Nev. 347, 350, 351 P.3d 720, 722 (2015); *Dangberg Holdings Nev.,*
22 *L.L.C. v. Douglas County*, 115 Nev. 129, 142, 978 P.2d 311, 319 (1999).

23 17. The Court rejects Plaintiff's argument that NRS 33.010 relieves Plaintiff from
24 showing the common law requirements for a preliminary injunction providing that an applicant
25 must show both a likelihood of success on the merits and irreparable harm before a preliminary
26 injunction will issue.

27 18. Here, Plaintiff has failed to demonstrate a likelihood of success on his conversion
28 claim against Member Defendants and failed to demonstrate that he will suffer irreparable harm

1 in the absence of the injunction. However, even if the Court were to employ the alternative
2 sliding-scale approach used by the federal courts, the balance of hardship here does not tilt sharply
3 in Plaintiff's favor. As such, the Court concludes that Plaintiff's Application for Preliminary
4 Injunction must be denied.

5 19. In order to succeed on his conversion claim, Plaintiff must show that Member
6 Defendants: (1) wrongfully exerted dominion over Plaintiff's property, (2) in denial of or
7 inconsistent with Plaintiff's rights or title thereto, or in derogation, exclusion, or defiance of such
8 rights. *Winchell v. Schiff*, 124 Nev. 938, 944, 193 P.3d 946, 950 (2008).

9 20. Here, the Court concludes that Plaintiff has not demonstrated a likelihood of
10 succeeding on the merits of his conversion claim against the Member Defendants.

11 21. The Court concludes that Plaintiff did not present sufficient evidence to persuade
12 the Court that Plaintiff entered into a transaction with Member Defendants whereby he could
13 unilaterally withdraw his consent for the use of the stem cells or processes at any time.

14 22. Furthermore, a member or manager of a limited liability company cannot be held
15 liable for the acts of the entity simply as a result of being a member or manager under Nevada
16 law. NRS 86.381; *Gardner v. Henderson Water Park, LLC*, 133 Nev. 391, 393-94, 399 P.3d 350,
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Dated this 29th day of April, 2025.

Respectfully submitted by:

CHRISTIANSEN TRIAL LAWYERS

/s/ Peter S. Christiansen, Esq.

Peter S. Christiansen, Esq.
Nevada Bar No. 5254
Whitney Barrett, Esq.
Nevada Bar No. 13662
710 S 7th Street
Las Vegas, Nevada 89101

Jeffery A. Bendavid, Esq.
Nevada Bar No. 6220
Jacqueline Vokoun, Esq.
Nevada Bar No. 16400
BENDAVID LAW
7301 Peak Dr., Suite 150
Las Vegas, Nevada 89128

Aubrey B. Harwell III, Esq.
(Pro Hac Vice Pending)
TN No.. 017394
ADAMS & REESE
1600 West End Avenue, Suite 1400
Nashville, Tennessee 37203

*Attorneys for Defendants, Clay, Nelson, and
Perry and Nominal Defendant CPI*

Dated this 29th day of April, 2025.

Approved as to form:

SNELL & WILMER L.L.P.

/s/ V.R. Bohman, Esq.

V.R. Bohman, Esq.
Nevada Bar No. 13075
Xyzlo Lee, Esq.
Nevada Bar No. 16912
1700 South Pavilion Center Drive, Suite 700
Las Vegas, NV 89135

Attorneys for Plaintiff

1 **CSERV**

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3 DISTRICT COURT
CLARK COUNTY, NEVADA

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6 Francisco Silva, Plaintiff(s)

CASE NO: A-25-909767-B

7 vs.

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8 Ed Clay, Defendant(s)

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15 R. Todd Terry

tterry@christiansenlaw.com

16 Keely Perdue

keely@christiansenlaw.com

17 Jonathan Crain

jcrajin@christiansenlaw.com

18 Chandi Melton

chandi@christiansenlaw.com

19 Norma Richter

nrichter@jfnvlaw.com

20 Leilani Gamboa

lgamboa@bendavidfirm.com

21 Docket Docket

docket_las@swlaw.com

22 Esther Barrios Sandoval

esther@christiansenlaw.com

23 VR Bohman

vbohman@swlaw.com

24 Logan Willson

Logan@jfnvlaw.com

25 Aileen Bencomo

ab@christiansenlaw.com

26

27

28

1	Jeffery Bendavid	jbendavid@bendavidfirm.com
2	Erika Perez	erika@jfnvlaw.com
3	Joanna Fung	jfung@swlaw.com
4	Andrew Brown	abrown@christiansenlaw.com
5	Jacqueline Vokoun	jkvokoun@bendavidfirm.com
6	Jacqueline Vokoun	jkvokoun@bendavidfirm.com
7	Jacqueline Vokoun	jkvokoun@bendavidfirm.com
8	Jacqueline Vokoun	jkvokoun@bendavidfirm.com
9	Jacqueline Vokoun	jkvokoun@bendavidfirm.com
10	Peter Christiansen	pete@christiansenlaw.com
11	Whitney Barrett	wbarrett@christiansenlaw.com
12	Peter Christiansen	pete@christiansenlaw.com
13	Whitney Barrett	wbarrett@christiansenlaw.com
14	Peter Christiansen	pete@christiansenlaw.com
15	Whitney Barrett	wbarrett@christiansenlaw.com
16	Peter Christiansen	pete@christiansenlaw.com
17	Whitney Barrett	wbarrett@christiansenlaw.com
18	Peter Christiansen	pete@christiansenlaw.com
19	Whitney Barrett	wbarrett@christiansenlaw.com
20	Xyzlo Lee	xlee@swlaw.com
21	Amy Larsen	amy@christiansenlaw.com
22	Lyndsey Mosbey	lmosbey@swlaw.com
23	Draego Burton	drburton@swlaw.com

24
25
26
27
28